

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable J. Derham Cole, Circuit Court Judge

RODERQUIZ R. COOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000972

APPENDIX

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Jan 14 2021

S.C. SUPREME COURT

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Closing Argument by the Defense

1001

1 So the scorpion went down by the riverbank
2 area. He met up with a frog. And he said, "Mr.
3 Frog, can you please take me across the river to
4 this distant land?" And that frog said, "Oh, no,
5 Mr. Scorpion. If I let you get on my back and go
6 across the river, you're going to sting me."

7 The scorpion said, "Oh, no, no, I wouldn't
8 do that. If I sting you, then I can't get across
9 the river." Then the frog said, "Oh, okay. What
10 happens when we get close to the bank here and
11 you're on my back here? Are you going to sting me
12 then?"

13 And the scorpion said, "No, no, no, no.
14 I'm not going to do that, because if I sting you
15 then, then I can't get back across the riverbank if
16 I want to come back this way." And the frog
17 thought, "Wait a minute. What happens when I get
18 you safely across to the riverbank here and get you
19 off my back? Are you going to sting me then?"

20 And the scorpion said, "No, no. By the
21 time we get on the other side of the river, I'll be
22 so grateful that you gave me a ride, I surely
23 wouldn't harm you." So the frog said, "Okay, I'll
24 give you a ride."

25 So the frog gives the scorpion a ride, and

Closing Argument by the Defense

1002

1 when they get halfway across the riverbank, the frog
2 feels a piercing sting of the scorpion in his back
3 and the scorpion's venom going in his body. And the
4 frog looks back and asks the scorpion, "Why did you
5 do that? Why did you do that?"

6 And the scorpion just shrugs and says,
7 "It's in my nature. That's who I am." Meon Miller
8 is a liar. It's in Meon Miller's nature to lie.
9 That's just who he is. I told you on Tuesday there
10 would be two things that you would learn about Meon
11 Miller during this trial -- one, that he's a liar;
12 and, two, he's a killer.

13 The State of South Carolina's whole case
14 rests solely on the words of Meon Miller. Rod has
15 been charged with conspiracy, attempted armed
16 robbery, and murder, all on the words of Meon
17 Miller. Nobody else backs up this conspiracy,
18 nobody else admits to being part of this conspiracy
19 but Meon Miller.

20 Their whole case, the foundation of their
21 case, is the word of an admitted liar and now
22 admitted killer. I told you all on Tuesday that
23 everybody had a job. Everybody had a job to do.
24 Now comes the time when it's you 14's job to do.
25 Your job is simple.

Closing Argument by the Defense

1003

1 Your job is not to go back to that jury
2 room and try to figure out what happened. You have
3 all these law enforcement agencies here, these
4 capable investigators and police officers. Their
5 job is to investigate crimes. Their job is to try
6 to figure out what happened.

7 That's not you 14's job. It's simply not.
8 Our system is designed not for juries to try to find
9 out what happened. Your job is simple -- to give a
10 verdict that says whether or not the State of South
11 Carolina has done their job. Their job is to try to
12 prove to you beyond a reasonable doubt in this case
13 that a conspiracy existed and that Rod Cook would be
14 guilty of attempted armed robbery and murder based
15 on hand of one is the hand of all.

16 Basically, was there a conspiracy? Was
17 there an agreement? That's what their job was to
18 do, to prove to you that a conspiracy existed, that
19 agreement existed between all the people they claim
20 was part of this conspiracy. They have not done
21 their job.

22 The only evidence of an agreement is the
23 testimony of Meon Miller. Now, Judge Alford is
24 going to show you and tell you two things about the
25 law in this when I'm done here. He's going to

Closing Argument by the Defense

1004

1 explain to you what the law of conspiracy means.

2 There's going to be a lot of legal words here.

3 Simply put, a conspiracy is an agreement
4 between two or more people to do something illegal.
5 They have to be prove to you that there was an
6 agreement between Meon Miller and Rod Cook, at the
7 very least. And Judge Alford is going to tell you
8 about this theory, what we call hand of one is the
9 hand of all.

10 And felony murder, he will address that,
11 as well. Simply put, if something happens that's
12 the natural and probable consequence of something
13 that you agree to do, then you're responsible for
14 that, as well. Two things are not present in this
15 case.

16 There's no agreement. There is no
17 agreement between Rod Cook and Meon Miller to rob
18 the McDonald's on that day. The only reason Meon
19 Miller was in the car with Tasha Matthews on that
20 day is because Meon Miller is a drug dealer. He
21 told you that from that stand himself.

22 He says, "I sell drugs in Columbia and in
23 Ridgeway, but I don't know anything about
24 Batesburg." Then the State introduced his own phone
25 records -- 12 texts on his phone records to a

Closing Argument by the Defense

1005

1 Batesburg number, 12 texts to a Batesburg number.
2 And then they brought in a young lady that said,
3 "Oh, I've got that number, and I live here in
4 Columbia."

5 The State of South Carolina wants you to
6 believe Meon Miller over their own phone records.
7 Meon Miller says he doesn't know anybody from
8 Batesburg, so the phone records must be lying. Do
9 your job. Your job is to simply say have they
10 proven their case beyond a reasonable doubt?

11 Two examples of what beyond reasonable
12 doubt means, beyond reasonable doubt means leaving
13 you firmly convinced. Remember, their whole case
14 relies on the word of Meon Miller. He's the only
15 one that says that there's a conspiracy.

16 Are you firmly convinced of what Meon
17 Miller says? Meon Miller is not even being truthful
18 about the shirt he was wearing. You can't even
19 believe Meon Miller when he tells you what shirt he
20 had on. How can you believe anything he says? How
21 can you not hesitate to act if all you have to go on
22 is the word of Meon Miller?

23 Why would Mr. Miller lie? He told you now
24 he's 20 years old. He saw it as a conspiracy. He
25 saw it was attempted robbery. He saw the murder.

Closing Argument by the Defense

1006

1 He told you he knew that he could face a life
2 without parole sentence for that murder. That was a
3 possibility for him.

4 And he's told you he knew that. He told
5 you jail wasn't a fun place, jail wasn't a good
6 place, and prison is probably not any better. He
7 has a family out there that he loves and loves him.
8 He told you he wanted to get back home to them.

9 What would a person do to avoid a life
10 without parole sentence? What would they do? What
11 would they say? What lies would they tell? Let's
12 kind of walk through some of the lies Meon Miller
13 has told during this time here.

14 We are all aware that this incident
15 occurred in October of 2010 -- October 13, 2010.
16 For 11 months, Meon Miller never gave any written
17 statement
18 -- 11 months, he didn't give any sort of written
19 statement. End of September of 2011, he got a
20 lawyer, and he gave a statement.

21 When he gave that statement, he swore to
22 tell the truth, the whole truth, and nothing but the
23 truth, the same oath he took the other day when he
24 came here and testified in front of you 14. He
25 swore to tell the truth, and he lied.

Closing Argument by the Defense

1007

1 How do we know he lied? He said he called
2 Rod Cook. He got a call from Rod at 9:00 or 10:00
3 in the morning. We have his phone records. There
4 is no phone call at 9:00 or 10:00 in the morning
5 from Rod Cook to Meon Miller. That's a lie.

6 He said after that first phone call, when
7 he doesn't want to be part of any sort of
8 conspiracy, Rod called right back. We have his
9 phone records. There's no call shortly after 9:00
10 or 10:00 in the morning.

11 He said when he got to Tasha's house,
12 Tasha explained the details of the robbery to him.
13 You heard Tasha Matthews take the stand this week.
14 The State called her as a witness. She absolutely
15 denies making any one of those statements.

16 That's a lie when Meon Miller says Tasha
17 explained to him the details. He said he told
18 Angelo Tucker about the robbery. You heard Angelo
19 Tucker come in here and testify. He denies ever
20 talking to Meon Miller and agreeing to do this
21 robbery here. That was a lie.

22 Meon said that Tasha decided where they
23 were going to park at when they got there. Again,
24 you heard Tasha's testimony. Judge her credibility.
25 She didn't say that. She told you she didn't say

Closing Argument by the Defense

1008

1 that. That was a lie.

2 When Meon Miller said he got out of the
3 car, he said Tucker had the gun. Tucker had the
4 gun. Tucker was struggling with him. He said all
5 this in September 2011, once he swore to tell the
6 truth in the statement. He got up the stand this
7 week here and said, "Okay, yes, I lied about that,
8 too."

9 It's in Meon Miller's nature to lie. When
10 he gets scared and his back is against the wall, he
11 responds by lying. In his September 2011 statement,
12 he said he saw the gun in Tucker's hand, and Tucker
13 shot him. That was a lie, and he admitted to it.

14 It's in his nature to lie. Then when he
15 got up on the stand right here, he didn't finish --
16 he didn't stop lying back in 2011. He got up here
17 again in 2013 and swore to tell the truth, the whole
18 truth, and nothing but the truth, and he lied.

19 He continued to tell some of the same lies
20 in 2011. Then he had to lie about the T-shirt.
21 Then he said he picked the gun up off the ground,
22 which is a lie. And then he said when Mr. Jennings
23 came at him, he shot down in the ground and didn't
24 aim the gun at him. That's clearly a lie.

25 You heard from the pathologist that said

Closing Argument by the Defense

1009

1 there's no way that gunshot wound could have
2 happened at that sort of angle, and that's a lie.
3 The State told you that Rod Cook's plan killed Mr.
4 Jennings. I beg to differ. Meon Miller killed Mr.
5 Jennings.

6 It was the hand of Meon Miller on that
7 trip that killed Mr. Jennings, and Rod Cook had
8 nothing to do with that. There was no plan, no
9 agreement for Meon Miller to come rob the
10 McDonald's.

11 The only reason he was in that car was to
12 do a drug deal and drove there -- not near the
13 McDonald's, in the neighborhood away from
14 McDonald's. There was never a plan for Meon Miller
15 to be anywhere near that McDonald's.

16 Meon Miller tells you that Rod told him he
17 needed to rob his store because he was about to get
18 evicted. You have their history there, Rod's and
19 Tasha's, at the apartment complex. Look at it.
20 Thirty months they were there. Close to 27 of those
21 months, they were late on their rent.

22 Of those 30 months, 19 of them had an
23 eviction fee. They had been two months behind five
24 previous times. Use your common sense. There's no
25 reason this day Rod Cook would have decided that "We

Closing Argument by the Defense

1010

1 needed to rob the McDonald's because we're behind on
2 our rent."

3 This isn't a house. This is an apartment.
4 There are hundreds of apartments around the Columbia
5 area that they could have went to. There's no
6 reason to rob the McDonald's because you're late on
7 your rent that you're always late on.

8 Meon Miller told you that Rod told him
9 there'd be \$18,000 in this McDonald's. This is a
10 McDonald's in Batesburg on a Wednesday night, where
11 the only monies available would be cash made since
12 6:00 that afternoon until 11:00 that night on a slow
13 night at McDonald's.

14 There wasn't \$18,000 in that McDonald's.
15 Rod knew that. Rod wouldn't have said that. Rod
16 didn't say that. The only evidence that the State
17 can present to you that Rod did say that is the word
18 of a killer and the word of a liar.

19 We use the word "corroboration" a lot.
20 That means to kind of support or give authority to
21 somebody's words. The only evidence of a
22 conspiracy, the only basis of the hand of one is the
23 hand of all is the testimony of Meon Miller. Ask
24 yourself the hard question, what, if anything,
25 corroborates what Meon Miller is saying.

Closing Argument by the Defense

1011

1 Look at the phone records. Look at the
2 timeline that Meon Miller claims that there were
3 phone calls made. The phone calls don't back it up.
4 Look at the phone records that occurred late that
5 evening at the McDonald's.

6 They claim that Tasha was in on this
7 conspiracy, as well. Remember what she said about
8 whether or not she knew anything was going on. She
9 clearly told you nobody had discussed anything about
10 a robbery with her. She didn't discuss anything
11 about a robbery with anybody else.

12 None of the State's witnesses that they
13 called corroborates or backs up what Meon Miller has
14 said. Tasha Matthews denies knowing about this
15 robbery. Meon claims that Tasha informed him about
16 this robbery at the house and in the car.

17 Angelo Tucker came in and told you that he
18 didn't know anything about any pre-plan for a
19 robbery. Nobody asked him to bring a gun for a
20 robbery there. He doesn't corroborate what the
21 State is saying.

22 The victim himself, Willie Jennings, he
23 doesn't corroborate the State's theory. What was
24 his last words? "They shot me," never a mention
25 about "They were trying to walk me back into

Closing Argument by the Defense

1012

1 McDonald's." He didn't say anything about they were
2 trying to rob the store. He didn't say anything
3 about them "trying to force me to come inside." All
4 he said was, "They shot me."

5 Even Mr. Jennings doesn't back up what
6 their theory of what happened that day was. Listen
7 to the McDonald's employees, everybody that came in
8 that worked that night with Rod, Renee in
9 particular. She told you that it was a slow night,
10 wouldn't have been that much money in the registers
11 here, and nothing happened out of the ordinary that
12 night.

13 There was nothing that happened that was
14 not usual. She had closed with Rod several times
15 before, closed herself several times before, closed
16 with Mr. Jennings several times before. Nothing out
17 of the ordinary was happening that night.

18 It does not corroborate what Meon Miller
19 is saying. You have the apartment records here.
20 Look at the apartment records. If the motive of
21 this robbery was financial, why this day? You've
22 heard Tasha tell you that they had already talked
23 with the home office, and they could stay a few more
24 days until the check cleared.

25 They wasn't going to get kicked out of the

Closing Argument by the Defense

1013

1 apartment that day. There was no reason, no motive
2 to rob the McDonald's on a slow Wednesday night.
3 The foundation of this case is the testimony of Meon
4 Miller. The State keeps talking about this trash
5 policy, that it would have been against the
6 corporate policy to take the trash out night here,
7 and Rod knew about it.

8 And that's correct. Look at the timeline.
9 Look at the phone calls. This managers' meeting was
10 at 4:00 -- 4:00 on the afternoon that this occurred.
11 Rod was informed at 4:00 on this afternoon that this
12 occurred that nobody could take the trash out. If
13 Rod had this plan to let Mr. Jennings take the trash
14 and get robbed, he would have changed it once he
15 realized that he couldn't take the trash out
16 anymore.

17 That would have drawn attention to what
18 happened. If this no trash out policy was hammered
19 in as much as the State claims it was -- you can't
20 take the trash out, everybody knows it -- why would
21 you have a plan for there to be a red flag on a
22 policy that was just put in place here?

23 There are several phone calls to Tasha,
24 one phone call to Mr. Miller here. Tasha called the
25 McDonald's several times after 4:00. If the plan

Closing Argument by the Defense

1014

1 involved taking the trash out and now this policy
2 came into place here, they would have changed it.

3 You know why it wasn't changed? Because
4 it never was a plan. It never was a plan for Mr.
5 Jennings to get robbed while taking the trash out.
6 Mr. Miller's own letters here indicate that he
7 orchestrated this idea of saying that it was all
8 Rod's idea.

9 He sent Rod a letter in 2012 that he
10 admits to. He says, "Yes, I'm sorry, cuz. I lied
11 on you. I lied on you." That was after he wrote
12 his statement in 2011 claiming that Rod set all of
13 this up. In 2012, he came up and said, "Cousin, I'm
14 sorry I lied on you. I'll straighten it out."

15 But he never straightened it out. Why
16 didn't he straighten it out? Because it's in his
17 nature to lie. Why else doesn't this case make
18 sense? Why doesn't the State's theory make sense?
19 Why would Rod Cook pick Meon Miller to rob his
20 store? -- an 18-year-old kid who by his own
21 admission doesn't do robberies, never held a gun
22 before here.

23 And he's the guy you want to use as a co-
24 defendant to be a part of this plan here? Use your
25 common sense. It doesn't make sense. Of all the

Closing Argument by the Defense

1015

1 days you can rob a McDonald's, you're going to pick
2 a Wednesday night, the slowest night of the week --
3 a Wednesday night? It makes no sense.

4 Use your common sense here. You have the
5 phone calls here. Don't let the State only show you
6 snippets of these phone calls. Go back and listen
7 to the phone calls in their entirety. Listen to
8 them in context. See what everybody was saying in
9 those phone calls.

10 You heard from Rod in those phone calls.
11 Judge his credibility from the phone calls that you
12 heard. Look at the videos. Look at them in
13 context. The State makes this point about the safe
14 was left unlocked. There's no reason for the safe
15 to be left unlocked because of a robbery. Rod had
16 the key.

17 There's no importance about the safe being
18 unlocked. Look at the videos for yourself here.
19 Look at Rod's conduct that night as explained by the
20 witnesses that were there. He was in shock. He was
21 nervous. He was worried about Tasha. He had just
22 pulled a man who had been shot back in the
23 restaurant on his back.

24 Listen to the 911 tape. You can hear the
25 victim's voice on the tape. Rod's on the phone with

Closing Argument by the Defense

1016

1 911 while he's on the outside of the store. You can
2 hear the victim's voice on the tape. Listen to him.
3 Are those the actions of somebody who's involved in
4 a conspiracy?

5 He waved the police in. They got a
6 description from a McDonald's employee. Are those
7 the actions of somebody who's involved in a
8 conspiracy? When you listen to the phone calls,
9 listen to how Meon Miller and Tasha Matthews are
10 responding to Rod. Are they talking to him like he
11 knows what's going on?

12 Why are they explaining things to him
13 after what happened if he already knew what was
14 going on? They're explaining things to him because
15 he didn't know what happened. He was trying to
16 figure out what happened. The police didn't know
17 what happened.

18 This first theory they thought was that
19 Rod was the intended victim of this crime. You know
20 why? Because when they got there, there was no
21 evidence of a robbery attempt at the McDonald's, no
22 evidence of that. The only evidence that they ever
23 got of a robbery attempt at the McDonald's was the
24 word of Meon Miller.

25 Two things we know about Meon Miller --

Closing Argument by the Defense

1017

1 he's a killer, and he's a liar. Martin Luther King,
2 Jr., once said that the true test of a man is not
3 where he stands at in times of comfort or
4 convenience, but times of challenge and times of
5 controversy. You can't tell that much about a man
6 during times of comfort and convenience.

7 Let that man face challenge and
8 controversy, that's when you find out a lot about
9 him. We say that we have a jury system here that's
10 the best in the world. But this case, this date, is
11 the true test of our legal system. We have a system
12 that says you are presumed innocent until proven
13 guilty, until the State of South Carolina can prove
14 their burden beyond a reasonable doubt.

15 The only thing they've done to try to
16 prove their case is give you the word of Meon
17 Miller, a liar and a killer. He came in and I guess
18 the State said he confessed to shooting Mr.
19 Jennings. He wasn't even truthful about that. It
20 wasn't a plan of Rod Cook to kill Mr. Jennings. It
21 was the hand of Meon Miller.

22 When you 14 go back there in that jury
23 room, I'm not asking you to do what's comfortable,
24 I'm not asking you to do what's convenient. But I
25 will ask you to do what's correct. And the correct

Closing Argument by the Defense

1018

1 thing to do is to issue a verdict of not guilty on
2 conspiracy, on attempted murder -- on attempted
3 armed robbery, and murder. Thank you.

4 CHARGE OF THE COURT

5 THE COURT: Mr. Foreman, ladies and
6 gentlemen of the jury, you've heard final arguments
7 of counsel. It's now time for me to charge you,
8 that is, to instruct you, with regard to the law
9 that applies to the issues in this case.

10 In this case, the State charges the
11 defendant, Roderquizz R. Cook, with three charges.
12 They charge him with criminal conspiracy, attempted
13 armed robbery, and murder. To these charges, the
14 defendant has pled not guilty, which then places
15 upon the State the burden of proving the defendant
16 guilty.

17 A person charged with committing a
18 criminal offense in South Carolina is never required
19 to prove themselves innocent. I charge you that it
20 is a vital and important rule of law that a
21 defendant in a criminal trial must always be
22 presumed innocent until his guilt has been proved
23 beyond a reasonable doubt.

24 This presumption of innocence remains with
25 the defendant at all times throughout the trial and

Charge of the Court

1019

1 is only removed when and if the State has proved
2 guilt beyond a reasonable doubt. It is your solemn
3 duty, ladies and gentlemen, if not clearly convinced
4 of guilt beyond every reasonable doubt to the
5 contrary, to find the defendant not guilty.

6 Mr. Foreman, ladies and gentlemen of the
7 jury panel, during the trial you have heard about a
8 maximum potential penalty or sentence in this case.
9 I charge you that the punishment or sentencing is a
10 matter for the Court. It is not a matter for the
11 jury.

12 I tell you that the jury's function is to
13 listen to the testimony and evidence and judge the
14 facts in this case and determine whether or not the
15 State has proven the elements of each of these
16 offenses beyond a reasonable doubt.

17 If the State fails to meet that burden,
18 then your verdict would be not guilty. If the State
19 meets that burden and you find that they have beyond
20 a reasonable doubt, you would find the defendant
21 guilty.

22 That is your duty in this case or your
23 role in a trial, is to determine the truth of the
24 facts in the case and not to determine the
25 appropriate punishment. I instruct you now and

Charge of the Court

1020

1 emphasize to you that the fact that the defendant
2 does not testify in his own behalf in a criminal
3 trial is not a factor to be considered by you in any
4 way in your deliberations.

5 You must not consider the fact that the
6 defendant has chosen not to testify or present any
7 evidence in this case when you determine the guilt
8 or innocence of the defendant. It must not be
9 considered by you in any manner whatsoever, either
10 against or for the defendant.

11 A defendant has the constitutional right
12 to remain silent. The assertion of that
13 constitutional right cannot and must not be
14 considered by you in your deliberations. Under your
15 oath, then, you are to reach no inference and draw
16 no conclusion whatsoever from the fact that the
17 defendant did not testify or present evidence.

18 The fact that the defendant did not
19 testify should not even be discussed in your jury
20 room. The burden of proof, as I have stated to you,
21 is upon the State. It is not the burden of the
22 accused to prove his innocence. The burden of proof
23 remains upon the State to prove guilt beyond every
24 reasonable doubt.

25 So the State has the burden of proving the

Charge of the Court

1021

1 defendant guilty beyond a reasonable doubt. What is
2 a reasonable doubt? Some of you may have served as
3 jurors in civil cases where you were told it is only
4 necessary to prove the fact is more likely true than
5 not, such as by the greater weight or preponderance
6 of the evidence.

