VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Jun 27 2022

S.C. SUPREME COURT

Certiorari to Berkeley County

Honorable R. Kirk Griffin, Circuit Court Judge

DONTE S. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001382

APPENDIX

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LAUREN MIMS
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

PAGES 1001-1096

INDEX

Q. All right. We'll get to the portion of the charge conference in a moment. So, it appears then, and correct me if I'm mistaken here, but it appears that you were aware of this particular jury instruction issue at the time, is that right?
A. Yes.
Q. But your testimony today is that as it regards to the instruction on page 200 you just missed it. Perhaps you didn't hear the instruction?
A. I was doing things that second chair people do, which is often time fending off questions from the client or taking down some other notes.
So, I did not catch it until it had gone past and I was not the lead attorney at that point or at any time during this hearing. So I was not the lead attorney for objection purposes.
Q. Let's jump forward to that charge conference where you just mentioned that you raised the issue later on. On page 645 of the transcript do you have that excerpt handy?
A. I'm going to be stealing from Ms. Littlejohn here so.
[Whereupon, Mr. Schwacke views document]
A. Okay. 645?
Q. Yes. On line 13 where it says Mr. Schwacke and we

didn't object to it at the time but your comments were to the effect that the jury's responsibility is to seek the truth.

And just based on the State versus Daniels I only have the appellate case number because I'm getting it offline from October 2012. They kind of caution the bench from using terms in that way.

And then here the Judge cuts you off. Do you recall bringing that to the Judge's attention at that point in the trial?

A. Yes.

Q. Do you have an independent recollection of this portion of the trial or is it just from reading the transcript?

A. I mean reading the transcript helps.

Q. Okay. Fair enough. So, it would appear then would you agree that you were aware of this particular that this particular jury instruction was a problem; this search for the truth, so called search for the truth jury instruction?

A. Correct.

Q. Okay. And again there was no objection when it was initially administered to the jury.

A. Correct.

Q. And now at the time when you raised this particular

concern to the Judge at page 645 do you recall whether you considered asking the Judge to address the fact that he or she had already made this remark to the jury?
A. Well, I think the main thing was to prevent it from being given again. So, yes I was trying to avoid that problem. Did I lose you?
Q. No, let me just clarify this. To the best of your recollection this is during the charge conference these conversations, in other words the jury was not present at that point?
A. Right.
Q. So as you sit here today are you able to identify any reason why you didn't ask the Judge outside the presence of the jury whether the Judge could address this particular issue as far as the previous instruction having been given already?
A. I can't -- ask that question again.
Q. Let me ask it this way. Did you consider asking for a curative instruction or did you consider asking the Judge to clarify to the jury that their job is not to search for the truth in other words?
A. Yes because -- I'm a guy that does not do an awful lot of objections during the course of a trial. I am paying attention and will have them if I need them. Often times I just feel like you're bring attention to

the jury as you pointed out in forming a question that it's one of those things that the jury may not remember from the earlier instruction and you simply don't want it to be reinforced a second time when it's been -- we've already had the full run of the trial at that point.

Q. I'm sorry to cut you off; keep going please. I'm sorry; did you finish your answer?

A. Yes.

Q. Sorry; I thought I had cut you off there. So if I'm understanding you correctly you're talking about your kind of general practice. Are you saying that those were the considerations in this particular case?

A. I brought it to the Judge's attention. I'm not sure there is much more I can do than that. Especially in a charging conference to ask the Judge to do a corrective one again that to me would draw additional attention to it when it may be long gone forgotten by the jury.

Q. Okay. So your reason for not asking for any kind of additional instruction on this subject was not wanting to draw attention to it? Am I understanding that correctly?

A. That would be one of those reasons, yes.

Q. Okay. Are there other reasons that you can recall today as you sit here?

A. Let me just see how this first comes up.

[Whereupon, Mr. Schwacke reviews documents]

A. Because I asked the Court for permission to argue this as second attorney. Okay. So, the question; your question?
Q. So you indicated that there were -- the question was what would have been the strategic considerations for not requesting some kind of corrective from the Judge if there is anything else you can think of.
A. No, that would be what I've already said.
Q. Okay.
A. Undue attention drawn to it.
Q. Okay. Thank you, sir. So let's move over to the DNA evidence. We touched on that briefly with Ms. Littlejohn but she had indicated that it appears from the transcript that this was your witness as far as things go. In other words you conducted the cross-examination of this DNA witness?
A. Yes.
Q. So, is Ms. Littlejohn correct that ostensibly it would have been the objection would have been yours if there were any objections while the witness was testifying?
A. Yes.
Q. Okay. So, just to provide a little bit of background here what we're talking about is do you recall the witness sort of testifying that there was touch DNA

on a firearm that was relevant to this case. Is that consistent with the way you recall from that testimony?
A. That was part of the testimony, yes.
Q. Okay.
A. We kind of went through a list of the property that he had done, Mr. Demers [phonetic] whatever he had checked for DNA, DNA results or anything.
Q. And as the witness testified there was a particular firearm and the gist of the testimony was that Donte Brown could not be excluded as a person who contributed to what they call touch DNA. Is that consistent with your recollection?
A. Yes.
Q. Okay. Let's look at some of the actual testimony itself if we could. Can I direct your attention please to page 602 of the transcript?
[Whereupon, Mr. Schwacke reviews document]
A. All right.
Q. Okay. So down on line 20 where the witness is testifying about this exclusion, probability of exclusion of Mr. Brown.
Starting on line 20 the witness says: To give you some idea of the meaning of that we calculate what's called the probability of exclusion. That probability of exclusion is not as complicated as it sounds. When you

think of the probability of exclusion you can think of it it's the probability that a falsely accused person or somebody just selected at random would be excluded from the evidence.

Let me ask you this. I know that there is a decent amount of information packed in there but as we sit here today do you have any reaction to the reference of a falsely accused person in this explanation?

A. I think a probability exclusion -- sure I would think I guess -- falsely the accused person. I mean in some ways it might seem that would be helpful to the client.

But it's something that should get your attention at least the words should have sunk in it might be coming where he said...

Q. Just to clarify the witness here was asked to test the handle of the firearm and determine whether Donte Brown could have been a contributor of that DNA.

Is that consistent with your understanding of the sort of tests that were performed?

A. Yes.

Q. So, would you agree that the question here is whether Donte Brown could have been the DNA contributor on that particular item? And this witness not whether he was falsely accused or anything along those lines.

A. I think our goal was to show how low the numbers were and that we were kind of tagged into Mr. Demers [phonetic] and his private lab.

And so at that point he -- this was the first dealings we've had with him and his company. And so as we went through there were several things that we wanted to try to accomplish with him.

One is to show that although they might be a certified lab they might be on the smaller side. They're not exactly a benefit or did not, would not use; they would not use a law enforcement agency. Goose Creek police for whatever reason decided they wanted to use that company.

So in terms of falsely accused person and the numbers that you say, again, and at some point in the transcript and I'm trying to remember where that actually occurs.

The Solicitor, Ms. Taylor, tells the Court that if the numbers, if they only had those numbers, just had those numbers to prosecute they would not prosecute the case because the actual number was so low.

So, that was kind of my goal at the outset is to show okay, we need to use them to get to our numbers but we need to get the numbers because they benefit us in terms of how weak they are in that they could be used in

a way by the defense.
Q. Let me ask you a question. As you sit here today can you identify any basis for objecting to this witness's testimony?
There are a few of them and we'll touch them in a moment but these references to whether someone is falsely accused. As you sit here today is there any strategic reason why -- you can identify why you did not object.
A. Because I guess the question is how is the jury going to take that if it's kind of objected to and brought back to their attention.
To me it sounds again the phrasing, the three word phrasing there seems to indicate to me that it's a good thing for our family for our client. And there would be no reason why I would feel that we had to exclude them.
Q. So, if I'm understanding you are you saying you don't, as you sit here today you don't think they should have been excluded? You prefer to have the jury hear that?
A. The words of somebody selected at random?
Q. No, falsely accused.
A. Falsely accused? A falsely accused person. And again I think that draws a good attention for our client in terms of that. The word gets the attention. There are going to be people on that jury that have known

people who have been falsely accused. At that point their attention is geared in to what the rest of the evidence is going. So, I don't see where this is a big problem.

Q. And that's true. I certainly won't sit here and argue with you but that's your opinion even though they indicate that someone who is falsely accused would be excluded from the evidence?

A. I think again once the numbers get out there and repeated over and over again I think it's a plus.

Q. Okay. On page 603 starting on line 8. I'll just read this sentence and it's really, it's the same issue so I won't belabor the point. But the witness says:

What does that mean? I'll just back up. Probability of exclusion of 99.99 percent means that 99.99 percent of falsely accused people would be excluded from this mixture.

In other words 99.99 percent of falsely accused people if we looked at their profile we would not find all of their data peaks on the evidence.

I won't ask you the whole series of questions again but would your answer be the same if I was to go through and say whether you found that testimony objectionable?

A. Again, no because we were able to respond to it and look for I think the results of the testing in a way that

helped our client because he was, in fact, very way down, very low percentages in terms of the testing that was performed in the case.

Q. Okay. Let's jump forward to page 609 of the transcript if we could.

A. All right.

Q. Let me know when you have that page in front of you.

[Whereupon, Mr. Schwacke reviews document]

A. All right.

Q. Okay. At the top it kind of starts halfway but it says: He is one of those people, meaning Donte Brown he is one of those people, he is either one of those unlucky people you know that came to the attention of the police and just by coincidence all of his data peaks are there or he handled the gun. Those are the two possibilities.

Again, I'll just say the same question to you. As you sit here today can you identify any reason to object to that particular remark?

A. No.

Q. Okay. And moving down to line -- bear with me a moment.

[Whereupon, Mr. Geel reviews document]

Q. Okay. Starting at line 16 in the middle where it says ---

A. --- which page?

Q. Page 609 still.
A. All right.
Q. Line 16 where it starts in the middle of the line: If you took 100 U.S. blacks and you profiled them all and compared them to this mixture profile two of them on average that statistically we would expect to not be excluded from the handgun.

That in its most basic level is a true statement. But what that doesn't take into consideration is the other evidence that may be associated with the case.

The fact that the person came to the attention of police as a suspect, the fact that maybe he or she did not have an alibi for that time, and then on top of that you have this potentially coincidental match.

I'll pause there but I'd like to keep going with these remarks but stopping right there now we've got it in reference to a lack of an alibi.

Do you have any -- as you sit here today looking at that can you identify any basis for objecting to these remarks?
A. Anything that suggests that a client has got to have an alibi is a benefit from either testimony or testing of the DNA is wrong, it's just improper. So ---
Q. --- okay. And there is no objection at the time?
A. Not at the time.

