STATE OF SOUTH CAROLINA
In The Supreme Court



---

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

---

Appellate Case No. 2017-000826
Lower Court No. 2016-CP-23-3282

---

Christopher Eric Russell, .....Respondent,

v.

State of South Carolina, .....Petitioner.

---

# APPENDIX

---

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General
SC Bar No. 79054
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

WANDA H. CARTER
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29201
(803) 734-1330

ATTORNEY FOR RESPONDENT

# INDEX

of you done a fine job for your case, for your perspective sides, regardless. That being said, it would be my pleasure to try other cases with you, regardless if you feel the same. Thank you.

MR. MOYER: Thank you.

THE COURT: All right. All right. Go ahead and take those back and get them -- tell them to begin deliberations.

Y'all check those exhibits and make sure they're all there.

MS. ROSS: Is the alternate still back there?

THE COURT: Yeah, I'm going to bring her back in.

MS. ROSS: Sorry, I just had a case--

THE COURT: Listen --

(WHEREUPON, everyone was talking over one another.)

MR. MOYER: Question I have, Judge, I often had judges to not do it.

THE COURT: I tell you what--

MS. ROSS: I don't have a position on it.

THE COURT: That's fine.

Ask the Forelady -- tell them we have the ammunition out here, we're going to keep it out here unless they want it in there, okay.

Do y'all have a problem doing it that way?

MR. MOYER: Not at all.

THE COURT: Also, ask the alternate to come back out.

MS. ROSS: Judge, do I need to renew my directed verdict motion?

THE COURT: Let me put this on the record, if I may. I went on with the State's reply instead of letting the Defense counsel put her renewal of the directed verdict on the record. I told her I would give her a chance to do so. I assume that you're renewing it without any additional grounds. Or if there are, you can certainly state them.

MS. ROSS: No additional grounds, simply the objection to the rebuttal. And I would like to put on the record, I think, the State a couple of times went very close to commenting on the Defense's -- what testimony they didn't present. And I objected to that.

THE COURT: I did?

MS. ROSS: No, I'm sorry the State, the Solicitor.

THE COURT: Okay, excuse me.

MS. ROSS: And I objected to that during closing but I renew my objection to that and renew my mistrial request.

THE COURT: Very good, those motions are denied. Thank you.

(WHEREUPON, the deliberations began at approximately 1:01 p.m.)

(WHEREUPON, court was in recess awaiting a verdict.)

THE COURT: All right, there's a question. The question is this. Was the police Officer Allen Smith on the original list of witnesses? Our concern is that he seems like a last minute witness.

Now, quite frankly, I normally don't address questions to factual issues like that.

What would the State propose how I should respond?

MR. MOYER: I think any -- any answer to the question would be would be remarking outside the bounds of what testimony's in the record. So I would just propose that we tell the jury that -- that -- I don't think we can answer the question. They just have to -- I don't know how to phrase it but --

THE COURT: One of the standard ways I do phrase it is, ladies and gentlemen, what I've told you is you have to make the determination based on the evidence and testimony presented in this courtroom. And you may not consider anything beyond those facts or stipulations. And

that was not anything that was presented in this courtroom so therefore, I'm not allowed to address it.

MR. MOYER: That sounds good.

THE COURT: Any problem with that? I know you would want me to say, Yeah, he was a last minute witness.

MS. ROSS: And obviously, I would like you to say that but I think that might be commenting a little much on their question. However, he was not on that list. The truth is he wasn't on the list.

THE COURT: The truth is that's right. But they don't have a witness list.

MS. ROSS: Correct. And I don't -- arguably, that's not evidence in the case, the witness list.

THE COURT: Can we bring the jury in real quick, please.

(WHEREUPON, Court's Exhibit No. 6 was marked for identification and received into evidence.)

(WHEREUPON, the jury came into open court at approximately 2:20 p.m.)

THE COURT: All right, Madam Forelady, ladies and gentlemen of the jury, your question with regard to Mr. Smith as a witness and whether or not he was on the original witness list, let me -- I always hate telling -- not answering a question that the jurors send out to me. However, the rules require that you have to make your

decision based on the testimony and the evidence that you heard in this courtroom. Okay. And that's what I've tried to bring forth to you. That is information that is not in the evidence and so I'm not allowed to comment on it. The Judges are not allowed to comment on the facts or have an opinion of the facts. You'll just have to make your determination without any further response from me. And I'm sorry I can't be anymore clearer, okay.

If you'd go back to you jury room, hold up your deliberations for one moment to make sure I didn't misspeak for any of these attorneys, and then we'll send word back for you to begin. Okay. Do you need anything as far as lunch or do y'all have everything?

MADAM FORELADY: Thank you, Your Honor.

THE COURT: Okay.

(WHEREUPON, the jury left open court at approximately 2:23 p.m.)

THE COURT: Any additions or exceptions from the State?

MR. MOYER: No, Your Honor.

THE COURT: From the Defense? Other than your other grounds?

MS. ROSS: None.

THE COURT: All right, thanks, guys.

If you'll just be in earshot so we can get you

when we need you, okay. Thank you.

(WHEREUPON, deliberations continued.)

(WHEREUPON, Court was in recess awaiting a verdict.)

THE COURT: Bring our jury in, please.

(WHEREUPON, the jury came into open court at approximately 4:12 p.m.)

THE COURT: All right, Madam Forelady, it's my understanding the jury's reached a verdict, is that correct?

MADAM FORELADY: Yes, Your Honor.

THE COURT: It is unanimous?

MADAM FORELADY: Yes, Your Honor.

THE COURT: Would you pass it to the Bailiff, please, ma'am.

Madam Clerk, would you publish the verdict, please, ma'am.

VERDICT

THE CLERK: Your Honor, in the case of 2011-GS-23-1118, 1122, 1123 and 1124, the State of South Carolina vs. Christopher Russell, we, the jury, by unanimous consent, find the Defendant, Christopher Russell, as to the charge of conspiracy, on Indictment 2011-GS-23-1118, guilty. As to the charge of kidnapping on Indictment 2011-GS-23-1122, guilty. As to the charge

of armed robbery, on Indictment 2011-GS-23-1123, guilty. As to the charge of first degree burglary on Indictment 2011-GS-23-1124, guilty.

These are all signed by Ms. Walls our Forelady.

Ladies and gentlemen of the jury, if you agree these are the verdicts you reached in your deliberation room, would you, please, raise your right hand.

(WHEREUPON, all the jurors raised their right hand.)

THE CLERK: Thank you.

THE COURT: Okay, ladies and gentlemen of the jury, the Court is never interested in what your verdict is. The Court is interested always that the process is followed and that a fair and impartial is had. It's never easy to sit in judgment of your fellow man. I know it's been tough, it's been a lot of information. But I've watched you throughout this trial, you stayed engaged and you paid attention to the State's case and to the Defense's case. And you paid attention during my long, lengthy, diatribe of the charge. So, I appreciate you doing that. Before you go, I want -- I'm going speak to y'all in your jury room for a second.

Madam Forelady, I have a few things I need for you to sign.

Let me tell you this, I wish I can say you're

done for the week, you may not be. If you would call in tonight after 6:00, there will be a message as to when and whether or not you're to return. But if I can talk to you in your jury room for one second, please. Thank you.

(WHEREUPON, the jury left open court and was excused for the day at approximately 4:14 p.m.)

THE COURT: Now, if you want to have your victims come forward and speak to me, would you arrange for that? I'm going to step out for two seconds and speak to them then I'll be ready for sentencing.

(WHEREUPON, a short break was taken.)

THE COURT: Any other motions? What -- didn't they amend the rules to make it 10 days from the date of the actual judgment in the case to make your post-trial motion for appeal?

MS. ROSS: I'm not sure, I'll make sure I appeal within the timeframe. I thought anything less than less than 10 days, unless you got weekend time. But I'm not sure about that. But I'll make sure I take care of it.

THE COURT: Mr. Russell, while we're waiting, just to inform you, that you have 10 days not counting today, to appeal the verdict and sentence I impose in just a minute. Okay, sir.

Mr. Moyer, did you want to add anything further or to say other than the testimony?

MR. MOYER: May it please the Court, I believe Mrs. Lyles would like to address the Court.

THE COURT: Okay, Mr. Lyles, would you come around, please, sir.

Mrs. Lyles.

MR. MOYER: You can come around.

MRS. LYLES: I'd just like to say I'm glad to put this behind me. Just this happen to use really put a toll on our family. Really damaged one of my grandkids -- grandchild that he afraid to come to our house. When he was free to run around and play and sleep anywhere, now he won't come and stay. If he do he wake up in the middle of the night and call his mom, come and get him. It really put a toll on our family.

And my granddaughter there, sometimes I have to have her at the house with me in order to take my medicine to go to sleep. We just don't feel really safe in our house anymore. That never happened to us. Never. And we always work hard for everything that we got we work hard for. Like my husband say, he been in business for 40 years. And it was just terrible for someone to come in there and do that to us. Even though what they might have heard on the street. But that don't mean the family, the parents, have anything to do when their child do something like that. So they should have thought about us. Because

we always worked for everything that we have. We never looked for our child to give us anything. And it just really messed our home up.

I'm not -- my husband, since we been coming up here this week, I haven't been sleeping, I haven't been eating anything. And it's just hard for me to go to sleep at night since that happened to me. I'm on medication. My husband has to be there most of the time when I take a shower. He really just can't go that much unless I'm going with him or my granddaughter or my daughter there with me. I don't like to be alone in the house. And when I do leave and come home I have to call him to make sure he answers his phone and come out the door so I know he all right. And for it safe for me to come in the house. And usually when I go he don't go anywhere. Because he know once I get there, I just want him to search the house, you know. And sometime my neighbor he have to come outside. Or sometime I call -- out there to go with me. So, it really put a toll on our family.

THE COURT: Okay, thank you, ma'am.

Mr. Moyer, anyone else?

MR. MOYER: No, your Honor.

THE COURT: Thank you, very much.

Ms. Ross, do you or your client or anyone on his behalf like to say anything?

MS. ROSS: Judge, I would just say that Mr. Russell, in light of the fact that you have no ability to change the sentence here, is looking at life without parole. Mr. Russell has been offered opportunities to plead to life without parole on the table a number of times. He has consistently maintained his innocence on this case.

THE COURT: If I'm not mistaken that was an offer that was actually made today during this trial, or am I incorrect on that?

MS. ROSS: That was true, that was an offer that was extended today during trial.

THE COURT: Mr. Moyer, as to the burglary, armed robbery and kidnapping, those are all LWOP. Would conspiracy be LWOP as well?

MR. MOYER: The conspiracy would not, it would be five years. If it please the Court, I have documentation I'd like to enter into the record regarding life without parole.

THE COURT: Absolutely, please.

MR. MOYER: I have the Notice of Intent to Seek Life Without Parole document that was served on the defendant and his attorney on December the 18th of 2011, based on his previous convictions. He has seven previous convictions for burglary, second degree. Which are all

serious offenses. And he has a conviction 1991 for armed robbery as well. Which is a most serious offense. All of which makes him eligible for life without parole. So if it please the Court, I'd like to make this a Court's Exhibit.

THE COURT: Absolutely.

(WHEREUPON, Court's Exhibit No. 7 was marked for identification and received into evidence.)

THE COURT: Ms. Ross, do you need to look at those?

MS. ROSS: No, I don't.

SENTENCING

THE COURT: All right, Mr. Russell, as your attorney said, I have really no choice in the matter. But the jury has spoken and they found you guilty beyond a reasonable doubt. Under Indictment 2011-1122, kidnapping the sentence would be life without the possibility of parole. Under Indictment 2011-1124, burglary, first degree, sentence would be life without the possibility of parole. Under Indictment 2011-1123, armed robbery, sentence would be life without the possibility of parole. And under Indictment 2011-1118 conspiracy, the sentence will be five years. Good luck to you.

MS. ROSS: Judge, he wants to know whether it's all running concurrent?

THE COURT: I tell you what I didn't say. I'll run the life without the possibility of paroles concurrent and I'll make the conspiracy concurrent.

MS. ROSS: Thank you, Judge.

THE COURT: Okay, thank you.

(WHEREUPON, the proceedings were concluded.)

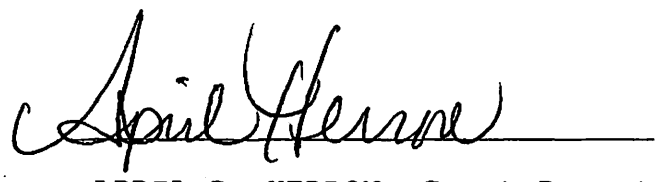
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 11-13 day of February, 2013.

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

June 17, 2013



APRIL P. HERRON, Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

---

Case Nos. 2011-GS-23-01118; 01122-01124

---

The State, Respondent,

v.

Christopher E. Russell, Appellant.

Appellate Case No. 2013-000381

---

# FINAL BRIEF OF APPELLANT

---

David B. Morgen, Esq.
Katten Muchin Rosenman LLP
550 South Tryon Street, Suite 2900
Charlotte, North Carolina 28202
(704) 444-2023

Robert M. Dudek, Esq.
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1330

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES



OTHER AUTHORITIES

## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY ALLOWING THE REBUTTAL TESTIMONY OF THE COURTROOM DEPUTY WHO SAT IN COURT DURING THE ENTIRE TRIAL, WAS NOT PREVIOUSLY DISCLOSED AS A WITNESS, DID NOT TESTIFY AS TO ANY OF DEFENDANT'S EVIDENCE, AND PROVIDED THE ONLY TESTIMONY TO SUBSTANTIATE A CLAIM BY THE STATE'S STAR WITNESS THAT RELATED TO HIS IDENTIFICATION OF DEFENDANT AS HIS ACCOMPLICE?

2. DID THE TRIAL COURT ERR BY DENYING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED PURSUANT TO A SEARCH WARRANT THAT CONTAINED FALSE INFORMATION?

3. DID THE TRIAL COURT ERR BY NOT DECLARING A MISTRIAL AFTER THE SOLICITOR REPEATEDLY AND IMPROPERLY ATTACKED THE DEFENDANT'S ALIBI DEFENSE DURING CLOSING ARGUMENT?

## STATEMENT OF THE CASE

On July 19, 2011, at a Court of General Sessions, the Grand Jurors of Greenville County returned true bills on indictments against Christopher Eric Russell ("Russell") for Conspiracy (Case No. 2011-GS-23-001118), Kidnapping (Case No. 2011-GS-23-001122), Armed Robbery (Case No. 2011-GS-23-001123), and Burglary First Degree (Case No. 2011-GS-23-001124), all of which were alleged to have occurred on December 18, 2010. (R. pp. 530-37). On December 8, 2011, the State filed its Notice of Intent to Seek Life Without Parole. (R. pp. 523-25). On October 26, 2012, Russell, through counsel, filed a Notice of Alibi Defense setting forth his whereabouts on December 18, 2010 and identifying two witnesses who would testify to his alibi. (R. p. 477). On February 11, 2013, Russell made two oral motions to suppress evidence. (R. pp. 21-31). On February 11, 2013, Russell's motions were denied and he was put on trial before the Honorable R. Lawton McIntosh and a jury in Greenville County. (R. p. 31). Russell's

trial counsel moved for directed verdict and renewed her evidentiary motions at the close of each evidentiary phase. (R. pp. 314, 464). Russell's trial counsel objected to certain statements during the State's closing argument and moved for a mistrial, and renewed the motion after the jury instructions. (R. pp. 424, 464). On February 13, 2013, the jury deliberated and returned a verdict of guilty with respect to all four indictments. (R. pp. 468-70). The trial court sentenced Russell to life without parole. (R. pp. 474, 526-29). On February 20, 2013, Russell filed and served the Notice of Appeal. (R. p. 538).

## FACTS

This case involves a robbery of a residence in Greenville, South Carolina (the "Residence") that was perpetrated by Antonias Williams ("Williams") and another man on the evening of December 18, 2010. (R. p. 264). The owners of the Residence, Jeffrey and Elaine Lyles ("Mr. and Mrs. Lyles"), were surprised that evening by two armed individuals who tied them up, took the money that each had on their person, and ran from the house. (R. pp. 60-70, 93-97, 147-148). One of the robbers, Williams, tried to flee with Mr. Lyles' money and other possessions but was chased down at the scene by a police dog. (R. pp. 212-14). The other individual successfully fled the scene without being apprehended. (R. pp. 148-49). Although Williams initially refused to identify the other person who was with him, he later identified his partner and agreed to testify against him. (R. pp. 223-24). When Williams initially gave a statement to law enforcement, he identified his accomplice as "Poncho." (R. p. 303). When Williams testified at trial, he stated that his partner, "Poncho," was Russell. (R. pp. 264-65). No other witness testified during the State's case-in-chief that Russell was known as

"Poncho." (R. pp. 368-70). In fact, one of the State's witnesses testified that the State had a record of aliases for Russell, and "Poncho" was not one of them. (R. p. 252-53).

Williams admitted that he expected to receive a benefit from the State for his testimony against Russell. (R. p. 302-03). Before Russell's trial, Williams pled guilty to conspiracy, armed robbery and kidnapping in connection with the robbery of the Residence, and was sentenced to five years in prison for conspiracy, with the State waiting until after Russell's trial to sentence Williams on the other charges. (R. p. 260-61, 300-301). The State agreed to dismiss Williams' burglary charge, which had the highest mandatory minimum sentence. (R. p. 303). Williams had a prior criminal record. (R. pp. 509-18). As a result, Williams could have been facing a lengthy prison term if the burglary charge had not been dropped by the State. (R. p. 298, 302-03).

What happened to Mr. and Mrs. Lyles was terrible, but Russell simply was not with Williams on the night of December 18, 2010. (R. p. 335). The Defense denied that Russell was "Poncho," Williams' accomplice who disappeared into the night. (R. pp. 406-48). Russell notified the State of his alibi defense, and presented his alibi at trial through the two witnesses identified in his notice. (R. p. 447, 329-31, 350-63).

*Where was Russell on December 18, 2010?*

On the evening of Saturday, December 18, 2010, Russell was at the home of his mother, Eleanor Russell ("Ms. Russell"), watching a sports game on her television with some other people. (R. pp. 335-38). Russell was accompanied by, among others, his girlfriend at the time, Ruby Willett ("Willett"). (R. pp. 352-54). According to Ms. Russell, Russell arrived around 7:00 p.m. and stayed until 10:00 p.m. (R. p. 335).

Russell and Willett went to his mother's house to watch the game because Russell and Willett's apartment did not have cable television at the time. (R. pp. 352-53).

*What did Williams do on December 18, 2010?*

Meanwhile, on December 18, 2010, Williams and the man that Williams initially identified as "Poncho," who the State alleged at trial was Russell, traveled to the Residence in a van that Williams had borrowed from his employer. (R. pp. 264-65, 273-74). Williams had been observing the Residence for several weeks. (R. p. 267). Williams intended to take money from an individual named Tavarus Lyles, also known as "T-Lyles," who was involved in drugs. (R. pp. 85, 267-68) Williams had been inside the Residence before with T-Lyles. (R. p. 308). Williams believed that T-Lyles lived at the Residence and kept a large amount of money there. (R. pp. 267-68). Williams and his accomplice put on ski masks that said "Police" and hid behind the Residence. (R. pp. 271-75). Williams testified that he and the other man left their cell phones in the vehicle before they went to hide behind the Residence. (R. pp. 274-75). After hiding for some time, Williams and the other man forced their way into the Residence when someone opened the back door to get firewood. (R. p. 277).

Williams took cash, a watch and a cell phone from the man in the Residence. (R. p. 279). The man Williams identified as Poncho told Williams that someone was coming, and another person arrived at the house and was taken to the ground by Williams and his partner. (R. pp. 279-80). Eventually, the police arrived. (R. p. 281). Williams tried to flee out the back door but was caught by a police dog. (R. p. 282). Williams had

no idea where his accomplice went when Williams tried to flee the house. (R. pp. 282-283). Williams refused to talk to police at the scene. (R. pp. 213-14).

*The Eyewitness Testimony Regarding December 18, 2010.*

Mr. and Mrs. Lyles, who lived in the Residence, both testified at trial. (R. p. 60). The Residence had two entrances, one in the front and one in the back. (R. pp. 145-46). Mr. and Mrs. Lyles were not home during the day on December 18, 2010 because they were working at a restaurant in Greenville owned by members of their family. (R. pp. 60-61, 89-90). Mr. Lyles, after cooking and cleaning at the restaurant, grew tired and left the restaurant around 4:45 p.m. (R. p. 61). Mrs. Lyles stayed at the restaurant for a longer period of time, along with the Lyles' granddaughter, Danielle Durham ("Durham"). (R. pp. 90-91). Mr. Lyles got home around 5:00 p.m. and started a fire and put on some music to relax. (R. p. 61). At some point that evening, Mr. Lyles stepped out the back door of the Residence to get more firewood. (R. p. 63).

When Mr. Lyles went outside to get firewood, he was confronted by two armed men wearing stocking caps that said "Police" on them. (R. p. 63). The men forced their way into the Residence. (Id.) The men forced Mr. Lyles to the ground and tied him up. (R. p. 66). One of the men pointed his gun at Mr. Lyles and demanded to know the location of "the safe." (Id.) Mr. Lyles was not aware of any safe in his home. (Id.) The men took Mr. Lyles around the Residence searching for "the safe." (R. pp. 66-68). One of the men demanded Mr. Lyles' money. (R. p. 66). Mr. Lyles gave the bigger man the cash that he had on his person. (R. p. 67). The bigger man also took Mr. Lyles' watch and cell phone. (R. p. 72). This same man was the one who had pushed Mr. Lyles to the

floor and tied him up. (R. p. 87). Williams was apprehended with Mr. Lyles' possessions on his person. (R. p. 214).

Meanwhile, around 8:30 p.m., Mrs. Lyles and Ms. Durham left the restaurant. (R. p. 90). They had intended to go to Waffle House to pick up dinner, but ended up driving to the Residence instead because they were unable to reach Mr. Lyles to find out what he wanted to eat. (R. pp. 90-92). Mrs. Lyles and Durham arrived at the Residence and went inside. (R. p. 91). When Mrs. Lyles went inside, she was surprised by an armed man wearing a mask that said "Police." (R. pp. 93-94). Durham, who was behind Mrs. Lyles, fled the house when she saw the man confront Mrs. Lyles. (R. pp. 135-36).

The man who surprised Mrs. Lyles tied her up and demanded to know where "the safe" was and demanded her money. (R. p. 95). Mrs. Lyles, like Mr. Lyles, was not aware of a safe in the residence and told the man that. (R. pp. 95-96). The man took the cash in Mrs. Lyles' purse. (R. pp. 96-97).

While Mr. and Mrs. Lyles were tied up in the Residence, Durham ran to the house next door. (R. pp. 142-44). At that time Jimmy McDaniel ("McDaniel"), who used to live at that house, was pulling into the driveway to return something to the house. (Id.) Durham ran up to McDaniel and asked for help. (R. p. 137). McDaniel called 911 and law enforcement thereafter arrived at the Residence. (R. pp. 145-46).

When law enforcement arrived, the two masked men in the Residence split up. (R. p. 99). Williams went to the back door, and his accomplice went to the front door. (R. pp. 99, 281-82). They opened the doors and ran from the residence. (R. pp. 147-48). Williams dropped his gun as he fled. (R. p. 282). A police dog chased Williams and

took him down. (Id.) According to McDaniel, the other man, who ran out the front door, disappeared into a wooded area. (R. pp. 148-49, 151).

*None of the Four Witnesses at Trial Definitively Identified Russell as Present at the Crime Scene on December 18, 2010.*

At trial, each of the four witnesses, Mr. Lyles, Mrs. Lyles, Durham and McDaniel, was asked to testify as to whether Russell was at the Residence on December 18, 2010. None of them could do so definitively. When Russell was pointed out by the Solicitor, Mr. Lyles testified that he had "[n]ever seen him before in my life." (R. p. 74). Durham testified that she could not identify the man that she saw in the Lyles' Residence. (R. p. 139). McDaniel testified that he only saw the build, not the face, of the man who ran out the front of the Residence, and speculated that the individual was African-American (like Russell and Williams) because of the racial makeup of the neighborhood, not any personal observation. (R. p. 150). He could not definitively identify the man who left out of the front of the Residence. (R. p. 149).

Russell initially objected to the State's attempt to have Mrs. Lyles identify him in court. (R. p. 102). Mrs. Lyles testified in-camera that the height, weight, lips, complexion and voice of the man who ran out the front door were "consistent" with Mr. Russell's appearance in court. (R. p. 105-06). However, she admitted that she did not get a good look at the man and could not make a complete identification. (R. p. 102). The Solicitor conceded that Mrs. Lyles could not make a definitive identification, either. (Id.) The trial court permitted the Solicitor to ask Mrs. Lyles the lips, height, build, complexion and voice of the man who ran out the front door of the Residence were similar to Russell. (R. pp. 118-24). She testified that they were, but did not specifically

identify the man who ran out the front door as Russell and said she only saw the man for one or two seconds without a mask on. (R. pp. 122-26).

Williams' accomplice, the man who ran out the front door, was not arrested at the crime scene on the night December 18, 2010. (R. p. 213). Law enforcement's only apparent clue regarding this man was a second cell phone discovered during a search of the vehicle that Williams had used the night of the robbery. (R. pp. 217-23). The evidence regarding the second cell phone was admitted over Russell's objection. (R. pp. 22-31, 218). No fingerprints, blood, DNA, hair, or other similar evidence was placed in the record to link Russell to either the vehicle Williams drove or to the Residence. (R. pp. 210, 229, 482-83).

*Williams' Testimony Was the Link Between Russell and the Crimes.*

The identity of "Poncho" was a significant issue at the trial. (R. pp. 375-76). When Williams initially confessed to police, he identified his accomplice as "Poncho." (R. p. 303). At trial, Williams testified that his accomplice was Russell, and Williams explained that he had always known Russell as "Poncho." (R. pp. 264-65). But there was no other evidence from the State (except for the courtroom deputy's "rebuttal" testimony) that Russell and "Poncho" were the same person. (R. pp. 394-95). Williams' testimony was essential for the State because he was the only witness who definitively identified Russell as having been present in the Residence on the night of the robbery. (R. pp. 273, 277-82). Williams referred to Russell as "Poncho" on more than one occasion during his trial testimony. (R. pp. 265, 280, 303). However, the State's records at the time, which contained other aliases for Russell, did not include "Poncho" as one of

Russell's nicknames. (R. pp. 252-53). As both parties noted in closing, the only witness in the State's case-in-chief who referred to Russell as "Poncho" was Williams. (R. pp. 409-10, 417-18). Russell's counsel pointed out that if "Poncho" was someone other than Russell, the State's case against Russell would be weakened considerably, both from the damage to Williams' credibility and since Russell presented an alibi for the night of the robbery. (R. p. 375).

The Solicitor told the jury that Russell's cell phone was found in the vehicle Williams had intended to use as the get-away vehicle. (R. p. 50). Williams' cell phone was recovered from the search of the vehicle he parked near the Residence, along with a second cell phone. (R. pp. 219-20). The cell phone carrier's records did not identify who owned the second cell phone. (R. pp. 225-26). Williams was the link between the second cell phone found in the vehicle and Russell. (R. p. 276). The investigating officer, Greenville County Sheriff Sergeant Dave Weiner ("Weiner"), testified that Williams told him during his January 5, 2011 confession that the second cell phone belonged to Russell. (R. pp. 224-25). However, Weiner conceded that there was no recording of the confession to substantiate this testimony and further conceded that Williams' written statement did not identify the second cell phone as belonging to Russell. (R. p. 227-28). Russell's counsel objected to the admission of the cell phone records because the affidavit supporting the search warrant for the contents of the second cell phone included Weiner's assertion that Williams identified the second cell phone as belonging to Russell, even though that fact did not appear in Williams' written statement. (R. pp. 30-31, R. pp. 235-36). The search of the phone's records revealed that the second cell phone included Williams in its contacts database, and that several calls had been

placed from that phone to Williams. (R. pp. 284-88, 484-508). The phone's database also included Russell's mother's phone number under the contact "Momma." (R. p. 238, 247, 332, 484-508). The contact alone did not necessarily connect the phone directly to Russell, because Ms. Russell testified that she talked to Russell regularly on the phone, and there were no calls in the second cell phone's database to or from Ms. Russell. (R. pp. 347, 484-508). Furthermore, Ms. Russell had other children besides Russell who could also reasonably have her number under the contact "Momma." (R. 336). The telephone number for Willett, who was undisputedly Russell's girlfriend at the time, does not appear anywhere in the second cell phone's records. (R. pp. 363, 484-508).

*The Solicitor, Without Notice to Russell, Called a Courtroom Deputy to Testify at Trial.*

After Russell presented his alibi evidence at trial, the Solicitor announced that he intended to present the testimony of a Greenville County Sheriff's deputy in rebuttal. (R. p. 369). The "rebuttal" witness, Master Deputy Bruce Allen Smith ("Deputy Smith"), had been the courtroom security deputy during Russell's trial. (R. p. 384). As such, Deputy Smith was present for the testimony of the witnesses during Russell's trial, and after hearing the evidence volunteered testimony regarding the alias "Poncho" to the Solicitor during the trial. (R. pp. 384-85). Deputy Smith was not on the Solicitor's witness list and was not identified as a rebuttal witness in response to Russell's Notice of Alibi Defense. (R. p. 370-72). According to the trial judge, the Solicitor originally asked to have Deputy Smith testify during the State's case-in-chief, but the trial judge refused to permit the testimony at that time because Deputy Smith was not on the State's witness list. (R. p. 374).

Russell's counsel objected to Deputy Smith testifying because his testimony was not related to Russell's alibi defense. (R. pp. 374-76). After hearing the arguments of counsel, the trial court overruled Russell's objection and permitted Deputy Smith to testify to the jury. (R. pp. 377-86). Deputy Smith testified that he worked off-duty as a security officer for an apartment complex in Greenville. (R. pp. 394-95). Deputy Smith testified that, approximately three to four years before the trial, he saw Russell wearing a camouflage jacket and riding a bicycle at the apartment complex. (R. p. 395). Deputy Smith testified that he asked Russell his name and Russell responded that his name was "Poncho." (R. p. 395).

Deputy Smith's testimony clearly had some effect on the jury, because the jury inquired about him during deliberations. (R. pp. 465). The jury sent a note to the trial court asking: "Was the police Officer Allen Smith on the original list of witnesses? Our concern is that he seems like a last minute witness." (R. p. 522). Deputy Smith was not, in fact, on the State's list of witnesses. (R. p. 466). The trial judge summoned the jurors and instructed them:

> All right, Madam Forelady, ladies and gentlemen of the jury, your question with regard to Mr. Smith as a witness and whether or not he was on the original witness list, let me - - I always hate telling - - not answering a question that the jurors send out to me. However, the rules require that you have to make your decision based on the testimony and the evidence that you heard in this courtroom. Okay. And that's what I've tried to bring forth to you. That is information that is not in the evidence and so I'm not allowed to comment on it. The Judges are not allowed to comment on the facts or have an opinion of the facts. You'll just have to make your determination without any further response from me. And I'm sorry I can't be anymore clearer, okay.

(R. pp. 466-67). Russell's counsel objected to the trial court's instructions. (R. p. 467). Less than two hours later, the jury returned with a guilty verdict on all four counts of the indictment. (R. pp. 468-69).

## ARGUMENTS

I. THE TRIAL COURT ERRED BY ALLOWING THE REBUTTAL TESTIMONY OF THE COURTROOM DEPUTY WHO SAT IN COURT DURING THE ENTIRE TRIAL, WAS NOT PREVIOUSLY DISCLOSED AS A WITNESS, DID NOT TESTIFY AS TO ANY OF DEFENDANT'S EVIDENCE, AND PROVIDED THE ONLY TESTIMONY TO SUBSTANTIATE A CLAIM BY THE STATE'S STAR WITNESS THAT RELATED TO HIS IDENTIFICATION OF THE DEFENDANT AS HIS ACCOMPLICE.

### *A. Standard of Review.*

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the trial court's conclusions lack evidentiary support. Id. The trial court's ruling on the admissibility of evidence may also be reversed if it is based on a legal error that results in prejudice to the defendant. State v. Compton, 366 S.C. 671, 677, 623 S.E.2d 661, 664 (Ct. App. 2005) (citing State v. Hamilton, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)).

### *B. The Trial Court's Decision Was Incorrect.*

The State asked the trial court during its case-in-chief to permit Deputy Smith's testimony, even though Deputy Smith was not on the State's witness list. (R. p. 374). After Russell presented his evidence, the trial court heard a proffer of Deputy Smith's

testimony. (R. p. 381). Deputy Smith's testimony was to be solely limited to the issue of nicknames. (Id.) Deputy Smith testified that, in addition to serving as a courtroom security officer, he also works as the security coordinator for an apartment complex. (R. p. 383). Deputy Smith stated that he saw Russell wearing a camouflage jacket (during warm weather) and riding a bicycle at the apartment complex approximately three to four years before the trial. (R. pp. 383-84). Deputy Smith testified that when he asked Russell his name, Russell responded "Poncho." (R. p. 384). Deputy Smith stated that he was present for the entire trial as a courtroom security officer, and volunteered his information to the Solicitor during the trial. (R. p. 384-85). Deputy Smith conceded during the proffer that other people could have the nickname "Poncho" and admitted that he had never checked any records to see if there were other people with the alias "Poncho." (R. p. 385). The trial court decided, despite its initial reservations, to allow the testimony over Russell's objection that the testimony was hearsay, not proper rebuttal testimony, and more prejudicial than probative given the length of time involved (three or four years). (R. pp. 386, 388-89). The trial court allowed the testimony because: (i) the trial court did not think the State needed to name its reply witnesses beforehand; (ii) the trial court was concerned with fairness because it prevented the State from introducing Deputy Smith's testimony during its case-in-chief; and (iii) Russell interjected the issue of the identity of "Poncho" into the case through cross-examination. (R. pp. 374, 389). Deputy Smith's testimony to the jury was identical to his *in camera* testimony. (R. pp. 393-96).

*C. The Trial Court's Incorrect Decision Was An Abuse of Discretion.*

The trial court abused its discretion in permitting Deputy Smith to testify for the State in reply because Deputy Smith was not a proper rebuttal witness. Although the admission of reply testimony is ordinarily within the discretion of the trial court, reply testimony should be limited to rebuttal of matters raised by the defense. State v. Farrow, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998). The improper admission of reply testimony is a basis for reversal if it is prejudicial. Id., 504 S.E.2d at 133. Deputy Smith's testimony did not address matters raised by the defense, and was prejudicial to Russell. The trial court abused its discretion by allowing the testimony.

*i. Deputy Smith's Testimony Was Improperly Admitted Because It Did Not Address Matters Raised by the Defense.*

In *Farrow*, a case involving the armed robbery of a convenience store, the State put on evidence that the defendant was wearing a shirt identical to the shirt of the robber, as filmed on the store's surveillance video. 332 S.C. at 191, 504 S.E.2d at 132. After the first day of trial, a juror submitted questions about technical aspects of the surveillance system. Id., 504 S.E.2d at 132. The trial court decided to allow the State to present evidence during rebuttal to address the juror's questions. Id., 504 S.E.2d at 132. The defendant presented an alibi defense, introducing two witnesses who testified that (i) defendant was not at the store on the date of the robbery and (ii) the defendant did not buy a shirt like the one seen in the surveillance video until after the date of the robbery. Id. at 192-93, 504 S.E.2d at 132. During its reply, the State presented, over the defendant's objection, testimony from a law enforcement officer regarding the store's surveillance system. Id. at 194, 504 S.E.2d at 132. The defendant had not addressed the

technical workings of the surveillance system in his case-in-chief. Id., 504 S.E.2d at 133. The State argued on appeal that the testimony regarding the surveillance system was equivalent to the trial court exercising its discretion and permitting the State to reopen its case to prove an essential element. Id., 504 S.E.2d at 133. This Court disagreed, and held that the law enforcement officer's testimony about the surveillance system was improper because it was not presented to rebut the defendant's evidence. Id., 504 S.E.2d at 133. This Court decided not to reverse because the testimony about the surveillance system was not prejudicial as the "rebuttal" testimony consisted of describing the surveillance system as "not sophisticated and was similar to a home camera." Id., 504 S.E.2d at 133. *See also* State v. Huckabee, 388 S.C. 232, 242-43, 694 S.E.2d 781, 786 (Ct. App. 2010) (holding that the trial court did not abuse its discretion in admitting reply testimony because the testimony, that the witness did not own a handbag, was limited to contradicting the defendant's testimony that the witness had pulled a gun from her handbag and fired it at him).

