VOLUME SIX OF SIX

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

RICHARD BERNARD MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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Q -- as improper res gestae testimony?
A I made a motion on it. I don't remember what my motion was.
Q Okay. Because -- I got too many notebooks. I'm sorry.
This is already in the record too. Do I need to -- y'all -- it's just part of the transcript.
I don't need to mark this then, judge, or introduce it?
THE COURT: I don't know what it is.
MR. MORTON: It's just part of, part of the transcript that I wanted to ask Mr.---
THE COURT: If it's, if it's in the transcript, that's gonna be part of the record of appeal.
MR. MORTON: All right, sir.
Q Bottom of Page 1149, you indicate that up until last week, when you received State's supplementary notices of additional evidence in support of aggravating circumstances, this wasn't an issue, meaning Mr. Gibson's new statement, correct?
A I'm sorry. Can you ask that question again?
Q Okay. At the bottom of 1149 --
A Uh-huh. (Affirmative).
Q -- your, your last comment.
A Uh-huh. (Affirmative).
Q You indicate that you had not received any new information about Gibson now saying that Mr. Moore came over

for crack. That was the first you had heard about it is what you're indicating.

A Yes, on the top of 1150 I'm going into they've indicated that there's been a change, and then I went on to talk about that.

Q And you objected to that testimony coming in as being improper motive or res gestae evidence?

A I, I'm---

Q You can take your, take you---

A If you'll tell me---

Q Okay.

A Tell me where it is you're talking about so I can---

Q Okay.

A ---cause you've got some things marked on here and I'm trying to --

Q You indicate on Page 1150, the next paragraph down actually --

A Uh-huh. (Affirmative).

Q -- that they are going to use this drug use to establish a motive for the crime, correct, and your position basically was unless they can report -- you are objecting to it?

A Yes, up until then, up until last week, which is when I got Mr. Gibson's statement, there wasn't any connection in evidence as far as drug use around the time of the crime.

But by use of Mr. Gibson at that point, they were gonna then be able to do it, and that's what my objection was, and, of course, the Court's worried about whether I'm talking about aggravating circumstance, which I'm not.

Q Because the notice you got was actually a notice, that was a notice, a supplemental notice of the State's intentions to use Mr. Gibson's testimony as a factor, as an aggravating circumstance?

A Right, and, and from what I'm arguing here, it appears that when I saw that I didn't, I realized -- that was almost my notice that he had changed his statement.

Q Right.

And this -- you were arguing to keep that out?

A Right.

Q Okay. And the judge decided, at that point, he would have an in camera hearing to hear what Mr. Gibson's testimony was gonna be?

A Right.

Q Okay. And after hearing that testimony and arguments by counsel, the judge decided that he would allow Mr. Gibson's res gestae testimony?

A That's right.

Q Over your objection?

A Right.

Q Okay. Do you remember Mrs. Genie Smith, the nurse

testifying?
A Seems like there was somebody from the hospital that was there.
Q And she came in and testified on behalf of the, of the State, correct?
A Yes.
Q And she came in and testified as to the following: She was a nurse at the hospital that treated, that helped treat Mr. Morin for his---
A Moore.
Q Mr. -- I'm sorry, Mr. Moore, for his wounds?
A Right.
Q And she testified that she remembered the record on Mr. Moore?
A Uh-huh. (Affirmative).
Q I mean you can -- I'm not---
A Yes. Okay.
Q Okay. And that Mr. Barnette asked if she could show her record, would that refresh her, would refresh her memory?
A Uh-huh. (Affirmative).
Q And apparently she was given a copy of the record?
A Uh-huh. (Affirmative).
Q And then Mr. Barnette asked, and in your assessment, can you tell us what your assessment found.

A Uh-huh. (Affirmative).
Q And the answer was that he was admitted to, into the emergency room with the gunshot wound to his left arm. He had -- I have documented that he had alcohol and cocaine present.
A Uh-huh. (Affirmative).
Q And that I had noted the odor of alcohol and also that he was disoriented.
A Uh-huh. (Affirmative).
Q The questioning then by Mr. Barnette was say you noted, you had notated that he had alcohol and cocaine present and she said I did. And Mr. Barnette said, and would that information be gathered from Mr. Moore himself, and her answer was more than likely it would. It either comes from the patient or from the EMS, you know, report. And then further down we can -- she says and if they did not give me any kind of report from that, you know, I do obtain that from the, the patient also.
A Uh-huh. (Affirmative).
Q Did they -- do you remember, during her testimony, how or if they established the basis of her knowledge?
A It appears in there that she said that she was looking at her own notes or her own report.
Q Okay. And does she---
A And that she was treating him and that she looked at

those, at her notes to tell what happened when she was doing that.

Q Right.

She indicates that, that she had documented --

A Right.

Q Right. That he had alcohol and cocaine present, that she was then asked how that information would be gathered.

A Right.

Q Right.

And she said---

A She was vague about it.

Q Either from Mr. Moore or from EMS?

A Right.

Q Do you remember whether there was any toxicology or anything done?

A I don't remember.

Q Okay. Do you consider her testimony to be subject to a hearsay objection?

A It depends because she's saying that she got it -- at one point she says she got it from Mr. Moore, which she's treating him for medical. So, that would be an exception. On the other hand, she's also saying that she may of got it from EMS, which would make it hearsay.

Q Okay.

A So --.

Q And does she indicate conclusively where she got that information from?
A Doesn't appear to.
Q Okay. And possibly, if she did not clear that up, potentially that could of been a hearsay objection?
A Potentially, yes, sir.
MR. MORTON: Okay. I beg the Court's indulgence, Your Honor?
THE COURT: Yes, sir.
(Pause.)
Q Do you agree, Mr. Morin, that it would have been good for Mr. Moore had Mrs. Smith's statements to the jury to have been excluded?
A Yes.
MR. MORTON: Okay. I think that's all I have, Your Honor. If you'll give me one second.
(Pause.)
MR. MORTON: That's all I have.
Thank you very much, Mr. Morin.
THE COURT: All right. We'll take a short recess, about five to ten minutes. Court's in recess for that period of time.
I'll instruct the witness not to discuss his testimony with anyone during the break. You may step down and move around.

WITNESS: Thank you, Your Honor.
THE COURT: Thank you.
(WHEREUPON, a short recess was taken at this time.)
THE COURT: State ready to proceed?
MR. SALTER: Yes, sir, Your Honor.
THE COURT: Applicant ready to proceed?
MR. MORTON: Yes, sir, Your Honor.
THE COURT: You may proceed.
MR. SALTER: Thank you, Your Honor.
THE COURT: Your witness.
(WHEREUPON, a letter was marked as Respondent's Exhibit No. 19 for identification purposes only at this time.)

CROSS-EXAMINATION

BY MR. SALTER:

Q Good morning, Mr. Morin. How are you doing, sir?
A Good morning.
Q I think you've been up here, you've been patient, for hours. So, I will try to be as succinct as I can, but there's an awful lot of ground I want to cover with you.
You testified, on direct examination, that you first went to work with the, the P.D.'s Office in '95?
A That's correct.
Q Is that correct?
A April '95.
Q And you went through your experience. I think you

stated you've been third chair of two different death penalty cases.

A That's correct.

Q All right. Now, you knew, you knew you had tried two non-capital murder cases, you thought maybe four?

A Could of been, yes.

Q Okay. Have you thought about whether or not it was two or four?

A Well, I thought it was two or four originally because I remember Alonzo Mack right off, but since then I've remembered a defendant by the name of Hughes. I can't remember his first name. So, that made two of the four. But I --.

Q All right. And you first met with Mr. Moore shortly after his arrest, correct?

A That's correct.

Q All right. Did y'all discuss the facts of the case at that point?

A We might have talked about them a little bit. My first meeting was more concerned with making sure that he didn't make any statements to the news media. My prior experience on death penalties was that the news media like to go over there and interview the defendant, and I wanted to cut that off before it ever started.

Q All right. Do you recall when you met with him to,

next met with him to discuss the case?
A I show that on March 1st, 2000, I met with him. He had different things he wanted to know about, and I talked to him, answered his questions as best I could. He wrote the issue about bond. He had written me a letter on February 16th asking me to come and I got there on March 1st.
Q All right. Y'all didn't discuss the facts of the case at that time?
A We were probably discussing the facts and I'm sure he told me about what his, what had happened during that. I didn't specifically write it down because I mean we were talking about, you know -- I didn't write down he told me this happened and he told me that happened at that point, but---
Q All right.
A I'm sure I walked in and said okay, you're charged with this, and I told him the legal side of it, and he probably told me his story because, by that time, I would of known some about it.
Q All right. Now, do your notes reflect an entry dated July 14th of 2000?
A Yes.
Q Okay. And this would of been before you were provided with discovery?

A It appears that my notes, yeah, no discovery at this time.
Q Is there any -- did you and Mr. Moore discuss the facts of the case at that time?
A Let's see, I'm just going by what I wrote, no discovery. See if I could get bond, discuss the effects of anticipating, he brought up bond again. Satisfied with the way case is being handled. I didn't write down what he, about the facts. But I know, by then, I had met with him at least three times and we had talked about the facts.
Q All right. What did he tell you had occurred on the night before, the morning of the shooting?
A I remember, and I know I've said I don't remember a lot, but one thing I do remember and always will remember is that he went into that store to buy I thought it was a Coke and gum. But it's -- I, over the years, I must of got it confused. It was beer and cigarettes. That he didn't have enough money. That he asked the clerk to let him slide because he was in there all the time. That the clerk made some offensive remarks to him and told him he'd have to leave or what have you. Mr. Moore didn't want to. That the clerk pulled out a gun and Mr. Moore immediately tried to disarm him for his own safety. That after he got that gun away from the, him, the clerk pulled out a second gun and shot him and he returned fire.

Q All right.
A Now, that's -- I mean those are, those are facts that he's told me that I'm gonna remember for -- I don't think I'll forget.
Q Well, either on that occasion or at any subsequent occasion --
A Uh-huh. (Affirmative).
Q -- did he tell you that he'd gone behind the counter and fired a shot from while he was behind the counter?
A Not to my recollection. I mean if---
Q Excuse me.
A I don't remember him ever saying that. I know he went behind the counter and he admitted he went behind the counter. I mean afterwards he did also tell me that he went around the counter, he saw that money laying there, he took it, he went back out. I mean he was consistent with that as well.
Q Okay.
A And the evidence supported him going around behind the counter and him leaving with the money.
Q In your initial conversations with your client --
A Uh-huh. (Affirmative).
Q -- did he tell you that he'd been using crack?
A Not initially, no, that came later.
Q All right. What was he -- what, what did he tell you

initially?

A He didn't -- initially he had got off work and he was going by there. That's, that's what he told me. Now, much later in, in a conversation some, some admissions about crack came up, but that was a long time later, and, in fact, when I saw it in my notes, it was something that I hadn't even kept in my memory of the---

Q When was the first time he told you that?

A It's gonna -- I'm gonna have to flip through it because I saw it while I was looking at these.

All right. It was after June 27th, 2001, and my notes -- I meant -- I went there. I kind of have to back-up because I can't tell. I made a break here, but I didn't change the dates. So, I don't know if that was occurring on the date or sometime after. But sometime between June, because I went through a long thing written, writing down all the things that he told me going back that day.

So, it starts out I met with Mr. Moore in Pod 4. Jennifer Johnson and Keith Kelly were present. We talked about a potential plea. He said he got up around nine o'clock, walked around the house with Mario Madison. The kids were in a day care across from Chapman. I'm getting to where, to answer your question cause it's what I wrote. Visited Beuford's house and Charles Jackson, who lives behind the church, on Cleveland Chapel Road. He smoked some

crack and pot during the day.

So, I know on June 27th, 2001, he had said that.

Okay. I'm sorry. June 25th, 2001, Keith Kelly, we discussed the case. We went to the defendant, met with him about 90 minutes in Pod 4. Stated he'd been drinking all day prior to the incident, admits to drug use, and I wrote down this is the first we've heard of this version.

Q All right. So, did this information cause you to have to kind of shift gears a little bit or --?

A It caused -- it didn't -- it made me concerned about what happened after the shooting because---

Q Okay. How so?

A Because I believe then and I pretty much believe now that I don't know if he intended to rob that store when he went in. My concern was is everything he did after the shooting is what hurt him, and it also, his admission to crack use, lends credence to or calls in question some of the other decisions he made. I try not to let that come into play because he's always, he was always -- this is what I did, and I was convinced that, and I am convinced that -- I don't know that he intended to rob that store when he walked in, but that crack use sort of -- you have to keep that in mind, and, you know, like I said, when I read that in these notes is the first time I'd remembered it cause I always remembered the story he told me about going in there

and not having the money and all that kind of stuff.
Q All right, sir.
A But that crack use, you know, it kind of puts you back and it also, in the back of your mind, you're trying to make sure that you watch where you go with their, the State's theories about his drug use cause now you're on notice that well, he, he's, he's telling you he did have some drug issues.
Q All right. Did you make any effort to ascertain where he may of been upon using crack apart from that statement?
A Let's see. No, because after that we started talking about potential pleas and what was realistic and that he seems to have been, and maybe he sensed it a problem with us, because we started having more contentious meetings after that.
Q You mentioned potential pleas.
A Uh-huh. (Affirmative).
Q Was there a plea bargain offered?
A Yes, it was.
Q What was it?
A There was a life -- I think there was a life -- let me, once again, let me make sure that I write down what it was because I want to say that they offered to let him -- they offered life. I'm trying to remember if, if they offered a regular murder, which regular murder being 30 to life,

because I wrote in here several times that his position was, is that 30 years was life, which is not something that I would of argued with my clients about. They --.

Q So, he wasn't interested in a plea bargain?

A Well, he was interested in a plea bargain if he, if the amount of time was right. But the problem was, is the amount of time that he wanted was unrealistic in the case. I mean he, he was talking in the teens and here we are looking at a death notice and that's too far apart.

Q So, he wasn't interested in a plea to murder obviously?

A There was a note in here where at one point he said that was a possibility, but then he wasn't.

Q All right.

A And he said defendant, defendant said the plea to murder and armed robbery with 30 to life range is a possibility, and then I wrote it, his answer makes it difficult to pursue, and then I went back to writing down the things that he had told me. I'm almost certain there was an offer, but I, I could of sworn I had it, written it down. I would have.

Q All right, sir.

A I'm sorry to keep flipping back through here because I've already seen things in here that I've skipped over before during my testimony. I don't want to -- I apologize, Your Honor.

I take it from my notes where I wrote he said it was a possibility means that, that regular life wasn't offered. That was something that he was saying that he might be willing to do if it was offered. But there's no more conversations about it.

Q All right, sir. You were asked, on direct examination, about whether, about the information you heard at the preliminary hearing.

A Uh-huh. (Affirmative).

Q And one of the things you, that was elicited is that information that your client supposedly came into Nikki's with a gun.

A I'm sorry. Did you say preliminary hearing?

Q At a preliminary hearing, yes, sir.

A I don't recall having a preliminary hearing. We had a bond hearing.

Q I'm sorry. A bond hearing. I do apologize. I said prelim.

A The notes I had from the bond hearing, I think it says that a witness claimed that the defendant was armed upon entering.

Q All right.

A And, and that's all I wrote. So, I didn't have a copy of it at that time. Looking back on it now, I assume they were making some sort of reference to Mr. Hadden, but

obviously he wasn't armed.
Q And this is before it was determined where the guns all came from?
A Right.
Q And you were also asked about whether or not you had read Applicant's Exhibit 25, the report prepared by Rusty Clevenger.
A Yes, I was asked that.
Q Okay.
A And I had Mr. Clevenger's report at -- I mean it was provided in discovery. But I don't know that I had it at the bond hearing.
Q His report was based at least on hearsay, if not hearsay within hearsay, was it not?
A Yeah, because he was collecting up information from all different sources to compile his report.
Q And it was also prepared reasonably in the infancy of the investigation?
A I think that's an accurate statement.
Q And by the time trial rolled around, the State didn't claim that your client came into, with a tire tool or lug wrench?
A No, no. I -- no.
Q The State did, however, present evidence that it was a meat cleaver present at the scene that wasn't accounted for

by being the property of Nikki's, right?
A I, I, I -- I'd have to see. I don't remember the discussion about meat cleaver. Like I said, I remember the knife. I remember some discussion about the, the tire iron. But, you know, in my mind, those two guns dominate my memory of the case.
Q Okay. You testified earlier that Mr. Kelly was appointed after the State served the notice of intent to seek the death penalty?
A Yes.
Q Okay. And I believe you indicated that the two of you had a good working relationship?
A That's correct.
Q And you respected his abilities as an attorney?
A Yes.
Q Why did you view it important that you have a say so in who's appointed second chair?
A My experience on prior death penalties was, is that it -- on Theodore Kelly's case, I saw Don Thompson get his attorney appointed to him, get a letter in the mail saying this is your attorney and Don had never met John. In the Locklair case, they tried to take the first person off the list. It was David Walsh, and David Walsh hadn't done criminal law in at least four or five years, and I remember being in chambers and David Walsh saying I don't know

anything about this, I don't know anything about this at all, and somebody from the Solicitor's Office said well, you're on the list and he said well, you need to take me off the list, and it came close to him being appointed.

So, one of the things that I knew might happen, as soon as he gets appointed, as soon the death penalty comes down, is somebody else, be it the judge, the clerk, the solicitor, or somebody, may try to appoint somebody to be on Mr. Moore's case, and if it's David Walsh or, or somebody to that effect, and I'm sure Mr. Walsh is a fine attorney, but he hasn't done criminal work, at that time he hadn't done it in nearly ten years, I don't want Mr. Moore to be exposed to somebody with no, no ability and I don't want to have to be meeting my co-counsel for the first time at the jail. So, that was my feelings on that.

Q All right. And is your recollection that Mr. Kelly had some experience --

A Yes.

Q -- as a criminal attorney?

A He did.

Q All right. Did you have -- you obviously met with each other and discussed matters, did you not?

A Yes.

Q Do you have any idea how many times the two of you may of met?

A I'd have to -- I'm just gonna count the ones that I know that I've documented. September 19th is when I got the death penalty notice and I filed the motion to have Keith appointed. We met that day and I had briefly -- and I had had conversations with him prior to that saying in the event that they do this, are you gonna be interested in taking on this kind of case and he said he would. I mean I didn't discuss the fact that Mr. Moore had given me because, at that time, he wasn't Mr. Moore's attorney. But he knew the general facts as they were reported.

Q Okay.

A The 20th I had another conversation with him. The -- May 7th I had, had -- Keith and I discussed the jury consultant among other things looks like. I spoke to Keith on the phone on May 9th. Talked to him about the meeting I had had the previous day, and I wrote down defendant rejected offer of life at that meeting. That was May 8th, 2001.

I would say that, you know, without counting, counting, counting every one, Keith and I probably met 15 or 20 times easy during this, either with Mr. Moore or at the Public Defender's Office or in with Ms. Glass. We went to Columbia to talk to some people down there.

Q All right. Now, I believe you testified earlier that the decision was made that you would take the guilt phase

and he'd take the penalty phase?

A That's correct.

Q How, how did y'all arrive at that decision?

A Well, first, once again, my experience on the, in seeing two prior death penalty cases it was, and having gone to different CLE's, that the feeling at that time was that you needed to divide it that way because if you're sitting there arguing that your man is not guilty, and the jury finds him guilty, you want somebody new that's gonna present a different view of the facts in a different manner, and it's gonna be hard for you to sit there and say he's not guilty, and say okay, now that he's guilty, let me tell you why. So, I mean that's, that, that was a good way to break up the, the work.

Now, how I got the guilt phase and Keith got the penalty phase is probably be because, by that point, I had already had several meetings with Mr. Moore, I had gone over the facts, and I was involved on the guilt side of it. And once you get served with the death penalty, now you're starting up the penalty phase. So, he was coming in and I don't remember if he had any prior death penalty experience or not. So, that would of been my, the reasons why we did it that way.

Q All right. Now, obviously you would have some meetings where Mr. Kelly would not be present with any of your

experts or your client?
A That's correct.
Q But you would keep him abreast, would you not, of anything?
A Yes.
Q Without having you go through and document each time that you met with your client --
A Okay.
Q -- approximately how times did you meet with Mr. Moore prior to the trial?
A I would say -- I want to say at least 15, maybe 20, somewhere in there, somewhere in the middle teens to, to 20.
Q All right. Did you discuss strategic matters with him?
A Sometimes we talked about strategic matters. Sometimes we talked about facts. Sometimes we talked about bonds. You know, we talked about different things, and, you know, sometimes I went to the jail specifically to see him, and sometimes, as a public defender, I'd be there seeing other people and I would see him too. So --.
Q All right. And he understood your conversations with him?
A Oh, I think we were clear with each other. I think we both understood each other in the conversations we had. Sometimes we disagreed about what one thing meant or another, but --.

Q Do you recall what, if any, history Mr. Moore related to you about alcohol or drug abuse?
A Without flipping all the way through my notes again, I, I know that he had a record and I knew it then and he had told me about his record both here and in Michigan. And then after, you know, we started getting the penalty phase together, and after he made that admission about drinking and smoking crack, it became more apparent as we got into the case, I guess, you could say.
Q All right.
A So, the answer -- I guess the answer is yes, I did, but it was sort of gradual over time.
Q Okay.
A I didn't one day just get bombed with the whole thing, but it become more and more apparent that it was an issue.
Q And y'all had experts to invest, to help you investigate how to deal with that, correct?
A Drucy, Drucy Glass was a investigator, social and social history worker kind of person that we were relying on for to collect that information and get that kind of made.
Q Okay.
A But you're talking about a penalty phase question sort of. So, Keith would know better than me.
Q All right, sir. Now, the record and your testimony earlier kind of reflected Mr. Moore wasn't always

cooperative with you and Mr. Kelly?
A No, he wasn't. I mean it was things that I wanted him to do at trial that he didn't want to do. There were things that I was telling him that I thought were realistic and he didn't want, which isn't atypical, but obviously -- and then, of course, you know, you have that whole fired at the day of trial, which sort of was the pinnacle of us not getting along.
Q And the reason he made the motion to have y'all relieved was because y'all had a prior working relationship, is that correct?
A I think that was part of what he said when he told Judge Clary that he didn't want us anymore.
Q All right.
A He -- the working relationship you mean between me and Mr. Kelly or me and Mr.---
Q Yeah, between you and Mr. Kelly.
A I believe that's what he said.
Q All right. Ultimately y'all were briefly removed as counsel, correct?
A For about 30 or 40 minutes.
Q How did you, how did you get back on so quickly?
A Judge Clary ordered us to copy our file and give him the file. We went to the Solicitor's Office and began making the copies, and it's in one of those boxes. And

before or right around the time the box, that the file was copied, word came back to us that we were gonna be brought back on the case. We went back, came back downstairs and Judge Clary said that, and I wasn't there, but we were informed that we were back on the case and we just picked up from there.

Q All right. Did you -- I don't know how to phrase it.

Did the fact that he moved to have you relieved and then you were thereafter appointed, did that cause any hard feelings on your part or---

A Not on mine. I, I really didn't expect to be -- and I don't know. I can't speak for Keith. But I had been relieved on a case before and I was ordered to stay in the Court to assist the defendant. So, I knew we were gonna have to stay, and I knew I was gonna be involved in the case. So, it didn't really affect me too much other than I think that's a, sort of a reflection of where our relationship had gotten to at that point.

Q All right. But despite the breakdown in the relationship, you continued to represent your client zealously?

A Oh, yeah, I mean a lot of times when you get to Court on a defense side, then you're having a jury trial, the defendant's already mad because they don't like the way things are going.

Q All right. One of the experts the defense employed was a psychologist by the name of James Evans.

Do you remember him?

A Yes.

MR. SALTER: Excuse me for one moment.

MR. MORTON: No objection. No objection, Your Honor.

MR. SALTER: Okay.

THE COURT: What is the document?

MR. SALTER: I'm sorry.

I hand you a two page typed document that appears to be a report from Doctor Evans.

Do you recognize that?

A Yes, this came from my file.

MR. SALTER: Your Honor, I would move to introduce that as Respondent's Exhibit.

THE COURT: I understand there's no objection?

MR. MORTON: Yes, that's correct, Your Honor.

THE COURT: Be admitted.

(WHEREUPON, the report was marked as Respondent's Exhibit No. 20 and received into evidence at this time.)

MR. SALTER: Your Honor, this is Respondent's Exhibit 20.

THE COURT: Thank you.

MR. SALTER: Yes, sir.

Q Before I ask you questions about his report, how did

you develop Doctor Evans as a potential witness?
A Again, in my prior work on death penalty cases, I knew that there was certain people that you needed to have sort of on your team. You needed to have a social history. You needed to have somebody evaluate your client's mental status, and Doctor Evans, I can't remember if he came recommended or if I had picked him up from other death penalty cases.

And, of course, the mental health issue, the State was trying to get Mr. Moore to be sent to the State Mental Hospital, which I wanted to prevent because that would give the State information about his mental health. Plus would give him, may give them an insight into what he was saying.

So, we had a hearing where I was asking to not do that. Judge Clary said well, you got -- you have until, I don't remember if this -- he gave a date to decide whether or not mental health was gonna be a defense. So, I knew I was gonna need to get him and then that happened. So, I had Doctor Evans come to the jail and evaluate Mr. Moore so we would have our own evaluation.
Q All right. Doctor Evans report -- first of all, can you tell the Court what Doctor Evans found with respect to any specific head injuries or psychiatric type treatment or seizures?
A He says that Mr. Moore claimed that he had no history

of significant head injuries, serious illness, psychiatric type seizures. He denied having used alcohol, illegal drugs to any significant degree.

Q Okay. So, he's telling your doctor that he didn't have a prior history of alcohol and drug abuse?

A Or psychiatric---

Q Or psychiatric---

A ---mental type illness.

Q All right, sir. Now, further on down in the report, I believe it's the last sentence on the fourth paragraph.

A Yes, sir.

Q Doctor Evans states -- I'm sorry. Begins with the next to the last sentence after that paragraph. Start -- that sentence reads however, he showed some evidence of difficulty dealing with emotional responsivity, and specifically it seems likely that he would lose intellectual efficiency to greater than average degrees under conditions of continuing emotional arousal.

A Right.

Q All right. How did Doctor Evans explain that, those findings to you?

A I remember talking to Doctor Evans at the time right after this and he said that he felt like Mr. Moore was showing some, what he called -- I'm trying to remember. I think he said -- I think he used the word antisocial, and

when he did that, my experience in the past had been that that is a major red flag that I do not want to address on behalf of my defendant because the State's doctors would take that and turn him into a out of control monster. I've seen it attempted in the past and I was not interested in going down that way.

Q All right.

A So, that's why I -- that's -- that was -- that was exactly the kind of thing that I was worried that the State, if he gotten, gotten evaluated, the State, they would of said that and then they would of come up here and it would of been something that would of been bad for us.

Q And you already knew that you had a fairly extensive prior criminal history to deal with?

A I knew he had a criminal history, yes.

Q And, so, that would of been coupled with the evidence of a prior criminal history?

A Yes, they probably would of done that.

Q You testified earlier that you discussed with Mr. Moore his right to testify?

A Yes.

Q Particularly with respect, and with respect to the guilt or innocence phase of the trial?

A Guilt.

Q Yes.

A I did specifically have that conversation with him about guilt.
Q All right, sir. And you wanted him to testify?
A Absolutely.
Q But he didn't want to testify, did he?
A He didn't. He, he had -- he was worried about his record and some other things, and I was worried that self-defense is an affirmative defense that we need to raise, and we couldn't -- I mean at that time we had to raise it, and -- or at least get enough evidence in, and I knew we wouldn't be able to get it in just off of the State's side, that he was gonna have to explain that part, but he didn't want to.
Q All right. Now, you were asked earlier about discussing the possibility of lesser included offenses and self-defense with your client.
A Okay.
Q I direct your attention to your notes of September, October 18th of 2000.
A Yes.
Q Did you, at that time, discuss those matters with the bond?
A Murder, manslaughter, and self-defense, yes, we discussed those theories.
Q And you would of relayed to your client the importance

of his testimony to support any of those, correct?
A Yes.
MR. SALTER: All right. Beg the Court's indulgence one second.
THE COURT: Yes, sir.
(Pause.)
Q Could you tell the Court whether or not you had any concerns about whether or not Mr. Moore would be a good witness?
A I think you always have that concern, but it didn't matter what kind of witness he was gonna make in this particular case because it was so important for him to be able to tell that story. Obviously you're concerned about how, what kind of witness he's gonna be. You're worried about what, how the defendant, the State's gonna be able to cross-examine him. But in this case, with the stakes like they were, and the need, and the, and the possibility I felt that you, you could possibly argue self-defense, and especially if you had gotten a charge on it.
Q All right. But he was not interested in testifying?
A No.
Q Okay. Now, you had a private investigator to assist you, did you not?
A Pete Skidmore.
Q All right. Do you recall what led you to hire Mr.

Skidmore?

A The only thing I can remember about the reason we hired him is because, at that time, the Public Defender's Office didn't have a person with any real investigative, like a private detective, which is what Mr. Skidmore was, that had some experience as far as interviewing people, talking to witnesses, and we had him to do those kind of things so that, in the event that something came up, he would be our witness for whatever happened.

In other words, I mean if Mr. Hadden got up and said I really wasn't there that day, it wouldn't be, do me any good to know that if I can't testify. So, Pete would talk to them and he did some of that kind of work. I mean he talked -- I know he did talk to Mr. Hadden, but Mr. Hadden wouldn't talk to him in---

Q Right.

How about George Gibson, did he talk Gibson?

A I believe he tried to talk to George Gibson. I wrote down, and, of course -- I thought I had it. I know I wrote in here that he spoke to Mr. Hadden and Mr. Hadden clammed up and then he spoke to someone else and that person, and I wrote down, clammed up cause I saw it in my notes, that actual word telling me that they weren't really -- once -- he might talk to them a little bit, but once they realized he was working for us and for Mr. Moore, they wouldn't talk

to us anymore.
Q Is that a frequent problem you encountered?
A I think -- yeah, I think it is. I mean I've seen, since I've been a prosecutor, I've had, had to tell, direct some of my witnesses that it's okay to talk to them, and tell them what happened cause they immediately call you and go this guy's out here asking me questions.
Q All right. And do your notes reflect whether or not, on July 23rd of 2001, you and Mr. Skidmore reviewed the evidence?
A Yes, on -- it says on July 23rd Mr. Skidmore met me at the Sheriff's Department and we went through the evidence that they had there at that time, made -- we made separate notes that, on that and copied the comments, the contents of Mr. Ward's wallet. He thought they may need to see the truck. But after seeing the evidence, we decided we didn't need to see the truck.
Q Okay. What was the purpose in having your investigator review the evidence with you?
A Well, it's always good to have a second pair of eyes. It's -- Mr. Skidmore I believe had some law enforcement to see what he -- you know, because he might see something different than I do. Mr. Moore, if I recall correctly, had some different things, items in his wallet, and I had him look into that, you know, various names or whatever to see

if there was any witnesses there that might become useful to us.

Q All right. Did you have Mr. Skidmore locate any potential sentencing phase witnesses?

A Not that I recall.

Q All right. I'll show you a two page document that comports to be a letter from you to Mr. Skidmore dated August 14th, 2001, and ask you if you can identify that.

A This is a letter that I wrote on that day. It's on Spartanburg County Public Defender's Office stationary, and it says that the following list of names and numbers I've collected during, regarding this case. I'm unsure as to how much help it may be, but it seems it may lead to people who have seen Mr. Moore and have something to benefit him during the penalty phase.

So, apparently I did do that. I didn't remember that. But there it is and there's quite a few names on there that -- if I may. It's a two page document attached to it and the letter and there's some names and phone numbers, some names -- there's several names that have Martex. I guess they worked there. And then there's some names that, that have a question mark after them because we're not quite sure about the spelling of the last name. But it's got the numbers on there. They're all phone numbers and pagers, and then they're some notes next to it as to how they might of

been involved in the case.

MR. SALTER: Your Honor?

A I apologize. I didn't remember that, but that is something that I did.

MR. SALTER: We offer this as assistant, Respondent's Exhibit 21.

THE COURT: Any objection?

MR. MORTON: No, sir, Your Honor.

THE COURT: Without objection it will be so marked and admitted.

(WHEREUPON, the letter was marked as Respondent's Exhibit No. 21 and received into evidence at this time.)

THE COURT: All right. Ladies and gentlemen, at this time we're gonna break for lunch. We'll resume at about, let's say, a quarter till 2:00, 1:45.

I'll caution the witness not to discuss his testimony during the break, and at this time we'll be recess until that time.

Thank you very much.

MR. SALTER: Thank you, Your Honor.

MS. ARMSTRONG: Thank you, Your Honor.

(WHEREUPON, Court was in recess for the lunch break.)

THE COURT: Mr. Salter, you were on cross-examination. Are you ready to proceed?

MR. MORTON: Yes, sir.

THE COURT: You may proceed with your cross-examination.

MR. SALTER: Thank you, Your Honor.

THE COURT: Yes, sir.

CONTINUED CROSS-EXAMINATION

BY MR. SALTER:

Q Mr. Morin, I believe that before we broke I was asking you about Respondent's Exhibit No. 21, the letter to Mr. Skidmore

A Yes, sir.

Q And you indicated there were a list of names on this document.

A Yes.

Q Okay. Sir, I show you the second page of that document.

A Uh-huh. (Affirmative).

Q Those are the names you're referring to?

A Yes.

Q Can you please read those into the record?

A There's Wayne and there's two phone numbers for Wayne. Ron Guest that we put a question mark by him and phone number and says worked with defendant at Martex. Billy Forman, a phone number, and it says Martex. Mario Madison and then after that Madison possibly Perronead, and there's a question mark, was with him the day of the incident. Just

Beauford lives on Hillside Drive. Apparently he'd done some work. Bobby, he'd done some framework with, was a phone number.

Cassius Harris lived on Pine, Pond Street area. Now is in Inman, and then George, Curt, Mike and Sayn. They all have Martex after them and then phone numbers.

Q All right. Now, you gave that list to Mr. Skidmore, Skidmore?

A That's correct.

Q And Mr. Skidmore would of reported back his findings to you, wouldn't he?

A That's correct or to me and Keith.

Q Okay. To you and Mr. Kelly.

Okay. Do you recall what those findings were?

A Until you showed me this letter I'd forgotten that I even sent this to him. So, I wouldn't have any recollection of it.

Q All right. If---

A I'm sorry.

Q Is it safe to say that if you didn't call any of these people they wouldn't have been beneficial to you?

A I think it's safe to say.

Q All right. Going back to your notes, just real briefly, your notes for September 18th of 2001, in particular, I can direct your attention to that?

A September 18th?
Q Yes, sir.
A Yes.
Q Do those -- does that not reflect that an employee of Nikki's had said that a customer came into the store and reported that Mr. Mahoney had helped that customer change a tire?
A You said September 18th, 2001?
Q Yes, sir.
A Yes, says I spoke to Pete Skidmore. His main finding so far was that an employee of Nikki's said a customer had come into the store, yes.
Q All right. So, by the time the trial rolled around, no matter what had been theorized early on in the investigation, y'all eliminated the idea that your client went into the store with a tire iron?
A That's right.
Q Okay. Now, did you personally speak to any law enforcement officers involved?
A Not to my knowledge.
Q Okay. I mean you would of had their reports?
A Yes, I had their reports. It's part of the discovery.
Q And we, we heard earlier that Mr. Girndt had spoken to Mr. Dorman?
A Yes.

Q Okay. You were asked about your notes of August 14th of 2001?
A Uh-huh. (Affirmative).
Q It states that the, on the second sentence of your notes, that the victim may of fired three to four shots?
A That's correct.
Q Did that -- that would of been information provided by Mr. Dorman or Mr. Girndt?
I'm kind of confused. I wanted to know where it came from.
A Mr. Girndt, in reviewing my notes, and I think I had, I had written that Mr. Girndt had the photos and the video, and, and I may, I may be contradicting earlier, but now I see this in my notes. So, I'm just gonna read it. It says I relayed what the defendant said happened. So, I'm gonna rely on this cause this is more accurate than anything I could of said.
But it says walked through all photographs and reviewed video. So, that was with Girndt. So, when it says victim may have fired three or four shots, that probably would have come from Dorman's stuff because Mr. Moore, I don't think, was counting shots.
Q All right. And Mr. Dorman was not, I'm sorry, Mr., Mr. Dorman was not qualified as an expert in ballistics at the time of trial, was he?

A Not that I recall.
Q Do you ever recall him being qualified as a ballistics expert at any trial that you were involved prior to 2001?
A No, usually the ballistics experts were from SLED.
Q Right.
And he's just some -- and Mr. Dorman's someone who gathered evidence?
A Yes.
Q I hate to jump around on you, but do you have your notes from September 20th of 2001?
THE COURT: I'm sorry. What date did you say?
MR. SALTER: September 20th.
A Yes.
Q On September 20th, do those notes reflect a doorway theory?
You, you discussed or mentioned a doorway theory.
Do you recall what that was?
A After Mr. Moore got shot, he was telling me that, that he wasn't really clear as to what, how he got to the rest. And, so, that's why it says we ran through the doorway theory, ran the doorway theory, passed by Richard, and he indicated that it happened fast. But it may have happened that way. He would think about it and then it goes on. But that was -- you know, we were looking at the evidence. We were trying to piece together his memory as to what happened

and that's what I just referred to it as.
Q Okay. That's something else you investigated?
A Yeah. Yes, sir.
Q And what were the results of your --?
A Well, you know, I'm staying on the notes that I've gotten, and, and, in the notes, it says it explained the body's position and distance of the shots, much better than other theories, which -- and then it goes on and says Richard needs to decide. So, his testimony -- he needs to decide what he knows about it so it can be part of our defense if that's, if he, if he can remember what exactly happened.

So, at that point, we were kind of struggling with the after the shooting issues and that's really what all that evidence, all that Donald Girndt is about that after the shooting, or right up to where it happens.
Q I think you were asked earlier about whether or not you had talked to Mr. Moore about the change that Mr. Gibson made in his story.
A Yes, I believe -- we, we -- in one of my notes it said met with Mr. Moore, told him to the change in Mr. Gibson's story.
Q And that would of been your October 9th of 2001 notes?
A October 9th, 2001. Yes, October 9th, also

discussed Gibson changing story.
Q Okay. But -- and by that time you already had information from your client that he was, in fact, using crack cocaine on the night of the---
A He had told us that before then, yes.
Q Right. All right, sir.
MR. MORTON: Your Honor, I object to that characterization. I'm not sure that was the testimony as far as the night. I think that Mr.---
THE COURT: Well, let me see what my notes indicate.
MR. MORTON: All right, sir.
THE COURT: My notes indicate that prior testimony was, on June 27th, this witness was informed by his client that he had been drinking and smoking crack that day.
MR. MORTON: That day, yes, sir, Your Honor, as opposed to that night was my objection.
MR. SALTER: Oh, okay. Well, I'll apologize.
THE COURT: Then I'll ask you to reform the question.
MR. MORTON: Thank you, Your Honor.
Q By that time you already had information from your client that he had been using crack and drinking on the 15th?
A The day, yes.
Q Or the day of the 15th before the shooting on the 16th?

A Right.
Q All right. Now -- and you, you also filed discovery motions, had you not?
A Yes.
Q And you had the State's responses to those motions?
A Yes.
Q All right. You are alleged to have been ineffective in the manner in which you failed to reasonably investigate and present evidence to refute the State's physical evidence.
A Okay.
Q Well, you've talked at length now about Mr. Girndt and Doctor McMahon or McMahon, however she pronounced her name.
A Uh-huh. (Affirmative).
Q The two experts that you retained.
A Uh-huh. (Affirmative).
Q Now, you already retained both of the pathologists and a crime scene expert, and you had, and you had the results of their findings.

Did you see the need to go out and get other experts when these experts had put your client -- they provided you with information you didn't want to hear about what your client had done that night. In other words, that the fatal shot was inflicted behind the counter or in the kitchen area. Excuse me.

A I didn't see -- I had hired them because I felt they

were competent to tell me what they thought happened, and I didn't see any reason to try and discredit the people that I was picking who had credentials to do the things I was asking them to do to just be on a hunt for a needle that would match up with something I needed.

Q I mean you asked I believe Doctor McMahon or McMahon---

A Uh-huh. (Affirmative).

Q ---to look at the stippling and the direction of the fatal shot.

A Yes.

Q And I believe you testified her conclusions were the same as those of Mr. Girndt, correct?

A Yes.

Q The shooting occurred what, six to eighteen inches from the body, anywhere from that close to no more than 24 inches?

A I believe that's what the conclusions were.

Q You looked on your August 21st notes, 2001.

A August 21st, 2001. I'm sorry. August 21st, 2001?

Q Yes, sir.

A That's -- oh, August. I'm sorry. Okay. Yes, burns and stippling indicates six to eighteen inches from gun.

Q All right.

A And then later on, after photos, 18 to 24 through shirt puts him no more than 24 inches from barrel of gun to entry

of bullet.
Q All right. And you necessarily relied upon the expertise of the experts you had hired---
A Yes.
Q ---correct?
And you met with them together---
A Yes.
Q ---and discussed their findings?
A Uh-huh. (Affirmative).
That's correct.
Q Now, their findings were inconsistent with the version your client provided to you, hadn't it? Weren't they?
A Somewhat, yes.
Q And you didn't want to utilize that, those findings?
A No, as I've stated earlier, that you don't want them in the kitchen shooting. You want them on the customer side shooting.
Q In light of their findings, and your client's desire not to testify because he didn't want his record brought out --
A Uh-huh. (Affirmative).
Q -- what did you think was the best way to defend your client in the guilt phase?
A The best thing to do in the guilt phase was to attack the credibility of the witnesses. Be it you just changed

your story and you've got a pending charge on Gibson or what have you, and attempt to use their witnesses to create a situation where perhaps there was a legal provocation and he acted in sudden heat of passion. Therefore, that would of gotten us a manslaughter charge and the manslaughter conviction would of resulted in no penalty phase and that would of been good.

Q But that's just not what happened?

A No, I wasn't able to convince the judge that that, those elements had been shown evidence supporting that charge, and obviously, like I've said, you can't, at that time, especially with an affirmative defense of self-defense, there wasn't gonna be enough in there off of the State's testimony to get that charge, which I thought would of been beneficial because, from that, jumping off with the victim providing all of the weapons that resulted in the shooting, that might of been a, a good argument. I kind of tried to make it, but it was a little hamstrung I guess.

Q Did you explain your strategy to Mr. Moore?

A Yes.

Q Was he in agreement with it or---

A Well, that's where some of the problem between he and I were coming because I -- Keith and I and were saying we need to do this, do this, do this, but he was like I don't want

to do that, I want it to do this, and, you know, I, I wanted to do it this way and we were like no, you can't do it that way, it won't work that way, and that culminated in the firing and then rehiring.

Q All right. What did he want to do?

A He wanted to have the self-defense charge, yes. He felt like he was in self-defense. He wanted to have those charges, but the things that we had to do to get them he didn't want to do. He, he, he decided that his record and those kind of things were more important than doing that, and he felt like we should be able to get those charges anyway.

Q Absent any evidence to support it?

A Right, I mean that's, that's where the raw -- that's one of the, you know, those are one of the issues we started coming in contact with is, is what he believes we can do and what he wants to have happen were two different things, and, and that causes friction a lot between an attorney and a defendant, especially in these kind of cases. But at some point the law is what it is.

Q Okay. Now, I'm not gonna ask you about how many shots Mr. Morton said your client testified to Tuesday had been fired, but what I want to know is how many shots did Mr. Moore tell you the victim had fired at him?

A I know -- obviously he said I'm not -- I don't remember

exactly, but obviously he knew he was shot at once and he was shot, and I don't remember -- I do remember arguing about, and I don't mean arguing with him, I meant working with the arguments of well, you put the hand on the gun, the gun fired, the gun was pointed in a certain direction. I don't remember if he talked too much more about how many shots with fired at him, and the reason -- may I?

Q Certainly.

A The reason is because he's presented with a firearm. So, he's got to defend himself. Whether that gun being fired or just being pointed at him, he's still in a defensive position. So, if the gun's fired three times, the gun's not fired, he still has to do something. He's faced with the gun. So, he takes the gun. He gets shot with the second gun, and he returns fire.

Aside from the argument about whether or not he went into, to rob and what he did after, just in that little frame, it doesn't, it didn't really matter how many shots were going off because he's contended he is defending himself, and, and I think, in any argument, the fact that you've got a gun, a .45 pointed in your face or chest, that right there causes a defensive reaction. Whether it's to run or fall down or take the gun. And then when you get shot, you return fire.

That's not unreasonable I didn't think, and I was

concerned about the bullets and, and the other things that had to do with where Mr. Mahoney was so that we could develop that, that, that defensive struggle between two armed, one man armed twice, one not armed, now they're both armed, now they're both shot. That's the -- that right there is where we were trying to go with it, and how many times the .45 got shot, once the gun's pointed at you, you, you kind of -- he's kind of reacting.

Q All right. You also have to deal with the fact that you have Mr. Mahoney, Mr. Hadden's testimony, do you not, where he says your client turned and pointed the gun and fired at him, correct?

A That's correct.

Q And Mr. Hadden was over -- I think it was the third stool on the video poker machines?

A Right, and, you know -- yes.

Q Did Mr. Moore ever tell you that, while he and Mr. Mahoney was struggling over the gun on the counter, that one of those shots, I'm sorry, that a, that there was a shot that hit the video poker machine?

A I don't remember him telling me if shots came out of the .45.

Q Do you remember him telling you that the gun jammed and you got it?

A I know that was the argument we were working with cause

of that live round on the table. I don't remember -- I, I -- seems like I remember him saying that his hand was on top of the .45 at some point. It was doing something. But I don't remember if he told me it fired or not, and, obviously, you've -- well, so, that's my answer.

Q All right. Did you ask -- I realize that you and Mr. Kelly had different functions, and it's your, you were taking the guilt phase and Mr. Kelly the penalty phase, but did you ever ask any questions of Mr. Moore about his family background or social history?

A The -- something -- I had conversation with him about that was to cooperate, this person's gonna come see you and we need to get this from you, and we need to learn these kind of not, these pieces of information, this is what we're looking for, you know, that kind of thing. I didn't actually elicit too much as far as list all the people who were good for you or bad for you. But, you know, we need to find out about these people from your family. We need to find out this, you know, trying to construct -- I mean and Ms. Glass was working with us on that.

She had her own forms about can you tell me these things, and I know I'm pretty sure we had -- he did, at one time, but then we had to have it done again because there was a lot of blanks and we had to talk about that.

Q All right. Your notes of January 10, 2001, reflect

that you gave Mr. Moore a social history packet.
A Uh-huh. (Affirmative).
Q What would that have consisted of?
A That was a tool that Ms. Glass was using to collect the kind of information so we could develop a social history that would be used in a penalty phase as to trying to tell Mr., who Mr. Moore is.
THE COURT: What was the date of that entry?
MR. SALTER: January 10th, 2001, Your Honor.
THE COURT: Thank you.
Q What assistance did Mr. Moore provide to y'all?
A Well, he filled out that packet, and we had some conversations about his family. But we ran into -- his family in Michigan. Not his wife here. But he had a lot of family, extended family in Michigan. And we were having some trouble with that, and we've gotten some responses from the family like he's got into it or, or he's gonna have to take care of it or something to that effect, and, and we told them that, that we needed to try to work that out.
Q All right, sir. I would like to show you a document previously introduced as Respondent's Exhibit 19, and ask if you recognize this, this document.
A This is a copy of a letter in my file that Mr. Moore wrote to me about -- I mean he, he -- I'm writing to inform you that I'm unable to supply you the information you want

about my family in Michigan is how the first sentence goes.
Q All right, sir.
A And, and it goes on and, you know, I mean he says I -- let's see. I have, I have not informed them of the State's intention to seek the death penalty. When was I first arrested I asked for their help, and was told there would be no help coming. He got himself into this, he should get himself out. At that point I made up my mind not to call on them ever again for any reason. I meant it then and I meant it now.
Q So, by that point in time he did not have a good relationship with his family?
A Well, he was mad at them and he was not really interested in getting their assistance.
Q And they weren't---
A I guess he felt like they had abandoned him. So, he didn't want their help from somebody that abandoned them is the best way I can describe it, and it's reflected in that letter. But, obviously, when you're developing a social history and you're trying to do those things, you kind of need that.
Q All right. But it's clear they, they pretty much washed their hands of him also?
MR. MORTON: Object.
THE COURT: What's the objection?

MR. MORTON: I'm not sure that he's qualified to give an answer on that about whether Mr. Moore's family had washed his hands of Mr. Moore.

THE COURT: He's on cross-examination. I'll allow the question.

A As the letter reflects, we were having some sort of problems with them, and then he, his response was to never mind about them. But, once again, they, they were mad or they didn't get along. I don't know. But there was obviously friction between them.

Q But y'all still made efforts to develop a family background?

A We did what we could with what we had.

Q All right. Do you recall personally trying to make efforts to contact family members?

A I believe I made some calls to Michigan numbers.

Q All right. I'll refer you to your May 9, 2001, notes, and see if that helps you remember what you may of done.

A On May 9th I called his dad at [redacted]. The person who answered the phone said nobody by the name of Moore lived there. No one answered at his sister's house, [redacted]. Then I spoke to his common law wife, Linda Byrd, and she didn't know much about his family in Michigan, and then she asked to meet with me, which I told her I was available whenever she wanted to talk to me.

Q And you've mentioned Ms. Glass.
A Uh-huh. (Affirmative).
Q Y'all had, y'all had her services?
A Yes.
Q How specifically was she utilized?
A Her main, main function was to try and collect as much information, background information, family information, those kind of things, that were specific to Mr. Moore that would be in the penalty phase.
Q Okay. And is it fair to say that information she developed would of, would of gone more directly to Mr. Kelly?
A Yes, I mean his role in the case.
Q Okay.
A She wasn't developing the guilt phase information.
Q During the course of the trial itself, was Mr. Moore cooperative with y'all?
A He, he sometimes would write notes. Most times I don't remember him -- I mean cause defendants sometimes will jump in and ask them why this, ask them why that. I don't remember him doing that. But sometimes he was disinterested, and it didn't affect, it didn't affect me because I had my ideas of how we were gonna do it, and you don't want your client to be overstimulated and poking you all the time. But at the same time sometimes I think he, at

certain parts of the case, he was, he was a little disinterested I guess is the best way to put it, but I don't know that it affected me one way or another.

Q You were asked earlier about Judge Clary's explanation to your client in the penalty phase about what he could and couldn't say by way of argument.

A Yes.

Q Did you consider the explanation given by Judge Clary to be wrong or consistent with South Carolina law?

A It didn't -- it struck me as being consistent.

Q All right. And y'all previously talked to Mr. Moore about what he could and couldn't say?

A Yes.

Q And y'all explained to him he had a right to ask for mercy?

A Uh-huh. (Affirmative).

Yes.

Q Because that's part of his sentencing equation?

A The sentencing, right.

Q And you were asked about your advice and his decision, his ultimate decision to give a statement in the guilt phase.

A Yes.

Q That didn't go very well for him, did it?

A No.

Q And why?
A Well, for one, he got off the subject. For another, he didn't make the kind of impression -- he almost started, from what I remember, going into a sentencing type argument, and the jury didn't react well to it, and I say react cause I was sitting there and I'm looking at the jury and I'm listening to what he's saying because I don't know what he's gonna say because we haven't gotten -- he, he wasn't gonna do this.

So, I felt like we lost some credibility in the eyes of the jury on that statement, and going into the trial, it was my thought that he wouldn't, he wasn't gonna participate, participate in the sense of addressing the jury during the guilt phase, and at the end of the penalty phase, a lot of things he said at the end of the guilt phase would of applied. He wouldn't have been cut-off. It would of made sense in light of what was, of the whole case. So, I say that it probably didn't help too much.

Q All right. Why did y'all not want him to speak to the jury in the guilt phase?
A The same reason why Keith and I were changing positions from guilty to penalty. If he's gonna stand up and he's gonna say, in a statement, which I'm not really sure still what it was that he wanted to say as far as the evidence in the guilt phase. I just, I just felt like he would have

been more effective with what he said, looking back on it now, at the end of the penalty phase.

Q You were provided a rap sheet for George Gibson?

A Yes.

Q All right. And that rap sheet included an arrest for simple possession of crack, DUS first, and running a stop sign, correct?

A Yes.

Q And, and it -- there was an adjudication or, or conviction on the, the motor vehicle---

A The motor vehicle---

Q ---offenses?

A ---part, yes.

Q Are you anyway -- are you aware of any way you could of used those convictions to impeach his credibility?

A No.

Q All right. And you decided to use the pending trafficking charge?

A Yes.

Q Were you, were you aware of the other charge?

A Yes.

Q Why didn't you utilize both?

A I'm not sure. I know I wanted to do the trafficking because it had such a high -- it has an implication that comes with it that he is -- it, it just says it's serious.

The, the jury, you know, he's, he's moving along, and it's pending. So, he's got to try and work that out.

Once he admits yes, I have a trafficking, yes, it's still pending, yes, it's being prosecuted by them, I -- the best I can say is at that point I felt it was time, there were other things I could ask about. I mean I could of asked him, I suppose, what about this possession of cocaine, is that still pending too. But I probably got the answers I wanted on the trafficking and thought that's, that's made my point.

Q Because a trafficking implies someone's a major---

A Yes.

Q ---dealer as opposed to someone who's simply in possession of a drug?

A Right, and he's changing his story. He's going from Mr. Moore is coming for help and now all of a sudden he's going well, Mr. Moore's coming to buy drugs from me, which is what the trafficking is, and now he's -- so, I'm trying to point out the fact that it's odd that now that you're accused of doing something in that area, and the charges are pending, you're all of a sudden remembering something different. It's almost like he was trying to bootstrap Mr. Moore into the trafficking if that makes sense.

Q All right. You were also asked as to whether or not you were aware that Mr. Mabry had had a conversation with

Mr. Gibson some two or three days after the incident.
A Yes.
Q And you were not aware of that?
A No.
Q Do you recall whether or not the prosecution brought out that there was a conversation between Mr. Gibson and someone from the Solicitor's Office three days later?
A I don't remember.
Am I aware that that was done at trial?
Q Yes, sir.
A I -- not that I recall. But, like I've said, and I -- once again, I don't want to be evasive, but some things stand out and some things don't and details like that I'd have to rely on what the transcript says.
Q All right, sir. I'm going to show you Page 1260 of the record on appeal beginning on Line 6 and just ask you to read to yourself Line 6 through Line 24.
A Six through twenty-four?
(Witness complies.)
Okay.
Q And the prosecution developed that, in fact, there had been a -- there, there was no change in his story two or three days after the crime, correct?
A That said that two or three days later somebody briefly stopped by and he talked to and then they left.

Q All right.
A It doesn't indicate anything beyond that, and then it says the next time I spoke to you was September 25th.
Q And that's the time when he actually changed his story?
A I believe that's correct. I'd have to see the, the -- cause I think his new statement's---
Q All right, sir.
A ---got a date on it, but---
Q Do you recall how you dealt with Mr. Gibson in closing?
A No, sir, I could speculate. But I'll have to rely on the, the, what I said, what the transcript says I said.
Q Okay. I show you Page 1565 for the record on appeal beginning with Line 4, and ask you to read that to yourself going through to Line 20.
THE COURT: You said 1554?
WITNESS: 1565.
MR. SALTER: 1565, Your Honor.
THE COURT: 1565. I'm sorry.
MR. SALTER: Which one?
THE COURT: Thank you.
A (Witness complies.)
Okay.
Q All right, sir. Does that refresh your recollection?
A Yes, sir, I mean I can remember saying some of that.
Q All right. So, how do you -- how did you decide to

impeach him?
A Well, as I pointed out, Mr. Gowdy liked to call it a crack house when it was good for him, but then he wanted to say Mr. Gibson's a good upstanding citizen. He wants to say that Mr. Barnette says you never, you never changed your story from three days later till he met him again, and then I posed the question what happened, and the answer is 18 months ago he got a trafficking charge and it's still pending, and now all of a sudden his change -- he remembers that Mr. Moore was there, and changes it from needing help to wanting crack, and it's just a coincidence that, for 18 months, there's nothing been said, but this charge has been hanging out there over his head, and the implication being that's the reason he changed his story.
Q All right. You -- if you look, I guess, Line 21 of that same page, 1565.
A Photograph---
MR. MORTON: I'm sorry. Are you saying 1555?
MR. SALTER: 1565, sir.
MR. MORTON: 55?
MR. MABRY: 65 I think.
MR. SALTER: 65.
A Okay.
Q You impeached him with the State's photograph, did you not?

A Yes, he, he said that he could see Mr. Moore when the photograph clearly goes, shows he can't.
Q So, you used the State's own evidence to undermine his credibility?
A That's right.
Q I think it's fair to say you did a pretty scathing job on breaking him on cross, his credibility across the board?
A Well, I did what I could. I don't --
Q Now, you also indicated that you wouldn't have done anything with information that Mr. Mabry had in the conversation two or three days with -- excuse me. Let me start over.

You wouldn't have done anything with information that Mr. Mabry had a conversation with Mr. Gibson some two or three after the incident?
A That was in response to their question about what I would do or what I felt should be done and I said I think this should be done.
Q Correct.
A And I wouldn't have done anything. There he's being consistent. So, that's correct.
Q All right. Let me ask you, you were asked about Applicant's Exhibit 27, and this is the unsigned note from an investigator in the Solicitor's Office?
A Yes, or that's -- yes, sir.

Q Okay. That note doesn't indicate that the investigator confronted Mr. Gibson about using drugs, does it?
A I don't want to -- no, the note says that there's a theory that the witness is selling drugs and makes a reference to it says see rap sheet. So, I think they're talking about Mr. Gibson, but this is just the theory in there. It's not saying that they confronted them or anything. It's just saying that's their theory.
Q The investigator had that theory---
A Yes.
Q ---based on the rap sheet?
A That's what---
THE COURT: May I see that please?
A I think -- I'm trying to read it.
THE COURT: May I see that please?
MR. SALTER: Yes, sir, Your Honor.
THE COURT: You can go ahead.
MR. SALTER: Thank you, Your Honor.
Court's indulgence for one second.
THE COURT: Yes, sir.
(Pause.)
Q Mr. Morin, can you find your notes for May 9 of 2001?
A Yes.
Q All right. Now, I'm actually interested in the notes on the previous date or if you can not find the right page.

A May 8th.
Q May 8th.
Okay, sir. Do your notes of May 8th not reflect conversations with your client where you discussed his version of how the shooting occurred?
A May 8th, it starts out talking about the family. We talked in general and he stated he got off work and went home. Then to the -- he worked and gone home and then to the store. Denied any drug use. There was dispute over the bill. Clerk pulled gun.
Q He took it---
A Yes, the clerk pulled gun. He took it.
Q And then the clerk went for a second gun.
A Gunfire, fight ensued.
Q All right. So, the firefight, according to his version that day, the firefight ensued after he'd already gotten the .45 away from the clerk?
A Correct.
Q Mr. Mahoney, correct?
A That's correct.
Q All right, sir. Do you recall making a Batson motion?
A Initially, yes.
Q Do you recall why you didn't, why you didn't pursue, pursue it once the State gave its reasons?
A If I recall, there were two African-Americans that were

selected. The State struck them both, but then the State gave race neutral reasons for striking them.

Q And you accepted those as being race neutral?

A I think they were.

Q All right, sir. You requested a manslaughter instruction?

A Yes.

Q Do you recall your theory as to why the manslaughter charge should of been given?

A Well, my theory and, and my theory was, is that the victim produces a gun and points it at somebody, and then produces the second gun and shoots them, that's legal provocation. And you might act in sudden heat and passion right away when faced in that situation. And I felt like this, the evidence, even in the State's version, because the State wasn't trying to get away from the fact that both guns were Mr. Mahoney's. They weren't trying to get away from the fact that Mr. Mahoney shot Mr. Moore.

So, you know, I think the facts could of gone either way as to what it was. I guess the only missing piece was Mr. Moore saying this is what happened cause without that you basically yeah, everybody agrees Mr. Moore got shot by Mr. Mahoney, yeah, everybody agrees Mr. Mahoney got shot by Mr. Moore, but the way kind of -- that sudden heat of passion I guess was missing.

Q All right, sir. Turning to Mr. Moore's Ground 10-H and that was the allegation that you failed to request a statutory mitigating circumstance to be charged on the victim's provocation.

A Uh-huh. (Affirmative).

Q Now, by that time, the judge had already denied your manslaughter request, correct?

A That's true.

Q And the jury had also convicted him of both murder and armed robbery, had they not?

A Yes.

Q Okay. Would that -- wouldn't that have been insulting to the jury's intelligence to say that its mitigating circumstance that the victim was provoking the defendant when they, they've already convicted him of armed robbery?

A You could argue that. I don't know that, if that's what I was thinking at the time. Mr. Kelly would probably be in a better position to answer that question.

Q All right, sir. Now, counsel, also, you also did not object when the State requested a charge on the statutory aggravating circumstance that Mr. Moore, by his act of murder, knowingly created a risk of death to more than one person in a public place.

MS. ARMSTRONG: Your Honor, if I may go ahead and place this on the record. We have decided to waive that claim.

We have done further research and realized that it is not one that we are---

THE COURT: All right.

MS. ARMSTRONG: ---pursuing. Thank you.

THE COURT: It's on the record. They've waived that claim.

MR. SALTER: Beg the Court's indulgence for one moment.

THE COURT: Yes, sir.

(Pause.)

Q Do you recall any significance to evidence about the victim's shirt in this case?

A I don't recall any. In looking at what I wrote about Doctor McMahon, there was some issues about the stippling or something to that to try to determine how far the gun was.

Q Do you recall whether or not there was evidence that the buttons had been torn off the shit?

A I don't remember that, no, sir.

Q All right. Earlier you were asked about evidence, why you didn't put up an expert to adaptability, adaptability to prison life.

Do you recall whether or not you and Mr. Kelly had retained such an expert?

A The file indicates that Mr. Aiken had been retained.

Q All right. Do you know why Mr. Aiken wasn't utilized or would that be something I'd have to ask Mr. Kelly?

A You'd probably have to ask him.
Q All right, sir. And just real briefly, the nurse's testimony, turning to the nurse's testimony, Jenny Smith, it was potentially hearsay, correct?
A Yes.
Q Could the State have not gotten the EMT's to come in and testify if, in fact, that was what he said?
MR. MORTON: I object. It just calls for speculation.
THE COURT: I'll sustain the objection unless there's some evidence he interviewed the EMT's or had knowledge of what they were gonna say. That foundation has not been laid.
MR. SALTER: all right. Thank you, Your Honor.
THE COURT: Yes, sir.
Q But it's unclear, from her testimony, as to whether or not this was information that she directly gathered?
A That's correct.
Q If you had further explored the issue, and it became clear that this information, in fact, came from your client, that wouldn't have helped him, would it?
A No, it would not.
MR. SALTER: One moment, Your Honor.
THE COURT: Yes, sir.
(Pause.)
Q I think you would agree with me that statements made

for purposes of medical treatment, medical treatment being provided, are admissible, correct?

A Yes, I agree with that.

Q All right. Do you recall whether or not the State presented testimony from an expert in ballistics, Agent Whitler?

A I know who Agent Whitler is, and if he was there, that's what he was testifying to. But I, I don't remember -- I'll have to rely on the transcript.

Q All right, sir. Nothing further.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. MORTON:

Q Mr. Morin, as to the nurse's testimony when she was asked okay, so, you had notice, you had noted that he had alcohol and cocaine present and she said I did.

A Okay.

Q And the prosecutor said and would that information be gathered from Mr. Moore himself?

A Right.

Q She indicated --?

A More than likely it would.

Q All right. And the next sentence was?

A It either comes from patient or EMS, you know, report.

Q So, she could not say that Mr. Moore told her he was

doing cocaine?
A She, she didn't -- yeah, I guess that's a characterization of it, yes.
Q And if they didn't have that evidence and that evidence hurt you and it could of been kept out with the hearsay objection, that would of been beneficial---
A Anytime---
Q ---to keep it out?
A ---you keep something prejudicial against your client out it's good.
Q Okay. The -- Mr. Salter talked about Mr. Dorman and his qualifications. In fact, Mr. Dorman was qualified as a crime scene analyst and investigation expert, correct?
A I'll rely on the testimony, I mean the transcript --
Q Okay.
A -- if it says he was, then --.
Q And at least for the purposes of this hearing, Mr. Dorman -- and I'll show you what's been testified to, the transcript of Mr. Dorman's testimony in here on Tuesday I think---
A Okay.
Q ---and it says and you have been qualified as an expert in this court.
Yes, sir.
In the area of crime scene analyst.

Correct.

Crime scene investigator as well as latent fingerprint, and, in fact, he was qualified at this time --

A Uh-huh. (Affirmative).

Q -- as that, as an expert in those two things.

A Okay.

Q Okay.

A If you say so.

Q And that he had been qualified in this court before?

A That's what that transcript you showed me said.

Q Okay. As -- and, in fact, Mr. Dorman indicated that he could say that at least one, that at least one round from the .45 was fired from Mr. Mahoney's side of the counter?

A You mean at trial?

Q No, not at trial.

A Oh.

Q In here.

A Okay.

Q But had you known that testimony, and I'm not gonna beat a dead horse, you went to talk to Mr. Girndt---

MR. SALTER: Your Honor, we've been through this before on direct examination.

THE COURT: Redirect is for new matters that were brought out on cross.

MR. MORTON: Yes, sir, and he---

THE COURT: I don't find this to be a new matter that was brought out on cross. You thoroughly investigated this earlier.

MR. MORTON: Your Honor, I think---

THE COURT: Tell me what the new matter might be that cross revealed.

MR. MORTON: On cross --

THE COURT: Yes, sir.

MR. MORTON: -- he, Mr. Salter pointed out that he went to Mr. Girndt, he got an opinion, and that that opinion from Mr. Girndt caused him to accept that opinion.

THE COURT: That's not new on cross.

MR. MORTON: Okay.

THE COURT: You asked him about Mr. Girndt throughly on direct.

MR. MORTON: All right, sir.

THE COURT: Now, if there's something new that cross brought out about that, I'll be happy to hear from you.

MR. MORTON: Well, I'm sorry.

THE COURT: We don't use redirect just to reiterate.

MR. MORTON: All right, sir. I was trying, just trying to rebut what he brought up on his---

THE COURT: This is not in front of a jury.

MR. MORTON: Yes, sir.

THE COURT: I'm listening and taking notes.

MR. MORTON: Yes, sir.
THE COURT: I hear it the first time.
MR. MORTON: Yes, sir.
As to -- and, judge, again, I may not -- this may not be proper --
THE COURT: I'm gonna allow you to go into anything new --
MR. MORTON: -- redirect.
THE COURT: -- that was brought out in cross. Something new.
Q Mr. Salter brought out that you brought up in front of the jury the fact that Mr. Gibson had a trafficking charge pending.
A Okay.
Q And I believe you indicated that the reason that you did not go any further with that was because you felt that the trafficking charge was such a serious charge and that the implication from that trafficking charge would be important to the jury.
A And that it made its point on the---
Q Right.
Would you agree with me that jurors, as lay people, unless you tell them, don't know the implication of what that means, trafficking in, in crack, a lot of the times?
A Well, I could -- they could think it's worse or better.

It's -- but my point being that, and as I said it to Mr. Salter, I made my point in that he had a reason to change his story and that's why it comes out of my closing. The reason he had to change his story from the time it happened until the time of trial.

Q I understand.

But did you not also assume that the jury understood how serious a trafficking in crack conviction would be?

A I don't know that I gave thought to what the jury thought the sentence to a trafficking was.

Q Okay. And you would agree that jurors, they may not, may not have understood, as we understand, how heavy a sentence that could be?

MR. SALTER: Your Honor, again, I'm gonna object on the basis this is not responsive to cross.

MR. MORTON: It is---

MR. SALTER: I never asked any questions whatsoever about the sentence for trafficking.

THE COURT: I'm gonna overrule the objection. You brought out the, the, what he mentioned in closing as raking him over the coals thoroughly.

MR. SALTER: Yes, sir.

THE COURT: And I'll let him go into what that might mean.

A I'm sorry, Mr. Morton. I'll have to hear your question

again.
Q Okay. You didn't, you didn't tell the jury how much---
A No, I did not.
Q And would you agree that, because you didn't do that, they weren't told about it, they may not have known the implications of the seriousness of the trafficking in crack charge?
A They wouldn't of -- they would of known it was serious. They may not have known the -- I mean I assumed that a jury hears trafficking crack, they know it's a serious charge. Whether it carries five years or ten years or thirty years, what they consider to be serious when we're having a death penalty trial, I just assumed that that -- like I said, I didn't think what the jury might think about what the sentence might be for a pending trafficking charges.
Q Okay. I'm not gonna---
A Okay.
Q As to mitigation, you had a man who told you that he had several brothers and sisters, correct?
A Yes.
Q And I understand your testimony that you thought that, at some point, he was not being cooperative and I think you testified that he said they hadn't done anything for me then or that he had a beef with them.
A It's in his letter that they put into evidence --

Q I understand.
A -- as to what his position was.
Q But did you feel like it's your obligation, in a death penalty case, to at least go to the defendant's hometown and talk to his family, especially an extensive family like he had, and friends?
Do you find that to have been an obligation despite whatever the defendant said?
A I may have felt that way if I thought that or had any evidence that Mr. Moore had some sort of mental defect. But Mr. Moore was making his own decisions about his trial, and he understood what was going on in the case. And while I was trying, Keith and I were trying to do what we could to defend him, I don't know that a functioning defendant shouldn't have a say in what he, what he wants us to do or not do. Obviously some things you have to do. But in this particular instance, with Mr. Moore, I felt like Mr. Moore could make the call about his family.
Q Okay. As to the allocution charge, Mr. Salter asked you if you thought that Judge Clary's charge at the penalty phase was consistent with South Carolina law and you indicated that you did think that.
A Yes.
Q And is your understanding of the law, as to the defendant's right to speak to a jury, that he has the

opportunity, at that point, to ask the jury for mercy?
A Yes.
Q Okay. Did you feel like that, after Richard tried to get up and talk to the jury at the end of the guilt phase, that he didn't understand what the judge's instructions were as to the limits of what he could and could not say or that he was intimidated?
A I didn't have any indication that he didn't understand and Mr. Moore's not easily intimidated.
Q No, I understand and, again, I think if -- I don't want to misquote the evidence, but I think that Mr. Moore indicated as such on the record that he was confused or he was intimidated and he didn't really know what he could and could not say or something to that effect?
THE COURT: You want to show him that in the record?
(Pause.)
THE COURT: I'm looking at Page 1713 and 1714 --
MR. MORTON: Yes, sir.
THE COURT: -- where Judge Clary inquired of Mr. Moore of his right of allocution, allocution.
MR. MORTON: And -- in the penalty phase?
THE COURT: Yes, sir.
MR. MORTON: Okay. Well, I apologize. I didn't -- that wasn't -- I, I did not realize -- on page what, Your Honor?

THE COURT: Page 1713 and 1714 starting at Line 8.

MR. MORTON: Your Honor, if I might, Your Honor, just to try and set the stage as, as I would like to argue it from Mr. Moore's prospective.

THE COURT: You're not arguing now. You're questioning the witness.

MR. MORTON: Yes, sir, I understand. But through my questioning of the witness.

THE COURT: Well, you were asking him about the defendant indicating that he did, may not have understood his right or he may have been intimidated.

MR. MORTON: Yes, sir.

THE COURT: And I -- you were saying that he brought that up on the record.

MR. MORTON: Yes, sir.

THE COURT: I'm looking for that.

MR. MORTON: Okay. Yes, sir, that's what I was gonna try and point out to the witness.

THE COURT: Yeah, well, I'm, I'm -- I want you to point it out to me.

MR. MORTON: Okay. At the end of the guilt phase when---

THE COURT: I've read that.

MR. MORTON: Yes, sir, at the end of the guilt phase, Mr. Moore indicated, gets up and tries to speak to the jury.

The judge informed him that what he was saying was not within the confines of the law, that he was only able to talk about---

THE COURT: Talk about some things about some injuries to his arms and things like that that hadn't been brought up in the evidence apparently, what I read, and at that time the judge correctly indicated that he had not testified. He didn't have the right to testify at that point in time, and basically you got to confine yourself to what's in the record and that wasn't in the record.

MR. MORTON: Your Honor, and as to, as to Mr. Moore possibly me feeling intimidated, on Page 1575, at Line 20 and 21, Mr. Moore indicates I don't want to offend Your Honor any longer. So, I am not going to say anymore. That was the only thing that I was trying to the, point out as to---

THE COURT: Yes, sir, but that was the penalty phase. That's a 24-hour waiting period. That's a whole other trial that's conducted before we get to the point where he executes, decides on his right of allocution of the close of the penalty phase.

MR. MORTON: Yes, sir.

THE COURT: And I -- he was questioned by the Court, and he didn't, at that time, according to my reading of the record, indicate any misgivings about his right. He just

simply said he, he wasn't gonna testify.

MR. MORTON: And all I wanted---

THE COURT: Not testify. Wasn't gonna speak.

MR. MORTON: And I just wanted to point out, point out that he had indicated that just 24 hours before, whatever it was before that he---

THE COURT: Well, I took it from your questioning that you're asking about his right at the close of the penalty phase.

MR. MORTON: As it---

THE COURT: And I, and I.

MR. MORTON: ---developed---

THE COURT: ---read that part of the transcript and I didn't find misgivings on the part of Mr. Moore in the transcript. Go ahead and ask your question. But, again---

MR. MORTON: Yes, sir, my, my, my question was that because he had felt---

THE COURT: Now, is this something that wasn't explored earlier?

MR. MORTON: Yes, sir, I think -- I don't believe that it was. He, he was---

THE COURT: Now, you explored it earlier with this witness.

MR. MORTON: All right, sir.

THE COURT: But now, if there's something new, tell me.

MR. MORTON: Your Honor, Your Honor, also indicated on Page 1713 and 1714 at the penalty phase---

THE COURT: Yes, sir, that's -- well, that's what you were asking him about was the penalty phase.

MR. MORTON: Well, what I was trying to do, if Your Honor will just -- what I was trying to do was show that Mr. Moore may have been intimidated by the judge's statement at the end of the guilt phase---

THE COURT: You made that point---

MR. MORTON: ---when the---

THE COURT: You've made that point already several times.

MR. MORTON: All right, sir.

Now then, on Page 1713 and 1714, His Honor says, and tell me if I'm wrong, Mr. Morin, now, once again, this is your right, Mr. Moore, to address the jury. And, once again, the statement you make to the jury would have to be confined to the evidence that has been presented and to issues concerning the sentence imposed, correct?

A That's correct.

Q Okay. And that was pretty much the substance of the judge's instructions to him about his right of allocution?

A That's correct.

MR. MORTON: Beg the Court's indulgence one second, Your Honor.

THE COURT: Yes, sir.

(Pause.)

