

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

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S.C. Supreme Court

DANA MIDDLETON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	37
RETURN	55
POST-CONVICTION RELIEF HEARING TRANSCRIPT	59
ORDER OF DISMISSAL	151
CLERK OF COURT RECORDS	161

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Dana Middleton,) 2008-GS-42-2869;2870
7 Defendant.) February 25 - 26, 2009
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE
12

13
14 A P P E A R A N C E S:

15 ROBERT PATRICK COLER, ESQUIRE
16 SARAH BETH GADUS, ESQUIRE
17 Attorney for the State

18 TANYA JONES, ESQUIRE
19 Attorney for the Defendant
20

21
22 Linda D. Moffitt
23 Circuit Court Reporter
24

INDEX

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2 Guilty plea -- page 3.

3 No sworn testimony; no exhibits entered into evidence.

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1 (Proceedings February 25, 2009)

2 THE COURT: All right. Any matters that need to be
3 addressed before the jury is brought around?

4 MS. JONES: Your Honor --

5 THE COURT: Yes.

6 MS. JONES: -- my client would like to make a motion
7 on his behalf to relieve me as counsel.

8 THE COURT: Okay. You are Dana Middleton.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And Ms. Jones is your lawyer.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you don't want her to represent you in
13 this case?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Do you have some other lawyer
16 that you have discussed your case with who is going to come
17 and represent you?

18 THE DEFENDANT: I'm discussing it now with him, but, I
19 mean, as of right now, to show up as of right now, no, sir.

20 THE COURT: You don't have anybody to come today?

21 THE DEFENDANT: No, sir.

22 THE COURT: Or somebody who is willing to say they're
23 going to represent you?

24 THE DEFENDANT: I have somebody that says he is
25 willing to represent me, but they're not here today.

1 THE COURT: Well, when are they going to get here?

2 THE DEFENDANT: Hopefully -- I mean, I'm still talking
3 to him. Hopefully by, by next week.

4 THE COURT: Oh, no. In other words, they're not going
5 to tell the Court today that they're going to represent
6 you?

7 THE DEFENDANT: No, sir.

8 THE COURT: Who is that behind you?

9 THE DEFENDANT'S MOTHER: My name Sharon Mitchell
10 (sic.) I have an attorney, Mr. Michael Brown. He's in
11 route. I just got off the phone with him.

12 THE COURT: He is coming over here now?

13 THE DEFENDANT'S MOTHER: Yes, sir.

14 THE COURT: All right. Well, we'll wait a few minutes
15 until he gets here. You say he is on the way? I can't
16 wait too long.

17 THE DEFENDANT'S MOTHER: Yes, sir. He said he's about
18 20 or 25 minutes, said he is coming out of Anderson.

19 THE COURT: Well, have you discussed with him
20 representing your son?

21 THE DEFENDANT'S MOTHER: Yes, sir.

22 THE COURT: He is going to represent your son?

23 THE DEFENDANT'S MOTHER: Yes, sir.

24 THE COURT: All right. Well, we'll wait until he gets
25 here.

1 Take Mr. Middleton back to the holding cell.

2 (Whereupon, a recess was taken at which time Attorney
3 Michael Brown appeared.)

4 THE COURT: All right. Mr. Middleton, Mr. Brown is
5 here. Have you and he discussed his representation of you?

6 THE DEFENDANT: Say that again, sir.

7 THE COURT: Do you know Mr. Brown?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: He's here today. Have you seen him?

10 THE DEFENDANT: Not yet, sir.

11 THE COURT: You haven't seen him? Well, turn around
12 and look. There is he right there. Have you and he
13 discussed his representation of you?

14 THE DEFENDANT: No, sir.

15 THE COURT: No? I thought you said you talked to him
16 about it.

17 THE DEFENDANT: My mother has.

18 THE COURT: Oh, she did.

19 Mr. Brown, are you going to be assuming the
20 representation of Mr. Middleton?

21 MR. BROWN: No, Your Honor.

22 THE COURT: Okay. He says he's not going to be
23 representing you.

24 Thank you, Mr. Brown.

25 (Whereupon, Mr. Brown was excused.)

1 THE COURT: All right. Now, the issue then becomes do
2 you want Ms. Jones to represent you or not.

3 THE DEFENDANT: No.

4 THE COURT: You don't? So you're going to represent
5 yourself?

6 THE DEFENDANT: No, sir.

7 THE COURT: Well, who is going to be your lawyer then?

8 THE DEFENDANT: Get appointed. Get a new lawyer.

9 THE COURT: You misunderstand. There's already been
10 one appointed for you. That's Ms. Jones. She was
11 appointed to represent you.

12 You can hire anybody you want to. You told me you
13 were going to hire Mr. Brown. He says not. So that choice
14 is gone. So it's either Ms. Jones or it's Mr. Middleton.

15 THE DEFENDANT: Ms. Jones.

16 THE COURT: Sir?

17 THE DEFENDANT: Ms. Jones.

18 THE COURT: Okay. Have a seat.

19 Bring the jury around, please.

20 (The following takes place in the presence of the jury
21 venire.)

22 THE COURT: Good afternoon, ladies and gentlemen.

23 We are ready to begin with jury selection in the next
24 case that's going to require some of your participation.

25 And the title of that case is the State vs. Dana Middleton.

1 Mr. Middleton has been charged with two separate and
2 distinct offenses arising out of one particular event or
3 course of events which the state alleges occurred back on
4 August the 24th of 2007.

5 By way of two separate indictments the state is
6 alleging that Mr. Middleton did here in Spartanburg County
7 on that date while armed with a deadly weapon take, steal
8 and carry away from the person or presence of Earl Lee
9 Mason by the use of force and/or intimidation a certain sum
10 of money.

11 They also allege that on that same date that he did
12 commit a violent injury upon the person of Earl Lee Mason
13 by stabbing Mr. Mason requiring emergency medical
14 treatment; and he did those acts with the intent to kill
15 Mr. Mason.

16 As to those allegations and as to each of those
17 charges the defendant has entered a plea of not guilty.
18 And, as you are aware, that plea of not guilty places upon
19 the state the burden of proving the allegations contained
20 in each indictment and the burden of proving the defendant
21 guilty of the crimes they allege against him.

22 So we're going to be selecting 13 of you to
23 participate in the trial, to consider the evidence, decide
24 the facts, apply the law and arrive at a fair and just
25 decision.

1 I'm going to ask you some questions. The questions of
2 course are designed to find out if there's some reason why
3 any one of you jurors should not be selected to participate
4 in the trial of this particular case.

5 So as these questions are asked if you need to respond
6 to them, I'm going to ask that you please stand. And I
7 will address those matters with you individually as the
8 need may arise.

9 Now, first of all, as I told you, the defendant, the
10 person who is accused of each of these crimes, is Dana
11 Middleton.

12 Mr. Middleton, if you will, please stand and face the
13 jury panel.

14 (Whereupon, the defendant stood.)

15 THE COURT: Thank you. Be seated.

16 Seated with Mr. Middleton at the defense table is
17 Tanya Jones, his lawyer. She'll be assisting him in the
18 trial of this case.

19 The person who is alleged to have been the victim of
20 each of these crimes is Earl Lee Mason.

21 Mr. Mason, if you will, please stand.

22 (Whereupon, the victim stood.)

23 THE COURT: Mr. Mason is in the back.

24 Let me -- Mr. Mason, if you will, let me ask you to
25 come down here and have a seat in that chair over there

1 next to Mr. Coler so the jury can easily see who you are.

2 All right. Now, if you will, just stand and face the
3 jury panel so they can see who you are.

4 (Whereupon, the victim stood.)

5 THE COURT: Okay. Thank you. You may be seated.

6 Presenting the case on behalf of the state are Sarah
7 Beth Gadus and Bob Coler, both assistant circuit solicitors
8 for the 7th Judicial Circuit.

9 Potential witnesses to be called in the case include
10 Dale Arterburn from the Greer Police Department; Phillip
11 Dodd from the Greer Police Department; Tim Davis,
12 Spartanburg County Sheriff's Department; Sean Nix,
13 Spartanburg County Sheriff's Department; Scott Broome,
14 Greer Police Department; Ed Ballenger; Tonya Pace.

15 Ms. Pace is in the back.

16 Ms. Pace, let me ask you to step down here. Just
17 stand there next to Ms. Gadus at the table so the jury can
18 see who you are without having to strain themselves.

19 (Whereupon, the witness stood.)

20 THE COURT: Okay. Thank you. You can take your seat.

21 Gregory Hendrix, Emergency Medical Services; and Gary
22 Baggett, physician, Spartanburg Regional Medical Center.

23 Also, Orney Mack, a resident of Greer, South Carolina.

24 And what's Officer Jackson's first name? Who knows

25 Officer Jackson from the Greer Police Department?

1 MS. GADUS: Shandra, judge.

2 THE COURT: Shandra Jackson, Greer Police Department.

3 Does any member of the jury panel know any person who
4 has just been introduced to you and identified for your
5 benefit? If so, please stand.

6 Yes, sir.

7 JUROR NO. 114: I know Scott Broome.

8 THE COURT: And how do you know Scott Broome?

9 JUROR NO. 114: Just through some of his family and a
10 trip we made together.

11 THE COURT: Okay. And your name and number, please,
12 sir.

13 JUROR NO. 114: 114 Douglas Oliver.

14 THE COURT: And you live in Greer?

15 JUROR NO. 114: I live in Lyman which is close to
16 Greer.

17 THE COURT: Would that connection that you have in any
18 way influence your judgment in this case?

19 JUROR NO. 114: I don't believe it would.

20 THE COURT: All right. You could put that aside and
21 not allow it to affect your judgment?

22 JUROR NO. 114: I don't think it would, no.

23 THE COURT: Well, what I'm saying is could you put
24 aside that connection and not permit it to influence your
25 decision.

1 JUROR NO. 114: Well, I think, yes.

2 THE COURT: Okay. And your number was 114?

3 JUROR NO. 114: Yes, sir.

4 THE COURT: All right. Thank you. Be seated.

5 Anyone else?

6 (No response.)

7 THE COURT: Is there anything about the nature of the

8 case, that is what the allegations are, that would prevent

9 any juror from being able to be fair and impartial if you

10 were called upon to serve in the case? If so, please

11 stand.

12 (No response.)

13 THE COURT: Anyone think you've heard something about

14 the case? Do you think you know something about it that

15 you gleaned from some other source? If so, please stand.

16 (No response.)

17 THE COURT: Does any member of the jury panel belong

18 to or do you contribute time or money to any type of group

19 that might be characterized as a law enforcement support

20 type of organization or a victims' rights organization?

21 And those might include Mothers Against Drunk Drivers,

22 Citizens Against Violent Crime, the troopers association,

23 the honorary sheriff's association, the fraternal order of

24 police, the South Carolina Law Enforcement Officers

25 Association, any type of neighborhood watch or any other

1 type of similar organization.

2 I need to know if you are a member of such
3 organizations or you contribute time or you contribute
4 money to any of those types of organizations. If so,
5 please stand.

6 All right. And give me your name and your number
7 please, and then answer the question for me.

8 JUROR NO. 65: I am Juror No. 64 (sic), Revonda
9 Hamnett. I am a member of Mothers Against Drunk Driving.

10 THE COURT: All right. Thank you.

11 Yes, ma'am.

12 JUROR NO. 139: Juror 139, Deborah Roberts.
13 Neighborhood watch.

14 THE COURT: Thank you, ma'am.

15 Yes, ma'am.

16 JUROR NO. 9: Susan Berry, No. 9. I'm a contributor
17 to MADD, Mothers Against Drunk Driving.

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

19 Has any member of the jury panel ever appeared in
20 court as a witness for the prosecution or for a defendant
21 in the trial of a criminal case? Anyone ever been called
22 to appear as a witness in the trial of a criminal case in
23 circuit court? If so, please stand.

24 All right. Your name please, sir.

25 JUROR NO. 85: Eighty-five, Leslie Kirk.

1 THE COURT: All right. And were you called as a
2 witness for the state or for a defendant?

3 JUROR NO. 85: For a defendant.

4 THE COURT: All right. And how long ago was that?

5 JUROR NO. 85: More than 30 years.

6 THE COURT: All right. And was that in Spartanburg or
7 somewhere else?

8 JUROR NO. 85: It was in Anderson County.

9 THE COURT: Okay. Thank you. Be seated.

10 Has any member of the jury panel already made up your
11 mind or formed an opinion as to what you think the ultimate
12 decision in this case ought to be based upon what you've
13 heard up to this point or any other consideration? If so,
14 please stand.

15 (No response.)

16 THE COURT: Anyone know of any reason whatsoever why
17 you could not be fair and impartial if you were called upon
18 to serve as a juror in this case? If so, please stand.

19 (No response.)

20 THE COURT: Any other questions requested by the
21 state?

22 MS. GADUS: None, Your Honor.

23 THE COURT: By the defendant?

24 MS. JONES: No, sir.

25 THE COURT: Let me ask Juror No. 174. That's

1 Mr. Young.

2 Mr. Young, do you have to take your mother to the
3 doctor tomorrow?

4 JUROR NO. 174: My brother is going to take her.

5 THE COURT: Okay. So you are available tomorrow?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Thank you.

8 All right. Draw us a jury, please, ma'am.

9 (Whereupon, a jury was impanelled.)

10 THE COURT: All right. Are there any matters to be
11 addressed regarding jury selection by the state?

12 MS. GADUS: None, Your Honor.

13 THE COURT: The defendant?

14 MS. JONES: No, Your Honor.

15 (Whereupon, the remaining members of the jury venire
16 were excused.)

17 THE COURT: Those jurors who have been selected,
18 you're also going to be excused for the afternoon.

19 I'm going to ask that you report back to a jury room
20 that the bailiff will show you to before you leave. Report
21 back to that jury room at 9:30 in the morning at which time
22 we'll begin with the trial of this case. So report back at
23 9:30 in the morning to a jury room that the bailiff will
24 show you to.

25 If you're not sure how to get back there, be sure you

1 talk with the bailiff. He'll provide you with those
2 instructions before you leave. But please be back in that
3 room at 9:30 in the morning. Have a good evening.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: All right. The Middleton case is in
7 recess until 9:30 in the morning.

8 END OF PROCEEDINGS FEBRUARY 25, 2009

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1 (Proceedings February 26, 2009)

2 THE COURT: All right. You are Dana Middleton.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And Ms. Jones is your lawyer.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And how long has Ms. Jones been
7 representing you?

8 THE DEFENDANT: Since we were here, since this has
9 been waived up.

10 THE COURT: And how long has that been?

11 THE DEFENDANT: Since June.

12 THE COURT: June of 2008?

13 THE DEFENDANT: Of seven.

14 THE COURT: June of 2007?

15 THE DEFENDANT: June of '08. You're right.

16 MS. JONES: It's '08, Your Honor.

17 THE COURT: And during the time that Ms. Jones has
18 been representing you have you had plenty of time and
19 opportunity to talk with her about your cases, as well as
20 your decision apparently to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And did she go over each of these
23 indictments with you and let you know what the state claims
24 that you did?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did she explain to you what would have to
2 be proven in court before you could be convicted or found
3 guilty of attempted armed robbery and assault and battery
4 with intent to kill?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And did she explain to you the potential
7 sentences that could be imposed if you were found guilty of
8 attempted armed robbery and assault and battery with intent
9 to kill?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And did you tell her everything you know
12 about these allegations and the facts that have been
13 alleged against you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did you and she discuss whether or not you
16 have some defense to either one of these charges? And a
17 defense being some reason why you should not be found
18 guilty of either.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you know of any reason why you
21 should not be found guilty?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you understand what a defense is?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And do you know of any defense you have to

1 either of these charges?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: What is it?

4 THE DEFENDANT: I mean, a forced statement, for one
5 person, and I mean...

6 THE COURT: Well, again, a defense is some reason why
7 you should not be found guilty.

8 For instance, let's say in an armed robbery case. In
9 order to be guilty of armed robbery you have to commit a
10 robbery while armed with a deadly weapon.

11 THE DEFENDANT: Uh-huh.

12 THE COURT: And if you didn't have a deadly weapon, if
13 you didn't use any type of a weapon in the commission of an
14 armed robbery, then it couldn't be armed robbery. And so
15 your defense in that case would be that it's not armed
16 robbery because I had no weapon.

17 If you didn't commit any robbery at all because you
18 were in San Francisco when they claim you committed this
19 crime, then you might have an alibi defense, meaning that
20 you weren't where they say you were at the time the crime
21 was committed, you were at some other place so therefore
22 you couldn't have committed the crime. That's a defense.
23 Those are reasons why you should not be found guilty.

24 So what I'm trying to find out is do you have any
25 reason whatsoever why you should not be found guilty of

1 either of these charges.

2 THE DEFENDANT: No, sir.

3 THE COURT: Did Ms. Jones explain to you that each of
4 these crimes are classified under the law as violent
5 offenses?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand the significance of a
8 classification or a crime being classified as violent?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And what do you understand the
11 significance to be?

12 THE DEFENDANT: That I be done left the yard.

13 THE COURT: That you do what?

14 THE DEFENDANT: Move. I be done left the yard...

15 THE COURT: You be what?

16 MS. JONES: In level three.

17 THE COURT: Oh, well, that might very well be the
18 case.

19 But what I am saying is legally when a crime is
20 classified as violent, what it means is in the future if
21 you're convicted of any crime that's also classified as a
22 violent crime, then whatever sentence is imposed on that
23 future conviction is a no-parole sentence. Do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you also understand that each of these
2 crimes are classified as most serious offenses?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand the significance of
5 the crime being classified as most serious?

6 THE DEFENDANT: No, sir.

7 THE COURT: Ms. Jones didn't explain that to you, or
8 you just don't recall it?

9 THE DEFENDANT: Don't recall it.

10 THE COURT: All right. Well, each of these crimes are
11 classified as most serious. And they're going to be
12 treated as one crime today, one most serious crime. So
13 they are not going to be stacked against you.

14 But in the future if you are convicted of a crime
15 that's classified as a most serious offense, that means you
16 will have two most serious convictions, separate incidents,
17 separate days. And where you have two convictions for a
18 most serious offense, upon that second conviction you've
19 got to get a life sentence. And that means life without
20 the possibility of parole. There's no chance you'd ever
21 get out of jail.

22 So today these will be treated as one. While there
23 are actually two serious convictions, they're going to be
24 treated as one. So you're not going to be getting a life
25 sentence.

1 But in the future if you're convicted of a most
2 serious crime, you have to get a life sentence. Nothing
3 anybody can do for you. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Now, in this case by way of
6 these indictments the state alleges that on or about
7 August the 24th of 2007 you did attempt to take monies or
8 goods from Earl Lee Mason by the use of force and/or
9 intimidation and while armed with a deadly weapon.
10 Attempted armed robbery carries a sentence of up to 20
11 years in jail.