Like the situation in *Farrow*, Deputy Smith's testimony in this case did not rebut Russell's evidence. Russell presented three witnesses. First, Anthony Lounds ("Lounds"), a prisoner who stated that he was in the same jail as Williams, testified that he overheard Williams talking on the telephone and believed that Williams said something to law enforcement that caused Russell to be jailed for something Russell did not do. (R. pp. 326-27). Ms. Russell then testified that Russell was at her residence during the time of the robbery. (R. pp. 328-31). Finally, Willett testified that Russell was at Ms. Russell's residence on the day of the robbery. (R. pp. 350-54). The Solicitor conceded that Russell's witnesses did not testify regarding the identity of "Poncho." (R.

p. 370). Deputy Smith's testimony was supposed to relate solely to whether Russell went by the alias "Poncho." (R. p. 369). That had nothing to do with the evidence that Russell presented.

Instead, the Solicitor called Deputy Smith to bolster the testimony of the State's star witness, Williams, that Russell was known by the name "Poncho" and set up the State's closing arguments that Russell committed the crime because he owned a camouflage coat like one of the robbers and rode a bicycle just as Russell did on the day he was arrested. (R. p. 418). During his testimony for the State, Williams referred to Russell as "Poncho" on more than one occasion. (R. pp. 265, 280). But the State's prison records custodian testified that the State had no record of Russell using the alias "Poncho," although the State had other aliases for Russell in its records. (R. p. 252-53). Russell did not attempt to introduce the State's list of aliases into evidence. (R. p. 253). Russell did not present any evidence in his case-in-chief regarding (i) the name "Poncho," (ii) Russell's clothing on December 18, 2010 or (iii) the circumstances of Russell's arrest. Deputy Smith's testimony did not refute any evidence presented by Russell. It was improper and should have been excluded.

The trial court noted that Deputy Smith's testimony was not responsive to the Defense's evidence:

> THE COURT: Well, let me stop you. I hear you. Let me ask you this, do you want to risk dirtying up the record, based on a procedural posture in this case, by introducing evidence that was not responsive to the Defense? Regardless of my mistake or not?
>
> MR. MOYER: Your Honor, I really don't have a problem with it.
>
> THE COURT: I do.

(R. p. 377-78). However, the trial court, despite its expressed reservations, permitted the testimony over Russell's objection because it had prevented the Solicitor from introducing Deputy Smith's testimony during the State's case-in-chief because Deputy Smith was not on the witness list provided to Russell. (R. p. 389). The trial court's decision was analogous to the trial court's decision in *Farrow* to permit the State to furnish testimony that should have been presented during its case-in-chief and did not address the evidence the defendant presented to the jury. As this Court held in *Farrow*, such evidence is improper. Deputy Smith's testimony was improper and should have been excluded.

*ii. Deputy Smith's Testimony Was Prejudicial to the Defense.*

The trial court's decision to allow Deputy Smith to testify prejudiced Russell for three reasons. First, allowing the courtroom deputy to testify improperly influenced the jury. Second, it subjected Russell to trial by ambush. Third, the trial court did not poll the jury to determine if any members knew Deputy Smith.

Deputy Smith's testimony improperly influenced the jury. Criminal defendants have a Fourteenth Amendment due process right to trial by an impartial jury, untainted by improper influences. Turner v. Louisiana, 379 U.S. 466, 474 (1965); State v. Bryant, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003). The Supreme Court of the United States has held that when a law enforcement officer plays the dual roles of key trial witness and jury bailiff there is inherent prejudice warranting reversal. Gonzales v. Beto, 405 U.S. 1052, 92 S.Ct. 1503, 1505 (1972) (Stewart, J., concurring). In *Turner*, two deputy sheriffs were "key" prosecution witnesses and also served as bailiffs who ate with and conversed with

the jury while they were sequestered. Turner, 379 U.S. at 467-68. The Supreme Court reversed Turner's conviction, even though the deputies testified under oath after the trial that they did not discuss the case with the jury outside of their courtroom testimony, because of the "extreme prejudice" inherent in their dual roles of key testifying witnesses and continued contact with the jury. Id. at 473. The Supreme Court's fundamental concern was that the jurors would give more weight to the deputies' testimony based upon their position of authority with the jury. Id. at 474. Although the facts of this case differ somewhat from *Turner*, the Supreme Court's fundamental concern remains an issue.

In this case, the record regarding Deputy Smith's role at trial is not well developed. At a minimum, Deputy Smith was in the courtroom before he testified, in uniform, during the entire trial as the courtroom security officer. (R. pp. 384-85). As such, he, like the bailiffs in *Turner*, may have been viewed by the jury as more credible than a typical witness when he testified because they observed him in a position of authority in the courtroom. Indeed, the jury obviously took note of his testimony, because they asked the trial court a question about it during deliberations. (R. p. 465). The trial court, over Russell's objection, declined to give the jury any guidance in response to their question, and never instructed the jury to give Deputy Smith's testimony the same weight as that of other witnesses. (R. pp. 466-67). Nothing was done to prevent the jury from giving undue weight to Deputy Smith's testimony.

In other jurisdictions with reported cases regarding the issue of testimony by a courtroom security officer, the proper relief varies. In California, for example, the proper course of conduct is to relieve the individual of his or her courtroom duties and admonish

the jury not to give the witness' testimony greater weight because he or she was a courtroom deputy. People v. Cummings, 850 P.2d 1, 37-38 (Cal. 1993); People v. Guerra, 129 P.3d 321, 364 (Cal. 2006) (instruction not necessary if bailiff reassigned before the commencement of jury selection) *overruled in part on other grounds by* People v. Rundle, 180 P.3d 224 (Cal. 2008). Other states do not necessarily have this general rule, but share the concerns of the U.S. and California Supreme Courts. In Georgia, the state supreme court fairly recently issued a decision reversing a conviction where a law enforcement officer was one of several prosecution witnesses and also served (after testifying) as a bailiff for approximately one day of a four day trial. Bass v. State, 674 S.E.2d 255, 257-58 (Ga. 2009). In North Carolina, the state supreme court held that there was no prejudice to the defendant when the testifying security officer only had contact with the jurors in the courtroom letting the jurors in and out of the room or directing them to their seats, and the trial court remedied any potential conflict by ordering the testifying officer not to have any direct contact with jurors. State v. Flowers, 489 S.E.2d 391, 402 (N.C. 1997). Also of note, in *Flowers* the defendant did not allege any actual prejudice but merely asserted that prejudice must be conclusively presumed if a witness serves as a bailiff in a criminal trial. Id. In this case, unlike the California and North Carolina cases, the trial court took no precautions regarding Deputy Smith's testimony. Russell was actually prejudiced by Deputy Smith's testimony. The jurors obviously gave some consideration to Deputy Smith's testimony, because they asked the trial court about it, and although Russell objected to the trial court's answer, no instructions or other curative steps were taken to prevent Deputy Smith's testimony from being given undue weight.

Russell was further prejudiced by Deputy Smith's testimony, if that testimony was solely intended to bolster Williams' statement that Russell was "Poncho," because the testimony was an ambush. This Court has disapproved of "trial by ambush" before. State v. Barroso, 320 S.C. 1, 23, 462 S.E.2d 862, 876 (1995) (holding that trial court did not err in refusing to grant mistrial when trial court disallowed "ambush" testimony and gave "a careful and thorough curative instruction") (Ct. App. 1995), *rev'd on other grounds*, 328 S.C. 268, 493 S.E.2d 854 (1997); *see also* State v. Duncan, 274 S.C. 379, 382, 264 S.E.2d 421, 423 (1980) (defendant not prejudiced by testimony of witness not on State's list because defendant's counsel was aware of the nature of the witness' testimony and had the opportunity to confer with the witness before he took the stand). Russell had no prior notice of Deputy Smith's testimony. It is undisputed that Deputy Smith was not on any witness list provided to the defense by the Solicitor. In admitting Deputy Smith's testimony, the trial court relied on the fact that Rule 5(a), SCRCrimP, does not require the State to provide its witness list to a criminal defendant. State v. Nicholson, 366 S.C. 568, 579, 623 S.E.2d 100, 105 (Ct. App. 2005). The State had known since Williams gave his statement on January 5, 2011 that its key witness would claim that Russell was known as "Poncho." (R. pp. 265, 303). Russell's trial was not until 2013. There was therefore plenty of time for the State to notify Russell of his alleged statement to Deputy Smith three to four years ago that would be used against him, but the State did not do so. The trial court should have excluded Deputy Smith's testimony.

If Deputy Smith's testimony was intended to counter Russell's alibi defense, it was not properly noticed and should have been excluded. Rule 5(e)(2), SCRCrimP,

requires the State to identify the witnesses that it intends to rely on to establish a defendant's presence at the crime scene not less than ten days before trial. Deputy Smith was not identified as a witness before trial. (R. p. 371). Rule 5(e)(4), SCRCrimP permitted the trial court to exclude Deputy Smith's testimony if the testimony was intended to rebut Russell's alibi. The trial court's decisions under Rule 5(e)(4), SCRCrimP, are reviewed for abuse of discretion. State v. Trotter, 317 S.C. 411, 414, 453 S.E.2d 905, 907 (Ct. App. 1995), *modified*, 322 S.C. 537, 473 S.E.2d 452 (1996); *but see* State v. Beckham, 334 S.C. 302, 312-13, 513 S.E.2d 606, 611 (1999) (not discussing standard of review). The trial court abused its discretion. It should have followed its initial inclination to "air on the other side just to be cautious." (R. p. 380, lines 14-18; Tr. p. 418). Based upon the combination of the trial court's own concerns regarding the prejudice to Russell and the jury's evident consideration of Deputy Smith's testimony, the trial court abused its discretion in admitting Deputy Smith's testimony.

Finally, Russell was prejudiced because the trial court never polled the jury to see if they knew of or were related to Deputy Smith. The Solicitor initially suggested that the jury be asked if any of the members knew Deputy Smith, whose name was not called out to the jury during *voir dire*. (R. p. 372). The trial court never did so before Deputy Smith testified. (R. p. 393). Identifying witnesses to the jury panel during *voir dire* is necessary to see that an unbiased, fair and impartial set of persons is impaneled. State v. Powers, 331 S.C. 37, 43-44, 501 S.E.2d 116, 119 (1998). Since Deputy Smith was not identified during *voir dire*, it is not possible to know if Russell received an unbiased, fair and impartial panel. The trial court erred by not asking the jurors if they knew Deputy Smith before he testified, and Russell was prejudiced by the trial court's error.

Deputy Smith's "rebuttal" testimony was not responsive to Russell's evidence and improperly influenced the jury or otherwise prejudiced Russell. It should have been excluded. Russell's counsel properly objected. The trial court abused its discretion in permitting Deputy Smith to testify. Deputy Smith's testimony did not relate to Russell's alibi or case-in-chief. Deputy Smith's testimony was improperly influential because, as a courtroom deputy, Deputy Smith was in a position of authority; his testimony was clearly of interest to the jury, but the jury was not instructed to give his testimony no more weight than any other witness. Furthermore, his testimony was not properly noticed and the jury was never questioned to see if they could evaluate Deputy Smith's testimony impartially. This Court should reverse Russell's conviction and remand the matter for a new trial as a result of Deputy Smith's improperly influential testimony regarding Russell's identity.

## II. THE TRIAL COURT ERRED BY DENYING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINTED PURSUANT TO A SEARCH WARRANT THAT CONTAINED FALSE INFORMATION.

### *A. Standard of Review.*

The trial court's factual findings regarding whether evidence should be suppressed based upon a Fourth Amendment violation are reviewed for clear error. State v. Baccus, 367 S.C. 41, 48-48, 625 S.E.2d 216, 220 (2006). In determining whether there was a substantial basis to find probable cause to authorize a search, the reviewing court analyzes the totality of the circumstances of the affidavit supporting the search warrant, including the status, basis of knowledge, and veracity of the informant. State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 679 (2000).

*B. The Search Warrant Affidavit.*

The State obtained data from the second sell phone pursuant to a search warrant dated February 7, 2013. The affidavit supporting the search warrant, from Investigator A.L. Bailey ("Bailey"), requested the search because (i) Williams identified the second cell phone as belonging to Russell and (ii) a thorough search of the phone was necessary to complete a proper investigation. (R. p. 479). The affidavit was the subject of a pretrial motion, and was handed up to the trial court for its review by Russell's counsel during her argument. (R. pp. 27, 30-31). Although the affidavit was not identified as a court exhibit, it was reviewed and considered by the trial court in making its decision regarding the search. (R. p. 31).

Russell moved to suppress the records produced by the February 7, 2013 search of the second cell phone before the State presented its case, arguing that the search warrant did not establish probable cause. (R. pp. 22-24). Russell reasonably anticipated that the State would attempt to use the data from the phone, including the fact that the phone contained a contact labeled "Momma" with Russell's mother's phone number, to tie Russell to the robbery. Rather than hearing testimony, the trial court allowed counsel to summarize the circumstances of the search and the contents of the affidavit. (R. pp. 25-29). Essentially, the State alleged in its search warrant affidavit that the second cell phone found in the vehicle belonged to Russell based upon a statement that Williams made to law enforcement. (R. pp. 27-28). However, no statements or other information from Williams identifying the second cell phone as having belonged to Russell were ever produced to Russell. (R. pp. 29-30). The trial court initially denied Russell's motion without actually receiving any evidence. (R. p. 31).

At trial, the State introduced the second cell phone into evidence through Weiner, subject to Russell's objection. (R. p. 222). Weiner testified that Williams told him that the second cell phone belonged to Russell, but agreed that no video or written record evidenced Williams' statement. (R. pp. 224-25, 227-28). Weiner admitted that the second cell phone's carrier did not have any record regarding its ownership. (R. pp. 225-26). Weiner also admitted that the phone did not have any fingerprints on it. (R. p. 229). The trial court never heard testimony from the affiant, Investigator Bailey, to establish his knowledge of Williams' alleged statement. The investigator who did testify, Weiner, did not mention Bailey during his testimony. Russell's counsel renewed her motion to suppress the evidence, but the trial court overruled her and admitted the second cell phone's database records into evidence as State's Exhibit 43. (R. pp. 235-36). Although Williams later testified that the second cell phone belonged to Russell, he did not testify regarding whether he told that to law enforcement during his January 5, 2011 statement. (R. p. 276).

### C. *The Affidavit Included False Information and the Trial Court Should Have Suppressed the Cell Phone Records or Given Russell an Evidentiary Hearing.*

A search warrant may only be issued upon a sworn affidavit that establishes the grounds for the warrant. S.C. Code. Ann. § 17-13-140 (2013). Although the affidavit is presumed valid, a challenger is entitled to an evidentiary hearing if: (i) the challenger alleges a deliberate falsehood or reckless disregard for the truth; (ii) the allegations are accompanied by an offer of proof that (a) points out the specific portion of the affidavit that is claimed to be false and (b) is accompanied by supporting reasons; and (iii) if when the allegedly false materials are disregarded, the affidavit's remaining content is not

sufficient to find probable cause. Franks v. Delaware, 438 U.S. 154, 171-72 (1978). Russell supplied sufficient grounds to be entitled to an evidentiary hearing, but the trial court never conducted one. (R. pp. 30-31). Instead the trial court relied on Weiner's testimony before the jury to overrule Russell's *Franks* motion. (R. pp. 235-36).

In *State v. Jones*, an officer submitted a search warrant affidavit to a magistrate that stated information had been obtained from an "agent" regarding the defendant's drug activities, when the information really came from a confidential informant. 342 S.C. 121, 125, 536 S.E.2d 675, 677 (2000). Although the officer truthfully told the magistrate that the "agent" was really a confidential informant, the magistrate was under the false impression that the information was coming from a law enforcement officer. Id. at 126, 536 S.E.2d at 677. The trial court admitted the evidence resulting from the search, but this Court reversed, holding that the evidence should have been suppressed because the affidavit contained a false statement. Id., 536 S.E.2d at 678. The Supreme Court agreed, because if the statement was excluded there would not be sufficient corroborating evidence of the allegations in the affidavit to support a finding of probable cause. Id. at 127, 536 S.E.2d at 678.

In this case, although Bailey's affidavit stated that Williams identified the second cell phone as Russell's, Bailey never testified and Weiner conceded that: (i) there was no videotape of the confession and (ii) Williams' sworn written statement did not actually identify the second cell phone as belonging to Russell. (R. pp. 227-28). Based on the record, the only statement in the search warrant affidavit connecting Russell to the second cell phone was Williams' purported oral statement to Weiner. (Id.) The trial court determined that although ownership of the second cell phone was not mentioned in

Williams' written statement, the statement in the search warrant affidavit did not rise to the level of a material misrepresentation required by *Franks*. (R. p. 236). However, the statement in the search warrant affidavit was a misrepresentation because it was not supported by the contents of Williams' sworn written statement. The trial court's decision was a clear error, as there was no evidence in the record to explain how the affiant, Bailey, knew about Williams' supposed statement. The misrepresentation is material because if Williams' alleged statement was stricken from the search warrant affidavit, there would not have been a substantial basis for the magistrate to find probable cause to order the search because the statement was the only indication that the second cell phone was in any way connected to the robbery. (R. p. 479); State v. Jenkins, 398 S.C. 215, 224, 727 S.E.2d 761, 766 (Ct. App. 2012). The trial court erred in overruling Russell's *Franks* motion, and since the phone records were an integral part of the trial testimony, which otherwise contains little evidence to connect Russell to the robbery, like *Jones* the proper remedy is to reverse and remand for retrial. State v. Jones, 342 S.C. 121, 129, 536 S.E.2d 675, 679 (2000). In the alternative, Russell is at the very least entitled to have this matter remanded for an evidentiary hearing by the trial court to determine what Bailey actually knew, and what the magistrate may have been told (if anything), when the affidavit was issued. State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1994).

III. THE TRIAL COURT ERRED BY NOT DECLARING A MISTRIAL AFTER THE SOLICITOR REPEATEDLY AND IMPROPERLY ATTACKED THE DEFENDANT'S ALIBI DEFENSE DURING CLOSING ARGUMENT.

*A. Standard of Review.*

A trial court's decision on the appropriateness of a solicitor's argument is reviewed for abuse of discretion, and any alleged impropriety is examined in light of the entire record. State v. Rudd, 355 S.C. 543, 548, 586 S.E.2d 153, 156 (Ct. App. 2003); State v. Sweet, 342 S.C. 342, 347-48, 536 S.E.2d 91, 93-94 (Ct. App. 2000).

*B. The Solicitor's Made Improper Arguments That the Trial Court's Instructions Did Not Cure.*

During his closing argument, after he claimed that Deputy Smith's testimony made Williams' assertion that Russell was "Poncho" a "nonissue" the Solicitor asserted that the Defendant's alibi witnesses:

> had the key to remedy that injustice. And they had that key in their pocket. And they kept that key in their pocket for two years. Two years.

(R. pp. 418-20). In other words, the Solicitor insinuated that the alibi witnesses did not come forward with information until trial. Russell's counsel promptly objected and stated that Russell had provided notice of his alibi defense. (R. p. 421). The Solicitor also commented on the fact that only two people testified when five people were with Russell at the time of the robbery. (Id.) The Solicitor continued and asserted:

> all they had to do was go down to the law enforcement and let that person free. You wouldn't sit by and not let that information out. You'd be crying from the roof tops.

(Id.) Russell's counsel objected again, and the trial court instructed the jury:

> Ladies and gentlemen, the burden is on the State of South Carolina at all times to prove the Defendant guilty beyond a reasonable doubt of all charges. Any insinuation that may be given to you otherwise is incorrect.

(R. pp. 421-22).

The trial court's instruction should have ended the matter. But the Solicitor continued railing against Russell's alibi witnesses, and claimed that they should have gone to the local news. (R. p. 422). Finally, the Solicitor asserted: "Instead of that, it was an ambush. They wait until all this time goes by and then they let it out." (Id.) Russell's counsel again objected, based upon the fact that Russell had provided notice of his alibi defense as required by Rule 5(c), SCRCrimP, and the trial court sent the jury out of court to hear counsel's arguments regarding Russell's objection. (Id.)

Russell's counsel's moved for a mistrial based upon the Solicitor's comments that Russell's alibi evidence "was an ambush." (R. p. 423). The trial court denied her motion without explanation. (R. p. 424). However, the trial court agreed that Russell's objection was appropriate, and *sua sponte* instructed the jury when they reentered the courtroom:

> Just one moment, ladies and gentlemen of the jury, attorneys are allowed wide latitude in their arguments. And I'll remind you of this, when you go back and begin your deliberations, if your memory of the testimony and evidence differs from what either of these attorneys tell you, then your memory will control, okay. With that being said, the Rules of Procedure in criminal court are if a Defendant wishes to assert an alibi defense, as was done in this case, that you have to give advance notice before trial to the State. And that was done.

(R. pp. 424-25). This did not match Russell's request for jury instruction regarding Rule 5(c), SCRCrimP, but the trial court declined to give further instruction regarding Russell's Jury Instruction Request No. 8. (R. pp. 438, 520-21). The trial court did

instruct the jury regarding the burden of proof with respect to Russell's alibi using the instruction Russell requested. (R. pp. 458-59, 520).

At the conclusion of the jury instructions, Russell's counsel renewed her objections. (R. p. 462). Russell's counsel also renewed her request for a mistrial, based on the Solicitor commenting on what testimony Russell did not present. (R. p. 464). The trial court denied her objections and request for a mistrial. (R. p. 465).

*C. In Light of the Entire Record, Russell Has Demonstrated That The Solicitor's Argument Denied Him a Fair Trial and the Trial Court Should Have Granted Russell's Request for a Mistrial.*

It does not appear to have been proper for the Solicitor to repeatedly comment on Russell's alibi witnesses supposedly not coming forward and insinuating an adverse inference from Russell only calling two alibi witnesses instead of five. When a defendant does not present evidence, it is not proper for the solicitor to comment in closing argument on a defendant's failure to call alibi witnesses. State v. Primus, 349 S.C. 576, 584, 564 S.E.2d 103, 108 (2002), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). A jury should ordinarily be instructed not to draw inferences from the neglect of a defendant to call witnesses, although if the defendant presents evidence, the solicitor may comment on the defendant's failure to produce witnesses who would substantiate his story. Douglas v. State, 332 S.C. 67, 71, 504 S.E.2d 307, 309 (1998). However, the Supreme Court of South Carolina held three months after *Douglas* that an adverse inference is not warranted where a party does not call a particular witness but the material facts in that witness' knowledge are testified to by other qualified witnesses. State v. Charping, 333 S.C. 124, 128-29, 508 S.E.2d 851,

853-54 (1998). In this case, additional alibi witnesses would have been cumulative. Although the trial court did instruct the jury in response to Russell's counsel's objections, the judge never instructed the jurors not to make an adverse inference. The trial court could have easily let the jurors know, as Russell's counsel requested in her proposed instruction, that Russell provided the location and identified his witnesses. Simply telling the jury that a notice was provided, without explaining what the State was told, or that no adverse inference should be drawn, was not an adequate curative instruction. Therefore, the proper remedy was a mistrial.

In *State v. Primus*, the Supreme Court discussed the application of harmless error when a solicitor comments regarding an alibi defense. 349 S.C. 576, 587-88, 564 S.E.2d 103, 109 (2002). In that case, involving alleged criminal sexual conduct, the solicitor's comments were harmless in light of the overwhelming evidence of guilt, including both fingerprint and DNA evidence, a positive identification by the victim, and injuries on the defendant consistent with those the victim stated she inflicted while struggling with the defendant. Id., 564 S.E.2d at 109. In this case, there is no fingerprint or DNA evidence implicating Russell, and neither robbery victim positively and definitively identified Russell as being one of the perpetrators. (R. pp. 74, 102, 210, 229). Although Williams testified against Russell, the evidence of Russell's guilt is far less overwhelming than in *Primus*. The trial judge's error regarding the Solicitor's comments was not harmless. The Solicitor's repeated comments during closing argument, coupled with the trial court's failure to provide an adequate curative instruction, so infected Russell's trial with unfairness that his conviction was a denial of due process. Primus, 349 S.C. at 588, 564 S.E.2d at 109.

Even if the errors listed above are individually insufficient to warrant a new trial, their cumulative effect was so prejudicial to Russell as to justify reversal. State v. Peterson, 287 S.C. 244, 246, 335 S.E.2d 800, 801 (1985) (per curiam), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Freeman, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct. App. 1995). In *Freeman*, a combination of multiple interruptions or limitations of cross examination by the trial judge was sufficient to justify granting a new trial based upon the prejudice to the defendant, even though each error alone would not have been enough. 319 S.C. at 123, 459 S.E.2d at 875. In this case, the combination of the improperly influential testimony of Deputy Smith, improperly admitted phone records, and improper arguments of the Solicitor are each alone sufficient to justify a new trial, but in combination, they worked to deprive Russell of a fair trial and justify reversing the verdict and remanding for a new trial.

## CONCLUSION

For the reasons stated herein, this Court should reverse the judgment of the circuit court and remand the matter for a new trial. Deputy Smith's "rebuttal" testimony was not responsive to Russell's evidence and was improperly influential on the jury or otherwise prejudicial. The records from the second cell phone were the product of a search that relied upon a warrant with unsubstantiated, allegedly false statements. Finally, the Solicitor's closing was improper and not cured by the trial court's instructions to the jury. Judgment should be reversed and Russell's case remanded for a new trial.

Respectfully submitted,

July 3rd, 2014

By: _____

David B. Morgen, Esq.
S.C. Bar No. 80785
KATTEN MUCHIN ROSENMAN LLP
550 South Tryon Street, Suite 2900
Charlotte, North Carolina 28203
(704) 444-2023

Robert M. Dudek, Esq.
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1330

*Attorneys for Appellant*

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings".

July 3rd, 2014

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 28211-1589
(803) 734-1330

David B. Morgen
Katten Muchin Rosenman LLP
550 S. Tryon Street, Suite 2900
Charlotte, NC 28202
(704) 444-2023

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

---

Case Nos. 2011-GS-23-01118; 01122-01124

---

The State, Respondent,

v.

Christopher E. Russell, Appellant.

Appellate Case No. 2013-000381

CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of Appellant and Record on Appeal on the State of South Carolina on July 3 2014, addressed to the State's attorney of record, Mark R. Farthing, South Carolina Attorney General's Office, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

July 3, 2014

By: RIM

David B. Morgen, Esq.
KATTEN MUCHIN ROSENMAN LLP

Robert M. Dudek, Esq.
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1330

*Attorneys for Appellant*

SUBSCRIBED AND SWORN TO before me
this 3rd day of July, 2014.

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Greenville County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2013-000381

---

THE STATE,

Respondent,

vs.

CHRISTOPHER ERIC RUSSELL,

Appellant.

---

# FINAL BRIEF OF RESPONDENT

---

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**:

**Other Authorities**:

## STATEMENT OF ISSUES ON APPEAL

I.

The trial judge did not abuse his discretion in allowing the solicitor to introduce the testimony of a witness subsequent to the presentation of the defense's case when the solicitor attempted to introduce the testimony of the witness during the State's case-in-chief and was prevented from doing so by defense counsel objecting to the admission of the testimony and the trial judge precluding its admission on a basis that defense counsel subsequently conceded was legally incorrect.

II.

To the extent that Appellant is challenging the constitutionality of the search of the cell phone, the trial judge committed no error in denying Appellant's suppression motion because Appellant failed to establish that he had a legitimate expectation of privacy in the cell phone and, thus, did not have the capacity to challenge the constitutionality of the search. However, even if Appellant could properly challenge the constitutionality of the search, the trial judge correctly denied Appellant's suppression motion because the search warrant affidavit did not contain any false information.

III.

The trial judge did not abuse his discretion in denying Appellant's mistrial motion because the solicitor's comments during the State's closing argument regarding the alibi defense raised by Appellant were not improper and did not render Appellant's trial fundamentally unfair when considered in the context of the record as a whole.

## STATEMENT OF THE CASE

In January of 2011, Appellant Christopher Eric Russell was arrested following an investigation into a home invasion and armed robbery that took place in December of 2010. In July of 2011, the Greenville County grand jury indicted Appellant for first-degree burglary, kidnapping, armed robbery, and conspiracy. Prior to trial, the solicitor served timely notice on Appellant indicating that the State would seek a sentence of life without parole upon conviction based on Appellant's prior convictions. On February 13, 2013, a jury trial was commenced in the Greenville County court of general sessions with the Honorable R. Lawton McIntosh, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to life without parole pursuant to S.C. Code Ann. § 17-25-45 for the first-degree burglary, kidnapping, and armed robbery convictions and a concurrent term of imprisonment of five years for the conspiracy conviction. Appellant then timely filed a notice of appeal.

## STATEMENT OF FACTS

On the evening of Saturday, December 18, 2010, Jeffrey Lyles ("Mr. Lyles") made a fire at his home and turned on some music after spending the day working at his brother's restaurant with his family. (R. pp. 57; pp. 59-62). Later that night, Mr. Lyles needed more firewood for the fire so he opened the back door and started to go get some. (R. pp. 62-63). When he did, two armed men wearing camouflage outfits and police masks burst through the door, threw him to the ground, kicked him in his side, tied his hands behind his back, and identified themselves as police officers. (R. pp. 62-64; p. 88). The skinnier of the two men then shoved a machine gun to Mr. Lyles' mouth, demanded to know where his money and safe were, and told him that they would kill him if he did not tell them. (R. p. 66). Thereafter, the men moved Mr. Lyles to a back bedroom, placed him on the floor, took $750 in cash from his wallet, stole his watch and cell phone, and began ransacking the home in an apparent attempt to locate the safe and money that they were seeking. (R. pp. 66-68; p. 72; p. 81; p. 216).

Around that time, Mr. Lyles' wife, Elaine Lyles ("Mrs. Lyles"), started to go get something to eat with her sixteen-year-old granddaughter, Danielle Durham, after they finished working at the restaurant together. (R. pp. 89-91; pp. 127-130). However, Mrs. Lyles was unable to get in touch with Mr. Lyles on his cell phone so the two drove to the Lyles' home to check on him instead. (R. p. 91; pp. 129-130). Once they arrived, they entered the home through the back door, and Mrs. Lyles started to walk down the hallway to the back bedroom in search of Mr. Lyles. (R. p. 91; pp. 93-94; pp. 134-135). As she did, the skinnier robber jumped out with his machine gun and forced her onto the floor. (R. pp. 93-94; p. 135). Durham, who had not been seen by the robbers, then quickly fled

from the residence and ran towards the home of one of the Lyles' neighbors to get help. (R. pp. 135-136).

Thereafter, the skinnier robber informed Mrs. Lyles that he was with the police, demanded that she tell him where the money and safe were, threatened to kill her husband if she did not do so, and stole $200 in cash from her belongings. (R. pp. 95-98). He and his accomplice then resumed ransacking the Lyles' home. (R. p. 98; p. 216). Meanwhile, Durham encountered Jimmy McDaniel, the son of the Lyles' next-door neighbors, and told him about the gunman that she had seen inside her grandparents' home. (R. pp. 136-138; pp. 141-145). In response, the two alerted the police of what was going on. (R. p. 137; p. 145).

Two minutes later, Deputy Bryan Leppard of the Greenville County Sheriff's Office arrived at the Lyles' residence with his blue lights and sirens activated. (R. p. 137; p. 145; pp. 154-156). Shortly after that, more officers arrived on the scene, and the robbers inside the residence noticed the officers' arrival and began to panic. (R. p. 99; p. 157; pp. 170-171). Fearing arrest, the larger robber, Antonias Williams, ran out the back door and discarded his pistol as he fled.[1] (R. pp. 157-159). However, the officers were waiting for him outside, and Deputy Leppard apprehended Williams with the assistance of a police dog. (R. pp. 158-159). Meanwhile, the skinnier robber, who was still inside the Lyles' house, took off his mask and turned his attention away from Mrs. Lyles, and she responded by quickly running out the back door. (R. pp. 100-101; pp. 171-172). When she did, the skinnier robber fled through the front door and escaped into a nearby wooded area while the officers' attentions were focused on Williams and Mrs. Lyles. (R. p. 139; pp. 147-149; pp. 172-173).

[1] A loaded .40-caliber pistol was subsequently located in the Lyles' backyard. (R. pp. 182-184).

Shortly thereafter, Deputy Leppard informed Williams of his rights and spoke with him about the incident. (R. p. 160). During their conversation, Williams admitted that he was in possession of Mr. Lyles' property and indicated that he and his accomplice were at the Lyles' house because they believed $200,000 was hidden inside. (R. p. 163; pp. 167-169). However, Williams declined to provide Deputy Leppard with the name of his accomplice. (R. p. 163; pp. 167-169). Subsequently, Investigator Dave Weiner of the Greenville County Sheriff's Office arrived on the scene and attempted to speak with Williams. (R. pp. 211-213). During their conversation, Williams advised the officer that the vehicle used in the crimes was parked just one street over from the Lyles' street. (R. p. 213). However, he again refused to name his accomplice. (R. pp. 213-214).

Using the information supplied by Williams, officers found a white Toyota van parked in the driveway of a vacant residence located one street away from the Lyles' street, and the van was secured and removed from the scene.[2] (R. pp. 175-177). Subsequently, a search warrant for the van was obtained, and Investigator Weiner participated in the search of the vehicle. (R. pp. 194-195). During the search, he found a cell phone next to the driver's seat, another cell phone plugged into the van's charger outlet, various police costume items, a stocking cap, and a pry bar, and the items were collected as evidence. (R. p. 217; pp. 219-222).

Thereafter, on January 5, 2011, Investigator Weiner again spoke with Williams about the incident and, once again, asked him to reveal his accomplice's identity. (R. p. 223). This time, Williams identified Appellant Christopher Eric Russell by name as his accomplice. (R. p. 224; p. 264; p. 303). Following that admission, Investigator Weiner

[2] The van belonged to Toyota of Greenville, a car dealership, and was a vehicle that was loaned to customers when their own vehicles were being serviced. (R. p. 223).

asked Williams about the cell phones found in the van, and Williams indicated that Appellant's cell phone was the one plugged into the charger outlet. (R. pp. 224-225). Based on Williams' admissions, Investigator Weiner obtained a subpoena for the records associated with Appellant's phone, a search warrant for the phone, and a warrant for Appellant's arrest.[3] (R. pp. 225-226; pp. 228-229).

Subsequently, on January 10, 2011, officers located Appellant and arrested him after he unsuccessfully attempted to flee from them on a bicycle. (R. pp. 165-167). Following his arrest, he was booked at the Greenville County Detention Center, identified his mother as his next of kin during the booking process, and provided her phone number. (R. p. 247). Officers then conducted a forensic examination of the cell phone that Williams identified as Appellant's phone, and the same phone number that Appellant had provided for his mother during the booking process was included in the phone's contacts list under "Momma." (R. pp. 232-233; p. 238; pp. 484-508). Thereafter, Appellant was indicted for first-degree burglary, kidnapping, armed robbery, and conspiracy, and he proceeded to trial. (R. p. 8; pp. 19-20; pp. 530-537).

At the outset of trial, defense counsel moved to suppress the evidence recovered from the search of the cell phone found in the van connected to the incident.[4] (R. p. 22). In support of that contention, defense counsel argued that the warrant affidavit did not comply with the warrant statute, did not contain sufficient information to establish probable cause, and violated Appellant's constitutional rights pursuant to the Fourth

[3] Appellant's cell phone was a pre-paid phone, and no ownership information was available. (R. p. 225).

[4] Additionally, defense counsel moved to suppress the evidence discovered in the search of the van, arguing that it was questionable whether the search warrant affidavit established probable cause. (R. p. 22). Subsequently though, the trial judge questioned defense counsel about whether Appellant had standing to challenge the search of the van, and defense counsel responded by asserting that the main issue in the case was the search of the phone. (R. p. 24). The trial judge then denied her motion in regard to the search of the van. (R. pp. 24-25).

Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution. (R. p. 22). Following defense counsel's contentions, the solicitor informed the trial judge of the circumstances related to the search of the cell phone and asserted that Appellant did not have standing to challenge the search of the phone because it had been abandoned. (R. pp. 25-26). In response, defense counsel contended that the phone was not abandoned, that Appellant had standing based on the fact that the phone was being used as evidence against him, and that she had not been provided with any discovery regarding Williams' identification of Appellant as the cell phone's owner. (R. pp. 27-28).