Q. Okay. So as you sit here today can you identify any strategic basis for not objecting to just that portion?
A. Other than looking forward to my cross-examination after this direct examination --
Q. I'm sorry; you trailed off at the end there.
A. Other than knowing that I'm going to have the opportunity to cross-examine and take benefit from what I believed I was going to be able to get out of the witness.
Q. Okay. So at the time did you consider, do you have an independent recollection of considering of objecting to that remark regarding the lack of an alibi?
A. No.
Q. Okay. Let's keep going if we could with this testimony at the top of page 6 -- bear with me a moment -- the top of page 610 line 2 where the witness says:

So if we were to you know you might have 100 people in this courtroom let's say just for the sake of argument we had 100 blacks here in the U.S. courtroom and we were to test all of them. And let's say two of them matched. Let's say one matched, not matched but could not be excluded. Let's say three did; it's unimportant.

Most likely those people had nothing to do with the case. Most likely they had an alibi as to their location at the critical time of the crime. So you have to kind

of put it in perspective with these other elements.

And I'll stop there and I'll ask you the same question as I asked about the previous remark. Do you believe that that testimony is there are grounds to object to it?

A. There are grounds to object.

Q. And is it the same as the last remark regarding the comments on Mr. Brown's lack of an alibi?

A. It is basically the same.

Q. Okay. And are you able to identify any strategic reason for not objecting to those remarks?

A. Other than I was waiting at my chance at cross-examination.

Q. Okay. So continuing on on line 13 the witness says: It is on its most basic level a measure of how unlucky a person is that their data peaks are part of this mixture profile. Are they just unlucky? They could be.

Are they so unlucky that they are a suspect in the case, they have no alibi and they cannot be excluded? I don't know. That's for you all to decide.

Same question sir as far as this sort of line of remarks. Can you identify any basis for objecting to that?

A. Yes. There could be some grounds for objecting.

Q. Can you identify a strategic reason why you did not

object in this particular case at that time?
A. You know it doesn't ever show on these kinds of things like demeanor or any type personality traits. Mr. Demers [phonetic] was not a person that a jury would find friendly and want to connect with.
And so that may have been allowed to just take over too much. But it certainly was going on and I was not going to discourage him from trying to make their witness unlikeable.
Q. So just to make sure I understand you did not object because of the witness's demeanor? You did not think the jury would like the witness's demeanor?
A. Correct, that's one of the reasons.
Q. Okay. So, down at the bottom of page 610 starting at line 24 where the witness says: The most likely explanation for this mixture profile is that Christopher Wilson and Donte Brown, this is a possible explanation, Christopher Wilson and Donte Brown both handled the gun. We cannot exclude Christopher Wilson or Donte Brown.
And then it goes on to discuss some other items. But let me just ask the question this way. Is that consistent with your understanding of this type of scientific testing?
A. Say that again; I'm sorry.
Q. The question was is that consistent with your

understanding of this type of scientific testing? In other words as a factual matter do you think that that is the most likely explanation based on these reports that you saw as far as you, I know you're not a scientist but as far as your understanding of how this testing works would you agree that this is the most likely explanation based on the testing or do you have an opinion in that regard?

A. It's a very shortened version I guess of what type of information they get from the testing they do.

A. So as you sit here today again I don't want to belabor it too much but can you identify any basis for objecting to these remarks or objecting to this kind of line of questioning or line of answers?

A. It would again be just what gets out when the case turns over to his cross-examination.

Q. Okay. Moving to page 625 if we could.

[Whereupon, Mr. Schwacke reviews document]

Q. Now Mr. Schwacke, this portion just to frame it up this is the section during your cross-examination of the witness.

A. Right.

Q. And just to set it up, we don't have to go through all of it, but on the prior page if you'd like to go back and take a moment and read it that's fine. But you were

asking the witness whether there is a possibility of secondary transfer. In other words if the DNA could have been contributed from not directly from Mr. Brown's hand but from some other item. Do you understand -- do you recall asking the witness those questions.

A. We asked a bunch of questions on kind of whether there is contamination.

Q. Right. So at the top of page 625 discussing secondary transfer your question was, and this is on line 2: But you can't say that's what's going to happen in any given case. And the answer is: No, well I equate theoretical like this to the sun or our sun coming up in the morning.

Every morning for millions of years the -- that's how it is written in the transcript -- the sun has risen. Now is it theoretically possible that the sun won't rise tomorrow? Yes.

Or our sun could explode and we go into a deep freeze and so it wouldn't rise tomorrow. But for millions of years it has risen so I'll bet my money that it will rise tomorrow.

I'll ask the same question. Did you consider any legal objections to those remarks from the witness at that time?

A. Absolutely not there. No, I wanted the jury to hear

that.
Q. Can you elaborate a little bit more on that?
A. It's kind of crazy stuff. I'm sorry.
Q. In what sense?
A. In the sense that we're talking about when the sun is going to rise and could explode and...
Q. Let me make sure I understand. Do you believe that this was helpful to Mr. Brown?
A. It was helpful. I believe it was helpful to me. And I believe it was helpful to the client. So, yes I have no problem with that kind of discussion that Mr. Demers [phonetic] came up with here.
Q. All right. And turning to page 629 if we could.
[Whereupon, Mr. Schwacke views document]
A. All right.
Q. On line 4 where the answer is, the witness says: No. I was certainly trying to put the meaning of the mixture into perspective because I don't know what the other evidence is. I don't even know if there is other evidence.
I'm just saying as an example if somebody has an iron clad alibi regardless of the fact that they are included as a possible contributor if they have an iron clad alibi then you have to reasonably say regardless of the DNA result they are not likely to be a contributor.

That's all I'm saying.

I know we kind of circled around but getting back to those remarks about the lack of an alibi or having an alibi can you identify any legal basis for challenging those remarks or objecting to those remarks?

A. I don't. Basically what has happened is he's admitted that he doesn't know what evidence is there, doesn't know -- he had testified I think earlier that it's information that law enforcement could have given him that that's the case.

It's an incomplete picture particularly if they're saying that I don't -- he is saying I don't even know if there is other evidence. So how things might be touched, what evidence might have been left on I don't have a position -- well, I do have a position. I don't believe that the case was hurt by that inclusion.

Q. Okay. Now the witness here, is it your understanding that the witness I guess the gist here is essentially saying that this evidence could be called into question if someone has what they call an iron clad alibi.

Would you agree that that is what the witness is saying; kind of a broad overview of what the point is.

A. Ask me that again. I'm sorry.

Q. So the witness is essentially saying that if they

can't be excluded as a possible contributor that that would be less of a problem if they had an iron clad alibi on line 8. This is what the witness says.

[Whereupon, Mr. Schwacke reviews document]

A. Again, he is setting that up as an example. It never was argued or presented to the jury at any point after the trial. The Judge did not instruct anything such as that.

Again there is, would be the questioning that we did of him. I think just because the words iron clad alibi appear there doesn't mean that that connected to the jury in a sense that they had to give benefit to the State for that.

Q. Let's clarify one point. I mean Mr. Brown did not present an alibi defense at trial, correct; at least not one that had any witnesses, correct?

A. Correct.

Q. So the repeated remarks here from this witness referring to someone who has an alibi, who has in this case an iron clad alibi you don't think that would draw attention to the lack of an alibi of Mr. Brown?

A. I think with some people it could.

Q. Did you consider objecting on that basis?

A. No.

Q. I'm sorry, did you say no?

A. I said no.
Q. Okay.
MR. GEEL: Court's indulgence.
[Whereupon, Mr. Geel reviews documents]
MR. GEEL: That's all I have. Thank you, Your Honor.
THE COURT: Ms. McCallister?

CROSS-EXAMINATION

BY MS. MCCALLISTER:

Q. Okay Mr. Schwacke, I think you mentioned on direct that you felt like a lot of this DNA evidence the numbers were very low. And in fact the DNA evidence was not harmful and was actually potentially helpful to your client, correct?

A. Correct.

Q. And what the expert actually testified to he never testified that this was Mr. Brown's DNA on that gun, correct?

A. That's correct.

Q. Okay. His testimony was he can't be excluded as a possible contributor to the gun, correct?

A. Yes.

Q. And that Mr. Brown then was one of the 2.2 percent of the African American population in the United States who also could not be excluded as a contributor to that gun, correct?

A. Yes, ma'am.

Q. And you then sort of took that number and applied it directly to Berkeley County and were able to show that then taking those statistics and applying them towards the county that would mean that Mr. Brown and something like 980 other African Americans living in Berkeley

County also could not be excluded as contributors to that gun, correct?

A. Correct.

Q. Okay. And so when you're talking about feeling like those numbers were helpful and they weren't -- there were literally hundreds of other people who would not be able to be excluded as a contributor on that gun.

A. That's correct.

Q. Okay. And then the expert's testimony talking about when -- it's less essentially as Mr. Geel phrased that would it be less of a problem if they have an iron clad alibi the fact that they can't be excluded.

Your argument I think wasn't necessarily that it was an alibi. You were saying potentially -- I'm sorry; let me back up and rephrase this.

Is it fair to say that a reading of Mr. Demers [phonetic] testimony was that he was trying to explain that there are -- I'm sorry, you were trying to get Mr. Demers [phonetic] to explain that there were ways for Mr. Brown's DNA to be on that gun that was sort of like just an accident or coincidental.

It could have been from the transfer if the officers didn't wear the gloves. Or it could have happened in Mr. Demurs' [phonetic] lab if things were cross contaminated, correct.

A. So there were a lot of times when during the course of the trial in the State's presentation with exhibits we would watch and kind of keep track of when a person handling evidence had done so in a way that would have contaminated it when they were actually talking about that particular piece of evidence.

There were a lot of times and that's where my line of questioning kind of shows that we were trying to keep track of that and to be able to show the jury there are ways all these things can happen. And they not only happen but they can happen right in the face as they happened before.

There was no use of gloves by any of the officers when they were showing what they were handling. So that was one of the things that we kind of hoped to turn around in our favor.

Q. Okay. And you got him to admit that he had no way of knowing what happened to that evidence and how it was handled before it came to his lab.

A. That's correct.

Q. And whether the officers were using gloves or if they were using gloves and touching multiple items not changing gloves inbetween, correct?

A. I asked that question and yes, that's correct.

Q. Okay. So essentially you got Mr. Demers [phonetic]

to admit that there were ways that Mr. Brown's DNA could be on the gun. It could have been a coincidence and he didn't necessarily need to have an iron clad alibi to explain how it got on the gun because it could have been transfer, it could have been bad handling of the evidence.

