

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

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MARK ANTHONY BAYNE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001693

—————
APPENDIX
—————

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MARK BAYNE-DIRECT BY MR. ARIAIL

1 shotgun and that when Donald Trammell walked away, that he
2 walked up.

3 Q Okay. Let me, I know you've kind of brought a
4 lot of different areas we're going to have to go back
5 into. But my first part is, I just want to kind of get
6 straight on David Enice. Now, I'm going to go back a
7 little bit. When you stated right there that David Enice
8 positively identified your son, where are you getting that
9 information from?

10 A From the supplemental report of Matthew Owens.
11 Matthew Owens -- there's two pages, supplemental report
12 where the detective [audio distortion] it was on
13 10/21/2014. The detective brought the victim into
14 Greenville County Detention Center. And he gave a formal
15 statement. In his formal statement--

16 MR. SMITH: Objection.

17 MR. ARIAIL: Sir?

18 MR. SMITH: Objection, Your Honor. The witness
19 is referring to an item not in evidence.

20 THE COURT: Mr. Ariail.

21 MR. ARIAIL: Well, Your Honor, I will redirect
22 my client.

23 THE COURT: All right.

24 BY MR. ARIAIL:

25 Q We can't get into the hearsay part of it--

MARK BAYNE-DIRECT BY MR. ARIAIL

1 A [audio distortion].

2 THE COURT: I'll sustain the objection at this
3 time.

4 BY MR. ARIAIL:

5 Q I'm trying to -- in regards to -- you said
6 there's a statement out there, what I'm trying to --
7 Mr. Enice -- Mr. Bayne, what I'm trying to find out is
8 what Mr. Enice said about your son.

9 A Supplemental report.

10 Q Okay.

11 A By Detective Matthew Owens where his interview
12 with David Enice. If you look [audio distortion] you sent
13 me some papers this morning. I got my case file this
14 morning. And on the State of South Carolina vs. Mark
15 Bayne, Mr. Abdalla [audio distortion].

16 MR. SMITH: Objection, I can't hear. I can't
17 understand.

18 THE COURT: Mr. Bayne, can you just speak up a
19 little bit louder and a little bit slower, maybe, so
20 we can all understand?

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you.

23 THE WITNESS: This morning I got a packet from
24 my lawyer. My case file that Mr. Abdalla turned over
25 to him. In the case file, on the very first page,

MARK BAYNE-DIRECT BY MR. ARIAIL

1 there is where the discovery was turned over to
2 Mr. Abdalla pursuant to Rule 5 criminal procedure.
3 It is enumerated 1 through 41.

4 Do you see the document I'm talking about,
5 Mr. Ariail?

6 BY MR. ARIAIL:

7 Q Let me explain how this works. I know the
8 document you're talking about. What I'm going to try to
9 do is reference it for The Court, at some point we have to
10 share screen or I have to show them this document. But
11 you're referencing, for The Court and for everyone, the
12 initial letter that was sent to Mr. Abdalla by, I think,
13 it was Jeff Weston who was the solicitor at the time; is
14 that correct?

15 A Yes, sir.

16 Q Okay. Let me just make sure I can, for The
17 Court's purpose, it was sent December 3, 2014. It
18 included 41 -- or one through 41, information that was
19 provided as part of the discovery; is that correct?

20 A Yes, sir.

21 Q Okay. And the one you're referring on here is
22 a -- it's called number 34 GCSO Supplemental Report by
23 Officer Owens dated 10/21/14 and it was two pages long; is
24 that correct?

25 A Yes, sir.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 Q And as part of that discovery, you're saying
2 that supplemental report provided information which, I
3 guess, Mr. Enice said he had identified your son; is that
4 what you're saying?

5 A Yes, sir.

6 MR. SMITH: Same objection, Your Honor, that's
7 an item not in evidence. It's also hearsay.

8 THE WITNESS: Okay, let me--

9 MR. ARIAIL: Hold on, hold on.

10 THE COURT: I'll sustain that.

11 MR. ARIAIL: Your Honor, I don't know the best
12 way to do it. I can certainly -- I don't know the
13 best way to do this is, I can share my screen. But I
14 would move that the supplemental report by Officer
15 Owens, based upon his testimony and information he's
16 received, be moved into evidence as part of his --
17 part of his case.

18 THE COURT: All right, Mr. Smith.

19 MR. SMITH: Your Honor, I need to see it to be
20 able to make a decision on that.

21 Is there anyway that you can email that to me,
22 Mills or?

23 MR. ARIAIL: I tell you what, I'm going to try
24 to get nifty here. Is there a way I can -- I don't
25 think I can share my screen. I'll tell you what I'll

MARK BAYNE-DIRECT BY MR. ARIAIL

1 do--

2 THE COURT: My law clerk says you should be able
3 to.

4 MR. ARIAIL: Well, my share button on here is
5 not active.

6 MR. SMITH: It's very hard to read, though, off
7 the screen when you just share, I think.

8 BY MR. ARIAIL:

9 Q I'll tell you what I can do. So I printed it
10 out, I'm going to get my office to scan it in here in a
11 second. Let me ask you a couple questions before I do
12 this, Mr. Bayne. Mr. Bayne, you indicated there's a
13 10/20 -- I've got it appears to me that the document
14 you're talking about is for Matthew Owens. I have
15 10/23/14 date beside it. Is that what you have? Beside
16 his name in the bottom left hand corner?

17 A No, sir, it says 10/21/14.

18 Q Okay.

19 A Listen, it's in the transcript. Mr. Holloway
20 entered it into the report. Transcript on Page 32, Line
21 24 through 33 to Line 12.

22 Q Say that page again.

23 A Thirty-two, Line 24 through 33 Line 12.

24 Mr. Enice positively identified Mark Bayne, Jr. as the man
25 who robs him. No, Mark Bayne, Sr. He's talking about all

MARK BAYNE-DIRECT BY MR. ARIAIL

1 throughout the trial that Timothy Roach and Matthew Owens
2 [audio distortion].

3 Q Okay. So from my -- maybe we've kind of covered
4 this and the best way to do it you indicated that the
5 individuals in this case have represented during trial
6 that was your son, Mark Bayne Jr., who was the one that
7 committed the crime and not you?

8 A Forty-two strenuous statement, yes, sir.

9 Q Okay. Mr. Enice's statement, we're going to get
10 to that here in just a second. That's a statement that, I
11 think, that now as part of your record or as part of the
12 information I sent you was done on 10/18/2014; correct?

13 A I haven't found it. Like I said, I just got the
14 paperwork before I walked in the door.

15 Q Okay. But let me go back, you've seen it
16 before, correct?

17 A Yes, sir, I did.

18 Q Okay. Now, where in that statement did it
19 reference you as being an individual or your name being
20 involved in the incident; is that correct?

21 A That's correct.

22 MR. SMITH: Same objection to something not in
23 evidence.

24 THE WITNESS: Mr. Abdalla placed in it evidence
25 when he questioned Matthew Owens on the stand about

MARK BAYNE-DIRECT BY MR. ARIAIL

1 the picture.

2 THE COURT: All right, Mr. Smith, we're pulling
3 up a transcript to look. Was that put in evidence,
4 Mr. Smith?

5 MR. SMITH: I don't know, Your Honor. But I
6 haven't seen this. I'm not sure what the
7 supplemental report is he's referencing or.

8 THE WITNESS: There was a mugshot of my son that
9 Mr. Abdalla on the stand showed Matthew Owens.
10 Matthew Owens read the statement from the victim
11 [audio distortion] underneath it that would go into
12 the record.

13 THE COURT: All right. I'll allow him to
14 continue for a little while. I'll overrule it right
15 now.

16 THE WITNESS: No, sir, that's Donald Trammell.

17 MR. ABDALLA: Does anybody want to look at this?

18 THE WITNESS: That's not--

19 MR. ABDALLA: That's not what you're talking
20 about?

21 MR. ARIAIL: No, sir, supplemental report from
22 what I understand.

23 BY MR. ARIAIL:

24 Q Are you referencing the David Enice statement?

25 A I'm referencing -- it's two pages.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 Q Okay.

2 A One is his written statement, one is a picture
3 of a mugshot of my son.

4 Q Okay. I'm going to hold this up just for your
5 purposes right now and maybe I can come back. Is this the
6 statement, I know it's hard to see, but is this kind of
7 remembering what you saw? Looking like this?

8 A No, sir.

9 Q Okay.

10 A Matthew Owens questions David Enice at the law
11 enforcement office. David Enice he showed -- Matthew
12 Owens showed David Enice a single mugshot lineup of me.
13 He tells me -- David Enice tells him, that's not the man
14 that robbed me. He showed him a second picture, a more
15 recent picture that was 50 days old because I just had got
16 out of county jail, I had been out for 10 days. Fifty
17 days prior to this he showed him a second picture and he
18 tells him, No. He showed him a third picture, a mugshot
19 lineup of a man named Mark Bayne--

20 MR. SMITH: Objection, lack of personal
21 knowledge, hearsay and not in evidence.

22 THE WITNESS: Part of discovery.

23 THE COURT: I'm going to allow it just a little
24 while here until you get a foundation built.

25 MR. ARIAIL: And I found the report now, the

MARK BAYNE-DIRECT BY MR. ARIAIL

1 supplemental report. And I'm glad to send you a copy
2 of it. It's 10/21/2014, Matthew Owens. If you want
3 me to. I'll just ask him a couple of questions off
4 of it to see if he has any personal knowledge in
5 regards to it.

6 BY MR. ARIAIL:

7 Q So you received a copy of this report from
8 Mr. Abdalla; is that correct?

9 A Are you speaking to me, sir?

10 Q Yes, Mr. Bayne.

11 A No, sir, I didn't.

12 Q Okay.

13 A I saw it the day we were in trial, I saw
14 Mr. Abdalla lay it on the table when he took the pictures
15 when he questioned Matthew Owens on the stand. And as it
16 was laying there I read a copy of it.

17 Q Okay. So this is what I'm trying to kind of get
18 back to a little bit. We're here in regards to the --
19 what you're alleging is ineffective assistance of counsel
20 of Mr. Abdalla. What I want to understand and what I'm
21 trying to get down to is you're indicating that David
22 Enice had ID your son instead of you. Did you ever have a
23 discussion with Mr. Abdalla about that ID of your son by
24 Mr. Enice?

25 A Yes, sir.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 Q Okay. What was the discussion?

2 A He wanted to know how come Mr. Enice would lie.
3 Saying it was me and -- my son and not me. And I told him
4 I couldn't answer that. That as far as I knew he wasn't
5 lying.

6 Q Okay. Did he go into any detail with you about
7 Mr. Enice and, I guess, how the ID took place with the
8 Greenville County Sheriff's Office?

9 A No, sir, he didn't. He talked to me at the same
10 time about Donald Trammell. His testimony to the police
11 about it being contrary to what David Enice's was.

12 Q What did he say to you about that? What was
13 contrary between David Enice and Donald Trammell?

14 A Donald Trammell was saying that I was the one
15 that committed the crime. David Enice was saying that
16 Mark Bayne, Jr. was the one that committed the crime.

17 Q Okay. So as I understand, this is where kind of
18 the facts in this case go. So there was a situation
19 where, I guess, Mr. Trammell approached the vehicle; is
20 that correct?

21 A According to the transcript, yes, sir.

22 Q Okay. So you're saying that Mr. Enice did not
23 say that you were involved in this; is that what your
24 understanding is?

25 A That is correct.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 Q Okay. Did you have a discussion with
2 Mr. Abdalla about getting to the bottom of that and
3 finding out why there was a discrepancy and how you could
4 utilize that during your trial?

5 A Yes, sir, I did.

6 Q What did y'all discuss?

7 A We talked about -- that's where he said that he
8 couldn't understand why Mr. Enice would be telling a lie.

9 And I said, I don't understand, what do you
10 mean about this?

11 He said, Well, Donald Trammell's statement
12 to the police was that it was me and not Mark Bayne, Jr.

13 And I told him that wasn't true. I told
14 him that I would not testify against my son and I
15 wouldn't. Because that's my son. That has nothing to do
16 with David Enice testifying against him. And it has
17 nothing to do with Mr. Edmond, the man that owned the
18 house, testifying who was there and who wasn't there.

19 Q So during your discussions with him, I know this
20 is a little convoluted. First of all, you got your son
21 being involved, we've got David Enice saying something
22 contrary to Donald Trammell. Did you have any discussions
23 with Mr. Abdalla about how this would be utilized at trial
24 and the best way to do that?

25 A No, sir, we didn't.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 Q Did you -- you've indicated to me, Mr. Enice,
2 and part of this transcript, he didn't testify at trial?

3 A No, sir, he didn't.

4 Q Okay. Did you have a discussion with
5 Mr. Abdalla about how that could help you, hurt you or if
6 you needed him there?

7 A I explained to Mr. Abdalla that because he was
8 the victim that I needed him to be there. Because his
9 statement was contrary to Mr. Brown's.

10 Q Okay. And did you -- did he tell you, I guess,
11 did y'all have a discussion -- but he didn't -- did y'all
12 have any conversation as to why he wasn't going to testify
13 and what the issues were with that?

14 A Mr. Holloway had him as a witness. He was
15 subpoenaed to court to testify. According to the
16 transcript, Mr. Holloway said Mr. Abdalla took an active
17 role by telling Mr. Enice that we were in courtroom four
18 when we were in courtroom seven. And hindering David --
19 testifying at all. David Enice left the courtroom,
20 Mr. Holloway called him back and he told him that he had
21 talked to Mr. Abdalla and Mr. Abdalla told him that we
22 were going to be in courtroom four. That he waited for
23 somebody to show up and nobody showed up so he left.

24 Q Okay. All right. Mr. Abdalla give you any
25 information or talk to you about speaking with David Enice

MARK BAYNE-DIRECT BY MR. ARIAIL

1 or getting anything from him?

2 A About who speaking with him?

3 Q Mr. Abdalla and his office speaking with
4 Mr. Enice?

5 A No, sir, he never spoke to Mr. Enice until the
6 day of trial.

7 Q Did you ever speak to Mr. Abdalla about how it
8 could help or hurt your case that Mr. Enice could not ID,
9 I guess at the time, who the second assailant was?

10 A Yes, sir.

11 Q So you did speak with him about that?

12 A We talked about the fact that Mr. Enice had
13 positively identified Donald Trammell and Mark Bayne, Jr.
14 as the two men who robbed him.

15 Q Okay. And I go back to this and I just want to
16 understand. You're indicating he identified Mark Bayne
17 Jr., your son?

18 A Yes, sir.

19 Q And you're saying that is on some supplemental
20 report by Matthew Owens; is that correct?

21 A Yes, sir.

22 Q Okay. Do you remember anything, any discussion
23 with Mr. Abdalla about how Mark Bayne Jr. was identified?

24 A Not with me. He discussed it with Matthew Owens
25 on the stand.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 Q Okay. So he brought that up during the trial?