7 However, in criminal cases, the State's
8 proof must be more powerful than that. It must be
9 beyond a reasonable doubt. Ladies and gentlemen,
10 proof beyond a reasonable doubt is proof that leaves
11 you firmly convinced of the defendant's guilt.
12 There are very few things in this world that we know
13 with absolute certainty.

14 And in criminal cases, the law does not
15 require proof that overcomes every possible doubt.
16 A reasonable doubt may also be described as the kind
17 of doubt that would cause a reasonable person to
18 hesitate to act. If you have such a doubt as to the
19 guilt of the defendant, then he would be entitled to
20 a verdict of not guilty.

21 Reasonable doubt may arise from evidence
22 which is in the case upon the absence or lack of
23 evidence in the case. If based on your
24 consideration of the evidence you are firmly
25 convinced that the defendant is guilty of the crimes

Charge of the Court

1022

1 charged, you must find him guilty.

2 If on the other hand you think there's a
3 real possibility that he is not guilty, you must
4 give him the benefit of the doubt and find him not
5 guilty. You alone must make the determination of
6 whether or not reasonable doubt exists as to the
7 guilt of the defendant.

8 Mr. Foreman, ladies and gentlemen of the
9 jury panel, there are two types of evidence which
10 are generally presented during a trial, direct
11 evidence and circumstantial evidence. Direct
12 evidence is the testimony of a person who asserts or
13 claims to have actual knowledge of a fact, such as
14 an eyewitness.

15 Circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the
17 existence of a fact. The law makes absolutely no
18 distinction between the weight or value to be given
19 to either direct or circumstantial evidence, nor is
20 a greater degree of certainty required of
21 circumstantial evidence than of direct evidence.

22 You should weigh all the evidence in the
23 case. After weighing all the evidence, if you are
24 not convinced of the guilt of the defendant beyond a
25 reasonable doubt, you must find the defendant not

Charge of the Court

1023

1 guilty.

2 Mr. Foreman, ladies and gentlemen of the
3 jury panel, under the Constitution of South
4 Carolina, you are the finders of facts in this case.
5 I do not have the right to pass upon the facts or
6 even to express any opinion I might have as to the
7 facts, nor may I suggest in any way what I may think
8 about the guilt or innocence of the defendant.

9 You should form no opinion in that regard
10 from anything I may have said or any ruling I have
11 made during the course of the trial. Mr. Foreman,
12 ladies and gentlemen of the jury panel, I charge you
13 that the testimony of a witness may be discredited
14 or impeached by showing that he previously made
15 statements which are inconsistent with his present
16 testimony.

17 The earlier contradictory statements are
18 also admissible to establish the truth of these
19 statements. It is the province of the jury to
20 determine the credibility, if any, to be given to
21 the earlier statements and to be given the testimony
22 of a witness who has been impeached.

23 If a witness is shown knowingly to have
24 testified falsely concerning any material fact, you
25 may consider this in determining whether to trust

1 such a witness' testimony on other particulars. You
2 may reject all of the testimony of a witness or give
3 all or part of such testimony the credibility you
4 think it deserves.

5 As the sole judges of the facts in this
6 case, you are also necessarily the sole judges of
7 the credibility or believability of each of the
8 witnesses that have testified during the course of
9 the trial. There are a number of factors which you
10 may consider in arriving at your assessment as to a
11 particular witness' credibility or believability.

12 Some factors I'm going to list for you,
13 and should you think of other factors that you
14 believe also ought to be considered when you go back
15 into your jury room on the question of credibility,
16 then you should consider those factors, as well.

17 But you may consider the demeanor of the
18 witness from the witness stand. What was that
19 witness' manner of appearance? Was the witness
20 straightforward in answering questions or hesitant
21 in responding to questions? Simply put, do you
22 believe the witness was telling the truth or not
23 telling the truth?

24 Do you believe the witness knew of what
25 that witness testified or did not know of what that

Charge of the Court

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1 witness testified? You may consider whether or not
2 the testimony of a witness is consistent or
3 inconsistent with that witness' own testimony or
4 with other testimony or evidence presented during
5 the course of the trial.

6 You may also consider how the witness came
7 to know the facts to which he or she testified. You
8 may consider the opportunity that a witness had to
9 observe or hear, that is, to perceive the existence
10 of a fact by means of their senses.

11 You may also consider whether or not a
12 witness is biased or prejudiced. That simply means
13 do you find that a particular witness had some
14 reason to come into court, testify one way or
15 another, to help or hurt one side or the other. You
16 may also consider whether or not the testimony of
17 the witness was strengthened or weakened by other
18 testimony or other evidence presented during the
19 course of the trial.

20 Now, you as the finders of the facts in
21 this case and you as the judges of the credibility
22 or believability of each of the witnesses that have
23 testified may believe as much or as little of what a
24 witness testifies to as you deem appropriate.

25 You may believe all of what a witness

Charge of the Court

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1 says, you may believe none of what a witness says,
2 or you may believe only part of what a witness says.
3 Mr. Foreman, ladies and gentlemen of the jury panel,
4 the same constitution that makes you the finders or
5 judges of the facts in this case makes me the sole
6 and only instructor in the law.

7 You must accept as correct the law that I
8 charge and apply to the law the evidence as you find
9 it and reach your verdict. Put aside any
10 conceptions you may have had as to the law before
11 coming here to court today and accept the law as I
12 instruct it to be.

13 You, for purposes of your duty as jurors
14 today, should not be concerned about what the law
15 ought to be but what I charge you that the law is
16 now in this state. Mr. Foreman, ladies and
17 gentlemen of the jury panel, I charge you with
18 criminal intent.

19 Criminal intent is a necessary element of
20 each crime that must be proved by the State beyond a
21 reasonable doubt. Criminal intent is always a
22 matter that must be determined by the jury from the
23 circumstances surrounding the situation.

24 There is no way to prove intent to a
25 mathematical certainty. There is no way medical

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1 science can dissect a person's brain and determine
2 what he had in mind. So the law says that criminal
3 intent may be inferred from the circumstances shown
4 to have existed.

5 This is how the jury makes a determination
6 whether or not the element requiring intent was
7 present. Criminal intent is a state of mind which
8 operated jointly with an act is the commission of a
9 crime. Criminal intent is a mental state, a
10 conscious wrongdoing.

11 So it is up to you, the jury, to determine
12 what the defendant intended to do based on the
13 circumstances shown to have existed. I tell you
14 that the State must prove criminal intent beyond a
15 reasonable doubt, just as the State must prove every
16 element beyond a reasonable doubt as I previously
17 explained to you.

18 It is not necessary to establish intent by
19 direct and positive evidence, but intent may be
20 established by inference in the same way as any
21 other fact, by taking into consideration the acts of
22 the parties and all of the facts and circumstances
23 of the case.

24 While the State may prove motive, it is
25 unnecessary that the State do so. However, the

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1 State must prove intent. Now, Foreman, ladies and
2 gentlemen of the jury panel, I'm going to charge you
3 now with the offenses with which the defendant is
4 charged in this case and also some other legal
5 information.

6 So you will not have these charges written
7 down for you back in the jury room. So you're going
8 to have to call on your collective memories as to
9 what I instruct the law to be. But if you become
10 confused or you're not sure about the law, any of
11 this, when you get back and start your
12 deliberations, if you request me to do so, I'll
13 bring you back out in the courtroom and reinstruct
14 you on anything you wish me to reinstruct you on.

15 But what I ask you to do now is listen
16 carefully as I go through these. These are not easy
17 to understand because they're written somewhat in
18 legal language. So please pay attention to this.

19 I'm going to charge you first with the
20 crime of criminal conspiracy. The crime of
21 conspiracy is a combination between two or more
22 persons for the purpose of accomplishing either a
23 criminal or unlawful object by whatever means or an
24 object which is neither criminal nor unlawful by
25 criminal or unlawful means.

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1 If two or more persons agree to unite in a
2 common purpose to commit a criminal act, they
3 conspire. A conspiracy is a combination between two
4 or more persons to do an unlawful act or to do a
5 lawful act by criminal or unlawful means.

6 I charge you that there can be no
7 conspiracy when one individual acts by and for
8 himself only. To become a party to a conspiracy, a
9 person must combine with someone else to effect the
10 object of a conspiracy by the means agreed upon.

11 A common design or plan is essential to
12 the charge of conspiracy. To establish a
13 conspiracy, it is necessary first that an agreement
14 to commit the offense alleged in the indictment be
15 established.

16 What is required for an agreement is a
17 shared, single criminal objective, but not just
18 similar or parallel objectives between similarly
19 situated people. What is needed is proof that they
20 intended to act together for their shared mutual
21 benefit within the scope of the conspiracy charged.

22 The State must prove further that one or
23 more of the parties engaged in the agreement
24 committed some act to effect the object of the
25 conspiracy as alleged in the indictment. In this

1 case, the alleged conspiracy is as to armed robbery.

2 Although the offense of conspiracy may be
3 complete without proof of an overt act, such acts
4 may nevertheless be shown, since from them an
5 inference may be drawn as to the existence and
6 object of the conspiracy.

7 To constitute conspiracy, it is not
8 necessary that two or more persons meet and enter
9 into an expressed or formal agreement to do an
10 unlawful act or that they should directly by words
11 or in writing unite between themselves as to what
12 the unlawful object is to be or what the details of
13 the plan are, or by what means the unlawful
14 combination is to be made effective.

15 It is sufficient if two or more persons in
16 any manner or through any contrivance positively or
17 tacitly come to a mutual understanding to accomplish
18 a common and unlawful design. In other words, when
19 an unlawful end is sought to be effected and two or
20 more persons get together for the common purpose of
21 accomplishing that end and work together in any way
22 in furtherance of the unlawful scheme, each of those
23 persons becomes a member of the conspiracy.

24 The success or failure of conspiracy is
25 immaterial. But before any person can be found

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1 guilty of the charge of conspiracy, it must appear
2 beyond a reasonable doubt that the conspiracy was
3 formed and that the particular person was an active
4 party to it.

5 Although the offense of conspiracy may be
6 committed, again, without proof of overt acts, such
7 acts may nevertheless be shown. Here, the
8 conspiracy itself constitutes the offense, and it
9 must appear from the evidence beyond a reasonable
10 doubt before the defendant may be convicted that he
11 was a party to the conspiracy.

12 The mere fact that the defendant named may
13 be engaged in the performance of any of the acts
14 charged in the indictment, such as overt acts, is
15 not sufficient evidence to convict him of
16 conspiracy. You may not convict the defendant of
17 conspiracy on that fact alone, but it is necessary
18 to show that the defendant was a party to the
19 conspiracy, an unlawful agreement, before he is
20 guilty of conspiracy.

21 The evidence and proof of the conspiracy
22 may be circumstantial. The term "overt acts" as
23 I've used it means an act committed by one or more
24 of the conspirators as alleged in the indictment.

25 I charge you, ladies and gentlemen, that

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1 the State of South Carolina is required to prove all
2 the material and essential allegations of this
3 charge beyond a reasonable doubt before you can find
4 the defendant guilty of conspiracy.

5 Now, the defendant is also charged in this
6 case with attempted armed robbery. Of course, an
7 attempt means that the criminal offense was not
8 completed by withdrawal or being frustrated in some
9 way from completing it. I'm going to charge you
10 first with regard to attempt, and then it is
11 necessary for me to also charge you with regard to
12 the elements of armed robbery.

13 What is an attempt? An attempt is an act
14 done in part execution of a design to commit a
15 crime. There must be an intent that the act shall
16 be committed and an act done not in full execution
17 but in pursuance of the intent.

18 An attempt is distinguished from
19 preparation to commit it and also from the intent to
20 commit. The law does not punish the mere
21 entertainment of a criminal intent. To bring the
22 law into action, it is necessary that some act
23 should be done in pursuance of the intent
24 immediately and directly tenured to the commission
25 of the crime, an act which, should the crime be

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1 perpetrated, would constitute part and parcel of the
2 transaction but which does not reach to the
3 accomplishment of the original intent because it is
4 prevented or voluntarily abandoned.

5 In order to constitute an attempt to
6 commit a crime, it is essential that coupled with
7 the intent to commit the offense there be some overt
8 act beyond mere preparation in furtherance of the
9 intent, and there must be an actual or present
10 ability to complete the crime.

11 What is an armed robbery? The State must
12 prove beyond a reasonable doubt with regard to armed
13 robbery the defendant -- normally, in an armed
14 robbery charge, if a person is charged with armed
15 robbery instead of an attempted robbery, this is
16 what the State would have to prove.

17 The State must first prove beyond a
18 reasonable doubt that the defendant took personal
19 property from the person or presence of another
20 person with the felonious intent to steal the
21 property. Property is in the presence of a person
22 if it is within that person's reach, inspection,
23 observation, or control so that the person could, if
24 not overcome with violence or prevented by fear,
25 keep possession of the property.

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1 The State must also prove beyond a
2 reasonable doubt that the defendant carried the
3 property away, intending to permanently deprive the
4 owner of the property and to keep the property for
5 the defendant's own use. The slightest removal of
6 the property or the complete possession of the
7 property, even for an instant, by the defendant is
8 sufficient to show a taking and carrying away of the
9 property.

10 The taking and carrying away of the
11 property must have been done with violence or by
12 putting the owner of the property in fear of
13 violence. Finally, the State must prove beyond a
14 reasonable doubt that the defendant was armed with a
15 deadly weapon during the robbery.

16 A deadly weapon is any article,
17 instrument, or substance which is likely to cause
18 death or great bodily harm. Whether an instrument
19 has been used as a deadly weapon depends on the
20 facts and circumstances of each case. The following
21 are examples of instruments which may be deadly
22 weapons: a pistol, a shotgun, a rifle, a knife, and
23 so forth.

24 Again, what I have charged you with is
25 with regard to a completed armed robbery. In this

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1 case, the defendant, again, is charged with
2 attempted armed robbery. The defendant is also
3 charged in this case with the offense of murder.
4 I'm going to explain now to you the legal definition
5 of murder.

6 Murder is the willful, felonious killing
7 of a human being by another human being with malice
8 aforethought, that malice being either expressed
9 malice or inferred malice. What is malice? Malice
10 is hatred, ill will, or hostility towards another
11 person. It is the intentional doing of a wrongful
12 act without just cause or excuse and with an intent
13 to inflict an injury or under circumstances that the
14 law would infer an evil intent.

15 Malice aforethought may be expressed or
16 inferred. These terms "expressed or informed" do
17 not mean different kinds of malice but merely the
18 manner in which malice may be shown to exist, that
19 is, by direct evidence by inference from the facts
20 and circumstances which are proved. Expressed
21 malice is shown when a person speaks words which
22 express hatred or ill will for another or when the
23 person prepared beforehand to do the act which was
24 later accomplished.

25 For example, lying in wait for a person or

1 any other acts of preparation going to show that the
2 deed was within the defendant's mind would be
3 expressed malice. Malice is said to be expressed
4 where there is manifested a violent, deliberate
5 intention unlawfully to take away the life of
6 another human being.

7 Malice is implied where one intentionally
8 and deliberately does an unlawful act which he or
9 she then knows to be wrong and in violation of his
10 duty to another and where no excuse or legal
11 provocation appears and when the circumstances
12 attending a killing show an abandoned heart, a
13 malignant heart, fatally bent upon mischief.

14 Malice may be inferred from conduct
15 showing a total disregard for human life. In other
16 words, if such conduct results directly in the death
17 of another and if such conduct was so culpable and
18 inexcusable, so aggravated and grossly reckless as
19 to show an active, intentional disregard of the
20 consequences of human life, thus denoting a
21 malignant spirit, a heart devoid of social duty and
22 fatally bent on mischief, inference of malice may
23 arise.

24 Now, it will be observed, ladies and
25 gentlemen, that there must be malice aforethought.

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1 And while the law does not require that malice shall
2 exist for any particular length of time before the
3 commission of the act, it must be aforethought.
4 There must be a combination of the previous evil
5 intent and the act producing the fatal result.

6 If the evidence did show under what
7 circumstances a fatal injury was inflicted, then
8 you, the jury, would have to determine whether under
9 such circumstances the act was malicious. Mr.
10 Foreman, ladies and gentlemen of the jury, I charge
11 you with regard to felony murder.

12 If two or more combined together to commit
13 an unlawful act such as robbery and in the execution
14 of that criminal act, a homicide is committed by one
15 of the actors as a probable or natural consequence
16 of the acts done in pursuance of the common design,
17 all present participating in the unlawful
18 undertaking are as guilty as the one who committed
19 the fatal act.

20 The common purpose may not have been to
21 kill and murder, but if it was unlawful as, for
22 instance, to break in and steal and in the execution
23 of this common purpose, a homicide is committed by
24 one as a probable or natural consequence of the acts
25 done in pursuance of the common design, then all

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1 present participating in the unlawful common design
2 are as guilty as the slayer.

3 I charge you further with regard to the
4 hand of one is the hand of all, accomplice
5 liability. I charge you that the law is that if a
6 crime is committed by two or more persons who are
7 acting together in the commission of the crime or
8 the offense, the act of one is the act of all.

9 This is true if there are two people or
10 more than two people involved in the act. For
11 example, two people or more than two people can be
12 guilty of killing another when only one of the two
13 had a pistol and only one bullet and fired the shot
14 or committed the act which caused the death.

15 If two or more people are together, are
16 acting together, assisting each other in the
17 commission of an offense, the law says that under
18 these circumstances, the act of one is the act of
19 all, or as is sometimes said, the hand of one is the
20 hand of all.

21 Mr. Foreman, ladies and gentlemen of the
22 jury panel, I charge you with regard to mere
23 presence regarding accomplice liability. To be
24 guilty as an aider or abettor, the participant must
25 have knowledge of the principal's criminal conduct.

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1 Mere presence at the scene is not sufficient to
2 establish guilt as an aider or abettor.

3 The mere presence of a defendant where a
4 crime has occurred or the mere association by a
5 defendant with people who have committed a crime is
6 insufficient proof that the defendant has committed
7 the crime. Evidence that an individual is present
8 at the time a crime is committed is not in and of
9 itself sufficient proof that the individual
10 committed the crime.

11 The mere knowledge that another person is
12 going to commit a crime, even if the defendant is
13 present when the crime is committed, is not
14 sufficient to convict the defendant as a principal.
15 The State must prove beyond a reasonable doubt by
16 competent evidence the theory of the hand of one is
17 the hand of all.

18 To be guilty of a crime, a person must
19 personally commit the crime or be present at the
20 scene of the crime and intentionally or through a
21 common design aid, abet, or assist in the commission
22 of the crime through some overt act. A principal in
23 a crime is one who either actually commits the crime
24 or who is present aiding, abetting, or assisting in
25 the commission of the crime, present at the scene of

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1 the crime by prearrangement to aid, encourage, or
2 abet in the perpetration of the crime constitutes
3 guilt as a principal.

4 When a person does an act in the presence
5 of and with the assistance of another, the act is
6 done by both. Where two or more are acting with a
7 common plan or intent are present in the commission
8 of a crime, it does not matter who actually commits
9 the crime. All are guilty. The hand of one is the
10 hand of all.

11 Present means to be sufficiently near to
12 aid and abet and assist in the commission of the
13 crime. Intent is also a necessary element, for
14 there must have been a common design or intent to
15 commit the crime, and the crime must have been
16 committed pursuant to that plan with the person
17 aiding and abetting by some overt act.

18 The burden is on the State to prove every
19 element of the crime charged. If you find after
20 reviewing all of the evidence that the State has
21 proved the defendant was only present at the scene
22 of the crime and the State has not proved beyond a
23 reasonable doubt any participation in the crime,
24 then you are required to find the defendant not
25 guilty.

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1 Mr. Foreman, ladies and gentlemen of the
2 jury panel, the defendant is charged with three
3 separate offenses in this case. I charge you that
4 the defendant is not to be prejudiced by the fact
5 that there's more than one charge in this case. And
6 once you get back in your jury room and you begin
7 your deliberations, Mr. Foreman, ladies and
8 gentlemen of the jury panel, I charge you that you
9 are to consider each of these charges separately,
10 consider the facts and evidence in the case
11 separately, as to each of the charges and make a
12 separate finding as to each of these charges.

13 Mr. Foreman, ladies and gentlemen of the
14 jury panel, nothing that I may have said or done
15 during the course of this trial has been in any way
16 intended to express or suggest a view of the case or
17 an opinion as to the facts, the weight of the
18 evidence, or the credibility of the witnesses. If
19 any of my actions or words have seemed to so
20 indicate, you would disregard such and form your own
21 opinion as to these matters.

22 You have been selected as fair and
23 impartial jurors, sworn to impartially try and
24 determine the facts of this case. And when you
25 comply with your oath to do so, then no one will

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1 have a right to criticize your verdict, and you will
2 have fully discharged your duty as jurors.

3 You are to decide this case according to
4 the testimony that you have heard from the lips of
5 the sworn witnesses along with other evidence
6 introduced during the course of the trial. I charge
7 you that as jurors you must decide the issues in
8 this proceeding without bias and without prejudice
9 to any party.

10 You cannot allow yourself to be governed
11 by sympathy, by prejudice, by passion, by public
12 opinion, or any other arbitrary factor. Both the
13 State and the defendant have the right to expect
14 that each of you will carefully and impartially
15 consider all of the evidence in the case, and you
16 will follow the law as I have explained it to you.

17 Mr. Foreman, ladies and gentlemen of the
18 jury panel, whatever your verdict in this case as to
19 each of these charges must be your unanimous
20 verdict. All 12 jurors must agree on the verdict
21 which the foreperson will be authorized to write on
22 behalf of the jury.

23 Mr. Foreman, I charge you that once you
24 begin your deliberations that you maintain some
25 order in those deliberations, that all who wish to

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1 participate and to be heard in those deliberations
2 be allowed to do so. If for any reason any members
3 of the jury panel should take a break from the
4 deliberations, all should take a break.

5 By that, I mean all 12 jurors should be
6 present and deliberating when deliberations are
7 going on. Now, I have prepared for your use in the
8 jury room a verdict form for each of the charges in
9 this case. I'm going to go over those with you at
10 this time.

11 First, conspiracy to commit armed robbery.
12 There are two possible verdicts which appear on the
13 verdict form. They are as follows, "We, the jury,
14 find the defendant, Roderquiz R. Cook, guilty of
15 conspiracy to commit armed robbery." Second
16 possible verdict, "We, the jury, find the defendant,
17 Roderquiz R. Cook, not guilty."