A. Yes, ma'am.

Q. Okay. And he was reluctant to want to admit that.

A. I don't believe -- yes. He was reluctant to do it.

Q. Okay. And I think you were asked about specifically on page 611 his testimony about what the two possibilities are. You know that either it's a coincidence or he did touch it.

A. Page 611?

Q. Page 611, at the top of page 611.

[Whereupon, Mr. Schwacke views document]

Q. It starts on 610 and on to 611 where he says: Two things the most likely explanation for this mixture of profile is that Christopher Wilson and Donte Brown.

And then he stops and he says this is a possible explanation. We couldn't exclude them.

A. Correct.

Q. As being, as having handled the gun. So he starts to say it's a likely explanation but then he goes back and he corrects himself and says actually it's a possible

explanation.
A. Yes, ma'am.
Q. Okay. And you also in your cross-examination got him to admit that he didn't know what the evidence was in this case. He didn't know what evidence there was for or against Mr. Brown being on the gun other than the DNA.
A. And we have tried to use some questioning to kind of walk back to get away from the information that he had asked questions. He had asked that earlier, or I had asked that earlier.
Q. Okay. So you used your cross-examination to sort of get him to walk back this issue of, you know you asked him whether you could use an alibi to reduce that number and he had to say no, no, that's not what I was trying to say.
A. Yes. Correct.
Q. Okay. In the grand scheme of things how important do you consider the DNA evidence in this case, the evidence on the gun?
A. It's very low because of the way the testing and the numbers come out and with the other information about possible contamination.
Q. Okay. And I appreciate that. I was trying to ask more specifically like in the grand scheme of this case the DNA evidence along with the other evidence like the

statements of the women, Linear [phonetic] Daniels from the jail, the GPS evidence; where does the DNA rank in terms of importance in this case?
A. Well, maybe it's the way the question is being asked. But how does it rank in importance because it's not there it ranks very high.
Q. Okay.
A. The amounts are low, as low as they are, it would rank very high in this case.
Q. Okay. And you were able to get him to admit that the numbers and the amounts were very, very low for Mr. Brown?
A. Yes. Yes.
Q. Okay. And you felt like you did that effectively and the jury understood that?
A. I believe they did.
Q. Okay. And Ms. Littlejohn actually talked about that in closing about the fact that there are literally hundreds of other people in Berkeley County who their DNA expert has admitted could be contributors to this gun.
A. Yes, ma'am.
Q. Okay.
MS. MCCALLISTER: Your Honor, if I could just have a moment to review my notes to make sure I didn't miss anything?

THE COURT: Yes, ma'am.

[Whereupon, Ms. McCallister reviews documents]

Q. [Ms. McCallister] Oh, I did just want to clarify going back to the very beginning of your testimony with, on page 602 and 603 when you were talking about the language of the falsely accused person.

Your testimony to Mr. Geel was that you actually felt like there was some benefit there. And I think you said because the numbers were so weak.

And I just want to make sure we're not getting crossed because I think at some points we referred to the numbers as weak and sometimes we've called them high.

But I just want to clarify what you were saying is you felt like because there were so many other people who were possible contributors to that sample on the gun that this language about whether a falsely accused person could have put it there you felt like that was actually beneficial to your client because he could be one of the falsely accused people?

A. Correct.

Q. Okay.

MS. MCCALLISTER: I think that's all I have for Mr. Schwacke.

THE COURT: All right. Thank you, ma'am. Any redirect Mr. Geel?

MR. GEEL: No sir, Your Honor.

THE COURT: All right.

[Whereupon, the witness is excused]

THE COURT: Do we have any other witnesses on this case?

MS. MCCALLISTER: Not from the State, Your Honor.

MR. GEEL: None from the Applicant.

MS. MCCALLISTER: I would ask, the State would ask for the opportunity to do sort of a closing. I know we have another hearing. I don't know if you want to hear that as oral argument or if you would prefer some written supplementation. Mr. Geel has cited some case law in his application and I would like the opportunity to respond to that.

THE COURT: If Mr. Geel is okay with submitting kind of a written summation, I'm fine with that. It might give y'all a little more time to focus your arguments. So, if you could have a summation to me by a week from today that would be fine.

And I'm going to take this matter under advisement and have a decision by I believe a couple of Fridays from now I believe it is September the 24th. I will issue a memo opinion to both parties and ask the prevailing party to draft the appropriate order. Are written summations fine with you Mr. Geel?

MR. GEEL: Yes, Your Honor.

THE COURT: All right. So if you could have them to me by close of business on September 16 I believe that

is a week from today.

MR. GEEL: Will do.

MS. MCCALLISTER: Thank you, Your Honor.

THE COURT: Thank you ladies and gentlemen. We are adjourned in this matter.

********END OF TRANSCRIPT OF RECORD********

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is, to the best of my ability, a complete Transcript of Record of the proceedings had, using WebEx videoconferencing, and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Berkeley County, South Carolina on the 9th day of September, 2021.

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

January 22, 2022

Joyce C. Rueger, CVR-M
Court Reporter

State of South Carolina Berkeley County	In the Court of Common Pleas For the Ninth Judicial Circuit
	Case No(s): 2019CP0800502 (PCR Application)
Donte S. Brown (#314818) v. State of South Carolina	**POST-HEARING BRIEF IN SUPPORT OF APPLICATION FOR POST-CONVICTION RELIEF**

COMES NOW the Applicant, by and through undersigned Counsel, and hereby submits this Post-Hearing Brief in Support of Application for Post-Conviction Relief. Applicant respectfully shows as follows:

On September 9, 2021, this Court conducted an evidentiary hearing on the above-referenced Application for Post-Conviction Relief. The Applicant testified on his own behalf, and also presented the testimony of trial counsel Debra Littlejohn and David Schwacke. Applicant respectfully submits to the Court that he has met his burden of demonstrating that his Sixth Amendment rights were violated by trial counsel's constitutionally deficient performance, and that in each instance the deficient performance was prejudicial to Applicant. The Applicant submits this Brief in order to provide argument in support of the individual claims raised at the evidentiary hearing, and in Applicant's prior pleadings.

I. Ground One: Trial counsel was constitutionally ineffective by failing to make a contemporaneous objection to the trial court's impermissible "search for the truth" instruction that was delivered to the jury. (Tr. 200).

During the trial in this case, the trial judge gave the following instruction:

> When the other side then gets up and asks questions, that's called cross-examination. You've probably heard that before. So that's the way we get the truth out, is we let people get up. They tell you what they hear, they saw, they touched, they felt, the smelt, and then the other side gets to ask questions, and that adversarial

CL: CRG

> process is what we're trying to get to the truth, which is what you will find by way of your verdict, and your verdict should speak the truth.

(Tr. 200). The South Carolina Supreme Court has admonished trial courts not to impose this kind of instruction, reasoning as follows:

> [A] trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict. These phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice. We instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt.

State v. Beaty, 813 S.E.2d 502, 423 S.C. 26 (S.C. 2018). The trial judge's instruction in this case did *all three* of the things that the Beaty court cautioned against: it told the jury that their role was to "get the truth out" and "get to the truth," to determine what truly happened, and to issue a verdict that "speaks the truth," i.e. a verdict that reflects their conclusion about what *truly* happened on the night in question.

Trial counsel was not able to supply any valid strategic reason for failing to object to this instruction, and for failing to request a curative instruction. Trial counsel testified that he was aware that the instruction was erroneous, and he brought it to the Judge's attention during a later portion of the trial. Nevertheless, it was incumbent upon trial counsel to remedy the situation, to either move for a mistrial, or object, or request a curative instruction from the court. Counsel failed to seek any of these remedies, and therefore counsel was ineffective under the *Strickland* standard, and the Applicant is entitled to relief on this basis.

II. Ground Two: Trial counsel was constitutionally ineffective by failing to object when prejudicial comments from co-defendant Wilson were elicited at trial through Marteeka Hamilton, in violation of Bruton v. United States, 391 U.S. 123 (1968); Crawford v. Washington, 541 U.S. 36 (2004). (Tr. 383).

At trial, the State presented the testimony of Applicant's ex-girlfriend Marteeka Hamilton, who testified that she encountered Applicant and his codefendant Christopher Wilson shortly after the robbery. Referring to Wilson, Hamilton testified: "I overheard him say, I didn't mean to shoot someone." (Tr. 383). This can only be understood as a confession to the armed robbery and shooting that had just taken place.[1] This is a hearsay statement by Applicant's codefendant, and Applicant had a right to confront this witness in court. This was testimonial in nature, wherein Wilson reported factual claims about his own conduct that incriminated Wilson and Brown. The Supreme Court has cautioned that codefendant confessions are inevitably prejudicial, but the significant prejudice is "intolerably compounded when the alleged accomplice, as here, does not testify and cannot be tested by cross-examination." Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968). Where a codefendant's testimonial statement is admitted against a defendant, and the defendant has no opportunity to cross-examine him, "[t]hat alone is sufficient to make out a violation of the Sixth Amendment." Crawford v. Washington, 541 U.S. 36, 68 (2004). The Supreme Court mandates that "where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." Id. at 68-69.

Trial counsel did not provide a valid strategic reason for failing to object to this testimony, or for failing to keep it from being elicited at trial. Counsel's failure to object was deficient under the *Strickland* framework, and was prejudicial to Applicant. For this reason, Applicant is entitled to relief on this ground.

[1] And, because this was a "hand of one, hand of all" case, this statement was inherently incriminating of Brown as well.

III. Ground Three: Trial counsel was constitutionally ineffective by failing to object when irrelevant and prejudicial bad-character evidence was elicited at trial through Cynthia Garrett, in violation of Rule 404, SCRE; State v. Braxton, 541 S.E.2d 833, 343 S.C. 629 (2001); (Tr. 415-416, 435, 446, 464-65).

During trial, the State repeatedly elicited improper bad-character evidence from Cynthia Garrett, and trial counsel failed to object. Trial counsel did not request a pre-trial hearing on these matters, nor did counsel make a motion *in limine* prior to Garrett's testimony, nor did counsel object or move for mistrial after Garrett's testimony improperly placed Applicant's character in issue. Specifically, Garrett testified as follows:

- That Applicant would "rather rob than work." (Tr. 415).
- That Applicant possessed a gun on a prior unspecified occasion. (Tr. 416).
- That Applicant attempted to "fight" Garrett on a prior unspecified occasion. (Tr. 445-46).

This testimony is clearly inadmissible bad-character evidence that relates to Applicant's propensity to engage in criminal conduct.

