

SOUTH CAROLINA COURT OF APPEALS  
JENNY ABBOTT WITCHINGS, CLERK  
Post Office Box 11629  
Columbia, S.C. 29211

February 23, 2023

APPELLATE CASE NO. 2020-001426

Mr. LEVERN McCrea #348291

vs.

STATE OF SOUTH CAROLINA

RECEIVED

MAR 01 2023

SC Court of Appeals

RE: REVIEW EVIDENCE  
LEFT OUT OF APPEAL  
that Perjudice Appeal

Dear Clerk's Office:

ENCLOSED you will find petitioner's  
Letter to address evidence intentionally  
left out of petitioner's Appeal by Appellate  
COUNSEL OF RECORD. PLEASE file with the court  
and SEND back a dated clock stamped copy  
for my record.

Respectfully Submitted  
Mr. Levern McCrea  
Mr. LEVERN McCrea  
#348291 F-2-A-15  
Allendale Corr. Inst.  
Post office Box 1151  
Fairfax, S.C. 29827

SOUTH CAROLINA COURT OF APPEALS

JENNY ABBOTT KITCHINGS, CLERK

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Columbia, S.C 29211

February 23, 2023

. APPELLATE CASE NO: 2020-001426

MR. LEVERN MCCREA # 348291

RECEIVED

VS.

MAR 01 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

Dear Ms. Kitchings:

My name is LEVERN McCREA and I'm presently at the South Carolina Supreme Court for writ of certiorari Appeal from Williamsburg County. HOWEVER, my reason's for writing to Judge Beatty, Chief Supreme Court Justice. is because I was appointed an attorney from the office of indigent defense. Taylor Gilliam who knowingly, and intentionally, sabotaged Petitioner appeal. By neglecting to include [Any] of the states star witnesses police interview transcripts. That will show perjured trial testimony. IN addition to some Brady violation's concerning a letter of leniency. That was intentionally left out of petitioner RULE-5 Brady Motion.

That offered the state's witness  
A deal for his trial testimony. That Petitioner  
P.C.R Attorney Lance Boozer, addressed on the  
record during Petitioner P.C.R. hearing held  
ON JUNE 1, 2018. Where as the p.c.r court ruled  
ON that letter of LENIENCY, but DENIED PETI-  
TIONER relief. Which were legitiment grounds  
for Appellate Counsel, Taylor Davis Gilliam  
to address during petitioner's Appeal.  
My question is; How can a petitioner get  
relief UNDER the fourteenth Amendment, from  
CONSTITUTIONAL VIOLATION'S FROM THE STATE. WHEN  
PETITIONER'S APPELLATE ATTORNEY is deliberately  
LEAVING OUT EXCULPATORY EVIDENCE during his  
CLIENT'S Appeal? Petitioner has filed Com-  
plaint after Complaint, against Mr. Gilliam  
IN having counsel relieve. So that Petitioner  
can proceed PRO-SE, IN ORDER to file A MO-  
TION to AMEND, ALTER, and CORRECT the  
WRONG DOING. That Appellate Counsel, Taylor  
Davis Gilliam Committed against petitioner.  
IN ORDER to PRESERVE that Brady violation.  
It's clearly stated in Strickland, PETITIONER  
is ENTITLED to EQUAL PROTECTION of the  
LAWS during Appeal, UNDER the fourteenth  
AMENDMENT of our CONSTITUTION.

Petitioners Appellate Counsel Taylor D. Gilliam deliberately left out of petitioners Appeal's A Post-Hearing brief in support of P.C.R Application. That petitioners P.C.R Attorney Lance Boozer put together a month, after the petitioners P.C.R hearing. That addresses, Three (3) Constitutional violations committed against petitioner. Ineffective Assistance of Appellate Counsel. SEE Exhibits enclosed of Post-Hearing Brief and Transcripts pgs. of P.C.R. Hearing on June 1, 2018. Pg. 171 to 176. In addition to Trial Transcripts Pgs. 402 and 596. from Trial held on October 17-21, 2011. Appellate Counsel Taylor D. Gilliam, intentionally neglected to include that sanction hearing transcripts of solicitor Kimberly Barr, sanction hearing held on June 26, 2018. At the King Street, Court House, Williamsburg, County. For deliberately violating RULE 37(b). Failure to comply with order. And RULE (e), failure to participate in the forming of a discovery plan. And RULE 26(f), discovery conference. This violation of petitioner 14th Amendment right to Due process, prejudice petitioner's Appeal from the very start.

1. Appellate Counsel's failure to include, in the record on Appeal. That sanction hearing transcripts that exposes prosecutorial misconduct from solicitor Kimberly Barr, prior to petitioner trial.

Petitioner alleges, that Appellate Counsel Taylor D. Gilliam intentionally sabotaged petitioner's Appeal, by leaving out evidence that are "winning" issues during petitioner's Appeal. Petitioner is respectfully requesting that the Supreme Court Justice's, Look into petitioner's complaint of prejudice, and ineffective Assistance of Appellate Counsel.

2. Appellate Counsel's failure to include, in the record on Appeal. All Three (3) State Star Witness's prior police interview transcripts.
3. Appellate Counsel's failure to include, in the record on Appeal. Were Brady violations concerning that letter of Leniency. That petitioner's P.C.R Attorney Lance Boozer addressed on the record.
4. Appellate Counsel Taylor D. Gilliam knowingly, and intentionally violated RULE 407 of the South Carolina Appellate Court rules of professional conduct, RULE 1.1 COMPETENCE AND RULE 1.4 COMMUNICATION.