2 A Yes, sir. Matthew Owens stated that Mark Bayne
3 Jr. had long hair and a scruffy beard, just like Mark
4 Bayne, Sr. did. But that's not true. Mr. Abdalla had
5 both of the ID mugshots when we were arrested, six days
6 after this incident. Mark Bayne Jr. had a crewcut. Mark
7 Bayne, Sr. had hair all the way down his back. Mark
8 Bayne, Sr. was tattooed all the way out. Mark Bayne,
9 Jr.'s. not. There's a big difference in [audio
10 distortion] there. Mr. Enice identified the man with the
11 crewcut, 25 years old versus a 44 year old with long hair,
12 they discussed it in trial. Mr. Matthew Owens stated that
13 he was 100 percent sure that Mark Bayne, Sr. was the man
14 that robbed David Enice. Even after David Enice told him
15 in the supplemental report that it was Mark Bayne, Jr.

16 Q Well, I guess what I'm trying to understand is,
17 and we can go back and look at the transcript, didn't he
18 cross-examine him in regards to that information that you
19 just discussed?

20 A No, sir.

21 Q Okay. So he didn't bring any of that up, I
22 guess, to draw contradiction or to try to help you in any
23 way?

24 A No, sir.

25 Q Okay. So you believe he should have done more

MARK BAYNE-DIRECT BY MR. ARIAIL

1 as part of his strategy at trial or part of his
2 cross-examination to draw out that it was Mark Bayne, Jr.
3 and not him?

4 A I believe that the fact that David Enice was the
5 victim in this crime and I had the right to face my
6 accuser. And the fact that David Enice had already
7 accused two other men, not me. He told the police twice
8 it was not me. And yes, I think I should have had to be
9 able to cross-examine him on the stand. I should have
10 been able to allow him to tell the jury who it was that
11 robbed him and who didn't rob him.

12 Q Did you have any type of discussion with
13 Mr. Abdalla about how he could utilize that, as part of
14 his trial strategy, by not having Mr. Enice show up?

15 A No, sir.

16 Q Okay. So it's your position you wanted
17 Mr. Enice present to be able to testify and you requested
18 Mr. Abdalla to have him there?

19 A I explained to Mr. Abdalla the need for him to
20 be there. He being the victim of the crime. I explained
21 to Mr. Abdalla the need for him to be there because he had
22 already accused two people of doing the crime and I wasn't
23 either one of those people. Yes, sir, we did have that
24 discussion.

25 Q Okay. I know we bounced over a lot of this and

MARK BAYNE-DIRECT BY MR. ARIAIL

1 I'm sorry to go back. Do you believe that during your
2 meetings with Mr. Abdalla that you had adequate time to
3 prepare your case?

4 A I believe that -- I believe that Mr. Abdalla was
5 having some health issues when he was my lawyer. He had
6 been in the hospital or something before he got heart
7 surgery or something another. Had some kind surgery. I'm
8 not saying that he's a bad lawyer, I'm not saying that at
9 all. I'm not saying that he didn't try to do the best he
10 could with what he had. Because I do think that if the
11 discovery had been given to me for me to be able to work
12 with him on my case, that my outcome would have been
13 different if David Enice had testified.

14 Q Okay. I want to go through a little bit more
15 about this. I know that was an open ended question but I
16 want to also understand. When you had your discussions
17 with Mr. Abdalla, did he explain to you the evidence that
18 was going to be used against you at trial?

19 A He never explained to me about testimony of
20 Donald Trammell, Vicky Trammell or Nicky Gardener. I
21 never saw nothing dealing with those disks or transcripts
22 of it or not. He told me that Donald Trammell had told
23 the detective a lie when we were talking about Mr. Enice.
24 That's the only thing that we discussed on that topic.

25 Q Okay. And you keep on saying transcript and,

MARK BAYNE-DIRECT BY MR. ARIAIL

1 you know, other information. You've seen the discovery
2 that was presented in this court, is there anything you
3 have in your possession that Mr. Abdalla gave you that
4 shows any transcript or any type of written statement from
5 Nicky Gardener, Vicky Trammell or Donald Trammell?

6 A A written statement? On this paper that you've
7 given me today it does say that there was a disk of
8 Vicky's interview and Donald's interview.

9 Q Got it. That's a copy of the interviews,
10 correct?

11 A I don't know what they are. It just says, Copy
12 of Vicky's interview, one disk.

13 Q Okay.

14 A Copy of Donald's interview, two disks.

15 Q Then copy of Bayne Jr., correct?

16 A That's correct.

17 Q Did you see any of those interviews?

18 A No.

19 Q If they're video interviews or anything like
20 that, did you ever sit down and watch those with
21 Mr. Abdalla?

22 A No, sir.

23 Q Did he explain to you what they were going to
24 say, I guess, during their, I guess, the interviews or how
25 that was going to impact your case?

MARK BAYNE-DIRECT BY MR. ARIAIL

1 A No, sir.

2 Q Did he talk to you about what Nicky Gardener and
3 Donald Trammell could say at trial that would affect, I
4 guess, what could be used against you to prove the
5 elements of each of those crimes?

6 A No, sir.

7 Q Did he go through the evidence to show you or to
8 let you know how The State was going to have to prove the
9 elements and what evidence could be used against you?

10 A No, sir.

11 Q What did he do, I guess, during your meetings
12 that you had with him?

13 A Well, I mean, we talked a little bit, like I
14 said, about Donald -- I mean, David Enice's testimony and
15 about Aaron Shots [ph] testimony.

16 Q But did you discuss with him -- I mean, those
17 are the two victims in the case. Did you discuss any type
18 of statements made by co-defendants or others that were,
19 potentially, involved in the crime?

20 A No, sir. The only thing about the -- he stated
21 that Donald Trammell had told the detective a lie that had
22 something to do with David Enice. Kept wanting to know
23 why David Enice would lie on me. I told him I did not
24 know David Enice, I could not answer that.

25 Q Okay.

MARK BAYNE-DIRECT BY MR. ARIAIL

1 A I'm sorry.

2 Q No, that's fine. Were you ever given a plea
3 offer in this case?

4 A The day of trial he told me that there was one
5 offered, it was too late for that.

6 Q What was the plea offer that was offered the day
7 of trial?

8 A Oh, he told me it was off the table.

9 Q It was off the table, did you previously get
10 anything from him in regards to a plea offer?

11 A It was a six year plea deal.

12 Q So six year, was that in writing?

13 A No, sir, it wasn't.

14 Q How did you receive that?

15 A He told me.

16 Q When did he tell you that?

17 A I'm sorry. He told me the solicitor had offered
18 me a six year plea deal but it was off the table now.

19 Q My question is when do you believe he offered --
20 when did he tell you that?

21 A The day of court.

22 Q You say the day court, is the day of court the
23 same day as the day of trial?

24 A Yes, sir.

25 Q Okay. So maybe I'm kind of misunderstanding

MARK BAYNE-DIRECT BY MR. ARIAIL

1 this. You're telling me that he provided you information
2 on the day of trial that there was a six year plea offer
3 that he had not told you about prior to that?

4 A Yes, sir. When he brought me my clothes to put
5 on, he said that the solicitor had offered a plea deal six
6 years but it wasn't in writing. And it was too late to
7 take it that day.

8 Q Did you ask him to investigate or provide you
9 any additional information with regard to Donald Trammell
10 or other witnesses in the case?

11 A I did. I asked him to investigate Mr. Edmond.
12 Who talked to Mr. Edmond to find out who all was there
13 that day. Because Mr. Edmond knew that me and my son both
14 worked. And his testimony could have backed up David
15 Enice's testimony.

16 Q Let's go back a little bit because I want to
17 make sure everybody understands this. Mr. Edmond was who?

18 A Mr. Edmond was the man that owned the residence
19 where these incidents happened.

20 Q Okay. So how is Mr. Edmond going to help you
21 show that you were not involved in these alleged crimes?

22 A He couldn't have. But he could have proved
23 whose else was there.

24 Q And did Mr. Abdalla tell you about any
25 conversations he had with Mr. Edmond about others that

MARK BAYNE-DIRECT BY MR. ARIAIL

1 were at that location around that time?

2 A No, sir.

3 Q Did he provide you information from an
4 investigator in his office to go out and look at that?

5 A No, sir.

6 Q Okay.

7 A There was -- I'm sorry.

8 Q You go ahead, you finish.

9 A There was also two other witnesses there. Boyd
10 Morgan and [indiscernible] Trammell. They never
11 investigated neither one of those. He never talked to
12 either one of them.

13 Q And Trammell -- Larry Trammell was married to
14 Vicky, correct?

15 A Yes, sir.

16 Q Okay.

17 A I'm -- I'm sorry.

18 Q My bad. I'm trying to get the players in this
19 thing. Nicky Gardener was she married to -- how was she
20 related to somebody?

21 A She is their daughter. Larry and Vicky's
22 daughter.

23 Q I gotch you.

24 A I'm sorry. I explained to Mr. Abdalla that
25 Larry was the man [audio distortion] behind the home and

MARK BAYNE-DIRECT BY MR. ARIAIL

1 it was not me. That I had nothing to do with that at all.

2 Q Okay.

3 MR. SMITH: Objection, Your Honor, lack of
4 personal knowledge as to what happened to a robbery
5 when he says he wasn't there.

6 THE WITNESS: I never said I--

7 THE COURT: Overruled.

8 BY MR. ARIAIL:

9 Q Okay. Now, I'm trying to kind of bounce around
10 some of this. So, going into trial, did you have any
11 discussions about a trial strategy with Mr. Abdalla?

12 A No, sir.

13 Q Did you talk about your testimony?

14 A No, sir.

15 Q Did you talk about what he was going to try to
16 do or what he was going to try to accomplish through
17 cross-examination of the witnesses that were going to be
18 called?

19 A No, sir.

20 Q Now, you've brought up fingerprint evidence and
21 I've gone through this and maybe you can help me. I
22 haven't seen any fingerprint evidence. And there's some
23 reference in here of no forensic evidence. I want to make
24 sure I'm understanding you. You say there's fingerprint
25 evidence out there that you are aware of?

MARK BAYNE-DIRECT BY MR. ARIAIL

1 A I'm saying that if Mr. Abdalla would have
2 impeached Donald Trammel's statement on the stand by
3 Donald Trammell said that he had never been inside that
4 truck, that he was never in possession of that truck.
5 Although, the keys were found in his tennis shoes in his
6 bedroom to that truck. That stolen vehicle that was
7 recovered at the same house that Donald Trammell and Mark
8 Bayne Jr. were arrested at. They recovered the stolen
9 vehicle from that home. These two were arrested at. The
10 two men that David Enice accused of robbing him. This
11 fingerprint evidence is inside the paperwork that you just
12 sent me. It says that there were fingerprints taken off
13 the hood of that truck and fingerprints taken off the door
14 of that truck and there were also DNA samples taken.

15 MR. SMITH: Objection to something not in
16 evidence.

17 THE COURT: Sustained.

18 THE WITNESS: It's in the motion of discovery.

19 BY MR. ARIAIL:

20 Q Let me go back, let me handle it this way. Did
21 you have any discussions with Mr. Abdalla about any type
22 of fingerprints that were taken off any additional DNA
23 evidence?

24 A No, sir.

25 Q Did you inquire or did he tell you what that

MARK BAYNE-DIRECT BY MR. ARIAIL

1 fingerprint evidence showed that may help your case?

2 A No, sir.

3 Q Okay. And did you have any discussions about
4 what they took DNA evidence off of?

5 A Me and Mr. Abdalla did not, no, sir.

6 Q Okay.

7 A I just found out about -- I knew about the
8 fingerprints because when he said that he had never been
9 inside that vehicle, I knew that was a lie on the stand.

10 Q Okay.

11 A The DNA evidence and all, I got that this
12 morning in the case file that you sent me.

13 Q Okay.

14 A Supplemental report from the officer.

15 Q Which officer? I'm trying to find it as we
16 speak.

17 A I'll have to look right quick. The officer that
18 recovered the truck.

19 Q Okay. I'll look for it, see if we can come back
20 to that. But there was no discussion with him about that;
21 is that correct?

22 A No, sir.

23 Q Now, I want to understand, there was a
24 reference, and we discussed this, where Nicky Gardener had
25 indicated that you had been to prison at some point in

MARK BAYNE-DIRECT BY MR. ARIAIL

1 time. And there was an objection by Mr. Abdalla, I think
2 it was on Page 149, 14 through 17 of the transcript. You
3 discussed it with me because you indicated that you
4 believe that Mr. Abdalla should have asked for a curative
5 instruction during that period of time.

6 A Well, he had asked for limited instruction
7 during pre-trial.

8 Q Correct.

9 A About this issue. And then when the key
10 witness, The State's key witness got on the stand, they
11 asked her how long she had known me? And she stated that
12 she had known me all her life. And they asked her how
13 long she had known my wife? And she said that -- she said
14 I've known her since I was a child, when I was young. But
15 I really didn't get to know her until he got out of
16 prison. Inferring that I had done a long prison sentence.
17 Mr. Abdalla objects and asks for a mistrial. And the
18 Judge denied it pursuant to State vs. [audio distortion].
19 If jury [audio distortion] given that [audio distortion]
20 okay.

21 The Judge asked Mr. Abdalla to go home and
22 study that case and to come back the next day and argue
23 it. Two more times during the trial, the Judge offers
24 Mr. Abdalla a curative and he denied it both times. I
25 feel like that the fact that the jury knew that I had done

MARK BAYNE-DIRECT BY MR. ARIAIL

1 a long sentence, Mr. Abdalla even argued this with the
2 Judge that it had robbed me of my cloak of innocence. It
3 took away the robe of innocence all the way around. And
4 these people would look at me, this is Mr. Abdalla's
5 argument. They would look at me like I was the type of
6 person who would commit crimes. But yet, he denied the
7 curative. Okay, he is arguing that he asked for a limited
8 instruction and he did. And when it came out that I have
9 been in prison, he argues that it robbed me of my cloak of
10 innocence. And that if the jury considers this, then it
11 takes away my robe of innocence is what he called it. I'm
12 not sure what that means.

13 Q What I'm trying to understand is, he did object
14 and ask for a mistrial; correct?

15 A Yes, sir, he did.

16 Q Your issue is that he was ineffective by not
17 accepting the curative instruction that was offered by
18 Judge Brown, is that my understanding?

19 A It allowed the jury to consider the fact that I
20 had been in prison for a long time, yes, sir.

21 Q I guess what I'm trying to ask you is, which way
22 would you have wanted him do? It's kind of, I'm sorry but
23 you're damned if you do and damned if you don't in some of
24 those situations. Did you ever discuss with him about
25 what he should do with that?