After considering the arguments of counsel, the trial judge denied defense counsel's motion but asked the solicitor if he had complied with the discovery rules regarding Williams' identification of the cell phone's owner. (R. pp. 29-30). In response, the solicitor confirmed that he had provided defense counsel with all of the State's discoverable matter and noted that Williams' statements regarding the cell phone were not included in any reports or written statements but would be testified to during trial. (R. p. 30). Defense counsel then asserted:

> [I]f that statement is not reflected in discovery, that is making false representation to a Magistrate in order to get a search warrant. And then that's the problem. I would like to put that on the record as a problem with that search warrant is there's a statement in the officer's affidavit that says, Antonias Williams identified the phone as belonging [to Appellant]. And I don't see anything in any kind of incident report backing up that statement.

(R. pp. 30-31). Following defense counsel's new contention, the trial judge reaffirmed his denial of the suppression motion. (R. p. 31). However, he reserved ruling on defense counsel's claim regarding the inclusion of false information in the search warrant

affidavit and indicated an in camera hearing on the issue could be conducted when it came up during trial. (R. p. 31).

Thereafter, the trial judge presented opening instructions to the jury, and the solicitor and defense counsel made their opening statements. (R. pp. 35-43; pp. 45-56). During defense counsel's opening statement, she asserted to the jury that Appellant had an alibi for the time of the crimes and pointed out that Williams did not identify Appellant as his accomplice until over two weeks after his arrest. (R. p. 54).

Subsequently, during trial, the victims, witnesses, and law enforcements officers who responded to the incident testified about the details of Appellant's crimes and the ensuing investigation into them.[5] During Investigator Weiner's testimony, he confirmed that he spoke with Williams subsequent to his arrest and that Williams identified one of the cell phones recovered from the van connected to the incident as belonging to Appellant. (R. pp. 223-225). He further noted that the information about the cell phone was not included in Williams' written statement. (R. p. 227).

Following Investigator Weiner's testimony, Investigator Christopher Hammett of the Greenville County Sheriff's Office was called to the stand. (R. p. 230). During his testimony, he indicated that he extracted the data from Appellant's cell phone on February 8, 2013, and compiled a report of the extracted data. (R. pp. 231-234). Before that report was introduced, defense counsel objected and requested an in camera hearing on the matter. (R. p. 235). The jury was then excused from the courtroom, and defense counsel asked the trial judge to rule on her contention that the search warrant affidavit contained a material misrepresentation based on the fact that Williams' identification of

[5] During her testimony, Mrs. Lyles indicated that Appellant's skin tone, lips, and voice were consistent with the skin tone, lips, and voice of the skinnier robber. (R. pp. 123-124).

the owner of the cell phone was not included in his written statement. (R. pp. 235-236). In response, the trial judge stated:

> I'm going to overrule your objection as the officer clearly testified that that was told to him by [Williams]. I understand your argument that it did not find its way into a written report. I don't think that rises to the level of material misrepresentations referred to. So, I'm going to overrule your objection and find that it is admissible.

(R. p. 236). Thereafter, the jury returned to the courtroom, and the report was admitted into evidence. (R. p. 237). Investigator Hammett then confirmed that Appellant's cell phone contacts list included a specific phone number for an individual identified as "Momma." (R. p. 238).

Following Investigator Hammett's testimony, Captain Jinny Moran of the Greenville Department of Public Safety testified for the State. (R. p. 245). During her testimony, she indicated that Appellant provided the same phone number listed in his cell phone contacts list for "Momma" as the contact number for his mother. (R. pp. 245-247). Then, on cross-examination, defense counsel questioned Captain Moran about Appellant's aliases listed in the detention center's jail management system. (R. p. 252). Specifically, defense counsel asked her whether the nickname of "Poncho" was listed as one of Appellant's aliases, and she confirmed that it was not. (R. p. 253). However, she noted that only known aliases were entered into the system.[6] (R. p. 255).

Subsequently, Williams testified for the State, noted that he had pled guilty to armed robbery, kidnapping, and conspiracy based on his role in the incident, identified Appellant as his accomplice, and pointed him out in the courtroom.[7] (R. p. 260; pp. 264-265). Regarding the specifics of the incident, Williams stated that Appellant's brother

[6] Captain Moran also confirmed that it was common for individuals to have multiple aliases. (R. p. 256).

[7] After identifying Appellant as his accomplice, Williams stated that he called Appellant "Poncho." (R. p. 265).

came up with the idea of robbing the Lyles' home because their son supposedly had $200,000 hidden inside, Appellant brought the idea to him, they watched the home for approximately a month, and then they went there on the night of the incident with the intention of committing the robbery if the Lyles' son was home. (R. pp. 266-268). Upon arriving, Williams testified that they parked in front of a nearby abandoned home, left their cell phones in the van, put their gloves and masks on, and hid behind the Lyles' house for approximately an hour to an hour and a half.[8] (R. pp. 273-277). Then, when Mr. Lyles came out to get some firewood, Williams indicated that he and Appellant forced their way inside, restrained Mr. Lyles, stole some of his belongings, and searched the home for the money. (R. pp. 277-280). Subsequently, Williams testified that Mrs. Lyles entered the home, Appellant retrained her, they noticed that the police had arrived, he attempted to flee, and he was apprehended. (R. pp. 280-283). After he was arrested, Williams indicated that he did not reveal Appellant's identity as his accomplice for approximately two weeks. (R. p. 283; p. 307).

Following Williams' testimony, the State rested its case, and defense counsel offered the testimony of two alibi witnesses – Appellant's mother, Eleanor Russell, and Appellant's girlfriend or common-law wife, Ruby Willett.[9] (R. p. 328; p. 350). Both witnesses testified that Appellant was at Russell's house from approximately 7:00 p.m. to approximately 10:00 p.m. on the evening of December 18, 2010, watching a game with Willett, his brother, his daughter, and several of his cousins. (R. p. 329; p. 335-337; pp.

[8] During his testimony, Williams identified one of the cell phones recovered from the van as his own and the other as Appellant's. (R. pp. 275-276).

[9] In addition to the alibi witnesses, defense counsel offered the testimony of Anthony Lounds, who was incarcerated for armed robbery. (R. p. 315). Lounds testified that he was at the detention center at the same time as Williams and claimed that Williams asked him at some point in time between June of 2010 and July of 2011 what the police would do to Appellant if he told them that Appellant had been with him at the time of the crimes. (R. pp. 316; pp. 318-320).

351-353). Likewise, both witnesses indicated that they did not report Appellant's alleged alibi to the authorities following his arrest, but Willett stated that she told defense counsel about the alibi. (R. pp. 345-346; p. 358; p. 361). Additionally, Willett specifically claimed that she was testifying because she received a subpoena and "[i]t was the right thing to do."[10] (R. p. 350; p. 352). Furthermore, Willett asserted that her relationship with Appellant ended prior to his arrest, but she admitted that she visited Appellant in jail shortly after he was arrested and claimed to have done so on two or three occasions. (R. p. 351; pp. 355-356).

At the conclusion of Willett's testimony, the defense rested. (R. p. 366). The solicitor then indicated that he wished to present additional testimony to rebut Willett's claims about the number of times that she visited Appellant at the detention center following his arrest and to respond to the evidence elicited by defense counsel during trial suggesting that Appellant did not have the nickname "Poncho." (R. pp. 367-369). Regarding the testimony related to Appellant's nickname, the solicitor noted that he attempted to call a witness on that subject during his case-in-chief and brought the matter to the trial judge's attention at that time. (R. p. 370). The trial judge then confirmed that the solicitor brought the matter to his attention during the State's case-in-chief, noted that defense counsel raised an objection, and indicated that he informed the solicitor that he would have to introduce the testimony on reply due to the fact that the proposed witness was not on the witness list. (R. p. 370).

In response, the solicitor noted that the proposed witness was not on the witness list because the issue that the witness pertained to arose during cross-examination. (R.

[10] During her testimony, Willett admitted that she had previously been convicted in 2011 of giving false information to the police. (R. p. 362).

pp. 370-371). Furthermore, he noted that witness lists are not mandatory in South Carolina and not required by any criminal procedure rule. (R. p. 371). Following the solicitor's remarks, the trial judge indicated that he prohibited the solicitor from calling the witness when the solicitor attempted to do so based on his mistaken impression that a witness could not be called to testify during a party's case-in-chief unless he was on the party's witness list. (R. p. 374). Defense counsel then conceded that there was no rule regarding witness lists. (R. p. 374). However, defense counsel asserted that the solicitor should have anticipated the nickname issue because the "whole issue" in Appellant's case was allegedly whether Appellant "was this same person Poncho in all these telephone records." (R. pp. 374-375).

Following defense counsel's contentions, the trial judge inquired whether the nickname "Poncho" was ever referenced in the phone records that defense counsel had just mentioned. (R. pp. 376-377). Defense counsel admitted that it was not but argued "that's why I brought it up [ – ] because I anticipated when the records custodian was brought, that they were going to bring in his phone number and that's why this is the same in-take form and that's why I brought up the aliases." (R. p. 377). In response, the solicitor noted that the phone records were related to Appellant's cell phone so there would be no reason for Appellant's nickname to appear in those records. (R. p. 377). Thereafter, the following discussion occurred:

> [**Trial Judge**]: Well, let me stop you. I hear you[, solicitor]. [L]et me ask you this, do you want to risk dirtying up the record, based on a procedural posture in this case, by introducing evidence [t]hat was not responsive to the Defense? Regardless of my mistake or not?
>
> [**Solicitor**]: Your Honor, I really don't have a problem with it.
>
> [**Trial Judge**]: I do.

[**Solicitor**]: Okay.

[**Trial Judge**]: I mean, I certainly don't knowingly make mistakes up here but we're all human[]. I was under the impression that it had to be on the list, quite frankly. At the same time, [defense counsel], it is in some s[e]nse a matter of fairness. If I prevented him, I clearly did, because I was pretty unequivocal at the time bench, you're not going to do that when he tried to. I just . . .

[**Defense Counsel**]: Well, Judge, this trial is about fairness to the Defendant.

[**Trial Judge**]: Fairness to both State and the Defendant. One side doesn't have a priority over fairness.

(R. pp. 377-378).

Subsequently, the trial judge again noted that the solicitor attempted to call the witness at a proper time and was unequivocally prevented from doing so by him for an erroneous reason. (R. p. 380). As a result, the trial judge indicated that he would permit the solicitor to proffer the testimony of the proposed witness before he decided how to proceed on the matter. (R. pp. 380-381). The proposed witness, Master Deputy Allen Smith of the Greenville County Sheriff's Office, then testified during an in camera hearing and confirmed that he encountered Appellant three to four years prior to trial, that Appellant indicated that he was called "Poncho," and that Appellant refused to provide his real name. (R. pp. 382-384). He further noted that he was present throughout the trial and volunteered what he knew to the solicitor when the issue regarding Appellant's nickname came up.[11] (R. p. 384).

Following the proffered testimony, the trial judge ruled that the testimony was admissible and could be introduced. (R. p. 386). In response to the ruling, defense counsel asked for time to research if anyone else in the law enforcement records had the

[11] Master Deputy Smith was present in the courtroom during Appellant's trial because he was assigned to the courthouse and was in charge of courtroom security. (R. p. 382; p. 394).

nickname "Poncho," and the trial judge granted defense counsel's request.[12] (R. p. 386). Defense counsel then renewed her objection to the admission of the testimony on the grounds that it was inadmissible hearsay, its probative value was outweighed by its prejudicial effect, it was not proper rebuttal testimony, and it would deny Appellant a fair trial. (R. pp. 388-389). However, the trial judge overruled defense counsel's objection, found that the issue was raised by defense counsel through her cross-examination of the witnesses, and noted that his erroneous ruling was what prevented the testimony from being admitted during the State's case-in-chief.[13] (R. p. 389).

Subsequently, Master Deputy Smith testified before the jury about the circumstances of his meeting with Appellant three to four years earlier. (R. p. 394). Specifically, Master Deputy Smith stated that he was working while off-duty as a security coordinator at an apartment complex, he saw Appellant riding a bicycle there, he asked Appellant what his name was, and Appellant responded that it was "Poncho." (R. pp. 394-395). Additionally, Dana Lewis, the populations manager at the Greenville County Detention Center, testified about the information in the detention center's records regarding Willett's visits to Appellant. (R. pp. 396-397). Specifically, Lewis stated that Willett visited Appellant twenty-two times following his arrest in 2011, including two

[12] Later during trial, Investigator Weiner presented the results of the requested records check to defense counsel and the trial judge. (R. p. 391). According to the records, six individuals had the listed nickname of "Poncho" – three white males, one Hispanic male, and two black males. (R. p. 391). Because one of the black males had been born in 1947 and was last arrested in 1969, no photograph of that individual was available. (R. p. 391). However, a photograph of the other black male was available, and Master Deputy Smith confirmed that he had never seen that individual before after being shown the photograph. (R. p. 391).

[13] Additionally, defense counsel objected to the rebuttal testimony regarding Willett's visits to the jail on the basis that the admission of such testimony was improper due to the fact that Willett admitted she had visited the jail. (R. p. 389). However, the trial judge denied that objection after finding that the challenged testimony was proper evidence of bias. (R. pp. 389-390).

times in January, seven times in February, seven times in March, three times in April, two times in May, one time in June, and one time in August. (R. p. 398).

Thereafter, the State again rested its case, and defense counsel presented her closing argument to the jury. (R. p. 398; pp. 406-415). During her closing argument, defense counsel reminded the jury that Appellant had an alibi based on the testimony of Appellant's mother and Willett and argued that the State had failed to present enough evidence to overcome Appellant's alibi defense. (R. pp. 407-408; pp. 414-415). Additionally, defense counsel attacked the credibility of Williams' identification of Appellant as his accomplice due to the fact that Williams did not identify Appellant as his accomplice until two weeks after his arrest. (R. p. 408). Furthermore, defense counsel challenged the credibility of Master Deputy Smith's testimony regarding Appellant's nickname of "Poncho" due to the fact that it was allegedly not corroborated by any other witnesses during trial. (R. p. 412).

Subsequently, the solicitor presented his closing argument to the jury. (R. pp. 415-436). During his closing argument, the solicitor called the jury's attention to the fact that the witnesses who testified in Appellant's defense claimed to have vital information establishing Appellant's innocence and questioned why they would have waited for two years to come forward with that information even though Appellant was incarcerated during that time period. (R. pp. 419-420). Following those remarks, defense counsel objected and noted that she provided the State with notice of an alibi defense.[14] (R. p. 421). The solicitor then continued with his argument, indicating that the testimony presented during trial established that at least five people, including Appellant's daughter,

[14] Defense counsel served the alibi notice on the solicitor on October 25, 2012, which was approximately twenty months after Appellant was arrested. (R. p. 477).

brother, and cousin, were allegedly present with Appellant at the time of the crimes and that the expected response under those circumstances would be for them to go to the authorities and attempt to obtain Appellant's release from custody. (R. p. 421). Once again, defense counsel objected, asserting that Appellant had no duty to present any evidence. (R. p. 421). In response, the trial judge instructed the jury that the burden of proof rested upon the State and any insinuation to the contrary was incorrect. (R. pp. 421-422). The solicitor then argued:

> That's what they would have done. They would have gone down there and they would not [have] allowed this injustice to take place. And if that didn't work they would have gone to Channel Four News, gone to Greenville News and say, There's a horrible injustice that's been done. Because not only is an innocent man free [sic] but the real person who did this, the real criminal, the real dangerous person, is still out there on the streets. I argue to you that's what would have happened. Instead of that, it was an ambush. They wait until all this time goes by and then they let it out.

(R. p. 422). Following the solicitor's comments, defense counsel again objected, and the trial judge sent the jury out of the courtroom. (R. p. 422). Defense counsel then argued that the State had been provided with notice of Appellant's alibi defense in compliance with the applicable criminal procedure rule and objected to the solicitor referring to the alibi defense as an ambush. (R. p. 423). In response, the trial judge indicated that he would instruct the jury that the State had been provided with notice of Appellant's alibi. (R. p. 423). Defense counsel then moved for a mistrial, and the motion was denied. (R. p. 424). Thereafter, the jury returned to the courtroom, and the trial judge issued the following charge to the jury:

> [L]adies and gentlemen of the jury, attorneys are allowed wide latitude in their arguments. And I'll remind you of this, when you go back and begin your deliberations, if your memory of the testimony and evidence differs from what either on[e] of these attorneys tell you, then your memory will control, okay. With that being said, the Rules of Procedure in criminal

> court are if a Defendant wishes to assert an alibi defense, as was done in this case, that you have to give advance notice before trial to the State. And that was done.

(R. pp. 424-425). The solicitor then completed his closing argument without further objection from defense counsel. (R. pp. 425-436).

Following the closing arguments, the trial judge charged the jurors on the applicable law, including on their roles in determining the credibility of the witnesses, on the fact that Appellant's failure to testify could not be considered against him, on the defense of alibi, and on the burden of proof regarding the alibi defense. (R. pp. 437-462). Subsequently, the jury retired from the courtroom, and defense counsel renewed her mistrial motion along with her objections to the State's presentation of the additional testimony and to the challenged portions of the solicitor's closing argument. (R. p. 464). However, the trial judge once again denied those exceptions, and the jury began deliberating.[15] (R. p. 465).

Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. pp. 468-469). Following the verdict, the trial judge sentenced Appellant to life without parole for first-degree burglary, kidnapping, and armed robbery and a concurrent term of imprisonment of five years for conspiracy. (R. pp. 474-475).

---

[15] During the jury's deliberations, the jury foreman sent out a note asking if Master Deputy Smith was on the witness list and expressing concern that he seemed "like a last minute witness." (R. p. 465). Thereafter, the trial judge discussed the note with counsel and indicated that the standard way in which he typically responded to such questions was by advising the jurors that the requested information had not been presented during trial and that their determination had to be based solely on the evidence and testimony presented. (R. pp. 465-466). Defense counsel then indicated that she wished the trial judge would tell the jury that Master Deputy Smith was a last-minute witness, but she conceded that such a remark "might be commenting a little much on the question" and that the witness list was not evidence. (R. p. 466). Thereafter, the trial judge informed the jurors that their decision in the case had to be based on the testimony and evidence presented during trial while noting that the requested information was not in evidence. (R. pp. 466-467). The jury then resumed its deliberations, and no objections were raised to the trial judge's response to the jury note. (R. p. 467).

## ARGUMENT

I.

**The trial judge did not abuse his discretion in allowing the solicitor to introduce the testimony of a witness subsequent to the presentation of the defense's case when the solicitor attempted to introduce the testimony of the witness during the State's case-in-chief and was prevented from doing so by defense counsel objecting to the admission of the testimony and the trial judge precluding its admission on a basis that defense counsel subsequently conceded was legally incorrect.**

Appellant contends that the trial judge prejudicially abused his discretion in permitting the solicitor to introduce the testimony of Master Deputy Smith, who testified about his knowledge of Appellant's nickname. In support of that contention, Appellant maintains that the trial judge abused his discretion in permitting the introduction of that testimony due to the fact that the testimony did not rebut the evidence presented in the defense's case. Contrary to Appellant's contentions, the trial judge did not abuse his discretion in allowing the solicitor to introduce the testimony of Master Deputy Smith after Appellant's case-in-chief had concluded because the testimony was only not admitted in the State's case-in-chief after Appellant objected to its admission and the trial judge excluded it on a basis that defense counsel subsequently conceded was legally incorrect. Because the trial judge had improperly excluded the testimony from being introduced in the State's case-in-chief, the trial judge committed no error in exercising his discretion to correct that earlier error by allowing the introduction of the improperly-excluded testimony upon discovering his error. As a result, no prejudicial abuse of discretion occurred in Appellant's case, and there were no grounds warranting a reversal of Appellant's convictions. Appellant's convictions should be affirmed.

The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bryant,

372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007); see State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Pursuant to the trial judge's discretion regarding the manner in which a criminal trial is conducted, a trial judge has the discretion to control the time at which the testimony will be introduced, to reopen the evidentiary record, and to allow additional evidence or testimony to be presented. State v. Humphery, 276 S.C. 42, 43, 274 S.E.2d 918, 918 (1981); see State v. Clyburn, 16 S.C. 375, 378 (1882) ("The conduct of a case in the Circuit Court, so far as relates to the time when testimony may be introduced, must be left to the discretion of the Circuit judge, to be governed by the particular circumstances of each case."). Critically, "[a] trial is a search for the truth; concomitantly, liberality is the linchpin of the rule." State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996).

Likewise, decisions as to whether to admit or exclude evidence are generally left to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). As a result, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of

discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.").

Notably, in State v. Thompson, 68 S.C. 133, 134-135, 46 S.E. 941, 942 (1904), Thompson was charged with murder after killing a man who "accomplished the ruin" of Thompson's daughter by promising to marry her. During trial, the solicitor attempted to introduce the testimony of a particular witness during his case-in-chief, Thompson objected, and the trial judge excluded the testimony. Id. at 135, 46 S.E. at 942. Subsequently, after Thompson had presented his case-in-chief, the solicitor again attempted to introduce the testimony of the previously-excluded witness, arguing that the basis upon which the testimony was excluded was incorrect. Id. At that point, defense counsel objected to the admission of the witness' testimony due to the fact that it was allegedly too late for it to be admitted and not on the basis upon which it had previously been excluded. Id. However, after realizing that his ruling excluding the testimony was erroneous, the trial judge reversed that ruling and allowed the solicitor to introduce the testimony despite the fact that the parties' cases-in-chief had already concluded. Id. Thereafter, Thompson was convicted and appealed, arguing that the admission of the witness' testimony was improper due to the fact that it was admitted after both the State and the defense had concluded their cases-in-chief. Id. On appeal, the Supreme Court affirmed Thompson's conviction. Id. at 137, 46 S.E. at 943. In affirming, the Supreme Court instructed:

> It is clear in our minds that the Circuit Judge made no error as here presented. Suppose the Circuit Judge had erred in refusing to allow one of the defendant's witnesses to be examined after the State had fully gone

> into its evidence in reply to the defense, and then for the first time the Court became conscious of his error, ought he not to have allowed defendant's witnesses to be examined? Clearly so. Courts are organized to dispense justice, and when such Courts find that *they* have made mistakes in refusing to admit competent testimony, they should at once admit such testimony. There are numerous decisions in our State sustaining such conclusions.

Id. at 136, 46 S.E. at 943 (italics in original).

In the case sub judice, the trial judge did not abuse his discretion in permitting the State to introduce the testimony of Master Deputy Smith after the defense rested its case because the solicitor – just like the solicitor in Thompson – was incorrectly precluded from presenting the testimony during his case-in-chief following an objection from defense counsel and an erroneous legal ruling from the trial judge. Critically, during the State's case-in-chief, the solicitor attempted to introduce the testimony of Master Deputy Smith at an appropriate time, and the trial judge prevented him from doing so after defense counsel raised an objection to the introduction of the testimony. The basis upon which the trial judge excluded the testimony at that time was that Master Deputy Smith was not originally on the State's witness list. However, as defense counsel later conceded to the trial judge, the fact that Master Deputy Smith's name was not on the State's witness list did **not** preclude him from testifying during trial. See State v. Nicholson, 366 S.C. 568, 579, 623 S.E.2d 100, 105 (Ct. App. 2005) ("The State . . . is not required to provide its witness list to a criminal defendant[.]"); see also Bryant, 372 S.C. at 315-316, 642 S.E.2d at 588 (recognizing that an issue conceded during trial cannot subsequently be argued on appeal). Because the trial judge's decision to prevent the solicitor from introducing Master Deputy Smith's testimony during the State's case-in-chief was legally incorrect, the trial judge properly corrected his earlier error by exercising his discretion and permitting the solicitor to introduce Master Deputy Smith's

testimony, which had only not been presented during the State's case-in-chief due to the trial judge's erroneous earlier ruling.[16] See Thompson, 68 S.C. at 136, 46 S.E. at 943 ("Courts are organized to dispense justice, and when such Courts find that *they* have made mistakes in refusing to admit competent testimony, **they should at once admit such testimony**." (italics in original and emphasis added)). Under those circumstances, the trial judge's decision was entirely proper and ensured that the trial was fair for all of the parties and that competent evidence relevant to the case was presented to the jury and not excluded merely as a result of the amount of time needed for the trial judge to discover his error in regard to it. See State v. Van Williams, 212 S.C. 110, 113, 46 S.E.2d 665, 667 (1948) (" 'The general rules for the introduction of testimony must necessarily be so often applied or relaxed according to circumstances apparent only to the Court engaged in conducting the trial, that a strict uniformity at all times is not to be expected and indeed, in some instances would prove injurious to the interests of justice. The Courts are agreed, accordingly, that the order of proof must be left to the sound discretion of the trial Court, and such Court will not be reversed unless it clearly appears that the Court has abused its discretion.' " (citations omitted)); see also Wren, 322 S.C. at 105, 470 S.E.2d at 112 ("A trial is a search for the truth; concomitantly, liberality is the linchpin of the rule.").

In arguing to the contrary, Appellant contends that the trial judge abused his discretion because Master Deputy Smith's testimony did not rebut any of the testimony presented by the defense witnesses. In support of that position, Appellant analogizes the

[16] Notably, since the trial judge's initial decision to exclude Master Deputy Smith's testimony was controlled by an error of law, that initial decision constituted an abuse of discretion. See McDonald, 343 S.C. at 325, 540 S.E.2d at 467 ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."). Thus, in essence, Appellant's argument against the admission of Master Deputy Smith's testimony is that the trial judge abused his discretion in correcting an earlier abuse of discretion.

circumstances of his case to the circumstances of State v. Farrow, 332 S.C. 190, 504 S.E.2d 131 (Ct. App. 1998). However, the circumstances in Farrow were markedly different from the circumstances of Appellant's case and do not support a conclusion that the trial judge abused his discretion in permitting the introduction of Master Deputy Smith's testimony. Specifically, in Farrow, the trial judge permitted the solicitor to introduce testimony that the solicitor had **not** attempted to introduce in his case-in-chief after Farrow concluded his case-in-chief based purely on written questions submitted by one of the jurors. Farrow, 332 S.C. at 132-133, 504 S.E.2d at 193-194. On appeal, this Court found that the introduction of the testimony was improper because it was not presented to rebut evidence introduced by Farrow. Id. at 133, 504 S.E.2d at 194. Conversely, in Appellant's case, the solicitor **did** attempt to introduce Master Deputy Smith's testimony during his case-in-chief and was only prevented from doing so due to an objection raised by defense counsel and an erroneous ruling from the trial judge. As a result, the circumstances of the cases are far different, and the trial judge in Appellant's case committed no error in permitting the introduction of the previously-excluded testimony after discovering that it had been excluded solely as a result of an error. See Thompson, 68 S.C. at 136, 46 S.E. at 943 (holding that a trial judge committed no error in permitting the introduction of previously-excluded evidence that was only excluded due to an error on the part of the trial judge despite the fact that the parties' cases-in-chief had concluded and instructing that trial judges should immediately admit improperly-excluded evidence when an error in regard to the exclusion of that evidence is discovered); see also Clyburn, 16 S.C. at 378 ("The conduct of a case in the Circuit Court, so far as relates to the time when testimony may be introduced, must be left to the

discretion of the Circuit judge, to be governed **by the particular circumstances of each case**." (emphasis added)).

Additionally, in seeking a reversal of his convictions, Appellant contends on appeal that the trial judge's ruling was prejudicial to him because Master Deputy Smith's testimony allegedly ambushed him, because the jury allegedly might have given undue weight to Master Deputy Smith's testimony due to the fact that he was a courtroom security officer, and because the trial judge did not poll the jurors to see if any of them knew of or were related to Master Deputy Smith.[17] However, as the trial judge did **not** err or abuse his discretion in allowing the solicitor to introduce Master Deputy Smith's testimony, a prejudice analysis is entirely unnecessary in regard to the admission of that evidence. See Thomasko v. Poole, 349 S.C. 7, 17, 561 S.E.2d 597, 602 (2002) ("It is well established that an appellant seeking reversal of a decision by the trial court **must show** both **error** and prejudice." (emphasis added)). Regardless though, the grounds identified by Appellant would not entitle him to a reversal of his convictions even assuming that a prejudice analysis was somehow necessary under the circumstances.

[17] On appeal, Appellant also appears to suggest that Master Deputy Smith's testimony established Appellant's presence at the scene of the crimes and that his identity was required to be disclosed prior to trial as a result. See Rule 5(e)(2), SCRCrimP ("Within ten days after defendant serves his [alibi defense] notice, but in no event less than ten days before trial, or as the court may otherwise direct, the prosecution shall serve upon the defendant or his attorney the names and addresses of witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged crime."). Notwithstanding the fact that Appellant did not preserve such an argument by raising it to the trial judge, Master Deputy Smith did **not** testify that Appellant was present at the scene of the crimes. See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."). Instead, he merely testified about his knowledge of Appellant's nickname while Appellant's presence at the scene of the crimes was established by the direct testimony of his accomplice, who identified Appellant by name as a participant in the crimes and identified him in-court as his accomplice. (R. pp. 264-265; pp. 382-385; pp. 394-395). Thus, to the extent that Appellant is asserting the solicitor was required by South Carolina's criminal procedure rules to disclose Master Deputy Smith's name before trial, that assertion is wholly without merit. However, assuming that Appellant's contentions in that regard were somehow valid, those contentions would conflict with Appellant's argument that Master Deputy Smith's testimony should not have been admitted because it did not rebut the testimony presented in Appellant's defense, which was primarily focused on Appellant's alleged alibi.

Initially, none of the prejudice grounds identified by Appellant on appeal was ever raised to or ruled upon by the trial judge, and, thus, those grounds cannot be raised for the first time on appeal. See State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) ("The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal."); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). However, even if they were somehow preserved despite the fact that they were not raised during trial, they still would not have entitled Appellant to any appellate relief.

Regarding Appellant's contentions that the introduction of Master Deputy Smith's testimony was an improper ambush, the issue to which the officer testified was directly raised by defense counsel's questioning of the witnesses and, had it not been so raised, would have been largely irrelevant to the case since Appellant's accomplice identified Appellant not just by nickname but also directly by name subsequent to his arrest. Moreover, the trial judge had the solicitor proffer Master Deputy Smith's testimony prior to its introduction into evidence, and the trial judge allowed defense counsel to investigate the prevalence of the nickname "Poncho" upon request. Under those circumstances, the introduction of Master Deputy Smith's testimony did not ambush Appellant and resulted in no improper prejudice to him. Cf. State v. Duncan, 274 S.C. 379, 382, 264 S.E.2d 421, 423 (1980) ("The trial judge properly exercised his discretion in allowing Strength to testify. With or without the [unconstitutional local] rule

[requiring the disclosure of the names of the State's witnesses], the defendant was not prejudiced in this instance, since his counsel was aware of the nature of Strength's testimony and declined an opportunity to confer with the witness prior to his taking the witness stand.").

Regarding Appellant's contentions about the jurors' potential connections to or interactions with Master Deputy Smith, the trial judge was prevented from taking any steps to address Appellant's complaints or to question the jurors about any connection or contact with Master Deputy Smith that they might have had since Appellant never called those matters to the trial judge's attention. See State v. Penland, 275 S.C. 537, 538, 273 S.E.2d 765, 766 (1981) ("One may not preserve a vice until he learns what the result will be and then, take advantage of the error on appeal."); State v. Burnett, 226 S.C. 421, 424, 85 S.E.2d 744, 746 (1954) ("A defendant may not reserve vices in his trial, of which he has notice as here, taking his chances of a favorable verdict, and in case of disappointment, use the error to obtain another trial."); State v. Ballew, 83 S.C. 82, 87, 63 S.E. 688, 690 (1909) ("The general principle that a party can not take his chances of a successful issue, reserving vices in the trial, of which he has notice, for use in case of disappointment, is universally recognized and obviously just."); see also State v. Logan, 279 S.C. 345, 348, 306 S.E.2d 622, 624 (1983) ("Appellant can neither take advantage of an error he contributed to at trial nor preserve a vice and, upon learning of the outcome of trial, raise it on appeal."). As a result, Appellant cannot complain about the trial judge's failure to address those issues for the first time on appeal, and his unpreserved contentions cannot properly be addressed on appeal. See State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991) ("Where an objection and the ground therefor is not stated in the record, there is no basis for appellate review."); see also State v. Hale,

284 S.C. 348, 355, 326 S.E.2d 418, 423 (Ct. App. 1985) ("Hale concedes that no exception was taken to the 'Allen' charge in the trial court. Having denied the trial judge an opportunity to cure any alleged error by failing to object to the charge, Hale cannot properly raise the issue for the first time on appeal."). Furthermore, nothing appearing in the record suggests that any of the jurors had a connection to Master Deputy Smith or that Master Deputy Smith had any direct interactions with any of the jurors in carrying out his role in providing courtroom security. Accordingly, Appellant suffered no improper prejudice from the introduction of Master Deputy Smith's testimony.

In conclusion, the trial judge committed no error in permitting the introduction of Master Deputy Smith's testimony regardless of the timing of when that testimony was introduced because the testimony was only prevented from being introduced in the State's case-in-chief due to an objection raised by defense counsel and a subsequent erroneous ruling from the trial judge. Under those circumstances, the trial judge's decision to admit that competent and relevant testimony could not be considered an abuse of the trial judge's broad discretion in regard to the conduct of the trial and merely ensued that the jury was presented with evidence that it should have been presented with during the State's case-in-chief. See Douglas, 369 S.C. at 429, 632 S.E.2d at 847-848 (recognizing that a trial judge's decision in regard to evidentiary matters will only be reversed for a manifest and prejudicial abuse of discretion). Appellant's convictions should be affirmed.

II.

**To the extent that Appellant is challenging the constitutionality of the search of the cell phone, the trial judge committed no error in denying Appellant's suppression motion because Appellant failed to establish that he had a legitimate expectation of privacy in the cell phone and, thus, did not have the capacity to challenge the constitutionality of the search. However, even if Appellant could properly challenge the constitutionality of the search, the trial judge correctly denied Appellant's suppression motion because the search warrant affidavit did not contain any false information.**

Appellant contends that the trial judge committed reversible error by refusing to grant his motion to suppress the evidence discovered in the search of one of the cell phones recovered during the investigation into the incident. In support of that contention, Appellant maintains that the trial judge erred in denying his suppression motion because the search warrant affidavit allegedly contained false information and because no evidentiary hearing was conducted in regard to that false information. Initially, to the extent that Appellant is challenging the constitutionality of the search of the cell phone, the trial judge committed no error in denying the suppression motion because Appellant did not have the capacity to challenge the constitutionality of the search in light of the fact that he failed to establish that he had a legitimate expectation of privacy in the cell phone. However, even assuming that Appellant had the capacity to challenge the constitutionality of the search, the trial judge nonetheless committed no error in denying Appellant's suppression motion because Appellant failed to make any showing at all during trial that the challenged statement in the search warrant affidavit was false. As a result, he was not entitled to an evidentiary hearing in regard to the truthfulness of the search warrant affidavit or to the suppression of the evidence discovered in the search of the cell phone. For those reasons, the trial judge properly denied Appellant's suppression motion. Appellant's convictions should be affirmed.

### A. Appellant's Lack of Capacity to Challenge the Constitutionality of the Search

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Importantly though, the protections afforded by the Fourth Amendment are personal in nature and cannot be vicariously asserted. See Alderman v. United States, 394 U.S. 165, 174 (1969) ("Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted."). As a result, a criminal defendant must first establish that his own personal Fourth Amendment rights were violated by an allegedly unreasonable search or seizure **before** a challenge to that search or seizure will be entertained. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987); see Rakas v. Illinois, 439 U.S. 128, 132, n. 1 (1978) ("The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.").

The critical factor as to whether an individual has the capacity to challenge the reasonableness of a particular search or seizure involves determining "whether the person who claims the protection of the [Fourth] Amendment has a legitimate expectation of privacy in the invaded place." Rakas, 439 U.S. at 143. A legitimate expectation of privacy is both subjective and objective in nature. State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004). In order to establish a legitimate expectation of privacy, an individual must show: (1) that the individual had a subjective expectation that the area searched would remain free from intrusion; and (2) that the individual's subjective expectation is one that society recognizes as reasonable. Id.; see Minnesota v. Olsen, 495 U.S. 91, 95-96 (1990) (instructing that a subjective expectation of privacy can be considered legitimate if it is one society accepts and recognizes as reasonable).