Q Mr. Morin, were, was -- were you or Mr. Kelly, or both of you I presume, involved with the striking of the jury?

A We were both---

Q Okay.

A ---there and involved.

Q And there was a juror, as you'll recall, there was -- this was an all white jury?

A That's correct.

Q Okay. The only two black members of the jury who were qualified were struck by the State, correct?

A Yes.

Q And one of the jurors that was struck by the State was a, was struck by the State was a juror named Mrs. Morrow?

A Yes.

Q And the reason that the Court, that the State struck Mrs. Morrow, as indicated in the record, was that Mrs. Morrow had not been truthful with them about a previous conviction for simple possession of marijuana?

A Yes.

Q Okay. And do you recall that, prior to the jury being selected, of course, that juror information forms were sent out?

A Yes.

Q Okay. And on those juror information forms, jurors are asked lots of different questions and that Mrs. Morrow, as well as the rest of the jurors, that Question 23-A was asked have you or any family member ever been arrested or charged with a crime other than a traffic offense.
A Uh-huh. (Affirmative).
Q And she indicated yes.
A Uh-huh. (Affirmative).
Q And they said if yes, please explain, who was charged with what time, and she indicated gambling and drugs.
A Right.
Q And then -- so, in her questionnaire --
A Uh-huh. (Affirmative).
Q -- Mrs. Morrow had indicated, in her response to Question 23, that she or some member of her family had been convicted of gambling or drugs, right?
A Uh-huh. (Affirmative).
Q Right?
A Right.
Q And when questioned about it further by the State, she had indicated -- when questioned about having -- I'm sorry.
MR. MABRY: Number sheet.
MR. SALTER: Number sheet.
MR. MORTON: I don't know.
MR. MABRY: You're just trying the---

MR. MORTON: That's okay.

Q In juror qualification, the Court -- and I beg the Court's indulgence. I'm sorry. It's on Page 322, and, judge, I don't know if you have a questionnaire form that I was referring to.

THE COURT: I do not. I do not think I have the questionnaire form. I assume she answered yes, somebody had been arrested.

MR. MORTON: Yes, sir.

THE COURT: Okay. That's fine. Because he, cause he referred, Mr. Willingham, on 322, Line 20, refers to the fact that in the questionnaire there was that response.

MR. MORTON: Yes, sir.

MR. MABRY: Your Honor, the juror also did -- there was some testimony on Page 203 over into 204.

THE COURT: From the same juror?

MR. MABRY: The same juror, yes, sir. I think that was during the general qualification.

THE COURT: All right.

MR. MORTON: Yes, sir.

THE COURT: Yes, sir, you may proceed.

MR. MORTON: Thank you, Your Honor.

On Page 322---

A Are you gonna ask me a question about 322?

Q Okay. I'm sorry. Okay. If we can read along together

then on Page 322. Mr. Willingham, I apologize, Your Honor. And then on the questionnaire it does say have you or any other family member been arrested, charged with a crime other than minor traffic offenses, and you indicated yes.

A Uh-huh. (Affirmative).

Q And in parenthesis you put gambling or drugs. Who was convicted of those?

A. Can I put what?

Let me show you what I believe is in your questionnaire.

Question 23. Bla, bla, bla.

Who was charged with what crime, gambling and drugs?

Is that in your questionnaire?

Yes, sir.

Okay. I'm just trying to find out who was charged.

Okay. My brother.

So, you have never been charged with anything?

Yes, sir.

What have you been charged with?

Gambling.

When was that?

'85.

And it was expunged?

It was expunged.

And no other convictions you're aware of?

No, sir.

What happened?

I know you says, I know you said it's already been expunged, but before it was expunged what happened to the trial? Was it a trial or did you plead guilty?

No, sir.

What happened?

It was tickets, ball tickets.

Okay. Forfeited, is that what happened?

Yes.

And do you think that if you had this prior dealing you would still be fair and impartial, that it would affect your ability to be fair and impartial?

No, sir.

Mrs. Morrow is your maiden name or prior name Atchinson?

Yes, sir.

Okay. And, again, I don't mean to pry more than I have to, but, in 1982, did you have an arrest for simple possession of marijuana?

In '82, yes, sir.

And what happened to that charge?

It was expunged.

But before you said it was expunged what happened?

It was a fine.

And you didn't have a jury trial or anything?

No, sir.

You just, again, forfeited the bail bond, correct?

Right?

A That's what it.

Q Okay. And then, on Page 1135, I had written down, judge, without the transcript in front of me, and I'm -- and that is taken out of my file for some reason. I have indicated that on Page 1135, when questioned about the reasons that the State gave for striking Mrs. Morrow, they indicate "Mr. Gowdy, on Mrs. Morrow, Your Honor, Deputy Willingham questioned her at length about some, about her criminal record."

"MR. GOWDY: There was some withholding on her behalf, and but for the fact that I think I dropped the ball in terms of understanding how the Court qualified jurors, jurors early on on Tuesday morning we would, of course, moved to have had her disqualified because her answers were frankly closer I thought to Mrs. Rookard's, who was disqualified, then they were of any, of the people who had innocent misrecollection. She also said, Your Honor, that she thought guns were used improperly, and that's not really an issue here."

MR. MABRY: No, I---

MR. MORTON: Okay. I'll--

MR. MABRY: You read all of it.

MR. SALTER: Your Honor?

MR. MORTON: No, I'm sorry. I don't mean to -- I'm not trying to -- well, I'll go ahead.

Your Honor, she also said that she thought guns were used improperly. Now, there were other jurors who expressed some reluctance about guns, but nobody used the word guns are used in properly.

THE COURT: I think that should be improperly.

MR. MORTON: Yes, sir.

THE COURT: That's probably a mistyping.

MR. MORTON: That's probably, probably going to be an issue in this case that the victim were armed. In addition, Your Honor, she wanted to switch to another term. She is a school teacher as I recall, and obviously we don't want jurors who want to be here, and when she was confronted with the fact that she would miss her vacation, she did opt to stay. But the primary reason, Your Honor, is the withholding of the convictions, and only when confronted with the fact that she had an alias did we begin to get truthful responses.

Now, Mrs. Hoffman's I think maiden name was what Atchinson, was what the solicitor was referring to as an alias, correct?

A Correct.

Q Which is not really?
A No.
Q Okay. And they indicated that the primary reason that they struck her was because that she had withheld information from them regarding her forfeiting bail on the simple possession of marijuana charge.
Is that fair?
A That's one of the reasons they gave, yes.
Q Okay. But they said the primary reason that they---
A Well, whatever Mr. Gowdy said.
Q Okay. And, so, she was struck.
Now, there was also -- and, and Mrs. Morrow, one of the reasons, the Court said the primary reason, therefore, that she was struck was that she had withheld information about a simple possession of marijuana conviction, and the implication that she was using an alias to do that, is that right?
A Not the alias. She, she said that -- she didn't reveal that marijuana conviction she had from '82.
Q Okay. And in Question 23-A, although it is ambiguous I would submit, she answered yes, that either she or some member of her family had been convicted for gambling and drugs.
A I believe that's what her -- I'll rely on what she, she wrote.

MR. MORTON: Okay. And, judge, I presume that this is part of the record too. I don't have to admit it, the juror information sheet.

THE COURT: I don't know about that.

MR. MORTON: I would like to, just in an abundance of caution here, then ask that Juror Number 191, Joyce Morrow's juror summary sheet be admitted.

THE COURT: Any objection?

MR. SALTER: No, sir, Your Honor.

THE COURT: If it's not already a part of the record. We'll admit it. Mark it as a separate exhibit.

MR. MORTON: Thank you, Your Honor.

(WHEREUPON, the juror information sheet was marked as Applicant's Exhibit No. 30 and received into evidence at this time.)

Q So that before she came to Court, Mr. Morin, she had answered 23-A as I've just described, correct?

A That's correct.

Q Okay. Now, as to Juror Number 94 on Page 894, which I understand is, again, and I guess the really relevant part goes on to Page 902, and it's my understanding, judge, and I apologize for not being more clear, that Mrs. Gantt was a Caucasian woman.

THE COURT: You may proceed.

MR. MORTON: Oh, okay.

And I'll -- I guess the best thing for me to do is read along with you. Mr. Willingham introduces himself on Page 902, and on Line 18 says you filled out your questionnaire and sent it back in, and it's dated September the 17th of 2001, is that about right?

A. Yes, sir.

Okay. Is there anything at all that caused you any confusion on this questionnaire that you didn't understand?

No, sir, I don't think so.

Okay. And you filled it out as completely as you thought you could?

Yes, sir.

And, of course, you gave truthful answers to it?

Yes, sir.

One thing I want to ask you about is Question Number 23. Okay. You indicated on there that as to whether or not had you or a family member ever been arrested or charged with a crime other than a traffic offense, it is my understanding that you indicated no, is that right?

A. What family member is that? Any person?

Q. Any family member.

Any of my family.

You or any family member.

Oh, that's wrong.

Okay. Tell me why that's wrong.

My uncle was convicted for shoplifting and he was in prison for like four years.

Where did that happen?

Spartanburg.

How long?

He was in prison in Perry.

Okay. How long ago was that?

MR. MABRY: What page are you on, Jim?

MR. MORTON: I'm sorry.

MR. MABRY: Nine what?

MR. MORTON: 904.

MR. MABRY: Thank you.

Q And if I might skip Lines 1 through 12 about her, one through 13 about her uncle and go down to Line 14 on Page 904.

Okay. And anybody else?

You or anybody else in your family ever been arrested?

A. No, sir.

Q. Ms. Gantt, I have, I have got a record here that says Stacy Marie Gantt. Is that your middle name?

Yes, sir.

Was arrested back in April of this year for receiving stolen goods.

A. Yeah, but I was found not guilty.

And that's fine. That's fine. I just asked you

whether or not you had been arrested for it.

Oh, I been arrested for it, yeah, for receiving stolen goods.

Okay. I notice, Mrs. Gantt, and also there is nothing wrong with that. I just need to ask these questions.

And then go on to some stuff about the tattoo.

On Line 17, with your arrest for receiving stolen goods back in April, did you deal with anybody in the Solicitor's Officer?

I had to go to Court -- answer. I had to go to court over there.

In Magistrate's Court?

Yes, I think so.

And, Your Honor, I would, and, Mr. Mabry, submit that Page 906 is not really relevant, and on Page 907, Line 19, Mr. Willingham, Your Honor, I, again, have the same motion I made with some earlier jurors. Mrs. Gantt was questioned numerous times about whether her form was complete, whether or not she or any member of her family had been arrested. She began to explain that her uncle, in fact, had been arrested, but still did not indicate her arrest. Only when I had to point out by referring to NCIC criminal history that she, in fact, had been arrested and she admitted that.

On Page 908 still, I believe, for that reason, she would not be qualified for failure to render truthful

answers to the Court and to the State.

Mr. Morin, the Court, Mr. Morin.

"MR. MORIN: Your Honor, Mr. Willingham asked her some personal, very personal questions. I think she was truthful on everything, and I realize, in dealing with my client, as well as dealing with jurors, if they are not convinced, they try to put that aside as something else, and I don't think she, in anyway, indicated that she was trying to be, deceive anyone and not be truthful."

"MR. WILLINGHAM: With that, Your Honor, if that's the case, then there's absolutely no purpose for 23-A. 23 asked if you'd been arrested. 23-A asked if you'd been convicted."

:THE COURT: Well, the purpose of 23-A, the whole purpose of this is to cut down on what we go through in this so you will get the information. Quite frankly, everyone is not a law school graduate. Quite frankly, everyone is not a lawyer. Quite frankly, everyone is not quite as sharp as everyone else. Quite frankly, everyone doesn't pay attention to things like everyone else does. And, quite frankly, I'm not going to -- I'm going to change my form and make it a little more detailed because, quite frankly, I believe when somebody gets a not guilty verdict they think there is nothing to it."

"I know that what's, what's going to happen is my form

is going to be read in the future. Have you ever merely been arrested or merely charged with any crime even if it resulted in a not guilty verdict, a dismissal, a nol pross, a pretrial intervention, or whatever, and then if somebody comes in here, and they haven't put it on there, then I know what I'm going to do for it because I think, quite frankly, knowing what I do and what everybody in this courtroom does about some of the cases that come in front of us, it gives me a great deal of pause when people are even arrested sometimes."

"So, your motion is noted. That is marked and she is qualified. Bring her in."

The Court found her qualified, and gave her some more instructions about her duties upon reporting and so forth. And, so, then I believe, Your Honor, or I'm asking, trying to, not to make statements here, Mr. Morin, that Mrs. Gantt was ultimately seated as an alternate juror on this case.

Do you -- are you aware of that?

A If you say she was.

Q She was.

A Okay.

Q Okay. And would you agree with me, that having just heard what I have read, that Mrs. Gantt and Ms. Morrow were in a similar situation as it referred to being truthful about their answers to the solicitor's questions about being

arrested or charged with drug offenses?

MR. SALTER: Your Honor, at this point I'm gonna have to object because so far he's failed to elicit that on Page 323 of the record the African-American juror who was struck was asked so, you've never been charged with anything.

Yes, sir.

What have you been charged with?

With gambling.

Okay. When was that?

It was in 19 -- it was in '85 and it was expunged.

Expunged?

Yeah.

Okay. No other prior convictions you're aware of?

No, sir, it was only when confronted with the fact that she had other convictions under a different name that she admitted to it.

THE COURT: I've, I've already read that.

MR. MABRY: Just a moment. Can we have -- Madam Clerk, can we ask the clerk for something, judge, before we go forward?

THE COURT: Yes, sir. We've got the file itself up here I believe.

MR. MABRY: Okay. I got it, judge. Judge, I'm looking at the strike sheet, and it appears that Juror Upton was the first alternate juror that was called and was struck by the

State. So, then the State wouldn't of had any remaining strikes for alternates I believe. Maybe I'm wrong. I don't know what the strikes were on the alternates. It was one and two. I believe it's usually one and two, isn't it?

THE COURT: Well, how many -- they picked two alternates?

MR. MABRY: Two alternates, judge.

THE COURT: Well, you would have to take a look and see what the judge announced.

MR. MABRY: Okay. Okay. Thank you. I'm sorry. I may be wrong.

Q Would you agree or disagree, Mr. Morin, that Mrs. Gantt and Mrs. Morrow, under the circumstances that I have just read, would be similarly situated as to their truthfulness regarding their arrest and/or convictions with drugs?

A Disagree.

Q You would disagree with that?

A Yes.

Q Okay. And can you tell me why you disagree with that?

A Well, for one, Morrow was convicted, and she didn't say anything about it until after she was confronted, and the conviction itself would of been a race neutral, a race neutral reason to do so. And you've characterized Mr. Gowdy's position as a primary and secondary or whatever, but just her conviction straightaway, while it wouldn't

disqualify her from being in the pool, it's typical and normal thing that the State uses to strike witnesses, strike, excuse me, strike the jurors who are qualified. So, for that reason, that would be one.

Number two would be Gantt, and, and what happened if I, and I could be wrong, but I believe Gantt came after Morrow. I'm not sure which one they came in order there. And clearly, Mr. Willingham is using a different tact to elicit the information that he's looking for to avoid the problem later. I don't know which one came first.

But I guess my point is it appeared to me, at the time, and it appears to me now that you see Gantt saying no, wait, that's not right. He's not saying no, it's not true and then Mr. Willingham's approaching him. He's saying no, that's not or she is saying no, that's not right.

Q What's not right?

A Or as in Morrow, Morrow's saying I don't know anything -- that got expunged. So, I'm, I'm -- I don't have to talk about that. That's different. That's, to me, that's what it appeared then, that's what it appears now.

Q Do you believe that to be a sometime a reasonable understanding by lay people if a marijuana charge had been expunged that they can say that they don't have any arrest or convictions for that?

A Yes, sir. Well, I'll agree with you on that, but to

get back to the point, if you look at Gantt, if I'm, and I may be getting the names wrong, but one of them says, no, wait, stop, this is, isn't right. Okay. And I distinguished that, as the State did, that that's different than in saying let me show you your rap sheet here.

Now, you may be correct in that they may misinterpret, and, quite frankly, as the judge said, he had to change it around. But that's the way I understood it at the time, and I don't -- I think they're distinguishable in that manner and I -- that's just what I think.

Q On Page 907, Mr. Willingham indicates, Your Honor, I, again, have the same motion I made with some earlier jurors. Mrs. Gantt, when questioned numerous times about whether her form was complete, whether or not she or any member of her family had been arrested, she began to explain that her uncle, in fact, had been arrested. But still did not indicate her arrest. Only when I had to point out to -- only when I had to point out, by referring to N.C.I.C. criminal history that she, in fact, had been arrested---

A I, I---

Q She admitted that.

A Oh, I was following, trying to following the two jurors and that kind of thing, and it, it struck me that when you first questioned me, from my recollection of what you'd been reading, that Morrow and Gantt were different in how they

responded. Having said all of that, the fact that the State wasn't successful in getting them not qualified at that time did not change the fact that the statements that they gave later and or were race neutral in that.

Now, whether or not I could of argued that Gantt and Morrow were similarly situated and they struck one and they didn't strike the other, I don't know. But I felt, when I heard their reasoning, that they met Batson's standards for striking.

Q Okay. And just to be -- just -- cause I want to make sure that it's clear, is that Mrs. Gantt was, did not indicate that she had been arrested for receiving stolen goods.

A I---

Q But yet she was accepted by Mr. Willingham, right?

A By the State at picking or the---

Q By State?

A It wasn't accepted there because clearly Mr. Willingham doesn't even want her in the pool.

Q She was accepted and, in fact, and sat on the jury?

A Yeah, you're saying that later they didn't use a strike on her.

Q Right, right.

A Okay.

Q Whereas they did use a strike against a---

A Yes, sir.
Q ---an African-American woman --
A Right.
Q -- who indicated on her form that she or some member of her family had been arrested or convicted for gambling and/or drugs, and that it could at least be argued that some lay people have a reasonable basis for their interpretation that when a simple possession of marijuana conviction has been expunged or when there was a fine, that---
MR. SALTER: Your Honor?
THE COURT: Yes, sir.
MR. SALTER: Your Honor, I'm gonna object to leading. Also he's focusing us something---
THE COURT: This, this smacks of argument as opposed to questions.
MR. MORTON: Okay.
THE COURT: Do you follow what I'm saying?
MR. MORTON: Yes, sir.
THE COURT: And this is direct examination.
MR. MORTON: Okay.
Q Do you agree, Mr. Morin, that Mrs. Morrow indicated that she had, when questioned, on the juror information sheet and later by the solicitor, that she had, in fact, been charged with simple possession of marijuana?
A Yes.

Q That she had paid a fine for it?
A That's what that indicates.
Q That it had been expunged?
A That's what the testimony was.
Q And that was her reason for not going any further than she did on 23-A?
A That's what the testimony is.
Q Okay. And that Mrs. Gantt indicated that she had not been arrested for receiving stolen goods?
A That's correct.
Q Okay. Beg the Court's indulgence.
THE COURT: Yes, sir.
(Pause.)
Q And as to Ms. Morrow, the African-American lady who was struck, her simple possession of marijuana conviction that she paid a fine for and that was expunged was in 1982, which was almost 20 years prior to this date, correct?
A That's what the, the transcript indicates.
Q And that Mrs. Gantt's receiving stolen goods conviction, I'm sorry, arrest, apologize, was in April of 2001?
A I think that's what the transcript indicates.
MR. MORTON: Okay. And I think that's all I have.
Beg the Court's indulgence one second, Your Honor.
(Pause.)

MR. MORTON: That's all I have, Your Honor.
THE COURT: Recross.
MR. SALTER: Your Honor, we have no questions.
THE COURT: You may step down, Mr. Morin.
WITNESS: Thank you, Your Honor.
THE COURT: Any objection to the witness being excused?
MS. ARMSTRONG: None, Your Honor.
MR. SALTER: None, Your Honor.
THE COURT: You're free to go.
WITNESS: Thank you, Your Honor.
THE COURT: You may call your next witness.
MR. MORTON: That's the Applicant's case, Your Honor.
THE COURT: You may call your first witness.
MR. SALTER: Your Honor, we'd move for a directed verdict particularly with, beginning with the charge or the allegations, I believe it's 10-A, about the trial judge limiting the right to allocution and the right to ask for mercy. I think Mr. Moore's testimony itself refutes that allegation. He testified that he was aware of that right, and that his failure to exercise the right was not because he wasn't aware of it, but because the solicitor had intimidated him.
THE COURT: Or judge.
Yes, ma'am.
MS. ARMSTRONG: I'm sorry.

Do you want us to respond to each?

THE COURT: Yes, ma'am.

MS. ARMSTRONG: Your Honor, I would simply point out that, based on the, not only Mr. Moore's testimony, but he thought he was gonna be stopped short the way he had been at the guilt phase, but also the fact that it's certainly arguable that the judge's charge precluded him from arguing mercy. The fact that Mr. Morin has testified that the issue of mercy was addressed with Mr. Moore with respect to his closing argument, prior to the judge's colloquy with the defendant, it's certainly some evidence of the issue of mercy was, was brought up. I mean he testified to it. We have no evidence that's not true.

But the point is the judge makes the ruling as to what you can and can not do, and essentially it's our position that the judge's admonition to Mr. Moore that he had to confine himself to the evidence in the case, and penalty phase issues precluded him from arguing for mercy. The concept of mercy has not been brought up in the evidence. We all know it's an issue. We all know, here, as lawyers and as a judge, as capital defendants in a penalty phase, we ask for mercy. However, I think it's fairly clear that the judge's instruction to Mr. Moore did not adequately and accurately advise him of his right to ask for mercy.

THE COURT: So, you're saying that unless the judge

uses the word mercy in advising them of their right of all allocution that it is, as a matter of law, incorrect?

MS. ARMSTRONG: I believe the way that Judge Clary instructed Mr. Moore---

THE COURT: At what time?

MS. ARMSTRONG: Prior to, prior to Mr. Moore saying okay, I'm not gonna make a statement. I believe his admonition that Moore had to do -- Moore's argument had to have two things. It had to be based in the facts that were in the, in the record --

THE COURT: Uh-huh. (Affirmative).

MS. ARMSTRONG: -- in the penalty phase and it had to be confined to penalty phase issues. Without saying oh, and by the way, penalty phase issues. I guess my point is that I think the judge combined them such that unless a particular concept had come up through the evidence, it precluded Mr. Moore from talking about things outside the record, mercy was outside of the record, and that's our point.

Especially based on what happened in the guilt phase when Mr. Moore tried to the, argue mercy and was shut down. Well, we all know that he shouldn't, he shouldn't of been arguing for that. That was the wrong time to be making that argument.

But having gone through that once before, and then 24,

36 hours later, getting this cautionary instruction---

THE COURT: What, what's your argument as far as the incorrectness of Judge Clary's instructions at either occasion?

MS. ARMSTRONG: His instructions in the guilt phase, we, we don't have an issue. It's not raised as an issue. I think---

THE COURT: Well, what, what's incorrect about his instructions in the penalty phase?

MS. ARMSTRONG: We think that it arguably precludes, if you follow his instructions, arguably precludes---

THE COURT: You got a case on this?

MS. ARMSTRONG: Your Honor, I would, I would note that this issue was raised on the direct appeal, and the Supreme Court---

THE COURT: Uh-huh. (Affirmative).

MS. ARMSTRONG: ---noted that there needed to be more factual development. So, certainly I do not believe that, based on the judge's instructions to Mr. Moore---

THE COURT: I just, I just have -- you know, there's a concern on the Court's part that it seems that you feel like the Court's instructions should be based on the state of mind of the defendant.

MS. ARMSTRONG: No, Your Honor. I simply think that when a judge or a lawyer advises a defendant that the

defendant needs to understand fully.

THE COURT: The state of mind of the defendant or you need to know what he's thinking?

MR. ARMSTRONG: No, no, Your Honor. Respectfully, that's, that's not my position.

THE COURT: I'm asking. That was a question.

MS. ARMSTRONG: Oh, okay. Well then the answer's no.

THE COURT: Okay.

MS. ARMSTRONG: Not at all.

THE COURT: I'll deny the motion at this time.

MS. ARMSTRONG: Thank you, Your Honor.

MR. SALTER: All right. Your Honor, as to Ground B, the investigation of mitigation, with respect to family members, they did not introduce the, the deposition testimony of any family member, those depositions having been already taken some time ago. Also, I think it's very clear, from counsel's testimony, that, and the letter that Mr. Moore wrote to him, Mr. Moore was not only uncooperative in helping develop family member, family member testimony, but he and the family had had their falling out and neither one was cooperating with the other.

I think counsel's action were more than reasonable even though further testimony could be presented from Mr. Kelly. I think that Mr. Morin's testimony so far is sufficient to allow, allow a directed verdict motion on that ground as

well.

THE COURT: I'll hear from you.

MS. ARMSTRONG: Beg the Court's indulgence.

(Pause.)

MS. ARMSTRONG: Your Honor, I would simply note that at the time the depositions were taken, which was approximately ten days ago, it was our understanding they were gonna become part of the record, and right now we're waiting on the court reporter to produce the hard copies of those depositions. The evidence simply is not available in hand, but it was certainly our understanding that they will be part of the record.

THE COURT: Is there a stipulation to that effect?

MR. SALTER: The agreement was we could take those depositions, as I understood it, in lieu of having to fly them here to testify. My point is just simply they never moved to introduce them, those depositions into the record. I mean I would of had no basis for, to make my motion had they done so, and there's plenty of case law out there, I think it's Glover v. State and a couple other, Bannister versus State, and a couple other cases that say when you make the claim of a failure to present a witness, you have to present the witness' testimony, either live testimony or offered in the proper form, and it was just not done.

MS. ARMSTRONG: Your Honor, I would stand by my

representations to the Court that it was our understanding that, we're all in agreement, that we would use these depositions as evidence in this case.

THE COURT: Well, they got to be---

MS. ARMSTRONG: If there's been some---

THE COURT: They got to be introduced at some point in time.

MS. ARMSTRONG: Yes, Your Honor. Well, at this point we move to introduce them. We move to reopen the record. If we've misunderstood something, Your Honor, we ask to reopen the record.

THE COURT: You wish to be heard on the motion to reopen the record to allow them to be introduced?

MR. SALTER: Your Honor, again, we understood that that may offer these depositions, but it's their case and they chose not to do it. I don't think they should now be allowed, after I've made a motion for directed verdict---

THE COURT: Were they, were they taken de bene esse for the purpose of introduction at the trial?

MR. SALTER: Yes, sir.

THE COURT: I'll open the record and let them in.

MS. ARMSTRONG: Thank you, Your Honor. And based on that ruling, Your Honor, I believe that---

THE COURT: I can't rule on them until I see them. I can't rule on that motion until I see those depositions.

MS. ARMSTRONG: I apologize, Your Honor.
THE COURT: I haven't seen them.
MS. ARMSTRONG: No, Your Honor, and they're---
THE COURT: I don't know what---
MS. ARMSTRONG: And they're---
THE COURT: I have no idea what they say. So, I've let, I've let -- I've allowed them to come in. I won't rule on the motion until I see them.
MS. ARMSTRONG: Okay. Thank you, Your Honor.
THE COURT: Yes, sir.
MR. SALTER: As to Ground F, which is the appellate counsel's failure to raise the denial of the voluntary manslaughter charge, we submit the trial record doesn't have any evidence to support an instruction on voluntary manslaughter, and, and the same would hold true with respect to the failure of trial counsel to request the statutory mitigating circumstance to the victim provoked the confrontation. There's simply no evidence of that in the trial record itself.
THE COURT: Yes, sir.
MR. MORTON: Your Honor, I respectfully disagree in the fact that Mr. Moore was wounded with the victim's weapon. That, that, in and of itself, satisfies the necessity, I believe, for appellate counsel to raise what Mr. Morin raised and that was asking for a voluntary manslaughter

charge based on the law of voluntary manslaughter. The testimony -- obviously there was conflicting testimony. I think the testimony was consistent in that none of the weapons that were involved were the weapons that belonged to Mr. Moore, and that they were both produced by the victim in this case, and that failure of appellate counsel to raise that issue was, you know, arguably ineffective based on the evidence in this case.

THE COURT: I want to take that under advisement.

Next motion.

MR. SALTER: That will be it, Your Honor.

THE COURT: All right.

Yes, sir.

MR. MORTON: Was that, was that just one, just the one motion on that?

Is that -- was that the only one?

Did I address that?

I thought it was kind of a double.

MR. SALTER: I made---

MR. MORTON: Oh, so, you're taking both of them under advisement?

THE COURT: Yes, sir.

MR. MORTON: Okay. Yes, sir, I understand.

THE COURT: You may call your witness, next witness or first witness.

MR. MABRY: If we could just have a minute, judge?

THE COURT: I'm gonna take about a five minute break at this point in time.

MR. MABRY: That would be great.

(WHEREUPON, a short recess was taken at this time.)

(WHEREUPON, a rap sheet was marked as Respondent's Exhibit No. 22. A case history was marked as Respondent's Exhibit No. 23. Both of the above exhibits were marked for identification purposes only at this time.)

MR. MABRY: Mrs. Porter.

THE COURT: Is she gonna be the first witness?

MR. MABRY: Yes, sir.

THE COURT: All right. Please swear her for me. Right over here. Thank you.

SUSAN PORTER, having been first duly sworn, testified as follows:

THE COURT: Have a seat please, and once seated, I'd ask that you state your name.

WITNESS: Susan Olmert Porter.

THE COURT: Your -- Mr. Mabry, your witness.

MR. MABRY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MABRY:

Q Mrs. Porter, where do you currently work?

A I work at the South Carolina Law Enforcement Division.

Q Okay. And what is your occupation there?
A I'm their general counsel.
Q All right. And when did you join the South Carolina Law Enforcement Division?
A December 1st, 2010.
Q Where did you work before that?
A I worked at the Attorney General's Office.
Q What was your job there?
A I was the chief of the prosecution in State Grand Jury Division.
Q All right. And how long were you there in the Attorney General's Office?
A A little over five years.
Q And before there, where did you work?
A I worked for the Seventh Circuit Solicitor's Office, in the Spartanburg.
Q Okay.
A ---Office.
Q Thank you.
I want to show you some files and ask you, first of all, do you recognize this file or---
A I do.
Q Okay. And is that a file of the Seventh Circuit Solicitor's Office?
A Yes.

Q And is that a trafficking in crack charge against George James Gibson?
A It is.
Q And when was -- what was the date of arrest on the trafficking in crack charge?
A March 23rd, 2000.
Q All right. And when was that case disposed of or if you tell the Court what happened to the trafficking charge?
A I'm not exactly sure when it was assigned to me. I began working in the Solicitor's Office in July of 2000, and was put on the drug team sometime in 2002. I'm sorry. July of 2001.
Q Okay.
A And began working on the drug team sometime in 2002. This case was assigned to me in 2003. I dismissed the case. There were two individuals, two officers, Horbal and Camp, who both worked for the Sheriff's Office who are no longer there.
Q All right. Spell the first one's name.
A H-O-R-B-A-L.
Q Okay. Horbal?
A Horbal.
Q Okay.
A Sorry.
Q And Mr. Camp?

A And Mr. Camp, C-A-M-P.

MR. MORTON: Your Honor, I have an objection.

THE COURT: Yes, sir.

MR. MORTON: As to the relevance.

THE COURT: I -- relevance of what the question or the, the whole line of questioning?

MR. MORTON: The whole line of questioning.

MR. MABRY: Well, I think it's relevant, judge, because he brought up the trafficking charge and I think it's relevant for the record to see what happened to the charge, and how it was disposed of.

THE COURT: Overruled.

Q Okay. What, what happened to the trafficking charge on Mr. Gibson?

A I dismissed it because Officer Horbal was, had moved to Texas. I had been in conversation with him and he did not wish to return to South Carolina in order to testify in the case, and he was in the chain of evidence. So, I could not get the crack cocaine into evidence without him.

Q All right. Another officer, where was he?

A An Officer Camp was oversees. He -- I'm, I'm not sure if it was Iraq or Afghanistan, but he had left to participate in the protection services oversees, and was not coming back anytime in the near future, foreseeable future and possibly not ever.

Q All right. And when was that charge dismissed, exact date?
A May 5th, 2003.
Q Okay. And if you could, is there an arrest report in there?
A Yes, there is.
Q How many, how many people were arrested in this incident in which Mr. Gibson was charged with trafficking in crack?
A Six.
Q All right. Thank you.
Did you also prosecute -- I want to show you this file and ask if you recognize that file.
A Yes, I do.
Q Okay. And did you prosecute that case for the Solicitor's Office here in Spartanburg?
A I did.
Q All right. When was that charge disposed of?
A May 13th, 2003.
Q All right. And do you have an indication of what the defendant pled guilty to or was it dismissed?
What happened to the charge?
A I made an offer. Again, same defendant, George Gibson. Defense attorney Rod Tullis represented him on both charges, and I made an offer to reduce it from possession of crack

third offense to powder cocaine third offense --
Q Okay.
A -- to which he pled and he received three years and a $3,000 fine suspended to 60 days and a $200 fine with one years probation. He also received credit for 60 days and I'm not sure what my RT --
Q All right.
A -- stands for.
Q Let me show you two other files. One against Mr. Gibson, arrest date of 12/15/03 and 5/26/05, 12/15/03 for the distribution of crack, and 5/26/05 for possession with intent to distribute crack, and ask if you recognize either of those files.
A I recognize the files, but I did not handle these cases.
Q Okay. And are -- do those show that Mr. Gibson had additional charges that arose in 2003 and 2005 involving either sale of drugs or possession with intent to distribute drugs?
A Correct. They do.
Q Okay.
A One was for distribution and one was for possession with intent to distribute.
MR. MORTON: Your Honor, I object to the relevance.
THE COURT: Relevance of these charges?

MR. MABRY: Yes, sir, they, they have called witnesses who testified that Mr. Gibson -- they know Mr. Gibson to be a crack dealer. Every one of their own witnesses have been to his house and this would corroborate their testimony that Mr. Gibson was, in fact, a sellar of crack cocaine.

THE COURT: These are convictions that are a matter of public record?

MR. MABRY: Yes, sir, I believe.

WITNESS: Yes, sir.

THE COURT: I'll allow it in for what it's worth. It's a matter of public record and it does have to do with his ongoing activities it appears.

Q Can you tell us what---

THE COURT: For whatever it's worth.

MR. MABRY: I'm sorry.

THE COURT: I don't know.

MR. MABRY: Thank you, Your Honor.

Q Could you tell us what the disposition of those charges were according to the file?

A Yes, Indictment Number 2004-GS-42-2437, he pled guilty to that in front of Your Honor, Judge Couch, on November 30th, 2005. He received three years and was ordered to do inpatient drug treatment.

Q Okay.

A The other file, 2005-GS-42-3792, looks as if it were

dismissed as a part of the plea agreement.

Q To the other charge?

A To, to the -- yes, sir, to the one I just mentioned.

Q Okay. Thank you.

All right. That's all the questions I have of this witness, Your Honor.

THE COURT: Your witness.

CROSS-EXAMINATION

BY MR. MORTON:

Q As I understand it -- and I'm sorry. Your name? I apologize.

A Susan Porter.

Q Susan Porter.

Was it Susan Olmert?

A Well---

Q Okay.

A This was before I was married. I dealt with that before I was married. So, that's my maiden name.

Q That's what had me confused.

So, just to summarize, Mr. Gibson was arrested for trafficking in crack on May or March the 23rd of 2000, and it was dismissed in, on May the 5th of 2003?

A Yes, sir.

Q And then on May the 13th---

A I'd have to look at the files to get the exact dates.

I don't have an independent recollection of the dates.
Q I'm gonna, I'm gonna give you a rap sheet. That's the easiest way for me to find it.
A Sure.
MR. MABRY: If I can interrupt, I intended to introduce his rap sheet. I've got it marked if you want to use that.
MR. MORTON: I think, I think it's already in.
MR. MABRY: This is a brand new one that's been run.
MR. MORTON: Oh, okay. Well, I---
MR. MABRY: You can use it.
MR. MORTON: Okay.
MR. MABRY: Thank you. If you don't have any objection.
MS. ARMSTRONG: Without objection.
THE COURT: All right. It will be received as marked.
(WHEREUPON, Respondent's Exhibit No. 22 was received into evidence at this time.)
Q Okay. That was his -- yeah, that was nol prossed on---
A Okay.
Q ---the 5th and the possession charge was pled on the 13th. So, I was right, right?
Eight days later?
A Yes.
Q Right?
And for the trafficking in cocaine and crack charge,

were you aware that he had confessed to that to the police?
A In the trafficking, my recollection of that case was he was found outside the trailer, there was a medicine bottle beside him with approximately a little under three grams or two or three grams of crack cocaine. I think he confessed to that amount. I do not believe he confessed to the larger amount, which was found inside the trailer. But I -- it's a little fuzzy. It's a long time ago.
Q That's okay.
And he was looking at 30 years for that, no parole?
A It would of been a third offense, more than ten. Yes, he would of been looking at 25 to 30.
Q I actually think would -- yeah, I think it would of been a second cause he had a prior in 1980 and this one in 2000 trafficking.
A If I can see the file I can tell you.
Q Okay.
A I always wrote the rap sheet on the inside of the file. Of course, I didn't in this one. You're right. It would of been a second, and, so, he would of been facing seven to thirty.
Q And---
A At 85 percent, violent and serious.
Q And no parole?
A Correct. That's 85 percent.

Q Right. I'm sorry.
A It's no parole. He's eligible for parole after 85 percent of his sentence is served.
MR. MORTON: Beg the Court's indulgence.
(Pause.)
Q And then after that was nol prossed on May the 5th of 2003, he pled guilty. He was charged with possession of crack third. He pled to possession of cocaine third.
A Second.
Q Second.
And he got 60 days time served?
A Again, I'd have to see the file. I think that's right. I think he got three years suspended to 60 days.
Q And I've got that too.
A But that---
THE COURT: Mr. Morton, if you'll hand her the file she says she can testify to that.
MR. MORTON: Okay.
A I'm fairly certain there was no recommendation by the State.
(Pause.)
A That's correct. Three years suspended to 60 days and there was no recommendation by the State.
MR. MORTON: Okay. Beg the Court's indulgence one second.

THE COURT: Yes. Yes, sir.

(Pause.)

A Judge Cole was the sentencing judge.

THE COURT: Any other questions, Mr. Morton?

MR. MORTON: Yes, sir, if the Court will just -- appreciate the Court's patience. I'm sorry.

(Pause.)

THE COURT: Mr. Morton, I don't know what you -- if you can tell us what you're looking for.

MR. MORTON: Your Honor, I'm looking -- what I'm looking for, when I was handed this file to review earlier, there was a notation in here regarding Mr. Mabry, and---

THE COURT: Which file, cause you looked through three or four of them?

MR. MABRY: It's on the trafficking I think is what you're looking for. I dismissed it. I think I know what he's talking about.

MR. MORTON: There was a, some indication of your involvement with Mr. Gibson.

MR. MABRY: No.

MR. MORTON: There was a yellow sticky sheet.

MR. MABRY: I don't know about that. I know about that right there. That's a codefendant.

MR. MORTON: Okay.

MR. MABRY: I'll look and see if there's something over

here, but I didn't see it.

(Pause.)

MR. MORTON: I have no more questions, Your Honor.

MR. MABRY: Nothing further. We ask that she---

THE COURT: You may step down.

WITNESS: Thank you.

MR. MABRY: We ask that she be excused.

THE COURT: Any objection to this witness being excused?

MS. ARMSTRONG: No, Your Honor.

THE COURT: You're free to go. Thank you very much.

WITNESS: Thank you.

THE COURT: State may call its next witness.

MR. MABRY: Before we call our next witness, Your Honor, I intended to introduce Respondent's Exhibits 23, and these are case history from Magistrate Court on Mr. Gibson, and it shows the disposition of the driving charges on the 9/27/2001.

MR. MORTON: No objection.

THE COURT: Without objection, they'll be received as marked.

(WHEREUPON, Respondent's Exhibit No. 23 was received into evidence at this time.)

THE COURT: Next witness.

MR. SALTER: Your Honor, at this time we'd call Keith

Kelly.

THE COURT: Step outside and ask Mr. Kelly to step in please.

Mr. Kelly, come forward to my left to be sworn.

WITNESS: Yes, sir.

KEITH KELLY, having been first duly sworn, testified as follows:

THE COURT: Have a seat in the witness stand please. Once you're seated, state your name for the record.

WITNESS: I'm Keith Kelly.

THE COURT: Your witness.

MR. SALTER: Thank you, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. SALTER:

Q Mr. Kelly, Mr. Kelly, where and how are you employed?

A I'm employed here in Spartanburg as a partner with Lister Flynn & Kelly, attorneys. 421 Marion Avenue, Spartanburg, South Carolina.

Q And how long have you been so employed?

A Lister Flynn & Kelly was formed in September 1 of 2001. But I've been practicing law since 1988.

Q All right. How did you come to represent Mr. Moore on the charges in question?

A I was Court appointed.

Q When was your Court, Court appointment?
Do you recall?
A No, I don't. I, I think maybe in late 2000 maybe. I'm sure I have that or you may have that. I don't, I don't have the Court order I don't think.
Q Now, you were second chair in this case?
A I was.
Q Is that correct?
A Yes.
Q Okay. Had you worked with co-counsel prior to this time?
A With Mr. Morin?
Q Yes.
A Yes, Mr. Morin and I were in the same law office at one point when he was in private practice. I was practicing with a lawyer here in Spartanburg by the name of Jim Brooks. Mr. Morin joined the firm, I don't know the exact dates. But he stayed some period of time and then left and went, and went into either the Public Defender or the Solicitor's Office and so forth. So, Mr. Morin and I knew each other.
Q Had you tried any death penalty cases or been involved in the trial of any death penalty cases prior to this one?
A Yes.
Q Can you please enlighten the Court as to your---
A I, I think -- I have been involved in four. I think

that this was the third one that I was involved in. The first one was -- I was new out of the law school and I worked with Charlie Sanders and David Anderson, who's the second chair, and I believe Billy Hahs was on that. That was the Jessie Keith Brown case, and there was one more, and then I think -- I think the other one was with Don Thompson in -- it was a Laurens County case. I believe that was the Samples case, and then this one, and then I've had one since this one.

Q All right. Now, at the time you were appointed, had you ever tried any non-capital cases, murder cases?

A Yes.

Q How many?

A I'd say at least two, if not three, to a trial and then maybe in, some to pleas.

Q Okay. Did you have any experience handling non, I'm sorry, excuse me, other major felony cases?

A Yes, sir, drug cases, trafficking cases. I've, I've practiced probably about half my practice, 40 percent anyway, in the Court of General Sessions.

Q That's to how many years now?

A Well, since I was sworn in January 4th, 1988.

Q All right, sir. Do you recall when you and co-counsel first met to discuss the case?

A Yes, I recall Michael calling me about the case, yes.

Q Do you have any recollection of when that would of been?
A No, sir, I, I really don't. I, I think I've provided my time sheets to everybody, which is, of course, public record through the Indigent Defense. But everything wasn't recorded, of course, when Michael and I would talk informally or so. But I don't remember exactly when we first met and talked about the case.
Q You mentioned your time records.
Would they reflect when you first --?
A You know what, in, in this time records is a copy of the order of appointment. I was appointed by Judge Clary on April 3 of 2001. And looks like Mr. Morin and I met, according to my time records, on March 14th, 2001, which would be consistent with Michael saying that I was gonna be involved in the case.
Q Okay. How did y'all ultimately decide to divide your responsibilities in this case?
A We decided to, to divide the case into one lawyer being in charge of the penalty phase and one lawyer being in charge of the guilt phase, and Mr. Morin, I'm -- I think that he elected to take the guilt phase and me to take the penalty phase, but I'm not sure, but that's how it ended up.
Q Okay. Is there any particular reason what, why the breakdown way between the two?

A No, sir. No, sir.
Q Okay.
A I just think that -- I think that the reason for that is, cause I remember us talking about it, was because he didn't want the same lawyer doing both phases because, in the event that there is a finding of guilt by the jury, then you -- it's sort of a -- thought was that lawyer kind of loses credibility before that jury on the next phase.
Q All right. During the course of your representation of Mr. Moore, did you ever meet with him?
A Oh, yes, sure.
Q And do you have any idea how many times?
A No, I don't. He was incarcerated and the jail records would reflect that, but I don't know exactly how many times I met with him.
Q Do you have any -- could you approximate how many times you may have met with him?
A A dozen times, maybe 15, maybe a dozen and a half times.
Q All right. What did you -- from your prospective as to handling the sentencing phase, what would you have covered with him in your meetings with him?
A On the sentencing phase?
Q Yes, sir.
A Well, certainly prior, prior to trial, we talked about

a possible sentence. We talked about a possible plea to life. We talked about a term of years versus a life sentence. We talked about, of course, what the, what the sentence of death would mean. I, I -- is that kind of what you're looking for?

Q Yes, sir. Yes, sir.

A Okay. Yes. Mr., Mr. Moore -- and then let me say this now. But the State never offered us life. But a conversation was held, actually several conversations were held, actually with Mr. Barnette, where the State wanted us to come to them with a number before they would go to the family to see if a trial, you know, if the family would be willing to do that versus a trial, and Mr. Moore, it's my recollection, wanted to put 15 years on the table, and that was not a possibility.

Q Did you explain to him that that was not a possibility?

A Absolutely.

Q All right. You mentioned your claim for your services you rendered.

Do you have a copy of that?

A I do.

Q All right, sir. Does that accurately reflect what you did during the course of your representation of your client?

A Yes, actually more, more was done, but it's at least this. That's right.

Q And those notes would of been prepared, or as far as the information there on that, on those sheets would of been transferred from the notes prepared during the course of your representation?

A Yes, that's right. And I can tell, from the way this is set up, there was a program that we had at one time. We no longer have, no longer use, is called Time Slips. Sort of a popular way to keep time several years ago, and, and that's, that -- this is from Time Slips. That's what that's from.

Q Okay.

MS. ARMSTRONG: Without objection, Your Honor.

MR. SALTER: Your Honor, we'd move to admit, admit this as Respondent's Exhibit---

THE COURT: Without objection it will be marked and received into evidence.

Give her an opportunity to mark it.

MR. SALTER: I'm sorry.

(WHEREUPON, the time sheet was marked as Respondent's Exhibit No. 24 and received into evidence at this time.)

Q Let me hand you that.

A Okay.

Q Does that exhibit reflect how many times you may of met with Mr. Moore?

A No, I, I would say that -- I would say that I probably

met with him more than what's on the time sheet, and, and explained that to you is, and you can always get the jail records to see certainly because he was incarcerated, but, you know, if Michael, if Michael would swing by the office and grab me or something or if we would eat lunch together and swing by the jail, that, that time may or may not be reflected on any time sheet.

Q All right, sir.

A I mean --

Q All right. In your conversations with Mr. Moore, what do you recall him telling you about the events of September 15 and 16, 1999?

A About the facts themselves?

Q Yes, sir.

A Okay. I recall that Mr. Moore went into the store. It was late at night. I want to say that he actually knew the decedent or had been in the store before, maybe several times, and it, and it was sort of a popular place for people that, at shift change, there was something to do about a shift change and people would come in and out, out of the store, and video poker was still legal in this state at that point and there were video machines there.

And Mr. Moore went in there to buy a couple of items. I think it may of been a beer and cigarettes, and he was short some amount of money, not very much, but he was short

some, some amount. And he basically made, I guess, a request to, to the clerk that, to either spot him the money or he'd pay him later or something to that effect. And, and I think that racial slur may have been used, Mr. Moore became upset about that, and it escalated into a, I guess, first of all, a shouting match of some sort, and that the decedent then pulled a firearm.

I don't know if Mr. Moore had a firearm. Didn't go into the store with a firearm. A firearm was pulled by the decedent. Mr. Moore then managed to take that firearm from him, and at that point a second firearm was drawn. I believe it was a .44, the first one being .45, and then a .44 was pulled, and then shots were fired.

There was a gentleman seated playing the poker machine at sort of at the front of the store. A shot was fired in that direction. There's some testimony about a shot being fired through the door because previously there had been somebody there for the purpose of -- they had to borrow a tire arm or something to change a tire. But anyway, several shots were fired, and also shell casings were found.

Mr. Moore was injured himself, shot in the arm I think, upper part of his arm, and then he fled the scene at that point in time.

Q What, if anything, do you recall that your client telling you about using crack either the morning of the

shooting or the day before?
A I think that, that Mr. Moore, at first, denied any drug use whatsoever, but at some point, closer to trial, maybe admitted that he had used some drugs. I think that's what I remember.
Q All right. In your various meetings with Mr. Moore, did you discuss strategic matters with him?
A Yes, sir.
Q Okay. Did he appear to understand your conversations with him?
A Yes, sir.
Q Do you, in the course of your preparation, did you ever meet with attorneys, other attorneys who have expertise in capital cases?
A Sure. Yes, sir.
Q Who -- specifically who?
A Well, pretty quickly after being appointed, Mr. Moore and I went to, went to Columbia and met with Teresa Norris. I can't tell you where her office was, but I remember going there. There was somebody else in the office besides Teresa when we met. In fact, there was about four of us there.
Drucy Glass was on the case. Her husband is John Bloom. I did not meet with him personally, but I talked with Mr. Bloom several times on the phone. In fact, I talked to him on the phone during the, during the course of

a trial over an issue because Drucy was able to get him on a cell phone. So, I mean Teresa Norris, John Bloom.

At that point, I think at that point -- no, no, it's not. I was gonna say Rick -- Rick Vieth and I are good friends. Rick's a good lawyer, done several death penalty cases, and I often times bounce things off of Rick as well as Mitch Slade. So, I'm, I'm sure I had conversations with them as well.

Q All right. Now, the record reflects that y'all hired a jury consultant?

A We did.

Q And what was the reason for hiring the jury consultant?

A Well, I understand that, number one, I understand that we should be doing that, and, and, number two, we thought we needed somebody. We actually -- I can't tell you the name of the lady that was given to us at first, and actually she was given to us by Rick because Rick Vieth, Rick had used her in a, in a trial, and I went to hear her speak because she was speaking at a, at a seminar, and she couldn't do it because she was already engaged from another trial.

So, we, we were referred to Maurene, and I actually flew her -- well, I'm a pilot and I went and got her and brought her up here and she met with us and then I took her back. I think she's from Gainesville, Florida, Gainesville, Georgia, or somewhere like that.

Q Okay. Do you recall whether or not Mr. Moore related to you a history of alcohol or drug addiction?
A I -- no, sir, I don't. I don't know whether he did, if he related that to me or not. I'm familiar with that from some other records that I have mainly from Drucy Glass. But I don't know that Mr. Moore told me that.
Q Okay. What are you familiar with from Ms. Glass?
A Well, she did a report of sorts that, where she met with or tried to meet with family members, that sort of thing, and she has a, she has a report. I believe it's right here. I also put together a history of, Mr. Moore's history, arrest, concealed weapons, alcohol, stolen property, et cetera. That's right here. And if I'm not mistaken, and she, she references it in a letter. So, I'm presuming I got it from her, the jail records here, infractions or various infractions.

Is this what you're asking for?

Q Yes, sir. The document you just handed me, it's a 13 page memorandum from Ms. Glass?
A Yes, sir.
Q Does this appear to be a copy of this very same document?
A Yes, sir.

THE COURT: Any objection?

MS. ARMSTRONG: No objection.

THE COURT: It will be received without objection and marked as an exhibit for the State.

(WHEREUPON, the attorney work product was marked as Respondent's Exhibit No. 25 and received into evidence at this time.)

MS. ARMSTRONG: Mr. Salter, can you give us the number of that exhibit please, sir?

MR. SALTER: No. 25.

MS. ARMSTRONG: Thank you.

Q Mr. Kelly, I hand you Respondent's Exhibit 25, the memorandum we've just been discussing.

A Okay.

Q What does it indicate on there with respect to family members that Mr. Moore, Mr. Moore had?

A Okay. First of all, it starts off with his parents, who's a James Maurice Moore. Gives an address. Drucy, looks like she left numerous messages. She made a notation on 9/20, I'm sorry, 9/12/01. She had left numerous messages for Mr. Moore, his father, not returned the calls, and she had sent a certified letter on 9/17. She notes that his mother's name, but also notes that Mr. Moore was in the Spartanburg County Jail at the time of his mother's death and he was not able to attend.

From her notes and from the conversations that we had, it appeared that Mr. Moore's mother was the matriarch of the

family, and that she, she sort of held the family together, and that after her death the family was, was not as, as close I guess. She -- and she noted that Mr. Moore stated that if his mother were alive that he would not be cut-off from his family and that financial help would of been there for a private lawyer.

His common law wife, Linda Byrd, children, gives daughter, son, and stepson, siblings. His sibling, Mr. Maurice Moore. Her notation is that it was a phone line, a privacy line. Not subject to take calls unless approved. She couldn't reach him and she sent a certified letter on 9/17 of '01.

Gary Lee Moore, no listing in the phone book, and Mr. Moore didn't know how to get in touch with him.

A Michael Moore that Mr. Moore said that he had heard that Michael lives somewhere in Alabama.

A Vanessa Moore, who, according to the notation, Drucy actually talked with and was told that "Richard is dead to us." Actually she says that she told Richard's common law wife that, Richard is dead to us.

Cynthia Louise Moore, Phillip Derane Moore, Michigan State Prison. James Allen Moore, Michigan State Prison. The notation is that Richard said both his brothers are in prison for drugs. So, that's the family that Drucy developed with Mr. Moore.

Q Do you recall whether or not you tried to get your client to help you develop information regarding his family?
A Yeah, we did, and I don't have it. But there is a letter of sorts that Mr. Moore wrote, I think he wrote that letter to Mr. Moore and I don't have a copy, but I'm familiar that a letter was written, that there was just a -- the family had cut -- I don't know if the family cut him off from them or they cut themselves off from him or both, but they were no longer close.
Q I show you a copy of -- I show you Respondent's Exhibit 19.

Is that the letter to which you're referring?
A It sure is. Yeah, he wrote this to Mr. Morin in April the 2001. I knew there was a letter, yep.
Q All right. And you relied upon Ms. Glass to try to develop the family members for you?
A Yes, sir.
Q Do you know whether or not she had any prior experience in trying to develop such witnesses?
A It's my understanding she does.
Q All right.
A I did not know Ms. Glass prior to this case, and she, she was referred to us, along with several other potential expert witnesses.
Q Do you recall whether or not your relationship with

Mr. Moore was good throughout the course of your representation?

A It was -- as far as I'm concerned it was good.

Q Okay. Did you and co-counsel discuss with Mr. Moore his right to testify in this case?

A Absolutely.

Q What did you tell him?

A I would of told him the same thing I tell, I tell everybody in every case. He has a right to testify, has a right not to testify, and the right's up to him. I will say in this case, Mr. Morin, who was in charge of the, of course, the, the guilt phase, wanted Mr. Moore to testify.

Q All right. And what was Mr. Moore's response?

A Mr. Moore did not want to testify because of his prior record.

Q Did you personally have any concerns about whether or not your client would be a good witness if he testified?

A No, I, I -- Mr. Salter, I, I don't think, in all my time practicing law, that I've told somebody to testify or not testify. I can tell them, you know, that, you know, your prior record can be used or can't be used, and I tell them, you know, that you got to tell it straight and you're subject to cross-examination and all those things and you have a right to testify or not testify and I explain that, and I always ask the trial judge to, to have a conversation

with them on the record about that. But I don't think I've ever told anybody to testify or not testify, but I just remember that Mr. Morin did want Mr. Moore to testify.

Q Okay. But he refused?

A Yes, sir.

Q All right. We talked earlier about your responsibility in the trial would, would be handling the sentencing phase?

A Yes, sir.

Q But one of the experts -- one of the witnesses you testified -- pardon me. One of the witnesses that you cross-examined was SLED Agent Whitler, the firearms expert.

A Yes, sir.

Q How did that happen?

A Mr. Morin is, is, is really not familiar with firearms at all and I am. I grew up around them. I own several and I'm prior military. I'm an expert with a .45. So, Mr. Morin asked me if I would cross-examine that witness, and I think that's the only witness I had in that phase.

Q You just mentioned your expertise in that area.

Could you elaborate a little more?

A Well, miliary. I had to qualify and I qualified expert several times. I was an officer and that was my sidearm. I carried a 1911A1.

Q Now, what was your strategy how to most effectively cross-examine Mr., Agent Whitler?

A Basically attack his theory of the, of the case there.
Q How so?
A I, I don't know, have particular notes at this point, Mr. Salter. I'm sorry.
Q Okay. Would you have been made aware, prior to your cross-examination, would you have been made aware of any findings of any experts the defense may of hired?
A Absolutely.
Q Specifically Mr. Girndt?
A Yes, sir.
Q And the pathologist?
A Yes, sir.
Q So, even -- those, those weren't people with whom you necessarily had to deal with personally.
You were aware of their findings?
A Yes, sir.
Q All right. Do you recall what the findings were?
A They were negative to us. They were very adverse to us.
Q How so?
A As I recall on Mr. Girndt's, I think Mr. Girndt's theory of the case would of fit right in with the government's theory in that all the shooting took place behind that counter and we absolutely could not use that.
Q All right.

A In fact, I specifically remember us asking him not to send us a report.
Q We mentioned Ms. Glass.
You met with her and discussed her findings?
A Yes.
Q Okay. Do you have any idea how many times you may of met with her?
A I met with her several times and then, throughout the trial, she was available to us as well, and as I indicated to you, I've forgotten the particular legal issue that came up, but I remember us being over in the courtrooms over there, and she and I, cause I dealt with her I guess probably more than Michael did, and we came over here for some privacy, and we got her husband on the phone, on the cell phone to ask him. I thought she was helpful.
Q In light of your investigation, who, which witnesses did you ultimately determine to present in the penalty phase?
A I don't, I don't know who, I don't know who we called.
Q You don't recall whether or not -- you don't, you don't recall at all?
A No, sir.
Q I, I showed you, if I showed you the transcript, would it refresh your recollection?
A Sure.

Q Might that help you?
A I don't have a transcript with me.
Q I show you Page 1687 of the record, and then going on to the next page.
A Oh, yeah, Linda Byrd. I remember Mrs. Byrd testifying, and then her son, the stepson, testified as well.
Q All right.
A James.
Q Now, does that help refresh your recollection?
A Yes, sir.
Q All right, sir. Do you recall what your reasoning was behind presenting these two witnesses?
A Absolutely. You know, we, of course, we were, we were begging for mercy here at this point, and I think that, that you'll see that the State's theory was he is death eligible, and I was saying he's life eligible because he has a family. He has a wife who loves him. The -- Drucy's report shows that, that Mrs. Byrd, even though he's incarcerated for a long time here in Spartanburg, she visited regularly. She left money for him, I think it was about $20 that he could have. I don't think she missed a single week.

Her child, his stepson, as I recall, called him daddy, referred to him as daddy. And the other two children were smaller children. They did not testify because of their ages. And I, I mean I recall making my notes for the

closing and at my house sitting in my, in my glassed in roomed that night, and, you know, the whole, the whole theory was put these folks up, you know, to -- that he's life eligible. He can parent from behind bars. He can talk about basketball games. He can talk about soccer. He can, he can talk -- he can help with Spanish lessons, if necessary. All -- I think I even said that. But he, he can do all of those things.

So, the purpose of putting these people up was to show that.

Q Yes, sir.

A He can parent from behind bars and be a productive member of society.

Q All right, sir. Do you recall whether or not you considered retaining an expert to testify about the affects of any cocaine use or abuse that your client may have?

A I don't think that -- I don't think that I was the person that, that handled that. There was a doctor, and I think that, in fact, I remember that at one point we were in Columbia, Mr. Morin and I. Seems like Drucy and I, we split up. Drucy and I went to someone else about an issue on the case, and Mr. Morin went to see the doctor. I don't think I actually met with that person.

Q Do you recall whether or not you ever spoke to a pharmacist or pharmacologist?

A I don't recall.
Q All right. Do you recall the trial judge addressing Mr. Moore at the conclusion of the penalty phase as to whether or not Mr. Moore wished to give a closing statement?
A I do.
Q All right, sir. Prior to the time, had you and/or Mr. Morin talked to him about his right to make a closing statement?
A Yes, sir.
Q What did you tell him?
A We told him that he had a right to make that statement even, even without testifying, of course, in the case, and he chose not to do that, that, on that day, and that was done here at the courthouse. His decision was that day he's not gonna do that.
Q Do you recall whether not you may have explained to him he had a right to ask for mercy?
A Oh, yes, sir, that's what the whole statement would of been about at this point.
Q So, in your, in your estimation he understood that he had a right to ask for mercy?
A Yes, sir.
Q All right. Do you recall the trial judge addressing him though?
A I do.

Q All right. Did you receive anything in the manner in which the trial judge or anything the trial judge said, excuse me, as abridging his right to ask for mercy?
A I did not think so at the time, and I, I don't think so now. I've read that part of the transcript.
Q Okay. Had you and Mr. Morin talked to Mr. Moore about whether or not he'd give a statement in the guilt phase?
A Yes, we did, and he, he did give a statement in the guilt phase.
Q Is that consistent with your advice?
A I would, I would have to defer to Mr. Morin. I think that Mr. Morin and he would of talked more about that. But I remember us talking about that and he gave that statement.
Q Do you recall why you did not make a request for jury instruction on provocation by a victim as a mitigating circumstance?
A I, I think that, that -- I think that we thought it was no evidence we could get that because the, the jury had -- the jury had found him guilty of the, of the murder at that point, and I remember us talking about whether or not you can come off as a period of somehow or another the victim provoked his own murder cause I understand, remember Michael saying that over and over, he provoked his own murder. There was some discussion about that, and we, we decided not to do that, not to ask that.

Q Do you recall the testimony of a nurse, Jenny Smith? Specifically her testimony that she had documented, documented that Mr. Moore had alcohol and cocaine present?
A Oh, yes. Yes, I remember that. Yes, it's on the medical report, yes, sir.
Q Do you recall why there's no objection to that testimony?
A I think that she said that the information came from Mr. Moore.
Q Did you know of any basis to object to the, that testimony?
A No, sir.
Q All right. One of the witnesses that I believe y'all retained and did not call was a Mr. Aiken?
A Yes, sir.
Q Do you know why he was retained?
A Yes, sir, Mr. Aiken, a nice gentleman. Mr. Aiken, I'm not sure about all of his background, but I think that he is a retired warden, and basically what -- I specifically remember -- I worked with him a lot, and when we, when we met, you know, his testimony was gonna be along the lines of no matter what, we have a place that we can make the population safe by, by housing Mr. Moore and without Mr. Moore, you know, getting the death penalty. In other words, he's never gonna get out and we can control him.

He's not a monster. He's not uncontrollable. That sort of thing. We did not use him, but we retained him.

Q And why did you not use him, sir?

And why did you not use him?

A Because the State flew down here or brought down here, I'm assume he flew, but they brought down, and I don't know the man's name, but you probably have a witness list with it on it, but they actually brought the person, the custodian of records, if you will, from Michigan. And Mr. Moore had a lengthy record in Michigan.

In addition to that, and I have the ones here at Spartanburg County, Mr. Moore had, had a lot of grievances and he would file or they would file on him and disciplinaries is the word I'm looking for. And, so, they were prepared to put that in. And, and, of course, in discussing that with Mr. Aiken, they, they would be able to, to put that, their person up in rebuttable. Otherwise we would of kept it out.

Q All right.

A I mean I remember Mr. Aiken well.

Q So, you made a decision not to present his testimony?

A We sure did.

Q Do you recall whether or not your file contains a handwritten note of a Michigan disciplinary that you just wanted to stay away from?

A I---

MS. ARMSTRONG: Objection to leading.

A I wanted to stay away from---

THE COURT: Just a second. I've got an objection.

WITNESS: I'm sorry.

THE COURT: You say that's leading?

MS. ARMSTRONG: We'll withdraw it. That's fine.

THE COURT: All right. You may answer the question.

WITNESS: Thank you, Your Honor.

I, I don't know about the handwritten one. I just wanted to keep all of that out, every bit of it.

Q All right. And it would have come in had you presented Mr. Aiken?

A It would have.

Q Okay. I believe you testified earlier that you were familiar with the findings of the defense pathologist, and that those findings were something you, that was not very good for your client, correct?

A Right.

MR. SALTER: Nothing further, Your Honor.

THE COURT: All right. We're gonna break for the evening at this point in time. We'll resume again in the morning at nine o'clock. Court's in recess.

I'll instruct the witness not to discuss your testimony with anyone during our break.

WITNESS: Yes, sir.

THE COURT: Thank you very much.

Court's in recess until nine o'clock in the morning.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: Thank you.

(WHEREUPON, Court was in recess for the evening.)

Friday, February 4th, 2011.

MR. MABRY: Judge, before we get started, I needed to correct something on the record.

THE COURT: Yes, sir.

MR. MABRY: In that directed verdict motion last night, Ms. Armstrong said we had an agreement. I didn't remember it at the time, but we did. At the video depositions, she had asked us to leave the record open till they got the depositions. I simply forgot about it in the heat of the battle yesterday.

THE COURT: I understand.

MR. MABRY: So, and---

THE COURT: Okay. Well, I have -- I'm gonna allow them in anyway. So, that's fine. Thank you.

MR. MABRY: Yes, sir, and I just wanted to make sure the record's correct.

THE COURT: All right. Thank you very much.

MS. ARMSTRONG: Thank you.

THE COURT: Mr. Kelly, you want to resume the stand. I'm not asking if you want to, but you can resume the stand. Let's put it that way.

WITNESS: Yes, sir, thank you, judge.

(Witness returns to the stand.)

THE COURT: All right. Is the State ready to proceed

in the matter?

MR. SALTER: Yes, sir, Your Honor.

THE COURT: And is the Applicant ready to proceed?

We don't have the Applicant in the courtroom. So, we'll need to get, do that first.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: He's on his way?

Go ahead and get him.

(WHEREUPON, the Applicant comes into the courtroom at this time.)

THE COURT: All right. Now, Ms. Armstrong, are you ready to proceed?

MS. ARMSTRONG: I am, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MS. ARMSTRONG:

Q Good morning, Mr. Kelly.

THE COURT: Just one second.

A Morning.

THE COURT: Let me let this gentleman get everything moved in and then we'll get started.

OFFICER: Thank you.

THE COURT: Not rushing you.

(Pause.)

THE COURT: All right. Thank you, ma'am. You may

proceed.

MS. ARMSTRONG: Thank you, Your Honor.

May it please the Court?

THE COURT: Yes, ma'am.

Q Good morning, Mr. Kelly.

A Good morning.

Q How are you?

A I'm well. I hope you are.

Q I am. Thank you.

Just to streamline this a little bit, do you have a copy of the, Mr. Moore's amended application for post-conviction relief?

A I have two. I have the, the---

MS. ARMSTRONG: May I approach?

THE COURT: You may.

A This, this one that's -- and then I have one that I think was submitted by Mr. Morton that had two questions or two points.

Q Okay. Let's deal with the main one.

A Okay.

Q It's entitled amended application to post-conviction relief, and based on the testimony we've already had here today, or excuse me, during the course of the week, it seems pretty clear that, for the most part, Mr. Morin, because he was first counsel, dealt with the guilt phase issues?

A That's correct.
Q And then when you came on board, somewhat later in the process, you took over the penalty or sentencing issues?
A That, that's true. In addition to that, as I recall, and my file is, is pretty much thick with it, I'd also dealt with the, more with the juror questionnaires and the jury consultant person. So, I sort of had the front end and the back end.
Q Okay. All right. Good. Well, that will help me out a little bit.
Let's just go through the allegations, and I will limit my, my examination to those parts of the case in which you were actually involved.
A Okay.
Q The first one would be the right of Mr. Moore to make allocution. In other words, to ask the jury for mercy.
A Right.
Q Obviously penalty phase issues. So, we'll, we'll talk about that a little bit.
A Okay.
Q And then the 8-B, or excuse me, 9-B concerns the investigation that was conducted for purposes of developing evidence in mitigation. So, we'll, we'll go over that.
Now, Ground C involves challenging the forensic evidence. If I understand your testimony correctly, the

only expert that you examined in the guilt phase, and this is also based not just on your testimony, but also in the record, would be Mr. Whitler or---

A That's my recollection. I, I have not read the complete transcript. I read what---

Q Okay.

A ---pretty much what you, you or Mr. Morton, Morton sent me.

Q Okay.

A Excerpts, yes, ma'am.

Q All right. And, of course, there's Brady and just to sort of touch on that briefly. That would be Ground 9-B. Despite the fact that your involvement was somewhat limited in this sense that you were focusing on a penalty phase, you obviously would of expected to have been given all the evidence that the State was required to give you?

A Yes. Yes.

Q Whether it's guilt or penalty?

A Sure.

Q Okay. All right. And then Ground 9-E, which is on Page 4 of the application, Batson, you said you were involved with jury selection. So, we'll talk about that a little bit.

Now, Ground 9-F, which is on Page 5, this is concerning the voluntary manslaughter charge.

Would it be fair to say that that is an issue that was handled by Mr. Morin and that his testimony would be dispositive on that issue?

A I, I would say that, that Mr. Morin handled that. I also noted, in the, in the excerpt transcript that was provided by your office or Mr. Morton's office, that I specifically remember reading in there where Michael raised the objection or renewed his objection regarding that charge to Judge Clary.

Q Okay. So, just to streamline things, that would not be an issue on which --?

A I would not be involved in.

Q Okay. All right. Well then we'll cross that one off.

9-G obviously is about a penalty phase issue. So, we'll discuss that a little bit.

A All right.

Q H, likewise is about mitigating statutory, excuse me, mitigating, statutory mitigating factor. Excuse me. A little tongue tied. Ground 9-I has been waived. There's a res gestae issue, which obviously is a penalty phase issue concerning Jenny Smith.

Would it be fair to say that Mr. Morin's testimony in the record pretty much covers that issue or did you have any involvement with that nurse or that piece of evidence?

A Mr., Mr. Morin had that person.

Q All right. All right. Well, that gives us our road map here.
A Okay.
Q Okay. Now, on, under direct, I think, correct me if I'm wrong, that you were appointed to this case April 3rd of 2001?
A I think that's what that order reflects.
Q Okay. And I noticed from your, noted in your testimony that you had met, maybe I got this backwards, but you had met Mr. Moore in March of 2001?
A I think I did meet Mr. Moore. How this came about is, as I said yesterday, Mr. Morin and I use to work or at one point worked together when he was in private practice and at some point he left and I'm not sure if he went to the Solicitor's Office or to the Public Defender's Office.
Q All right.
A But he left us and went to one or the other. And then, at some point prior to me being officially appointed, Michael called me and said that he had this case, and he wanted -- he was going to ask that I be appointed, but he wanted to call me as courtesy at first because he knew I had been involved in a couple and we had worked together. So, he called and asked if I would agree to come on the case, and I did and then was subsequently appointed. So, we had---

Q Okay.
A ---some meetings, some conversations, and probably met Mr. Moore before I was officially appointed.
Q All right. So, in other words, you came into the case about, excuse me, and correct me if I'm wrong, about seven months before the trial?
A That would be right.
Q Okay. All right. And, so, you met with Mr. Moore and at some point you and Mr. Morin decided that you would be the person best able to handle the penalty phase issues?
A Right.
Q Okay.
A And I think that decision came or was done in Columbia when we met with Teresa Norris. I think that, that was some of the advice that we were given that you needed to divide up the work load, divide pretty early on who's gonna do the penalty and who's gonna do the guilt phase, who's gonna handle which expert witnesses. I think that's some advice we got there.
Q Okay. All right. Fair enough.
Do you know when you went to Columbia, what date?
Was it early on?
A Yeah, it's on the time sheet if you look there.
Q Okay. And let me ask you this. You said you went to Columbia to meet with Teresa Norris and some of the folks

who regularly do---
A Yes.
Q ---capital work?
A Yes.
Q And present at that meeting -- would Drucy had already been on board I take it, Drucy Glass?
A I think Drucy was there because Michael and I were talking about this the other day. Michael actually went and met with the, the doctor from, is it, MUSC.
Q McMahon, McMahon.
A And I did not attend that as I recall, and I couldn't understand -- I couldn't think why I would not have done this. But I think -- what we -- I remember then, and Michael too, was that we split up, and I don't know where Drucy and I went. But we went, we went somewhere else to talk to somebody while Michael went to talk to somebody. And I think if you look at that very last page, there's a fuel ticket cause I, I took us down there, I flew us down there, an 18 gallon fuel ticket.
Q Okay. So, you, you flew?
You're a pilot, right?
A Yeah.
Q Okay. I see that. It's -- that would of been September 19th of 2001 is, is where it's dated.
So, you went somewhere?

A Let's see. How much, how much -- that wouldn't be right. I mean let me look at the time sheet.
Q Sure, sure. Please. Take your time.
A That's when we met with, with Drucy. I don't know why. I mean I don't -- she was probably -- I know she had been in the case long before that, but that's when we met with her. That's what the notes say, September 18th, conference with Drucy, in Columbia.
Q Okay. All right. Do you recall what involvement she had with the case prior to that meeting?
A What Drucy did?
Q Yes, sir, what she was doing prior to the meeting leading up to the meeting.
A Well, I -- she was our mitigation person, and when she was doing things and so forth I don't know cause I don't have her time sheets or whatever she submitted. But, again, I remember that whenever we met with Teresa Norris, I'm sure -- cause I did not know Drucy Glass, and we got her name from I guess a couple others along with our jury consultant person's name, and, again, we, we were -- and I got this name from Rick Vieth I think in a case he had used here. But that lady was not available and we ended up getting Maurene.
Q Okay.
A So, I don't know when that was.

Q Okay. So, in other words, you're not sure, are -- you can't testify as to what Drucy was doing prior to this meeting?
A I can not.
Q Okay. Were there any sort of requirements that she report to you about the, the, sort of the course of her investigation or do you feel like she was pretty good about coming to you and saying this is what I found?
A I thought she was good about telling us what she had found. I mean she, she had experience and suppose to know what she was doing, and was putting in the, which is in the record too, her report together about the family and so forth.
Q Okay. And referring to, to her report, which is been previously admitted I believe.

Beg the Court's indulgence briefly.

THE COURT: Yes, ma'am.

MS. ARMSTRONG: I'm gonna find---

A I have it.
Q But while I'm searching for it, let me ask you this.

Do you recall much in the way -- here it is. Sorry. I keep fumbling around here.

Respondent's Exhibit 25 is a confidential attorney work product concerning Richard Bernard Moore, and it's from Drucy Glass.

You've got a copy of it?
A Yes, ma'am.
Q Okay. Just want to make sure we're reading from the same page.
In my review of this, and it would appear that this document lists various family members --
A Yes, ma'am.
Q -- at the, at the outset, and then the substance of it beginning really on Page 3, right after the, the notation is made about two of Mr. Moore's younger brothers being in prison at the time for, for drug charges.
This is really essentially a chronology of his criminal offenses?
A Right.
Q Okay. There's, there's not any real substance as far as the family background's concerned. It's just more, you know, correct me if I'm wrong, I didn't see anything in the body of this document related to interviews with family members or teachers or, or anybody that was part of his family history.
A No, but as far as the, as far as the family history, as you can see from her notes there, and from verbal statements she would of told us, and then also from Mr. Moore's letter to Mr. Morin in April I guess it was, I think that's what the date on that letter that's in evidence, but she, she

couldn't get in touch with anybody there. They, again, after Mr. Moore's mother died, it, it, it looked like the family cut him off or maybe it was mutual I don't know, but---

Q You said she was the matriarch?