18 On the charge of attempted armed robbery,
19 it's in the same format as that. On the charge of
20 murder, the same format. The first possible verdict
21 in each case is you find the defendant guilty of the
22 charge; the second is you find the defendant not
23 guilty.

24 Now, Mr. Foreman, ladies and gentlemen of
25 the jury panel, in preparing the verdict forms, I

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1 have to put the possible verdicts on the form in
2 some order. I do it the same way every time. But
3 the order in which the possible verdicts appear on
4 the verdict form means absolutely nothing, and you
5 should infer nothing from it.

6 What you should do, Mr. Foreman, you and
7 the jury should deliberate as to each of the
8 charges. Once the jury has reached the unanimous
9 verdict as to each of these charges, you will go to
10 that verdict form. You will find the verdict on the
11 verdict form which corresponds to the unanimous
12 verdict reached by the jury.

13 You will then put a check mark in the
14 blank beside that particular verdict, sign your name
15 on the line above the words "Foreperson's
16 Signature," and date it. Once you've done that as
17 to all three charges, you will knock on the door,
18 let the Bailiff know you've reached a verdict. The
19 Bailiff will let me know, and I will bring you back
20 out into the courtroom to receive those verdicts.

21 Now, I'm going to ask you if you will at
22 this time to retire to the jury room, but do not yet
23 begin your deliberations. I have to give counsel an
24 opportunity to request additional instructions on
25 the law. If additional instructions are requested

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1 and I deem them necessary, I will bring you back out
2 and give you those additional instructions.

3 It follows that we should make sure all
4 instructions are complete before you begin your
5 deliberations. I'll ask you, if you will, at this
6 time to go back to your jury room, all except the
7 two alternates. I'll ask you please at this time
8 not to go into the jury room but wait just outside
9 the jury room door for further instructions from the
10 Court.

11 Now, your food is here, but let's make
12 sure all the instructions are complete before we
13 begin lunch, okay? Please retire to the jury room,
14 all except the two alternates.

15 (Jury out at 1:25 p.m.)

16 THE COURT: Exceptions or additional
17 requests to charge from the State?

18 MS. WEISS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. O'NEILL: No, Your Honor.

21 THE COURT: All right, thank you.

22 Counsel, I don't know if you've had a chance to do
23 that. Please go through the exhibits. There are a
24 lot of them. You can go over those with the Court
25 Reporter. And make sure only those exhibits that

1 were admitted actually go back to the jury.

2 MR. O'NEILL: Yes, sir.

3 COURT REPORTER: They're all admitted.

4 THE COURT: They're all admitted, okay.

5 MS. WEISS: Except for a defense exhibit.

6 COURT REPORTER: Yes.

7 CLERK OF COURT: Your Honor, we're going
8 to keep the bullets out and let the gun go back
9 first?

10 BAILIFF: The gun is locked.

11 THE COURT: The gun's locked anyway.

12 CLERK OF COURT: Yes, sir. I know they
13 say not to let both go at the same time.

14 THE COURT: Well, it's probably a good
15 idea not to do it. We can leave those out. If they
16 request them, we can let them see them.

17 MS. WEISS: Defense Exhibit One is not in
18 evidence.

19 COURT REPORTER: Thank you.

20 MR. O'NEILL: Put them in order?

21 MS. WEISS: Do you want us to go through
22 them in order?

23 COURT REPORTER: No, no, no, not in order,
24 but we have to check them all to make sure they're
25 all there.

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1 MS. WEISS: Okay. You're going to send
2 both the gun and the ammunition back. You're just
3 going to alternate them out?

4 THE COURT: Well, I wasn't going to send
5 the bullets back. I don't think they need that.
6 But I can. But usually you don't like to give them
7 both.

8 MS. WEISS: The clips can go back.

9 THE COURT: Yes, the clips can go back. I
10 don't really have any problem sending them back. If
11 there's a trigger lock, make sure there's a trigger
12 lock on the gun and it can't be used. That's what
13 really matters. Just let them go back. I don't see
14 a problem.

15 MS. COTE: That should be everything.

16 THE COURT: All accounted for?

17 MR. O'NEILL: One check.

18 COURT REPORTER: Your Honor, we're sending
19 back 57 State's exhibits.

20 THE COURT: Fifty-seven. They're all
21 present and accounted for?

22 COURT REPORTER: All present and accounted
23 for.

24 THE COURT: All right, you can take those
25 back. The jury, of course, can eat, and you can

1 tell them they can begin deliberating after they've
2 eaten, whenever they get ready. And once you've
3 done that, if you'll bring the alternates in,
4 please.

5 Ladies, you can stand right there if you
6 will, Ms. Drozd and also Ms. Keane. As it turns
7 out, we made it all the way through the trial
8 without an emergency developing. So it will not be
9 necessary for you to participate in deliberations in
10 this case. So this will complete your service for
11 the week on this case and also, of course, for the
12 week.

13 I want to take this opportunity to thank
14 you for your service and sacrifices you've made this
15 week to help make our justice system work. We do
16 not take your sacrifice for granted. We deeply
17 appreciate it. And you're free to go at this time.
18 Your lunch will be given to you, you can take with
19 you to eat.

20 I guess something has been given to you or
21 will be given to you shortly to show that you were
22 required to be here this week. And I'm told that
23 you'll probably get a check in the mail within the
24 next 10 days for your service this week. Again,
25 thank you very much for your service, and you're

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1 free to go at this time.

2 (Whereupon, the alternates
3 were excused.)

4 THE COURT: We'll be at ease until we hear
5 something.

6 (Court in recess awaiting
7 the verdicts of the jury.)

8 THE COURT: All right, counsel, I'm
9 informed that we have a jury verdict in this case.

10 I'm going to ask those that are seated in
11 the courtroom -- I have no idea what the verdict is
12 in this case -- but whatever the verdict is, I would
13 ask you to respect the jury's verdict, whatever it
14 may be, and not display emotions here in the
15 courtroom and reserve those if you feel any emotions
16 till you get outside the courthouse.

17 Again, I have no idea what the verdict is,
18 but just ask you to respect that verdict here in the
19 courtroom. Thank you.

20 Please bring the jury in.

21 (The jury returned to the
22 courtroom at 2:38 p.m. with verdicts, after which
23 the following proceedings were had:)

24 THE COURT: Mr. Foreman, have you and the
25 jury reached unanimous verdicts in these cases?

1 MR. HUFFINES: We have, Your Honor.

2 THE COURT: Please hand the verdicts up to
3 the Bailiff, sir. You may be seated.

4 If the Clerk will please publish the
5 verdict.

6 VERDICT OF THE JURY

7 CLERK OF COURT: Indictment 2012-GS-32-
8 6042, State of South Carolina versus Roderquiz R.
9 Cook, charge conspiracy to commit armed robbery,
10 "We, the jury, find the defendant, Roderquiz R.
11 Cook, guilty of conspiracy to commit armed robbery."

12 Indictment 2011-GS-32-1505, the State
13 versus Roderquiz R. Cook, indicted for attempted
14 armed robbery, "We, the jury, find the defendant,
15 Roderquiz R. Cook, guilty of attempted armed
16 robbery."

17 Indictment 2012-GS-32-6044, the State
18 versus Roderquiz R. Cook, indicted for murder, "We,
19 the jury, find the defendant, Roderquiz R. Cook,
20 guilty of murder." They are all so signed by the
21 foreperson. They are also dated April 12, 2013.

22 Mr. Foreman, ladies and gentlemen of the
23 jury, if this is your verdicts, please indicate each
24 of you by raising your right hand.

25 All hands raised, Your Honor.

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1 THE COURT: Let the record so reflect.
2 Any questions of the jury panel from the
3 State?

4 MS. WEISS: No, Your Honor.

5 THE COURT: From the defense?

6 MR. O'NEILL: No, Your Honor.

7 THE COURT: All right. Mr. Foreman,
8 ladies and gentlemen of the jury panel, this will
9 conclude your service in this case. Of course, it
10 will also conclude your service for the week.

11 I want to take this opportunity to thank
12 you for your service this week and sacrifices you've
13 made this week to help make our justice system work.
14 We certainly understand that your being here this
15 week has required you to be away from your jobs,
16 family, and other things that you feel are important
17 for you to be doing.

18 We do not take that sacrifice for granted.
19 We deeply appreciate it. Again, thank you very much
20 for your service this week. I think the Clerk has
21 prepared -- if you haven't already received those --
22 a certificate showing you were required to be here
23 this week if you need that for your employment.

24 I'm told that a check will put in the
25 mail, and you will receive that within about 10 days

1 for your service this week. You're free to go at
2 this time, all except the foreperson.

3 Sir, I'll ask you to please come up and
4 sign the indictments for us.

5 Madam Clerk, would you do that?

6 CLERK OF COURT: Yes, sir, Your Honor.

7 THE COURT: Just the foreperson. All the
8 rest are free to go. If everybody would just remain
9 seated while the jury goes out.

10 Everybody else, please remain for a few
11 minutes.

12 (Whereupon, the jury panel
13 released from service.)

14 THE COURT: Thank you, sir, for your
15 service.

16 Okay, now I'll hear you with regard to any
17 motions you might wish to make at this time.

18 MR. O'NEILL: At this time, I renew all my
19 previous objections and motions.

20 At this time, Your Honor, I would ask for
21 a new trial on behalf of Mr. Cook here based on the
22 brevity of the jury deliberations. I think the jury
23 did deliberations for a period of about one hour,
24 Your Honor. Based on that, I would ask for a new
25 trial.

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1 THE COURT: All right, sir. Well, of
2 course, whether the jury deliberates 15 or 20
3 minutes or whether they deliberate all week, they
4 deliberate. They have all the evidence before them.
5 And it's their decision as to how much time they're
6 going to need to deliberate.

7 I think the evidence was pretty clear in
8 this case. The question is who they believed.
9 Basically, it came down to credibility of the
10 witnesses, I think. And they had all of that before
11 them. So I think that there is substantial evidence
12 to support the jury's verdict, each of the verdicts
13 in this case.

14 And I would point out for the record,
15 insofar as obviously there's substantial evidence,
16 circumstantial and otherwise, even taking all of the
17 witnesses' testimony that might have been involved
18 in it that were alleged to be taking part in this,
19 even taking the parts that they admitted, taken
20 altogether with the other circumstantial evidence,
21 there is substantial evidence of criminal conspiracy
22 in which Mr. Cook would have been the mastermind of
23 that and originated it.

24 Also, the attempted robbery, there's
25 plenty of substantial evidence to support that.

1 Insofar as the murder charge, obviously somebody was
2 killed during the attempted robbery. But the jury
3 also had to find malice in this case, and obviously
4 I instructed them with regard to what malice is.

5 And obviously there was evidence to
6 support malice in this case. And so for all of
7 those reasons, I find that the jury's verdicts are
8 supported by the evidence in this case. And I
9 therefore deny your motion for a new trial. Thank
10 you.

11 Anybody else?

12 MS. WEISS: No, sir, Your Honor. We're
13 supposed to do sentencing sheets.

14 THE COURT: Obviously, we do need to do
15 that.

16 If you'll bring the defendant around,
17 please.

18 MS. WEISS: We don't have sentencing
19 sheets prepared.

20 THE COURT: Oh, you don't, okay. Well,
21 we'll give you a few minutes to do that. How long
22 will it take?

23 MS. WEISS: I will need about three or
24 four minutes.

25 THE COURT: All right.

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1 MS. WEISS: Thank you, Your Honor. May it
2 please the Court?

3 THE COURT: Yes, ma'am.

4 MS. WEISS: On behalf of Willie Jennings -
5 - first of all, on behalf of the State, I think you
6 heard all of the facts in the case, and you've heard
7 all the positions of each of the people that were
8 brought into this by Mr. Cook.

9 Mr. Cook clearly had some sort of control,
10 some sort of influence over people in his life that,
11 for the life of me, I cannot explain. But over the
12 years, he's managed to get people to come and do
13 things. And I think this is just an example of a
14 pattern that he followed throughout his life, and
15 that deeply concerns the State.

16 I think -- I'm glad that the jury's
17 verdict spoke to what I believe to be the truth --
18 he is a dangerous person, and obviously we leave the
19 sentence completely up to you, because you have
20 heard all of the facts in this case.

21 On behalf of the victim, Mr. Willie
22 Jennings, his family and friends have been here off
23 and on throughout the whole week, including
24 Geraldine Batson; Jimmy Jennings and Patricia
25 Jennings, his brother and sister-in-law; Gloria

1 Robinson, who would like to address the Court, Your
2 Honor, on the victim's behalf; Elizabeth Stewart;
3 Leon Batson; Jenny Hall; and John Mitchell.

4 Unfortunately, some of the family are
5 still at lunch. But on behalf of the victims,
6 Gloria Robinson would like to speak. And also we've
7 had here the whole week Chief Oswald of the
8 Batesburg-Leesville Police Department, along with
9 Lt. Clare, who's also here. And I think the chief
10 may wish to address the Court, as well.

11 THE COURT: Okay.

12 MS. ROBINSON: Good afternoon, Your Honor.

13 THE COURT: Good afternoon, ma'am.

14 MS. ROBINSON: First off, I would like to
15 speak on behalf of the family for Willie Jennings.
16 First off, I would like to say that Willie was a
17 human being. He was our family, and we loved him a
18 lot.

19 And Willie was a good person. If you
20 asked him to do anything, Willie would do it. He
21 was just that kind of person. And at night at
22 McDonald's, when those ladies got ready to go, he
23 would wait until every one of them was in their car
24 before he would even get in his car to leave. He was
25 that kind of person.

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1 We miss Willie. The holidays have just
2 passed. The children still ask where's their
3 granddaddy, and we try to explain, because some of
4 them are small. But Willie was a good person, and I
5 would just like to say we just want justice for
6 Willie.

7 THE COURT: Thank you, ma'am.

8 Yes, sir?

9 LT. CLARE: Your Honor, I have policed in
10 Batesburg 37 years, grew up in Batesburg. I've
11 known Willie most of my life. He was a good man,
12 worked two jobs. He was working McDonald's which
13 was his night job. Twin City Motor Company was his
14 day job, just trying to make a living and support
15 his family.

16 And this has been very traumatic for the
17 entire community to have someone as well-known as he
18 was gunned down in a small community like ours. So,
19 you know, like I said, Your Honor, I think the
20 sentence should fit the crime. Thank you, Your
21 Honor.

22 THE COURT: Thank you, sir.

23 MS. WEISS: And, Your Honor, as far as a
24 prior record for Mr. Cook, there's a 1999 disturbing
25 schools, ABHAN, and resisting arrest. He was

1 sentenced to a YOA. He had a 2003 parole
2 revocation, and then in 2010 he had a public
3 disorderly conduct.

4 THE COURT: All right, thank you.
5 Counsel?

6 MR. O'NEILL: Thank you, Your Honor, may
7 it please the Court. I think we all just kind of
8 heard varying kind of ideas of what happened that
9 night on October 13th. But I think something
10 everybody kind of agreed on is that nobody intended
11 for the death of Willie Jennings to actually occur
12 out there. From all accounts, he was a great man,
13 and nobody actually intended for something to
14 happen, Your Honor.

15 Rod, Your Honor, is 32 years old. He's
16 been incarcerated now since November 15, 2010. He
17 has a young daughter that he has now entrusted her
18 raising to his mother, Your Honor.

19 And I would just say he's always been open
20 and honest with me in telling me what was going on
21 with this situation here, Your Honor. He's worked
22 pretty much his whole life, he tells me, since he
23 was about 15 or 14 years old, at various different
24 places, Your Honor.

25 We would ask that you allow his mother,

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1 his grandmother, to speak on his behalf. And, Your
2 Honor, I think he wants to actually address the
3 Court, as well.

4 THE COURT: All right, I'll be glad to
5 hear from him.

6 MR. O'NEILL: I'll ask that his
7 grandmother speak first.

8 MS. COOK: Good afternoon, Your Honor.

9 THE COURT: Yes, ma'am. Please give us
10 your name for the record.

11 MS. COOK: Thank you. My name is Margarie
12 Cook.

13 THE COURT: Yes, ma'am, Ms. Cook.

14 MS. COOK: I am the grandmother of Rod
15 Cook. The only thing I can say actually this
16 afternoon is just please have mercy on him, please.
17 Thank you, Your Honor.

18 THE COURT: Thank you, ma'am.

19 MS. COOK: My name is Jearlyn Cook, Your
20 Honor. Rod is my son. (crying) I'm sorry, I'm so
21 sorry. I can't imagine what the gentleman's family
22 is going through, and I care about the loss they
23 had. But I am sorry for y'all all.

24 And I too ask for the Court to have mercy
25 on him. I am raising his daughter, and that does

1 not take away from the fact that Mr. Jennings'
2 family is left without a father or a grandfather. I
3 just ask that you show some mercy to him, just some,
4 please.

5 THE COURT: Thank you, ma'am.

6 MR. O'NEILL: I wish, as Ms. Cook just
7 said, as Your Honor knows, there's a limited prior
8 record here, which there's the ABHAN. That was
9 approximately 14 years ago, Your Honor. I would ask
10 that you fashion a sentence that would give Rod some
11 sort of hope of coming out and try to give some
12 proof to society that he can be a productive
13 citizen. I know he does wish to address the Court,
14 Your Honor.

15 MR. COOK: I never had the chance to tell
16 the Jennings family I give them my condolences about
17 Mr. Willie and how much I loved Mr. Moe like my own
18 uncle. That's basically all I want to do is just
19 get a chance to turn around and apologize for what
20 happened to him that night.

21 I'm sorry for their loss. If I could, you
22 know, turn around and just speak with the Jennings
23 family, that's all I really want to say.

24 THE COURT: Did you want to say something
25 to them? Is that what you're saying?

1 MR. COOK: Yes.

2 THE COURT: Yes, sir.

3 MR. COOK: I know no amount of words and
4 what I say will take y'all's loss away. I just
5 apologize. Mr. Moe was a good guy. From the bottom
6 of my heart, I apologize.

7 As my lawyer just said, my mother is the
8 sole provider now for my 7-year-old. And I just ask
9 for, you know, like he just said, one day the
10 opportunity to get back out there to catch up on
11 whatever life I miss out on.

12 THE COURT: Let me say this. In
13 sentencing, I try to do what I think is fair insofar
14 as the sentencing is concerned, insofar as justice
15 is concerned. And looking at all the facts and
16 circumstances of this case, let me say that I think
17 obviously everything I saw in the videos and
18 everything I've heard about Mr. Jennings was that he
19 was a very fine person, a good person, who didn't do
20 anything wrong and was always helping people.

21 And I understand that. And it's a life
22 lost that we won't be able to bring back. And I
23 think Mr. Cook is responsible for some other people
24 that have served a good bit of time already, and
25 some of them will serve a lot more time, all as a

1 result of his scheming and planning and trying to
2 steal some money, and his plan of putting that in
3 effect.

4 So he has affected a lot of lives, not
5 just Mr. Jennings and Mr. Jennings' family, who have
6 lost him, but also them, as well. Nevertheless, I
7 honestly don't believe Mr. Cook intended for Mr.
8 Jennings to get hurt or killed in this case. I
9 certainly don't think that was part of the plan.

10 But you have to understand if you set
11 something like this in motion and somebody's got a
12 gun that something like this can happen. Obviously,
13 he didn't think that far ahead about it that
14 something could happen. In any event, I have taken
15 into consideration all of that.

16 So my sentence for Mr. Cook is going to be
17 day for day, which means he does not get parole. He
18 will serve day for day the time he gets in this
19 case, with no parole whatsoever. So keep that in
20 mind with regard to my sentence.

21 I have some more serious cases where
22 somebody comes in, and in my opinion they just shoot
23 somebody down in cold blood, totally defenseless,
24 with no ability to defend themselves. They just
25 come in and shoot them down, or they stab them to

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1 death, or they are just inhumane in what they do to
2 somebody.

3 And I reserve for those people life
4 without parole so that they'll never get out of
5 prison again, if I can help it. But I don't think
6 Mr. Cook falls into that category. So I've got to
7 try to do justice in this case.

8 Everything he did was reprehensible. I
9 think he's self-absorbed and cared not for anybody
10 else who was involved in this conspiracy. And all
11 of them, particularly Mr. Miller but the others, as
12 well -- particularly Mr. Miller is going to be
13 serving probably -- I have no idea because his case
14 hasn't come up -- but he's looking at an awful lot
15 of time put away. And Mr. Cook is responsible for
16 that, too.

17 And his cousin, an 18-year-old, looked up
18 to him, and he led him down that path. So he's
19 responsible for all of this, a lot of hardship, and
20 he has not taken responsibility for it.

21 But be that as it may, I've got to look at
22 the facts and what happened when this went down.
23 And I usually reserve my life without parole
24 sentences for those where somebody killed somebody
25 just in cold blood who was defenseless.

1 And that's not this situation. Again, I
2 don't think he started out with that intention, but
3 that's what happened. And he should have been aware
4 that could be a result of this when he went into it.
5 But I don't think he ever intended for Mr. Jennings
6 to get shot or hurt in this thing. He never
7 intended for that to happen. But he is responsible
8 for it, nevertheless.

9 SENTENCE OF THE COURT

10 Case Number 2012-GS-32-6044, Roderquiz
11 Rozelle Cook, having been found guilty by a jury of
12 murder, the sentence of the Court is that he be
13 committed to the South Carolina Department of
14 Corrections for a determinate term of 30 years.
15 This sentence will be concurrent. He's given credit
16 for any jail time he has served.

17 Case Number 2012-GS-6042, Roderquiz
18 Rozelle Cook, having been found guilty by a jury of
19 criminal conspiracy, the sentence of the Court is
20 that he be committed to the State Department of
21 Corrections for a determinate term of five years,
22 that is to be concurrent, with credit for time
23 served.

24 And Case Number 2011-GS-32-1505, Roderquiz
25 Rozelle Cook, having been found guilty of attempted

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1 armed robbery, the sentence of the Court is that he
2 be committed to the State Department of Corrections
3 for a determinate term of 20 years. That sentence,
4 again, is concurrent, with time served. That is the
5 sentence of this Court.