12 The second indictment charges you with assault and
13 battery with intent to kill. And that indictment alleges
14 that on the same day that you committed the attempted armed
15 robbery that you also committed this crime by committing an
16 unlawful act of violent injury upon the person of Earl Lee
17 Mason by stabbing him and intending to kill him.

18 And what it really requires under the law is that the
19 state prove that you committed those acts maliciously, with
20 malice. It doesn't necessarily require them to prove that
21 you did, in fact, intend to kill him. But it does require
22 that they prove that you committed the acts with malice.

23 Now, did Ms. Jones explain to you what malice is?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. And that this crime also carries a

1 maximum sentence of up to 20 years in jail. And the
2 sentences could be run concurrently, that is running at the
3 same time, or they could be running consecutively, that is
4 you'd have to do one and then you'd begin the next.

5 I understand that there have been some plea
6 negotiations and they've agreed to recommend that the
7 sentences be concurrent. But I get to make that decision.
8 Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So they're just making a recommendation.
11 But I don't have to go along with that.

12 Now, do you understand what you're charged with?

13 THE DEFENDANT: Yes, sir. Assault and battery.

14 THE COURT: Sir?

15 THE DEFENDANT: Assault and battery with intent to
16 kill and attempted armed robbery.

17 THE COURT: Right. And do you understand the
18 potential sentences that might be imposed?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand that you have
21 certain constitutional rights that only you can give up?
22 But you must give them up if you want to plead guilty. But
23 you don't have to plead guilty. It's up to you.

24 So you have a right to remain silent; nobody can make
25 you testify; nobody can require that you make a statement;

1 nobody can make you answer any questions that relate to
2 these charges.

3 In fact, you don't have to answer my questions right
4 now unless you want to plead guilty. You have an absolute
5 right to remain silent and to require the state to come
6 into court with sufficient evidence to establish your guilt
7 to the satisfaction of a jury beyond a reasonable doubt.
8 And you don't have to help the state in their efforts to
9 prove your guilt by you taking the witness stand and
10 testifying or making statements or answering questions that
11 might tend to prove your own guilt.

12 Do you understand your right to remain silent?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you wish to give that right up in
15 order to plead guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you also understand that you have a
18 right to confront the state's witnesses?

19 In other words, you've got a right to require the
20 state to bring each of their witnesses into court. And any
21 person offering testimony or other evidence tending to
22 prove your guilt would have to come into court and take the
23 witness stand and testify in your presence under oath so
24 that you can see who the witnesses are, you could hear what
25 they have to say and your lawyer could examine them, ask

1 them questions about their testimony in order to test their
2 credibility as a witness and the reliability of the
3 information they're providing.

4 Now, when you plead guilty there might be some witness
5 who would testify in your case in court today. And they
6 may tell me something about this case. But they are not
7 going to be placed under oath. They're not going to
8 testify. You're not going to get to examine them. You
9 obviously will get to see them and hear them. But you
10 don't get to test their recollection of any event.

11 When you plead guilty you have to give up your right
12 to confront those witnesses. Do you understand you have
13 that right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you wish to give it up in order to
16 plead guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You also have a right to have a jury trial
19 and have a jury of 12 people determine whether or not
20 you're guilty.

21 And as you well know, 12 jurors make a decision in a
22 case as to whether or not you're guilty. And you have
23 helped select that jury. And those jurors are sitting back
24 in the jury room waiting for us to bring them out if we
25 want to continue with your trial.

1 Now, that's your choice. But if you had that trial
2 with the jury making the decision, before a jury could find
3 you guilty of anything the state claims you committed all
4 12 jurors would have to be convinced of your guilt beyond a
5 reasonable doubt.

6 The burden would be on the prosecutor to present
7 enough evidence to convince them of that fact. And if the
8 jury was not convinced beyond a reasonable doubt of your
9 guilt, then they couldn't find you guilty. It takes all
10 12. All 12 have to be convinced. And all must be in
11 agreement.

12 You can have a jury trial and still enjoy your right
13 to have a lawyer. You can have a jury trial and still
14 enjoy your right to confront the state's witnesses and have
15 a jury make that determination.

16 But you still can remain silent. Nobody can make you
17 take the witness stand even during the trial. So you don't
18 have to say anything unless you want to.

19 Do you understand your right to have that jury
20 determine whether or not you're guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And understanding that right, do you wish
23 to give it up in order to plead guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anybody promised you anything that

1 caused you to make that decision?

2 THE DEFENDANT: No, sir.

3 THE COURT: Now, the state did agree to make a
4 recommendation in your case, didn't they?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And what do you understand the
7 recommendation is that they agreed to make?

8 THE DEFENDANT: Twelve years, sir.

9 THE COURT: Twelve years?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: On each charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And the charges or the sentences are to
14 run concurrently?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And were you promised anything other than
17 that?

18 THE DEFENDANT: No, sir.

19 THE COURT: Has anybody threatened you?

20 THE DEFENDANT: No, sir.

21 THE COURT: Anybody coerced you in any way?

22 THE DEFENDANT: No, sir.

23 THE COURT: Anybody put any pressure on you that made
24 you arrive at your decision to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you pleading guilty freely and
2 voluntarily?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Was it your decision?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you are 17?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How far did you go in school?

9 THE DEFENDANT: I was in the 10th. This year I
10 supposed to be in the 11th.

11 THE COURT: Are you married?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you got any children?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you able to read and write?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand fully what you're doing
18 here today?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you understood all of my questions
21 I've asked you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And have all of your answers been
24 truthful?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And have you understood all of your
2 discussions and conversations with your lawyer?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you need to discuss anything with her
5 now before we continue?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. I'm going to ask the solicitor
8 to tell me about the facts that relate to your case.

9 Now, listen to what she tells me because when she's
10 through I'm going to ask you if you agree with her version
11 of the facts, or you disagree with it. So listen to what
12 she says.

13 MS. GADUS: Thank you, Judge.

14 On August 24th of 2007 law enforcement responded to
15 Mr. Bingo which is located 14137 East Wade Hampton
16 Boulevard, Greer, which is in Spartanburg County. They had
17 responded to a call.

18 The victim, Mr. Earl Mason, who is present with me
19 here this morning had been stabbed and cut in five
20 different places on his body. E. M. S. had responded at
21 the time the initial officer responded to the scene.

22 The victim informed law enforcement that he had been
23 approached by an individual who he later identified in a
24 photo lineup to be the defendant while the victim was
25 seated in his pickup truck located outside the Mr. Bingo

1 while the victim was waiting to pick up his wife from
2 playing at Mr. Bingo.

3 The victim's window was rolled down on his truck. The
4 defendant approached the vehicle. They actually spoke
5 about the winnings at Mr. Bingo. The defendant bummed a
6 cigarette from him and then walked around and then
7 approached the vehicle again with a silver blade in one of
8 his hands which the victim believed to be a box cutter.

9 The defendant then told the victim that he hated to do
10 this but give me your wallet. At that time the victim
11 refused to give him his wallet. And the defendant started
12 cutting him on his arms, hands and legs.

13 The victim was able to get away from the defendant and
14 went inside Mr. Bingo and called for help. 9-1-1
15 responded.

16 That was approximately -- approximately three days
17 later law enforcement showed the victim a photo lineup of
18 the defendant, and he was identified in the photo lineup as
19 the one who cut him and attempted to rob him.

20 THE COURT: All right. Mr. Middleton, you heard what
21 the solicitor told me about the facts that she would offer
22 to prove during the trial of the case.

23 Did you understand what she just told me?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you agree or disagree with her version

1 of those facts?

2 THE DEFENDANT: I agree, sir.

3 THE COURT: Everything she told me is correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And based upon that fact you still want to
6 plead guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you today under the influence of any
9 type of substance that might prevent you from understanding
10 fully what you're doing?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you consumed any alcohol or other
13 intoxicating substance within the past 72 hours?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you ever been treated for any type of
16 substance abuse or addiction?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you ever been treated for any type of
19 mental illness or emotional disturbance?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you suffer from any type of mental
22 illness or emotional disturbance now?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. I will accept your pleas and
25 hear from you and Ms. Jones.

1 MS. JONES: Thank you, Your Honor.

2 Your Honor, we're standing before you on these
3 charges. There is simply no excuse for the charges. And
4 the only thing we can offer at this time is our guilt and
5 our remorse.

6 I talked with Mr. Middleton. And he is -- I've seen
7 him sort of grow up the last couple of days on this charge.
8 He started to be serious and take these charges seriously.
9 And I think part of that was his age.

10 Your Honor, at the time this happened he was 15 years
11 old. He spent a little over a year in D. J. J. He was
12 brought up to Spartanburg County in November.

13 He's currently 17 years old. And we've talked a lot
14 about this is going to be his last chance basically if the
15 judge will go along with the recommendation. The solicitor
16 is giving him another chance.

17 I have gone over that if he's charged again with
18 another serious, most serious, charge like first degree
19 burglary they're going to petition for life without parole
20 and he will spend the rest of his life in prison. We
21 talked a lot about that, Your Honor. He --

22 THE COURT: Well, now. Well, be sure he understands
23 this too.

24 It's not a matter of the state asking. It's required.
25 In other words, the law imposes a life sentence. Whether

1 the state wants to impose it or not, the law requires it.

2 MS. JONES: That is correct, Your Honor.

3 Also, we talked a lot. He is working on his
4 education, Your Honor. He was taking classes in D. J. J.
5 He is only 17, so he obviously doesn't have his diploma
6 yet. But when he gets down to the D. O. T. he's going to
7 be working on his G. E. D. I've informed him that there's
8 classes also at the D. O. C. that he can take advantage of
9 to learn a trade so that when he does get out he can be a
10 productive member of society.

11 He indicated to me that that is something that he will
12 definitely try to take advantage of so that when he does
13 get out he can be a productive member of society and he can
14 go on.

15 He has got his mother here, as well as his uncle.
16 They are seated in the first row. They offer him support.
17 They have been in contact with me as well, and they support
18 Dana and hopefully give him the structure he needs when he
19 gets out after 12 years.

20 We are respectfully requesting Your Honor to accept
21 the recommendation and sentence him to 12 years concurrent.
22 Thank you.

23 THE COURT: All right. Mr. Middleton, you've heard
24 what your lawyer has told me. Do you have anything you
25 want to add to it?

1 THE DEFENDANT: I just want to say I'm truly sorry for
2 the pain he suffered and anything that happened.

3 THE COURT: Do you also understand that the sentence
4 that they've agreed to recommend, which is 12 years, do you
5 understand that's a no-parole sentence?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand the significance of a
8 no-parole sentence?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What do you understand the significance to
11 be?

12 THE DEFENDANT: That I have to do the 12 years.

13 THE COURT: Well, you have to do at least 85 percent
14 of it. You might have to do the whole 12. But you have to
15 do at least 85 percent before you could even be considered
16 for any early release.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you still want to pled guilty under
20 those circumstances?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Mason, I didn't get to ask you, but I
23 will.

24 Do you have anything you want to tell me?

25 THE VICTIM: No, sir, not at this time.

1 THE COURT: But you agree with the version of the
2 facts that the solicitor has presented?

3 THE VICTIM: Yes, sir, yes, I do.

4 THE COURT: And you agree with the recommendation that
5 she has made?

6 THE VICTIM: Yes, sir.

7 THE COURT: Okay.

8 MS. GADUS: Judge --

9 THE COURT: Yes, ma'am.

10 MS. GADUS: -- I do have some pictures -- the defense
11 and I had spoken prior to trial -- that I would like to
12 pass up to Your Honor if you would like to see them.

13 THE COURT: Well, if you want to make them a part of
14 the record, I don't have any problem with that. I don't
15 really need to see them, because if Mr. Mason is in
16 agreement with the recommendation, I think it's a
17 reasonable sentence. And I'm inclined to go along with it.

18 MS. GADUS: Thank you.

19 THE COURT: All right. On Indictments 2008-42-2869
20 and 2870, indictments for attempted armed robbery and
21 assault and battery with intent to kill, and as to each of
22 the indictments the Sentence of the Court is you, Dana
23 Middleton, be confined to the South Carolina Department of
24 Corrections for a period of 12 years.

25 Those sentences are concurrent. And the defendant is

1 to be given credit for any time he is entitled to pursuant
2 to 24-13-40.

3 (Whereupon, the jury was returned and excused after
4 the defendant left the courtroom.)

5 END OF REQUESTED TRANSCRIPT OF RECORD

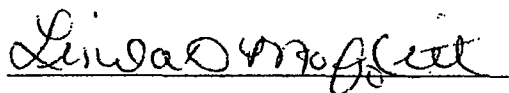
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 25th and 26th days of February 2009.

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

August 13, 2009



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of Spartanburg

Gary Jerome Garrett #1309371
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2009-CP-42-5979

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 Spartanburg County Court House (General Sessions)
2. Name and location of Court which imposed sentence Spartanburg County Court House - 180 Magnolia St. Spbrg 29306
3. Name(s) of co-defendant(s) (if any) Cory Linder and Marlon Bobo
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008GS4201339, 2008GS4201336, 06BS424805
 - (b) 2006BS4204807, 2006GS4204806, 2008GS4201357

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ATTORNEY GENERAL'S OFFICE

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ADMINISTRATIVE INSTRUCTIONS

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(c) 2008GS4201358, 2006A131204810, 2006GS4201809, 2006GS4201808

5. The date upon which sentence was imposed and the terms of the sentence:

(a) February 4th 2009

(b) 10yrs, 20yrs, 30yrs, 30yrs, 30yrs, 30yrs, 30yrs, 30yrs

(c) 30yrs, 30yrs (Concurrent) 30yrs

6. Check whether a finding of guilty was made:

☒ after a plea of guilty (Open)

(b) after a plea of not guilty

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

The Judgment of conviction (Yes)

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The South Carolina Court of Appeals

ii.

iii.

(b) the result in each such Court to which you appealed:

i. Dismissed and Remitted

ii.

iii.

(c) the date of each such result:

i. Dismissed March 24 2009

ii. Remitted April 10 2009

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b)

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Petitioner submits the following grounds to set forth the accusations of Ineffective assistance of counsel. The Defendant states that according to the 6th Amendment right to a speedy trial is such basic part of due process that it applies in state criminal cases by virtue of 14th Amendment. Petitioner claims that his speedy trial rights were violated due to the facts: Defendant filed a self-styled speedy trial motion, and motion for dismissal of indictment according to the state laws of the speedy trial rules. The Defendant claim that he did not submit the paperwork to the court because his attorney told him she would not do it, therefore the client did not notify the court of the information or present it there of. The Client states that the reasons he did not submit this is because he was in ignorance of legal procedures and he thought that during legal matters, the counsel must submit all legal work in relations to the case because he was aware that he could not represent himself, due to the fact there is no sixth Amendment right to hybrid representation. Counsel is rendered ineffective for failing to contemplate the legal process with Defendant merely because the defendant believe's the irrelevant is relevant is no reason to turn the system on it's head and solemnly undermine the actual knowledge of a person who doesn't have the sense to be guided in an area where he (the defendant) himself has no expert. Furthermore, The petitioner states that counsel is ineffective for failing to request a mental competency hearing. Due to the following that defendant is listed as mentally ill and has been diagnosed with ADHD, Learning disability and Emotional Handicapped. The defendant has been receiving mental Health treatment since a child, Therefore counsel should have requested a competency hearing because defendant is listed as mentally ill. Counsel is rendered ineffective because if counsel properly investigated the defendant's files and prior history she would have requested the hearing. The defendant could have been incompetent at the time, even tho defendant may have seem to be understanding the process taking place in court the defendant is mentally ill and therefore cannot process and function mentally on a judicial level even tho he may have been aware of the legal matters, but being in the ignorance of its direct consequence. Defendant states consistently that counsel is ineffective because defendant has a 6th Amendment right to effective assistance of counsel.

Furthermore, the defendant presents grounds on "all the above" and would like to move the court to invalidate his guilty plea on ineffective assistance of counsel and grant the defendant a new trial.

Ineffective assistance of Appellate counsel

The Defender does not know Appellate counsel name, the defendant never received no personal information from this appellate counsel. The Defendant presented a letter to the Chief appellate about these matter but the defendant never received information about his counsel.

This is the evidence which defendant states his grounds.

"Appellate Counsel is ineffective for failing to notify appellate that his appeal had been dismissed and remitted. This was unlawful and prejudicial Defendant of his 6th Amendment right of ineffective assistance of counsel, because the S.C statute of limitations (the General assembly enacted a one year statute of limitations for filing P.C.R actions S.C Code ANN § 17-27-45, 1995 S.C Acts 7) defendant's limitations was deprived because counsel failed to notify defendant. Defendant took matters into his own hands after concerns and worries about the appeal. After Defendant was sentenced he wrote his trial attorney Ms. Price in concern for the appeal. The defendant received a letter to write the court of appeals stating grounds for appeal which he did do without help or assistance from appellate counsel or no transcript from the trial. Defendant states the Appellate counsel is ineffective for the failing. Criminal law 1077.3 - although a defendant has right to counsel on appeal his implicit 6th Amendment right to "represent" himself at trial does not carry over to appeal. U.S.C.A Constitution Amend. 6 Equal Protection and Due process clauses command that an indigent defendant has the right to appointed counsel

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Defendant finds counsel ineffective for these matters according to *State v. Stuckey* 33341C 56 (1978) thus case where the supreme court held that substantive documents filed pro se by person represented by counsel could not be considered. The Appeal matters were submitted by the Defendant with no reasonable help or assistance from the counsel, thus violates defendant's Amendment right to effective assistance of counsel. By the counsel being ineffective thus possibly effected the outcome of this appeal. Where counsel could have asserted and perfected reasonable grounds to perfect the appeal/brief. But due to this ineffective assistance, defendant being in the blind of the law most likely submitted frivolous grounds which would not stand, because there is no right under the S.C. constitution to hybrid representation according to *Foster v. State* 298 S.C. at 307, 379 S.E.2d at 907 *U.S. vs Willis* 773 F.2d 549. The Defendant was also young and inexperienced in the intricacies of criminal procedure, where he finds counsel ineffective for "all three above" stating Criminal Law 1077.3 at the appellate stage, defense counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasures of his client.