A Yes.

Q Okay. So, she, after she died, the, the sort of the nucleus of that family was gone and you just had---

A Yes.

Q ---individuals?

A That's right.

Q Okay. All right. Fair enough and let me ask you this.

Based on the information that I've found in your file, Mr. Moore having been born in '65, and then moving to South Carolina in, what was it, '97?

A I think that might be right.

Q Late 90's, after he was released from prison.

Essentially his entire life he grew up and was raised in Michigan, a little tiny town of Mount Clemmons?

A Right.

Q Okay. Did you ever consider going to that little tiny town and looking for his rather numerous family members who lived there?

A If Mr. Moore had given us names of anybody I, I would have gone there.

Q Okay.
A In fact, I would of enjoyed flying there quite honestly.
Q Okay. Did y'all ever discuss the possibility of going there?
Because, you know, I notice, on Page 1 and 2, it wasn't just daddy who apparently didn't respond or the sister, but there are a lot of other family members who were never really actually spoken to?
A That's right, and there was no other, according to Drucy's notes there, and, and there was no other way to get in touch. Mr. Moore didn't know how to get in touch with some of them, didn't know where some of them were.
Q Okay. All right. So, in other words, in other words, he's in the detention center in South Carolina and doesn't know much about what's going on---
A Right.
Q ---on the scene at Mount Clemmons?
A Yeah, and Michael was, was asking him, you know, about people there and, and, again, I referred to his, Mr., his being Mr. Moore's letter to Michael, he just, he, he just didn't know how to give him information on, on it. He didn't tell them who -- he didn't tell us, Michael, who to talk to, who to see. I mean---
Q Okay.

A ---I don't know that I would remember my first grade teacher's name, but I could point you in the right direction for a principal maybe or something, but---
Q Right.
So, he said this is where I'm from, these are my people?
A Right.
Q I can't tell you the phone number, I can tell you where they live, but this is where they're at?
A Yeah.
Q Okay. And you refer to the letter in April.
Now, did you and Mr., and I -- you probably already answered this, so bear with me if I'm repeating myself.
A Sure.
Q But you and Mr. Morin worked pretty close and shared information?
A Yes.
Q Okay. All right. So, obviously the letter that he got in April, he shared the contents of that with you?
A Oh, yes, I remember the letter. I didn't remember who he wrote it to, but I knew there was a letter.
MS. ARMSTRONG: Okay. Beg the Court's indulgence, Your Honor.
THE COURT: Yes, ma'am.
Q Oh, here we go. I didn't look for it very long.

Okay. April 20th. Okay. Respondent's Exhibit 19, you said you're familiar with the letter, and do you have a copy of it with you?

A I don't.

Q Okay. I'm sorry.

Would you mind, just for purposes of the record, reading the contents of the letter?

A Sure.

Q Including the date?

A Certainly.

Q Thank you.

A It's a handwritten letter signed by what appears to be Mr. Richard B. Moore dated April 20th, 2001. It says Mr. Morin, I'm writing to inform you that I am unable to supply all of the information you wanted about my family in Michigan. However, I do believe you and Mr. Morin could get this information if you were to contact my sister, Vanessa Moore, at [redacted] or write her, or write her at [redacted], Clinton, I don't know what TWP stands for, Michigan, 48036. Above the phone number. I believe that's Michael Morin's handwriting. It says disconnected 6-1-01.

Whether you call or write, explain the reason for this information. I've not informed them of the State's intention to seek the death penalty. When I first arrested

I asked for their help and was told "there would be no help coming and to get myself out of this mess." At that point I made up my mind not to call them ever again for any reason. I mean it then. I mean it now. This is why, if you really want this information, you need to contact, contact her for yourself. I'm not trying to be uncooperative. It's just the way it is. I, myself, will supply all that of, I can of myself. My sister needs to. Yours truly, Richard B. Moore.

Q Thank you. Sorry to have to do that.

A No.

Q I don't think it was in the record yesterday.

Okay. So, it's fair to say that Mr. Moore, when he wrote this letter, and wouldn't you agree with me that he, he was trying to be of assistance in his own defense if---

A I, I think he was -- I think he was being of assistance in, in that he, he had, he gave him what information he had, but he didn't intend to contact them himself.

Q Okay. And obviously he couldn't get bond and go interview his family members and---

A No, he couldn't.

Q ---had to rely on -- all right. So, do you recall any specific conversations about going to Michigan?

A Oh, I -- yeah, I, I kind of do recall us talking about going there.

Q Okay.

A But we just didn't have much to go on.
Q He -- the addresses and the names?
A Well, again, according to Drucy's report, I remember us talking, but according to that, you know, there were no listings.
Q Okay.
A We, we just didn't have -- she just didn't have much to go on from Richard himself, from us or from Richard.
Q Okay.
A We didn't have much to go on.
Q All right. And it appears that there were some addresses in her report.
A Right, and it, according to her, she tried to reach them by phone and certified mail, and I don't know what else she may of done.
Q Okay. All right. So, with the addresses and the names and the knowledge that Mr. Moore grew up his entire life in that area, tell me, again, did y'all discuss her going to Michigan ever to just sort of hit the ground and see these folks face-to-face.
A Actually, as I recall, we discussed us, us going there. I mean I, I would of like -- I would of gone myself if we had some reason to go. We had some information there.
Q Okay.
A And, of course, it's two things. Number one, it's ten

years later and the Internet is certainly made a world a much smaller place than it was ten years ago, but --.

Q Okay. Well, let me ask you this.

Would you be surprised to, to learn that Maurice Moore still lives at [redacted] in 2011?

A No, I don't, I don't know if that's true or not. I --.

Q Okay. And let me follow that up with, if you'd gone to Michigan and had spoken when these folks and they were willing to say some positive things about Richard, that he wasn't this horrible monster who went around, you know, getting involved in, in violent scuffles, would you have wanted to present that?

Is that fair to say that would of been helpful?

A I don't know that it would of been helpful, but I don't know that it would of not have been. But if anybody had anything positive to say, we would have put them, we would have brought them there. Just saying a neighbor, I don't remember a neighbor's name. But Mr. Moore gave us the name, I don't know if it's a next door neighbor or somebody. I don't remember the name, and they wouldn't get involved in it. I mean Mr. Moore thought that because they were friendly, that they would help us.

Q Okay. But you'd agree with me that if you had some people that had good things to say about them, that that, obviously, would of been of benefit to the mitigation case?

A I would of hoped that it would of been, yes.
Q Right.
A Whether it would of been, I don't know. I really can't say.
Q No, I'm not asking -- and I'm not asking you to put your own---
A Right.
Q ---assessment into the brains of those jurors.
A Right, I don't know what the jurors would of done.
Q I mean not---
A But if I had, if I had ten people that would of said nice things about him, I would of put ten people up.
Q That -- okay. Good. You've answered my question.
A Okay.
Q I just wanted to make sure---
A Yes, ma'am.
Q ---that you'd agree with me that that would be a good thing.
A (Witness nods affirmatively.)
Q And I, I think you mentioned that Drucy, and help me out here, did Drucy decide that going to Michigan would be unveiling or did y'all have a discussion after which you decided that going to Michigan didn't make any sense?
A I think, I think we decided that cause I know we talked about that. Again, I would of enjoyed making the trip. So,

we just -- I just didn't see any reason to go. We didn't have anything there --

Q Okay.

A -- it didn't appear.

Q All right. But you did have the names of some folks and you knew you had a big family and you knew he grew up there and you had an address?

A I did that. But, again, they, they were not returning phone calls or answering phone calls. They were not picking up certified mail, and according to one of them, "Richard is dead to us" and, of course, Mr. Moore having cut ties with them as well.

Q Okay. And that was the one sister, Vanessa?

A I think that's, that's right.

Q Okay. Mr. -- Maurice, his, his oldest brother, had a privacy line. So, that was, that wasn't available obviously by telephone.

A Right, but according to the notes, and, again, we have to ask Drucy what all she did, but according to her notes she also sent a certified letter that he didn't pick up.

Q Of your own knowledge, do you know if that letter was ever---

A No, ma'am.

Q ---received?

A I can only tell you what her work product says. I

didn't send the letter and I can't attest to it.
Q Okay. All right. That's fair enough.
Okay. I'm gonna back up to the first issue. We kind of jumped ahead, and I was trying to follow the application---
A No, that's fine.
Q ---just so it's a little easier on everybody.
Mr. Moore's right to allocution, for lack of, more understandable word, or his right to ask for mercy, y'all discussed that obviously before the trial?
A We sure did and, and I think he got mixed up and then that's then reflected in the statement that he made in the penalty phase, and Judge Clary instructed him several times that we were not there, not at that point.
Q You mean during the guilt phase, his statement?
A Yes.
Q Okay. Would it be fair to say that Mr. Moore actually wanted to talk to the jury?
I mean that was sort of his inclination?
A He---
Q Not to testify, but to speak.
A Right, he---
Q Let me make it clear.
A Well, he chose not to. Again, I don't think I've ever told anyone not to testify, not to testify or to testify.

But, Mr. Morin, I remember in this case, it was basically we got nothing to lose, you know, and he wanted Mr. Moore to testify. So, I think, I think we really needed him to go up there, but when he was -- when he tried to make the statement in the guilt phase---

Q Yes, sir.

A ---it went so badly.

Q And would you say it went badly because Mr. Moore essentially was attempting to preemptively give his plea for mercy and that wasn't allowed?

A Well, that's true.

Q Okay. I mean you'd agree with me that he really got up there and was begging for mercy, but he hadn't been convicted of anything yet, but as his lawyers, we know---

A Well---

Q ---that you can't do that?

A Right, and, and that's what I was gonna say. We, we, we are lawyers and Mr. Moore is not a lawyer. But nonetheless, we told him you can do this at this point, you can do this at this point, and Judge Clary also instructed him as well.

Q All right. But you'd agree with me that obviously he's not a lawyer, and he didn't get the parameters, that's why he kept getting basically cut-off during his, his bungled statement?

A He stepped---
Q Would that of been your assessment?
A Well, he stepped outside the parameters and was called down --
Q Right.
A -- much as you and I would be, but---
Q Exactly.
A In fact, I think, I think that's what Judge Clary said. You're bound by the same boundaries and guidelines as the lawyers.
Q That's right, you're a non-lawyer, but we got to treat you as, like you're a lawyer for purposes of understanding the rules.
A Right. But---
Q Okay. And he didn't get that?
A But he didn't do that, and then when it came, when it came to the penalty phase itself, he, he just said he didn't want to make a statement.
Q Okay. And let me ask you, and I believe this was gone over yesterday. So, I'm not gonna rehash it.

But you, you have reviewed, within the last 24 hours, the colloquy between Judge Clary and Mr. Moore?
A I did, yes.
Q And it was your assessment at the time that Mr., excuse me, Judge Clary's admonition to Mr. Moore was okay?

I mean, in other words, it was not, it was not objectionable?

A That's true.

Q Okay. But if it was, and if it misled Mr. Moore, would you agree with me that that's something you should of objected to?

A Well, we would have objected to it if it, if we had deemed it -- if there'd been objection there we would have objected to it.

Q Yes, sir.

Okay. So, in other words, if Mr. Moore got the impression that he had to stick to the, what had been presented in the penalty phase---

MR. SALTER: Your Honor, that's going---

A I'm sorry.

MR. SALTER: ---calls for speculation on the part of the witness unless they had a conversation about it in which Mr. Moore revealed what his impression was.

THE COURT: I'd ask you to lay a better foundation as to whether Mr. Moore, at anytime, indicated his state of mind on this matter.

MS. ARMSTRONG: Okay. Fair enough.

Q During the colloquy between Judge Clary and Mr. Moore, after Judge Clary's statements to him about what you can and can not do --

A Right.
Q -- do you recall an opportunity to speak with Mr. Moore?
Was there a break in the, in the trial to discuss what the instructions were?
A I don't know. The transcript would reflect if it were. I'm sorry, but I, I don't know.
Q Okay. Assuming the transcript reflects Judge Clary speaking with Mr. Moore and Mr. Moore saying I'm not gonna say anything, you'd agree that you didn't have the opportunity based on that sort of sequence of events to speak with Mr. Moore?
A Well, if the transcript doesn't, doesn't reflect a pause, then there was none and we did not talk. But I will say this.
Q Okay.
A We -- I think this goes back to his statement that, his improper statement he was making in the guilt phase was we didn't wait until that day to talk about all that.
Q No, and I'm not suggesting that.
A Yeah, so---
Q You had previous discussions---
MR. SALTER: Your Honor, I'd ask counsel be allowed to finish.
THE COURT: Let him finish his answer.

MS. ARMSTRONG: I apologize.

THE COURT: She can't take down two people talking at the same time.

MS. ARMSTRONG: Yes, Your Honor.

THE COURT: Finish your answer, Mr. Kelly.

WITNESS: Yes, sir, thank you.

But we, we talked about what you can do and when you can do that at, at, in the entire trial. And, so, we, we didn't -- Mr. Moore didn't hear -- he heard Judge Clary saying it maybe for the first time in the courtroom. But we had certainly talked about that the judge is going to tell you this at some point in time, and you can or can not make a statement.

Q Okay. And, so, I think it's undisputed that you discussed the issue?

A Absolutely.

Q Beforehand?

A Yes, ma'am.

Q Okay. And in your discussions, as well as in your dealings with Mr. Moore during trial, did you tell him that the judge had the final say on what you can and can not do in the courtroom?

Was he aware of the role of the judge?

A I, I don't know. I don't know that I specifically said anytime the judge says it's blue it's blue. But I mean

that's -- I don't know that I said that to him.
Q Okay. That's fair enough. I'll move on.
Now, I believe you said that you were involved with the jury selection expert, Mrs. Nichols?
A McKinley I believe.
Q McKinley. Maurene.
A Maurene.
Q Okay. Let's just call her Maurene. It's a little easier.
A Okay. Maurene.
Q Okay. Do you recall specifically what she said about the, the venire that you were looking to strike from?
Do you have any specific recollection about her advice as far as selecting a jury?
A No, not really. I can tell you what all we did. She came up. I think she's from Athens, Georgia, but I'm not real sure. I think yesterday I said Gainesville, but I think it's Athens, Georgia.
Q Okay.
A And because we met in my office. I think the first time that I met her we met there, and, you know, she told us what you sort of had to look for in age and the demographics and so forth and trying to get them close to our client.
Q Okay. So, you'd agree with me, based on those conversations, that getting an all white jury was not what

you wanted?
A No, it would not have been what I wanted.
Q Yes, sir.
And I believe, and just to shorten this somewhat, that Mr. Morin was essentially the person in charge of handling the Batson challenge, challenge?
A That's true.
Q Okay. All right. So, his decision to abandon that, at some point, was his, not yours?
A That's right. He would be handling that.
Q Okay. All right. That takes care of that.
Okay. Now, let's move on to some of the issues directly related to evidence in the penalty phase.
Do you recall any specific meetings with James Aiken?
A Oh, yes, I, I remember Mr. Aiken well.
Q Okay. All right. Have you worked with him in the past?
A I had never met him.
Q Okay. All right. Have you worked with him since?
A I have not. He invited me to go fishing, but I never took him up on it.
Q Okay. What was the purpose of retaining Mr. Aiken?
A Well, the purpose of retaining Mr. Aiken was, he, I think, and I don't have the CV or whatever, but I think that he's a retired warden perhaps and has a lot of training

otherwise. But that he could, he could testify that, that even though the jury had found Mr. Moore guilty of the murder, that he could be housed safely and he could be controlled, and that no matter how the State tried to portray Mr. Moore as a monster of some sort, that, that he could, he could be in the population, the inmate population and be---

Q Okay.

A ---and be controlled.

Q All right. And did you provide Mr. Aiken with documents so that he could formulate his opinion as to whether or not Mr. Moore was a potential threat or not?

A I don't have any, any records to what I gave him or didn't give him. But I'm sure we gave him whatever he asked for.

Q Okay. And based on his request for information, his assessment, would it be fair to say that Mr. Aiken was prepared to give favorable testimony for Mr. Moore?

A I, I don't know. I don't have a file from him. I actually called Mr. Aiken's -- I found an invoice with his phone number on it from Brevard, North Carolina. I actually called and spoke with a lady in his office. She advised me, advised me that there was no records, that they didn't have any file --

Q Okay.

A -- that Mr. Aiken was traveling. And he never returned my call personally even though I gave him my cell phone number.

Q And this was in---

A This was---

Q ---2011?

A ---in the last 15 days.

Q Okay. So, it's not at the time of trial that he didn't return your phone call?

It's---

A No.

Q ---you tried to call him in the last 15 days?

A Right.

Q He was traveling and---

A Right.

Q Okay. All right.

A Because I didn't have anything in my, in my file, which you've had privy to me -- I mean you took my file and copied what you wanted. So, it's not there.

Q Yes, sir.

A And Mr. Morin was in the P.D.'s Office, and of course, they didn't want to release their files. So, Mr. Morin and I had to go to the P.D.'s Office and use their conference room to go through Mr. Morin's file.

Q Okay. And---

A We don't, we don't have a file from Mr. Aiken.
Q You do not have a file?
A That I know of.
MR. ARMSTRONG: Beg the Court's indulgence.
THE COURT: Yes, ma'am.
(Pause.)
Q Well, it doesn't appear that the P.D.'s file has, that I can locate, a file on Mr. Aiken, but---
A I was looking for a report that he gave and I thought that he would have a copy. That's why I called. I was trying to get his report.
Q Okay. All right. Putting that aside, do you recall whether or not Mr. Aiken was either under subpoena or had made himself available for testimony at trial?
A He was here.
Q He was actually in the courtroom?
A Yes, ma'am, he was here.
Q All right. Now, he wouldn't have been here if he didn't have something good to say, is that---
A Right, I mean I think he would of given us a, a favorable report, but he was here.
Q Okay.
A And I think I answered this yesterday, but I would be happy to say it again. I don't remember the name. But the State brought down somebody from Michigan with all of the

disciplinaries and the records, and that person's name would be on a witness list --

Q Okay.

A -- maybe in your possession. But, but it's my understanding -- cause we, we may of talked to Mr. Aiken into his room, but probably not. Outside of these doors at that time were some conference rooms --

Q Yes, sir.

A -- that are not there anymore, and I think that's where we kind of hung out if you will. We kind of made that an office because we were across the hall over here in this, in the courtroom that Judge Cole, either Judge Cole or Judge, anyway, Judge Hayes, I don't remember. We were across the, the hall.

Q Yes, sir.

A And we, we didn't have offices here. So, we kind of made that an office over there if you will, and, and Mr. Aiken was here.

Q Okay.

A And they had the other person from Michigan that was gonna bring in all of those disciplinaries and --.

Q Well, let me ask you a little bit about that.

A Okay.

Q The person who -- and I realize you don't remember the name.

A I don't.
Q Somebody from Michigan.
This person, were they like a -- was the person they brought down someone to, to introduce records?
A Yes.
Q Okay. So, this person would of been like a, basically serving in the role of authentication?
These are our records, this is what it says?
A Right, custodian of records.
Q Okay. Would you agree with me that typically prison records or disciplinaries are hearsay without the officer to come in and say well, this is what happened?
MR. SALTER: Your Honor, I think that there's a case on point that says that they are actually admissible as a business record exception where some statements that are in may not be admissible.
MS. ARMSTRONG: Okay.
THE COURT: I think it's Rule 803(8)(b) maybe. Anyway.
MS. ARMSTRONG: Okay.
Q Okay. So, certain portions would be admissible, and maybe certain portions would not of been?
A Okay.
Q Okay. But the person who was down here from Michigan wasn't an expert?
They were someone serving in the capacity of like a

records custodian?
A That's my recollection.
Q Okay.
A I don't remember any person's name. I don't even remember if it was a male or female, but I know that a person or two were here.
Q Okay.
A And we, we being Michael and Mr. Aiken and I even think Drucy was in on that conversation as well.
Q Okay. And did you know or have possession of the records the State intended to, to introduce through this?
A Oh, absolutely. I, I think I specifically remember Trey Gowdy handing me a copy and smiling.
Q Okay. And did those records contain -- did you provide those to Mr. Aiken so he could look at them?
A Yes, ma'am, I think that we were altogether and---
Q Okay.
A ---and we kind of went over this stuff, and we made a decision to release Mr. Aiken, but he was here. He was physically in this courthouse as I recall.
Q Okay. Is it -- I'm sorry. I didn't mean to cut you off.
A No, you didn't.
Q Based on Mr. Moore's, let me make sure I get this right, but based on Mr. Moore's previous incarceration and

whatever disciplinaries may have been documented as a result, you chose not to call Mr. Aiken?

A Yes, ma'am, I thought we were gonna get hammered with the, with that.

Q Okay. Even though Mr. Aiken reviewed those prior records and still thought Mr. Moore could be safely housed?

A Well, he -- it's been ten years, but---

Q Yes, sir.

A But, but it, it seems like that the thought process was then and might would well be now that here's -- the jury doesn't know about that prior record at all. Okay. And, so, here, all of a sudden, they are gonna know.

Q Yes, sir.

A Okay. And, and it's gonna be a lengthy record. And, and, so, it's -- he's now before us. We convicted him of the murder, and maybe he should of been stopped before and we're gonna stop him now. So, I don't know. It was just a, a decision. It may of been the wrong decision. It may of been the right decision, but at the time, and maybe even today if I had a similar case, I -- the decision was made that we just could not put that up.

Q Okay. And that was because of the prior disciplinary infractions?

My understanding is you, you didn't want the jury to know that Mr. Moore had gotten into some squabbles in the

Michigan Department of Corrections?
A There and here.
Q There and here.
A Yes, ma'am.
Q Okay. All right. Do you recall whether or not Mr. Moore, while incarcerated either in Michigan or in South Carolina, was ever found guilty of assaulting either an officer or another inmate?
A I don't recall.
Q Okay. Were you -- do you recall if he was ever involved in a gang?
A I don't. I'm sorry. I don't recall.
Q Okay. And, to your knowledge, Mr. Moore had never tried to escape from prison?
Would that be fair to say?
You don't have any evidence that was the case?
A I don't remember that, no.
Q Okay. And would it be fair to say that, during the penalty phase, the State did a really effective job of bringing out Mr. Moore's prior acts of violence while on the street, the Rack Room Shoes, the purse snatching, that sort of thing, and, in fact, they were allowed to do so because it's a penalty phase, and while it's not completely open season, the State could bring out pretty much anything they wanted with certain limitations and, in fact, did so?

A I would have to defer to the transcript. I'm sorry.
Q Okay. All right. All right. I'm gonna wind down here somewhat, and I believe that Mr. Salter asked you about why you would not have asked for a statutory mitigating circumstance of provocation by the victim, and if I misstate what you said, please, by all means, correct me, but I, I believe your testimony was that you didn't ask for that statutory mitigator because the jury had already found him guilty of murder and thus they had made some assessment about provocation?
A Yeah, I don't think we had any, I don't think we had any evidence we couldn't, we couldn't get it. I think that was the thought process, we couldn't get that charge.
Q Even though Mr. Moore was shot by a gun that belonged to the victim?
A Right.
Q Okay.
A And we didn't, we didn't get the manslaughter charge. We probably would of gotten -- we, we might -- well, now, I don't know if we could have or not gotten that manslaughter charge. I think there's a couple cases on that about armed robbery and bringing the trouble on yourself or something. But---
Q But there was evidence he went in without a gun?
A Oh, absolutely. I don't think anybody said that he

carried a firearm in that store.
Q Okay. And do you remember the argument, Mr. Morin's argument in the guilt phase, that Mr. Moore was also a victim?
A I do.
Q Okay. All right. But tell me again, your precise reason for not asking for the statutory mitigator of provocation of the victim?
A I just, I just think that we didn't think we could get it at all. We had, we had no evidence to get it. We had no legal basis to get that charge.
Q Even though you asked for a voluntary manslaughter charge?
Albeit it was denied.
A It was denied, right.
Q But obviously you asked for it because you thought there was some evidence in the record that Mr. Moore acted in the heat of, heat of the moment, and was entitled to it. Otherwise you wouldn't have asked for the charge. The judge may of disagreed with you, but at the time you had thought you had some basis otherwise you'd be wasting your breath asking for it?
A Well, I -- you want the real answer on that?
A lot of times we ask for things we know we're not gonna get quite honestly, but---

Q All right. Well, let me ask you this.
A I didn't think we were gonna get the manslaughter. I didn't think we were gonna get this either.
Q Okay. Let me ask you this.
A Okay.
Q If the judge would of been willing to give you the statutory mitigating circumstances of provocation by the victim --
A Yes.
Q -- would you have wanted that charge instructed to the jury?
A I think so just like I would of wanted ten people to say nice things about Mr. Moore.
Q Okay. All right. That's fair.
Beg the Court's indulgence, Your Honor.
THE COURT: Yes, ma'am.
(Pause.)
Q Just a few more questions.
A Sure.
Q Realizing that you weren't part of the deposition that's occurred in November of 2010, would you have wanted, if, if you had known or gone up to Michigan, would you have wanted to speak to some extended family members that could of said good things like an uncle, an aunt, folks who were around Mr. Moore?

Do you think that would of been helpful to have had those folks testify?
A I don't know that it would of been helpful. I don't know that -- I mean it certainly wouldn't have been hurtful because we would of put them it. But I don't, I don't know that it would of been helpful. I just know that we didn't have them. I don't know what they would of said. So, I can't really tell you what they, if it would of been helpful to the case or not.
Q Okay. If you had known that they were in Michigan prior to trial and would of spoken to you, would you of wanted -- would you of made that decision to go and speak with them?
A Well, we would have. The problem was we couldn't -- the -- again, the, the family had broken apart if you will. When his mom died, it's just that they cut him off and he sort of cut them off if you, if you will, and---
Q And that was based on the statement of one sister?
A Well, and Mr. Moore's comments. I mean he, he -- in his written letter, for instance. You know, you can do it. I'm not gonna do it and I think he---
Q You agree with me he couldn't do it?
A No, he couldn't do it. But I mean he, he -- no, I know that, but he could write letters too---
Q Yes, sir.

A ---you know, even from prison, you know. He could of written a letter to his sister, brother, daddy, said please, these are my lawyers, they need to talk to you, this is what I'm charged with, et cetera. No, he couldn't physically go there himself, but we just didn't have that cooperation.
Q From Mr. Moore or from the family?
A Actually from both. I mean Mr. Moore didn't -- he sort of shoved them away and they -- it appeared to me they shoved him away. It was just broken. Who he did have was his wife here, who loved him very much, and visits and so forth. His stepson was old enough to testify.
Q Okay. Well, let me ask you this. You said you and Mr. Morin spoke obviously as the case developed.

Were you aware that on May 8th of 2001, Mr. Morin, in response to the April 20th letter, were you aware that he went and spoke to Mr. Moore and Mr. Moore provided him with information and apparently had decided he wanted to cooperate a little more?
A I don't recall that.
Q Okay.
A He may have. I don't, I don't remember that Michael told me that or didn't tell me that.
Q Okay. But if Mr. Morin would of noted that he spoke with you on May 8th of 2001, would you disagree that he had?
A No, if Michael made a note that he told me that he told

me. I don't remember.
Q Okay. All right. Fair enough.
And would you agree with me that ultimately the decision as to how the investigation was conducted was your decision and that Ms. Glass was essentially your agent, and you were the principal as far as that relationship went?
A Well, yeah, I, I, I agree that, that the buck stops here, yes.
Q Yes, sir.
Okay. And you may of said that. I apologize. I just wanted to make it clear.
A No.
Q And you first met with Ms. Glass I think you said September 18th of 2001?
A I don't recall it being that late in the, in the process. But I don't know when we first met.
Q Okay. All right.
A You know, when did you say that date again, September what?
Q I'm sorry. September 18th of 2001.
A You know, no, I wouldn't say that and the reason is there's no date on this, but her notes go back to September 12 at least some of the things that he was -- I had already met her. We had already hired her.
Q Okay. Do you recall exactly---

A See, I don't.
Q ---in the matter---
A I remember when we went to see Teresa because, again, I did not know her, and that's how I got her.
Q Yes, sir.
A But -- and there's no date on this work product. So, if she had already done work---
Q Yes, sir.
A ---and mailed letters.
Q Okay.
A I don't know when that was.
MS. ARMSTRONG: All right. Your Honor, may I approach?
THE COURT: Certainly.
Q Okay. This is your, your time sheets.
A Uh-huh. (Affirmative).
Q Can you maybe review those and see if it refreshes your recollection as to when you first met with Drucy?
THE COURT: While he's doing that, Drucy is spelled how?
MS. ARMSTRONG: D-R-U -- like Lucy, but with a D-R. D-R-U-C-Y.
THE COURT: C-Y. I had it S-Y. Thank you.
MS. ARMSTRONG: The last name's Glass.
A I don't know when I first met her, but according to the time sheets, at least by September 4 she and I were talking

by phone.
Q Okay.
A So, I don't know, I don't know when and then it looks like we met in Columbia in September 18 or so.
Q Yes, sir.
A But we were already talking by phones in September 4. I don't, I don't know when we first met.
Q All right. So, your first contact was by phone on September 4th as reflected in your time sheets?
A As reflected in the time sheet, but I don't know, I don't know when we met and hired her and so forth.
Q Okay. All right. Let me give this back to the court reporter. Thanks.

Mr. Salter may already have asked you this question, but do you have any notes from your meetings with Ms. Glass?
A I, I don't think so.
Q Okay. All right. Mr. Kelly, thank you so much.
A Yes, ma'am.

THE COURT: Redirect.

MR. SALTER: Just very briefly, Your Honor.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. SALTER:

Q Mr. Kelly, do you still have a copy of Respondent's 25 in front of you, the report from Ms. Glass?

A This confidential work product.
Q Yes, sir.
A Yes, I have my copy.
Q Will you turn back to Page 3?
A Yes, sir.
Q It indicates at the end of the list of the siblings that, according to Richard, most of his younger brothers are in prison for drugs?
A That's right.
Q So, y'all knew where they were?
A Yes, sir.
Q Did you see any advantage to your client in presenting family members who were incarcerated for drugs?
A No, sir.
Q Why not?
A Because they were inmates according to this and the Michigan State Prison. I mean they would not be helpful witnesses for us.
Q All right. So, even if they had something positive to say, it would not have been helpful?
A I would not think so.
Q Yes, sir.
On that same page, is there an entry for 6/9/83?
A Yes.
Q What does it say there, sir?

A It says Richard graduated from Mount Clemmons High School. His class rank was 278 out of a class of 295. He did not fail any grades. School records.

Q So, that information would of been provided to you from Ms. Glass?

A This is Drucy's work product and it says school records. It's my understanding that that came, would of could from his school records, yes.

Q So, she not only was developing a time line of any criminal activities of him, but looking at school records as well?

A Yes, sir.

MR. SALTER: Nothing further, Your Honor.

THE COURT: Recross.

MS. ARMSTRONG: Yes, Your Honor. Briefly.

RECROSS EXAMINATION

BY MS. ARMSTRONG:

Q Mr. Salter asked you if you thought it would be advantageous to present testimony from people in prison, and, of course, you said no, which is obvious that would not have been a good idea.

However, would it have been helpful to present testimony from four law abiding citizens with college educations who've never been to prison and who knew Richard and knew him to be a sweet kind child, who knew him to be a

sort of gentle natured, more passive than aggressive type person?
A I don't know that it would of been helpful, but I didn't have those people.
Q If you had found the people and they were available, willing to testify, would you have presented that evidence?
A I would have presented any evidence that would of been favorable to Mr. Moore, and I, I would of thought that might have been favorable to him, but I did not have those people.
Q But assuming that they were available and willing to testify at the time of trial, you would of wanted them?
A I don't know what they would of said, but if they said positive things, I, I, I -- I'm not being argumentative, I promise. I just -- if I had a silver eagle bus load of people that would of said tremendously nice things about Richard, I would of loved to have them.
Q Okay. All right. That's all I'm asking.
No further questions.
THE COURT: Any objection to the witness being excused?
MR. SALTER: None, Your Honor. We ask that he be excused.
MS. ARMSTRONG: No.
THE COURT: You may step down. You're excused. Thank you very much.
WITNESS: Thank you, Your Honor.

THE COURT: Be sure you don't take any exhibits with you.

WITNESS: I don't think I have any.

THE COURT: All right. All right. Thank you.

MR. MABRY: Judge, we need just about a five minute recess. I've got to get---

THE COURT: All right. The Court will take about a five to ten minute recess. Thank you very much.

(WHEREUPON, a short recess was taken at this time.)

MR. MABRY: Your Honor, my next witness is Judge Willingham. I told him we were ready. He said he was on his way.

THE COURT: Okay. All right.

MS. ARMSTRONG: Your Honor, while we're waiting on Judge Willingham, now Judge Willingham.

THE COURT: Yes, sir.

MS. ARMSTRONG: I was involved in a case, a death penalty case in Orangeburg where my co-counsel and I attempted to call a judge as a witness, and it produced a case called Ex Parte Whetstone. I don't know if I need to raise this now, but it's my recollection, and we lost that case, and won at the circuit level, lost it at the Supreme Court level. I'm not sure if it has applicability here. It's a little different because this involved---

THE COURT: Well, let me pull up Ex Parte Whetstone and

see what it says.

MR. SALTER: My recollection of the Whetstone case, Your Honor, my office argued both sides of that appeal. Judge Whetstone was a sitting Circuit Court judge they wanted to call.

THE COURT: A law school classmate of mine.

Go ahead.

MR. SALTER: Yes, sir, they wanted to call him to testify to certain matters that occurred while he was acting in his judicial capacity. He resisted the subpoena, and that was upheld. The quashing of the subpoena was upheld. The calling of Judge Willingham, on the other hand, relates to matters that occurred before he became a judge. Has nothing to do with any act in his judicial capacity.

THE COURT: Is that your understanding of the case?

MS. ARMSTRONG: Yes, but I, I think it needs to be reviewed. I have a vague recollection that it may, that the case may have held that judge's are not proper witnesses before the Court.

MR. SALTER: Well, Your Honor, I've called Former Justice Burnett as a witness in a, in a capital PCR, and he gladly testified.

MS. ARMSTRONG: Which is in conflict with Ex Parte Whetstone. I mean I, I---

THE COURT: Well, who has the right to claim the

privilege, the judge?

MR. SALTER: Yes, sir, Your Honor.

MS. ARMSTRONG: I haven't looked at the case. I'm just bringing it up.

THE COURT: I'm going to.

MS. ARMSTRONG: It's in the back of my mind.

THE COURT: If y'all give me a second, I'll get it pulled up.

MS. ARMSTRONG: Good. Thank you.

THE COURT: Thank you.

MS. ARMSTRONG: Bear in mind I just---

THE COURT: Give me a second. Thank you.

DONNIE WILLINGHAM, having been first duly sworn, testified as follows:

(WHEREUPON, Respondent's Exhibit Nos. 26 through 28 were marked for identification purposes only at this time.)

THE COURT: Whetstone appears to stand for the proposition, proposition that judge's should not be called to testify regarding matters from a, from a case over which they have previously presided.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: He didn't preside in this case.

MS. ARMSTRONG: You're absolutely right. I just wanted to make sure.

THE COURT: All right.

MS. ARMSTRONG: That case came out a long time ago. Thank you, Your Honor.

THE COURT: You welcome.

The witness has been sworn.

State your name please.

WITNESS: It's Donnie Willingham.

THE COURT: Your witness, Mr. Mabry.

MR. MABRY: Yes, sir.

DIRECT EXAMINATION

BY MR. MABRY:

Q Mr. Willingham, where are you currently employed and how?

A I am currently employed as a magistrate judge for Spartanburg County.

Q And how long have you held that position?

A About three and a half years now.

Q All right. And prior to being a magistrate in Spartanburg County, what was your position or occupation?

A I was a deputy solicitor for the Seventh Circuit Solicitor's Office.

Q All right. Were you involved in the trial of the case of Richard, State versus Richard Moore, capital case?

A Yes, I was.

Q All right. And do you remember being involved in the jury strike in that case?

A I was.
Q And do you remember the fact that Mr. Morin made a Batson motion after the strike took place?
A I do recall that being an issue. I don't remember exactly what his arguments were, but I do remember that took place after our---
Q Okay.
A ---full panel strikes.
Q All right.
A We used, we used all of ours if I recall correctly.
Q Did -- well, let me show you the -- first of all, do you have you a -- do you have a copy of the record before you?
A I do.
Q If you could go to Volume III, Page 1765.
A Okay.
Q And in looking at that, can you tell us who you struck, what strikes you exercised, and what the race---
A Okay.
Q ---sex of those individuals were from the actual panel of 12 and we'll go to the alternates next.
A From the State's strikes?
Q Correct.
A The state struck Juror number 251, Joyce Smythe, who was a white female. State struck Juror 191, Joyce Morrow,

who was a black female. State struck Juror Number 2, Douglas Alexander, who was a black male. State struck Juror Number 213, Deborah Perkins, who was a white female, and we struck Juror Number, 145, Charles Kent, who was a white male. That was the -- that was all five of ours for the original panel.

Q Okay. And do you -- can you go down and tell---

A And for the alternates, we stuck Juror Number 132, Edward Huffman.

Q Okay. Do you remember if the alternate strikes, was there was -- looks like you picked two alternates?

A Two alternates.

Q Were they one and two?

A One and two for each alternate.

Q For each one. Okay.

A Yeah.

Q If you would, go to Volume III of the trial record. Page, I believe, it's 1135.

A Okay. I'm there.

Q Well, I guess starting at the bottom of 1145.

Does it appear that Mr. Morin made a Batson motion?

A Yes.

Q Okay. And if you would, go over to 1135, and if you could tell us what the reasons were and just take a few moments and review that.

A Okay.
Q Okay. And have you had the chance to look at the reason for all three jurors or, or just the first one?
A Well, I looked at Mrs. Morrow.
Q Keep going if you would.
A And I looked at Mr. Alexander.
Q Okay.
A Is there another one?
Q Yes, that's it. There was just two.
MR. MORTON: Your Honor, I hate to interrupt. What pare are you on?
MR. MABRY: 1135 to 1136.
MR. MORTON: Thank you.
Q Okay. First of all, talk about Mr. Allen.
A Yes.
Q And, and Mr. Huffman, I can't remember which one was that African-American?
A Mr. Alexander was an African-American.
Q Why was he struck?
A He had a son who had been charged with murder within five years of this case, and we felt that was a valid reason to strike him and did not want him on our jury.
Q All right. And was there a similarly situated juror to him that was white?
A No.

Q Well, let me ask you to look at Page 1136.
A You talking about Mr. Huffman?
Q Right.
A Well, okay. Similarly situation. Mr., Mr. Alexander had a son --
Q Right.
A -- who was charged within five years.
Q Okay.
A Mr. Huffman had a -- wait a minute. Had a brother-in-law who was convicted.
Q Okay. Okay. Of murder?
A Correct.
Q Same charge the defendant was on trial for?
A Correct.
Q Okay.
A And we struck Mr. Huffman, but he was a white male.
Q Okay.
A I---
Q That was my question.
So, there was a juror that was similarly, in your opinion, similarly situated to juror---
A Similarly situated in that he had a family member charged, but I see brother-in-law versus son being a little different. But either way, both of them were struck by the State.

Q Okay. And who, who prosecuted -- who was prosecuting the African-American, Mr. Alexander, was that his name?

I keep losing my place here.

Who y'all struck -- Yeah, Mr. Alexander is a black male that y'all struck.

A He was prosecuted by the Seventh Circuit Solicitor's Office.

Q Okay. So, by your office?

A Correct.

Q Okay. Now, let's talk about Mrs., if you'll go back to Page 1135. Let's talk about Mrs. Morrow.

A Yes.

Q Why was she struck?

A Mrs. Morrow, I did not believe, was truthful with the Court. As you know, and everybody here know, jurors fill out the questionnaires. One of the questions on the questionnaire was have you ever been charged or arrested for any crime. She indicated that she had not been. I gave her an opportunity in the, the -- I believe she is -- I gave her an opportunity, in my questioning of the juror, to clear that up, and she finally acknowledged, when confronted, that she had been, in fact, charged with possession of ball tickets, gambling.

Only after I then asked about the possession of marijuana did she volunteer that information. I didn't

think she was candid with the Court. I made a motion to the Court to have her disqualified as not being truthful. Judge Clary denied that motion. So, that's why we had to use a strike on her.

Q Okay. Now, had she just been arrested for these charges or had she been actually convicted of these charges?

A I think she had actually been -- let me look.

Q Okay.

MS. ARMSTRONG: Your Honor, I believe this witness may be confused and we would ask that we, we rely on the transcripts.

THE COURT: He's going there now.

A That's what I'm saying. He's looking at---

MS. ARMSTRONG: Oh, I'm sorry.

A I'm not sure how I was confused. But on Page 324 of the transcript it indicates that she was convicted of the possession of marijuana.

Q All right. I want to show you Respondent's Exhibit 26 and 27. I've actually identified those.

MS. ARMSTRONG: Yes, sir.

MS. ARMSTRONG: No objection to that. No objection.

THE COURT: You want to make those files exhibits?

MR. MABRY: Yes, sir.

THE COURT: Are they separate files on different subjects?

I don't know if they're---

MR. MABRY: And they're marked separately, Your Honor.

THE COURT: All right. They'll be received as marked. Without objection.

(WHEREUPON, Respondent's Exhibit Nos. 26 and 27 were received into evidence at this time.)

Q I show you first Respondent's Exhibit 191. If you can tell us what that is, folder is.

THE COURT: That, that -- No. 191?

MR. MABRY: I'm sorry. What did I say?

THE COURT: You said Exhibit 191.

WITNESS: No, it's Exhibit No. 26.

MR. MABRY: 26, but it's file folder 191.

WITNESS: It's file folder 191 for juror number.

THE COURT: Thank you. I didn't think we got to 191 exhibits. I just wanted to be sure.

MR. MABRY: You're right, Your Honor. Thank goodness.

THE COURT: All right.

A Yeah, this is apparently my folder on---

Q Okay.

A ---from when we -- we make a folder on each individual juror.

Q Okay. And this is her, her folder with my notes and her questionnaire.

Q Okay. If you'll look through her questionnaire.

What does she actually say in her questionnaire about prior convictions or prior arrest or whatever?

A Actually she says that she has been.

Q Okay. Well, what is the question?

Does it say---

A Have you ever been convicted of a crime other than a minor traffic offense. She indicated yes. So, I was -- you're right. I was confused.

Q Okay. All right. There should be more. There's another question in there I believe in the questionnaire.

A Yeah.

Q What's the question?

A Have you or any family member ever been arrested or charged with a crime other than a traffic offense. Yes. If so, explain who was charged and what crime. Gambling and drugs.

Q Did she explain who had been charged?

A No.

Q Okay. Now, did you make notes in there indicating your determination of the juror's voir dire, individual voir dire or what you felt about the juror at the time?

A What I felt about the juror at the time?

Q Okay.

A Yes.

Q What do your notes in that file indicate?

A Well, indicated that she's related to Judge Beatty.
Q Okay.
A That at one point she wanted to be excused, but then decided to stay.
Q Okay.
A That she had convictions for possession of marijuana in 1982 and 1983, ball tickets in '83, and gambling in '93.
Q Okay. So, that's three convictions, am I right?
A That's right. According to my notes, yes.
Q Okay.
A And her stepson had been killed. No one had been charged.
Q All right. Now, if you go to Page 303 in the transcript.

THE COURT: You said 303?

MR. MABRY: Yes, sir.

THE COURT: Thank you.

MR. MABRY: I believe it's 303.

MS. ARMSTRONG: Your Honor, I think I'm gonna have to object on the basis of hearsay unless there's some foundation laid for where this information came from. It's certainly---

THE COURT: He indicated those were his notes in his file.

MS. ARMSTRONG: Yeah, we're just wondering where they

came from cause they're not on the record.

WITNESS: The notes that are in the file?

I made them.

MS. ARMSTRONG: Based on what?

WITNESS: Sitting in the courtroom listening to the juror.

THE COURT: Woa, woa, woa.

WITNESS: I'm sorry.

THE COURT: I've got an objection going on.

WITNESS: Okay. I'm sorry.

THE COURT: And I have not allowed you to ask questions of the witness at this point.

MS. ARMSTRONG: I apologize, Your Honor.

THE COURT: Now, your objection is that his testimony is based on hearsay?

MS. ARMSTRONG: Correct. He's reading from a file for which there's no basis to the information.

THE COURT: All right.

MR. MABRY: I'll be glad to follow that up, judge.

THE COURT: All right. Lay a foundation if you don't mind.

MR. MABRY: Yes, sir.

MS. ARMSTRONG: Yes, sir.

THE COURT: Thank you.

MS. ARMSTRONG: Thank you, Your Honor.

WITNESS: I'm sorry.
Q The exhibit in front of you, Mr. Willingham, that is -- is that your file --
A Yes.
Q -- I believe you testified?
And the notes, how did those notes come to be made?
Are they your notes?
A Those are my -- that's are my notes. That's my handwriting.
Q Okay. And when did you record those notes?
A As we were going through the qualification of the jurors.
Q All right. I -- does she still have -- I don't know if the---
THE COURT: Just -- is there a continuing objection?
MS. ARMSTRONG: Your Honor, I think that the record speaks for itself as to what was said, and based on what I've heard, there's additional information in Mr., excuse me, Judge Willingham's notes that are not on the record.
MR. MABRY: I'm just showing what the attorneys were confronted with. Judge, they're saying a Batson objection should of been made, and if it had been made, they would be entitled to a new trial, and the trial attorneys acquiesced in the ruling, and I'm going to show that this is what the solicitors would of provided to the Court if the motion had

continued.

MS. ARMSTRONG: Your Honor, the State has already put on the record at trial what their basis was. They don't get to come in 11 years later and supplement it. That's, that's not---

THE COURT: We've supplemented a lot that went on in the trial in this hearing.

MS. ARMSTRONG: I realize that, Your Honor.

THE COURT: And this, and this is a PCR, and I'm going to allow him to testify. Now, you've indicated they were his notes. I understand that. But you have not laid a foundation as to the source of the information that's in the file. Now, he indicates that it was developed during the questioning of this witness. Somewhere in this record the questioning of this witness took place.

MR. MABRY: Right.

THE COURT: You want to go there and show him where that is?

MR. MABRY: Yes, sir, that's where I intended to go.

THE COURT: Okay. Good.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: Thank you.

Q I guess the first, first question is where did you get the information that the witness had, the convictions that you have testified to?

A Anytime that we have a jury trial, criminal histories are run on all the prospective jurors. That was done in this case. That's where I got that information from was from her N.C.I.C. rap sheet.

Q Okay. If you would go to I believe it's 303. Let me correct me. 323. That would be in Volume I.

Still with me?

A I'm on Page 303, but---

Q 323. I'm sorry.

A Okay. Cause 303 was Juror Blanchard.

Q Yes, Juror 191.

A Okay. I'm on 323.

Q Okay. And if you would, I guess read the first question at the top of, top of the page. Well, we can start on the other page. Bottom of the other page.

A 322?

Q Page 322.

A Okay.

Q Yep. You had asked -- solicitor, I think that's -- judge says that you or your family member. You say yes, sir. I think you left the family member part out. I want you to make sure. I apologize. And then the next question.

What was the next question?

A Then on the questionnaire it does not -- on the questionnaire it does say have you or any other family

member been arrested, charged with a crime other than a minor traffic offense, and, and you indicated yes, and in parenthesis you put gambling or drugs. Who was that, who was that convicted of those.

Q And what was her answer?

A Can I put what?

Q Then what?

A Keep reading?

Q Yes.

A Let, let me show you what I believe is your questionnaire. Question Number 23, have you or any family member been arrested or charged with a crime other than a minor traffic offense. You put yes. If so, please explain.

Who was charged with that crime, gambling and drugs?

Is that your questionnaire?

Yes, sir.

A. Yes, sir.

Q. Okay. I am just trying to find out who was charged?

A. Oh, my brother.

Q. Your brother. Okay. So, you've never been charged with anything?

Yes, sir.

Well, what have you been charged with?

With gambling.

Okay. When was that?

1985.

And?

A. It was expunged.

Q. Expunged?

A. Yeah.

Q. Okay. No other convictions that you're aware of?

A. No, sir.

Q All right. Let me stop you right there.

So, after she admitted to the gambling charge, you asked her if she had had any other prior convictions that she was aware of and she said no?

A No, sir.

Q Okay. Then what happened after that?

A Q. What happened -- I know you said it's already been expunged. But before it was expunged, what happened, happened to the trial?

Was it a trial or a guilty plea?

A. No, sir.

Q. What happened?

A. It was tickets. Ball tickets.

Q. Okay. Forfeit, is that what happened?

A. Yes.

Q. Do you think because you had this prior dealing with the criminal justice system that you would, in anyway,

affect your ability to be fair and impartial to the State or the defense?

A. No, sir.

Mrs. Morrow, your maiden name or prior name was Atchinson?

A. Yes, sir.

Q. Okay. And, again, I don't mean to pry. I know I have to. But in 1983 did you have an arrest for simple possession of marijuana?

A. In '82, yes, sir.

And what happened to that charge?

It was expunged.

Q. But before you say it was expunged, what happened?

A. It was fine.

Q. And you didn't have a jury trial or anything?

A. No, sir.

Q. You just, again, forfeited the bail bond money?

A. Yes.

Then at the same time you had the ball tickets, did you have another possession of marijuana charge?

No, sir.

You didn't have that?

A. I did not.

Q. Okay. Again, would that have any bearing at all on your ability to be a juror?

No, sir. Answer, answer. No, sir.

Q. Those were back in 1983?

A. Yes, sir.

Q All right. Okay. Thank you.

Now, what -- going back to the Batson motions, what were the reasons that were given at the Batson motion for striking this juror, this particular juror?

A That's on 1135?

Q Yes, sir, starting on 1135.

A Well, the solicitor points out that she was questioned at length, that I questioned her at length about her criminal history, that there was some withholding on her behalf.

Q All right. What else?

A She also indicated that she thought guns were used improperly.

Q Do you remember where that was in her voir dire?

A Not right off. I don't remember that.

Q Okay.

A Also, again, she wanted to switch to another term, and when she indicated she would, in fact, miss her vacation if she did opt to stay. But, again, the primary reason, Your Honor, is withholding of the convictions and only when confronted with the fact she had any aliases did she begin to give any truthful response. So, again, that went back to

the main reason was that her, what I felt she was not truthful with the Court.

Q Okay. Can you tell me, to show you this note pad, can you tell me whose this is?

A That's mine as well.

Q Okay. I'm gonna -- it's together, but I'm gonna tear out this one page.

THE COURT: You want to show the whole thing to them---

MR. MABRY: Yes, sir, I'm sorry.

THE COURT: ---so they can take a look at it.

MS. ARMSTRONG: Your Honor, we're gonna object. I mean these are notes.

THE COURT: Well, he just -- all he said is he's gonna hand it to him. So, I don't know what it is. I'll let him go ahead and identify what it is, and when he moves to put it in, I'll let you go ahead and object. Okay.

MS. ARMSTRONG: I'm sorry.

THE COURT: So, he can mark it for identification at this point in time.

(WHEREUPON, the file was marked as Respondent's Exhibit No. 29 for identification purposes only at this time.)

Q All right. I removed the front page from that note pad. I want to show you Respondent's Exhibit 29.

Does that -- can you tell us what that is?

A These are, again, my notes from the trial.

Q Okay. And when would those have been recorded?
A Each night after we were finished with the qualifications we would go back and we'd look at the panel, the jurors that were qualified during that day.
Q Uh-huh. (Affirmative).
A I would then make the notes about them cause, again, you know, you got to get 30 something jurors qualified. It's hard to remember the features of each juror and what was important with their, with their answers. And, so, I would make a summary of it not only in the individual file folders that were taken during the trial. I would make this summary at night after we were finished.
Q Okay. And those are your actual notes?
A That is my handwriting.
Q Okay. And does that indicate your notes regarding Juror Morrow?
A Yes, it does.
MR. MABRY: Okay. Your Honor, I'm gonna have him read those notes regarding Juror Morrow at this time.
THE COURT: Are you gonna try to put that into evidence?
MR. MABRY: Yes, sir.
THE COURT: Now do you have an objection?
MS. ARMSTRONG: I do. The State is attempting to, through this witness, introduce non-contemporaneous

note-taking. These are impressions. They're not close as to what happened. I feel like this is in an attempt to reverse engineer a legitimate basis for striking Juror Morrow.

Furthermore, Solicitor Gowdy is the, is the proper person to testify as to why the State struck those jurors cause he is the person who made, who responded in the Batson motion.

THE COURT: Well, you're saying just because Gowdy spoke to the Court that this witness has no knowledge of what went in---

MS. ARMSTRONG: No, I'm not saying that at all.

THE COURT: Okay.

MS. ARMSTRONG: Of course he does.

THE COURT: Well, you're saying he's an improper witness. I misunderstood you.

MS. ARMSTRONG: Yes, sir, and he doesn't -- he's not the person to respond to the, the Batson motion because Mr. Gowdy is the person who responded to that motion.

THE COURT: So, you want to tell the State who they can call as a witness?

MS. ARMSTRONG: No, sir. No, sir. But I also don't want to, the State to be able to call witnesses and introduce hearsay and impression.

THE COURT: Well, if you want to make a hearsay

objection, go ahead.

MS. ARMSTRONG: That's, that's where I'm gonna stop then. It's hearsay.

THE COURT: Overruled.

Q Okay. If you would -- well, I move, I move to admit them at this time subject to understanding their objections.

THE COURT: Subject to the objection, his notes will be admitted.

(WHEREUPON, Respondent's Exhibit No. 29 was received into evidence at this time.)

Q And what do they reflect regarding Juror Morrow?

A Got Joyce Morrow, Juror Number 191, black female. Didn't understand life sentence question. Prior record. Related to Beatty. Not truthful. Opposed handguns. Tried to get off because of arrest meaning we tried to get her off.

Q Okay.

A And I graded her as an F.

Q Okay. What's an F mean?

A A to F. A's a good juror that we want to have on there. F is a juror we don't want to have on there.

Q Okay. Now, had -- have I, at anytime, talked to you about what is occurred in this courtroom during this hearing?

A No.

Q Okay. I want to talk to you about Juror 94, Stacy Gantt, who became an alternate. Let me find her.

Do you remember Juror Gantt?

A I do.

Q Okay. And can you tell us, from your recollection, why she (sic) did not strike her as an alternate juror in this case?

A I don't -- according to the strike sheet, we didn't have any strikes to strike her.

Q Okay. You didn't?

A I mean if it was one and two, and we struck Hoffman, that was one. Defense struck White, and then brought Ms. Gantt as being the alternate. We couldn't strike her.

Q Okay. So, you were out of strikes at that point?

A Right.

MR. MABRY: Okay. Just one second.

(Pause.)

Q I Show you what's been marked State's Exhibit, Respondent's Exhibit 28.

MS. ARMSTRONG: Actually I think I do need to continue my objection on hearsay.

MR. MABRY: Oh, okay.

THE COURT: I, I don't know what it is.

So, what is it?

MR. MABRY: Let me show it to the witness --

THE COURT: All right.

MR. MABRY: -- I guess. Let me do that first.

THE COURT: Thank you.

MR. MABRY: He may not know what it is.

THE COURT: Well, we do need to identify the document and then take it up.

MR. MABRY: Yes, sir.

Q Can you identify Respondent's Exhibit 28?

A This is, again, a strike sheet, but is not my strike sheet.

Q Okay. You -- are you familiar with it or do you remember that strike sheet?

A I do. I mean this is Solicitor Gowdy's strike sheet. I mean I recognize his handwriting.

Q Okay.

A It's, it's a typed strike sheet, but his writing is in the margins.

Q Okay.

A It's not mine.

MR. MABRY: Okay. Any objection?

MS. ARMSTRONG: Yes, absolutely. This is hearsay. Not only hearsay, and I mean it's notes taken by a third party who's not here to testify as to his own marking of the sheet. I mean I realize that---

THE COURT: Well, I'm gonna sustain the objection.

MS. ARMSTRONG: Thank you. I'll be quiet then.
MR. MABRY: Can I attempt to lay more of a foundation, judge?
THE COURT: You can attempt to lay more of a foundation and attempt to introduce it at a later time.
MR. MABRY: Okay.
THE COURT: But based on what I've heard so far, I'll sustain the objection.
MR. MABRY: Okay.
MS. ARMSTRONG: Thank you, Your Honor.
Q Mr. Willingham, were -- was this a, in striking the jury, was this an individual thing that Mr. Gowdy did or was it joint?
A No, we all three, me, Solicitor Gowdy, and now Solicitor Barnette all were together making the decisions on who to strike and who to keep.
Q Okay. And would this document, Respondent's Exhibit 28, would it have been made in your presence while y'all were discussing what you were gonna do or not?
A The typing itself, the -- as you noticed in my note pad, I write things out by hand.
Q Okay.
A Solicitor Gowdy typed everything on his computer. When we all got together, again, I'm not sure how Solicitor Barnette did it, but when we all got together, we all

brought our notes, we all brought our impressions, and we sat down together and decided who to strike and who not to.

Q Okay. And would Solicitor Gowdy have made the notations on here while y'all were doing that discussion?

A Honestly he probably made them before we got together.

MS. ARMSTRONG: Objection. Calls for speculation. He doesn't know.

MR. MABRY: Actually he can---

THE COURT: Well, he, he can testify as to what took place in his presence. So, I didn't know the answer to that before he answered it. He said he didn't know.

MR. MABRY: Okay.

THE COURT: Okay.

MR. MABRY: We'll withdraw it, Your Honor.

THE COURT: Thank you.

MR. MABRY: Just have it marked for, I guess, identification.

THE COURT: Thank you.

MR. MABRY: Yes, sir. I'm sorry, Your Honor. I have just one additional question.

Do you remember, at this time, why you struck the first alternate juror that you struck?

That would of been --?

A Mr. Huffman.

Q Yes.

A Again, that was because he had the brother-in-law convicted of murder.
Q Oh, okay. All right. That's the alternate, first alternate juror?
A Yes, sir.
Q Okay.
A Juror Number 132, Edward Huffman.
THE COURT: All right. That's all I have.
THE COURT: Your witness.
MS. ARMSTRONG: Thank you, Your Honor.
May it please the Court, Your Honor?
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. ARMSTRONG:

Q Morning, judge.
A Good morning.
Q And I realize you -- have you had a chance to look at the transcript, review it?
A Briefly this morning.
Q Okay. So, you're sort of just now, after 12 years, back in this case?
A Doesn't seem like it's been that long, but if it's been 12 years, it's been 12 years, yeah.
Q Okay. Well, let me ask you, during jury selection, if you-all thought, during the initial question and answer that

that, that someone should be relieved, you would of objected to them?

I mean isn't that, isn't that what you would do, reserve the issue?

A Yes.

Q Okay. So, if the State didn't object during the initial qualification, that's because they didn't find the juror to be objectionable?

A Well, if a juror was a type one or type two juror, depending on which way they fall, either the State or the defense objected, if they're clearly a type three, just didn't like them, then that would be another reason. When it comes to Mrs. Morrow, we did object, but, according to Judge Clary, we did that too late. So, again, I guess that's a long way to answer your question of, of yes.

Q Okay. And Juror Gantt?

A Yes.

Q Okay. You'd agree -- it sounds like initially you were confused about judge, Juror Morrow's questionnaire, you confused that with Gantt, who utterly failed to disclose anything on her, on her questionnaire whereas Morrow indicated both gambling and drugs, and later said I thought they'd been expunged?

A And, and Gantt had a shoplifting and a receiving stolen goods.

Q Okay. And I think, I think the record reflects that Juror Morrow, her convictions were from the early 80's, whereas Juror Gantt had, six months prior to jury selection, actually been in the process of being prosecuted --
A Uh-huh. (Affirmative).
Q -- in this very county?
A That's right.
Q Okay. All right.
A And I think, and you correct me if I'm wrong, I think we argued that Mrs. Gantt was not qualified based on those answers just like we did Mrs. Morrow.
Q You did.
A Okay.
Q You did.
A Okay.

MS. ARMSTRONG: No further questions. Thank you.

MR. MABRY: Just briefly on redirect.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. MABRY:

Q But by the time Mrs. Gantt came up, you didn't have any more strikes?
A That's right. We struck Huffman because of the conviction of his brother-in-law for murder, and then we had no strikes for Mrs. Gantt. I was worried about Mrs. Gantt,

but nothing I could do about it

Q All right. Thank you, sir.

THE COURT: Recross?

MS. ARMSTRONG: No further questions.

THE COURT: You may step down.

Any objection to the witness being released from---

MR. MABRY: No, sir. Thank you.

THE COURT: Either side?

MS. ARMSTRONG: None, Your Honor.

THE COURT: You may go. Thank you, sir.

WITNESS: Thank you, judge.

THE COURT: Don't take any exhibits with you.

WITNESS: I will do my best not to.

THE COURT: Thank you.

The State may call its next witness.

MR. SALTER: Your Honor, the State would rest at this time.

THE COURT: All right. Any witnesses to be called, called in reply or rebuttal, State's witnesses?

MS. ARMSTRONG: Your Honor, may we have a couple minutes?

THE COURT: Sure.

MS. ARMSTRONG: Thank you.

MR. SALTER: Wanted to make sure of one thing, judge, the court reporter told me both 94 and, 191 are in evidence,

is that correct?

THE COURT: Okay.

MS. ARMSTRONG: Your Honor, we're gonna have one witness in rebuttal. We just have to get him down here.

THE COURT: All right.

MS. ARMSTRONG: That would be Mr. Morin, Your Honor. I think he's close by.

THE COURT: Is he in the building?

MR. MABRY: I saw him this morning. He passed me in the hall, judge.

THE COURT: All right. I'll stay on the bench. We'll take a short recess while you---

MS. ARMSTRONG: We'll be quick, Your Honor.

THE COURT: Thank you.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: All right. Mr. Morin has retaken the stand.

I will remind you that you've previously been sworn in this case. You remain under oath at this time.

WITNESS: Yes, sir.

THE COURT: Mr. Morton, your witness.

(WHEREUPON, a letter was marked as Applicant's Exhibit No. 31 for identification purposes only at this time.)

MIKE MORIN, having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORTON:

Q Good morning, Mr. Morin.

A Mr. Morton.

Q Just wanted to talk to you briefly about your conversations with Mr. Moore about some of his or some of yours, y'all's attempts to talk to his family in Michigan, and I will ask you if you can identify these notes for us if you will and give us the date on those.

A These are my notes and they're dated -- well, the first page you've got numbered 40, 41, and 42. 40 is a different date. But May 8th, in the middle of the page, May 8, 2001. Then May 9th, 2001, and apparently it's May 8th, 2001.

MR. MORTON: Your Honor, I would move his notes into evidence and publish them.

THE COURT: Any objection?

MR. SALTER: I don't believe so, Your Honor.

THE COURT: They'll be received and marked.

(WHEREUPON, Applicant's Exhibit No. 31 was received into evidence at this time.)

Q Mr. Morin, I believe there's been some testimony that there was a letter from Mr. Moore to you and Mr. Kelly where he indicated he didn't want to cooperate or his family didn't want to cooperate?

A Well, he didn't want his -- I think you gave me a copy

of the original, it it's my file, that said that he didn't want any help for them or something to that effect. You have -- that's what -- you asked me yesterday about that.

Q Okay. I'm gonna show you Applicant's Exhibit 41.

A Uh-huh. (Affirmative).

Q And read that paragraph for us.

Does that indicate then that after the April letter on May the 8th -- he, he, after the April letter, he followed up with this communication to you in May.

A If the letter that he sent was in April.

Q Right.

A The one that you're talking about that you showed me a copy of.

Q Yes, sir.

A This is me going back and talking to him some about it because he had refused to help and I wanted to get whatever little I could get from him. So --

Q Okay.

A -- I went back and asked him about that.

Q And at that point he was cooperative?

A Well, to the, to the extent that you see right there.

Q Right. And---

A He said he had brothers and sisters in these places.

Q Yes.

And then---

A But he didn't -- go ahead.
Q Further on, he -- you indicated or you communicated that---
MR. SALTER: Your Honor, I'm gonna object. He's leading the witness.
Q Did you later communicate what Richard had told you there to Mr. Kelly?
A Yes, Mr. Kelly had seen the letter that he had sent. I mean we were working together. He knew that that letter was there. Obviously it affected Mr. Kelly's portion of the trial more than it did me.
Q Right.
But your notes indicate that you also communicated to Mr. Kelly what Mr. Moore had told you on May the 8 after the April letter?
I think it might be on the third page.
A Right. After -- I spoke to R.K.K. That's Keith Kelly. Then told him about the meeting with him on May 8th, that the defendant had rejected the offer of life, and I told him about some other things.
Q Regarding his family?
You told him some other things---
A About conversations with Ms. Glass, Doctor Evans. I mean there's a lot of things we talked about.
Q Your---

A Not just -- I mean I just didn't go there to talk to Mr. Moore about his family on May 8th and that wasn't the only thing that I talked to him about. And when I talked the Mr. Kelly, that was one of several things I talked to him about.

Q That's fine.

A That's what my notes indicate.

Q Thank you very much.

A Okay.

MR. MORTON: That's all I have, Your Honor.

MR. SALTER: I'll be very, very brief, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. SALTER:

Q Mr. Morin, your notes that are now -- the portion of your notes that are now entered as Applicant's Exhibit No. 31 --

A Uh-huh. (Affirmative).

Q -- looks like that he gave you his telephone number for his father?

A Yes, on the second page he gave me his dad's addresses, his, and writes his address, and it says the phone is this, and lists the phone number.

Q All right. Do you know whether or not you made an effort to call that telephone number?

A Let's see. Yes, because it says the next day I called that number, and the person that answered the phone said that no one named Moore lived there.

MR. SALTER: All right. Nothing further, Your Honor.

MR. MORTON: I have nothing further, Your Honor.

THE COURT: All right. You may step done.

WITNESS: Thank you.

THE COURT: Any other witnesses?

MS. ARMSTRONG: No, Your Honor. We rest our case.

THE COURT: All right. Counsel, I would expect that you'd like to brief the case, is that correct?

MS. ARMSTRONG: Respectfully, Your Honor, we would request that.

MR. SALTER: Yes, Your Honor.

THE COURT: All right. I would suggest fourteen, fourteen days?

MS. ARMSTRONG: Yes, Your Honor, and I will note for the record that the transcripts have been ordered. But they are not, from the depositions, they are not, they're not currently in hand. But, so, we would request just simply be able to, in our brief --.

THE COURT: When do we expect the transcripts from the depositions?

MS. ARMSTRONG: I would hope -- and I'll follow-up with the transcript of, the reporter today after---

THE COURT: If you'd let me know, and let's get a hard date --

MS. ARMSTRONG: Yes, sir.

THE COURT: -- so I can report the progress of this case.

MS. ARMSTRONG: Yes, sir.

THE COURT: And I will -- from the date those are delivered, fourteen days for your brief.

MS. ARMSTRONG: Yes, sir.

THE COURT: Fourteen days in which to reply to that, and then I'll give you a week to submit anything after you've received the State's reply.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: Thank you very much.

MR. SALTER: Thank you, Your Honor.

THE COURT: That concludes the hearing.

MR. MABRY: Thank you, Your Honor.

THE COURT: I will leave the record open to receive the depositions that are to be delivered at a later date.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: Thank you very much.

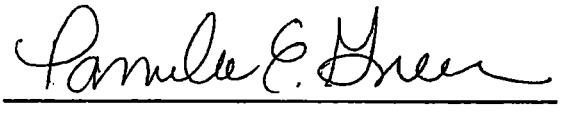
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

CERTIFICATE

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 31st day of January and the 1st, 3rd, and 4th day of February, 2011.

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

November 15th, 2011



PAMELA E. GREEN, Court Reporter

242

VOLUNTARY STATEMENT

PAGE 1

STATEMENT OF: George NMN Gibson AGE 56 DATE 9-16-99

ADDRESS: [redacted]

PHONE # _____ CASE: _____

I was laying in bed watching TV when I heared a vehicle pull into my yard that had loud mufflers. Someone then banged on my door. I got up and went to the door and asked who it was. The person said open the door. I then opened the door but left the screendoor locked. I turned on the Porchlight and saw it was A B/M that I know as Mo. Mo stated that he needed to go to the hospital, he had been shot. He had A teeshirt wrapped around his left arm and it had blood on it. I asked him what he came here for and he said that he had done something wrong and needed to go to the hospital and also to turn hisself in. I told him no he couldn't come in and he could drive himself to the hospital. Mo then went back and got into his truck, it was white & ~~blue~~ Green. He tried to back out of the driveway but he ran into A telephone pole. Then A police car drove by and he got out and turned himself in to the officer. End of statement

Statement prepared by Det TE Brown, Sheriffs office at request of Mr. Gibson.

I've read this statement consisting of 1 page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 0538 A.M. on the 16 day of Sept 19 99

WITNESS: Terry E Brown

George N. Gibson

SPARTANBURG COUNTY DETENTION FACILITY

SHERIFF'S ID NO: _____ LOC: Dorm 35 BIN # 264

TO BE COMPLETED BY ARRESTING OFFICIAL

NAME: Gibson, George James ALIASES: _____

LAST FIRST MIDDLE

ADDRESS: [redacted] PHONE: _____

AGE: [redacted] RACE B SEX: M HT: 1602 WT: 190 HAIR: Blk EYES: Br

S.S.N [redacted] DR. LIC. NO. [redacted] ISSUING STATE: SC

EMPLOYER: _____

NEXT OF KIN: _____ RELATIONSHIP: _____

ADDRESS: _____ PHONE#:( ) _____

CHARGE(S)	WARRANT/TICKET #	ISSUING JUDGE	TRIAL DATE	TIME
1. Dus (BW)	BW 20871 BK	Cash.	500.00 or 60 days	
2.				
3.				
4.				
5.				

HOLD (EXPLAIN): _____

VEHICLE IMPOUNDED: TOWED BY: _____

IN LIEU OF AN ARREST WARRANT, I HEREBY REQUEST, BY AFFIXING MY SIGNATURE, THAT THE DETENTION FACILITY HOLD THE ABOVE SUBJECT ON THE ABOVE LISTED CHARGE. I WILL OBTAIN A WARRANT AT THE EARLIEST OPPORTUNITY AND I UNDERSTAND THAT THE FACILITY WILL CARRY THE SUBJECT BEFORE THE MAGISTRATE AT THE NEXT ARRAIGNMENT HEARING.

OFFICER'S SIGNATURE: DTA _____ **AGENCY:** S.O

OFFICER'S NAME (PRINT) _____

BOOKED BY: _____ SEARCHED BY (IF DIFFERENT): _____

TYPE SEARCH (CHECK): NONE FRISK *STRIP (EXPLAIN IF NOT BEING HOUSED IN FACILITY

BOOKING/JAIL NO: 10455S DATE IN: 8/30/01 TIME: 1350

(REASON):

TO BE COMPLETED BY MAGISTRATE: ARRAIGNMENT

DATE: 8-30-01 TIME: 4p MAGISTRATE: J Mc

M/C BOND _____

G/S BOND _____

BOND REDUCTION: _____ REASON: _____ DATE: _____

JUDGE: _____

BOND ADJUSTMENT: _____ REASON: _____ DATE: _____

JUDGE: _____

BASED UPON THE BELOW FACTS, A P/R BOND [ ] WILL NOT REASONABLY ASSURE APPEARANCE,

[ ] WILL RESULT IN AN UNREASONABLE DANGER TO THE COMMUNITY:

WARRANT #	JUDGE	SENTENCE
1.		
2.		
3.		
4.		
5.		

RELEASED BY: _____ DATE: _____ TIME: _____

(JUDGE'S SIGNATURE)

IF RELEASED OTHER THAN BY COURT: REASON: DATE 9-30-01 TIME: 0330 OFFICIAL: _____

AGENCY: SCDC

TO: SPTJC2
FROM: SCCH

ICHS/QH INQUIRY OF SCLED CCH FILES USING:
ATN-CLEVENGER, RUSTY INV
ORI-SC042015A PUR-C
NAM-GIBSON, GEORGE JAMES
SOC-2[redacted] SEX-M RAC-B DOB-[redacted]

DATE-10/17/2001 TIME-14:47 PAGE-01 OF 01
ORI-SC042015A
SCLED IDENT RESPONSE TO ICHS/QH INQUIRY
THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-GIBSON, GEORGE JAMES SEX-M RACE-B
HEIGHT-601 WEIGHT-180 EYES-BRO HAIR-BLK SKIN- BORN-SC
HENRY-11 1AU 001 15 NCIC-AA11111115AA11101313
1AU 011
SID-SC00274556 FBI- 186059F
PHOTOGRAPH AVAILABLE
-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS
ATE RECORD ENTERED--03/13/1980 DATE OF LAST UPDATE--10/10/2001

S NAMES-GIBSON, GEORGE J

BIRTH DATES-[redacted] [redacted]

MARKS, ETC-SC R CHK

SOC SEC NUMBERS-[redacted]
ADDITIONAL INFORMATION IN THE INTERSTATE IDENTIFICATION INDEX ON ICHS

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES
FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR FBI NUMBER.