6 MR. O'NEILL: Thank you, Your Honor.

7 MS. WEISS: Thank you, Your Honor.

8 -- End of Transcript of Record --

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF LEXINGTON)

3 COURT REPORTER'S CERTIFICATION

4 I, REMA K. GANTT THOMAS, OFFICIAL COURT
5 REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF
6 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING
7 IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
8 RECORD OF THE PROCEEDINGS HAD AND EVIDENCE
9 INTRODUCED IN THE ABOVE-CAPTIONED CASE ON APRIL 8
10 THROUGH 12, 2013, IN LEXINGTON, SOUTH CAROLINA.

11 I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
12 NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
13 ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
14 OUTCOME.

15 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
16 AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE FIFTH
17 DAY OF AUGUST, 2013.

18

19

20

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22

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25

26


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

FORM 5

STATE OF SOUTH CAROLINA

County of Lexington 22 21 06

IN THE COURT OF COMMON PLEAS

Rodriguez R. Code 261587

Full name and prison number, if any, of Applicant

2015 CP3202565

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

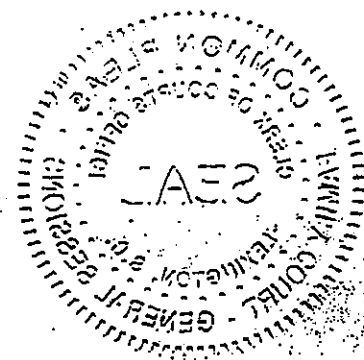
Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

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

1. Place of detention Kirkland Corr. Inst. 4344 Broad River Rd.
Columbia SC 29210
2. Name and location of Court which imposed sentence General Session Court
at the County of Lexington, State of South Carolina
3. Name(s) of co-defendant(s) (if any) Tasha Matthews, Meen Miller,
De Angelo Tucker
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed.
(a) 2012 -CS -6042
(b) 2012 -CS -6044

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Lex. Co. C.C.C.P., C.S. & F.C.



2015 CP 5202565

(c) 2012 - GS - 32 - 1505

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 12, 2013 5 years
- (b) April 12, 2013 30 years
- (c) April 12, 2013 20 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. denied
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. June 3, 2015
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2015-UP-270
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing
- (a) N/A
- (b) N/A

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(c) N/A

2015 CP 5202565

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Trial Counsel(b) N/A(c) Will Amend pursuant to SCRPC, Rule 71.1

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

(a) Trial Counsel was ineffective for lack of due diligence(b) Trial Counsel was ineffective in failure to fully investigate(c) Appellate reserves the right to amend.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No / Appeal only(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No / other than Direct Appeal(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/Aii. N/Aiii. N/Aiv. N/A

(b) the name and location of the Court in which each was filed.

i. N/Aii. N/Aiii. N/Aiv. N/A

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(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

No

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

2015 CP3202565

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Revised 12-1-13



2015 CP3202565

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

- (a) Ineffective Assistance of Trial Counsel cannot be raised in Direct App
 (b) N/A
 (c) Will Amend new grounds upon appointment of PCR Counsel

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

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

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

(a) the name and address of each attorney who represented you:

i. Dean O'Neil 2127 Park Street
Columbia, SC 29203

ii. N/A

iii. N/A

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

i. Dean O'Neil 2127 Park Street
Columbia, SC 29203

ii. N/A

iii. N/A

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2015 CP3202565

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

VACATE / Reverse Sentence AND Conviction
Remand For New Trial

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

No

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

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

Roderique R Cook

SWORN to and subscribed before me this 15TH
 day of July, 2015.

Samuel A. Roper (L.S.)
 Notary Public

My Commission Expires: April 12, 2023

FILED

2015 JUL 16 PM 4:06

Revised 5/27/13

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[Signature]
 Lex. Co. C.C.C.P., G.S. & F.O.

2015 CP3202565

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

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

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

Roderique R. Cook
Applicant

SWORN or affirmed to and subscribed before me this

15th day of July, 2015.
[Signature]
Notary Public

My Commission Expires: April 12, 2023

FILED

2015 JUL 13 PM 4:06

Revised 3/2003

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[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.



ALAN WILSON
ATTORNEY GENERAL

May 23, 2016

The Honorable Beth Carrigg
Clerk of Court, Lexington County
205 E. Main St. Ste. 146
Lexington, SC 29072-3557

Re: Roderquiz R. Cook # 261587 v. State of South Carolina
2015-CP-32-2565

Dear Ms. Carrigg:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

for Johanna C. Valenzuela
Senior Assistant Deputy Attorney General

JCV/dgr
Enclosure

cc: David Kellum Allen, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Roderquiz R. Cook,	)	C.A. No. 2015-CP-32-02565
S.C.D.C. No. 261587	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed July 23, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the June 2011 term of the Lexington County Grand Jury for Attempted Armed Robbery (2011-GS-32-01505). Applicant was later indicted by the December 2012 term of the Lexington County Grand Jury for Conspiracy to Commit Armed Robbery and Murder (2012-GS-32-06042, 06044). He was represented by Deon O'Neill, Esquire. On April 8, 2014, Applicant proceeded to trial pursuant to which he was found guilty as indicted. The Honorable Lee S. Alford sentenced Applicant to imprisonment for twenty (20) years for Attempted Armed Robbery, five (5) years for Conspiracy to Commit Armed Robbery and thirty (30) years for Murder.

A timely notice of appeal was filed and perfected on Applicant's behalf. Erica McElraeath, Esq., and Robert M. Dudek, Esq., represented Applicant on appeal. The South

¹ David Allen, Esquire, has been appointed to Applicant's PCR Case.

Carolina Court of Appeals dismissed the appeal. State v. Cook, 2015-UP-270 (Filed on June 3, 2015). The Remittitur was issued on June 24, 2015.

II.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Trial counsel was ineffective for lack of due diligence;"
 - b. "Trial counsel was ineffective in failure to fully investigate."

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject trial, records from the South Carolina Department of Corrections, Applicant's PCR application, the Trial Transcript, and the Record on Appeal. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits that Applicant's claim of ineffective assistance of trial counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot

be relied upon as having produced a just result.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

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

IV.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

By: 
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May 23, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

RODERQUIZ R. COOK, #261587)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)
_____)

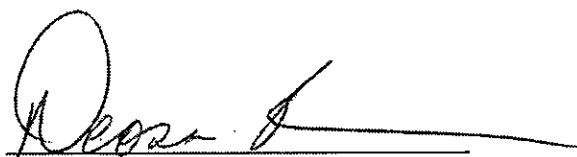
IN THE COURT OF COMMON PLEAS

2015-CP-32-2565

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

David Kellum Allen
 The Allen Law Firm, P.A.
 PO Box 3241
 West Columbia, SC 29171

DATED this the 23rd day of May, 2016.


Deonna Rogers, Legal Assistant
 For Respondent

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas
3 Roderquiz R. Cook,) Case No.: 2015-CP-32-02565
4 Applicant/Plaintiff,)
5 vs.) Transcript of Record
6 State of South Carolina,)
7 Respondent/Defendant.)
8 _____)

9
10 February 23, 2018
11 Lexington, South Carolina

12 BEFORE:

13 The Honorable J. Derham Cole, Judge

14
15 APPEARANCES:

16
17 Kristy G. Goldberg, Esquire
18 Attorney for the Applicant/Plaintiff

19 Susannah Cole, Assistant Attorney General
20 Attorney for the Respondent/Defendant

21 ALSO PRESENT:

22 Roderquiz R. Cook

23

24

25

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19	NO. DESCRIPTION	ID	EVDS.
20	NONE		
21			
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23			
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1 Thereupon, the following proceedings were had,

2 MS. COLE: Your Honor, this is the case of Roderquiz
3 "Rod" Cook versus State of South Carolina. It's case
4 number 2015-CP-32-02565. Your Honor, this is a Lexington
5 County case arising out of Mr. Cook's trial for murder,
6 attempted armed robbery and conspiracy to commit armed
7 robbery before Judge Alford in April of 2014. The
8 Attorney General's Office prosecuted this case and
9 Mr. Deon O'Neil represented Mr. Cook at trial. The jury
10 found Mr. Cook guilty of all charges and Judge Alford
11 sentenced Mr. Cook to 30 years for murder, 20 years for
12 the attempted armed robbery and five years for the
13 conspiracy to commit armed robbery.

14 The charge arose from the shooting death of an
15 employee at the Batesburg McDonald's during a botched
16 armed robbery. Mr. Cook was the night manager of that
17 McDonald's at the time and his co-defendants were his
18 girlfriend Tasha Matthews, his 18 year old cousin Meon
19 Miller and a friend of that cousin named Angelo Tucker.
20 The State alleged Mr. Cook was the mastermind of the
21 robbery.

22 He appealed his convictions and they were affirmed
23 in June of 2015. He has recently amended his application
24 to include allegations of ineffective assistance of
25 counsel. Your Honor, I have the judge's packet here. If

1 I may hand it up. We have included in the judge's packet
2 -- I'll hand this to you. It's bulky, I understand
3 (proffering.)

4 Your Honor, in your packet there is a CD that has
5 the jail phone calls burned into it and it was a
6 duplicate of the clerk's exhibits. We just dragged and
7 dropped them onto the CD and Ms. Goldberg has a copy of
8 that disk as well which I just gave to her this morning
9 and she was aware of that at the time so we thought that
10 was the best way to present you with those jail phone
11 calls. We are ready to proceed, Your Honor.

12 THE COURT: All right.

13 MS. GOLDBERG: Thank you, Your Honor. May it please
14 the Court. Before we begin, I do need to bring to the
15 Court's attention some conversations I had with my client
16 this morning. As we -- Well, I guess I'll go ahead and
17 state for the record that I did go meet with Mr. Cook at
18 the SCDC facility on February 1st. That was not the
19 first time we've met. That was just the most recent time
20 we've met. Since that time he has been transferred to
21 another facility. There was a lapse of where the
22 facility - he was transferred to Lee. Lee was on lock
23 down. Not Mr. Cook but the dorm. He was without his
24 legal materials for a period of time including his
25 transcripts. I also mailed him some documentation he

1 never received prior to today's date. To get to the
2 point, what he would like to do right now is ask for a
3 continuance in this matter.

4 In addition as an additional ground there are some -
5 it's the co-defendants in this case. I would say
6 witnesses but they're actually the co-defendants who he
7 has asked me to contact. I have attempted to contact all
8 three of them unsuccessfully. There are some additional
9 measures I could take to try an ensure contact that he
10 would like me to do which I can go into more detail with,
11 if necessary, but he would like the additional time to do
12 that so for all of those reasons he is asking this Court
13 to continue this matter and place it on the April
14 docket.

15 THE COURT: What's the State's position?

16 MS. COLE: Your Honor, we would oppose. This is a
17 fairly large case that we spent a lot of time preparing
18 for. We have got Mr. O'Neil here as well as Ms. Weiss
19 who prosecuted the case and we would just oppose any
20 motion to continue the case.

21 THE COURT: All right. Ms. Goldberg, what is it
22 that you feel you need to do that you have not done in
23 order to present Mr. Cook's application?

24 MS. GOLDBERG: Well, specifically the things that I
25 would be doing is one of his co-defendants is

1 incarcerated. I have attempted to contact that
2 co-defendant by mail saying if you want to contact me,
3 here is my information. I have been told this morning
4 that that particular co-defendant wants to talk with me
5 but has been transferred several times and has not had
6 the ability to reach out to me so I suppose what I would
7 need to do now is actually go to the facility face to
8 face and say -- You know, I'm always in a weird position
9 talking to co-defendants because I don't want there ever
10 to be an allegation that I'm trying to make them say
11 anything in particular but at this point the only thing
12 left for me to do is make face to face contact and say if
13 there's anything you want to tell me or if you want to
14 contact me, you can do it now and I'll ask you questions
15 but if you want me to leave, I'll leave.

16 So that is what I could do. And then as far as a
17 co-defendant who is not incarcerated, I have called and
18 left messages with no avail. At this point I would have
19 to hire an investigator to track her down in person.

20 THE COURT: Well, do you know what the benefit is of
21 talking to these two witnesses?

22 MS. GOLDBERG: No. And Mr. Cook may feel it's more
23 appropriate for him to address that but basically he
24 believes there's additional information that they have
25 that was omitted at trial or misconstrued at trial that

1 if they were to testify now with that information, it
2 would make - it affected his case originally. It was
3 detrimental to his trial and it would be beneficial for
4 his PCR.

5 THE COURT: You mean they would testify to something
6 that was inconsistent with the trial testimony?

7 MS. GOLDBERG: Somewhat. And, you know, it's hard
8 for me to get --

9 THE COURT: Well, that's the purpose of having a
10 trial and having testimony. I mean, you don't get to
11 change your testimony later.

12 MS. GOLDBERG: Well, and, you know, to be fair all
13 co-defendants were represented by counsel prior to trial
14 so this isn't a situation where his previous attorney
15 would have been able to interview any of them or talk
16 with them since they had counsel.

17 THE COURT: I'm sorry. I thought you said they
18 testified.

19 MS. GOLDBERG: They did testify at trial. I'm
20 saying that his lawyer couldn't have interviewed them
21 prior to that is all I'm saying.

22 THE COURT: Okay. Well, then that certainly can't
23 be ineffective assistance if you're not permitted to
24 interview them. Let's do this. We'll proceed with the
25 application and if there's no objection from the Attorney

1 General, I'll allow you an opportunity to talk with these
2 other witnesses and if you need to supplement something,
3 we'll talk about that later.

4 MS. GOLDBERG: I suppose, Your Honor, what we could
5 do that may be the most effective is we could proceed
6 with the application on the grounds that we can proceed
7 with today and then we could tentatively plan to
8 reconvene -- Well, I don't even know if that's
9 appropriate. I'm just thinking off the top of my head.
10 I was gonna say we could reconvene in April if there is
11 anything to be supplemented or at that point in time
12 inform the Court that there's nothing to be supplemented
13 but, of course, that would be a different judge so I'm
14 not sure.

15 THE COURT: Well, it's got to be the same judge.

16 MS. GOLDBERG: Right. I suppose we'll just
17 communicate with your office if there's anything to
18 supplement.

19 THE COURT: Well, now, we're talking about
20 allegations that have already been made.

21 MS. GOLDBERG: Yes, Your Honor.

22 THE COURT: I'm not talking about supplementing the
23 application.

24 MS. GOLDBERG: No. Just the facts. Evidence.

25 THE COURT: All right. Well, let's proceed then.

RODERQUIZ COOK - DIRECT BY MS. GOLDBERG

9

1 MS. GOLDBERG: All right. Your Honor, at this time
2 -- I believe there's an amended application in your
3 packet that we would be proceeding on.

4 THE COURT: I have an application. Does it say
5 amended?

6 MS. GOLDBERG: No, Your Honor. (Proffering.)

7 THE COURT: Thank you.

8 MS. GOLDBERG: Yes, Your Honor. That's what we are
9 proceeding on today. At this time I would call Roderquiz
10 Cook to testify.

11 Thereupon,

12 RODERQUIZ COOK

13 after having been first duly sworn, testified as follows,

14 DIRECT EXAMINATION

15 BY MS. GOLDBERG:

16 Q. State your full name for the record please.

17 A. Roderquiz Cook.

18 MS. GOLDBERG: You Honor, may I approach? I'm just
19 going to hand him the transcript.

20 THE COURT: Yes, ma'am.

21 BY MS. GOLDBERG:

22 Q. In case you need it. All right. Mr. Cook, where
23 are you currently housed?

24 A. Lee County Correctional.

25 Q. And what sentence are you servicing?

- 1 A. 30 year sentence.
- 2 Q. For what charges?
- 3 A. Murder, attempted armed robbery and conspiracy.
- 4 Q. You were convicted after a trial?
- 5 A. Yes, ma'am.
- 6 Q. When was your trial?
- 7 A. 2013 September.
- 8 Q. Leading up to your trial were you on bond or in
- 9 jail?
- 10 A. I was in jail.
- 11 Q. Were you in jail at all times between your arrest
- 12 and your trial?
- 13 A. Mm-hmm.
- 14 Q. Do you remember when you were arrested?
- 15 A. I turned myself in in early November 2010.
- 16 Q. Does November 17th sound correct?
- 17 A. Yes. Before Thanksgiving.
- 18 Q. Of 2010?
- 19 A. Yeah. 2010.
- 20 Q. Prior to your arrest, how far did you go in
- 21 school?
- 22 A. I received my GED in '97 from Job Corps. I went in
- 23 the military for a short brief time. I didn't complete it.
- 24 Q. After you were arrested, who was your first attorney
- 25 in this matter?

1 A. Mrs., uh -- I can't remember her name. I can't
2 remember her name. She ended up moving out of state. I know
3 the private investigator was Ms. Rickbar and then Mr. Deon was
4 given the case.

5 Q. Does the name Carolyn Sutherland sound right?

6 A. That's her name.

7 Q. So she was your first attorney?

8 A. She was the first person I spoke with.

9 Q. Beginning in November of 2010 or let's say December,
10 how long did she represent you, do you remember?

11 A. Just very briefly. Uh, we only had - we didn't even
12 have a hearing together. She told me she was representing me
13 and the next time I seen a lawyer it was Mr. Deon telling me
14 that Ms. Sutherland handed him the case.

15 Q. So you only met with her once?

16 A. Yes, ma'am.

17 Q. Do you recall or can you approximate when Mr. O'Neil
18 would have gotten this case?

19 A. 2011.

20 Q. Did he come to meet with you at the jail regularly
21 while these charges were pending?

22 A. I seen him a couple times.

23 Q. How many times do you think you saw him?

24 A. I remember more times prior to trial. We met maybe
25 three or four times prior to trial.

1 Q. Just in the immediate time frame leading up to
2 trial?

3 A. Within a four month period.

4 Q. But then prior to that you had met with him
5 occasionally also?

6 A. Like once. Like twice at the most.

7 Q. When he met with you, did he review with you the
8 discovery, the evidence in this case, statements, things like
9 that?

10 A. We went over some of the discovery.

11 Q. Is there anything that you're aware of that he
12 didn't review with you prior to trial?

13 A. Uh, the phone calls. We didn't go over those. We
14 didn't watch a lot of the video. We went over some of the
15 calls but it was to my understanding that he would file a
16 motion to have those excluded so that's why we didn't go over
17 a lot of them. We didn't go over a lot of video. It was my
18 understanding that he would subpoena prior video from the work
19 establishment of the incident and then video after the
20 incident.

21 Q. And the incident location was where?

22 A. I'm not sure of the exact address but it's in
23 Batesburg, South Carolina.

24 Q. It was a McDonald's?

25 A. Yes.

1 Q. Just to go further on with what you just said, you
2 believed that Mr. O'Neil would be subpoenaing video footage
3 from before and after the incident? Is that what you said?

4 A. That's what I thought was going to take place.
5 That's what I thought we agreed upon.

6 Q. Do you mean different days or do you mean before and
7 after that same day?

8 A. Yeah. Different days. Before the incident to show
9 that, I guess we wanted to show that, you know, protocol
10 wasn't broken because it was all from the knowledge that I had
11 the State would be saying that I broke protocol by taking the
12 trash out.

13 Q. Okay. To your knowledge did he ever obtain those
14 videos?

15 A. I found out at trial we didn't.

16 Q. You also mentioned that you believed Mr. O'Neil
17 would be excluding the jail phone calls so you didn't go over
18 them much. The jail phone calls were audio recordings; is
19 that accurate?

20 A. Yeah.

21 Q. Okay. Do you mean that you didn't talk about them
22 much or you didn't actually listen to them for yourself?

23 A. Well, we didn't - we didn't listen - we listened to
24 a couple of them but then once we made the - I thought we was
25 clear on the decision that we made that we would file a motion

1 to have them, you know, excluded so we didn't do too much
2 talking about them.

3 Q. What did Mr. O'Neil have you believe regarding what
4 the outcome of those jail phone calls would be?

5 A. That he would file a motion and get them dismissed.
6 They wouldn't be used.

7 Q. You thought they weren't going to be used?

8 A. I didn't prepare for them to be used.

9 Q. What, if anything, do you believe Mr. O'Neil should
10 have done differently regarding the jail phone calls?

11 A. In hindsight I think he should have filed the motion
12 prior to trial. That motion should have gone in front of a
13 panel of judges and not a pretrial motion.

14 Q. And that's based on that statute that was named in
15 trial that's named in the amended application as well?

16 A. (Witness nodding head.)

17 Q. Do you believe that the jail phone calls were
18 detrimental to your case?

19 A. I do.

20 Q. How were they detrimental in your opinion?

21 A. They tainted my character.

22 Q. Regarding those jail phone calls is there anything
23 else you believe Mr. O'Neil should have done differently?

24 A. Outside of the jail phone calls?

25 Q. Well, no. About the jail phone calls but anything

1 in addition to what you have already said?

2 A. Well, if the motion wasn't going to be filed
3 properly, then we should have went over them and I have an
4 idea of what and how the State would have used them against me
5 and been able to cross examine my co-defendants with the phone
6 calls that they was recorded on also.

7 Q. Did he cross examine your co-defendants at all
8 regarding the substance of those phone calls?

9 A. I can't recall. I hadn't had a chance to look
10 through my transcript as you are aware of the move and I just
11 recently got my legal material because we was on lockdown for,
12 once I got on the yard it's been on lockdown since then. They
13 do property control a lot differently there so you don't get
14 your stuff until contraband goes through it.

15 Q. Now, the morning -- Were there ever any plea offers
16 in this case?

17 A. I don't recall one.

18 Q. Okay. The morning of trial or prior to trial
19 beginning, there was some new information presented. Tell the
20 Court what happened.

21 A. Yeah. We filed pretrial motions and went through
22 that. Then after pretrial motions we got ready to select a
23 jury and the Attorney General sitting behind the other two, I
24 think Ms. Weiss is her name, she comes and, oh, we got a new
25 statement from Mr. Miller. We got it eight days. Mr. Deon

1 did object at that moment and did what he could do but they
2 claimed that they had their trial notes and they wouldn't
3 redact the trial notes from them. We never received this new
4 statement. To this day we have never received this
5 statement.

6 Q. You said that Mr. Miller, and I'm just trying to
7 make the Court record clear here, you said there's a new
8 statement from Meon Miller and Meon Miller's relevance was?