MARK BAYNE-DIRECT BY MR. ARIAIL

1 A That was his exact words, Damned if you do,
2 damned if you don't.

3 Q Okay.

4 A [audio distortion].

5 Q Right out of the transcript, that's what he
6 said. So, I guess, my question is, what did you discuss
7 with him as to the best way to handle that situation?

8 A Well, it was suggested that I not take the stand
9 because that was the beginning of the whole thing was that
10 I wasn't going to take the stand to begin with. Because
11 of my son's involvement. And because of anything that
12 might incriminate me. I had asked him -- I had told him
13 in the beginning that I didn't want to testify.

14 Q And do you think that placed you in a awkward
15 spot of having to make a decision to whether to testify or
16 not?

17 A Of course, it did.

18 Q Okay.

19 A It placed me knowing that the jury was going to
20 consider it. I mean, there is no way that they could have
21 fairly judged me for a crime that I did not commit,
22 knowing that I had been in prison before. Knowing that I
23 was that type of person who, 18 years prior to this, went
24 to prison. They never mentioned what the crime was or
25 they don't. And she does infer to it being a long

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1 sentence.

2 Q Right. Mr. Bayne, I've gone through and I tried
3 to, during our discussions, hit the items that are the
4 ones we have referenced. Are there other things that you
5 want to add to that we've not done so far? Related to
6 those items?

7 A I'm drawing a blank right at this moment.

8 Q All right. We put a lot on the evidence, a lot
9 on the record. I just want to make sure I've gone through
10 your items and if there are other things that you want to
11 add to those items, I'm glad to do it. But it seems like
12 we've accomplished most of what we needed to.

13 A This is the reason that I asked you to help me
14 find David Enice so that he could testify on my behalf to
15 what the truth was.

16 Q Right.

17 A I understand that he did not try -- he did not
18 testify in my trial. And because of that, I was found
19 guilty. I don't -- I'm sorry. I don't understand how
20 this is the victim of my crime and I cannot even put him
21 on the stand when he was there to help me, not hurt me.
22 His testimony was a support to me all the way around. The
23 testimony that he gave to the police there to help me, not
24 hurt me. I don't understand why Mr. Abdalla did not call
25 him to the stand. I don't understand that.

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1 Q Okay. And I'm going to ask him some questions
2 on cross-examination. But I appreciate you answering
3 these questions, Mr. Bayne. That's all I have for you.

4 THE WITNESS: Thank you.

5 THE COURT: All right, cross-examination.

6 MR. SMITH: Yes, Your Honor, may I ask for --
7 I'm sorry, appointed clarification of whether
8 Mr. Ariail intends to introduce the supplemental
9 report and any DNA or fingerprint report into
10 evidence?

11 MR. ARIAIL: I do not, Your Honor. I think we
12 got enough through Mr. Bayne's testimony as to his
13 position on that, I'm not going to offer those
14 exhibits in there. I think they're probably hearsay
15 also. I don't know how we can get those in. So I
16 would not put those in at this moment in time.

17 THE COURT: Okay.

18 MR. SMITH: Well, Your Honor, on that basis I
19 renew my objection to all that prior testimony about
20 those two things.

21 THE COURT: All right, your objection's noted,
22 overruled.

23 MR. SMITH: Okay.

24 THE COURT: All right, cross.

25 MR. SMITH: All right.

MARK BAYNE-CROSS BY MR. SMITH

CROSS-EXAMINATION

1

2 Q Mr. Bayne, you don't have David Enice here to
3 testify today, do you?

4 A No, sir. I asked my lawyer to, Mr. Ariail, to
5 help me get in touch with him. But he would be here
6 today. But my understanding, Mr. Ariail said he gotten no
7 reply back from Mr. Enice.

8 Q Okay. Who was Mr. Edmond? You referred to
9 Mr. Edmond earlier.

10 A Mr. Edmond is the man who owns the home where
11 the incident occurred.

12 Q Do you know his first name?

13 A Fred Edmond.

14 Q And you testified that you did not want to
15 testify at trial because you were scared you might be
16 forced to say something that might affect your son; is
17 that right?

18 A That is one of the two reasons, yes, sir.

19 Q Okay. What's the other reason?

20 A The Fifth Amendment.

21 Q Okay.

22 A Because of incrimination.

23 Q Okay.

24 A I was charged with a multitude of charges.

25 Q Okay. And when Mr. Holloway, the solicitor, was

JOHN ABDALLA-DIRECT BY MR. SMITH

1 giving his opening argument at trial, didn't he tell the
2 jury that they would hear conflicting testimony from The
3 State's witnesses?

4 A He did. He also told them that they would hear
5 testimony from David Enice.

6 MR. SMITH: Okay, no further questions. Thank
7 you.

8 THE WITNESS: Thank you.

9 MR. ARIAIL: I have no redirect, Your Honor.
10 And that is our case too for The Court's reference.

11 THE COURT: All right.

12 All right, Mr. Smith, any motions?

13 MR. SMITH: Well, Your Honor, I would call
14 Mr. Abdalla as a witness.

15 THE COURT: All right, Mr. Abdalla, raise your
16 right hand.

17 JOHN ABDALLA, after being duly sworn{,}testified
18 as follows:{F}

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q Mr. Abdalla, have you had a chance to go back
22 through your criminal defense file for Mr. Bayne?

23 THE COURT: I think he may be muted.

24 Mr. Abdalla, I believe you're muted. Here we
25 go.

JOHN ABDALLA-DIRECT BY MR. SMITH

1 THE WITNESS: First of all, you asked if I'd
2 tell the truth and I said, Of course. And as to the
3 file, I think there's some stuff missing,
4 unfortunately, but, yes, I do have a file. And I
5 have gone through some stuff.

6 BY MR. SMITH:

7 Q Okay. When you say things are missing, what do
8 you mean by that?

9 A It seems like I had some other notes that I
10 can't locate. I was in another office at the time and I
11 may have left -- this was in a trial notebook at one time,
12 after the trial I put it into a file here. Then it was in
13 my storage unit. So that's how things have happened.

14 Q Okay. If I ask you a question and you think
15 that the answer to that may be included on one of those
16 missing notes, will you alert me?

17 A Sure.

18 Q Okay.

19 A If it's missing one of those things, I don't
20 know if it's there. Anyway, not trying to be flippant
21 but.

22 Q Okay.

23 A Because I take this seriously.

24 Q Right. So when were you admitted to practice
25 law in South Carolina?

JOHN ABDALLA-DIRECT BY MR. SMITH

1 A 1989.

2 Q Okay. What portion of your legal experience
3 since then has been devoted to the field of criminal law?

4 A At least 90 percent.

5 Q Okay.

6 A Because I was a solicitor and public defender
7 twice and I had a private practice for 12 of those years.
8 Which was the bulk of criminal as well. I did some family
9 court but that's about it.

10 Q How did you come to be involved in Mr. Bayne's
11 underlining criminal case?

12 A I was appointed to Mr. Bayne's case when I
13 was -- it was a 608 appointment. And, I believe, it was
14 late 2014. And I was -- we ended up going to trial a year
15 and a half later.

16 Q Okay. Do you know how long it was from the time
17 that you were appointed until you first met Mr. Bayne?

18 A I don't.

19 Q Okay. Do you know how many times you met
20 Mr. Bayne while representing him?

21 A That I don't know either. The only thing I can
22 say is, for what it's worth, and when I go to trial, I
23 always believe that I've communicated everything properly
24 to my client that needs to be communicated and prepared
25 properly. That doesn't mean I'm above reproach by any

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1 means, I make a lot of mistakes. But I can't give you a
2 number but I can tell you that I believe that was I
3 prepared. So but I don't know [audio distortion].

4 Q Okay. Did -- when you met with Mr. Bayne -- I
5 tell you first, can you summarize for me the facts of
6 Mr. Bayne's case as you remembered them?

7 A Well, I remember he was involved in a robbery,
8 there was several people. One, we have different
9 recollections of certain things. The most striking is he
10 doesn't recall me making the offer when the offer was
11 ripe. There is no way I would never not convey an offer.
12 As a matter of fact, I conveyed it to him so often, I
13 said, They got five years, you're being offered six at
14 this point. I might even be able to get you five. I know
15 I made that offer several times well before the trial.

16 The only thing I'm wondering about is at
17 the trial, when the trial was almost over, I turned to him
18 and said, I really wish you would have taken that offer.
19 Because I think it's going downhill. And he may have then
20 said he wanted it and I said it was too late. But that
21 had been done numerous times before the trial. I don't
22 think Mr. Bayne is lying, I think he just has a different
23 recollection of it. But I know that I have never -- I
24 can't imagine ever having gone to trial without conveying
25 offers.

JOHN ABDALLA-DIRECT BY MR. SMITH

1 Q Okay. So when you refer to the offer there,
2 you're referring to a six year plea offer that Mr. Bayne
3 testified about?

4 A Yes.

5 Q Okay. So let me just ask you questions about
6 plea offers then.

7 A Sure.

8 Q How many plea offers were extended to Mr. Bayne
9 in this case?

10 A I don't know if there was any different, when
11 you say plea offers, how many times did I have a
12 conversation with him? That I couldn't accurately say.
13 But I know I thought it was a bad case to go to trial on.
14 Because I thought there were too many moving parts.
15 Frankly, I didn't know who was telling the truth. There
16 seemed to be a lot of lying going on, which is not
17 uncommon with a case like this. And that's why I thought
18 rolling the dice was not in Mr. Bayne's best interest.
19 And I know all about, I say all about, I know about the
20 Trammell Event. And I know about Enice. But anyway
21 that's another matter.

22 Q Okay. So is the six year plea offer the only
23 plea offer that you remember being extended from the
24 solicitor's office in this case?

25 A It's the only one I remember. If there's

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1 another one, I'm sorry, I forgot.

2 Q Okay. Do you remember if that was a verbal
3 offer or was it in writing?

4 A I don't recall.

5 Q Okay.

6 A I know the solicitor was a man of his word,
7 there would have been no problem. We had a lot of
8 conversations about it. And I never had that backfire.

9 Q Okay. How soon after you learned of the offer
10 did you inform Mr. Bayne of it?

11 A I don't recall. Like I said, long before it was
12 ever on the trial docket. But aside from that, I don't
13 know.

14 Q Okay. Why did Mr. Bayne tell you he did not
15 want to take the offer?

16 A He said he wasn't guilty.

17 Q Okay.

18 A And I do have that in my notes.

19 Q Okay. Did you talk with Mr. Bayne about the
20 witnesses and victims in this case?

21 A I don't have specific notes to that effect but
22 there's no way I would have gone to trial without having a
23 conversation with him about the fact that people are going
24 to testify against him. And I do recall on some occasions
25 he said they would be lying. And, you know, not to be

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1 negative about but that's oftentimes the nature of
2 criminal trials. Where people are lying on one another.
3 And the reality is it's who the jury believes, not
4 necessarily what the truth is.

5 Q Okay. And in this case some of these people
6 were not only witnesses, they were co-defendants; is that
7 correct?

8 A That's correct.

9 Q Okay. Did any of them -- do you know if they
10 had lawyers?

11 A I don't recall.

12 Q Okay.

13 A I do remember -- I have to -- are you going to
14 ask me about Enice or you want me to comment about that
15 now?

16 Q Did you -- we'll come back to him.

17 A Okay.

18 Q Let's try to keep it--

19 A That's fine.

20 Q Okay. When you were talking with Mr. Bayne
21 about the witnesses and co-defendants, did you discuss the
22 fact that they may have had stories that were different
23 from one another?

24 A I don't recall that but I probably did. I can't
25 honestly say.

JOHN ABDALLA-DIRECT BY MR. SMITH

1 Q Okay. How much of what they testified to were
2 you aware of before trial?

3 A I mean, it was -- off the top of my head I can't
4 remember what I thought before or what I thought after.
5 The trial went much like I expected. The biggest surprise
6 was they convicted him of a robbery when he left, did not
7 testify. And found him not guilty on the one where the
8 victim testified, so.

9 Q Okay. Do you remember there being things like
10 witness statements and police reports in the discovery?

11 A Oh, yeah.

12 Q Okay. Did you go over those with Mr. Bayne?

13 A I feel certain I did. But I would be a liar if
14 I said for certain I knew everything I went over with him.
15 I couldn't imagine not having done it. But, again, I
16 don't recall which ones I didn't. Generally, I go over
17 and I say, This is what this person is going to say, they
18 gave a statement here and there. But I'm not going to sit
19 here five or six years later and say for certain I know
20 what I did.

21 Q Okay. Do you know if there were any video
22 recorded police interviews of the witnesses?

23 A I saw reference where there were. And I no
24 longer have those. If I did, I don't know that I ever
25 showed them to him, I'd have to admit to that. I just

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1 don't have a recollection. But I just saw, as I was going
2 through, it said something about a video thing. And I
3 thought, Hmm. And I just don't recall. I would imagine I
4 watched them but -- my usual procedure but since I don't
5 have them in this file here, I can't say under oath, yes,
6 I watched those or yes -- I can't imagine going and
7 discussing the case with him not having watched them.
8 But, again, I don't want to say something that might be in
9 error.

10 Q Okay. In cases where you have co-defendants who
11 are represented by counsel, do you normally expect to
12 really be able to talk to those co-defendants?

13 A The only time I do is I'll go to the lawyer and
14 I say, Hey, my client wants to know, you know, trying to
15 work something out with the lawyer. If that's in our
16 interest.

17 Q Okay. Do you remember what you discussed at
18 your first meeting with Mr. Bayne?

19 A No, I believe you asked me that and I have no
20 recollection. The things he said I don't remember at all.
21 I'm not, again, I will never call Mr. Bayne a liar, he's a
22 nice guy. But it sounded -- it was remarkable, I don't
23 recall that.

24 Q Okay. Did you have an investigator working on
25 this case?

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1 A No.

2 Q Okay. Did you do any pretrial investigation
3 into the witnesses?

4 A I did. And I know I called witnesses and spoke
5 to people. But nothing that warranted me changing the way
6 the trial went.

7 Q Okay.

8 A Not the result, mind you, but the witnesses I
9 would have called is what I'm trying to establish.

10 Q Okay. Give me one moment, please. Okay. Do
11 you remember if Ms. Vicky Trammell identified -- whether
12 or not Ms. Vicky Trammell identified Mr. Bayne as one of
13 the robbers?

14 A I don't remember off hand. I don't have enough
15 to look back at everything.

16 Q Okay. If you would look at Page 124 of the
17 transcript for me, please. See if that jogs your memory.

18 A Where is that, 124?

19 Q Look at about Line 12.

20 A Okay.

21 Q Does Ms. Trammell's testimony place Mr. Bayne
22 there in the robbery?

23 A Yeah. It says, Was there anything [audio
24 distortion] anything being said by Donald or Mark during
25 this time or was there a big commotion?