A lawyer shall provide COMPETENCE representation to a client. COMPETENT REPRESENTATION requires the legal knowledge, skill, thoroughness, and preparation reasonably NECESSARY for the representation. Counsel Taylor D. Gilliam has failed to do so.

### CONCLUSION

Wherefore the petitioner, Mr. LVERN McCree, respectfully request that the Supreme Court Justice's, consider the Petitioner's letter of complaint. That Appellate Counsel Taylor D. Gilliam, intentionally and deliberately left evidence out of petitioner's Appeal. That prejudice petitioners claim for relief, during writ of certiorari Appeal. Petitioner respectfully ask this Honorable Court, to relieve Appellate Counsel Taylor D. Gilliam. And Grant petitioner 45-days in which to proved a pro-se petition as a matter of Law as required in the case of Jabson vs. State.

1 Mr Levern McCrea

SWORN TO AND AFFIRMED TO BY THE AFFIANT

This 23<sup>rd</sup> day of February 2023

Ashley Vanacore

NOTARY PUBLIC

My Commission Expires: 9/9/32



Respectfully Submitted

1 Mr Levern McCrea

Mr. LEVERN MCCREA

# 348291 F-2-A-15

ALLENDALE CORR. INST

Post office Box 1151

Fairfax, S.C 29827

1 Q: All right. So if you take a right from 378, you'd  
2 be on Highway 41?

3 A: Coming back from Johnsonville.

4 Q: All right. Now, what was the approximate distance  
5 on Old River Road from Highway 378 that the firearm  
6 that we talked about in this case was recovered?

7 A: I measured it at eleven point five miles.

8 Q: Eleven point five miles from Highway 378?

9 A: Yes, ma'am.

10 Q: Now, it has been suggested or insinuated at this  
11 point that Mr. Briggs wrote a statement requesting  
12 to talk to law enforcement back on March the 29th,  
13 2010, and that was the reason why you all came to  
14 see him; is that true?

15 A: No, ma'am.

16 Q: You never received any type of letter requesting  
17 that he speak with you?

18 A: I don't have any knowledge of any letters.

19 Q: And the only reason why you all went to go see him  
20 on the 29th of March of 2010 was because of what was  
21 told to you by Ms. Smith?

22 A: Yes, ma'am.

23 Q: And was there any type of deal between the sheriff's  
24 department and Christopher Briggs concerning him  
25 providing you with information?

ON the top of pg. 403 of No. 1 NO McCrea

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A: No, ma'am. 370-

Q: Was there any promises made to get him out of jail?

A: No.

Q: All right. And as a matter of fact, after you recovered a firearm on Old River Road in Florence County, where did y'all take Christopher Briggs?

A: Back to the jail.

Q: Right back to jail.)

A: Yes, ma'am.

Q: Is that right?

A: Yes, ma'am.

Q: And would the Williamsburg County Sheriff's Office even have any control or say-so or authority related to Georgetown County Cases?

A: No, ma'am. He's actually in custody for Georgetown County. So we wouldn't have any say-so on those matters.

Q: Now, the items that were recovered from Old River Road, you transported those items to SLED in Columbia?

A: I did.

Q: All right. And typically you all have items of evidence that are taken to SLED in Columbia to be analyzed. You all have Lieutenant Jeff Scott to do that; is that right?

PLANTIFFS EXHIBIT BK  
NO. 6

# INCIDENT REPORT SUPPLEMENTAL

Case Number: 0902123

Officer: 1727 LAMBERT, BRENDA Date Entered/Changed: 03/15/2009 Reviewer: Review Date:

202

WE WAS TOLD THAT [REDACTED] KNEW WHY LEVERN MCCREA KILLED CORA BROWN. WE TALKED TO [REDACTED], AND TOLD HER THAT WE NEEDED TO TALK WITH HER ABOUT CORA DEATH, AND SHE STATED THAT SHE DO NOT KNOW ANYTHING ABOUT HER DEATH. WE TOLD [REDACTED] THAT SOME ONE TOLD US THAT SHE KNEW WHY LEVERN KILLED CORA, AND [REDACTED] STATED THAT IF SHE KNEW ANYTHING SHE WOULD HAVE CALL OR COME BY, THE SHERIFF OFFICE, AND LET THE LAW KNOW. SHE STATED THAT SHE AND CORA WERE BEST FRIENDS, AND SHE WILL DO ANYTHING TO HELP US FIND OUT THE TRUTH. \*\*\*\*\*WILLIE BROWN\*\*\*\*\*