> In a criminal case, the State cannot attack the character of the defendant unless the defendant first places his character in issue. In a similar vein, evidence of other crimes or bad acts is generally inadmissible to prove the crime charged . . . character evidence is not admissible "for purposes of proving that the accused possesses a criminal character or has a propensity to commit the crime with which he is charged." . . . The term "character" refers to a generalized description of a person's disposition or a general trait such as honesty, temperance or peacefulness . . . Such evidence could only invite the jury to infer [that the defendant] was acting in conformity with this character trait when he committed the crimes with which he was charged. Because this is an improper

> basis upon which to determine guilt, the evidence should not have been admitted.

State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (S.C. 1998)(internal citations omitted). The testimony of Ms. Garrett was clearly objectionable on this basis, it only served to bolster the implication that Applicant has a *propensity* to commit robberies, possess firearms, and engage in violent conduct. None of Garrett's remarks were probative of the disputed facts at issue in this case, they merely served to imply that Applicant is *the type of person* who would commit the alleged acts, which is an implication that is expressly prohibited by Nelson. Trial counsel failed to provide a plausible or valid reason for failing to object to these remarks, or for failing to move for a mistrial. In this regard, trial counsel was constitutionally ineffective, and Applicant was prejudiced by counsel's failure to remedy the harm suffered by these remarks. Applicant is entitled to relief on this basis.

IV. **Ground Four: Trial counsel was constitutionally ineffective by failing to object when the State's DNA expert made repeated improper remarks that implicated Applicant's failure to testify, lack of alibi, and failure to present evidence. State v. Posey, 269 S.C. 500 (1977). (Tr. 609-610, 629).**

During the testimony of the State's DNA expert, the witness made repeated improper remarks regarding Applicant's failure to present an alibi, and that urged the jury to draw negative inferences about the Applicant on this basis. The witness made the following remarks:

- "[S]tatistics can mean a lot of things, so you kind of have to put a little bit of explanation with it because what a lot of people say is if you took 100 U.S. blacks and you profiled them all and compared them to this mixture profile, two of them on average that statistically we would expect to not be excluded from the handgun. That, at its most basic level, is a true statement, but what that doesn't take into consideration is the other evidence that may be associated with the case; **the fact that the person came to the attention of the police as a suspect; the fact that maybe he or she did not have an alibi for that time**, and then on top of that, you have this potentially coincidental match." (Tr. 609-610).
- "Let's say, just for the sake of argument, we had 100 blacks here in this U.S. courtroom and we were to test all of them, and let's say two of them matched. . . Most likely, those

people had nothing to do with the case. **Most likely, they had an alibi as to their location at that critical time of the crime, so you have to kind of put it in perspective with these other elements.** It is, on its most basic level, a measure of how unlucky the person is that their data peaks are part of this mixture profile. Are they just unlucky? They could be. **Are they so unlucky that they're a suspect in the case, they have no alibi, and they cannot be excluded?** I don't know. That's for you all to decide." (Tr. 610).

- **"If somebody has an ironclad alibi,** regardless of the fact that they are included as a possible contributor, **if they have an ironclad alibi,** then you have to reasonably say, regardless of the DNA result, they are not likely to be a contributor." (Tr. 629).

This testimony is unambiguous in its meaning. The witness was instructing the jury to consider not only the scientific opinion that he was presenting, but also to consider whether the Applicant was able to provide an alibi, and to draw negative inferences against the Applicant as a result of his failure to present an alibi. This type of evidence and argument is inadmissible in South Carolina, as it places an undue burden on a defendant's right to remain silent, it is burden-shifting, and it undermines a defendant's right to rely on the insufficiency of the State's evidence at trial.

> It is elementary that an accused is presumed innocent until proven guilty and that the burden is upon the State to prove that the accused committed the crime charged. An accused has the right to rely entirely upon this presumption of innocence and the weakness in the State's case against him. He would clearly be deprived of that right if an adverse inference is permitted to be indulged against him because of its exercise . . . The solicitor [must not be] permitted, in argument, to draw an adverse inference from appellant's failure to produce a certain witness. This had the effect of depriving appellant of the right to offer no evidence and rely upon the insufficiency of the State's case against him.

State v. Posey, 269 S.C. 500, 238 S.E.2d 176 (S.C. 1977). Trial counsel failed to identify a valid strategic reason for not objecting to these remarks. This witness' remarks were not isolated or off-hand, they were repeated numerous times, and the witness expressly urged the jury to draw

impermissible inferences against the Applicant, without any objection from counsel. The failure to object was clearly deficient under *Strickland*, and Applicant was prejudiced by counsel's failure to do so. Applicant is therefore entitled to relief on this ground.

V. Ground Five: Trial counsel was constitutionally ineffective by failing to object to the premature and coercive Allen charge, in violation of Workman v. State, 412 S.C. 128 (2015)(Tr. 704-07).

"A trial judge has a duty to urge, but not coerce, a jury to reach a verdict." Workman v. State, 412 S.C. 128, 130 (2015). Whether an Allen charge is unconstitutionally coercive must be judged in its "context and under all the circumstances." Id. In this case, the jury had only been deliberating for 2.5 hours, after a lengthy multi-day trial with nearly two-dozen witnesses, and they simply asked the court for guidance about what *would* happen if they were unable to reach a verdict. The jury never indicated that they *were* deadlocked, they simply asked what would take place in the event that they continued deliberating and were unable to reach a verdict. Delivering an Allen charge under these circumstances was absolutely premature, as well as coercive. Furthermore, the jury delivered their verdict shortly after the Allen charge was completed, demonstrating the coercive nature of the instruction. Trial counsel was unable to articulate a valid strategic reason for failing to object to the premature charge, and counsel was constitutionally ineffective when failing to object. Applicant was prejudiced by the premature charge, which is amply demonstrated by the brief duration of time that the jury deliberated, after a multi-day trial. Because trial counsel's failure to object was not predicated on valid strategic considerations, and Applicant was prejudiced by this failure, Applicant is entitled to relief on this ground.

VI. Ground Six: Trial counsel was constitutionally ineffective by failing to object to the State's DNA expert, and not requiring the State to demonstrate the reliability of the witness' expert testimony, nor requiring the Court to examine the evidence under Rule 702 and 403. State v. Phillips, 430 SC 319 (2020). (Tr. 602-03, 609-11, 625-29).

In State v. Phillips, 430 SC 319 (2020), our Supreme Court expressed significant concerns about the type of evidence that was presented in this case, through the State's "touch DNA" expert. There, the court discussed the likelihood that this kind of evidence would lead to "unfair prejudice"

and be confusing or misleading to a jury. The court noted that this type of evidence is very likely to be confused for the much more compelling traditional DNA testing (i.e. mitochondrial DNA matching). Referring to "touch DNA" and "random match probability," the Court opined that "these DNA concepts carry with them the same aura of reliability or invincibility [as mitochondrial DNA matching], as we will explain, each of them has significant potential to confuse and mislead." Id. at 330-31. The court was particularly concerned that "random match probability" could easily be confused by a jury for "statistical probability of guilt." Id. at 333. In the present case, the State's witness repeatedly discussed the likelihood that a "falsely accused" individual would be excluded from the test results, and also repeatedly opined that a person would be "unlucky" if they could not be excluded by the testing if they had not, in fact, touched the item in question. These remarks very clearly imply what the Phillips court expressed concern about – the DNA witness offered his personal opinion that it is *unlikely* that a person who did not touch firearm would *not* be excluded from the testing, and that a person who fell into such a category would be decidedly "unlucky." In other words, the witness made very clear implications about the statistical likelihood of guilt, which is precisely the type of testimony that is confusing and misleading to a jury, according to the Phillips court.

The Phillips court also expressed concern over the prosecutor in that case mischaracterizing the evidence, by (1) implying that the defendant would have been excluded if he had not touched the item in question, and (2) implying that the failure to *exclude* the defendant was equivalent to finding his DNA on the item in question. We find both of these implications and statements in the present case, both presented quite unambiguously. First, the prosecutor stated: "You're going to hear how the gun was tested for DNA, and you're going to hear how **that DNA was tested for that of Donte Brown.**" (Tr. 213). The expert witness stated that the results of his testing show that because Wilson and Brown could not be excluded, and the "most likely explanation" is that they both handled the firearm. The Phillips court was eager to point out that "'cannot be excluded' most certainly does not mean 'can be included.'" Id. at 338. The State, through its witness and through the arguments of the Solicitor, repeatedly blurred this line, implying that the results offered in this case were similar to a mitochondrial DNA match, and that a "falsely accused" person would likely be excluded by this testing, and that only an extremely "unlucky" person would *not* be excluded as

a contributor if he had not handled the firearm in question. All of these inferences are precisely the type that the Phillips court expressed significant concern about, and they were extremely harmful to the Applicant in this case. Trial counsel did not provide any adequate strategic considerations that would permit this type of testimony and argument, and therefore trial counsel was deficient in failing to object. Applicant was prejudiced by this evidence, and he is entitled to relief.

CONCLUSION

Based on the foregoing, the Applicant respectfully urges this Court to grant his application for post-conviction relief, and remand the case to the general sessions court for a new trial.

On this day, September 16, 2021 it is
RESPECTFULLY SUBMITTED,

Christopher R. Geel
Geel Law Firm, LLC
P.O. Box 21771
Charleston, SC 29413
843-277-5080

CERTIFICATE OF SERVICE: I hereby certify that I have served a copy of this document upon the Attorney General's Office via US Mail, on this day, September 16, 2021.

State of South Carolina
The Circuit Court of the Third Judicial Circuit

R. Kirk Griffin
Judge

215 North Harvin Street, Suite 226
Sumter, SC 29150
Phone: (803) 436-2150
Fax: (803) 436-2403
rgriffinj@sccourts.org

September 23, 2021

TO: LINDSEY MCALLISTER, ESQ.
CHRIS GEEL, ESQ

FROM: R. KIRK GRIFFIN

RE: DONTE BROWN V. STATE OF SOUTH CAROLINA
2019-CP-08-0502

After reviewing the issues under advisement, the transcript of the jury trial, the applicant's PCR application, the testimony of the witnesses, any exhibits admitted into the record, the post hearing briefs submitted by the parties, and all other documents provided to the Court, the Court finds that, the applicant, Donte Brown, has failed to prove trial counsel was constitutionally ineffective. Therefore, the Court denies relief and dismisses the action with prejudice.

Ms. McAllister, please prepare an order consistent with your post hearing brief within 15 days and provide Mr. Geel an opportunity to review it. Please submit it to me via e-mail at rgriffinlc@sccourts.org for my review, and I will sign if proper.

If you have any questions, please feel free to contact my office.