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1 The answer was: When the door opened
2 [indiscernible] in the house, all I could see was, you
3 know, just Rich Boy, actually, Mark, Rich Boy, told me to
4 get the F in the house.

5 Is that what you're referring to?

6 Q It is. Okay. Do you remember if Ms. Nicky
7 Gardener placed Mr. Bayne in the robbery?

8 A I think she did but I don't recall off the top
9 of my head.

10 Q Okay.

11 A Is there a place for me to look?

12 Q Well, look at Page 171.

13 A All right, particular line?

14 Q Okay, if you'd look at Page -- I'm sorry, Page
15 172 at Line 25.

16 A Okay.

17 Q And isn't it true that Ms. Gardener testified
18 that Mr. Bayne told her that he had participated in the
19 robbery against Mr. Enice?

20 A Line 25.

21 So he told you that they were trying to rob
22 Mr. Enice?

23 Is that--

24 Q Yeah.

25 A Yeah.

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1 Q Okay. If you look at Page 182, can you tell me,
2 if you'll agree with me there on 182, that you were
3 cross-examining Ms. Gardener?

4 A Yes, I was cross-examining her; is that what
5 you're asking?

6 Q Yes. Can you tell me what sorts of preparation
7 you had to do to be able to cross-examine her about the
8 topics like her drug use, criminal record, in trouble with
9 the Department of Social Services?

10 A Well, a couple of things I probably spoke to my
11 client about it. I may have called her, I don't recall
12 off the top of my head. Obviously, the records that were
13 provided to me. And, again, I don't have this in my
14 record of a contact at the Department of Social Services
15 because it's something I'll do if it warrants it. But I'm
16 not going to sit here, again, said I did something that
17 I'm not certain I did. But I accomplished, it appears,
18 what I intended to with the cross-examination of
19 Ms. Gardener.

20 Q Okay. If you'll look at Page 246, will you
21 agree with me that Mr. Trammell identified -- it's Page
22 246.

23 A Okay.

24 Q That Mr. Trammell places Mr. Bayne in the
25 robbery with a shotgun?

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1 A The objection -- when I objected, it is
2 sustained, anything in his hand? When he approached he
3 had a shotgun. With a shotgun.

4 That was during direct and I object to it.
5 The solicitor leading. But nonetheless, that's what
6 you're referring to the shotgun that was testified to?

7 Q Right. So when you questioned Mr. Trammell
8 about the terms of his plea agreement, what sorts of
9 preparation did you do to be able to cross-examine on
10 that?

11 A You know, as I said, the same thing I generally
12 would do. I would have spoken to my client and tell me
13 why you think this person would be lying. Or if not, why
14 are we going to trial? And I don't know if I spoke to
15 Mr. Trammell ahead of time. Obviously, read the police
16 reports. But standard procedure is what I would say.

17 Q Okay. Are you aware of any fingerprint evidence
18 in this case related to Mr. Trammell?

19 A Off the top of my head I am not.

20 Q Okay. At the time of Mr. Bayne's trial, did you
21 think that there was any way for you to impeach
22 Mr. Trammell using fingerprint evidence?

23 A No, not that I recall. I don't remember -- if
24 it existed I would have used it unless there was a blind
25 spot and I missed something.

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1 Q Okay.

2 A So, generally, when I miss something I'm aware
3 of it. It's something that sticks with me forever.

4 Q Okay.

5 A Can't say for sure, though.

6 Q So you agree Mr. Enice did not testify at trial,
7 right?

8 A Mr. Enice did not testify at trial and I lost
9 track. Can I go off a minute about that?

10 Your Honor, can I give a detailed
11 explanation about Mr. Enice?

12 THE COURT: You can respond to the question,
13 yes.

14 THE WITNESS: All right. Mr. Enice was called
15 by the prosecution. He was there, he was one of the
16 victims of the armed robbery. I went out and spoke
17 to him. When I went out again, he had gone. He
18 never testified in the case. So I don't remember
19 Mr. Bayne being upset with the fact that he left.
20 Because my thinking was, if he's not there to testify
21 about the armed robbery, it's going to help him.
22 [indiscernible] he got convicted of that. But he
23 left. And, again, I don't recall Mr. Bayne telling
24 me he wanted him back. I certainly said nothing to
25 Mr. Bayne to get him -- not Mr. Bayne, to Mr. Enice

JOHN ABDALLA-DIRECT BY MR. SMITH

1 to make him leave. I merely asked him about his
2 testimony. Because of the conversation I had
3 previously had with Mr. Bayne.

4 Q Okay.

5 A The contradiction as to whether he was really
6 able to identify my client.

7 Q You used the fact that Mr. Enice was not present
8 to testify as one of the basis for your directed verdict
9 motion; is that correct?

10 A Correct.

11 Q Okay. And you brought it up again in your
12 closing arguments.

13 A I did. As I recall I did.

14 Q Okay. Okay. So you saw Mr. Enice's absence as
15 a positive development for the defense?

16 A It appeared to me like that. Armed robbery was
17 dead but I was wrong.

18 Q Okay.

19 A I mean, the victim did not testify to being
20 robbed.

21 Q Okay.

22 A But there were two armed robberies so.

23 Q So did you talk with Mr. Bayne about any role
24 his son may have played in the crimes?

25 A I did.

JOHN ABDALLA-DIRECT BY MR. SMITH

1 Q Okay. And so tell me about that conversation.

2 A The only thing I recall off the top of my head
3 is that he did not want to take the stand and implicate
4 his son. And I saw that as kind of a catch 22. So I
5 didn't know a way around that. Maybe I just wasn't smart
6 enough to figure it out. But other people placed
7 Mr. Bayne, my client, Mr. Bayne, there. Again, there
8 were -- there were a lot of people involved in this. And
9 I think that's why the offers were so good. Because it
10 was kind of a -- quite a collection, is all I can say, of
11 individuals.

12 Q Okay.

13 A [audio distortion].

14 Q If Mr. Bayne had requested that you do so or had
15 allowed you to do so, would you have raised argument about
16 his son?

17 A In what context?

18 Q In the context of defending Mr. Bayne?

19 A Well, yes. But in short of him testifying, I
20 don't know what else I could have done. I can't force a
21 client to testify. Because there are other reasons with
22 his record and whatnot.

23 Q Okay. So didn't Deputy Owens testify at trial
24 that Mr. Bayne and his son looked a like?

25 A I don't recall.

JOHN ABDALLA-DIRECT BY MR. SMITH

1 Q Okay. If you would, look at Page 288 of the
2 transcript for me.

3 A All right.

4 Q Okay. And if you'll look down there, when
5 you're cross-examining the witness, would you agree with
6 me that you elicited testimony from Deputy Owens that
7 Mr. Enice identified Mr. Bayne's son from a photograph on
8 Facebook?

9 A I did.

10 Q Okay.

11 A Yeah, I have that in the discovery as well.

12 Q Okay. And in your closing arguments, did you
13 revisit this point that one of the victims identified
14 Mr. Bayne's son?

15 A I don't recall, I didn't reread my closing
16 arguments.

17 Q Okay. So I'm going to ask you now about the
18 reference at trial to Mr. Bayne's having been in prison.
19 So why did you decide not to ask for a curative
20 instruction?

21 A I believe Mr. Ariail hit on it. It was a -- you
22 sort of lose either way. And my thinking is don't remind
23 the jury of him being in prison with a curative
24 instruction. Because you can't unring the bell. I think
25 it should have been a mistrial but I'm not in charge of

JOHN ABDALLA-DIRECT BY MR. SMITH

1 the court or the hearing because you can't unring that
2 bell. And I think a curative instruction merely draws for
3 attention by saying forget what you were told because it
4 doesn't exist. In legal form. The fact that it exist but
5 it doesn't exist for the sake of the conversation.

6 Q Okay.

7 A So whether it was correct or not is how I -- it
8 was an intentional -- you know, it was a decision I made
9 and I almost always make it that way of avoiding a
10 curative instruction.

11 Q Okay. Did you discuss that decision with
12 Mr. Bayne before you told Judge Brown you did not want a
13 curative instruction?

14 A I think I did but I can't say for certain.

15 Q Okay. If you look at Page 149 of the
16 transcript, please.

17 A (The witness complies.)

18 Q Lines 15 through 17. Will you agree with me
19 that Ms. Gardener, when she's testifying there, she does
20 not say how long Mr. Bayne had been in prison?

21 A When I was young as a child, from what I can
22 remember her, was back in -- well, I can't, actually,
23 remember her. [audio distortion] when he -- he hadn't
24 been released from prison long.

25 Yeah, that's the extent of it.

JOHN ABDALLA-DIRECT BY MR. SMITH

1 I said, Your Honor, may we approach? And
2 that's when I made a motion for a mistrial.

3 Q Okay.

4 A But yeah, prison was definitely mentioned and
5 should not have been.

6 Q Okay. But she didn't say how long he had been
7 in prison, right?

8 A No.

9 Q Okay. And would you agree with me that after
10 [audio distortion] you renewed that motion several times?

11 A Yes.

12 Q Okay. Just one moment, please. Did you discuss
13 with Mr. Bayne before trial began about having Mr. Enice
14 as a witness for the defense?

15 A I don't recall.

16 Q Okay.

17 A I mean, obviously, he was subpoenaed but I don't
18 recall that specific conversation.

19 Q Okay. Do you normally subpoena witnesses in
20 criminal -- I mean victims in criminal cases?

21 A Well, I mean, if there -- yeah, if it's a
22 necessary witness. But no, typically, a victim is not
23 somebody I would subpoena.

24 Q Okay. What can you tell me about, if you
25 remember, about the differences in appearance between

JOHN ABDALLA-DIRECT BY MR. SMITH

1 Bayne and his son?

2 A I don't remember, I'm sorry.

3 Q Okay.

4 A I could be flippant and say that one's younger
5 than the other but that's. . .

6 Q Did you discuss the elements of the crimes with
7 Mr. Bayne before trial?

8 A I did.

9 Q Okay. Did you discuss someone named Mr. Edmond
10 with Mr. Bayne?

11 A I don't recall.

12 Q Did you talk with Cory Morgan or Larry Trammell?

13 A I don't remember if I spoke to people ahead of
14 time, I don't recall.

15 Q Do you know if those were two people that
16 Mr. Bayne asked you to talk with?

17 A If he asked me to speak to them, I spoke to them
18 or attempted to speak to them.

19 Q Okay.

20 A That's the only thing I can tell you.

21 Q Okay. Did you discuss with Mr. Bayne what your
22 strategy would be at trial before trial started?

23 A Of course.

24 Q Did you talk about DNA with Mr. Bayne?

25 A I would think so, I don't remember.

JOHN ABDALLA-CROSS BY MR. ARIAIL

1 MR. SMITH: Okay. Those are the only questions
2 I have, thank you.

3 THE COURT: Cross-examination.

4 MR. ARIAIL: Thank you, Your Honor, may it
5 please the Court.

6 CROSS-EXAMINATION

7 BY MR. ARIAIL:

8 Q Mr. Abdalla, how you doing today?

9 A Good.

10 Q Good. I want to go through a little bit in
11 regards to Mr. Enice. Did you have any discussions with
12 Mr. Bayne about whether Enice was going to, I guess, help
13 or hurt your case if you put him on the witness stand?

14 A You know, I'm sure I did but I can't remember
15 that conversation.

16 Q Was there any discussion with him about the
17 potential that he was going to say that Mr. Bayne did not
18 commit the crime?

19 A I don't think so. My recollection is that he
20 was a witness for the prosecution, was going to hurt more
21 than help.

22 Q Okay. I know you might have said this, did you
23 have your office or private investigator go out and talk
24 to Mr. Enice about his testimony and what he was going to
25 say?

JOHN ABDALLA-CROSS BY MR. ARIAIL

1 A If anyone spoke to him it was me and I don't
2 recall.

3 Q Okay.

4 A If he had me asked to speak to him, I would have
5 spoken to him or tried to speak to him. That's the only
6 thing I can say.

7 Q All right. And you don't remember Mr. Bayne
8 asking you to call Mr. Enice to the stand?

9 A No, I don't. I mean, I could be mistaken on
10 that but I really don't remember him asking me that.

11 Q Okay.

12 A I mean, he says that. I can't imagine him just
13 making it up but I don't remember that. Because I would
14 have made a bigger deal about the fact that he had left.
15 And I would have being angry about it. And I don't recall
16 being at all angry that he left. I remember being happy,
17 you know, thinking pleasantly surprised that he was no
18 longer available for the prosecution. So that's why I'm
19 kind of perplexed on that issue.

20 Q And, I guess, the interesting thing about this
21 case and is that they find him --

22 A Right --

23 Q -- guilty on what you didn't think they were
24 going to find him guilty on.

25 A Yes.

JOHN ABDALLA-CROSS BY MR. ARIAIL

1 Q And my question is, do you think if Mr. Enice
2 was there, how that would have impacted your case or how
3 you would have handled it if he had testified during the
4 trial?

5 A Well, obviously, in a hypothetical, it couldn't
6 be worse than a conviction for armed robbery. So I don't
7 see how it could have hurt anymore. But for that event,
8 you don't want a witness to -- a victim to testify. You
9 hope they don't testify. Because I don't see how the
10 witness was going to exonerate him from the other charge.
11 Which, of course, he wasn't convicted of. And since he
12 was called by the prosecution, obviously, he had some
13 issues with his own integrity that he left. So he knew he
14 was lying, apparently.

15 Q And I saw in one of the supplemental reports,
16 maybe to go back, it appeared that Mr. Enice during one of
17 these conversations, thought that -- I think he even said,
18 he initially thought the whole incident was a joke?

19 A Yep.

20 Q Okay. So did you bring that out during the case
21 or think that was informative for the jury to understand?

22 A Well, he didn't testify.

23 Q Well, did you think you could bring that out
24 through the officer or some other source to be able to get
25 that in front of the jury?

JOHN ABDALLA-CROSS BY MR. ARIAIL

1 A Maybe I should have, I didn't. That I recall.

2 Q Okay. And I think he -- let's see--

3 A I did -- you know, was he the guy that worked
4 for the lock company or not?

5 Q Correct.

6 A I spoke to him before -- long before the trial.
7 I say long before.

8 Q What do you remember about the conversation with
9 him?

10 A Sadly, I don't remember the contents of the
11 conversation. I don't think it was helpful. Because
12 again, if I thought it was helpful, I would have been -- I
13 know that he was not available. But I apologize for not
14 recalling the content of the conversation.

15 Q Okay. In regards to Mark Bayne, Jr., do you
16 remember any discussions with Mark Bayne about how that
17 was going to impact his -- whether or not he was going to
18 testify or not or any communication you had with him about
19 that?