9 A. He was their star witness.

10 Q. And he was also a co-defendant, correct?

11 A. Yes. He was a co-defendant and their star witness
12 in the case and he had information that I should have been
13 privy to, I should have been privileged to but we was denied
14 the information so we couldn't effectively, Deon couldn't
15 effectively cross examine him because we was denied the
16 information.

17 Q. That -- How -- What information was new and how was
18 that important?

19 A. Well, we never got the statement so we only could
20 question him on the old statement. You know? Now, one of the
21 things that came out at trial is that he admitted to doing the
22 shooting and that was new for the three years that we had been
23 incarcerated in the county.

24 Q. The fact that he admitted to the shooting, did you
25 or your attorney ever know this prior to --

1 A. No.

2 Q. -- the trial beginning that day?

3 A. That was new knowledge to us.

4 Q. How did that new information affect your trial?

5 A. It affected it because the testimony that I had that
6 we had worked on it threw it out the door.

7 Q. Do you mean to say that you were at some point
8 intending to testify?

9 A. Yes, ma'am.

10 Q. Okay. So you had prepared to testify with
11 Mr. O'Neil?

12 A. Yes, ma'am.

13 Q. Leading up to the very first day of trial?

14 A. Yes, ma'am.

15 Q. And this new information affected your ability to do
16 that?

17 A. It affected it and in Deon's own words, too, it
18 affected his whole case. He had planned on it the other
19 way.

20 Q. Now, when this new information was presented to the
21 Court the day of, or presented to your counsel the day of
22 trial, what did your counsel ask the Court to do to remedy
23 that problem?

24 A. I believe he asked for a continuance. He was
25 denied. He also asked and even had the trial notes that they

1 claim that was on this new statement blacked out or redacted
2 and him to receive the new statement. He was denied that
3 also.

4 Q. What more do you think your attorney -- Well, let me
5 back up. Let re rephrase this. First of all, you appealed
6 this issue, correct?

7 A. On those grounds. Yes, ma'am.

8 Q. All right. And what did the Court of Appeals do
9 with that issue, that appeal?

10 A. Because he didn't object timely to preserve it they
11 denied my appeal.

12 Q. What more do you think Mr. O'Neil could have done to
13 preserve it?

14 A. Once they denied him access to the new statement,
15 he should have made an objection.

16 Q. Made an additional objection?

17 A. Objection. Yeah.

18 Q. Basically after the Court ruled he should have --

19 A. After the Court, after His Honor had ruled that he
20 was not going to allow him to have the statement, he should
21 have objected to preserve.

22 Q. Aside -- And I know you testified a little bit about
23 this. You testified that, I think, the fact that this
24 information was presented at the last minute affected your
25 preparations and your own ability to testify. In addition to

1 that how else did it affect your trial or hurt you in any
2 way?

3 A. Could you clarify?

4 Q. Aside from whether or not you were going to testify
5 how else did this hurt your trial?

6 A. Well, with Meon bringing this new statement in, that
7 gave the State, you know, that was their - they based their
8 whole case off Meon's testimony. However, Meon, and he's not
9 here to be a witness which I hope we get the continuation to
10 bring him in, he can clarify that he was not actually the
11 shooter and what came out in trial is that the State knew that
12 the whole time that Angelo had - Batesburg County Police
13 Department or Lexington County Sheriff's Department misplaced
14 his clothes so he was never tested for GSR so he could never
15 be tested to show that he was the shooter so they only had one
16 person who was tested. He was positive so they leaned on him
17 and for whatever reason he testified he was the shooter.

18 Q. Okay. Just so everything is clear, let me make the
19 Court aware of kind of the background here a little bit. Meon
20 Miller is a co-defendant?

21 A. Mm-hmm.

22 Q. After arrest or at some point during the pendency of
23 these charges he did give an original statement to law
24 enforcement; is that right?

25 A. He gave an original statement saying that he wasn't

1 the shooter and Angelo was.

2 Q. That's what his original statement said?

3 A. I believe that's what his original statement said.

4 Q. And then the new statement was given to the State
5 when?

6 A. His third statement was given to the State, if I
7 remember correctly, eight days before I went to trial.

8 Q. There was a second statement then, correct?

9 A. I think Meon wrote three statements.

10 Q. Okay. In the second statement was it different from
11 the first as far as what matters to your case?

12 A. Yeah. Because his first statement was he had had no
13 formal knowledge of anything. Then his second statement kind
14 of, oh, now I knows - I know some things and this is what my -
15 this is what he did and, you know, what other people did in
16 the incident and then his third statement was full fledged
17 that, you know --

18 Q. Okay. I'm following you now. So that first
19 statement denied anything. The second statement was where he
20 put Angelo as the shooter?

21 A. I'm pretty sure it was the first statement he put
22 Angelo as the shooter. The second statement, he put more
23 knowledge of the crime in the second statement that he knew
24 about.

25 Q. Oh, I understand.

1 A. And he implicated more people in the second
2 statement than the third statement because in hindsight I see
3 where the second statement still didn't help the State. They
4 needed him - they needed someone to say that they actually did
5 this to implicate me and without Meon doing that, that's when
6 the third statement came in.

7 Q. And so aside from the fact that this third
8 statement, Meon Miller's now taking responsibility for
9 shooting, what else was important from that? What else
10 changed in his testimony from his prior statements?

11 A. Well, we never got his statement. We never got his
12 third statement to go over it.

13 Q. What else in his actual testimony before the jury
14 changed compared to his earlier statements?

15 A. Oh, that I was - that he included me as the head,
16 you know. It was all my idea.

17 Q. And had he ever given a statement stating that it
18 was all your idea prior to trial?

19 A. I want to say he hinted at it in the third statement
20 but he didn't go - he wasn't full fledged until he testified
21 at trial.

22 Q. Is that ultimately the testimony that you believe
23 convicted you?

24 A. I think it was -- What's the word I want to use? It
25 added to it but that was the - that was the big piece. That

1 along with the other witness that I had asked to call to be
2 here.

3 Q. Tasha?

4 A. Yes, ma'am.

5 Q. All right. And Tasha's relationship to you was
6 what?

7 A. At the time she was my girlfriend.

8 Q. She testified in the trial?

9 A. Yes, ma'am.

10 Q. She is also a co-defendant, correct?

11 A. Yes, ma'am.

12 Q. Do you have some issues with some of the testimony
13 that she offered during trial?

14 A. Yes, ma'am.

15 Q. What is that?

16 A. Character issues, you know, bringing up and that's
17 another issue that I think Deon should have objected when she
18 brought up character issues of allegations of me selling
19 reefer. I think one time in the transcript she claimed that
20 one of her, choose me over the kids kind of thing.

21 Q. Say that again.

22 A. She wanted me to choose -- I wanted her to choose me
23 over the kids in one of the incidents. Those was very, very
24 detrimental to my character.

25 Q. You believe Mr. O'Neil should have objected to those

1 statements?

2 A. Yes, ma'am. I do.

3 Q. Was the fact that you had been alleged to have sold
4 marijuana then or at any other time relevant to this case in
5 your opinion?

6 A. No, ma'am. It wasn't.

7 Q. Is there anything else that you asked Mr. O'Neil,
8 that you believe Mr. O'Neil should have done that he did not
9 do in this trial?

10 A. Uh, as far as the phone call, I think you have the
11 number. You had to subpoena the Court to get in touch with
12 the young lady. I think we should have investigated that a
13 little more because the lady that she had come on trial to
14 testify was not the carrier of that phone so I feel like Ms.
15 Weiss either coerced that lady into testifying or -- I have it
16 written down that was not the number. She didn't have that
17 number at the time that we was calling it. It was proven that
18 Meon had been back and forth to Batesburg through that phone
19 call so for her to say - for him to say that he had no
20 knowledge of anybody in Batesburg and then him calling back
21 and forth and receiving text from a number in Batesburg and
22 then the person in Batesburg saying they never knew Meon and
23 never talked to him kind of seemed kind of funny so I think we
24 could have investigated that a little bit more and being able
25 to cross examine her about it.

1 Q. Is there anything else you believe your lawyer
2 should have done in this trial that he didn't do?

3 A. Yeah. Win.

4 Q. Fair enough.

5 A. I think his hands was tied when the statement wasn't
6 given to us, with not making the timely objections before
7 that, not making the right and proper motions to get the phone
8 calls excluded, that was very, very detrimental to my
9 character, and him not cross examining Tasha along with Meon
10 effectively it hurt my case.

11 MS. GOLDBERG: All right. Mr. Cook, the Attorney
12 General is going to ask you questions, okay?

13 CROSS EXAMINATION

14 BY MS. COLE:

15 Q. Good afternoon, Mr. Cook. You said you met with
16 your attorney about three to four times right before trial and
17 then maybe two times in addition to that. Did I hear you
18 correctly?

19 A. Yeah. Give or take.

20 Q. Okay. Do you recall going over the State's case
21 against you with Mr. O'Neil?

22 A. Briefly.

23 Q. So where were you living at the time?

24 A. I was housed in the Lexington County Detention
25 Center.

1 Q. No. No. Sorry. Where were you living at the time
2 of the shooting of Mr. Jennings? When you were working at
3 McDonald's, where were you actually living?

4 A. In Columbia.

5 Q. In Columbia. And you lived there with your
6 girlfriend Tasha?

7 A. And our kids.

8 Q. And your kids. And the typical day for you was she
9 would drive you to the McDonald's, is that correct, to drop
10 you off for work?

11 A. Sometimes I drive myself but that day she drove
12 me.

13 Q. And then sometimes she would come and pick you up.
14 And so the night of the shooting she was there with Meon
15 Miller and Angelo Tucker, correct?

16 A. Yes. Yeah.

17 Q. Do you remember what the defense strategy was to
18 explain why Meon and Angelo rode with Tasha that night to come
19 pick you up?

20 A. Do I remember the - my strategy?

21 Q. Did you talk about that with your attorney? Right.
22 Did y'all talk about that?

23 A. Yeah. We went over -- Repeat the question.

24 Q. Did you talk -- Meon Miller and Angelo Tucker rode
25 with Tasha to pick you up that night or were with Tasha that

1 night when they were arrested; is that right?

2 A. I'm not -- All I know is they was arrested. I don't
3 know if they was in the same car together or not, you know.
4 At the point of their arrest I think Tasha was in the car and
5 Angelo and Meon was together. They could have been all
6 together. That part we never discussed. I don't know what
7 happened outside of the store.

8 Q. But would it have been helpful to the defense to
9 have some reason that Meon and Angelo came all the way over to
10 Batesburg that night?

11 A. Okay.

12 Q. And I'm asking. Would that have been part of your
13 defense strategy? Do you remember discussing that?

14 A. Yeah. We discussed it.

15 Q. Okay. So the suggestion that maybe Angelo knew
16 someone or Meon knew someone in Batesburg you felt like was
17 part of your defense at trial. How did - how did you suggest
18 you defend that? If I'm not clear, I can rephrase it.

19 A. Please rephrase.

20 Q. What was your opinion about that, why Meon and --

21 A. I didn't know Angelo. I never met Angelo. He was
22 new to me that he was even in the car when all this was told
23 to me. As far as Meon, Meon knew people in Batesburg. He had
24 already contact people in Batesburg. It was not new for him
25 to ask for a ride and get a ride to Batesburg. Tasha didn't

1 have to ask him could she give him a ride because he had been
2 there before.

3 Q. Okay. So that was going to be a critical part at
4 your trial, is that fair to say?

5 A. Yeah. That's why I said we should have investigated
6 who held that number a little bit more.

7 Q. Okay. You remember your lawyer Mr. O'Neil trying to
8 suppress the phone call records, don't you?

9 A. At pretrial motion he made a motion. However, in
10 hindsight that motion should have been made prior to trial,
11 prior to pretrial motions.

12 Q. You're referring to the judge's panel?

13 A. Yes.

14 Q. Do you recall him arguing a constitutional ground to
15 suppress those jail phone call records?

16 A. No. I don't.

17 Q. Do you remember Mr. O'Neil complaining to the judge
18 that he had not been notified about Meon Miller's change in
19 his statement?

20 A. Yeah.

21 Q. Do you remember him causing a ruckus about how this
22 hurt his defense?

23 A. I wouldn't say that he caused a ruckus.

24 Q. Well, do you remember him arguing to the judge that
25 this was going to hurt the defense?

1 A. He made an objection. The objection was denied. He
2 asked again, however, when the objection was denied, he didn't
3 make a timely objection to preserve the evidence.

4 Q. And do you remember what he told the Court his
5 strategy was, what the defense was with Meon Miller?

6 A. Not to my recollection. No.

7 Q. So you don't recall him telling the judge that it
8 was a credibility issue with Meon Miller? That Meon Miller
9 was a liar and that he wanted to show that?

10 A. Yes. I remember some of that. But our whole case
11 was built upon Meon's and Tasha's testimony. My testimony
12 would have been very pivotal but however the State coerced him
13 on to testify to something he didn't do. He did not shoot
14 Mr. Willie Jennings.

15 Q. Do you remember your attorney questioning Meon
16 Miller about his changing statements?

17 A. Did he cross examine him? Yes. He did.

18 Q. When he was on the stand. Right.

19 A. Yeah. I think he didn't - he could have did a
20 better job. Yes. But he did question him.

21 Q. But he didn't. But he didn't. He pointed out the
22 changing statements he made, the inconsistencies?

23 A. Well, he couldn't point too much out because we
24 never got the third statement. We never -- He could only go
25 by what he had in front of him. He could only question him on

1 the statement that he already had made until he brought forth
2 new evidence.

3 MS. COLE: Thank you, Mr. Cook. No further
4 questions.

5 MS. GOLDBERG: Nothing further.

6 THE COURT: Okay. Step down.

7 MS. GOLDBERG: Your Honor, at this time the
8 applicant would rest as to presenting evidence today
9 subject to what's been discussed earlier and I guess to
10 be even more clear, allegation D and allegation E are
11 what, if additional testimony is necessary, are what that
12 additional testimony would go towards but at this time
13 the applicant rests.

14 THE COURT: D and E?

15 MS. GOLDBERG: Yes, Your Honor.

16 THE COURT. All right. Ms. Cole.

17 MS. COLE: Your Honor, we would call Heather Weiss.

18 Thereupon,

19 HEATHER SAVITZ WEISS

20 after having been first duly sworn, testified as follows,

21 DIRECT EXAMINATION

22 BY MS. COLE:

23 Q. Ms. Weiss, where do you work?

24 A. I'm a prosecutor for the Attorney General's
25 Office.

1 Q. And you were the prosecutor for Mr. Cook's case?

2 A. I was.

3 Q. And can you explain how, briefly how the AG's Office
4 got involved in this case?

5 A. I can. It happened I think before I even got to the
6 Attorney General's Office but there was a conflict in the
7 Solicitor's Office where the Solicitor who was originally
8 assigned the case had had a disagreement with an officer in
9 Batesburg and didn't want to prosecute the case because that
10 officer was involved in it and so they conflicted it to our
11 office which is typical. Whether or not it's an actual
12 conflict or just a request to prosecute, they send it over to
13 the office, we accept it and another prosecutor had the case
14 originally. He left to go run for Solicitor and so then it
15 got assigned to me.

16 Q. So as discovery would come in, what did you do in
17 this case as far as turning discovery over to Mr. O'Neil?

18 A. I believe the first set of discovery had already
19 been turned over to Mr. O'Neil by Mr. Stumbo but we went back
20 through - there were a lot of CD's and a lot of recordings and
21 papers and everything in this case so we went through and
22 reorganized the case and made sure and sent new copies over
23 and I would talk to, of course, there was a defense attorney
24 for every one of the co-defendants. We would all meet. We
25 met all to go through the actual physical evidence and I would

1 go over everything that I had, gave them all an opportunity to
2 make sure they had a copy of everything that I had. Mr.
3 O'Neil at one point said that he had, could not locate a
4 couple of the disks so we made more copies and sent those to
5 him. So it was a constant communication making sure that we
6 kept providing whatever we had to the defense.

7 Q. Did it take some time for some of the discovery
8 materials to come in, phone records, that sort of thing?

9 A. Well, it did. Everything that we had obviously was
10 turned over. There were some phone records that are mentioned
11 where when we got the expert in to testify as to the cell
12 phone towers because the cell phone towers were important to
13 show the traveling of the co-defendants to Batesburg, from
14 northeast Columbia to Batesburg and we had the maps, we had
15 the phone records, all that had been turned over. But when
16 the expert came, the expert brought the hard data that those
17 maps were based on and so we turned those over the day of
18 trial because that's when we had just gotten them when they
19 got into town and we gave those. But those were raw data that
20 supported what we had already turned over which were the maps
21 of where it actually, the coordinates of where it actually
22 mapped out to be.

23 Q. Was there any real dispute about whether or not
24 Tasha and Meon and Angelo were in Batesburg that night?

25 A. No. They were actually stopped in Batesburg by law

1 enforcement within seconds to minutes after the phone call
2 went out and they were arrested, felony stop and arrested that
3 night in Batesburg.

4 Q. Okay. And so what was your theory then of
5 Mr. Cook's liability? How was he responsible?

6 A. It was - the State's theory of the case is that
7 Mr. Cook was the mastermind. He and Tasha were
8 boyfriend/girlfriend. They were having financial problems.
9 He was the manager of the McDonald's and the plan as we
10 understood it was for him to get Meon who was his young cousin
11 who looked up to him to come out to Batesburg/Leesville.
12 Angelo Tucker comes into play because he's the one who
13 actually had a weapon that could be used so that's where
14 Angelo gets picked up to come out to Batesburg. He was going
15 to send out the victim in the case who was an older gentleman
16 who worked in the McDonald's to take out the trash, send him
17 out the backdoor to take out the trash knowing there were no
18 cameras outside where the trash is.

19 At that time Meon was supposed to pretend to want to
20 rob him, escort him back inside the restaurant at which time
21 Rod would get the money that had been collected for the night,
22 turn it over to the robbers who would take it back and they
23 could split it when they got back to the house and that would
24 solve the financial issues they were having at the moment.

25 Q. So what happened with Meon Miller's changing his

1 statement? First of all, was there ever, this last statement,
2 was there ever a written statement that was not turned over?

3 A. No. Absolutely not.

4 Q. So can you just explain to the Court what that's
5 about?

6 A. Yes. So we had Tasha Miller - I mean Tasha
7 Matthews, Meon Miller and Angelo Tucker were all co-defendants
8 in the case charged hand of one hand of all charged with Rod
9 Cook. As the case developed the three of them cooperated with
10 the State as far as, well, cooperated with law enforcement,
11 gave statements and so we were prepping them for trial. We
12 had the multiple statements just like Mr. Cook talked about
13 and it was the State's understanding the entire time that
14 Angelo Tucker and Meon Miller walked up to the trash can,
15 approached the victim, somebody pulled a gun, the victim
16 started to struggle with one on them, the other one - it was
17 sort of a back and forth, and then they ended up firing the
18 gun which ended up ultimately killing the victim.

19 Each one in their initial once they admitted to
20 being there and being a part of it they each pointed at the
21 other, said the other one shot. Did not matter to us who
22 shot. We knew that either Angelo or Meon shot the victim
23 which ultimately led to his death. We knew that this was a
24 robbery still under felony murder, conspiracy and hand of one
25 hand of all, all of those theories put together. We had

1 murder. It didn't matter. It just didn't matter to the State
2 who shot. We knew Rod Cook didn't shoot but we were charging
3 him with murder. We knew that either Angelo or Meon did. We
4 knew it was Angelo's gun.

5 When the GSR test came back, the gunshot residue
6 test on the clothing came back, it came back positive on Meon
7 Miller's clothing, negative on Angelo Tucker's so we knew at
8 least the gun soon after it was shot was held against Meon's
9 clothing. We always believed that Meon Miller was the one who
10 shot primarily because he was younger and we knew that it was
11 a situation from what we could gather where somebody got
12 scared and fired. We don't think anybody planned on this
13 being a murder from the beginning. This was planned to be an
14 armed robbery or a fake armed robbery. So it was a situation
15 that came up and we just knew Meon was the younger one and so
16 we believed that plus the gunshot residue. I believed it was
17 Meon but I never -- I mean, he didn't say it.

18 Then right before trial as we were prepping him for
19 trial as we always do going over the witnesses had our
20 investigator there as well as my co-counsel and myself and one
21 of the final preps he said, okay, you know, I need to tell
22 you, actually I was the one who shot. I said okay. We
23 figured that. And it didn't even phase me as changing
24 anything because we always believed that. We always knew it
25 was one of them and so we just sort of went on. And then when

1 we got to trial said, you know, is there anything extra? Is
2 there absolutely any more discovery? You know, we did have
3 one more meeting with Meon. The only difference is now he
4 says he did shoot so that's a little bit different but other
5 than that, that was it.

6 And the defense raised the objection of that they
7 felt that that was crucial. It changed their whole defense
8 which was a surprise to me because the defense for Rod Cook
9 was as far as we knew that he wasn't out there and had nothing
10 to do with it and we all knew that one of the two of them had
11 shot.

12 So the judge admonished me for not turning that
13 over, for not telling them about that sooner. The judge then
14 instructed that the case would be continued over night for the
15 defense to put together, to figure out how this affected their
16 strategy and make any changes they needed to make.

17 Also, Mr. O'Neil was given the opportunity to, and
18 we were told we had to sit down with him and open up all of
19 our notes, my notes, my co-counsel's notes, the investigator's
20 notes. There was no statement. There was no written
21 statement. This was just kind of something that came out
22 during prep and Mr. O'Neil went through just to be sure that
23 there was nothing else on any of our other witness prep that
24 we didn't think was material that Mr. O'Neil might and so he
25 went through all of my notes, all of my co-counsel's notes,

1 all of the investigator's notes and he talked to us and it was
2 continued overnight. So it actually was dealt with I felt
3 like very comprehensively by the Court at that time.

4 Q. And it happened before the trial obviously got
5 started?

6 A. Yes.

7 Q. And he again had the opportunity to look at
8 everyone's notes, see what was in your file, any changes he
9 was fully he informed of the change in verbal communication
10 with you not any sort of written statement as you mentioned?