Furthermore, all these grounds the defendant base his allegations on, of ineffective assistance of counsel, defendant would like to invalidate his guilty plea to reconsider for a new trial. at last, a defendant has the procedural right to "one fair bite at the apple". That is every defendant has a right to an direct appeal and one P.C. R application.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) that counsel's representation fell below an objective standard of BACK
 - (b) reasonableness and that there is a reasonable probability that but
 - (c) for counsel's errors, the defendant (I) would not have pleaded guilty but would he went to the
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Petitioner States all grounds/claims on the
 - (b) reverse of the next 3 pages Back
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? Yes
 - (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. Direct Appeal
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. South Carolina Court of Appeals
 - ii. Post Office Box 11129
 - iii. Columbia, SC 29211
 - iv. _____

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Counsel is ineffective for providing client with erroneous sentencing advice, which the advice was not within the range of competence demanded of attorneys in criminal cases. Counsel did not meet the full standard of effectiveness by not properly investigating the complexity of clients possible defenses. Due to the erroneous sentencing advice, thus violates defendant's 6th Amendment Right to effective assistance of counsel. Where also defendant rejected the solicitors plea offer to carry on to trial after the plea rejection of 25 years. *Alexander v. State* (Cite as 402 S.E.2d @ 484 SC 1991) where defendant argued that he would have not pled guilty if counsel had not mis-informed him that he would face a potential life sentence if he proceeded to trial, established "prejudice" elements of ineffective assistance of counsel.

According to the Strickland and Hill test the record must support this claim. Defendant supports this claim in relation to the Guilty Plea hearing the day before the trial (2-3-09) thus is where the client respectfully submitted a statement to the court in concern of replacing the counsel after counsel and defendant was not communicating on a proper level according to the case matters. By the client rejecting the plea to proceed to trial, but then entered an open plea of guilt after erroneous advice from the attorney, this era shifted the whole outcome of the trial where the case could have been different in the outcome if defendant proceeded to trial. If the Defendant would have proceeded to trial he could have requested a jury charge on a lesser offense a might have been convicted of the lesser offense due to the era's in the case with the other two suspects who were not arrested but was involve in the case. The outcome of this client case could have been different by, if the client accepted the plea of 25 he would have a lesser sentence than what the court handed down to the defendant which is 30yrs after entering an open plea on 10 charges. A defendants understanding of his plea includes the comprehension of the scope of the possibilities that might be issued in the case.

Ray v. State 401 S.E.2d 151 (1991 S.C.) this case where clients defense counsel is ineffective for advising defendant he would be subject to a life sentence with out parole under the Omnibus Act if he went to trial and was convicted of the offenses. This case relates to the Defendant Mr. Garretts case where the same era's applied. In the *Ray v. State* case, the Law Analysis of this petitioners case was that since Ray faced a possible maximum penalty without parole if he elected to proceed to trial. The State contends that this in effect constitutes trial counsel advice to defendant was ineffective. Mr. Garretts case is a similar - a like scenario. Please check the Plea hearing / trial record for the proofs of this petitioners claims. There is a noticeable difference in both records as you will be aware of.

Furthermore the petitioner alleges counsel as ineffective for failing to object to the prosecution addressing the judge on petitioners charges. The Judge asked the prosecutor to recite defendants criminal history. The prosecutor recalled a charge of assault and battery with intent to kill but the defendants correct charge was Assault with intent to kill. Counsel is ineffective for failing to object to the incorrect history which possibly prejudiced the trial situation because these two differs charges carry different sentencing terms. So therefore it is also possible the Judge was asking for the record to be recited so that he may exercise his judicial discretion. Counsel is ineffective because if counsel had properly investigated the defendants records and files, Counsel would have been aware of the comment on the charge and therefore objected to solicitors statement on the charge (the solicitor never did intent to correct the era also after reciting the information.) Thus possibly could have changed the outcome of the trial because the failure to object to an error of law affected the calculation of the sentence, where the judge was exercising his discretion.

(- Continued on the Next additional page)

- (c) the disposition thereof:
 - i. dismissed
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. March 24th 2009
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

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

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. Ineffective assistance of Counsel
 - ii. Involuntary Guilty Plea
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. Direct Appeal
 - ii. _____
 - iii. _____

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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) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes (incarcerated at the time)
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. Andrea Price (SC Bar # 75786)

366 North Church Street, Suite 3000 - Spartanburg, S.C. 29303

ii. _____

iii. _____

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

i. Ms. Price represented me at the trial court and wrote me a letter about my appeal. The letter was basically directed to me as a "green light" to write the Court of appeals about my direct appeal, stating my grounds for appealing the case.
 ii. _____
 iii. _____

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

Invalidate Guilty Plea / New Trial

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

No

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Gary Garrett, 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.

Gary J. Garrett

SWORN to and subscribed before me this 29
day of October, 2005.

Charles B. Butler (L.S.)
Notary Public

My Commission Expires: 5/1/2018

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MARC KITCHENS

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

I, Gary J. Garrett, 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.

Gary J. Garrett
Applicant

SWORN or affirmed to and subscribed before me this

29 day of October, 2009
Debra B. Bledsoe
Notary Public

My Commission Expires: 5/1/2018

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MARC KITCHENS

FORM 5

2009-CP-42-6725

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

Full name and prison number (if any) of Applicant.)

Dana
Middleton v. State of S.C.
333427)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

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 Perry Correction
2. Name and location of Court which imposed sentence Spartanburg County
3. Name(s) of co-defendant(s) (if any) I have no co-defendants.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 08-42-2869
 - (b) 08-42-2870
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March of 2009 / 12 years 85%
 - (b)

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SPARTANBURG COUNTY
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MARC KITCHENS

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

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- (a) Ineffective Assistance Of Counsel
 (b) ~~Unlawful Search and Seizure~~
 (c) Subject Matter Jurisdiction

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

- (a) Will Send a Attachment shortly
 (b) Will Send a Attachment shortly
 (c) _____

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

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

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/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

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iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) I have Pled Guilty

(b) _____

(c) _____

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

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

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

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

- i. Tyona Jones Public Defenders Office.
- ii. _____
- iii. _____

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

- i. General Session
- ii. _____
- iii. _____

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

To Be relieved of all charges or Charges to A.Y.O.A.

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

NO

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

I, _____, 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.

Dana Middleton #333427
Applicant

SWORN or affirmed to and subscribed before me this

14 day of Dec., 2009

[Signature]
Notary Public

My Commission Expires: May 12th 2014

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JEFFERSON COUNTY
2009 DEC 15 AM 11:58
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STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

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

Dana Middleton #333427

SWORN to and subscribed before me this ~~14th~~ 14th

day of Dec, ~~2008~~ 2009

[Signature] (L.S.)

Notary Public

My Commission Expires:

May 12th, 2011

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 DEC 15 AM 11:58
MARC KITCHENS

Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Dana Middleton, #333427,	)	2009-CP-42-6725
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 15, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the July 2008 term of the Spartanburg County Grand Jury for attempted armed robbery (2008-GS-42-2869) and assault and battery with intent to kill (2008-GS-42-2870). Applicant was represented by Tanya Jones, Esquire. On February 25-26, 2009, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable J. Derham Cole to confinement for a period of twelve (12) years on each charge, both sentences to run concurrently. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel; and
2. Subject-matter jurisdiction.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction; however, the Applicant fails to set forth with specificity the grounds upon which this allegation is based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

April 28, 2010.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 DANA MIDDLETON,) TRANSCRIPT
5)
6 APPLICANT,) OF
7)
8 vs.) RECORD
9 STATE OF SOUTH CAROLINA,)
10) 2009-CP-42-6725
11)
12)
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25)

September 16th and 17th, 2010
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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

CHRISTOPHER BROUGH
ESQ.
Attorney for the Applicant

SUZANNE H. WHITE
ASSISTANT ATTORNEY GENERAL
Attorney for the State

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	DANA MIDDLETON	
5	Direct examination by Mr. Brough	6
6	Cross-examination by Ms. White	17
7	Redirect examination by Mr. Brough	25
8	Recross examination by Ms. White	27
9	SHALONDA MITCHELL	
10	Direct examination by Mr. Brough	30
11	Cross-examination by Ms. White	40
12	TANYA JONES	
13	Direct examination by Ms. White	44
14	Cross-examination by Mr. Brough	53
15	EDWARD BALLENGER	
16	Direct examination by Mr. Brough	67
17	Cross-examination by Ms. White	70
18	TANYA JONES	
19	Direct examination by Ms. White	73
20	Cross-examination by Mr. Brough	76
21		
22	Closing by Mr. Brough	78
23	Closing by Ms. White	82
24	Certificate	85
25		

1
2
3
4
5
6
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8
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
A-1	Notice of Alibi Witnesses		25
A-2	List of witnesses		38
A-2	Report		72

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>State's Exhibits</u>		
3				
4	S-1	SLED Document		48
5	S-2	SLED Document		48
6	S-3	Report		74
7				
8				
9				
10				
11				
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P R O C E E D I N G S

1
2
3 THE COURT: All right. We're on the record in the case
4 of Dana Middleton versus The State of South Carolina.

5 MS. White, you may proceed.

6 MS. WHITE: Thank you, Your Honor.

7 This is Dana Middleton versus The State. It's Case
8 Number 2009-CP-42-6725. He's represented today by Mr. Chris
9 Brough.

10 Mr. Middleton was indicted originally in July of '08 on
11 attempted armed robbery charges and assault and battery with
12 intent to kill. He ultimately pled guilty February 26th,
13 2009, and received a sentence of 12 years concurrent on both
14 charges. He filed his PCR alleging ineffective assistance
15 of counsel and subject matter jurisdiction, and I will turn
16 it over to Mr. Brough at this time.

17 THE COURT: Mr. Brough, can you tell us what grounds
18 your client wishes to go forward on today?

19 MR. BROUGH: Yes, Your Honor.

20 We would like to go forward on the grounds of
21 ineffective assistance of counsel. We would also like to go
22 forward on the grounds of an involuntary guilty plea. That
23 was actually, it looked like, it was alleged in the
24 application and then crossed out, and I know I had talked to
25 the attorney general before the last hearing that we would

1 like to make that amendment. But it looks like it was
2 actually pled, on the copy I have, and then subsequently
3 crossed out on the original application. So, I don't think
4 that's anything by way of surprise.

5 THE COURT: All right. Is that correct?

6 MS. WHITE: Yes, Your Honor. That's fine.

7 THE COURT: All right. You may call your first
8 witness.

9 MR. BROUGH: Thank you, Your Honor.
10 We would call Dana Middleton to the stand.

11 THE COURT: Sir, come forward to my left to be sworn.

12 DANA MIDDLETON, having been first duly
13 sworn, testified as follows:

14 THE COURT: Have a seat in the witness stand please.

15 (Witness complies.)

16 THE COURT: State your name.

17 WITNESS: Dana Middleton.

18 THE COURT: Mr. Brough, your witness.

19 MR. BROUGH: Thank you, Your Honor.

20 May it please the court?

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. BROUGH:

24 Q Mr. Middleton, how old are you, sir?

25 A Eighteen years old, sir.

Dana Middleton - Direct examination
by Mr. Brough

1 Q Okay. At the time that you went to trial, were you 17
2 years old, sir?

3 A Yes, sir.

4 Q Okay. And the time the incident occurred, were you a
5 juvenile at the time?

6 A Yes, sir.

7 Q And, in fact, they had to have a hearing in Family
8 Court to determine whether or not you should stand trial in
9 General Sessions Court, is that true?

10 A Yes, sir.

11 Q Who represented you at your trial, sir?

12 A Ms. Tanya Jones.

13 Q And was that -- was she working with the Public
14 Defender's Office?

15 A Well, let me correct that. I never went to trial. So,
16 she never actually---

17 Q Okay.

18 A ---defended me at the trial, but my lawyer at the time
19 would of been Tanya Jones.

20 Q Okay. Well, let's talk about whether or not you went
21 to trial.

22 Your case went in front of I believe it was Judge Cole
23 on February the 25th of 2000 and---

24 MS. WHITE: Nine.

25 Q ---nine I believe, is that correct?

Dana Middleton - Direct examination
by Mr. Brough

1 A Yes, sir.

2 Q And, and when you went to court, did you plead on the
3 25th, on the first day?

4 A On the first day, no, sir. I was -- when I went
5 originally -- like the day of my trial was the day that I
6 pleaded. Originally I did not plead. My intention was to
7 go to trial.

8 Q Your intention was to go to trial. So, you pled not
9 guilty?

10 A Yes, sir.

11 Q Okay. What was your defense, sir?

12 A My defense, I was not at the scene of the crime and I
13 was at another place. I had an alibi, which I mean I stated
14 to my lawyer.

15 Q Are you aware of whether or not your attorney filed a
16 notice of alibi in your case?

17 A I'm aware. At the time I wasn't aware. But I am aware
18 now that I have looked over my case.

19 Q And your alibi is -- where were you, sir?

20 A I was at---

21 THE COURT: Just one second.

22 Was there a, a notice of alibi claim filed?

23 MR. BROUGH: Yes, Your Honor. Hold on.

24 THE COURT: Okay. That's all right. I just wanted to
25 be sure that, that did occur.

Dana Middleton - Direct examination
by Mr. Brough

- 1 Okay. Go ahead.
- 2 Q Where were you, sir?
- 3 A I was at a card game in Greer, South Carolina at the
- 4 time of the incident.
- 5 Q What kind of card game?
- 6 What were you playing?
- 7 A We was playing tunk I mean.
- 8 Q What, what is tunk, sir?
- 9 For those of us who have never played it before, what
- 10 is it?
- 11 A I don't know it as nothing else but that. The rightful
- 12 name for it I don't know.
- 13 Q Okay. Well, how do you play it?
- 14 A It's the best hand wins.
- 15 Q Okay. Were you betting on the games?
- 16 A Yes, sir.
- 17 Q How were you doing that night?
- 18 Were you up or down?
- 19 A Started good, but ended real bad. Ended down.
- 20 Q When you say you ended bad, how much -- I mean were,
- 21 was this a situation where you were out of money more than
- 22 you had on you?
- 23 A Yes, sir.
- 24 Q What did you do about that?
- 25 A I actually called my moms and my moms told me, wait a

Dana Middleton - Direct examination
by Mr. Brough

1 minute, she gonna be there and give me money.

2 Q Now, the, the time of this card game, that was -- when
3 you called your mom, that was around 10:30?

4 A About, about, approximately about that time.

5 Q 10:30, 11:00?

6 A The exact time I can't tell you, but approximately
7 about that time.

8 Q Okay. And, and are you aware that, in this case, the
9 incident is alleged to have occurred between 10:10 and
10 10:14 on 8/24 of '07 when you were at the card game?

11 A Say that again, sir.

12 Q In other words, the crimes you're charged with having
13 committed occurred somewhere between ten after 10:00 that
14 evening to quarter after 10:00, is that correct?

15 Were you aware of that?

16 A Yes, sir.

17 Q And, and is it your testimony at this time that you
18 were at a card game in Greer?

19 A Yes, sir.

20 Q Did you tell Ms. Jones that you were at a card game in
21 Greer?

22 A Yes, sir.

23 Q And did you try to supply her with the names of people
24 who were at the card game?

25 A Yes, sir.

Dana Middleton - Direct examination
by Mr. Brough

- 1 Q Was one of those witnesses an Ornie Mack, or, sorry, an
2 Ornie Smith?
- 3 A Yes, sir.
- 4 Q And was one of them a Santoria Dodd?
- 5 A Yes, sir.
- 6 Q Was there a Sharon Miller there?
- 7 A Yes, sir.
- 8 Q Were all of those witnesses present when you went to
9 Court for your trial?
- 10 A No, sir.
- 11 Q Were any of those witnesses present?
- 12 A None of the ones you just called, no, sir.
- 13 Q And not in a -- there was -- and the witness, Ornie
14 Mack I believe, I, I think one's her maiden name and one's
15 her married name, and Ornie Mack, she was not -- was she
16 present at trial or no?
- 17 A No, sir.
- 18 Q Was she identified by the Court, and I direct the
19 Court's attention to Page 9 of the transcript, as being a
20 potential witness in your case?
- 21 A Yes, sir.
- 22 Q And that was a witness that was your alibi witness?
- 23 A Yes, sir.
- 24 Q Did Ms. Jones, when the Court proceedings began on
25 February 25th, inform the Court that you would like to

Dana Middleton - Direct examination
by Mr. Brough

1 make a motion that you, yourself, would like to make a
2 motion to have her relieved as counsel?

3 A Yes, sir.

4 Q And was that motion heard?

5 A Yes, sir.

6 Q And did the Court actually break until Mike Brown could
7 be present to determine whether or not he was going to
8 represent you?

9 A Yes, sir.

10 Q And he indicated that he was not going to do that,
11 correct?

12 A Yes, sir.

13 Q Did you, again, ask the Court for a different attorney,
14 whether private or if they would appoint you a different
15 public defender?

16 A Yes, sir.

17 Q Okay. Was that motion denied?

18 A Yes, sir.

19 Q Did you then pick a jury on February the 25th?

20 A Yes, sir.

21 Q Okay. And after you picked the jury, you stopped for
22 the day, correct?

23 A Yes, sir.

24 Q Okay. Now, the following day, on the 26th, you
25 entered a guilty plea, correct?

Dana Middleton - Direct examination
by Mr. Brough

1 A Yes, sir.

2 Q And, and it was a recommendation of 12 years I believe,
3 correct?

4 A Yes, sir.

5 Q Was that the first time you had heard of that deal or
6 had you talked about it beforehand?

7 A We talked about it beforehand.

8 Q Okay. And, and what did you say beforehand to Tanya
9 Jones about the 12 year offer?

10 A I told her that I wanted to go to trial.

11 Q Okay. And when you went to trial, and realized your
12 alibi witnesses weren't there, how did that make you feel
13 about your chances at winning at trial?

14 A It made me feel real slim cause I felt like if I ain't
15 have the people that I asked from my witnesses to back up my
16 defense that I was really going into a lose/lose situation.

17 Q Were you told that you would get 40 years potentially
18 or you could get 40 years?

19 A Yes, sir.

20 Q Was your mom present at your trial?

21 A Yes, sir.

22 Q Was she identified as a potential witness in your case?

23 A Yes, sir.

24 Q Now, I know one of the questions that you're going to
25 be asked on cross-examination is why, if you didn't do, did

Dana Middleton - Direct examination
by Mr. Brough

1 you plead, why did you say you were guilty.

2 So, tell me, why did you say that?

3 A I felt I pleaded because it got -- when I started my
4 trial, the beginning of my trial, I felt that if I ain't
5 plead I would get, I feel, a greater sentence. I feel cause
6 I ain't have no support and I felt the lawyer that I was
7 going to trial with was really ineffective. So, I was like,
8 instead, you know what I mean, risking the chance of 40
9 years, I just take the 12 and try to come back on an appeal.

10 Q Did you ever discuss what an appeal was with your
11 attorney?

12 A I asked her about it before, but it wasn't no real
13 elaborated detail. But, yes.

14 Q Did she file an appeal in your case?

15 A No.

16 Q All right. Sir, how many times did you meet with
17 Ms. Jones in the months leading up to your trial?

18 A Okay. I got waived up to General Sessions, and if I'm
19 not mistaken, like in June or July, I seen her with my
20 Family Court attorney public defender told me that it would
21 be my General Sessions, General Sessions attorney, that was
22 like June, July of '08. I ain't see her again until I say
23 November when I turned 17 to come to the county, the county
24 jail. If I'm not mistaken, she was on pregnant leave or
25 somewhere around there. The next time I seen her was in

Dana Middleton - Direct examination
by Mr. Brough

1 June, I mean January and right in February I was going to
2 trial. So, altogether I say about no more than four, maybe
3 three or four times, five.