REQUEST FORWARDED TO NCIC
ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
** END OF MESSAGE **

IN OCT 17, 2001 14:47:50 000313161256/246
OUT OCT 17, 2001 14:47:53 MSG# 9695 SAN: 0MHGCLTHSCSZ

TO: SPTJC2
FROM: NCIC2

7L010MHGCLTHSCSZ020
SC042015A
THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR INQUIRY ON NAM/GIBSON,GEORGE JAMES SEX/M RAC/B DOB/19430414 [redacted] PUR/C

NAME	FBI NO.	INQUIRY DATE
GIBSON,GEORGE JAMES	166059F	2001/10/17

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE	PHOTO
M	B	[redacted]	600	156	BRO	BLK	SOUTH CAROLINA	N

FINGERPRINT CLASS	PATTERN CLASS
AA 11 12 13 15	RS RS RS RS RS LS LS LS LS LS
AA 12 10 13 14	AU WU WU AU WU WU WU
	LS RS

ALIAS NAMES

MILLER,GEORGE JAMES

OTHER
46

BIRTH DATES	SOCIAL SECURITY	MISC NUMBERS
[redacted]4	2[redacted]	AS-53398647

IDENTIFICATION DATA UPDATED 2001/09/17

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE FOLLOWING:
FBI - FBI/186059F

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

IN OCT 17, 2001 14:47:54 000313172602/246
OUT OCT 17, 2001 14:47:58 MSG# 9696 SAN: OMHGCLTHSCSZ

TO: SPTJC2
FROM: NCIC1

1L010PHGCLTHSF8T108
SC042015A

NO NCIC WANT FBI/186059F
NO NCIC WANT SOC/250640413

IN OCT 17, 2001 14:49:34 000313467104/246
OUT OCT 17, 2001 14:49:34 MSG# 9698 SAN: 0PHGCLTHSF8T

TO: SPTJC2
FROM: SCCH

ICHR REQUEST FOR RAP SHEET
ORI-SC042015A FBI- 186059F PUR-C
ATN-CLEVENGER, RUSTY INV

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-10/17/2001 TIME-14:49:24
REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT
SC00274556 FBI- 186059F
NAM-GIBSON, GEORGE JAMES SEX-M RACE-B
HEIGHT-601 WEIGHT-180 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC-AA111111115AA11101313 HENRY-11 1AU 001 15
1AU 011
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

RECORD ENTERED--03/13/1980 DATE OF LAST UPDATE--10/10/2001

ADDITIONAL IDENTIFIERS

NAME | BIRTH DATES | MARKS SC R CHK | SOC SEC

GIBSON, GEORGE J | [redacted] | | [redacted]

CONTRIBUTOR/SUBJECT | DOA/RCVD | CHARGE/DISPOSITION/ETC

SC0420000 SPARTANBURG CNTY SO 02/24/1980
CASE-17917
CIT-SC44-53-370

ARREST CHARGE 01-POSSESSION MARIJUANA WITH INTENT TO DISTR
OFFENSE DATE-02/24/1980

CIT-SC44-53-370

ARREST CHARGE 02-POSSESSION HASH
OFFENSE DATE-02/24/1980

CIT-SC44-53-370

ARREST CHARGE 03-POSS SCHEDUL E II AMPHETAMINES

OFFENSE DATE-02/24/1980
ARREST DISP- BAIL

CIT-SC44-53-370

COURT CHARGE 01-[redacted] POSSESSION
COURT DISP-[redacted] 5Y;12M CONFINE

CIT-SC44-53-370

(1)

COURT CHARGE 02-[redacted]
COURT DISP-[redacted] CONFI NE; 2Y PROB; $500 FINE; CONFINEMENT OR FINE
COURT DATE-07/08/1980
COURT CHARGE 03-[redacted]
COURT DISP-[redacted] CONVICTED;2Y SUSP; 12M CONFINE; 2Y PROB
CUSTODY STATUS-RECEIVED
START DATE-07/11/1980
CUSTODY STATUS-PROBATION
START DATE-01/01/1981

SC0230055C APPL REC EVAL CTR
CASE-102071
SC0400156 PAROLE & COMM CORR
CASE-161223

ON, GEORGE JAMES 03/09/1994

SC042G000 SPARTANBURG CNTY SO
CASE-017917
WARR-E041310

ARREST CHARGE 01-FRAUDULENT CHECK
PHOTOGRAPH AVAILABLE

W -E041311

ARREST CHARGE 02-FRAUDULENT CHECK

WARR-D929685

ARREST CHARGE 03-FRAUDULENT CHECK

WARR-D573167

ARREST CHARGE 04-FRAUDULENT CHECK

WARR-D928308

ARREST CHARGE 05-FRAUDULENT CHECK

WARR-E041312

ARREST CHARGE 06-FRAUDULENT CHECK

WARR-D573170

ARREST CHARGE 07-FRAUDULENT CHECK

W -D929684 @

ARREST CHARGE 08-FRAUDULENT CHECK

WARR-D573169

ARREST CHARGE 09-FRAUDULENT CHECK

WARR-D573168

ARREST CHARGE 10-FRAUDULENT CHECK

WARR-E041310

COURT CHARGE 01-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

WARR-E041311

COURT CHARGE 02-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

WARR-D929685

COURT CHARGE 03-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

WARR-D573167

COURT CHARGE 04-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

WARR-D928308

COURT CHARGE 05-FRAUDULENT

WARR-D041312

DISMISSED
COURT CHARGE 06-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

WARR-D573170

COURT CHARGE 07-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

WARR-D929684

COURT CHARGE 08-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

WARR-D573169

COURT CHARGE 09-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

WARR-D573168

COURT CHARGE 10-FRAUDULENT CHECK
COURT DISP-NON-CONVICTION; DISMISSED

GIBSON, GEORGE JAMES 01/09/2000
SCSHP0300 SC HIWAY DEPT DIST 3

-X585491

ARREST CHARGE 01-DRIVING UNDER SUSPENSION
OFFENSE DATE-01/08/2000
PHOTOGRAPH AVAILABLE

GIBSON, GEORGE J 03/23/2000
SC0420000 SPARTANBURG CNTY SO
CASE-81166 ATN-
WARR-G335110

(2)

TRAFFICKING CRACK

ARREST CHARGE 01-TRAFFICKING CRACK
OFFENSE DATE-03/23/2000
PHOTOGRAPH AVAILABLE

GIBSON, GEORGE JAMES 05/31/2001
SC0420000 SPARTANBURG CNTY SO
CASE-81166 ATN-
-208718X

ARREST CHARGE 01-DRIVING UNDER SUSPENSION 2ND
OFFENSE DATE-05/31/2001
PHOTOGRAPH AVAILABLE

GIBSON, GEORGE JAMES 07/22/2001

WARR-67801BW

ARREST CHARGE 01-DRIVING
UNDER SUSPENSION
OFFENSE DATE-07/22/2001
PHOTOGRAPH AVAILABLE

WARR-67802BW

ARREST CHARGE 02-IMPROPER
TURNING
OFFENSE DATE-07/22/2001

WARR-67803BW

ARREST CHARGE 03-DISREGARDING

STOP SIGN
OFFENSE DATE-07/22/2001

WARR-G460947

ARREST CHARGE 04-[redacted] Poss. Crack
[redacted]
OFFENSE DATE-07/22/2001

DOC-42 WARR-67803BW

COURT CHARGE 01-DISREGARD
STOP SIGN
[redacted] CONVICTED;10 DAYS
JAIL
COURT DATE-09/27/2001

SC040055C R & E CENTER COLA 09/28/2001
C[illegible]-278585
C[illegible]56-5-2330(8)-MISDEMEANOR

CUSTODY STATUS-RECEIVED
START DATE-09/28/2001

COURT CHARGE 01-DISREGARD
STOP SIGN
COURT DISP-MULTIPLE CHARGE
ONE DISPOSITION; 105 DAYS

CIT-N/A-MISDEMEANOR

COURT CHARGE 02-MISCELLANEOUS
TRAFFIC OFFENSE
COURT DISP-MULTIPLE CHARGE

ONE DISPOSITION

CIT-56-5-2940(1)-MISDEMEANOR

COURT CHARGE 03-DRIVING UNDER
THE INFLUENCE 1ST OFFENSE
COURT DISP-MULTIPLE CHARGE
ONE DISPOSITION

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

[illegible]D ON SEARCH OF SCLED CJICS CCH FILE USING FBI/ 186059F
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

ADDITIONAL INFORMATION IN THE INTERSTATE IDENTIFICATION INDEX

INQUIRY FORWARDED TO INTERSTATE IDENTIFICATION INDEX
-2752
** S C CJICS END OF RECORD **

IN OCT 17, 2001 14:49:35 000313603150/246

OUT OCT 17, 2001 14:50:17 MSG# 9699 SAN: OPHGCLTHSF8T

SPTJC2
NCIC2

FL010PHGCLTHSF8TO2D
SC042015A
THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/186059F. THE FOLLOWING WILL RESPOND TO YOUR
AGENCY:
FBI - FBI/186059F
END

IN OCT 17, 2001 14:49:42 000313615230/246
OUT OCT 17, 2001 14:50:18 MSG# 9700 SAN: OPHGCLTHSF8T

TO: SPTJC2

4L010PHGCLTHSF8T02D
SC0420015A
ATN/CLEVENGER, RUSTY INV
THIS RECORD IS BASED ONLY ON THE FBI NUMBER IN YOUR REQUEST-186059F.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.
- FBI IDENTIFICATION RECORD -

WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE
DIRECTLY WITH THE AGENCY THAT FURNISHED THE DATA TO THE FBI.

NAME	FBI NO.	DATE REQUESTED
GIBSON,GEORGE JAMES	186059F	2001/10/17

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE
M	B	[redacted]	600	156	BRO	BLK	SOUTH CAROLINA

FINGERPRINT CLASS	PATTERN CLASS	CITIZENSHIP
AA 11 12 13 15	RS RS RS RS RS LS LS LS LS LS	UNITED STATES
AA 12 10 13 14	AU WU WU AU WU WU WU	

LS RS

1-ARRESTED OR RECEIVED 1962/11/25
AGENCY-POLICE DEPARTMENT SPARTANBURG (SC0420100)
AGENCY CASE-10269
CHARGE 1-SHOPLIFTING PL SEVERAL CASES

2-ARRESTED OR RECEIVED 1980/02/24
AGENCY-SHERIFF'S OFFICE SPARTANBURG (SC0420000)
AGENCY CASE-17-917
CHARGE 1-POSS MARIJ W/INT TO DIST
CHARGE 2-POSS HASH
CHARGE 3-POSS SCHEDULE II-AMPHETAMINES

3-ARRESTED OR RECEIVED 1980/07/11
AGENCY-PERRY R-E CENTER PELZER (SC004015C)
AGENCY CASE-102071
CHARGE 1-MARIJ POSS

COURT-
CHARGE-MARIJ POSS
SENTENCE-
12 MOS

4-ARRESTED OR RECEIVED 1994/03/09
AGENCY-SHERIFF'S OFFICE SPARTANBURG (SC0420000)
AGENCY CASE-017917
CHARGE 1-FRAUDULENT CHECK 10 CTS

COURT-SHERIFF'S OFFICE SPARTANBURG (SC0420000)

VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
CHARGE-FRAUDULENT CHECK
SENTENCE-
VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
CHARGE-FRAUDULENT CHECK
SENTENCE-
VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
CHARGE-FRAUDULENT CHECK
SENTENCE-
VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
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VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
CHARGE-FRAUDULENT CHECK

SENTENCE-
VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
CHARGE-FRAUDULENT CHECK
SENTENCE-
VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
CHARGE-FRAUDULENT CHECK
SENTENCE-
VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
CHARGE-FRAUDULENT CHECK
SENTENCE-
VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED
CHARGE-FRAUDULENT CHECK
SENTENCE-
VERDICT - NON-CONVICTION ADDITIONAL DATA - DISMISSED

5-ARRESTED OR RECEIVED 2000/03/23
AGENCY-SHERIFF'S OFFICE SPARTANBURG (SC0420000)
AGENCY CASE-81166 NAME USED-GIBSON,GEORGE J
CHARGE 1-TRAFFICKING CRACK G-335110

6-ARRESTED OR RECEIVED 2001/07/22
AGENCY-SHERIFF'S OFFICE SPARTANBURG (SC0420000)
AGENCY CASE-81166

CHARGE 1-DISREGARDING STOP SIGN 67803BW,
CHARGE 2-POSSESSION OF CRACK G460947
CHARGE 3-DRIVING UNDERSUSPENSION 67801BW
CHARGE 4-IMPROPER TURNING 67802BW

ALL ARREST ENTRIES CONTAINED IN THIS FBI RECORD ARE BASED ON FINGERPRINT COMPARISONS AND PERTAIN TO THE SAME INDIVIDUAL.

THE USE OF THIS RECORD IS REGULATED BY LAW. IT IS PROVIDED FOR OFFICIAL USE ONLY AND MAY BE USED ONLY FOR THE PURPOSE REQUESTED.

END OF RECORD

Applicant Exhibit 4

INVESTIGATION REPORT

SC0420000 **TYPE:** ☐ PRELIMINARY ☐ CONTINUING **CASE NO:** 990901180

INCIDENT TYPE: Homicide **VICTIM:** James "Jamie" Joseph Mahoney

LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

I was dispatched to a homicide/robbery by the Spartanburg Communications Center. I arrived at the scene at [redacted] at Nikki's Speedy Mart, (a convenience store across from the old Sky City building in Spartanburg County) at 0405 a.m. I waited on the Coroner, who that particular night was Ken Bishop, and Paul Dorman, the ID Tech. that would process the scene. We all three entered at the same time. There was quite a bit of blood noted on the concrete parking area right in front of the store, blood drops and a good bit of blood on the front glass doors, inside and out, blood drops that led into the store, and around the counter where I observed a white male lying face down. The white male was later identified as James Mahoney. He was lying face down with his arms in front of him, his legs facing down with his ankles turned outward. Upon observation, it appeared his arm was broken. Blood was all around his body. Blood was in various places behind the counter, including a desk where money was kept and weapons were kept to protect the premises. I was advised there was also a witness to the incident, Terry Hadden. Terry lives at [redacted], Spartanburg. ([redacted]). His statement is fairly short and to the point. He stated that on that night, he was inside the store playing the poker machines and at approximately 3:20 a.m., a black male entered the store, walked over to the beer cooler, and walked up to the counter. He heard Jamie say, "What the Hell!" He heard the black male tell Jamie to get the Hell back. He states he then turned around and looked at both of them and the black male said, "I told you not to move", pointed a gun at him (Terry Hadden) and fired one shot toward him. He fell to the floor and laid still. He heard about 7 or 8 shots being fired. He states that the shooting stopped and he heard the black male leave the store because the doorbell rang

INVESTIGATION REPORT

SC0420000 **TYPE:** ☐ PRELIMINARY ☐ CONTINUING CASE NO: 990901180

INCIDENT TYPE: Homicide VICTIM: James "Jamie" Joseph Mahoney

LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

and then he heard him say, "Let's get the Hell out of here." He ran outside and heard a vehicle with loud mufflers leave. He never saw the vehicle, but he did say that it had loud mufflers and did not run very smooth. He went back inside and called 911. The statement he gave was prepared by Inv. Tony Brown. I spoke with Terry at length and that's pretty much everything he saw and heard. He appeared to be very scared. He was also able to pick the suspect, Richard Bernard Moore, out of a line up immediately. That line-up was prepared at my request by Inv. Tony Brown, who showed the line-up and had it sworn. After observing the scene, I left crime scene number one, which was the store, and went to crime scene number two which was on Hillside Drive, approximately two miles away where the vehicle that the suspect drove was located. I observed a pickup truck, older model, in bad shape backed up against a telephone pole. Inside the vehicle was a great amount of blood. Also, on the driver's side, on the outside of the vehicle (the windows were rolled down), it appeared that the suspect had driven with the window down and blood was spattered all over the side of the truck. Inside the truck was a large amount of U.S. currency that also contained quite a bit of blood transfer. In the back of the pickup truck were empty beer cans. The same type beer cans were found at the counter (crime scene #1) bagged up with a pack of cigarettes, that the suspect had evidently placed on the counter and the victim had bagged them for him before the incident took place.

I left crime scene #2 after talking with the resident of the home, George Gibson, age 56, [redacted] Spartanburg. He also gives a statement that is fairly quick and to the point also. He says he was lying in bed watching TV when he heard a vehicle pull into his yard that had loud

INVESTIGATION REPORT

SC0420000 **TYPE:** ☐ PRELIMINARY ☐ CONTINUING **CASE NO:** 990901180

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LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

mufflers. Someone banged on his door. He got up, went to the door, and asked who it was. The person said, "open the door." He then opened the door, but left the screen door locked. He turned on the porch light and he saw it was a black male who he knew as "Mo." Mo stated that he needed to go to the hospital, he had been shot. He had a T-shirt wrapped around his left arm and it had blood on it. He said he (George) asked him what he (Richard) came there for and he (Richard) stated he had done something wrong and needed to go to the hospital and also to turn himself in. He (George) told him that he (Richard) couldn't come in and he could drive himself to the hospital. Mo then went back and got into his truck, white and teal green in color. He tried to back out of the driveway, but ran into a telephone pole. The police car drove by and he turned himself in to the officer. George witnessed all of these things. He also gave a sworn statement to Inv. Tony Brown. Statement was taken at 5:38 a.m.

I left crime scene #2 and drove to the Spartanburg Regional Medical Center and I spoke with the suspect who was in custody. Again, the suspect being Richard Bernard Moore, b/m. Upon arrival at the SRMC, Officer Charity Brazeal was standing by the bedside in Room 18 at the ER. The victim was being looked at by several physicians. It appeared that he had a gunshot wound on the inside of his left arm between the bicep and tricep area. It appeared to be an entry wound with no exit wound. He seemed to be in quite a bit of pain, screaming that, "It hurt! It hurt!" probably about 100 - 150 times for about the five minutes that I was there. I tried to talk to him at that point, but he was in too much pain and being worked on by physicians. He was also very belligerent. I left at that point and came to the Sheriff's Office to interview witness, Terry Hadden.

INVESTIGATION REPORT

SC0420000 **TYPE:** ☐ PRELIMINARY ☐ CONTINUING CASE NO: 990901180

INCIDENT TYPE: Homicide VICTIM: James "Jamie" Joseph Mahoney

LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

Terry Hadden was being interviewed by Tony Brown, who took the statement and swore it. While I was interviewing Mr. Hadden, I was called back to the hospital by Officer Brazeal. It seemed that the suspect wanted to talk to me. When I arrived I simply asked the suspect what it was that I could do for him. I noted that he was speaking very intelligently at that point. He had somewhat of a northern accent. He answered questions that the doctors were asking him just fine, although he was somewhat crying a little bit when I arrived the first time. I noted there were no tears. When I arrived the second time, he seemed to be in no pain and he seemed to be very coherent. I simply talked with him, very shortly, and asked him what it was I could do for him. This was around 6:30 a.m. in Room 18 in the ER. Basically, he immediately started cussing, saying that, "The fucker shot me. Is he in jail or what? He pulled a gun and shot me." He repeated this over and over and over again, probably 10-15 times. At that point, I asked Officer Brazeal to go to her vehicle, which was outside and retrieve some Voluntary Statement forms. (If I were going to take a statement from him, I wanted to make sure that we did it in writing. I didn't know the depth of his wound or if they were going to have to take him to surgery).

Officer Brazeal left and he calmed down a little bit. As I was writing my notes, he asked me what I was writing. I had written very little. I told him that I was just taking notes of what he was saying. I went ahead and Mirandized him once again just so he would know that he didn't have to speak to me and again, he stated that he understood his rights at that point. He had already been read those rights by Officer Rollins at crime scene #2 where he turned himself in. He stated that he did understand his rights and he kept saying, in an acting sort of way, that "the fucker shot him." He

INVESTIGATION REPORT

SC0420000 TYPE: ☐ PRELIMINARY ☐ CONTINUING CASE NO: 990901180

INCIDENT TYPE: Homicide VICTIM: James "Jamie" Joseph Mahoney

LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

wanted to know where the victim (Mahoney) was. When I advised him that the victim was dead, it reminded me of a person putting on an act. I know of no other way to described it other than it was an act. At that point, I asked him why he got shot. He couldn't tell me anything other than he he and the clerk had gotten into an argument about the price of cigarettes and beer and that the clerk just pulled a gun out and started shooting at him and he was able to take the gun away from him and then the clerk pulled another gun out and shot at him again. He stated that he then fired back and ran out the door and got into his truck and left. He stated that he was alone, nobody else was with him. At that point, I asked him what he did with the gun that he ran out with. He stated, at first, "I may have in haste, threw it down" and then he said, "I never had a gun and I didn't do this." He was back and forth quite a few times, but he said in haste, he possibly could have dropped the gun. I then asked him again if he saw anyone else in the store at the time? Did he speak with a customer? Did he speak with anybody else in the store other than the clerk? He stated there was nobody else in there and he didn't speak with anybody. I asked him if he was sure about that and he stated that he was very sure, that nobody else was in there. I asked him if he knew anything about the money in the blue vinyl bag that was covered in blood in his truck. He stated the only money he knew anything about was his pocket change that was in his pocket. I asked him again, did he not know anything about the money that was in his vehicle, between the driver's side and passenger's side, in the seat. He again stated he didn't know anything about any money, he didn't have any money. He kept on telling me to please tell him that the victim wasn't dead; that I was only kidding. I told him that I would not joke, make fun of, or kid, about anything

INVESTIGATION REPORT

SC0420000 TYPE: ☐ PRELIMINARY ☐ CONTINUING CASE NO: 990901180

INCIDENT TYPE: Homicide VICTIM: James "Jamie" Joseph Mahoney

LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

of such a serious nature. Again, I tried to find out, after the shooting, where he went to. He said that he went to Hillside Drive. He stated that he was just trying to find a police officer so he could turn himself in. I asked him why he didn't stay at the scene if what he was telling me was true. He stated at that point, basically that I didn't believe his story and he really didn't have anything else to say. At that point, my questions of him ceased and I did not take the statement from him. He stated he did not want to give one.

Also, prior to that, I had asked him while he was on Hillside Drive had he gone to the backyard toward a trash can that sat in the back yard between the house and the yard line. He stated that he did not. We found white, T-shirt cloth material with blood on it and also a $5 bill in the back yard between the house and the trash can. The witness also said that he could see him in the back yard when he had pulled up, that he had pulled the truck up in that area, so that's where he had evidently gotten out of the truck.

He told Mr. Gibson that he had been shot and needed medical assistance and that when Mr. Gibson wouldn't let him in, he laid down on the ground for the police officer that he saw to take him into custody. He said the next thing he knew, he had passed out and he woke up in an ambulance. He said he did not remember telling the police officer that he was the guy we were looking for and that he did it and needed help.

Again, to reiterate his demeanor the second time I talked to him, it was evident to me, based on my experience interviewing people that had just committed a crime similar to this, that he was very much aware and trying to, based on what he thought we knew, to lie to us and to put on quite

INVESTIGATION REPORT

SC0420000 TYPE: ☐ PRELIMINARY ☐ CONTINUING CASE NO: 990901180

INCIDENT TYPE: Homicide VICTIM: James "Jamie" Joseph Mahoney

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a theatrical show in the hospital. He was speaking very loudly so everybody could hear him. The attendants in the hospital, the nurses, techs, heard him. He was yelling as loud as he could that "the fucker shot him." He wanted to know why he wasn't in jail. Again, me telling him several times that the victim was deceased. He kept telling me that he didn't want to hear that and that I had to be kidding.

After he refused to give a written statement, I left the ER. As I left, he said, "Wait a minute" and wanted my name in case he wanted to get back in touch with me. I wrote my name and phone number on a piece of paper and told him to hold on to it while he was in jail. If he needed to speak with me further, that he would need to initiate contact with me, that I would not initiate contact with him at all.

The suspect had on a pair of leather work-type boots, hiking-type boots, white socks, and a pair of small, plaid shorts (small squares) at the time that I saw him in the ER, he did not have a shirt on.

I went back to crime scene #1 (the store) and met with the owner, Keith Fowler. Keith stated that the victim, James Mahoney, always carried a .44 Magnum while he worked at the store; however, he did tell me there was a .45 semi-automatic pistol that laid on an area on the desk between the counter and the floor area where the people behind the counter worked. It sat up on the desk, approximately 3 feet up from the floor. I advised him that I could not find that weapon there. He also stated there was a .32 Magnum which I did locate, but I could not locate the .45 semi-automatic. He stated it was blue steel with wooden handles and it was a South American

INVESTIGATION REPORT

SC0420000 TYPE: ☐ PRELIMINARY ☐ CONTINUING CASE NO: 990901180

INCIDENT TYPE: Homicide VICTIM: James "Jamie" Joseph Mahoney

LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

made gun. I brought him into the crime scene to show me where it normally was and it was not there. He immediately asked me, as he was looking for the gun, where the blue vinyl bank bag was. I advised him that I wasn't sure what he was talking about. He said the blue vinyl bag that he kept the poker machine money in. At that point, I went ahead and told him that the blue bag he was asking about was recovered in the suspect's vehicle, along with the money. He didn't know approximately how much poker machine money would be there.

While in the store, almost immediately, within two or three minutes of being behind the counter, Mr. Fowler noticed a four-way tire tool lug nut wrench that laid on the desk also. He stated that it was not their's and asked why it was there. I told him that I didn't know, that it wasn't ours either, obviously. He stated it was not there at 9:30 and it was not their's at all. I immediately realized that probably the suspect had brought the tire tool in and was going to do the robbery with that weapon. It made sense that the .45 semi-automatic pistol was not there because at that point, I realized the suspect had brought the tire tool in and the victim probably pulled the .45 from the top of that desk and they must have struggled over the gun. At some point, a shot was fired. The suspect probably did take the .45 away from him at that point or at least, was able to reach over the counter and grab the pistol off the desk, one or the other, and the suspect then fired a shot at the witness (Hadden) and then turned around, as gunfire started between the two, and he fired back at the victim as the victim fired at him. He then fled after being struck in the arm, bleeding pretty bad. It appears that on the way out, the doors opened inwards. You push the doors in to enter the store and obviously you have to open the door towards you to exit the store. It appears he was running to the door and

INVESTIGATION REPORT

SC0420000 TYPE: ☐ PRELIMINARY ☐ CONTINUING CASE NO: 990901180

INCIDENT TYPE: Homicide VICTIM: James "Jamie" Joseph Mahoney

LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

ran into the door and it wouldn't open in that there was a very large amount of blood that had dripped down on the door facing to the left, on the glass. He couldn't get out that door and finally got out the other door, facing on the right side. There was blood transfer and splatters on the floor and the glass area of the door, and a blood trail following outside. It appears that his truck was parked right in front, that he would have had to make a pretty good circle to his left to get around the bed of his truck up to the driver's side so he could drive away. Those blood drops are also noted. It appears that he probably drove up California Avenue, pulling out of the store and took a right on California Avenue, took a right onto Hwy. 9 and was going to make a left towards Asheville Highway when the gun was thrown out or at least drove up Hwy. 9 and threw the gun out on his side. It was in the left turning lane on Hwy. 9 which a person traveling from Spartanburg would enter the left lane to turn left onto California and to travel towards Asheville Highway and the 585 area. The gun was recovered by ID Tech Shane Dedmon. It was discovered by Jeff Goodwin, who was on the way to work. He saw a gun in the middle of the road, backed up and put his truck over it while he called 911. He had realized the crime had been committed just down the road earlier.

Also, see Officer Bobby Rollins' statement. Officer Rollins is the deputy who pulled up and was looking for the suspect and heard the noise (which would of been him backing into the telephone pole), and turned around on him and before suspect could exit the driveway backing up, he was able to stop the vehicle. The suspect got out, laid down on the ground, telling him that he was the person that we were looking for and that he had been involved in this shooting. He states that as

INVESTIGATION REPORT

SC0420000 TYPE: ☐ PRELIMINARY ☐ CONTINUING CASE NO: 990901180

INCIDENT TYPE: Homicide VICTIM: James "Jamie" Joseph Mahoney

LOCATION: Nikki's Speedy Mart, Hwy. 221 & California Avenue, Spartanburg, SC

he turned around on the truck, to stop or get behind the truck, a black male put his hands in the air. Officer Rollins stated that he got out of his vehicle and shouted for him to show him his hands. As he approached the suspect, he noticed he was bleeding severely from his left arm. Suspect shouted, while he was on the ground, "I give up. I did it." At that time, he had asked Dispatch for assistance. Officer Brazeal arrived and placed suspect in handcuffs. Suspect was still stating that he was giving up. Suspect, during this time, was not asked about the crime. Also, Officer Rollins read him his Miranda Rights and suspect stated that he understood his rights clearly. Ambulance was called to the scene. After suspect stated that he did understand his rights, he became unconscious. Suspect was transported to SRMC for treatment.

INVESTIGATOR/UNIFORM OFFICER Steve Denton (I-5) REPORT DATE: 09/17/99 INCIDENT DATE: 09/16/99

SUPERVISOR: DATE:

CURRICULUM VITAE

November 21, 2010

NAME: **SANDRA E. CONRADI** DOB: [redacted]

SOCIAL SECURITY: [redacted]

HOME AND OFFICE ADDRESS: [redacted]
Mt. Pleasant, SC 29464-3936

HOME OFFICE AND FAX NUMBER: [redacted]
MOBILE PHONE NUMBER

CITIZENSHIP: U.S.

EDUCATION:

Years	Training	Location	City/State
1954-1958	B.A.	St. Lawrence University	Canton, New York
1958-1959	None	University of Rochester	Rochester, New York
1959-1963	M.D.	University of Cincinnati	Cincinnati, Ohio

INTERNSHIP:

Years	Location	City/State
1963-1964	Cincinnati General Hospital	Cincinnati, Ohio

RESIDENCY OR POST DOCTORAL:

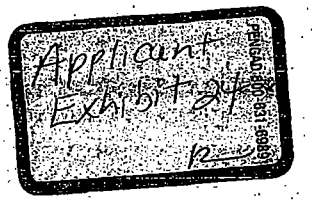
Years	Location	City/State
1964-1968	Cincinnati General Hospital	Cincinnati, Ohio

SABBATICAL:

Date	Location	City/State
Jan.-June, 1999	Children's Hospital Medical Center	Cincinnati, Ohio

SPECIALTY/BOARD CERTIFICATION:

Pathology - 1968
Forensic Pathology - 1974



LICENSURE:
South Carolina 6787 - 1973

FACULTY APPOINTMENTS:

Years	Rank	Department	Institution
1973	Instructor in Pathology	Pathology	Medical University of SC
1975	Assistant Professor	Pathology	Medical University of SC
1981	Associate Professor	Pathology	Medical University of SC
1981	Adjunct Professor	Law School (Faculty)	University of SC
1981	Attending Professor	Pathology	Charleston Mem. Hosp.
1995	Professor	Pathology	Medical University of SC

HOSPITAL APPOINTMENTS/PRIVILEGES:

Years	Active/Inactive	Institution
1973-2001	Inactive	Medical University of SC
1973-2001	Inactive	Charleston Mem. Hosp.

Memberships in Professional/Scientific Societies:

National Societies:	
National Association of Medical Examiners	1972 - Present
Board of Directors (3 yr. Interval)	1979, 1982, 1989
Vice President	1990 - 1991
Membership and Credentials Committee	1990 - 1991
President	1991 - 1992
Chairman, Board of Directors	1992 - 1993
Program Chairman, National Meeting	1994
Chairman of Nominating Committee	1994, 1995
American Academy of Forensic Sciences, Fellow	
Chairman, Milton Helpern Award Committee	1993, 1994, 1995
Inspector, Standards and Accreditation Committee	1998 - Present
American Medical Association	
Member of Coalition Against Family Violence	1990 - Present
College of American Pathologists	1985 - Present
Local Societies:	
Charleston Medical Society	1973 - Present
South Carolina Medical Association	1973 - Present
South Carolina Society of Pathologists	1973 - Present

Extramural Grants/Award Amount (past 5 years):

Grant for purchase of Mini Crimescope for Trace Evidence Collection $10,495

Awards, Honors, Memberships in Honorary Societies:

A.O.A. Honorary Medical Society, University of Cincinnati Medical School - 1962
Candidate for Golden Apple Teaching Award - 1990

Academic Committee Activities (past 5 years):

Faculty Affairs Committee/Faculty Senate	University Level	1988 - 1990
MUSC Medical Student Progress Committee	University Level	1992 -2001

Major Teaching Responsibilities

Undergraduate:

Sophomore Medical/Dental Students - General & Systemic Pathology
Course Director - Forensic Pathology II

Major Clinical Interests and Responsibilities:

Sudden Infant Death Syndrome
Child Abuse

Invited Lectures (past 3 years).

Lecturer for Southern Forensic Science Institute, New Orleans LA, Memphis TN 2003-4
Lecturer for Mt. Pleasant Police, Folly Beach Police, Charleston County Sheriff's Office, Charleston City Police
Lecturer in Forensic Anthropology, Trident Technical College

Extramural Professional Activities:

See Above

Community Service:

Deputy Chief Medical Examiner, Charleston County, 1973 - 1983.
Chief Medical Examiner, Charleston County, 1983 – 1998

Seminar Speaker and Invited Speaker at numerous Civic Organizations and Law Enforcement, and Coroner groups in and out of South Carolina

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12/14/2010 11:28 8645962367 SPTBG CO CORONER OFF PAGE 03

FROM :M G FAX NO. :8033664044 Dec. 13 2010 05:14PM P2

R. Moore: DISC; Crime scene investigator

596 2589 now Coroner

FROM THE DESK OF RUSTY CLEVENGER
INVESTIGATOR'S PROGRESS REPORT

DATE	NOTES
	State vs. Richard Bernard Moore
9/16/99	Notified of a Homicide at Nikki's Speedy Mart on Hwy 221 at the intersection of California Avenue in Spartanburg County across from the indoor flea market.
	Time of arrival is approx. 11:00 a.m. The weather is clear and the sun is shinning. The weather was bad last night with periods of rain Case detective is Det. Steve Denton of the Spartanburg Sheriff's Office
	I responded to look at the crime scene before talking to Det. Denton. Denton is interviewing witnesses at the time of my inspection. Autopsy is supposedly under way at this time.
	There were a number of individuals in the extended part of the crime scene parking lot. The scene is taped off and a chain is maintained via Officer Robert Rosenburg of the Sheriff's Office. Also present at the scene is the crime scene van. I was notified by Officer Rosenburg that Inv. Paul Dorman was inside conducting his part of the investigation. I asked permission from Inv. Dorman to inspect the crime scene on the inside. Entry was made by this Inv. at approx. 11:04 a.m. Upon walking to the doorway I noticed fresh drying substance that appears to be blood in the dirt on the cement in front of the store. It I apparent to me that some-one was injured substantially, ran from the front door of the store and ran around an object and fled by some other means other than on foot.
	When I entered the door I saw blood spatter on the door that was flowing free enough that it ran before coagulating and stopping. The door does not open out. It opens in. It is apparent by looking at the door, the injured person leaving the scene was in a real hurry and bumped into the door or was feeling the effects of extending blood loss.
	As one enters the premise there is a small eating or social area to the left that contains 4 chairs and a table. Walk a small distance further and the room opens to the left and right with a large counter directly in front of you. To the left you can see large coolers for beverages that contain beer, soft drinks etc. that are cool to the touch. As one would enter the store to the right there are 5 poker machines against a wall. If one were to sit at the poker machines you would be facing Hwy 221. There are drinks stored against the walls everywhere. There is also evidence that

Applicant Exh. 51 25

EXHIBIT Clevenger 12-16-10

FROM THE DESK OF RUSTY CLEVENGER
INVESTIGATOR'S PROGRESS REPORT

	some of the drinks have been damaged by some means and the contents are on the floor. I see a fresh indentation on the poker machine to the left of the inoperable machine that coincides with a bullet hole in the front plate glass window that also appears to be fresh.
	I look up at the ceiling and see video cameras in several conspicuous locations. I check with Inv. Dorman and discover that the tape player was not in the record mode. There will be no video of the incident.
	Looking down at the ground I see more indications that the individual leaving the store was injured severely. Blood drops on the ground were frequent and extremely large. Based on the smudges I see on the wall and the direction I think the person leaving the store was injured on his left side possibly his shoulder or arm. The blood spatter starts in front of the cash register in front of the bar, proceeds around the bar to the right approaching the cash register, spatter falls in the cash register and a drawer where money is kept, back toward the direction they came from looking behind some items, then walking back in front of the bar and out of the store. The suspect rubbed the wall occasionally on his way out and bumped the door.
	The victim had been removed from the scene before I arrived. Inv. Dorman showed me the spot where the victim (James Mahoney) was found on the floor. There was only a small amount of blood on the floor beneath where he would have been lying. Inv. Dorman stated to me that the defendants blood would be on the back of the victim. I asked because I thought that important to show what the defendant intended to do prior to the Murder, then being determined enough to carry the Robbery through even after the Murder.
	Dorman added that there was a eye-witness that stated he was in the store playing the poker machine. The defendant entered the store, and went to the beer cooler. The defendant then placed some beer on the counter for purchase. The defendant then pulled a lug wrench from a concealed part of his body and threatened the deceased with it. The deceased had access to a .45 Caliber pistol behind the counter. The deceased pulled the gun and the defendant wrestled with the deceased for the gun. The defendant got the gun

FROM THE DESK OF RUSTY CLEVENGER
INVESTIGATOR'S PROGRESS REPORT

	from the deceased and pointed the gun at the eye-witness, making some kind of statement, then shooting at the eye-witness. The eye-witness then fell to the ground. He states he lay still until the defendant left the store. He called the police. The story that I obtained through police interviews it is speculated that the deceased shot the defendant in the arm with a pistol that he carried on his person for protection. The defendant then shot the deceased killing him instantly. The deceased falls to the floor. The defendant walks around the bar , robs the store and walks out. He then gets in his vehicle and drives onto California Avenue toward Hwy #9. At Hwy #9 the defendant throws the gun he used from the truck and drives around. The defendant eventually ends up at the address where he was arrested.
	I spoke to Inv. Dorman about getting blood samples from the whole crime scene area and from the clothing of the victim. The cigarettes and 2 beers that were discovered on the counter were to be taken and processed to see if there was any evidence to be obtained. Dorman was digging projectiles from the walls and other places while I was there. Dorman was sketching a crime scene while I was there also. I also asked for a video tape of the scene. Dorman agreed. I left the store area and went outside. I then took Asst. Solicitor Derrick Bulsa to the location on Hillside Drive off Hwy 221.
	The location at [redacted]e was taped off also with uniform Deputy Smoke maintaining a chain on entry to the scene.
	Visual inspection of the truck is a green and white Chevrolet truck much older model. Rust has started to form on the body of the truck. S.C. tag [redacted] expiration 4/ 2000. There is a placard in the road that is covering a wallet and a pack of cigarettes discovered in the road. Both windows are open on the truck
	I inspect from the passenger side, around to the front and then to the drivers side. When I get to the front of the truck I see a large amount of blood on the door and trailing to the exterior and interior area of the cab of the truck. It is apparent that the defendant was in the drivers seat and bled bad enough that the blood ran when wind passed by it.
	I also see a large amount of money on the front seat with blood on it. The money is in large increments. There is a flashlight on the seat beside the money.

FROM :M G FAX NO. :8033664044 Dec. 14 2010 11:58AM P3

FROM THE DESK OF RUSTY CLEVENGER
INVESTIGATOR'S PROGRESS REPORT

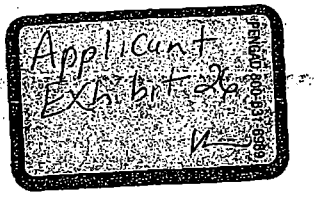
	The truck was backed into a utility pole at the intersection of Hillside and Proctor Drive.
	There also are placards in the yard of the location where the defendant was arrested. These placards depict a shirt with blood on it, money and blood smear and other items.

8-15-01 8-16-01	See if the cleaver and knife can be positively identified. -Result: Asked Fowler to go to S.O. on 8-21-01 after 4:00 p.m. and I.D. the items. I will be notified of the results per Denton.	8-16-01 Pending

Rusty Clevenger
INVESTIGATOR

EXHIBIT
Clevenger
12-16-10

SPARTANBURG COUNTY SHERIFF'S OFFICE
FORENSIC UNIT CASE REPORT



INCIDENT:	HOMICIDE/ROBBERY.
CASE:	990901180
DATE:	09-16-99
TIMES:	0335/0435
LOCATION:	366 HWY. 221 SPARTANBURG SC
VICTIM:	JAMES MAHONEY W/M DOB: [redacted]
DEPUTY:	R. C. MILLER
DETECTIVE:	S. DENTON
CORNER INV.	K. BISHOP
FORENSIC INV.	P. M. DORMAN

Narrative

On Thursday, 09-16-99, I was requested to respond to 366 Hwy 221 in reference to a death investigation. Upon arrival I met with Det. S. Denton who told me the details of the incident. I was then led into the business and shown where the victim was located and also shown locations of possible evidence.

Before entering the business I was shown a blood trail that led from the front door of the business into the front parking lot. As I entered the front doors of the business I observed large amounts of blood on the inside of both doors. There was a trail of blood leading down the hallway into the main area of the business. There was blood observed on the floor in front of the counter and the blood trail led into the kitchen area of the business.

The victim was inside the kitchen area laying face down with his right arm turned in a non-natural position. There was large amounts of blood observed in the kitchen area and there was blood on the victims body that was not consistent with the victims injuries. I observed a revolver laying on the floor to the left of the victim.

I photographed the scene and made a rough scene sketch noting the locations of possible evidence.

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Narrative cont.

Once the Coroners Investigator, K. Bishop, examined the victim, he was transported to S.R.M.C. Morgue for a later autopsy.

I began collecting evidence and taking measurements of there location, (see evidence location/measurement portion of report).

I was told by Forensic Investigator S. Dedmon the suspect had been arrested and transported to hospital with a gun shot injury and another scene was being maintained by patrol at [redacted]. We were notified of a caller saying he had located a pistol on the road at Hwy 9 and Devon St., Inv. Dedmon responded to the scene and recovered the handgun, (see Dedmon's report/evidence report).

I collected blood samples from the five locations in the parking lot and a spent bullet. I also collected, what appeared to be rust, from where the get away vehicle had been located in the parking lot. Photographs and measurements were also taken of the parking lot evidence.

Once I completed the documentation and collection of evidence at the 366 Hwy 221 crime scene, Forensic Inv. Lacy and I went to the scene at [redacted]. Upon arrival we observed a green and white Chev. P/U truck backed against a telephone pole next to the driveway of [redacted]. I observed money on the front seat of the truck along with a blue money bag and a large amount of blood on the inside and the outside of the left door. We were also shown where a white t-shirt with blood stains was located in the back yard along with a five dollar also with blood stains.

Inv. Lacy and I documented the scene and collected possible evidence. The money inside of the vehicle was counted and found to be $1403.00 in US currency. Blood samples were collected from five locations on the left side of the vehicle. I also observed some rust which looked like the same type found at the scene on the right side of the truck . I collected a sample as possible evidence. The suspects wallet and a pack of cigarettes were recovered from the roadway adjacent the driveway.

Once this scenes documentation was complete the evidence was taken to S.O. Crime Lab.

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EVIDENCE LOCATION

1 - Live 45 cal. round - The round was found on the floor in front of the counter on the customers side.

2 - Brown paper sack with a bullet hole through it and a piece of paper w/ blood on it. The sack contained two beer cans and a pack of cigarettes. This was on the counter on the customer side at cash register area.

3 - Shell casing (S&W 45 ACP) - The shell casing was found on the floor inside a Lil Debbie's display on the customers side of counter.

4 - Shell casing (S&W 45 ACP) - The shell casing was found on the floor on the customer side of counter in front of the Lil Debbie's display.

5 - Shell casing (S&W 45 ACP) - The shell casing was found on the floor in front of a Pepsi display on the customer side of counter just left of the kitchen door.

6 - Spent bullet (projectile) - The spent bullet was found on the floor to the left of a Coke display going into the video poker game machine area.

7 - Shell casing (S&W 45 ACP) -The shell casing was found on the floor just left of center of the entrance into video poker machine area.

8 - Pellet (possible ball bearing) - Found on the floor in the video poker game machine area.

9 - Ricochet mark on video poker machine (ser# 08005071O) - The bullet ricochet off of the machine, went through a plate glass window, struck a Merc. Cougar in the parking lot and came to rest in parking lot. (See#15,16, &17).

10 - Small butcher knife - Found on the floor in the kitchen adjacent the victims feet.

11 - Revolver (Charter Arms 44 Spl. Bulldog - ser# 841057) - Found on the floor in the kitchen next to black stool above the victims head.

12 - Spent bullet (projectile) - Found on the floor in the kitchen below the sink area, right side.

13 - Bullet hole in wall - Found in kitchen back wall above the right side of the sink area.

(14)

SPARTANBURG COUNTY SHERIFF'S OFFICE
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HOMICIDE/ROBBERY
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EVIDENCE LOCATION

14 - Bullet hole in wall - Found in kitchen back wall above the right side area of the sink just right of bullet hole #13.

15 - Bullet hole in front widow glass - this was caused by the ricochet from the video poker machine (#9).

16 - Spent bullet (projectile) - This was the bullet that hit ricochet off of the video poker machine (#9), through the front window (#15), then ricochet off of the Merc. Cougar (#17) into the parking lot.

17 - Bullet impact mark - This is where the #9 ricochet impacted the Merc. Cougars lower right rear quarter panel 17 ½" up from ground.

18 - Spent bullet (projectile) - Found on the floor below the right side of the desk adjacent the victims left leg.

19 - Pellet (possible ball bearing) - Found on the floor in the video poker game room area under a turned over stool.

20 - Two pellets (possible ball bearings) - Found on floor in the video poker game room area under a turned over stool.

21 - Blood trail in parking lot - Found at the outside of the front door.

22 - Blood trail in parking lot - Found in the parking lot front right of building.

23 - Blood trail in parking lot - Found in parking lot off right corner of building.

24 - Blood trail in parking lot - Found in parking lot between building and Ford Ranger P/U.

25 - Blood trail in parking lot - Found in parking lot between building and Merc. Cougar.

26 - Piece of metal jacket - Found on floor in front of counter, customer side of counter in front of the Lil Debbie's display.

27 - Piece silver tip jacket - Found on floor behind potato chip display.

28 - White button - Possibly from victims shirt - Found on counter top next to the brown paper bag.

29 - Shell casing (S&W 45 ACP) - Found in a York peppermint Display on Counter.

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EVIDENCE LOCATION

30 - Shell Casing (S&W 45 ACP) - Found under the left side of the kitchen sink.
31 - Piece of metal jacket - Found in upper left corner of the video poker game room above the #5 video poker machine.
32 - Debris from parking lot (possible rust) - Next to #25 Blood trail.
33 - Magazine with blood stains - Found on corner of desk in kitchen.
34 - Notepad with bullet hole - Found on corner of desk in kitchen.
35 - Metal file holder - Found on corner of desk in kitchen.
36 - Receipt book with blood stains - Found in the bottom drawer of the desk on the right side.
37 - Ricochet impact mark in video poker machine -# 1 video machine l.front.
38 - Four way jack handle found on desk in kitchen.

BLOOD SAMPLE LOCATIONS

1 - Floor front of counter, customer side.
2 - Floor front of counter, customer side.
3 - Floor front of counter, customer side by small trash can.
4 - Floor front of counter, customer side.
5 - Floor front of Pepsi display l. side, right of counter.
6 - Floor front of Pepsi display center, right of counter.
7 - Floor front of kitchen door opening.
8 - Floor in kitchen in front of desk.
9 - Right side of desk.
10 - Floor in kitchen right side of desk.
11 - Floor in kitchen below right side of desk.
12 - Floor in kitchen back side of desk, right corner.
13 - Floor in kitchen behind chair.
14 - Floor in kitchen back side of desk, center area.
15 - Front of bottom desk drawer.
16 - Front page of "Whitetail" magazine on corner of desk.

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BLOOD SAMPLE LOCATIONS

17 - Back gammon board box - grey - on floor next to desk in kitchen.
18 - Black stool next to desk in kitchen.
19 - White paper bags on shelf's below counter in kitchen.
20 - Bottom shelf below counter in kitchen.
21 - Blood trail outside the front door.
22 - Blood trail parking lot front right of building.
23 - Blood trail parking lot off right corner of building.
24 - Blood trail parking lot between building and Ford Ranger P/U.
25 - Blood trail parking lot between building and Merc Cougar.
26 - Kitchen floor in front of freezer.
27 - Kitchen floor behind door.
28 - Kitchen floor in front of door.
29 - Kitchen door, front side at bottom.
30 - Kitchen door, front side center area.
31 - Kitchen door, edge of door center area.
32 - Kitchen door, edge of door lower area.
33 - Floor going into kitchen at doorway.
34 - Floor front of potato chip display, left side.
35 - Floor front of potato chip display.
36 - Floor customer area of business between chip display and gum display.
37 - Floor in front of gum display.
38 - Right side of gum display stand.
39 - Hall door at customer area of business.
40 - Floor in hallway - center.
41 - Floor right side of hallway.
42 - Floor by the front doors - inside.
43 - Floor under paper rack in hallway.
44 - Front of alternative paper in hallway.
45 - Wall in hallway by paper rack.

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BLOOD SAMPLE LOCATIONS

46 - L. front door glass.
47- L. door frame.
48- R. door frame.
49- R. door handle.
50- R. door glass.
51- Center of doorway at entrance - inside.
52- L. door of Chev. P/U Truck - outside -(suspect vehicle).
53- L. door of Chev. P/U Truck - outside -(suspect vehicle).
54- L. door of Chev. P/U truck - inside - (suspect vehicle).
55- L. bottom door jam of Chev. P/U truck - (suspect vehicle).
56- L. side of truck bed of Chev. P/U truck - (suspect vehicle).

Attachments

1 - Evidence/property reports
2 - Crime Scene Sketch's

SPARTANBURG COUNTY SHERIFF'S OFFICE
FORENSIC UNIT CASE REPORT
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Measurements

Inside of business	X - Z = 34' 4 1/4" W - Y = 29' 11"	(inside measurements)
Customer area	Ww - Yy = 10' 8 3/4" X - Yy = 21' 7"	
Kitchen area	Yy - Y = 10' 3 3/4" X - Z = 34' 4 1/4"	
Video poker area	13' 1 1/4" - 8' 7"	
Counter top	161" - 36"	
Counter - K. door	18"	
Bathroom - K. door	51"	
Bathroom area	112" - 52"	
Front door hallway	103" - 76 3/4"	

B = Kitchen door jam (counter top side)
A = Victims left foot
D = Victim's right foot
C = Victim's head
F = Z wall (between freezer and hot water heater)
E = Yy wall (kitchen side)

B - A = 52"
B - D = 73"
B - C = 82"
C - E = 61"
D - F = 92"
C - F = 157"

Front corners of business = XW and WZ
Front doors = FD
Left front door = LFD
Right front door = RFD
Center of front door = CFD
Mercury Cougar = MC
Window w/bullet hole = WBH

XW - WZ = 35' 1"
XW - LFD = 17' 6 ½"
CFD - MC = 29'
WBH - MC = 29' 6 ½"

SPARTANBURG COUNTY SHERIFF'S OFFICE
FORENSIC UNIT CASE REPORT
HOMICIDE/ROBBERY
990901180

Measurements

Outside Blood Trail Collection Points

FD - #21 = 13"	XW - #21 = 17' 9 ½"
FD - #22 = 100"	XW - #22 = 22' 9 1/4"
FD - #23 = 17' 8"	XW - #23 = 33'
FD - #24 = 19' 5"	XW - #24 = 32'
FD - #25 = 15' 11"	XW - #25 = 22'

Spent Bullet Location

WBH -spent bullet = 22' 11"
MC - spent bullet = 68"
XW - spent bullet = 33' 5"

Debris

FD - Debris = 14' 5 ½"

Blood Sample Collection Points (BS)

BS1	-	Yy - 7 ½"	Zz - 119 1/4"
BS2	-	Yy - 11 1/4"	Zz - 88 ½"
BS3	-	Yy - 18"	Zz - 83 ½"
BS4	-	Yy - 26 1/4"	Zz - 82 ½"
BS5	-	Yy - 23 3/4"	Zz - 69"
BS6	-	Yy - 22"	Zz - 59 ½"
BS7	-	Yy - 16"	Zz - 39 ½"
BS8	-	Y - 88"	F - 89"
BS9	-	Y - 73 1/4"	F - 128"
BS10	-	Y - 65"	F - 128"
BS11	-	Y - 73 ½"	F - 128"
BS12	-	Y - 76"	F - 147 ½"
BS13	-	Y - 71"	F - 166"
BS14	-	Y - 92"	F - 157"
BS15	-	Y - 101"	F - 151"
BS16	-	Y - 72"	F - 128"
BS17	-	Y - 78"	F - 145"

(50)

SPARTANBURG COUNTY SHERIFF'S OFFICE
FORENSIC UNIT CASE REPORT
HOMICIDE/ROBBERY
990901180

Measurements

Blood sample Collection Points

BS18 -	Y - 70"	F - 173"	
BS19 -	Y - 86"	F - 182"	
BS20 -	Y - 86"	F - 182"	
BS26 -	Y - 84 ½"	F - 27"	
BS27 -	Y - 86"	F - 46"	
BS28 -	Y - 89"	F - 76"	
BS29 -	Y - 91"	F - 67"	
BS30 -	^ - 5'9"	v - 24"	(^ = up from floor, v = down from top of door)
BS31 -	^ - 5'9"	v - 24"	
BS32 -	^ - 24"	v - 58"	
BS33 -	v - 3"	< - 9"	(v & < = from right corner of kitchen doorway)
BS34 -	Yy - 28"	Zz - 28"	
BS35 -	Yy - 52"	Zz - 28 ½"	
BS36 -	Yy - 70"	Zz - 72"	
BS37 -	Yy - 105"	Zz - 128"	
BS38 -	Yy - 113"	Zz - 139"	
BS39 -	< - 26"	^ - 100"	(^ = from front door, < = from hallway wall)
BS40 -	< - 40"	^ - 73"	
BS41 -	< - 15"	^ - 26"	
BS42 -	< - 28"	^ - 8"	
BS43 -	< - 11"	^ - 20"	
BS44 -	< - 10"	^ - 16"	
BS45 -	up - 12 ½"	^ - 18"	(up = from floor)
BS46 -	up - 31"	< - 11"	(< = from edge of door)
BS47 -	up - 47"	< - 1"	
BS48 -	up - 47 ½"	> - 1 1/4"	(> = from edge of door)
BS49 -	up - 43"	> - 1 ½"	
BS50 -	up - 38"	> - 5 3/4"	
BS51 -	1" inside doorway on floor - centered between doors.		

SPARTANBURG COUNTY SHERIFF'S OFFICE
FORENSIC UNIT CASE REPORT
HOMICIDE/ROBBERY
990901180

Measurements

Evidence (E)

E1 - < - 42 ½" v - 24" (< & v = edge of counter top)
E2 - < - 23" v - 28 ½"
E3 - Yy - 29" D - 94"
E4 - Yy - 21 3/4" D - 73 ½"
E5 - B - 37" Zz - 56"
E6 - B - 122 ½" Zz - 73 1/4"
E7 - B - 110 ½" Zz - 37 3/4"
E8 - B - 160" Zz - 79"
E9 - up - 31 1/4" > - 22 3/4" (up = from floor, > = from front edge)
E10 - B - 61" Z - 93 3/4"
E11 - B - 72" Yy - 47"
E12 - B - 103" Z - 100 3/4"
E13 - Above sink area on Y wall, sink 37 1/4" from floor.
E14 - Above sink area on Y wall, sink 37 1/4" from floor.
E15 - ^ - 29 3/4" ZW - 6' 1 1/4" XW - 29' 1/4"
E16 - W - 22'11" MC - 68"
E17 - ^ - 17 ½"
E18 - B - 56 1/4" Z - 116"
E19 - B - 168" < - 103" (< = from hallway wall on video poker side)
E20 - B - 162 3/4" < - 86 ½"
E21 - E25 Blood evidence.
E26 - B - 81 1/4" Yy - 17 ½"
E27 - Against Zz wall right rear of chip display.
E28 - B - 45" ^ - 14 1/4" (^ = front of counter)
E29 - B - 73 ½" ^ - 12"
E30 - Y - 7 ½" Z - 172"
E31 - ^ - 79 1/4" v - 28 5/8" (^ = from floor, v = from ceiling)
E32 - FD - 14" 5 ½"
E33 - E35 on top of desk in kitchen.
E36 - in bottom desk drawer.
E37 - ^ - 58" < - 28 ½" (^ = from floor, < = from hallway wall vp/side)
E38 - on desk top in kitchen.

Forensic Inv: _____ Reviewed By: Lt. Mark Barry
P. M. Dorman I-60

2786

2390

SEVENTH CIRCUIT SOLICITOR'S OFFICE
INVESTIGATOR'S INTERVIEW

STATE V. Richard Bernard Moore DATE: 06/15/01

NAME: Witness or Victim: George James Gibson

ADDRESS: [redacted] M.H.P. Spartanburg, S.C.

PHONE: (Home) [redacted] (Work)

EMPLOYER: Does Odd Jobs RACE: B/M DOB: [redacted]

SOCIAL SECURITY NUMBER: [redacted]

Have you ever been arrested? YES Photos Available? YES

Amount of Insurance paid: _____ Relation To Defendant ACQUAINTANCE

WITNESSES:

NAME: ADDRESS:
PHONE:

INFO: This witness called the police the night of the crime reporting the where-abouts of the Defendant. It is theorized that this witness may have or was selling drugs to the defendant. See rap sheet.

NOTES: When I spoke to this witness on 6-5-2001 he stated he never knew the defendants full name. He knew the def. only as (Mo). He stated the defendant showed up at his house and said "Can you help me?, I need to go to the Dr." This witness admits to knowing the defendant prior to this event.
What does victim desire from case?

_____
INVESTIGATOR

NAME: ADDRESS:
PHONE:

INFO:

NOTES:

What does victim desire from case?

INVESTIGATOR

2788

BW20871BX 20871BX
WARRANT/TICKET NUMBER (S)

STATE OF SOUTH CAROLINA)
SPARTANBURG COUNTY)

IN THE MAGISTRATE COURT

STATE)
VS)
GIBSON, GEORGE JAMES)

BENCH WARRANT

Applicant Exhibit 28

TO ALL SHERIFFS, DEPUTY SHERIFFS, CONSTABLES AND OTHER PEACE OFFICERS OF THE STATE:

WHEREAS, The above named defendant was on 06/28/2001 found guilty by this court of DUS 2nd Off (NOT DUI) and has failed to pay the fine and/or has otherwise failed to comply with the order of the court, it is therefore ordered that the defendant serve 60 days in jail unless a fine and/or court costs of $ 500.00 is sooner paid to this court.

It is, therefore, ordered that you make diligent search for the above named and take him/her to the county jail where he/she will be safely held until he/she may be brought before this court, or otherwise discharged by due course of law.

It is further ordered that the county jailer notify this court immediately, during the normal operating hours of this office that the above named is in custody. This sentence shall run consecutively to all other sentences.

8-13-01
DATE

JOHNNY CASH
MAGISTRATE JUDGE

RECEIVED
AUG 14 2001
SPARTANBURG COUNTY

RETURN OF SERVICE
DATE SERVED: 8/20/01

SERVED BY DTM

DATE RETURNED _____

WARRANT IS CERTIFIED FOR SERVICE IN _____
COUNTY/MUNICIPALITY (CIRCLE ONE)

THE ACCUSED IS TO BE ARRESTED AND BROUGHT BEFORE ME TO BE DEALT WITH ACCORDING TO LAW.

DEFENDANT: GIBSON, GEORGE JAMES
Address: [redacted]
City/St: SPARTANBURG, SC 29303

Height: 6'02" Birth [redacted]
Weight: 190 S.S. #: [redacted]
Sex...: M Lic #.: [redacted]
Race..: B State.: [redacted]

DISPOSITION: _____

SPARTANBURG COUNTY DETENTION FACILITY

35

SHERIFF'S ID NO: _____ LOC Dorm BIN # 264

TO BE COMPLETED BY ARRESTING OFFICIAL

NAME: Gibson, George James ALIASES: _____

LAST FIRST MIDDLE

ADDRESS: [redacted] PHONE: _____

AGE: [redacted] RACE B SEX: M HT: 602 WT: 190 HAIR: Blk EYES: Brn

S.S.N [redacted] DR. LIC. NO. [redacted] ISSUING STATE: SC

EMPLOYER: _____

NEXT OF KIN: _____ RELATIONSHIP: _____

ADDRESS: _____ PHONE#:( ) _____

CHARGE(S)	WARRANT/TICKET #	ISSUING JUDGE	TRIAL DATE	TIME
1. Dus (BW)	BW 20871 BK	Cash.	500.00 or 60 days	
2.				
3.				
4.				
5.				

HOLD (EXPLAIN): _____

VEHICLE IMPOUNDED: TOWED BY: _____

IN LIEU OF AN ARREST WARRANT, I HEREBY REQUEST, BY AFFIXING MY SIGNATURE, THAT THE DETENTION FACILITY HOLD THE ABOVE SUBJECT ON THE ABOVE LISTED CHARGE. I WILL OBTAIN A WARRANT AT THE EARLIEST OPPORTUNITY AND I UNDERSTAND THAT THE FACILITY WILL CARRY THE SUBJECT BEFORE THE MAGISTRATE AT THE NEXT ARRAIGNMENT HEARING.

OFFICER'S SIGNATURE: DIAZ **AGENCY:** S.O

OFFICER'S NAME (PRINT) _____

Applicant Exhibit 29

FENGAD 800-631-6989

AGENCY: SCDC DATE: 8-30-01 TIME: 0330 OFFICIAL: Reyes

IF RELEASED OTHER THAN BY COURT: REASON: C

(JUDGE'S SIGNATURE)

RELEASED BY: _____ DATE: _____ TIME: _____

	WARRANT #	JUDGE	SENTENCE
1.			
2.			
3.			
4.			
5.			

BASED UPON THE BELOW FACTS, A P/R BOND [ ] WILL NOT REASONABLY ASSURE APPEARANCE.

[ ] WILL RESULT IN AN UNREASONABLE DANGER TO THE COMMUNITY:

_____

JUDGE: _____ DATE: _____

BOND ADJUSTMENT: _____ REASON: _____

JUDGE: _____ DATE: _____

BOND REDUCTION: _____ REASON: _____

G/S BOND _____

M/C BOND Bw pay cc $70

DATE: 8-30-01 TIME: 4p MAGISTRATE: J Bell

TO BE COMPLETED BY MAGISTRATE: ARRAIGNMENT

BOOKING/JAIL NO: 18555 DATE IN: 8/30/01 TIME: 1350

(REASON):

BOOKED BY: _____ SEARCHED BY (IF DIFFERENT): _____

TYPE SEARCH (CHECK): NONE RISK *STRIP (EXPLAIN IF NOT BEING HOUSED IN FACILITY

2790

JUROR SUMMARY SHEET

JUROR NAME: JOYCE E MORRISON RATING: ____ ____ ____ ____

JUROR NUMBER: 191

PRIORITY AREAS:

JIC: wants excuse bec. she's a teacher, school dist. #7

Q23: arrest for gambling & drugs

BASIC DEMOGRAPHICS	EDUCATION/PLACES LIVED	FAMILY MEMBERS
age 50 Born here Blond Hair B/F	B.S. – S.C. State Univ. M.Ed - Converse, USCS, Furman always here	married 6 years to James, a box builder 3 girls – 28, 29, 20 2 boys – 23, 21
HEALTH PROBLEMS	**JURY DUTY/MILITARY**	**EMPLOYMENT**
Good	N/A	School Dist. #7 – 13 yrs; P.E teacher there 9 yrs.
RELIGION	**LE CONTACTS**	**VICTIM OF CRIME/WITNESS/ARRESTED**
Baptist	N/a	Q23: She has been arrested for gambling & drugs Family Member killed step. son
ORGANIZATIONS	**MEDIA**	**BUMPER STICKERS**
N/a	TV, radio for news WSPA News	no

Applicant Exhibit 30

2791

JUROR INFORMATION CARD

FOR TERM BEGINNING: 10/15/01 JUROR NUMBER: 0191

(PLEASE TYPE OR PRINT CLEARLY)

COUNTY, STATE OF BIRTH	AGE	MARRIED	SINGLE	WIDOWED	DIVORCED	NO. OF CHILDREN
Martinsburg	50	☒	☐	☐	☐	5

R OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	NAME OF SPOUSE
Teacher	School Dist. #7	13	James E. Morrow
OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	IF THE ADDRESS BELOW IS INCORRECT PLEASE "X" THE BOX AND CORRECT THE ADDRESS ON THE BACK OF THIS CARD.
Builder	Union Camp	27	☐

JOYCE E MORROW
[redacted]

/E PREVIOUSLY SERVED ON A ☐ CRIMINAL ☐ JURY — IF SO, WHEN?

E YOU EVER BEEN A PARTY TO A CIVIL SUIT? YES ☐ NO ☒

HAVE YOU EVER BEEN CONVICTED OF A CRIME (OTHER THAN A MINOR TRAFFIC OFFENSE)? YES ☒ NO

MAL EDUCATION COMPLETED?

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

HOME TELEPHONE NO.	BUSINESS TELEPHONE NO.	SPOUSE'S BUSINESS TELEPHONE NO.	EMERGENCY TELEPHONE NO.
[redacted]	[redacted]	[redacted]	[redacted]

MPLETE THIS FORM AND RETURN IT WITHIN TWO DAYS.
LURE TO RETURN IS PUNISHABLE BY CONTEMPT.

Joyce Morrow
SIGNATURE

JUROR RESPONSE FORM

FOR TERM BEGINNING: 10/15/01 JUROR NUMBER: 0191

Please read both sides of this form carefully. If any of the following statements apply to you, complete the form and return it to the address on the envelope within two days. YOU MUST STILL APPEAR AT THE COUNTY COURTHOUSE AT THE DATE AND TIME INDICATED ON THE JUROR SUMMONS, EVEN IF YOU ARE DISQUALIFIED, OR IF YOU DESIRE TO BE EXEMPTED OR CUSED OR HAVE YOUR SERVICE POSTPONED BECAUSE YOU ARE A STUDENT, UNLESS THE COURT ADVISES YOU OTHERWISE.

u are disqualified, or desire to be exempted or excused from jury service, or have ur service postponed because you are a student, check the appropriate box and omplete the statement below. (See disqualifications, exemptions, excuses and student postponements on reverse side of this form).

(check one only if applicable and state reasons below)

JOYCE E MORROW
331 VINYARD RD
BOILING SPRINGS SC 29316
[redacted]

☐ I am disqualified from jury service because:

☐ I desire exemption from jury service because:

☐ I desire to be excused from jury service because:

☒ I desire that my service as a juror be postponed to a date which does not conflict with my school term (provide name of school where you are enrolle and date you will be available for service) because:

Explanation: I am a teacher / School Dist. #7 until May 31, 2001

Joyce Morrow
SIGNATURE

THE FURNISHING OF FALSE OR MISLEADING INFORMATION TO THE COURT MAY SUBJECT YOU TO PENALTIES AS FOR CONTEMPT OF COURT.

2792

TO THE BEST OF YOUR KNOWLEDGE THE FOLLOWING QUESTIONS AND RETURN ALONG WITH THE JUROR QUESTIONNAIRE CARD (FORM)

191

(NOTE: IF AT ANY TIME, YOU NEED ADDITIONAL SPACE IN ORDER TO PROPERLY ANSWER ANY GIVEN QUESTION, PLEASE ATTACH A SEPARATE SHEET.)

1. NAME Joyce Morrow
2. DATE OF BIRTH [redacted]
3. ADDRESS [redacted]
4. PLACE OF BIRTH Spartanburg
5. PLEASE NAME THE SCHOOLS YOU HAVE ATTENDED AND THE GRADE OR LEVEL COMPLETED.
   (A) GRADE SCHOOL Cumming St. / Highland, Mary H. Wright
   (B) JUNIOR HIGH Cumming St.
   (C) HIGH SCHOOL Carver
   (D) COLLEGE S.C. State University
   (E) VOCATIONAL OR TRADE SCHOOL None
   (F) PROFESSIONAL SCHOOL None
   (G) GRADUATE SCHOOLS Converse / USCS / Furman
   (H) DEGREES OR DIPLOMAS YOU HOLD B.S. MED.
6. HOW LONG HAVE YOU LIVED IN LEXINGTON COUNTY, SOUTH CAROLINA? _____
7. HAVE YOU EVER LIVED OUTSIDE THE SOUTHEASTERN U. S.? No
8. MARITAL STATUS:
   [X] MARRIED - NUMBER OF YEARS 6
   [ ] NEVER MARRIED
   [ ] SEPARATED
   [ ] DIVORCED
   [ ] WIDOWED
9. IF MARRIED, SPOUSE'S NAME James Edward Morrow
10. SPOUSE'S OCCUPATION Box builder
11. SPOUSE'S EDUCATION LEVEL 2 years of College
12. NUMBER OF CHILDREN AND THEIR AGES 5
    GIRLS 28, 29, 20
    BOYS 23, 21

DESCRIBE THE CONDITION OF YOUR HEALTH? None

A. IF YOU HAVE ANY PHYSICAL OR MEDICAL PROBLEMS WHICH WOULD MAKE JURY DUTY DIFFICULT OR WHICH REQUIRE ACCOMMODATION, PLEASE EXPLAIN HERE. None

14. HAVE YOU EVER BEEN A WITNESS IN A CRIMINAL CASE? NO

15. HAVE YOU PREVIOUSLY SERVED ON A JURY? [ ] YES [X] NO

IF YES, WHAT TYPE OF CASE WAS IT? [ ] CIVIL [ ] CRIMINAL

16. HAVE YOU EVER SERVED ON A GRAND JURY? NO

17. HAVE YOU EVER BEEN IN ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES (INCLUDING THE MILITARY RESERVES, NATIONAL GUARD OR ROTC?) [ ] YES [X] NO.

(A) IF YES, PLEASE ANSWER THE FOLLOWING:

(a) IN WHAT BRANCH? N/A

(b) WHAT WAS YOUR RANK AT DISCHARGE? N/A

18. PLEASE ANSWER THE FOLLOWING ABOUT YOUR EMPLOYMENT. IF NOT CURRENTLY EMPLOYED, PLEASE ANSWER THE FOLLOWING ABOUT YOUR LAST EMPLOYMENT:

(A) WHERE DO YOU WORK? School Dist. #7

(B) HOW LONG HAVE YOU WORKED THERE? 13 years

(C) WHAT IS YOUR CURRENT JOB TITLE? Physical Education teacher

(D) HOW LONG HAVE YOU HAD THAT TITLE? 9 years

(E) PLEASE DESCRIBE YOUR JOB RESPONSIBILITIES. teacher

(F) WHAT WAS YOUR OCCUPATION BEFORE PRESENT EMPLOYMENT? teacher

19. WHAT IS YOUR RELIGIOUS AFFILIATION, IF ANY? Baptist

20. HAVE YOU, ANY FAMILY MEMBERS OR CLOSE FRIENDS EVER: (CHECK ALL THAT APPLY)

[ ] BEEN AN EMPLOYEE OF ANY LAW ENFORCEMENT AGENCY (LOCAL, STATE, FEDERAL, MUNICIPAL, OTHERWISE)?

[ ] SERVED AS A MEMBER OF AN AUXILIARY OR POLICE RESERVE LAW ENFORCEMENT BRANCH SUCH AS AN AUXILIARY DEPUTY SHERIFF OR CONSTABLE?

[ ] SERVED AS A MILITARY POLICE OFFICER?

[ ] APPLIED FOR A JOB IN LAW ENFORCEMENT?

IF YOU CHECKED ANY OF THE ABOVE, PLEASE EXPLAIN : _____

21. HAVE YOU OR ANY MEMBER OF YOUR FAMILY A MEMBER OF *ANY GROUP* WHICH ENCOURAGES STRICT ENFORCEMENT OF CRIMINAL LAWS OR MODIFICATION OF OUR PRESENT LAWS SUCH AS MOTHERS AGAINST DRUNK DRIVERS (MADD), CITIZENS AGAINST VIOLENCE (CAVE)?

[ ] YES [X] NO

22. HAVE YOU, ANY FAMILY MEMBERS OR CLOSE FRIENDS EVER BEEN THE VICTIM OF OR WITNESSED ANY CRIME (WHETHER OR NOT THE CRIME WAS REPORTED)?

[ ] YES [X] NO

IF YES,

(A) PLEASE DESCRIBE THE CRIME(S) AND INDICATE WHO WAS INVOLVED EITHER AS A WITNESS OR VICTIM: N/A

(B) WAS ANYONE ARRESTED? [ ] YES [ ] NO.

(C) IF THERE WAS AN ARREST, WHAT WAS THE OUTCOME? N/A

(D) IF THERE WAS A TRIAL, DID YOU TESTIFY? [ ] YES [ ] NO

23. HAVE YOU OR ANY FAMILY MEMBER EVER BEEN ARRESTED OR CHARGED WITH A CRIME OTHER THAN A TRAFFIC OFFENSE? [X] YES [ ] NO

IF YES, PLEASE EXPLAIN WHO WAS CHARGED AND WITH WHAT CRIME. Gambling, drugs

A. HAVE YOU OR ANY FAMILY MEMBER EVER BEEN CONVICTED OF A CRIME OTHER THAN A TRAFFIC OFFENSE? [X] YES [ ] NO

IF YES, PLEASE EXPLAIN WHO WAS CONVICTED OF WHAT CRIME. _____

24. PLEASE LIST ALL CLUBS, ASSOCIATIONS OR CIVIC GROUPS TO WHICH YOU BELONG. THESE MAY INCLUDE, BUT ARE NOT LIMITED TO, THE AMERICAN CIVIL LIBERTIES UNION, AMERICAN LEGION, NAACP, KIWANIS, LEAGUE OF WOMEN VOTERS, NATIONAL RIFLE ASSOCIATION, ROTARY CLUB, VETERANS OF FOREIGN WARS, OR ANY OTHER ASSOCIATION: N/A

[X] TV [ ] MAGAZINE

[ ] NEWSPAPER [ ] OTHER

[X] RADIO

(A) WHAT TV OR RADIO SHOWS DO YOU REGULARLY WATCH OR LISTEN TO AND WHAT MAGAZINES AND NEWSPAPERS DO YOU REGULARLY READ? ____

WSPA news

26. HAVE YOU DISPLAYED ONE OR MORE BUMPER STICKERS ON YOUR AUTOMOBILE IN THE LAST TWELVE (12) MONTHS?

[ ] YES [X] NO

IF YES, PLEASE LIST EACH BUMPER STICKER: _____

Joyce Morrow
JUROR SIGNATURE

Joyce Morrow
JUROR NAME - PRINTED OR TYPED

DATED: 9-20-01

191

FAX Time: 11:53
Date: 9/27/01

Cleveland Elementary School
151 Franklin Street
Spartanburg, South Carolina 29303
Phone (864) 594-4444 Fax (864) 594-6146

FAX COVER SHEET

THIS TRANSMITTAL SHOULD INCLUDE 1 PAGES INCLUDING COVER SHEET.

DATE: 9/24/01

X PLEASE DELIVER TO: Kay

FIRM:

FAX NUMBER: 596-2239

FROM: Amelia Senn

COMMENTS: Please note that Joyce Morrow, a teacher at Cleveland Elementary, is scheduled for jury duty beginning Oct. 15. If possible, please release her from service during the school year.

Thanks.

I gave that info to RKK he got connected with McGinley(?) after talking to Va. we decided to use her.

May 8, 2001

I spoke with A in POD 4. I talked to him about his family in Michigan. His dad and 4 brothers and 2 sisters were in Michga with one being in Alabama This meeting was triggered by his letter of April 20, 2001 where he basically refused to help with family info.

I spoke to him about Dr. Evans & Ms. Glass and what they would be doing.

We talked about the case in general and he stated he'd got off work and gone home then to store. Denied any drug use. There was a dispute over bill at store clerk pulled gun he took it. Clerk went for second gun fire fight insued. He went behind counter after shooting stopped. Saw Mahoney and saw money. He took money, but does not know why. He gave me his dad's address as [redacted] Mt. Clemens, MI 48043.