11 A. Yes.

12 Q. Okay. If you could briefly summarize what the
13 State's evidence was against Mr. Cook?

14 A. Well, we had the statements of Tasha Matthews and
15 Meon Miller and Angelo Tucker and it was kind of an
16 interesting case in that we had, we had the - so we had the
17 statements but they were statements of co-defendants so all of
18 that has to be taken with a little bit of apprehension so we
19 had to see what we could corroborate. So what we had were, we
20 had the cell phone record which we were able to show the phone
21 calls from Rod Cook to Tasha Matthews, from Rod Cook to Meon
22 Miller throughout the day that corroborated what they were
23 saying had happened throughout the day so we had those phone
24 calls. Then we were able to show the movement of those phone
25 calls through the maps all the way from northeast Columbia to

1 where they traveled to dropping off Rod to going back to
2 coming back and then being present in Batesburg at the time of
3 the shooting of the murder. So that was important.

4 What we also had were video cameras. So there's no
5 video camera on the back of the store so there's no video
6 camera of the actual shooting, of the actual murder. But
7 inside the store there were video cameras that showed the
8 movement of Rod Cook around the store. So we were able to
9 match up Rod Cook's phone calls and his expressions. There
10 was no sound but there was - you can actually, you can see
11 when he was picking up the phone when he was calling, you can
12 match that up with the phone calls to show it was actually Rod
13 Cook that was calling not just the phone number that should be
14 him but actually Rod Cook calling at the time that the phone
15 calls were being received.

16 And then we had several different jail phone calls
17 but one key jail phone call was right after Tasha Matthews
18 gets arrested in Batesburg in the vehicle with Angelo and Meon
19 and the mask and the gun and everything in the car, she calls
20 Rod from the jail saying this is the first phone I've gotten
21 to have at which point he tells her what to tell law
22 enforcement and then we had her first statement which is
23 exactly what he had told her to tell which doesn't match up.
24 It's interesting and it's something to listen to but it was
25 key as far as the phone call. It was him telling her how she

1 didn't know what was going on and just trying to lay out for
2 her what to say. So between all of that, the statements, we
3 were able to show that the statements were corroborated by
4 actual physical evidence. Am I answering the question?

5 Q. You are. The only other -- Mr. Cook mentioned video
6 surveillance to show the protocol about taking the trash out
7 at McDonald's?

8 A. Okay.

9 Q. So can you explain what that's about?

10 A. Sure. What was interesting is in order for Rod
11 Cook's plan to work Rod had to send out this elderly gentleman
12 out of the backdoor to the trash can where there are no
13 cameras late at night in order for the robbery to take place,
14 the attempted robbery that then ended up leading to the
15 murder. So it turns out that that day Rod had to come in
16 earlier for a meeting, for a managers' meeting because he was
17 a manager at McDonald's where the corporate representative or
18 the head manager, I forget definitely who she was, what her
19 position was, but she went over with everybody how the
20 protocol had been changed for the safety of the employees and
21 that the trash should be left inside and taken out during the
22 daytime. You should not send anybody out late at night
23 because it was dangerous. There were no cameras back there,
24 it shouldn't be taken out and every manager had to sign and
25 Rod Cook signed along with the other ones saying that he knew

1 the protocol had changed. He could not send anybody out that
2 backdoor for the last final run because there were no cameras
3 and it was dark. So actually it changed, I believe it was
4 just that day it had changed and he had signed saying he
5 wouldn't do that but he had to break that protocol that he had
6 just been told about that day in order to make his plan work.

7 Q. Okay. And then at one point or several points
8 during the trial you asked the co-defendants about whether or
9 not they had any drugs on them that day. Do you recall why
10 you were asking those questions?

11 A. Yes. So during the jail, I believe it's the jail
12 phone call where Rod tried to have, tried to get Tasha to say
13 that they were only there, they only rode with her to do some
14 sort of drug deal out by the trash cans and that's where
15 people do drug deals. So it became important as to whether
16 that was a feasible explanation for what was going on versus
17 the explanation that it was actually all part of the plan for
18 them to come there, try to rob the gentleman who worked in the
19 McDonald's ultimately to be the fake robbery which lead to the
20 murder.

21 Q. And can you explain the issue of this Batesburg
22 phone call? This phone call that went out from I believe Meon
23 Miller's phone to someone in Batesburg? If you can explain
24 that.

25 A. Okay. So according to the records, when you get the

1 phone records, it has the from number, the to number and then
2 it will show what area it's hitting off of. So we were
3 focused completely on the phone calls from Tasha, to and from
4 Tasha and Rod, to and from Meon and Rod, to and from Meon and
5 Angelo and Tasha, the people that were actually the players in
6 the case and at some point during, at some point during
7 pretrial listening to what Mr. O'Neil was saying, some
8 questions, all of a sudden it dawned on me that there was that
9 one phone number that we didn't know who it was, who it went
10 to and it said Batesburg but that was going to be something
11 that they were gonna hit on and at that point I turned to my
12 investigator and said we've got to find out who owns that
13 number. See what you can do and I handed it to my
14 investigator and he took off.

15 He did his investigator stuff and found a person who
16 had had that phone number and went and found the person,
17 interviewed them. She said she had had that number for a
18 period of years that spanned the time that the murder
19 occurred. We were able to get a subpoena and bring her in.
20 She had the phone. She still had the phone number. That was
21 her phone number that she had had for many years. She said I
22 haven't been to Batesburg. I don't know why it would show up.
23 I don't know Meon but I certainly, you know, I think she said
24 something to the effect of, you know, text different, you
25 know, gotten texts from different guys or whatever. She's

1 like I don't know him. I don't know that I don't know him. I
2 just, like I don't have any personal acquaintance to him but
3 that -- Well, all she could say is that is my phone number and
4 I have never been to Batesburg before today.

5 Q. And so there was no really any explanation that you
6 all could figure out as to why it would ping off some Bateburg
7 tower?

8 A. We have no idea and that was certainly covered in
9 the case but we at least were able to explain something about
10 that phone number.

11 MS. COLE: Thank you very much. I don't have any
12 further questions. If you will answer anything from Ms.
13 Goldberg.

14 CROSS EXAMINATION

15 BY MS. GOLDBERG:

16 Q. All right. Ms. Weiss, did you bring your file
17 with you?

18 A. No.

19 Q. You kind of going through this in order, the order
20 you testified, the discovery or the last statements from Meon,
21 who was Meon's attorney, do you recall?

22 A. Meon's attorney was -- Yes. I do. What's her name?
23 I'm blanking on her name.

24 Q. Aimee?

25 A. Aimee Zmroczek. Yes.

1 Q. Thank you. That's what I thought. Do you recall in
2 relation to when the trial began when this meeting was with
3 Meon Miller when you met with him for the trial prep?

4 A. I believe it's been said eight days. If it's from
5 the transcript, I have no reason to dispute that.

6 Q. Okay. When you met with Meon Miller that day for
7 trial prep, his attorney was present?

8 A. Yes.

9 Q. Prior to that meeting, had his attorney informed you
10 that he was going to be admitting being the shooter in this
11 case?

12 A. Honestly I don't recall. I don't recall if it was
13 -- I mean, it would have been -- It would have been -- I don't
14 know if it was like as we were going into it or -- But it
15 wasn't --

16 Q. Do you recall having conversations with his attorney
17 about what the substance of his statement would be prior to
18 him actually giving the statement?

19 A. I don't recall.

20 Q. You have testified that you opened your notes to Mr.
21 O'Neil and that he was able to look through them?

22 A. Yes.

23 Q. That's correct?

24 A. Yes.

25 Q. He was able to see all of the notes written

1 regarding the conversation with Mr. Miller?

2 A. That is my memory of us sitting in there and going
3 through it. I don't know if -- I don't know if I read them to
4 him or if he looked at the writing but we were certainly
5 sitting in the room together going through it note by note,
6 page by page.

7 Q. And it sounds like you acknowledged today that that
8 information should have been turned over to him sooner than it
9 was?

10 A. I acknowledge in hindsight that I would. I'm not
11 sure -- I would do it differently if I were to do it again.
12 And I did - I mean, I was turning it over. I was the one who
13 brought it up in the courtroom. It wasn't like I was hiding
14 it. It's just I would have said something to them earlier.

15 Q. Just to kind of clear up some of characterizations
16 that you have said on the record, the jail phone calls, the
17 defendant never actually tells any of his co-defendants
18 exactly what to testify to. That's not what the phone calls
19 contain.

20 A. That's the way I heard it.

21 Q. He never says you need to tell them this happened,
22 correct, as far as them not acknowledging that that's what
23 happened first? That question is probably wrong. He asked
24 them all what happened, correct?

25 A. Mmm, kind of as told.

1 Q. You mentioned, you testified that there was some
2 sort of protocol acknowledgment that the defendant signed.
3 Nothing like that was ever offered as evidence at trial,
4 correct?

5 A. I believe the manager testified.

6 Q. But there was no documentation, evidence offered --

7 A. I don't remember.

8 Q. -- as to anything he signed?

9 A. And I'm speaking off of my memory from 2013 so I
10 remember the specific conversation. I don't know. I can't
11 remember.

12 MS. GOLDBERG: No further questions, Your Honor.

13 MS. COLE: No redirect.

14 THE COURT: Step down.

15 THE WITNESS: Thank you, Your Honor.

16 MS. COLE: Your Honor, we would call Mr. Deon
17 O'Neil.

18 Thereupon,

19 ERNEST DEON O'NEIL

20 after having been first duly sworn, testified as follows,

21 THE COURT: All right. Proceed.

22 DIRECT EXAMINATION

23 BY MS. COLE:

24 Q. Mr. O'Neil, can you state your name for the record
25 please.

ERNEST O'NEIL - DIRECT BY MS. COLE

45

1 A. Earnest Deon O'Neil.

2 Q. And where are you employed, Mr. O'Neil?

3 A. I'm currently self employed. I'm a solo
4 practitioner.

5 Q. Solo practice. About what is your case load
6 typically per year?

7 A. Probably now probably about 50 cases a year.

8 Q. And at the time you represented Mr. Cook had you
9 done felony work before? Trial work? Had you done felony
10 cases?

11 A. Yeah. I graduated from law school in 2006. My
12 first four years would have been at the Richland County Public
13 Defender's Office so that would have been from November 2006
14 up until July 2010 and then I went out in private practice and
15 been out in private practice ever since.

16 Q. And have you reviewed the amended application so you
17 reviewed the newer allegations?

18 A. I have.

19 Q. And what have you done to prepare for today?

20 A. I have my file with me.

21 Q. You brought it with you. Thank you. Now, can you
22 tell us how you came to represent Mr. Cook?

23 A. He was, Mr. Cook was -- Well, Ms. Carolyn Sutherland
24 was appointed to Mr. Cook it would have been around December
25 of 2010. Me and Ms. Sutherland were both Public Defenders

1 together here so when she had got assigned to Mr. Cook's case,
2 she had probably approached me around February or March of
3 2011 and asked me to be her co-counsel and then Ms. Sutherland
4 moved to Tennessee the end of April of 2011 here so she asked
5 me to substitute counsel and be Mr. Cook's counsel so I think
6 I did that, it would have been around May of 2011.

7 Q. Do you remember if there were any plea negotiations
8 in this case?

9 A. I mean, I know there's always discussion with the
10 Attorney General's Office about whether or not there's any
11 plea offers. I don't have anything in my file specifically
12 that notes that there were any specific plea offers here. Off
13 the top of my head I think that during the trial I may
14 remember there being like a 30 year voluntary manslaughter
15 offer here. I don't have that written down in my file.

16 Q. Do you remember receiving the discovery from the
17 State?

18 A. I do.

19 Q. And going over that with Mr. Cook?

20 A. Mr. Cook had some of the discovery previously he had
21 Ms. Griffin for four or five months here so we would have went
22 over specifically some of the jail phone calls at the jail. I
23 remember that particularly because normally in Lexington
24 County jail they require you to go in the booth to have visits
25 here but there was still some evidence that me and Mr. Cook

1 had to go over via a laptop so I actually had to go inside the
2 dorm with the laptop to go over some of the jail phone calls
3 because they were on the CD's.

4 Q. Okay. So you did discuss those with him?

5 A. Some of them. There are probably in Mr. Cook's case
6 as the Attorney General Ms. Weiss indicated there were
7 probably about 25 to 26 CD's in the case here. Some of them
8 jail phone calls, some of them interviews, some of them videos
9 here so we would not have went over every one of those videos
10 but we would have went over the jail phone calls that were
11 pertinent to the case here.

12 Q. And you had a few pretrial motions. One of them was
13 about the phone calls?

14 A. Correct.

15 Q. So you tried to get them suppressed?

16 A. Yes. Because my suppression with the jail phone
17 calls was mainly in Richland County jail and their system is a
18 little bit different here so Lexington County had a different
19 kind of jail phone system here so I spoke with some of the
20 Public Defenders over here in Lexington County about jail
21 phone calls and the experience they have had with them. There
22 was a motion that they had used in previous cases to try to
23 get those calls suppressed so I got a copy of that motion and
24 got it personalized for Mr. Cook's case.

25 Q. And you based - your motion was partially based on

1 constitutional grounds?

2 A. Yes. There was one particular statute I based it
3 upon and then I also supplemented that statute with
4 constitutional grounds.

5 Q. And do you recall making a creative argument about
6 one of the phone calls that was about when he didn't answer
7 the phone but his daughter answered the phone, I believe?

8 A. Yeah. I don't think it was - it was somebody. I
9 don't know who answered the phone. But my argument was --
10 Well, let me back up one second. The State's argument was
11 that Mr. Cook had consented to the recording. He knew that it
12 had been recorded because it says so at the very beginning of
13 the call. One of the more important jail phone calls here
14 Mr. Cook did not answer the phone. Somebody else answered the
15 phone, talked with the individual for a period of time and
16 then handed the phone to Mr. Cook. So my argument was that
17 Mr. Cook did not hear that admonition that it was going to be
18 recorded because he didn't answer the phone.

19 Q. But it wasn't, ultimately it wasn't successful?

20 A. Correct.

21 Q. Right. And the issue with the co-defendant's
22 statement changing, what did you do when you learned that Meon
23 Miller had admitted to being the shooter?

24 A. I think I asked for his new statement to be
25 suppressed.

1 Q. Because? And why - why did it matter to you that
2 Meon had admitted that he was the shooter?

3 A. Because the whole foundation of our case was that
4 the only true evidence that the State had that Mr. Cook was
5 involved in this came from Meon Miller. You had the testimony
6 of Tasha Matthews. You had the testimony of Angelo Tucker but
7 neither one of those two indicated that Mr. Cook knew anything
8 about any sort of robbery and there was no testimony that
9 there was any talk of any other robbery. The only person who
10 testified that Mr. Cook had knowledge and had planned a
11 robbery was Meon Miller and he gave a statement to that effect
12 about a year into the case once the GRS residue came back and
13 showed that his, the GRS, the gun shot residue was on his
14 hands. But even in that statement he still indicated that he
15 was not the shooter. That Meon Miller indicated that it was
16 Angelo Tucker that was the shooter.

17 Our point was that he was clearly lying about that
18 issue in the face of all the other evidence to the contrary so
19 if he is lying about that issue in the face of evidence to the
20 contrary, then he's also lying about Mr. Cook being the one
21 who initiated or planned this robbery of the McDonald's
22 here.

23 Q. So you thought that if he was -- Well, so when he
24 said he was admitting to being the shooter, how did that
25 change that?

1 A. Now that makes him look truthful. Now it makes him
2 look like he's actually telling the truth when the crux of our
3 case is that he's not being truthful.

4 Q. So that's why your strategy was to suppress that
5 statement?

6 A. Yes.

7 Q. This happened prior to the trial even starting?

8 A. We were doing pretrial. I had made a motion, made a
9 motion based on whether the statement need to supplement any
10 sort of statements that any other co-defendants had. I think
11 the transcript speaks for itself. I think at that point they
12 indicated there was no change in anybody's statements. We
13 went along with a few more motions, then right before we were
14 about to do openings then they indicated that, oh, well, no,
15 Mr. Miller said this and Tasha Matthews said this which in my
16 opinion was different from what they had said earlier.

17 Q. Do you think if you had asked the Court for a new
18 trial or to dismiss the charges against Mr. Cook, that that
19 would have been successful?

20 A. To dismiss the charges?

21 Q. Right.

22 A. I don't think the Court would have dismissed the
23 charges at that point here.

24 Q. Right. What about a new trial?

25 A. We hadn't started the trial yet at that point.

1 Q. Right. Okay. Moving on. Who is Tasha Matthews, do
2 you remember?

3 A. It would have been Mr. Cook's live-in girlfriend.

4 Q. And she was a problem for the defense, is that fair
5 to say?

6 A. Her testimony was problematic.

7 Q. Okay. What was your approach to Tasha Matthews if
8 you can -- What were you trying to show about her phone calls
9 say, for example, just her phone calls to Mr. Cook?

10 A. My approach with Tasha Matthews looking back at my
11 notes here it morphed or changed during the trial because if
12 you look at her original statement to law enforcement, it was
13 kind of mundane. She indicated that she had called during the
14 day but there was no talk about in her statement as to what
15 the substance of those conversations was. During the trial
16 her testimony then got fleshed out. She said that Mr. Cook
17 was upset and that he was agitated by the phone calls and that
18 he was just wanting to know whether or not they were there or
19 not and that's all that he really cared about. Where were
20 they at? Had they gotten to McDonald's yet. None of that was
21 in her prior testimony here so I was trying to just on the fly
22 to her new more expanded version of what happened on that day
23 here.

24 Q. And did it matter if there were a lot of phone calls
25 between Rod and Tasha?

1 A. The number of phone calls didn't matter. What
2 mattered was what was the substance of those phone calls.
3 What were they talking about.

4 Q. And Mr. Cook mentioned character reference.
5 Character evidence. When Tasha mentioned drugs, did that help
6 or hurt your case?

7 A. Looking at it I guess you could say it did both.
8 The question is what did it do more of. I mean, you never
9 really want a jury to think of your client as a drug dealer.
10 On the other hand you do need the explanation as to why these
11 two other individuals are riding all the way to Batesburg with
12 your client's girlfriend just to pick him up.

13 Q. Right.

14 A. So I think it both helped and hurt. The question
15 was which one it did more of.

16 Q. Because if they weren't robbing the McDonald's, you
17 obviously didn't, your strategy was not to suggest they were
18 robbing the McDonald's?

19 A. Correct.

20 Q. What was the strategy why they were there?

21 A. My strategy that I was trying to convince the jury
22 of is that Meon Miller was there to conduct some sort of drug
23 deal.

24 Q. And when he took the stand, what was your approach
25 with him?

1 A. Just to point out, I mean, I think in my opening I
2 characterize him as a liar and in my cross examination was,
3 the point was to point out as many inconsistencies and portray
4 his bias and his failure to tell the truth as much as
5 possible.

6 Q. Because he was a cousin of Mr. Cook's?

7 A. Yes.

8 Q. And he was really the one who primarily pointed the
9 finger at Mr. Cook?

10 A. Yeah. He essentially was the only person that
11 pointed the finger to Mr. Cook related to knowing, having
12 pre-knowledge of the robbery scheme.

13 Q. So your best shot with him was just to make him out
14 to be the liar, a liar?

15 A. Correct.

16 Q. Now, Angelo Tucker, did he know Mr. Cook at all?

17 A. He did not.

18 Q. So did it matter to you as much whether or not
19 Angelo Tucker changed his story for purposes of your
20 defense?

21 A. No. I don't think Angelo Tucker did. I don't think
22 he changed his story at all.

23 Q. Okay. Do you remember anything about Mr. Cook
24 wanting to testify or not wanting to testify?

25 A. I remember him wanting to testify and then looking

1 back at the transcript. I clearly see where he said initially
2 he was going to testify and then we took a break and then I
3 don't remember what happened during that break. I don't have
4 any notes as to what happened during that break.

5 Q. Would you have had advised him of whether or not you
6 thought it was a good idea for him to testify or whether you
7 thought it was a bad idea for him to testify?

8 A. If he had asked my opinion, I would have told him
9 what my opinion was. I would not have made him do it one way
10 or the other but I would have told him what my opinion was.

11 Q. And would you have told him that it his decision to
12 make and not yours?

13 A. Yes.

14 Q. And you warned him about the pros and cons of
15 getting on the stand and what could happen. Would you have
16 warned him about the pros and cons of taking the stand?

17 A. Yes. And, in fact, I think I remember we practiced
18 testifying at the jail in jail visits leading up to the trial
19 here. We probably took at least one or two of the visits was
20 devoted mainly to practicing his testimony.

21 Q. Okay. But at some point he changed his mind and you
22 don't remember what that was about?

23 A. Yeah.

24 MS. COLE: Thank you very much, Mr. O'Neil. Answer
25 questions from Ms. Goldberg.

ERNEST O'NEIL - CROSS BY MS. GOLDBERG

55

1 CROSS EXAMINATION

2 BY MS. GOLDBERG:

3 Q. Good afternoon, Mr. O'Neil.

4 A. Good afternoon.

5 Q. Prior to trial, we all know now that you did make a
6 motion to suppress the jail phone calls and then the State
7 cited to a statute called 17-30-15 stating that the motion
8 must be made prior to trial. Tell this Court why you didn't
9 make that motion?

10 A. I wasn't aware of that requirement at the time I
11 made the motion.

12 Q. Okay. You weren't familiar with that law?

13 A. Correct.

14 Q. Okay. Do you believe that's something that you
15 should have done?

16 A. Yes.

17 Q. You said that the basis that you did submit for your
18 motion to suppress the jail phone calls came from what other
19 attorneys in the Lexington County Public Defender's Office had
20 done in the past?

21 A. Correct.

22 Q. Did they tell you if they had been successful in the
23 past?

24 A. No. They said in the case that they had the motion
25 had been denied.

1 Q. Did you at any point in time tell Mr. Cook that you
2 anticipated that the jail phone calls would be suppressed?

3 A. I wouldn't - I would not have couched it that way.
4 I would have given him my opinion on what I thought the law
5 would be and the strength of the legal argument that I was
6 making.

7 Q. And do you know what your belief the error now was
8 in that regard?

9 A. I don't - I don't have any notes to that effect but
10 if my memory serves me right I would have said something to
11 the effect that I think we have a good shot at getting these
12 dismissed but if we don't, this is the way we gonna kind of
13 try to maneuver around them still coming in.

14 Q. You testified that you reviewed some of the jail
15 phone calls with him at the jail. Would you have reviewed
16 with him those three that were actually introduced into
17 evidence?