4 Q Now, sir, the people you were playing the card games
5 with, are these people that you had exceptionally good
6 addresses or contact information for or were they hard to
7 locate?

8 A At the time, yes, the addresses that I presented and
9 the information that I gave you at the time was accurate. I
10 mean cause while I was locked up I still kept in contact
11 throughout my D.J.J. incarceration.

12 Q What was your understanding about any kind of
13 fingerprints, DNA evidence, or anything else that the State
14 had linking you to the crime?

15 A They told me they had evidence that they was getting
16 processed through SLED, which was the main reason why they
17 detained my waiver hearing. But after the evidence had been
18 processed, it turns out not to be me.

19 Q The evidence that you're referring to, is that a
20 cigarette butt that was found at the scene of the crime that
21 was tested for DNA?

22 A Yes, sir.

23 Q And was that tested against your DNA?

24 A Yes, sir.

25 Q And that turned out not to be your DNA on that

Dana Middleton - Direct examination
by Mr. Brough

1 cigarette butt, is that correct?

2 A Yes, sir.

3 Q Is that one of the factors that your trial attorney
4 tried to use to convince you that pleading was in your best
5 interest?

6 A Yes, sir, she told me that since the DNA was -- since
7 it ain't -- she told me it ain't match mine. That was a
8 good thing. But if it matched the defendant's, that it
9 destroyed my chances. So, when it matched the defendant at
10 the time, she told me that if you, really in my best
11 interest to plead cause it's not saying that it wasn't mine.
12 It's just saying that he had it on his possession.

13 Q Right.

14 what about fingerprints?

15 A They said I -- they were gonna fingerprint the lighter,
16 and if I'm not mistaken, a bottle. But neither that turned
17 out to be mine neither.

18 Q Did you confess?

19 Did you give a statement confessing to the crime to law
20 enforcement?

21 Did you tell the Sheriff's Office that yeah, I, I went
22 and committed this crime?

23 A No, sir.

24 Q The, the victim in the case, is this a person you'd
25 ever met before?

Dana Middleton - Direct examination
by Mr. Brough

1 A No, sir.

2 Q And this event occurred in the nighttime?

3 A Yes, sir.

4 Q Sir, had you gone to trial, what would of been your
5 testimony as to where you were on the date and time of the
6 crime?

7 A My testimony would of been I was at the card game at
8 the date and time when the crime. At, at the time when the
9 crime I was at a card game.

10 MR. BROUGH: If I may have just one more moment, Your
11 Honor?

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q Mr. Middleton, did you and your attorney discuss making
15 any pretrial motions in your case?

16 Did you have a, a hearing to challenge the
17 identification of you as being the person who perpetrated
18 this crime by the victim as to whether or not that
19 identification was reliable?

20 Did you do anything like that in your case?

21 A No, sir.

22 MR. BROUGH: No further questions for this witness.

23 THE COURT: Ms. White.

24 MS. WHITE: Thank you, Your Honor.

25 CROSS-EXAMINATION

Dana Middleton - Cross-examination
by Ms. White

1 BY MS. WHITE:

2 Q Mr. Middleton, you testified that you did have an alibi
3 defense and that's what you were relying on if you had gone
4 to trial, is that right?

5 A Yes, ma'am.

6 Q Okay. And had your attorney subpoenaed any witnesses
7 on your behalf to your knowledge?

8 A I didn't -- not to my knowledge.

9 Q Okay. But -- so, when they said at the beginning that
10 Ornie Mack was a potential witness, did that mean that the,
11 the state had called Ornie Mack?

12 Was this a male or a female?

13 I don't know if this is a male or a female.

14 A Female.

15 Q This is a female.

16 Called her to, to come and testify on their behalf or
17 was she -- would she have been there to testify on your
18 behalf?

19 A On my behalf.

20 Q Okay. Cause she was one of the people that was at this
21 card game?

22 A Yes, ma'am.

23 Q Okay. So, your attorney subpoenaed her then to testify
24 on your behalf?

25 A I mean I gave her the information. As far as---

Dana Middleton - Cross-examination
by Ms. White

- 1 Q Okay.
- 2 A ---the subpoenas being issued, I don't --.
- 3 Q Sure.
- 4 Okay. So, so, you did tell your attorney about Ms.
- 5 Mack and Ms. Mack was there to testify on your behalf?
- 6 A She was not there.
- 7 Q She wasn't?
- 8 A Was not.
- 9 Q Okay. But she was listed as a potential witness?
- 10 A Yes.
- 11 Q Okay. In regards to the 12 year deal, you were
- 12 actually facing 20 years on each charge, is that right?
- 13 Do you recall?
- 14 A I mean the status for the charges, I, was zero to
- 15 fifteen for one charge and ten years, twenty years maximum
- 16 for the other charge.
- 17 Q Okay. So, when, as you testified before, you knew you
- 18 were facing maybe up to 40 total if the judge ran them both
- 19 consecutive?
- 20 A Thirty-five I mean.
- 21 Q Okay. All right. So, you thought you were facing 35.
- 22 So, at the time when you pled guilty, 12 years sounded
- 23 like a, a pretty good deal compared to possibly getting 35
- 24 or 40, right?
- 25 A Yes, ma'am.

Dana Middleton - Cross-examination
by Ms. White

1 Q Okay. Now, just to kind of go over with you, and I
2 know Mr. Brough said that we're gonna ask you some about the
3 transcript, do you remember the pleading guilty part of it?

4 A Yes, ma'am.

5 Q Okay. And do you recall the judge asking you if you
6 had any real defense including an alibi defense?

7 A Yes, ma'am.

8 Q And you said no, sir?

9 A Actually, if you read the, if you read the text, they
10 took out some things that I said. I did ask me, asked that
11 part. I did say that I felt it was things that on my
12 defense that should be stated, but at the time I was only, I
13 was 15, 17 coming straight out of D.J.J., and the plea, I
14 ain't really know what I was, I mean understanding of it.
15 So, instead of making myself, drive myself into a deeper
16 hole, I just and I mean went along with the rest of the
17 plea.

18 Q So, are you referring to the time when the judge asked
19 you if you had any defense, and you said I mean a forced
20 statement for one person, and I mean, and then he kind of
21 went on and he asked you about the alibi defense, and you
22 said no, sir, is that what you're referring to?

23 A Yeah.

24 Q Okay. And I---

25 A Yes, ma'am.

Dana Middleton - Cross-examination
by Ms. White

1 Q That was on Page 18 to 19 of the transcript.

2 Now, did you also -- the judge talked with you about
3 all the, the classifications of the crime, and the, and the
4 guilty plea and how the charges, whether they were a violent
5 or a serious or a most serious?

6 A Yes, ma'am.

7 Q Okay. And, so, you understood the potential of, of
8 pleading guilty to these charges?

9 A I mean---

10 Q Like what you -- if you pled guilty to this particular
11 charge, that, that would be a most serious or a serious
12 charge?

13 A Yes.

14 Q And it might affect your parole or the, or the time
15 you'd actually spend?

16 A Yes, ma'am.

17 Q Okay. And when the, the prosecutor went over the facts
18 of the case, do you recall them going over the facts of the
19 case?

20 A Yes, ma'am.

21 Q And you recall the fact that you agreed that those are
22 the facts and that that was accurate?

23 A Agreed for saying yes.

24 Q Yes.

25 Do you recall saying when the judge said is everything

Dana Middleton - Cross-examination
by Ms. White

1 she told me correct and you said yes, sir?

2 A Yes.

3 Q Okay. And were you telling the truth that day?

4 A Well, was I?

5 I mean I, I agreed to it because it was part of the --

6 it's the only way that I could get the plea.

7 Q So, everything that the judge, that the attorney said

8 about how the actual crime happened, and you said you

9 understood it and you agreed with those facts, you're,

10 you're saying that you just said that just cause you wanted

11 to plead?

12 A Yes, ma'am.

13 Q Okay. And you had sworn to tell the truth that day,

14 hadn't you?

15 A No, ma'am.

16 Q You hadn't been sworn to tell the truth?

17 A No, ma'am.

18 Q All right. And in regards to the issue having to do

19 with -- hold on one second.

20 The DNA, now, the DNA didn't match you, right, on the

21 cigarette or the lighter?

22 A No, it didn't.

23 Q Okay. But didn't it ultimately come back saying that

24 it might match the, the victim in the crime?

25 A No, I ain't, I ain't have no understanding of that

Dana Middleton - Cross-examination
by Ms. White

- 1 until---
- 2 Q Okay.
- 3 A ---after my attorney told me.
- 4 Q Okay. But your attorney did tell you that that come
- 5 back late in the game, it was late, but they had finally
- 6 tested it against the victim's, isn't that right?
- 7 A That -- she told me that, yes, ma'am.
- 8 Q Okay. So, you weren't gonna be able to use that to
- 9 help you in your defense, would you?
- 10 A At first it was, yes.
- 11 Q Right.
- 12 A At first when it didn't match you?
- 13 A Yeah, when it didn't match me.
- 14 Q Okay. But then once the results came back that it most
- 15 likely matched the victim, that wasn't gonna help you at
- 16 all, was it?
- 17 A It's still help me because it ain't match me. It ain't
- 18 have nothing to do with me.
- 19 Q Okay. All right. And in regards to identification,
- 20 the victim had picked you out of a lineup, hadn't he?
- 21 A Yes, ma'am.
- 22 Q Okay. So, so, that was -- he had picked you out of the
- 23 lineup and he was, in fact, present at the guilty plea,
- 24 wasn't that right?
- 25 A Yes, ma'am.

Dana Middleton - Cross-examination
by Ms. White

1 Q Okay. Okay. Okay. And had anybody else ID'd you in
2 that situation?

3 A As far as --?

4 Q At the, at the bingo parlor.

5 Was it Tonya Pace?

6 A Yes, ma'am.

7 Q Okay. So, there was a second person that ID'd you.

8 Your Honor, if I could ask, we've got somebody that's
9 sitting behind that keeps commenting after I ask questions.
10 I don't know if we can ask somebody to remain silent.

11 THE COURT: Ma'am, if you can't remain silent in the
12 courtroom I'll ask you to leave.

13 Do you understand that, ma'am?

14 MRS. MITCHELL: Yes.

15 THE COURT: So, don't make any comments during his
16 testimony.

17 I'm talking to.

18 MRS. MITCHELL: Okay.

19 THE COURT: Do you understand that, ma'am?

20 MRS. MITCHELL: Yes, sir.

21 THE COURT: Your name is?

22 MRS. MITCHELL: Mrs. Mitchell.

23 THE COURT: Thank you.

24 You may proceed.

25 MS. WHITE: Thank you, Your Honor.

Dana Middleton - Cross-examination
by Ms. White

1 Q So, there had been a second person that identified you
2 related to this incident?

3 A When you said identified, are you saying as far as -- I
4 mean I need you to elaborate more cause---

5 Q Okay. At the photo lineup.

6 A Out of a photo lineup, now, do, do they have paperwork
7 saying that?

8 Yes.

9 Q Okay. But you, you don't agree with it?

10 A I don't agree with it, no.

11 MS. WHITE: Okay. All right. That's all the questions
12 I have at this time, Your Honor, of this witness.

13 THE COURT: Mr. Brough.

14 MR. BROUGH: Just briefly, Your Honor.

15 Have this marked as Applicant's Exhibit No. 1 for ID.
16 Like to move it into evidence. It's the, a filed copy of
17 the notice of alibi filed by Tanya Jones, Your Honor.

18 THE COURT: Any objection?

19 MS. WHITE: No objection, Your Honor.

20 THE COURT: Without objection it will be made part of
21 the record.

22 (WHEREUPON, the notice of alibi was marked as
23 Applicant's Exhibit No. 1 and received into evidence at this
24 time.)

25 REDIRECT EXAMINATION

Dana Middleton - Cross-examination
by Ms. White

1 BY MR. BROUGH:

2 Q Mr. Middleton, I'm gonna hand you Applicant's 1 that's
3 been introduced into evidence.

4 Sir, is that document a notice to the State as to you
5 stating that you had an alibi that you were at a residence
6 in Greer?

7 A Yes, sir.

8 Q Okay. And that was filed by your attorney?

9 A Yes, sir.

10 Q Okay. So, clearly you had talked to your attorney
11 about your alibi defense ahead of time?

12 A Yes, sir.

13 Q Now, when you pled, sir, you didn't just plead when you
14 showed up to Court, did you?

15 A No, sir.

16 Q There was an entire day, an entire Court proceeding the
17 day before you pled, correct?

18 A Yes, sir.

19 Q And at that proceeding when you realized your alibi
20 witnesses were not present, you asked that your attorney be
21 relieved as counsel, did you not?

22 A Yes, sir.

23 Q And that, that motion was denied?

24 A No, hold, hold. Excuse me. That was the same day.

25 Q On, on the 25th, the day before you pled, you asked

Dana Middleton - Cross-examination
by Ms. White

1 that your attorney be relieved?

2 A Yes.

3 Q Okay. And then once that was denied, the next day you
4 felt like you had no options, correct?

5 A Yes, ma'am, sir.

6 Q So, you did what you felt you needed to to get the
7 least amount of time possible.

8 Is that accurate?

9 A Yes, sir.

10 MR. BROUGH: All right. No further questions.

11 THE COURT: Ms. White.

12 MS. WHITE: Just briefly, Your Honor.

13 RECROSS EXAMINATION

14 BY MS. WHITE:

15 Q You did tell the judge that you were pleading freely
16 and voluntarily, didn't you?

17 A Yes, sir. I mean ma'am.

18 Q Okay.

19 A Excuse me.

20 Q That's okay.

21 And you did say that, at this point, you were satisfied
22 with your attorney, is that right, at the actual time?

23 I know it was the day after your motion had been
24 denied.

25 But you did testify that you were satisfied at that

1 point with your attorney?

2 A Yes, ma'am.

3 Q Okay.

4 A For the fact that it was what was necessary to get the
5 plea.

6 Q Okay. All right. Thank you.

7 That's all I have, Your Honor.

8 THE COURT: Before I ask the witness to step down, Mr.
9 Middleton, your testimony was earlier that the card game
10 didn't go well, it ended real bad, and you ended up, ended
11 up owing some money and you had to call your mother to come.

12 Is that -- was that your testimony?

13 WITNESS: Yes, sir.

14 THE COURT: Did she come to the card game?

15 WITNESS: Yes, sir.

16 THE COURT: And wasn't she present at all times during
17 both the trial, beginning of the trial and the plea in this
18 case?

19 WITNESS: Yes, sir.

20 THE COURT: Okay. You can follow-up with any questions
21 you'd like to ask, Mr. Brough.

22 MR. BROUGH: No, Your Honor. Our next witness was
23 going to be Mr. Middleton's mother, Shalonda Mitchell.

24 THE COURT: Okay. Well, I was, I was just wondering
25 cause his testimony has been that none of his alibi

1 witnesses were present, and it appeared to the Court that
2 perhaps the mother was present throughout this proceeding
3 and was one of the alibi witnesses and I was just confirming
4 that.

5 MR. BROUGH: Yes, sir.

6 THE COURT: Okay. Is that true?

7 MR. BROUGH: That's -- my understanding is that she
8 showed up at the card game. I don't know if the time frame
9 is exactly correct at---

10 THE COURT: It was in Greenville. That's what I
11 understood.

12 MR. BROUGH: ---to qualify her as an alibi witness per
13 se and, and---

14 THE COURT: Well, we're, we're probably gonna have to
15 take a look at that.

16 MR. BROUGH: But I think that she's gonna testify that
17 she arrived somewhere around 10:30 and the incident occurred
18 15 minutes ahead of time.

19 THE COURT: But she -- this card game was in
20 Greenville.

21 MR. BROUGH: It's in Greer.

22 WITNESS: Greer, South Carolina.

23 THE COURT: Okay. All right.

24 MR. BROUGH: Yes, sir.

25 THE COURT: You may step down, sir.

1 MR. BROUGH: We would call Shalonda Mitchell.

2 THE COURT: Come forward, ma'am. Over here to my left
3 please.

4 SHALONDA MITCHELL, having been first duly
5 sworn, testified as follows:

6 THE COURT: Have a seat please. State your name once
7 you're seated.

8 WITNESS: Shalonda Mitchell.

9 THE COURT: Mr. Brough, your witness.

10 MR. BROUGH: Thank you, Your Honor.

11 May it please the Court?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. BROUGH:

15 Q Mrs. Mitchell, what is your relationship with Dana
16 Middleton?

17 A He's my son.

18 Q And did you receive a call from him to come to a card
19 game?

20 A Yes.

21 Q Can you please tell me about what you did after
22 receiving that phone call?

23 A After receiving a phone call, because I thought there
24 were, might be some consequence, you know, like an argument
25 or a fight might break out about the money he owed, I got

Shalonda Mitchell - Direct examination
by Mr. Brough

1 up, which I live maybe 3.5 seconds from where the card game
2 took place, and I got up. I was still in my pajamas. I
3 went -- I proceeded to Sunnyside Drive, a blue house where I
4 know Sherry, and I gave Dana \$40 to pay off someone. I
5 argued with him a little bit, but that's what I did.

6 Q what did you argue about?

7 A The fact that he was at a card game playing cards and
8 that I had to bring out my hard earned money to give to him
9 to give to whoever he owed. He had no business there
10 gambling playing cards.

11 Q And how old was he at this time?

12 A Fifteen.

13 Q Was Dana arrested that night?

14 A No, sir.

15 Q When was he arrested?

16 A Dana was arrested, I want to say, that Saturday
17 morning. I had given him money to go purchase him some
18 tennis shoes and get a haircut. The barber in Greer, which
19 is across from, in the same location as the bingo, he called
20 me to inform me that the police had picked up my son at
21 which time I proceeded to Greer Police Department. I was
22 engaged by Detective Cortenburn. He had asked me some
23 questions pertaining to this night, and at the time I wasn't
24 aware of the hours in question. But he stuck to this nine
25 o'clockish thing. And as I explained to him, well, I can't

Shalonda Mitchell - Direct examination
by Mr. Brough

1 tell you nothing about nine o'clock. But from maybe the
2 hours of 10:00, 10:30 I could say he was at this house
3 playing a card game.

4 He asked for, for permission for me to sign the paper
5 so he could question Dana, and I did, I proceeded. I
6 allowed him to question Dana. I had to go back to work to
7 punch out. When I came back he told me that they were
8 holding him and that, for more questioning, that I can go
9 home, and he would call me later on or I could return back
10 periodically, that they were waiting for another witness.