The phone is [redacted]

May 9, 2001

I called his dad at [redacted]

the person who answered the phone said no one named Moore lived there. No answer at his sister's house at [redacted] I also spoke to Δ's common law wife Lynda Byrd. She is no help w/ his family in Michigan. She wants to meet me. I told her I was available at her convieniance.

I spoke to RKK told him about a meeting with Δ on 5-8-01. The Δ rejected an offer of life at that meeting. I also told him about conversations with Ms. Glass and Dr. Evans.

2800

Statement

Skidmore & Associates
3555-C Centre Circle
Fort Mill, SC 29715
(803) 547-3554

Date
1/18/2011

To:

Richard Moore
c/o Spartanburg Public Defender
Atty: Mike Morin
258 N. Church Street
Spartanburg SC 29306

Amount Due	Amount Enc.
$0.00	

Date	Transaction	Amount	Balance
12/18/2000	Balance forward		0.00
07/02/2001	Due 11/02/2001. 07/02/01-Investigator Skidmore traveled to Spartanburg and met with Attorney Michael Morin and defendant Richard Moore - 5.5 hrs @ $50.00 per hour	275.00	275.00
07/02/2001	Due 11/02/2001. 07/02/01-Mileage - Investigator Skidmore to Spartanburg and back to Fort Mill office - 165 miles @ $0.35 per mile	57.75	332.75
07/20/2001	Due 11/02/2001. 07/20/01-Research-Investigators reviewed case file - 2 hrs @ no charge	0.00	332.75
07/23/2001	Due 11/02/2001. 07/23/01-Research-Investigator Skidmore traveled from Fort Mill office to Atty Michael Morin's office in Spartanburg to review case and evidence. He then returned to Fort Mill office - 5.5 hrs @ $50.00 per hour	275.00	607.75
07/23/2001	Due 11/02/2001. 07/23/01-Mileage - Investigator Skidmore traveled from Fort Mill office to Spartanburg, SC and met with Michael Morin and returned to Fort Mill office - 185 miles @ $0.35 per mile	64.75	672.50
07/24/2001	Due 11/02/2001. 07/24/01-Research-Investigators reviewed the case file for an upcoming interveiw with Client - 2.5 hrs @ no charge	0.00	672.50
07/25/2001	Due 11/02/2001. 07/25/01-Research-Investigators reviewed case and made list of people that needed to be interviewed when they traveld to Spartanburg,SC - 1.5 hrs @ no charge	0.00	672.50
07/26/2001	Due 11/02/2001. 07/26/01-Investigators Skidmore & Cooper traveled to Spartanburg, SC and they met with Mr. Moore at Spartanburg County Jail. They located and interviewed Ann Yarborough at Nikki's Speed Mart. They located and spoke with Linda Byrd. Attempted to locate George Gibson and Terri Hadden - 8 hrs @ $50.00 per hour	400.00	1,072.50
07/26/2001	Due 11/02/2001. 07/26/01-Mileage - Investigator Skidmore & Cooper traveled from Fort Mill office to Spartanburg, SC and back to Fort Mill office - 210 miles @ $0.35 per mile	73.50	1,146.00
07/27/2001	Due 11/02/2001. 07/27/01-Locate current address of Terry Hadden - [redacted] Spartanburg, SC 29307 - 1 @ $80.00	80.00	1,226.00

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	0.00	$0.00

Statement 2801

Skidmore & Associates
3555-C Centre Circle
Fort Mill, SC 29715
(803) 547-3554

Date
1/18/2011

To:
Richard Moore c/o Spartanburg Public Defender Atty: Mike Morin 258 N. Church Street Spartanburg SC 29306

Amount Due	Amount Enc.
$0.00	

Date	Transaction	Amount	Balance
08/29/2001	Due 11/02/2001. 08/29/01-Investigator Cooper conducted interviews and contact calls - Attempted to locate and interview Cassius Harris, Gwen Smith at Martex Fiber. Inv made several contact calls for location of subjects. Attempted to locate and interview Mario Madison -10.75 hrs @ $50.00 per hour	537.50	1,763.50
08/29/2001	Due 11/02/2001. 08/29/01-Mileage - Investigator Cooper traveled to Spartanburg, SC and located subjects and conducted interviews - 242 miles @ $0.35 per mile	who? 84.70	1,848.20
08/30/2001	Due 11/02/2001. 08/30/01-Investigator Cooper conducted interviews. Located and interviewed Mario Madison. Attempted to locate and interview Beauford Hall or Hawes. Conducted more follow calls to find more information - 7.25 hrs @ $50.00 per hour	who? 362.50	2,210.70
08/30/2001	Due 11/02/2001. 08/30/01-Mileage - Investigator Cooper traveled to Spartanburg, SC and conducted interviews - 179 miles @ $0.35 per mile	62.65	2,273.35
09/24/2001	Due 11/02/2001. 09/24/01-Investigator Skidmore attempted to locate Terry Hadden at the Wise Potato Chip Plant, Spartanburg, SC and interview him. Investigator was informed that Mr. Hadden worked 2nd shift and would not be in until tomorrow - 3 hrs @ $50.00 per hour	150.00	2,423.35
09/24/2001	Due 01/18/2011. 09/24/01-Mileage - Investigator Skidmore traveled from Fort Mill office to Spartanburg to interview Terry Hadden and back to Fort Mill office - 150 miles @ $0.35 per mile	52.50	2,475.85
09/25/2001	Due 11/02/2001. 09/25/01-Interview with Investigator Cooper and Terry Hadden at Wise Potato Chip Plant in Spartanburg, SC - 3 hrs @ $50.00 per hour	150.00	2,625.85
09/25/2001	Due 11/02/2001. 09/25/01-Mileage - Investigator Cooper to Spartanburg, SC and back to Fort Mill office - 153 miles @ $0.35 per mile	53.55	2,679.40

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	0.00	$0.00

2802

Statement

Skidmore & Associates
3555-C Centre Circle
Fort Mill, SC 29715
(803) 547-3554

Date
1/18/2011

To:

Richard Moore
c/o Spartanburg Public Defender
Atty: Mike Morin
258 N. Church Street
Spartanburg SC 29306

Amount Due	Amount Enc.
$0.00	

Date	Transaction	Amount	Balance
10/11/2001	Due 11/02/2001. 10/11/01-Investigator Skidmore traveled to Spartanburg, SC to the Public Defenders office to meet with Attorney Michael Morin. Mr. Morin was at the Solicitor's Office. Inv. Skidmore proceeded to Solicitor's office to meet with Atty Morin and attempt to interview Terry Hadden (Wise Potato Chip Plant). Atty Morin had already talked with Mr. Hadden and was concluding meeting. Invesitgator Skidmore returned to Public Defender's Office and met with Atty Morin and they discussed a jail house snitch who had just been released from jail. Inv. Skidmore traveled to [redacted] in order to speak with George Gibson who was not home and Benjamin Gibson (George's brother) informed Skidmore that George had been sent down road a couple of weeks ago. Inv. Skidmore went to Bible Church Road to attempt to interview Laurie Turner. Ms. Turner lives in trailer which appeared that the grass had not been cut in a while. Some clothing and a bike were on the back porch but no activity. Inv. Skidmore waited a while for Ms. Turner to return but she never did. Inv. Skidmore returned to Fort Mill office - 5.25 hrs @ $50.00 per hour	262.50	2,941.90
10/11/2001	Due 11/02/2001. 10/11/01-Mileage - Investigator Skidmore traveled to Spartanburg, SC and to Boiling Springs, SC then back to Fort Mill office - 174 miles @ $0.35 per mile	60.90	3,002.80
10/12/2001	Due 11/02/2001. 10/12/01-Investigator Smith attempted to locate George Gibson at Perry R&E and Columbia R&E. All inmates from these facilities go to Kirkland R&E in Columbia, SC. Mr. Gibson was not at this facility. He is at Spartanburg County Jail waiting to be transported - 30 mins @ $50.00 per hour	25.00	3,027.80
10/16/2001	Due 11/02/2001. 10/16/01-Investigator Skidmore traveled to Spartanburg, SC and attempted to meet with Ms. Turner but she wasn't at home. Mr. Turner told Investigator Skidmore that Ms. Turner worked second shift and that they could talk in the morning. Mr. Turner was supposed to page Inv. Skidmore on 10/17/01 in the AM but she did not - 4.5 hrs @ $50.00 per hour	225.00	3,252.80
10/16/2001	Due 11/02/2001. 10/16/01-Mileage - Investigator Skidmore traveled to Spartanburg, SC and back to Fort Mill office - 185 miles @ $0.35 per mile	64.75	3,317.55
10/17/2001	Due 11/02/2001. 10/17/01-Investigator Skidmore spoke with Laurie Turner via telephone - 30 mins @ $50.00 per hour	25.00	3,342.55

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	0.00	$0.00

Statement 2803

Skidmore & Associates
3555-C Centre Circle
Fort Mill, SC 29715
(803) 547-3554

Date
1/18/2011

To:
Richard Moore c/o Spartanburg Public Defender Atty: Mike Morin 258 N. Church Street Spartanburg SC 29306

Amount Due	Amount Enc.
$0.00	

Date	Transaction	Amount	Balance
10/19/2001	Due 11/02/2001. 10/19/01-Investigator Skidmore attended court proceeding in Spartanburg, SC. Investigator Skidmore interviewed George Gibson and they went over his statement which his answers seemed fairly consistent with report. At a break at 10:30 AM, Attorney Morin asked that Investigator Skidmore stay at proceeding to see if Laurie Turner would testify. Ms. Turner never showed up for court so Investigator Skidmore was cut loose by Attorney Morin. Investigator was informed that he may be paged to return to court this weekend. He then returned to Fort Mill office - 8 hrs @ $50.00 per hour	400.00	3,742.55
10/19/2001	Due 11/02/2001. 10/19/01-Mileage - Investigator Skidmore traveled to Spartanburg, SC for court proceeding and back to Fort Mill office - 140 miles @ $0.35 per mile	49.00	3,791.55
10/25/2001	Due 01/18/2011. 10/25/01-Preparation of reports, invoices and interviews - 2 hrs @ $50.00 per hour	100.00	3,891.55
01/23/2002	PMT #10784. Investigative Services	-3,891.55	0.00

- what report?

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	0.00	$0.00

PROPERTY REPORT Pg 1 of 6

2804

1. Status - Check One: [ ] Recovered Property [X] Evidence [ ] Found — 2. Case No. 990901180

3. Date and Time Impounded: 9-16-99 0425 — 4. Laboratory Examination: [ ] Yes [ ] No — 5. For Prop - Room Use Only: Bin No. / Vault No. / Shelf No. — Property Sec. #

6. Found or Recovered From: [ ] Person [ ] Place — none [ ] James Mahoney

7. Where property was impounded (Give exact location - address): 366 Hwy 221 SPTBG SC

8. Owner's Name — 9. Owner's Address — 10. Owner's Telephone No.

11. Item No.	12. Quantity	13. Description
1	1	Envelope W/ 14 Color Photo's & 20 B&W Photo's
2	1	Envelope W/ 67 Color Photo's
3	1	Envelope W/ 77 Color Photo's
* 4	1	Box Containing one Charter Arms Bulldog 44 Spl. 5 Shot
/	/	W/ 4 Live Rds and one Spent Shell Casing. Ser# 8416
- 5	1	Box Containing one H&R Revolver
/	/	32 H&R Mag. Model R73 Ser# HJ004352
/	/	W/ Four Live Rounds.
6	1	Envelope W/ Video Tape.
7	3	Magazines W/ Bullet Hole
- 8	1	EMAC Note Pad W/ Bullet Hole & Blood
- 9	1	4 Way Tire Tool W/ Blood Spatter
- 10	1	Ring Book W/ Blood Spatter
- 11	1	Small Meat Cleaver W/ Blood Stains
- 12	1	Live Round - S&W 45 ACP (#1) (#2)
- 13	1	Spent Shell Casing - S&W 45 ACP (#4)
- 14	1	Spent Shell Casing - S&W 45 ACP (#5)
- 15	1	Spent Shell Casing - S&W 45 ACP

DISPOSITION OF PROPERTY — AUTHORITY: JUDGE ____ DATE ____ TIME ____ ; OFFICER ____ DATE ____ TIME ____ ; RELEASE TO COURT ____ DATE ____ TIME ____ ; RETURNED TO OWNER ____ DATE ____ TIME ____ ; SOLD AT PUBLIC AUCTION ____ DATE ____ TIME ____ ; DESTROYED ____ DATE ____ TIME ____ ; WITNESS. **********

14. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.

Signature X

15. Impounding Officer (Print Full Name): T. M. ATMAN — 16. Unit No.: I-60

17. Signature

18. Received By	19. Reason	20. Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received

RESPONDENT'S EXHIBIT

Form No. A - 31

ORIGINAL

4/20/01

Mr. Morin,

Im writing to inform you that I am unable to supply all the information you want about my family in Michigan. However, I do believe you Mr. Morin could get this information if you were to contact my sis[redacted]r Va[redacted]Moore at: [redacted] Disconnected 6-1-01 or write her at: [redacted] Clinton Twp. Michigan 48036

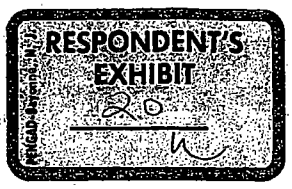
Whether you call or write, explain the reason for this information. I have not informed them of the states intention to seek the death penalty. When I was first arrested I ask for there help and was told "there would be no help coming, and to get myself out of this mess." At that point I made up my mind not to call on them ever again for any reason. I ment it then, I mean it now. This is why if you really want this information, you need to contact her for yourself. Im not trying to be ~~uncooperative~~ uncooperative, it's just the way it is.

I myself will supply all that I can of myself. My sister need not to.

Yours Truly
Richard B. Moore

[redacted]

RESPONDENT'S EXHIBIT 19



REPORT OF NEUROPSYCHOLOGICAL EVALUATION

Name: Richard Moore
Date of Evaluation: 6-22-01
Birthdate: [redacted] Age: 36

Mr. More claimed no history of significant head injuries, serious illnesses, psychiatric type treatment or seizures. He denied ever having used alcohol, or illegal drugs to any significant degree. He said he never attended special education classes, but had been expelled one or two times from school for fighting. He reported previous arrests for breaking and entering and for assault and battery of a high and aggravated nature, and admitted to several parole violations.

A battery of neuropsychological tests, an intelligence test, an academic achievement test, a quantitative EEG evaluation and a clinical interview were involved in this evaluation. Mr. Moore scored within the average range on the Wechsler Adult Intelligence Scale—III, with no major variation among his subtest scaled scores. His reading (word recognition) and arithmetic computation standard scores on the Wide Range Achievement Test-3 were 87 and 79 respectively, suggesting mild to moderate degrees of underachievement. He showed no evidence of brain damage on the Reitan Neuropsychological Test Battery subtests administered (Impairment Index of 0). Other neuropsychological type tests administered were the Controlled Oral Word Association Test, the Wisconsin Card Sorting Test , two subtests from the Wechsler Memory Scale-III (Logical Memory and Faces), the Rey 15-item test for malingering and the Integrated Visual and Auditory Continuous Performance Test (IVA). He performed within normal limits on all of these with the exception of the IVA where he showed evidence of significant problems with response control (tendency to respond impulsively) and mild problems with visual attention.

Results of the QEEG evaluation indicated excessive posterior slowing, some left temporal (T3) coherence abnormalities and several instances of abnormal right-left hemisphere neural timing abnormality. These may relate to the academic underachievement noted earlier. There was some evidence for excessive right frontal abnormality (excess delta and theta amplitude at Sites F4 and F8). The latter often is seen in persons having problems with impulse control and/or attention.

The Rorschach projective personality assessment procedure was administered to Mr. Moore. There was no evidence for problems with reality testing, depression or other major psychiatric type disorder. However, he showed some evidence of difficulty dealing with emotional responsivity. Specifically, it seems likely that he would lose intellectual efficiency to greater than average degrees under conditions of continuing emotional arousal.

Mr. Moore was cooperative with the evaluation, and showed evidence of desiring to perform well on the tests. The findings are believed to be valid. The main relevant abnormal findings appear to be that he has some problems with impulse control and with maintaining intellectual efficiency when emotionally aroused, and is underachieving in

reading and arithmetic relative to his ability. These appear to have neurophysiological (EEG) correlates.

James R. Evans, Ph.D.
Licensed Clinical Psychologist

SPARTANBURG COUNTY PUBLIC DEFENDER OFFICE

CHARLES E. SANDERS
CHIEF PUBLIC DEFENDER

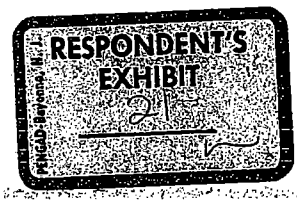
258 NORTH CHURCH STREET
SPARTANBURG, SC 29306

TELEPHONE (864) 596-2561
FAX (864) 596-2284

AUGUST 14, 2001

Pete Skidmore
P.O. Box 3176
Rock Hill, SC 29732

SENT VIA FAX 803-547-3556



Dear ~~Pete~~ Mr. Skidmore,

The following is a list of names and phone numbers I have collected regarding this case. I am unsure as to how much help they may be, but they seem to be leads on people who may have seen Mr. Moore or have something to say that may benefit Mr. Moore during a penalty phase. If you could let me know what progress you have made by the end of the month I would appreciate it. Drucy Glass has also expressed an interest in assisting you if need be.

Sincerely,

Michael D. Morin

Wayne -	996-7782 429-3081	
Ron Guest (?)-	573-7382	Worked with Defendant at Martex
Billy, Forman -	576-5093	Martex
Mario Maddison- Perronead (?)	583-8560 598-3374 Pager	Was with him on the day of the incident
Beauford -	582-3729	Hillside Drive area. Did some construction
Bobby (Framework) -	582-0154	
Cassius Harris -	591-1454	Lived in the Pond Street area, now in Inman
George (Martex)	578-9832	
Curt (Martex)	573-1080	
Mike (Martex)	577-9547	
Sayna (Martex)	515-0249	

LEMS.Web

ICHS 003F9D053C from SCCH

SPTSL410
ICHS 003F9D053C SCCH 20110118 10:36:02
TO: SPTSL410-8034 20110118 10:36:02 003F9D053C
FROM: SCCH-10290492 20110118 10:36:02
ICHS/QH INQUIRY OF SCLED CCH FILES USING:
ATN-BULSA, DERRICK
ORI-SC042015A PUR-C
NAM-GIBSON, GEORGE
SOC [redacted] SEX-M RAC-B [redacted]4

RESPONDENT'S EXHIBIT

DATE-01/18/2011 TIME-10:37 PAGE-01 OF 01
ORI-SC042015A
SCLED IDENT RESPONSE TO ICHS/QH INQUIRY
THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-GIBSON, GEORGE JAMES SEX-M RACE-B
HEIGHT-601 WEIGHT-180 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC: HENRY-11 1AU 00I 15 NCIC-AA11111115AA11101313
1AU OII
SID-SC00274556 FBI- 186059F
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS
DATE RECORD ENTERED--03/13/1980 DATE OF LAST UPDATE--02/11/2009

ALIAS NAMES-GIBSON, GEORGE J GIBSON, GEORGE

BIRTH [redacted]

MARKS, ETC-SC R CHK

SOC SEC NUMBERS-[redacted]
ADDITIONAL INFORMATION IN [redacted]RSTATE IDENTIFICATION INDEX ON ICHS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS. THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.

FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR FBI NUMBER.

REQUEST FORWARDED TO NCIC
ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
** END OF MESSAGE **

LEMS.Web

QH 0035DD8BCB from III

SPTSL410
.QH 0035DD8BCB.III.20110118 10:36:04
TO: SPTSL410-8035 20110118 10:36:04 0035DD8BCB
FROM: III-14519243 20110118 10:36:04
7L011D3D001C722QH
SC042015A
THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR INQUIRY ON NAM/GIBSON,GEORGE SEX/M RAC/B DOB/19430414 SOC/[redacted]
PUR/C

NAME	FBI NO.	INQUIRY DATE
GIBSON,GEORGE JAMES	186059F	2011/01/18

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
M	B	[redacted]	600	156	BRO	BLK	N

BIRTH PLACE
SOUTH CAROLINA

FINGERPRINT CLASS	PATTERN CLASS
AA 11 12 13 15	RS RS RS RS RS LS LS LS LS LS
AA 12 10 13 14	AU WU WU AU WU WU WU
	LS

ALIAS NAMES
GIBSON,GEORGE GIBSON,GEORGE J
MILLER,GEORGE JAMES

OTHER
BIRTH DATES SOCIAL SECURITY [redacted]
[redacted]
[redacted]
2[redacted]

IDENTIFICATION DATA UPDATED 2005/05/27

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE FOLLOWING:
FBI - FBI/186059F

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

LEMS.Web

ICHR 003F9D0555 from SCCH

SPTSL410
.ICHR 003F9D0555.SCCH 20110118 10:37:35
TO: SPTSL410-8036 20110118 10:37:35 003F9D0555
FROM: SCCH-10290517 20110118 10:37:35

ICHR REQUEST FOR RAP SHEET
ORI-SC042015A FBI- 186059F PUR-C
ATN-BULSA, DERRCIK

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-01/18/2011 TIME-10:39:13
REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT
SID-SC00274556 FBI- 186059F
NAME-GIBSON, GEORGE JAMES SEX-M RACE-B
HEIGHT-601 WEIGHT-180 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC-AA11111115AA11101313 HENRY-11 1AU OOI 15
1AU OII

PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--03/13/1980 DATE OF LAST UPDATE--02/11/2009

ADDITIONAL IDENTIFIERS NAME	BIRTH DATES	MARKS	SOC SEC	MISC NUM
GIBSON, GEORGE J	[redacted]		2[redacted]	
GIBSON, GEORGE			[redacted]	

CONTRIBUTOR/SUBJECT	DOA/RCVD	CHARGE/DISPOSITION/ETC
SC0420000 SPARTANBURG CNTY SO	02/24/1980	
CASE-17917		
CIT-SC44-53-370		ARREST CHARGE 01-POSSESSION MARIJUANA WITH INTENT TO DISTR OFFENSE DATE-02/24/1980
CIT-SC44-53-370		ARREST CHARGE 02-POSSESSION HASH OFFENSE DATE-02/24/1980
CIT-SC44-53-370		ARREST CHARGE 03-POSS SCHEDUL E II AMPHETAMINES OFFENSE DATE-02/24/1980 ARREST INFO- BAIL
CIT-SC44-53-370		COURT CHARGE 01-MARIJUANA POSSESSION

COURT DISP-CONVICTED;12M
CONFINE

CIT-SC44-53-370

COURT CHARGE 02-POSS HASH
COURT DISP-CONVICTED;3M CONFI
NE; 2Y PROB; $500 FINE;
CONFINEMENT OR FINE
COURT DATE-07/09/1980
COURT CHARGE 03-POSS SCHEDULE
II AMPHETAMINES
COURT DISP-CONVICTED;2Y SUSP;
12M CONFINE; 2Y PROB
SC023055C APPL REC EVAL CTR CUSTODY STATUS-RECEIVED
CASE-102071 START DATE-07/11/1980
SC040015G CENTRAL PPP CUSTODY STATUS-PROBATION
CASE-161223 START DATE-01/01/1981

GIBSON, GEORGE JAMES 03/09/1994
SC0420000 SPARTANBURG CNTY SO
CASE-017917
WARR-E041310

ARREST CHARGE 01-FRAUDULENT
CHECK
PHOTOGRAPH AVAILABLE

WARR-E041311

ARREST CHARGE 02-FRAUDULENT
CHECK

WARR-D929685

ARREST CHARGE 03-FRAUDULENT
CHECK

WARR-D573167

ARREST CHARGE 04-FRAUDULENT
CHECK

WARR-D928308

ARREST CHARGE 05-FRAUDULENT
CHECK

WARR-E041312

ARREST CHARGE 06-FRAUDULENT
CHECK

WARR-D573170 @

ARREST CHARGE 07-FRAUDULENT
CHECK

WARR-D929684 @

ARREST CHARGE 08-FRAUDULENT
CHECK

WARR-D573169 @

ARREST CHARGE 09-FRAUDULENT
CHECK

WARR-D573168

ARREST CHARGE 10-FRAUDULENT
CHECK

WARR-E041310

COURT CHARGE 01-FRAUDULENT
CHECK
COURT DISP-NON-CONVICTION;
DISMISSED

WARR-E041311

COURT CHARGE 02-FRAUDULENT
CHECK
COURT DISP-NON-CONVICTION;
DISMISSED

WARR-D929685

COURT CHARGE 03-FRAUDULENT

```
                                        CHECK
                                     COURT DISP-NON-CONVICTION;
                                        DISMISSED
WARR-D573167                         COURT CHARGE 04-FRAUDULENT
                                        CHECK
                                     COURT DISP-NON-CONVICTION;
                                        DISMISSED
WARR-D928308                         COURT CHARGE 05-FRAUDULENT
                                        CHECK
                                     COURT DISP-NON-CONVICTION;
                                        DISMISSED
WARR-E041312                         COURT CHARGE 06-FRAUDULENT
                                        CHECK
                                     COURT DISP-NON-CONVICTION;
                                        DISMISSED
WARR-D573170                         COURT CHARGE 07-FRAUDULENT
                                        CHECK
                                     COURT DISP-NON-CONVICTION;
                                        DISMISSED
WARR-D929684                         COURT CHARGE 08-FRAUDULENT
                                        CHECK
                                     COURT DISP-NON-CONVICTION;
                                        DISMISSED
WARR-D573169                         COURT CHARGE 09-FRAUDULENT
                                        CHECK
                                     COURT DISP-NON-CONVICTION;
                                        DISMISSED
WARR-D573168                         COURT CHARGE 10-FRAUDULENT
                                        CHECK
                                     COURT DISP-NON-CONVICTION;
                                        DISMISSED
                          ----------
GIBSON, GEORGE JAMES          01/09/2000
SCSHP0300 SC HIWAY DEPT DIST 3
ATN-
WARR-X585491
                                     ARREST CHARGE 01-DRIVING
                                        UNDER SUSPENSION
                                        OFFENSE DATE-01/08/2000
                                        PHOTOGRAPH AVAILABLE
                          ----------
GIBSON, GEORGE J              03/23/2000
SC0420000 SPARTANBURG CNTY SO
CASE-81166
ATN-
WARR-G335110
                                     ARREST CHARGE 01-TRAFFICKING
                                        CRACK
                                        OFFENSE DATE-03/23/2000
                                        PHOTOGRAPH AVAILABLE
CIT-44-53-375(C)(A)-FELONY
DOC-00GS4202997 WARR-G335110         COURT CHARGE 01-TRAFFICKING
                                        ICE,CRANK,CRACK,>10G BUT<2
                                        8G-1ST
                                     COURT DISP-NON-CONVICTION;
                                        NOLLE PROSSED
                                        COURT DATE-05/05/2003
                                     ATN-
                          ----------
GIBSON, GEORGE JAMES          05/31/2001
```

SC0420000 SPARTANBURG CNTY SO
CASE-81166
ATN-
WARR-20871BX

ARREST CHARGE 01-DRIVING
UNDER SUSPENSION 2ND
OFFENSE DATE-05/31/2001
PHOTOGRAPH AVAILABLE

GIBSON, GEORGE JAMES 07/22/2001
SC0420000 SPARTANBURG CNTY SO
CASE-81166
ATN-
WARR-67801BW

ARREST CHARGE 01-DRIVING
UNDER SUSPENSION
OFFENSE DATE-07/22/2001
PHOTOGRAPH AVAILABLE

WARR-67802BW

ARREST CHARGE 02-IMPROPER
TURNING
OFFENSE DATE-07/22/2001

WARR-67803BW

ARREST CHARGE 03-DISREGARDING
STOP SIGN
OFFENSE DATE-07/22/2001

WARR-G460947

ARREST CHARGE 04-POSSESSION
OF CRACK
OFFENSE DATE-07/22/2001

DOC-42 WARR-67803BW

COURT CHARGE 01-DISREGARD
STOP SIGN
COURT DISP-CONVICTED;10 DAYS
JAIL
COURT DATE-09/27/2001

ATN-

CIT-44-53-370(D)(1)-FELONY
DOC-02GS4203146 WARR-G460947

COURT CHARGE 02-POSS SCHED
I(B)(C)LSD/SCHED II(COCAIN
E)-2ND
COURT DISP-CONVICTED;3 YRS &
3000.00 SUS 60 DAYS &
200.00, 1 YR PROB, CFTS
OF 60 DAYS, DRUG/ALCOHOL
TEST
COURT DATE-05/13/2003

SC040055C R & E CENTER COLA 09/28/2001 CUSTODY STATUS-RECEIVED
CASE-278585
START DATE-09/28/2001

END OF PAGE 01 - PAGE 02 TO FOLLOW

ICHR 003F9D0557 from SCCH

```
SPTSL410
ICHR 003F9D0557 SCCH 20110118 10:37:36
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FROM:     SCCH-10290519  20110118 10:37:36

PAGE-02 DATE-01/18/2011 TIME-10:39:13
REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT
SID-SC00274556 FBI- 186059F
-------------------------------------------------------------------
CONTRIBUTOR/SUBJECT          DOA/RCVD CHARGE/DISPOSITION/ETC
-------------------------------------------------------------------
SC040055C R & E CENTER COLA                CUSTODY STATUS-RECEIVED
CASE-278585                                   START DATE-09/28/2001
CIT-56-5-2330(B)-MISDEMEANOR
                                           COURT CHARGE 01-DISREGARD
                                              STOP SIGN
                                           COURT DISP-MULTIPLE CHARGE
                                              ONE DISPOSITION; 105 DAYS
                                           ATN-
CIT-N/A-MISDEMEANOR
                                           COURT CHARGE 02-MISCELLANEOUS
                                               TRAFFIC OFFENSE
                                           COURT DISP-MULTIPLE CHARGE
                                              ONE DISPOSITION
CIT-56-5-2940(1)-MISDEMEANOR
                                           COURT CHARGE 03-DRIVING UNDER
                                               THE INFLUENCE 1ST OFFENSE
                                           COURT DISP-MULTIPLE CHARGE
                                              ONE DISPOSITION
                          ----------
GIBSON, GEORGE JAMES          02/18/2004
SC0420000 SPARTANBURG CNTY SO
CASE-81166
ATN-422000075919
WARR-H666257
CIT-44-53-375(B)(1)-FELONY
                                           ARREST CHARGE 01-MANUF,DISTRI
                                              B,ETC,ICE/CRANK/CRACK
                                              COCAINE-1ST
                                              OFFENSE DATE-02/18/2004
                                              PHOTOGRAPH AVAILABLE
CIT-44-53-375(A)-MISDEMEANOR
DOC-04GS4202437 WARR-H666257               COURT CHARGE 01-POSS < 1GRAM
                                              OF METH OR COCAINE BASE
                                              1ST
                                           COURT DISP-CONVICTED;3 YRS
                                              HOME DETENTION
                                              COURT DATE-11/30/2005
                                           ATN-422000075919
                          ----------
GIBSON, GEORGE                05/27/2005
SC0420000 SPARTANBURG CNTY SO
CASE-2005051597
```

ATN-422100092801
WARR-H937242
CIT-44-53-375(B)(1)-FELONY

ARREST CHARGE 01-MANUF,DISTRI
B,ETC,ICE/CRANK/CRACK
COCAINE-1ST
OFFENSE DATE-05/26/2005
PALM PRINTS AVAILABLE

WARR-76802DC
CIT-44-53-370(D)(3)-MISDEMEANOR

ARREST CHARGE 02-POSS 28G OR
LESS MARIJ OR 10G OR LESS
HASH 1ST
OFFENSE DATE-05/26/2005

CIT--MISDEMEANOR
DOC-42 WARR-76802DC

COURT CHARGE 01-POSS 28G OR
LESS MARIJ OR 10G OR LESS
HASH 1ST
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/23/2005
ATN-422100092801

CIT-44-53-375(B)(1)-FELONY
DOC-05GS4203792 WARR-H937242

COURT CHARGE 02-DRUGS/MAN,DIS
T,ETC OF METH OR COCAINE
BASE 1ST
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-12/01/2005

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/ 186059F
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

ADDITIONAL INFORMATION IN THE INTERSTATE IDENTIFICATION INDEX

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

INQUIRY FORWARDED TO INTERSTATE IDENTIFICATION INDEX

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** S C CJIS END OF RECORD **

LEMS.Web

CR 0008C00701 from NLETS

SPTSL410
CR.0008C00701.NLETS.20110118 10:37:44
TO: SPTSL410-8040 20110118 10:37:44 0008C00701
FROM: NLETS-12584705 20110118 10:37:44
CR.WVFBINF00
08:33 75126
01/18/2011 65493 SC042015A
*1D3D001C74
TXT
HDR/2L011D3D001C742QR
ATN/BULSA, DERRCIK

********** CRIMINAL HISTORY RECORD **********

********** Introduction **********

This rap sheet was produced in response to the following request:

FBI Number	186059F
Purpose Code	C
Attention	BULSA, DERRCIK

The information in this rap sheet is subject to the following caveats:

This record is based only on the FBI number in your request-186059F. Because additions or deletions may be made at any time, a new copy should be requested when needed for subsequent use. (US; 2011-01-18)
All arrest entries contained in this FBI record are based on fingerprint comparisons and pertain to the same individual. (US; 2011-01-18)
The use of this record is regulated by law. It is provided for official use only and may be used only for the purpose requested. (US; 2011-01-18)

********** IDENTIFICATION **********

Subject Name(s)

GIBSON, GEORGE JAMES
GIBSON, GEORGE J (AKA)
MILLER, GEORGE JAMES (AKA)
GIBSON, GEORGE (AKA)

Subject Description

FBI Number	State Id Number
186059F	Unknown

Social Security Number

[redacted]

Miscellaneous Numbers

53398647

Sex	Race
Male	Black

Height	Weight	Date of Birth
6'00"	156	[redacted]

Hair Color	Eye Color	Fingerprint Pattern
Black	Brown	AA11121315AA12101314 (FPC)

Place of Birth	Citizenship
SC	US

Fingerprint Images

Photo Images
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated with arrest date of 2004/02/18)
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated with arrest date of 2001/09/28)
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated with arrest date of 2001/07/22)
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated with arrest date of 2000/03/23)
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated with arrest date of 1994/03/09)

********** CRIMINAL HISTORY **********

========== Cycle 1 ==========
Earliest Event Date 1962-11-25

Arrest Date 1962-11-25
Arrest Case Number 10269
Arresting Agency SC0420100 POLICE DEPARTMENT SPARTANBURG
Charge 01
Charge Literal SHOPLIFTING PL SEVERAL CASES
Severity
========== Cycle 2 ==========
Earliest Event Date 1980-02-24

Arrest Date 1980-02-24
Arrest Case Number 17-917
Arresting Agency SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge 01
Charge Literal POSS MARIJ W/INT TO DIST
Severity

```
Charge                  02
        Charge Literal  POSS HASH
              Severity
Charge                  03
        Charge Literal  POSS SCHEDULE II-AMPHETAMINES
              Severity
============================== Cycle 3 ==============================
Earliest Event Date     1980-07-11
---------------------------------------------------------------------
Arrest Date             1980-07-11
Arrest Case Number      102071
Arresting Agency        SC004015C PERRY R-E CENTER PELZER
Charge                  01
        Charge Literal  MARIJ POSS
              Severity

---------------------------------------------------------------------
Court Disposition       (Cycle 3)
Court Agency            Unknown
Charge                  01
        Charge Literal  MARIJ POSS
              Severity
           Disposition  ( ; 12 MOS)
============================== Cycle 4 ==============================
Earliest Event Date     1994-03-09
---------------------------------------------------------------------
Arrest Date             1994-03-09
Arrest Case Number      017917
Arresting Agency        SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge                  01
        Charge Literal  FRAUDULENT CHECK 10 CTS
              Severity

---------------------------------------------------------------------
Court Disposition       (Cycle 4)
Court Agency            SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge                  01
        Charge Literal  FRAUDULENT CHECK
              Severity
           Disposition  ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                        DISMISSED)
Charge                  02
        Charge Literal  FRAUDULENT CHECK
              Severity
           Disposition  ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                        DISMISSED)
Charge                  03
        Charge Literal  FRAUDULENT CHECK
              Severity
           Disposition  ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                        DISMISSED)
Charge                  04
        Charge Literal  FRAUDULENT CHECK
              Severity
           Disposition  ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                        DISMISSED)
Charge                  05
        Charge Literal  FRAUDULENT CHECK
              Severity
           Disposition  ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
```

```
                          DISMISSED)
Charge                    06
        Charge Literal    FRAUDULENT CHECK
              Severity
           Disposition    ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                          DISMISSED)
Charge                    07
        Charge Literal    FRAUDULENT CHECK
              Severity
           Disposition    ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                          DISMISSED)
Charge                    08
        Charge Literal    FRAUDULENT CHECK
              Severity
           Disposition    ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                          DISMISSED)
Charge                    09
        Charge Literal    FRAUDULENT CHECK
              Severity
           Disposition    ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                          DISMISSED)
Charge                    10
        Charge Literal    FRAUDULENT CHECK
              Severity
           Disposition    ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                          DISMISSED)
================================ Cycle 5 ================================
Earliest Event Date       2000-03-23
--------------------------------------------------------------------------
Arrest Date               2000-03-23
Arrest Case Number        81166
Arresting Agency          SC0420000 SHERIFF'S OFFICE SPARTANBURG
Subject's Name            GIBSON,GEORGE J
Charge                    01
        Charge Literal    TRAFFICKING CRACK G-335110
              Severity

--------------------------------------------------------------------------
Court Disposition         (Cycle 5)
Court Agency              SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge                    01
        Charge Literal    TRAFFICKING ICE,CRANK,CRACK, 10G BUT 28G-1ST
              Severity
           Disposition    ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                          NOLLE PROSSED)
================================ Cycle 6 ================================
Earliest Event Date       2001-07-22
--------------------------------------------------------------------------
Arrest Date               2001-07-22
Arrest Case Number        81166
Arresting Agency          SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge                    01
        Charge Literal    DISREGARDING STOP SIGH 67803BW,
              Severity
Charge                    02
        Charge Literal    POSSESSION OF CRACK G460947
              Severity
Charge                    03
        Charge Literal    DRIVING UNDERSUSPENSION 67801BW
              Severity
```

```
Charge                  04
        Charge Literal  IMPROPER TURNING 67802BW
              Severity

--------------------------------------------------------------------------
Court Disposition       (Cycle 6)
Court Agency            SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge                  01
        Charge Literal  DISREGARD STOP SIGN
              Severity
          Disposition   ( ; VERDICT - CONVICTED  ADDITIONAL DATA - 10
                        DAYS JAIL)
Charge                  02
        Charge Literal  POSS SCHED I B C LSD/SCHED II COCAINE -2ND
              Severity
          Disposition   ( ; VERDICT - CONVICTED  ADDITIONAL DATA - 3
                        YRS & 3000 00 SUS 60 DAYS & 200 00, 1 YR PROB,
                        CFTS OF 60 DAYS, DRUG/ALCOHOL TEST)
============================== Cycle 7 ==============================
Earliest Event Date     2001-09-28
--------------------------------------------------------------------------
Arrest Date             2001-09-28
Arrest Case Number      SCDC278585
Arresting Agency        SC040055C DOC-INMATE REC OFC COLUMBIA
Subject's Name          GIBSON,GEORGE J
Charge                  01
        Charge Literal  DISREGARDING STOP SIGN IMPROPER TURNING AND DUI
              Severity

--------------------------------------------------------------------------
Court Disposition       (Cycle 7)
Court Agency             Unknown
Charge                  01
        Charge Literal  DISREGARDING STOP SIGN IMPROPER TURNING AND DUI
              Severity
          Disposition   ( ; 105 DAYS)
============================== Cycle 8 ==============================
Earliest Event Date     2004-02-18
--------------------------------------------------------------------------
Arrest Date             2004-02-18
Arrest Case Number      81166
Arresting Agency        SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge                  01
        Charge Literal  MANUF,DISTRIB,ETC,ICE/CRANK/CRACK COCAINE-1ST
              Severity

--------------------------------------------------------------------------
Court Disposition       (Cycle 8)
Court Agency            SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge                  01
        Charge Literal  POSS   1GRAM OF METH OR COCAINE BASE 1ST
              Severity
          Disposition   ( ; VERDICT - CONVICTED  ADDITIONAL DATA - 3
                        YRS HOME DETENTION)
============================== Cycle 9 ==============================
Earliest Event Date     2005-05-27
--------------------------------------------------------------------------
Arrest Date             2005-05-27
Arrest Case Number      2005051597
Arresting Agency        SC0420000 SHERIFF'S OFFICE SPARTANBURG
```

```
Subject's Name          GIBSON,GEORGE
Charge                  01
        Charge Literal  MANUF,DISTRIB,ETC,ICE/CRANK/CRACK COCAINE-1ST
              Severity
Charge                  02
        Charge Literal  POSS 28G OR LESS MARIJ OR 10G OR LESS HASH 1ST
              Severity
--------------------------------------------------------------------------------
Court Disposition       (Cycle 9)
Court Agency            SC0420000 SHERIFF'S OFFICE SPARTANBURG
Charge                  01
        Charge Literal  POSS 28G OR LESS MARIJ OR 10G OR LESS HASH 1ST
              Severity
          Disposition   ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                        NOLLE PROSSED)
Charge                  02
        Charge Literal  DRUGS/MAN/DIST/ETC OF METH OR COCAINE BASE 1ST
              Severity
          Disposition   ( ; VERDICT - NON-CONVICTION  ADDITIONAL DATA -
                        DISM/NOL PROS/PROS ENDED)
************************  INDEX OF AGENCIES  ***************************

Agency                  FBI-CJIS DIV-CLRKSBG CLARKSBURG; WVFBINF00;
Address
                         1000 CUSTER HOLLOW RD
                        CLARKSBURG, WV 26306

--------------------------------------------------------------------------------
Agency                  POLICE DEPARTMENT SPARTANBURG; SC0420100;
Address
                         PO BOX 1746
                        SPARTANBURG, SC 293041746

--------------------------------------------------------------------------------
Agency                  SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Address
                         8045 HOWARD ST
                        SPARTANBURG, SC 29303

--------------------------------------------------------------------------------
Agency                  PERRY R-E CENTER PELZER; SC004015C;
Address
                         430 OAKLAWN RD
                        PELZER, SC 29669

--------------------------------------------------------------------------------
Agency                  DOC-INMATE REC OFC COLUMBIA; SC040055C;
Address
                        4344 BROAD RIVER RD PO BOX 21787
                        COLUMBIA, SC 292211787

--------------------------------------------------------------------------------
Agency                  POLICE DEPARTMENT SPARTANBURG; SC0420100;

--------------------------------------------------------------------------------
Agency                  SHERIFF'S OFFICE SPARTANBURG; SC0420000;

--------------------------------------------------------------------------------
Agency                  PERRY R-E CENTER PELZER; SC004015C;
```

Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	DOC-INMATE REC OFC COLUMBIA; SC040055C;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	Unknown; ;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	Unknown; ;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;
Agency	SHERIFF'S OFFICE SPARTANBURG; SC0420000;

* * * END OF RECORD * * *

QR 0035DD8BE0 from III

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FROM:      III-14519264  20110118 10:37:42
FL011D3D001C742QR
SC042015A
THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/186059F. THE FOLLOWING WILL RESPOND TO YOUR
AGENCY:
 FBI            - FBI/186059F
END
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LEMS.Web

QWA 000648AC0D from NC2K

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FROM: NC2K-4762637 20110118 10:37:41
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SC042015A

NO NCIC WANT FBI/186059F
NO NCIC WANT SOC/250640413
***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

Spartanburg Magistrate

CASE HISTORY FOR CASE 67801BW

The State of South Carolina VS GEORGE JAMES GIBSON

FILED DATE: 7/23/2001 | CASE TYPE: TR | STATUS: Disposed

JUDGE: Cash, Johnny Lee

ARRESTING AGENCY: Spartanburg County Sheriff

CASE PARTIES:

Defendant Gibson, George James
[redacted], SPARTANBURG, SC 293030000

Officer Dominesey, Michael
[redacted], Spartanburg, SC 29303

CASE HISTORY FOR CASE 67801BW

Gibson, George James
[redacted]
SPARTANBURG, SC 293030000

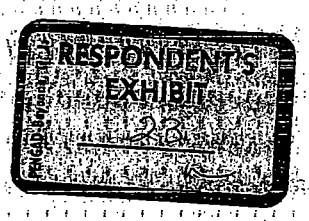
Age: 67
DL# [redacted]

DOB: [redacted]
SSN: [redacted]

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
0175	DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	7/22/2001	Guilty Bench Trial	9/27/2001

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Total:				

DATE	TIME	EVENT DESCRIPTION
09/27/2001	7:02 pm	Court event: Criminal/Traffic Court
09/27/2001	7:02 pm	Filing recorded: SEN - LETTER PRINTED
09/27/2001	7:02 pm	recorded the following Case Note: DUS 3rd/Sub Off (NOT DUI)
09/27/2001	7:02 pm	TCM recorded the following Case Note: DISP:2 09/27/2001



MHarding

Print Date: 02/02/2011
Print Time: 3:25:39PM
Requested By: MHARDING

2828

Spartanburg Magistrate

CASE HISTORY FOR CASE 67802BW

The State of South Carolina VS GEORGE JAMES GIBSON

FILED DATE: 7/23/2001 | CASE TYPE: TR | STATUS: Disposed

JUDGE: Cash, Johnny Lee

ARRESTING AGENCY: Spartanburg County Sheriff

CASE PARTIES:

Defendant Gibson, George James
[redacted] SPARTANBURG, SC 293030000

Officer Dominesey, Michael
[redacted], Spartanburg, SC 29303

CASE HISTORY FOR CASE 67802BW

Gibson, George James
[redacted] RD.
SPARTANBURG, SC 293030000

Age: 67
DL#: [redacted]

DOB: [redacted]

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
2508	Traffic / Unlawful turning, turning from wrong lane or improper signal	7/22/2001	Guilty Bench Trial	9/27/2001

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Total:				

DATE	TIME	EVENT DESCRIPTION
09/27/2001	7:02 pm	Court event: Criminal/Traffic Court
09/27/2001	7:02 pm	recorded the following Case Note: Unlawful turning
09/27/2001	7:02 pm	recorded the following Case Note: Costs were Adjusted on this Case. Original total costs were200
09/27/2001	7:02 pm	TCM recorded the following Case Note: DISP:2 09/27/2001

M Hardins

Print Date: 02/02/2011
Print Time: 3:26:13PM
Requested By: MHARDING

Spartanburg Magistrate

CASE HISTORY FOR CASE 67803BW

The State of South Carolina VS GEORGE JAMES GIBSON

FILED DATE: 7/23/2001 CASE TYPE: TR STATUS: Disposed

JUDGE: Cash, Johnny Lee

ARRESTING AGENCY: Spartanburg County Sheriff

CASE PARTIES:

Defendant Gibson, George James
[redacted] SPARTANBURG, SC 293030000

Officer Dominesey, Michael
[redacted], Spartanburg, SC 29303

CASE HISTORY FOR CASE 67803BW

Gibson, George James
[redacted]

Age: 67
DL#: [redacted]

DOB: [redacted]
SSN: [redacted]

SPARTANBURG, SC 293030000

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
2515	Traffic / Disregarding stop sign	7/22/2001	Guilty Bench Trial	9/27/2001

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Total:				

DATE	TIME	EVENT DESCRIPTION
09/27/2001	7:02 pm	Court event: Criminal/Traffic Court
09/27/2001	7:02 pm	Filing recorded: SEN - LETTER PRINTED
09/27/2001	7:02 pm	Filing recorded: SEN - LETTER PRINTED
09/27/2001	7:02 pm	recorded the following Case Note: Disregarding stop sign
09/27/2001	7:02 pm	recorded the following Case Note: Costs were Adjusted on this Case. Original total costs were200
09/27/2001	7:02 pm	TCM recorded the following Case Note: DISP:2 09/27/2001

MHarding

Print Date: 02/02/2011
Print Time: 3:26:28PM
Requested By: MHARDING

2830

LAW OFFICE
LISTER, FLYNN, & KELLY
SPARTANBURG, SOUTH CAROLINA 29306
(864) 582-8805
(864) 582-3770
FAX: (864) 542-8589 & (864) 582-3553

MAILING ADDRESS:
P. O. Box 2929
SPARTANBURG, SC 29304-2929

PHYSICAL ADDRESS:
421 MARION AVENUE
SPARTANBURG, S.C. 29306

FACSIMILE COVER SHEET

DATE: 26 NOV 01

PLEASE DELIVER TO: Donna

FROM: Keith

RE: Time Sheets

NUMBER OF PAGES: three (INCLUDING COVER SHEET)

ADDITIONAL COMMENTS: I certify that the paralegal time as listed on Timeslips time sheets is accurate & is customarily kept by our office personnel on Timeslips software. I certify that fuel & other expenses are accurate.

R. Keith Kelly

IF YOU DO NOT RECEIVE THE ENTIRE TRANSMISSION OR

HAVE ANY QUESTIONS, PLEASE CALL Terie (864) 582-8805/3770.

CONFIDENTIALITY NOTICE

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE MAY BE ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

STATE OF SOUTH CAROLINA)) COUNTY OF SPARTANBURG)	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT
THE STATE OF SOUTH CAROLINA,)) Plaintiff,)) vs.) RICHARD BERNARD MOORE,)) Defendant.)	**ORDER FOR TRAVEL EXPENSES** **CASE NO. 00-GS-42-617, 00-GS-42-619 & 00-GS-42-2460**

IT APPEARS TO THE SATISFACTION OF THE COURT that Lister, Flynn & Kelly, P.A. incurred travel expenses in the defense of the Defendant in this matter; that, the travel expenses are recorded on the billing statement from R. Keith Kelly, Esquire; and, that the travel expenses incurred are reasonable.

IT IS HEREBY ORDERED that the travel expenses incurred in this matter shall be paid in the amount of one hundred, forty-six dollars and sixteen cents($146.16) for the necessary defense of the Defendant.

IT IS SO ORDERED.

Given under my hand in the seal of this Court this 16th day of November, 2001.

GARY E. CLARY
Circuit Court Judge

Mailed
Nov. 19. 2001

FILED
2001 NOV 19 AM 11:42
CLERK OF COURT
SPARTANBURG, S.C.

STATE OF SOUTH CAROLINA)) COUNTY OF SPARTANBURG)	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT
THE STATE OF SOUTH CAROLINA,)) Plaintiff,)) vs.) RICHARD BERNARD MOORE,)) Defendant.)	**ORDER FOR PARALEGAL FEES** **CASE NO. 00-GS-42-617, 00-GS-42-619 & 00-GS-42-2460**

IT APPEARS TO THE SATISFACTION OF THE COURT that Lister, Flynn & Kelly, P.A. retained a contract paralegal to assist in the defense of the Defendant in this matter; that, the paralegal performed various duties as recorded on the billing statement from R. Keith Kelly, Esquire; and, that the services provided and the costs incurred are reasonable.

IT IS HEREBY ORDERED that the time and expenses of paralegal Teresa Vess incurred in this matter shall be paid in the amount of nine hundred, sixty dollars and fifty cents ($960.50) for the necessary defense of the Defendant.

IT IS SO ORDERED.

Given under my hand in the seal of this Court this 16th day of November, 2001.

Gary E. Clary

GARY E. CLARY
Circuit Court Judge

DEFENSE OF INDIGENTS VOUCHER

2833

NOTICE TO ASSIGNED COUNSEL OR PUBLIC DEFENDERS: Please complete voucher including FULL NAME and LAST KNOWN NONINCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT (803) 734-1343 BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL and two (2) copies along with one copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11433, 1122 Lady Street, Suite 1110, Columbia, SC 29211. Please insure that all supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed in order to be paid.

County: Spartanburg

List All Criminal Case Numbers: 2000-GS-42-0617, 2000-GS-42-0619 and 2000-GS-42-2460

Client's Full Name: Richard Bernard Moore

Last Known Address of Client (Prior to incarceration): unknown

List All Charges:

Type of Case (Most Serious Charge):
☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ PCR

Pursuant to §§ 16-3-26 and 17-3-50 of the 1976 S.C. Code of Laws, as amended, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender, for representation of the above named as set out below:

NONDEATH PENALTY CASE FEES

_____ Hours at $40.00 per hour for Out-of-Court services: $ _____

_____ Hours at $60.00 per hour for In-Court services:(Restricted to actual trial or hearing times) $ _____

DEATH PENALTY CASE FEES

181.82 Hours at $50.00 per hour for Out-of-Court services: $9,091.00

55.75 Hours at $75.00 per hour for In-Court services:(Restricted to actual trial or hearing times.) $4,181.25

MAXIMUM FEE allowed is $25,000 per attorney in Death Penalty cases, $3,500 in Felony cases, and $1,000 in Misdemeanor and PCR cases.

- EXPENSES

Long Distance Telephone Calls	$
Psychiatric Examination*	$
Expert Witness(es)*	$
Investigative Services*	$ 960.50
Extraordinary Travel Expenses*	$
Advanced Payment For Expenses*	$
Other Expenses (explain)* Travel Expenses	$ 146.16

FILED IN MY OFFICE 2001 NOV 19 AM 11:15 CLERK OF COURT SPARTANBURG COUNTY

* ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT - ORDER TO STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.) $ 1,106.66

MAXIMUM expenses allowed are $20,000 in Death Penalty cases and $500 in all other cases.

I ☒ did ☐ did not seek and obtain part payment from the Defendant in the amount shown below.

Less amount paid by Defendant $ -0-

TOTAL $14,378.91

☐ Advance payment. Date of request for funds (Approval Order attached): _____, 19__

☐ Final submission; no further requests for funds. Date case concluded: October 22, 2001

Method of Disposition: Trial: ☐ Acquittal ☒ Guilty Verdict ☐ Dismissal ☐ Plea ☐ Mistrial ☐ Other

This is a true and correct statement of my services to, and expenses for the above named Defendant.

R. Kent Kelly
Signature

Signature

Check applicable category:
☐ Public Defender ☒ Private Attorney ☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.E.I. NUMBER MUST BE INCLUDED.

NAME: Lister, Flynn, & Kelly, P.A.

ADDRESS: Post Office Box 2929
Spartanburg, S.C. 29304-2929

SS OR F.E.I. NUMBER: 57-1128969 TELEPHONE NUMBER: 864-582-3770

APPROVED BY: Gary E. Clary
(Trial Judge)
Spartanburg GS
(County or Circuit)
DATE: 11/16, 2001

CERTIFIED BY: Carole Hayward, D.C.
Mark Hammond
Clerk of Court for Spartanburg
County (County of Appointment)
DATE: Nov. 19, 2001

OID FILE NO.:

AGENCY VOUCHER NO.:

Form **W-9** (Rev. March 1994)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do NOT send to the IRS.

Please print or type

Name (If joint names, list first and circle the name of the person or entity whose number you enter in Part I below. See instructions on page 2 if your name has changed)

Business name (Sole proprietors see instructions on page 2)
LISTER, FLYNN, & KELLY, P.A.

Please check appropriate box: [ ] Individual/Sole proprietor [X] Corporation [ ] Partnership [ ] Other ▶

Address (number, street, and apt. or suite no.)
421 Marion Avenue

Requester's name and address (optional)

City, state, and ZIP code
Spartanburg, S.C. 29306

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). For sole proprietors, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Get a TIN below.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Social security number

OR

Employer identification number
57-1128969

List account number(s) here (optional)

Part II For Payees Exempt From Backup Withholding (See Part II instructions on page 2) ▶

Part III Certification

Under penalties of perjury, I certify that

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions.—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (Also see Part III instructions on page 2.)

Sign Here Signature ▶ R. Keith Kelly Date ▶ 14 Nov 2001

Section references are to the Internal Revenue Code.

Purpose of Form.—A person who is required to file an information return with the IRS must get your correct TIN to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 to give your correct TIN to the requester (the person requesting your TIN) and, when applicable, (1) to certify the TIN you are giving is correct (or you are waiting for a number to be issued), (2) to certify you are not subject to backup withholding, or (3) to claim exemption from backup withholding if you are an exempt payee. Giving your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

Note: If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

What is Backup Withholding?—Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that could be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. The IRS tells the requester that you furnished an incorrect TIN, or
3. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
4. You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only), or
5. You do not certify your TIN. See the Part III instructions for exceptions.

Certain payees and payments are exempt from backup withholding and information reporting. See the Part II instructions and the separate Instructions for the Requester of Form W-9.

How To Get a TIN.—If you do not have a TIN, apply for one immediately. To apply, get Form SS-5, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), from your local IRS office.

If you do not have a TIN, write "Applied For" in the space for the TIN in Part I, sign and date the form, and give it to the requester. Generally, you will then have 60 days to get a TIN and give it to the requester. If the requester does not receive your TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
The State,	)	
	)	ORDER APPOINTING COUNSEL
Plaintiff	)	(Death Penalty Case)
	)	
vs.	)	Case No. 00-GS-42-0617, 618, 619
	)	
Richard B. Moore,	)	
	)	
Defendant.	)	

JEAN H. COOK
SPARTANBURG COUNTY
2001 APR 5 PM 4:52
MARK FAMEUND

The State of South Carolina has served a Notice of Intent to Seek the Death Penalty in the captioned matter pursuant to S.C. Code of Laws, as amended. The Court, pursuant to 16-3-26(B) of the South Carolina Code of Laws, 1976 as amended, shall appoint two attorneys, where the Defendant is unable financially to retain adequate counsel. I find that it is necessary for counsel to be appointed in this matter and the following attorneys have agreed to serve and shall be appointed to represent Defendant, Richard B. Moore. Michael D. Morin, Esquire will be designated as lead counsel and R. Keith Kelly, Esquire as co-counsel. The Court finds that they are eminently qualified and both have substantial criminal trial experience having exceeded the requirements for statutory and felony trials prerequisite for criminal appeals.

I, therefore, find that attorney, Michael D. Morin, has demonstrated the necessary proficiency to qualify as lead counsel in this case. Further, I find that attorney, R. Keith Kelly, has demonstrated the necessary proficiency to qualify as co-counsel in this case.

I find that the appointment of these attorneys is in compliance with and in furtherance of 16-3-26(B) of the South Carolina Code of Laws for 1976, as amended, and the Constitution of the United States of America.

GCC
#1

IT IS THEREFORE ORDERED that counsel herein appointed shall continue to serve until relieved by order of this Court

AND IT IS SO ORDERED.

Gary E. Clary
Presiding Judge

April 3, 2001

Gaffney, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2001 APR -5 PM 4:22
MARK HAMMOND

A CERTIFIED COPY
Mark Hammond
M. HAMMOND
CLERK OF COURT
SPARTANBURG COUNTY
BY: Gail Moffett D.C.
DATED 10/25/01

Nickname 1 : MOORE Nickname 2: 1
Address : RICHARD B. MOORE
SPTBG. LEC
Rounding : None
Full Precision : No

Last bill :
Last charge : 10/22/01
Last payment : Amount : $0.00
Arrangement : Time Charges: From slips.
: Expenses: From slips.

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
3/14/01	R. KEITH KELLY / Conference	1.50	300.00	
#495	Conference with client, M. Morin & J. Johnson. Travel.	200.00		
4/3/01	R. KEITH KELLY / Court	1.50	300.00	
#575	Court Appearance. Waiting period. Questions to asst. Clerk of Court re. jury selection.	200.00		
5/9/01	R. KEITH KELLY / Phone client	0.25	50.00	
#674	Phone call from M. Morin re. client. Expert witness subject.	200.00		
5/9/01	R. KEITH KELLY / Phone client	0.50	100.00	
#675	Phone call to jury consultant. Refer to 2d expert; conflict in schedule. Telephone consultationw/ M. McGinley.	200.00		
5/10/01	R. KEITH KELLY / Phone client	0.25	50.00	
#676	Phone call from M. McGinley. Return call. Info to be sent via fax.	200.00		
5/10/01	R. KEITH KELLY / Correspondence	0.25	50.00	
#677	Review info sent by jury consultant.	200.00		

5/10/01 R. KEITH KELLY / Phone client 0.39 78.00
#678 Phone call to M. Morin re. 200.00
#678.. jury consultant. Fax info
to him.

5/10/01 R. KEITH KELLY / Correspondence 0.14 28.00
#679 Letter to jury consultant. 200.00

5/22/01 R. KEITH KELLY / Correspondence 0.50 100.00
#682 Letter from jury 200.00
consultant. Review motion
from co-counsel.
Instructions to Toria re.
copies.

5/23/01 R. KEITH KELLY / Phone client 0.25 50.00
#694 Phone call co-counsel re. 200.00
client.

6/1/01 R. KEITH KELLY / Conference 0.50 100.00
#744 Conference with co-counsel. 200.00

6/5/01 R. KEITH KELLY / Phone client 0.25 50.00
#753 Phone call co-counsel. 200.00

6/6/01 R. KEITH KELLY / Phone client 0.14 28.00
#754 Phone call w/ co-counsel. 200.00
Materials ready for pick
up.

6/21/01 R. KEITH KELLY / Conference 1.00 200.00
#800 Conference with M. Morin, 200.00
Esq.

6/22/01 R. KEITH KELLY / Phone client 0.25 50.00
#801 Phone call from M. Morin. 200.00
Not meet today. Doctor
still w/ client, etc.

6/25/01 R. KEITH KELLY / Conference 3.50 700.00
#811 Conference with client. 200.00
Meeting w/ M. Morin, Esq.

6/25/01 R. KEITH KELLY / Phone client 0.25 50.00
#812 Phone call M. Morin @ 200.00

home. Meet Monday.

7/5/01 R. KEITH KELLY / Phone client 0.25 50.00
#880 Phone call from M. Morin 200.00
re. client.

7/6/01 R. KEITH KELLY / Phone client 0.14 28.00
#881 Phone call from M. Morin 200.00
re. client. Meet at jail.

7/6/01 R. KEITH KELLY / Conference 2.50 500.00
#882 Conference with client, 200.00
Michael & Jennifer.

7/11/01 R. KEITH KELLY / Phone client 0.39 78.00
#894 Phone call re. client to 200.00
jury consultant.

7/11/01 R. KEITH KELLY / Correspondence 0.14 28.00
#895 Letter to M. McGinty w/ 200.00
copy of Court order.

7/27/01 R. KEITH KELLY / Conference 3.00 600.00
#951 Conference with client. 200.00

8/3/01 R. KEITH KELLY / Conference 2.50 500.00
#952 Conference with client's 200.00
wife.

8/29/01 R. KEITH KELLY / Phone client 2.50 500.00
#1033 Phone call from M. Morin 200.00
re. client. Judge wants
jury questionaire sent
out. Telephone call to
Judge. See clerk's ofc.
personnel re. QS-1 system
non-compliance.

8/29/01 R. KEITH KELLY / Phone client 0.25 50.00
#1061 Phone call with M. Morin. 200.00

8/30/01 R. KEITH KELLY / Phone client 0.25 50.00
#1034 Phone call to jury trial 200.00
consultant.

8/31/01 R. KEITH KELLY / Correspondence 0.14 28.00
#1035 Notes from jury trial 200.00
consultant re. questions.

8/31/01 R. KEITH KELLY / Legal Research 3.50 700.00
#1121 Legal Research. 200.00

9/4/01 R. KEITH KELLY / Phone client 0.39 78.00
#1056 Phone call w/ D. Glass. 200.00

9/13/01 R. KEITH KELLY / Legal Research 8.00 1,600.00
#1122 Legal Research on computer 200.00
& law library. Met w.
Clerk of Court. Prepared
motion draft copy.

9/14/01 R. KEITH KELLY / Preparation 3.50 700.00
#1123 Preparation. Study. File 200.00
motion.

9/15/01 R. KEITH KELLY / File Review 4.00 800.00
#1124 File Review. 200.00

9/17/01 R. KEITH KELLY / Legal Research 0.39 78.00
#1201 Juror lists available. 200.00
Quick review.

9/17/01 R. KEITH KELLY / Phone client 0.25 50.00
#1202 Phone call w/ M. Morin. 200.00

9/17/01 R. KEITH KELLY / Phone client 0.25 50.00
#1203 Phone call Judge Hall re. 200.00
continue Magistrate case;
too close to this trial.

9/17/01 R. KEITH KELLY / Phone client 0.25 50.00
#1204 Phone call to M. Morin. 200.00

9/18/01 R. KEITH KELLY / Conference 5.50 1,100.00
#1128 Conference with D. Glass, 200.00
et. al. in Columbia.
Travel.

9/18/01 R. KEITH KELLY / Legal Research 0.39 78.00
#1205 Review names on jury list 200.00

w/ T. Lister.

9/20/01 R. KEITH KELLY / Phone client 0.25 50.00
#1206 Phone call to M. Morin 200.00

9/20/01 R. KEITH KELLY / Phone client 0.25 50.00
#1207 Phone call from M. Morin. 200.00

9/20/01 R. KEITH KELLY / Phone client 0.14 28.00
#1208 Phone call to D. Glass. 200.00

9/21/01 R. KEITH KELLY / Phone client 0.14 28.00
#1209 Phone call to D. Glass. 200.00

9/21/01 R. KEITH KELLY / Phone client 0.25 50.00
#1210 Phone call from D. Glass. 200.00

9/21/01 R. KEITH KELLY / Phone client 0.25 50.00
#1211 Phone call to James Aiken. 200.00

9/26/01 R. KEITH KELLY / Legal Research 1.00 200.00
#1212 Review juror questionaires. 200.00

9/27/01 R. KEITH KELLY / Legal Research 3.50 700.00
#1213 Review juror questionaires 200.00
at home after West case.

9/28/01 R. KEITH KELLY / Legal Research 3.00 600.00
#1214 Review juror questionaires 200.00
before motion hearing set
for today.

9/28/01 R. KEITH KELLY / Court 1.75 350.00
#1215 Court Appearance. Motion 200.00
hearing.

9/28/01 R. KEITH KELLY / Phone client 0.25 50.00
#1216 Phone call from D. Glass. 200.00
Materials being sent via
fedex to me & Jim Aiken.

10/1/01 R. KEITH KELLY / Phone client 0.39 78.00
#1336 Phone call w/ jury 200.00
consultant. Arrange Friday
travel.

10/1/01 R. KEITH KELLY / Conference 1.00 200.00
#1337 Conference with paralegal 200.00
re. jury list.
Instructions.

10/1/01 R. KEITH KELLY / Correspondence 0.25 50.00
#1338 Fax materials from D. 200.00
Glass. Review.

10/1/01 R. KEITH KELLY / Phone client 0.25 50.00
#1339 Phone call w/ D. Glass. 200.00

10/3/01 R. KEITH KELLY / Conference 2.00 400.00
#1346 Conference with D. Glass. 200.00

10/4/01 R. KEITH KELLY / Conference 2.00 400.00
#1347 Conference with paralegal. 200.00

10/4/01 R. KEITH KELLY / Conference 1.50 300.00
#1348 Conference with M. Morin. 200.00
Review evidence at
evidence room.

10/5/01 R. KEITH KELLY / Conference 12.50 2,500.00
#1258 Conference with M. Morin, 200.00
J. Johnson, jury trial
consultant. Legal research
& preparation.

10/8/01 R. KEITH KELLY / Preparation 12.00 2,400.00
#1267 Meet w/ M. Morin. Legal 200.00
research on west law, etc.

10/9/01 R. KEITH KELLY / Preparation 9.00 1,800.00
#1268 Preparation. Law library, 200.00
etc.

10/10/01 R. KEITH KELLY / Preparation 9.50 1,900.00
#1269 Preparation. Law library. 200.00
No lunch break. Talk w/ D.
Glass. Received new info
from Sol. Ofc.

10/11/01 R. KEITH KELLY / Preparation 11.50 2,300.00
#1272 Preparation for trial. 200.00

10/12/01 R. KEITH KELLY / Preparation 11.00 2,200.00
#1273 Preparation for trial. 200.00

10/14/01 R. KEITH KELLY / Preparation 9.50 1,900.00
#1274 Preparation for trial. 200.00
Lunch in the ofc.

10/15/01 R. KEITH KELLY / Client Dvlp 5.50 1,100.00
#1276 Out of Court. 200.00

10/15/01 R. KEITH KELLY / Court 8.00 1,600.00
#1277 Court Appearance. 200.00

10/16/01 R. KEITH KELLY / Court 10.00 2,000.00
#1278 Court Appearance. 200.00

10/16/01 R. KEITH KELLY / Client Dvlp 3.00 600.00
#1279 Out of Court. 200.00

10/17/01 R. KEITH KELLY / Court 8.00 1,600.00
#1280 Court Appearance. 200.00

10/17/01 R. KEITH KELLY / Client Dvlp 4.00 800.00
#1281 Out of Court. 200.00

10/18/01 R. KEITH KELLY / Court 5.50 1,100.00
#1282 Court Appearance. 200.00

10/18/01 R. KEITH KELLY / Client Dvlp 4.50 900.00
#1283 Out of Court. 200.00

10/19/01 R. KEITH KELLY / Court 7.50 1,500.00
#1284 Court Appearance. 200.00

10/19/01 R. KEITH KELLY / Client Dvlp 3.00 600.00
#1285 Out of Court. 200.00

10/20/01 R. KEITH KELLY / Court 7.00 1,400.00
#1286 Court Appearance. 200.00

10/20/01 R. KEITH KELLY / Client Dvlp 7.00 1,400.00
#1287 Out of Court. 200.00

10/21/01 R. KEITH KELLY / Preparation 8.00 1,600.00
#1288 Talk w/ J. Aiken. 200.00

Research, etc.

10/22/01 R. KEITH KELLY / Court 6.50 1,300.00
#1289 Court Appearance. 200.00

10/22/01 R. KEITH KELLY / Client Dvlp 7.00 1,400.00
#1290 Out of Court. 200.00

TOTAL BILLABLE TIME CHARGES 237.57 $47,514.00

Date/Slip# Description QTY/PRICE

9/18/01 R. KEITH KELLY / $Delivery 1 49.25
#1129 Fuel to Columbia. 49.25

9/26/01 R. KEITH KELLY / $Invest. Srvc 1 37.50
#1312 Paralegal Services: gather 37.50
jury list from clerk's
ofc. Organize.

9/27/01 R. KEITH KELLY / $Invest. Srvc 1 25.00
#1313 Paralegal work on jury 25.00
list.

10/2/01 R. KEITH KELLY / $Invest. Srvc 1 62.50
#1314 Paralegal research jury 62.50
list.

10/3/01 R. KEITH KELLY / $Invest. Srvc 1 137.50
#1315 Paralegal jury research. 137.50

10/4/01 R. KEITH KELLY / $Invest. Srvc 1 100.00
#1316 Paralegal jury research. 100.00

10/5/01 R. KEITH KELLY / $Invest. Srvc 1 23.00
#1255 Lunch for lawyers & trial 23.00
consultant.

10/5/01 R. KEITH KELLY / $Delivery 1 96.91
#1259 Fuel. 41.3gls. 96.91

10/5/01 R. KEITH KELLY / $Invest. Srvc 1 125.00
#1317 Paralegal jury research. 125.00

10/10/01 R. KEITH KELLY / $Invest. Srvc		1	50.00
#1325 Paralegal Services. jury research.	50.00		
10/11/01 R. KEITH KELLY / $Invest. Srvc		1	75.00
#1326 Paralegal Services. jury research.	75.00		
10/12/01 R. KEITH KELLY / $Invest. Srvc		1	75.00
#1327 Paralegal Services. jury research.	75.00		
10/13/01 R. KEITH KELLY / $Invest. Srvc		1	75.00
#1328 Paralegal Services: Review materials, update jury notes.	75.00		
10/14/01 R. KEITH KELLY / $Invest. Srvc		1	75.00
#1329 Paralegal Services.	75.00		
10/15/01 R. KEITH KELLY / $Invest. Srvc		1	100.00
#1330 Paralegal Services: after counsel fired, to courthouse to make copies of file for defendant. Wait in courtroom w/ atty. during afternoon for further instructions.	100.00		

TOTAL BILLABLE COSTS		$1,106.66
TOTAL NEW CHARGES		$48,620.66
NEW BALANCE		
New Current period	48,620.66	
TOTAL NEW BALANCE		$48,620.66

2846

SPARTANBURG DOWNTOWN AIRPORT
500 AMMONS RD
SPARTANBURG SC 29306

INVOICE/SALES RECEIPT

KEITH KELLY
P.O. BOX 2804

SPARTANBURG SC 29304

AIRCRAFT NO: 146SC

NUMBER: 65845
DATE: 09/19/2001
CUST#: 179

ITEM	DESCRIPTION	QUANTITY	PRICE	AMOUNT	TAX
AVGAS	FUEL, AVIATION GASOLINE 100LL	18.30	2.1900	40.08	T

2.49

SERVICE ORDER

N 146SC

Kelly

- FUEL - RECOMMEND X/C OIL - OIL -

18.3 GALLONS

TANKS: MAIN AUX

TYPE GRADE FILL TO

DELIVERED OIL: LE QT RE QT TOTAL QT

FUEL METER READING: FINISH 18.3 START 1313 TOTAL GALLONS

SIGNED 9-18-01 DATE

OTHER:

THINK PHILLIPS X/C OIL

FORM 3566-S 2-81

BTOTAL:	40.08
T:	3.55
LES TAX:	2.00
TAL:	45.63

Paid 10/8/01

3.62
49.25

SPARTANBURG DOWNTOWN AIRPORT
500 AMMONS RD
SPARTANBURG SC 29306

INVOICE/SALES RECEIPT

H KELLY
BOX 2804

TANBURG SC 29304

RAFT NO: N/A

NUMBER: 66139
DATE: 09/30/2001
CUST#: 179

DESCRIPTION		QUANTITY	PRICE	AMOUNT	TAX
CE CHARGE	SERVICE CHARGE	1.00	3.6200	3.62	

PAYMENT	METHOD	REF NO
3.62	CHG	

SUBTOTAL:	3.62
FET:	
SALES TAX:	
TOTAL:	3.62

CONFIDENTIAL — ATTORNEY WORK PRODUCT
RICHARD BERNARD MOORE
DOB: [redacted]
SS# 3 [redacted] **(in Michigan records) SS#** [redacted] **(in SC records)**
FBI# 78278FA2
SCDC #243214 (from prior incarceration)
****

FAMILY MEMBERS

PARENTS:

FATHER: James Maurice Moore
DOB:
[redacted]
#[redacted]

****as of 9/12/01, I have left numerous messages for Mr. Moore at the above number - he has not returned my calls.**
****sent certified letter on 9/17/01**

MOTHER: Anna Lue Harrington Moore
DOB:
DOD: [redacted]

****Richard was in Spartanburg County Jail at the time of his mother's death so he was not able to attend her funeral. Richard states that if his mother were alive today, he would not be cut off from his family - she would have provided the financial help needed for a private attorney.**

COMMON LAW WIFE: Lynda Byrd
DOB:
[redacted]
Spartanburg, SC
#[redacted]
Cell#[redacted]

CHILDREN:

DAUGHTER: Alexandria Richlyn Moore
DOB: [redacted]
[redacted]
Spartanburg, SC

LISTER FLYNN & KELLY Fax:864-542-8589 Jan 26 2011 04:16pm P005/017

SON: Lyndall Bernard Moore
DOB: [redacted]
[redacted]SC

STEP-SON: James Randall Byrd
DOB:
[redacted]
Spartanburg, SC

SIBLINGS:

1) Maurice Moore
DOB:
[redacted]et
Mt. Clemens, MI
#[redacted]

****phone has a "privacy line" - not set up to take phone calls unless caller has been approved**
****sent a certified letter on 9/17/01**

2) Gary Lee Moore
DOB:
Mt. Clem[redacted]

****No listing in phon**

3)

****Richard heard that**

4)

****She told Richard's c[redacted]s"**

5)

6)

LISTER FLYNN & KELLY Fax:864-542-8589 Jan 26 2011 04:18pm P006/017

7) Phillip Duran Moore
DOB:
Michigan State Prison
8) James Allen Moore
DOB:
Michigan State Prison

****According to Richard, both of his younger brothers are in prison for drugs**

1982

[redacted] **17th birthday**

8-28-82 12:30 am Richard was arrested and charged with Larceny from a Motor Vehicle. **[Macomb County Sheriff Dept. records]**

8-30-82 The records are unclear what the disposition was for the above offense - but it appears it was turned over to the Mt. Clemens Public Defender's office. **[Macomb County Sheriff Dept. records]**

1983

[redacted] **18th birthday**

6-9-83 Richard graduated from Mount Clemens High School. His class rank was 278 out of a class of 295. He did not fail any grades. **[School records]**

12-2-83 Richard was arrested and charged with Possession of Stolen Property over $100.00. He was placed in Macomb County Jail. His co-defendant was Maurice Moore. (The amount of money stolen was $206.21). **[Macomb County Sheriff Dept. records]**

12-5-83 Richard was released from jail after bond was set at $2,500; personal bond.