HERE

ON JULY 30, INVESTIGATOR BROWN ALONG WITH LT COLLINS, AND CHIEF JOHNSON MADE A LETTER FOR CHRIS BRIGGS WHICH STATED BASE ON OUR RECENT CONVERSATIONS, WE BELIEVE THE YOU HAVE VITAL INFORMATION ABOUT CORA BROWN DEATH. AT THIS POINT WE DO NOT BELIEVE THAT YOU ARE THE ACTUAL BROODER AND IF YOU FREELY AND VOLUNTARILY PROVIDE ALL OF THE TRUTHFUL DETAIL SURROUNDING CORA DEATH, AND PASS THE POLYGRAPH. CHRIS WILL BE CHARGED WITH ASS, AFTER THE FACT, THE LETTER WENT ON TO SAY THAT WE WILL TALK WITH THE JUDGE AND THE SOLICITOR TO GET CHRIS BRIGGS LENIENCY ON HIS CHARGE. INVESTIGATOR BROWN ALONG WITH LT COLLINS WENT TO [REDACTED], AND MADE CONTACT WITH [REDACTED], WHO WAS ABLE TO MAKE CONTACT WITH CHRIS BRIGGS. [REDACTED] STATED THAT CHRIS HAD TOLD HIM THAT HE DO NOT WANT TO TALK WITH US, WITH OUT A LAWYER. [REDACTED] STATED THAT HE WILL EXPLAIN THE LETTER TO CHRIS AS SOON AS HE CAN GET IN TOUCH WITH HIM.

INV. Willie Brown, Lt. Debra Collins & Chief Michael Johnson

JULY 30, 2009 LT COLLINS MADE CONTACT WITH [REDACTED] WHO STATED THAT HE WILL TALK WITH US BUT IT WILL BE AFTER MONDAY, CHRIS BRIGGS WANTS TO TALK WITH A LAWYER FIRST. \*\*\*\*\*WILLIE BROWN\*\*\*\*\*

ON 08/04/2009 INV. BROWN WENT TO CHRIS BRIGGS HOUSE TO MAKE CONTACT WITH HIM, AND THE [REDACTED] WAS IN THE YARD BUT NO ONE CAME TO THE DOOR, I LEFT AND WENT DOWN THE ROAD, TO THE [REDACTED] WHERE CHRIS BRIGGS [REDACTED]. I BEEN CALLED AND I WAS ABLE TO MAKE CONTACT WITH MS BRIGGS, AND I ASKED HER WHEN WAS THE LAST TIME SHE SEEN CHRIS, AND SHE STATED THAT SHE DO NOT KNOW NOTHING.

INV. BROWN AND LT COLLINS WENT BACK TO CHRIS BRIGGS HOUSE, AND THE [REDACTED] WAS GONE. WE THEN WENT DOWN TO THE ROAD, AND WAITED FOR CHRIS BRIGGS TO COME HOME, OFFICER WAS ABLE TO MAKE CONTACT WITH CHRIS BRIGGS, AND HE STATED THAT HE WAS NOT RUNNING FROM US. CHRIS STATED THAT HE WILL GO WITH US, BUT HE NEED TO DROP OFF HIS SON AT THE [REDACTED]. CHRIS BRIGGS CAME TO W.C.S.D ALONG WITH LT COLLINS, AND MYSELF. CHRIS BRIGGS STATED THAT HE WANT'S TO TALK BUT HE THINK THAT WE ARE GOING TO LOCK HIM UP.

INV. BROWN AND CHIEF JOHNSON GIVE CHRIS BRIGGS HIS MIRANDA WARNING, AND CHRIS STATED THAT HE WILL TALK WITH US. CHRIS STATED THAT WHEN LEVERN MCCREA FIRST CAME BACK TO [REDACTED] THE FIRST OF MARCH, LEVERN STATED THAT HE AD SOME FOLK'S TO GET RID OF, CHRIS BRIGGS STATED THAT LEVERN TOLD HIM THE CORA, CHAN, LEVERN SISTER, AND SOMEONE ELSE. WAS ON LEVERN LIST. CHRIS BRIGGS STATED THAT LEVERN TOLD HIM THE CORA WAS TALKING ABOUT HIM AND TALKING EVERYONE THAT HE WAS A FAGGOT, AND LEVERN WAS UPSET ABOUT THAT. [CHRIS STATED THAT THE TUESDAY BEFORE CORA DEATH LEVERN, AND HISSELF WENT TO NORTH CAROLINA, TO GET SOME MONEY FROM LEVERN STRIPKIND. CHRIS STATED THAT WHEN THEY GOT THERE THE [REDACTED] LEFT AND LEVERN, AND HISSELF WENT INTO THE HOUSE, WITH THE KIDR. CHRIS STATED THAT LEVERN THEN LEFT. CHRIS STATED THAT THE NEXT TIME HE SAW LEVERN, WAS THE NEXT MORNING, WHEN LEVERN WAKE HIM UP TO COME HOME. CHRIS STATED THAT THEY GOT HOME ABOUT 12:00 NOON, AND THEY WENT TO LEVERN HOUSE. CHRIS STATED THAT LEVERN LEFT AND WENT TO HIS MOTHER CUSE FOR ABOUT 15 MINS. CHRIS STATED THAT LEVERN CAME BACK AND TOLD HIS THAT HE HAD TO GO AND TAKE CARLYNN TO WORK AT AYA, AND THEY DID. CHRIS STATED THAT WHEN THEY GOT BACK THAT WENT TO ANDREWS TO CARLINDA HOUSE. CHRIS STATED THAT HEY GOT THERE ABOUT 9:00pm, [CHRIS STATED THAT HE WAS DRINKING, AND LEVERN NEEDED TO GET SOME DRUGS. CHRIS STATED THAT LEVERN GOT A PHONE CALL SOMEONE, CHRIS STATED THAT HE DO NOT KNOW IF IT WAS BJ, DORSEY, OR CHRISTEN. CHRIS STATED THAT S GET DRUNK, AND HE WENT TO SLEEP. CHRIS STATED THAT LEVERN WAKE HIM UP, AND TOLD HIM LET'S GO. I ASKED HIM IF LEVERN HAD ON THE SAME CLOTHES FROM THE DAY BEFORE, AND CHRIS STATED NO. CHRIS STATED THAT LEVERN DID NOT HAVE ANY HING THERE TO PUT ON. CHRIS STATED THAT THE TWO OF THEM WENT AND RICK CHRISTEN UP FROM HER HOUSE, AND THE THREE OF THEM WENT TO ANDERSON, TO PAY LEVERN CAR NOTE. CHRIS STATED THAT ON THE WAY BACK CHRIS DROVE FROM FLORENCE, AND [REDACTED] AND LEVERN WAS IN THE BACK SEAT HAVING SEX. CHRIS STATED THAT THEY CAME BACK DOWN HWY 512, AND WHEN THEY GOT TO WINGO CHANDLER ROAD LEVERN TOLD HIM TO KEEP STRAIGHT. CHRIS STATED THAT HE WENT ON UP TO HWY 41, AND LEVERN TOLD HIM TO GO RIGHT SO THEY COULD TAKE CHRISTEN HOME. WHICH WAS ABOUT 15 MILES OUT THE WAY. CHRIS STATED THAT LEVERN TOLD HIM THAT HE HAD TO GO SEE THE POLICE, BUT LEVERN NEVER TOLD HIM WHY. CHRIS STATED THAT LEVERN TOLD HIM THAT HE WAS GOING TO KILL CORA, AND A FEW DAYS AFTER SHE WAS DEAD. WE THEN ASKED CHRIS IF HE WAS WILLING TO TAKE A POLYGRAPH TEST, CHRIS STATED OK. WE THEN TOOK CHRIS TO S.I.E.D, AND CHRIS TOOK THE TEST.