11 Q Okay. Is that the only contact that you had with law
12 enforcement relating to your son's case?

13 A No, sir, not at all. After, in fact, Dana was arrested
14 and picked up, he was already serving time up in Columbia,
15 facility up in Columbia, an officer came to my house
16 August 10th at 8:13 a.m. banging down my door. I come to
17 the door. She's like I'm here for Dana. I'm here to arrest
18 Dana. His description was just given in a hijacking on
19 Highway 101.

20 My response to her was ma'am, my son's been
21 incarcerated in Columbia, South Carolina for some time. I
22 prefer, prefer that you relay to your co-workers, Detective
23 Cortenburn, and he can enlighten you more about where my son
24 whereabouts is. There's no way in the world he could of
25 hijacked a car on Highway 101, and then I went in to say

Shalonda Mitchell - Direct examination
by Mr. Brough

1 about, again, your coming to my house about a description.
2 My son is now presently incarcerated due to the fact that
3 the description was given. But I knew it was no way
4 possibly he could of physically hijacked this car on this
5 date because he was already incarcerated in South Carolina,
6 Columbia, and I informed --.

7 Q And there were no charges brought as a result of this
8 incident that you're referring to, correct?

9 A None. They couldn't of been. He was incarcerated
10 already.

11 Q But my question to you is did you have some concerns
12 that there was someone out there that this police agency
13 thought was your son who looked a lot like your son that was
14 out there committing crimes at this time?

15 A Yes, that's definitely. Because, like I said,
16 throughout the course of my stay in Greer, Dana had got in
17 trouble one time and the police know me. They asked me
18 personally to bring him in for questioning. I always
19 voluntarily do. Like I said, they knew even -- they knew
20 where to find him. He's always, you know, he came home
21 every time. I can't say he's a child that never came in at
22 night or I wouldn't know where his whereabouts was on the
23 day-to-day basis.

24 So, I was -- that was really a concern of mine because,
25 again, a description -- they told me a description was

Shalonda Mitchell - Direct examination
by Mr. Brough

1 given, that y'all wanted to question him. I hadn't seen my,
2 seen him anymore. Now you come to my house months later
3 with this same detailed description about my son, but he was
4 already incarcerated. So, yes, now my concern arise that
5 there is someone else that actually looks like him or
6 matches the description for you to be at my front door here
7 today.

8 Q But you're sure, on the date that this armed robbery
9 that he is currently incarcerated on was committed, that he
10 was at a card game?

11 A Yes.

12 Q And, and you went to that card game?

13 A Yes, I did.

14 Q Who was present besides him when you went to that card
15 game?

16 A Ms. Shannon Miller, which we call Sherry. This was her
17 residence. This was where she resides. Ms. Ornie Mack, a
18 Tyson Grayson, a Pretoria Dodd, Keisha Miller. Several
19 people that I'm familiar with in the area.

20 Q And currently have you been in touch with any of those
21 folks?

22 A In the past 24 hours more so than anything I can say.
23 I've been trying to locate these people because, like I
24 stated, at the time of the original trial they were present
25 and willing to come in. I actually came in to Ms. Tanya

Shalonda Mitchell - Direct examination
by Mr. Brough

1 Jones office with two of the witnesses, which was Ms. Ornie
2 Mack and Tyson Grayson. She wasn't available. I spoke with
3 her supervisor, Mr. Michael Box, Boston, Barley, or
4 something like that. He told me that she was on maternity
5 leave, that she would return on a little later date, that
6 furnish these witnesses upon her arrival, her return from
7 her maternity leave.

8 Q Okay. And, and were you able to do that?

9 A No, upon her return -- I mean I was very active on this
10 case because, like I said, at the time Dana was a minor and
11 there was a lot of things that I know he couldn't do like,
12 even with the D.J.J., we kept having numerous monthly
13 hearings just to say that they was gonna detain him because
14 he's a minor and all the things of that nature.

15 So, when he did, when I did come in contact with
16 Ms. Jones, like I said, I met with her one time. We sat
17 down and discussed the case. I gave her all the information
18 I had. I gave her all my concerns about, cause they had a
19 big thing about they had this cigarette butt that they found
20 on the ground near the vehicle and a lighter because the
21 victim had gave his attacker a cigarette and a light. They
22 had this thing about the attacker. The victim stated that
23 he bluntly kicked his attacker in the nose creating bleeding
24 and, you know, things of that nature.

25 This didn't, you know, at the time of Dana's arrest,

Shalonda Mitchell - Direct examination
by Mr. Brough

1 which was like a day or two later, I believe I asked them
2 was any of that evidence visible. They was like no, but
3 that didn't matter much. They were really going on this DNA
4 from the cigarette butt, which took a long time. I was
5 calling Ms. Jones trying to contact her seeing what was
6 going on with the case. Again, she was unavailable, she was
7 unavailable.

8 Like I said, when the DNA did come back not his, it was
9 like a world lifted off my shoulders. But then somehow or
10 another they made it seem like oh, well, it was a random
11 pick-up of cigarette butt. But this was your grounds for
12 holding him and detaining him in D.J.J. for month after
13 month after month, but when it came back not to be a matched
14 to his, oh, it was a random cigarette butt that we picked,
15 then it was 90 percent, 80 percent, something, it could have
16 been the victim.

17 Q Right.

18 A So -- but, at the time, I was also under the impression
19 where they said the cigarette butt that was picked up from
20 outside of the vehicle and the cigarette butt was taken from
21 inside of the victim's car to make sure those matches was
22 separate.

23 Q I'm gonna take you back to the trial.

24 Did you ever have any conversations with Tanya Jones
25 about testifying at trial?

shalonda Mitchell - Direct examination
by Mr. Brough

1 A I spoke with Ms. Jones. Like I said, I think she came
2 back from maternity leave -- when she came back. I'm not
3 for sure exact time and date. I spoke with her. She,
4 again, trying to present the witnesses or whatever. She was
5 like oh, Mrs. Middleton, don't worry, Mrs. Mitchell, don't
6 worry, Dana's case gonna be about a month or two off. I
7 have time for this, that, and the third. And maybe like the
8 next week she called me up. You have to be in court on the
9 such and such a date. Dana was going up for trial, and I
10 asked her that question, what happened, why is it coming up
11 so quick. Oh, it just came up. They put it on the
12 calendar.

13 I said well, I don't think you had enough time to deal
14 with Dana. I mean you just relocated here, you're getting
15 settled into a new job, you're pregnant, getting ready to
16 have the baby, that's a lot to take on, and, and try to be
17 concerned about my baby at the same time. And she was
18 like -- at which time I felt now she was getting like cocky
19 like well, it's an eye witness, it's this, it's that. I
20 think he should take the 12 years. If he don't take this 12
21 years. He's gonna get 40 years and ya da da, and I'm asking
22 her well, yeah, at the time he was still here in the county,
23 can I speak to him on any occasion. She was like no.

24 I asked her did she relate to him how was he feeling
25 about this 12 years or whatever. She was like well, he's

Shalonda Mitchell - Direct examination
by Mr. Brough

1 willing to go to trial. But I'm -- I don't think he should
2 go to trial because of this case itself was a minor versus
3 an elderly person, which made it look like the, you know,
4 real bad, like a punk, a young punk just took advantage of
5 an old man, and that it was an eye witness, that he picked
6 him out of the lineup, and that there was another eye
7 witness and things. But, you know, she just basically
8 didn't listen.

9 Q Did you feel that there was pressure exerted on Dana?

10 A Yes, definitely. Definitely.

11 Q I'd like to move into evidence Defendant's list of
12 witnesses filed with the Court on February the 25th, 2:33
13 p.m., as Applicant's Exhibit No. 2.

14 THE COURT: Any objection?

15 MS. WHITE: No objection, Your Honor.

16 THE COURT: Without objection, it will be admitted.

17 (WHEREUPON, the list of witnesses was marked as
18 Applicant's Exhibit No. 2 and received into evidence at this
19 time.)

20 Q Mrs. Mitchell, I'm showing you what's been entered into
21 evidence as Applicant's Exhibit No. 2. So, a list of
22 witnesses intended to be called by the defense, is that
23 correct?

24 A Yes.

25 Q Is your name on that list?

Shalonda Mitchell - Direct examination
by Mr. Brough

1 A No, sir. When I asked Ms. Jones about me taking the
2 stand on behalf of Dana, she told me point blank it wouldn't
3 make a difference, I'm his mother, and the cases, you know,
4 that it really would make a difference, wouldn't make, make
5 a difference because I was his mother, and they had two or
6 three alibi witnesses. Two, two, I believe. Mr. -- the
7 victim and the young lady that stated she seen Dana in the
8 area --

9 Q Okay.

10 A -- you know. So -- and at the date of the sentence she
11 did promise that after the plea or whatever that I would be
12 able, as a parent, to get up and address the Court. She got
13 angry with me at the end and was like no, never mind, you
14 don't need to say anything, and I'm like okay.

15 Q Are these, are these witnesses or any of these people
16 that knew Dana personally or saw him in the area at, at the
17 supposed time of the incident?

18 A What, the witnesses on the defense's part?

19 Q For the State that, that she was talking to you about.

20 A Did Dana know them personally?

21 Q Yeah.

22 A No, not to my knowledge.

23 Q Okay. All right. Thank you, ma'am. Please answer any
24 of Ms. White's questions.

25 A Yes.

Shalonda Mitchell - Cross-examination
by Ms. White

1 THE COURT: Ms. White.

2 MS. WHITE: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. WHITE:

5 Q I just have a couple of questions.

6 You testified that Ms. Jones met with you and kind of
7 talked with you about the evidence that the State had
8 against your son?

9 A Yes, she said that the victim had ID'd him and that
10 there was another witness that can say she seen Dana in the
11 area. Not that she seen him commit a crime.

12 Q Okay. All right. And at one point you testified --
13 and I know there's some issues of timing maybe as to what
14 time the actual crime occurred versus what time you had gone
15 to the house to give him money.

16 Your knowledge was that, as far as you knew, he was at
17 the house prior, right before you went to give him the
18 money, is that right?

19 A No, I stated that when Detective Cortenburn first asked
20 permission to question Dana, again, he was a minor, but they
21 had already detained him---

22 Q Okay. I -- that was---

23 A ---and I expressed to him that I couldn't because he
24 was about this nine o'clock hour.

25 Q Right.

Shalonda Mitchell - Cross-examination
by Ms. White

1 A I told him I couldn't tell you nothing about 9:00 or
2 whatever. But between 10:00, you know, like 10:00, 10:13---

3 Q Right.

4 A ---10:30, somewhere in that tenish area, I can state
5 that I witnessed, physically went to Dana at this address
6 and gave him money. This was before having any knowledge of
7 the date and time of the incident.

8 Q Sure. And that's what I was asking you.

9 You knew where he was once you got to the house and saw
10 him, and you knew from the time you saw him at the house
11 until the time you left him there after giving him that
12 money?

13 A Right.

14 Q Right.

15 Okay. And that's all the questions I have for this
16 witness, Your Honor.

17 THE COURT: Anything further Mr. Brough?

18 MR. BROUGH: No, Your Honor. We would like the Court
19 to consider leaving open the record from our standpoint.
20 Mrs. Mitchell just informed me this morning that we might
21 have some addresses that she was able, upon going back to
22 the area, to locate a Santoria Dodd and a Sharon Miller, who
23 I believe were testified to earlier were in the card game,
24 and we just ask---

25 THE COURT: well, ma'am, you can step down.

1 MR. BROUGH: We just ask that the record be left open
2 for the applicant, at the end of this, to present those
3 witnesses. I know Ms. Jones still has to testify. I
4 understand that, Your Honor.

5 THE COURT: Well, I'm trying to find out, who, who are
6 you talking about?

7 MR. BROUGH: Some of the other witnesses who were at
8 the card game, Your Honor, that were testified to. Mrs.
9 Mitchell indicated were present at the card game, and who we
10 believe we've just been able to locate where they might be,
11 and we just ask that we be allowed to call those witnesses
12 at a later date.

13 THE COURT: State's position.

14 MS. WHITE: Well, Your Honor, the State would object on
15 a couple of facts. One is that the case was filed, the
16 application was filed December 15th, 2009. I know Mr.
17 Brough has probably been on it approximately maybe six
18 months at this point. You know, I think there's been plenty
19 of time to try to locate witnesses that are necessary.
20 Furthermore, Mr. Middleton actually pled guilty in this case
21 and admitted the facts. So, the need to have any other
22 additional alibi witnesses, obviously the, the defense had
23 called at least one alibi witness at the time, but I don't
24 see the, the necessity or the relevance to have them.

25 THE COURT: I'm not sure what the, what the purpose of

1 their testimony would be.

2 Can you help me, Mr. Brough?

3 MR. BROUGH: Your Honor, one of the things that we
4 would have to prove is but for the events the result would
5 of been different, and I believe that bringing additional
6 witnesses in would help us prove that the result might of
7 been different had this case been handled differently.

8 THE COURT: well, let me hear from Ms. Jones and then
9 I'll rule on that.

10 MR. BROUGH: Yes, sir.

11 MS. WHITE: Thank you, Your Honor.

12 THE COURT: I assume you're gonna call Ms. Jones?
13 Is that the applicant's case?

14 MR. BROUGH: Yes, Your Honor.

15 THE COURT: Except for the witnesses you---

16 MR. BROUGH: Yes, Your Honor.

17 THE COURT: Okay. Now, Ms. White.

18 MS. WHITE: Yes, Your Honor.

19 The State would call Tanya Jones to the stand.

20 THE COURT: Come forward please, ma'am, to be sworn.

21 TANYA JONES, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please. Once you're seated,
24 state your name.

25 WITNESS: Tanya Jones.

Tanya Jones - Direct examination
by Ms. White

1 THE COURT: Ms. White, your witness.

2 MS. WHITE: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. WHITE:

5 Q Ms. Jones, the testimony has been that you were
6 appointed to represent Mr. Middleton in this case, is that
7 correct?

8 A I was.

9 Q And do you recall when you were appointed following his
10 arrest?

11 A This case initially was downstairs. Karen Hamrick with
12 our office, who handles all of the juvenile matters, was
13 initially Mr. Middleton's attorney. I think he was finally
14 waived upstairs after a hearing on I think June of '08 and I
15 was appointed or June of '09 rather, and I was appointed
16 shortly thereafter. I think I filed my notice in July of
17 '09.

18 Q And I'll just say possibly '08 because the trial was or
19 the guilty plea was '09 I think.

20 A Okay. Yes.

21 Q I wanted to clarify that.

22 Okay. And in talking with him, obviously you, you
23 filed a notice of appeal that's in the record, I mean a
24 notice of an alibi defense, defense and that's in the
25 record.

Tanya Jones - Direct examination
by Ms. White

1 Is that based on conversations with Mr. Middleton and,
2 and his version of the story?

3 A Yes.

4 Q Okay. And the version that he told you at the time, is
5 that the same as the version he's telling today?

6 A Initially, when I spoke with him as well as I spoke
7 extensively with Ms. Hamrick in preparing his case, he
8 indicated that he had been at Mr. Bingo, which was the site
9 of the crime. He was actually meeting a girlfriend there,
10 but the girlfriend never showed up. He then went to a
11 friend's house. He couldn't provide me the name of that
12 friend. In subsequent meetings with him I finally was able
13 to get out of him that he was at an Ornie Mack's house
14 playing cards was what he indicated they were doing.

15 I got Ms. Ornie Mack's phone number. I was able to
16 make contact with her. I also spoke with Mr. Middleton's
17 mom trying to track down other people who had been allegedly
18 at this card game, and we were unsuccessful in getting
19 anybody besides Ornie Mack. In fact, Ms. Mack couldn't even
20 really provide me last names of people, let alone phone
21 numbers, and I can't remember if it was from mom, his mom or
22 Ms. Mack, but they did provide me a name of a Trisha and
23 David who would be able to provide me with all of these
24 names and phone numbers and addresses. All I had was phone
25 numbers, no last names, but they never called me back and I

Tanya Jones - Direct examination
by Ms. White

1 probably tried at least three or four times.

2 Q Okay. And in working with him, I know one of the
3 things they talked about was DNA evidence having to do with
4 the -- well, let me backtrack a little bit.

5 well, first, initially how did he even become a suspect
6 in this case?

7 A My understanding is that when Greer was investigating
8 the case, they talked to -- one of the things that police
9 officers have are confidential informants. And, so, they
10 went and talked with a variety of their confidential
11 informants, and one of them actually saw somebody he knew as
12 "Bean" being in the area of Mr. Bingo at the time of the
13 crime. The police officer in question was familiar with
14 Mr. Middleton, knew that was his nickname, and then prepared
15 a photo lineup to show Mr. Earl Mason, who was the victim in
16 the case, put Mr. Middleton's picture in that lineup, along
17 with five other people, and Mr. Mason was able to identify
18 Mr. Middleton as the person who cut him up.

19 Q Okay. And another female or another person identified
20 him.

21 How, how did that come about?

22 A There was several witnesses on the scene. One of them
23 was Tonia Pace. My understanding is she was just playing or
24 she was there with her grandmother, something along those
25 lines. But she was a patron at Mr. Bingo, and the police

Tanya Jones - Direct examination
by Ms. White

1 officer also showed her the photo lineup, and she was
2 identify, able to identify Mr. Middleton as the man she saw
3 talking with Earl Mason shortly before the incident.

4 Q Okay.

5 A She didn't actually see the crime or the cutting or the
6 attempted robbery, but she did place Mr. Middleton by
7 Mr. Earl Mason's car.

8 Q Okay.

9 A Truck rather.

10 Q And I'm gonna -- if I may approach, Your Honor?

11 THE COURT: Yes.

12 Q I'm gonna bring up two things I want to have marked for
13 identification.

14 Do you recognize these documents?

15 A Yes, I do.

16 Q And you just gave me these from your file.

17 What, what are these documents?

18 A Those are the SLED analysis of the DNA.

19 Q Okay. And you were -- if I may move those in as

20 State's---

21 THE COURT: Any objections to those going into the
22 record?

23 MR. BROUGH: No objections.

24 THE COURT. Without objections they'll be marked as
25 State's Exhibits.

Tanya Jones - Direct examination
by Ms. White

1 know, one that you could win or how did you feel about it?

2 A Eye witness cases are always very difficult, but the
3 fact that the initial DNA didn't match Mr. Middleton's I
4 thought was gonna be helpful because then you could really
5 hammer home that it, you know, this was somebody else. You
6 know, eye witness testimony can sometimes be faulty. People
7 can make mistakes.

8 But when that was excluded as being, you know, pretty
9 much it was Mr. Mason's, that really took that away. So now
10 we're left with trying to figure out why, one, Earl Mason
11 would make a mistake as well as, two, Tonia Pace making a
12 mistake in identification. So, it was gonna be a really
13 difficult case, I think, to try.