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Donte S. Brown, #314818, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2019-CP-08-[illegible]02 **ORDER OF DISMISSAL**

This matter comes before the court by way of an application for post-conviction relief filed by Donte S. Brown (Applicant) on February 28, 2019. Respondent made its return and partial motion to dismiss on July 1, 2019. Applicant, through counsel, amended his application on March 23, 2021, and again on March 25, 2021. An evidentiary hearing convened September 9, 2021, via the WebEx virtual platform with the consent of Applicant, before the Honorable R. Kirk Griffin.

At the hearing, Applicant proceeded only on the six claims set forth the two amendments to the application,[1] alleging his constitutional rights were violated and trial counsel was ineffective for: (1) failing to object to the "search for the truth" language in the trial court's opening jury instructions, (2) failing to object to Marqueeta Hamilton's testimony regarding Christopher Wilson's statement that he shot someone, (3) failure to object to bad character/bad act evidence from Cynthia Garrett, (4) failing to object to the DNA expert's testimony regarding an alibi; (5) failing to object to the trial court's Allen charge, and (6) failing to object to object to the admissibility of the DNA expert and the reliability of the DNA evidence on the basis of Rules 702 and 403, SCRE.

[1] Applicant expressly withdrew the allegations of ineffective assistance of appellate counsel contained in his original application.

At the close of all evidence, the Court directed the parties to submit memoranda of law in support of their respective positions. Additionally, this Court had before it a copy of the Berkeley County Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application and amendments, Respondent's return, the trial transcript, and Applicant's appellate records. After a review of the record and all evidence presented, for the reasons set forth below, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted in July 2012 by the Berkeley County Grand Jury for three counts of armed robbery (2012-GS-08-1187, -1188, -1189), five counts of kidnapping (2012-GS-08-1190, -1191, -1192, 1193, -1194), and one count each of attempted murder (2012-GS-08-1198), criminal conspiracy (2012-08-1196), possession of a weapon during a violent crime (2012-GS-8-1197) , and second-degree burglary (2012-08-1195). These charges all stem from the violent robbery of a Zaxby's restaurant.

Deborah Littlejohn and David Schwacke represented Applicant. Assistant Solicitors Colleen Taylor and Mason West prosecuted the case. On May 5-8, 2014, Applicant was tried before the Honorable Roger M. Young, Sr., and a jury. The jury convicted Brown on all counts of armed robbery and kidnapping, as well as burglary and criminal conspiracy. However, the jury found Brown not guilty of attempted murder and possession of a weapon during a violent crime. Judge Young sentenced Brown to an aggregate sentence of sixty years' imprisonment – thirty years for each count of kidnapping, fifteen years for second-degree burglary, and five years

for criminal conspiracy, all to be served concurrently to each other, plus a consecutive sentence of thirty years for the armed robbery.

Applicant filed a timely notice of appeal and was represented by John Strom and Tiffany Butler of the Office of Appellate Defense. Applicant the sole issue of the admissibility of the GPS tracking evidence. The Court of Appeals affirmed in an unpublished Rule 220(b) opinion. State v. Brown. 2016-UP-447 (filed November 2, 2016). The Court of Appeals then denied Applicant's subsequent petition for rehearing. Brown filed a petition for writ of certiorari, which the South Carolina Supreme Court granted by order dated October 19, 2017. After briefing, the Supreme Court affirmed the result on August 28, 2018, and the remittitur issued on September 26, 2018.

SUMMARY OF TESTIMONY AT TRIAL

The convictions in this case stem from the robbery of a Zaxby's restaurant which occurred around midnight on December 24, 2011, committed by Brown and his co-defendant, Christopher Wilson.[2]

Jeffrey Taylor was the first witness for the State. He testified he was sitting in his car outside Zaxby's, having just got off duty. He made some phone calls and listened to music in his car. Taylor then saw two men wearing black outfits, one of them with a gun, walking toward the back door of the restaurant. Taylor promptly called 911 to tell them Zaxby's was being robbed. Tr. pp. 220-25.

Riley Kemp was a cook at Zaxby's. Kemp was taking trash out to the dumpster behind Zaxby's when he heard footsteps. Two men in dark clothes and ski masks took hold of him and

[2] Wilson was tried and convicted prior to Applicant's trial.

smashed his cell phone. He testified one had a knife, and the other had a gun. Tr. pp. 232, 238-39.

One of the men checked out a noise from the other side of the dumpster and came back with Kemp's co-worker, Vincent Riley, known as V.J. The robbers searched V.J. but allowed him to leave. One robber took Kemp's wallet by ripping the pocket of Kemp's pants with a knife. TR. pp. 240-242. The robbers then directed Kemp to let them in the restaurant. Kemp rang the buzzer, and someone let them in the back of the restaurant. The robbers made Kemp and another co-worker, Kevin Lane, lie on the ground. Kemp heard his manager plead, "Don't hurt us." Then Kemp heard a gunshot. Kemp heard the robbers dropping change as they left. Kevin called the police. Tr. pp. 243-45.

V.J. testified his mother, Linda Williams, was the manager of Zaxby's. V.J. was not working that night but happened to be riding by the restaurant on his bike when he saw his co-worker's car and decided to ask for a ride. He heard voices behind the dumpster and called out his friend's name. Instead, a man came out with a gun. The robbers took V.J.'s cell phone but gave it back and ordered him at gunpoint to take the battery out, which he did. V.J. identified the gun used in the robbery in court. The men told V.J. to leave, and he went home. Tr. p. 252-57. The robbers warned him not to "snitch." Tr. p. 260.

Kevin Lane was working at Zaxby's the night of the robbery. While carrying dishes into the back of the restaurant, Lane heard the buzzer and opened the door. Lane turned around to see the two robbers approaching, one with a gun. The robbers ordered Lane to the ground. Andre, another co-worker, was also on the ground. Lane testified heard a smacking noise, which he surmised was the gunshot, and then the robbers left. Lane called 911. Tr. pp. 264-68.

Daniel Auman also was working at Zaxby's that night as a dishwasher. He testified he was likewise ordered to get on the ground by two men wearing black clothes and ski masks, one of whom had a gun. Auman testified the robbers took his cell phone which they gave back to him when they left. He also testified one of the men hit him with the gun. Tr. pp. 273-75.

Linda Williams testified she was on duty at Zaxby's when two gunmen came into her office wearing black clothes, hoodies, and masks. They made her stand up from her seat and then lie on the floor. They rifled through her pants and took $18. They also shot her. She testified the robbers stole approximately $3,600 to $3,800. Tr. pp. 277-81. As the robbers were leaving, they argued over the bag of stolen money and dropped some of it. Tr. pp. 286-87.

Melvin Powell and his wife were driving nearby the restaurant when Powell noticed a commotion. He testified his wife was driving, and she changed lanes to allow police cars to pass. He explained there was a moment of darkness after the blue lights of the patrol vehicles passed by, and about that time his wife slammed on the brakes to avoid hitting two men in dark clothing running out of the woods. The two men ran down the road in between a fence and some bushes. Tr. pp. 294- 95. Powell and his wife stopped at Zaxby's and spoke with police about what they had seen. Tr. pp. 296-97.

Sergeant Scott Cook of the K-9 Unit for the Berkley Sheriff's Department brought Gotcha, his German shepherd, to the scene. After being advised by officers that the two suspects were seen running across Highway 176 and entering the Foxborough subdivision, Sergeant Cook put Gotcha into action. Gotcha followed a scent trail and led Sergeant Cook to a cul-de-sac, where he found some money lying on the ground in front of the house at 310 [redacted] Lane. The trail ended in front of 318 [redacted] Lane. Tr. pp. 307-15, 321-23. Sergeant Cook testified

investigators later found additional money and a mask in the woodline by the Zaxby's. Tr. pp. 322-23.

Marteeka Hamilton testified she was in an off-and-on relationship with Brown for six years. She received a call from Brown on Wilson's cell phone around midnight on December 23-24. Hamilton testified Wilson's street name is "Dolla." Brown asked Hamilton to pick him and Wilson up, but she could not do so right away because she was at a salon. After some back and forth with Applicant, Hamilton ultimately picked up him and Wilson at the entrance of the Foxborough subdivision. She testified she saw a police car in front of someone's house in the neighborhood. She told Brown and Wilson that she needed gas money, and they gave her $40. While Hamilton was driving, she heard Wilson talking on the phone about shooting someone and said he did not mean to do it, and Brown called Wilson a "stupid motherfucker."

Hamilton testified she dropped Brown and Wilson off at a mall parking lot between 1:00 a.m. and 2:00 a.m. even though the mall was closed. At first, they wanted her to drop them off at a pawn shop to get another ride. Hamilton testified she spoke with Brown on his own phone several times in the days following the robbery. She also saw Brown and Wilson at the Motel Six on Ashley Phosphate Road. She noticed two or three shopping bags in the room. Tr. pp. 375-85; pp. 388-89.

Cynthia Garrett started dating Brown around November 2011. Brown's parents put him out of the house, so Garrett let Brown stay with her and her three kids. They had a fight, so Garrett told Brown to leave after he accused her of "being slick with another guy." Tr. pp. 411-13. Brown moved out about a week before Christmas. Garrett testified Brown would call her using Wilson's phone. Tr. p. 414.

Prior to kicking Brown out of the house, Garrett tried to convince him to get a job and offered to drive him back and forth to the job site. However, Garrett testified Brown told her he would "rather rob than work," and declined the job offer. Tr. p. 415. Garrett also testified Brown asked her to let him use her car to do a "lick," which Garrett understood as a slang term for a robbery. Brown told Garrett he was planning to do the lick with Wilson. Garrett refused. Garrett testified that one time her daughter saw Brown cleaning a gun in the kitchen.[3] Garrett told Brown he needed to get the gun out of the house. Tr. pp. 416-17.

Garrett testified she picked up Brown from the area between Zaxby's and the Hess gas station sometime before Christmas. Brown was staying across the street with Wilson in a subdivision near the Zaxby's. Garrett testified Brown often used Wilson's phone until Brown got his own. Around midnight on December 23-24, Brown called her on Wilson's phone asking her to pick him and Wilson up. Brown tried to entice her to do this by offering to pay her light bill, which was about $175, and to pay to fix the vent in her car. Garrett declined. TR. pp. 417-421.

The next time Garrett heard from Brown, he offered to take her out for her birthday in December. Garrett again declined. Then around the beginning of the year, she saw Brown because she wanted to have Wilson cut her son's hair before he went back to school. During this meeting, Brown told her about the robbery and how Wilson had shot someone. According to Garrett, Brown said they had been scoping out the scene for a while. Brown also told her he and Wilson went shopping with the stolen proceeds and bought shoes, clothes, and cell phones. Garrett noticed Brown was wearing new clothes. Brown told her how they dropped some of the money but kept running because the police were coming.