In the case sub judice, the cell phone that was ultimately searched was discovered abandoned in a loaned van being used by Appellant's accomplice. See State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) ("Abandoned property has no protection from either the search or seizure provisions of the Fourth Amendment."). Subsequently, during trial, Appellant did **not** assert that the searched phone belonged to him, that he had a subjective expectation of privacy in the contents of the phone, or that such a subjective expectation of privacy would be one that society recognizes as reasonable. Instead, in moving to suppress the evidence discovered in the search, Appellant merely asserted that he could challenge the constitutionality of the search solely because evidence discovered in the search was going to be used against him during his trial. See Rakas, 439 U.S. at 134 ("A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed."); see also State v. Missouri, 337 S.C. 548, 553, 524 S.E.2d 394, 396 (1999) (recognizing that the United States Supreme Court's decision in Franks v. Delaware, 438 U.S. 154 (1978), was based on the Fourth and Fourteenth Amendments of the United States Constitution). However, without establishing that he had a subjective expectation of privacy in the searched cell phone that society recognizes as reasonable, Appellant could not claim to have a legitimate expectation of privacy in the cell phone and, thus, could not assert that the search of the cell phone violated his own constitutional rights. See Missouri, 361 S.C. at 112, 603 S.E.2d at 596 ("A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable.").

Because Appellant wholly failed to establish during trial that he had a legitimate expectation of privacy in the searched cell phone, he lacked the capacity to challenge the constitutionality of the search of the cell phone and was not entitled to receive the benefits of the exclusionary rule even if the search was somehow unconstitutional. See United States v. Salvucci, 448 U.S. 83, 85 (1980) ("[D]efendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated."); see also Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) ("Petitioner, of course, bears the burden of proving not only that the search of Cox's purse was illegal, but also that he had a legitimate expectation of privacy in that purse."). Therefore, to the extent that Appellant is arguing that the search of the cell phone violated his constitutional rights, the trial judge committed no error in denying Appellant's suppression motion due to the fact that Appellant did not have the capacity to raise such a constitutional challenge. See Rakas, 439 U.S. at 130, n. 1 ("The proponent of a motion to suppress has the burden of establishing that **his own** Fourth Amendment rights were violated by the challenged search or seizure." (emphasis added)); see also McKnight, 291 S.C. at 114, 352 S.E.2d at 473 ("One who seeks to have evidence suppressed on this basis must establish that his *own* Fourth Amendment rights were violated." (italics in original)). Appellant's convictions should be affirmed.

**B. Propriety of the Search Warrant and the Search of the Cell Phone**

In order to obtain a search warrant in South Carolina, an affiant must present a sworn affidavit to a judge establishing the grounds for the warrant. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999); see S.C. Code Ann. § 17-13-140 ("A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the

warrant."). Critically, those grounds must contain sufficient underlying facts upon which the judge can base a probable cause determination because a search warrant may only be issued upon a finding of probable cause. State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990); see Bellamy, 336 S.C. at 143, 519 S.E.2d at 349 ("A search warrant may issue only upon a finding of probable cause."); see also Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as "a fair probability that contraband or evidence of a crime will be found"). If the affiant sufficiently establishes probable cause, the judge shall issue a search warrant. See S.C. Code Ann. §17-13-140 ("If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched.").

However, under the Fourth and Fourteenth Amendment of the United States Constitution, a defendant has a right "to challenge misstatements in a search warrant affidavit" even after a search warrant is issued. State v. Jones, 342 S.C. 121, 126, 536 S.E.2d 675, 678 (2000). In Franks v. Delaware, 438 U.S. 154, 171-172 (1978), the United States Supreme Court identified the process for raising such a challenge. Pursuant to the process identified in Franks, a defendant is constitutionally entitled to a hearing on the validity of a search warrant affidavit if "the defendant makes a **substantial** preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit" and "if the allegedly false statement is necessary to the finding of probable cause[.]" Id. at 155-156 (emphasis added). Importantly, that preliminary showing "must be more than conclusory" and "must be accompanied by an offer of proof." Id. at 171. Moreover, it

"must be supported by more than a mere desire to cross-examine." Id. In making the offer of proof, the defendant is required to "point out specifically the portion of the warrant affidavit that is claimed to be false[,]" to provide "a statement of supporting reasons[,]" and to either furnish "[a]ffidavits or sworn or otherwise reliable statements of witnesses" or "satisfactorily" explain why such materials were not provided. Id. Then, if those requirements are met, the defendant is entitled to a hearing where he must prove his allegations of falsity or a reckless disregard for the truth by a preponderance of the evidence. Id. at 156. Assuming that the allegations are proven during the hearing and the search warrant affidavit's remaining content is insufficient to establish probable cause, the trial judge should then void the search warrant and exclude the evidence discovered during the search "to the same extent as if probable cause was lacking on the face of the affidavit." Id.

In the case at bar, the trial judge committed no error in denying Appellant's suppression motion because Appellant failed to establish that the search warrant affidavit connected to the search of the cell phone contained any false information. Critically, during trial, Appellant alleged that the statement included in the search warrant affidavit regarding Appellant's accomplice's identification of the cell phone as Appellant's was false. However, Appellant did **not** offer any statements, affidavits, or other proof to establish that the challenged statement in the affidavit was, in fact, false. See id. at 171 ("They should point out specifically the portion of the warrant affidavit claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained."). Instead, Appellant simply asserted – and continues to assert on appeal – that the statement was false because it was not included in the

discovery materials provided to him prior to trial. Critically though, the fact that the statement, which was an oral statement made by Appellant's accomplice, was not memorialized in writing prior to the preparation of the search warrant affidavit or turned over to Appellant during the discovery process in no way established that the statement was false, and Appellant failed to identify **any** authority that would support such a conclusion. See Rule 5, SCRCrimP (containing no requirement that the State memorialize all oral statements in writing and turn them over to the defendant and certainly containing no declaration that all oral statements not disclosed during the discovery process are presumptively false); see also Franks, 438 U.S. at 171 ("There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant."). As a result, Appellant's unsupported allegation of a falsity in the search warrant affidavit did not constitute even a prima facie showing that the statement was false and was not sufficient to entitle him to an evidentiary hearing on the validity of the warrant or to establish by a preponderance of the evidence that the information in the affidavit was, in fact, false. See Franks, 438 U.S. at 171 ("To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine."). However, even assuming that Appellant's unsupported attack on the truthfulness of the information in the search warrant affidavit had somehow been sufficient to warrant an evidentiary hearing on the validity of the warrant, Sergeant Weiner unequivocally testified to Appellant's accomplice's identification of the cell phone during trial and noted that the identification led him to personally obtain the original search warrant for the cell phone's records. Accordingly, the unrebutted testimony presented during trial established that the information in the

search warrant affidavit was truthful, and the trial judge correctly determined that the search warrant affidavit did not contain any false information.

In arguing to the contrary on appeal, Appellant continues to assert that the statement in the search warrant affidavit was false because it was not contained in any of the discovery materials while also raising several new contentions. Specifically, Appellant now asserts – for the first time on appeal – that the trial judge erred in denying his suppression motion due to the facts that there was no testimony presented during trial regarding how the affiant, Investigator A.L. Bailey, acquired his knowledge of the information included in the affidavit and that no evidentiary hearing was conducted in regard to the alleged Franks violation. However, neither of those arguments was raised to the trial judge, and, thus, neither of those arguments was properly preserved for appellate review. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing that a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); see also Patterson, 324 S.C. at 19, 482 S.E.2d at 767 ("Appellant is limited to the grounds raised at trial."); see, e.g., I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and **arguments**." (emphasis added)). However, even assuming that those arguments were somehow preserved for appellate review despite the fact that they were not raised to the trial judge, neither of those arguments established that the trial judge committed any error in Appellant's case or that the information included in the search warrant affidavit was false. First, regarding the source of the information included in the search warrant affidavit, the solicitor explained to the trial judge that two separate search warrants were

obtained for the cell phone in Appellant's case due to the fact that the officer who originally extracted the data from the phone was unavailable to testify during Appellant's trial, and defense counsel readily acknowledged that the affidavits used to obtain both of the search warrant were identical. (R. pp. 28-29). Thus, Investigator Bailey derived the information that he included in the search warrant affidavit used to obtain the second search warrant from Sergeant Weiner's statements in his sworn affidavit used to obtain the first warrant, which was entirely proper and in no way established that the information in either search warrant affidavit was false. See United States v. Ventresca, 380 U.S. 102, 111 (1965) ("Observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number."). Second, regarding the lack of an evidentiary hearing, Appellant – as previously stated – failed to make a substantial preliminary showing that false information was included in the search warrant affidavit. Moreover, Appellant also failed to ask the trial judge to conduct such a hearing during the course of trial. See Franks, 438 U.S. at 155-156 ("[W]here the defendant **makes a substantial preliminary showing** that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held **at the defendant's request**." (emphasis added)). Therefore, Appellant was not entitled to an evidentiary hearing on the Franks issue, and the trial judge committed no error in not conducting one.

In conclusion, Appellant wholly failed to establish that any information included in the search warrant affidavit was false. As a result, he was not entitled to an evidentiary hearing on the Franks issue and was not entitled to the suppression of the evidence

discovered during the search of the cell phone. Accordingly, the trial judge committed no error in denying Appellant's constitutional challenge to the validity of the search warrant, and his ruling was fully supported by the evidence and testimony presented during trial. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). Appellant's convictions should be affirmed.

III.

**The trial judge did not abuse his discretion in denying Appellant's mistrial motion because the solicitor's comments during the State's closing argument regarding the alibi defense raised by Appellant were not improper and did not render Appellant's trial fundamentally unfair when considered in the context of the record as a whole.**

Appellant contends that the trial judge erred in declining to grant his motion for a mistrial raised in response to comments made by the solicitor during the State's closing argument. In support of that contention, Appellant maintains that the solicitor's comments regarding Appellant's failure to call additional alibi witnesses and regarding the testifying witnesses' delay in revealing the alibi coupled with the solicitor's characterization of the alibi defense as an ambush were improper and rendered his trial fundamentally unfair. Contrary to Appellant's contentions, the trial judge committed no error in denying Appellant's mistrial motion because the solicitor's comments during the closing argument were entirely proper in light of the fact that Appellant chose to present an alibi defense. However, even assuming that the solicitor's comments were improper, those comments did not render Appellant's trial fundamentally unfair when considered in the context of the entire record. Accordingly, the trial judge did not abuse his discretion in declining to grant Appellant's mistrial motion. Appellant's convictions should be affirmed.

Closing arguments are a basic element of the adversarial fact-finding process in a criminal trial. Herring v. New York, 422 U.S. 853, 858 (1975). Such arguments serve "to sharpen and clarify the issues for resolution by the trier of fact in a criminal case" and provide both the prosecution and the defense with an opportunity to advocate for their respective positions, to argue for certain inferences to be drawn from the evidence and testimony presented, and to identify the weaknesses in their opponents' positions. Id. at

862. As a result, closing arguments are crucial towards achieving the ultimate objective of the adversarial system of justice in the United States, which is for the correct verdict to be reached in each case. Id.; see also Gardner v. Florida, 403 U.S. 349, 360 (1977) ("[T]he debate between adversaries is often essential to the truth-seeking function of trials[.]").

In presenting a closing argument to the jury, a solicitor – and any other party – must confine the argument to the evidence in the record and the inferences to be drawn from that evidence. State v. Tubbs, 333 S.C. 316, 321, 509 S.E.2d 815, 818 (1999). However, the solicitor is unquestionably permitted in a closing argument to state and discuss the State's version of the testimony, to comment on the weight to be given to such testimony, and to point out the matters that the jury should and should not consider in arriving at a verdict. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); see State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975) (" '[The prosecuting attorney] may argue with reference to any matters which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.' " (citations omitted)). Importantly, the solicitor is also permitted to use a closing argument to call into question the credibility of the defenses that were identified or raised by the opposing side during trial. State v. Liberte, 336 S.C. 648, 653, 521 S.E.2d 744, 746 (Ct. App. 1999).

In considering the propriety of a closing argument, "[i]t is sometimes difficult to draw the line between proper and improper argument, but counsel's remarks must be confined within the record." State v. Edgeworth, 239 S.C. 10, 14, 121 S.E.2d 248, 250 (1961). "However, some latitude must necessarily be allowed and it must, to a large extent, be left to the wide discretion of the Circuit Judge." Id. As a result, trial judges

have broad discretion in regard to both the range and scope of closing arguments. State v. Raffaldt, 318 S.C. 110, 114-115, 456 S.E.2d 390, 393 (1995); see State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996) ("The trial court has broad discretion when dealing with the propriety of the solicitor's argument.").

When a challenge is raised to the propriety of a closing argument, the burden rests upon the party raising the challenge to establish that the allegedly improper argument rendered the trial fundamentally unfair. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). On appeal, appellate courts will review the alleged impropriety in the context of the entire record and must determine whether the comments so infected the trial with unfairness as to make the resulting conviction a denial of the defendant's due process rights. State v. Rudd, 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003); see Patterson, 324 S.C. at 17, 482 S.E.2d at 766 ("The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process."). In making that determination, " 'it is not enough that the [challenged] remarks were undesirable or even universally condemned.' " Darden v. Wainwright, 477 U.S. 168, 181 (1999) (citation omitted). Critically, absent a clear abuse of discretion, appellate courts will ordinarily not disturb the trial court's ruling in regard to a closing argument. Rudd, 355 S.C. at 548, 586 S.E.2d at 156; see State v. Sweet, 342 S.C. 342, 347, 536 S.E.2d 91, 93 (Ct. App. 2000) ("Ordinarily, a trial court's rulings on closing arguments will not be disturbed.").

Notably, in State v. Bamberg, 270 S.C. 77, 81, 240 S.E.2d 639, 640 (1977), Bamberg and his co-defendant, Brown, were charged with murder and, during their trial, testified that they were at a club with friends at the time of the crime. However, in support of their alibi, they only presented the testimony of a few witnesses. Id. The

solicitor then commented during his closing argument on the fact that the defendants did not present many witnesses to support the alibi defense while also asserting to the jury that the defendants would not be found at church and, instead, "hung out" at the club identified in their alibi defense. Id. At the conclusion of trial, Bamberg and Brown were convicted, and they appealed, arguing that the trial judge erred in allowing the solicitor to comment on their failure to call more witnesses in regard to their alibi defense and in refusing to declare a mistrial when the solicitor made the comments regarding their absence from church and presence at the club. Id. On appeal, the Supreme Court affirmed their convictions. Id. at 82, 240 S.E.2d at 641. In affirming, the Supreme Court initially ruled that the trial judge's decision to allow the solicitor to comment on the defendants' failure to call alibi witnesses was proper, finding that the solicitor's comments were a valid argument to make to the jury and that the trial judge's charge to the jury on alibi defenses "corrected any possible misapprehension" that could have resulted from those comments. Id. at 81, 240 S.E.2d at 640. Furthermore, the Supreme Court held that the trial judge did not abuse his discretion in declining to grant a mistrial in response to the other remarks made by the solicitor under the circumstances of the case. Id. at 82, 240 S.E.2d at 641.

Just like the trial judge in Bamberg, the trial judge in Appellant's case committed no error in declining to grant a mistrial in response to the solicitor's comments during his closing argument because those comments were not improper. However, even if the solicitor's comments during the closing argument were improper, the trial judge nonetheless properly declined to undertake the extreme step of declaring a mistrial because the solicitor's comments did not render Appellant's trial fundamentally unfair when considered in the context of the entire record.

Looking to the challenged portions of the solicitor's closing argument, the solicitor used his closing argument to point out to the jurors that Appellant's alibi witnesses did not immediately disclose Appellant's alleged alibi to the authorities or the media after Appellant's arrest despite the fact that Appellant was incarcerated during that time period. Additionally, the solicitor noted in his closing argument that Appellant only presented the testimony of two alibi witnesses even though several other witnesses allegedly could have attested to the alibi. Furthermore, based on the amount of time that passed before the alibi defense was revealed, the solicitor characterized Appellant's alibi defense during his closing argument as an ambush.

Initially, the solicitor's comments regarding the alibi witnesses' failure to reveal the alleged alibi sooner and Appellant's failure to present additional witnesses to corroborate the alibi were entirely proper comments on the strength of Appellant's alibi defense. See State v. Shackleford, 228 S.C. 9, 11, 88 S.E.2d 778, 779 (1955) ("Where the evidence indicates that there are witnesses, seemingly accessible to the accused, or under his control, who are or should be cognizant of material and relevant facts competent to testify thereto, and whose testimony would presumably aid him or substantiate his story if it were true, it is not improper for the prosecuting attorney to comment upon his failure to produce them."); see, e.g., State v. Hammond, 270 S.C. 347, 356, 242 S.E.2d 411, 416 (1978) ("While **it is always proper for an attorney in argument to the jury to point out the failure of a party to call a witness**, we have concluded that such a charge has no proper place in the judge's statement of the law." (emphasis added)). Critically, Appellant chose to present an alibi defense, and, as a result, he opened up that defense to attack and challenge from the solicitor. See Liberte, 336 S.C. at 653, 521 S.E.2d at 746 ("Certainly, a prosecutor is entitled to call into

question the credibility of a defense."). Just as in Bamberg, the solicitor in Appellant's case properly identified to the jurors the different aspects of Appellant's alibi defense that reflected adversely on the strength and credibility of that defense.[18] See Bamberg, 270 S.C. at 81, 240 S.E.2d at 640 (holding that the solicitor's comments during closing argument regarding the defendants' failure to present more than a few alibi witnesses were proper due to the fact that the defendants presented evidence during trial to establish an alibi defense). Accordingly, as the solicitor's comments were a wholly proper attack on a defense raised by Appellant, the trial judge properly denied Appellant's motion for a mistrial based on those comments.[19] See State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999) ("The granting of a motion for mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way."); see also United States v. Jones, 471 F.3d 535, 543 (4th Cir.

---

[18] Notably, the weaknesses in Appellant's alibi defense identified by the solicitor – the lack of further corroboration of the alibi testimony and the delays in the revelation of the details of the alibi – were the exact same kind of weaknesses that defense counsel alleged existed in the State's case during her closing argument to the jury. Specifically, defense counsel used her closing argument to call into question the credibility of Appellant's accomplice's testimony due to the fact that the accomplice did not implicate Appellant in the incident for approximately two weeks and to call into question the credibility of Master Deputy Smith's testimony because it was not corroborated by other witnesses. (R. p. 408; p. 412). Thus, even if the solicitor had not made the challenged remarks during his closing argument, defense counsel herself suggested to the jury that a lack of corroboration and a failure to reveal information at the earliest opportunity were legitimate reasons for the jurors to find the testimony of a witness not to be credible. See State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."); see also Darden, 477 U.S. at 179 ("The prosecutors' comments must be evaluated in light of the defense argument that preceded it[.]").

[19] On appeal, Appellant cites to State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), in support of his contention that the solicitor's comments on Appellant's failure to call additional alibi witnesses were improper. However, unlike Appellant, Primus did not call any alibi witnesses or testify on his own behalf. Primus, 349 S.C. at 584, 564 S.E.2d at 107-108. Based on the fact that Primus did not present any evidence in regard to an alibi defense, the Supreme Court in Primus found that the solicitor's comments on Primus' failure to call alibi witnesses were improper. Id. at 584, 564 S.E.2d at 108. Critically though, unlike the circumstances of Primus, Appellant **did** present alibi witnesses to establish his alibi defense. As a result, the solicitor was fully permitted to comment on Appellant's failure to call additional alibi witnesses, and his decision to do so was not improper. See Bamberg, 270 S.C. at 81, 240 S.E.2d at 640 (recognizing that the rule prohibiting the solicitor from commenting on a defendant's failure to present evidence is only applicable when the defendant presents no evidence at all and does not apply when a defendant presents testimony and witnesses on his own behalf).

2006) ("To view such general comments on the inadequacies of an opponent's case as improper is to strike at the heart of the adversary system. Adversaries are supposed to expose the weakness of each other's evidence, and the prosecution committed no error in doing just that.").

Furthermore, the solicitor's comments characterizing the alibi defense as an ambush were not improper and, instead, merely reflected the State's position on Appellant's defense in light of the fact that the State first received notice of Appellant's alleged alibi almost two years after Appellant was arrested for his crimes. See, e.g., Durden, 264 S.C. at 92, 212 S.E.2d at 590 (" '[The prosecuting attorney] may argue with reference to any matters which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.' " (citations omitted)); State v. Pitts, 256 S.C. 420, 428, 182 S.E.2d 738, 742 (1971) ("The solicitor had a perfect right to state his version of the testimony and to comment on the weight that should be given to such."). However, to the extent that the solicitor's "rhetorical flourishes" in describing the alibi defense could be considered improper, the trial judge did not abuse his discretion in denying Appellant's mistrial motion because the solicitor's comments neither warranted the extreme sanction of the abandonment of the trial nor rendered Appellant's trial fundamentally unfair. See State v. Plath, 281 S.C. 1, 17, 313 S.E.2d 619, 628 (1984) ("[A]ppellants complain of rhetorical flourishes engaged in by the Solicitor in his summation . . . . An inelegant turn of phrase or momentary lapse of good taste will rarely constitute prejudicial error, nor does robust language necessarily inject an arbitrary factor into a trial such as this one. Finding no prejudice here, we dismiss these claims of error as frivolous."). Critically, that is true because – notwithstanding the fact that the solicitor's "ambush" comment was minimal in the

context of the entire record – the trial judge quickly followed that comment with an instruction to the jury informing them that notice had to be provided to the State before an alibi defense could be raised and that such notice was, in fact, provided in Appellant's case. Cf. Donnelly v. DeChristoforo, 416 U.S. 637, 645 (1974) ("[T]he prosecutor's remark here, admittedly an ambiguous one, was but one moment in an extended trial and was followed by specific disapproving instructions. Although the process of constitutional line drawing in this regard is necessarily imprecise, we simply do not believe that this incident made respondent's trial so fundamentally unfair as to deny him due process."). As a result, even if the solicitor's characterization of the alibi testimony as an ambush was improper, the harm that could have resulted from it – that the jurors believed the State had no advance notice in regard to Appellant's alibi defense – was dispelled. Cf. Bamberg, 270 S.C. at 81, 240 S.E.2d at 640 ("[T]he judge's charge that the State had the burden of showing the appellants were present and actually participated in the crime corrected any possible misapprehension on the part of the jury."). Accordingly, a mistrial was not warranted in light of the solicitor's comments. See State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983) ("The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment."); see also State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 178, 184 (1971) ("[The appellant] was not entitled to a perfect trial, only a fair one.").

In conclusion, the solicitor's comments during the State's closing argument were not improper and did not render Appellant's trial fundamentally unfair. Critically, the solicitor did **not** appeal to the personal biases of the jurors or make any statements that could reasonably be characterized as the type that would have aroused the passions and

prejudices of the jurors. See, e.g., Durden, 264 S.C. at 92, 212 S.E.2d at 590 ("Closing arguments have been held improper when they have appealed to personal bias, or when they have aroused passion and prejudice."). Instead, the solicitor's used his closing argument to focus the jury's attention on the weaknesses in Appellant's alibi defense, which is exactly what closing arguments are supposed to be used for in an adversarial system of justice. See Liberte, 336 S.C. at 653, 521 S.E.2d at 746 ("Certainly, a prosecutor is entitled to call into question the credibility of a defense."). Furthermore, even if the solicitor's comments were somehow improper, the trial judge's charge to the jury on alibi defenses and the State's burden of proof coupled with the trial judge's curative instruction regarding the fact that the State had actually received advanced notice of Appellant's alibi defense eliminated any prejudice that could have resulted from the solicitor's comments. See Darden, 477 U.S. at 181 ("[I]t 'is not enough that the prosecutors' remarks were undesirable or even universally condemned.' The relevant question is whether the prosecutors' comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.' " (citations omitted)). Accordingly, when the challenged comments are viewed in the context of the entire record, Appellant failed to meet his burden of establishing that the solicitor's comments deprived him of a fair trial, and the trial judge did not abuse his discretion in declining to grant a mistrial in response to those comments. See Durden, 264 S.C. at 93, 212 S.E.2d at 591 ("The burden of proving that the appellant did not receive a fair trial is upon the appellant himself."); see also State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) ("A mistrial should not be granted unless absolutely necessary. Instead, the trial

judge should exhaust other methods to cure possible prejudice before aborting a trial.").

Appellant's convictions should be affirmed.[20]

[20] At the conclusion of his appellate brief, Appellant contends that he is entitled to a new trial based on the cumulative effect of the errors alleged to have occurred during his trial even if none of the errors was individually sufficient to warrant such relief due to the fact that the alleged errors taken together supposedly deprived him of a fair trial. However, Appellant did **not** raise such a cumulative error argument to the trial judge and never asserted to the trial judge that the alleged errors taken together deprived him of his right to a fair trial. See Patterson, 324 S.C. at 19, 482 S.E.2d at 767 ("Appellant is limited to the grounds raised at trial."); see also In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appellate review."). As a result, Appellant's appellate argument regarding cumulative error cannot properly be raised or considered for the first time on appeal. See West v. Morehead, 396 S.C. 1, 14, 720 S.E.2d 495, 502 (Ct. App. 2011) ("Appellants make arguments and cite authorities in their briefs that were not presented to the trial court. These arguments are not preserved."); see also State v. Senter, 396 S.C. 547, 555, 722 S.E.2d 233, 237 (Ct. App. 2011) ("Because Senter failed to raise this argument to the trial court, it is not preserved for our review."). However, even assuming that the issue had somehow been preserved for appellate review despite the fact that it was not raised to or ruled upon by the trial judge, none of the errors identified by Appellant was actually an error for the reasons previously articulated, and Appellant was afforded everything he was entitled to pursuant to his right to a fair trial. See State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) ("[A party raising an issue pursuant to the cumulative error doctrine] must demonstrate more than error in order to qualify for reversal on this ground. Instead, the errors must adversely affect his right to a fair trial."); see also State v. Black, 400 S.C. 10, 29, 732 S.E.2d 880, 891 (2012) ("[A] defendant is entitled to a fair trial, not a perfect one."); State v. Kornahrens, 290 S.C. 281, 290, 350 S.E.2d 180, 186 (1986) ("[Kornahrens] asserts the trial judge should have granted a new trial because of the cumulative effect of the asserted trial errors. Since we have found no errors, this issue is without merit.")

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 17, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Greenville County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2013-000381

---

THE STATE,

Respondent,

vs.

CHRISTOPHER ERIC RUSSELL,

Appellant.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: _____
Mark R. Farthing
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 17, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Greenville County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2013-000381

---

THE STATE,

Respondent,

vs.

CHRISTOPHER ERIC RUSSELL,

Appellant.

---

**PROOF OF SERVICE**

---

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David B. Morgen, Esquire
Katten Muchin Rosenman LLP
550 South Tryon Street, Suite 2900
Charlotte, NC 28202

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 17th day of June, 2014.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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

The State, Respondent,

v.

Christopher E. Russell, Appellant.

Appellate Case No. 2013-000381

---

Appeal From Greenville County
R. Lawton McIntosh, Circuit Court Judge

---

Unpublished Opinion No. 2015-UP-435
Heard March 2, 2015 – Filed August 19, 2015

---

**AFFIRMED**

---

David Bryant Morgen, of Saratoga Springs, NY; Chief Appellate Defender Robert Michael Dudek, and Appellate Defender Laura Ruth Baer, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant Attorney General Mark Reynolds Farthing, and Assistant Attorney General Jennifer Ellis Roberts, all of Columbia; and Solicitor William Walter Wilkins, III, of Greenville, for Respondent.

---

**PER CURIAM:** Christopher E. Russell (Russell) appeals his convictions for conspiracy, kidnapping, armed robbery, and first-degree burglary, arguing the circuit court erred in (1) allowing the rebuttal testimony of the courtroom deputy; (2) denying Russell's motion to suppress evidence; and (3) denying Russell's motion for a mistrial after the solicitor challenged the defendant's alibi defense during closing argument. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in allowing the rebuttal testimony of the courtroom deputy: *Gause v. Smithers*, 403 S.C. 140, 151, 742 S.E.2d 644, 650 (2013) (holding that an "issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review"); *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.") (citations omitted)).

2. As to whether the circuit court erred in denying Russell's motion to suppress evidence obtained pursuant to a search warrant that allegedly contained false information: *State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence, and an appellate court may reverse only when there is clear error."); *State v. Gore*, 408 S.C. 237, 247, 758 S.E.2d 717, 722 (Ct. App. 2014), *cert. granted* (Jan. 16, 2015) ("An appellate court reviewing the decision to issue a search warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed. This review, like the determination by the magistrate, is governed by the 'totality of the circumstances' test. The appellate court should give great deference to a magistrate's determination of probable cause.") (citations omitted)).

3. As to whether the circuit court erred in denying Russell's motion for a mistrial after the State challenged Russell's alibi defense during closing arguments: *Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) ("'On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt.' 'Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has

the burden of proving he did not receive a fair trial because of the alleged improper argument.'") (citations omitted)).

**AFFIRMED.**

**SHORT, LOCKEMY, and MCDONALD, JJ., concur.**

# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 16, 2015

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

**REMITTITUR**

Re: The State v. Christopher E. Russell
Lower Court Case No. 2011GS2301118, 2011GS2301122, 2011GS2301123, 2011GS2301124
Appellate Case No. 2013-000381

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Christopher Russell, 158392
Robert Michael Dudek, Esquire

Alan McCrory Wilson, Esquire
David Bryant Morgen, Esquire
Mark Reynolds Farthing, Esquire
Laura Ruth Baer, Esquire
Jennifer Ellis Roberts, Esquire

# The Supreme Court of South Carolina

The State, Respondent,

v.

Christopher E. Russell, Petitioner.

Appellate Case No. 2015-002239

---

ORDER

---

In an opinion filed on August 19, 2015, the South Carolina Court of Appeals affirmed the convictions in this case. On September 16, 2015, the Court of Appeals sent the remittitur to the court of general sessions.[1] Petitioner has now filed a petition for a writ of certiorari dated October 27, 2015, seeking review of the decision of the South Carolina Court of Appeals in this matter.

Under Rule 242(a) of the South Carolina Appellate Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing has been ruled on by the Court of Appeals in this matter, there is no final decision for this Court to review.[2]

---

[1] Before the Court of Appeals, the Appellate Case Number was 2013-000381.

[2] Petitioner attempted to file a *pro se* petition for rehearing with the Court of Appeals. The Court of Appeals properly rejected this *pro se* petition for filing since petitioner was represented by counsel in the appeal. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Because petitioner was represented by counsel, the *pro se* motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity. . . . We also take this opportunity to remind judges and clerks of court of our directive in *Foster* not to accept substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a party who is represented by counsel."); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

Further, when no petition for rehearing was filed by petitioner's counsel, the Court of Appeals properly sent the remittitur. Rule 221, SCACR. The sending of the remittitur ended appellate jurisdiction over this case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Accordingly, the petition for a writ of certiorari is dismissed.

C.J.

FOR THE COURT

Columbia, South Carolina
November 2, 2015

cc: Robert Michael Dudek, Esquire
David Bryant Morgen, Esquire
Laura Ruth Baer, Esquire
Mark Reynolds Farthing, Esquire
Jennifer Ellis Roberts, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Paul B. Wickensimer

**FORM 5**

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

Christopher Eric Russell #158392
Full name and prison number (if any) of Applicant.

**2016-CP-23-** 03282

v.

State of South Carolina

**APPLICATION FOR POST-CONVICTION RELIEF**

FILED IN THE OFFICE OF THE CLERK OF COURT
GREENVILLE CO. S.C.
PAUL BRICKENSIMER
2016 JUN 1 PM 3 38

## 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 SCDC, McCormick Corr. Inst.
2. Name and location of Court which imposed sentence Greenville County
3. Name(s) of co-defendant(s) (if any) Antonias Williams
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 2011-GS-23-01118
   (b) 2011-GS-23-01122-01124
   (c)
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) February 2013 - LWOP
   (b)

Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓ Found Guilty by Jury

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. August 19 2015

ii. _____

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) _____

(c) _____

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

(a) Ineffective Assistance Counsel - 6th Amendment U.S. and STATE Constitution

(b) Due Process - 5th + 14th Amendment U.S. and STATE Constitution

(c) Confrontation Clause - 6th Amendment U.S. and STATE Constitution

(d) Illegal Search and Seizure - 4th Amendment U.S. and STATE Constitution

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Trial counsel failed to communicate plea in proper terms

(a) TO BE AMENDED LATER

(b) trial counsel failed to challenge the use of

(c) prior conviction with proper arguement.

(d)

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. 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.

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. NONE

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) THE Allegations in (10) were NOT Preserved for Appellate Review.

(b) Appellate Court is NOT the Proper Authority to make a legal

(c) determination.

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

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

i. Susannah Boss, Guilk County Public Defender office

ii. Robert Dudek, S.C. Commission of Indigent Defense.

iii.

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

i. Trial

ii. Direct Appeal

iii.

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

Reverse and Remand for a New trial and/or Resentencing

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

No

STATE OF SOUTH CAROLINA )
) VERIFICATION
County of Greenville )

I, Chris Russell, 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.

Christopher Russell

SWORN to and subscribed before me this 24 day of May, 2016.

[illegible] (L.S.)
*Notary Public*

My Commission Expires: 12-16-2019

Revised 3/2003

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

I, Chris Russell, 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.

Christopher Russell
*Applicant*

SWORN or affirmed to and subscribed before me this 24 day of May, 2016

J C Franklin
*Notary Public*

My Commission Expires: 12.16.2019



Revised 3/2003

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | ) | IN THE COURT OF COMMON PLEAS<br>THIRTEENTH JUDICIAL CIRCUIT |
| Christopher Eric Russell, #158392,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | 2016-CP-23-03282<br><br>**RETURN**[1] |

In response to the post-conviction relief application filed on June 1, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the July 2011 term of the Greenville County Grand Jury for conspiracy (2011-GS-23-1118), kidnapping (2011-GS-23-1122), armed robbery (2011-GS-23-1123), and burglary, first degree (2011-GS-23-1124). Susannah Ross, Esquire, represented him. On February 13, 2013, Applicant proceeded to a jury trial and was found guilty as indicted on all charges. The Honorable R. Lawton McIntosh sentenced Applicant to confinement for five (5) years for conspiracy and life without parole for each charge of kidnapping, armed robbery, and burglary, first degree. The sentences are set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals

[1] Respondent requests that counsel be appointed.

affirmed Applicant's convictions. State v. Russell, Op. No. 2015-UP-435 (filed on August 19, 2015). The Remittitur was issued on September 16, 2015.

II.

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

1. "Ineffective Assistance of Counsel- 6th Amendment and U.S. and State Constitution" (sic)
    a. "Trial counsel failed to communicated plea on proper terms"
2. "Due Process- 5th and 14th Amendment U.S. and State Constitution" (sic)
    a. "Trial counsel failed to challenge the use of prior conviction with proper argument."
3. "Confrontation Clause- 6th Amendment U.S. and State Constitution" (sic)
4. "Illegal search and seizure- 4th Amendment U.S. and State Constitution" (sic)

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not **specifically** laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 *et seq*; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. For the purpose of this Return, Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant's first and third allegations as an allegation of ineffective assistance of counsel.

The Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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

IV.

The Applicant alleges a denial of due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." 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 that his due process and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

V.

In his final allegation, Applicant also alleges his constitutional rights were violated due to an unlawful search and seizure and that the evidence was insufficient to convict him. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Further, claims challenging the sufficiency of the evidence are specifically barred by §17-27-20(6) of the Uniform Post-Conviction Procedure Act. The Respondent construes this claim as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not explain with any specificity the

grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. 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). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

VI.

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

[*Signature follows*]

VII.

WHEREFORE, the Respondent requests that counsel be appointed and an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: Johanna C. Valenzuela
ATTORNEYS FOR RESPONDENT

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

12 Jan., 2017

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF GREENVILLE<br><br><br>CHRISTOPHER E. RUSSELL, #158392<br><br>Applicant,<br><br>vs<br><br>STATE OF SOUTH CAROLINA,<br><br>Respondent. | IN THE COURT OF COMMON PLEAS<br><br>2016-CP-23-03282<br><br><br><br><br>AFFIDAVIT OF SERVICE BY MAIL |

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Christopher Eric Russell, #158392**
**McCormick Correctional Institution**
**386 Redemption Way**
**McCormick, SC 29899**

DATED this 12th day of January, 2017.