14 Q Okay. And tell us -- you did have two witnesses that
15 you had subpoenaed that were on your witness list. Ornie
16 Mack, who we've discussed, would of been an alibi witness,
17 and who was the other witness?

18 A The other witness was Ms. Jackson I believe.

19 Q Okay. And what was her purpose in being there?

20 A One of the other witnesses in the case was a
21 Ms. Drennan, who also helped Earl Mason when he was
22 initially attacked, getting him out, trying to stop some of
23 the bleeding. She indicated that Mr. Mason told her that he
24 "knocked the hell out of the suspect's face." Ms. Jackson
25 was actually the person who took the mug shot of

Tanya Jones - Direct examination
by Ms. White

1 Mr. Middleton and there was no injury or anything to Mr.
2 Middleton's face. So, we were essentially going to
3 introduce his mug shot into evidence, and she was the only
4 person who could essentially establish that foundation for
5 me to get that information in.

6 Q Okay. Now, in regards to the plea, when was that first
7 discussed or how did that come about?

8 A According to my notes, we initially talked about
9 perhaps pleading the case on January 28th, 2009. We
10 talked about a possible plea, and at, at that point I would
11 of explained to him, and I, I have explained to him about
12 numerous times about what most serious was and most violent
13 and 85 percent, and the fact that armed robbery is a strike
14 and another strike which could lead to life without parole.
15 I was concerned about his age, and we talked about me trying
16 to negotiate attempted strong armed robbery as well as an
17 ABHAN, which were both nonviolent, nonserious, and 51
18 percent, which probably would of made him eligible for YOA.

19 We had that discussion in January. I then spoke with
20 the solicitor handling that, which was Sara Beth Gaddis, who
21 was having help from Bob Coler, and they were adamantly
22 opposed to reducing it, and that's kind of where the, they,
23 they stuck to their guns and said it was ten years
24 negotiated without credit or 12 years with credit.

25 Q Okay. And did you talk with the, the applicant at the

Tanya Jones - Direct examination
by Ms. White

1 time and what was his thought at the time of the, of the
2 option of the 12 years with credit or the ten without?

3 A At the time he still wasn't really sure what to do, and
4 then at the day of the trial, I think it was on the 25th,
5 I indicated they're just not gonna come down. They're
6 essentially calling our bluff because we're gonna go in and
7 pick a jury cause sometimes that happens. Sometimes you can
8 just go all the way up to trial and maybe they can't get all
9 their witnesses together and there might be a better offer.
10 The offer wasn't getting any better, and at that point he
11 wanted to fire me as his attorney at record.

12 Q Okay. And obviously that, that motion was denied.

13 Did you talk with him any more following that point
14 before the guilty plea?

15 A I think we struck a jury at that point. Judge Cole, it
16 must of been later in the afternoon, decided to start
17 openings the following day. I went back again to talk with
18 Mr. Middleton, explained what was gonna happen the next day
19 and things like that, and he explained to me he, he may want
20 to plead and he actually wanted to speak with James Cheek.

21 Q Okay. And to your knowledge had he met with Mr. Cheek
22 previously?

23 Is that how he knew him or---

24 A I'm not sure whether or not they had actually met.

25 Mr. Cheek, his office is actually at the jail. He's always

Tanya Jones - Direct examination
by Ms. White

1 Q And explain to us a little bit about how---

2 THE COURT: Give, give her a minute to mark them before
3 you start.

4 MS. WHITE: Oh, I'm sorry.

5 THE COURT: Thank you.

6 (WHEREUPON, the SLED documents were marked as State's
7 Exhibit Nos. 1 and 2 and received into evidence at this
8 time.)

9 THE COURT: All right. You may proceed.

10 MS. WHITE: Thank you, Your Honor.

11 Q We've got State's Exhibit 1 and 2. Talk to you first
12 about No. 2. That -- the date of that was February of '08?

13 A That's correct.

14 Q And what does that DNA profile or report tell us?

15 A Initially I should start out by saying that at the
16 crime scene, Mr. Mason, who was the victim who was, was
17 attacked, he indicated that this young man, black man, early
18 20's, approached him and asked him for a cigarette and a
19 light. Mr. Mason gave him a cigarette, let him use his
20 lighter, and after he lit the cigarette, started attacking
21 Mr. Mason with a box cutter and tried to steal his wallet.
22 He wasn't -- the suspect wasn't able to get the wallet and
23 ran off. And, so, what they did is they found actually a
24 cigarette butt outside of the vehicle.

25 Q Okay.

1 A They also located the lighter.

2 So, what happened is that they, they sent the, the
3 cigarette butt down to SLED as well as the lighter for
4 analysis, and they only compared it to Dana Middleton, and
5 it came back as not a match. And that was a big issue in
6 Family Court, as I understand it, in waiving him up. The
7 judge had some reservations about waiving him up because
8 there wasn't, it wasn't a match.

9 I talked extensively with Mr. Middleton, and my worry
10 in the case is that after it got upstairs Bob Coler would
11 see that it wasn't compared to the victim's DNA, and, in
12 fact, which is what State's Exhibit 1 is. Later on in the
13 case, in February, about a couple weeks before, they did
14 decide to compare it to Earl Mason's, the victim, and the
15 cigarette butt was a match to Earl Mason, and the lighter,
16 you can tell with the DNA profile that they couldn't
17 necessarily exclude Mr. Mason's DNA from it, which was a
18 serious blow to our defense of, you know, somebody else was
19 there, this DNA didn't match our client cause now it did
20 match somebody. It matched the victim.

21 Q And looking at the case, did you have a chance to
22 review the discovery with the applicant?

23 A Yes, we, we met at least five times before trial.

24 Q Okay. And in doing so, what was your opinion of it as
25 an attorney as to whether or not this was a good case, you

Tanya Jones - Direct examination
by Ms. White

1 know, one that you could win or how did you feel about it?

2 A Eye witness cases are always very difficult, but the
3 fact that the initial DNA didn't match Mr. Middleton's I
4 thought was gonna be helpful because then you could really
5 hammer home that it, you know, this was somebody else. You
6 know, eye witness testimony can sometimes be faulty. People
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9 much it was Mr. Mason's, that really took that away. So now
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25 was actually the person who took the mug shot of

Tanya Jones - Direct examination
by Ms. White

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13 and 85 percent, and the fact that armed robbery is a strike
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20 the solicitor handling that, which was Sara Beth Gaddis, who
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22 opposed to reducing it, and that's kind of where the, they,
23 they stuck to their guns and said it was ten years
24 negotiated without credit or 12 years with credit.

25 Q Okay. And did you talk with the, the applicant at the

Tanya Jones - Direct examination
by Ms. White

1 time and what was his thought at the time of the, of the
2 option of the 12 years with credit or the ten without?

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4 then at the day of the trial, I think it was on the 25th,
5 I indicated they're just not gonna come down. They're
6 essentially calling our bluff because we're gonna go in and
7 pick a jury cause sometimes that happens. Sometimes you can
8 just go all the way up to trial and maybe they can't get all
9 their witnesses together and there might be a better offer.
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11 wanted to fire me as his attorney at record.

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14 before the guilty plea?

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16 must of been later in the afternoon, decided to start
17 openings the following day. I went back again to talk with
18 Mr. Middleton, explained what was gonna happen the next day
19 and things like that, and he explained to me he, he may want
20 to plead and he actually wanted to speak with James Cheek.

21 Q Okay. And to your knowledge had he met with Mr. Cheek
22 previously?

23 Is that how he knew him or---

24 A I'm not sure whether or not they had actually met.

25 Mr. Cheek, his office is actually at the jail. He's always

Tanya Jones - Direct examination
by Ms. White

1 in, in and out of the pods. They may have talked a little.
2 I just know that he wanted to talk to Mr. Cheek. And, so, I
3 asked Mr. Cheek to come in and listen to our conversation
4 and add anything that he felt would be appropriate and
5 answer Mr. Middleton's questions that he had.

6 Q And following that conversation, was the result that he
7 wanted to plead?

8 Is that what happened?

9 A That is what happened.

10 Q Okay. And in regards to filing an appeal, obviously he
11 did not have an appeal in the case.

12 Was there anything that you felt was an appealable
13 issue?

14 A Not at the time, no.

15 MS. WHITE: Okay. All right. That's all the questions
16 I have at this time, Your Honor.

17 THE COURT: Mr. Brough.

18 MR. BROUGH: Thank you, Your Honor.

19 May it please the Court?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. BROUGH:

23 Q Ms. Jones, how many times had you discussed the offer,
24 prior to going to trial, with Mr. Middleton?

25 A Probably one or two times prior to that January date.

Tanya Jones - Cross-examination
by Mr. Brough

1 I'm not sure necessarily when I got that offer. But usually
2 when I'm talking with the client in preparing for trial,
3 I'll remind them, as long as that offer hasn't been revoked,
4 that there is still an offer out there. You can change your
5 mind at any time.

6 Q When you say he could change his mind at anytime, he
7 told you he didn't want the offer and he wanted to go to
8 trial, correct?

9 A Uh-huh. (Affirmative).

10 Yes.

11 Q Okay. And the, and the reason he wanted to go to trial
12 is he was saying he didn't do it because he wasn't there?

13 A That is correct.

14 Q Okay. After you struck a jury, you had a conversation
15 with him and Mr. Cheek, correct?

16 A Yes, I believe so.

17 Q Okay. And, and my understanding is that, that
18 Mr. Cheek is also employed by the Public Defender's Office,
19 but only does pleas, is that correct?

20 A That is correct.

21 Q Okay. Now, was the purpose in Mr. Cheek being there to
22 convince Mr. Middleton to plead?

23 A No, in fact, it was Mr. Middleton who requested
24 Mr. Cheek.

25 Q So, you didn't bring him there voluntarily of your own

Tanya Jones - Cross-examination
by Mr. Brough

1 accord?

2 A No.

3 Q Now, you had talked to Ornie Mack.

4 was she present at the trial?

5 A I don't recall whether or not she was actually present,
6 but we had her subpoenaed.

7 Q Okay. You had her personally served?

8 A Yes, sir.

9 Q Okay. What about any of these other witnesses that had
10 been referred to as being in the card game, what efforts did
11 you make to secure them?

12 A I talked with Ms. Mack trying to get names, last names,
13 first names, phone numbers. She wasn't able to provide me
14 any of that. I also talked with his mom trying to get me
15 names, last names are always important, and phone numbers,
16 and she wasn't able to give me anything except Ms. Mack's
17 phone number. I did, like I said before, get a Trisha and
18 David and their number, who could maybe provide me with some
19 additional names. No last names. And like I say, I tried
20 that number several times, left messages, and no one ever
21 returned my phone call.

22 Q Would you agree with me that -- well, let me ask you
23 this.

24 How long you been with the Public Defender's Office?

25 A In Spartanburg?

Tanya Jones - Cross-examination
by Mr. Brough

1 Q Uh-huh. (Affirmative).

2 A I think I was hired in April '08.

3 Q Okay. I---

4 A I'm not sure.

5 Q Would you agree with me that a lot of times, when you
6 talk to clients in doing criminal defense, that they refer
7 to each other either by a street name or, or some other
8 method that does not include their first name and last name?

9 A Yes.

10 Q Okay. And, and would you agree with me that a lot of
11 times, when you talk to them, they say yes, I was with so
12 and so and provide a street name?

13 A Yes.

14 Q Okay. Was that the type of information that you had?

15 A I don't think I was getting street names. I think I
16 was just getting maybe first names. Sherrie sounds sort of
17 familiar, but not Miller. I think I heard a Grayson. I
18 couldn't get a last name, if that was a first name. I just
19 wasn't getting any information, and, and I always tell
20 clients well, I understand that maybe you only know them by
21 a street name or a first name. But that's not helpful to
22 me. I actually need phone numbers. I need addresses so I
23 can send investigators out to talk with these folks. Just a
24 name, living in Greer, isn't helpful to me, and I explained
25 that extensively to Mr. Middleton in the times that we had

Tanya Jones - Cross-examination
by Mr. Brough

1 met, that I need actual information, and I can't pick these
2 people out of the sky.

3 Q Does the Public Defender's Office not have two
4 full-time investigators?

5 A We do.

6 Q Okay. And did you not know the general area around
7 where the card game took place?

8 A My understanding was it happened at Sunnyside.

9 Q Okay. In fact, you---

10 A Or Prince Circle rather in the Sunnyside portion of
11 Greer.

12 Q Right.

13 You actually indicated an address on the notice of
14 alibi---

15 A Yes.

16 Q ---that you filed, correct?

17 A Uh-huh. (Affirmative).

18 Q Now, based on your conversations, was it your
19 understanding that most of these people are people without
20 transportation?

21 A I have no idea.

22 Q In other words, that you, had you gone down there, you
23 might of been able to walk around and find these folks or
24 your investigators?

25 A Well, my understanding, in speaking with Mr., Ms. Mack,

Tanya Jones - Cross-examination
by Mr. Brough

1 is that Grayson had left the area for a while. She wasn't
2 really sure where he went. I think it was actually a guy.
3 Sherrie, I have no idea where this person resided and I
4 wasn't getting that information either from the, the mother
5 or Mr., Mr. Middleton.

6 Q Okay. But you did have -- Dana Middleton's mom was
7 present, correct?

8 A At the trial?

9 Q At the trial.

10 A Yes.

11 Q And was -- Ornie Mack was under subpoena?

12 A She was under subpoena.

13 Q And was served?

14 A She was served.

15 Q So, had you wanted to get her, you could of had the
16 judge potentially send the sheriff out to secure her
17 presence?

18 A Absolutely.

19 Q Okay. So, you had your alibi witness that was properly
20 served?

21 A Uh-huh. (Affirmative).

22 Q You had his mother, who could of verified some of that
23 information present?

24 A Actually, the -- her as an alibi witness is the first
25 time I've ever heard that. I had talked with his mom

Tanya Jones - Cross-examination
by Mr. Brough

1 several times, and she had never once indicated to me that
2 she picked up Mr. Middleton from Ornie Mack's house. I've
3 never heard of that until today.

4 Q Okay. And, and you had the mug shot that showed that
5 Mr. Middleton did not have any injuries to his face?

6 A That's correct.

7 Q With the information that the victim had basically, you
8 know, beat the face to hell or whatever his exact language
9 was of the perpetrator, and you had his mug shot with no
10 bruising?

11 A I did, yes.

12 Q Okay. And correct me if, if I'm wrong on this, but the
13 only evidence they had was they had an eye witness who was,
14 saw somebody talking to the victim before the events
15 occurred, but did not see the crime?

16 A (Witness nods affirmatively.)

17 Q And they had the victim ID Mr. Middleton.

18 Is that pretty much everything?

19 There was no forensics, right?

20 A You know---

21 Q There was no forensic evidence that implicated
22 Mr. Middleton?

23 A No.

24 Q So, you had a cigarette butt, in terms of DNA analysis,
25 which just meant that the victim smoked at some point is

Tanya Jones - Cross-examination
by Mr. Brough

1 really all---

2 A Yes.

3 Q ---it meant?

4 A Yes.

5 Q And that's pretty much it for forensic evidence, and
6 this identification was developed through the use of a
7 confidential informant?

8 A Yes, who was actually---

9 Q Did you ever find out who that was?

10 A Yes, his name actually was Ed Ballenger and he was
11 actually called to trial.

12 Q Okay. And, and was he also not carried out of the
13 courtroom because he was disagreeing with the time frame he
14 saw Mr. Middleton there?

15 A I don't believe so. No, he never testified. We didn't
16 get that far.

17 Q Okay. But you would agree with me that that was a case
18 that potentially, depending upon who the jury believed,
19 could of been won?

20 A I never know what a jury is going to do. I only give
21 options for my client, and I explained to him that the
22 victim was extremely adamant. The officer testified he
23 picked him out immediately from that lineup. The injuries
24 themselves were gruesome. We had an elderly man and a young
25 child.

Tanya Jones - Cross-examination
by Mr. Brough

1 I was very concerned that, if he was convicted, he
2 would spend a substantial amount of time in prison. I
3 explained that the offer was 12 years, and we did the math
4 on 85 percent, and that he was still gonna be in his 20's
5 when he got out, that, you know, it's gonna be up to him,
6 but does he want to take the offer and run with it or does
7 he want to risk potentially getting up to 40 years at
8 85 percent.

9 Q But did you also explain to him that he forfeited his
10 chance at potentially being acquitted of something he may
11 not have done?

12 A Yes, and as I always counsel clients, I say, you know
13 what, I go home at the end of the day and you may not and
14 it's up to you. I never tell people they have to do
15 anything. It's up to them and he asked that he -- he was
16 very concerned. He then wanted to speak with Mr. Cheek. I
17 indicated that I can arrange that. I'll ask Mr. Cheek if he
18 could come in cause we have plea court as well as jury
19 trial. Mr. Cheek came in, answered some of his questions,
20 and I don't really recall what they were at this point, and
21 then Mr. Middleton explained that he was ready to go forward
22 with the plea.

23 Q Now, you said if you wanted to risk going to jail for
24 40 years or prison for 40 years, did you ever explain to him
25 that the judge didn't have to sentence him to 40 years, if

Tanya Jones - Cross-examination
by Mr. Brough

1 he was convicted, that he could of sentenced him to anything
2 in his discretion?

3 A Absolutely. Yes, concurrent time, a sentence of up to
4 20 years, but at, at 85 -- it still would be at 85 percent.

5 Q Right.

6 A It still counts as a strike. I explained all of that.
7 I explained to him the issues that we had with the case as
8 well as some of the positives. Although we were dealing
9 with an older man and how hard he could of hit allegedly
10 the, the suspect, you know, might be something that the jury
11 may consider. It was just one of those things, and Mr. --
12 and I also talked with Mr. Hamrick. Mr. Mason had already
13 testified in Family Court and she indicated to me he made a
14 good witness, which also gave me concern, and I talked with
15 Mr. Middleton about that.

16 Q All right. So, you told him it was in his best
17 interest to plea?

18 A I would never use that kind of terminology.

19 MR. BROUGH: No further questions.

20 THE COURT: Anything further from the State?

21 MS. WHITE: Nothing further, Your Honor.

22 THE COURT: You may step down.

23 MS. WHITE: The State has no other witnesses, Your
24 Honor.

25 THE COURT: All right. Let's talk about these other

1 witnesses.

2 were these individuals that were identified prior to
3 trial?

4 MR. BROUGH: These were individuals that have been
5 testified to as being potentially present at the card game.
6 Ms. Jones said she recognized the name Sherry.

7 THE COURT: Is Sherry one of them?

8 MR. BROUGH: Sherrie or Sharon Miller, yes, is her
9 nickname, and a Santoria Todd. Mrs. Mitchell, Dana's mom,
10 had identified these folks as being present at the card game
11 when she went there. These are people that were supposedly
12 at the card game who could help verify that's where he was.