---

[3] Initially, Garrett testified she had seen the gun herself and identified it from a picture showed to her by the solicitor. However, on cross-examination, Garrett admitted she had not personally seen the gun, but her daughter had told her about it and described it to her. Tr. pp. 435-37.

Brown further told Garrett that his ex-girlfriend picked him and Wilson up after the robbery. He and Wilson then rented a car and went out of town for a while. Brown said he was staying in a hotel. Garrett reported what Brown had told her to the police because she felt it was the right thing to do. Tr. pp. 422-26.

Captain David Sodeberg participated in the execution of the search warrant at 318 [redacted] Lane. Brown was found in the home at the time the search warrant was executed. Law enforcement located a blue Ruger Mark II semi-automatic .22 caliber pistol in a suitcase sitting outside the exterior door to the garage. Law enforcement also seized a knife from the residence. Tr. pp. 478-483. Additionally, the social security card of one of the victims of the robbery was found in a drawer in one of the bedroom's at Wilson's home. Tr. pp. 486-94.

Investigator Powell testified he received a tip on December 29, 2011, from Cynthia Garrett. Investigator Powell verified that Brown stayed at the Motel Six and corroborated the approximate amount of money stolen from Zaxby's. Tr. pp. 486-94.

Sonia Wilson, Christopher Wilson's mother, testified she arrived home to discover a search warrant being executed at her house at 318 [redacted] Lane. Christopher Wilson was not at the house when the search warrant was executed. She testified Ramen noodles had been left out on the table, and neither she nor her husband eat Ramen noodles. Tr. pp. 557-58. Sonia testified she had previously found Brown inside her house when her son was not there. Tr. p. 559.

Lanier Daniels was in jail with Applicant in January 2012. Daniels testified Brown talked about the Zaxby's robbery, and he was mad because the other guy shot someone during the robbery. Daniels testified Brown told him he had been arrested while having Ramen noodles at someone else's house. Brown told Daniels he was at the house to get rid of the gun. Brown

also told Daniels that his "baby mama" picked Brown and Brown's accomplice up after the robbery. Tr. pp. 560-64, 567.

SLED Agent Kenneth Whitler, who had retired by the time of trial, testified the cartridge case submitted to him was fired by the gun submitted to him by Goose Creek investigators for testing. Tr. pp. 568-70, 575.

Daniel Demers was qualified as an expert in forensic testing of DNA. He testified DNA found on the recovered ski mask matched Christopher Wilson's DNA. Tr. pp. 605-06. He also testified Brown and Wilson were in the 2.2% of the African-American population who could not be excluded as contributors of the DNA on the handle of the gun recovered by investigators. Tr. pp. 608-10.

ALLEGATIONS

In his original application for post-conviction relief, Applicant alleged he is being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel
    a. "Failure to object to witness' improper comment on defendant's lack of alibi and his right to remain silent at trial
    b. Failure to object to Court's improper comments RE: "Search for the truth."
    c. Failure to raise meritorious appellate issues RE: Motions to suppress search warrants, phone data, etc.
2. Ineffective Assistance of Appellate Counsel

In his first amended application, Applicant alleges:

> Ground One: "Trial counsel was constitutionally ineffective by failing to make a contemporaneous objection to the trial court's impermissible "search for the truth" language that was delivered to the jury. State v. Beaty, 423 S.C. 36 (2018). (Tr. 200)."
>
> Ground Two: "Trial counsel was constitutionally ineffective by failing to object when prejudicial comments from co-defendant Wilson were elicted at trial through Marteeka Hamilton, in violation of Bruton v. United States, 391 U.S. 123 (1968), and Crawford v. Washington, 541 U.S. 36 (2004). (Tr. 383)."

> Ground Three: "Trial counsel was constitutionally ineffective by failing to object when irrelevant and prejudicial bad-character evidence was elicited at trial through Cynthia Garrett, in violation of Rule 404, SCRE, State v. Braxton, 541 S.E.2d 833, 343 S.C. 629 (S.C. 2001) (Tr. 415-416, 435, 446, 464-65)."
>
> Ground Four: "Trial counsel was constitutionally ineffective by failing to object when the State's DNA expert made repeated improper remarks that implicated the Applicant's failure to testify, lack of alibi, and failure to present evidence. State v. Posey, 269 S.C. 500, 503, 238 S.E.2d 176 (1977)."
>
> Ground Five: "Trial counsel was constitutionally ineffective by failing to object to the premature and coercive Allen charge, in violation of Workman v. State, 412 S.C. 128 (2015). (Tr. 704-07)."

In his second amended application, Applicant alleges:

> Ground Six: "Trial counsel was constitutionally ineffective by failing to object to the State's DNA expert, and not requiring the State to demonstrate the reliability of the witness' expert testimony, nor requiring the Court to examine the evidence under Rule 702 and 403. State v. Phillips, 430 S.C. 319, 844 S.E.2d 651 (2020)."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has heard the testimony and evidence presented at the evidentiary hearing, observed the witnesses and evaluated their credibility, considered the arguments of counsel, and weighed these factors accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject conviction, the appellate records, and Applicant's original and amended applications, as well as the trial transcript. This Court finds the combined record from the criminal case and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and relief should be denied and this application dismissed with prejudiced. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws:

Standard of Review

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d

514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

"Search for the truth"

Applicant argues trial counsel were constitutionally ineffective for failing to object to the language of the trial court's opening instruction to the jury to "search for the truth." Tr. p. 200. As support Applicant cites State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018), although he acknowledges that case was decided several years after Applicant's trial. For the reasons detailed below, this Court finds Applicant's argument unavailing and denies relief as to this issue.

Littlejohn acknowledged she was on notice as to the objectionable phrasing before Beaty, but she testified she was simply not focused on this issue and missed the objection. More importantly, however, she testified she did not feel the instruction was prejudicial to Applicant in any way. Schwacke testified he felt it important to keep that language out of the trial court's closing jury instructions, which he successfully argued for, but he did not consider requesting a curative instruction regarding the opening instruction at that point because he did not want to draw attention to the issue, particularly since the trial was several days long, and so much time had passed since the judge's initial remarks.[4]

As the South Carolina Supreme Court explained in State v. Aleksey, instructions "which charge the jury to 'seek the truth' are disfavored because they '[run] the risk of unconstitutionally shifting the burden of proof to a defendant.'" 343 S.C. 20, 26-27, 538 S.E.2d 248, 251 (2000) (internal citations omitted). However, jury instructions are also to be "considered as a whole, and if as a whole they are free from error, any isolated portions which

[4] The Court finds this is a valid trial strategy. In Caprood v. State, the South Carolina Supreme Court reversed the PCR court's finding that trial counsel was ineffective for failing to move to strike or request limiting instructions after his objection to hearsay was sustained. 338 S.C. 103, 108-09, 525 S.E.2d 514, 516-17 (2000). At the evidentiary hearing, trial counsel testified he did not request curative instructions "as a trial strategy... because they tend to bring into focus precisely the item the objector has kept out." Id. at 110, 525 S.E.2d at 517. The Supreme Court found because trial counsel "articulated a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id.

may be misleading do not constitute reversible error. The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution." Id. at 27, 538 S.E.2d at 251. In reaching this holding, the Supreme Court cited to multiple cases in which nearly identical language was found not to have unconstitutionally shifted the burden of proof the defendant. See id. at 29 n. 2, 538 S.E.2d at 252 n. 2 (listing cases in which "search for the truth" or "seek the truth" language was found not to be reversible error because it did not shift the burden of proof).

Thus, the Court finds, even if the "search for the truth" language was objectionable in this context, Applicant has failed to prove he was prejudiced by the missed objection. Moreover, "even if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough v. Gentry, 540 U.S. 1, 6 (2003). Importantly, the trial court gave the correct instruction defining reasonable doubt as "proof that leaves you firmly convinced of the Defendant's guilt." Tr. p. 687. Moreover, the trial court repeatedly emphasized throughout the instructions that the State has the burden of proof beyond a reasonable doubt, and mere suspicion of Applicant's involvement is not enough. Tr. pp. 686, 688.

In Applicant's case, this Court finds the trial court's instructions to the jury, when taken as a whole, correctly stated the law, particularly at the more critical juncture of closing instructions immediately prior to the jury's deliberation. The trial court properly defined reasonable doubt and repeatedly informed the jury it was the State's burden of proof to meet, and the closing instructions made no reference to a search for the truth. Accordingly, this Court finds Applicant has failed to prove he was prejudiced by the trial court's initial reference to a "search

for the truth," the Court denies relief as to this issue, and the allegation shall be dismissed with prejudice.

Statement of codefendant

Applicant alleges his trial counsel were constitutionally ineffective for failing to object to testimony from Marqueeta Hamilton regarding a statement made by Applicant's codefendant Christopher Wilson. Hamilton testified she picked up Applicant and Wilson, known as Dolla, from the Foxborough subdivision across the street from Zaxby's on the night of the robbery. Once in the men were in her car, she overheard Wilson's phone call, in which he said "he didn't mean to shoot someone, and [Applicant] called him a stupid motherfucker." Tr. p. 383. Applicant argues trial counsel should have objected to this statement as a violation of Bruton.[5]

First, unlike Bruton and Bruton's codefendant, Applicant and Wilson were not tried together, and the statement made by Wilson that he did not mean to shoot someone does not implicate Applicant in the same way Bruton was implicated by his codefendant's confession. Wilson did not mention Applicant, or even an unnamed accomplice, in his statement, and Applicant's response, as testified to by Hamilton, was simply to call Wilson a "stupid motherfucker," which is not a confession or admission either.[6] Hamilton testified these two lines were "about all the conversation there was" between Applicant and Wilson. Because the statement made by Wilson refers only to his *own* guilt and does not implicate Applicant in any way, the Court finds there was no violation of Bruton, and trial counsel were not deficient in failing to object on this basis.

---

[5] Bruton v. United States, 391 U.S. 123 (1968) (holding defendant's Sixth Amendment right to cross-examination was violated and defendant was substantially prejudiced against because of the high risk that the jury considered codefendant's confession when deciding defendant's guilt).

[6] As the State points out, if your friend commits a robbery and shoots someone, this reaction is not an unreasonable response whether you are an accomplice or not.