Mallory Morris, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

| | | |
|---|---|---|
| CHRISTOPHER E. RUSSELL, | ) | |
| | ) | |
| APPLICANT, | ) | 2016-CP-23-03282 |
| | ) | |
| -VS- | ) | TRANSCRIPT OF RECORD |
| | ) | |
| STATE OF SOUTH CAROLINA, | ) | |
| | ) | |
| RESPONDENT. | ) | |
| _____ | ) | |

APRIL 19, 2017
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PERRY H. GRAVELY

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

ATTORNEY FOR APPLICANT:

R. MILLS ARIAIL, JR., ESQ.

ATTORNEY FOR RESPONDENT:

LINDSEY A. McCALLISTER
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

**I N D E X**

**E X H I B I T S**

| NO | DESCRIPTION | ID | EVIDENCE |
|---|---|---|---|
| P-1 | PLEA OFFER, PORTION OF TRANSCRIPT (8 PGS.) | 13 | 13 |
| P-2 | NOTICE OF INTENT TO SEEK LIFE & PRIOR RECORD (2 PGS.) | 19 | 19 |

**THE COURT:** We are here on the case of Christopher Russell versus the State of South Carolina, which is a evidentiary hearing on PCR application. I'll be glad to hear from you.

**MS. McCALLISTER:** Good morning, Your Honor. Mr. Russell filed his ---

**THE COURT:** Let me get you to state your name for the record.

**MS. McCALLISTER:** I'm sorry. Lindsey McCallister ---

**THE COURT:** Okay.

**MS. McCALLISTER:** --- from the Attorney General's Office.

Your Honor, Mr. Russell filed his application for Post Conviction Relief on June 1st, 2010. He was indicted at the June 2011 term of the Greenville County Grand Jury for one count each of conspiracy, kidnapping, armed robbery and burglary, first degree.

He was represented on these charges by Susannah Ross. He proceeded to a jury trial in front of Judge McIntosh on February 13th, 2013 where he was found guilty as indicted on all charges.

Judge McIntosh then sentenced him to confinement for life without parole on the armed robbery, kidnapping, and burglary charges, and five years on conspiracy charges. And those sentences were to be run concurrently.

He did file a timely notice of appeal. And the appeal was perfected on his behalf. The South Carolina Court of Appeals ultimately dismissed that appeal. And the remittitur was issued on September 16th, 2015.

In his application he alleges ineffective assistance of counsel and that trial counsel failed to communicate a plea offer, that trial counsel failed to challenge the use of the prior convictions and proper argument. And he alleges not very specific violations of the Confrontation Clause and illegal search and seizure.

And he is represented on these charges by Mr. Mills Ariail. And he is present in the courtroom today. And I will turn it over to Mr. Ariail at this time.

**THE COURT:** All right. Mr. Ariail.

**MR. ARIAIL:** Yes, Your Honor. We're ready to proceed. And Mr. Russell has filed his, I guess, his application and would like to have an evidentiary hearing in regard to it. And I call him as our first witness.

**THE COURT:** Mr. Russell, if you'll come forward and be sworn.

**MADAME CLERK:** Mr. Russell, please walk around here to the witness stand and place your left hand on the Bible and raise your right hand.

**Christopher Russell,**

being duly sworn testified as follows;

**MADAME CLERK:** Thank you. You may be seated. Please state your full name for the record.

**MR. RUSSELL:** Christopher Eric Russell.

**Direct Examination by Mr. Ariail:**

Q. All right. Mr. Russell, I'm trying to gather all this information together. Tell me -- we've heard a little bit of the background of the case. You filed a PCR application and dealt with the charges that Ms. Ross represented you. And that included conspiracy, kidnapping, armed robbery, and burglary, first degree, is that correct?

A. Yes, sir.

Q. Okay. Now those are the ones we're proceeding on today, correct?

A. Yes, sir.

Q. Okay. Now she represented you on this. And let me get a little background. She was appointed to represent you, is that correct?

A. Yes, sir.

Q. Okay. Now when you were arrested -- I guess you were arrested sometime -- it'd be February ---

A. I was arrested June -- January the 10th, 2011.

Q. Okay. January 10th, 2011. How long after you were arrested was she appointed to represent you?

A. She was already representing me on some other charges with failure to stop for a blue light and stuff that was all

on there. They didn't just never just give me another lawyer, she just took on the case.

Q. Okay. So she took over these charges ---

A. Um-hum (affirmative).

Q. --- in addition to the ones that you previously had?

A. Yeah.

Q. Okay. So after she was, I guess, appointed or began to serve as your counsel in these matters did y'all discuss these cases?

A. Well, we discussed the failure to stop for a blue light because that's the -- that's the one I went to trial on first, which it was December of 2010. So we went to trial on that first.

And then once I got incarcerated, you know, we didn't go to court again until February the 13th, 2013. So in between that time I was incarcerated. But we have, you know, when I first came back we had about three, four continuance, and, you know, I was speaking with her then.

Q. What I'm trying to figure out is how many -- when -- after she was appointed, when did you speak with her the first time about the charges that we're here today on?

A. Probably around June, June/July on these charges.

Q. June/July of 2012, right?

A. Um-hum (affirmative).

Q. Okay. So when you ---

A. No, 2000 -- it was 2011, I think.
Q. Okay, 2011. You were indicted on these on July 2011, is that correct?
A. Yeah.
Q. Okay. So she was representing you before you got indicted on these charges, correct?
A. Yeah.
Q. Okay. So when you initially discussed or had your initial discussions about this, did y'all talk about evidence that you were, you know, against you? Did y'all go through your discovery at that time?
A. It wasn't no discovery.
Q. Okay. So ---
A. Most of the stuff, it was about the failure to stop for a blue light because they had me back in April on that.
Q. Okay. Now I'm trying to -- we're not here on failure to stop for a blue light. I'm trying to just find out about the cases that we're here for, okay?
A. Okay.
Q. So the four charges that you -- that she picked up and started representing you on, ---
A. Um-hum (affirmative).
Q. --- that you went to trial on, ---
A. Um-hum (affirmative).
Q. --- when did y'all discuss the discovery in that case,

in those matters?
A. The discussion in that case should have been around August ---
Q. August 2011?
A. Should have been August when we started discussing it.
Q. Okay. Did she come down and bring the discovery that she had with her?
A. She didn't really just have too much discovery on -- she just had most of what they had gave her, I guess. And she was asking me about what took place with Antonias Williams, who's my co-defendant. And she didn't really just say too much about -- go in details about the charge.
Q. Right. And I guess the synopsis of this case was Antonio Williams ---
A. Um-hum (affirmative).
Q. --- was captured or arrested at a house ---
A. Um-hum (affirmative).
Q. --- during an armed robbery, ---
A. Yep.
Q. --- and there was a co-defendant ---
A. Yeah.
Q. --- or someone who was there who left, and as a result Antonio said or testified at trial ---
A. It was me.
Q. --- that was you?

A. Yeah.
Q. Okay. During your discussions ---
A. Um-hum (affirmative).
Q. --- with Ms. Ross did you go over the evidence or what could be presented or what Mr. Williams said ---
A. No, she told me I was facing life without parole, and if I went to court I would see multiple life sentences. I told her I wasn't pleading to no life without parole, period.
Q. Okay. But that's not my question. Did you go over what would be said or what Mr. Williams potentially would testify and the evidence that was going to be against you?
A. Well, she didn't really just say too much about that. I already knew that was going to happen, that he was going to testify.
Q. Okay. So I guess what I'm asking, are you saying that she didn't do -- she was ineffective in discussing the case ---
A. She was ineffective for not even telling me about no plea. I didn't even get to weigh my options like Mr. Williams got to weigh his options. I didn't have a choice. I was forced into a trial to go fight for my life. I was -- my plea was life without parole. I wasn't going to plead to life without parole.
Q. Okay. So you're saying you never -- never told you had

a plea offer?
A. No.
Q. Okay. Now ---
A. It's right there in the record. That's why I passed that out to you. I was going to pass one to the judge so all y'all could follow me. I've got this up here ---
Q. Okay. Now ---
A. --- to show y'all.
Q. --- I'm going to go through this to make sure we've got it. You've given me a document.
A. Yep.
Q. And let's go through -- basically it's a transcript -- I guess the initial pages that cover it. Okay. And then you've got page 511 of the transcript.
A. Yes, I do.
Q. I think you've highlighted a portion of that ---
A. Yeah.
Q. --- on page 511 saying that Mr. Russell has been offered opportunities to plead to life without parole on the table a number of times. That's what Ms. Ross said, is that correct?
A. That's what she told the judge. That's what she always told me.
Q. On line 4, 5 and 6. And you've given me what appears to be a letter ---

A. From the solicitor's office, Mr. Walt Wilkins' assistant.
Q. You got a copy of this? This is from Andrew Culbreath, who's the deputy solicitor.
A. Um-hum (affirmative).
Q. Wrote you a letter.
A. Yep. I had asked for the Freedom of Information Act on -- about the plea because during the trial they said it was a plea extended, but it wasn't never convoited [sic] what the plea was. So I wrote the Attorney General's Office, and he sent that back saying they offered me a plea 7/31 ---
Q. Hold on. Let me just stop you. First of all, you wrote the solicitor's office, ---
A. Yep.
Q. --- correct? Mr. Culbreath responded in a letter on November 21st, 2016?
A. Yep.
Q. And said he was providing you, I guess, information, documents that you had requested, is that correct?
A. Yes, sir.
Q. Okay. And as part of that you're telling me there was a plea offer ---
A. Yeah.
Q. --- that was addressed to Susannah Ross on March 29th, 2011.

A. Yes, sir.
Q. And that plea offer was for twenty years.
A. Twenty years, sir.
Q. Okay. Now you've included the last part of this. And I hadn't looked at this. This is Chico Bell versus State of South Carolina ---
A. It was Missouri versus Frye and all them cases that deals with that.
Q. Well, this is -- this is Chico Bell versus State.
A. Yeah.
Q. That's the only case that's here.
A. Um-hum (affirmative).
Q. And why have you included this as part of this package?
A. Why did I include it? Because it's -- because as a general rule the defense counsel has a duty to communicate formal offers from the prosecution to accept pleas on terms and conditions that may be favorable to the accused.
Q. Okay. So that's why you included this case ---
A. Yes, sir.
Q. Okay. So you want to introduce this as your exhibit number 1 in your PCR?
A. Yes, sir.
**MS. McCALLISTER:** Without objection, Your Honor.
**THE COURT:** All right.
(Whereupon Plaintiff's exhibit 1 was marked and

admitted into evidence)
Q. Okay. So your testimony here is that you never received a copy of that or any information about that at all?
A. No, sir. Never.
Q. Okay. What information was relayed to you in regards to any plea offers?
A. Just life without parole because of my record, the extents of my record. I was being told if I go to trial, I'm going to receive multiple life sentences.
Q. Okay.
A. I told her I wasn't going to plead to no life. I couldn't do that.
Q. Okay.
A. I was forced into a trial.
Q. You had told her, told Ms. Ross that you were not going to do life. Had you explained to her or ---
A. Because I felt like armed robbery and kidnapping didn't carry no life sentence.
Q. Okay. Let me finish my question.
A. Okay.
Q. Had you told her that you would do any other time other than life?
A. No. That's all that's been told to me, life.
Q. That's not my question. The question is did you tell

her or communicate to her that I'm willing to do certain amount of time that's less than life?

A. Wasn't nothing giving me no option. I didn't have no option. I didn't have nothing to weigh. It just was always life without parole. It's right here in the record. That's all she told me.

Q. Okay.

A. No -- no other kind of number ---

**THE COURT:** You need to listen to his question and ---

A. Okay.

**THE COURT:** --- answer his question. He's asking you a specific question ---

Q. All right. What I'm trying to figure out is if you communicated to her that I would do something less than life without parole?

A. No.

Q. No?

A. No.

Q. Okay. So going in at trial the only thing you knew that you were facing was the life without parole notice that you were given for these charges, is that correct?

A. That's all I knew.

Q. Okay. Now, I know you've raised issues in regards to whether or not you qualified for life without parole. Did you discuss that with Ms. Ross?

A. No, I didn't never question it. That's what they always told me, life without parole. I didn't never question it. I found all this information out later on after I done been incarcerated ---

Q. Okay.

A. --- that I wasn't eligible.

Q. Okay. Let me just kind of break this down. You've gotten a notice of intent to seek life without parole, is that correct?

A. Yes.

Q. Or you were served with it?

A. Yeah.

Q. Okay. As part of this document you've given me, it says the defendant has also been convicted of seven counts of burglary, second degree.

A. Yeah.

Q. Okay. You've told me you have not been convicted ---

A. I have not been convicted of no seven burglaries. My record is right there.

Q. Okay. Did you explain that and discuss that with Ms. Ross about saying that I didn't fall -- I didn't do these seven counts ---

A. No, I didn't discuss it with her because I went to prison. On that sheet -- when they seeked the life without parole, I was given five years in the maximum prison. And I

went and did time. I never -- I never talked to her about that.

Q. Okay. You never talked to her before the trial saying, hold on a second, they're seeking life without parole against me, I shouldn't be qualifying for that because I didn't do these seven burglaries?

A. No. I didn't -- I just got that information from the Attorney General's Office.

Q. But you just said you received this document here ---

A. I received -- I received the life without parole notice, but the information about me having all them burglaries, I didn't have that until I got this information from the Attorney General's Office with all the information in it. I didn't know I was not eligible for it, the life without parole. I just always thought I was eligible for life without parole. That's what she told me.

Q. Okay. You've given me this document, ---

A. Yes, sir.

Q. --- which is the notice of intent to seek life without parole.

A. Yes, sir.

Q. Okay. That you're saying you received, correct?

A. Yeah.

Q. And was sent to you by or served or was issued by Mark Moyer, is that correct?

A. I guess.
Q. Okay. And this is your jail screen, ---
A. Yes.
Q. --- I think, that you want to put as part of the record.
A. Um-hum (affirmative).
Q. And the reason you want to do that is showing -- it doesn't show that you have seven burglaries, correct?
A. It's not showing I have seven burglaries.
Q. Okay. And the last part is your explanation of ---
A. This 17 25 45.
Q. Yeah. And the law that's behind that in regards to qualifying for life without parole?
A. Yes, sir.
Q. Okay.

**MS. McCALLISTER:** Your Honor, I won't object to the LWOP notice or the SCDC screen coming in, but I don't think -- I don't know about this handwritten -- this is just his ---

A. It's not mine. That's Hill versus the State.

**MR. ARIAIL:** Your Honor, if I -- maybe I can do this easy.

**THE COURT:** Okay.

**MR. ARIAIL:** We can defer to what the case law is and what the statute says in regards to life without parole. At

least we get the two initial pages in.

**THE COURT:** All right.

(Whereupon Plaintiff's exhibit 2 was marked and admitted into evidence)

Q. All right. I want to go back -- I've hit some of the main points that you've raised in regards to this and I want to kind of go back through. You've raised an issue with me, and I want to put it on the record because you've requested that I do it. You're saying you were tried in the court of common pleas because the transcript says that.

A. All my records say that.

Q. Do you have anything other than the statement on the front of the transcript shows that you were tried in the inappropriate court?

A. I got three transcripts that I've been given that's got the same -- and ---

**MS. McCALLISTER:** Your Honor, I object to the -- I would object to this line of questioning, Your Honor, about the court of common pleas. He did not include that in his pleadings.

**THE COURT:** All right. Well, I'll take it -- since this is just -- I'll review the matter for what it's worth and let him proceed on this.

Q. You can finish.

A. Okay. When I came to trial, that's what they were

saying, all rise, court of common pleas. That's what they kept saying.

Q. Okay. We've discussed there was an issue in your case in regards to cell phone -- and give a little background in regards -- there was a cell phone found in Antonio Williams' car.

A. Um-hum (affirmative).

Q. And the question is was it your cell phone or was it someone else's cell phone? And there was a download of the cell phone information by, I think, it was Investigator Balis, ---

A. Um-hum (affirmative).

Q. --- who you -- who was not present at trial.

A. Was not present.

Q. Okay. You've got an issue that Ms. Ross was ineffective in some regards to not doing something in regards to Balis. What exactly is that ---

A. It's the Confrontation Clause. He was the investigator that got the search warrant for the phone. So we didn't really have what proper channels he took to get this cell phone. He wasn't present. That's the Confrontation Clause. I don't know what ---

Q. Okay.

A. --- how the solicitor entered that into evidence.

Q. Did she, I mean, did y'all discuss this issue

beforehand?
A. We discussed it, Frank versus Delaware, but I never got the hearing.
Q. She raised this issue at trial, correct?
A. She tried to.
Q. Okay. But I guess what I'm asking, I mean, if she's raised the issue, ---
A. Um-hum (affirmative).
Q. --- and the court denied her, ---
A. Um-hum (affirmative).
Q. --- then what are you saying should have been done and how was she ineffective in regards to that?
A. Well, he told them to remind him later on so he could have an in camera hearing on the evidence that was before the court, but they never did do the hearing.
Q. Okay. So you're saying there should have been some additional hearing that was done in regards to that ---
A. Yes, sir.
Q. --- chain of custody, ---
A. Yeah.
Q. --- Confrontation Clause in regard to Balis?
A. He told them. It's in the transcript, but they didn't never say anything about it and just went on with the case without even taking no time, in camera hearing or nothing about that.

Q. Okay. You've raised an issue about, I guess, a witness that testified who was part of either courtroom security ---

A. Yeah.

Q. And I want to understand exactly what you're saying that should have been done and how she was ineffective in dealing with that.

A. Well, they had courtroom security, Adam Smith, he was a guy that was taking me in and out, you know, dealing with the jury, he wasn't even on the witness list. He had something about rebuttal testimony or reply, but my defense didn't give up no testimony or nothing in reply for what he was trying to boast the State's case. That's all it was.

It was like a ambush because he didn't have nothing to do with my case. He sat there and listened to the whole case and all of a sudden he's volunteering information about a nickname that the County don't even have a nickname for me like that in the database. So it was like hearsay.

Q. And I've read your whole transcript. She objected to that, correct?

A. Yeah.

Q. Okay. So I'm trying to figure if she's objected and she's trying to keep it out, ---

A. Um-hum (affirmative).

Q. --- then what are you saying that she did that was ineffective in regards to that ---

A. There wasn't no voir dire done on him. He testified for the jury. There wasn't no voir dire.
Q. Well, didn't they do it in camera?
A. Yeah, but he still testified without being -- to the jury, it had some bearings on the jury because the jury sent a note in asking who was this witness because I don't know if his cousin, mother or whoever could have been in the jury panel. Wasn't no voir dire done on him before he took the stand.
Q. And correct me if I'm wrong. Was there a part of the testimony, I think, at some point or discussion with the court, and I don't have the exact page number, but his name was given to the jury when ---
A. It wasn't him. It was Bailey from a previous with the failure to stop for a blue light and was trying to bring it in. And the judge told him he couldn't do it because it was, as they say, prior bad acts. It didn't have nothing to do with what the case was, you know, ---
Q. Right.
A. --- if I was fleeing from the scene of the crime, during the commission of the crime. It wasn't that. It was a whole 'nother incident with a failure to stop for a blue light. And it was supposed to be Mr. Jeremy Jones was supposed to been the officer that was supposed to testify to the prior bad acts, but Mr. McIntosh said he couldn't do

that because it didn't have no bearings on the case.
Q. Okay.
A. But Mr. -- Mr. Moyer tried to slide that in on the courts, which was like falling on the courts like it was Alan. But it wasn't Alan because Alan was volunteering information after the State rested and the defense rested. Now all of a sudden this information come up.
Q. Okay. Now you've raised and we've discussed an issue in regards to, I think, when Elaine Lyles testified.
A. Um-hum (affirmative).
Q. There was a discussion in regards to her identification of the individual who was not arrested at the scene and who, I guess, eluded capture at that point in time.
A. Um-hum (affirmative).
Q. And we've gone through and there was some question that you've raised in regards to whether Ms. Ross opened the door ---
A. Um-hum (affirmative).
Q. --- in regards to some aspects of the identification ---

**MS. McCALLISTER:** Your Honor, I'm going to object to this questioning on the same basis that this was not pled in his application. The State did not have notice of this allegation.

**THE COURT:** All right. I'm going to, kind of like I

said, I will consider it. And I'm not saying I will accept it, but I'll let him go on ---

**MS. McCALLISTER:** Thank you, Your Honor.

**THE COURT:** --- and let you be able to respond.

Q. Okay. Where I was going with that -- and you've had some issue in regards to her opening the door about some of the, I think, it was the identification of lips, height, build and complexion ---

A. Um-hum (affirmative).

Q. --- of that individual who was in the house.

A. Yeah.

Q. Tell me a little bit about that.

A. Well, the judge was like it was out there because it was like she was trying to give an in court description. And I have never been put in front of a description or no line-up or anything.

So when she did that and Ms. Ross objected to it, and they went through the motion. And he sustained -- that it was -- he sustained it and saying that he wasn't going to allow that. But when she came up for cross examining she opened the door because she started doing the very thing she objected to with the description, and the height, and the lips and all that.

Q. Okay. Now, and that is from pages 140 to 143 ---

A. Yes, sir.

Q. --- that you have highlighted in the transcript. And your position is that was prejudicial to you ---

A. Yes, sir.

Q. And there was no way to unring that after it was done, is that ---

A. Yes, sir.

Q. Okay. I think you've raised -- we went through -- and I'm not sure if this is still one of your issues. But you were saying that you needed an evidentiary hearing or some type of hearing in regards to fingerprint analysis?

A. Yeah.

Q. What do you mean by that?

A. Because the fingerprints that was given to the jury wasn't mine.

Q. Weren't they inconclusive? I mean, ---

A. Yeah. They just told them that the fingerprints didn't belong to me, they belonged to -- I forgot -- it wasn't my fingerprints. That's what it boils down to.

Q. Okay. There were no fingerprints on ---

A. Uh-uh (negative).

Q. --- the gun that was found or anything of that ---

A. No.

Q. Okay. So you were -- the only way that you were tied to this was through Antonio Williams' ---

A. Yeah.

Q. --- testimony and through a cell phone that they say was yours in the car?
A. Um-hum (affirmative).
Q. And you presented an alibi -- a few alibi witnesses too, correct?
A. Um-hum (affirmative).
Q. Was there anything that you're saying that Ms. Ross did that was ineffective in regards to your alibi witnesses?
A. Well, she told me my alibi witnesses wouldn't have been enough. But like I say, I was forced into the trial, you know. If she would have communicated that plea to me, we wouldn't even be here today, period. We wouldn't even be this far. I'd be doing them twenty years. But now I got the death penalty because life without parole is equivalent to the death sentence for armed robbery. And that's what I was trying to avoid, not to get life without parole for armed robbery.
Q. Okay. Can I ---
A. If she'd communicated the twenty, I'd have took the twenty. But like I say, we wouldn't even be this far.
Q. Okay. Let me -- you're not only saying she didn't communicate the twenty, did you get any other plea offers at any time during this ---
A. No, sir.
Q. Okay. Now I've gone through and I've done everything,

you know, we've discussed.

A. Um-hum (affirmative).

Q. I'm going to basically turn it over for cross examination.

A. Um-hum (affirmative).

Q. I want to make sure -- you have any other items you want to add in or if you've got ---

A. No, sir.

Q. Okay.

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

**THE COURT:** All right. Cross examination.

**MS. McCALLISTER:** Thank you, Your Honor.

**Cross Examination by Ms. McCallister:**

Q. Okay. Mr. Russell, ---

A. Yes.

Q. --- can you be a little more specific as to how many times you met with Ms. Ross before you went to trial? Do you have any idea?

A. I would say that we met a few times on charges that I'm not here for now.

Q. I'm talking about just on these charges, can you give me a number? Not just -- does a few mean two, three, four?

A. Well, I would say that we had a continuance four times ---

Q. Okay.

A. --- in the past that we was trying to get this trial before a judge. And I used to meet her downstairs in the little office, the little -- downstairs we used to talk.
Q. Okay. So when you came, when you would come to court because maybe your case was going to trial, ---
A. Yeah.
Q. --- then you'd have some time to talk?
A. Um-hum (affirmative).
Q. And you think that happened at least four times?
A. I think so.
Q. Okay. And do you recall any other meetings with her?
A. Not pertaining to this case.
Q. Okay. Did you ever meet with anybody else from her office on this case, like an investigator or someone like that?
A. No. The only time I met with investigators from the other place was with the failure to stop for a blue light.
Q. Okay.
A. But on these charges, no. It was just me and her. There were times when I came, and they rescheduled my court.
Q. Okay. During those four meetings that you did have with Ms. Ross, ---
A. Um-hum (affirmative).
Q. --- did she -- did she present any kind of evidence to you that the State had against you?

A. No. She just talked about the discovery, what she had.
Q. Okay. So she did talk about the discovery with you?
A. Yes, she was talking about the discovery.
Q. Okay. And she talked to you about the fact that Mr. Williams was going to testify against you?
A. Yeah.
Q. Okay. And you mentioned that you had some alibi witnesses present to testify on your behalf in your defense, correct?
A. Um-hum (affirmative).
Q. Okay. And so did you give her those names of those people that you'd want -- who could be your alibi?
A. Yeah, I gave them to her like the second time ---
Q. Okay.
A. --- when I met her downstairs.
Q. Okay.
A. Um-hum (affirmative).
Q. And she did have -- and she did have the people present, correct?
A. Yeah, she had them present.
Q. And they did testify for you, correct?
A. Um-hum (affirmative).
Q. Okay. And so -- so you did talk about what your defense was going to be, correct?
(Pause)

Q. To these charges?
A. We talked about what they was going to be. She didn't go into detail what it was going to be because it wasn't too much of a defense.
Q. Okay. But you did -- but you told her you had an alibi?
A. Yeah, forced to have an alibi. Wasn't going to plead to life without parole.
Q. Okay.
A. So that was forcing me into a trial. Like I said, I didn't have no options to weigh. She took it away from me.
Q. Okay. That's not what I'm asking you, though. I'm asking you did you -- when you knew you were going to trial, ---
A. Yeah.
Q. --- did she talk to you about what your defense to these charges could be?
A. She told me my alibis wasn't going to be enough. That's what she told me.
Q. She told you that ---
A. Yeah.
Q. But she did ---
A. She admitted that.
Q. But she called -- but she did call the witnesses ---
A. Yeah, she called the witnesses. Yeah.

Q. Okay.
A. Yeah, she called them.
Q. And you did not testify in your own defense, ---
A. No.
Q. --- correct? And you talked about that decision with her, is that correct?
A. Yeah, with my mom and her. Yeah.
Q. With your mom and her?
A. Yeah.
Q. Okay. I think you -- you said that you didn't -- you were not aware that there was any plea offer that was made to you?
A. No.
Q. Did you hear at the trial when Ms. Ross told the judge that a plea offer had been made?
A. But what was it?
Q. Well, let me back up then. Do you agree with me that at the end of your trial Ms. Ross told the judge that a plea offer had been made?
A. Yeah, it was -- that's what they said.
Q. Okay.
A. But it wasn't convoited [sic] to me what it was. My option was life without parole. That's what it's always been to me.
Q. Okay.

A. Wasn't no numbers given.
Q. But you heard Ms. -- you heard Ms. Ross say that, did you not?
A. I heard the judge ask that.
Q. Okay.
A. You can look at the transcript.
Q. Right. And you heard Ms. Ross answer and say that, yes, a plea offer had been ---
A. Yeah. But she didn't ---
Q. --- had been made? Okay.
A. Yeah.
Q. At that time did you say -- did you raise that issue to the judge? Did you say, hey, judge, I didn't know that there had ever been a plea offer made?
A. It wasn't no plea offer made but life without parole.
Q. Well, you heard ---
A. That's all stated ---
Q. Okay. When you heard Ms. Ross say that some plea offer had been made did you tell anybody -- did you say, hey, I didn't know about that? Did you say to Ms. Ross I didn't know about that? Or did you tell the judge, hey, I never heard this before?
A. See, you still -- the only plea offer that was given to me that's in the record is life without parole ---
Q. Okay.

A. --- several times on the table from Ms. Ross' mouth.
Q. Okay. So ---
A. She never ---
Q. --- you're saying Ms. Ross did convey ---
A. She never indicated nothing about no original plea offer.
Q. Did she ---
A. Nobody.
Q. --- convey to you that you could plead to life without parole?
A. That what she told me.
Q. Okay. She never conveyed to you a plea offer of twenty years ---
A. No.
Q. --- or a plea offer that took life without parole off the table?
A. No.
Q. Okay. And when you heard her tell the judge that there was a plea offer that would have taken life without parole off the table, you heard her ---
A. She didn't say nothing about no life was taken off the table. They didn't explain that. It's in the record.
Q. Okay.
A. All they said, it was a plea extended. They didn't say what it was or what it would do.

Q. Okay.
A. What was all told to me was life without parole. If I go to trial, I'd receive multiple life sentences like I got, three life sentences plus five.
Q. Okay.
A. That's all it was.
Q. Okay.
A. She didn't -- she didn't object during the plea hearing, extending the plea resignation from the -- from the State persuading the judge to give me no twenty years.
Q. Okay.
A. Wasn't no number given.
Q. Okay.
A. She just failed to communicate the plea to me during trial before the jury verdict.
Q. Okay. This issue of the cell phone and the search of the cell phone, ---
A. Um-hum (affirmative).
Q. --- am I correct in understanding that your issue is that the officer named Balis was not present to testify? Is that correct?
A. He the one did the search warrant.
Q. Okay. He's the one who did the search warrant. Was there a second officer who was present to testify?
A. Wasn't nobody there who testified to the search warrant

of that phone was present and give no kind of testimony of what they did, the change in custody or nothing to that phone.

Q. Okay.

A. The solicitor introduced it to evidence without any witness.

Q. Okay. But you would agree that your -- that Ms. Ross did object to that evidence ---

A. Yes, she did.

Q. --- coming in? Okay. And so there -- and the judge did hear her arguments on that, is that correct?

A. No, he ain't heard no arguments. He overruled it and moved to something else.

Q. Okay. So ---

A. He told them to remind him later on so they could do a Franks versus Delaware hearing, which it's not in that transcript. I ain't had no Franks versus Delaware hearing.

Q. Okay. So when your attorney objected to the evidence coming in she just said objection and she didn't make any arguments, is that your ---

A. She said, I object, irrelevant to my client. That was it. It's in the record.

Q. Okay. And your issue with the courtroom security officer ---

A. Um-hum (affirmative).

Q. --- testifying is that he was not on the witness list, is that ---
A. No, he wasn't.
Q. Okay. And your attorney objected to that testimony as well, correct?
A. Yes, she objected to it.
Q. Okay.
A. But he allowed it.
Q. Okay. And the issue that you have raised today with the fingerprint analysis was that those weren't your fingerprints, is ---
A. No, it wasn't.
Q. --- that correct?
A. According to the record it wasn't my fingerprint.
Q. Okay. And that was what was testified to at the trial, that they couldn't say that those were your fingerprints, is ---
A. No, ---
Q. --- that correct?
A. --- but the jury had deliberated on them fingerprints.
Q. Okay. Okay. But you agree with me that the evidence that was presented was that they couldn't say they were yours?
A. No.
Q. Are you saying no, I'm incorrect?

A. They couldn't say they were mine because in the record said they wasn't mines.

Q. Okay.

**MS. McCALLISTER:** I think that's all the questions I have, Your Honor.

**THE COURT:** All right. Any redirect?

**MR. ARIAIL:** No, Your Honor.

**THE COURT:** All right. Thank you. You may step down. Call your next witness.

**MR. ARIAIL:** I call Susannah Ross to the stand.

**THE COURT:** All right.

**MADAME CLERK:** Ms. Ross, please place your left hand on the Bible and raise your right hand.

**Susannah Ross,** being duly sworn testified as follows;

**MADAME CLERK:** Thank you. You may be seated. And please state your full name for the record.

**MS. ROSS:** Susannah Conyers Ross.

**Direct Examination by Mr. Ariail:**

Q. Ms. Ross, how you doing today?

A. Fine. Thanks.

Q. Now you represented Mr. Russell in regards to the four charges that, I guess, you went to trial with in front of Judge McIntosh, is that correct?

A. Yes.

Q. Okay. Now with these four charges you were appointed to represent him, correct?
A. I was.
Q. Okay. And I guess initially he said he spoke with you or you were appointed to him sometime in the middle of 2011. Is that correct in your notes?
A. Originally in '09. These charges probably '11.
Q. Okay. And then you had the '09 charges with the failure to stop for a blue light that he's ---
A. I think it was a possession of crack and then the failure to stop for a blue light. And then ---
Q. Yeah.
A. So it was kind of a trail.
Q. Okay. And then you picked up these charges at that time?
A. And that's common in our office. If we have an open file, we'll just take the additional.
Q. Got it. Okay. Now with your representation of him, he was incarcerated during this period of time, is that correct?
A. No. At first he wasn't, but I believe after the failure to stop for a blue light trial, which was, let's see, in 2011, he was. He was sentenced to -- I'm not sure what he was sentenced to, but I think he was sent down the road.

Q. Okay. So at some point in time, I guess, he was incarcerated. And, I mean, I guess my question is when you began to represent him on these current charges was he out on bond or was he incarcerated? Do you know?

A. I'm not sure. I think he was incarcerated.

Q. Okay. But he says it sounds like that you had discussed this with him in the jail or had discussions with him about the discovery.

A. Um-hum (affirmative).

Q. Do you remember or do you have any notes that show when you spoke with him or how many times you talked to him?

A. Yeah. I started my notes without a year next to them.

Q. Okay.

A. So I've just got dates. I've got -- got him January 4th as a no-show. January 20th, left message for Ruby Willett. And then by the 26th I guess he was arrested. I have pro-v, defendant says not guilty, trial. At that point he gives me his alibi defense.

Q. Okay.

A. Watching a baseball game with the kids, cooked at home, ESPN. Then on January 31st, spoke to his girlfriend about the alibi.

February 22nd, another pro-v, talked to -- got his mother's information. I believe I talked to her and got more alibi information.

I have March 31st, gave defendant discovery at preliminary hearing. May 23rd, interviewed witness, Anthony Lowndes, more of that. Another pro-v in October. So there were a number ---

Q. Number of visits?

A. And it looks like my notes do reflect that I did give him discovery.

Q. Okay.

A. I didn't put which charge, but given the time period where these seemed to be -- it's likely that it's this charge.

Q. All right. And the main issues in this case were the testimony that would have come out from the co-defendant, Anthony -- Antonio Williams, is that correct?

A. Yes.

Q. Did y'all -- do you remember discussing that with him as to what could be said by Mr. Williams and he was going to implicate him in this armed robbery?

A. Not specifically. I don't have it in my notes, but that's something I would discuss. That was a key in this case. Mr. Russell was pretty adamant that he wasn't guilty and didn't really want to hear about what could happen.

Q. Okay. I know there was a discussion or some testimony during trial that Mr. Williams didn't, I guess, immediately say he had a co-defendant or that Mr. Russell was, I guess,

involved in this, I guess, armed robbery. Do you remember discussing that or any information about that with Mr. Russell?

A. And, again, I don't have really independent recollection of going and having that discussion, but in hearing this testimony and looking over my notes it looks like the point with Anthony Lowndes, the witness, is the idea that Williams didn't originally name Russell. And it was only after he was on a jail call with his girlfriend he heard Russell in the background or something and, boom, that's why he decided to name Russell. And that was our theory and that was what Anthony Lowndes was testifying to.

Q. Okay.

A. And I researched. They were all in jail at the same time ---

Q. Right.

A. --- and got all the dates together and ---

Q. And that's why you called Anthony Lowndes to basically dispel that or ---

A. Right.

Q. --- try to put that in the jury's mind about that?

A. Um-hum (affirmative).

Q. The -- okay. So after discussing it with him did you think he had a good understanding of what the evidence was against him and what could happen during trial?

A. I think so. I went over it with him. And I do have the plea offer with the twenty years here in the file. And I certainly would have gone over that with him before going to, you know, an LWOP trial.

Q. Okay. Now in regards to that plea offer, that was on March 29th, 2011?

A. Um-hum (affirmative).

Q. So that would be -- I guess you had -- he apparently was incarcerated sometime in January 2011. So you would have picked up the case somewhere, I guess, between January when he was arrested and March 29th, is that correct, from your notes?