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1984

[redacted] **19th birthday**

3-3-84 Date of incident which resulted in charges of Receiving and Concealing Stolen Goods over $100. An apartment belonging to Anglea Mayes was broken into and several items were removed including a television, a stereo and some gold chains. The B&E was reported to the local police. At a later date, the victim met with Richard Moore when he confessed to breaking into the apartment with another fellow. He was able to retrieve Ms. Mayes stereo but nothing else. As a result, he was charged with R&C over $100. **[Clinton Township Police records]**

3-29-84 Warrant issued for Richard's arrest. **[Clinton Township Police records]**

4-3-84 Richard was arrested at his home and charged with Receiving and Concealing Stolen Property over a $100. Bond was set at $20,000 cash or surety. He was booked into the Macomb County Jail. **[Clinton Township/Macomb County Sheriff Dept. records]**

4-16-84 Richard was released from the Macomb County Jail after bond was reduced and then posted. **[Clinton Township/Macomb County Sheriff Dept. records]**

1985

2-2-85 2:30am

Richard was arrested by and charged with carrying a concealed weapon in his automobile. The car was searched after traffic stop; gun was seen lying on floor near back seat. Marijuana could be smelled on defendant. Richard was arrested with a friend named Chadsey Nash. Richard made a statement explaining how and where he got the gun.

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The jail records note that he was under the influence of alcohol or drugs at the time of his arrest. **[Grosse Pointe Shores Dept. of Public Safety records]**

2-3-85 **4:12pm**
Richard was arraigned and bond was set at $1,000 or 10%. He was released later this same date. **[Grosse Pointe Shores Dept. of Public Safety records]**

[redacted] **20th birthday**

4-23-85 Richard was stopped in his car and it was discovered that there was an outstanding Bench Warrant on him; he was taken into custody; the officer searched his car and discovered a "bone handle knife with a 6 to 8 inch blade". At the time of his arrest, Richard was employed as a machine operator at Clover Tool. **[Clinton Township Police records]**

7-10-85 Disposition on Carrying Concealed Weapons Charge; Richard received two years probation.

11-6-85 5:30 pm Richard was arrested and charged with Improper Registration Plate. He was booked into the Macomb County Jail. He listed his occupation as Dock Handler. **[Macomb County Sheriff Dept. records]**

11-7-85 9:30am Richard was released from the Macomb County Jail pending "court order". **[Macomb County Sheriff Dept. records]**

1986

[redacted] **21st birthday**

9-30-86 3:25am Richard was arrested by the Mt. Clemens Police Dept. and charged with Armed Robbery; the victim was Dennis Current - wallet and credit cards were taken. **(Cannot read details in incident report provided by Solicitors Office)** **[Mt.**

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Clemens, MI police records]

10-3-86 Richard was "in a suspicious vehicle and later arrested after it was determined that he had outstanding warrants". He could not post his $65 bond and was then booked at the jail. **[Mt. Clemens, MI police records]**

10-22-86 Date of incident; B&E of Business/Stolen Handguns/Resisting & Fleeing Arrest.
(Incident report is difficult to read; a business called Broadway Market was broken into; several guns were taken; the victim, Mary Wroblewski, apparently knew Richard and he was identified by several police officers as being at the scene) [Mt. Clemens, MI police records]

11-25-86 Arrest Warrant issued - charging Richard with Armed Robbery.
[Michigan records - Criminal File # 24861]

12-21-86 12:54am - Richard arrived at the Mt. Clemens Police Sation and turned himself in; he was arrested and charged with B&E and placed in jail. The booking sheet noted that he was very cooperative. **[Mt. Clemens, MI Police records]**

Charge 1	#86-2885-MC	Armed Robbery - Date of Offense- 9/30/86
Charge 2	#86-2581-MC	B&E - Date of Offense - 10/22/86

Emergency Contact on the booking sheet was Lucille Harrington (grandmother). Her address is [redacted]. Clemens, MI. **[Mt. Clemens, MI Police records]**

12-23-86 Bond hearing held; bond was set at $15,000 for the B&E charge and $25,000 for the Armed Robbery Charge. **[Mt. Clemens, MI Police records]**

1987

1-2-87 Richard was sentenced to 1 yr. probation and to serve 3 months in the

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County Jail. **[Mt. Clemens, MI Police records]**

[redacted] **22nd birthday**

3-3-87 Richard was released from Macomb County Jail this date after serving a 90 day sentence and receiving a credit for 14 days. **[Macomb County Jail records]**

4-13-87 A Motion for Dismissal was filed this date (B&E Charge). The judge ordered that it was be dismissed at Sentencing. **[Macomb County Sheriff Dept. records]**

4-15-87 Richard pled guilty to Armed Robbery and B&E; the B&E was dismissed; he was sentenced to 18 months minimum to 60 months maximum with credit for 146 days served in county jail.

4-27-87 A memo from the 41st District Court in Mt. Clemens, MI indicates the Sheriff filed a complaint this date charging Richard with Improper Reg. Plate#19244 (in violation of a city a ordinance). The defendant failed to appear in court this date; forfeiting his bond; Motion to Dismiss was granted and the fine was court costs of $65.00. **[Macomb County Sheriff Dept. records]**

5-15-87 Richard was sentenced to 1 yr. 6 months to 5 years for Attempted Breaking and Entering. **[Michigan Dept. of Corrections records]**

5-27-87 Richard arrived at the Michigan Dept. of Corrections Reception Center at Jackson State Prison this date — from the Macomb County. **[Macomb County Sheriff Dept. records]**

1988

1-6-88 Richard was booked into the Macomb County Jail on charge of Probation Violation. An inmate detainer was issued this date. **[Macomb County Sheriff Dept. records]**

1-8-88 [illegible] released from the Macomb County Jail for the reason of

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"Other Jurisdiction" - and transferred to Jackson State Prison. **[Macomb County Sheriff Dept. records]**

[redacted] **23rd birthday**

9-7-88 Richard was transferred from Jackson State Prison to the Corrections Center this date. **[Michigan Dept. of Corrections records]**

9-26-88 Richard was paroled this date - to remain on parole for two years. The terms of his parole were: 1) that he not possess any controlled substance or narcotic or be in the company of any person who does. 2) to voluntarily seek and participate in a treatment program and recommended by the parole board. 3) To submit to urine specimens on a regular basis as determined by the parole agent. **[Michigan Dept. of Corrections Parole Board records]**

10-16-88 12:20am Richard was arrested and charged with DWLS . He was released later this same date after posting a $100 bond. He listed his occupation as Factory Worker. Emergency Contacts were his parents. **[Macomb County Sheriff Dept. records]**

1989

[redacted]

7-20-89 Richard was committed to Michigan Dept. of Corrections -he returned as a "parole violator"; he was sent to Dunes Correctional Facility. **[Michigan Dept. of Corrections records]**

12-7-89 Richard was paroled this date from the Michigan Dept. of Corrections. **[Michigan Dept. of Corrections records]**

1990

1-10-90 Richard "absconded from Parole" this date. **[Michigan Dept. of Corrections records]**

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2-20-90 Richard was returned to Michigan Dept. of Corrections - Dunes Correctional Facility - as a parole violator. **[Michigan Dept. of Corrections records]**

1991

[redacted] **26th birthday**

8-3-91 Richard maxed out his sentence at Michigan Dept. of Corrections - he was released this date with no parole. **[SCDC records]**

****WHILE INCARCERATED IN MICHIGAN, RICHARD MET LYNDA BYRD WHO VISITING ANOTHER PRISONER. THEY BEGAN A FRIENDSHIP WHICH PROGRESSED AFTER RICHARD'S RELEASE FROM PRISON. LYNDA HAD BEEN OFFERED A JOB IN SOUTH CAROLINA - SHE ASKED RICHARD TO ACCOMPANY HER "TO GET A FRESH START". THE TWO MOVED TO SPARTANBURG ONE WEEK AFTER RICHARD'S RELEASE FROM PRISON.**

9-13-91 Richard was arrested by the SC Highway Patrol and charged with Driving Under Suspension 5th and Habitual Traffic Offender. **[SLED Rap Sheet]**
this arrest is out of order on the rap sheet - it first shows up under the court date of 7/1/94; need arrest records, court records and jail records.

10-10-91 Richard was arrested by the Spartanburg Police Dept. and charged with two counts of Assault and Battery and two counts of Attempted Purse Snatching.
[SLED Rap Sheet]
These charges were dismissed on 8/12/93; need arrest records, court records and jail records to determine if he served jail time prior to the charges being dismissed - and if they were dismissed as part of a negotiated plea.

11-22-91 Richard was arrested by the Spartanburg Police Dept. and charged

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with Common Law Robbery and Strong Arm Robbery. **[SLED Rap Sheet]**
need arrest records and jail records; he was eventually convicted of these charges on 8/23/94 and received suspended sentence and probation.

1992

[redacted] **27th birthday**

9-29-92 Richard was arrested by the Spartanburg Police Dept. and charged with Driving Under Suspension More than 1st; Possession of Marijuana; Driving Under Suspension 2nd.
need arrest records and jail records; he was eventually convicted on 9/15/93 and received 60 days in jail

1993

2-6-93 Richard was arrested by the Spartanburg Police Dept. and charged with Speeding; Driving Under Suspension 3rd; Habitual Offender. **[SLED Rap Sheet]**
need arrest records and jail records; he was eventually convicted on 9/15/93

2-20-93 **28th birthday**

9-15-93 Richard was convicted of the Habitual Offender Charge and Driving Under Suspension 3rd; he received 1 year suspended on 90 days to be served on weekends with credit for time served. **[SLED Rap Sheet]**
need arrest records, court records, and jail records

1994

[redacted] **29th birthday**

7-1-94 Richard was arrested by the Spartanburg Sheriff Dept. and charged with 4 counts of Fraudulent Check. **[SLED Rap Sheet]**

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need arrest records and court records; he was eventually convicted of all four counts; no disposition is listed on the Rap Sheet

7-1-94 Richard went to Court for Driving Under Suspension 5th and Habitual Traffic Offender (arrest date of 9/13/93). He was convicted of Driving Under Suspension and received 6 months suspended, 90day balance suspended. He was also convicted of Habitual Traffic Offender and received 5 yrs. suspended, 90 days suspended. **[SLED Rap Sheet]**
The Rap Sheet is confusing - it appears that this date was also a court date for some prior arrests which occurred in 1993.

11-5-94 Richard was arrested by the Spartanburg Sheriff Dept. and charged with Driving Under Suspension 3rd offense. **[SLED Rap Sheet]**
need arrest records and jail records

1995

[redacted] **30th birthday**

5-28-95 Richard was arrested by the Spartanburg Sheriff Dept. and charged with Assault and Battery Aggravated. **[SLED Rap Sheet]**
need arrest records, court records and jail records; this charge was eventually Nolle Prossed on 11/1/95

7-13-95 Richard was convicted of Driving Under Suspension 3rd (arrest date 11/5/94) and was sentenced to 6 months suspended; 90 day House Arrest with Probation.
[SLED Rap Sheet]
need court records

10-30-95 Richard was arrested by the Spartanburg Sheriff Dept. and charged with Driving Under a Suspension3rd. His Rap Sheet indicates he was also charged with DUI 3rd. **[Spartanburg County Court records/SLED RAP SHEET]**
need arrest records, court and jail records; he was convicted on 1/18/86

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11-1-95 Assault and Battery charge (arrest date 5/28/95) was Nolle Prossed. **[Spartanburg County Court records]**
need arrest records and court records

1996

[redacted] **31st birthday**

3-7-96 Richard was arrested by the Spartanburg Sheriff Dept. and charged with Burglary 1st, CSC and A&B for an incident that occurred on the previous day. The victim in the case was Sonya Harrison and the incident occurred in her home at 1130 Knob Hill Rd, Spartanburg. **[Spartanburg County Court records/SLED Rap Sheet]**
SCDC file contains a statement indicating he met the victim at a bar where she was soliciting sex in exchange for drugs. He followed her to her house - where the incident took place. **[SCDC records]**

9-12-96 The Assault and Battery charge (arrest date 3/7/96) was Nolle Prossed. **[SLED Rap Sheet]**

1997

[redacted] **32nd birthday**

8-7-97 A Parole Revocation hearing was held in General Sessions Court in Spartanburg County on the original charge of Common Law Robbery. In a negotiated plea, Parole was revoked and Richard was ordered to serve six years of his original ten year sentence.
At the same time, Parole was revoked on the original charge of Habitual Traffic Offender. Richard was ordered to serve five years of the original five year sentence to run concurrently with the above charge. Judge Clary was the sentencing Judge. It was also ordered that Richard would be released directly to the Restitution Center in order for him to pay off all the monies owed. At the same hearing, Richard pled guilty to ABHAN (originally a CSC charge on 3/7/96). On this date the Burglary charge from 3/7/96 was Nolle Prossed after

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Richard pled to the above charges. [Spartanburg County Court records/SLED Rap Sheet]

8-11-97 Richard entered SCDC - R&E Center at Perry Correctional Institute. [SCDC records]
Family Information collected indicated that two of Richard's brothers, James Allen Moore and Phillip Moore, were also incarcerated. His former employer was listed as Precision Convert.

9-5-97 Richard was sent to Tyger River Correctional Facility. [SCDC records]

1998

[redacted] 33rd birthday

12-9-98 Richard was released from the SC Dept of Corrections on "Supervised Furlough".
[SCDC records]

1999

[redacted] 34th birthday

9-16-99 Richard was arrested by the Spartanburg Sheriff Dept. and charged with Murder, Armed Robbery, and ABWIK. [SLED Rap Sheet]
Richard was treated at the Spartanburg Hospital and released this same date and taken to the detention center.

2000

[redacted] 35th birthday

2001

[redacted] 36th birthday

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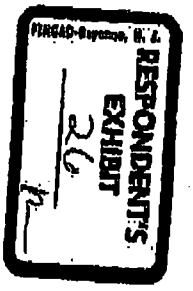
191



JUROR INFORMATION CARD

PLEASE TYPE OR PRINT CLEARLY)

FOR TERM BEGINNING: 10/15/01 JUROR NUMBER: 0191

Y, COUNTY, STATE OF BIRTH	AGE	MARRIED	SINGLE	WIDOWED	DIVORCED	NO. OF CHILDREN
Bartanburg	50	☒	☐	☐	☐	5

JR OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	NAME OF SPOUSE
Teacher	School Dist. #7	13	James E. Morrow
OUR OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	IF THE ADDRESS BELOW IS INCORRECT PLEASE "X" THE BOX AND CORRECT THE ADDRESS ON THE BACK OF THIS CARD
Dr Builder	Union Camp	27	☐

AVE PREVIOUSLY SERVED ON A
IL ☐ CRIMINAL ☐ JURY — IF SO, WHEN?

VE YOU EVER BEEN A PARTY TO A CIVIL SUIT? YES ☐ NO ☒

HAVE YOU EVER BEEN CONVICTED OF A CRIME (OTHER THAN A MINOR TRAFFIC OFFENSE)? YES ☒ NO ☐

RMAL EDUCATION COMPLETED?

JOYCE E MORROW
331 VINYARD RD
[redacted]

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

[redacted]	[redacted]	[redacted]	EPHONE NO	EMERGENCY TELEPHONE NO
	801 277 1194	803 [redacted]		[redacted]

COMPLETE THIS FORM AND RETURN IT WITHIN TWO DAYS.
FAILURE TO RETURN IS PUNISHABLE BY CONTEMPT.

Joyce Morrow
SIGNATURE

JUROR RESPONSE FORM

FOR TERM BEGINNING: 10/15/01 JUROR NUMBER: 0191

Please read both sides of this form carefully. If any of the following statements apply to you, complete the form and return it to the address on the envelope within two days. YOUR MUST STILL APPEAR AT THE COUNTY COURTHOUSE AT THE DATE AND TIME INDICATED ON THE JUROR SUMMONS, EVEN IF YOU ARE DISQUALIFIED, OR IF YOU DESIRE TO BE EXEMPTED OR EXCUSED OR HAVE YOUR SERVICE POSTPONED BECAUSE YOU ARE A STUDENT, UNLESS THE COURT ADVISES YOU OTHERWISE.

If you are disqualified, or desire to be exempted or excused from jury service, or have r service postponed because you are a student, check the appropriate box and nplete the statement below. (See disqualifications, exemptions, excuses and student postponements on reverse side of this form).

JOYCE E MORROW
331 VINYARD RD
BOILING SPRINGS SC 29316

(check one only if applicable and state reasons below)

☐ I am disqualified from jury service because:

☐ I desire exemption from jury service because:

☐ I desire to be excused from jury service because:

☒ I desire that my service as a juror be postponed to a date which does not conflict with my school term (provide name of school where you are enrolle and date you will be available for service) because:

Explanation I am a teacher / School Dist. # 7 until May 31, 2002

Joyce Morrow
SIGNATURE

THE FURNISHING OF FALSE OR MISLEADING INFORMATION TO THE COURT MAY SUBJECT YOU TO PENALTIES AS FOR CONTEMPT OF COURT

FAXED Time 12:33 Dated 9/24/01

Cleveland Elementary School
151 Franklin Street
Spartanburg, South Carolina 29303
Phone (864) 594-4444 Fax (864) 594-6146

FAX COVER SHEET

THIS TRANSMITTAL SHOULD INCLUDE 1 PAGES INCLUDING COVER SHEET.

DATE: 9/24/01

PLEASE DELIVER TO: Kay

FIRM:

FAX NUMBER: 596-2239

FROM: Amelia Senn

COMMENTS: Please note that Joyce Morrow, a teacher at Cleveland Elementary, is scheduled for jury duty beginning Oct. 15. If possible, please release her from service during the school year.

Thanks.

2864

JUROR INFORMATION CARD

(PLEASE TYPE OR PRINT CLEARLY)

FOR TERM BEGINNING: 10/15/01 JUROR NUMBER: 0191

CITY, COUNTY, STATE OF BIRTH	AGE	MARRIED	SINGLE	WIDOWED	DIVORCED	NO. OF CHILDR
S Partaburg	50	☒	☐	☐	☐	5

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	NAME OF SPOUSE
Teacher	School Dist. #7	13	James E. Morrow
SPOUSE'S OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	IF THIS ADDRESS BELOW IS INCORRECT PLEASE "X" THE BC AND CORRECT THE ADDRESS ON THE BACK OF THIS CARC
Box Builder	Union Camp	27	JOYCE E MORROW [redacted]

HAVE PREVIOUSLY SERVED ON A	IF SO, WHEN?
VIL ☐ CRIMINAL ☐ JURY	
HAVE YOU EVER BEEN A PARTY TO A CIVIL SUIT? YES ☐ NO ☒	HAVE YOU EVER BEEN CONVICTED OF A CRIME (OTHER THAN A MINOR TRAFFIC OFFENSE)? YES ☒ NO ☐
FORMAL EDUCATION COMPLETED?	

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

HOME TELEPHONE NO	BUSINESS TELEPHONE NO.	SPOUSE'S BUSINESS TELEPHONE NO	EMERGENCY TELEPHONE NO.
[redacted]	[redacted]	[redacted]	[redacted]

COMPLETE THIS FORM AND RETURN IT WITHIN TWO DAYS.
FAILURE TO RETURN IS PUNISHABLE BY CONTEMPT.

Joyce Morrow
SIGNATURE

JUROR RESPONSE FORM

FOR TERM BEGINNING: 10/15/01 JUROR NUMBER: 0191

Please read both sides of this form carefully. If any of the following statements apply to you, complete the form and return it to the address on the envelope within two days. YOUR MUST STILL APPEAR AT THE COUNTY COURTHOUSE AT THE DATE AND TIME INDICATED ON THE JUROR SUMMONS, EVEN IF YOU ARE DISQUALIFIED, OR IF YOU DESIRE TO BE EXEMPTED OR EXCUSED OR HAVE YOUR SERVICE POSTPONED BECAUSE YOU ARE A STUDENT, UNLESS THE COURT ADVISES YOU OTHERWISE.

If you are disqualified, or desire to be exempted or excused from jury service, or have your service postponed because you are a student, check the appropriate box and complete the statement below. (See disqualifications, exemptions, excuses and student postponements on reverse side of this form).

JOYCE E MORROW
331 VINYARD RD
BOILING SPRINGS SC 29316

(check one only if applicable and state reasons below)

☐ I am disqualified from jury service because:

☐ I desire exemption from jury service because:

☐ I desire to be excused from jury service because:

☒ I desire that my service as a juror be postponed to a date which does not conflict with my school term (provide name of school where you are enrolle and date you will be available for service) because:

Explanation I am a teacher / School Dist. #7 until May 31, 2002

Joyce Morrow
SIGNATURE

THE FURNISHING OF FALSE OR MISLEADING INFORMATION TO THE COURT MAY SUBJECT YOU TO PENALTIES AS FOR CONTEMPT OF COURT

12865

TO THE BEST OF YOUR KNOWLEDGE THE FOLLOWING QUESTIONS AND RETURN ALONG WITH THE JUROR QUESTIONNAIRE CARD (FORM)

(NOTE. IF AT ANY TIME, YOU NEED ADDITIONAL SPACE IN ORDER TO PROPERLY ANSWER ANY GIVEN QUESTION, PLEASE ATTACH A SEPARATE SHEET.)

1. NAME Joyce Marrow
2. DATE OF BIRTH [redacted]
3. ADDRESS [redacted]
4. PLACE OF BIRTH Spartanburg
5. PLEASE NAME THE SCHOOLS YOU HAVE ATTENDED AND THE GRADE OR LEVEL COMPLETED
   - (A) GRADE SCHOOL Cummings St. / Highland, Mary H. Wright
   - (B) JUNIOR HIGH Cummings St.
   - (C) HIGH SCHOOL Carver
   - (D) COLLEGE S.C. State University
   - (E) VOCATIONAL OR TRADE SCHOOL None
   - (F) PROFESSIONAL SCHOOL None
   - (G) GRADUATE SCHOOLS Converse / USC S / Furman
   - (H) DEGREES OR DIPLOMAS YOU HOLD B.S. MED
6. HOW LONG HAVE YOU LIVED IN LEXINGTON COUNTY, SOUTH CAROLINA? _____
7. HAVE YOU EVER LIVED OUTSIDE THE SOUTHEASTERN U. S.? No
8. MARITAL STATUS:
   - [X] MARRIED - NUMBER OF YEARS 6
   - [ ] NEVER MARRIED
   - [ ] SEPARATED
   - [ ] DIVORCED
   - [ ] WIDOWED
9. IF MARRIED, SPOUSE'S NAME James Edward Marrow
10. SPOUSE'S OCCUPATION Box builder
11. SPOUSE'S EDUCATION LEVEL 2 years of College
12. NUMBER OF CHILDREN AND THEIR AGES 5
    - GIRLS 28, 29, 20
    - BOYS 23, 21

A. IF YOU HAVE ANY PHYSICAL OR MEDICAL PROBLEMS WHICH WOULD MAKE JURY DUTY DIFFICULT OR WHICH REQUIRE ACCOMMODATION, PLEASE EXPLAIN HERE. None

14. HAVE YOU EVER BEEN A WITNESS IN A CRIMINAL CASE? No

15. HAVE YOU PREVIOUSLY SERVED ON A JURY? [ ] YES [X] NO

IF YES, WHAT TYPE OF CASE WAS IT? [ ] CIVIL [ ] CRIMINAL

16 HAVE YOU EVER SERVED ON A GRAND JURY? No

17. HAVE YOU EVER BEEN IN ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES (INCLUDING THE MILITARY RESERVES, NATIONAL GUARD OR ROTC?) [ ] YES [X] NO.

(A) IF YES, PLEASE ANSWER THE FOLLOWING:

(a) IN WHAT BRANCH? N/A

(b) WHAT WAS YOUR RANK AT DISCHARGE? N/A

18. PLEASE ANSWER THE FOLLOWING ABOUT YOUR EMPLOYMENT. IF NOT CURRENTLY EMPLOYED, PLEASE ANSWER THE FOLLOWING ABOUT YOUR LAST EMPLOYMENT:

(A) WHERE DO YOU WORK? School Dist. #7

(B) HOW LONG HAVE YOU WORKED THERE? 13 years

(C) WHAT IS YOUR CURRENT JOB TITLE? Physical Education teacher

(D) HOW LONG HAVE YOU HAD THAT TITLE? 9 years

(E) PLEASE DESCRIBE YOUR JOB RESPONSIBILITIES. teacher

(F) WHAT WAS YOUR OCCUPATION BEFORE PRESENT EMPLOYMENT? teacher

19. WHAT IS YOUR RELIGIOUS AFFILIATION, IF ANY? Baptist

20. HAVE YOU, ANY FAMILY MEMBERS OR CLOSE FRIENDS EVER: (CHECK ALL THAT APPLY)

[ ] BEEN AN EMPLOYEE OF ANY LAW ENFORCEMENT AGENCY (LOCAL, STATE, FEDERAL, MUNICIPAL, OTHERWISE)?

[ ] SERVED AS A MEMBER OF AN AUXILIARY OR POLICE RESERVE LAW ENFORCEMENT BRANCH SUCH AS AN AUXILIARY DEPUTY SHERIFF OR CONSTABLE?

[ ] SERVED AS A MILITARY POLICE OFFICER?

[ ] APPLIED FOR A JOB IN LAW ENFORCEMENT?

IF YOU CHECKED ANY OF THE ABOVE, PLEASE EXPLAIN _____

21. HAVE YOU OR ANY MEMBER OF YOUR FAMILY A MEMBER OF *ANY GROUP* WHICH ENCOURAGES STRICT ENFORCEMENT OF CRIMINAL LAWS OR MODIFICATION OF OUR PRESENT LAWS SUCH AS MOTHERS AGAINST DRUNK DRIVERS (MADD), CITIZENS AGAINST VIOLENCE (CAVE)?

[ ] YES [X] NO

22. HAVE YOU, ANY FAMILY MEMBERS OR CLOSE FRIENDS EVER BEEN THE VICTIM OR OR WITNESSED ANY CRIME (WHETHER OR NOT THE CRIME WAS REPORTED)?

[ ] YES [X] NO

IF YES,

(A) PLEASE DESCRIBE THE CRIME(S) AND INDICATE WHO WAS INVOLVED EITHER AS A WITNESS OR VICTIM: N/A

(B) WAS ANYONE ARRESTED? [ ] YES [ ] NO.

(C) IF THERE WAS AN ARREST, WHAT WAS THE OUTCOME? N/A

(D) IF THERE WAS A TRIAL, DID YOU TESTIFY? [ ] YES [ ] NO

23. HAVE YOU OR ANY FAMILY MEMBER EVER BEEN ARRESTED OR CHARGED WITH A CRIME OTHER THAN A TRAFFIC OFFENSE? [X] YES [ ] NO

IF YES, PLEASE EXPLAIN WHO WAS CHARGED AND WITH WHAT CRIME. _____
Conspiring, drugs

A. HAVE YOU OR ANY FAMILY MEMBER EVER BEEN CONVICTED OF A CRIME OTHER THAN A TRAFFIC OFFENSE? [X] YES [ ] NO

IF YES, PLEASE EXPLAIN WHO WAS CONVICTED OF WHAT CRIME: _____

24. PLEASE LIST ALL CLUBS, ASSOCIATIONS OR CIVIC GROUPS TO WHICH YOU BELONG. THESE MAY INCLUDE, BUT ARE NOT LIMITED TO, THE AMERICAN CIVIL LIBERTIES UNION, AMERICAN LEGION, NAACP, KIWANIS, LEAGUE OF WOMEN VOTERS, NATIONAL RIFLE ASSOCIATION, ROTARY CLUB, VETERANS OF FOREIGN WARS, OR ANY OTHER ASSOCIATION. N/A

2868

WHAT IS/ARE YOUR PRIMARY SOURCE(S) OF NEWS?

[X] TV [ ] MAGAZINE

[ ] NEWSPAPER [ ] OTHER

[X] RADIO

(A) WHAT TV OR RADIO SHOWS DO YOU REGULARLY WATCH OR LISTEN TO AND WHAT MAGAZINES AND NEWSPAPERS DO YOU REGULARLY READ? WSPA News

26. HAVE YOU DISPLAYED ONE OR MORE BUMPER STICKERS ON YOUR AUTOMOBILE IN THE LAST TWELVE (12) MONTHS?

[ ] YES [X] NO

IF YES, PLEASE LIST EACH BUMPER STICKER.

Joyce Morrow
JUROR SIGNATURE

Joyce Morrow
JUROR NAME - PRINTED OR TYPED

DATED: 9-20-01

Quite Frankly

94

JUROR INFORMATION CARD

PLEASE TYPE OR PRINT CLEARLY)

FOR TERM BEGINNING 10/15/01 JUROR NUMBER 0094

BY STATE OF BIRTH	AGE	MARRIED	SINGLE	WIDOWED	DIVORCED	NO OF CHILDREN
Lexington, SC	19	☐	☑	☐	☐	

OR OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS
unemployed	Professional Cleaning Svc.	1

USE'S OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS

NAME OF SPOUSE

IF THE ADDRESS BELOW IS INCORRECT PLEASE "X" THE BOX AND CORRECT THE ADDRESS ON THE BACK OF THIS CARD

STACY M GANTT
[redacted]

VE PREVIOUSLY SERVED ON A	IF SO WHEN?
L ☐ CRIMINAL ☐ JURY	

E YOU EVER BEEN A PARTY TO A CIVIL	HAVE YOU EVER BEEN CONVICTED OF A CRIME (OTHER THAN MINOR TRAFFIC OFFENSE)
SUIT? YES ☐ NO ☑	YES ☐ NO ☑

MAL EDUCATION COMPLETED
9th Grade

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

HOME TELEPHONE NO	BUSINESS TELEPHONE NO	SPOUSE'S BUSINESS TELEPHONE NO.	EMERGENCY TELEPHONE NO.
[redacted]			[redacted]

OMPLETE THIS FORM AND RETURN IT WITHIN TWO DAYS.
AILURE TO RETURN IS PUNISHABLE BY CONTEMPT.

Stacy M. Gantt
SIGNATURE

THE PRESIDING JUDGE REQUESTS THAT YOU ANSWER
TO THE BEST OF YOUR KNOWLEDGE THE FOLLOWING QUESTIONS
AND RETURN ALONG WITH THE JUROR QUESTIONNAIRE CARD (FORM)

(NOTE: IF AT ANY TIME, YOU NEED ADDITIONAL SPACE IN ORDER TO PROPERLY ANSWER ANY GIVEN QUESTION, PLEASE ATTACH A SEPARATE SHEET.)

1 NAME Stacy Marie Grant

2. DATE OF BIRTH [redacted]

3 [redacted]

4. PLACE OF BIRTH Spartanburg, SC

5 PLEASE NAME THE SCHOOLS YOU HAVE ATTENDED AND THE GRADE OR LEVEL COMPLETED

(A) GRADE SCHOOL Fairforest Elem 5th

(B) JUNIOR HIGH Dawkins middle School 8th

(C) HIGH SCHOOL Byrnes High School 10th

(D) COLLEGE _____

(E) VOCATIONAL OR TRADE SCHOOL _____

(F) PROFESSIONAL SCHOOL _____

(G) GRADUATE SCHOOLS _____

(H) DEGREES OR DIPLOMAS YOU HOLD _____

6. HOW LONG HAVE YOU LIVED IN LEXINGTON COUNTY, SOUTH CAROLINA? _____

7 HAVE YOU EVER LIVED OUTSIDE THE SOUTHEASTERN U. S.? NO

8 MARITAL STATUS

[ ] MARRIED - NUMBER OF YEARS _____
[✓] NEVER MARRIED
[ ] SEPARATED
[ ] DIVORCED
[ ] WIDOWED

9 IF MARRIED, SPOUSE'S NAME _____

10. SPOUSE'S OCCUPATION _____

11. SPOUSE'S EDUCATION LEVEL _____

12 NUMBER OF CHILDREN AND THEIR AGES

GIRLS _____

BOYS _____

HOW WOULD YOU DESCRIBE THE CONDITION OF YOUR HEALTH? VERY GOOD

A. IF YOU HAVE ANY PHYSICAL OR MEDICAL PROBLEMS WHICH WOULD MAKE JURY DUTY DIFFICULT OR WHICH REQUIRE ACCOMMODATION, PLEASE EXPLAIN HERE.

14 HAVE YOU EVER BEEN A WITNESS IN A CRIMINAL CASE? _____

15. HAVE YOU PREVIOUSLY SERVED ON A JURY? [ ] YES [✓] NO

IF YES, WHAT TYPE OF CASE WAS IT? [ ] CIVIL [ ] CRIMINAL

16. HAVE YOU EVER SERVED ON A GRAND JURY? NO

17. HAVE YOU EVER BEEN IN ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES (INCLUDING THE MILITARY RESERVES, NATIONAL GUARD OR ROTC?) [ ] YES [✓] NO.

(A) IF YES, PLEASE ANSWER THE FOLLOWING:

(a) IN WHAT BRANCH? _____

(b) WHAT WAS YOUR RANK AT DISCHARGE? _____

18. PLEASE ANSWER THE FOLLOWING ABOUT YOUR EMPLOYMENT IF NOT CURRENTLY EMPLOYED, PLEASE ANSWER THE FOLLOWING ABOUT YOUR LAST EMPLOYMENT:

(A) WHERE DO YOU WORK? Professional Cleaning Service

(B) HOW LONG HAVE YOU WORKED THERE? 1 year

(C) WHAT IS YOUR CURRENT JOB TITLE? Cleaning

(D) HOW LONG HAVE YOU HAD THAT TITLE? 1 year

(E) PLEASE DESCRIBE YOUR JOB RESPONSIBILITIES. Clean Houses + Commercial businesses.

(F) WHAT WAS YOUR OCCUPATION BEFORE PRESENT EMPLOYMENT? CASHIER At Piggys Drive in for 3 years.

19. WHAT IS YOUR RELIGIOUS AFFILIATION, IF ANY? Baptist

20. HAVE YOU, ANY FAMILY MEMBERS OR CLOSE FRIENDS EVER.. (CHECK ALL THAT APPLY)

[ ] BEEN AN EMPLOYEE OF ANY LAW ENFORCEMENT AGENCY (LOCAL, STATE, FEDERAL, MUNICIPAL, OTHERWISE)?

[ ] SERVED AS A MEMBER OF AN AUXILIARY OR POLICE RESERVE LAW ENFORCEMENT BRANCH SUCH AS AN AUXILIARY DEPUTY SHERIFF OR CONSTABLE?

[ ] SERVED AS A MILITARY POLICE OFFICER?

[ ] APPLIED FOR A JOB IN LAW ENFORCEMENT?

IF YOU CHECKED ANY OF THE ABOVE, PLEASE EXPLAIN : _____

21 HAVE YOU OR ANY MEMBER OF YOUR FAMILY A MEMBER OF ANY GROUP WHICH ENCOURAGES STRICT ENFORCEMENT OF CRIMINAL LAWS OR MODIFICATION OF OUR PRESENT LAWS SUCH AS MOTHERS AGAINST DRUNK DRIVERS (MADD), CITIZENS AGAINST VIOLENCE (CAVE)?

[ ] YES [✓] NO

22. HAVE YOU, ANY FAMILY MEMBERS OR CLOSE FRIENDS EVER BEEN THE VICTIM OF OR WITNESSED ANY CRIME (WHETHER OR NOT THE CRIME WAS REPORTED)?

[ ] YES [✓] NO

IF YES,

(A) PLEASE DESCRIBE THE CRIME(S) AND INDICATE WHO WAS INVOLVED EITHER AS A WITNESS OR VICTIM: _____

(B) WAS ANYONE ARRESTED? [ ] YES [✓] NO.

(C) IF THERE WAS AN ARREST, WHAT WAS THE OUTCOME? _____

(D) IF THERE WAS A TRIAL, DID YOU TESTIFY? [ ] YES [✓] NO

23. HAVE YOU OR ANY FAMILY MEMBER EVER BEEN ARRESTED OR CHARGED WITH A CRIME OTHER THAN A TRAFFIC OFFENSE? [ ] YES [✓] NO

IF YES, PLEASE EXPLAIN WHO WAS CHARGED AND WITH WHAT CRIME. _____

A. HAVE YOU OR ANY FAMILY MEMBER EVER BEEN CONVICTED OF A CRIME OTHER THAN A TRAFFIC OFFENSE? [ ] YES [✓] NO

IF YES, PLEASE EXPLAIN WHO WAS CONVICTED OF WHAT CRIME. _____

24 PLEASE LIST ALL CLUBS, ASSOCIATIONS OR CIVIC GROUPS TO WHICH YOU BELONG. THESE MAY INCLUDE, BUT ARE NOT LIMITED TO, THE AMERICAN CIVIL LIBERTIES UNION, AMERICAN LEGION, NAACP, KIWANIS, LEAGUE OF WOMEN VOTERS, NATIONAL RIFLE ASSOCIATION, ROTARY CLUB, VETERANS OF FOREIGN WARS, OR ANY OTHER ASSOCIATION _____

2874

25. WHAT IS/ ARE YOUR PRIMARY SOURCE(S) OF NEWS?

[✓] TV [ ] MAGAZINE

[✓] NEWSPAPER [ ] OTHER

[ ] RADIO

(A) WHAT TV OR RADIO SHOWS DO YOU REGULARLY WATCH OR LISTEN TO AND WHAT MAGAZINES AND NEWSPAPERS DO YOU REGULARLY READ?

News channel 7 or 4 and the Herald Tourist

26 HAVE YOU DISPLAYED ONE OR MORE BUMPER STICKERS ON YOUR AUTOMOBILE IN THE LAST TWELVE (12) MONTHS?

[ ] YES [✓] NO

IF YES, PLEASE LIST EACH BUMPER STICKER:

Stacy M. Gantt
JUROR SIGNATURE

Stacy M. Gantt
JUROR NAME - PRINTED OR TYPED

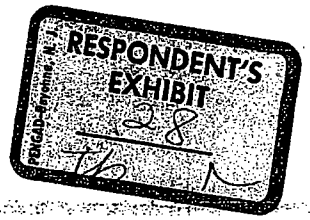
DATED: 09/17/01

X - state
X - Δ

State of South Carolina
vs.
Richard Bernard Moore

Ca. No. 00-GS-42-0617, 618, 619

Spartanburg County



	JUROR #	JUROR NAME	SEX	RACE	AGE	EDUCATION	OCCUPATION
1	251 X	Joyce B. Smythe	F	W	72	BA Rutgers	Cashier - Publix X
2	166	Jason B. Lyda	M	W	20	Chapman -10th	Cook's Transmis.
3	231	Pamela W. Robinson	F	W	39	R.D. Anderson	Print Shop Asst. Hair Stylist
4	29	Jeffrey A. Blanchard	M	W	48	BS Purdue	Auto Mechanic
5	191 X	Joyce Morrow	F	B	51	Converse, USCS, Furman	Phy. Ed. Teacher X
6	116	Susan C. Hardison	F	W	53	BA Winthrop	Retail Assistant
7	2 X	Douglas Alexander	M	B	53	Carver Junior High	Mrs. Smith's - Oven Operator X
8	230	Doris M. Robertson	F	W	66	10th Grade - Some College	Prepack Pharmaceuticals
9	28	Don S. Blair	M	W	73	High School	Safety Supervisor
10	213 X	Debra P. Perkins	F	W	48	BS USCS	IBM -Project Mgr X
11	194	Karen E. Nave	F	W	36	High School - 12th	Asst Dir Casey's Clubhouse
12	53	Jennifer M. Caston	F	W	27	Boiling Springs High	Admin. Medical Assistant
13	19	Walter M. Ballard, Jr.	M	W	42	Sptbg. Tech R.D. Anderson	Electrical Tech. R.R. Donnelley

14	4	Lanie M. Allen	F	W	28	BS Clemson University	Supply Chain Spec. Milliken
15	227	Larry W. Ridings	M	W	57	Boiling Springs High	Field Mgr. Torrey Homes
16	197	Gary L. New	M	W	21	R.D. Anderson	Trimmer - Davey Tree
17	205	Ronda B. Parks	F	W	35	R.D. Anderson	Stocker - Lowes
18	288	Kelly S. West	F	W	33	Dorman High - 12th	Mgr. - Palmetto Finance
19	220	Tammy P. Hayes	F	W	33	Dash School of Computers	Asst. Manager - Added Dimensions
20	145 X	Charles L. Kent	M	W	56	Union High 11th	Disable - Norfolk Southern
21	192	David M. Mosley	M	W	34	Chapman High - 12th	Contractor - Mosley Drywall
22	95	Michael S. Garner	M	W	37	York Tech.	Terminal Oper. - Crown Central Petroleum
23	157	Debra M. Ledford	F	W	46	Vocational	Bus Driver - Sptbg. Co. School Dist. 2
24	170	Benjamin L. Martinez	M	H	40	Las Cruces High School	Mechanic - Sandlapper
25	295	Michael J. Willingham	M	W	39	Chesnee High	Route Vender - Canteen Co.
26	85	Jeff L. Fortner	M	W	26	N. Greenville College	Mgr. - McNaughton McKay Electric
27	265	Sandra S. Taylor	F	W	55	Sptbg. Gen. Nurshing Sch.	R.N. - DHEC
28	132	Edward T. Huffman	M	W	30	Chapman High	Meter Reader - Blue Ridge Elect
29	290	Malcolm S. White	M	W	47	Clemson Univ. - Jr.	Service - Wakefield Buick
30	94	Stacy Gantt	F	W	19	Byrnes High - 10th	Maid - Professional Cleaning
31	92	Patricia P. Gallman	F	W	48	Gaffney High - 12th	Cook - Chartwell School
32	160	Deborah J. Lindsay	F	W	49	Daniel Morgan - 12th	Asst. Plant Mgr. Charles Samelson

X

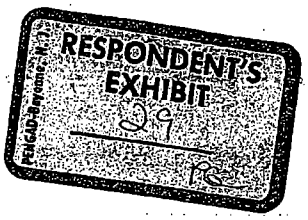
X

X if they switch white

33	130	Diane P. Howard	F	W	54	Sptbg. Tech.	Realtor - Century 21
34	286	Rebecca B. Weaver	F	W	58	Winthrop/ Converse Col.	Retired Teacher Fairforest Middle School
35	232	Rebecca A. Rocho	F	W	42	Ivy Tech.	Sales Clerk - Sears
36	36	Wanda K. Brothers	F	W	49	West Carolina Univ.	Outlet Mgr. - Palmetto Textile
37	136	Mary A. Ingram	F	W	27	Sptbg. Tech.	Sales - Toys-R-Us
38	248	Mary E. Smith	F	W	53	Indiana Tech.	LSSI - Charles Lea Center

2878

Strikes - 191, 213,



1 ✓ = Joyce Smythe #251 - From New Jersey WF
In SC 7 yrs.
C #3 but hate to give the death penalty
but if law, she could do it.
In general I don't like the D Penalty.
But could do it.

2 ✓ = Jason Lyda #166 - Wife can't drive at home. WM
#3 - Probably
B- -Not sharpest Knife in drawer -Follower

3 ✓ = Pamela Robinson #231 - Good Juror WF
Kelly asked @ 9/11/01 changed views on death penalty
A Could sign sheet

4 ✓ = Jeffrey Blanchard #29 - Prior DUI arrest WM
Victim of Store robbery
B++ Death - "believe I could"
Great Responsibility

5 ✓ = Joyce Morrow #191 BF
-didn't understand life sentence question
F -Prior Record
-Related to Beatty
-Not truthful
-Opposed to Handguns
-Tried to get off b/c of arrests

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	
)	
Richard Bernard Moore)	2004-CP-42-2715
)	
Applicant,)	
)	
v.)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 AUG -1 AM 10:06
M. HOPE BLACKLEY

This death penalty Post-Conviction Relief (PCR) action is before the Court pursuant to an August 8, 2004 Application filed on behalf of the Applicant, Richard Bernard Moore (Moore), as amended. The Court held an evidentiary hearing into the matter on January 30, February 1 and February 3-4, 2011, at the Spartanburg County Courthouse. Moore was present at the hearing; and Lisa J. Armstrong and James M. Morton, Esquires, represented him. Senior Assistant Attorney General William Edgar Salter, III, and Assistant Attorney General Anthony Mabry represented the State. Moore testified on his own behalf at the hearing, and he presented testimony from Mr. Mabry; George Gibson; Pete Skidmore; Wilbert Casey; Charles R. "Rusty" Clevenger; James Aiken; Stephen L. Denton; Paul Dorman; Dr. Sandra E. Conradi; and Michael Morin Esquire. He also introduced the depositions of family members Harold Harrington, Dorothy J. Hooper, Cecil J. Hooper, Arma Nell Hadley, Maurice Moore and James A. Moore. The State presented testimony from Susan Porter, Esquire; R. Keith Kelly, Esquire; and the Honorable Donnie Willingham. The Court now denies relief and dismisses the Application with prejudice for the following reasons:

I. PROCEDURAL HISTORY

COMPUTER

PI

Moore is currently on death row at Lieber Correctional Institution of the South Carolina Department of Corrections (SCDC), pursuant to commitment orders from the Spartanburg County Clerk of Court. The Spartanburg County Grand Jury indicted him at the January 2000 term of court for murder, assault with intent to kill (AWIK), armed robbery and possession of a firearm during the commission of a violent crime. (00-GS-42-617 through -619).

The State thereafter served notice of its intention to seek the death penalty. The Spartanburg County Grand Jury handed down another armed robbery indictment at the October 2001 term of court. The Honorable Gary E. Clary held motions hearings in the case on April 3, September 28, and October 15, 2001.

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M. HOPE BLACKLEY

On October 16-22, 2001, Moore received a capital jury trial, pursuant to S.C. Code Ann. § 16-3-20 (Supp. 2002), in front of Judge Clary. The jury convicted him of each of the indicted offenses. Following Moore's exercise of the twenty-four hour waiting period in § 16-3-20(B), a sentencing proceeding was conducted in front of the same jury.

The prosecution relied upon the statutory aggravating circumstances that the murder was committed while in the commission of robbery while armed with a deadly weapon; that Moore, by his act of murder, had knowingly created a risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person; and that Moore had committed the murder for the purpose of receiving money or a thing of monetary value. § 16-3-20(C)(a)(1), (3)-(4) & (d). Judge Clary submitted the statutory mitigating circumstances found in § 16-3-20(C)(b)(2), (6)-(7). The jury found the existence of each of the statutory aggravating circumstances alleged by the prosecution and it sentenced Moore to death. Judge Clary imposed the sentence of death for murder, and he sentenced Moore to five years for the weapons charge, ten years for AWIK and thirty years for

armed robbery. Ralph Keith Kelly, Michael David Morin and Jennifer Johnson, Esquires, represented Moore at trial. Seventh Circuit Solicitor Harold W. Gowdy, III, as well as Assistant Solicitors James Donald Willingham, II, and Barry J. Barnette, represented the prosecution.

A timely Notice of Appeal was served and filed. On October 16, 2003, Moore filed a Final Brief of Appellant, in which he raised the following issues:

1. The judge erred in the guilt phase by preventing Moore from stressing the gravity of the decision facing the jury by arguing, "The State is seeking the death penalty on me, which means my very life is at stake." The judge abused his discretion by ruling that Moore could not mention punishment, but was limited solely to a discussion of "the testimony and evidence that has been presented."

2. The judge erred during the sentencing phase by once again limiting Moore's closing argument "to the evidence that has been presented and to the issues concerning the sentence imposed." Since S.C. Code Sections 16-3-20(C) and 16-3-28 afford a capital defendant the opportunity to ask for mercy and express feelings of remorse, this arbitrary limitation was an abuse of discretion and rendered Moore's purported waiver of closing argument involuntary.

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

The State filed a Final Brief of Respondent on September 15, 2003. It restated the issues as follows:

I. The trial judge did not abuse his discretion by ruling that Appellant could not argue "my very life is at stake" in his guilt phase closing argument because Appellant's argument was not relevant to the question of his guilt or innocence, which was the only question before the guilt phase jury.

II. Appellant's complaints about the trial judge's conduct of the on-the-record waiver of Appellant's right to make a closing argument in the sentencing phase is not properly before the Court because there was no objection at trial.

The South Carolina Supreme Court affirmed Moore's convictions and death sentence in a published decision filed on March 1, 2004. *State v. Moore*, 357 S.C. 458, 593 S.E.2d 608 (2004). It sent the Remittitur to the Spartanburg County Clerk of Court on March 18, 2004. Deputy Chief

p3

Attorney Joseph L. Savitz, III, of the South Carolina Office of Appellate Defense, represented Moore on direct appeal. William Edgar Salter, III, of the Attorney General's Office, represented Respondent.

On March 16, 2004, Moore (through Mr. Dudek) petitioned the State Supreme Court for a stay of execution. In an Order dated April 4, 2004, the Court granted a stay, pursuant to *In Re Stays of Execution in Capital Cases*, it appointed the Honorable Larry R. Patterson to preside over the case and it granted him exclusive jurisdiction over the matter. In accordance with *In Re Stays of Execution*, Judge Patterson held a hearing on July 22, 1999, to determine whether Moore desired to pursue Post-Conviction Relief and whether he wished to have counsel appointed. On June 17, 2004, Judge Patterson appointed Ms. Armstrong and Kathryn Hudgins, Esquire, to represent Moore. Mr. Morton was thereafter substituted for Ms. Hudgins.

Moore raised two allegations of ineffective assistance of counsel in his August 4, 2004, PCR Application:

> [A] Ineffective assistance of counsel in violation of the Fifth, sixth and Fourteenth Amendments to the United States Constitution. Counsel was ineffective for failing to preserve for appellate review the question of whether defendant's waiver of his right to make a closing phase argument was rendered involuntary due to the trial court's admonition to him. *State v. Perez*, 334 SC 563,514 S.E.2d 754 (1999); *State v. Hall*, 312 SC 95, 439 S.E.2d 278 (1994).
>
> [B] Ineffective assistance of counsel in violation of the Fifth, sixth and Fourteenth Amendments to the United States Constitution. Counsel failed to perform an adequate investigation into evidence in mitigation. Counsel produced only two lay witnesses during the penalty phase, and presented no expert evidence on applicant's behalf. *Eddings v. Oklahoma*, 455. US 104 (1982).

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

After Judge Patterson's retirement, the case was assigned to this Court. Moore submitted his amended allegations on December 31, 2010.

II. STATEMENT OF FACTS

Sometime between 8:00 and 10:00 p.m. on September 15, 1999, Moore went to the residence of George Gibson, on Hillside Drive in Whitney, S.C.[1] He asked Gibson to get him some crack cocaine. Gibson, who knew Moore as "Mo," refused because Moore did not have any money. Gibson also told Moore that he could not get the crack for Moore on credit. Moore, who was unemployed at the time, told Gibson he was going to work and would return the following morning. He then left. **R. pp. 1245-48; 1253; 1255; 1371-72.**

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SPARTANBURG COUNTY
M. COPELAND-FINLEY

Meanwhile, Mr. Jamie Mahoney (the murder victim) was working the third shift at Nikki's Speedy Mart, a restaurant-convenience store located at the corner of Highway 221 and California Avenue in Whitney, South Carolina. He had been employed there for over three years. The owner of Nikki's kept a .32 caliber pistol and a .45 caliber semi-automatic pistol (**State's Ex. 3**) in the store for protection.[2] Also, Jamie Mahoney carried a .44 caliber handgun (**State's Ex. 1**) behind his back and in his waistband for protection. However, his hands were ravaged by arthritis and he was of slight build. (He was between 5' 7" and 5' 9" tall and weighed approximately 145 pounds). None of his co-workers or friends had seen him ever be physically aggressive towards anyone in Nikki's. **R. pp. 1195-96; 1346-57; 1361-63; 1366-70; 1489.**

Terry Hadden (the AWIK victim) was a regular customer at Nikki's. He stopped in to eat around 12:15 a.m. on September 16, 1999.[3] After eating and talking to Jamie for a while, he began playing on one of several video poker machines, around 1:00 a.m. The store was busy for a short period, and Jamie had a brief rush of customers around 1:15 a.m. Later, Jamie loaned his lug wrench to an African-American customer who had trouble with his tire in the parking lot.

---

[1] All locations referred to in the Statement of Facts are in Spartanburg County unless otherwise specified.

[2] Neither weapon was visible to customers: the .45 was kept under a towel by the cash register and the .44 was kept in Mr. Mahoney's waistband. There was also a .32 revolver that was kept under the counter. It was not involved in this case.

[3] Mr. Hadden worked the second shift at Wise Snacks Company. **R. pp. 1193-94; 1196.**

Otherwise, the early morning hours remained relatively uneventful, until Moore walked into the store shortly after 3:00 a.m.; and it does not appear that anyone came into Nikki's between the time the man with a flat tire left and Moore arrived. Mr. Hadden and Moore glanced at each other briefly when Moore first entered. Then, Mr. Hadden turned around and continued playing video poker. Moore went to a cooler and, apparently, retrieved two cans of beer. *See* **R. pp. 1193-1205; 1309**.

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SPARTANBURG COUNTY
2011 AUG -1 AM 10: 06
M. HOPE BLACKLEY

Mr. Holland testified that:

> The next thing I know of anything going on in the store is when I heard Jamie say, 'What the hell do you think you are doing?' . . . in a loud tone of voice.

R. p. 1205, ll. 9-14.

Once Mr. Hadden heard this comment, he swiveled around in his chair and saw Moore holding both of Jamie's hands in one of Moore's hands. Moore immediately "come around and come up with a gun and told me not to move." Without giving Hadden an opportunity to comply with his directions, Moore fired the .45 caliber semi-automatic (**State's Ex. 3**), which he had taken from the victim's constructive possession, at Mr. Hadden. Mr. Hadden instantly fell to the floor and played dead. He then heard a number of gunshots but did not count how many were fired. **R. pp. 1204-09; 1215-17; 1288-89; 1424**.

During the exchange of gunfire, at least one shot mortally wounded Jamie Mahoney. The pathologist explained that the victim had a gunshot wound which "passed through the lower border of the eighth rib" before going through his liver, through and through his stomach, through and through his diaphragm, through and through his heart and his left lung. It then exited Jamie's right chest. Jamie also had a gunshot wound to his lower right arm, which broke his right arm. **R. pp. 1491-1502**.

The pathologist opined that it is possible that either there were two gunshot wounds or all of Jamie's injuries could have been caused by a single gunshot if his body had been positioned in such a manner in which that could have occurred. He died from internal hemorrhaging caused by the wound to his torso and would have died within six to ten minutes after receiving this wound. **R. pp. 1491-1502.** A bullet from Jamie's .44 caliber weapon went through Moore's left arm. **R. pp. 1380-84.**

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Mr. Hadden continued to play dead until he heard Moore say, "Let's get the hell out of here" and exit the store. Mr. Hadden ran out of the building after he heard Moore's vehicle leave. He then went back into the store, saw that his friend was dead and called 911. **R. pp. 1205-13.**

Before Moore left the store, he took a money bag containing $1,408.00. Although he was profusely bleeding from a gunshot wound, he then immediately drove his pickup truck to Gibson's house. Along the way, he discarded the .45 caliber handgun which had his blood on it. **R. pp. 1211; 1262-64; 1267; 1312-13; 1352-54; 1466-69; 1478.** When he reached Gibson's, he asked for Gibson to get him some crack. Gibson refused because of the late hour. During their conversation, Moore told Gibson, "I done something bad, and I got to go turn myself in, and I got money." **R. pp. 1248-49.**

Moore was obviously bleeding and Gibson asked him what had occurred. Moore told him that he had been shot, and he asked Gibson to take him to the emergency room. Gibson refused because he did not want to become involved. When Moore tried to back his truck out of Gibson's driveway, he struck a telephone pole. **R. pp. 1249-50; 1256-57.**

Spartanburg County Deputy Sheriff Bobby Rollins was searching for "a black male, possibly injured, driving a loud vehicle" since this was the description of the suspect he had received. He passed by as Moore backed into the telephone pole. Therefore, he quickly turned

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his car around, "threw all of my light in that general area" and exited his vehicle with his weapon drawn. **R. pp. 1234-38.**

Moore approached Deputy Rollins with his hands in the air and "bleeding profusely" from his left arm. The whole time Moore was complying with Deputy Rollins' instructions to get on the ground, he repeatedly said, "I did it, I did it, I give up, I give up." A search of Moore's truck resulted in the seizure of the stolen money and an open pocketknife. Officers found Moore's wallet in the roadway and the bloody shirt Moore had been wearing near Gibson's residence.[4] **R. pp. 1238-40; 1311-18.** Later, Moore told the emergency room nurse that he was using alcohol and cocaine. **R. pp. 1377-78.**

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At the crime scene at Nikki's, officers found the victim lying in the kitchen floor. He was deceased, and his right arm was bent at such a peculiar angle that it was clearly broken. In addition to finding evidence of the victim's blood, Moore's blood was found across the back of the victim's clothing and a trail of his blood led out the front door. Also, a meat cleaver, which did not belong to Nikki's Speed Shop (**State's Ex. 83**), was found at the victim's feet with Moore's blood on it. Further, officers found six shell casings, two lead bullet cores and two fired bullets that had been fired by the .45 automatic, as well as several fragments that were consistent with having been fired by it.[5] **R. pp. 1271-93; 1305-18; 1352-53; 1364-65; 1368; 1421-32; 1460-80.**

In the penalty phase of Moore's trial, the State presented victim impact evidence (**R. pp. 1618-24; 1632-35; 1641-47**) as well as photographs and additional testimony from the pathologist who performed the autopsy. **R. pp. 1675-81.** The remainder of the State's evidence

[4] The presence of Moore's shirt in Gibson's yard corroborates that Moore was the person who had been in the yard yelling for Gibson to come outside.

[5] A reasonable inference from the presence of the cleaver at the store and the opened pocket knife is that Moore may have very well been armed before he entered the store. In any event, his crimes were certainly premeditated by the time he fired at Mr. Hadden, who was unarmed and had not spoken to him.

was devoted to presenting evidence related to Moore's character.

The State presented evidence of a 1985 Michigan conviction for unlawful possession of a weapon and a May 15, 1987, Michigan conviction (*see* **State's Ex. 49**) for attempted breaking and entering with intent. At the time, Moore had described the crime by saying that he had pushed open the front door of the Broadway Mark, entered the store and removed two handguns as well as $10.00 in quarters. When later stopped by police, he managed to get away from them. Moore spoke to David Saad (a parole and probation officer from the Michigan Department of Corrections) and said that his addiction to cocaine and crack cocaine caused him to commit the crime. **R. pp. 1648-57.**

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Michelle Crowder testified to a September 1991 incident in South Carolina, in which Moore robbed her and beat and kicked both her and her boyfriend. Her boyfriend was so badly injured that he had to go to the hospital. **R. pp. 1658-60.** Valerie Wisniewski testified about a September 13, 1991, incident in which Moore stole money from her at the Rack Room where she was working as a cashier. **R. pp. 1662-64.**

Additionally, the State introduced evidence concerning Moore's South Carolina convictions. On September 15, 1993, he was convicted of second offense DUS (92-GS-63-59), habitual traffic offender (93-GS-42-1804), DUS third offense (93-GS-42-1805). He was convicted of habitual traffic offender again on August 23, 1994 (94-GS-42-3666). On the same date, he was convicted of common law robbery in connection with the incident at Rack Room Shoes (92-GS-42-2606). On July 13, 1995, he was convicted of driving under suspension (third offense) (95-GS-42-160). On January 18, 1996, he was convicted of driving under suspension (sixth offense) (95-GS-42- 3836) and driving under suspension (fifth offense) (96-GS-42-387).

On August 7, 1997, he was convicted of assault and battery of a high and aggravated nature on Ms. Sonja Harrison. **R. pp. 1665-70.**

III. ALLEGATIONS

Moore raises the following allegations in the December 31, 2010 Amended Application: allegations:

9&10. Applicant maintains, as the grounds on which he bases his claims of unlawful custody, that:

a. Trial Counsel was ineffective in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and federal laws, South Carolina Constitution and South Carolina state law due to counsel's failure to object to the trial court's erroneous limitation on Applicant's right to allocution/ right to address his jury at the end of the penalty phase and/or make a plea for mercy during his penalty phase closing statement. Counsel's failure to object to the trial court's improper admonition to Applicant deprived Applicant of the fundamentally important right to seek mercy from his sentencing jury, and prevented review of this issue on direct appeal. *State v. Perez*, 334 S.C. 563,514 S.E.2d 754 (1999); *State v. Hall*, 312 S.C. 95,439 S.E.2d 278 (1994).

b. Trial Counsel was ineffective in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and federal laws, South Carolina Constitution and South Carolina state law due to their failure to perform a reasonable investigation into Applicant's background and family life, resulting in a sentencing proceeding that was fundamentally unfair and assured a death verdict for the Applicant would be returned by the jury. Trial counsel failed to conduct any investigation in the state of Michigan, where the Applicant was born and raised. Had counsel conducted a reasonable investigation into Applicant's background, they would have learned that Applicant comes from a large family, had numerous relatives who could have testified to his good character and struggle with addiction, and these relatives and/or friends would have been willing to testify on Applicant's behalf during his sentencing proceeding at trial. Failure to conduct a reasonable investigation into potential avenues of mitigation is conduct falling below what is required of trial counsel in a capital case. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Strickland v. Washington*, 466 U.S. 668 (1984)

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("counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.*, 466 U.S. at 691); *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

c. Applicant was denied the right to effective assistance of counsel at both the trial and sentencing phases in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, federal law, South Carolina State Constitution and South Carolina law in that trial counsel failed to properly and adequately investigate and prepare to confront and rebut the State's alleged physical evidence, and further trial counsel failed to present its own expert or evidence to rebut or explain such physical evidence and/or object that ballistics and firearms and serology testimony was inadmissible in that it failed to meet the mandates of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and State v. Jones, 273 S.C. 723 (1979). Counsel's unreasonable omissions denied Applicant an opportunity to show to the jury he acted in self-defense or (sic).

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This incident involved a late night shoot out in a convenience store. Multiple gun shots involving two guns were fired. The defendant was wounded in the arm and chest and the victim was mortally wounded. There is undisputed evidence that the victim owned and/or possessed both guns involved and no evidence the defendant possessed any gun until he wrestled one of the guns from the victim. There was a great deal of evidence and testimony presented by the Solicitor regarding multiple guns, ballistics, shell casings, bullet jackets, bullet fragments, finger prints, trace evidence, gun[] shot residue, blood, blood spatter, DNA, and pathology. Much of this testimony is subject to attack on the basis of its questionable admissibility, Even if admissible, the evidence was easily contradicted and/or explained in a manner consistent with "circumstances other than the guilt of the accused." Trial counsel never retained its own expert to assist with the forensic issues involved with the State's physical evidence. Trial counsel never called as witnesses its own experts for the jury to hear an opposing view and opinion as to the physical evidence. Thus, trial counsel did not adequately investigate or prepare to deny, rebut, or explain the State's physical evidence. *Gardner v. Florida*, 430 U.S. 122, 50 L.Ed.2d 339, 97 S. Ct. 399 (1976), Had counsel hired appropriate forensic experts, including a forensic pathologist, who could have testified as to the single bullet having killed James Mahoney, rather than two as opined by the state, and a crime scene analyst, who could have provided testimony concerning the likely origin of bullets, bullet fragments, shell casings, and general crime scene

analysis, there is a reasonable probability that the guilt and/or penalty phase would have had a different outcome. *Strickland v. Washington, supra.*

d. Applicant was denied due process of law and also denied the right to effective assistance of counsel in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, the South Carolina Constitution and South Carolina law because the State failed to disclose material evidence to the defense concerning State's Witness George Gibson. *Brady v. Maryland*, 373 U.S. 83 (1963). Alternatively, if trial counsel was aware of all of the information set forth below about George Gibson, then trial counsel acted unreasonably in not cross-examining Gibson as to his pending charges and/or investigating the other witnesses at Gibson's home the night of the incident. *Strickland v. Washington, infra.*

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George Gibson, a State witness had told detectives immediately after the shootings, in 1999, that Applicant came to Gibson's home and asked him for a ride to the hospital, which Gibson refused to do. On October 18, 2001, the first day of trial, defense counsel told the Court that the State now had an additional statement from Gibson. This new statement had been provided to counsel the previous week in a summary of supplemental aggravating circumstances notice, Gibson's new statement said that defendant robbed and murdered the store clerk in order to buy cocaine, and that was why Applicant showed up at Gibson's home after the shooting, Although other witnesses were at Gibson's residence on the night of the incident at the time of Moore's visit there, and had talked to law enforcement, defense counsel was either unaware of these other witnesses, which the state failed to name or take statements from, or had not been able to locate or interview them before trial.

Additionally, defense counsel was not informed that, at the time of his testimony, George Gibson was incarcerated at Allendale Correctional Institution and was brought to Spartanburg to testify at the solicitor's direction. Defense counsel was never told that Mr. Gibson was also out on bond for a then-new (July 2001) possession of crack arrest (although counsel had been informed of Gibson's 2000 Trafficking Crack charge that was pending in the 7th Circuit). Assuming, *arguendo*, that the State did provide the above information to the defense about Mr. Gibson, then counsel failed to adequately investigate this matter. Impeachment evidence related to a critical witness, such as George Gibson, whose testimony formed the centerpiece/lynchpin of the state's case against Applicant, and whose second statement to law enforcement, given at the eleventh

hour, became their basis for *res gestae* testimony, that was used to prove a sketchy, yet overwhelmingly prejudicial, "motive" and should have been disclosed to defense counsel. George Gibson had substantial charges for which he faced significant prison time, which fact, had it been known to the jury, would certainly have cast doubt on Gibson's credibility. *State v. Mizzell*, 394 S.C. 326 (2002). The State's nondisclosure of critical impeachment evidence against its star witness undermines any confidence that can be had in the jury's guilt and/or sentencing verdict(s). *Brady v. Maryland*, *supra*; *Strickland v, Washington*, *supra*. Alternatively, if trial counsel were aware of the information, they were ineffective in failing to use it during cross-examination and for investigation. *Strickland v, Washington*, *supra*.

e. Applicant was denied due process of law and also denied the right to effective assistance of counsel in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, the South Carolina Constitution and South Carolina law because trial counsel failed to pursue their *Batson v. Kentucky*, 476 U.S. 79 (1986) claim, despite the fact that Applicant's jury was exclusively white and the state struck the only two African-Americans qualified to serve as jurors. Applicant is African-American and the alleged victim, James Mahoney, was Caucasian. The State's decision to strike the only two qualified African-American jurors on the jury panel established a prima facie case of racial discrimination. Trial Counsel raised a *Batson* challenge, but later abandoned it. (Tr. P. 1137). Trial Counsel's failure to pursue and/or preserve for direct appeal a *Batson* challenge was unreasonable, as the State's alleged race-neutral reasons for striking jurors Morrow and Huffman were pre-textual, as white jurors who gave almost mirror like responses and/or were similarly-if not exactly-situated insofar as having relatives who were prosecuted, were not challenged by the State and were seated on Applicant's jury. Counsel's failure to preserve this meritorious issue was deficient and unreasonable, as well as prejudicial. *Strickland v. Washington*, *supra*.

f. Applicant was denied due process of law and also denied the right to effective assistance of counsel in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, the South Carolina Constitution and South Carolina law because trial counsel failed to preserve their objection to the trial court's refusal to give a jury charge on voluntary manslaughter. Assuming, *arguendo*, that the issue of the trial judge failing to give a voluntary manslaughter charge was properly preserved, appellate counsel was ineffective in failing to raise this issue on direct appeal. Applicant was entitled to a charge of voluntary manslaughter based on the

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facts of his case. It is undisputed that Applicant was shot by James Mahoney and he was shot by a weapon owned by either James Mahoney or the owner of Nikki's Convenience Store. James Mahoney's death was likewise the result of being shot with his own weapon. The fact that all three firearms collected from the crime scene in and near Nikki's Convenience Store belonged to either Mahoney or the store owner establishes that: (1) Applicant entered the store without a firearm and (2) that James Mahoney initiated what later became a deadly gun fight.

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Voluntary manslaughter is a lesser-included offense of murder. Voluntary manslaughter is defined as an "unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Cole*, 338 S.C. 97 (2000). The only time a voluntary manslaughter charge should not be provided to the jury is when there is "no evidence whatsoever tending to reduce murder to voluntary manslaughter." *State v. Pittman*, 373 S.C. 527 (2007). In Applicant's case, there was ample evidence that Mahoney was killed as a result of a gun battle he initiated with a weapon that did not belong to Applicant. These facts alone establish sufficient provocation by Mahoney to entitle Applicant to a charge on voluntary manslaughter.

Trial counsel's failure to preserve this issue or, alternatively, appellate counsel's failure to raise it on direct appeal amounts to ineffective assistance of counsel. *Strickland v. Washington, supra.*

g. Applicant was denied due process of law and also denied the right to effective assistance of counsel in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, the South Carolina Constitution and South Carolina law because trial counsel failed to present adaptability evidence from James Aiken, a nationally recognized expert in the field of penal institution safety and management. Mr. Aiken was prepared and available to testify on behalf of Applicant but never called as a witness. Counsel's unreasonable decision to not call Mr. Aiken opened the door for the state's damning closing argument that Applicant had shown "escalating violence," thereby injecting the fear of Applicant's future dangerousness into the minds of the jurors, who were never told that Applicant could be safely housed for the duration of his life. The prejudice to Applicant stemming from counsel's inexplicable (and seemingly eleventh hour) decision to discard the only defense expert is manifest. *Strickland v, Washington, supra.*

h. Applicant was denied due process of law and also denied the right to effective assistance of counsel in violation of the Fifth, Sixth,

Eighth and Fourteenth Amendments to the U.S. Constitution, the South Carolina Constitution and South Carolina law because trial counsel failed to request a charge on the statutory mitigating circumstance of provocation by the victim, as set forth in S.C. Code Section 16-3-20 (c)(b)(8). Failure to request this mitigating circumstance was both deficient and prejudicial to Applicant. Counsel argued to the jury that Applicant was also a "victim," so there is no conceivable professionally reasonable basis for not seeking instruction to the jury that the victim's provocation could be considered by them as a factor in mitigation of punishment. Without such an instruction, the jury was left with no guidance to assist them in taking into consideration the fact that Mahoney shot Applicant, which was the whole basis of counsel's argument that Applicant was a victim, too. Trial counsel's failure to request the statutory mitigator of provocation by the victim was ineffective assistance of counsel. *Strickland v. Washington, supra.*

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i. Trial Counsel was ineffective in failing to object to the State's request to charge the statutory aggravating circumstance found at S,C, Code Section 16-3-20(c)(3) because it was not appropriate to the facts of Applicant's case. Alternatively, if the trial court correctly held that S.C. Code Section16-3-20(c)(3) is properly applied to the facts of Applicant's case, then this code section is unconstitutional due to its over-breadth, in that it fails to sufficiently narrow the class of offenders who are eligible for a death sentence.

South Carolina Code Section 16-3-20(c)(3) reads as follows: The Offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.

Applicant's case involved use of a pistol. A pistol is not "a weapon or device which normally would be hazardous to the lives of more than one person." Alternatively, if a single-shot pistol meets the criteria of 16-3-20(c)(3), then this aggravating factor would make any non-residential intentional shooting death occurring near a third-party eligible for the death penalty. Clearly, this is not what the legislature intended. The more reasonable construction of 16-3-20(c)(3) is to apply it in those few cases where an incendiary device, bomb or other explosive type of weapon is used to kill people in a public place. To hold otherwise would violate the basic Eighth Amendment principle that death penalty statutes must sufficiently narrow the class of death-eligible offenders.

> Applicant either received ineffective assistance of counsel or S.C. Code Section 16-3-20(c)(3) is unconstitutional. *Strickland v. Washington*, *supra*, *Lewis v. Jeffers*, 497 U.S. 764,774 (1990).

Additionally, Moore submitted the following allegations, without objection, on January 5, 2011:

> (9/10j). Appellant was denied the right to effective assistance of appellate counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution during the appellate proceedings when appellate counsel failed to raise on appeal the trial court's error in admitting the testimony of State's witnesses George Gibson and Jeanie Smith as res gestae witnesses. These witnesses' testimony should not have been admitted under a res gestae theory and, as such, the probative value of such testimony was substantially outweighed by its prejudicial nature.
>
> (9/10k). Appellant was denied the right to effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution in that trial counsel failed to object to the admission of testimony by State's witness Jeanie Smith in that such testimony was inadmissible hearsay.

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At the PCR hearing, Moore, through his attorneys, abandoned allegation 10(i). *See State v. Locklair*, 341 S.C. 352, 535 S.E.2d 420 (2000) (a firearm is a "weapon or device which would normally be hazardous to the lives of more than one person;" thus, the trial judge properly refused to direct a verdict on the statutory aggravating circumstance in S.C. Code Ann. § 16-3-20(C)(a)(3) (Supp. 2000)).