20 A I know we had conversations. And I know he
21 didn't want to take the stand, didn't want to implicate
22 his son. But to the extent beyond that, I don't recall.

23 Q Do you remember the reason he didn't want to
24 implicate his son?

25 A Well, it's his son.

JOHN ABDALLA-CROSS BY MR. ARIAIL

1 Q Right. Well, I understand but also--

2 A I think that's like all of us. I want to
3 protect my family.

4 Q But did he, specifically, state that to you and
5 let you know that?

6 A He did.

7 Q Okay. And did you go over with him how that was
8 going to impact your strategy if you were not able to say
9 it was his son?

10 A I imagine I did, Mills, but I apologize. I feel
11 like somebody on the stand that is avoiding answering
12 questions that there's so much I don't recall about this.
13 So my apologies to The Court and everybody involved.

14 Q Now, the issue in regards to investigating more
15 about Donald Trammell, did you remember having that
16 discussion with Mr. Bayne about doing that or steps you
17 took with that?

18 A I don't recall. I mean, I'm sure I tried to
19 contact him but I don't remember.

20 Q Was there -- now going back through it, did you
21 believe you could have done differently in regards to your
22 crosses of Donald Trammell and Nicky Gardener?

23 MR. SMITH: Objection, Your Honor.

24 MR. ARIAIL: I'll withdraw that.

25

JOHN ABDALLA-CROSS BY MR. ARIAIL

1 BY MR. ARIAIL:

2 Q We talked about fingerprint evidence in regards
3 to Donald Trammell, you don't recall having anything that
4 would have helped or would have placed him near that
5 vehicle?

6 A I don't recall but, again, there were numerous
7 people involved and other people pled guilty. So it
8 wasn't, necessarily, if I'm remembering correctly, a
9 situation where because this one's in, that one's out. It
10 don't exonerate, necessarily, just adds to it. It was a
11 [audio distortion] he did it and he did it and he did it,
12 kind of a thing. If I remember correctly. Because I do
13 recall their being several people involved.

14 Q Right. And that's a whole -- I mean, we tried
15 these cases before where you've got numerous people saying
16 information. Did you discuss with him and let him know
17 this is what they, potentially, could say and this is the
18 impact it could have on you during this trial?

19 A Yes. I mean, that was that whole crux of it,
20 which is why I wanted him to take the plea offer. But he
21 doesn't remember having the plea offers given to him until
22 right before the trial. Which is not true. I don't know
23 why he doesn't recall it but. That's one thing I'm
24 totally certain of. As I said, the reason I'm so certain,
25 I remember turning to him during the later part of trial,

JOHN ABDALLA-CROSS BY MR. ARIAIL

1 and said, I'm really annoyed with you.

2 And he said, Why?

3 And it was kind of cute. I was almost
4 being flippant. And I said, I wish you took this offer
5 because I hate to see you go down the road for a long time
6 because you're a nice guy. And he apologized. And I
7 laughed and said, No, it's not your fault. I wish you
8 took it because I'm afraid we're going to lose.

9 Q I guess what I'm saying, there was no
10 discussions at the time of trial that the plea offer had
11 either been reinstated or still valid?

12 A No, earlier, I guess, when I mentioned that to
13 him, it may have been when the jury was actually out and I
14 may have said it was too late. But at that time, he was
15 responded like he knew he had that offer. So he's
16 mistaken on that, that's one thing I'm certain of, he's
17 mistaken.

18 Q Okay. Now, the curative instruction, I guess,
19 it was your position that you just didn't want to
20 readdress that in front of the jury; is that--

21 A That's correct.

22 Q That was your strategy but you can't recall if
23 you had a discussion with him about that?

24 A Oh, I'm almost certain I did.

25 Q Okay.

JOHN ABDALLA-CROSS BY MR. ARIAIL

1 A But, you know, I always say here's why I don't
2 want to do this. But yeah, I don't, generally, just do
3 things out of the blue and say this is best for you
4 because I realize it will come back and bite me in the
5 rear end.

6 Q Bear with me one second. Do you feel that you
7 had enough time to be able to discuss and prepare this
8 case with him prior to trial?

9 A I do.

10 Q And do you think there was anything else that
11 could be done or needed to be done before y'all started
12 the trial that affected the outcome in this case?

13 A Mills, I don't think I've gone to trial and not
14 think I wish I did something more.

15 Q I understand that.

16 A I this it's my personality. I always feel like,
17 Oh, I wish I did more.

18 Q Right. And based upon this you think he was
19 adequately informed on what your strategy was going into
20 trial?

21 A I thought I conveyed it to him. He may not have
22 felt that way and that might be my fault.

23 Q Okay.

24 I have no further questions, Your Honor.

25 THE COURT: All right.

JOHN ABDALLA-REDIRECT BY MR. SMITH

1 Mr. Smith, any other witnesses?

2 MR. SMITH: Your Honor, may I ask just two or
3 three follow up questions?

4 THE COURT: Sure.

5 MR. SMITH: Okay.

6 REDIRECT EXAMINATION

7 BY MR. SMITH:

8 Q Mr. Abdalla, you testified earlier that someone
9 was laughing or thought someone was joke. I missed that,
10 can you repeat that again?

11 A I think I might have been -- that I tend to be
12 too personal with my clients sometimes. And I turned to
13 him, if I'm not mistaken, maybe during deliberations. And
14 I said, I'm pissed at you. Because you -- I said, I'm
15 pissed at you.

16 And he said, Me, why is that?

17 And I said, Because you didn't take the
18 offer and now I'm sweating about you going down the road.

19 And he said, I'm sorry.

20 And I laughed and said, No, I'm sorry.

21 Q Well --

22 A The reason I brought it up was, one, I like my
23 client. Two, I hate him going down the road. And three,
24 that was the umpteenth time I talked to him, to my
25 recollection, about that offer. Which may have been

JOHN ABDALLA-REDIRECT BY MR. SMITH

1 expired at that time. And that maybe why he remembers it.
2 Because I know it was given to him long before the trial.

3 Q Okay. I think I'm asking you, you had testified
4 earlier, where you agreed with Mr. Ariail, that someone
5 thought the robbery was a joke or funny or something?

6 A Oh, yeah. Yeah.

7 Q Can you repeat that because I did not understand
8 that.

9 A The one witness, I don't know if it was Trammell
10 or who it was said, I thought it was all a joke. Then I
11 realized something was going on. And I think it was
12 just -- I think it just showed the whole nature of the
13 group that was involved on both sides of the weapons. The
14 victims and defendants were not that different, it seems
15 to me.

16 Q Okay.

17 A I mean, there were drugs involved, weapons
18 involved. As far as drugs, guns.

19 Q Okay. In terms of Mr. Trammell touching the
20 door, would you agree with me that both Vicky Trammell and
21 Nicky Gardener testified that Mr. Trammell touched the
22 door, opened the truck door?

23 A Yeah.

24 Q Okay.

25 MR. SMITH: No more questions, thank you.

JUSTIN HOLLOWAY-DIRECT BY MR. SMITH

1 THE COURT: Any cross, Mr. Ariail?

2 MR. ARIAIL: No, Your Honor, thank you.

3 THE COURT: All right, Mr. Smith.

4 MR. SMITH: Your Honor, I would call Justin
5 Holloway as a witness.

6 THE COURT: All right, Mr. Holloway.

7 JUSTIN HOLLOWAY, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SMITH:

11 Q Mr. Holloway, in what year did you become
12 license to practice law in South Carolina?

13 A I think -- well, I took the bar in the summer of
14 2012 and I think the bar results came back October of
15 2012.

16 Q Okay. In what capacity were you working at the
17 time of Mr. Bayne's trial?

18 A I was a assistant solicitor with the 13th
19 Circuit Solicitor's Office in the Greenville office.

20 Q Okay. How did you come to be involved in the
21 case?

22 A If I remember correctly, the case was assigned
23 to Jeff Weston, who was a senior assistant solicitor at
24 the time. And I think I just picked up the case for
25 trial. I remember I did not prosecute Donald Trammell. I

JUSTIN HOLLOWAY-DIRECT BY MR. SMITH

1 was not part of his guilty plea, I just remember picking
2 up his case and taking it to trial. After, I think, it
3 had been relayed to me that this was going to be likely a
4 trial.

5 Q Okay. Do you remember if Mr. Trammell had a
6 lawyer?

7 A I don't remember if he was represented when he
8 pled guilty or not.

9 Q Okay. Do you know if any of the -- either Vicky
10 Trammell or Nicky Gardener were represented?

11 A They -- when I spoke to them, as potential
12 witnesses, I was not, to the best of my recollection, I
13 was not aware that they had any charges associated with
14 this activity. I think Vicky Trammell, the mother, had
15 pending criminal charges that were from different conduct.
16 But I don't think that they had been charged. It's not my
17 recollection they were charged in this incident.

18 Q Okay. What do you mean, generally, about the
19 facts of Mr. Bayne's case?

20 A I remember that the house they were at, it was a
21 trailer. It was sort of out in like the Blue Ridge area
22 of Greenville County. I remember the allegations that the
23 trailer -- there was kind of a long gravel driveway, I
24 think there was a turnaround. And I remember the
25 allegations that when concerning Vicky and Nicky, Vicky

JUSTIN HOLLOWAY-DIRECT BY MR. SMITH

1 Trammell and Nicky Gardener, that they discussed pulling
2 up there near the driveway with Aaron Shunk [ph]. They
3 referred to him as Rich Boy. If I remember correctly it
4 was because he lived in a house that had a foundation on
5 it. I think that was their explanation. And that they
6 seemed to be pretty -- they seemed to be quite positive
7 that the two people that came up to the truck that night
8 were Mr. Bayne, Sr. and Donald Trammell. Donald being
9 Nicky's brother and Vicky's son. And that was -- the
10 state relied significantly on their testimony. As they
11 testified as eye witnesses. And then you also have the
12 second incident with David Enice, which has been
13 discussed. And if I remember correctly, they occurred
14 within an hour of one another. Or at least the
15 allegations were that they occurred within an hour of on
16 another on the same evening.

17 Q Okay. Mr. Enice being the victim of the second
18 robbery?

19 A Yes, that's correct.

20 Q Have you ever met Mr. Bayne's son?

21 A I have.

22 Q Okay. In what context did you met him?

23 A I interviewed him multiple times prior to the
24 trial. And I discussed this case with him.

25 Q Okay. Why did you interview him?

JUSTIN HOLLOWAY-DIRECT BY MR. SMITH

1 A Because he had been identified -- I don't
2 remember the -- I don't remember all the specifics. But I
3 do remember a David Enice had identified him. I can't
4 remember if it was a six person photo lineup or if he was
5 just shown a mugshot of Mark Bayne, Jr. And then, I think
6 it -- I think one of the investigators, Matthew Owens,
7 talked about this in his testimony. That it was pretty
8 quickly after charging -- after going to a Magistrate
9 Judge and getting a warrant and charging Mark Bayne, Jr.,
10 that he really had questions and started believing that
11 Mark Bayne, Jr. was not, actually, involved and that it
12 was Mr. Bayne, Sr. And had gone to a state magistrate
13 regarding a bond. And then he, actually, called up to the
14 solicitor's office as well and asked them to dismiss any
15 potential charges connected to this incident against Mark
16 Bayne, Jr.

17 Q Okay. And the issue about whether Mr. Enice
18 identified Mr. Bayne's son was something that was address
19 at trial; is that right?

20 A Yeah. I mean, as I was going back through the
21 transcript, I noticed that in my opening I discussed how
22 there could be a potential of inconsistent testimony. I
23 know we intended to call him as a witness. And then I
24 remember Mr. Abdalla and I talking and saying, I think we
25 lost Mr. Enice. And that was about all there was to it.

JUSTIN HOLLOWAY-DIRECT BY MR. SMITH

1 I remember The Court asked me if we wanted to delay or
2 continue at some point. And I said, Your Honor, we
3 weren't sure where he was. And even though there was a
4 bench warrant out for his arrest. So I think we just made
5 a decision at that point to move forward with the evidence
6 we had.

7 Q Okay. Even though, originally, you had intended
8 to question Mr. Enice during The State's case?

9 A That's correct. And I remember talking to
10 Mr. Enice on multiple occasions leading up to trial.
11 However, I cannot remember exactly what his testimony was
12 going to be. I do remember that he was also connected or
13 was a user of methamphetamine at the time. I remember
14 that we had subpoenaed him and intended for him to testify
15 at trial.

16 Q Okay. Was Mr. Bayne's son present for any
17 portion of trial?

18 A He was.

19 Q Okay. Were you able to distinguish Mr. Bayne
20 from his son when looking at them?

21 A Yes. I mean, just from, I think, Mr. Bayne, Sr.
22 probably has 20 years on him or so.

23 Q Okay. What plea offers did you extend to
24 Mr. Bayne?

25 A Mr. Smith, I don't remember. I do -- just

JUSTIN HOLLOWAY-DIRECT BY MR. SMITH

1 looking at the records I know that Mr. Trammell pled to
2 five years or there was a recommendation of five years.
3 The offer of six sounds consistent. But if it makes a
4 little more sense, at that time in my life, or in my
5 career at the solicitor's office, I would take on cases, I
6 was a younger prosecutor, I would take on cases that
7 appeared to be going to trial. I'm pretty sure that Jeff
8 Weston, who had been assigned this case, was the one that
9 made the plea offers. And then when it got to a point in
10 which the case needed to be tried, I think that I took the
11 case and prepared it for trial. So I do not think that I
12 was all that actively engaged in plea discussions.

13 Q Okay. Do you know if The State had any DNA or
14 fingerprint evidence?

15 A I don't remember. However, if -- I cannot think
16 of a situation in which if there had been forensic
17 evidence, we would not have called that witness. And it
18 sounds like there's been some questions regarding Donald
19 Trammell's fingerprints. And maybe there were
20 fingerprints that came back to Donald Trammell. But had
21 there been forensic evidence associated with Mr. Bayne,
22 I'm sure I would have called somebody from the Department
23 of Public Safety as a witness.

24 Q Okay.

25 Those are the only questions I have, thank

JUSTIN HOLLOWAY-DIRECT BY MR. SMITH

1 you.

2 THE COURT: All right, cross-examination.

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

4 THE COURT: All right.

5 Thank you, sir.

6 All right, Mr. Smith, any other witnesses?

7 MR. SMITH: That's The State's case, Your Honor.

8 THE COURT: All right, either of you want to
9 give a little summary on what you think?

10 I'll start with you, Mr. Ariail.

11 Do either one of you want to provide any kind of
12 summary?

13 MR. ARIAIL: No, Your Honor. I'm fine with just
14 sticking with what the record is as we said.

15 THE COURT: All right, I've heard it all and I
16 don't need it but I did want to, at least, give you
17 the opportunity if either one of you wanted to.