MR RICK STATED THAT CHRIS HAD DOUBLE WITH ONE QUESTION, AND THAT WAS DID YOU LIE ABOUT LEVERN SAYING HE SHOT CORA, CHRIS ANSWER NO.

09-08-2009 INV. LAMBERT MADE CONTACT WITH [REDACTED] IN-REFERENCE TO THE POLY GRAPH THAT WAS SET UP FOR 09-09-09. LAMBERT ADVISED [REDACTED] THAT WE WOULD PICK HER AND TAKE HER. [REDACTED] STATED THAT SHE WOULD GET SOMEONE TO TAKE HER TO THE OFFICE. I ADVISED [REDACTED] THAT THE POLY GRAPH WOULD NOT BE DOWN AT THE OFFICE. [REDACTED] THEN STATED THAT SHE WOULD CALL ME BACK IN 20 MINUTES TO LET ME KNOW IF SHE HAD A RIDE TO THE OFFICE FOR THE NEXT MORNING. [REDACTED] DID NOT CALL BACK SO I CALLED HER BACK AND SHE WOULD NOT ANSWER THE PHONE. I LEFT HER A MESSAGE TO CALL ME. MORNING OF 09-09-09 I TRIED TO MAKE CONTACT WITH [REDACTED] SEVERAL TIME AND NO CONTACT WAS MADE. PER LT. COLLINS I MADE CONTACT WITH CPT. PIERCE FROM GEORGETOWN AN CANCELLED THE POLLY GRAPH.

# ANDERSON LAW FIRM, P.A.

ATTORNEYS AT LAW

265 WEST EVANS STREET, SUITE A, FLORENCE SC 29501-3464  
POST OFFICE BOX 1904, FLORENCE SC 29503-1904  
PHONE (843) 665-4300  
FAX (843) 665-5511

HENRY M. ANDERSON, JR  
TODD S. TUCKER

April 25, 2011

Leevern McCrea, 2010 2533 C-223  
Florence County Detention Center  
6719 Friendfield Rd.  
Effingham, SC 29541

*The First hearing for bond hearing in a hearing  
for a bond release in a hearing  
The second hearing will be held on  
May 10, 2011 at 10:00 AM.*

Dear Leevern:

I have received several letters from you recently and I have answered them all in detail. You sent me another letter on April 20, 2011 and I will answer it in detail. I am not sure how much more clear I can be however I will answer them yet again.

First of all, I am not aware of anyone who is trying to deliberately delay your case. In order to have a second bond hearing, the law as I understand it says that you have to show a change of circumstance. I would like to see what was said at your first bond hearing so that we can certainly change the circumstances.

If you want to go forward in May, that is fine. As far as me representing you or not, I would personally like to be relieved as counsel. You put in a Motion to have me relieved. I sent it to Kimberly Barr. I asked her to have that matter heard as soon as possible.

As I have told you on three separate occasions, a Motion for Bond Reconsideration was submitted by Cezar McKnight in November of 2010. I have written Ms. Barr and asked her to schedule that as soon as possible. I have never had copies of your contract from dealerships. [I am not even sure what dealership you are talking about.] When I met with you on December 19, 2010, you told me that you had bought a 1996 Mercedes in Greenville. I think you indicated that you bought it in October or November of 2008. According to my notes you bought it from The ABU Auto in Greenville. I do not have any paperwork on that. I have never had any paperwork on that. However, if I am not relieved as counsel, I will certainly try and get some paperwork.