A. Yes.

Q. Okay. So you got this plea offer pretty much -- this is early in the case? Seems to be two months into it.

A. Um-hum (affirmative).

Q. Two to three months. Do you have anything in your file showing that it was given to or sent to Mr. Russell showing that he got a copy of it?

A. No. I don't have a cover letter or anything like that.

Q. Okay. Do you have any notes in your file showing that you discussed it with him or relayed this to him?

A. Not independently. I have a three or four following professional visitations after what I mentioned. So I don't have that. All I can say is that I would have given a plea

offer to someone before notice of life without parole ---
Q. Okay.
A. --- was filed.
Q. And the notice of life without parole, if I'm not mistaken, I've got to -- made that an exhibit. I'm not sure I have a copy of it. Do you know the date of when he was served with that notice?
**THE COURT:** You want yours?
**MR. ARIAIL:** Oh, thanks.
A. I've got it in the file somewhere, but I've got ---
Q. Looks like December 8th, 2011.
A. Okay.
Q. I guess my question is between that time between the plea offer of March 29th, 2011 and December 8th, 2011 do you have any notes or documentation showing that he was presented with this plea and declined it, I guess?
A. I haven't been through the whole file because it's large. So there could be something in there. I will note that I have a December 5th pro-v that I went and visited with him, and a December 7th pro-v.
Q. Okay.
A. And what that would indicate to me is that I was going down to visit him over and over again right before Mark could plan to serve notice of LWOP on him in attempts to avoid that consequence.

Q. And -- okay. So you have nothing in your file. My question is, I guess, was he adamant that he was, I mean, what's his position in regards to pleaing on this case?
A. His position was always that he was innocent and he did not want to plead guilty.
Q. Okay. Did he say -- did you have any discussions with him, well, I'll plead guilty if I can get something less than life without parole?
A. I don't recall that independently. It's quite possible often that I'll hear probation or something like that, but he was not accepting the twenty years or even a straight-up with the mandatory minimum of ten.
Q. Right. I mean, because at this point in time when all this is going on from March 29th of 2011 to December 8th life without parole is not on the table yet?
A. Uh-uh (negative). No.
Q. And y'all -- because he hadn't been served with it.
A. Right.
Q. It's a potential that's out there. Was he -- do you remember advising him of that and say, hey, look, if you don't ---
A. Yes.
Q. --- turn -- if you turn these down, you're going to get served with life without parole?
A. Yes, I would have -- I was well aware of his record and

would have advised him of that.
Q. Okay. Now he raised an issue about these seven burglaries that are a part of the life without parole. And I don't know if you saw -- and this was what was served on him.
A. Right.
Q. And they go back -- I think they're all in 1991. It appears that he had seven counts of burglary, second degree.
A. Um-hum (affirmative).
Q. Do you for any reason believe that, you know, that's not correct or anything in your notes showing that he shouldn't have been served with life without parole for those charges?
A. No. And I haven't -- I don't have my hands of his rap sheet. I don't know where it is in this file. But I would be given his rap sheet as part of the discovery. And I think he had, if I'm not mistaken, I think he had other armed robberies as well.
Q. Okay. So I guess your view is before he was served with life without parole there was nothing you had to go to Mark Moyer and say, hold on a second, you can't -- he doesn't qualify for life without parole?
A. Not that -- I would have done that if I'd seen it.
Q. Right.
A. If I'm wrong, I've made a terrible error if he wasn't

LWOP eligible. You know, I don't have the rap sheet in front of me right now to determine, but that's something I would normally look into.

Q. Okay. And that was something that, you know, something you would inquire into before you would let him go forward, I guess?

A. Absolutely.

Q. Okay. Now there was some question about this audio or, excuse me, cell phone download by Investigator Balis who was not at trial. Do you remember that? Some question as to whether or not it could come in if he wasn't here because he was the initial one that downloaded it?

A. I was basically trying to keep out that phone at all costs. I thought more my objection was that something on the -- that the search warrant, the affidavit on the search warrant, I want to say that it said that they knew that the phone may be -- belonged to Russell when, in fact, at that point I was arguing that Williams hadn't given that information yet. So they wouldn't know that at that time.

Q. Right.

A. So I thought that was more the crux of my objection. But, frankly, I don't remember, and I haven't re-read the entire transcript. That's just ---

Q. Yeah, I think that's correct. You were arguing that, I guess, they had not -- they had presented something to the

magistrate to get the warrant ---
A. Right.
Q. --- that had not been relayed to them.
A. Right. And maybe I'm wrong, but I don't think it matters whether I had them switch out photo -- it's still the same phone. So switching out the analyst in the chain of custody doesn't really make a lot of difference because they'd just get someone else to run the same phone, the same information.
Q. But I guess what you were trying to do and the strategy was to keep the phone out or the phone records out ---
A. 'Cause they had mama, which turned into ---
Q. His mother's ---
A. --- Chris Russell's ---
Q. --- cell phone, right?
A. Um-hum (affirmative).
Q. Okay. So -- but there was part of that, your argument too, as part of the transcript, if I remember correctly, there were no aliases that were used for Mr. Russell, I guess, which was Poncho, is that ...
A. I don't think so.
Q. Okay.
A. And I could be wrong on this. Chris could tell me. But I think in one of the prior trials they were trying to allege that his nickname was -- alias was New York.

Q. Right.
A. So it's crazy to come in now with Poncho ---
Q. Correct.
A. --- as an alias.
Q. And I think you elicit that in some testimony at some point, if I'm not mistaken. Do you remember that?
A. No. If it's in the record, sure.
Q. Okay. Now there was a testimony by Elaine Lyles that went into, I guess, her description of the, I guess, the -- the individual that went out the front door of the residence and escaped?
A. Um-hum (affirmative).
Q. And during your cross examination, which, I believe, was on page -- I think it was -- yeah, 140 to 141. You had previously made, I guess, a motion in limine to keep out any type of description ---
A. Um-hum (affirmative).
Q. --- about that individual who went out the front door to keep out -- I think it was the build of the individual, the type -- I guess the lips, the height, the complexion of that individual. Do you remember that?
A. Yes. And I looked at it again during Mr. Russell's direct. And I think just looking at the transcript, it was not my intention to open the door. And I didn't read all of it, but I had felt that even though he had stricken the

record, the jury had heard this testimony already.

So I can't say looking, you know, I did not intend to open the door to have -- allow an in-court identification or anything. And I don't think that occurred.

I didn't think that testimony of thin lip, light skin, taller than me fit Mr. Russell. And I kind of used it later on to say that description does not fit him, but I was cutting it close.

And I was trying not to, you know, open the door. The judge found that I did. But in the long-run I think I got sort of a description that didn't match Mr. Russell out in front of the jury and the fact that she had not been able to pick him out of a lineup.

Q. Okay. So I guess when that information came up, ---

A. Um-hum (affirmative).

Q. --- what was your view as to how the impact it had on the jury or any issues in the case?

A. I think it helped more than it hurt. That was cutting it close because I wanted the jury to hear some of that. But I certainly didn't think I was trying -- I didn't think I was opening the door to anything else. And so just reading over that, that was a dangerous moment because I was scared she was going to stand up and point or something like that would happen, and it did not.

Q. Okay.

A. And -- so ...
Q. Okay. Now there was an issue, and I don't know -- he's raised to me about an investigator, I guess, Weiner who was -- or is it a sergeant who was either arrested or charged with some type of issue in regards to excessive force on a bank robber? Do you remember anything about that?
A. No.
Q. Okay. Because he -- somebody had testified during the trial. Were you aware of that or put on notice of that prior to him testifying?
A. I've had a number of cases with Officer Weiner.
Q. Weiner, sorry.
A. I keep pronouncing it ---
Q. Sure.
A. But -- and then that doesn't surprise me. But I don't think I knew about that or cross examined him on that.
Q. Okay. So -- because that -- he raised that issue to me, and I don't know if that was something y'all discussed or if he raised or if it was something that ---
A. I don't remember that.
Q. Okay. Now the deputy that testified, I think it was Alan Smith, who was, I guess, in the courthouse or courtroom at some point in time and who came in to testify in reply, I believe, ---
A. Um-hum (affirmative).

Q. --- about identifying my client's alias of Poncho, is that ---

A. Right.

Q. Do you remember there was a discussion as to he was not allowed to testify in the beginning and then he was allowed to testify ---

A. Right.

Q. --- in reply? Do you ---

A. I remember ---

Q. --- remember that?

A. --- that well. Um-hum (affirmative).

Q. And what was the issue, I guess, what occurred in the initial part of the case to exclude him from testifying?

A. So he's sitting there as the deputy through the whole trial. And then all of a sudden Mark tells me, oh, yeah, he knows your guy as Poncho, so I want to put him up.

And I objected just trying to think of anything I could and said, well, he wasn't on the witness list, he can't testify now. And so that was my initial objection, which was sustained. He wasn't allowed to testify.

Q. Okay.

A. Then after my alibi case, Mark, again, attempted to put him up. And at this point he argued that he'd been prevented from exercising, you know, presenting his case and basically just changed the judge's mind as to whether he

could be -- at that point I objected because it wasn't an issue of rebuttal because I hadn't brought that issue up in my case on purpose. But the judge ruled against me.

So I attempted to preserve the record. If I didn't do it enough, I didn't. But that's what I put on the record. I was doing what I could to stop that from coming in because it was so incredibly prejudicial.

And I still -- when I see Officer Smith in trials I'll make comments to him like, hey, do you want to say how you saw -- witnessed my guy killing somebody? You know, just because it was just ridiculous to -- to me, that was completely unfair. But I tried to put that on the record. And I hope I -- I hope I did so.

Q. But you objected to the best of your ability and ---

A. Um-hum (affirmative).

Q. --- in which you knew how to do at that time?

A. Yeah.

Q. Okay.

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

**THE COURT:** Okay. Cross examination.

**MS. McCALLISTER:** Thank you, Your Honor.

**Cross Examination by Ms. McCallister:**

Q. Ms. Ross, how long have you been practicing law?

A. Twenty years.

Q. So at the time of this case then in 2011 it would have

been about fifteen, ---

A. Um-hum (affirmative).

Q. --- sixteen years? Okay.

A. Yeah.

Q. How much of that time have you been practicing criminal law?

A. The entire time.

Q. Okay. And I think you've discussed a little bit about how these charges arose and how your representation arose. You were previously appointed on some other charges and just kept the file, is that correct?

A. Yes.

Q. Okay. And the main -- the main issue or the main way that these charges arose against Applicant was because he was named by a co-defendant, is that correct?

A. Yes.

Q. Okay. And I believe you've testified a little bit about your meetings with Mr. Russell specifically regarding these four charges?

A. Right.

Q. When your -- with those visits that you mentioned, are those visits at the jailhouse, or are those at the courthouse, or how -- or can you tell from your notes?

A. I probably should take better notes. When I write down pro-v, that means professional visitation, and that's at the

jailhouse.
Q. Okay.
A. And I'll put something else -- like I have one up earlier on a different case where we met at the courthouse or met at a preliminary hearing. So those are at the jail.
Q. Okay. So your notes reflect that you've met with him at the jail as well as when he came to court?
A. Yes.
Q. Okay. Do you -- can you give me a number as to how many times that is? Just approximately.
A. Looks like at least eight. And I've got to say I don't -- sometimes I miss -- just don't write it in my notes, but at least eight times.
Q. Okay. During those meetings did you discuss -- what did you discuss during those meetings? Just kind of a summary.
A. Just his case.
Q. Okay. Did you discuss the elements of the charges he had and what the State would have to prove?
A. Yes. And I reviewed discovery.
Q. Okay. Did you discuss the fact that the -- and his co-defendant was prepared to testify against him?
A. Yes.
Q. Okay. Did you discuss any possible defenses with him?
A. Yes. We talked often about his alibi defense ---

Q. Okay.
A. --- in this case.
Q. And he did -- did he give you some witnesses that he wanted you to call?
A. He did.
Q. Okay. And did you -- do you recall what you did to investigate those witnesses and to investigate the alibi?
A. Me and Cam, my investigator, extensively did that. I have notes looking up whether this Gonzales basketball game was happening that night, which it was. We looked up -- we found the witnesses, had them in court, spoke to them, got statements from Anthony Lowndes. So, yes, we researched the case.
Q. Okay. And you had Anthony Lowndes present to testify as well?
A. Um-hum (affirmative).
Q. Do you recall -- do you recall saying to one of the witnesses that the alibi wouldn't be enough? Do you recall that?
A. I don't.
Q. Okay.
A. If there was something like that -- all I could say, sometimes if someone tells me, you know, we can't lose with this alibi or something, I might say something to the effect of, well, when you have witnesses and, you know, it's

possible you could lose, but I would never say you're going to lose with this alibi.

Q. Okay. Did you specifically discuss the possibility of life without parole?

A. Yes. And I'm trying to think what Mr. Russell could be referring to. And I think when I was talking to him about plea offers, you're just talking -- that's the rest of my life, I can't, you know, he really wasn't about discussing twenty years or going to prison for a long time. He was saying he was not guilty. But I would have -- this was a -- I take life without parole very seriously. And I would have thoroughly reviewed that with him.

Q. Okay. So is it fair to say that from the beginning he indicated that he maintained his innocence to you and he wanted a trial, correct?

A. Yeah. My notes actually do reflect that. Something on January 26th, pro-v defendant says not guilty, all trial.

Q. Okay. I'm sorry. Did you say that was in January?

A. I have January 26th. And I'm not sure -- I'm assuming 2011.

Q. Okay. And so that would have been shortly after this case arose?

A. Right.

Q. Okay. So from the beginning he was telling you a trial?

A. Yes.
Q. I'm not interested in a plea?
A. Yes.
Q. Okay. What is your usual practice when it comes to plea offers and how you convey those to a client?
A. I usually go down to the jail and discuss the plea offer with them.
Q. So that was something that you would do?
A. Yes.
Q. Okay. So the fact that you don't have a letter or something like that in your file, is that unusual?
A. It's not.
Q. Okay.
A. And I've actually changed my policy on that to provide a copy. At the time, quite often -- I didn't. I would just ...
Q. And the plea offer that was made either during trial or right before trial, do you recall something about that? About a plea offer being made at the last minute?
A. Yes.
Q. Okay. Do you recall what the offer was at that point?
A. I believe it was straight-up at that point.
Q. Okay. Would that mean that life without parole was still ---
A. That would be off the table. And my note reflects --

and I think -- I think I wrote this for a reason after the trial, but on February 13th, 2012 I just put down guilty, note, defendant turned down number of offers for lifting life without parole.

Q. Okay. So your notes reflect that you did convey an offer that would take the life without parole off the table, and he still refused that offer?

A. Yes. I think that's what I meant by -- I wouldn't have written that down if he wasn't saying I -- you didn't tell me whatever I was ---

**THE COURT:** What's the date on that?

A. February 13th, 2012.

**THE COURT:** And wasn't his trial in '13?

A. Yeah. This was the day of trial that just -- after I wrote guilty ---

**THE COURT:** No, the trial was in 2013.

A. Oh, okay. Then I apologize. Then it was 2013 'cause I wrote guilty, note. And I might just not be reading it right. But I wrote guilty. So it had to be the date of trial.

**THE COURT:** Okay.

Q. Okay. So just to clarify, the note where you wrote guilty, refused multiple offers to take LWOP off the table is February 2013 you believe?

A. It must have been, yeah.

Q. Okay. And that would have been shortly after the trial or the day of the trial?
A. Yes.
Q. Did he ever at any time indicate to you that he didn't understand what that meant, what life without parole meant or what it meant to receive a, you know, the LWOP notice? Did he ever indicate that he didn't understand?
A. No.
Q. Okay. And to your knowledge did he understand or do you feel that he understood?
A. I believe so.
Q. Okay. Okay. The issues with the State's evidence, I believe, that you named as issues that you challenged were the cell phone evidence, correct?
A. Um-hum (affirmative). Yes.
Q. Okay. And I think you testified to that your main objection was the sufficiency of the search warrant, correct?
A. I believe ---
Q. To obtain ---
A. --- so.
Q. --- the evidence? Okay.
A. Yeah, whatever the record's saying is -- yeah.
Q. Okay. And you don't see any issue or didn't see any issue with having a second officer, maybe, re-download the

information who hadn't done it the first time?
A. There may be some issue there, but I don't -- if the record shows that I didn't argue it, I probably -- I didn't argue it.
Q. Okay. Do you see -- sitting here now today do you see a problem with that?
A. Not really. I don't think -- I possibly could have argued that he should have been there for the chain of custody if it was signed out of evidence, but I didn't make that argument.
Q. Okay. Did you feel that the issue with the sufficiency of the warrant was a better argument?
A. Yes.
Q. Okay.
A. And I think there's case law out there that -- I wouldn't have won the chain of custody argument.
Q. Okay.
A. I could have made it, but ...
Q. Okay. And then the other issue, I think you said, that was -- that you felt was a problem in terms of this case was the testimony of Alan Smith?
A. Yes.
Q. Okay. And I want to just clarify it a little bit. If I'm understanding correctly, you said that the solicitor tried to offer that testimony in his case in chief, correct?

A. Yes.
Q. Okay. And your objection at that point -- you were surprised -- were you surprised by the fact that he was offering that testimony? Or trying to offer that testimony?
A. Mr. Moyer -- Mark had told me earlier that he was going to. So I wasn't like startled in the courtroom, but I was five minutes startled. I didn't have a lot of time to go research it. So I was bringing up the best objection I could think of at the time.
Q. Okay. And that objection was that ---
A. He wasn't on ---
Q. --- he wasn't on the ---
A. --- the witness list.
Q. --- witness list, ---
A. Um-hum (affirmative).
Q. --- and you didn't know about this witness?
A. Right.
Q. Okay. And then he tried to then again offer that as a reply witness, is that correct?
A. Um-hum (affirmative). Yes.
Q. Okay. And at that point did -- the judge decided that his earlier ruling was incorrect?
A. Yes.
Q. Okay. So was the witness actually offered as reply or was he offered because the judge decided he had erroneously

kept it out in the first place?
A. My reading -- and I just briefly looked at this transcript again. But my understanding was that he was -- the judge was saying I made an error in the trial that was prejudicial to the State and now I'm correcting it.
Q. Okay. And to your knowledge was that issue raised on appeal?
A. Yes.
Q. Okay. And was the issue of the cell phone and the warrant raised on appeal to your knowledge?
A. Yes.
Q. Okay. So these issues have been -- have been looked at ---
A. Yeah.
Q. --- to your knowledge through a merits appeal?
A. Yes.
Q. Okay. The issue with Elaine Lyles and her testimony about the description of the person -- of the robber?
A. Yes.
Q. I believe you testified that you felt that that testimony actually helped you more than it hurt you. Can you explain that a little bit?
A. I didn't think that description matched Mr. Russell. And I asked his family -- I think when I put them on the stand, I asked family members does that description match

your son? No, it doesn't. I think, though I can't be sure on that. That's just what I'm thinking I said, that I'd tried to use that again, the fact that she looked at a lineup and didn't pick Mr. Russell out.

Q. Okay. So the only -- and the only description that she gave really was he had dark skin and something about his lips, is that correct? And his height, maybe?

A. Um-hum (affirmative). She said taller than her.

Q. Okay.

A. And Mr. Russell's probably not, I wouldn't say.

Q. Okay. In your opinion had that testimony not come out do you -- do you think that -- or let me ask -- let me rephrase that. Do you think that that testimony and her description was what kind of changed the outcome for Mr. Russell? Do you think that was the ---

A. No.

Q. --- like the straw that broke the camel's back, ---

A. No.

Q. --- so to speak? Okay. I think you testified that you have a copy of the notice that the solicitor served that he was seeking life without parole.

A. I saw it earlier looking through the file, but I don't have it right in front of me. But ---

**THE COURT:** That's an exhibit.

A. Yeah.

**MS. McCALLISTER:** May I approach?

A. Okay.

Q. And that notice lists the crimes or the convictions that he, that the solicitor was basing ---

A. Right.

Q. --- his request for life without parole on ---

**THE COURT:** What's the exhibit number you're referring to?

A. Plaintiff's exhibit 2.

**THE COURT:** Okay.

A. Yes.

Q. Okay. And it lists those charges as seven burglary, second, correct, and one armed robbery?

A. Right.

Q. Okay. Does it give the dates of those?

A. No.

Q. Okay. And I believe you testified that you would have -- you would have investigated that, is that correct?

A. I would have investigated whether he was eligible for life without parole or not.

Q. Okay.

A. I can't say that I would have really gone beyond to determine each one.

Q. Okay. But you would have -- you would have at least investigated whether he had previous convictions that would

qualify him for that?
A. Yes.
Q. Okay.
A. And I knew he had a couple of armed robberies, which in themself without any burglaries.
Q. Okay. And so the armed robbery in itself without the burglary ---
A. Most serious, yeah.
Q. --- would qualify him?
A. Right.
Q. Okay. And did you have any reason to believe that what the solicitor listed there was incorrect?
A. No.
Q. Did Mr. Russell ever tell you it wasn't correct?
A. No.
Q. Okay.

**MS. McCALLISTER:** Beg the Court's indulgence.

(Pause)

Q. Mr. Russell has raised an issue as to whether this case was tried in the court of common pleas or general sessions.
A. It was in general sessions. I'd, you know, we'd have to get on April for putting common pleas on there. But, no, it was general sessions.
Q. Okay. It was tried during the term of general sessions court?

A. Yes.
Q. In front of a judge who is a judge in circuit court?
A. Yes.
Q. Okay. And the indictments lists general sessions ---
A. Yeah, ---
Q. --- the Applicant was tried on ---
A. I believe so, yes.
Q. --- to your knowledge? Okay. And the issue of the fingerprint analysis, do you recall anything about that issue that Mr. Russell has raised today?
A. Barely. There's an email that I just ran across where Mark Moyer, the solicitor, had the analyst run a print that didn't match Williams against Russell, and it didn't match either. And I think that came out at trial, prints don't match.
Q. Okay. So the prints didn't match him. There was no one there to testify, for instance, that the prints -- no one said they were his?
A. Right.
Q. Okay. And they, in fact, said, we've tested it against his and it's not him?
A. Right.
Q. So ---
A. I didn't think that was damaging evidence at all.
Q. Okay.

**MS. McCALLISTER:** I think that's all the questions I have, Your Honor.

**MR. ARIAIL:** No redirect, Your Honor.

**THE COURT:** I've got a -- Ms. Ross, ---

A. Yes.

**THE COURT:** --- do you have the transcript with you?

A. Yes.

**THE COURT:** Look on page 511 at the top of the page. In the second sentence it says Mr. Russell has been offered opportunities to plead to life without parole on the table a number of times.

A. I would have said off the table. I don't know if that's a typo. I mean, maybe it -- maybe I said on the table, but I certainly meant life without parole off the table.

**THE COURT:** Okay.

A. But I don't know what -- maybe I did. Maybe I misstated that to the judge, but he -- life without parole, Mr. Moyer was willing to take that off the table in exchange for a guilty plea.

**THE COURT:** Okay.

A. And Mr. Russell didn't want to do that.

**THE COURT:** All right. If anybody wants to follow up with that in light of my questions, that'll be -- I'll give you that opportunity.

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

**THE COURT:** All right.

**MS. McCALLISTER:** No, Your Honor.

**THE COURT:** All right. Thank you. You may step down. All right. Anything further from the Applicant?

**MR. ARIAIL:** No, Your Honor. That is our case.

**THE COURT:** All right. Anything from the State?

**MS. McCALLISTER:** No, Your Honor.

**THE COURT:** All right. Any discussions anybody want -- I'll hear brief comments if you'd like or, I mean, I think I'm fully aware of what all the issues are.

**MR. ARIAIL:** Your Honor, I think we've presented it, and it's pretty obvious what the issues are and our position in regards to it. I don't think any summary is needed at this time.

**MS. McCALLISTER:** Your Honor, I would just reiterate that the State's position that many of these issues raised by the Applicant were not pled. And the State believes that that's prejudicial at this point to have to defend against ---

**THE COURT:** Right. And I ---

**MS. McCALLISTER:** --- the issues. And we didn't realize we had to ---

**THE COURT:** Right.

**MS. McCALLISTER:** --- until today.

**THE COURT:** And I realize that, and just so we could get everything in the record. But I agree, they're not raised -- weren't raised in the application. And I'm not going to allow those to be considered. But ...

Now let me ask y'all this. Now I'm a little bit confused here. Is there a -- let me direct this to you, Mr. Ariail. Based on his record, and I know y'all raised this issue, based on his record was he eligible for life without parole?

**MR. ARIAIL:** Your Honor, from my understanding and from what I've seen from the life without parole, and I haven't seen his rap sheet in regards to it, I'm under the impression he was eligible for life without parole.

**THE COURT:** Okay.

**MR. ARIAIL:** There's nothing that I have seen -- I know his testimony, there was some question in regards to those, but if those charges stack up the way they are, which Ms. Ross is saying that, you know, she would have objected if she did, that he would ---

**THE COURT:** All right.

**MR. ARIAIL:** --- have qualified for life without parole.

**THE COURT:** Well, and I'm going to review this matter. And I'm going -- I'll be very frank with you, you know, we have Mr. Russell's testimony about he didn't receive an

offer. And then, I mean, it may have been mistaken, but looking at the transcript in the record, she specifically talks about prior offers and she talks about a life without parole was always on the table. And Ms. Ross said, I mean, there was -- said she would have been advised.

I mean, and that's what I'm going to be -- I'm going to carefully look at that in light of the case law and all. But that does -- that's the primary issue, I think, that really is before the court. The other issues, I think, were clearly objected to and either appealed or properly -- whether the attorney won those issues or not is not -- really not to consider, but I think they were properly preserved and properly done. But I am going to look at that issue carefully. And I'll let y'all know something within the next day or so.

**MR. ARIAIL:** Okay. Thank you, Your Honor.

(Hearing Ended at 11:31 am)

(End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 19th day of April 2017.

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

December 19, 2017

*Susan W. Hudgins*

_____

Circuit Court Reporter

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | IN THE COURT OF COMMON PLEAS<br>FOR THE THIRTEEN JUDICIAL CIRCUIT |
| Christopher Eric Russell, #158392,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | Case No. 2016-CP-23-3282<br><br>**ORDER GRANTING POST-CONVICTION RELIEF IN PART AND DENYING POST-CONVICTION RELIEF IN PART** |

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, SC
2017 JUN 15 AM 11:04

| | |
|---|---|
| Presiding Judge: | Perry H. Gravely |
| Applicant's Attorney: | R. Mills Ariail, Esquire |
| Respondent's Attorney: | Lindsey A. McCallister, Esquire |
| Trial Counsel: | Susannah Ross, Esquire |
| Date of Hearing: | April 19, 2017 |
| Court Reporter: | Susan W. Hudgins |

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 1, 2016. Respondent made its return on January 12, 2017. An evidentiary hearing on the matter was convened on April 19, 2017, at the Greenville County Courthouse. Applicant was present at the hearing and represented by R. Mills Ariail, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Susannah Ross, Esquire, also testified. The Court had before it the trial transcript, the Greenville County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the pleadings, and Applicant's appellate records.

## PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the July 2011

term of the Greenville County Grand Jury for conspiracy (2011-GS-23-1118), kidnapping (2011-GS-23-1122), armed robbery (2011-GS-23-1123), and burglary, first degree (2011-GS-23-1124). Susannah Ross, Esquire, represented him. On February 13, 2013, Applicant proceeded to a jury trial and was found guilty as indicted on all charges. The Honorable R. Lawton McIntosh sentenced Applicant to confinement for five years for conspiracy and life without parole for each charge of kidnapping, armed robbery, and burglary, first degree. The sentences are set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's convictions. State v. Russell, Op. No. 2015-UP-435 (filed on August 19, 2015). The Remittitur was issued on September 16, 2015.

## ALLEGATIONS

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

1. "Ineffective Assistance of Counsel- 6th Amendment and U.S. and State Constitution" (sic)
    a. "Trial counsel failed to communicated plea on proper terms"
2. "Due Process- 5th and 14th Amendment U.S. and State Constitution" (sic)
    a. "Trial counsel failed to challenge the use of prior conviction with proper argument."
3. "Confrontation Clause- 6th Amendment U.S. and State Constitution" (sic)
4. "Illegal search and seizure- 4th Amendment U.S. and State Constitution" (sic)

During the hearing, Applicant raised additional issues that were outside the scope of the allegations in his application. Respondent objected to those issues going forward on the basis of prejudice since the issues were raised with no prior notice to the State. This Court ~~granted~~ sustained Respondent's objection and did not consider any issue unless it was raised in the original application.

## 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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).[1]

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 300 S.C. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984). Second, counsel's deficient performance must have prejudiced the applicant such that

[1] As noted above, Applicant raised several issues at the evidentiary hearing that were not properly plead in his application or an amendment filed with the court. Accordingly, these findings of facts and conclusions of law relate only to the four issues contained in the application.

"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.

### A. Ineffective Assistance of Counsel

#### 1. Failure to Convey Plea Offer

In Davie v. State, the court granted relief to the applicant on the basis of counsel's failure to relay a plea offer made by the State to the applicant. 381 S.C. 601, 675 S.E.2d 416 (2009). The South Carolina Supreme Court held that in order to prevail on claims that defense counsel failed to convey a favorable plea offer, Applicant must show (1) failure to communicate the plea offer was deficient performance, and (2) Applicant was prejudiced by the deficient performance, or there was a reasonable probability Applicant would have accepted the original offer. Id., 381 S.C. at 608, 675 S.E.2d at 420. Generally, "'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Bell v. State, 410 S.C. 436, 441, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting Missouri v. Frye, 566 U.S. 133 (2012)). Failure to communicate a plea offer constitutes deficient performance, although prejudice must be evaluated on a case-by-case basis. Davie, 381 S.C. at 609, 675 S.E.2d at 420. "To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." Frye, 566 U.S. at 147. The difference in the sentence received and the plea offer may be sufficient proof of prejudice. See Bell, 410 S.C. at 443, 765 S.E.2d at 7-8 ("In this case, trial counsel testified the plea offer was for ten years imprisonment. Bell was sentenced to twenty years' imprisonment. The difference is evidence of his prejudice."); Davie, 381 S.C. at 614, 675 S.E.2d at 423 ("[W]e

conclude that the difference in the sentence Petitioner received and the plea offer is proof of prejudice.).

Applicant and Counsel both testified that at the time of Applicant's arrest on these charges, Counsel had already been appointed to represent him on other matters, so she handled this new case as well. Applicant testified his first meeting with Counsel to discuss these specific charges was in June or July 2011. Applicant testified the case was continued several times, and he spoke with Counsel at court each time. Applicant further testified he and Counsel discussed discovery beginning in August 2011, and they went over the evidence the State had turned over, discussed the issue of the codefendant's testimony, and on multiple occasions, discussed that Applicant was facing life without parole. Applicant testified the only offer ever communicated to him was to plead to life without parole (LWOP), and he was unaware there was an offer of twenty years until he obtained copies of his file through a FOIA request after his conviction. Applicant repeatedly testified he told Counsel he would not plead to LWOP. Although Applicant testified he did not communicate to Counsel a term of years that would be acceptable to him, he testified he would have accepted the twenty-year offer if it had been communicated.

Counsel testified she received a plea offer of twenty years in writing from the solicitor in March 2011. She testified it was her usual practice to convey all plea offers and discuss the ramifications with her clients, but she did not have any specific documentation or notes in her file confirming the practice was followed in this case. Counsel testified, at the time, it was her practice to convey plea offers in person rather than in writing. However, Counsel did not recall any specific discussions of the twenty-year plea offer with Applicant in this case. Counsel testified the LWOP notice was served on December 8, 2011, and her notes reflect she made jail visits on December 5, 2011, and December 7, 2011, which she believed were attempts to

persuade Applicant to avoid LWOP by accepting the plea offer. However, Counsel's notes only reflect that she visited Applicant in jail on those days and do not contain any specific indication that the twenty-year offer was conveyed or discussed at that time. Counsel testified Applicant maintained his innocence throughout the case and did not wish to plead guilty.

This Court finds the trial transcript confirms Applicant's testimony, as Counsel states the following during the sentencing phase: "Judge, I would just say that Mr. Russell, in light of the fact that you have no ability to change the sentence here, is looking at life without parole. Mr. Russell has been offered opportunities to plead to life without parole on the table a number of times. He has consistently maintained his innocence on this case." Counsel testified she misspoke and meant to say Applicant had been offered opportunities to plead without LWOP on the table. Counsel's statement in the transcript is consistent with Applicant's testimony that he was unaware of any offers except to plead to a sentence of LWOP. This Court finds there is no evidence that the offer of twenty years was conveyed to Applicant.

Accordingly, this Court finds Counsel's performance was deficient for failing to relay the plea offer of twenty years to Applicant. Applicant was sentenced to LWOP as a result of his conviction at trial, and Applicant testified he would have accepted the offer of twenty-years had it been conveyed to him. The Court finds this testimony credible, and therefore, this Court finds Applicant has sufficiently proven he was prejudiced by Counsel's deficient performance. See Davie, 381 S.C. at 613, 675 S.E.2d at 422. ("[I]t is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice."). Because Applicant has proven both deficiency and prejudice, Applicant's request for relief on this ground is granted. The appropriate remedy is to send the case back to the trial court for

resentencing as if Applicant had accepted the twenty-year plea offer. Bell, 410 S.C. at 439-40, 765 S.E.2d at 5-6.

2. **Failure to Challenge Use of Prior Conviction**

Applicant alleges his criminal record did not qualify him for LWOP on these charges, and Counsel was deficient for failing to object. In support of this allegation, Applicant introduced the LWOP notice and the first screen of his SCDC records, which he contends do not match. Applicant testified the LWOP notice states he has convictions seven prior burglary – second degree charges, but Applicant's SCDC record does not show those all of those convictions. Applicant's record, however, does show a previous conviction for armed robbery..

Counsel testified she would have obtained Applicant's criminal record as part of the discovery process, and she would have verified the convictions listed on the LWOP notice were correct. Counsel testified the LWOP notice listed seven burglary – second degree convictions and one armed robbery conviction. Counsel testified she had no reason to believe the LWOP notice was incorrect. Further, Applicant testified he never raised this issue to Counsel or told Counsel he did not believe he was eligible, and Applicant's PCR counsel conceded Applicant was indeed eligible for LWOP based on his previous convictions.

This Court finds Counsel was not deficient for not objecting to the LWOP notice. Although Applicant presented his part of his SCDC record as evidence that he does not have seven prior burglary convictions, he has not alleged or offered any evidence that the previous armed robbery conviction is an error. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("This Court has repeatedly held a PCR 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. . . .). That conviction alone is sufficient for

LWOP. S.C. Code Ann. § 17-25-45 (2016). Further, PCR counsel conceded Applicant was eligible on the basis of his previous record. Accordingly, this Court finds Applicant has failed to prove prejudice. "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691, 104. Therefore, this Court finds Counsel's performance was not deficient, nor was Applicant prejudiced by any alleged deficiency. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The allegation is denied and dismissed.

**B. Constitutional Violations - Confrontation Clause and Illegal Search and Seizure**

Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). "Errors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings." Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975). In a PCR action, "when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel." Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993).

Regarding the search of Applicant's cell phone, Counsel testified she did object to the phone-download testimony, but her argument was focused on the validity of the search warrant, as she believed that was the stronger argument. Counsel testified her strategy for trial hinged on keeping the cell phone evidence out because the phone had a contact entry for "Mama," which rang to Applicant's mother's house. Counsel testified she contested the validity of the search warrant in a pre-trial motion to suppress, and then renewed her objection to admission of that

evidence during the trial. Counsel testified her opinion was that the identity of the analyst testifying did not make any difference, and she did not believe there was any impropriety in the State running a second analysis after the original officer left the agency. This issue was raised during Applicant's direct appeal. The Court of Appeals affirmed the trial court's ruling on the merits.

Applicant testified he believed his right to confront witnesses against him was unconstitutionally violated when the trial court allowed testimony of a courtroom security officer who established an alias for the State. Counsel testified she raised the Confrontation Clause issue during trial and objected to the testimony of a courtroom security officer on the basis that she was not given any prior notice and the officer was included on the State's witness list. The trial court ultimately overruled her objection, and this issue was raised on appeal. Again, the Court of Appeals affirmed the trial court's ruling on the merits.