18 MR. ARIAIL: I'm fine with that, Your Honor.

19 THE COURT: Okay, Mr. Smith, you okay with that?

20 MR. SMITH: I can run through them very quickly,
21 Your Honor, if there's anything you want to hear
22 specifically.

23 THE COURT: There's nothing. I've heard it all
24 and I've got a good grasp of it. I just, again, if
25 you wanted the opportunity, I certainly make it

1 available for you.

2 MR. SMITH: The only thing I'll say, Your Honor,
3 I believe that the testimony we've heard contradicts
4 what Mr. Bayne has alleged. But the only things on
5 terms of law that I would throw in where this stuff
6 about DNA or fingerprints or these witnesses, I can
7 supply Your Honor with case law that says for him to
8 prevail in a post-conviction relief case on some sort
9 of missing evidence, he actually has to present it
10 today. And show proof that would have made a
11 difference at trial. And whether that's Mr. Enice or
12 Mr. Edmond or some sort of DNA, he, as a matter of
13 law, failed to meet that burden.

14 THE COURT: I'm familiar with the case law, you
15 don't need to produce it. And I understand your
16 argument.

17 All right, anything else from either of the
18 parties?

19 MR. ARIAIL: Thank you, Your Honor, nothing.

20 THE COURT: All right, thank you.

21 MR. SMITH: Thank you.

22 THE COURT: Thank y'all. I'll take it under
23 advisement, I'll let y'all know.

24 MR. ARIAIL: Thank you.

25 MR. SMITH: Thank you, Your Honor.

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THE COURT: Thank you.
(WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the Eighth day of November, 2021.

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

March 14, 2022

APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Mark Anthony Bayne, #250241,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

) Case No. 2018-CP-23-5730
)

) **ORDER OF DISMISSAL**
)

) **ENTERED COMPUTER**
)

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Paul Wickensimer COC GVL SC

This matter comes before this Court by way of an application for post-conviction relief filed by Mark Anthony Bayne (“Applicant”) on November 9, 2018. The State’s (“Respondent”) return to the application, dated April 25, 2019, included a motion for a more definite statement. An evidentiary hearing in this matter was held before the undersigned via the WebEx virtual platform on November 8, 2021. Everyone who participated did so remotely via WebEx. Applicant was present and was represented by R. Mills Ariail, Jr. Taylor Zane Smith of the South Carolina Attorney General’s Office represented Respondent. Following a thorough review of the record in its entirety and the testimony presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief, and denies the application with prejudice.¹

PROCEDURAL HISTORY

Applicant is presently imprisoned in the South Carolina Department of Corrections. The Greenville County Grand Jury indicted Applicant in September of 2015 for two counts of conspiracy (2014-GS-23-11901; -11900), carjacking (2014-GS-23-11898), kidnapping (2014-GS-

¹ The Court issued this Order and sent it to be filed with the Clerk of Court in June 2022, but the Order cannot be located in the Clerk’s filings.

On April 6-8, 2016, Applicant proceeded to a jury trial with the Honorable D. Craig Brown (“trial court”) presiding. John P. Abdalla (“trial counsel”) represented Applicant at that trial, and Justin William Holloway (“the solicitor”) of the Thirteenth Circuit Solicitor’s Office prosecuted him. At the conclusion of trial, the jury found Applicant guilty as indicted of: carjacking (2014-GS-23-11898), kidnapping (2014-GS-23-11899), armed robbery (2014-GS-23-11902), and possession of a weapon during the commission of a violent crime (2014-GS-23-11902).¹ Applicant was found not guilty of: two counts of conspiracy (2014-GS-23-11901; -11900), armed robbery (2014-GS-23-11897), and possession of a weapon during the commission of a violent crime (2014-GS-23-11897). The trial court sentenced Applicant as follows: to five years’ imprisonment for possession of a weapon during the commission of a violent crime, to twenty years’ imprisonment for armed robbery, to twenty years’ imprisonment for kidnapping, and to ten years’ imprisonment for carjacking, with credit for time served, and with all sentences running concurrently.

Trial counsel filed a timely notice of appeal. Appellate Defender John H. Strom (“appellate counsel”) of the South Carolina Commission on Indigent Defense represented Applicant on appeal initially,² arguing that the trial court erred: (1) in giving an instruction pursuant to *Allen v. United States*, 164 U.S. 492 (1896), that was unconstitutionally coercive, constituted an impermissible comment upon the facts, and incorrectly instructed the jurors to consider the burden that a second trial would impose on the parties, the trial court, and future jurors; and (2) in denying trial counsel’s motion for a mistrial after a witness for the prosecution testified that Applicant had previously been imprisoned. The South Carolina Court of Appeals affirmed Applicant’s convictions and

¹ The carjacking and kidnapping convictions related to victim Aaron Shunk, but the armed robbery and possession of a weapon convictions related to victim David Ennis.

² Appellate counsel left the employ of the Commission on Indigent Defense on October 6, 2017, and Applicant’s appeal was reassigned to Appellate Defender Robert M. Pachak, also of the Commission on Indigent Defense. At that point, appellate counsel had already filed the final brief.

sentences in an unpublished opinion. *State v. Bayne*, Op. No. 2018-UP-310 (S.C. Ct. App. filed July 5, 2018) (per curiam). The remittitur was issued on July 23, 2018.

This application for post-conviction relief followed.

CURRENT PROCEEDING

In his application for post-conviction relief, filed on November 9, 2018, Applicant raised the following claims:

1. Trial counsel was constitutionally ineffective for his:
 - a. Failure to investigate and/or prepare:
 - “Ineffective assistance of counsel to discharge his duty of due diligence to investigate the facts, evidence, and witnesses in the case”;
 - “Counsel failed to investigate evidence and discovery, to make sure that informant ‘Donald Trammell’ was registered with the South Carolina Law Enforcement Division for a major investigation. The investigator ‘Matt Owens’ failed to register ‘Donald Trammell’ with SLED, pursuant to SLED Policy 13.30. The investigator violated SLED Policy 13.30, ‘Use of informants in investigations.’ Furthermore, Vickie Trammell and Nicki Gardner were not registered with SLED for this investigation;
 - “Counsel failed to spend adequate time with Petitioner reviewing discovery with him”;
 - “Ineffective assistance of counsel for failure to provide a proper defense for physical evidence in the case”;
 - “Ineffective assistance of counsel for failure to have a valid strategy for trial”;
 - “Counsel failed to properly and fully investigate the case”;
 - “Counsel failed to properly and fully prepare [sic] Petitioner for testimony in the case”;
 - “Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared [sic] to present testimony through direct and cross-examination of relevant evidence related to the matter”; and
 - “Counsel failed to provide Petitioner with a copy of discovery in the case so Petitioner could assist with the case”;
 - b. Failure to call witnesses and/or cross-examine witnesses;
 - “Counsel failed to interview or call as a witness a number of people who would have relevant information in this matter”;
 - “Counsel failed to impeach the State’s witness David Ennis

- because the Petitioner had a right to face his accuser and challenge their [sic] testimony at trial”; and
- “Counsel failed to challenge the testimony of the State’s witnesses and failed to adequately object and preserve objections to portions of the witness’s testimony, and failed to effectively cross-examine the witnesses on their testimony”;
- c. Failure to challenge arrest and/or indictments:
- “Counsel failed to challenge or move to quash the indictment before the jury is sworn [sic], that indictment is not sufficient”; and
 - “Counsel failed to request a preliminary hearing so Petitioner could more adequately be informed about case”;
- d. Failure to move:
- “Counsel failed to move for a pre-trial motion for a directed verdict”;
 - “Counsel failed to move for a motion to server (sic) the charges”; and
 - “Counsel failed to move for a pre-trial motion to suppress the evidence from the case;
- e. Failure to object and/or preserve objections:
- “Counsel failed to object to hearsay”;
 - “Counsel failed to put on the record, after a bench conference, what objection and ruling was made by the State on page 258 of the trial transcript so as to preserve the issue for appellate review”;
 - “Counsel failed to put on the record, after a bench conference, what objection and ruling was made by the state on page 276 of trial transcript so as to preserve the issue for appellate review; and
 - “Counsel failed to move for a mistrial when the solicitor, on page 347 of the trial transcript, violated a cardinal rule and expressed his own opinion of the Petitioner’s guilt. Furthermore, counsel waited until the jury left the courtroom to deliberate before he made his objection to these remarks”; and
- f. “Ineffective assistance of counsel for abandonment of his client during trial.”

At the start of the November 8, 2021, hearing before this Court, Respondent noted that Applicant’s counsel had said by phone on November 3, 2021, that Applicant would proceed at the hearing upon the following claims only:

1. Trial counsel was constitutionally ineffective for:
 - a. Not calling David Ennis as a witness at trial;
 - b. Not exploring the possibility that Applicant’s son was involved in

- the crime instead of Applicant;
- c. Not investigating witnesses, including Donald Trammel and other unspecified witnesses;
- d. Not objecting to the introduction of evidence of Applicant's prior bad acts;
- e. Declining the trial court's offer to give a curative instruction to the jury regarding the evidence of Applicant's prior bad acts; and
- f. Not using fingerprint evidence to impeach Trammel's credibility.

Applicant confirmed for this Court that Applicant would be proceeding only upon the claims that Respondent had mentioned. This Court finds that Applicant has abandoned or waived all claims other than these, and only these claims will be addressed in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Greenville County Clerk of Court for Applicant's convictions and sentences; Applicant's records from the South Carolina Department of Corrections; the transcript from Applicant's trial; Applicant's direct appeal records, including the parties' final briefs, the record on appeal, the Court of Appeals' dispositive opinion, and the remittitur; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that trial counsel was constitutionally ineffective for not calling David Ennis as a witness at trial.

Applicant was tried for his participation in two different armed robberies, and related crimes, that took place back-to-back on the same day at the same location. The prosecution alleged that Aaron Shunk, the victim in the first robbery, was removed from his truck at gunpoint, moved to a different location, held until he was able to escape on foot during a subsequent disturbance, and had his truck stolen by the robbers. The prosecution also alleged that the disturbance was

caused by the arrival of David Ennis, the victim in the second robbery, from whom the armed robbers then took cash and personal property. The jury found Applicant guilty of some of the crimes relating to Shunk and not guilty of others, and likewise found Applicant guilty of some of the crimes relating to Ennis and not guilty of others.

Applicant alleges that trial counsel was ineffective for not calling Ennis as a defense witness at trial. Timothy Brochin of the Greenville County Sheriff's Office testified at trial that he had been dispatched after Ennis made a call to 911 to report an armed robbery. Trial Tran. 97, 101. Detective Brochin testified, while being cross-examined by trial counsel, that Ennis had identified Vickie Trammel ("Vickie"), Nikki Gardner ("Gardner"), and Donald Trammel ("Donald") as participants in the robbery, but had not identified anyone else. Trial Tran. 108. Detective Brochin testified that Ennis, upon being shown a photograph of Mark Bayne, Jr., Applicant's son, without a beard, had said that the second male robber had looked similar to the man in the photograph shown to him, but had had a scruffier beard, and that he could not say with absolute certainty that Applicant's son had been the other robber. Trial Tran. 110. Detective Brochin could not testify as to whether Ennis subsequently identified Applicant's son as being the robber after viewing a different picture of the son because Detective Brochin had not been involved in that. Trial Tran. 110-11.

Matthew Owens of the Greenville County Sheriff's Office testified at trial that Ennis met with him couple of days after Detective Brochin had shown the photograph of Applicant's son to Ennis. Trial Tran. 282. Deputy Owens testified that Ennis identified both Donald and Applicant's son as the robbers. Trial Tran. 280-81. Deputy Owens knew that Applicant's son was, in fact, Applicant's son, and testified that Applicant's and Applicant's son's physical appearances were "strikingly very similar. Long hair, facial hair, the – I guess the weight. They – they look very

alike.” Trial Tran. 282. After Deputy Owens talked with Vickie, Donald, Applicant’s daughter, and Applicant’s son, he became confident that Applicant’s son had not been involved in the robberies, and even helped Applicant’s son get a personal recognizance bond, and convinced the Solicitor’s Office to dismiss the charges against him. Trial Tran. 282-84. Deputy Owens testified that Ennis had looked at a photograph of Applicant’s son that had been posted on Facebook, and that Ennis told him that the person in the photograph had been the robber. Trial Tran. 290. Deputy Owens testified that he felt that Applicant’s son “look[ed] like him,” except that Applicant’s son had longer hair in the photograph. Trial Tran. 290. Deputy Owens testified that Applicant’s son had not had a beard in the photograph, but agreed that he had had a beard when he talked to him, and that it was his understanding that Donald’s accomplice had had a scruffy beard. Trial Tran. 292-93.

Vickie testified at trial that her husband was one of Applicant’s first cousins, and she identified Applicant as one of the robbers, and as the robber who had struck Shunk during the robbery. Trial Tran. 111, 124-25. Gardner testified that she had previously lived with Applicant’s wife, that she is Applicant’s cousin and had known him for her entire life, and that Applicant participated in the robbery of Shunk. Trial Tran. 144, 148-49, 166. Gardner testified that Applicant told her after the robbery that he and others had wanted to take methamphetamine from Ennis. Trial Tran. 171-72. She testified that she saw Applicant wiping down Shunk’s truck a few days after the robbery. Trial Tran. 175. Donald testified at trial that he knew Applicant, that Donald had committed crimes against Shunk, and that Applicant had approached Ennis with a shotgun. Trial Tran. 214, 224, 244-46.

At a certain point during the trial, the solicitor asked the trial court for a bench warrant for Ennis’s arrest because Ennis had left the courthouse before he had been called to the stand, had

not returned to the courthouse, and had been refusing to answer his phone. Trial Tran. 194. Ultimately, Ennis did not testify at Applicant's trial. Trial counsel moved for a directed verdict, arguing, in part, that such was warranted because Ennis had not testified during the prosecution's case-in-chief, but the trial court denied that motion. Trial Tran. 295-98. Trial counsel argued in closing that Ennis had not shown up to testify. Trial Tran. 355.

Applicant testified before this Court that he and trial counsel met on multiple occasions. He testified that trial counsel showed him documents in discovery that were from Ennis. He testified that he and trial counsel discussed the fact that Ennis had positively identified Applicant's son as the man with the shotgun during the crimes, which he said that they had learned from a supplemental report of Deputy Owens. He testified that Ennis had told Owens, after seeing one or more photographic lineups that included a photograph of Applicant, that the lineups did not include a photograph of the person who had robbed him. He testified that Ennis had already accused two people, neither of which was Applicant, of committing the crime. He testified that Ennis accused Donald and Applicant's son of robbing him. He testified that trial counsel had asked him to give him a reason that Ennis would lie by saying that the robber had been Applicant instead of Applicant's son, and that he had not been able to do so. He testified that trial counsel had not discussed with him the procedure that Deputy Owens used to conduct the lineup for Ennis. He testified that he told trial counsel that Ennis needed to be present to testify at trial because Ennis was the victim and Ennis's statement to law enforcement officers contradicted the statement given by "Mr. Brown."³ He testified that he told trial counsel that he would not testify against his own

³ Applicant failed to give information with which this Court could know the identity of "Mr. Brown," or to know his relevance to this case.

son. He testified that he had decided from the beginning that he would not testify at trial “because of anything that might incriminate [himself]” and because “of [his] son’s involvement.”