As far as paperwork that I have seen or statements that I have had, you have every single copy of everything that I have. You have copies of where I have requested it. I am not sure what else you want.

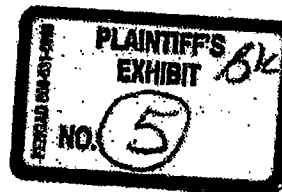
I can promise you that as soon as I get some additional information, I will send it to you.

With kindest personal regards, I am

*Please refer to the letter dated 4/20/11  
letter.*

Sincerely,

Henry M. Anderson, Jr.  
ccc



1 Q And it says -- and this is from it looks like Brenda  
2 Lambert. It says (as read): "On July 30, Investigator  
3 Brown. along with Lieutenant Cowans and Chief Johnson,  
4 made a letter for Chris Briggs which stated: 'Based on  
5 our recent conversations, we believe that you have vital  
6 information about Cora Brown's death. At this point we do  
7 not believe that you're the actual shooter, and if you  
8 freely and voluntarily provide all of the truthful details  
9 surrounding Cora's death and pass the polygraph, Chris  
10 will be charged with accessory after the fact.'"

11 The letter went on to say that (as read): "We will  
12 talk with the judge and the Solicitor to get Chris Briggs  
13 leniency on his charge. Investigator Brown, along with  
14 Lieutenant Cowans, went to ..." -- and it looks like it's  
15 blacked out -- "and made contact with ..." -- it's blacked  
16 out -- "... who was able to make contact with Chris  
17 Briggs. Stated that Chris had told him he was not willing  
18 to talk with us without a lawyer. Stated he will explain  
19 the letter to Chris as soon as he can get in touch with  
20 him."

21 So after reading that, would you agree with me that  
22 somewhere in existence there is a letter that is outlining  
23 some sort of agreement for Mr. Briggs?

24 A It appears to.

25 Q Okay. Why was that not turned over?

1 A I'm not sure why that wasn't turned over. The  
2 Solicitor's Office never had a -- that letter. I -- I  
3 would assume that, based upon what's contained in that  
4 paragraph, that that letter would've been given to someone  
5 to give to Mr. Briggs. And the only thing that I could --  
6 I could guess is that a copy was not made of that letter.

7 Q Would that not be subject to disclosure pursuant to  
8 Rule 5?

9 A I think it would've been.

10 Q Okay. It definitely would've been, wouldn't it?

11 A Yeah. I ---

12 Q - Okay.

13 A --- think it would've been.

14 Q And as a matter of fact, at the trial, did Mr. Briggs  
15 not -- did he deny, during your examination and all also  
16 Mr. McCrea's examination, that there was any sort of deal  
17 that had been promised to him?

18 A I believe he did.

19 Q Okay. So Mr. McCrea -- it would've been important for  
20 him to have had a letter where there was actually a deal  
21 laid out 'cause that's pretty rare, is it not, to have?

22 A Is what pretty rare? I'm sorry.

23 Q Is it pretty rare for law enforcement or the State to  
24 take a written letter or agreement and send it to a  
25 witness before they even testify saying that, "If you

1 testify, we'll give you this." Is that pretty rare?

2 A It is.

3 Q Okay. So that would've been important for Mr. McCrea  
4 to have during his examination of Mr. Briggs; would it  
5 not?

6 A In theory, yes. Here -- let me explain why I qualify  
7 my answer. It appears that this letter indicates that law  
8 enforcement did not believe that Christopher Briggs was  
9 the person who killed Ms. Brown, but they believed that he  
10 had knowledge about the involvements of -- of the person  
11 or persons who did; and that if the -- Mr. Briggs were  
12 willing to give truthful information that could be -- the  
13 truth, the authentic -- the authenticity of which could be  
14 corroborated by the polygraph, that they would agree to  
15 talk to the Solicitor and to the judge and advise the  
16 Solicitor and the judge of his cooperation and request  
17 leniency on his charge.

18 As far as this case is concerned, as I sit here today  
19 and even with the trial of the case and in preparation for  
20 the trial of the case, there was no evidence that ever  
21 came to mind that Mr. Briggs was a participant in the  
22 murder or acted to assist Mr. McCrea once the -- the  
23 murder was committed.

24 I vaguely have a recollection of talking with the  
25 officers about potential charges that defendants could

1 face. I -- and -- and that's -- and that's normal.  
2 Before arrest warrants are issued, law enforcement  
3 officers may talk to prosecutors who -- to find out what -  
4 - what charges, if any, are appropriate.

5 And I remembered that -- you know, obviously, I wanted  
6 to charge Mr. Briggs with something more than simply the  
7 charge of misprision of a felony, but there was no  
8 evidence -- no information in the file or in the  
9 investigation that -- that I'm aware of that Mr. Briggs  
10 actually assisted the principal once the felon had been  
11 committed. So an accessory after the fact -- although law  
12 enforcement might've believed that that was an appropriate  
13 charge, it was not my belief, based upon what we could  
14 prove, that that was an appropriate charge.