18 A. Yes. Because what the State did, they pulled every
19 single jail phone call, all the Tasha Matthews, Meon Miller,
20 Angelo Tucker and every one made. We didn't listen to
21 everybody's phone calls. We only listened to the ones in
22 particular that were troublesome because one of the things me
23 and Ms. Griffin -- I call her Ms. Griffin. She just got
24 married -- Ms. Sutherland did before I took his case was we
25 had went through the jail phone calls so I had Ms.

1 Sutherland's notes as to which jail phone calls said what and
2 which ones were important and which ones were not important.

3 Q. So other than what you have already testified to is
4 there any particular reason why you didn't file a motion to
5 suppress the jail phone calls pursuant to 17-30-15?

6 A. No. Because like I said, I got the motion from my
7 colleagues at the Lexington County Public Defender's Office.
8 They didn't mention to me either that it need to be filed
9 before a three judge panel so obviously they didn't know that
10 either so there was no strategy reason why I didn't do that.

11 Q. Now, on the day of trial you spent the morning
12 picking a jury and arguing motions and you then make your
13 renewed discovery request under Brady and Riddle and then
14 during lunch, does anything happen during lunch that's not in
15 the record, like in the transcript?

16 A. Nothing.

17 Q. And I guess I'll be a little bit more clear. After
18 lunch is when the information comes up about Meon's most
19 recent statement. So while you were out and not on the record
20 were you informed about Meon's statement and what
21 conversations took place?

22 A. Oh, yes.

23 Q. Okay. What happened? What do you remember?

24 A. I just think Ms. Weiss and her co-counsel informed
25 me that essentially the same language that's on the record

1 here that these were the differences in the statements that
2 the co-defendants had given here.

3 Q. So that you don't recall any information that you
4 were told or anything that really isn't reflected in the
5 substance of what's already said in the transcript?

6 A. No.

7 Q. Prior to that moment during lunch, had you ever been
8 informed that Meon Miller had admitted to being the shooter in
9 this case?

10 A. No.

11 Q. Were you also informed of additional information
12 regarding Tasha Matthews' statement do you recall?

13 A. Yes.

14 Q. And what was that?

15 A. Off the top of my head I remember that she indicated
16 that Mr. Cook and Mr. Miller sold drugs and I think she said
17 in the Batesburg area and that Mr. Cook wanted to go back to
18 hustling is what I remember the gist of the updated version of
19 Ms. Matthews' statement was.

20 Q. So you knew going into trial that she was going to
21 be testifying to something regarding Mr. Cook and drug
22 dealing?

23 A. Correct.

24 Q. Now, at this point in pretrial you objected asking
25 that all these statements be excluded from trial based on the

1 record. Instead of granting your request, the Court gave you
2 the afternoon to talk with the Attorney General and prepare
3 for trial based on the changes; is that accurate?

4 A. Correct.

5 Q. What happened after recess that afternoon?

6 A. I think me, Ms. Weiss and her co-counsel, we all sat
7 down and they looked at their notes and they read them to
8 themselves and then told me whether or not there was anything
9 different from them. I never saw, physically saw the notes
10 here because if you look at the transcript, we come back the
11 next day and I ask to see the notes and it's probably like a
12 three or four page discussion about why I can't see the actual
13 notes here.

14 Q. Now, given the fact that you had the opportunity to
15 talk with help and have that afternoon to prepare was this all
16 sufficient to address your concerns regarding this new
17 information?

18 A. No. Because I guess the following day I asked to
19 actually see the notes here because there's no way for me to
20 -- I think me and the Attorney General's Office had a
21 difference of opinion as to what was material and what was not
22 material when it comes to a change in the statement here. So
23 that was the basis of me asking the judge to review the actual
24 notes here because I think we had a difference of opinion as
25 to what was material and what was not material here.

1 Q. In addition to that, was this afternoon enough time
2 for you to change your trial strategy and adjust how you were
3 going to present a defense in trial?

4 A. I mean, I guess as a defense attorney you would
5 always want more time. I think from my conversation with the
6 judge it was clear that the afternoon is all I was going to
7 get.

8 Q. The next morning when you came back like you
9 testified, you did ask, there was a dialogue about trying to
10 get actual copies of those notes. Aside from that the
11 transcript does not reflect that you asked for those
12 statements to be suppressed again. Do you disagree with that?
13 Do you recall?

14 A. No. I don't disagree with that.

15 Q. Okay. Did you ever seek to renew your objection to
16 those statements being admitted in trial?

17 A. No.

18 Q. Should you have continued that objection or renewed
19 that objection?

20 A. In hindsight, yes.

21 Q. Is there any strategic reason why you let that issue
22 go?

23 A. No.

24 Q. The transcript reflects that when Tasha Matthews
25 testified you did not renew your objection; is that

1 accurate?

2 A. That's accurate.

3 Q. And the transcript also reflects that when Meon
4 Miller testified you did not renew your objection; is that
5 accurate?

6 A. Correct.

7 Q. Is there any strategic reason why you did not do
8 that?

9 A. No.

10 Q. Should you have renewed your objections?

11 A. In hindsight, yes.

12 Q. And then at the end of trial there's no further
13 dialogue renewing that objection. Is there any strategic
14 reason why you let it go?

15 A. No.

16 Q. How did all of this affect your handling of
17 Mr. Cook's case and your strategy? How were you able to
18 adjust or were you even able to sufficiently adjust?

19 A. Well, I mean, I guess obviously I wasn't able to
20 sufficiently adjust to where I wanted to go because the
21 outcome was not to Mr. Cook's liking here but the only thing
22 we could do at that point was still try to paint Meon Miller
23 as being a liar here but it's not as effective without the
24 clear lying that basically was the cornerstone of our defense
25 here.

1 Q. Do you recall -- You just testified that in the
2 transcript you can tell that Mr. Cook originally said he was
3 going to testify and then that changed and you don't have any
4 notes. Do you recall other conversations during the course of
5 the trial happening about whether he was still intending to
6 testify or not or what your advice to him in that regard
7 was?

8 A. I think, I mean, during the trial we talked about
9 kind of how things are going and how I feel like things are
10 going here so there would have been conversations in that
11 regard. The specifics of the conversations I don't
12 remember.

13 Q. Do you remember, even though you don't have notes as
14 to it, do you remember what your opinion was regarding whether
15 he should testify or not?

16 A. I honestly can't tell you. I don't remember.

17 Q. What would you have done differently in this case,
18 if anything, if you had had these statements from Mr. Miller
19 and Ms. Matthews sooner or are you able to answer that?

20 A. On Ms. Matthews I may have requested from her
21 attorney that she speak with her because her initial statement
22 was so benign that there was no need to try to reach out and
23 talk with her through her attorney because she didn't say
24 anything that really hurt us here. So had I known she was
25 gonna be more detrimental toward our case here, I probably

1 would have tried to reach out and talk to her through her
2 attorney earlier.

3 Q. And then regarding Mr. Miller?

4 A. I don't know anything off the top of my head what I
5 would have done differently had I known he was gonna testify
6 the way he testified here and make the admission he was gonna
7 make here. I don't know anything off the top of my head that
8 I would have done differently.

9 Q. Now, the during the trial there are several
10 references where Ms. Matthews mentions marijuana and I'm just
11 gonna for the record kind of go over what those citations are.
12 So on page 272, the State asks Tasha Matthews if Rod had
13 additional sources of income and the response was that he
14 would sell marijuana. On 275 that same information is
15 mentioned again. On 312 there is talk that marijuana was
16 found in her car but it belonged to Mr. Cook. And then on
17 page 312 it was asked when was the last time, asked to Ms.
18 Matthews when was the last time you had seen Mr. Cook use
19 marijuana. So is there any particular reason why you didn't
20 object to all this information?

21 A. The first one, and I think the first one is whether
22 or not he had a different source of income. The middle one, I
23 think that him selling marijuana as an additional source of
24 income in that first statement I think undercut the State's
25 theory that for some reason they need to rob this McDonald's

1 because they were two months behind on the rent here. So I
2 think that helped in that regard even though it hurts in a
3 general sense that some people associate drug dealing with bad
4 character here. But I thought it helped in the sense that it
5 indicated a different source of income that would contradict
6 their whole motive that he need to rob the store because they
7 were behind on two months of rent.

8 Q. Okay. And then as to the fact that Tasha testified
9 that the marijuana in her car belonged to Mr. Cook, is there
10 any reason that you didn't object to that?

11 A. I mean, no. There's no simple reason.

12 Q. And then the fact that Ms. Matthews testified that
13 she had seen Mr. Cook use marijuana that day before work, any
14 reason you didn't object to that?

15 A. No reason.

16 Q. Should you have objected?

17 A. It's a judgment call sometimes because you want to
18 only object to some things that's really detrimental and I
19 guess probably that last question I didn't feel like it was
20 detrimental in the sense that it didn't really add anything to
21 the State's theory of the case or help them in any real
22 concrete way.

23 Q. What conversations did you and Mr. Cook have
24 regarding offering evidence in case, not just his testimony,
25 but was there any conversations about offering additional

1 evidence?

2 A. We did have a conversation about subpoenaing the
3 videos here but the problem was by the time I got appointed to
4 Mr. Cook here, I told him we would still subpoena those videos
5 here but the likelihood of those videos being still in place
6 would have been low because by the time I got appointed to
7 Mr. Cook it would have been May of the following year and this
8 incident would have happened in October of the previous year
9 so it would have been like six or seven months earlier here.

10 Q. And do you recall if you, in fact, subpoenaed them
11 and they didn't exist or did you just not --

12 A. We subpoenaed them and they didn't exist because we
13 had two different investigators on Ms. Weiss' case. Ms.
14 Sutherland had retained Ms. Patty Rickbar but during the
15 previous year on Mr. Cook's case Ms. Rickbar got ill so then I
16 had to retain Detective Watkins, Bobby Watkins in Mr. Cook's
17 case here to finish the investigation.

18 MS. GOLDBERG: Nothing further, Your Honor.

19 MS. COLE: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. COLE:

22 Q. You said you might talk to Tasha again if you could
23 do it all over and find out what her testimony was going to
24 be?

25 A. Yes.

1 Q. Is it fair to characterize her testimony at trial as
2 I knew something was up? I don't know what necessarily but
3 something was going on?

4 A. That and plus her testimony at trial she indicated
5 the demeanor of Mr. Cook as kind of, the best way to describe
6 it was that Mr. Cook had been anxious on the phone here that
7 she did not indicate in her written statement to law
8 enforcement.

9 Q. Okay. And again, the drug references of whether
10 drugs being present at all didn't necessarily hurt you as
11 compared to a murder and an armed robbery charge? That was
12 the lesser of two evils --

13 A. Correct.

14 Q. -- as far as you were concerned? Okay. And did you
15 not also question Tasha about whether or not Rod could be
16 agitated because he was working?

17 A. Yes.

18 Q. And didn't want to get irritated to being called?

19 A. Yes.

20 Q. Okay. Meon Miller was with your defense strategy a
21 liar?

22 A. Correct.

23 Q. And so whether his last statement, it was just that
24 one statement that was in dispute, the verbal statement to
25 investigators, correct? You had the previous written

1 statements?

2 A. Correct.

3 Q. So Meon Miller being a liar whether that statement,
4 the last statement came in or not that was going to always be
5 your defense?

6 A. Yes. I mean, there's no - the defense - there's no
7 choice but to claim Meon Miller is a liar if he's gonna say
8 that Rod somehow orchestrated an armed robbery.

9 Q. Right. And then lastly on the issue of the jail
10 phone calls and the Wiretap Act, I understand you weren't
11 aware of that provision. But there's no question these were
12 jail phone calls? These were calls originating from a
13 detention center or from the jail?

14 A. Correct.

15 Q. And there was no question that at least the person
16 making the call was aware that they were being recorded?

17 A. Correct.

18 Q. Whether or not Rod actually knew he was being
19 recorded on one of those calls, that was a different issue.
20 But certainly one party of the conversation knew it was being
21 recorded?

22 A. Correct.

23 MS. COLE: Okay. That's all I have.

24 MS. GOLDBERG: Nothing further.

25 THE COURT: You may step down.

1 MS. COLE: That's all from the State, Your Honor.

2 THE COURT: Okay. Anything else?

3 MS. GOLDBERG: No, Your Honor. With that we will
4 contact the Court if we have any actual testimony to
5 supplement the record.

6 THE COURT: All right. Let me know one way or
7 another within 30 days so I know where we stand.

8 MS. GOLDBERG: Okay. Thank you, Your Honor.

9 THE COURT: All right. Anything else?

10 MS. COLE: Not on this case, Your Honor.

11 THEREUPON, THE HEARING WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

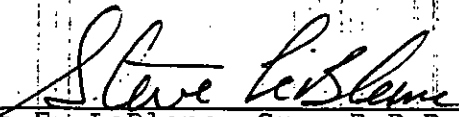
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 23rd day of February, 2018.

11 I FURTHER CERTIFY that the forgoing 68 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 2nd day of May, 2018.

17
18
19 
20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.
23
24
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Roderquiz R. Cook,	)	C.A. No. 2015-CP-32-02565
S.C.D.C. No. 261587	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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 CLERK OF COURT
 LEXINGTON SC

This matter comes to the Court by way of an application for post-conviction relief (PCR) filed July 23, 2015. Respondent made its return dated May 23, 2016. An evidentiary hearing was held on February 23, 2018. Applicant was present and represented by Kristy Goldberg, Esq., Assistant Attorney General Susannah Cole of the South Carolina Attorney General's Office represented Respondent. Applicant, prosecutor Heather S. Weiss, of the South Carolina Attorney General's Office, and trial counsel Ernest Deon O'Neill Esq., testified. The Court had before it records from the Lexington County Clerk of Court and South Carolina Department of Corrections (SCDC), trial transcript, and relevant direct appeal documents.

Following review of testimony presented at the hearing and all other evidence, this Court finds Applicant received constitutionally effective assistance of counsel at all stages of the trial, and relief must be denied.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the June 2011 term of the Lexington County Grand Jury for Attempted Armed Robbery (2011-GS-

32-01505). Applicant was later indicted by the December 2012 term of the Lexington County Grand Jury for Conspiracy to Commit Armed Robbery and Murder (2012-GS-32-06042, 06044). He was represented by Deon O'Neill, Esquire. On April 8, 2014, Applicant proceeded to trial and was found guilty as indicted. The Honorable Lee S. Alford sentenced Applicant to imprisonment for twenty (20) years for Attempted Armed Robbery, five (5) years for Conspiracy to Commit Armed Robbery, and thirty (30) years for Murder.

A timely notice of appeal was filed and perfected on Applicant's behalf. Erica McElraeath, Esq., and Robert M. Dudek, Esq., represented Applicant on appeal. Counsel raised two issues on Applicant's behalf:

Was the Defendant provided a fair trial when the prosecution withheld cell tower site records of the Defendant and co-conspirators until the day prior to the trial, withheld additional testimony of a co-conspirator explaining her role in the alleged conspiracy until the closing of pre-trial motions, withheld a confession by a different co-conspirator that he was the triggerman in the alleged murder until the closing of pre-trial motions, and withheld additional cellphone address records of the Defendant and co-conspirators until the second day of trial?

The South Carolina Court of Appeals dismissed the appeal. State v. Cook, 2015-UP-270 (Filed on June 3, 2015). The Remittitur was issued on June 24, 2015.

In his original *pro se* Application, Applicant alleged he was being held in custody unlawfully for the following reasons:

"Ineffective Assistance of Trial Counsel"

- a. "Trial counsel was ineffective for lack of due diligence;"
- b. "Trial counsel was ineffective in failure to fully investigate."

In the amended application filed by PCR counsel on February 19, 2018, Applicant raised the additional claims for relief:

- (a) Ineffective assistance of trial counsel – counsel was ineffective for failing to move to suppress jail phone call evidence prior to the trial, pursuant to statute 17-30-10, et. seq.

- (b) Ineffective assistance of trial counsel – counsel was ineffective in failing to properly object and preserve the record in regards to the fact that the State did not fully disclose the statements made by co-defendants and notify the Defense as to the substance of the statements prior to trial.
- (c) Ineffective assistance of trial counsel – counsel was ineffective in failing to object when the Applicant's character was unfairly discredited by admission of irrelevant information that was prejudicial to the Applicant's case during the testimony of Tasha Matthews.
- (d) Ineffective assistance of trial counsel – counsel was ineffective in thoroughly cross examining the co-defendants.
- (e) Ineffective assistance of counsel – counsel was ineffective for failing to advise the Applicant to testify and failing to present evidence

At the hearing, Applicant proceeded on the grounds of ineffective assistance of counsel raised in the amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record, and further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. This Court finds the testimony of the prosecutor and trial counsel credible and should be afforded great weight, while also finding Applicant's testimony lacks credibility on the critical facts and allegations. Set forth below are the relevant findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-80.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his application and establishing he is entitled to relief. *Goins v. State*, 397 S.C. 573, 726 S.E.2d 1, 3 (2012). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v.*

Washington, 466 U.S. 668, 686 (1984).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, counsel's performance is measured by its reasonableness under professional norms. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 446 U.S. at 688). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Moreover, where counsel articulates valid reasons for choosing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992); *see also Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding where counsel articulates a valid strategy, it is measured under an objective standard of reasonableness).

Second, the applicant must demonstrate prejudice and show there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596. A reasonable probability is one sufficient to undermine confidence in the outcome of the trial. *Id.* at 331, 642 S.E.2d at 596. When a conviction is challenged, "the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695. Importantly, overwhelming evidence of guilt negates any claim counsel's deficient performance could have reasonably affected the result of applicant's trial to the level of required prejudice. *Harris v. State*, 377 S.C. 66, 79-80, 659 S.E.2d 140, 147 (2008).

After careful review of the record and testimony presented at the evidentiary hearing, and

based on the standard above, this Court denies and dismisses with prejudice the application for relief. The Court finds, as to all claims of ineffective assistance of counsel raised by Applicant, counsel had adequate and proper strategic grounds upon which to base his decisions. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (holding courts presume counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case). Counsel's performance was not deficient, there was no resulting prejudice to Applicant, and Applicant failed to carry his burden. Below are the findings related to each of the allegations raised in the PCR application:

Failure to Move for Suppression of the Jail Phone Calls Prior to Trial

Applicant first argues trial counsel was ineffective for failure to move to suppress the jail phone call evidence prior to trial in accordance with S.C. Code Ann. § 17-30-10, et. seq, or, the South Carolina Homeland Security Act (Wiretap Act), which generally prohibits the interception of communications. The phone calls in question were either made by Applicant while he was incarcerated or received by him prior to his incarceration from his co-defendants Meon Miller and Tasha Williams. (Tr. p. 80.) Trial counsel argued the calls were intercepted by the Lexington County Sheriff's Department in violation of Applicant's Fourth Amendment rights under the United States Constitution, the South Carolina Constitution, and the state Wiretap Act. (Tr. p. 80.)

The State argued the Wiretap Act required the motion to suppress to be made before a panel of judges of the South Carolina Court of Appeals. (Tr. p. 82.) In response, counsel argued the motion to suppress was still viable pursuant to his United States and South Carolina Constitutional claims. (Tr. p. 83.) Counsel argued the phone calls were an invasion of Applicant's right to privacy because he was not aware the calls were being recorded. (Tr. p. 83-

84.) The trial court found the calls admissible, noting that Applicant and the other were warned at the beginning of the calls they were being recorded and therefore Applicant waived any right to privacy in the conversations. (Tr. p. 86-87.)

At the PCR hearing, Cook testified he thought counsel would file a motion to suppress the jail calls, so he did not spend much time reviewing the calls with his co-defendants. (T. p. 14.) Cook said he believed the motion should have been made before a panel of judges, not the trial court. (T. p. 14.) Cook recalled trial counsel attempted to have the phone records suppressed on constitutional grounds. (T. pp. 27-28.)

Counsel testified he reviewed the discovery with Cook, and he specifically remembered bringing his laptop inside the dorm at the jail so they could listen to the jail phone calls. (T. p. 47.) Counsel testified he tried to get the jail phone calls suppressed based upon a particular statute and also based on constitutional grounds. (T. p. 48.) Counsel claimed Cook did not consent to the recording of the phone calls. Counsel said he argued that because Cook did not initially answer the phone during some of the calls, Cook did not hear the warning from the detention center that the calls were being recorded. (T. p. 48.) On Cross-examination, counsel said he did not move to suppress the records before an appellate panel, in accordance with the State statute because he was unaware that was a requirement under the Wiretap Act. Counsel said he would not have told Cook the calls would have been suppressed, but he would have given him an opinion on the strength of the argument. (T. p. 56.) Although counsel did not specifically recall what he told Cook, he believed he told him they "have a good shot at getting these dismissed but if we don't, this is the way we gonna try to maneuver around them still coming in." (T. p. 56.) Counsel acknowledged the phone calls originated from the jail and that at least one party to the conversation was aware of the recording, even if Cook was not. (T. p. 67.)

This Court finds Applicant suffered no prejudice from counsel's failure to move to suppress the jail phone calls prior to trial in accordance with the Wiretap Act, because the Act is inapplicable to the jail phone calls at issue. S.C. Code § 17-30-30 says:

(B) It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

S.C. Code Ann. § 17-30-30. The testimony was without dispute that the phone calls were made from the jail and that the party initiating the phone call was informed the calls were being recorded. Accordingly, regardless of whether Applicant heard the recorded warning at the beginning of one of the calls, the other participant was aware and consented to the recording. Moreover, the record reflects trial counsel attempted to suppress the phone calls by making a Constitutional argument against their admission, but was ultimately unsuccessful because the trial court found Applicant had no expectation of privacy in the recorded calls.

This Court finds this claim of ineffective assistance of counsel is without merit. Applicant cannot demonstrate prejudice where trial counsel attempted to suppress the phone calls, argued alternative reasons for suppression, but failed in his efforts because the calls were properly admissible. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (holding to establish prejudice, an applicant must demonstrate the result of the proceeding would have been different but for counsel's errors). Therefore, this Court finds Applicant failed to meet his burden of proof and this allegation must be denied and dismissed.

Failure to Preserve the Objection to the Co-Defendant's Changing Statement

Applicant next alleges trial counsel was ineffective for failing to preserve his objection to Meon Miller's confession to the shooting from being admitted at trial. It is uncontested that number items of evidence, records, statements of witnesses and co-defendants, telephone

records, and other items were revealed by the State to the defense. During pretrial motions, on April 8, 2013, trial counsel filed a motion for disclosure of information from the prosecution including notes, statements, or changes from witnesses that may be useful for impeachment. (Tr. 64-65.)