Applicant testified that there was testimony at his trial that Ennis had identified Applicant’s son as the one who committed the crime instead of identifying Applicant. He testified that Ennis did not testify at all at trial. He testified that the solicitor said at trial that Ennis told him that trial counsel had directed him to the wrong courtroom and that he left when no one else ever showed up. He testified that trial counsel did not speak with Ennis until the day of trial. He testified that trial counsel cross-examined Deputy Owens about the identification of Applicant’s son. He testified that Deputy Owens testified that Applicant and Applicant’s son both had had long hair and “scruffy” beards, but testified that Deputy Owens’ testimony had not been true because Applicant had had long hair and tattoos at the time of his arrest, while his son had had a crew cut without being tattooed so extensively. He denied that trial counsel had cross-examined Deputy Owens about that identification of Applicant’s son. He testified that he should have had the chance to confront Ennis at trial and to allow Ennis to testify as to the real identity of the robber. He testified that he was found guilty because Ennis did not testify at trial. On cross-examination, Applicant testified that he had asked his counsel in this matter to help him contact Ennis, and that it was his understanding that his counsel had done so, but had not received a response from Ennis.

Trial counsel testified before this Court that Applicant told him that he was not guilty. He testified that he discussed with Applicant in advance of trial the fact that people would testify against him, and that Applicant told him that those people would be lying. He testified that he felt certain that he went over with Applicant the witness statements and police reports in discovery. He testified that his general practice was to ask clients before a trial for reasons that witnesses might be lying. He testified that he called witnesses and talked to people, but heard nothing that

made him think he needed to change his witness list. He testified that he did not remember whether he spoke to Ennis before trial about what Ennis would say. He testified that he discussed with Applicant the possibility that Applicant's son had been involved in the crimes, and remembered that Applicant did not want to take the stand in order to implicate his own son. He testified that people other than Ennis placed Applicant at the scene of the crimes, though. He testified that he would have raised more argument about Applicant's son had Applicant testified, but felt that Applicant's decision not to testify limited his ability to raise those arguments. He testified that he did not recall Applicant's asking him to call Ennis as a witness. He testified that he normally does not subpoena victims for criminal trials. He testified that he normally hopes that victims do not testify in criminal trials. He testified that he thought that he had discussed with Applicant whether Ennis's testimony would help or hurt the defense, but could not remember that conversation. He testified that he did not think that they discussed the possibility that Ennis would give testimony at trial that Applicant did not commit the crimes because Ennis was a witness for the prosecution whose testimony would hurt the defense more than help it.

Trial counsel testified that the solicitor was going to call Ennis as a witness at trial, and that trial counsel went outside of the courtroom and talked to Ennis, but saw that Ennis had left when he subsequently went back out of the courtroom. He testified that he had not said anything to Ennis to cause him to leave, but had merely asked Ennis about his testimony. He testified that he did not remember Applicant's being upset at Ennis's absence or requesting that trial counsel get Ennis back to testify. He testified that, if Applicant had done so, he would have made a bigger issue at trial about Ennis's leaving. He testified that he remembered Applicant being happy that Ennis was not available to testify for the prosecution. He testified that he personally thought at the time that

it would be to Applicant's benefit if Ennis was not present to testify. He testified that he had thought that Ennis's absence was a positive development for Applicant's defense.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional

ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer's] unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted).

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 a lawyer'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. at 697. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. *Id.* at 690.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel’s performance with respect to Ennis’s absence from trial. Trial counsel testified that he does not normally call victims as defense witnesses when he is representing criminal defendants at trial, and that he, in fact, hopes that the victims do not testify at all. Trial counsel’s normal practice is in line with the prevailing professional norms of criminal defense lawyers, and Applicant has not proven otherwise. Neither has Applicant given this Court any reason to find that trial counsel should have deviated from that common practice with respect to Ennis. Trial counsel’s testimony that he thought that Ennis’s testimony would have been harmful to the defense is credible, and was reasonable under the circumstances. Applicant’s testimony that he told trial counsel to call Ennis as a witness at trial because he expected Ennis to support the defense is not credible in light of trial counsel’s more credible testimony that Applicant did not tell him to call Ennis as a witness, and that Applicant had been happy that Ennis left the courthouse.

This Court finds that Applicant has failed to prove that there was a reasonable likelihood that the outcome of trial would have been different but for the alleged deficiency in trial counsel’s

performance. An “applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.” *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998)); *see also Dempsey v. State*, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court’s finding that Dempsey was prejudiced by trial counsel’s failure to call an expert at trial to rebut the State’s expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). An applicant’s “mere speculation” what a witness’s testimony at trial would have been “cannot, by itself, satisfy the applicant’s burden of showing prejudice.” *Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995). Applicant did not call Ennis as a witness at the hearing before this Court.⁴ Thus, Applicant has failed to meet his burden in proving any prejudice from Ennis’s absence from trial.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not calling Ennis as a witness at trial because Applicant has failed to prove that there was any deficiency in trial counsel’s performance and because he has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant’s claim that trial counsel was constitutionally ineffective for not exploring the possibility that Applicant’s son was involved in the crime instead of Applicant.

Gardner testified at trial that Applicant told her after the robberies that Applicant and others had wanted to take methamphetamine from Ennis. Trial Tran. 171-72. Gardner identified

⁴ If Applicant’s testimony is to be believed, Ennis was apparently unwilling to reply to Applicant’s counsel in this matter, which is further evidence that Ennis’s testimony would not have aided Applicant’s defense.

Applicant as the person who robbed Ennis, and she did not so identify Applicant's son. Trial Tran. 173. Gardner testified that she saw Applicant wiping down Shunk's truck a few days after the robbery. Trial Tran. 175. Trial counsel elicited testimony from Detective Brochin that Ennis identified Vickie, Gardner, and Donald from photographs, but had been unable to identify anyone else. Trial Tran. 107-08. Deputy Owens testified that Ennis identified Applicant's son and Donald as two of the robbers. Trial Tran. 280. When being cross-examined by trial counsel, Deputy Owens testified that Ennis had looked at a photograph of Applicant's son that had been posted on Facebook, and that Ennis told him that the person in the photograph had been the robber. Trial Tran. 290. Deputy Owens disagreed with trial counsel's assertion that Applicant's son, as shown in the photograph, looked like Applicant. Trial Tran. 290. Deputy Owens agreed with trial counsel that he had not been present during the robberies. Trial Tran. 294. During his closing argument, trial counsel argued that Ennis identified Applicant's son, and not Applicant, as one of the robbers. Trial Tran. 348. After the trial court charged the jury, trial counsel moved for a mistrial on the basis that the solicitor argued in closing that Applicant was trying to cast blame on his own son despite the fact that Applicant had not testified, but the trial court denied the motion. Trial Tran. 380-81.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to the possibility that Applicant had been incorrectly identified as the robber and that Applicant's son was actually the one who was guilty. Applicant admitted that he and trial counsel discussed Ennis's identification of Applicant's son as the robber, and that Ennis had not identified Applicant himself. Trial counsel did use Ennis's identification of Applicant's son in Applicant's defense at trial. Trial counsel elicited testimony from Detective Brochin about Ennis's identification of Applicant's son and cross-examined Deputy Owens about

it. Trial counsel argued in closing that Ennis identified someone other than Applicant. Trial Tran. 351. Trial counsel did what Applicant alleges that he did not do, in that he “explored” the possibility in trial that the victim had incorrectly identified Applicant. Trial counsel credibly testified that he did not explicitly argue that Applicant’s son was the robber because Applicant decided not to testify and because Applicant did not want to implicate his son in any way. Applicant’s own testimony before this Court corroborates trial counsel’s testimony on this point. Trial counsel did what he could do while respecting the boundary that Applicant had set.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different but for the alleged deficiency in trial counsel’s performance. Two law enforcement officers testified at trial that Ennis had identified Applicant’s son as one of the robbers, so the jury knew of the identification. The jury heard testimony about the similarities and differences in appearance between Applicant and his son. Applicant’s co-defendants testified as to his involvement. The jury was able to weigh the credibility of the evidence and determined that the solicitor had proven beyond a reasonable doubt that Applicant was guilty. Applicant has not proven that there is a reasonable likelihood that he would have been found not guilty had trial counsel handled the issue of Applicant’s son differently.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not exploring the possibility that Applicant’s son was involved in the crime instead of Applicant because Applicant has failed to prove that there was any deficiency in trial counsel’s performance and because he has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that trial counsel was constitutionally ineffective for not investigating witnesses, including Donald Trammel and others.

Applicant testified before this Court that he and trial counsel discussed Donald's testimony, and that trial counsel told him that a detective was having issues with Donald's telling lies. He answered in the affirmative when asked if he asked trial counsel "to investigate or provide [him] with any additional information with regard to Donald Trammel or other witnesses in the case." He testified that he had asked trial counsel to investigate Fred Edmond in order to find out who had been present during the robberies. He testified that Mr. Edmond was the man who owned the home where the crimes took place. He testified that Mr. Edmond's testimony could have corroborated Ennis's testimony. He denied that trial counsel had told him about any conversations that trial counsel had had with Edmond. He denied that trial counsel had given him any information about Edmond. He testified that Boyd Morgan and Larry Trammel ("Larry") had also been present, and that trial counsel never investigated or talked to either of them. He affirmed that Larry had been married to Vickie and was Gardner's father. He testified that he told trial counsel that Larry had been the man behind the home and not Applicant, and that Applicant had had nothing to do with the crimes at all.

Trial counsel testified that he discussed with Applicant on more than one occasion Applicant's belief that the witnesses against him would lie at trial. Though he could not remember definitively, he testified that he felt certain that he had discussed with Applicant before trial what he expected each witness to testify to at trial. He thinks that there were recordings in discovery of law enforcement interviews of the witnesses, and he thinks that he would have watched or listened to those recordings himself and then discussed them with Applicant. He testified that he only talks to a client's co-defendants if he gets permission beforehand from the co-defendants' lawyers and he feels that it is in his client's interest to do so. He testified that he did not have an investigator

working on Applicant's case, but did call witnesses and talked to people. He could not remember if he had spoken to Donald, Larry, or Cory Morgan ahead of Applicant's trial. He testified that he contacted or attempted to contact every person whom Applicant asked him to contact. He testified that he did not learn any information from speaking to people that caused him to change his witness list. He testified that he may have contacted the South Carolina Department of Social Services in order to obtain the information that he used to cross-examine Gardner at trial, and testified that he does that if he feels that a situation warrants such action. He could not remember if he had discussed Edmond with Applicant.

Trial counsel testified that he could not remember whether or not he talked with Ennis in advance of Applicant's trial. He testified that he would have spoken to Ennis, or attempted to do so, if Applicant had asked him to do so. He testified that he had talked with "the guy that worked for the lock company" before the trial, but could not remember the substance of that discussion, although he did not think that the man's information was helpful to the defense. He testified that he is sure that he tried to contact Donald, but does not remember with certainty.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to his investigation into witnesses. Applicant named multiple people whom he contends that trial counsel should have "investigated," but gave only one justification for the desired investigation: in order to determine which people were present during the robberies.⁵ There is no evidence that the people whom Applicant named, with the exception of

⁵ When Respondent objected to Applicant's testimony that it was Larry, and not Applicant, was the person behind Edmonds' home during the robbery, arguing that Applicant lacked personal knowledge because he was alleging that he was not present when the robberies took place, Applicant blurted out, saying, "I never said I --," but his statement was cut short. Applicant's spontaneous statement seems to be an admission that he was present at Edmonds' home when the robberies took place, or at least an admission that he was not denying that he was present.

the people who testified at trial, would have been able to provide trial counsel with any helpful information. Trial counsel credibly testified that he talked to or tried to talk to any person whom Applicant asked him to talk. In that, trial counsel performed an independent investigation, and did all that was required of him according to prevailing professional norms. If there were additional alleged witnesses whom Applicant wanted trial counsel to talk to beyond those whom trial counsel talked to or tried to talk to, trial counsel's lack of contact with them is due to Applicant's failure to identify them for him.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different but for the alleged deficiency in trial counsel's performance. A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing *Kibler v. State*, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." *Bannister*, at 303, 509 S.E.2d at 809; *see also Dempsey*, at 370, 610 S.E.2d at 815 (holding that the PCR court's finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing). An applicant's "mere speculation" what a witness's testimony at trial would have been "cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover*, at 499, 458 S.E.2d at 540. Applicant did not present

testimony from any of the people whom he alleges that trial counsel should have interviewed or “investigated,” so he has failed to meet his burden with respect to the prejudice prong of *Strickland*.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not investigating witnesses because Applicant has failed to prove that there was any deficiency in trial counsel’s performance and because he has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant’s claim that trial counsel was constitutionally ineffective for not objecting to the introduction of evidence of Applicant’s prior bad acts, and for declining the trial court’s offer of a curative instruction regarding the evidence of Applicant’s prior bad acts.

Applicant raised two independent claims: that trial counsel was constitutionally ineffective for not objecting to the introduction of evidence of Applicant’s prior bad acts and that trial counsel was ineffective for declining the trial court’s offer of a curative instruction regarding the evidence of Applicant’s prior bad acts. Because these two claims are so closely related, this Court will consider them together.

At the beginning of trial, trial counsel asked the trial court and the solicitor to instruct the witnesses that they should not reference Applicant’s criminal record. Trial Tran. 37. Trial counsel noted that, at that point, Applicant did not have plans to testify. Trial Tran. 37. The solicitor agreed with trial counsel’s request and said that he would discuss it with his witnesses. Trial Tran. 37. Trial counsel also wanted the trial court to limit the solicitor’s ability to impeach Applicant’s credibility with evidence regarding Applicant’s three 1998 convictions for armed robbery. Trial Tran. 41. The trial court took the issue under advisement at that time. Trial Tran. 44.

When Gardner testified during the prosecution's case-in-chief, the following exchange occurred:

Q: Okay. When did you meet [Applicant's wife]?

A: When I was younger, as a child. But from when I can remember her was back in – when I can actually remember her is when he had – he hadn't been released from prison long.