15 And in talking with Mr. Briggs prior to the trial of  
16 the case, he wanted guarantees from me that he could get  
17 probation. And I was very candid with him, in the  
18 presence of several witnesses, that that was not being  
19 offered. And -- and my recollection was that he actually  
20 was sentenced to prison rather than given a probationary  
21 sentence.

22 So yes, I believe, in principle, that that's something  
23 that -- that should've been discovered. I -- I suspect  
24 that, based upon how this read, that it was a letter that  
25 was turned over or given to somebody to give to Mr.

1 to do. Now, the part about that is because it relates to  
2 the roles those two fellas had that night. The night  
3 that Cora was killed. Let me go ahead and tell you  
4 folks, I know some of you all are thinking in the back of  
5 your mind, maybe you all are thinking in the back of your  
6 mind, um Ms. Barr, I'm not too sure about Christopher  
7 Briggs. He might know more than what he's saying. Tell  
8 me you all are thinking that. I know you all are  
9 because it ran through my mind as well. He might have  
10 seen a little more than he letting on but, well not but.  
11 Let me tell you this. I'm not going to get up here with  
12 a straight face and say that Christopher Briggs is all  
13 innocent, he's a choral boy. I'm not going to say that,  
14 Not with a straight face anyway. But Christopher Briggs,  
15 I would submit to you is the lesser of two evils. But  
16 the evil one, let there be no doubt, the evil one is  
17 right there. He is the one who is clearly, clearly in  
18 control. Christopher Briggs sort of strikes me as a  
19 follower. He sort of strikes me as the type of person  
20 that, he just, for lack of a better word, he's lacking.  
21 And quite frankly, he very possibly could have been the  
22 look out. Let me tell you why you should be satisfied  
23 within your spirits and your soul that Christopher Briggs  
24 is not the one who killed Cora Brown. A couple of  
25 reasons. One, when the police officers went and talk to

1 around a month before this murder was committed to  
2 anybody who would listen to him. People I want to get.  
3 I got people I want to get. Telling Christine. Telling  
4 Christopher. Christine said, I'm not the only person you  
5 told that to. Because he's, you know, he's smart, he's  
6 big city, running his mouth. He's telling all these  
7 people here. Cora Brown, one of them and Carmen Presley  
8 another one. He put his mama and his sister on the list.  
9 Now, that was interesting to me because I remember in one  
10 of these investigator's file that the defendant had  
11 actually filed a police report on Carmen Presley about a  
12 year and a half before Cora was murdered. So there's  
13 some evidence of some anks between Carmen and the  
14 defendant, which sort of, in my mind, remember I was  
15 talking about credibility of witnesses and corroboration,  
16 that sort of boost the credibility of what Christine and  
17 Christopher were both saying. He's the kind of fellow, I  
18 think it's pretty clear now, that has to be in control.  
19 He's like the person that has all of these various chess  
20 pieces and they're the ones --- he's the type of fella  
21 that's making all the moves. I mean you can kind of see  
22 how he was asking witness questions, you can kind of see  
23 in those letters. He's the one in control. He's the one  
24 doing the planning. He's the one doing the manipulation.  
25 You know that. He's constantly telling someone else what

1 Briggs. Never dawned on me, quite frankly, to ask Mr.  
2 Briggs if he has that letter. But it is ---

★ --- 3 Q You might want to ask law enforcement if they've got  
4 the letter.

5 A They -- law enforcement does not have a letter to this  
6 effect.

7 Q Have you checked with law enforcement?

8 A I did.

9 Q You -- before the trial or after the trial?

10 A My recollection is it was during the trial when that  
11 issue came up.

12 Q When did that issue come up?

13 A I believe it was during the point where Mr. McCrea was  
14 asking Mr. Briggs about the State offering him leniency or  
15 -- or something along lines of a sentence recommendation  
16 to ---

17 Q Well, you're saying ---

18 A --- induce him to testify.

★ --- 19 Q That wasn't addressed to the judge where you said,  
20 "Judge, I think there was a letter out there that we may  
21 have written to Mr. Briggs." It didn't come up like that,  
22 did it?

23 A It did not.

24 Q Okay.

25 A No.

1 Q So there's nothing on the record about the existence  
2 of this letter.

3 A No, I'm sorry. I thought you were asking me when did  
4 I ask law enforcement about it.

5 Q Yeah. So ---

6 A About the letter.

7 Q --- you -- you asked law enforcement during the trial  
8 is your testimony --

9 A Correct.

10 Q -- about this letter.

11 A Correct.

12 Q So there's nothing in the record about -- about that  
13 or you bringing it to the Court's attention.

14 A No, sir.

15 Q Okay.

16 A No, sir.

17 Q Okay. Let me ask you, going back to the June 22, 2011  
18 motion to relieve Mr. Anderson, do you recall the Court --  
19 Judge King stating that if Mr. Anderson were relieved,  
20 that he would remain -- he would stand by to advise with  
21 the procedure in the courtroom. Do you recall that? And  
22 I'm happy to hand up the transcript if you don't have one.

23 A That'd be great.

24 (Mr. Boozer hands document to the witness.)

25 Q And specifically I'm looking at page 41, and just

② My Appellate Counsel Taylor Gilliam NEVER ENTERED this brief into those volumes for writ of certiorari Appeal H my defense.