13 THE COURT: Well, now I would be more concerned about
14 their availability to be subpoenaed---

15 MR. BROUGH: Right.

16 THE COURT: ---then as much as their testimony is
17 concerned.

18 MR. BROUGH: Right.

19 THE COURT: I'll hear from the State.

20 MS. WHITE: Well, Your Honor, I just -- it's been -- he
21 pled guilty February 26th of 2009. I believe he was
22 arrested at least, I think at least six months prior to
23 that, and the time that has been available to be able to
24 contact those witnesses, not only in giving information to
25 trial counsel in preparation, but also now for the PCR, I

1 believe there's been ample time, and the fact that, you
2 know, suddenly now they're able and available, I just think
3 that that's, that's not gonna be necessary for this case in
4 regards to his actual guilty plea.

5 THE COURT: Mr. Brough, have you spoken to these
6 individuals?

7 MR. BROUGH: Your Honor, my paralegal, and I can call
8 her over here if you want to, actually did speak to Sharon
9 Miller on the phone. We had a phone number for her, and she
10 did indicate that he was present at the card game initially,
11 but then said she didn't want to be involved. But she did
12 indicate that he was present, and unfortunately when you're
13 a witness you are involved. I mean I don't have anybody
14 else that can say what you saw. I need you.

15 So, you know, it's my understanding that we may have
16 been successful finding, I don't have a street address, but
17 I have which house it may look like on a specific road, and
18 my intention is that if -- and I just received this
19 information this morning.

20 THE COURT: It sounds like to me you're having the same
21 success as trial counsel had in dealing with these people.

22 MR. BROUGH: Well, I think we might have a little bit
23 more if you'll give me a little bit more time.

24 THE COURT: Till tomorrow.

25 MR. BROUGH: Yes, sir.

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MS.. WHITE: Thank you, Your Honor.

THE COURT: Thank you.

(WHEREUPON, this case was in recess for the evening.)

1 Friday, September 17th, 2010

2
3 THE COURT: All right. We're back on the record in the
4 Middleton case, is that correct?

5 MS. WHITE: Yes, Your Honor, and I believe Mr. Brough
6 has some things to present.

7 THE COURT: Mr. Brough, I think we'd left the record
8 open for you to discuss some matters with alibi witnesses.
9 Be happy to hear from you.

10 MR. BROUGH: Yes, Your Honor. We had sent a private
11 investigator out to contact those witnesses. We did --
12 well, we were successful in contacting Sharon Miller, but
13 based upon her demeanor, her profanity used with our
14 investigator, and general unwillingness to cooperate, we
15 decided not to pursue her. However, we did and would like
16 to call Edward Ballenger, who, after Court ended, we came
17 into some information. He's here today. We located him.
18 He was the CI with whom which the Greer Police Department
19 actually developed the lineups that were used to identify my
20 client, and we would like to call him as a witness cause I
21 believe that he might be able to help us.

22 THE COURT: Any objection to my taking that witness?

23 MS. WHITE: No. No, Your Honor.

24 THE COURT: All right. You may call the witness.

25 MR. BROUGH: Okay. We call Edward Ballenger to the

1 stand.

2 THE COURT: Come forward, sir. Right over here to my
3 left. Sir, as you approach, I'll ask that you place your
4 left-hand on the Bible, raise your right-hand.

5 WITNESS: I don't -- I'm a minister. I don't swear.

6 THE COURT: Well, sir, I give you the option of either,
7 either swearing or affirming.

8 WITNESS: I'll affirm.

9 EDWARD BALLENGER, having first duly
10 affirmed, testified as follows:

11 THE COURT: All right. Thank you, sir. Have a seat.
12 Mr. Brough, your witness.

13 MR. BROUGH: Thank you, Your Honor.
14 May it please the Court.

15 DIRECT EXAMINATION

16 BY MR. BROUGH:

17 Q Please state your name for the record.

18 THE COURT: Well, wait a second. I didn't get him to
19 state his name.

20 State your name, sir.

21 WITNESS: Edward Ballenger.

22 THE COURT: Mr. Brough.

23 MR. BROUGH: Thank you, Your Honor.

24 May it please the Court?

25 THE COURT: Yes, sir.

Edward Ballenger - Direct examination
by Mr. Brough

1 Q Mr. Ballenger, sir, were you contacted by the Greer
2 Police in reference, a couple years ago, an incident that
3 occurred near Mr. Bingo?

4 A Yes, sir.

5 Q Okay. And what was -- what did you tell the officers
6 after being contacted and in reference to a Dana Middleton?

7 Do you remember?

8 A I told the officer that I goes to Wal-Mart perfectly
9 everyday because it's within three minutes to my house. I
10 did not tell them specifically who the guy was because I
11 didn't know, but I explained to them that I seen a guy with
12 a t-shirt and blue jeans on of approximately daylight saving
13 time, during the daylight, that's coming out of the vicinity
14 of Wal-Mart and that was it.

15 Q You're sure it was during the daylight?

16 A It was during the daylight. I had just left a son --
17 my two sons were playing football at the high school. They
18 had started the game at five o'clock, and the game was over
19 and it was daylight saving time. It was still daylight
20 because they had a C team and a JV football team.

21 Q Okay. But it was not around ten o'clock at night or
22 some time in that vicinity?

23 A No, I did not tell them it was no ten o'clock at night.
24 Ten o'clock at night I usually try to be in the house
25 myself.

Edward Ballenger - Direct examination
by Mr. Brough

1 Q Okay. And, sir, are you aware that they actually
2 developed the lineup they showed to the victim's in this
3 case and based on your information?

4 Are you aware of that fact?

5 A No, sir, I was not aware of that.

6 Q But you are the person who gave the police department
7 that description?

8 A I gave the police department a description that I just
9 spoke of previously that I seen a black male wearing a white
10 t-shirt and blue jeans at that time coming up from the
11 vicinity of Wal-Mart.

12 Q Were you subpoenaed for a trial back in February of
13 2009, sir, by the State?

14 A I don't recall being subpoenaed by the State, but I do
15 recall being told by an officer of the City of Greer to come
16 to the courtroom, and they did not give me the opportunity
17 to say anything then.

18 Q Prior to coming to the Court, had you ever had any
19 conversation with a Tanya Jones, the young lady seated over
20 there with blonde hair?

21 A I had a conversation with -- I, I can't recall the
22 name, but I did have a conversation with a lady along with
23 the officers, and if I'm not mistaken, I think the woman was
24 expecting a baby at the time.

25 Q Okay. Did you tell her this information that you've

Edward Ballenger - Direct examination
by Mr. Brough

1 testified to in court?

2 A Yes, sir.

3 MR. BROUGH: No further questions.

4 THE COURT: Ms. White.

5 MS. WHITE: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. WHITE:

8 Q So, Mr. Ballard, your testimony is not -- you're
9 testifying that you didn't call the Greer Police to identify
10 the gentleman that you saw walking near the Wal-Mart that
11 night?

12 A No, I called the police upon reception of information
13 that was left at my house after speaking with somebody else.
14 They told me that the police officer had been there. He
15 needed me to give him a call.

16 Q Okay. And you didn't tell the police that you had seen
17 someone that you were, that you knew as Bean walking around
18 that, that area---

19 A I told---

20 Q ---shortly after the incident?

21 A I told the police that I seen somebody that fit that
22 description with the clothes on, but I did not tell them it
23 was Bean.

24 Q Okay. And did you know a gentleman named Bean at the
25 time or somebody that went by that nickname?

Edward Ballenger - Cross-examination
by Ms. White

1 A I knew a gentleman by the name of Bean at that time due
2 to the fact that I have numerous of kids at my house, and my
3 wife had previously passed in '99, and my kid was
4 inter-reacting with a lot of other kids.

5 Q Okay. And just to -- the Wal-Mart, in relation to the
6 Mr. Bingo, it's kind of behind Mr. Bingo back with some
7 roads, is that right?

8 Kind of off to the side and maybe a little behind?

9 A Actually, Mr. Bingo is off Wade Hampton Boulevard, but
10 there's a road that runs behind Mr. Bingo. It's called
11 Hampton Road, and Hampton Road intersects with the road,
12 Allure Street, that comes off Wal-Mart.

13 Q Okay. All right. And just -- I'm gonna -- just want
14 to show something to you if you'll -- is this a good map of,
15 of Mr. Bingo?

16 That's the Wal-Mart right there?

17 A That is.

18 Q That's Wade Hampton?

19 A That's Wade Hampton.

20 Q And this is the Mr. Bingo, right?

21 A Yes, ma'am.

22 Q And that's that Hampton Road you were talking about?

23 A Yes, ma'am.

24 Q Okay. All right.

25 All right. That's all the questions I have for this

1 witness, Your Honor.

2 THE COURT: Anything further, Mr. Brough?

3 MR. BROUGH: No, Your Honor.

4 THE COURT: You may step down, sir.

5 WITNESS: Thank you, sir.

6 THE COURT: Anything from the applicant?

7 Anything further from the applicant?

8 MR. BROUGH: Your Honor, if I may just show Ms. White
9 one thing?

10 (Pause.)

11 MR. BROUGH: May I have this introduced as Applicant's
12 3 I believe. It's just a report from the investigator that
13 was sent out, for the Court's information.

14 THE COURT: Any objection?

15 MS. WHITE: No, Your Honor.

16 THE COURT: All right. It will be received and marked.

17 MR. BROUGH: That would be all that we have.

18 THE COURT: And that's, that's from your investigator
19 that went out to meet with the witness that would, that's
20 not appearing?

21 MR. BROUGH: The witness who did show up, but was going
22 to eventually find herself in contempt of Court would be my
23 belief, Your Honor.

24 THE COURT: I see. Okay. Whatever.

25 (WHEREUPON, the report was marked as Applicant's

1 Exhibit No. 3 and received into evidence at this time.)

2 THE COURT: All right. Now, do you wish to call any
3 witnesses in reply to the testimony that we've heard?

4 MS. WHITE: Yes, Your Honor. I'd like to recall Tanya
5 Jones.

6 THE COURT: Ms. Jones, if you'd return to the stand,
7 and I'll remind you that you've been placed under oath for
8 this hearing. You remain under oath at this time.

9 TANYA JONES, having been previously
10 sworn, testified as follows:

11 THE COURT: Ms. White, your witness.

12 MS. WHITE: Thank you, Your Honor.

13 If I may approach?

14 THE COURT: You may.

15 DIRECT EXAMINATION

16 BY MS. WHITE:

17 Q Ms. Jones, if you can, look at -- let me show you. I
18 don't have a copy of it.

19 If you would look at this and just identify for me what
20 this is.

21 A This is the Greer Police Department supplemental report
22 that I received in discovery.

23 Q Okay. So, you received that in regards to this case
24 after you filed this discovery motion?

25 A Yes.

Tanya Jones - Direct examination
by Ms. White

1 MS. WHITE: Okay. And, Your Honor, if we could mark
2 this as State's Exhibit 3.

3 THE COURT: Any objection?

4 MR. BROUGH: No.

5 THE COURT: All right. It will be so marked and
6 received into evidence.

7 (WHEREUPON, the report was marked as State's Exhibit
8 No. 3 and received into evidence at this time.)

9 Q If you could, for me, read the highlighted part
10 reflecting what Ms. Ballenger has just testified to I guess
11 or contradicting maybe.

12 A The officer received a call from an informant the
13 following day. Stated that he observed a black male fitting
14 the description running from Hampton Road, which was close
15 to the incident location shortly after the incident the same
16 night. The informant further advised that the subject's
17 name was "Bean." This officer is familiar with a black man
18 named Dana Middleton, Middleton that goes by the name Bean,
19 and his physical description was very consistent with the
20 description given by the victim.

21 Q Okay. Thank you.

22 So, so, apparently the investigating officer's report
23 indicated that they received a call from Mr. Ballenger who
24 testified that he had seen Bean running from the location
25 shortly after the incident, and that was at about

Tanya Jones - Direct examination
by Ms. White

1 10:15 p.m.---

2 A That's correct.

3 Q ---that evening?

4 So, that would of not been in the daylight time?

5 A That's correct.

6 Q And did you ever talk with Mr. Ballenger about this?

7 Do you recall having any conversations with him?

8 A I, I did. He actually appeared the first day of trial.

9 The State identifying him. I went over and spoke with him.

10 He was actually sitting with Dana Middleton's mother. He

11 indicated to me initially that the time frame was wrong,

12 that he'd seen Mr. Middleton near Wal-Mart, something like

13 that, during the daylight hours. However, according to

14 Mr. Middleton's statement to me, he had started -- he was

15 going to meet a girlfriend at Mr. Bingo. He had started out

16 walking in the daylight, and by the time he had got to

17 Mr. Bingo it was nighttime. The girlfriend was no longer

18 there, and, so, then he continued on to a friend's house on

19 Sunnyside. So, there was an obvious contradiction there,

20 and I started to become a little bit more obviously

21 concerned about the case at that point.

22 Q Okay. And in regards to calling Mr. Ballenger as a

23 witness, was he ever presented as a witness on or if, for

24 the State's behalf or on the defense's behalf prior to the

25 guilty plea or at any point?

Tanya Jones - Direct examination
by Ms. White

1 A I do believe he was identified during jury selection.
2 I'm not sure if he was necessarily in the room, but I
3 know---

4 Q Okay.

5 A ---he was present the day of trial because I spoke
6 with him personally---

7 Q Okay.

8 A ---to see what exactly his testimony was going to be.

9 Q And ultimately, after, after that, did you talk with
10 Mr. Middleton about the contradictions or do you recall?

11 A I did. I talked with Mr. Middleton about Mr.
12 Ballenger's story as well as the fact that Mr., we were
13 having some difficulty with Ms. Mack.

14 Q Okay. Thank you.

15 That's all I have, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BROUGH:

18 Q Ms. Jones, the, the statement you keep referring to
19 that Mr. Middleton gave that's contradicted, that was not a
20 statement he gave to law enforcement, correct?

21 A That's correct. I don't believe he gave a statement to
22 law enforcement.

23 Q So, that was some sort of internal notes that you had
24 at one point as to something he may have said?

25 A That's correct. Actually it was in my notes. He told

Tanya Jones - Cross-examination
by Mr. Brough

1 me that on August 14th, 2008, and I also have an oath to
2 the, as a lawyer, not to present false or basically lies to
3 a Court.

4 Q Okay. You also have a duty to represent your client
5 though, correct?

6 A That is correct.

7 Q This State's Exhibit 3, can you please show me where,
8 on State's Exhibit 3, Mr. Ballenger signed that document?

9 A He did not sign that document.

10 Q So, he did not sign that document at all?

11 A No.

12 Q And he was the witness with whom the State developed
13 their identifications of Mr. Middleton in this case?

14 A That is correct.

15 Q And you understand that your client had the right to
16 remain silent?

17 A Yes, he does.

18 Q And that you would not have to put him up in court?

19 A That's correct.

20 Q And yet you still chose to talk him into pleading?

21 A I didn't talk him into pleading. I gave him options
22 and noted the difficulties with the case.

23 MR. BROUGH: No further questions.

24 THE COURT: Anything further, Ms. White?

25 MS. WHITE: Nothing, Your Honor.

1 THE COURT: You may step down.

2 Does the applicant wish to call any additional
3 witnesses?

4 MR. BROUGH: No, Your Honor.

5 THE COURT: State wish to call any additional
6 witnesses?

7 MS. WHITE: No, Your Honor.

8 THE COURT: All right. Be happy to hear from you, Mr.
9 Brough.

10 MR. BROUGH: Thank you, Your Honor.

11 Your Honor, we would submit that this is a case that
12 fits the criteria of both ineffective assistance of counsel
13 as well as being an involuntary guilty plea. The standard
14 on an involuntary guilty plea is essentially that the trial
15 counsel's level of performance fell so far below the norm
16 that you would, in essence, have to take a plea. This case
17 fits that category exactly.

18 Mr. Middleton showed up for trial. He had an alibi
19 defense. There was notice of alibi that was filed. The
20 alibi witness that Ms. Jones had and was identified to the
21 Court in the transcript was a Ms. Ornie Mack. There was
22 some additional witnesses as well. One of whom was seated
23 in the courtroom, Ms. Shalonda Mitchell, who was not called.

24 Ms. Ornie Mack did not show up for trial on the first
25 day. There was no motion made to assure her presence for

1 the second day of Court. There was nothing done about the
2 fact that his alibi witness did not show up. There should
3 of been immediately---

4 THE COURT: Well, they never reached the stage where
5 the defense was presenting its case, were they?

6 MR.. BROUGH: But it would be my position that that
7 would, should of been present during jury selection.

8 THE COURT: That's not -- I'm not, I'm not aware of a
9 rule to that effect.

10 MR. BROUGH: I understand.

11 I would also indicate that this is a case where there
12 were no eye witnesses. I'm sorry. Let me retract that. No
13 forensic evidence. Only eye witness testimony. You had two
14 eye witnesses. The identification procedures that they used
15 were based on an informant, who was Mr. Ballenger, who
16 testified here today about an individual he saw in the area
17 at approximately the time that this occurred. That's what's
18 in the State's 3 supplemental report.

19 However, as the Court heard Mr. Ballenger testify and
20 told Ms. Jones on the day of trial while he was present in
21 the courtroom, that this occurred in the daylight hours,
22 that this was not something that he witnessed at around ten
23 o'clock at night, and that he never actually said it was
24 Bean. There's no where in that supplemental report that Mr.
25 Ballenger signed and said this is what I'm saying. It's the

1 report of an officer interpreting what someone else said.
2 clearly he could of been called to testify and that would
3 have created doubt in the case.

4 Additionally, Mr. Middleton tried to avail himself of
5 the remedies of Court at the time of his trial. He tried to
6 have his lawyer fired. Clearly he was not happy with his
7 representation. He had told Ms. Jones in the past he did
8 not want a 12 year deal. I want to go to trial. And
9 instead, he was forced in a situation where he knew he had a
10 lawyer who was not calling the witnesses properly to his
11 defense, that after he tried to fire his attorney, that
12 motion was denied by the Trial Court. And, so, he was
13 basically left without any kind of remedies whatsoever,
14 which basically affected the fact that he knew, had he gone
15 to trial, as it stood with the person representing him and
16 the way he was being represented, he would have been found
17 guilty. That was the situation he found himself in.

18 And, so, he did take a plea, but it was the following
19 day. Nothing had been done in terms of presenting the case
20 from a defense prospective in any manner in which, you know,
21 could have potentially resulted in his acquittal. There
22 were witnesses present. There was clearly some issues with
23 the identification procedures that were developed before
24 even showing the eye witnesses the lineup.

25 You know, it was dark out. There was the potential

1 that, you know, serious doubt could of been created, coupled
2 with alibi witnesses, this was a case that could of been won
3 at trial. He didn't, not want to take a plea. He wanted to
4 go to trial. He tried to fire his lawyer, and when
5 everything else failed, he was without remedies, and this is
6 clearly a case that should be overturned.