Trial Tran. 149. There was an off-the-record bench conference immediately after that line of testimony. Trial Tran. 149. After that, the trial court sent the jury out of the courtroom. Trial Tran. 149. Trial counsel moved for a mistrial on the ground that the jury had been made aware through Gardner's testimony that Applicant had been imprisoned previously. Trial Tran. 150. Gardner told the trial court that she had not meant to refer to Applicant's criminal record and that the solicitor had instructed her not to do so. Trial Tran. 152. The trial court denied the motion and found that a curative instruction would cure any prejudice, but said that he would give trial counsel the opportunity to argue the issue again on the following day. Trial Tran. 153-54. Trial counsel asked for additional time in which to consider whether he would request a curative instruction. Trial Tran. 155. Trial counsel did not want to request one "so quickly because it almost draws more attention to it," and agreed with the trial court's characterization of a curative instruction as a "kind of double edged sword." Trial Tran. 155.

On the following day, trial counsel again argued that there should be a mistrial. Trial Tran. 201. The trial court again denied the motion and gave trial counsel more time in which to consider whether to request a curative instruction. Trial Tran. 205. After the solicitor rested his case, trial counsel renewed his motion for a mistrial, and the trial court denied it again. Trial Tran. 294-98. Applicant chose not to testify. Trial Tran. 302. During the charge conference, the trial court suggested that he give a curative instruction. Trial Tran. 303. Trial counsel discussed the issue

with Applicant. Trial Tran. 305. Trial counsel ultimately told the trial court that “we,” ostensibly meaning both trial counsel and Applicant, did not want the trial court to give a curative instruction. Trial Tran. 305-06.

Trial counsel testified before this Court that he decided not ask for a curative instruction because he did not want to remind the jury of the fact of Applicant’s having been in prison. He testified that he felt that a curative instruction would have merely drawn attention to the fact. He testified that he almost always decides not to ask for curative instructions. He testified that he was “almost certain” that he discussed that decision with Applicant before he made it.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel’s performance with respect to the introduction of evidence of Applicant’s prior bad acts. Trial counsel secured the solicitor’s agreement on the record before trial began that the prosecution’s witnesses would not reference Applicant’s prior criminal record. Despite having been told not to do so by the solicitor, Gardner referenced the fact that Applicant had been in prison in the past. Trial counsel immediately asked for a bench conference. Once the jury left the courtroom, the trial court asked trial counsel to put the issue “on the record” so that “the record [would be] protected for [Applicant].” Trial Tran. 149-50. Trial counsel stated that his objection was to Gardner’s reference to Applicant’s prison sentence, which he argued violated the limitation put on the solicitor at the beginning of trial, and asked for a mistrial. Trial Tran. 150. The trial court’s offer to give a curative instruction proves that the trial court agreed with trial counsel’s argument about the inadmissibility of Gardner’s testimony and was sustaining the objection. Trial counsel did everything that he could have been expected to do in order to prevent the introduction of evidence of Applicant’s criminal record. Applicant has not given any example of what more trial counsel could have done, and has not proved that trial counsel was required to do more. As

Applicant has failed to prove the deficiency prong of *Strickland* as to this claim, there is no need for this Court to consider the prejudice prong.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to trial counsel's decision not to request a curative instruction. Trial counsel had valid, strategic reasons for not requesting a curative instruction: he did not want the jury to be reminded of the fact and he did not want to draw attention to the fact. "Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (finding that the PCR court erred in finding that trial counsel was ineffective because, among other reasons, trial counsel had articulated at the PCR hearing his strategy of not requesting a curative instruction because they tend to highlight for the jury that which he wanted to keep out, which the Supreme Court found was a valid justification) (citing *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992)). Gardner's reference to Applicant's having been in prison was brief, did not include details about the length of the sentence, did not include details about the crime or crimes for which Applicant was serving time in prison, and was not revisited in the remainder of the trial. Under those circumstances, trial counsel's decision not to revisit the issue with the jury was reasonable according to prevailing professional norms.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not objecting to the introduction of evidence of Applicant's prior bad acts because trial counsel did object to the introduction of that evidence, so Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to the claim. This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for declining the trial court's offer to give a curative instruction because trial counsel's decision not to request

a curative instruction was a valid, reasonable, and strategic one under the circumstances, so Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to the claim. These claims are denied and dismissed with prejudice.

Applicant's claim that trial counsel was constitutionally ineffective for not using fingerprint evidence to impeach Donald Trammel's credibility.

Before this Court, Applicant's counsel stated that he was not aware of any fingerprint evidence in Applicant's case. Applicant then testified that trial counsel had not discussed with him any evidence from fingerprints or deoxyribonucleic acid ("DNA") in the case. He testified that he had known that Donald was lying when Donald testified that he had never been inside the stolen truck. Trial counsel testified before this Court that he was not aware of any fingerprint evidence related to Donald. He testified that he would have used fingerprint evidence to impeach Donald at trial if any such evidence had existed, unless he had overlooked the evidence. He did not believe that he had missed any such evidence in Applicant's case because he never forgets his oversights, although he could not say with certainty that there had been no such evidence in this case. The solicitor testified before this Court that he could not remember if there had been any forensic evidence in the case related to Donald, but he testified that he was sure that he would have called an expert in forensics as a witness at trial if there had been such evidence.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to fingerprint (or DNA) evidence. Applicant, without credibility, testified that there was fingerprint and DNA evidence proving that Donald had been inside the stolen truck, but presented this Court with no evidence to support the allegation.⁶ Trial

⁶ Applicant testified that his own counsel had given him DNA evidence on the morning of the hearing before this Court, but Applicant's counsel stated that he had no knowledge of any fingerprint or DNA evidence.

counsel credibly testified that he was not aware of any such evidence and that he would have made use of it if there had been. The solicitor could not remember if forensic evidence relating to Donald existed, but credibly testified that he likely would have used such evidence if it had existed. As such, this Court concludes that there was no forensic evidence linking Donald to the stolen truck.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of his trial would have been different had forensic evidence linking Donald to the truck—if such had existed—had been introduced at trial. Shunk testified at trial about his truck, which was a tan or gold 2007 Dodge Ram 1500 Laramie. Trial Tran. 82. There was evidence at trial that Donald came into contact with Shunk's truck during and after the robbery, or had been around it or touched it, which could have explained the presence of Donald's fingerprints or DNA, if any, on or inside the truck. Trial Tran. 85, 94-95, 127-28, 166-67, 178-80, 185, 190, 223-24, 239-40, 250-51, 263. Even if there had been some forensic evidence linking Donald to the truck, such would not be something with which Donald's credibility could have been impeached, or at least not effectively, because neither Donald nor the solicitor staked Donald's credibility on whether or not he touched Shunk's truck. Additionally, Applicant has not proven that the presence of Donald's fingerprints or DNA would have negated, rebutted, or disproven the evidence of Applicant's guilt or proven his innocence. The solicitor argued in closing that, even if the evidence indicated that someone other than Applicant may have removed him from his truck and held him against his will, the jury could find Applicant guilty under the theory of accomplice liability. Trial Tran. 321-22.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not using fingerprint or DNA evidence to impeach Donald's credibility because he has not proven that there was any deficiency in trial counsel's performance with respect to the

alleged forensic evidence and because he has failed to prove that there would have been any prejudice resulting from trial counsel's failure to introduce such evidence, even if it had existed. This claim is denied and dismissed with prejudice.

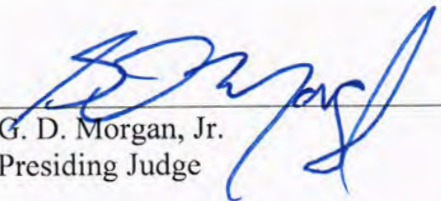
CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21st day of November, 2022.



G. D. Morgan, Jr.
Presiding Judge

Greenville, South Carolina

SEARCHED
SERIALIZED
INDEXED
FILED
BY general T.S./mills Anail
11 / 29 / 2022

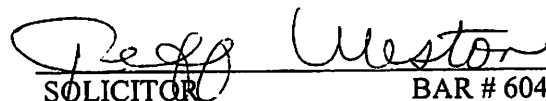
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CARJACKING

At a Court of General Sessions, convened on SEP 22 2015 the Grand Jurors of Greenville
County present upon their oath:

That MARK ANTHONY BAYNE did in Greenville County, on or about the 18th day of October, 2014, take or attempt to take a motor vehicle, to wit: a 2006 DODGE LARAMIE TRUCK, from AARON SHUNK by force, and violence or by intimidation while AARON SHUNK was operating and/or was in the said vehicle. This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR BAR # 6047

WITNESSES

Matthew Owens

Greenville County Sheriffs Office

10/26/2014



ARREST WARRANT NUMBER

2014A2330209776

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

011898

WJW

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September

TERM 2014

2015

THE STATE

vs.

MARK ANTHONY BAYNE

Indictment for

2599

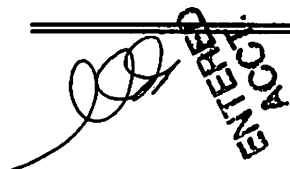
CARJACKING

VIOLATION §16-03-1075

FILED

DEC 29 2014

Clerk of Court
Greenville County



011899

DOCKET NO. 2014-GS-23-

WJW

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2014

THE STATE

vs.

MARK ANTHONY BAYNE

WITNESSES

Matthew Owens

Greenville County Sheriffs Office

10/26/2014

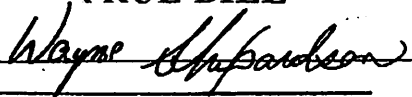


ARREST WARRANT NUMBER

2014A2330209777

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

0095

KIDNAPPING

VIOLATION §16-03-0910

FILED

DEC 29 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) INDICTMENT FOR
) **ARMED ROBBERY and POSSESSION OF A WEAPON DURING**
) **THE COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on **SEP 22 2015** the Grand Jurors of Greenville

County present upon their oath:

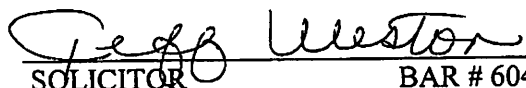
COUNT 1 — ARMED ROBBERY

That MARK ANTHONY BAYNE did in Greenville County, on or about the 18th day of October, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: CELL PHONES and/or CASH and/or a BATTERY JUMP BOX from the person or presence of DAVID ENNIS. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT 2 — POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That MARK ANTHONY BAYNE did in Greenville County, on or about the 18th day of October, 2014, possess or visibly display a shotgun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR BAR # 6047

DOCKET NO. 2014-GS-23-^{WJW} 011902

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
September TERM 2014 ²⁰¹⁵

THE STATE

vs.

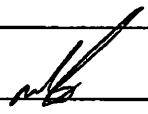
MARK ANTHONY BAYNE

WITNESSES

Matthew Owens

Greenville County Sheriffs Office

10/26/2014

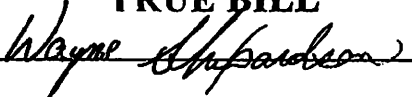


ARREST WARRANT NUMBER

2014A2330209772 and 2014A2330209773

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0139 and 0549

ARMED ROBBERY and POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-11-0330 and §16-23-0490

Foreperson of Petit Jury

Date:



FILED
DEC 29 2014
Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
 Mark Anthony Bayne)
 AKA:)
 Race: WHITE Sex: M Age: 45)
 DOB: [REDACTED]-1970 SS#: [REDACTED])
 Address: [REDACTED] Road)
 City, State, Zip: Travelers Rest, SC 29690)
 DL#: [REDACTED] SID#:)
 *CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Carjacking / Take Or Attempt By Force (0-20)

IN THE COURT OF GENERAL SESSIONS

fair

INDICTMENT/CASE#: 2014GS2311898
 A/W#: 2014A2330209776
 Date of Offense: 10/18/2014
 S.C. Code § : 16-03-1075(B)(1)
 CDR Code #: 2599

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
 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: *Justin* 100639 SC Bar# Defendant Attorney for Defendant SC Bar#
 Holloway, Justin

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: *All convictions of 4-8-16*
 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. *531 days*
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

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	\$ 500
3% to County (if paid in installments)		\$ 390
TOTAL		\$ 13390

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk *Paul B. Wickens*
 Court Reporter: *V. Cross*
 SCCA/217 (03/2011)

Presiding Judge *D. [Signature]*
 Judge Code: 2160
 Sentence Date: 4-8-16

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
Mark Anthony Bayne)
 AKA: _____)
 Race: WHITE Sex: M Age: 45)
 DOB: 1970 SS#: _____)
 Address: _____ Road)
 City, State, Zip: Travelers Rest, SC 29690)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS *Just*

INDICTMENT/CASE#: 2014GS2311899
 A/W#: 2014A2330209777
 Date of Offense: 10/18/2014
 S.C. Code § : 16-03-0910
 CDR Code #: 0095

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping (gs) (0.30)

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ 100639 _____
 Hollway, Justin SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: All convictions of 4-8-16
 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 _____

PTUP _____
 _____ days/hours Public Service Employment

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	\$ 500
3% to County (if paid in installments)	\$	\$ 390
TOTAL	\$	\$ 1339.00

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund

Other:
- Defendant shall not be required to register as a sex offender upon release from the Department of Corrections.
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickramasekera
 Court Reporter: V. Cross
 SCCA/217 (03/2011)

Presiding Judge D. [Signature]
 Judge Code: 210
 Sentence Date: 4-8-16

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
Mark Anthony Bayne)
 AKA: _____)
 Race: WHITE Sex: M Age: 45)
 DOB: 1970 SS#: 215 15 8660)
 Address: _____ Road)
 City, State, Zip: Travelers Rest, SC 29690)
 DL#: _____ SID#: _____)

34839 605
 IN THE COURT OF GENERAL SESSIONS *fail*

INDICTMENT/CASE#: 2014GS2311902
 A/W#: 2014A2330209772
 Date of Offense: 10/18/2014
 S.C. Code § : 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Robbery, Armed With A Deadly Weapon (10-30)

CONVICTED OF or PLEADS

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: Justin Holloway 100639 SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: All convictions of 4-8-16
 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. 531 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP _____ days/hours Public Service Employment

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>2.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickensamer
 Court Reporter: V. Cruz
 SCCA/217 (03/2011)

Presiding Judge D. Craig
 Judge Code: 2160
 Sentence Date: 4-8-16

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Mark Anthony Bayne

AKA:
Race: WHITE Sex: M Age: 45
DOB: 03-29-1970 SS#: 015-45-8666
Address: Road
City, State, Zip: Travelers Rest, SC 29690
DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2311902
A/W#: 2014A2330209773
Date of Offense: 10/18/2014
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

CONVICTED OF or PLEADS TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death (0-5)

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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: Just Holloway, Justin SC Bar# 100639 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: All convictions of 9-8-16
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. 531 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

PTUP days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickerman
Court Reporter: V. Cross
SCCA/217 (03/2011)

Presiding Judge D. Camp
Judge Code: 2780
Sentence Date: 4-8-16