IV. DISCUSSION

To establish that he received ineffective assistance of counsel, an inmate must make a twofold showing. *See Wiggins v. Smith*, 539 U.S.510 (2003). First, he must demonstrate that his attorneys' "representation fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688 (1984). "[E]very effort [must] be made to eliminate the distorting effects of hindsight . . . and to evaluate the [challenged] conduct from counsel's perspective as

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the time." *Id* at 689. "A court considering a claim of ineffective assistance must apply a 'strong presumption' that counsel's representation was within the 'wide range" of reasonable professional assistance. *Id.*, at 689, 104 S.Ct. 2052. The challenger's burden is to show 'that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.' *Id.*, at 687, 104 S.Ct. 2052." *Harrington v. Richter*, 131 S.Ct. 770, 787 (2011) (quoting *Strickland*).[6]

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The inmate must also demonstrate that he was prejudiced by counsel's deficient performance. *Strickland*, 466 U.S. at 691. To do so, he must prove "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. It is insufficient to prove "that the errors had some conceivable effect on the outcome of the proceeding." *Id* at 693. Rather, "[c]ounsel's errors must be 'so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.'" *Richter*, 131 S.Ct. at 787 (quoting *Strickland*, 466 U.S. at 687).

Applying these principles to the present case, the Court finds that Moore has failed to meet either prong of the *Strickland* test as to any and all of the issues raised at PCR. I specifically find that Mr. Moore was represented by capable and experienced counsel at both the jury trial and on appeal, and that each of the complaints now asserted at PCR were the result of either an articulated and reasonable trial strategy, they were not raised due to a lack of meritorious proof or supporting law, or there was no prejudice to Moore based upon counsel's alleged errors.

A. Guilt Phase Allegations.

GROUND 10(c)

[6] "Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is 'all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence.'" *Id* at 787 (citation omitted).

Moore first alleges that trial counsel failed to properly and adequately investigate and prepare to confront and rebut the State's alleged physical evidence, and that counsel failed to present its own expert or evidence to rebut or explain this physical evidence. The Court finds that he has not proven either deficient performance or resulting prejudice.[7]

The Court in *Strickland* explained the deference owed counsel's strategic judgments in terms of the adequacy of the investigations supporting those judgments:

> [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

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Strickland, 466 U.S. at 690-691. *See also Wiggins*, 539 U.S. at 521-22.

Further, "the reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Strickland*, 466 U.S. at 691. In assessing counsel's investigation, the Court "must conduct an objective review of their performance, measured for 'reasonableness under prevailing professional norms,' *Strickland*, 466 U.S., at 688, [. . .], which includes a context-dependent consideration of the challenged conduct as seen 'from counsel's perspective at the time,' *id.*, at 689 [. . .] ('[E]very effort [must] be made to eliminate the distorting effects of hindsight')" *Wiggins*, 539 U.S. at 523.

[7] He also claims that "trial counsel failed to present its own expert or evidence to rebut or explain such physical evidence and/or object that ballistics and firearms and serology testimony was inadmissible in that it failed to meet the mandates of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and State v. Jones, 273 S.C. 723 (1979)." However, he failed to present any evidence in support of this portion of his allegation and he did not address it in his proposed Order. Therefore, the Court finds that he has abandoned this allegation.

Based upon the credible evidence before the Court, the Court finds that counsel's investigation to "prepare to confront and rebut the State's alleged physical evidence" was objectively reasonable. Both of Moore's attorneys had a great deal of experience in trying major felony cases when they were appointed to represent him. Also, Mr. Morin, who was the lead attorney, sought and obtained Mr. Kelly's appointment as second chair because they had a good working relationship. Both Mr. Morin and Mr. Kelly met with Moore on numerous occasions and they had discussed his version of what had occurred. He repeatedly denied that he had intended to rob Nikki's went he entered the store, which was the State's theory of the case, but he gave conflicting accounts about whether he used crack that night.

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The Court further finds that Mr. Morin employed the services of a forensic pathologist, a crime scene expert and a private investigator to assist them in their efforts. Mr. Morin thought that both were competent. He did not see the need for employing another expert and was unsure that funding would be approved for such a request. Also, Mr. Kelly has a great deal of experience with and knowledge of the use of firearms.

Mr. Morin reviewed the physical evidence with both his crime scene expert and his investigator.[8] Counsel's investigation and the information that the State provided to him through

[8] Respondent's Ex. 1, a billing statement from Pete Skidmore, the investigator, reflects that Mr. Skidmore met with Mr. Morin and Mr. Moore for 5.5 hours on July 2, 2001, and he reviewed the case file on July 23-24, 2001. Thereafter, either Mr. Skidmore or his associate (1) prepared a list of people who need to be interviewed; (2) again met with Moore; (3) spoke to Ann Yarborough (a Nikki's employee); (4) spoke to Lynda Byrd; (5) after repeatedly unsuccessful attempts to locate and speak to Terry Hadden, interviewed him; (6) interviewed several of Moore's former co-workers; (7) attempted to locate Gibson at Perry Correctional Institution and at Kirkland Correctional Institution on October 12, 2001, and discovered that Gibson was in the Spartanburg County jail "waiting to be transported;" (8) spoke to another potential witness; (9) met with Mr. Morin and reviewed the physical evidence; and (10) attended trial on October 19, 2001, where he again interviewed Gibson, reviewed his statement and ascertained that Gibson's "answers seemed fairly consistent with report." Counsel had a copy of the report prepared by Mr. Clevenger, an investigator with the Solicitor's Office (**Applicant's Ex. 25**) in his file. This report was prepared shortly after the crimes and contains hearsay evidence of some matters that were later determined to be incorrect.

discovery[9] revealed that Moore did not have a handgun on him when he entered Nikki's and that both the murder weapon (a .45 caliber handgun) and a .44 caliber revolver, originated with the victim. There were a number of shots fired at the store and a number of shell casings. He had his experts to assist him in reviewing the physical evidence and determining what the physical evidence indicated as to the relative positions of Moore and Jamie Mahoney and what had occurred. Mr. Morin did not tell his experts what Moore said had occurred. Also, Mr. Morin reviewed the physical evidence with his crime scene expert, Donald Girndt, and he provided Mr. Girndt with crime scene photographs. Mr. Morin met with both his pathologist and his crime scene expert, at the same time, to discuss their findings.

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After counsel's investigation was concluded, Mr. Morin did not perceive this case as extremely complex from a factual standpoint, and he ranked it somewhere in the middle of the cases that he had tried. His theory of defense was to attack the credibility of the State's witnesses and attempt to use those witnesses to demonstrate that Moore was in the heat of passion when the shooting occurred.

The Court finds that the evidence of Moore's guilt was overwhelming. Terry Hadden, who survived the assault, positively identified Moore as the perpetrator of the crimes. Hadden, who was sitting just a few feet from Moore when Moore fired the first shot at Hadden, positively identified Moore from a photo line-up and he positively identified Moore at trial as the perpetrator of the crimes against him and against James Mahoney. Also, Moore's DNA was found inside the store, outside the store, on the murder weapon, on the side of the getaway vehicle, and inside the getaway vehicle after Moore was arrested.

[9] This would have included the reports of the officers involved in the investigation.

The motive for the crime was clearly robbery. Moore went to George Gibson's house before the crime in search of crack cocaine. Gibson told Moore that he would not sell or give Moore any crack cocaine, unless Moore had some money to purchase it. Moore told Gibson he was going to work but would be back later. Moore was unemployed at the time and had no way to get money legally.[10]

Moore eventually went to the convenience store where the victim worked, which contained readily available cash that Moore could steal. Moore entered Nikki's around 9:00 a.m. From the evidence in the record, it is clearly inferable that Moore placed items on the counter pretending to be there to purchase these items, and then attempted to steal money from Mahoney and the store.[11] Moore went behind the counter to the cash register and took the bank bag that contained over $1,400 in cash, the video-poker money, evidencing his intent when he went into the store. Moore's jury heard this information.

Moore did not testify at his capital trial, but the Court viewed and heard Moore's PCR testimony of how and why the shooting occurred. Moore claimed that he went into the store only to purchase the items he placed on the counter; that he and the victim got into an argument over 11 or 12 cents; that the victim made a racial slur in the course of directing Moore to leave the store; and that a struggle ensued. The Court finds that Moore's testimony is not credible. Moore's contention that he only took the money as an after-thought is completely beyond belief.

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[10] At the time he testified at trial, Gibson had pending charges for possession of crack cocaine and trafficking in crack cocaine. Moore's jury knew of the trafficking charge.

[11] As discussed, Hadden testified at the trial that he heard James Mahoney state "What the hell are you doing?" Hadden heard no other argument or discussion. When Hadden turned to see what was occurring, Moore had the victims' hands in one of his hands and came up with a pistol, pointed it at Hadden and told him not to move. Moore fired a shot at Hadden. Hadden then heard an exchange of gunfire. Hadden testified at the trial that he heard James Mahoney state "What the hell are you doing?" Hadden heard no other argument or discussion. When Hadden turned to see what was occurring, Moore had the victims' hands in one of his hands and came up with a pistol, pointed it at Hadden and told him not to move. Moore then fired a shot at Hadden. Hadden thereafter heard an exchange of gunfire, as he pretended to be dead.

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The Court finds that as the victim lay helpless on the floor behind the counter, Moore, who had been seriously shot in the arm by the victim in self-defense, stole the bank bag from behind the counter. While doing so, he bled onto the victim's clothing. This required Moore to go behind the counter of the store. Moore left Nikki's only after stealing the money-bag containing the $1,400 in cash and not before doing so.

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Moore fled the crime-scene leaving a trail of his own DNA out of the store and into the parking-lot. Moore bled profusely down the side of his truck as he drove away from the scene. Instead of turning right out of the parking lot of the convenience store and driving just a few short blocks to Spartanburg Regional Hospital and receiving emergency treatment for his serious gunshot wound, Moore drove approximately six miles in the opposite direction. Moore did not drive to the hospital or even to his own home, but directly to George Gibson's house. This was the same house where he had earlier tried to purchase crack. Only now, Moore had over $1,400 in cash with which to purchase it.

Once he arrived there, Gibson refused to sell crack to or assist Moore, not wanting to get involved in what Moore had done. Moore then tried to back out of the driveway, wrecked his truck, and eventually passed out in the roadway. He told a Spartanburg County deputy that "he did it." The blood soaked money-bag and money was recovered from the front seat of Moore's truck. Moore told either EMS personnel or the emergency room nurse that he had been using alcohol and cocaine that day. However, Moore denied before this Court that crack cocaine had anything to do with the crime and he denied that he was addicted to crack. Rather, Moore testified that he went to Gibson's residence only because he wanted Gibson's assistance in bandaging his wound. Again, the Court finds that his testimony is simply not credible given the entire record in this case.

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George Gibson has no medical training whatsoever. The credible evidence shows that Gibson is a crack cocaine dealer or one who facilitates crack cocaine sales. Further, the testimony at PCR established that when one exits Nikki's convenience store, Spartanburg Regional Hospital is visible to one's right, just a few blocks from Nikki's. Although Moore was seriously wounded, he went in the opposite direction of the hospital, travelling over six miles to Gibson's house. As previously stated, the evidence of Moore's guilt was overwhelming.

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Moore alleges that counsel was ineffective for not retaining and calling their own pathologist to rebut the State's evidence presented at trial and in the sentencing phase. However, as discussed, the record shows trial counsel retained a forensic pathologist to review the evidence in the case. Specifically, counsel retained Dr. Susan McMahon, a forensic pathologist from MUSC in Columbia, S.C. Counsel met with Dr. McMahon and his crime scene expert before trial, together, to review their findings.

Dr. McMahon informed trial counsel that, in her opinion, Moore shot the victim while Moore was behind the counter with the victim and a relatively short distance from the victim. The significance of this opinion is that Moore did not fatally shoot the victim in an exchange of gunfire while Mahoney was on one side of the counter and Moore was on the customer side of the counter. Instead, Moore went through an entrance doorway which led to the area behind the counter in pursuit of the victim Mr. Mahoney and to where the cash register and video poker money was located.

This testimony would have been damaging to Moore's defense and mitigation presentation. Counsel did not want to introduce any evidence showing that Moore had fired a shot behind the counter. The Court finds that counsel reasonably determined under *Strickland* not

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to present her to testify to facts that would have incriminated Moore and was inconsistent with his version of the shooting. *E.g.*, *Pruett v. Thompson*, 996 F.2d 1560, 1574 (4th Cir. 1993) (counsel was entitled to rely on the information he obtained from his retained experts and not second-guess this information just because the experts he had retained and had evaluated petitioner rendered an unfavorable or less than desirable opinion); *Hendricks v. Calderon*, 70 F.3d 1032, 1038 (9th Cir. 1995) ("If an attorney has the burden of reviewing the trustworthiness of a qualified expert's conclusion before the attorney is entitled to make decisions based on that conclusion, the role of the expert becomes superfluous"); *Murtishaw v. Woodford*, 255 F.3d 926, 947 (9th Cir. 2001) (counsel is entitled to rely on the expert(s) consulted).

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In an attempt to meet his burden of proving that he was prejudiced by counsel's failure to present a pathologist at trial, Moore alleges that Dr. Sandra Conradi, the forensic pathologist his collateral attorneys retained and had testify at the PCR hearing, could have rebutted the findings of the State's pathologist. The Court finds that counsel was not ineffective for failing to retain and call Dr. Conradi at the trial for several reasons.

First, counsel is not required to call a specific expert, such as Dr. Conradi. If counsel has retained a qualified pathologist, who gives him an unfavorable opinion regarding the evidence in the case, counsel is not required to search for another expert who will testify favorably. Counsel is not required to "expert shop." *Poyner v. Murray*, 964 F.2d 1404, 1419 (4th Cir. 1992) (petitioner could not establish ineffective assistance because counsel did not expert shop until he found one that who would testify favorably); *Pruett v. Thompson*, *supra* (same); *see also Walton v. Angelone*, 321 F.3d 442, 464 (4th Cir. 2003) (defendant has no constitutional right to insist on the appointment of any particular expert under *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985); and the Constitution does not entitle a criminal defendant to the effective assistance of an expert

witness). More importantly, Moore's own expert, Dr. Conradi, further incriminated and damned applicant Moore by her own testimony at PCR.

Moore testified at the PCR hearing that the victim fired first and shot him in the arm with the .44 pistol after Moore took the .45 pistol away from the victim. Moore claimed that he retreated to a door frame approximately six feet way located directly in front of the counter and returned fire from this location with the .45. He then fired no more shots. Moore thereafter went around an entrance door, which led to the area behind the counter, to see if Mahoney was dead. This entrance door, which is different from the door frame from which Moore testified he fired all of his shots, leads to the area behind the counter, *i.e.* the kitchen area.

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It is clear from Moore's testimony at PCR that he allegedly shot Mahoney with one of the bullets he fired from the door frame approximately six feet away and directly in front of the store counter. According to Moore he saw the victim lying on the floor, wounded, after he went through the door-way leading to the area behind the counter. Moore claimed that he then saw the money bag and, as an after-thought, he decided to take the money-bag from behind the counter despite his own serious wound.

However, and importantly, Dr. Conradi opined that there was stippling around the fatal wound to the victim Mahoney's left side. She also admitted that Moore would had to have been within several inches of the victim when he fired the fatal shot into the victim because the victim was wearing a shirt at the time he was shot, and the stippling penetrated the outer clothing of the victim and is visible on the autopsy photographs. Dr. Conradi's testimony would place Moore going through the doorway leading to the area behind the counter and shooting Mahoney in the side after Moore entered the door-way to the area behind the counter. The significance of this testimony is that it would demonstrate that Moore was not going behind the counter to see if

Mahoney was dead. He was going behind the counter to murder Mahoney and to steal the store's money.

If Dr. Conradi's opinion in this regard is accepted, and the Court accepts it as credible, then Moore's testimony regarding how the shooting occurred is simply not credible given the physical evidence. More importantly, Dr. Conradi's testimony agrees with trial counsel's expert pathologist and trial counsel's forensic expert that the fatal shooting of the deceased victim in this case occurred when Moore and the victim were both in the area behind the counter and in the kitchen area.

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The Court finds that if trial counsel had called Dr. Conradi to the stand, this damaging testimony would have been elicited on cross-examination by the State, as it was by the Attorney General at PCR. It would have been devastating to Moore's guilt phase defense and to his mitigation presentation during the sentencing phase. Therefore, Moore cannot show any prejudice from failing to present Dr. Conradi's testimony. *Strickland*; *See also Wong v. Belmontes*, 130 S.Ct. 383, 386 (2009).[12]

Moore also alleges trial counsel was ineffective in failing to retain their own crime-scene expert. The Court disagrees. First, Moore did not meet his burden of proof on this issue because he did not call a crime scene expert of his own at PCR to testify to how counsel was ineffective in failing to call a crime-scene expert. He failed to establish deficient performance or prejudice in this regard. *Lorenzen v. State*, 376 S.C. 521, 657 S.E.2d 771 (2008) (defendant's testimony that expert would have helped his case was merely speculative where he failed to call expert to testify at PCR). Therefore, this ground must be dismissed with prejudice.

[12] Although *Belmontes* involved an assessment of prejudice in the sentencing phase of a capital trial, the Court makes clear that an assessment of prejudice under *Strickland* requires a reviewing court "to consider all the relevant evidence that the jury would have had before it if [counsel] had pursued the different path" not just the positive information that counsel could have presented" through the witness(es), but also the damaging evidence from the prosecution "that almost certainly would have come in with it." *Id.*

Second, the record shows that trial counsel did retain its own crime-scene expert to review the crime-scene photographs and the evidence recovered by law enforcement. The record shows trial counsel met with this expert, Donald Girndt, prior to trial to discuss his findings. Mr. Girndt, who was present with counsel when Dr. McMahon stated her findings, agreed with Dr. McMahon that the evidence indicated that Moore shot the victim while both he and the victim were in the area behind the store's counter. This Court finds that it was objectively reasonable trial strategy for trial counsel not to call Mr. Girndt to testify to evidence that would have further incriminated Moore or to have Girndt prepare a report with these findings; *Strickland*. This ground must be dismissed with prejudice.

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Moore also alleges that trial counsel were ineffective in failing to properly cross-examine the State's crime-scene technician, Paul Dorman. The Court disagrees. Moore repeatedly referred to the crime-scene technician as "the State's expert" during the PCR merit's hearing. This is a misnomer. Mr. Dorman was not the State's expert at trial or at PCR. Mr. Dorman was called at trial as a crime scene technician, *i.e.* to testify about where he located particular pieces of evidence and his retrieval of the same. Moore called Mr. Dorman at the PCR hearing.

Dorman testified at the PCR hearing that, in his opinion, one of the shell casings found behind the counter must have come from someone firing the gun from behind the counter. Moore argued that this indicated that the victim shot at him first with the .45, and that trial counsel was ineffective in failing to cross-examine Mr. Dorman on this specific issue.

However, as previously set forth, Mr. Dorman was not "the State's expert" as Moore contends. Rather, as the crime scene technician, he was simply the person from the Sheriff's Office who was designated to film the crime-scene, photograph it, and recover all of the physical evidence found at the scene. He is not an expert in crime scene reconstruction or ballistics, and

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Moore did not qualify him as such at the PCR merit's hearing. (He was qualified at PCR only as an expert in crime-scene processing). Further, Mr. Dorman, admitted at PCR that *a firearms expert* was more qualified to testify how or why one of the fired shell casings ended up behind the counter on the floor. The record shows *the firearms expert* did so testify at trial. The forensic firearms examiner testified at trial that there were a myriad of ways in which the fired shell casing found behind the counter could have ended up behind the counter. **R. pp. 1419-50.**

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This Court listened to Mr. Dorman's, PCR testimony and finds that his testimony on this specific issue, *i.e.* how the shell casing ended up behind the counter, is not credible. The record shows that Moore struggled with the victim and items were knocked over on the counter. There are a myriad of ways that the shell casing could have ended up behind the counter and in the location it was found. The shell casing could have landed on the counter and been knocked to the floor by either Moore or Mahoney, or the shell casing could have simply bounced off the counter and rolled onto the floor behind the counter.

Additionally, depending on the position of the gun at the time it was fired by Moore, the shell casing could have landed on the floor behind the counter. This was in essence the testimony of the qualified ballistics expert at trial, and this Court finds that the ballistics experts' testimony is credible, given his qualifications and all of the evidence and the record in this case.

The Court further finds that Mr. Dorman's testimony on this specific issue at PCR does not meet the standard of admissibility required for admission of such evidence at a trial before a jury. Indeed, Mr. Dorman admitted that it would be better to ask a firearms examiner about this specific issue than him. The record shows that Mr. Dorman did not perform specific testing of the weapon fired in this case to determine how this specific weapon ejects shell casings, the distance this specific weapon would eject shell casings, and in what direction it would eject shell

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casings depending on the angle the gun was held when fired. Mr. Dorman's testimony on this issue is thus speculative. The Court finds that trial counsel was not ineffective in failing to cross-examine him on his personal opinion regarding how the shell casing could have ended up on the floor behind the counter because this was outside of his expertise and, by his own admission, the firearms examiner was person qualified to testify to such matters. Therefore, Moore has failed to show deficient performance or prejudice in this regard. *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998) (state's failure to object to hearsay testimony as to what another witness's testimony might have been does not relieve applicant of the burden of producing admissible evidence in accordance with the rules of evidence).

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Even if this testimony could have been admitted, this Court finds that Moore has failed to show prejudice. *Strickland.* Given that (1) there are several other factors that could have contributed to or caused the shell casing to have ended up on the floor behind the counter; (2) Dorman's admission that the firearms examiner was qualified person to explain how the shell casing could have ended up behind the counter; (3) the firearms examiner testified it was impossible to tell how the shell casing ended up behind the counter; (4) the implausibility of Moore's version of the shooting; (5) Moore's own expert, Dr. Conradi, testified that Moore would had to have been behind the counter when he fired the fatal shot given the stippling around the victim's wound; and (6) the overwhelming evidence of Moore's guilt of these crimes, the Court finds that Moore was not prejudiced by counsel's alleged deficient performance in this regard. Moore has failed to show that had this testimony been admitted there is a reasonable probability the result of the proceeding would have been different. *Strickland.*[13]

GROUND 10(d)

[13] By this time, he had taken the .45 caliber semi-automatic from the victim, which would explain how one fired shell casing ended up behind the counter, *i.e.*, he was behind the counter when he fatally shot the victim.

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In his **Ground 10(d)**, Moore maintains that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to disclose material evidence to the defense concerning prosecution witness George Gibson. Alternatively, he asserts that trial counsel were ineffective if they had but did not impeach Gibson with the information at issue. Moreover, he alleges that counsel were ineffective because other witnesses were at Gibson's residence on the night of the murder when Moore went there, and these witnesses had spoken to law enforcement. However, "defense counsel was either unaware of these other witnesses, which the state failed to name or take statements from, or had not been able to locate or interview them before trial." For the following reasons, the Court finds that Moore has not established a *Brady* violation or that counsel was ineffective as urged by Moore.

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1. Gibson's statements.

First, Moore claims that the State did not disclose that Gibson had given two statements to law enforcement, after September 16, 1999, in which he confirmed his September 16th statement that did not mention Moore's visit on the night of the 15th and in which Gibson said that Moore had come to his residence to get Gibson to take him to the hospital but Gibson refused. The Court finds that there was no constitutional violation.

Prior to the guilt phase, lead trial counsel, Michael Morin, Esquire, moved to exclude testimony from Gibson related to Moore's efforts to purchase crack from Gibson. Mr. Morin noted that "[u]p until last week when I received the state's supplementary notices of additional evidence in support of aggravating circumstances, this wasn't an issue." However, in the State's "listing of some of their witnesses the issue about Mr. Moore's alleged drug use in or around the time of this incident, they indicated in here there were two specific people who have given statements, but apparently they have supplemented their statements at some point, which I do not

know, but apparently they have, because the summaries that they have given me had in it information that I hadn't previously received." **R. pp. 1149-54**. As discussed in **Ground 10(j)**, *infra*, he unsuccessfully argued that this evidence should be suppressed.

On direct examination, the State established that Gibson had given a statement to the police on September the 16, 1999 in which Gibson did not mention Moore's September 15th visit to Gibson's house because Gibson "was just scared to get involved." **R. pp. 1251-52**. Trial counsel Morin thereafter cross-examined Gibson. **R. pp. 1254-59.**

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M. HOPE BLACKLEY

In pertinent part, counsel established the following:

Q Now, **the night that this happened you went down to the police station**, is that right?

A **That morning, yes**, after, you know.

Q **You gave a statement to the police**.

A **Yes**.

Q **Didn't say anything about the drugs**, did you? If you need to see a copy of it, I can give it to you.

A **I know**. Uh-huh.

Q **You didn't say anything about it. Didn't say anything about Steve or Dollar or the other gentleman**, did you?

A **No**.

Q You had crack in the house that night, didn't you?

A No.

Q You told the jury that he wanted to give you -

A I said . . . wanted me to get something for him.

Q Okay.

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A That is why.

Q So there wasn't any reason for you to leave that part out then, was there?

A At the time I wasn't thinking about it like that, because . . . this man was bleeding. I was concerned about it. I wasn't thinking about it like that.

Q Well, yeah. I understand.
A Okay.

Q Now, **this part that you now say that you remember that's not in your statement about the drugs, when did you first tell police or the solicitors about that?**

A About - -

Q **About this drugs and him wanting to get it on the credit and that kind of stuff. Do you remember when you first told them about that?**

A **A month ago.**

Q A month ago?

A September, I guess.

Q **Two years after this happened, is that right?**

A Well.

Q September of 2001 . . .?

A **Yeah, yeah, whatever.**

See **App. pp. 1254-55** (emphasis added).

On redirect examination, the State elicited that:

Q **Mr. Gibson, did you give a written statement the night this happened?**

A **Yes, sir.**

Q **When is the next time you talked to somebody about this case?**

A About as far as a statement or anything?

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Q About the case itself, when you talked to somebody about your statement or your - -

A **About three days later. The investigator and the solicitor stopped by and asked me, you know, and, about three or four days later, about two or three days later, I think.** In fact, it wasn't long. That was -- you know, it was just a brief statement, a brief moment, you know, stopped by. And **then this time.** That's it.

Q So **when was the next time after that you talked to anybody else about that case?**

A **The 25th of** December, of **September** rather.

Q **When you came and talked to the solicitor?**

A **Yes,** sir. That's when I - - yes.

Q And the time that you are talking about happened two or three days afterward, was we any of those three solicitors that was - -

A Sir?

Q Was any of us one of those solicitors that came and talked to you two or three days afterwards?

A Really, I'm going to be honest with you. All I remember is Officer -- policeman. He's the one I really saw, you know, because it was hot, and the window was up in the car. That's who I remember talking to. That's the only one that really I could, you know, place his face.

Q But, you know, it was three gentlemen in the car, and they said they were with the solicitor's office. So, you know, that's the only one I recognized at the time.

See **R. pp. 1260-61** (emphasis added).

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In closing argument, Mr. Morin launched a scathing attack on Gibson's credibility, which included Gibson's failure to mention crack in either his original statement to police or to the Solicitor's Office several days after the offense:

> Mr. Gowdy called it a crack house in his own closing. When it helps him, it's a crack house. But the fact of the matter is he never said anything to any police about, or authorities about, any drugs being mentioned.

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> Mr. Barnette asked him after I sat down did you ever talk to anybody after the police, and he said, oh, yes. Somebody from the solicitor's office, an investigator, came out there and talked to me about three days later. He didn't say one single thing about any drugs being mentioned. But he did remember it three weeks ago when he met with them again.
>
> What changed? Well, 18 months ago he got a charge for trafficking crack. Eighteen months ago. And has anything happened to that? No. That case is still pending. But, by the way, I just remember that before Mr. Moore said he needed help, he wanted to talk about the crack.

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R. p. 1565, ll. 2-19.

Mr. Morin then showed jurors a photograph taken from Gibson's house and showing his view of the roadway from that location; which had been introduced as **State's Ex. 23**. Morin urged jurors that this photograph refuted Gibson's testimony that he looked out in the street and saw Moore laying on the ground because the photograph plainly demonstrated that Gibson's vision at 3:00 a.m. would have been obstructed by large bushes. Mr. Morin argued that Gibson "is not telling the truth. He doesn't want to be involved. He doesn't want to be involved. He has got a pending drug charge as it is." **R. pp. 1565-66**.

Gibson, Mr. Morin, Susan Porter, Esquire, and Mr. Mabry testified at the PCR hearing on matters related to these allegations. Mr. Mabry, who is currently employed in the South Carolina Attorney General's Office and assigned as second chair in this case, was the senior Deputy Solicitor in Seventh Circuit Solicitor's Office at the time of the murder. He had some involvement in this case and he served notice of intent to seek death penalty. He explained that the hospital is visible as you exit Nikki's. To get to it, one would take a right and it is a two or three minute drive. Moore, however, took a left and drove to George Gibson's residence. Several days after the murder, Mr. Mabry went to the crime scene. He then went to Gibson's residence

along with Solicitor Gossett and the Office's investigator, Rusty Clevenger, because this was a death penalty case and Gibson was a potential witness. A policeman met them there.

Gibson was not connected to the armed robbery or murder, but he later provided a motive: Moore's desire for crack cocaine, which was consistent with the emergency room nurse's testimony. Mr. Mabry's instinct was that Gibson had not been truthful in his statement. Mr. Mabry spoke to a family member of Gibson and then to Gibson. He communicated to Gibson that he did not believe Gibson's statement. However, Gibson told Mr. Mabry the same story that he had told police on the night of the murder, *i.e.*, that Moore had come and asked Gibson to take him to the hospital. Mr. Mabry did not tell Mr. Morin about this conversation before he left the Solicitor's Office on January 10, 2001and he was not called to testify at trial.[14]

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Mr. Mabry did not recall if he took notes of this conversation. If he did, then they would have been on his computer or in the Solicitor's file.[15] He did not have any further involvement in this case after he left the Solicitor's Office. Neither of Moore's trial attorneys spoke to him about his involvement in this case. He would have written down Gibson's statement to him if Gibson had said that crack was involved in the case.

Gibson testified that he spoke to police on the morning of September 16, 1999 and ultimately gave a statement, **Applicant's Ex. 1**. This statement does not mention crack, cocaine or drugs, and the statement indicates that Moore had asked Gibson to take him to the hospital and Gibson refused. Gibson, however, claimed that he told officers on the 16th that Moore had asked him to get something for Moore. He recalled members of the Solicitor's Office coming to his residence several days after the 16th, but he thought that they had come to check out the scene and he did not recall speaking to anyone at that time.

[14] He also met with the victim's family and he may have spoken to Terry Hadden.

[15] The computer was erased following the election and before he left the Solicitor's Office in January 2001.

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From September 16, 1999 until October 2001, he told officers that Moore had come to his residence asking for help. He told Solicitor Gowdy that crack was involved in Moore's visits to his residence on September 15-16, 1999, because Solicitor Gowdy was the first person to ask him about what the "something" was that Moore wanted Gibson to get for him. On cross-examination, Gibson corroborated his trial testimony about Moore's efforts to get crack from him on credit on September 15, 1999, Moore's statement that Moore was going to "work" on the night of the 15th and Moore's activities with him on the morning of September 16th.[16] Gibson admitted that his recollection of these events was better at the time of Moore's 2001 trial.

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Gibson's recollection of his criminal history at the time of the offense was somewhat limited and confusing, and he denied his guilt of several charges for which he was convicted. However, he recalled the March 2000 trafficking charge, as well as his arrest on July 22, 2001, for charges of possession of crack, DUS and failure to stop. He admitted that he was incarcerated at the time of Moore's trial and his recollection was that this was at K.C.I. for a sixty day sentence for third offense DUS. Gibson did not remember being interviewed by either Mr. Morin or Mr. Kelly, even though **Respondent's Ex. 1** clearly reflects that Mr. Skidmore interviewed him during Moore's trial.

Mr. Morin testified that he felt that Gibson's testimony may have hurt the defense, but he did not think that the jury convicted Moore based on Gibson's testimony. Mr. Morin first learned that Gibson had changed his story about a week before trial when the State disclosed that Gibson had now given the story to which he testified at trial. Mr. Morin was unaware that Mr. Mabry

[16] Before this Court, Moore admitted that he had lost his job before September 16, 1999. He also testified that he had met Gibson before the crimes, that he knew that Gibson was involved in crack and that someone could get crack from Gibson, but he denied that he went to Gibson's to buy crack on the 15th. Also, he claimed that he had gone to Gibson's on the 16th to seek medical attention because he knew that Gibson would be awake. As noted above, the Court does not find his testimony credible.

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had taken a statement from Gibson but he acknowledged that the prosecution had elicited evidence of this statement on re-direct examination of Gibson. *See* **R. p. 1261.**

Also, he would not have done anything with that statement if he had known that it was given to Mr. Mabry. He further testified that the June 15, 2001 unsigned memo by an investigator from the Solicitor's Office, **Applicant's Ex. 27**, would not have been shared with him. Still, he thought that it would have been helpful to know that Gibson had been consistent with his account of the events in the past. Although counsel could not recall many details about Gibson's record at the time of the PCR hearing, the State had provided him with a "rap" sheet for Gibson.

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Also, the bill from the defense investigator, Mr. Skidmore, reflects that Mr. Skidmore attempted to locate Gibson at Perry Correctional Institution and at Kirkland Correctional Institution on October 12, 2001. On that date, it was discovered that Gibson was in the Spartanburg County jail "waiting to be transported." Further, Mr. Skidmore attended trial on October 19, 2001, where he again interviewed Gibson; he reviewed Gibson's statement and ascertained that Gibson's "answers seemed fairly consistent with report." **Respondent's Ex. 1.**

Mr. Morin noted that the defense had been given a "rap sheet" on Gibson, which reflected the then-current charges that Gibson was facing. Mr. Morin may have been willing to use other pending charges to impeach Gibson's credibility if he could do so under the Rules of Evidence. However, he did not believe that Gibson could be impeached with some offenses that did not carry more than one year, such as a bench warrant for failure to appear. Mr. Morin also did not independently recall whether Gibson was incarcerated at the time of trial; but, in deciding how to deal with Gibson's testimony, he did not think whether Gibson was incarcerated or not was important. Instead, he thought that the pending trafficking charge was important because

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even if jurors did not fully understand the statutory definition of this offense, he thought that they would understand that it was a serious offense. Further, he had impeached Gibson with evidence that he was a drug dealer. The jury would either believe this or not. His strategy is not to necessarily use every prior available to impeach. Moreover, the simple possession charge would tend to show Gibson was a possessor of drugs, not a seller.

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Susan Porter, Esquire, testified that she was formerly employed as an Assistant Solicitor in the Seventh Circuit Solicitor's Office.[17] The Court finds that her testimony is credible and based upon her testimony finds that Gibson's March 2000 trafficking charge was assigned to her to prosecute. Ultimately, she dismissed it because two officers involved in the case were no longer employed by the Spartanburg Police Department. One of these witnesses, who was necessary to establish chain of custody, had moved to Texas and did not want to come back for the trial. If this had been treated as a second offense trafficking, he would have been looking at between seven and twenty years.

Respondent also introduced **Respondent's Ex. 23**, case histories of Gibson with the dispositions of his charges, through Ms. Porter. These records reflect that the March 2000 trafficking charge was *nolle prossed* in May 2003, as Ms. Porter testified. Also, on the indictment stemming from his July 2001 arrest for possession of crack cocaine (02-GS-42-3146), Gibson pled guilty on May 13, 2003 to second offense possession of powder cocaine and received a three year sentence, suspended upon service of sixty days or payment of $ 200.00, with one year probation.[18]

[17] She is currently General Counsel for SLED.

[18] **Respondent's Ex. 23** further reflects Gibson's post-trial arrest for possession with intent to distribute (PWID) crack on December 15, 2003. Gibson entered a plea to distribution, in connection his charge, on November 30, 2005. The Court notes this charge only because it indicates that Gibson is a crack dealer.

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"A Brady violation occurs when the government fails to disclose evidence materially favorable to the accused." *Youngblood v. West Virginia*, 547 U.S. 867, 869 (2006). Evidence is favorable if it is either exculpatory or impeaching. *See, e.g., Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Evidence is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Youngblood*, 547 U.S. at 870 (internal quotation marks omitted); *Strickler*, 527 U.S. at 281 ("the term 'Brady violation' is sometimes used to refer to any breach of the broad obligation to disclose exculpatory evidence;" however, "strictly speaking, there is never a real 'Brady violation' unless the non-disclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict"). A "'showing of materiality does not require demonstration by a preponderance of the evidence that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal,'" *Youngblood*, 547 U.S. at 870 (quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)), but only a "'showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict,'" *Youngblood*, 547 U.S. at 870 (quoting *Kyles*, 514 U.S. at 435). The assessment of materiality is made in light of the entire record. *United States v. Agurs*, 427 U.S. 97, 112 (1976).

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An individual asserting a *Brady* violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. *Strickler*, 527 U.S. at 282, 119 S.Ct. 1936.

In the present case, the Court finds that the credible evidence - from counsel, Mr. Mabry and the trial record - is that Gibson spoke to police on the morning of September 16th and that he

gave a written statement that day. He did not mention Moore's visit to his house to try and get crack on September 15th in this statement. He also claimed that Moore came to his house on the morning of the 16th to get Gibson to take Moore to the hospital and again did not mention crack.

Gibson thereafter gave a statement to Mr. Mabry several days later that was consistent with the September 16th statement. He subsequently was brought to the Solicitor's Office roughly a month before trial, and he gave the statement to Solicitor Gowdy in which he first disclosed that Moore had been to his house on the night of the 15th looking for crack, and that Moore's reason for returning to Gibson's residence immediately after the murder and armed robbery was to purchase crack.

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The Court finds that the substance of this second statement was disclosed to the defense, but not that the second statement was given to Mr. Mabry, since it was elicited by the State and heard by Moore's jury at trial. The Court finds that it is unclear whether or not **Applicant's Ex. 27** reflects that Gibson gave yet another consistent statement because that document is not signed by anyone and because Moore did not present the author thereof at the PCR hearing.

Even assuming that it does reflect another statement, the Court finds that Moore is still not entitled to relief and that Moore has failed to prove that the prosecution violated *Brady* by the nondisclosure of Gibson's statement that was consistent with the September 16th version. First, the Court rejects this allegation because the defense investigator, Mr. Skidmore, attempted to locate Gibson at Perry Correctional Institution and, at Kirkland Correctional Institution on October 12, 2001. On that date, it was discovered that Gibson was in the Spartanburg County jail "waiting to be transported." Mr. Skidmore later interviewed Gibson during the course of Moore's trial. *See* **Respondent's Ex. 1**.

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Therefore, evidence of these other statements was available to counsel through means other than the State's disclosure of them. "[W]here the exculpatory information is not only available to the defendant but also lies in a source where a reasonable defendant would have looked, a defendant is not entitled to the benefit of the *Brady* doctrine." *United States v. Wilson*, 901 F.2d 378, 381 (4th Cir. 1990) (Government did not have obligation to disclose allegedly exculpatory testimony of witness whom defendant was free to question and would naturally have interviewed in preparation for trial); *see also United States v. Hicks*, 848 F.2d 1, 4 (1st Cir.1988) (Government need not disclose details of a witness' grand jury testimony when defendant is aware of the grand jury witness and has access to interview that witness and have the witness testify at trial); *United States v. Grossman*, 843 F.2d 78, 85 (2nd Cir.1988) (concluding that no *Brady* violation occurred when defendant " 'knew or should have known the essential facts permitting him to take advantage of any exculpatory information' ").[19]

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More importantly, in light of the entire record, *Agurs*, 427 U.S. at 112, the Court finds that there cannot be a *Brady* violation because Moore has failed to demonstrate the materiality of the suppressed evidence by "'showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.'" *Youngblood*, 547 U.S. at 870 (quoting *Kyles*, 514 U.S. at 435). The Court finds that Gibson was a collateral witness, rather than an eyewitness such as in *Riddle*, and that his credibility was thoroughly assailed by defense counsel, through cross-examination and closing argument.

[19] The Court finds that the present case is thus distinguishable from *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006), where the Court rejected the State's argument that impeaching information with respect to an eyewitness' account could have been learned through interviewing the officer who took notes of the inconsistent statement. The Supreme Court found that it was "unrealistic to require petitioner and his attorneys to reinterview all officers and investigators in the days before the trial," *Id.* Here, however, Gibson was a collateral witness. Also, the defense was obviously aware that Gibson was incarcerated and knew where he was located. Moreover, Mr. Skidmore had, in fact, interviewed him during trial. Thus, this Court finds that counsel could have learned details about other statements Gibson had given and his criminal history that could be used for impeachment in this interview.

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Further, one of the two allegedly undisclosed statements was, in fact, disclosed to the defense: his statement to Mr. Mabry several days after the murder. The fact that there was no disclosure that this statement was made to Mr. Mabry is not important to whether the prosecution violated *Brady*, since the statement's existence was brought out at trial and counsel was able to effectively use it for impeachment purposes, as demonstrated. *See State v. Kennerly*, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct.App.1998); *Sheppard v. State*, 357 S.C. 646, 660, 594 S.E.2d 462, 470 (2004) (finding no *Brady* violation when defense counsel was given witness's statements in time for cross-examination, and, thus, there was not a reasonable probability the outcome of the trial would have been different had the statements been disclosed prior to trial).

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Additionally, there was overwhelming evidence establishing that Moore was guilty of murder, assault with intent to kill (AWIK), armed robbery and possession of a firearm during the commission of a violent crime as noted from the facts presented in a previous section. Any impeachment of Gibson does nothing to impeach or otherwise lessen the impact of Hadden's eyewitness testimony.[20] Given the strength of his identification of Moore and the physical evidence circumstantially corroborating it, Moore cannot prove that the undisclosed statement was material under Brady and the Court rejects this claim. *See State v. Gunn*, 313 S.C. 124, 136-38, 437 S.E.2d 75, 82 (1993) (given abundance of other evidence detailing witness' disrespect for law, defendants could not show failure to disclose evidence witness bribed or attempted to bribe magistrate was "material" under *Brady*). *See also Mills v. Singletary*, 161 F.3d 1273, 1288 (11th Cir. 1998) (defendant's Sixth Amendment right to confront witnesses is satisfied where the cross-examination permitted exposes the jury to facts sufficient to evaluate the witness' credibility and "enables defense counsel to establish a record from which he can properly argue why the witness is less than reliable").

[20] Indeed, Moore does not challenge identity in PCR.

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Further, the Court rejects Moore's alternative argument that counsel's cross-examination and impeachment of Gibson was ineffective because the existence of the June 2001 statement was not presented to the jury. The Court finds that counsel's performance was not deficient and that counsel's chosen manner for impeaching Gibson was objectively reasonable under *Strickland*. "[D]ecisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature" and will not support an ineffective assistance claim." *United States v. Nersesian*, 824 F.2d 1294, 3121 (2nd Cir. 1987); *see also Hunt v. Nuth*, 57 F.3d 1327, 1333 (4th Cir.1995) (refusing to indulge in a "grading of the quality of counsel's cross-examination"); *Sallie v. North Carolina*, 587 F.2d 636, 640 (4th Cir. 1978).

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"In hindsight, there are few, if any, cross-examinations that could not be improved upon. If that were the standard of constitutional effectiveness, few would be the counsel whose performance would pass muster." *Willis v. United States*, 87 F.3d 1004, 1006 (8th Cir. 1996). The extent of examination and cross-examination of witnesses is an area of trial tactics left to the discretion of counsel. *Yarrington v. Davies*, 779 F.Supp. 1304, 1308 (D. Kan. 1991), *aff'd*, 992 F.2d 1077 (10th Cir. 1993). Counsel is not required to raise every conceivable issue or pursue every avenue of inquiry, but is required only to exercise normal skill, judgment, and diligence. *Dyer v. Crisp*, 613 F.2d 275 (10th Cir. 1980). In the present case, counsel did cross-examine and thoroughly impeach Mr. Gibson - just not in the manner that Moore and his collateral attorneys suggest that he should have. This does not show deficient performance under *Strickland* because "[t]here are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Strickland*, 466 U.S. at 689.

More importantly, the Court finds that he cannot show any prejudice resulting from counsel's alleged errors because, for the same reasons that he has not established materiality under *Brady*, he cannot prove that "[c]ounsel's errors [were] 'so serious as to deprive him of a fair trial, a trial whose result is reliable.'" *Richter*, 131 S.Ct. at 787 (quoting *Strickland*, 466 U.S. at 687).[21]

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2. Gibson's pending charges.

Moore further alleges that the State failed to disclose that Gibson "was incarcerated at Allendale Correctional Institution and was brought to Spartanburg to testify at the solicitor's direction. Defense counsel was never told that Mr. Gibson was also out on bond for a July 2001 possession of crack arrest, although the State had informed counsel of Gibson's 2000 trafficking in crack charge that was still pending at the time of Moore's trial." The Court finds that there is no *Brady* violation and that Moore has alternatively failed to establish either deficient performance or prejudice under *Strickland*.

Initially, the Court finds that there was no violation of *Brady* because the prosecution had provided counsel with a rap sheet for Gibson that accurately reflected Gibson's then-pending charges. *See Kennerly, supra; Sheppard v. State, supra.* Also, Mr. Skidmore's report **(Respondent's Ex. 1)** shows that the defense was aware of Gibson's incarceration at the time leading up to the trial and the trial itself. This exhibit further reflects that Mr. Skidmore interviewed Gibson during Moore's trial and may have, or at the very least could have, inquired

[21] Unlike this Court's analysis for alleged *Brady* violations, *see Kyles, supra*, the Court will not aggregate any of Moore's ineffectiveness claims and perform a "cumulative prejudice" analysis because every ineffective assistance claim must be analyzed individually. While it is perfectly logical to consider the cumulative effect of failing to disclose evidence under *Brady*, since the determination to be made is whether non-disclosure of evidence deprived the defendant of due process, id, 514 U.S. 419 (1985), the Court finds that the same is not true when focusing upon whether trial counsel rendered ineffective assistance of counsel. Moreover, the Court finds that alleged errors, which are not unconstitutional individually, simply cannot be added together to create a constitutional violation. *See Fisher v. Angelone*, 163 F.3d 835, 852-53 (4th Cir. 1998); *United States v. Stewart*, 20 F.3d 911, 917-18 (8th Cir.1994).

about all of Gibson's pending charges. *See Wilson*, 901 F.2d at 381; *see also Hicks*, 848 F.2d at 4. *Contra Riddle*, 369 S.C. at 44, 631 S.E.2d at 73.

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More importantly, in light of the entire record, *Agurs*, 427 U.S. at 112, the Court finds that there cannot be a *Brady* violation because Moore has failed to demonstrate the materiality of the suppressed evidence. *See Youngblood*, 547 U.S. at 870; *Kyles*, 514 U.S. at 435. Again, Gibson was a collateral witness, rather than an eyewitness such as in *Riddle*. Also, his credibility was thoroughly assailed by defense counsel, through cross-examination and closing argument. Further, counsel utilized the pending trafficking charge to impeach Gibson. His credibility was thoroughly impeached.

Thus, he cannot show materiality for any supposed non-disclosure. Additionally, as noted earlier, there was overwhelming evidence establishing that Moore was guilty of murder, assault with intent to kill (AWIK), armed robbery and possession of a firearm during the commission of a violent crime.

Nor has Moore proven ineffectiveness in counsel's handling of Gibson on cross-examination. The Court first finds that counsel's performance was not deficient and that counsel's chosen manner for impeaching Gibson was objectively reasonable under *Strickland*. *See Nersesian*, 824 F.2d at 1321; *see also Hunt*, 57 F.3d at 1333 (refusing to indulge in a "grading of the quality of counsel's cross-examination"). The Court finds that this allegation appears to be primarily based upon the 20/20 vision of hindsight, which almost invariably results in a claim that the cross-examination could have been improved upon. This is not the standard of constitutional effectiveness. *E.g.*, *Willis*, 87 F.3d at 1006. As discussed, *Strickland* does not require counsel to raise every conceivable issue or pursue every avenue of inquiry. Rather, counsel is required only to exercise normal skill, judgment, and diligence. Here, counsel did

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cross-examine and thoroughly impeach Mr. Gibson - just not in the manner that Moore and his collateral attorneys suggest that he should have. This does not show deficient performance under *Strickland* because "[t]here are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Strickland*, 466 U.S. at 689.

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More importantly, the Court finds that he cannot show any prejudice resulting from counsel's alleged errors because, for the same reasons that he has not established materiality under *Brady*, he cannot prove that "[c]ounsel's errors [were] 'so serious as to deprive [him] of a fair trial, a trial whose result is reliable.'" *Richter*, 131 S.Ct. at 787 (quoting *Strickland*, 466 U.S. at 687).

3. Counsel's failure to present other witnesses who were at Gibson's residence on September 15-16, 1999.

The Court likewise rejects Moore's claim that counsel was ineffective in failing to investigate the other persons who were present at Gibson's house and present these individuals as defense witnesses. The Court first notes that Moore has not proven that counsel's performance was deficient because the Court finds that he did not prove that any statements from these witnesses were not disclosed by the prosecution and, more importantly, because this Court concludes that counsel were objectively reasonable under *Strickland* in opposing the introduction of evidence that the unemployed Moore had gone to Gibson's house on September 15th and, when informed that he had to have cash to pay for it, later committed the armed robbery and murder before returning to Gibson's home to purchase crack with the stolen money. This in spite of the serious gunshot wound to his arm.

The Court finds that the reasonableness of counsel's performance on this allegation dovetails into the reasons for the Court finding that Moore cannot show prejudice on this claim.

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The only witness that Moore presented in support of this allegation was Wilbert Casey. Casey testified that he is Gibson's friend and that he was present at Gibson's residence on September 16, 1999. Moore, who had been shot, came there and someone told him that he needed to go to the hospital. Four or five people were there at the time.

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Casey only saw Moore once that evening. Further, he admitted that he was high at the time and did not remember a lot. However, he stated that he had known Gibson for roughly twenty-five years; and he confirmed both that Gibson sold crack and that Gibson's residence was a gathering place to smoke crack. He further corroborated that Moore had asked for Gibson on his visit to Gibson's house. He did not overhear any conversation between Moore and Gibson and his only knowledge of the conversation was based upon what Gibson told him.

There is no prejudice from counsel's failure to present Casey's testimony, which is cumulative to and would have corroborated Gibson's trial testimony. It was not trial counsel's job to corroborate the Gibson's testimony and the State's theory of why the murder and armed robbery occurred. Indeed, the absence of prejudice is demonstrated by the claim in the first part of this allegation, as well as the other allegations in which Moore asserts ineffectiveness in connection with the State's introduction of testimony concerning crack through Gibson and Ms. Smith. The Court finds that Moore cannot show prejudice from counsel's failure to present a witness who is inconsistent both with counsel's chosen theory of defense and Moore's other allegations in collateral proceedings.

Moreover, as stated earlier, there was overwhelming evidence establishing that Moore was guilty of the crimes, including Mr. Hadden's eyewitness testimony and the physical evidence circumstantially corroborating it. Given the strength of his identification of Moore and the physical evidence circumstantially corroborating it, Moore cannot prove a reasonable

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probability of a different result but for counsel's failure to present Casey. *See Strickland*, 466 U.S. at 694. *See also Richter*, 131 S.Ct. at 787

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GROUND 10(e)

Moore alleges that counsel were ineffective because trial counsel failed to pursue their *Batson v. Kentucky*, 476 U.S. 79 (1986) claim, where Moore's jury was exclusively white; the State struck the only two African-Americans qualified to serve as jurors; and the State's facially race-neutral reasons for striking the two African-American jurors were allegedly pretext. The Court finds that this claim lacks merit.

In the course of jury selection, the State struck white jurors Joyce Smythe (# 251); Debra Perkins (# 213), Charles Kent (# 145) and alternate Edward Huffman (# 132). It struck African-American jurors Joyce Morrow (# 191) and Douglas Alexander (# 2). **R. pp. 1134; 1765.**[22]

Following jury selection, trial counsel Morin made a *Batson* motion, noting that the State had struck the only two qualified African-American jurors. **R. pp. 1134-35.** Solicitor Gowdy explained that the State struck Ms. Morrow because she had withheld information about her criminal record. The Solicitor observed that but for his initial misunderstanding about how the trial judge qualified jurors, he would have moved to have her disqualified for cause "because her answers were, frankly, closer, I thought, to Mr. Rookard's who was disqualified than they were any of the other people who had an innocent mis-recollection." **R. p. 1135, ll. 10-21.**

Solicitor Gowdy further noted that Ms. Morrow also indicated that "she thought guns were used improperly." While some other jurors may have had "reluctance about guns," no other juror stated that they believed guns are "improperly" used. "That's obviously going to be an issue in this case, if the victim was armed." Moreover, she was a school teacher who initially wanted

[22] The jury selection sheet reflects that the State first struck juror Smythe. It then struck jurors Morrow, Alexander, Perkins, Kent and alternate juror Huffman, in that order. **R. p. 1765.**

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to be switched to another term, and "only when she was confronted with the fact that she would miss her vacation did she opt to stay." He indicated that the State only wanted petit jurors who wanted to serve. The principle reason for striking her, however was "the withholding of [information about her prior] convictions, and only when confronted with the fact that she had an alias did we begin to get any truthful responses." **R. p. 1135, l. 22-p. 1136, l. 10.**

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The State struck juror Alexander because the Seventh Circuit Solicitor's Office prosecuted Mr. Alexander's son for murder. In fact, Solicitor Gowdy 's recollection was that Mr. Alexander was the only juror who had a child incarcerated for murder This is the same reason that the State struck Mr. Huffman, a white alternate juror, who likewise had a close family member prosecuted for murder. Solicitor Gowdy explained that "Mr. Moore is also somebody's son. And we did not want a juror who had recently had a son sent to prison . . . for the charge of murder." Although this was the primary reason for striking him, Solicitor Gowdy stated that his notes reflected that Mr. Alexander had misunderstood a question from the trial judge and he was the only juror who misunderstood that question. **R. p. 1136, l. 11-p. 1137, l. 7.**

The trial judge gave trial counsel an opportunity to show that the prosecution's stated reasons for striking the jurors were pretextual, but Mr. Morin stated that "we can't argue with the State." **R. p. 1137, ll. 8-14.** The trial judge then denied counsel's motion, as follows:

> Given the fact that the state has presented the reasons that they have, and that in accordance with our case law of the State vs. Adams, 322 South Carolina 114, 470 S. E. 2d., 366, a 1996 case, wherein a motion is made to hold a Batson hearing where members of a cognizable racial group or gender is struck and the opposing party requests a hearing, that was done by the defendant. The second step of the analysis requires only a race neutral explanation by the proponent of the strike.
>
> Mr. Morin and Mr. Kelly, it's my understanding that you have accepted those reasons. I do find, by the way, that they are race neutral reasons, and, as such, . . . these strikes were not just pretext. And, as such, the motion is denied.

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R. p. 1137, l. 15-p. 1138, l. 3.

Trial counsel testified in connection with this issue, as did Mr. Willingham, who was the Deputy Solicitor at the time of trial and part of the prosecution team.[23] The Court finds that their testimony is credible and that counsel's testimony is credible as to all of the issues addressed herein. In light of this credible testimony and the trial transcript, the Court finds that Moore has not proved either deficient performance or prejudice under *Strickland.*

Under *Batson* and its progeny, "parties are constitutionally prohibited from exercising peremptory challenges to exclude jurors on the basis of race, ethnicity, or sex." *Rivera v. Illinois*, 129 S.Ct. 1446, 1451 (2009). As the South Carolina Supreme Court explained in *State v. Rayfield*, 369 S.C. 106, 112, 631 S.E.2d 244, 247 (2006):

> "The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender." *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). "The purposes of *Batson* and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process." *State v. Haigler*, 334 S.C. 623, 628-29, 515 S.E.2d 88, 90 (1999). Both the State and defendants are prohibited from discriminatorily exercising a peremptory challenge of a prospective juror. *Georgia v. McCollum*, 505 U.S. 42, 58, 112 S.Ct. 2348, 2358-59, 120 L.Ed.2d 33 (1992).
>
> We set forth the proper procedure for a *Batson* hearing in *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996) (citing *Purkett v. Elem*, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995)). After a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation. This explanation is not required to be persuasive or even plausible. Once the proponent states a reason that is race-neutral, the

[23] The Court rejects Moore's claim that Mr. Willingham's testimony is irrelevant to the question of whether the State properly exercised his strikes and that "[o]nly Solicitor Gowdy knows why he exercised strikes against African-Americans in a certain way, and his reasons are set forth in the trial record." The Court finds that Mr. Willingham had input into and actively participated in the State's decision of which jurors to strike and, as a result, was permitted to testify about the reason for the State's use of its strikes, even though the Solicitor stated those reasons in the *Batson* hearing. Mr. Willingham's testimony and **Respondent's Ex. 26** (his folder for juror Morrow) corroborate the State's use of its challenges at trial.

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> burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. *Adams*, 322 S.C. at 123-24, 470 S.E.2d at 371-72; *Haigler*, 334 S.C. at 629-30, 515 S.E.2d at 90-91.

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See also Rice v. Collins, 546 U.S. 333, 338 (2006).

Further, "in *Batson* inquiries, 'the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed.' Because there is rarely any direct evidence of the attorney's state of mind when he made the challenge, 'the best evidence often will be the demeanor of the attorney who exercises the challenge.' This type of credibility assessment lies 'peculiarly within a trial judge's province.'" *Byram v. Ozmint*, 339 F.3d 203, 208 (4th Cir. 2003) (*citing Miller- El v. Cockrell*, 537 U.S. 322, 340 (2003)). *See also Batson*, 476 U.S. at 98 n. 21 ("Deference to trial court findings on the issue of discriminatory intent makes particular sense in this context because the finding 'largely will turn on evaluation of credibility'").

Initially, the Court finds that Moore has failed to prove deficient performance based on counsel's failure to argue the reasons proffered by the State for striking jurors Morrow and Anderson were, in fact, pretextual. The Court finds that Mr. Morin, who was primarily responsible for handling the guilt phase, made a reasonable strategic decision not to further argue the *Batson* motion because, based upon his knowledge of the record, the reasons proffered by the State were race-neutral.

Counsel had obviously participated in the lengthy voir dire process and he was aware of the jurors' responses to the questions posed as well as the jurors' demeanor. With respect to juror Morrow, counsel had witnessed the following exchange between Mr. Willingham and Ms. Morrow:

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Q And . . . on the questionnaire it does say have you or any other family member been arrested, charged with a crime other than minor traffic offenses, and you indicated yes. And in parenthesis you put gambling or drugs. Who was that convicted of those?

A Can I put what?

Q Let me show you what I believe is your questionnaire. Question number 23, "Have you or any family member been arrested or charged with a crime other than a minor traffic offense?" You put yes. "If so, please explain." Who was charged with what crime, gambling and drugs? Is that your questionnaire?

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A Yes, sir.

Q Okay. I am just trying to find out who was charged.

A Oh, my brother.

Q Your brother. Okay. So you have never been charged with anything.

A Yes, sir.

Q What have you been charged with?

A With gambling.

Q Okay. When was that?

A It was in '85.

Q And - -

A It was expunged.

Q Expunged?

A Yeah.

Q Okay. No other prior convictions that you are aware of?

A No, sir.

Q What happened? I know you said it's already been expunged. But before it was expunged, what happened to the trial? Was it a trial or did you plead guilty?

A No, sir.

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Q What happened?

A It was tickets, ball tickets.

Q Okay. Forfeited, is that what happened?

A Yes.

Q Do you think because you have had this prior dealing with the criminal justice system that would in any way effect your ability to be fair and impartial to the state or to the defense?

A No, sir.

Q Ms. Morrow, is your maiden name or prior name Atchison?

A Yes, sir.

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Q Okay. And, again, I don't mean to pry more than I have to, but in 1982 did you have an arrest for simple possession of marijuana?

A In 82? Yes, sir.

Q And what happened to that charge?

A It was expunged.

Q But before -- you say it was expunged. What happened?

A It was a fine.

Q And you didn't have a jury trial or anything?

A No, sir.

Q You just again forfeited the bail bond?

A Yes.

R. p. 322, l. 21-p. 325, l. 1.

Counsel was thus aware that juror Morrow consciously withheld information about her prior criminal *conviction* and that she only revealed a prior conviction when the State confronted

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her with its knowledge that she was formerly known by the name Atchison. A prior criminal conviction is a neutral reason to strike. *State v. Dyar*, 317 S.C. 77, 452 S.E.2d 603 (1994) (prior prosecution by that particular solicitor's office); *State v. Casey*, 325 S.C. 447, 453, 481 S.E.2d 169, 172 n. 2 (S.C. App. 1997); *Sumpter v. State*, 312 S.C. 221, 223-24, 439 S.E.2d 842, 844 (1994) (prospective juror had a prior DUI involvement). Counsel was also aware that, when asked how the fact that her stepson being killed made her feel, she had stated that "guns, . . . used inappropriately[,] . . . wrong things can happen. And that's my feeling that . . . everyone shouldn't be allowed to carry a gun. **R. p. 326.**[24]

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Counsel was likewise aware of the following information when he made the decision to accept the prosecution's stated reasons for their strikes as race-neutral. Stacey Gannt (# 94), a white juror who became the second alternate juror, had failed to disclose an arrest for receiving stolen goods during the same year as Moore's trial, but she had apparently misunderstood the questionnaire and did not disclose this because she was *acquitted* of the charge. **R. pp. 904-05.**[25] Further, the State had already struck white juror Edward Huffman (# 132), who was presented as a possible alternate, with the only challenge that it had for alternate jurors. **R. 1765.** Thus, it could not strike Ms. Gantt. Mr. Alexander, an African-American juror, had informed the trial judge that his son, John Alexander, was incarcerated for a Spartanburg County murder that the Seventh Circuit Solicitor's Office had prosecuted. **R. pp. 191-92.** In addition to striking juror

[24] Her stepson had been shot and no one was ever prosecuted for that crime. **R. p. 326.**

[25] When it was explained to her that the information requested in the questionnaire was arrests or convictions of herself or other family members, she immediately responded "that's wrong" in referring to her questionnaire responses and she explained that her uncle had served three or four years for a Spartanburg County shoplifting conviction. **R. pp. 903-04.**

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Anderson, the State had struck Mr. Huffman, who was white, based upon its knowledge that he had a brother-in-law who was convicted of murder.[26]

This Court finds that the reasonableness of counsel's acceptance of the reasons given by the State is demonstrated by the trial judge's finding that the State's reasons for striking jurors Morrow and Alexander were race-neutral and not pretext. The trial judge, unlike this Court, heard the jurors' responses to the questions posed and he viewed their demeanor. He also had the opportunity to view the demeanor of the Solicitor when exercising the State's strikes. His finding is entitled to great deference, and on direct review would have been upheld unless clearly erroneous. *Felkner v. Jackson*, 131 S.Ct. 1305, 1306 (2011); *See also Batson*, 476 U.S. at 98 n. 21; *Miller-El*, 537 U.S. at 340-41 ("Deference is necessary because a reviewing court, which analyzes only the transcripts from voir dire, is not as well positioned as the trial court is to make credibility determinations. ... In the context of direct review, therefore, we have noted that 'the trial court's decision on the ultimate question of discriminatory intent represents a finding of fact of the sort accorded great deference on appeal' and will not be overturned unless clearly erroneous"). The Court further finds that Moore has not presented it with any sound reason to disturb the trial judge's finding that there was no pretext.

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The Court finds that, much like any other objection, a *Batson* motion can be forgone for strategic or tactical reasons, *Randolph v. Delo*, 952 F.2d 243, 246 (8th Cir.1991); *Scott v. Gomez*, No. C-91-2181-SBA, 1993 WL 303728 *2 (N.D.Cal. July 29, 1993). Here, the Court finds that counsel made an objectively reasonable decision under *Strickland* not to contest the State's strikes after hearing the race-neutral reasons offered by the prosecution because counsel did not

[26] Mr. Huffman was the last juror who participated in voir dire. **R. pp. 1131-33.** The precise relationship of the "close family member" who was prosecuted for murder was not revealed until the PCR testimony of Mr. Willingham.

think that those reasons were a pretext for racial discrimination. *See Shabazz v. Com.*, 2006 WL 3751322, 4 (Ky.App., Dec. 22, 2006) (unpublished).

The Court further finds that Moore has not presented this Court with any credible evidence that he was prejudiced by trial counsel's decision. To show prejudice in the context of failing to argue that the reasons proffered by the State were a pretext for racial discrimination, Moore must show a reasonable probability that further argument in support of a *Batson* challenge would have resulted in a different jury. *State v. Pryor*, 2011 WL 1344165, 1 -2 (Ariz.App., Apr. 7, 2011). He has not met that burden. *Id. See also United States v. Franklin*, 157 F.3d 90, 92 (2nd Cir.1998) (finding that petitioner, alleging ineffective assistance of counsel based on his attorney's waiver of *Batson* claim, was unable to meet the requirements of *Strickland* where the challenge was meritless); *Williams v. Duncan*, 2007 WL 2177075, 21 (N.D.N.Y., July 27, 2007) ("Significantly, it is entirely possible that [trial counsel] recognized the futility of the *Batson* challenge and strategically decided to abandon the motion. An attorney's purported failure to pursue a meritless *Batson* claim cannot be the basis of an ineffective assistance of counsel claim") (citing *Franklin*).

In an effort to demonstrate prejudice from the strike of juror Morrow, he points out that the State failed to strike juror Gantt, the second alternate. He ignores, however, that the State had exercised its only challenge for alternates to strike juror Huffman. Further, Ms. Gannt failed to disclose a charge of which she was *acquitted*, but Ms. Morrow was not forthcoming about a prior *conviction*. The Court rejects Moore's contention that the State indicated that Ms. Morrow's use of an alias was one of the reasons for striking her. Rather, it challenged her because she was unwilling to admit her prior marijuana conviction until confronted with the alternate identity.[27]

[27] The Court would note, as did the Solicitor at trial, that the trial judge subsequently excused juror Rookard (# 235) because he had been dishonest in not disclosing a number of arrests and convictions on his questionnaire. Also, the

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Further, the State used a peremptory challenge to strike white juror Charles Kent (# 145), who had failed to reveal past offenses, after the trial judge had denied the State's request to strike Kent for cause. **R. pp. 715-18; 1765.** Nor has Moore proved that the State's other reasons for striking Ms. Morrow were pretext.

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Although the Solicitor noted that other jurors expressed some concerns over use of firearms, he noted that none had used the term "improperly" in doing so. Moore has not pointed to any other juror that the State accepted who expressed his or her reservations about gun use in this fashion or who had such strong reservations about possessing a weapon. Moreover, because this challenge was based upon an assessment of the juror's concern about gun use, this Court finds that it should defer to the trial judge. Again, he had the opportunity to actually listen to the responses and assess the demeanor of the various jurors when they responded to questioning.

Thus, he was in the best position to determine whether the State's assessment of Ms. Morrow's distrust of gun use was more than fellow members of the venire, whereas this Court must rely solely upon the cold record.[28] Likewise, he has not pointed to any other juror that the State accepted who sought to avoid jury service in this case, only to change his or her mind when informed that such a decision would result in loss of vacation time. The Court further finds that Moore has failed to show pretext in the striking of juror Anderson.

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trial judge informed Mr. Rookard that he would hold a contempt hearing as to the dishonest responses following Moore's trial. **R. pp. 485-92.**

[28] Even if the Solicitor was mistaken in regard to his assessment, the Court finds that Moore has not shown pretext. Rather, the reason proffered was still race-neutral, *see Hurd v. Pittsburg State Univ.*, 109 F.3d 1540, 1546-47 (10th Cir.1997) (finding that a proffered race-neutral explanation for peremptory strike based solely on strike proponent's mistaken belief satisfied the second prong of *Batson* analysis); *abrogated on other grounds, Migneault v. Peck*, 204 F.3d 1003 (10th Cir.2000); *United States v. Watford*, 468 F.3d 891, 912-13 (6th Cir. 2006); and because resolution of this claim rests on credibility, "the best evidence often will be the demeanor of the attorney who exercises the challenge." *Miller-El*, 537 U.S. at 339. For this Court to reverse the trial judge's findings "would require this Court to give greater weight to inferences and assumptions drawn from the cold appellate record concerning what the prosecutor must have known, than to specific credibility determinations made by the [trial judge] . . . with the benefit of firsthand observation." The Court declines to make those inferences and assumptions based upon this record. *Cf. Watford*, 468 F.3d at 914.

To the contrary, he recognizes that Mr. Anderson and Mr. Huffman were similarly situated jurors and that they were of different races. However, he has their races reversed, erroneously asserting that Mr. Anderson was white and Mr. Huffman was African-American. More importantly, he ignores that the prosecution struck both men (**R. p. 1736**) and for the same reason: a close family member of each juror was prosecuted by the Seventh Circuit Solicitor's Office for murder. *See* **Applicant's proposed Order, pp. 4, 17**. As noted, this is a race-neutral reason for exercising for the State's exercise of its peremptory challenges. *See Casey*, 325 S.C. at 453, 481 S.E.2d at 172 n. 2; *Sumpter*, 312 S.C. at 223-24, 439 S.E.2d at 844. Further and as noted, the State had already exhausted its peremptory challenges by the time Ms. Gantt was presented and, therefore, it could not strike her.

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As a result, Moore has not established a reasonable probability that further argument in support of a *Batson* challenge would have resulted in a different jury. Therefore, the Court finds that Moore has failed to prove either deficient performance or resulting prejudice under *Strickland* based upon counsel's failure to assert that the prosecution's stated reasons were, in reality, pretextual.

GROUND 10(f)

Moore further contends that trial counsel were ineffective for not preserving their objection to the trial judge's refusal to give a jury charge on voluntary manslaughter. Alternatively, he maintains that, if "the issue of the trial judge failing to give a voluntary manslaughter charge was properly preserved, appellate counsel was ineffective in failing to raise this issue on direct appeal." The Court finds that he has failed to prove either deficient performance or resulting prejudice on the part of trial counsel because counsel requested a voluntary manslaughter charge that was denied by the trial judge, and because there was no

evidence to support the requested instruction. The Court further finds that he has not established ineffectiveness on the part of appellate counsel because there was no evidence to support the requested instruction.

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1. Trial counsel's performance.

At the charge conference, Mr. Morin requested a voluntary manslaughter charge because "there is evidence that the victim produced the weapon, which certainly would be legal provocation. And there is evidence as to whether or not he was shot, which would be sudden heat of passion." **R. p. 1526, ll. 7-11**. The State opposed the requested charge. Citing to *State v. Tucker*, 324 S.C. 155, 171-72, 478 S.E.2d 260, 268-69 (1996) and *State v. Tyson*, 283 S.C. 375, 323 S.E.2d 770 (1984), the Solicitor argued that there was no evidence of voluntary manslaughter. "I can't recall a single shred of evidence that would tend to show that this was a killing based on sufficient legal provocation or heat of passion. It's either murder, or it's not." **R. p. 1526, ll. 15-23**.

In response, Mr. Morin argued that "there is no doubt that Mr. Mahoney started out armed with all of these weapons. That is not an issue." He further argued that Jamie Mahoney "produced the weapon," and that all that was in question was "whether or not Mr. Moore was . . . shot before he fired any rounds at Mr. Mahoney." It was Mr. Morin's theory that "if Mr. Mahoney produces a weapon, a gun, that's legal provocation itself. But once Mr. Moore is shot and he reacts, that's certainly in sudden heat of passion. Being shot, I think, covers this heat of passion." **R. p. 1527, ll. 3-14**.

The Solicitor, however, argued that the only evidence "on this point comes from Terry Hadden who was unequivocal in saying that Richard Moore fired the first shot." Relying upon *Tucker, supra* for the proposition that "'[e]vidence that the victim was defending himself from an

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armed robbery and got killed in this process is not sufficient legal provocation to warrant a voluntary manslaughter charge,'" the Solicitor argued that "even under the facts Mr. Morin just laid out, the only evidence is that Mr. Moore grabbed Mr. Mahoney's hands before anything else happened." Mr. Mahoney was entitled to defend himself and to defend the store. As a result, a manslaughter instruction would be improper. **R. p. 1527, l. 15-p. 1528, l. 13.**

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After the trial judge had re-read *Tucker* and *Tyson*, the trial judge denied the request to charge, as follows:

> I think from my, from my recollection of the, of the testimony, the thing that Mr. Hadden testified to was that when he heard the quote, "What the hell do you think you are doing," then he turned to see what was going on. The first shot was fired at him. And the hands were held.
>
> And I think that the Tucker case, as well as the Tyson case, both stand for the proposition that evidence that a victim was defending himself from an armed robbery and got killed in the process is not sufficient legal provocation to warrant a voluntary manslaughter charge.
>
> Quite frankly, I don't know of any testimony that is persuasive to me that would cause me to charge voluntary manslaughter. And, as a result, your request is denied.

R. p. 1528, l. 25-p. 1529, l. 12.

Mr. Morin objected to the failure to charge manslaughter and he argued that there was no testimony that a robbery was in progress before the guns were drawn. Rather, he asserted that this was an assumption that the Solicitor was making. The trial judge observed that this was a circumstantial evidence case and that he would give a circumstantial evidence charge. **R. p. 1529, l. 17-p. 1530, l. 3.**

Thus, the Court finds that counsel were not deficient under *Strickland* because they requested a voluntary manslaughter instruction but it was denied by the trial judge based upon the absence of evidence to support it. They thus perfected the issue of whether he was entitled to

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a manslaughter charge for appellate review and further objection unnecessary. *State v. Johnson*, 333 S.C. 62, 64 n. 1, 508 S.E.2d 29, 30 n. 1 (1998) ("neither our opinion in [*State v. Whipple*, 324 S.C. 43, 476 S.E.2d 683 (1996)] nor Rule 20(b), SCRCrim.P. (notwithstanding requests to charge, party must object to the giving or failure to give an instruction before the jury retires. Failure to do so constitutes a waiver of objection) have altered the long-standing rule that where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at conclusion of the court's instructions"). The Court further finds that there was neither deficient performance nor prejudice because, as more fully discussed *infra*, there is no evidence in the trial transcript that supports the requested charge.[29]

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2. Appellate counsel's performance.

The Court rejects his claim that appellate counsel was ineffective because the Court finds that there was no evidence presented at trial that the killing was "in the sudden heat of passion" or "upon sufficient legal provocation," as required for a manslaughter charge.