This Court finds these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b), and Applicant in fact raised both issues in his direct appeal. Even construing Applicant's allegations as a claim of ineffective assistance of counsel, this Court finds Counsel's performance was not deficient. Counsel objected both to the admission of the cell-phone evidence and to the testimony of the courtroom security officer, properly preserving both issues for appeal. Counsel further explained her strategy regarding the cell phone was to contest the validity of the search warrant rather than the issue of the second download, as she believed the search warrant issue was a stronger argument. See Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) ("[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.") Applicant

has failed to carry his burden on these allegations, and they are denied and dismissed with prejudice.

## CONCLUSION

Based on all the forgoing, this Court finds Applicant has established a constitutional deprivation which requires this Court to grant relief in regards to his allegation Counsel failed to convey a favorable plea offer. However, this Court finds and concludes Applicant has failed to carry his burden on all other allegations. Therefore, this PCR application is granted as to the allegation Counsel failed to convey a favorable plea offer, and it is denied and dismissed with prejudice as to all other allegations.

**IT IS THEREFORE ORDERED:**

1. The application be granted in part, based on Counsel's failure to rely a favorable plea offer to Applicant;
2. All remaining allegations are denied and dismissed with prejudice;
3. Applicant's sentence shall be vacated and his case remanded to General Sessions court for resentencing;
4. The State shall present Applicant with the original plea offer of twenty years.

**AND IT IS SO ORDERED** this 12th day of June, 2017.

HONORABLE PERRY H. GRAVELY
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

CHRISTOPHER E. RUSSELL, #158392 )
Plaintiff, )
vs. )
STATE OF SOUTH CAROLINA )
Defendant. )

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-23-3282

**MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

| Plaintiff's Attorney: | Defendant's Attorney: |
|---|---|
| R. Mills Ariail, Jr., Bar No.<br>Address: Law Office of R. Mills Ariail, Jr.<br>11 North Irvine Street, Suite 11<br>Greenville, SC 29601<br>Phone: _____Fax _____<br>E-mail: _____Other: _____ | Lindsey A. McCallister, Bar No.<br>Address: Attorney General's Office<br>PO Box 11549<br>Columbia, SC 29211<br>Phone: 803.734.3737 Fax 803.734.4113<br>E-mail: _____Other: _____ |

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

**SECTION I: Hearing Information**

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE COUNTY SC
2017 JUN 15 AM 11:04

**SECTION II: Motion/Order Type**

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — June 2, 2017 Date submitted

**SECTION III: Motion Fee**

☐ PAID – AMOUNT: $_____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

| **JUDGE'S SECTION** | JUDGE CODE _____ |
|---|---|
| ☐ Motion Fee to be paid upon filing of the attached order.<br>☐ Other: _____ | Date: _____ |

**CLERK'S VERIFICATION**

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOR THE THIRTEEN JUDICIAL CIRCUIT |
| COUNTY OF GREENVILLE | ) | |
| | ) | Case No.: 2016-CP-23-3282 |
| Christopher Eric Russell, #158392, | ) | |
| | ) | |
| | ) | |
| Applicant, | ) | **STATE'S NOTICE OF MOTION** |
| | ) | **AND MOTION TO ALTER** |
| | ) | **OR AMEND JUDGMENT PURSUANT** |
| v. | ) | **TO RULE 59(E), SCRCP** |
| | ) | |
| State of South Carolina, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

Respondent now moves pursuant to Rule 59(E) and Rule 60, SCRCP, and all other applicable rules to alter or amend the judgement issued by this Court.

This matter is before this Court by way of an application for post-conviction relief (PCR). Following a hearing on the matter, this Court granted relief by order dated June 12, 2017, and filed June 15, 2017. In its order, this Court found Counsel was ineffective for failing to relay at twenty-year plea offer to Applicant and remanded the matter to the Court of General Sessions for resentencing in accordance with the State's original plea offer. Respondent received the order via United States Postal Service on June 19, 2017.

**DISCUSSION**

In making this motion, Respondent reserves and incorporates all previous arguments and authority presented to this Court. Respondent submits the judgment should be altered or amended based on the following:

At the evidentiary hearing, Counsel testified she received a plea offer of twenty years in writing from the solicitor in March 2011. She testified it was her usual practice to convey all plea offers and discuss the ramifications with her clients, although she did not have any notes in her file

confirming the practice was followed in this case. Counsel testified, at the time, it was her practice to convey plea offers in person rather than in writing. Counsel testified the State served Applicant with its LWOP notice was served on December 8, 2011, and her notes reflect she made jail visits on December 5, 2011, and December 7, 2011, which she believed were attempts to persuade Applicant to avoid LWOP by accepting the plea offer. Counsel testified Applicant maintained his innocence throughout the case and did not wish to plead guilty.

In contrast, Applicant testified the only offer ever communicated to him was to plead to life without parole, and he was unaware there was an offer of twenty years until he obtained copies of his file through a FOIA request after his conviction. Applicant testified he would have accepted the twenty-year offer. This Court found additional support for Applicant's testimony in the transcript because Counsel stated during sentencing the State offered to let Applicant plead "with life without parole on the table," despite Counsel's testimony she misspoke regarding the terms of the offer.

First, contrary to the Court's findings at present, the record reflects Counsel's performance was not deficient, and she did in fact convey the offer to Applicant. Respondent argues Applicant's self-serving statement he was unaware of the plea offer but would have accepted it is insufficient to meet his burden of proof in this action. Counsel testified it was her practice at the time to convey plea offers in person, and she made two visits to Applicant in jail during the week before the plea offered expired, which she believed were her attempts to persuade Applicant to accept the offer. Applicant's self-serving statement that the offer was not conveyed, without more, is insufficient to support a finding of deficiency. Counsel's testimony as to her usual practice is enough to refute Applicant's claim. See, e.g., Simuel v. State, 390 S.C. 267, 269, 710 S.E.2d 738, 738 (2010) (upholding PCR court's denial of relief where trial counsel testified he normally

informed clients of their right to appeal after trials, and although he did not specifically recall informing Applicant of his right to appeal, he probably had done so); Fraiser v. State, 351 S.C. 385, 388 570 S.E.2d 172, 174 (2002) (upholding PCR court's denial of relief where trial counsel testified her normal practice is not to discuss parole eligibility with clients, although she could not recollect whether she had discussed parole with Applicant). Moreover, this Court's reliance on Counsel's statement during sentencing is erroneous given Counsel's testimony this was a misstatement, and an offer to plead to LWOP is illogical when the record is reviewed as a whole.

Second, even if Counsel did not convey the offer, to show prejudice due to ineffective assistance of counsel where a plea offer has lapsed, Applicant must demonstrate a reasonable probability he would have accepted the earlier plea offer, *and* he must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it. Missouri v. Frye, 566 U.S. 133, 147 (2012) (emphasis added). While Applicant presented his own self-serving testimony he would have accepted the offer, he presented no evidence whatsoever that it would have been accepted by the trial court. The facts established at trial showed Applicant and a co-conspirator robbed the home of an elderly couple, bursting through the door, throwing the male victim to the ground, kicking him in his side, and tying his hands behind his back, then shoving a machine gun into his mouth, while demanding to know where his money and safe were, and telling him that they would kill him if he did not tell them. When the female victim returned home, she was also assaulted and held at gun point, while the robbers threatened to kill her husband if she did not tell them where the money and safe they (erroneously) believed to be in the house were located. Further, Applicant's PCR counsel conceded Applicant was eligible for LWOP due to his prior record, and evidence introduced by Applicant himself shows he has previous convictions for armed robbery and burglary. There is a

reasonable probability the plea court would have rejected a twenty-year sentence based on the heinousness of the crime and Applicant's prior record.

Accordingly, Applicant has not met his burden of proof to show Counsel's performance was deficient or that he was prejudiced by the allegedly deficient representation. For the foregoing reasons, Respondent requests that the order be altered or amended.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

June 29, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

---

CHRISTOPHER ERIC RUSSELL, #158392,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

---

**CERTIFICATE OF SERVICE**

---

The undersigned hereby certifies that a copy of the **Motion to Alter or Amend the Order Granting PCR in Part and Denying PCR in Part** has been served upon the following persons, by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**R. Mills Ariail, Jr., Esquire**
**Law Office of R. Mills Ariail, Jr.**
**11 North Irvine Street, Suite 11**
**Greenville, SC 29601**

**The Honorable Perry H. Gravely**
**Presiding Judge, 13th Judicial Circuit**
**Post Office Box 219**
**Pickens, SC 29671**

This 29th day of June, 2017.

Lindsey A. McCallister
Assistant Attorney General
Attorney for Respondent

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | ) | IN THE COURT OF COMMON PLEAS<br>Case No. 2016-CP-23-3282 |
| Christopher Eric Russell,<br>S.C.D.C. #158392 | ) | |
| Applicant, | ) | |
| vs. | ) | **ORDER** |
| State of South Carolina, | ) | |
| Respondent. | ) | ENTERED COMPUTER |



This matter comes before the Court upon the State's Motion to Alter/Amend Judgment of the Order granting this Post-Conviction Relief claim, filed on June 29, 2017. After fully considering said Motion, this Court finds that oral argument is not needed for a final determination of this Motion. The Court has reviewed the cases cited and they do not appear to support the State's argument, nor is there any additional evidence to support an amendment to the Order previously filed in this matter. Therefore, the State's Motion to Alter/Amend Judgment is DENIED.

IT IS SO ORDERED!

Perry H. Gravely
Presiding Judge

Greenville, South Carolina

July 21, 2017

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOR THE THIRTEEN JUDICIAL CIRCUIT |
| COUNTY OF GREENVILLE | ) | |
| | ) | Case No.: 2016-CP-23-3282 |
| Christopher Eric Russell, #158392, | ) | |
| | ) | |
| | ) | |
| Applicant, | ) | **NOTICE OF MOTION AND MOTION** |
| | ) | **FOR RELIEF PURSUANT TO** |
| | ) | **RULE 60(B)(1), SCRCP** |
| v. | ) | |
| | ) | |
| State of South Carolina, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

The State (Respondent) now moves pursuant to Rule 60(b)(1), SCRCP, and all other applicable rules for relief from this Court's Order Granting PCR in Part and Denying PCR in Part issued on June 15, 2017.

**I.**

Christopher Eric Russell (Applicant) is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the July 2011 term of the Greenville County Grand Jury for conspiracy (2011-GS-23-1118), kidnapping (2011-GS-23-1122), armed robbery (2011-GS-23-1123), and burglary, first degree (2011-GS-23-1124). Susannah Ross, Esquire, represented him. On February 13, 2013, Applicant proceeded to a jury trial and was found guilty as indicted on all charges. The Honorable R. Lawton McIntosh sentenced Applicant to confinement for five years for conspiracy and life without parole for each charge of kidnapping, armed robbery, and burglary, first degree. The sentences are set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an was perfected on Applicant's behalf by Robert Dudek, Esquire, and David B. Morgen, Esquire, of the South Carolina Office of

Indigent Defense – Appellate Division. The South Carolina Court of Appeals affirmed Applicant's convictions. State v. Russell, Op. No. 2015-UP-435 (filed on August 19, 2015). The Remittitur was issued on September 16, 2015.

Applicant filed an application for post-conviction relief (PCR) on June 1, 2016. An evidentiary hearing was convened on April 19, 2017, after which this Court granted relief in part by order dated June 12, 2017, and filed June 15, 2017. In its order, this Court found Counsel was ineffective for failing to relay at twenty-year plea offer to Applicant and remanded the matter to the Court of General Sessions for resentencing in accordance with the State's original plea offer.

**II.**

Rule 60(b)(1) of the South Carolina Rules of Civil Procedure provides, "On motion and upon such terms as are just, the court may relieve a party... from a final judgment, order, or proceeding..." on the basis of "mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1), SCRCP. "This rule is an appropriate remedy for good faith mistakes of fact if all other applicable factors are met." Hillman v. Pinion, 347 S.C. 253, 256, 554 S.E.2d 427, 439 (2001). "[W]here there is a good faith mistake of fact, and no attempt to thwart the judicial system, there is basis for relief." Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (1986). The decision to deny or grant a motion pursuant to Rule 60(b) is within the sound discretion of the trial judge. Ware v. Ware, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013). "An abuse of discretion occurs when the order of the court is controlled by an error of law or *where the order is based on factual findings that are without evidentiary support.*" Id. (emphasis added).

**III.**

At the evidentiary hearing, Applicant testified the only offer ever communicated to him was to plead to life without parole, and he was unaware there was an offer of twenty years until he

obtained copies of his file through a FOIA request after his conviction. Applicant testified he would have accepted the twenty-year offer.

In contrast, Counsel testified she received a plea offer of twenty years in writing from the solicitor in March 2011. She testified it was her usual practice to convey all plea offers and discuss the ramifications with her clients, although she did not have any notes in her file confirming the practice was followed in this case. Counsel testified it was her practice at the time to convey plea offers in person rather than in writing. Counsel testified the State served Applicant with notice of its intent to seek life without parole (LWOP) on December 8, 2011, and her notes reflect she made jail visits on December 5, 2011, and December 7, 2011, which she believed were attempts to persuade Applicant to avoid LWOP by accepting the plea offer. Counsel testified she believed the transcript reflected a misstatement, and Applicant was offered the chance to plead guilty *without* life without parole on the table, but Applicant maintained his innocence throughout the case and did not wish to plead guilty.

Importantly, in the section of the order granting Applicant relief, this Court specifically found support for Applicant's testimony in the transcript, which as originally transcribed and presented to the Court at the evidentiary hearing, reflected Counsel stated during sentencing the State offered Applicant "opportunities *to plead to life without parole* on the table a number of times." See Attachment 1. The parties and this Court reasonably relied on the accuracy of the transcript, as attested to in the court reporter's accompanying affidavit. See Attachment 2. Critically though, the original version of the transcript was materially inaccurate. The corrected version of the transcript, which was obtained by Respondent on September 18, 2017, reflects Counsel's version of events that Applicant was offered the chance to plead *without* life without parole on the table.

Following the evidentiary hearing, Counsel contacted the court reporter from Applicant's trial to challenge the transcript. By letter dated September 12, 2017, the court reporter sent Counsel a letter notifying Counsel of an inadvertent mistake in transcription. Specifically, the court reporter corrected her transcription of page 511, lines 4-6, so it now reads, "Mr. Russell has been offered opportunities to plead without life without parole on the table a number of times." See Attachment 3.

Relying on the original transcript, the Order of Dismissal specifically states "[t]his Court finds the trial transcript confirms Applicant's testimony. . . . Counsel's statement in the transcript is consistent with Applicant's testimony that he was unaware of any offers except to plead to a sentence of LWOP. This Court finds there is no evidence that the offer of twenty years was conveyed to Applicant." However, the corrected version of the transcript confirms Counsel's testimony, not Applicant's, and therefore, the credibility finding made by the Court, on which the grant of relief is based, is without evidentiary support and is based on an inaccurate transcription which has now come to light.

This Court's original findings of fact and conclusions of law centered on an error made by a court administration employee, through no fault of either Respondent or Applicant, which has now been corrected. However, Applicant is not entitled to relief predicated on a factual error. For the foregoing reasons, Respondent requests this Court make new findings of fact and conclusions of law in light of the corrected transcript and relieve Respondent from the terms of the Order requiring it to resentence Applicant as if the twenty-year plea offer had been accepted.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

September 20, 2017

# Attachment 1

MS. ROSS: Judge, I would just say that Mr. Russell, in light of the fact that you have no ability to change the sentence here, is looking at life without parole. Mr. Russell has been offered opportunities to plead to life without parole on the table a number of times. He has consistently maintained his innocence on this case.

THE COURT: If I'm not mistaken that was an offer that was actually made today during this trial, or am I incorrect on that?

MS. ROSS: That was true, that was an offer that was extended today during trial.

THE COURT: Mr. Moyer, as to the burglary, armed robbery and kidnapping, those are all LWOP. Would conspiracy be LWOP as well?

MR. MOYER: The conspiracy would not, it would be five years. If it please the Court, I have documentation I'd like to enter into the record regarding life without parole.

THE COURT: Absolutely, please.

MR. MOYER: I have the Notice of Intent to Seek Life Without Parole document that was served on the defendant and his attorney on December the 18th of 2011, based on his previous convictions. He has seven previous convictions for burglary, second degree. Which are all

# Attachment 2

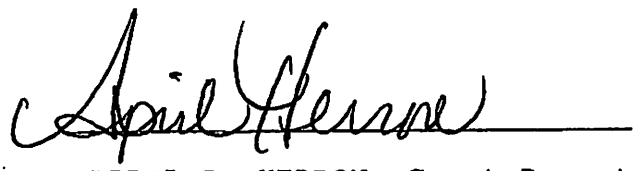
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 11-13 day of February, 2013.

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

June 17, 2013



APRIL P. HERRON, Court Reporter

# Attachment 3

April P. Herron
Circuit Court Reporter
Thirteenth Judicial Circuit
P.O. Box 17675
Greenville, SC 29606

September 12, 2017

Ms. Susannah Ross
Ross & Enderlin, PA
330 E. Coffee Street
Greenville, SC 29601

RE: State v. Christopher Russell
2011-GS-23-01118; 01122-01124

Dear Ms. Ross:

This letter is in regards to your challenging the accuracy of the transcript of record in the above-referenced case. Pursuant to the South Carolina Court Reporter Manual and Rule 607(i), SCACR as amended, I have reviewed the record and found that there was an inaccuracy. The inaccuracy is on Page 511, Lines 4-6.

Mr. Russell has been offered opportunities to plead to life without parole on the table a number of times.

CORRECT: Mr. Russell has been offered opportunities to plead without life without parole on the table a number of times.

That has been corrected in the record and the correct page of the transcript is attached.

Sincerely,

April P. Herron

April P. Herron
Circuit Court Reporter
Thirteenth Judicial Circuit

cc: Desiree R. Allen, Court Administration

MS. ROSS: Judge, I would just say that Mr. Russell, in light of the fact that you have no ability to change the sentence here, is looking at life without parole. Mr. Russell has been offered opportunities to plead without life without parole on the table a number of times. He has consistently maintained his innocence on this case.

THE COURT: If I'm not mistaken that was an offer that was actually made today during this trial, or am I incorrect on that?

MS. ROSS: That was true, that was an offer that was extended today during trial.

THE COURT: Mr. Moyer, as to the burglary, armed robbery and kidnapping, those are all LWOP. Would conspiracy be LWOP as well?

MR. MOYER: The conspiracy would not, it would be five years. If it please the Court, I have documentation I'd like to enter into the record regarding life without parole.

THE COURT: Absolutely, please.

MR. MOYER: I have the Notice of Intent to Seek Life Without Parole document that was served on the defendant and his attorney on December the 18th of 2011, based on his previous convictions. He has seven previous convictions for burglary, second degree. Which are all

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | |
| | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GREENVILLE | ) | |
| | ) | **2016-CP-23-3282** |
| | ) | |
| CHRISTOPHER E. RUSSELL, #158392 | ) | |
| | ) | |
| Applicant, | ) | |
| | ) | |
| vs | ) | AFFIDAVIT OF SERVICE BY MAIL |
| | ) | |
| STATE OF SOUTH CAROLINA, | ) | |
| | ) | |
| Respondent, | ) | |
| | ) | |

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Notice of Motion and Motion for Relief Pursuant to Rule 60(B)(1), SCRCP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**R. Mills Ariail, Jr., Esquire**
**Law Office of R. Mills Ariail, Jr.**
**11 North Irvine Street, Suite 11**
**Greenville, SC 29601**

DATED this the 20th day of September, 2017.

Deonna Rogers, Legal Assistant
For Respondent

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | ) | IN THE COURT OF COMMON PLEAS |
| Christopher Eric Russell, #158392 | ) | Case No.: 2016-CP-23-3282 |
| Applicant, | ) | |
| vs. | ) | **ORDER DENYING STATE'S RULE 60(B)(1) MOTION FOR RELIEF** |
| State of South Carolina, | ) | |
| Respondent. | ) | |



This matter comes before the Court upon the State's Rule 60(B)(1) Motion for Relief of Order issued June 15, 2017, granting the Applicant's PCR. The primary issue at the PCR hearing was whether counsel had communicated any offers to plea to less than Life without Parole.

The State's Motion was primarily based on a misstatement within the original transcript indicating "[the Applicant] has been offered opportunities to plead to life without parole...." The Applicant stated that counsel never communicated any offers, and counsel testified that she could not recall discussing any specific offers with the Applicant although she would normally have done so before trial. Nevertheless, there were no written notes confirming any such communications. In the corrected transcript from the underlying case, Counsel stated on the record that the Applicant "has been offered opportunities to plead without life without parole on the table a number of times. He has consistently maintained his innocence on this case." This confirms that offers were made, but it does not confirm that any offers were communicated to the Applicant. Therefore, the Court denies the State's Motion and affirms the Order of June 15, 2017.

AND IT IS SO ORDERED!

cc: Attorneys

Perry H. Gravely
Presiding Judge

Pickens, South Carolina

October 17, 2017

STATE OF SOUTH CAROLINA )
COUNTY OF Greenville )
STATE VS. )
Christopher Eric Russell )
AKA: )
Race: BLACK Sex: M Age: 41 )
DOB: [redacted]-1971 SS#: [redacted] )
Address: [redacted] )
City,State,Zip: Taylors, SC 29687 )
DL#: [redacted] SID#: )
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2301118
A/W#: I343870
Date of Offense: 12/18/2010
S.C. Code § : 16-17-0410
CDR Code #: 0049

**SENTENCE SHEET**

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

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Moyer, Mark | 64155 SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

| | | |
|---|---|---|
| *Fine: | | $ |
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ 100 |
| §14-1-211(A)(2) (DUI Surcharge) | $100 | $ |
| § 56-5-2995 (DUI Assessmcnt) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ 25 |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ 5 |
| [redacted]% to County (if paid in installments) | | $ |
| TOTAL | | $ |

**PTUP** _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wilkerson
Court Reporter: A. Herron
Presiding Judge
Judge Code: 2155
Sentence Date: 2-13-13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on JUL 19 2011 the Grand Jurors of Greenville County present upon their oath:

That CHRISTOPHER ERIC RUSSELL did in Greenville County, on or about the 18th day of December 2010, willfully and unlawfully combine with ANTONIAS PHILLIP WILLIAMS for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: burglary and/or armed robbery. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

**WITNESSES**

David Weiner

Greenville County Sheriffs Office

1/11/2011

**ARREST WARRANT NUMBER**
I343870

**ACTION OF GRAND JURY**

TRUE BILL

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*
*Date:* 2-13-13

**DOCKET NO. 2011-GS-23-** LMM 001118

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**July** **TERM 2011**

2-13-13

**THE STATE**

**vs.**

**CHRISTOPHER ERIC RUSSELL**

**Indictment for**

0049

**CONSPIRACY**

VIOLATION § 16-17-0410

# ARREST WARRANT

I-343870

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Greenville

THE STATE

against

Christopher Eric Russell

Address: [redacted]

TAYLORS, SC 29687-

Phone: SSN: [redacted]

Sex: M Race: B Height: 6 1 Weight: 191

DL State: SC DL #: [redacted]

DOB: [redacted]/1971 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: David Weiner - 0630

Offense: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Offense Code: 0049

Code/Ordinance Sec: 16-17-0410

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Christopher Russell on 1-10-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville County Bond Court
4 Mc Gee Street Room 116-A
Greenville, SC 29601

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

# AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

STATE OF SOUTH CAROLINA )
[X] County/ [ ] Municipality of )
Greenville )

Personally appeared before me the affiant David Weiner who being duly sworn deposes and says that defendant Christopher Eric Russell did within this county and state on or about 12/18/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville ) in the following particulars:

DESCRIPTION OF OFFENSE Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On the night of 12-18-2010 the defendant and a codefendant did plan and conspire to commit a burglary and an armed robbery. The defendant and codefendant approached the residence at [redacted] Caroline St. and forced their way inside while armed with deadly weapons. Once inside they tied up the victim and held him for more than twenty minutes. While the victim was restrained the defendant and codefendant ransacked the residence and took numerous personal items including jewelry, money, and cellular phones. Before the defendant and codefendant could flee the Sheriff's Office arrived. The codefendant was apprehended immediately after the offense. This defendant was able to elude arrest. This defendant was implicated by the codefendant in a written statement. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA )
[X] County/ [ ] Municipality of )
Greenville )

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone (864)467-5252

# ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that [redacted] on or about 12/18/2010 defendant Christopher Eric Russell did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville ) as set forth below:

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 01/05/2011 (L.S.)

Signature of Issuing Judge

Leila Foster

Judge Code: 5762 5031

Judge's Address 4 Mc Gee Street Room 116-A
Grenville, SC 29601-2256

Judge's Telephone (864)467-5315

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

APPENDIX - Page 797 of 798

STATE OF SOUTH CAROLINA )
COUNTY OF Greenville )
STATE VS. )
Christopher Eric Russell )
AKA: )
Race: BLACK Sex: M Age: 41 )
DOB: [redacted]-1971 SS#: [redacted] )
Address: [redacted] )
City,State,Zip: Taylors, SC 29687 )
DL#: [redacted] SID#: )
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2301122
A/W#: I343869
Date of Offense: 12/18/2010
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADS
TO: Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

| Moyer, Mark | 64155 | | | |
|---|---|---|---|---|
| | SC Bar# | Defendant | Attorney for Defendant | SC Bar# |

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of LWOP - Life without possibility of Parole days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

| | | |
|---|---|---|
| *Fine: | | $ |
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ 100 |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ |
| § 56-5-2995 (DUI Assessment) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ 25 |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ 5 |
| % to County (if paid in installments) | | $ |
| TOTAL | | $ |

**PTUP** _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickensimer
Court Reporter: A. Herron
Presiding Judge
Judge Code: 2155
Sentence Date: 2-13-13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

INDICTMENT FOR
KIDNAPPING

JUL 19 2011

At a Court of General Sessions, convened on the Grand Jurors of Greenville County present upon their oath:

That CHRISTOPHER ERIC RUSSELL did in Greenville County, on or about the 18th day of December, 2010, unlawfully seize, abduct, confine, inveigle, decoy or carry away JEFFERY LYLES and/or ELAINE LYLES, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

**WITNESSES**

David Weiner

Greenville County Sheriffs Office

1/10/2011

**ARREST WARRANT NUMBER**
I343869

**ACTION OF GRAND JURY**

TRUE BILL

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*
*Date:* 2-13-13

**DOCKET NO. 2011-GS-23- LMM 001122**

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**July TERM 2011**

2-13-13

**THE STATE**

**vs.**

**CHRISTOPHER ERIC RUSSELL**

**Indictment for**

0095

**KIDNAPPING**

VIOLATION § 16-03-0910

RECEIVED
FEB 25 2011
Clerk of Court
Greenville County

APPENDIX - Page 740 of 768

# ARREST WARRANT

5531

1-13-11

I-343869

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Greenville

Entered On

1-2010-192853

THE STATE

against

Christopher Eric Russell

Address: [redacted]

TAYLORS, SC 29687-

Phone: SSN: [redacted]

Sex: M Race: B Height: 6 1 Weight: 191

DL State: SC DL #: [redacted]

DOB: [redacted]/1971 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: David Weiner - 0630

Offense: Kidnapping / Kidnapping

Offense Code: 0095

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Christopher Russell on 1-10-11

Signature of Constable/Law Enforcement Officer #999 BPS (CAGE)

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

# AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Greenville

Personally appeared before me the affiant David Weiner who being duly sworn deposes and says that defendant Christopher Eric Russell did within this county and state on or about 12/18/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville ) in the following particulars:

DESCRIPTION OF OFFENSE Kidnapping / Kidnapping

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On the night of 12-18-2010 the defendant and a codefendant did plan and conspire to commit a burglary and an armed robbery. The defendant and codefendant approached the residence at [redacted] Caroline St. and forced their way inside while armed with deadly weapons. Once inside they tied up the victim and held him for more than twenty minutes. While the victim was restrained the defendant and codefendant ransacked the residence and took numerous personal items including jewelry, money, and cellular phones. Before the defendant and codefendant could flee the Sheriff's Office arrived. The codefendant was apprehended immediately after the offense. This defendant was able to elude arrest. This defendant was implicated by the codefendant in a written statement. This offense occurred in Greenville County.

Signature of Affiant #630 621

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone (864)467-5252

# ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 12/18/2010 defendant Christopher Eric Russell did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville ) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 01/05/2011

(L.S.)

Signature of Issuing Judge

Leila Foster

Judge Code: 5762 5031

Judge's Address 4 Mc Gee Street Room 116-A
Grenville, SC 29601-2256

Judge's Telephone (864)467-5315

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

APPENDIX - Page 741 of 768

STATE OF SOUTH CAROLINA )
COUNTY OF Greenville )
STATE VS. )
Christopher Eric Russell )
AKA: )
Race: BLACK Sex: M Age: 41 )
DOB: [redacted]-1971 SS#: [redacted] )
Address: [redacted] )
City,State,Zip: Taylors, SC 29687 )
DL#: [redacted] SID#: )
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2301123
A/W#: I343868
Date of Offense: 12/18/2010
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

**SENTENCE SHEET**

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

| Moyer, Mark | 64155 | | | |
|---|---|---|---|---|
| | SC Bar# | Defendant | Attorney for Defendant | SC Bar# |

WHEREFORE, the Defendant is commited to the ☐ ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LWOP Life without possibility of Parole days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

| | | |
|---|---|---|
| *Fine: | | $ |
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ 100 |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ |
| § 56-5-2995 (DUI Assessment) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ 25 |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ 5 |
| [redacted]% to County (if paid in installments) | | $ |
| [redacted]OTAL | | $ |

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickensamer
Court Reporter: A. Herron
Presiding Judge
Judge Code: 2155
Sentence Date: 2-13-13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

INDICTMENT FOR
**ARMED ROBBERY**

At a Court of General Sessions, convened on JUL 19 2011 the Grand Jurors of Greenville County present upon their oath:

That CHRISTOPHER ERIC RUSSELL did in Greenville County, on or about the 18th day of December, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as jewelry, U.S. currency, cellular phones, a watch and/or other miscellaneous items from the person or presence of ALVIN JEFFERY LYLES and/or ELAINE LYLES. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

**WITNESSES**

David Weiner

Greenville County Sheriffs Office

1/10/2011

**ARREST WARRANT NUMBER**
I343868

**ACTION OF GRAND JURY**

TRUE BILL

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*
*Date:* 2-13-13

**DOCKET NO. 2011-GS-23-** LMM 001123

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**July TERM 2011**

2-13-13

**THE STATE**

**vs.**

**CHRISTOPHER ERIC RUSSELL**

**Indictment for**

0139

**ARMED ROBBERY**

VIOLATION § 16-11-0330

# ARREST WARRANT

I-343868

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Greenville

THE STATE

against

Christopher Eric Russell

Address: [redacted]

TAYLORS, SC 29687-

Phone: SSN: [redacted]

Sex: M Race: B Height: 6 1 Weight: 191

DL State: SC DL #: [redacted]

DOB: [redacted]/1971 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: David Weiner - 0630

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Christopher Russell on 1-10 @ 1:44 pm

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

# AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

STATE OF SOUTH CAROLINA )
[X] County/ [V] Municipality of )
Greenville )

Personally appeared before me the affiant David Weiner who being duly sworn deposes and says that defendant Christopher Eric Russell did within this county and state on or about 12/18/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville ) in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On the night of 12-18-2010 the defendant and a codefendant did plan and conspire to commit a burglary and an armed robbery. The defendant and codefendant approached the residence at [redacted] Caroline St. and forced their way inside while armed with deadly weapons. Once inside they tied up the victim and held him for more than twenty minutes. While the victim was restrained the defendant and codefendant ransacked the residence and took numerous personal items including jewelry, money, and cellular phones. Before the defendant and codefendant could flee the Sheriff's Office arrived. The codefendant was apprehended immediately after the offense. This defendant was able to elude arrest. This defendant was implicated by the codefendant in a written statement. This offense occurred in Greenville County.

Signature of Affiant 630

STATE OF SOUTH CAROLINA )
[X] County/ [ ] Municipality of )
Greenville )

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone (864)467-5252

# ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 12/18/2010 defendant Christopher Eric Russell did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville ) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 01/05/2011

(L.S.)

Signature of Issuing Judge

Leila Foster

Judge Code: 5762 5031

Judge's Address 4 Mc Gee Street Room 116-A
Grenville, SC 29601-2256

Judge's Telephone (864)467-5315

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

APPENDIX - Page 743 of 768

STATE OF SOUTH CAROLINA )
COUNTY OF Greenville )
STATE VS. )
Christopher Eric Russell )
AKA: )
Race: BLACK Sex: M Age: 41 )
DOB: [redacted]-1971 SS#: [redacted] )
Address: [redacted] )
City,State,Zip: Taylors, SC 29687 )
DL#: [redacted] SID#: )
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2301124
A/W#: 1343867
Date of Offense: 12/18/2010
S.C. Code § : 16-11-0311
CDR Code #: 0079

**SENTENCE SHEET**

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

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 64155 _____ _____ _____
Moyer, Mark SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of LWOP - Life without Possibility of Parole days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

| | | |
|---|---|---|
| *Fine: | | $ |
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ 100 |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ |
| § 56-5-2995 (DUI Assessment) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ 25 |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ 5 |
| % to County (if paid in installments) | | $ |
| TOTAL | | $ |

**PTUP** _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickensamer
Court Reporter: A. Herron

Presiding Judge _____
Judge Code: 4155
Sentence Date: 2-13-13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

INDICTMENT FOR
**BURGLARY FIRST DEGREE**

JUL 19 2011

At a Court of General Sessions, convened on the Grand Jurors of Greenville County present upon their oath:

That CHRISTOPHER ERIC RUSSELL did in Greenville County, on or about the 18th day of December 2010, willfully and unlawfully enter the dwelling of ALVIN JEFFERY LYLES and/or ELAINE LYLES, located at [redacted] Caroline Street, Greenville, South Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: the entering or remaining did occur during the hours of darkness, and the defendant was armed with a deadly weapon. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

**WITNESSES**

David Weiner

Greenville County Sheriffs Office

1/10/2011

**ARREST WARRANT NUMBER**

I343867

**ACTION OF GRAND JURY**

TRUE BILL

*Foreperson of Grand Jury*

**VERDICT**

X Kimberly Jo Wells

*Foreperson of Petit Jury*

*Date:* 2-13-13

**DOCKET NO. 2011-GS-23- LMM 001124**

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**July TERM 2011**

2-13-13

**THE STATE**

**vs.**

**CHRISTOPHER ERIC RUSSELL**

**Indictment for**

0079

**BURGLARY FIRST DEGREE**

VIOLATION § 16-11-0311

RECEIVED

FEB 25 2011

Clerk of Court
Greenville County

# ARREST WARRANT

I-343867

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Greenville

THE STATE

against

Christopher Eric Russell

Address: [redacted]

TAYLORS, SC 29687-

Phone: SSN: [redacted]

Sex: M Race: B Height: 6 1 Weight: 191

DL State: SC DL #: [redacted]

DOB: [redacted]/1971 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: David Weiner - 0630

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

**RETURN**

A copy of this arrest warrant was delivered to defendant Christopher Russell on 1-10-11

Signature of Constable/Law Enforcement Officer

**RETURN WARRANT TO:**

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

5531 1-13-11 Entered On NCIC

1-2010-192853

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

# AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 516

STATE OF SOUTH CAROLINA )
[X] County/ [ ] Municipality of )
Greenville )

Personally appeared before me the affiant David Weiner who being duly sworn deposes and says that defendant Christopher Eric Russell did within this county and state on or about 12/18/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville ) in the following particulars:

**DESCRIPTION OF OFFENSE** Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On the night of 12-18-2010 the defendant and a codefendant did plan and conspire to commit a burglary and an armed robbery. The defendant and codefendant approached the residence at [redacted] Caroline St. and forced their way inside while armed with deadly weapons. Once inside they tied up the victim and held him for more than twenty minutes. While the victim was restrained the defendant and codefendant ransacked the residence and took numerous personal items including jewelry, money, and cellular phones. Before the defendant and codefendant could flee the Sheriff's Office arrived. The codefendant was apprehended immediately after the offense. This defendant was able to elude arrest. This defendant was implicated by the codefendant in a written statement. This offense occurred in Greenville County

Signature of Affiant

STATE OF SOUTH CAROLINA )
[X] County/ [ ] Municipality of )
Greenville )

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone (864)467-5252

COMPUTER ENTERED

# ARREST WARRANT

**TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:**

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 12/18/2010 defendant Christopher Eric Russell did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville ) as set forth below:

**DESCRIPTION OF OFFENSE:** Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 01/05/2011

(L.S.)