However, even if the statement was objectionable either under the lens of the Confrontation Clause or simply as garden-variety hearsay, the Court finds it was cumulative to the testimony of other witnesses which was *not* objectionable, and therefore, Applicant was not prejudiced by its admission. First, Cynthia Garrett testified Applicant himself told her that he and Wilson had robbed the Zaxby's together, and Wilson had shot someone. Tr. p. 423. Additionally, Lanier Daniels, the jailhouse informant, testified Applicant told him about the robbery and admitted he was present when his codefendant shot someone, which Applicant was upset about. Tr. pp. 561-62. The testimony of both of these witnesses was proper under Rule 804(b)(3), SCRE, as these statements were made by Applicant himself. Rule 804(b)(3), SCRE ("A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability... that a reasonable person in the declarant's position would not have made the statement unless believing it to be true..." is not excluded by the hearsay rule if the declarant is unavailable as a witness). Thus, Hamilton's testimony was merely cumulative.

Therefore, the Court finds Applicant failed to prove he was prejudiced by the lack of and objection because "[t]he improper admission of hearsay is reversible error only when the admission causes prejudice." State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006) (finding even if testimony concerning victim's fear of the defendant was inadmissible, there was no prejudice because it was cumulative to other witnesses' testimony admitted without objection); State v. Hughes, 419 S.C. 149, 796 S.E.2d 194 (Ct. App. 2017) (explaining that while the trial court erred in admitting some of the testimony, appellant could not demonstrate the necessary resulting prejudice). Because this Court finds trial counsel were not deficient, nor was Applicant prejudiced, it denies relief as to this issue and dismisses this allegation with prejudice.

Bad character evidence

Applicant argues trial counsel failed to object to three specific pieces of testimony from Garrett which was impermissible bad-act testimony under Rule 404, SCRE: (1) Garrett's statement Applicant told her he would "rather rob than work;" (2) Applicant had a gun; (3) Applicant had attempted to fight Garrett in the past. However, trial counsel credibly testified one of the main themes of Applicant's defense was that the two ex-girlfriends, Hamilton and Garrett, were scorned women with a vendetta against Applicant who could not be trusted. Trial counsel repeatedly testified her strategy for dealing with Garrett's testimony was to make Garrett out to be liar in as many ways a she could. As counsel explained, this meant she let Garrett testify without objection to statements she believed she could prove were false or exaggerated in order to impugn Garrett's credibility. For the reasons detailed below, the Court finds this was a reasonable and valid trial strategy, and trial counsel was therefore not deficient.

As to Garrett's statement that Applicant claimed he would "rather rob than work," on cross-examination, trial counsel elicited testimony from Garrett admitting Applicant held a job and helped her pay bills at the home they briefly shared. Tr. pp. 432-33. Additionally, trial counsel used Garrett's allegation of a physical fight between her and Applicant to poke holes in the timeline of Applicant's confession to Garrett about his involvement. Trial counsel elicited testimony showing Garrett first gave a statement to police in which she stated Applicant had denied any involvement in the robbery. However, after the fight occurred, Garrett gave her second statement, in which she claimed Applicant admitted to committing the robbery with Wilson. Tr. pp. 445-46. Finally, the most obvious example of trial counsel's stated strategy in action involved Garrett's testimony that she saw Applicant with a gun in their home. On cross-examination, Garrett was forced to recant that testimony and admit she had not actually seen the

gun herself, and in fact, the only information she had about it came from her daughter. Tr. pp. 435-37.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily account for the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a particular defendant. 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for her action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Here, the Court finds trial counsel clearly articulated a strategy in which she did not object to portions of Garrett's testimony she believed to be false because she knew she could use that testimony to Applicant's advantage on cross-examine. Trial counsel then used the contradictions and inconsistencies in Garrett's story in her closing argument to the jury to make the case that Garrett was angry at Applicant over the end of their relationship, and she changed her story to police in order to get back at him. Tr. pp. 679-82. As this strategy was objectively reasonable, this Court will not second guess counsel's tactics. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.").

Because the Court finds trial counsel was not deficient, Applicant has failed to meet his burden of proof, and the Court denies relief and dismisses this allegation with prejudice.

DNA expert's references to alibi

Applicant alleges trial counsel were constitutionally ineffective for failing to object to the DNA expert's references to an alibi during the course of his testimony. Applicant alleges the expert instructed the jury to consider whether Applicant provided an alibi and to draw negative inferences from his inability to do so, which he characterizes as unfair burden-shifting.

While the Court finds, and the State concedes, this testimony was objectionable as outside the scope of the expert's qualifications. However, the Court also finds Applicant failed to prove he was prejudiced by it. First, on cross-examination, the expert unequivocally clarified he did not know the other evidence in the case, if there was any, and he was not trying to suggest that an alibi would factor into the statistically probabilities he calculated or offer a way to decrease the pool of people who could not be eliminated as a contributor to the sample. Tr. pp. 628-29. Moreover, his testimony actually admits that the DNA of a "falsely accused person" could be unable to be eliminated from the sample simply by bad luck or chance. As trial counsel Schwacke testified, he did not feel this testimony was harmful to Applicant. He also testified he believed the DNA evidence was helpful to Applicant overall because of the high number or percentage of people in addition to Applicant who could not be excluded. Additionally, as discussed further in section 6 below, the solicitor did not repeat the expert's remarks in her closing argument to the jury. Instead, she merely asked the jury to consider the DNA in conjunction with all the other evidence.

Importantly, trial counsel Littlejohn credibly testified, in her estimation, the DNA evidence was relatively unimportant, and the key witnesses against Applicant were Marqueeta

Hamilton and Cynthia Garrett. Garrett testified Applicant admitted to committing the robbery with Wilson, as did a third witness, Lanier Daniels. It was not Applicant's lack of an alibi which made the DNA evidence more significant; rather it was his own inability to keep quiet about his role in the robbery.

Accordingly, the Court finds that because the testimony of the DNA expert did not unfairly prejudice Applicant, trial counsel were not constitutionally ineffective. This Court denies relief as to this ground and dismisses it with prejudice.

Allen charge

Applicant asserts trial counsel were constitutionally ineffective for failing to object to the trial court's Allen charge[7] as premature and coercive. First, the Court notes Applicant's argument the Allen charge was premature reads a timing requirement into Allen which simply does not exist. As long as the charge is not coercive – and the Court finds the charge given in Applicant's trial was not – there is no requirement of deadlock. Therefore, this Court finds the charge given was proper, and trial counsel was not deficient for declining to object to it, nor was Applicant prejudiced by the charge.

While an Allen charge is traditionally given once a jury indicates it is deadlocked, this is not a requirement. Allen itself does not mention deadlock and merely says the instruction was "given to the jury after the main charge was delivered, and when the jury had returned to the court, apparently for further instructions." 164 U.S. at 501. Other jurisdictions have approved Allen language in the court's main charge to the jury. See, e.g., Love v. State, 909 S.W.2d 930 (1995) ("We find no authority condemning the issuance of the 'Allen' type instruction in the court's main charge."). Still others have approved the giving of an Allen charge under similar

[7] Allen v. United States, 164 U.S. 492, 501, (1896).

circumstances as here, after the main charge but before a clear indication of deadlock. See US v. Martinez, 446 F.2d 118 (2nd Cir. 1971) (approving jury charge given by judge sua sponte after three hours of deliberation and without indication of deadlock).

Applicant cites to State v. Workman in support of his argument, and Workman clearly articulates the factors used to evaluate whether an Allen charge is coercive. 412 S.C. 128, 130-31 (2015). The four factors to be considered are: (1) whether the charge singles out minority jurors; (2) whether it includes language requiring a decision; (3) whether the trial court inquires into the division of votes; and (4) the amount of time between when the charge is given and when a verdict is returned. Id. at 131. The Court finds none of the coercive factors were present in Applicant's case.

The trial court's charge addressed both majority and minority jurors and encouraged each side to listen to the other. It did not contain language requiring jurors to reach a decision; rather, the trial court instructed the jurors to keep working at their deliberations and to alert if they were to reach an impasse or need to break for the day. The trial court did not inquire into the breakdown of votes, and in fact specifically instructed the jury *not* to disclose the vote count. Finally, the jury deliberated an additional two hours after the charge before reaching a verdict and asked two additional questions during that time, signifying true deliberation amongst the jurors. Tr. pp. 704-12. Thus, applying the Workman factors here, this Court finds the language of the charge itself was proper and not coercive, and trial counsel had no grounds to object on that basis. Consequently, trial counsel were not deficient, nor was Applicant prejudiced.

Because trial counsel were not deficient in declining to object to the court's Allen charge, nor was Applicant prejudiced, as that charge was not objectionable, Applicant has failed to meet

his burden of proof as to this allegation. This Court should denies relief and dismisses the allegation with prejudice.[8]

DNA expert's qualifications and reliability of evidence

Finally, Applicant argues trial counsel were constitutionally ineffective for failing to object to the DNA expert, Demers, and the reliability of his tests and evidence under Rules 702 and 403, SCRE.

However, Littlejohn did object to the admission of the DNA evidence on the basis of Rule 403 and cited to State v. Bostick, 392 S.C. 134 (2011), in support of her argument. The trial court listened to her argument and reviewed the case, but ultimately ruled the testimony and evidence were admissible, and Applicant's argument could be made through cross-examination. Tr. pp. 544-47. Littlejohn additionally requested to voir dire the expert, which both the State and the defense did thoroughly. Littlejohn credibly testified she did not believe an objection based on Rule 702 would be successful, and in her opinion and experience, the Demers was qualified to testify as an expert. Thus, the Court finds the allegation trial counsel were deficient in not objecting to the admission of the DNA evidence on the basis of Rule 403 is plainly contradicted by the record.

As to the argument Applicant should have objected under Rule 702, in support of his position, Applicant points to State v. Phillips, 430 S.C. 319, 844 S.E.2d 651 (2020), in which the Supreme Court expressed concern with the use of touch DNA evidence and testing, as was used in Applicant's case. As an initial matter, this Court notes Phillips was decided in 2020, six years

[8] Additionally, Applicant did not present any testimony from any juror(s) who felt pressured by the charge, and Littlejohn testified she believed the charge was actually beneficial to Applicant. She explained that in her career, most of the times that her clients have received a favorable verdict involved juries who received an Allen charge and needed to deliberate longer, rather than when the jury quickly returned a verdict.

after Applicant's trial, and trial counsel did not have the benefit of its guidance in making arguments in Applicant's case. In any event, this Court finds Phillips is distinguishable from Applicant's case for two important reasons.

First, Phillips admitted to being at the crime scene and holding the gun; thus, the fact of his DNA being on the gun or not excluded from the gun was much less relevant in his case than in Applicant's situation, wherein Applicant denied all involvement in the robbery.[9] Id. at 327, 844 S.E.2d at 655. Moreover, the statistical probabilities cited in Phillips were much larger than those in Applicant's case. In Phillips, the DNA expert testified one in two people – half of the population – could not be excluded from some of the DNA samples. Id. at 328, 844 S.E.2d at 655. In Applicant's case, the DNA expert testified 97.8% of the black population of the United States could be excluded from the butt of the gun. Tr. p. 608. Even so, Schwacke testified he felt even this number was helpful to Applicant because when he extrapolated it out to the population of Berkeley County alone, there were more than 980 people in addition to Applicant who could not be excluded.