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

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

Levern McCrea, #348291, )

2012-CP-45-363 )

Applicant, )

v. )

POST-HEARING BRIEF IN SUPPORT )  
OF PCR APPLICATION )

State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

Per the Court's instructions, please allow this memo to serve as a supplement to Applicant's pre-hearing brief and additional case law in support of his PCR application following an evidentiary hearing held June 1, 2018.

**A. Applicant's rights were violated when he was shackled throughout the duration of his trial.**

The Fifth and Fourteenth Amendments of the United States Constitution prohibit using physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that restraints are justified by a state interest specific to the particular defendant on trial. Deck v. Missouri, 544 U.S. 622, 125 S. Ct. 2007 (2005).

It is undisputed from the testimony of both the Applicant and Assistant Solicitor Kimberly Barr that Applicant remained in shackles throughout the duration of his five (5) day trial. Even more egregious, unlike a shackled defendant who is represented by counsel and is generally confined to counsel's table, Applicant was *pro-se* and was forced to shuffle around the courtroom while attempting to examine witnesses and otherwise move about. This was clearly visible to the jury as it was to Ms. Barr. No hearing was held to determine whether the shackles

7  
were "justified by an essential state interest" such as courtroom security as the law requires. Applicant need not demonstrate actual prejudice as it is "inherently prejudicial." Id. at 635.

Applicant's application for PCR should be granted based upon this violation. **BINGO!**

**B. Brady violations were committed by the State resulting in prosecutorial misconduct.**

The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). The State must disclose Brady evidence even when a criminal defendant does not specifically request the evidence. United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

Applicant alleged and testified the State withheld evidence subject to Rule 5 Brady disclosure even after repeated requests for disclosure. Applicant alleged and testified in addition to discovery being "spoon fed" to him prior to and even during trial, photographs of bullets, a statement he believed was taken of Roberta Smith on or about June 28, 20<sup>10</sup>18, a Clinton Dorsey police interview/statement, and a "letter of leniency" were withheld. At the PCR hearing, Applicant introduced a supplemental investigative report marked Exhibit #6. The report was prepared by the Williamsburg County Sheriff's Department during their investigation into the case. The report stated:

On July 30, Investigator Brown along with Lt. Collins, and Chief Johnson made a letter for Chris Briggs which stated base (sic) on our recent conversations, we believe the (sic) you have vital information about Cora Brown (sic) death. At this point we do not believe

that you are the actual shooter and if you freely and voluntarily provide all of the truthful detail surrounding Cora (sic) death and pass the polygraph Chris will be charged with \_\_\_\_\_ ass., (sic) after the fact. The letter went on to say that we will talk with the judge and the solicitor to get Chris Briggs leniency on his charge.

During the trial, Briggs testified on behalf of the State and was the State's sole alleged witness to the crime. Briggs' credibility was a key issue in this case and it was he who claimed the Applicant committed the crime. There was no murder weapon or DNA evidence conclusively linking Applicant to the crime. During Briggs' testimony, he denied that there were any promises made or deals offered to him. However, clearly from the supplemental report, a deal had certainly been conveyed to Briggs by the State. This deal, memorialized in the form of a letter, would have been subject to disclosure by the State but the State failed to do so or ensure its preservation. At the PCR hearing, Ms. Barr testified that at some point, she became aware **BINGO** that there was a letter but she could not locate it. However, as the record reflects, Ms. Barr never notified the Court or the Applicant. Ms. Barr should have disclosed this key piece of missing evidence on the record to the Court and Applicant.

Applicant respectfully submits his PCR application should be granted.

**C. Applicant was denied his right to counsel at trial.**

Regarding Applicant's claim that he was denied the right to counsel during his trial, Applicant refers to the previously submitted pre-hearing brief for a detailed discussion of the law. Additionally, testimony at the PCR hearing established the following:

First, attorneys Charles Barr, Cezar McKnight, Hank Anderson and former Assistant Solicitor Kimberly Barr all admitted Applicant was never provided Faretta style warnings. Mr. Barr testified he was relieved without a hearing so there would not have been an opportunity for

3

a judge to advise Applicant of his right to counsel and the dangers of pro se representation. Cezar McKnight requested that he be relieved twice during his short representation of the Applicant. Candidly, both in his request to the trial court to be relieved and at the PCR hearing, McKnight admitted that he initially wanted to be relieved because Applicant first attempted to privately retain his services, however, he was eventually appointed by the court and he did not believe it was fair that he should be representing him as an appointed attorney when he thought he could have privately retained his services <sup>and</sup> or that he was able to initially afford Mr. Barr. Although McKnight testified he had essentially moved past the disappointment about being appointed, a review of the transcript from McKnight's second motion to be relieved reflect those sentiments continued to linger. Additionally, during the motion McKnight explained to the Court he felt "threatened" by the Applicant and that he feared being physically accosted if he were to visit Applicant in the detention center. At the PCR hearing, McKnight admitted that Applicant had never actually threatened him and he never feared for his own safety while meeting with the Applicant.


Second, all the transcripts available to this Court reflect that no Faretta warnings were provided to the Applicant. Third, Applicant credibly testified that he was never provided any Faretta warnings. As discussed in Applicant's pre-trial hearing brief, "[T]o the extent that the defendant's actions are examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings." United States v. Goldberg, 67 F.3d 1092, 1100 (3d Cir.1995); State v. Jacobs, 271 S.C. 126, 128, 245 S.E.2d 606, 608 (1978); State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct.App.