Signature of Issuing Judge

Leila Foster

Judge Code: 5762 5031

Judge's Address 4 Mc Gee Street Room 116-A
Grenville, SC 29601-2256

Judge's Telephone (864)467-5315

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

12:48:22 Thursday, July 07, 2016

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/07/16
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 158392 LOC: **MCCORMICK**
**RUSSELL, CHRISTOPHE ERIC** SCDC CLASSIFICATION..: **VIOLENT**
OFFENDER TYPE...: **ADULT-STRAIGHT SENTENCE** SEXUAL REGISTRY..: **Y**
SEXUAL PREDATOR..: **NOT APP**
DNA STATUS.....: **COMPLETED**
GPS REQUIREMENT..: **N**
PREA DECISION....:

CURRENT SENTENCE: CONSECUTIVE SENTENCE ..:
**LIFE** CURRENT SENT START DATE: **03/18/2012**
PROJECTED COMPLETION DATES
MAXOUT DATE .....: **99/99/9999** CURRENT EWC .:
YOA SIX YEAR DATE: CURRENT EEC .:
INITIAL PAROLE DATE: **00/00/0000** NEXT PAROLE HEARING DATE: **00/00/0000**

TOTAL GT DAYS EARNED .....: **000000** LABOR CREW/WORK PROG DATE: **99/99/9999**
TOTAL EARNED WORK CREDITS ..: **000000** LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: **000000** **CURRENT OR PRIOR SEX CONDUCT CONVICT**
TOTAL EXTRA EARNED CREDITS .: **000** SUPERVISED REENTRY DATE..: **00/00/00**
TOTAL SERVICE TIME EARNED ..: **000000** ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

# South Carolina Department of Corrections

Classification Summary Reports

Date: Thursday, July 7, 2016

## Classification Summary Reports

Inmate Number

158392

Submit

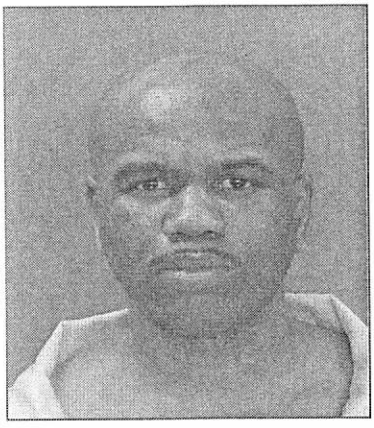
| SCDC ID | Name | Sex/Race | Status |
|---|---|---|---|
| 00158392 | RUSSELL, CHRISTOPHE ERIC | M B | INCARCERATED |
| Y 00158392 | RUSSELL, CHRISTOPHE ERIC | M B | RELEASE |

**Classification Summary Report for RUSSELL, CHRISTOPHE ERIC :**

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 07/07/2016

SCDC# 00158392 RUSSELL, CHRISTOPHE ERIC FBI# 742202JA5



OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: MCCORMICK

SECURITY/CUST: 3 MININMUM IN

CURR INCARC SENT: 999 YRS 0 MOS 0 DAYS

VICTIM WITNESS: SEPREQ:Y

MED CLASS:

INST RESTRICT: NO RESTRICTION

MENTAL CLASS: NMH (NO MENTAL HEALTH TRE

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: Y

DNA: C

AGE: 45

RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: F2 0134 A

PROJ MAXOUT DATE: -

PROJ PAROLE DATE: -

EWC JOB: GENERAL WORKER

ASSIGNMENT: BLDING DETAIL BLDG. #2

EWC LEVEL: 2F5 EEC LEVEL:-

EDUC PGM: NO CURR EDUC PROGRAM

---

PREVIOUS NUMBERS:

Y00158392

SENTENCE SENTENCE

| CURRENT OFFENSES | YRS | MOS | DYS | COUNTY | START | V/NV | CAT | INDICT |
|---|---|---|---|---|---|---|---|---|
| INTERFERING WITH OFFICER | 0 | 0 | 30 | GREENVILLE | 08/17/2012 | N | 2 | |
| MOVING TRAFFIC VIOL | 0 | 0 | 30 | GREENVILLE | 08/17/2012 | N | 1 | |
| DRIVING UNDER SUSPENSION | 0 | 0 | 90 | GREENVILLE | 08/17/2012 | N | 1 | |
| DRIVING UNDER SUSPENSION | 0 | 0 | 120 | GREENVILLE | 08/17/2012 | N | 1 | |
| KIDNAPPING | 999 | 99 | 999 | GREENVILLE | 03/18/2012 | V | 5 | 11GS23-1122 |
| ARMED ROBBERY | 999 | 99 | 999 | GREENVILLE | 03/18/2012 | V | 4 | 11GS23-1123 |
| CRIMINAL CONSPIRACY | 5 | 0 | 0 | GREENVILLE | 03/18/2012 | N | 2 | 11GS23-1118 |
| BURGLARY-1ST DEGREE | 999 | 99 | 999 | GREENVILLE | 03/18/2012 | V | 4 | 11GS23-1124 |
| RESIST ARREST/ASSLT OFF. | 5 | 0 | 0 | GREENVILLE | 01/10/2011 | N | 4 | 11GS2301121 |
| FAIL TO STOP FOR OFFICER | 5 | 0 | 0 | GREENVILLE | 01/10/2011 | N | 2 | 11GS231119 |

| | SENTENCE | | | | | SENTENCE | | |
|---|---|---|---|---|---|---|---|---|
| COMPLETED OFFENSES | YRS | MOS | DYS | COUNTY | START | V/NV | CAT | INDICT |
| ESCAPE | 0 | 6 | 0 | GREENVILLE | 06/28/1994 | N | 4 | 94GS233937 |
| LARCENY | 10 | 0 | 0 | PICKENS | 10/29/1991 | N | 2 | 91GS39938 |
| BURGLARY-2ND DEGREE | 15 | 0 | 0 | PICKENS | 10/29/1991 | V | 4 | 91GS39937 |
| BURGLARY-2ND DEGREE | 5 | 0 | 0 | GREENVILLE | 07/18/1991 | V | 4 | 91GS234535 |
| LARCENY | 5 | 0 | 0 | GREENVILLE | 07/18/1991 | N | 2 | 91GS234533 |
| ARMED ROBBERY | 21 | 0 | 0 | GREENVILLE | 01/15/1991 | V | 4 | 90GS238135 |
| ARMED ROBBERY | 5 | 0 | 0 | GREENVILLE | 01/15/1991 | N | 4 | 90GS238138 |
| MULTIPLE TRAFFIC OFFENSE | 0 | 0 | 60 | GREENVILLE | 10/11/1990 | N | 2 | 90GS1331 |

PRIOR COMMITMENTS OVER 90 DAYS:

*INMATE HAS NO PRIORS*

| | | SENTENCE | | | | | SENTENCE | | |
|---|---|---|---|---|---|---|---|---|---|
| PREVIOUS OFFENSES | PREVSCDCID | YRS | MOS | DYS | COUNTY | START | V/NV | CAT | INDICT |
| BURGLARY-3RD DEGREE | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00007 |
| LARCENY | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00006 |
| GRAND LARCENY | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00009 |
| GRAND LARCENY | Y00158392 | 0 | 10 | 0 | GREENVILLE | 03/25/1989 | N | 2 | 00001 |
| VEHICLE THEFT | Y00158392 | 0 | 10 | 0 | ANDERSON | 03/25/1989 | N | 2 | 00001 |
| VEHICLE THEFT | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00001 |
| VEHICLE THEFT | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00001 |
| BREAKING INTO MOTOR VEH | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00010 |
| RECEIVE STOLEN PROPERTY | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00008 |
| MALIC INJURY/PERS PROPTY | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00011 |
| COMBINED OF 06 | Y00158392 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | | 00001 |

DETAINERS (HOLD,WANTED,NOTIFY):

*NO DETAINERS*

ESCAPES:

| | | |
|---|---|---|
| 03/17/2009 | | OTHER ESCAPE RELATED |
| 05/31/1993 | CLASS I | ATTEMPTED ESCAPE |

CRIMINAL CHARGES:

| | |
|---|---|
| 06/04/1993 | ATTEMPTED ESCAPE |

ASSAULTIVE DISCIPLINARIES:

| | | | |
|---|---|---|---|
| 12/09/2000 | FIGHTING WITHOUT A WEAPON | CLOSED | OTHER ACTION TAKEN/INFORM |
| 06/20/1994 | FIGHTING WITHOUT A WEAPON | CONVICTED | MINOR DISC. HEARING |

| | | | |
|---|---|---|---|
| 03/20/1993 | FIGHTING WITHOUT A WEAPON | CONVICTED | MINOR DISC. HEARING |

PREVIOUS ASSAULTIVE DISCIPLINARIES:

*NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY*

NON-ASSAULTIVE DISCIPLINARIES:

| | | | |
|---|---|---|---|
| 07/22/2001 | USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT | CONVICTED | MAJOR DISC. HEARING |
| 10/27/1998 | OUT OF PLACE | DISMISSED | MINOR DISC. HEARING |
| 03/18/1998 | OUT OF PLACE | CLOSED | MINOR DISC. HEARING |
| 10/07/1992 | POSSESSION OF CONTRABAND | CONVICTED | MAJOR DISC. HEARING |

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

*NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY*

HISTORY OF MOVEMENTS:

| | | | |
|---|---|---|---|
| 02/15/2013 | MCCORMICK | INCARCERATED | RETURN FROM COURT |
| 02/11/2013 | GREENVILLE CO | AUTH ABSENCE (AWL) | TO COURT |
| 01/15/2013 | MCCORMICK | INCARCERATED | RETURN FROM COURT |
| 01/15/2013 | GREENVILLE CO | AUTH ABSENCE (AWL) | TO COURT |
| 11/07/2012 | MCCORMICK | INCARCERATED | RETURN FROM COURT |
| 11/07/2012 | GREENVILLE CO | AUTH ABSENCE (AWL) | TO COURT |
| 05/23/2012 | MCCORMICK | INCARCERATED | ADMINISTRATIVE |
| 12/12/2011 | KIRKLAND | INCARCERATED | R&E PROCESSING |
| 12/12/2011 | PERRY | INCARCERATED | NEW ADMISSION |
| 07/02/2002 | UNK | RELEASE | EXPIRATION OF SENTENCE |
| 01/30/2002 | MCCORMICK | INCARCERATED | ADMINISTRATIVE |
| 01/29/2002 | KIRKLAND | INCARCERATED | MEDICAL |
| 01/16/2002 | MCCORMICK | INCARCERATED | ADMINISTRATIVE |
| 01/15/2002 | KIRKLAND | INCARCERATED | MEDICAL |
| 12/23/2001 | MCCORMICK | INCARCERATED | ADMINISTRATIVE |
| 12/22/2001 | TUOMEY REGIONAL | AUTH ABSENCE (AWL) | MEDICAL |
| 11/30/1999 | MCCORMICK | INCARCERATED | ADMINISTRATIVE |
| 11/19/1999 | TYGER RIVER UPPER | INCARCERATED | ADMINISTRATIVE |
| 09/02/1993 | EVANS | INCARCERATED | ADMINISTRATIVE |
| 05/31/1993 | PERRY R&E | INCARCERATED | DISCIPLINARY |
| 04/26/1993 | PERRY | INCARCERATED | ADMINISTRATIVE |
| 03/20/1993 | PERRY R&E | INCARCERATED | DISCIPLINARY |
| 12/21/1992 | PERRY | INCARCERATED | ADMINISTRATIVE |
| 10/30/1991 | KIRKLAND | INCARCERATED | ADMINISTRATIVE |
| 10/30/1991 | PERRY R&E | INCARCERATED | RETURN FROM COURT |
| 10/28/1991 | PICKENS CO | AUTH ABSENCE (AWL) | TO COURT |
| 07/22/1991 | KIRKLAND | INCARCERATED | ADMINISTRATIVE |
| 07/19/1991 | PERRY R&E | INCARCERATED | RETURN FROM COURT |
| 07/17/1991 | GREENVILLE CO | AUTH ABSENCE (AWL) | TO COURT |
| 01/17/1991 | KIRKLAND | INCARCERATED | RETURN FROM COURT |
| 01/11/1991 | GREENVILLE CO | AUTH ABSENCE (AWL) | TO COURT |
| 01/02/1991 | KIRKLAND | INCARCERATED | ADMINISTRATIVE |
| 12/27/1990 | KIRKLAND | INCARCERATED | LOCKUP-INVESTIGATION |
| 12/21/1990 | KIRKLAND | INCARCERATED | YOA CONVERSION |

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION | START DATE | END DATE | TERMINATION REASON | JOB LVL |
|---|---|---|---|---|
| GENERAL WORKER | 12/17/2013 | - | | 2F5 |

| | | | | |
|---|---|---|---|---|
| BAKER | 09/11/2012 | 04/09/2013 | INMATE REQUEST | 2F7 |
| FOOD SERVICE AIDE | 06/08/2012 | 09/10/2012 | PROMOTION | 2F5 |
| FOOD SERVICE AIDE | 06/05/2012 | 06/07/2012 | MI ELIGIBLE FOR LEVEL 2 | 3F5 |
| GENERAL WORKER | 05/24/2012 | 05/24/2012 | CUSTODY REVIEW | 3F5 |
| GENERAL WORKER | 05/24/2012 | 06/04/2012 | LATERAL TRANSFER | 2F5 |
| FOOD SERVICE AIDE | 11/08/2001 | 07/02/2002 | RELEASED/PAROLED | 3F5 |
| WARDKEEPER ASSISTANT | 08/07/2001 | 11/07/2001 | LATERAL TRANSFER | 3F5 |
| FOOD SERVICE AIDE | 03/17/2000 | 07/22/2001 | PLACED IN ST/SP CUSTODY | 2F5 |
| ELECTRONIC ASSEMBLER II | 06/10/1997 | 11/24/1999 | PLACED IN ST/SP CUSTODY | 2F5 |
| PAINTER | 05/02/1997 | 06/09/1997 | LATERAL TRANSFER | 2F5 |
| PAINTER | 01/23/1996 | 05/01/1997 | MI ELIGIBLE FOR LEVEL 2 | 3F5 |
| PAINTER HELPER | 09/08/1995 | 01/22/1996 | PROMOTION | 5F5 |
| CUSTODIAL WORKER | 07/07/1995 | 09/07/1995 | LATERAL TRANSFER | 7F7 |
| SENIOR COOK | 06/16/1995 | 06/29/1995 | UNSAT JOB PERFORM | 2F7 |
| SR DINING ROOM OPERATOR | 06/08/1995 | 06/15/1995 | PROMOTION | 3F7 |
| SENIOR COOK | 12/08/1994 | 04/30/1995 | LOCKUP-INVESTIGATION | 2F7 |
| COOK | 06/23/1994 | 12/07/1994 | PROMOTION | 3F7 |
| BAKER | 05/13/1994 | 06/12/1994 | LOCKUP-INVESTIGATION | 3F7 |
| COOK | 02/02/1994 | 02/16/1994 | UNSAT JOB PERFORM | 3F7 |
| COOK | 09/14/1993 | 01/16/1994 | LOCKUP-INVESTIGATION | 3F7 |
| CUSTODIAL WORKER | 09/13/1993 | 09/13/1993 | LATERAL TRANSFER | 7F7 |
| GENERAL WORKER | 02/10/1993 | 03/20/1993 | INSTIT TRANSFER | 7F5 |
| FOOD SERVICE AIDE | 01/27/1993 | 02/09/1993 | DEMOTION | 5F7 |
| ADMIN. RUNNER/MESSENGER | 11/03/1992 | 12/21/1992 | INSTIT TRANSFER | 5F7 |
| FOOD SERVICE AIDE | 09/10/1992 | 10/07/1992 | UNSAT JOB PERFORM | 5F7 |
| BOILER OPERATOR HELPER | 04/27/1992 | 08/14/1992 | LOCKUP-INVESTIGATION | 5F7 |
| FOOD SERVICE AIDE | 03/17/1992 | 04/08/1992 | UNSAT JOB PERFORM | 5F7 |
| FOOD SERVICE AIDE | 12/23/1991 | 03/08/1992 | LOCKUP-INVESTIGATION | 5F7 |
| COOK | 10/31/1991 | 11/26/1991 | UNSAT JOB PERFORM | 3F7 |
| COOK | 10/11/1991 | 10/30/1991 | INSTIT TRANSFER | 3F7 |
| FOOD SERVICE AIDE | 07/22/1991 | 10/10/1991 | PROMOTION | 5F7 |
| FOOD SERVICE AIDE | 05/29/1991 | 07/19/1991 | INSTIT TRANSFER | 5F7 |
| CUSTODIAN HELPER | 02/21/1991 | 05/28/1991 | INMATE REQUEST | 5F7 |
| FOOD SERVICE AIDE | 12/21/1990 | 02/20/1991 | INMATE REQUEST | 5F7 |

HISTORY OF EARNED EDUCATION CREDITS:

*NO SCHOOL ASSIGNMENTS*

********** END OF REPORT **********

Create PDF

Source : SummaryReport.jsp


[Version: *1.4.12* Built: *02/03/2015 11:57:23 AM* Time: *12:48:40 PM*]

# South Carolina Department of Corrections

Classification Summary Reports

Date: Thursday, July 7, 2016

## Classification Summary Reports

Inmate Number: 158392

Submit

| SCDC ID | Name | Sex/Race | Status |
|---|---|---|---|
| 00158392 | RUSSELL, CHRISTOPHE ERIC | M B | INCARCERATED |
| Y 00158392 | RUSSELL, CHRISTOPHE ERIC | M B | RELEASE |

**Classification Summary Report for RUSSELL, CHRISTOPHE ERIC :**

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 07/07/2016

SCDC# Y00158392 RUSSELL, CHRISTOPHE ERIC FBI# 742202JA5

OFFENDER TYPE:

INSTITUTION: UNK

SECURITY/CUST: L4 CLOSE CUSTODY (OLD)

CURR INCARC SENT: 0 YRS 0 MOS 0 DAYS

VICTIM WITNESS: SEPREQ:N

MED CLASS:

INST RESTRICT: -

MENTAL CLASS: -

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: N

AGE: 45

RESIDENT STABILITY:

DORMROOMBUNK_CODE:

PROJ MAXOUT DATE: -

PROJ PAROLE DATE: 12/31/1990

EWC JOB: NO CURRENT JOB

ASSIGNMENT:

EWC LEVEL: 0 EEC LEVEL:

EDUC PGM: NO CURR EDUC PROGRAM

---

PREVIOUS NUMBERS:

*NO PREVIOUS NUMBERS*

CURRENT OFFENSES

*NO CURRENT OFFENSES*

| COMPLETED OFFENSES | SENTENCE YRS | MOS | DYS | COUNTY | START | SENTENCE V/NV | CAT | INDICT |
|---|---|---|---|---|---|---|---|---|
| VEHICLE THEFT | 0 | 10 | 0 | ANDERSON | 03/25/1989 | N | 2 | 00001 |
| GRAND LARCENY | 0 | 10 | 0 | GREENVILLE | 03/25/1989 | N | 2 | 00001 |
| VEHICLE THEFT | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00001 |
| VEHICLE THEFT | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00001 |
| COMBINED OF 06 | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | | 00001 |
| LARCENY | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00006 |
| BURGLARY-3RD DEGREE | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00007 |
| RECEIVE STOLEN PROPERTY | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00008 |
| GRAND LARCENY | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00009 |
| BREAKING INTO MOTOR VEH | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00010 |
| MALIC INJURY/PERS PROPTY | 0 | 0 | 0 | GREENVILLE | 02/24/1989 | N | 2 | 00011 |

PRIOR COMMITMENTS OVER 90 DAYS:

*INMATE HAS NO PRIORS*

OFFENSES UNDER PREVIOUS NUMBER:

*NO PREVIOUS OFFENSES*

DETAINERS (HOLD,WANTED,NOTIFY):

*NO DETAINERS*

ESCAPES:

*NO ESCAPE HISTORY*

CRIMINAL CHARGES:

*NO CRIMINAL CHARGES HISTORY*

ASSAULTIVE DISCIPLINARIES:

*NO ASSAULTIVE DISCIPLINARY HISTORY*

PREVIOUS ASSAULTIVE DISCIPLINARIES:

*NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY*

NON-ASSAULTIVE DISCIPLINARIES:

*NO NON-ASSAULTIVE DISCIPLINARIES HISTORY*

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

*NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY*

HISTORY OF MOVEMENTS:

| | | | |
|---|---|---|---|
| 12/21/1990 | UNK | RELEASE | YOA CONVERSION |
| 12/17/1990 | KIRKLAND | INCARCERATED | RETURN FROM COURT |
| 11/29/1990 | GREENVILLE CO | AUTH ABSENCE (AWL) | TO COURT |
| 10/31/1990 | KIRKLAND | INCARCERATED | ADMINISTRATIVE |
| 10/17/1990 | BROAD RIVER R&E | INCARCERATED | RETURN FROM COURT |
| 10/16/1990 | PERRY R&E | INCARCERATED | RETURN FROM COURT |
| 10/10/1990 | GREENVILLE CO | AUTH ABSENCE (AWL) | TO COURT |
| 09/21/1990 | BROAD RIVER R&E | INCARCERATED | YOA PAROLE VIOLATOR |
| 09/19/1990 | BROAD RIVER R&E | INCARCERATED | ADMINISTRATIVE |
| 09/12/1990 | PERRY R&E | INCARCERATED | PENDING PAROLE ACTION |
| 12/21/1989 | GREENVILLE CO | YOA PAROLE - CONDITIONAL | PAROLE BOARD ACTION |

| | | | |
|---|---|---|---|
| 12/04/1989 | BLUE RIDGE | PRE-RELEASE | PRE-RELEASE |
| 07/18/1989 | GIVENS | INCARCERATED | ADMINISTRATIVE |
| 07/18/1989 | PERRY R&E | INCARCERATED | RETURN FROM COURT |
| 07/09/1989 | ANDERSON CO | AUTH ABSENCE (AWL) | TO COURT |
| 06/19/1989 | GIVENS | INCARCERATED | ADMINISTRATIVE |
| 05/30/1989 | PERRY R&E | INCARCERATED | NEW ADMISSION |

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION | START DATE | END DATE | TERMINATION REASON | JOB LVL |
|---|---|---|---|---|
| FOOD SERVICE AIDE | 12/29/1990 | 12/21/1990 | RELEASED/PAROLED | 5F7 |
| FOOD SERVICE AIDE | 11/13/1990 | 12/28/1990 | LOCKUP-INVESTIGATION | 5F7 |
| GENERAL WORKER | 06/19/1989 | 12/20/1989 | RELEASED/PAROLED | 7P5 |

HISTORY OF EARNED EDUCATION CREDITS:

| EEC DESCRIPTION | START DATE | END DATE | TERMINATION REASON |
|---|---|---|---|
| BONUS 15 OR MORE | 11/13/1990 | - | |

********** END OF REPORT **********

Create PDF

Source : SummaryReport.jsp


[Version: *1.4.12* Built: *02/03/2015 11:57:23 AM* Time: *12:48:51 PM*]

**STATE OF SOUTH CAROLINA**
**COUNTY OF** Greenville
**STATE VS.** Christopher Eric Russell
**AKA:**
**Race:** BLACK **Sex:** M **Age:** 41
**DOB:** [redacted]1971 **SS#:** [redacted]
**Address:** [redacted]
**City,State,Zip:** Taylors, SC 29687
**DL#:** [redacted] **SID#:**
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

**IN THE COURT OF GENERAL SESSIONS**

**INDICTMENT/CASE#:** 2011GS2301118
**A/W#:** 1343870
**Date of Offense:** 12/18/2010
**S.C. Code § :** 16-17-0410
**CDR Code #:** 0049

**SENTENCE SHEET**

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Conspiracy
in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Moyer, Mark 64155 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.

**SPECIAL CONDITIONS:**

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms:
☐ Set by SCDPPPS
Recipient:

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other:

| | | |
|---|---|---|
| *Fine: | | $ |
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ 100 |
| § 56-5-2995 (DUI Assessment) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ 25 |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCIA Surcharge) | $5 | $ |
| % to County (if paid in installments) | | $ 5 |
| TOTAL | | $ |

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Paula B. Wilkinson
Court Reporter: A. Hesse
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2455
Sentence Date: 2-13-13

INMATE RECORDS OFFICE 2013 FEB 14 AM 8:

**STATE OF SOUTH CAROLINA** )
COUNTY OF Greenville )
STATE VS. )
Christopher Eric Russell )
AKA: )
Race: BLACK Sex: M Age: 40 )
DOB: [redacted]1971 SS#: [redacted] )
Address: [redacted] )
City,State,Zip: Taylors, SC 29687 )
DL#: [redacted] SID#: )
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐ )

**IN THE COURT OF GENERAL SESSIONS**

INDICTMENT/CASE#: 2011GS2301120 1119
A/W#: [illegible] I3729940
Date of Offense: 1/2/2011
S.C. Code § : 56-05-0750(B)(2)
CDR Code #: 2396

**SENTENCE SHEET**

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Failure to stop for a blue light, no injury or death - 2nd or subsequent offense
in violation of § 56-05-0750(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2396
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Moyer, Mark 64155 SC Bar# Defendant Attorney for Defendant 11205 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of $ — ; provided that upon the service of — days/months/years and/or payment
of $ — ; plus costs and assessments as applicable*; the balance is suspended with probation for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 332 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms:
☐ Set by SCDPPPS
Recipient:

*Fine: $
§ 14-1-206 (Assessments 107.5 %) $
§ 14-1-211(A)(1) (Conv. Surcharge) $100 $
§ 14-1-211(A)(2) (DUI Surcharge) $100 $ 100
§ 56-5-2995 (DUI Assessment) $12 $
§ 56-1-286 (DUI Breath Test) $25 $
Proviso 47.9 (Public Def/Prob) $500 $
§ 14-1-212 (Law Enforce. Funding) $25 $
§ 14-1-213 (Drug Court Surcharge) $150 $ 25
§ 50-21-114(BUI Breath Test Fee) $50 $
§ 56-5-2942(J) (Vehicle Assessment) $40/ea $
Proviso 90.5 (SCCJA Surcharge) $5 $
[illegible]% to County (if paid in installments) $ 5
[illegible]TAL $

**PTUP** _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wilkinson
Court Reporter: T. Johnson
Presiding Judge
Judge Code: 2162
Sentence Date: 12-8-11

SCCA/217 (03/2011)

**STATE OF SOUTH CAROLINA**
COUNTY OF Greenville
STATE VS.
Christopher Eric Russell
AKA:

Race: BLACK Sex: M Age: 40
DOB: [redacted]-1971 SS#: [redacted]
Address: [redacted]
City,State Zip: Taylors, SC 29687
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

**IN THE COURT OF GENERAL SESSIONS**

INDICTMENT/CASE#: 2011GS2301121
A/W#: I343825
Date of Offense: 1/2/2011
S.C. Code § : 16-09-0320(B)
CDR Code #: 0256

**SENTENCE SHEET**

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐PLEADS
TO: Resisting arrest with assault

in violation of § 16-09-0320(B) of the S.C. Code of Laws, bearing CDR Code # 0256
☒ NON-VIOLENT ☐ VIOLENT ☐SERIOUS ☐MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Moyer, Mark 64155 SC Bar# Defendant Attorney for Defendant 11205 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 [illegible] days/months/years or ☐ under the **Youthful Offender Act** not to exceed ____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 332 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

| *Fine: | | $ |
|---|---|---|
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ 100 |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ |
| § 56-5-2995 (DUI Assessment) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ 25 |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ |
| % to County (if paid in installments) | | $ 5 |
| TOTAL | | $ |
| | | $ |

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Workman
Court Reporter: T. Johnson
SCCA/217 (03/2011)

Presiding Judge [signature]
Judge Code: 2162
Sentence Date: 12-8-11

STATE OF SOUTH CAROLINA )
COUNTY OF Greenville ) IN THE COURT OF GENERAL SESSIONS
STATE VS. )
Christopher Eric Russell ) INDICTMENT/CASE#: 2011GS2301122
AKA: ) A/W#: 1343869
Race: BLACK Sex: M Age: 41 ) Date of Offense: 12/18/2010
DOB: [redacted]1971 SS#: [redacted] ) S.C. Code § : 16-03-0910
Address: [redacted] ) CDR Code #: 0095
City,State,Zip: Taylors, SC 29687 )
DL#: [redacted] SID#: )
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐ ) SENTENCE SHEET
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping ☒ CONVICTED OF or ☒PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Lloyd Mark 64155
Moyer, Mark SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of Life w/ the possibility of Parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine: _____ $ _____
§ 14-1-206 (Assessments 107.5 %) $ _____
§ 14-1-211(A)(1) (Conv. Surcharge) $100 $ _____
§14-1-211(A)(2) (DUI Surcharge) $100 $ 100
§ 56-5-2995 (DUI Assessment) $12 $ _____
§ 56-1-286 (DUI Breath Test) $25 $ _____
Proviso 47.9 (Public Def/Prob) $500 $ _____
§ 14-1-212 (Law Enforce. Funding) $25 $ _____
§ 14-1-213 (Drug Court Surcharge) $150 $ 25
§ 50-21-114(BUI Breath Test Fee) $50 $ _____
§ 56-5-2942(J) (Vehicle Assessment) $40/ea $ _____
Proviso 90.5 (SCCJA Surcharge) $5 $ _____
% to County (if paid in installments) $ 5
TOTAL $ _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Paul B. Lewis
Court Reporter: A. Hines
SCCA/217 (08/2011)

Presiding Judge: _____
Judge Code: 1155
Sentence Date: 2-13-13

2013 FEB 14 AM 9:14 INMATE RECORDS OFFICE

STATE OF SOUTH CAROLINA )
COUNTY OF Greenville )
STATE VS. Christopher Eric Russell )
AKA: )
Race: BLACK Sex: M Age: 41 )
DOB: [redacted]1971 SS#: [redacted] )
Address: [redacted] )
City,State,Zip: Taylors, SC 29687 )
DL#: [redacted] SID#: )
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2301123
A/W#: 1343868
Date of Offense: 12/18/2010
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery
in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Moyer, Mark 64155 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 years days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: $ _____ plus 20% fee: $ _____ days/hours Public Service Employment
Payment Terms: Obtain GED ☐
☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Recipient: Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐

| | | |
|---|---|---|
| *Fine: | | $ |
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ |
| § 56-5-2995 (DUI Assessment) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(3) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ |
| *% to County (if paid in installments) | | $ |
| TOTAL | | $ |

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires $200 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Lattimore
Court Reporter: A. Nesse
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 3455
Sentence Date: 2-13-13

2013 FEB 14 AM 8:14 INMATE RECORDS OFFICE

**STATE OF SOUTH CAROLINA**

COUNTY OF Greenville
STATE VS.
Christopher Eric Russell
AKA:

Race: BLACK Sex: M Age: 41
DOB: [redacted]-1971 SS#: [redacted]
Address: [redacted]
City,State,Zip: Taylors, SC 29687
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

**IN THE COURT OF GENERAL SESSIONS**

INDICTMENT/CASE#: 2011GS2301124
A/W#: I343867
Date of Offense: 12/18/2010
S.C. Code § : 16-11-0311
CDR Code #: 0079

**SENTENCE SHEET**

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

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Moyer, Mark — 64155 SC Bar# — Defendant — Attorney for Defendant — SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of Life without possibility of parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $
Payment Terms:
☐ Set by SCDPPPS
Recipient:

**SPECIAL CONDITIONS:**

PTUP
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning
$ _____ paid to Public Defender Fund
Other:

| *Fine: | | |
|---|---|---|
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ Lab |
| § 56-5-2993 (DUI Assessment) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ 25 |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ |
| % to County (if paid in installments) | | $ 6 |
| TOTAL | | $ |
| | | $ |

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickensimer
Court Reporter: D. Herndon
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 155
Sentence Date: 2-13-13

INMATE RECORDS OFFICE 2013 FEB 14 AM 8:3

STATE OF SOUTH CAROLINA )
COUNTY OF GREENVILLE )
Greenville Township )

1343820
CASE NUMBER

IN THE MAGISTRATE'S COURT

CHARGED WITH OFFENSE OF

RECKLESS DRIVING

May 15, 2013

The State of South Carolina

vs.

Christopher Eric Russell
[redacted]
TAYLORS, SC 29687 DOB: [redacted]/1971
DEFENDANT(S)

## SENTENCE

**30 DAYS CONCURRENT ON THIS CHARGE ONLY!**

2013 JUL 15 PM 3:50
INMATE RECORDS OFFICE

STATE OF SOUTH CAROLINA )
County of Greenville )

I, Dianne D. Cagle Magistrate for Greenville Township in Greenville County, in State aforesaid, do herby certify that the foregoing is a true copy of the sentence pronounced by me in the case above entitled.

David Fisher
JUDGE

The above defendant delivered to .

MC2301

STATE OF SOUTH CAROLINA )
COUNTY OF GREENVILLE )
Greenville Township )

1343823
CASE NUMBER

IN THE MAGISTRATE'S COURT

CHARGED WITH OFFENSE OF

DUS 3RD OR ABOVE

July 15, 2013

The State of South Carolina

VS.

Christopher Eric Russell
[redacted]
TAYLORS, SC 29687
DEFENDANT(S)

DOB: [redacted]/1971

## SENTENCE

**99 DAYS CONCURRENT ON THIS CHARGE ONLY!**

INMATE RECORDS OFFICE
2013 JUL 15 PM 3:50

STATE OF SOUTH CAROLINA )
County of Greenville )

I, Diane D. Cagle Magistrate for Greenville Township in Greenville County, in State aforesaid, do herby certify that the foregoing is a true copy of the sentence pronounced by me in the case above entitled.

Diane D. Cagle
JUDGE

The above defendant delivered to SCDC.

MC2301

STATE OF SOUTH CAROLINA )
COUNTY OF GREENVILLE )
Greenville Township )

1343824
CASE NUMBER

IN THE MAGISTRATE'S COURT

CHARGED WITH OFFENSE OF

HINDERING AN OFFICER

July 15, 2013

The State of South Carolina

-vs-

Christopher Eric Russell
[redacted]
TAYLORS, SC 29687 DOB: [redacted]971
DEFENDANT(S)

## SENTENCE

30 DAYS CONCURRENT ON THIS CHARGE ONLY!

2013 JUL 15 PM 3:50
INMATE RECORDS OFFICE

STATE OF SOUTH CAROLINA )
County of Greenville )

I, Diane D. Cagle Magistrate for Greenville Township in Greenville County, in State aforesaid, do herby certify that the foregoing is a true copy of the sentence pronounced by me in the case above entitled.

JUDGE

The above defendant delivered to SCDC.

M4C2301

STATE OF SOUTH CAROLINA )
COUNTY OF GREENVILLE )
Greenville Township )

1372938
CASE NUMBER

IN THE MAGISTRATE'S COURT

CHARGED WITH OFFENSE OF

RECKLESS DRIVING

July 15, 2013

The State of South Carolina

vs.

Christopher Eric Russell
[redacted]
TAYLORS, SC 29687 DOB: [redacted]971
DEFENDANT(S)

## SENTENCE

30 DAYS CONCURRENT ON THIS CHARGE ONLY!

INMATE RECORDS OFFICE
2013 JUL 15 PM 3:50

STATE OF SOUTH CAROLINA )
County of Greenville )

I, Diane D. Cagle Magistrate for Greenville Township in Greenville County, in State aforesaid, do herby certify that the foregoing is a true copy of the sentence pronounced by me in the case above entitled.

JUDGE

The above defendant delivered to SCDC.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Greenville Township

1372939
CASE NUMBER 158392

IN THE MAGISTRATE'S COURT

CHARGED WITH OFFENSE OF

DUS 3RD AND ABOVE

July 15, 2013

The State of South Carolina

vs.

Christopher Eric Russell
[redacted]
TAYLORS, SC 29687
DEFENDANT(S)

DOB: [redacted]1971

# SENTENCE

## 120 DAYS CONCURRENT ON THIS CHARGE ONLY!

2013 JUL 15 PM 3:50
INMATE RECORDS OFFICE

STATE OF SOUTH CAROLINA )
County of Greenville )

I, Diane D. Cagle Magistrate for Greenville Township in Greenville County, in State aforesaid, do herby certify that the foregoing is a true copy of the sentence pronounced by me in the case above entitled.

JUDGE

The above defendant delivered to SCDC.