Second, and most importantly, the solicitor in Phillips repeatedly and drastically misstated the evidence and testimony presented by the DNA expert, both to the trial court and to the jury, and even the expert testified incorrectly on some issues. Id. at 342-43, 844 S.E.2d at 663. In this case, the DNA expert testified that Applicant's DNA could not be excluded from the DNA mixture found on the handle of the gun, and he clearly explained this was a different scenario than one in which a person would be deemed "included." The DNA expert explicitly stated he could not say it *was* Applicant's DNA on the gun. Moreover, the expert repeatedly

[9] Although Applicant did not testify or otherwise present evidence, trial counsel testified the defense aimed to establish Applicant had nothing to do with the robbery, was not present, and did not participate in it in any way.

explained it was possible that a "falsely accused person" could be "unlucky" enough that their DNA could not be excluded in this scenario. Tr. pp. 608-10. In closing argument, the solicitor did not misstate or misconstrue the DNA expert's testimony to the jury.

Here, Littlejohn objected to the DNA evidence on the basis of Rule 403, SCRE, as Applicant alleges she should have done. She also credibly testified she did not believe a Rule 702, SCRE, objection would have been successful as Demers was clearly qualified as an expert. Most importantly, however, the extreme and repeated overstatements of the significance of the DNA test results by the State was not present in Applicant's case as it was in Phillips. Therefore, the Court finds trial counsel were not deficient, Applicant was not prejudiced by trial counsels' lack of a Rule 702 objection, nor was Applicant unfairly prejudiced by the expert's testimony regarding the test's inability to eliminate Applicant as a contributor to the DNA on the gun. The Court denies relief and dismisses this allegation with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by her representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g),

SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

R. KIRK GRIFFIN
Presiding Judge
Ninth Judicial Circuit

October 22, 2021

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Inv M. Boyd

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002499

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury *Date:* 8 May 14

INDICT

DOCKET NO. 2012GS0801187

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Armed Robbery

§16-11-0330(A)
CDR: 0139

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of Riley Kemp from or in the immediate presence of Riley Kemp, described as follows: a wallet, with intent to deprive Riley Kemp of possession by use of force, threats or intimidation, in violation of §16-11-0330(A) 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.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Ian M. Page

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002500

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury *Date:* 8/May/14

INDICT

DOCKET NO. 2012GS0801188

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Armed Robbery

§16-11-0330(A)
CDR: 0139

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of Vincent Riley from or in the immediate presence of Vincent Riley, described as follows: a cell phone battery, with intent to deprive Vincent Riley of possession by use of force, threats or intimidation, in violation of §16-11-0330(A) 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.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Inv. M. Boyle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002501

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

erson of Grand Jury

Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury *Date:* 8 May 14

INDICT

DOCKET NO. 2012GS0801189

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Armed Robbery

§16-11-0330(A)
CDR: 0139

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of Gerlinda Williams from or in the immediate presence of Gerlinda Williams, described as follows: United States Currency, with intent to deprive Gerlinda Williams of possession by use of force, threats or intimidation, in violation of §16-11-0330(A) 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.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Irma Foyle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002494

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

D K Peters

Foreperson of Grand Jury

Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury

8May14
Date:

INDICT

DOCKET NO. 2012GS0801190

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Kidnapping

§16-03-0910
CDR: 0095

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Gerlinda Williams, without authority of law, in violation of §16-03-0910 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.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Jm. M. Fogle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002495

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

D K Peterse

Foreperson of Grand Jury

Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury

Date: 8 May 14

INDICT

DOCKET NO. 2012GS0801191

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Kidnapping

§16-03-0910
CDR: 0095

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Riley Kemp, without authority of law, in violation of §16-03-0910 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.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Dave M. Fogle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002496

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

O.D. Peters

Foreperson of Grand Jury

Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury

Date: 8 May 14

INDICT

DOCKET NO. 2012GS0801192

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Kidnapping

§16-03-0910
CDR: 0095

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Vincent Riley, without authority of law, in violation of §16-03-0910 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.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Dave M. Foyle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002497

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

D.P. Peterson

Foreperson of Grand Jury

Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury

Date: 8 May 14

INDICT

DOCKET NO. 2012GS0801193

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Kidnapping

§16-03-0910
CDR: 0095

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Kevin Lane, without authority of law, in violation of §16-03-0910 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.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Inv. M. Fogle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002498

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury *Date:* 8 May 14

INDICT

DOCKET NO. 2012GS0801194

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Kidnapping

§16-03-0910
CDR: 0095

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Daniel Aumen, without authority of law, in violation of §16-03-0910 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.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Inv. M. Fogle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002505

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury *Date:* 8 May 14

INDICT

DOCKET NO. 2012GS0801195

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Burglary 2nd Degree

§16-11-0312(B)
CDR: 0086

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Burglary 2nd Degree

That DONTE SAMAR BROWN did in Berkeley County, on or about December 24, 2011, enter without consent and with the intent to commit a crime therein, the Zaxby's building located at 433 St. James Avenue, Goose Creek, South Carolina, and the defendant did enter the building in the nighttime while armed with a deadly weapon, in violation of §16-11-0312(B) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Thom M. Floyd

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002508

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 7/18/12

VERDICT

Guilty

Foreperson of Petit Jury *Date:* 8 May 14

INDICT

DOCKET NO. 2012GS0801196

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN
DOB: [redacted]
B/M

Indictment for

Criminal Conspiracy

§16-17-410
CDR: 0049

FILED
12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Criminal Conspiracy

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, combine with another, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: to commit Armed Robbery, in violation of §16-17-410, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BENJAMIN T SHELTON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N. Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2012GS0801187
A/W#: K002499
Date of Offense: 12/24/2011
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: _____ 73731 _____ _____ _____
Taylor, Colleen E. 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 30 ~~days/months/years~~ or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS08 1188 + 1189
☑ 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	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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 _____
Court Reporter: Amanda Nabholden
Presiding Judge _____
Judge Code: 2134
Sentence Date: 9/8/14

SCCA/217 (03/2011)

1088

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N. Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801188
A/W#: K002500
Date of Offense: 12/24/2011
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: _____ 73771
Taylor, Colleen E. | 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 30 ~~days/months/years or~~ ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012GS08-1187 & 1189
☑ 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	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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 L. Hill
Court Reporter: Amanda Haffenden
Presiding Judge
Judge Code: 2134
Sentence Date: 5/8/14

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N. Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801189
A/W#: K002501
Date of Offense: 12/24/2011
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: Taylor, Colleen E. | 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 30 ~~days/months/years or~~ ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS-08-1188 + 1187
☐ 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. Credit 1/5/12
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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 L. Hill
Court Reporter: Amanda Haffenden
Presiding Judge 213
Judge Code:
Sentence Date: 5/8/14

SCCA/217 (03/2011)

1090

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801190
A/W#: K002494
Date of Offense: 12/24/2011
S.C. Code § : 16-03-0910
CDR Code #: 0095

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

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: _____ 73731 _____ _____ _____
Taylor, Colleen E. 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 30 ~~days/months/years~~ or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☑ CONSECUTIVE to sentence on: 2012-GS08-1187, 1188, 1189
☑ 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	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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 _____
Court Reporter: Amanda Hattenden

Presiding Judge _____
Judge Code: 2134
Sentence Date: 5/8/14

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N. Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801191
A/W#: K002495
Date of Offense: 12/24/2011
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: 08/16/14 _____ _____ _____ _____
Taylor, Colleen E. 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 30 ~~days/months/years~~ or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by ~~reference~~.
☐ CONCURRENT or ☑ CONSECUTIVE to sentence on: 2012-GS08-1187, 1188, 1189
☑ 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	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.98
TOTAL		$ 133.98

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 _____
Court Reporter: Amanda Hatfield
Presiding Judge _____
Judge Code: 2134
Sentence Date: 5/8/14

SCCA/217 (03/2011)

1092

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801192
A/W#: K002496
Date of Offense: 12/24/2011
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: _____ 73731 _____ _____ _____
Taylor, Colleen B 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 30 ~~days/months/years~~ or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by ~~reference~~. 2012-GS08-1187, 1188, 1189
☐ 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	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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: Amanda Hatfield
Court Reporter: _____
Presiding Judge _____
Judge Code: 213
Sentence Date: 5/8/14

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N. Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801193
A/W#: K002497
Date of Offense: 12/24/2011
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: Taylor, Colleen E. 73731 _____ _____ _____
Taylor, Colleen E. | 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 30 ~~days/months/years~~ or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☑ CONSECUTIVE to sentence on: 2012-GS 08 1187, 1188, 1189
☑ 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	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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: Amanda Hattenden
Court Reporter: _____
Presiding Judge: _____
Judge Code: 2134
Sentence Date: 8/8/14

SCCA/217 (03/2011)

1094

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N. Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801194
A/W#: K002498
Date of Offense: 12/24/2011
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: Taylor, Colleen E | SC Bar# 75871 | 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 30 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☑ CONSECUTIVE to sentence on: 2012-GS08-1187, 1188, 1189
☑ 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	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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: Amanda Hathaden
Court Reporter:
Presiding Judge
Judge Code: 213
Sentence Date: 5/8/14

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N. Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801195
A/W#: K002505
Date of Offense: 12/24/2011
S.C. Code § : 16-11-0312(B)
CDR Code #: 0086

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
☐ 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: _____ 73131 _____ _____ _____
Taylor, Colleen E. 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 15 ~~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: 2012-GS08-1187, 1188, 1189
☑ 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	$ 100.00
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.98
TOTAL		$ 133.98

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: Dan Hollenden
Court Reporter: Amanda
Presiding Judge
Judge Code: 2134
Sentence Date: 5/8/14

SCCA/217 (03/2011)

1096

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Donte Samar Brown)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: 4753 [redacted])
City,State,Zip: N Charleston, SC 29420)
DL#: [redacted] SID#: SC01688092)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0801196
A/W#: K002508
Date of Offense: 12/24/2011
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: Criminal 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: _____
Taylor, Colleen E. | SC Bar# 78731 | 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: 2012-GS08-1187, 1188, 1189
☑ 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	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.98
TOTAL		$ 133.98

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 Amanda Hoffmeyer
Court Reporter: _____
Presiding Judge 134
Judge Code: _____
Sentence Date: 5/8/14

SCCA/217 (03/2011)