A defendant is constitutionally entitled to the effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387 (1985). "[R]eviewing courts must accord appellate counsel the "presumption that he decided which issues were most likely to afford relief on appeal." *Pruett v. Thompson*, 996 F.2d 1560, 1568 (4th Cir. 1993). Appellate counsel is not required to raise every non-frivolous issue that is presented by the record, since "[t]here can hardly be any question

[29] Based upon counsel's PCR testimony, the Court finds that, although Moore provided counsel with differing accounts of the incident in their numerous pretrial meetings, he told counsel, in a June 25, 2001 meeting, that he had been drinking all day on September 16th, 1999 and that had used crack that evening. He never told counsel that he had the intent to rob Nickki's when he entered the store and he relayed a story to them that was similar to his PCR testimony: he claimed that the trouble began after he entered the store because of a dispute with Mr. Mahoney. The Court further finds that counsel advised Moore of his right to testify, that his testimony might permit a jury instruction on voluntary manslaughter or provide a possible defense to the charges, and that the defense might not be able to receive a jury instruction on voluntary manslaughter if he did not testify. Also, Mr. Morin expressly advised Moore that he should testify, but Moore repeatedly refused to do so.

about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review." *Jones v. Barnes*, 463 U.S. 745, 752 (1983). To obtain relief a PCR applicant must prove "that his counsel was objectively unreasonable in failing" to identify and argue present significant and obvious issues on appeal, and "a reasonable probability that, but for his counsel's unreasonable failure . . ., he would have prevailed on his appeal." *Smith v. Robbins*, 528 U.S. 259, 285 (2000) (citation omitted).[30]

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The Supreme Court in *Robbins* recognized that, "[n]otwithstanding *Barnes*, it is still possible to bring a *Strickland* claim based on counsel's failure to raise a particular claim" on direct appeal. However, "it [will be] difficult to demonstrate that counsel was incompetent." *Robbins*, 528 U.S. at 288. "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" *Id* (quoting *Gray*, 800 F.2d at 646). *See also Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000) (en banc). Moore, who did not present the testimony of his appellate counsel, Mr. Savitz, even though he has the burden of proving his allegations under *Strickland*, cannot overcome the presumption that his appellate counsel "decided which issues were most likely to afford relief on appeal," *Pruett*, 996 F.2d at 1568, because the trial judge properly found (**R. pp. 1528-29**) that no evidence supported a manslaughter instruction.

The law to be charged to the jury is to be determined by the evidence presented at trial. *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989); *see also State v. Dennis*, 468 S.E.2d 674 (S.C. Ct.App.1996). If there is any evidence to warrant a jury instruction, the trial judge

[30] *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986) (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"). *See also Smith v. South Carolina*, 882 F.2d 895, 899 (4th Cir.1989) (counsel's failure to raise a weak constitutional claim may constitute an acceptable strategic decision designed "to avoid diverting the appellate court's attention from what [counsel] felt were stronger claims").

must, upon request, give the instruction. *State v. Starnes*, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010); *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001). However"[t]he trial court should refuse to charge on a lesser-included offense where there is no evidence that the defendant committed the lesser rather than the greater offense." *Tucker*, 324 S.C. at 170, 478 S.E.2d at 268.

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South Carolina defines "murder" as the "killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10. "Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998). It is the doing of a wrongful act intentionally and without just cause or excuse. *Tate v. State*, 351 S.C. 418, 570 S.E.2d 522 (2002).

On the other hand, voluntary manslaughter is an "unlawful killing of a human being in a sudden heat of passion upon sufficient legal provocation. S.C. Code Ann. § 16-3-50 (Supp. 2011); *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001); *State v. Walker*, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). Both heat of passion and sufficient legal provocation must be present for the killing to constitute voluntary manslaughter. *State v. Cole*, 338 S.C. 97, 101-02, 525 S.E.2d 511, 513 (2000).

> A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion. *See* [*State v.* Wharton, 381 S.C. 209, 215, 672 S.E.2d 786, 788 (2009)]. (holding the State's request for a voluntary manslaughter charge was not warranted where there was no evidence of sufficient legal provocation, although the defendant may have been acting under heat of passion). Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked. *See State v. Pittman*, 373 S.C. 527, 576, 647 S.E.2d 144, 170 (2007) (holding although sufficient legal provocation arguably existed, there was no evidence the defendant was in a heat of passion). Moreover, there must be evidence that the heat of passion was caused by sufficient legal provocation.

Starnes, 388 S.C. 590, 596-97, 698 S.E.2d at 608.

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Voluntary manslaughter mitigates an otherwise felonious killing, and while the elements of passion and provocation need not be of such a degree so as to dethrone reason entirely, or shut out knowledge and volition, they must "be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *Walker*, 324 S.C. at 260, 478 S.E.2d at 281 (citing *State v. Byrd*, 323 S.C. 319, 474 S.E.2d 430 (1996)). *See also State v. Smith*, 391 S.C. 408, ___, 706 S.E.2d 12, 14-15 (2011).

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Here, the record is completely devoid of any evidence to support the argument that the killing was "in a sudden heat of passion upon sufficient legal provocation." To the contrary, the State presented evidence that reasonably tended to demonstrate that the crimes for which Moore was charged were motivated by his desire to obtain money with which to purchase crack cocaine. This included evidence that Moore went to George Gibson's residence between 8:00 and 10:00 p.m. on September 15, 1999, and he asked Gibson to get him some crack cocaine. Gibson refused because Moore did not have any money and he would not give Moore any crack on credit. Then, Moore, who was unemployed at the time, told Gibson he was going to work and would return the following morning. He then left. **R. pp. 1245-48; 1253; 1255; 1371-72.**

Even though the victim shot Moore in their exchange of gunfire and Moore was bleeding profusely, Moore did not try to go to the hospital. Instead, he took over $ 1,400.00 from the store and he drove straight to Gibson's house. Once there, he, again, sought to purchase crack cocaine. **R. pp. 1211; 1262-64; 1267; 1312-13; 1352-54; 1466-69; 1478.** Gibson refused because of the late hour. During their conversation, Moore told Gibson, "I done something bad, and I got to go turn myself in, and I got money." **R. pp. 1248-49.** Moore only asked Gibson to take him to the emergency room after Gibson refused to sell him crack and suggested that he needed to go to the

hospital. Gibson refused because he did not want to become involved. When Moore tried to back his truck out of Gibson's driveway, he struck a telephone pole. **R. pp. 1249-50; 1256-57.**

With respect to the shooting itself, the *only* evidence is Mr. Hadden's eyewitness testimony that the first thing that he heard after Moore had entered the store was Jamie Mahoney exclaiming 'What the hell do you think you are doing?' . . . in a loud tone of voice. **R. p. 1205, ll. 9-14.** Hadden swiveled around on his stool to see what was happening. Hadden saw that Moore had grabbed both of Mr. Mahoney's hands and was holding them in one of his hands. Moore then immediately "come around and come up with a gun and told me not to move." Without giving Hadden an opportunity to comply with his directions, Moore fired the .45 caliber semi-automatic (**State's Ex. 3**), which he had taken from the victim's constructive possession, at Hadden. Hadden instantly fell to the floor and played dead. He then heard a number of gunshots but did not count how many were fired. **R. pp. 1204-09; 1215-17; 1288-89; 1424.**

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The Court finds that the only reasonable inference from Gibson's testimony and Moore's statement to the emergency room nurse (or EMS personnel) that he had used alcohol and cocaine that night (**R. pp. 1377-78**) is that Moore's motive for the crimes was robbery; to obtain money, so that he could buy crack. However, even if this Court was to ignore the remainder of the State's case and this evidence of motive, it is clear that Moore did not kill the victim "in sudden heat of passion" that was "caused by sufficient legal provocation" because there is no evidence that the victim - who was much smaller in stature than Moore, had bad eyesight and arthritis in both hands - did anything to provoke Moore. *Starnes*, 388 S.C. 590, 596-97, 698 S.E.2d at 608.

The victim clearly had a right to defend himself and the store from Moore's efforts to rob it. *See State v. Ivey*, 325 S.C. 137, 481 S.E.2d 125 (1997) (voluntary manslaughter charge not required when there was evidence the victim, who was a law enforcement officer, was acting

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lawfully and had a right to defend himself); *Tucker*, (victim's attempt to defend herself from a crime could not give rise to legal provocation); *Tyson*, 283 S.C. at 379, 323 S.E.2d at 772 (the trial court properly refused to charge the jury on voluntary manslaughter because evidence of a struggle as the victim resisted an armed robbery showed that the victim was defending himself).

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Nor does evidence that the victim was initially armed with both weapons or that he may have produced a weapon first constitute sufficient legal provocation. The Court finds that the record does not clearly reflect that the victim first produced the weapon. It is equally possible that Moore may have somehow discovered the .45 laying under the towel next to the cash register. Yet, even if the victim did first present the .45, it is clear that Moore had managed to take that weapon away from him and completely subdue him before any shots were fired. Further, the *only* evidence is that the victim did not shoot at Moore, until after Moore had fired a shot at Hadden. Again, the victim had the right to defend Mr. Hadden.

Thus, whether Mr. Mahoney was acting to defend himself, the store or Hadden, he was acting lawfully when he finally fired his .44 caliber weapon at Moore, and there could not be sufficient legal provocation. As a result, assuming *arguendo* that heat of passion existed,[31] any heat of passion that he may have been under was not caused by sufficient legal provocation and he was not entitled to a manslaughter charge. *Starnes*, 388 S.C. 590, 597, 698 S.E.2d at 608. Therefore, Moore cannot prevail on his claim that appellate counsel was ineffective because has not overcome the presumption of effective assistance of counsel, since the ignored issue was not "'clearly stronger than those presented.'" *Robbins*, 528 U.S. at 288 (quoting *Gray*, 800 F.2d at 646).

GROUND 10(j)

[31] The Court does not find any such evidence in the record. Rather, the record demonstrates that the victim acted lawfully at all times.

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Ground 10(j) is that Moore received ineffective assistance of appellate counsel because counsel failed to argue on appeal the trial judge's supposed "error in admitting the testimony of State's witnesses George Gibson and Jeanie Smith as res gestae witnesses." Once again, the Court finds that Moore has failed to show deficient performance or prejudice.

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1. Gibson's testimony.

Prior to the guilt phase, lead trial counsel, Mr. Morin, moved to exclude testimony from Gibson related to Moore's efforts to purchase crack from Gibson and a nurse's testimony that he had crack in his system. Mr. Morin argued that "[u]p until last week when I received the state's supplementary notices of additional evidence in support of aggravating circumstances, this wasn't an issue." However, in the State's "listing of some of their witnesses the issue about Mr. Moore's alleged drug use in or around the time of this incident, they indicated in here there were two specific people who have given statements, but apparently they have supplemented their statements at some point, which I do not know, but apparently they have, because the summaries that they have given me had in it information that I hadn't previously received." He argued that this evidence should be excluded because the State could not establish a sufficient nexus between the crimes with which Moore was charged and his drug use. **R. pp. 1149-51; 1153-54.**

The State explained the substance of Mr. Gibson's proposed testimony and argued that the evidence was relevant and admissible, citing *State v. Dickerson*, 341 S.C. 391, 535 S.E.2d 119 (2000) (prior bad acts evidence of defendant's drug use during time period of murder was admissible under *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923) and as part of the *res gestae* of the crime charged). **R. pp. 1151-52.** The trial judge was inclined to rule that the testimony was admissible, but he deferred his ruling until after hearing an *in camera* proffer of Gibson's testimony. **R. pp. 1153-54.**

The trial judge later addressed the admissibility of Gibson's testimony *in camera*. Gibson testified that he knew Moore by the name of "Mo" in September 1999. Mo came to Gibson's residence between 8:00 and 10:00 p.m. on September 15th and he asked Gibson "to get him something," specifically, cocaine. Gibson refused because Moore did not have any money. Moore then told Gibson that "he had to go to work and, he would be back." **R. pp. 1166-68.**

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Early the next morning, Gibson heard someone "calling me from the outside, [asking me] to come outside." However, Gibson did not go outside because he was in bed. The person then knocked on Gibson's door. Gibson's roommate came and told him that someone was at the door and wanted to see him. So, Gibson went to the back door, and he saw Moore. Moore told Gibson that "I need for you to do something for me." When Gibson asked what, Moore said, "I need you to get me something." Again, Moore was referring to cocaine, and he told Gibson that he had some money. **R. pp. 1168-71.**

When Gibson told Moore that it was too late, Moore said, "well, look, I been hurt . . . and I need something bad, I got to go turn myself in." Gibson could see that Moore was bleeding badly and he asked Moore what had happened. Moore said "he had been shot, . . . he had to go turn [himself] in." Gibson told him to go to the emergency room and Moore asked Gibson "to take him, go with him to the emergency room, but . . . I got kinda panicked, because I was scared . . . and I didn't want to get involved, because he was shot." **R. pp. 1169-70.**

Gibson convinced Moore that Moore could drive himself to the hospital and Moore got into his truck. "[H]e was backing out of the yard, and I guess he backed into the post. And at that time there was a county car coming up the street, so he got out of the car and he said I give up, going to turn myself in, and that was it." Gibson witnessed this from his front yard. **R. p. 1170.**

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On cross-examination, Gibson testified that a Steve Knight and Wilbur Casey had spent the night at his house that night, and that Casey was the roommate who had gone to the front door. Gibson spoke to the police that night. He acknowledged at trial that he had not told them everything that had occurred "[b]ecause I was afraid of getting involved because of the cocaine thing." (Sic). On September 25, 2001, however, he told the story that he gave at trial to the Solicitor and Mr. Barnette. He indicated that this was the truth. **R. pp. 1171-73.**

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Following Gibson's testimony, Mr. Morin argued that Gibson had testified that Moore went to his residence on two occasions and asked Gibson "for some stuff," which Gibson understood to be cocaine. However, Gibson did not testify that Moore asked him for cocaine. Also, Gibson "never saw any monies. He never knew whether or not Mr. Moore had any money." Further, Moore's first visit to Gibson's house was seven or eight hours before "the incident." Mr. Morin argued that "this vague recollection [Gibson] has about something that happened almost eight, or more than six hours, almost eight hours prior to anything happening is not a significant enough connection to what happened at the store to be able to say that it's part of this crime." **R. pp. 1174-75.**

The Solicitor responded by noting that his research revealed cases where the conduct admitted as part of the *res gestae* occurred more than twenty-four hours before the criminal conduct for which the defendant was on trial. He also observed that Gibson testified that Moore come to Gibson's house "looking for cocaine and said he had no money. He came back immediately after robbing this store, shot in the arm, bleeding and wanted cocaine and had money. And I think that that is part of the context of the crime." **R. pp. 1174-75.**

The trial judge specifically rejected the argument that Moore had not gone to Gibson's house looking for cocaine and he ruled that Gibson's testimony was admissible:

Well, sir, I think that his testimony and his credibility is going to speak for itself. I don't believe that from what I have been able to observe from Mr. Gibson that he was selling M & M's or lollipops down there that there would be any confusion about.

It sounds to me like he was a dope dealer, and, you know, that's something that the jury will have to sort out. I think that the case of the State vs. Dickerson is instructive, because it gives an analysis by the Chief Justice of that case, and then also cites back to the case of the State vs. Adams. The case of the State vs. Adams is 322 S. C., 114, 470, S. E. 2d., 366, a 1996 case wherein there was, I think, a series of robberies that were involved, people using the money to buy drugs.

I believe that from my finding or from my review of the cases here that the evidence not only meets the issues that I would consider under, let's say, a Lyle analysis but also would meet a res gestae analysis . . . ; and then also Rule 403 when we look at that, I find that this evidence is clear and convincing in my mind to fall within the exception and that it is probative and outweighs any danger of unfair prejudice to the defendant.

I believe that the issues presented here are such that allow me to allow the state to introduce this evidence.

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R. p. 1175, l. 16-p. 1176, l. 14.

The record demonstrates that Mr. Morin did not interpose an objection at the time of Gibson's testimony before the jury. **R. pp. 1245-53.** Thus, the issue of whether his testimony was admissible was not preserved for appellate review because an *in limine* ruling is not final and does not preserve the issue for appeal. *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993).[32] The Court therefore finds that Moore cannot meet his burden of showing either deficient performance or prejudice of appellate counsel under *Robbins*.

Even assuming *arguendo* that the issue of the admissibility of Gibson's testimony was preserved for appellate review, the Court finds that Moore has not met his burden of proof. Generally, "'[i]n criminal cases, an appellate court reviews errors of law only and is bound by

[32] An exception to this rule is recognized only where the *in limine* ruling is made immediately before where the motion is ruled on immediately prior to the introduction of the evidence in question. In that situation, no further objection is necessary. *See State v. Tufts*, 355 S.C. 493, 497, 585 S.E.2d 523, 525 (Ct.App. 2003); *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct.App.1998).

the factual findings of the trial court unless clearly erroneous.'" *State v. Bixby*, 388 S.C. 528, 541, 698 S.E.2d 572, 579 (2010) (quoting *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007)).

In *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996) the Supreme Court cited, with approval, the following quotation from the Fourth Circuit Court of Appeals' decision in *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980):

> One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with an explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the '*res gestae*'" or the "uncharged offense is 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...' [and is thus] part of the *res gestae* of the crime charged." And where evidence is admissible to provide this "full presentation" of the offense, "[t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "*res gestae*."

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Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (citations omitted from original). *See also State v. Sweat*, 362 S.C. 117, 132-33, 606 S.E.2d 508, 516-17 (Ct.App. 2004); *State v. Owens*, 346 S.C. 637, 552 S.E.2d 745 (2001); *State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999); *State v. Gagum*, 328 S.C 560, 492 S.E.2d 822 (Ct. App. 1997).

This Court finds that appellate counsel was not deficient in failing to challenge the trial judge's ruling that Gibson's testimony was admissible as part of the *res gestae* of the charged offenses because the trial judge's ruling in this regard was correct. Gibson's testimony of Moore's efforts to acquire cocaine from him places the murder and robbery of Jamie Mahoney in context. Also, it is so intimately connected with and explanatory of the crimes charged against Moore and is so much a part of the setting of the case and its "environment" that its proof is

appropriate in order "to complete the story of the crime on trial by proving its immediate context or the '*res gestae*.'" *Adams*, 322 S.C. at 122, 470 S.E.2d at 370-71.

His testimony was relevant to his state of mind at the time of the offenses, identity of the perpetrator and a motive for the armed robbery and murder: his desire for crack cocaine.[33] The Court rejects the argument that there was not a sufficient temporal connection between Moore's effort to get cocaine from Gibson on the night of September 15th and the murder and armed robbery on the 16th merely because the charged offenses occurred five to seven hours later. First, the Court would note that the appellate courts in this State have upheld the introduction of evidence under the *res gestae* theory where the temporal connection between the conduct admitted as part of the *res gestae* and the criminal conduct for which the defendant was on trial was similar to or less than that here. *E.g.*, *State v. Martucci*, 380 S.C. 232, 257-58, 669 S.E.2d 598, 611-12 (Ct.App. 2008) (prior incidents of defendant's alleged abuse of child in the weeks immediately preceding child's death were admissible, in prosecution for homicide by child abuse); *State v. Benjamin*, 345 S.C. 470, 549 S.E.2d 258 (2001) (evidence concerning convenience store robbery committed by defendant and accomplice approximately five hours after charged murder and armed robbery at another convenience store was admissible as part of res gestae, where weapon that was used and left behind at second convenience store was also the weapon used in charged crimes); *Sweat*, 362 S.C. at 130-32, 606 S.E.2d at 515-16 (passage of two months from date of prior episode of domestic violence and incident in question was not too remote to make evidence of prior act inadmissible).

Further, the facts of this case demonstrate the requisite connection between Moore's two visits to Gibson's house and the crimes at Nikki's so as to support its introduction a part of the

[33] Although Gibson only referred to cocaine *in camera*, his testimony before the jury made clear that Moore wanted crack cocaine.

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res gestae. When Gibson refused to get cocaine for Moore because Moore did not have any money, the unemployed Moore told Gibson that "he had to go to work and, he would be back." He committed the charged offenses several hours later. Any doubt about whether proof of the first visit and the reason for that visit was relevant to show the complete, whole, and unfragmented story of Moore's crimes is resolved by Moore's actions immediately after murdering Jamie Mahoney and stealing the $ 1,400.00.

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Moore was shot in the arm during the murder around 3:00 a.m. He bled so profusely from this wound that he left a trail of blood from the victim's body to the front door of the store. He also bled on the murder weapon, as well as in the truck and on the driver's side door of the truck. Instead of seeking medical attention for the gunshot wound, however, he immediately drove to Gibson's house and attempted to purchase cocaine with the stolen money. He thought of seeking medical attention only after Gibson refused to get any cocaine for him.

Additionally, the Court cannot say that the trial judge abused his discretion in finding that the State had by proven these other acts by Moore by clear and convincing evidence. "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." *State v. Fletcher*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008). The Court finds that the proffered evidence in this case met this standard, unlike the evidence introduced in *Fletcher*. Moreover, it was not error for the Court to omit giving the jury a limiting instruction as to its consideration of this evidence, since it was properly admitted as part of the *res gestae*. *State v. Johnson*, 306 S.C. 119, 126-127, 410 S.E.2d 547, 552 (1991).

The Court further finds that the probative value of this evidence was not substantially outweighed by its prejudicial effect under Rule 403, SCRE. Gibson's testimony was extremely probative of placing the murder and robbery in proper context. It was also relevant to establishing identity, Moore's state of mind and motive. The Court finds that the logical connection articulated by the State was sufficiently strong that this probative value is not substantially outweighed by the tendency of the evidence to show propensity, or by some other form of unfair prejudice.

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Moreover, even if this Court were inclined to find that the trial judge's ruling was erroneous, the Court finds that any error was harmless beyond a reasonable doubt. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial"); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("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").

Gibson's testimony was cumulative to the testimony of Jeanie Smith, the emergency room nurse at Spartanburg Regional Medical Center who treated Moore on the morning of September 16, 1999. Ms. Smith testified, without objection, that the notes for her assessment of Moore's injury reflected that "he had alcohol and cocaine present; and that I had noted the odor of alcohol; also that he was disoriented." **R. pp. 1377-78.** Because Gibson's testimony was cumulative to testimony by Ms. Smith, it was harmless. *State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); *State v. Johnson*, 298 S.C. 496, 498, 381 S.E.2d 732, 733 (1989) (admission of improper evidence is harmless where it is merely cumulative to other evidence).

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Also, there was overwhelming evidence of guilt, separate and apart from the testimony of Gibson or Smith. This evidence included the eyewitness testimony of Terry Hadden (the AWIK victim) (**R. pp. 1193-1209; 1309; 1215-17; 1288-89; 1424**); evidence that Moore's DNA was found on the .45 caliber weapon that was used to kill the victim and which Moore had discarded after he left the crime scene; evidence that Moore's blood (established through DNA testing was found on the victim's clothing, the money ($1,408.00) that was recovered from Moore's truck, a meat cleaver that was found at the scene (at the victim's feet) but which did not belong to the business and a trail of his blood leading out of the business (**R. pp. 1271-93; 1305-10; 1352-53; 1364-65; 1368; 1421-32**); and evidence of Moore's admission of "I did it, I did it, I give up, I give up," when Spartanburg County Deputy Sheriff Bobby Rollins came across Moore after the truck had hit the pole. **R. pp. 1238-40; 1311-18**. Given the present record, any error in the admission of Gibson's testimony must be viewed as harmless and non-prejudicial beyond any reasonable doubt. *See Sherard* and *Bailey, supra.*

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Finally, the Court notes that Moore has not asserted ineffective assistance of appellate counsel based on the failure to challenge the admissibility of Gibson's testimony under Rule 404(b), SCRE, and *Lyle, supra*. Therefore, he cannot show any prejudice from counsel's failure to challenge the ruling that Gibson's testimony formed part of the *res gestae* because "'[w]here the ruling of a trial judge is based on more than one ground, an appellate court must affirm unless the appellant appeals all grounds upon which the ruling was based.'" *State v. Hicks*, 387 S.C. 378, 379, 692 S.E.2d 919, 920 (2010); *Biales v. Young*, 315 S.C. 166, 432 S.E.2d 482 (1993) (where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case). Thus, Moore still cannot "'overcome the presumption of effective assistance of counsel,

since the ignored issue was not "'clearly stronger than those presented.'" *Robbins*, 528 U.S. at 288 (quoting *Gray*, 800 F.2d at 646). He also cannot prove "a reasonable probability that but for this counsel's unreasonable failure...he would have prevailed on his appeal." *Id.* At 285.

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2. Smith's testimony.

The Court finds that Moore did not argue this portion of **Ground 10(j)** in his proposed Order. Therefore, he has abandoned his claim that appellate counsel was ineffective for not arguing on appeal that Ms. Smith's testimony was inadmissible as part of the *res gestae* of the charged crimes. Alternatively, the Court finds that Moore has failed to prove deficiency or resulting prejudice under *Robbins* because the issue he now asserts should have been raised was not preserved for appellate review because there was no objection to Ms. Smith's testimony. **R. pp. 1377-78.**

Even if the *in camera* ruling did cover her testimony, however, counsel did not interpose an objection at the time of her testimony and the issue of whether her testimony was admissible was not preserved for appellate review because an *in limine* ruling is not final and does not preserve the issue for appeal. *Schumpert, supra.*

Also, her testimony was admissible for the reasons discussed in **Ground 10(k)** and the State could introduce it without establishing that it constituted part of the *res gestae* of the armed robbery and murder. Because the issue was not preserved for appellate review and was admissible on other grounds than as part of the *res gestae* of the charged offenses, Moore cannot meet his burden of proving ineffectiveness of appellate counsel.

GROUND 10(k)

In his remaining guilt phase claim, Moore asserts that trial counsel were ineffective for not raising a hearsay objection to Ms. Smith's testimony. The Court disagrees and finds that

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counsel strategically decided not to object because he correctly recognized that her testimony was admissible.

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The credible evidence before this Court is that Mr. Kelly did not object to the introduction of Ms. Smith's testimony because he thought that it was admissible. Also, even if he successfully raised a hearsay objection, he believed the State could call the emergency personnel and present the same evidence. The Court finds that his performance was not deficient under *Strickland* because he correctly viewed her testimony as admissible.

The Court finds that Ms. Smith's personal observations of Moore, such as noting "the odor of alcohol" and "that he was disoriented" did not constitute hearsay. Also, any information that he provided to her was admissible as admissions by him under Rule 801(d)(2)(A), SCRE, or as statements as to his then existing mental, emotional, or physical condition under Rule 803(3), SCRE. The Court finds that Moore has failed to prove that Ms. Smith did not personally acquire this information from him because he did not call her as a witness at the PCR hearing and she testified at trial that "[m]ore than likely," she would have obtained this information from him. **R. p. 1378, ll. 6-9**. *See Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1999) ("The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice").

More importantly, even if the information in her notes was provided to her by EMS personnel, who had acquired it from Moore, she was properly permitted to testify thereto because the information introduced through her testimony was not barred by the hearsay rule. Rather, it is admissible under Rule 803(4), SCRE, as statements made for purposes of medical diagnosis or treatment. *See Todd v. Joyner*, 385 S.C. 421, 425-426, 685 S.E.2d 595, 597-98 (2009) (affirming trial court's rejection of appellant's hearsay objection to testimony by respondent's doctor about

complaints or statements appellant made to her physicians because medical history was properly admissible under Rule 803(4), SCRE). *See also Gentry v. Watkins-Carolina Trucking Co.*, 249 S.C. 316, 154 S.E.2d 112 (1967) (a patient statements as to his or her present condition made to a physician consulted for treatment are generally admitted as evidence of facts stated); *State v. Ruiz*, 94 NM 771, 774-76, 617 P.2d 160, 163-65 (Ct. App. 1980), *superseded by statute on other grounds as stated in State v. McCormack*, 101 N.M. 349, 682 P.2d 742 (Ct.App.1984).

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While Rule 803(4) provides that "the admissibility of statements made after commencement of the litigation is left to the court's discretion," Moore cannot show an abuse of discretion based upon this record because Ms. Smith's testimony was very probative of Moore's state of mind and circumstantially corroborated his motive. This Court further finds that the probative value of her testimony was not substantially outweighed by the tendency of the evidence to show propensity, or by some other form of unfair prejudice. Rule 403, SCRE.

Moreover, even if Moore had established that counsel's failure to object was deficient under *Strickland*, he has failed to establish that he was prejudiced by counsel's error. Ms. Smith's testimony was cumulative to that of Gibson. Also, there was overwhelming evidence of guilt, separate and apart from the testimony of Gibson or Smith. *Strickland*, 466 U.S. at 694. Given this record, Moore simply has not proven "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id* at 694.[34]

B. Sentencing Phase Allegations.

GROUND 10(a)

Moore's first claim as to counsel's performance in the sentencing phase is that trial counsel were ineffective because they did not object to the trial judge's "erroneous limitation on

[34] Again, "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

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[Moore]'s right to allocution/ right to address his jury at the end of the penalty phase and/or make a plea for mercy during his penalty phase closing statement. He asserts that their failure to object deprived him "of the fundamentally important right to seek mercy from his sentencing jury." The Court finds that Moore did not prove either deficient performance or prejudice resulting from counsel's alleged error.

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As he had in the guilt phase, the trial judge obtained an on-the-record waiver of Moore's right to testify in the penalty phase. **R. pp. 1686-87.** Following a charge conference, the trial judge obtained an on-the-record waiver of Moore's right to personally address the penalty phase jury. The waiver colloquy was as follows:

[THE COURT]: Of course, Mr. Moore, would you stand, please, sir?

(Whereupon, the defendant stood).

THE COURT: As is the case in the sentencing phase, as well as the guilt phase that we have already been through, **you** certainly **have the right**, along with your attorney, **to** have a **closing argument regarding the sentence imposed**.

Now, once again, this is your right, Mr. Moore, to address the jury; and once again, the statement that you would make to the jury would have to be **confined to the evidence** that has been **presented and to the issues concerning the sentence imposed.**

Do you understand that you have this right, sir?

THE DEFENDANT: Yes, sir, I do.

THE COURT: And what is your decision?

THE DEFENDANT: I shall not speak, Your Honor.

THE COURT: You will not speak to the jury?

THE DEFENDANT: No, sir.

THE COURT: But you understand that that is your right?

THE DEFENDANT: Yes, sir.

THE COURT: All right, sir. Thank you very much, Mr. Moore.

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R. p. 1713, l. 6 - 1714, l. 1 (emphasis added).

Moore's second issue on direct appeal was that the judge erroneously limited his closing argument "to the evidence that has been presented and to the issues concerning the sentence imposed" because "S.C. Code Sections 16-3-20(C) and 16-3-28 afford a capital defendant the opportunity to ask for mercy and express feelings of remorse."[35] Therefore, he argued that his waiver of sentencing phase closing argument was not knowing and voluntary. *Moore*, 357 S.C. at 464, 593 S.E.2d at 611-12.

The South Carolina Supreme Court, however, found that his "argument is procedurally barred. At trial, Moore did not assert that the trial judge's comments prohibited him from asking for mercy and/or expressing feelings of remorse; he simply advised the court that he did not intend to address the sentencing phase jury. His failure to raise this contention to the trial judge precludes review of the issue on appeal." *Id* at 464-65, 593 S.E.2d at 612 (citing *State v. Perez*, 334 S.C. 563, 514 S.E.2d 754 (1999) and *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991) (issue must be raised to and ruled upon by trial judge to be preserved for appellate review)).

The Court added that:

> Moreover, to the extent the trial court's comment could feasibly be viewed as limiting Moore's ability to express remorse to the sentencing phase jury, the matter is more appropriately addressed in a post conviction relief (PCR) action. As noted above, the only comment made by the trial court was that Moore could address the sentencing jury as to "the issues concerning the sentence to be imposed." This statement arguably encompasses the right to argue remorse and mercy. There is no further explanation of what this sentence means, nor any objection to it. On the present record, it is simply impossible to determine

[35] Section 16-3-28 provides: "Notwithstanding any other provision of law, in any criminal trial where the maximum penalty is death or in a separate sentencing proceeding following such trial, the defendant and his counsel shall have the right to make the last argument."

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> precisely what the trial court meant by this statement, or what Moore understood it to mean. In the PCR context, however, a court could analyze all the facts surrounding the trial to determine if Moore knowingly and intelligently waived his rights under section 16-3-28. *See Franklin v. Catoe*, 346 S.C. 563, 552 S.E.2d 718 (2001) (noting that PCR process is specifically designed to allow for an inquiry into the relevant facts surrounding the adequacy of a defendant's information and/or waiver of rights). Accordingly, given the lack of objection and failure to raise the present issue at trial, Moore's remedy, if any, is through PCR.

Moore, 357 S.C. at 465, 593 S.E.2d at 612.

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In *State v. Rocheville*, 310 S.C. 20, 425 S.E.2d 32 (1993), the Court explained that the waiver of last argument should be viewed in light of the facts surrounding the trial. "The post conviction relief process is specifically designed to allow for an inquiry into the relevant facts surrounding the adequacy of a defendant's information and/or waiver of rights." *State v. Cartrette*, 323 S.C. 15, 18, 448 S.E.2d 553, 555 (1994). *See also Franklin v. Catoe*, 346 S.C. 563, 568, 552 S.E.2d 718, 721 (2001).

This Court finds that the only evidence before it is that Moore understood both that he had the right to address the sentencing phase jury in closing argument and that he had the right to express remorse in his argument. Moore testified before this Court that he understood he had the right to make a closing statement in the sentencing phase and that he understood he could express remorse in his argument. He then testified, initially, that his recollection was that he had attempted to express remorse, but that the State objected to his argument. On the other hand, he claimed that he did not make a sentencing phase argument asking for mercy because he was intimidated by the prosecution in the guilt phase.

Although the Court has elsewhere found that Moore's testimony is generally not credible as to the various matters to which he testified, the Court finds that his testimony that he understood that he had the right to express remorse in closing is credible because his testimony is consistent with the PCR testimony of trial counsel. Mr. Morin testified that he advised Moore of

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Moore's right to address the jury in sentencing phase closing argument prior to the trial judge's colloquy with Moore, that he advised Moore of Moore's right to ask his jury for mercy and that he informed Moore that he thought that Moore should address the jury at that point. Moore apparently understood their conversation.[36]

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Mr. Morin did not object to the trial judge's colloquy with Moore during the on-the-record waiver proceeding or request a recess to further discuss this issue with Moore after the trial judge conducted the on-the-record waiver because his understanding was that the trial judge's explanation of the law was correct. Mr. Kelly agreed that the trial judge's explanation to Moore correctly stated the law relating to a closing sentencing phase argument. Also, Mr. Kelly corroborated that counsel had advised Moore of his right to make a closing argument in the sentencing phase before the on-the-record inquiry by the trial judge. This advice included the right to ask the jury for mercy.

Based upon counsel's credible testimony, the Court finds that Moore has failed to prove deficient performance resulting from counsel's failure to object to the trial judge's remarks during the on-the-record waiver hearing. Indeed, he does not dispute that counsel had advised him of his right to address the jury by way of argument in the sentencing phase; including his right to allocate and that he understood his rights. The Court further finds that counsel had advised Moore of his rights in this regard before the on-the-record inquiry by the trial judge.

Moore further asserts that counsel's failure to object "prevented review of this issue on direct appeal." However, there is nothing in the trial judge's colloquy that incorrectly stated the law governing closing statements or contravened counsel's advice that he could ask the jury for mercy. To the contrary, the trial judge's explanation is consistent with counsel's advice.

[36] Mr. Morin had advised Moore of the right to address the guilt phase jury, a right that counsel had advised Moore not to assert and which Moore had indicated that he would not assert. However, Moore ultimately addressed the jury in the guilt phase and both attorneys felt that his argument did not make a favorable impression on the jury.

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Clearly, the admonition that a closing argument would have to be confined to the evidence presented at trial and to issues concerning the appropriate sentence was proper.[37] First, he could not discuss matters not in evidence, apart from his right to allocate. Second, the purpose of the sentencing phase in a capital trial pursuant to § 16-3-20(B) is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender. *State v. Owens*, 346 S.C. 637, 552 S.E.2d 745 (2001); *State v. Shaw*, 273 S.C. 194, 200, 255 S.E.2d 799, 802 (1979). Additionally, the trial judge specifically informed Moore that he had the right to discuss "the issues concerning the sentence imposed." This Court finds that a request for mercy falls within such issues. Because the trial judge's statements did not incorrectly state the law governing closing statements or contravened counsel's earlier advice that properly explained Moore's right to allocution and which he understood, the Court finds that that counsel were not deficient in failing to object and that Moore knowingly, voluntarily and intelligently waived his rights under section 16-3-28.

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MICHAEL BLACKLEY

The Court further finds that Moore has failed to prove any prejudice resulting from counsel's failure to object to the trial judge's remarks. To establish prejudice, he must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. In a capital sentencing proceeding, he must prove that "there is a reasonable probability that ... the sentencer--including an appellate court, to the extent it independently reweighs the evidence--would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695. *See also Wiggins v. Smith*, 539 U.S. 510, 537 (2003). The Court finds that he did not meet his burden of proof under *Strickland*.

[37] Any contention that the trial judge improperly limited his argument by stating that any argument "would have to be confined to the evidence that has been presented" (*see* **R. p. 1713, ll. 14-15**), ignores the remaining portion of the trial judge's explanation "and to the issues concerning the sentence imposed." **R. p. 1713, ll. 15-16.**

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There was overwhelming evidence that established Moore's guilt of murder and the statutory aggravating circumstances, as discussed above. *See Strickland*, 466 U.S. at 694. Also and as noted, counsel had already properly advised Moore of his rights under § 16-3-28 and Moore understood counsel's advice. Further, while the jury did not hear from Moore, personally, counsel ably argued the defense's case in mitigation. **R. pp. 1726-30**. Counsel's argument was succinct. However, Moore has not raised any allegation as to it and it was more than constitutionally adequate under *Strickland*.

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H. HOKE BRACKLEY

Moreover, he did not allocate to the crime in the PCR hearing and the Court finds that he would not have done so at trial, even if counsel had objected to the trial judge's remarks to Moore or further advised him regarding this right. Although he did testify at PCR that he was sorry that the shooting occurred and that the victim was dead, he did not admit that he had gone into Nickki's with the intent to commit a robbery or that the killing was murder, which the jury had already had found in the guilt phase. In spite of a history of strong armed robberies and theft related convictions, he claimed that the trouble only began after the victim ordered him out of the store in a racially insulting manner and thereafter pulled a .45 caliber weapon on him. Even after he got that weapon away from the victim, the victim produced a second gun and shot at him. This does not constitute allocution. Thus, the Court finds that he has failed to prove prejudice because, based upon this record, the Court is unable to conclude that "the balance of aggravating and mitigating circumstances did not warrant death" if he had exercised his right to address the jury. *Strickland*, 466 U.S. at 695.

GROUND 10(b)

Moore also alleges trial counsel was ineffective in failing to investigate, develop, and present mitigation evidence from family members of Moore. There is no merit to this ground.

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This Court viewed and heard the testimony of trial counsel on this issue and finds trial counsel's testimony is credible on this issue. This Court also viewed the video-taped depositions of Moore's family from Michigan. This Court finds their testimony on the issue of their willingness to come to trial and testify to be not credible given this entire record.

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It is trial counsel's responsibility to adequately investigate and present evidence in mitigation of guilt. *Williams v. Taylor*, 529 U.S. 362, 395 (2000); *Byram v. Ozmint*, 339 F.3d 203, 209 (4th Cir.2003). However, counsel is only required to make a reasonable investigation for possible mitigating evidence. *Matthews v. Evatt*, 105 F.3d 907, 919 (4th Cir.1997). As the Court emphasized in *Wiggins*,

> we emphasize that *Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing. Nor does *Strickland* require defense counsel to present mitigating evidence at sentencing in every case. Both conclusions would interfere with the "constitutionally protected independence of counsel" at the heart of *Strickland,* 466 U.S., at 689. *We base our conclusion on the much more limited principle that "strategic choices made after less than complete investigation are reasonable" only to the extent that "reasonable professional judgments support the limitations on investigation."* *Id.*, at 690-691. A decision not to investigate thus "must be directly assessed for reasonableness in all the circumstances." *Id.*, at 691.

Wiggins, 539 U.S. at 533 (emphasis added). *See also Lovitt v. True*, 403 F.3d 171, 179 (4th Cir. 2005); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Id* at 157 (Traxler, J., concurring) (citing *Wiggins* and *Strickland*).

The Court finds that counsel's investigation for and presentation of mitigating evidence in the present case was objectively reasonable under the "prevailing professional norms." *Strickland*, 466 U.S. at 686. The record shows that trial counsel investigated and attempted to locate mitigation witnesses for Moore from his family in Michigan. However, Moore was largely uncooperative in their endeavor and initially did not want these members to assist. Additionally,

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counsel attempted to develop potential mitigation witnesses in South Carolina through the investigator, Mr. Skidmore, to whom Mr. Morin provided a list of persons to contact. These results were apparently unsuccessful. Ultimately, counsel presented Moore's wife and stepson. Their testimony is discussed elsewhere in the Order.[38]

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To assist in obtaining the cooperation of Moore's family members in Michigan, counsel retained Drucy Glass as their mitigation investigator. Ms. Glass is the wife of attorney John Blume, and she has acted as a mitigation investigator in numerous capital cases. Ms. Glass prepared and filed a report with trial counsel regarding her attempts to locate possible family members from Michigan in this case. **Respondent's Ex. 25, Report of Drucy Glass.**

The report indicates that Ms. Glass left numerous messages for Moore's father on his answering machine at Moore's father's residence in Mt. Clemens, Michigan, but that Moore's father did not return Ms. Glass' phone calls. The report also indicates that she sent a certified letter to Moore's father on September 17, 2001. The credible testimony at PCR was that Moore's father did not respond. The Court finds that Ms. Glass' report indicates the reason Moore's father did not respond to either telephone calls or a certified letter: Moore related to Ms. Glass that he had been "cut off" by his family in Michigan. Moore also told trial counsel that he had asked his family for help and he was told "there would be no help coming, and to get myself out of this mess." **Respondent's Ex. 19.**

[38] Although no issue in PCR has been raised concerning counsel's failure to present a mental health defense, or the failure to present expert testimony regarding his crack addiction, the Court notes that the defense had Moore examined by Dr. James Evans, a neuropsychologist, and counsel had contacted a Dr. Alexander Morton, a pharmacologist. Neither expert provided counsel with any information that would assist in mitigating Moore's punishment. Instead, both provided information that would hurt any reasonable efforts to mitigate the sentence for murder. Mr. Morin testified that Dr. Evans felt that Moore had an anti-social personality disorder. The State introduced Dr. Evans' June 22, 2001 report as **Respondent's Ex. 20**. Based upon the findings in the report (such as Moore's denial to Dr. Evans that he had used illegal drugs or alcohol "to any significant degree;" his average score on intelligence testing; and evidence that Moore "showed some evidence of difficulty dealing with emotional responsibility," which he explained to Mr. Morin) and counsel's credible testimony, the Court finds that counsel wisely chose not to present either expert.

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Ms. Glass' report indicates why Moore's family would have cut him off. Her report details Moore's life of crime beginning in 1984 with an arrest for receiving stolen goods. In that incident, Moore actually admitted to the victim that he broke into her apartment with another individual. Moore was then arrested in 1985 for possession of a firearm. Moore was placed on two years probation during that year. In 1986, Moore was arrested for armed robbery. Again in 1986, he was arrested for breaking and entering where several guns were stolen. In 1987, he was sentenced to one year probation and three months in jail.

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HOPE BLACKLEY

In 1987, Moore was sentenced to one year and six months to five years for attempted breaking and entering. In January of 1988, he was arrested for a probation violation. In September 1988, he was released from prison on parole. He was subsequently arrested in October of that same year for driving with a suspended license. Moore was recommitted to the Michigan Department of Corrections as a "parole violator" in July 1989. He was paroled six months later in December of 1989. In January 1990, Moore absconded from parole. He was returned to the Michigan Department of Corrections on February 20, 1990. Moore maxed out his prison sentence and was released from the Michigan Department of Corrections on August 3, 1991. He then moved to South Carolina one week after his release from the Michigan Department of Corrections. **Respondent's Ex. 25.**

Ms. Glass' report reveals Moore's life of crime did not end once he moved to South Carolina. He was arrested on September 13, 1991 for driving under suspension (DUS) and habitual traffic offender. He was arrested on October 10, 1991 for two counts of assault and battery and two counts of attempted purse snatching. On November 22, 1991, he was charged with common law robbery and strong armed robbery. He was eventually convicted of these charges and received a suspended sentence and probation. In 1992, he was arrested for DUS and

possession of marijuana, for which he received sixty days in jail. In 1993, he was arrested for speeding, DUS, and habitual traffic offender. He eventually received ninety days in jail to be served on weekends.

In 1994, he was arrested for four counts of passing fraudulent checks. In 1994, he was arrested, again, for DUS. In 1995, he was arrested for ABHAN. Also in 1995, he was convicted of DUS 3rd and sentenced to six months, suspended, with ninety days house arrest and probation. Also in 1995, he was arrested again for DUS and for driving under the influence. On March 7, 1996 he was arrested and charged with first degree burglary, criminal sexual conduct, and assault and battery. On August 7, 1997, Moore's probation was revoked on a charge of common law robbery. He was ordered to serve six years in prison. His probation was also revoked on a habitual traffic offender charge. On the same date, Moore pled guilty to ABHAN, arising from the 1995 arrest and was sentenced on that charge as well. Moore was released from SCDC on "Supervised Furlough" on December 9, 1998. Approximately nine months later, he was arrested on September 16, 1999 and charged with the murder of James Mahoney, the armed robbery of Nikki's convenience store, and AWIK for the attempted shooting of Terry Hadden. **Respondent's Ex. 25, Report of Drucy Glass.**

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Ms. Glass' report also indicates that Moore's mother died in 1997 and that Moore could not attend his mother's funeral because he was incarcerated at the time. **Respondent's Ex. 25.** It is no small wonder that Moore's family had cut him off. His life of crime set forth in detail in Ms. Glass' report explains why his sister, Vanessa, stated to Moore's wife: "Richard is dead to us." **Respondent's Ex. 25.** It also explains why applicant's family told him: "there would be no help coming [from Michigan], and to get myself out of this mess." **Respondent's Ex. 19.**

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The record shows both trial counsel and Ms. Glass unsuccessfully attempted to locate family members of Moore in Michigan, who would come to South Carolina and testify favorably for him. The attempts of trial counsel's and Ms. Glass' to locate and obtain the cooperation of Moore's family members in Michigan were rebuffed. His family members would not answer telephone calls or answer letters sent by counsel or their mitigation investigator. Moore told Ms. Glass that if his mother had not died in 1997, he would not have been "cut-off" by his family like he was in this case.

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This Court viewed the testimony of the witnesses in this case, including trial counsel, and finds that trial counsel's testimony on this issue is credible. Counsel's testimony is corroborated by the letter written to trial counsel by Moore and Ms. Glass' report. The Court finds that Moore's family members did not want to assist in his case and that they avoided all efforts to gain their assistance and cooperation. Counsel's investigation was reasonable. O'Brien v. Dretke, 156 Fed.Appx. 724, 2005 WL 3529255 (5th Cir. 2005) (counsel's failure to discover particular family friends and relatives and call them to testify in mitigation during penalty phase of capital murder prosecution, did not amount to deficient performance, where counsel's investigation into defendant's background was reasonable, counsel asked defendant to identify potential mitigation witnesses, interviewed several of defendant's family members and friends, and retained mental health experts, and determined that none of those potential witnesses would be favorable to defense).

Nor has Moore established prejudice from counsel's alleged errors. This Court has reviewed the deposition testimony of Moore's family from Michigan and it finds that their testimony as to their willingness to come and testify is not credible. In particular, the testimony of one of Moore's brothers typifies the credibility of Moore's family members on this issue.

James Moore testified he would have come and testified if he had been notified of the trial. James Moore claimed he was living at home with his and Moore's, father during the time from Moore's arrest until trial.

However, on cross-examination by Respondent, James was forced to admit that he was incarcerated in a prison during part of the time leading up to Moore's trial and at the time of Moore's trial on drug charges. James also admitted that he was kept in the dark by Moore's Michigan family regarding the fact that Moore had been charged with murder and was facing the death penalty. This further corroborates the fact that Moore's Michigan family was embarrassed and angered by Moore's commission of a murder and armed robbery in South Carolina, and that they had washed their hands of him.

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M. HOPE BLACKLEY

Another of Moore's brothers, Maurice Moore, admitted that he too had a criminal record, for conspiracy and grand larceny. He also was angry with Moore after Moore's arrest for murder and armed robbery. Maurice Moore admitted that when Moore called him from jail after his arrest for these crimes, he did not talk to Moore initially. So, Moore talked to Maurice's girlfriend. Maurice further admitted that Moore's father basically disowned him after he was charged with murder and armed robbery in South Carolina.

Maurice Moore later admitted that he talked with Moore several times on the telephone prior to the trial. Maurice testified that they talked about him coming to South Carolina and testifying, however, he then reversed himself and said he was just imagining that Moore wanted him to come and testify. Maurice also testified he did not come and testify at the trial because he could not afford to. He then admitted that his girlfriend could have driven him to South Carolina, and that he could have stayed with Moore's wife during the trial.

This Court simply does not find Maurice Moore credible because of his conflicting testimony about his discussions with Moore regarding coming and testifying at his capital trial, and his later testimony that he could not afford to come at the time. Additionally, Maurice Moore's testimony is contradicted by Ms. Glass' mitigation report. Maurice denied that he was contacted by any person acting on behalf of his brother prior to or at the time of his brother's capital trial, but Ms. Glass mitigation report specifically states that she sent a certified letter to Maurice Moore on September 17, 2001.

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This Court finds it was an objectively reasonable trial strategy decision not to seek out two of Moore's brothers. Ms. Glass' report indicates Moore related to either his counsel or Ms. Glass that two of his brothers were incarcerated for drugs. Moore related that his brother James and his brother Phillip were both incarcerated in state prison outside South Carolina. **Respondent's Ex. 25**. Trial counsel Kelly testified that he would not want to present a family member who was, himself, incarcerated.

This Court has also carefully reviewed the testimony of Moore's other family members from Michigan, and the Court finds that he was not prejudiced by the failure of trial counsel to call any of them in his capital case. First, counsel called Moore's wife and his stepson, to testify in mitigation and to make a plea for applicant's life.

Second, most of the Michigan family members testified that they had little contact with Moore after he reached the age of 18 or after he moved to South Carolina. These witnesses would have been thoroughly impeached with their lack of knowledge of Moore. Even though they lived in the same small community in Michigan and lived in close proximity to him, they testified that they were unaware of his convictions in Michigan for possession of a weapon, and

attempted burglary. Additionally, they had no knowledge and were unaware of his criminal convictions for common law robbery, habitual traffic offender, and ABHAN.

Moreover, one witness contradicted Moore's PCR testimony. She testified that he moved to Detroit around the age 18. **Deposition testimony of Arma Hadley, p. 15.** However, Moore denied at PCR that he had ever lived in Detroit. This Court finds the family's testimony that they were not aware of Moore's extensive criminal history is not credible. Even if credible, they would be thoroughly impeached at trial, by any claim that they were unaware of it. *See Belmontes*. It would have appeared to the sentencing jury that either his Michigan family members were lying about not knowing about his criminal record, or that they really did not know about Moore as a person.

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M. HOPE BLAKELY

Finally, while the witnesses said some good things about Moore, they offered no evidence that he suffered from any mental illness, mental retardation, personality disorder, physical or sexual abuse, or deprivation or poverty. Nor was there any testimony from any of these family members that Moore witnessed any physical or sexual abuse during his formative years. In fact, they each testified that Moore came from a good family, had good parents, had positive role models, and was made to attend church growing up and taught the difference between right and wrong. Given the totality of their testimony, this Court finds Moore has failed to show prejudice from the alleged deficient performance in not calling these witnesses in the penalty phase. This Court finds that even if they had been called, there is no reasonable probability the result of the sentencing proceeding would have been different. *See Belmontes*. He simply did not meet his burden of proving that "there is a reasonable probability . . . that the balance of aggravating and mitigating circumstances did not warrant death" if his Michigan

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family members had testified at sentencing. *See Strickland*, 466 U.S. at 695. *See also Wiggins*, 539 U.S. at 537.

GROUND 10(g)

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M. HOPE MACKLEY

Next, Moore alleges that counsel were ineffective because they failed to present evidence of his adaptability to prison through their retained "expert in the field of penal institution safety and management," James Aiken. He asserts that their failure to present Aiken's testimony "opened the door for the state's damning closing argument that [Moore] had shown 'escalating violence.'" He claims that he was prejudiced by counsel's decision because the State injected the issue of Moore's future dangerousness by its argument, and that Aiken's opinion that Moore could be safely incarcerated if he received a life sentence would have rebutted the State's argument. The Court finds that counsel made a reasonable strategic decision not to present Aiken's testimony. The Court further finds that Moore has not proven any prejudice resulting from counsel's decision.

Mr. Aiken, an expert in correctional institution management, was presented by Moore at the PCR hearing. Mr. Aiken testified that he is President of James E. Aiken & Associates, and he gave a summary of his work experience, both of working for various departments of corrections and as a consultant. He explained prison classification systems, his own assessment of Moore's classification and his opinion that Moore would be of low risk of presenting a future danger in the prison system. Mr. Aiken opined that Moore can be controlled and managed in a prison environment for the remainder of his life without causing an undue risk of harm to staff, inmates or the general community. In part, the basis for Aiken's favorable opinion is that Moore does not have a history of escape attempts, use of weapons against other inmates or officers and there was no indication that he participates in gang or other predatory activity.

Based upon Mr. Kelly's credible testimony, the Court finds that Mr. Aiken was present at trial and prepared to testify that Moore could be safely housed and controlled by SCDC. While Mr. Kelly did not have all of the prison records that had been gathered by the time of his PCR testimony, he had given copies of all of those records to Mr. Aiken in preparing for Moore's trial. Mr. Kelly felt that Aiken would have given favorable testimony.

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However, the prosecution had brought a records custodian down from Michigan to testify about misconduct while incarcerated in that State. The State had provided Mr. Kelly a copy of the records that it intended to introduce through this witness and he provided the records to Aiken. Although Mr. Kelly was unable to recall the precise nature of these records,[39] he recalled that the State's evidence was damaging enough that he thought the defense would be "hammered" if Aiken testified. Therefore, he decided not to present Mr. Aiken as a witness.

"In light of 'the variety of circumstances faced by defense counsel [and] the range of legitimate decisions regarding how best to represent a criminal defendant,' the performance inquiry necessarily turns on 'whether counsel's assistance was reasonable considering all the circumstances.'" *Belmontes*, 130 S.Ct. at 384-85 (citing *Strickland*, 466 U.S. at 688-689). Considering the circumstances of discussed above, this Court finds counsel's decision not to offer this evidence was reasonable under *Strickland*, since the presentation of Aiken's testimony would have resulted in the State being allowed to present damaging testimony in reply. *See Gaskin v. Secretary, Dept. of Corrections*, 494 F.3d 997, 1002-03 (11th Cir. 2007) (petitioner did not present clear and convincing evidence to rebut presumption that defense counsel's decisions

[39] The Court finds that, in 2011, Mr. Kelly had telephoned Mr. Aiken in an effort to obtain a copy of the records from Mr. Aiken and refresh his recollection. Mr. Aiken did not return his call, but he was informed that Aiken did not have the records. Therefore, Mr. Kelly could not recall whether Mr. Moore was involved in gangs, assaults or escape or some other misconduct. Although he did not have a specific recollection, the report sent to him by Ms. Glass (**Respondent's Ex. 25**) shows a detailed account of his criminal history in both Michigan and South Carolina, including several offenses that the State did not introduce at trial. *See* **Ground 10(b)**. Included in the information provided to counsel was that Moore absconded from parole in Michigan on January 10, 1990. **Respondent's Ex. 25, p. 8.**

not to present retained mental health expert's findings or further evidence regarding petitioner's educational history were tactical: counsel purposely withheld information about defendant's past, including school records, because he had reason to believe that it would lead to damaging testimony regarding defendant's past violent and criminal conduct); *Byram v. Ozmint*, 339 F.3d 203, 210 (4th Cir. 2003) (counsel's strategic decision not to present psychological evidence, where experts' findings contained suggestions of antisocial behavior that could have been harmful to client's defense "was a reasonable one because such evidence 'is a double-edged sword that might as easily have condemned [defendant] to death as excused his actions.'") (citation omitted); *Miller v. Anderson*, 255 F.3d 455, 459 (7th Cir. 2001) ("The clearest respect in which the lawyer's representation fell below the minimum level was the decision to put the psychologist on the stand, knowing what the lawyer knew"), order directing the district court to issue a conditional writ of habeas corpus vacated and the petition for rehearing dismissed, 268 F.3d 485 (7th Cir. 2001); *Bonin v. Calderon*, 59 F.3d 815, 834 (9th Cir. 1995) ("while the Constitution requires that a criminal defendant receive effective assistance of counsel, the presentation of expert testimony is not necessarily an essential ingredient of a reasonably competent defense." Counsel's presentation of childhood mitigation evidence was reasonable since expert testimony would have been of "slight value at best" and it "would have opened the door to precisely the type of cross-examination that [counsel] sought to avoid by refusing to call psychiatric experts-another recitation of all of Bonin's atrocities for the purpose of determining whether, in the expert's opinion, such behavior is the likely product of such abuse").

The Court further finds that Moore has not proven that he was prejudiced by counsel's failure to present Mr. Aiken's testimony. This requires Moore "to establish 'a reasonable probability that a competent attorney, aware of [the available mitigating evidence], would have

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introduced it at sentencing,' and 'that had the jury been confronted with this ... mitigating evidence, there is a reasonable probability that it would have returned with a different sentence.'" *Belmontes*, 130 S.Ct. at 386 (citing *Wiggins*, 539 U.S. at 535, 536). Further, "[i]n evaluating that question, it is necessary to consider all the relevant evidence that the jury would have had before it if [counsel] had pursued the different path-not just the mitigation evidence [counsel] could have presented" through Mr. Aiken, but also the damaging evidence from the prosecution in reply "that almost certainly would have come in with it." *Belmontes*, 130 S.Ct. at 386.

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MOORE BLACKLEY

The Court finds that, on cross-examination, Respondent significantly impeached his opinion of Moore's adaptability with a contrary history of disciplinary infractions that Moore has committed while incarcerated. Specifically, Respondent elicited that Moore had committed a number of disciplinary infractions, both in the Spartanburg County Jail and on death row. The most serious offense that he has committed while housed on death row is possession of a cell phone and cell phone charger, which occurred in July 2006. This was considered a major infraction by SCDC.

Mr. Aiken was dismissive of all of the disciplinary infractions that Respondent elicited; and he opined that none of the infractions, including Moore's possession of the cell phone charger, caused him to alter his opinion that Moore was adaptable to life in prison and could be safely incarcerated. However, the Court finds that Moore's record while incarcerated demonstrates that he has refused to adapt to prison and that his various infractions demonstrate an unwillingness and refusal to comply with the rules and regulations of the institutions that have incarcerated him. Indeed, the offense of inmates possessing cell phones while incarcerated is such a grave problem for the Department that SCDC and prison officials from twenty-nine other

states petitioned the Federal Communications Commission in 2010 for permission to install technology that would jam cell phone transmissions and render them useless.[40]

Further, although Respondent did not impeach Mr. Aiken's opinion with the January 10, 1990 offense that Moore absconded from parole in Michigan (*see* **Respondent's Ex. 25, p. 8**), this offense and any other infractions that he committed during his incarceration in Michigan would almost certainly be presented by the State at trial to rebut Mr. Aiken's opinion as to Moore's adaptability. The Court finds that this offense and the numerous disciplinary infractions that Moore committed in South Carolina prior to the trial would have minimalized the effectiveness of Aiken's testimony. This is particularly true if there was further evidence of misconduct that Moore committed in the Michigan incarcerations, as there appears to be. Under these circumstances, the Court finds that Aiken's expert testimony would have been of slight value, at best, and that it would have permitted the introduction of evidence that would be damaging to the defense's case in mitigation.[41]

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Counsel's decision not to present Mr. Aiken's opinion meant that the defense did not present expert testimony to rebut any argument by the State as to Moore's future dangerousness, but, at the same time, it avoided the introduction of much evidence that circumstantially tended to demonstrate his future dangerousness: *i.e.*, his inability or unwillingness to adjust to life in prison. Furthermore, counsel presented Moore's wife and stepson at trial and counsel argued that these witnesses suggested that Moore's actions after his arrest proved that he "is being a

[40] *See* http://www.nytimes.com/2011/01/03/us/03prisoners.html.

[41] The original jury would obviously not have been presented with any of the disciplinary infractions that Moore committed after the trial, such as his misconduct while he has been incarcerated on death row. However, a resentencing jury obviously would be presented with this evidence, as well. The Court finds that this post-trial evidence of misconduct would all but conclusively demonstrate his inability or refusal to adjust to confinement.

productive member of society." **R. p. 1730**. Thus, the defense did present evidence to rebut the State's argument on future dangerousness.

Additionally, the Court finds that there was overwhelming proof that Moore was guilty of the murder of Jamie Mahoney and the aggravating circumstances. There was also overwhelming proof of Moore's future dangerousness, through the introduction of evidence concerning his prior criminal history, which included convictions for common law robbery, aggravated assault and battery, thefts of valuables the theft or possession of weapons, and parole violations. There was also a similar robbery where he went behind the counter threatened and assaulted the victim. Finally, the record shows that Moore had been incarcerated several times before and was not rehabilitated by his incarceration. Thus, the Court finds that Moore did not meet his burden of proving that "there is a reasonable probability . . . that the balance of aggravating and mitigating circumstances did not warrant death" if such an instruction had been given. *See Strickland*, 466 U.S. at 695. *See also Wiggins*, 539 U.S. at 537.

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M. HOPE LAMBERT

GROUND 10(h)

Moore maintains that trial counsel were ineffective because they failed to request a charge on the statutory mitigating circumstance of provocation by the victim, as set forth in S.C. Code Ann. § 16-3-20(C)(b)(8) (Supp. 2011).[42] He asserts that there was "no conceivable professionally reasonable basis for not seeking" the charge since counsel argued to the jury that Moore was also a "victim," and that, in the absence this "instruction, the jury was left with no guidance to assist them in taking into consideration the fact that Mahoney shot [Moore], which was the whole basis of counsel's argument that [Moore] was a victim, too." The Court finds that he has not proven that counsel's performance was deficient because the credible evidence is that

[42] Section 16-3-20(C)(b)(8) provides that it is a mitigating circumstance that "[t]he defendant was provoked by the victim into committing the murder." The Court's Westlaw search of the statutes of those states that have the death penalty revealed that South Carolina is the only one that has this mitigating circumstance.

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counsel made a reasonable strategic decision not to request the charge. The Court further finds that there was no prejudice from counsel's alleged error because there was no evidence that the victim provoked him.

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SPARTANBURG COUNTY
2011 AUG 11 AM 10:11
M. HOPE BLACKLEY

First, this Court finds that counsel's failure to request this statutory mitigating instruction did not amount to deficient performance under *Strickland*. The credible evidence is that Mr. Kelly correctly determined that there was no legal basis for counsel to request the charge, in the absence of testimony from Moore to support it. Also, the jury had already convicted Moore of murder and armed robbery. Therefore, the Court finds that trial counsel made a reasonable strategic decision under not to ask the trial judge to submit this statutory mitigating circumstance. The Court further finds that counsel discussed with Moore that the defense might be entitled to this statutory mitigating circumstance if there was evidence to support it, in connection with the discussion as to whether or not Moore would testify in the sentencing phase. However, Moore refused to testify in either phase of the trial. Moreover, he has not raised any allegation that counsel were ineffective in their advice as to his right to testify in either phase of the trial.

Nor has Moore established any prejudice under *Strickland* from counsel's chosen strategy. He would have been entitled to this statutory mitigating circumstance if there was any evidence presented that the victim did anything to provoke the murder. This Court does not read § 16-3-20(C)(b)(8) to require the existence of evidence that would constitute sufficient legal provocation such as would warrant a manslaughter instruction. However, as discussed in **Ground 10(f)**, there is absolutely no evidence in the trial transcript that the victim did anything, whatsoever, to provoke Moore. *Contra State v. Plemmons*, 286 S.C. 78, 84, 332 S.E.2d 765, 769 (1985). Rather, the only evidence at trial was that the victim was acting lawfully and in defense

99

of himself or Mr. Hadden. Also, evidence that the victim was initially armed with both weapons or that he may have produced a weapon first did not constitute provocation by him for the reasons discussed in **Ground 10(f)**.

Even if the victim did first present the .45, it is clear that Moore had managed to take that weapon away from him and completely subdue him before any shots were fired. Further, the *only* evidence is that the victim did not shoot at Moore, until after Moore had fired a shot at Hadden. Thus, whether Mr. Mahoney was acting to defend himself, the store or Hadden, he was acting lawfully when he finally fired his .44 caliber weapon at Moore, and the victim did not provoke the defendant to commit the murder. Moreover, there was overwhelming evidence that proved that Moore was guilty of murder and the statutory aggravating circumstances. *See Strickland*, 466 U.S. at 694. Also, there was no evidence to support the submission of this mitigator.

FILED
CLERK OF COURT
GREENVILLE COUNTY
2011 AUG 1 AM 10:1
M. HOPE BLACKLEY

Additionally and contrary to Moore's argument before this Court, counsel's sentencing phase closing argument did not assert that Moore was a victim, even though the evidence did show that Moore was shot during his confrontation with Mr. Mahoney and counsel did urge that Moore's had "suffered with an addiction problem." **R. p. 1728**. Rather, counsel pointed out the meaningful contributions that Moore could make within his family if given a life sentence[43] and counsel argued for a life sentence as an act of mercy. **R. pp. 1726-30**.

Therefore, the Court finds that he did not meet his burden of proving that "there is a reasonable probability . . . that the balance of aggravating and mitigating circumstances did not warrant death" if such an instruction had been given. *See Strickland*, 466 U.S. at 695. *See also Wiggins v. Smith*, 539 U.S. 510, 537 (2003).

[43] In obvious response to the prosecutions argument, counsel suggested that Moore's actions after his arrest demonstrated that he "is being a productive member of society." **R. p. 1730**.

100

IT IS, THEREFORE, ORDERED:

1. That the Application for Post-Conviction Relief in this matter is dismissed with prejudice; and

2. That Applicant is remanded to the custody of Respondent.

AND, IT IS SO ORDERED this 29th day of July, 2011.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 AUG -1 AM 10: 11
M. HOPE BEACHLEY

ROGER L. COUNCH
Presiding Circuit Court Judge

Spartanburg, South Carolina

WITNESSES

Steve Denton

Spartanburg County Sheriff's Dept.

POB 771

Spartanburg, SC 29304-0771

1. SENTENCE MADE ☐
2. REPORT ENDED ☐
3. CARD PULLED ☐
4. INDEXED ☐
5. CHECKED WARRANTS ☐
6. CHECKED SIGNATURE ☐
7. ASSESSMENT AND FINE CARD MADE ☐
8. TRAFFIC VIOLATIONS COPY ☐

Computer

ARREST WARRANT NUMBER

G-299134 and DIRECT INDICTMENT

Death Penalty

ACTION OF GRAND JURY

True Bill

June Lancaster

Foreperson of Grand Jury

Date: 1-13-00

VERDICT

COUNT ONE: Guilty

COUNT TWO: Guilty

Karen E. Nave

Foreperson of Petit Jury

Date: 10-20-01

DOCKET NO. 00-GS-42-0017

The State of South Carolina

County of Spartanburg

(02) *Holman C. Gossett, Solicitor*

COURT OF GENERAL SESSIONS

JAN 17 2000 **TERM**

THE STATE

vs.

Richard Bernard Moore

Indictment for

MURDER AND POSSESSION OF FIREARM DURING COMMISSION OF A VIOLENT CRIME

SC Code 16-03-0010, 0020 and 16-23-490

CDR CODE: 0116: 0549

CLASS: FEL-EXM: FEL/F

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

Defendant

I

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

Defendant

Witness:

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

2980

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 13 2000, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE—MURDER

That Richard Bernard Moore did in Spartanburg County on or about September 16, 1999, feloniously, wilfully and with malice aforethought, kill one James Joseph Mahoney, by shooting the victim with a gun, and that the said victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

COUNT TWO—POSSESSION OF FIREARM DURING COMMISSION OF A VIOLENT CRIME

That Richard Bernard Moore did in Spartanburg County on or about September 16, 1999, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended

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

SOLICITOR

2982

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
RICHARD BERNARD MOORE)
AKA:)
Race: B Sex: M Age: 36)
DOB: [redacted] SS#:)
Address: [redacted])
DL# SID#:)

IN THE COURT OF GENERAL SESS.
INDICTMENT/CASE#:
00 -GS- 42 - 617
A/W#:
Date of Offense: 9/16/99
S.C. Code §: 16-3-20
CDR Code #: 0 1 1 1 1 6
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: MURDER - COUNT ONE
in violation of § 16-3-20 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Defendant | E. Keith Kelly, Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of death by electrocution or lethal injection days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____
*Fine: .....$_____
§14-1-206 (Assessments 100%).....$_____
§14-1-211(A)(1) (Surcharge).....$_____
§14-1-211(A)(2) (Surcharge).....$_____
§56-5-2995 (DUI Assessment).....$_____
3% to County (if paid in installments)....$_____
TOTAL.....$_____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

Mark Hammond
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE: Gary E. Clary
Judge Code: 0 1 0 1 5 8
Sentence Date: 10/22/01

Court Reporter: Linda Moffitt

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
RICHARD BERNARD MOORE)
AKA:)
Race: B Sex: M Age: 36)
[redacted] SS#:)
Address: [redacted])
DL#)

IN THE COURT OF GENERAL SESS. 2983
INDICTMENT/CASE#:
00 -GS- 42 - 617
A/W#: DIRECT INDICTMENT
Date of Offense: 9/16/1999
S.C. Code §: 16-23-490
CDR Code #: 015419
☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: POSSESSION WEAPON (PISTOL) DURING THE COMMISSION OF A VIOLENT CRIME COUNT TWO
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 015419

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of five (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.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine: . . . . . $_____
§14-1-206 (Assessments 100%). . . . $_____
§14-1-211(A)(1) (Surcharge) . . . . . $_____
§14-1-211(A)(2) (Surcharge) . . . . . $_____
§56-5-2995 (DUI Assessment). . . . . $_____
3% to County (if paid in installments). . . $_____
TOTAL . . . . . $_____

Mark Hammond
Clerk of Court/ Deputy Clerk
Court Reporter: Linda Moffitt

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

PRESIDING JUDGE Gary E. Clary
Judge Code: 010516
Sentence Date: 10/22/01

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

WITNESSES

Steve Denton

Spartanburg County Sheriff's Dept.

POB 771

Spartanburg, SC 29304-0771

1. SENTENCE MADE ☑
2. REPORT ENDED
3. CARD PULLED ☑
4. INDEXED ☑
5. CHECKED WARRANTS ☑
6. CHECKED SIGNATURE ☑
7. ASSESSMENT AND FINE CARD MADE ☑
8. TRAFFIC VIOLATIONS COPY ☑

Computer

ARREST WARRANT NUMBER

G-299133

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 1-13-00

VERDICT

Guilty

Karen E Nave

Foreperson of Petit Jury

Date: 10-20-01

DOCKET NO. 00-GS-42-0619

The State of South Carolina

County of Spartanburg

(02) *Holman C. Gossett, Solicitor*

COURT OF GENERAL SESSIONS

JAN 17 2000

TERM

THE STATE
vs.
Richard Bernard Moore

Indictment for

ASSAULT W/ INTENT TO KILL

SC Code: 17-25-0030
CDR Code: 768
Class MIS-UNC

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

Defendant

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

Defendant

Witness:

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

POB 771
Spartanburg County S
Denton
LIM

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 13 2000

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

ASSAULT WITH INTENT TO KILL

That Richard Bernard Moore did in Spartanburg County on or about September 16, 1999, with malice aforethought attempt to commit a battery upon one Terry Dean Hadden, by shooting at the victim with a gun, with intent to kill the said victim, in violation of §17-25-30 (CL), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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

Holman Gossett

SOLICITOR

2986

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
RICHARD BERNARD MOORE)
AKA:)
Race: B Sex: M Age: 36)
[redacted] SS#:)
Address: [redacted])
Spartanburg, SC)
DL# SID#:)

IN THE COURT OF GENERAL SESSI
INDICTMENT/CASE#:
00 -GS- 42 - 619
A/W#: G299133
Date of Offense: 9/16/1999
S.C. Code §: CL, 16-3-620, 17-25-30
CDR Code #: 017618
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ASSAULT WITH INTENT TO KILL (AWIK)
in violation of § CL, 16-3-620, 17-25-30 of the S.C. Code of Laws, bearing CDR Code # 017618
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Richard B. Moore, Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of Ten (10) days/~~months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____
*Fine: . . . . . $_____
§14-1-206 (Assessments 100%). . . . $_____
§14-1-211(A)(1) (Surcharge) . . . . . $_____
§14-1-211(A)(2) (Surcharge) . . . . . $_____
§56-5-2995 (DUI Assessment). . . . . $_____
3% to County (if paid in installments). . . $_____
TOTAL . . . . . $_____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____
_____
_____

Mark Hammond
Clerk of Court/ Deputy Clerk
Court Reporter: Linda Moffitt

PRESIDING JUDGE Gary E. Clary
Judge Code: 010308
Sentence Date: 10/22/01

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

WITNESSES

Steve Denton

Spartanburg County Sheriff's Office

1. SENTENCE MADE
2. REPORT ENDED
3. CARD PULLED
4. INDEXED
5. CHECKED WARRANTS
6. CHECKED SIGNATURE
7. ARREST WARRANT NUMBER
FINE CARD MADE

Computer

Direct Indictment

VIOLATIONS COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 10-4-01

VERDICT

Guilty

True Bill

Foreperson of Petit Jury

Date: 10-20-01

DOCKET NO. 01 – GS – 42 - 2460

The State of South Carolina

County of Spartanburg

Trey Gowdy, *Solicitor*

COURT OF GENERAL SESSIONS

OCT 08 2001 TERM

THE STATE
vs.

RICHARD BERNARD MOORE

Indictment for

ARMED ROBBERY

SC Code: **16-11-330 (A)**
CDR Code: **139**
Class **FEL/A**

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

Defendant

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

Defendant

Witness:

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

2987

2988

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 0 4 2001, the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That Richard Bernard Moore did in Spartanburg County on or about September 16, 1999, committed a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of James Mahoney, by means of force, violence, and/or intimidation, goods or monies of Nikkis Speedy Mart, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

Barry Barnette
DEPUTY SOLICITOR

2986

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)
) INDICTMENT/CASE#:
STATE VS.) 01 -GS- 42 - 2460
RICHARD BERNARD MOORE)
AKA:) A/W#: DIRECT INDICTMENT
Race: B Sex: M Age: 36) Date of Offense: 9/16/1999
[redacted] SS#:) S.C. Code §: 16-11-330(A)
Address: [redacted]) CDR Code #: 01 1 3 19
DL# SID#:) ☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ARMED ROBBERY
in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 01 1 3 19

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of thirty (30) days/~~months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____
*Fine: . . . . . $_____
§14-1-206 (Assessments 100%). . . . $_____
§14-1-211(A)(1) (Surcharge) . . . . . $_____
§14-1-211(A)(2) (Surcharge) . . . . . $_____
§56-5-2995 (DUI Assessment). . . . . $_____
3% to County (if paid in installments). . . $_____
TOTAL . . . . . $_____

Mark Hammond
Clerk of Court/ Deputy Clerk
Court Reporter: Linda Moffitt

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____
_____
_____

PRESIDING JUDGE
Judge Code: 010158
Sentence Date: 10/22/01

White - Clerk Green - Corrections Canary - Probation Pink - Defendant