Assistant Deputy Attorney General Heather Weiss responded that the State had turned over everything that had come into its possession. (Tr. 65.) As to any information from witnesses and co-defendants in response to the disclosure motion, the prosecutor stated they had turned over notes they had received from the co-defendant's attorneys. (Tr. 65-66.) Trial counsel then asked if any witnesses gave statements verbally contradicting their earlier statements. The prosecutor indicated there were no changes she was aware of. (Tr. 66.) After a break, the prosecutor brought to the court's attention that Miller had changed his testimony from witnessing Angelo Tucker shoot Jennings to describing that Miller himself had shot Jennings. (Tr. 133-145.) This new information varied from the September 15, 2011 statement of Meon Miller that defense counsel had been provided wherein he denied shooting and placed the blame on Tucker.

Trial counsel claimed the statement should be suppressed under Rule 5 and the U.S. Constitution because it changed his strategy. He claimed his strategy was that Meon Miller was clearly the triggerman from the evidence and that his statement in 2011 to the contrary revealed he was not a credible person. Counsel argued that Miller's admission made him more credible than less credible and therefore hurt the defense. Counsel complained that learning this information moments before the opening state changed the premise of his defense. (Tr. 133.)

The prosecution stated that they had just talked with Miller on March 29 when he revised his role to be the triggerman. She noted that Miller still asserted both (he and Tucker) were involved, but that he did the shooting. Assistant Attorney General Weiss stated under the hand

of one hand of all theory, it did not matter to the State whether Miller or Tucker was the triggerman because both were there and involved in the crime when Jennings was shot. (Tr. 133.) Further, Miller's statement now is essentially "I shot him, but I didn't mean to kill him." (Tr. p. 133-p. 134, l. 7.) The State contended that this new information could not change the defense.

Judge Alford agreed that Meon Miller's new version should have been given to the defense sooner than the day of trial since it was made approximately eight days previously. (Tr. 136-39.) Judge Alford stated Miller has now given different versions and his credibility is still at issue. (Tr. p. 138, ll. 9-15.) Judge Alford stated that since it was a surprise today, he would recess until the next day to give him time to work on his defense. (Tr. p. 138, ll. 16-21.) Judge Alford noted that he did not think the change made much difference at all, but will give him overnight to address it. (Tr. 138-19.)

When they returned the next day, the attorneys confirmed that they had met and discussed the versions of the oral statements and the inconsistencies with Miller and Matthews earlier statements. (Tr. 171-183.) In addition, Assistant Attorney General Cote advised the court that the additional cell phone tower information had just been made available to them and they provided it to the defense. (Tr. 184.) Further, the defense also stated that he was satisfied with the disclosure he had received about Tasha Matthews. (Tr. 184-88.) Later during Miller's testimony, counsel cross-examined Miller on his September 15, 2011 four page statement and the inconsistencies with his present testimony. (Tr. p. 525, p. 535, pp. 574-575, p. 584.) He said it was a lie in the statement when he said that the gun was in Tucker's hand when it went off and that he saw Tucker shot Mr. Jennings. (Tr. p. 535, l. 5-13; p. 595, l. 10-25.) As Miller stated to defense counsel concerning the September 2011 statement: "some of it's the truth, but it's a

lot of lies in it." (Tr. p. 537, l. 16-17.) He further stated he was lying in September 2011, because he was trying to get home. No objection was made to the testimony about the shooting by Miller.

At the PCR hearing, both prosecutor Weiss and trial counsel testified about this issue. Weiss said the State's theory of the case was that Cook was the mastermind of the robbery. Cook managed a McDonald's and devised a plan to have his young cousin surveil that McDonalds and wait for Cook to send out an employee to take out the trash. Miller would pretend to rob them victim, escort him back inside, then demand Cook give him the money from the night's sales. (T. p. 32.) From the statements given to police, the prosecution knew Tucker and Miller approached the victim, presented the weapon, and then the victim fought back. One of the men fired the gun at the victim and it ultimately killed him. (T. p. 33.) Miller and Tucker both admitted being present and part of the robbery plan, but each indicated the other man shot the victim. (T. p. 33.) Weiss said it did not matter to her which one of the men actually shot the weapon, because all three men were involved in the crime. (T. p. 34.) Weiss said she suspected Miller was the shooter because his clothes tested positive for gunshot residue, and he was the younger, more impressionable of the two men. (T. p. 34.)

Weiss testified that right before trial, when they were preparing Miller to testify, Miller finally admitted to being the one who shot the gun. Weiss said she was not surprised or phased by this admission, so she did not think much of it. She said she did notify trial counsel of the change of story at the beginning of the trial. (T. p. 35.) Weiss said when counsel objected and argued the change was crucial to the defense, it surprised her because her understanding of their defense was that Cook had nothing to do with the robbery. Weiss testified the trial court continued the case overnight to allow the defense an extra day to determine how the change

affected their trial strategy. (T. p. 35.) Weiss said she made her notes from the interview available to trial counsel to review, but there was no written statement from Miller that she could have turned over to the defense. (T. p. 35.)

Counsel also said he attempted to get Miller's statement suppressed because the foundation of the defense's case was that Miller was a liar and the only link between Cook's involvement and the crime was Miller's claim Cook planned it. (T. p. 49.) Counsel argued if Miller were lying about being the shooter, then he was lying about Cook's involvement. (T. p. 49.) Miller's changing story now made him look more truthful. (T. p. 50.) Counsel said he did not believe the trial court would dismiss the charges or order a new trial. (T. p. 50.)

Rule 5(a)(1)(C), SCRCrimP, provides for the disclosure of documents and other tangible items that are in the possession of the prosecution and are intended for use by the prosecution during its case in chief or are material to the defense. In addition, Rule 5 (a) (2) says the disclosure rule does not authorize discovery of internal prosecution documents made by the attorney or of statements made by prosecution witnesses or prospective prosecution witnesses. The Rule also allows that "the court may upon a sufficient showing require the production of any statement of any prospective witness prior to the time such witness testifies." Rule 5 (c) sets forth the continuing duty to disclose and recognizes that the disclosure to the other party should be "promptly" done concerning the existence of other material. The definition of "material" in Rule 5 has been found to be the same as in the *Brady*¹ line of cases. *State v. Moses*, 390 S.C. 502, 516, 702 S.E.2d 395, 402 (Ct. App. 2010). "Evidence is material 'only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *State v. Frazier*, 394 S.C. 213, 223-224, 715 S.E.2d

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

650, 655 (Ct.App. 2011) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

The State proceeded to trial on the theory of accomplice liability. The defense's strategy was to show the co-defendants were not credible witnesses. As the trial court determined, Applicant has not shown he was entitled to the disclosure of Miller's admission he was holding the weapon when it fired because it would not have changed the result of the proceeding. Further, Applicant has failed to show counsel was deficient in any manner. Counsel attempted to have the testimony of Meon Miller suppressed, but was unsuccessful. The trial court did not believe the defense was harmed by the changing statement because the co-defendant's credibility was still at issue, but out of an abundance of caution, afforded Applicant time to review the statement and develop a new trial strategy, if necessary. Applicant has not shown how he was prejudiced by counsel's attempts to challenge the changing statement at trial or by counsel's failure to properly preserve the issue for appeal.

In determining whether a PCR applicant has established prejudice, the PCR court does not act as a finder of fact and substitute its judgment for that of the trial court. Rather, the PCR court must view the trial court's ruling through the same lens that would be applied on appeal, which here requires giving appropriate deference to the trial court's findings. *See State v. Khingratsaiphon*, 352 S.C. 62, 70, 572 S.E.2d 456, 459-60 (2002) (explaining that on appeal from a motion to suppress, an appellate court will only reverse the trial court if there is clear error, and will affirm if there is any evidence to support the ruling). The proper inquiry for determining prejudice in this case is whether there is evidence in the record to support the trial court's finding Applicant was not prejudiced from the changing statement. *Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018). If so, an appellate court would necessarily have affirmed the trial court's denial of the motion to suppress. Thus, because there is evidence in the

record to support the trial court's ruling, Applicant cannot show prejudice.

Failure to Object to Character Evidence

Applicant alleges counsel was ineffective when he failed to object to the admission of irrelevant information during the testimony of Tasha Mathews that he claims was prejudicial to his case. At trial, Mathews testified Applicant would sell marijuana as an additional source of income. (Tr. p. 272.) Mathews also testified she believed the men rode with her to pick up Applicant because they were likely selling drugs to someone. (Tr. p. 297.) Counsel did not object.

At the evidentiary hearing, prosecutor Weiss explained that during one of the jail phone calls, Cook can be heard instructing Mathews to say Miller and Tucker rode out to Batesburg to conduct a drug deal. (T. p. 39.) Counsel said Tasha Matthews' testimony was problematic for the defense because she testified that during her calls to Cook on the way to the McDonalds that night, Cook was agitated and only really cared about the timing of their arrival. (T. p.51.) Counsel said the number of phone calls between Matthews and Cook did not matter as much as the substance of the calls. (T. p. 51.) Counsel said that although a lawyer ordinarily would not want the jury to think their client is a drug dealer, in this case, he needed an explanation "as to why these two other individuals are riding all the way to Batesburg with your client's girlfriend just to pick him up." (T. p. 52.) Counsel said the strategy was to convince the jury Meon Miller was there to conduct a drug deal. (T. p. 52.) Further, Counsel said that although the drug references were negative character evidence, the references to drug sales helped the case because it help cast doubt on the State's theory of motive – that Cook was in financial trouble. (T. p. 64.) As to whether counsel should have objected to Mathews testimony the drugs in the car belonged to Cook and that she saw him smoking marijuana the day before, counsel said it was a judgment

call not to object because he did not believe it helped the State's case at all. (T. p. 64.)

Counsel articulated a valid reason for pursuing a trial strategy in which testimony was admitted concerning his client's involvement in drug sales. Counsel did not object to Mathews statements Applicant sold drugs because it provided a reason the men would accompany Mathews to Batesburg. The drug deal theory also explained why Applicant was agitated during his calls to Mathews and concerned about the timing of their arrival. Given the evidence against Applicant, Counsel's strategy was reasonable under the circumstances. Applicant has not overcome the presumption of effective assistance of counsel. He has shown neither deficiency on Counsel's part, nor prejudice from Counsel's election not to object to the testimony.

Failure to Cross-Examine Co-Defendants

Applicant alleges counsel was ineffective in thoroughly cross-examining his co-defendants. Applicant has not explained with specificity how Counsel was deficient in his cross-examination of the co-defendants, nor has he provided this Court with any testimony from the co-defendants to substantiate his claim.

At the evidentiary hearing, PCR Counsel explained Applicant previously asked her to contact his co-defendants, who might testify at the evidentiary hearing, but she was unable to reach the men. (T. p. 5.) The Court allowed Applicant to supplement the record following the evidentiary hearing in the event her discussions with the co-defendants provided relevant testimony. (T. p. 8.) By letter of March 9, 2018, Applicant informed this Court he would not present any further witnesses or evidence in this matter.

Applicant has failed to show how Counsel was ineffective in his cross-examination of his co-defendants. *See, e.g., Fugate v. Head*, 261 F.3d 1206, 1219 (11th Cir. 2001) ("The decision as to whether to cross-examine a witness is a tactical one well within the discretion of a defense

attorney.... Absent a showing of a single specific instance where cross-examination arguably could have affected the outcome of either the guilt or sentencing phase of the trial, a[n] [applicant] is unable to show prejudice necessary to satisfy the second prong of Strickland”) (citations and internal quotation marks omitted); *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (“the Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish”); *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”).

The record reflects Counsel thoroughly cross-examined Applicant’s co-defendants. This Court finds that Counsel’s strategic decisions of how to cross-examine witnesses were proper and reasonable. Furthermore, Applicant has failed to show exactly what information should have been elicited if the witnesses were properly cross-examined. “The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.” *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). This Court cannot speculate as to what testimony could have been elicited upon a different strategy of cross-examination, and thus Applicant cannot meet his burden of proving prejudice.

Because Applicant has failed to meet either prong of the *Strickland* test, this allegation must be denied and dismissed with prejudice.

Failure to Advise Applicant to Testify or Present Evidence

Applicant alleges counsel was ineffective for advising him not to testify or present evidence. At the evidentiary hearing, Applicant said he intended to testify at his trial, but the

State's disclosure of Miller's admission "threw [the plan to testify] out the door. (PCR T. p. 17) Counsel recalled Applicant wanted to testify at the beginning of the trial, but did not recall why Applicant changed his mind. (PCR T. pp. 53-54.) Counsel said he would have given Applicant his opinion of whether he should testify, but would not have forced him to decide one way or the other. (PCR T. p. 54.)

The testimony at the hearing concerning counsel's advice to testify does not support Applicant's contention Counsel was ineffective for advising him not to testify or present evidence. Applicant has failed to show deficiency or prejudice with respect to this allegation. The trial judge fully advised Applicant of his right to testify at trial. (Tr. pp. 926-927.) Applicant initially indicated he wanted to testify, then appeared to change his mind during a break. (Tr. pp. 928-929.) The record indicates Applicant made a choice, of his own free will and volition, after having been fully advised of his rights and ramifications of testifying or, in the alternative, not testifying. Applicant ultimately chose not to testify. He has not met his burden of showing Counsel was deficient in his advice to Applicant or that he was prejudiced from his decision not to testify. Accordingly, with respect to this allegation, it is denied and dismissed.

III. ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

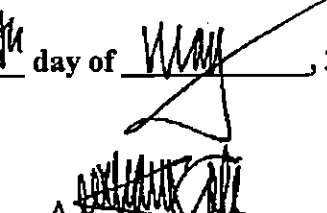
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

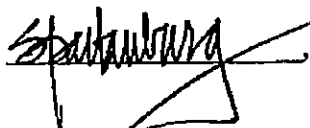
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9th day of WAM, 2020.


J. DERHAM COBB
Presiding Judge
Eleventh Judicial Circuit

 South Carolina

WITNESSES

Batesburg Leesville Police Department

Chief Wallace Oswald

Law Enforcement Case #:

AGO

ARREST WARRANT NUMBER

1022679

ACTION OF GRAND JURY**TRUE BILL**

Foreperson of Grand Jury

Date: June 16, 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS3201505

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2011

THE STATE

vs.

Roderquiz Rozelle Cook

CDR #: 0026

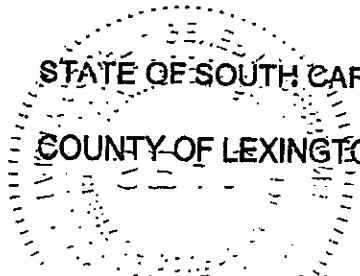
Indictment for

ATTEMPTED ARMED ROBBERY

§ 16-11-0330(B)

ALAN WILSON, ATTORNEY GENERAL**A TRUE COPY**

Lex. Co. C.C.C.P., G.S. & F.C.


 STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

 INDICTMENT FOR
 ATTEMPTED ARMED ROBBERY

§ 16-11-0330(B)

At a Court of General Sessions, convened on JUNE 2011, the Grand Jurors of Lexington County present upon their oath:

That **Roderquiz Rozelle Cook** along with Meon Mikeal Deanglius Miller, Angelo Pierce Tucker and Tasha Marie Matthews did in Lexington County, South Carolina on or about October 13, 2010, knowingly and willingly either by action or words, did attempt to commit while armed with a deadly weapon, to wit: a 9 mm hand gun and did attempt to feloniously take from the person or presence of McDonald's at 210 W. Columbia Avenue, Batesburg-Leesville, South Carolina by means of force, threats or intimidation goods or monies being described as follows: U. S. currency, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (B) of the South Carolina Code of Laws, 1976, as amended.

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


 ALAN WILSON (DMS) *by Jme*
 ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Roderquiz Rozelle Cook

AKA:

Race: Sex: M Age: 32DOB: -1981 SS#: Address: Us Highway 21 SCity, State, Zip: Ridgeway, SC 29130DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Robbery / Attempted armed, or allegedly armed, robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3201505A/W#: 1022679Date of Offense: 10/13/2010S.C. Code §: 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Heather Weiss
SolicitorSC Bar# 16700

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 7413Sentence Date: 7/12/11

CLERK OF COURT
 COURT REPORTER
 Tex. Co. C.C.P. & S. & F.O.
 SCCA 217 (03/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
v.	)	VERDICT
	)	2011-GS-32-1505
RODERQUIZ R. COOK,	)	
	)	(Attempted Armed Robbery)
DEFENDANT.	)	
_____	)	

 X We, the Jury, find the Defendant, Roderquiz R. Cook, guilty of Attempted Armed Robbery.

 We, the Jury, find the Defendant, Roderquiz R. Cook, not guilty.

Jashay S. Huffines
Foreperson's signature

April 12, 2013
Lexington, South Carolina

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.O.

WITNESSES

(S) SGT PHILLIP TURNER SR.

ARREST WARRANT NUMBER

Ref:

I-022657

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: 12/10/2017

VERDICT

[Signature]
Foreperson of Petit Jury

Date:

A TRUE COPY
TAX. CO. C.C.C.P., G.S. & F.C.

DOCKET NO. 2012-GS-32- 6042

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2012

THE STATE

vs.

RODERQUIZ ROZELLE COOK

Indictment for

**CONSPIRACY TO COMMIT ARMED
ROBBERY**

SC Code: 16-17-410

CDR Code: 0049

Class 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

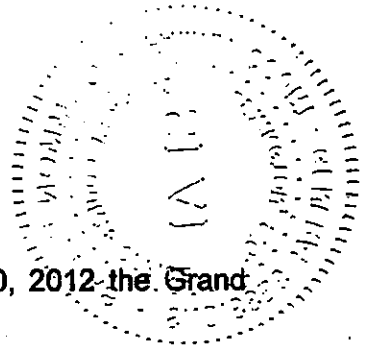
Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT



At a Court of General Sessions, convened on December 10, 2012, the Grand

Jurors of Lexington County present upon their oath:

CONSPIRACY TO COMMIT ARMED ROBBERY

That RODERQUIZ ROZELLE COOK did in Lexington County, on or about October 13, 2010, willfully and unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with others for the purpose of committing Armed Robbery, to wit: the robbery of Willie Jennings and/or McDonald's Restaurant all in violation of §16-17-410, *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.


ALAN WILSON (HSW)

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Roderquiz Rozelle Cook

AKA: _____

Race: _____ Sex: M Age: 32DOB: -1981 SS#: [REDACTED]Address: Us Highway 21 SCity, State, Zip: Ridgeway, SC 29130DL#: [REDACTED] SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3206042A/W#: 2012GS3206042Date of Offense: 10/13/2010S.C. Code § : 16-17-0410CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jonathan S. Wain 16700
Solicitor AC SC Bar# _____

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: _____

Sentence Date: 4/12/12

A TRUE COPY

Clerk of Court Deputy Clerk

Court Reporter: _____

see 4717 (10/28/11) G.S. & F.O.

Lex. Co. C.C.C.T., G.S. & F.O.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 STATE OF SOUTH CAROLINA,)
)
 v.)
)
 RODERQUIZ R. COOK,)
)
 DEFENDANT.)
 _____)

IN THE COURT OF GENERAL SESSIONS

ELEVENTH JUDICIAL CIRCUIT

VERDICT
 2012-GS-32-6042

(Conspiracy to Commit Armed Robbery)

X We, the Jury, find the Defendant, Roderquiz R. Cook, guilty of Conspiracy to Commit Armed Robbery.

_____ We, the Jury, find the Defendant, Roderquiz R. Cook, not guilty.

Joshua D. Hefline
 Foreperson's signature

April 12, 2013
 Lexington, South Carolina

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

WITNESSES

(s) SGT PHILLIP TURNER SR.

ARREST WARRANT NUMBER

I-022658

ACTION DE GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 12/10/2012

VERDICT

Foreperson of Petit Jury

Date:

A TRUE COPY

Lex. Co. C.C.C.R. G.S. & F.C.

DOCKET NO. 2012-GS-32- 6044

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2012

THE STATE

vs.

RODERQUIZ ROZELLE COOK

Indictment for

MURDER

SC Code: 16-3-10, 20

CDR Code: 0116

Class FEL/EXM(V)

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

Defendant

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

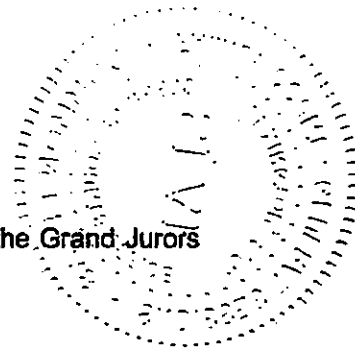
Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT

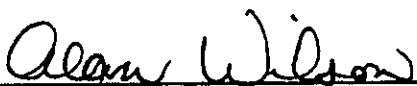


At a Court of General Sessions, convened on DECEMBER 10, 2012, the Grand Jurors
of Lexington County present upon their oath:

MURDER

That RODERQUIZ COOK did in LEXINGTON County on or about
October 13, 2010, feloniously, willfully and with malice aforethought, kill
one WILLIE JENNINGS by means of gunshot wound and that the said
victim died as a proximate result thereof. All in violation of §16-3-10, 20,
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.


ALAN WILSON (HSW)

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Roderquiz Rozelle Cook

AKA: _____

Race: _____ Sex: M Age: 32DOB: -1981 SS#: [REDACTED]Address: Us Highway 21 SCity, State, Zip: Ridgeway, SC 29130

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3206044A/W#: 2012GS3206044Date of Offense: 10/13/2010S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Heather S. Wein 16700
 Solicitor SC Bar# _____

Defendant _____

Attorney for Defendant _____

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforc. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/Deputy Clerk

Court Reporter

Lexington County, S.C. & P.C.

SCCA217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: _____

Sentence Date: 11/12/13

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
STATE OF SOUTH CAROLINA,)
v.)
RODERQUIZ R. COOK,)
DEFENDANT.)
_____)

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

VERDICT
2012-GS-32-6044
(MURDER)

☒ We, the Jury, find the Defendant, Roderquiz R. Cook, guilty of Murder.
☐ We, the Jury, find the Defendant, Roderquiz R. Cook, not guilty.

Jackson S. Huffines
Foreperson's signature

April 12, 2013
Lexington, South Carolina

A TRUE COPY
[Signature]
Lex. Co. C.C.C.R., G.S. & F.C.