7 THE COURT: Now, do you, do you take the position that
8 there were willing alibi witnesses other than his mother?

9 MR. BROUGH: I take the position that they were able to
10 find an Ornie Mack that was under subpoena who---

11 THE COURT: Well, you, you, you tried to get her here
12 and, and---

13 MR. BROUGH: It's currently my understanding---

14 THE COURT: Let me finish talking, Mr. Brough.

15 MR. BROUGH: Yes, sir.

16 THE COURT: And informed the Court that she was not,
17 you weren't in a position to present her today because of
18 her demeanor.

19 MR. BROUGH: No, I informed the Court that I was unable
20 to present Sharon Miller. Not Ornie Mack. No.

21 THE COURT: Okay. Mrs. Miller then. That was another
22 one of the witnesses identified.

23 MR. BROUGH: Correct. Ms. Ornie Mack we were not able
24 to get here. My understanding is she's fled from some legal
25 trouble and is in New York. We were not able -- but she was

1 present at the time.

2 THE COURT: She was under subpoena.

3 MR. BROUGH: She was under subpoena, and, and that goes
4 to the issue of nothing was done to secure her presence.

5 THE COURT: well, I don't know what else you do but
6 subpoena here, and then, when the times comes to call her,
7 make the appropriate motion. I don't -- I'm not sure that
8 the appropriate time had arrived-at that point in time.

9 MR. BROUGH: I will also indicate to the Court, and,
10 and I went through the transcripts, and I know there was
11 some testimony as to, as to the transcripts in this case
12 because I believe Ms. White asked Mr. Middleton if he was
13 under oath at the time of his plea. I went back through the
14 transcript -- I actually -- I didn't see it, and it's
15 possible I missed it. But I went through it once or twice.
16 I didn't see where he was actually ever sworn during that
17 plea to tell the truth, and I'll just throw that out there.

18 THE COURT: Ms. White.

19 MS. WHITE: Thank you, Your Honor.

20 I think it's clear from the record that there's a lot
21 of contradictory testimony that was presented prior to the
22 case obviously in regards to alibi. This---

23 THE COURT: Maybe not testimony. But at least
24 statements.

25 MS. WHITE: Statements, yes, sir, Your Honor. That's

1 more accurate. The investigating officer received a call,
2 made that in the statement that this gentleman, Mr.
3 Ballenger had seen the gentleman he referred to as Bean
4 shortly after, after the incident, which was around
5 10:15 p.m.

6 Your Honor, Ms. Jones had subpoenaed Ornie Mack, had
7 also subpoenaed the officer that took the mug shots to
8 indicate that Mr. Middleton had no injuries to his face to
9 contradict the victim's testimony that he had, I guess,
10 attacked him in defense. Obviously a defense was ready to
11 be presented, the alibi defense motion had been made, and
12 they were ready to go forward. At that point though,
13 Mr. Middleton pled freely and voluntarily. He was given the
14 option of proceeding with retaining an attorney. That was
15 not an option. So, his attorney was Ms. Jones, who had
16 prepared and, and worked on this case for a while, and had
17 properly subpoenaed the, the witnesses, done the research,
18 and prepared.

19 He did plead freely and voluntarily. He has gotten a
20 12 year deal compared to facing 20 years on each charge.
21 Obviously that's still a substantial amount of time for
22 someone who's a young, young man. But, unfortunately, in
23 this case, the evidence was pretty strong. It was
24 identified by the victim. He was identified in the lineup a
25 hundred percent by the victim. And we think that it's clear

1 that Ms. Jones did everything that was necessary and
2 required of an attorney in her position to be effective, and
3 that the guilty plea was freely and voluntarily made.

4 THE COURT: Thank you.

5 MS. WHITE: We ask that the application be denied.

6 THE COURT: All right. I'll take the matter under
7 advisement. Thank you very much.

8 MS. WHITE: Thank you, Your Honor.

9

10 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 16th AND 17th day of September, 2010.

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

January 29th, 2011



PAMELA E. GREEN, Court Reporter

THE STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT
2008GS4202869, 2008GS4202870

The State of South Carolina)

v.)

DANA MIDDLETON,
Defendant.)

DEFENDANT'S RESPONSE TO STATE'S
REQUEST FOR NOTICE OF ALIBI

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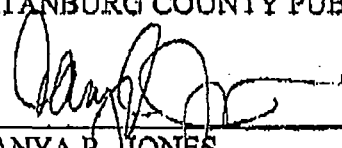
To: Sara Beth Gadas, Assistant Seventh Circuit Solicitor

YOU WILL PLEASE TAKE NOTICE that Pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, the Defendant by and through his undersigned attorney responds to the State's Request for Notice of Alibi Defense as follows:

1. Defendant claims he was at 129 Prince Circle, Greer, SC at the time of the alleged incident.
2. Witnesses that may be called to support the alibi include: Ms. Orrie Smith, 129 Prince Circle, Greer, SC. DOB 10-2-1970.
3. Defendant reserves right to amend this Notice if additional witnesses are located.

Respectfully submitted,

SPARTANBURG COUNTY PUBLIC DEFENDER

By: 

TANYA R. JONES

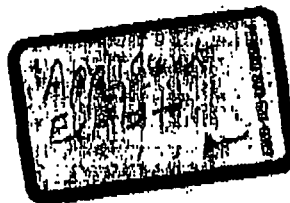
Assistant Public Defender

366 North Church Street

Spartanburg, South Carolina 293063

(864) 596-2561

Date: January 22, 2009



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,

Indictment: 2008GS4202870

vs.

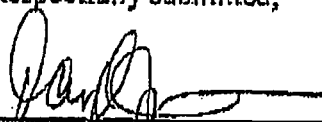
DEFENDANT'S LIST OF WITNESSES

Dana Middleton

Defendant.

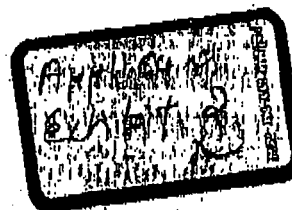
1. Ornie Mack, Greer, SC
2. Officer Jackson, Greer Police Department

Respectfully submitted,



Tanya R. Jones #77355
Attorney for the Defendant
Assistant Public Defender
Spartanburg County Public Defender Office

Dated this 24 day of February, 2009
Spartanburg County



MARC KITCHENS

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CLERK OF COURT

Case Title:
Dana Middleton vs.
The State of South Carolina

Investigator:
P.D. Hice

Assigned:
09/16/10

Date of Investigation:
09/16/08 -

Status:
Closed

INTRODUCTION:

This case originated on Thursday, 09/16/10 upon a request for investigative services from law offices of Attorney Christopher Brough. PI Hice was asked to travel to several addresses in the Greer, SC area and locate potential witnesses for the purpose of serving subpoenas in the above captioned case.

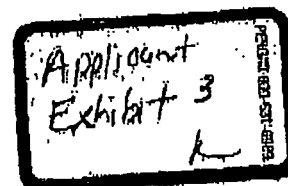
DETAILS OF THE INVESTIGATION:

PI Hice, after being contacted by the Brough Law Firm, traveled to their offices located on Magnolia St., in Spartanburg, SC. Attorney C. Brough advised PI Hice that he had three subpoenas for the above captioned case and requested that PI Hice travel to the Greer, SC area to effect service of the subpoenas.

PI Hice left Spartanburg, SC in the company of Ms. Mitchell, Dana Middleton's mother who had personal knowledge of the whereabouts of the three persons who were to be served.

*Edward "Earl" Ballenger. PI Hice was instructed to travel to 412 Morgan St. Greer, SC. After reaching this location, no one would answer the door. The subpoena was attached to the front door, with instructions requesting that Mr. Ballenger contact Attorney C. Brough. PI Hice and Ms. Mitchell returned to this residence several times over the next hour and knocked several more times on the residence in order to effect "good service" of this subpoena with negative results.

Hice Investigations LLC
P.O. Box 16, Glendale, SC 29346
Private Investigations
864/500-2471
petehice@bellsouth.net



*Sharon Miller. PI Hice traveled then to 414 Sunnyside Drive, Greer, SC and located Sharon Miller. PI Hice served her with a subpoena in the above captioned case at 1:59 pm. Ms. Miller was visibly upset and profane in speaking with PI Hice and Ms. Mitchell. PI Hice left this residence without incident.

*Santoria Dodd. PI Hice traveled to building 100, Apt. 2 Victor Ct. Greer, SC. This is the residence of Santoria Dodd. PI Hice knocked at the door in order to effect service and was spoken to through the door. The female speaking through the door refused to open the door and denied that Santoria Dodd lived at this apartment. PI Hice contacted the maintenance department for the apartments and it was confirmed that this was the apartment for Santoria Dodd but service could not be effected.

PI Hice then traveled to Piney Grove Baptist Church on Jordan Rd. just a short distance outside of Greer, SC in order to locate Edward "Earl" Ballenger with negative results.

PI Hice then returned to the Brough Law Firm and revealed these findings.

END OF REPORT.

Hice Investigations LLC
P.O. Box 16, Glandale, SC 29346
Private Investigations
864/590-2471
petehice@bellsouth.net

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG)

Dana Middleton, #333427,)

2009-CP-42-6725

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 15, 2009. The Respondent made its Return on or about April 27, 2010. An evidentiary hearing into the matter was convened on September 16, 2010, with a supplemental hearing held on September 17, 2010. The Applicant was present and represented by Christopher D. Brough, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Applicant also presented testimony from his mother, Shalonda Mitchell, and Ed Ballenger. Tanya R. Jones, Esquire, testified on behalf of the State. This Court also had before it a copy of the guilty plea transcript, the records of the Spartanburg County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the July 2008 term of the Spartanburg County Grand Jury for attempted armed robbery

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(2008-GS-42-2869) and assault and battery with intent to kill (2008-GS-42-2870). Applicant was represented by Tanya Jones, Esquire. On February 25-26, 2009, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable J. Derham Cole to confinement for a period of twelve (12) years on each charge, both sentences to run concurrently. Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel; and
2. Subject-matter jurisdiction.

SUMMARY OF TESTIMONY

Applicant testified at his hearing that he wanted to proceed on claims of ineffective assistance of counsel and involuntary guilty plea. Applicant testified that he was a juvenile at the time of the crime and had a waiver hearing in Family Court before proceeding to trial. Applicant testified that his intention was to proceed to trial with an alibi defense. Applicant testified that he first met with his attorney, Tanya Jones (Counsel), in June or July 2008 when his case was waived to General Sessions. Applicant testified that he then met with Counsel in November when he was returned to the county jail and in January, before the trial in February. Applicant testified that Counsel filed notice of alibi defense, as evidenced by Applicant's Exhibit #1. Applicant testified that at the time of the crime at Mr. Bingo, he was at a card game at a home on Sunnyside Drive. Applicant testified that he informed Counsel of his alibi and informed her of several witnesses to call, including Ornie Mack, Santoria Dodd, and Sharon Miller. However, Applicant testified that none of the witnesses were present when his trial was to begin. Applicant testified that he had accurate contact information

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for each of the witnesses at the time he gave their names to Counsel.

Applicant testified that at the beginning of his trial, he made a Motion to relieve Counsel. Applicant testified that Counsel had discussed a twelve-year offer with him previously, but he had not accepted the offer because he wanted to go to trial. Applicant testified that the DNA evidence on the cigarette lighter was not his. Applicant also testified that Counsel did not file a pre-trial motion challenging the photo line-up. Applicant testified that he pled guilty because none of the witnesses were present to support his alibi defense and he was told he might receive a forty-year sentence if he proceeded to trial.

Shalonda Mitchell (Mitchell) testified that she received a call from the Applicant, who was fifteen, on the night of the crime, asking her to bring money to the card game. Mitchell testified that she went to the house on Sunnyside Drive and gave Applicant forty dollars. Mitchell also testified that there were several people present at that card game, including Sharon Miller, Ornie Mack, and Keisha Miller. Mitchell testified that she received a call saying that he had been arrested and when she arrived at the police station, she signed a paper given consent for Applicant to be questioned. However, Mitchell testified that an Officer came to her house to question Applicant about a carjacking that occurred after Applicant's arrest because the suspect apparently resembled Applicant. Mitchell testified that she believes someone who looks like her son committed the crime related to this conviction as well.

Mitchell testified that she tried to locate all of the witnesses to testify and brought two of the witnesses in to meet with Counsel at one time. Mitchell testified that she informed Counsel that Mitchell did not believe Counsel had enough time to prepare and work on the case. Mitchell testified that she was not allowed to speak at the guilty plea and thought there was pressure put on

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HOLLY B. MCALLEY

her son to plead guilty.

Edward Ballenger (Ballenger) testified that he was the confidential informant who was contacted by the Greer police regarding the Mr. Bingo incident. Ballenger testified that he told the police that he saw a guy during daylight hours coming from the vicinity of the Wal-Mart in a t-shirt and jeans. Ballenger testified that he did not identify Applicant by the nickname of "Bean," or place Applicant near the scene of the crime at or around the time of the crime, as the Officer's investigative report indicated, which was entered as Applicant's Exhibit #3.

Counsel testified that she was appointed to represent the Applicant in June 2008 following the waiver hearing. Counsel testified that she met with Applicant at least five times. Counsel testified that she spoke with Applicant and he initially indicated that he had been at Mr. Bingo and then left to go to a friend's house. Counsel testified that she did speak with Ornie Mack and Applicant's mother at a subsequent meeting. Counsel also testified that she was unsuccessful in contacting any of the other alleged alibi witnesses, as Applicant and others only provided first names and could not provide last names or phone numbers for any witnesses. Counsel testified that she did call someone named Trisha, who never returned her phone call. Counsel also testified that she was informed that Grayson had left the area for a while and no one had any idea where Sherry resided. Counsel testified that she did speak with Sharon Miller and based on her use of profanity and demeanor, Counsel was not interested in having Ms. Miller testify. Counsel testified that she did subpoena Ornie Mack and the officer who took Applicant's booking photo, since the victim stated that he hit or kicked the suspect in the face and Applicant's photo indicated no facial injuries. Counsel testified that Ms. Mack did appear on the first day of the trial. Counsel also testified that the first time she heard that Applicant's mother went to the house on the night in question was during the

PCR hearing testimony.

Counsel testified that she discussed the plea offer with Applicant one to two times prior to January, but Applicant continued to say he wanted to proceed to trial. However, Counsel testified that on the day of trial, Applicant specifically requested to speak with James Cheek, another attorney. Counsel testified that after speaking with Mr. Cheek, Applicant decided to plead guilty. Counsel testified that she discussed the plea with Applicant, including the fact that this was a non-violent charge, but also a serious charge, which would give Applicant one strike. Counsel also discussed with Applicant the options of strong armed robbery or a YOA sentence, but the State would not reduce the charges or provided a better deal than the twelve years.

Counsel testified that the victim was a good witness during the waiver hearing, so she expected the victim to be equally as compelling at trial. Counsel also testified that although the DNA did not belong to the Applicant on the cigarette butt or lighter, those items were later tested and determined to contain DNA from the victim. Counsel indicated the results on the two separate SLED forensic reports, State's Exhibits #1 and #2. Counsel testified that she saw no legal reason to challenge the photo line-up identification of Applicant by the victim. Counsel testified that she explained all of the choices, facts, and potential sentences to the Applicant, but he made his choice to plead guilty freely and voluntarily.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required

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pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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As to Applicant's allegation that Counsel was ineffective for her failure to call witnesses in support of Applicant's alibi defense, this Court finds that Applicant has failed to meet his burden of proof. This Court found Counsel's testimony more credible than Applicant's or other witnesses' testimony. This Court also finds that Counsel made sufficient attempts to locate alibi witnesses for trial. Counsel subpoenaed the witness she was able to contact and determined would be helpful for Applicant's case. Counsel also attempted to contact other witnesses from minimal information given to her by the Applicant.

Furthermore, prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant failed to present any witnesses at the hearing to support his claims or indicate what the witnesses might have said had they testified at trial. Therefore, this allegation is denied and dismissed.

Regarding Applicant's allegation that Counsel was unprepared to proceed to trial, this Court finds that Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony to be the most credible regarding this issue. This Court finds that Counsel was prepared and ready to go to trial. Counsel investigated the case, contacted witnesses, reviewed discovery

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materials and prepared a defense. Counsel is an experienced attorney who was clearly prepared for trial. Therefore, this allegation is denied and dismissed.

Involuntary Guilty Plea

The Applicant also alleges that his guilty plea was entered into involuntarily and unknowingly. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntariness and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

This Court finds that the record conclusively refutes this allegation. The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his

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guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing regarding the voluntariness of his plea lacked credibility, in particular as to Applicant's testimony that he only pled guilty because of Counsel's failure to secure witnesses to testify on his behalf. This Court also finds Counsel's testimony credible in that she gave Applicant all available options and allowed him to make his own informed decision. Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered.

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 advises Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243¹ for appropriate procedures for appeal.

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¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

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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 16th day of November, 2010.

Spartanburg, South Carolina


Roger L. Couch
Presiding Circuit Court Judge

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WITNESSES

GREER POLICE DEPT

SENTENCE MADE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

5. CIRCLED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT NUMBER

TRAFFIC VIOLATIONS

DIRECT

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

MADE KITCHENS

82-0144-1-7118 8004

Foreperson of Petit Jury

Date:

DOCKET NO.

08-GS-42-2869

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 27 2008

TERM

THE STATE

vs.

DANA MIDDLETON

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 26

Class FELIC

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 26 2008

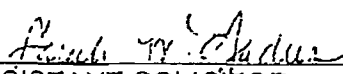
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Dana Middleton did in Spartanburg County on or about August 24, 2007, while armed with a deadly weapon, feloniously attempt to take from the person or presence of Earl Lee Mason, by means of force or intimidation goods or monies belonging to Earl Lee Mason, in violation of §16-11-330 (B), §16-1-80 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.



ASSISTANT SOLICITOR

WITNESSES

SPREER POLICE DEPT

SENTENCE MADE

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ARREST WARRANT

FINE CARD MADE

DIRECT TRAFFIC VIOLATIONS COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 6/26/08

VERDICT

MARC KITCHENS

2008 JUL -1 AM 10:28

Foreperson of Grand Jury

Date: FILED

DOCKET NO.

08-GS-42-2870

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 07 2008

TERM

THE STATE

VS.

DANA MIDDLETON

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

INDICTMENT

At a Court of General Sessions, convened on JUN 26 2008, the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That the defendant, Dana Middleton, did in Spartanburg County on or about August 24, 2007, commit an unlawful act of violent injury upon the victim, Earl Lee Mason, by stabbing the victim, requiring emergency medical treatment, and with the intent to kill the said victim, in violation of §16-03-620 of *THE CODE OF LAWS OF SOUTH CAROLINA*, 1976, as amended.

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

Siobhán W. Padua
ASSISTANT SOLICITOR