1996). Applicant submits he could neither have waived his right to counsel either affirmatively or by conduct as no Faretta warnings were ever given to Applicant.

Finally, Judge King indicated that in the event Anderson was relieved as counsel he would remain to assist as standby counsel, however, this never occurred. Applicant, Anderson and Ms. Barr all testified at the PCR hearing they believed Anderson would have remained as standby counsel if he were ever relieved. Not only was Applicant forced to represent himself at his week-long trial, he was forced to do so without the assistance of standby counsel.<sup>1</sup>

Applicant respectfully submits his PCR application should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Attorney for Applicant  
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THE BOOZER LAW FIRM, LLC

July 3, 2018

Columbia, South Carolina.

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<sup>1</sup> At the conclusion of the hearing, the State provided Applicant with State v. Samuel, 2018 WL 1077731. In Samuel, the defendant actually requested to represent himself at trial, however, following a lengthy inquiry of both the defendant and counsel, the trial court denied defendant's request and determined the defendant was lying about whether he had legal coaching in preparation for trial. The Supreme Court reversed, finding that the trial court denied defendant's right to self-representation and that the court's inquiry and questioning of his counsel should have been limited to whether the defendant's request to proceed *pro se* was knowing and voluntary, not whether he was able to represent himself. Samuel does not stand for the proposition that whether standby counsel is available to a *pro se* defendant is irrelevant as it is anticipated the State will argue. Any such argument is in contradiction to the Cash factors outlined in Applicant's pre-hearing brief.

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMNER )

COURT OF GENERAL SESSIONS

LEVERN MCCRAE )  
PETITIONER, )

v. )

TRANSCRIPT OF RECORD  
12-CP-45-363

STATE OF SOUTH CAROLINA, )  
RESPONDENT. )

June 26, 2018  
Kingstree, South Carolina

**BEFORE :**

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE

**APPEARANCES:**

LANCE BOOZER, ESQ.  
Attorney for Applicant

JULIE COLEMAN, ESQ.  
Attorney for Respondent

RONNIE A. SABB, ESQ.  
Attorney for Ms. Barr

FRANCES B. RAY, RPR  
Circuit Court Reporter

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(There were no exhibits submitted.)

1 THE COURT: Ms. Coleman, yes, ma'am.

2 MS. COLEMAN: Good morning, Your Honor.

3 This is Ievern McCrae versus the State of South  
4 Carolina, docket number 2012-CP-45-363. We are on  
5 record today in Kingstree with the PCR action of Mr.  
6 McCrea. We had his hearing a couple of weeks ago  
7 on, almost a month ago, on June 1st in Sumter  
8 County. As part of that hearing, we started the  
9 sanctions hearing against Solicitor Kimberly Barr,  
10 but we ran out of time and ended up continuing that  
11 sanctions hearing until today. So it's a PCR action  
12 that the hearing is completed, but we're here today  
13 for the sole purpose of the sanctions hearing  
14 against Ms. Barr. Kimberly Barr is present today.  
15 She's represented by counsel Ronnie Sabb who is also  
16 here in the courtroom. Mr. McCrae is present today  
17 with his attorney Lance Boozer.

18 THE COURT: All right. Am I correct that  
19 the last time we were together we heard from  
20 Mr. McCrae during his testimony. Is that right, Mr.  
21 Boozer?

22 MR. BOOZER: That's correct, Your Honor,  
23 and I gave -- at the beginning of the case when the  
24 case was called, we had a few preliminary matters.  
25 This was one of those preliminary matters where I

1 recited history of us attempting to get some Rule 5  
 2 materials from the State and went through all that  
 3 with the court. I mean, it was at that time I  
 4 believe that Ms. Barr, she was present, but did not  
 5 have counsel. And I think at the time she'd  
 6 indicated she wasn't aware that there may be a  
 7 sanctions hearing that was being held that day; and  
 8 so, of course, this Court continued the matter, for  
 9 lack of a better word, to this term so that we could  
 10 hear from Ms. Barr in regard to why we didn't  
 11 receive the discovery at the time.

12 THE COURT: All right. Now Mr. Boozer,  
 13 out of an abundance of caution, as I said, I recall  
 14 Mr. McCrae's complaints about the situation when he  
 15 testified.

16 MR. BOOZER: Correct.

17 THE COURT: Do I need to hear anymore from  
 18 him today that's not redundant to that?

19 (Attorney Boozer confers with Mr. McCrae.)

20 MR. BOOZER: Your Honor, my client's  
 21 indicated he does need to address the Court.

22 THE COURT: All right. Is it going to be  
 23 something new I haven't heard now? Because my -- I  
 24 have notes from the last hearing.

25 MR. BOOZER: He said, yes, it's going to

The judge  
 was trying  
 to make a  
 lawyer sit  
 for me in  
 an incoming  
 Kimberly  
 Barr viola  
 tion of  
 rules of  
 court

1 be something new that you have not heard.

2 THE COURT: All right.

3 MR. BOOZER: If we could swear Mr. McCrae  
4 in.

5 THE COURT: Madam clerk or bailiff, one of  
6 the bailiffs, please.

7 MR. BOOZER: Your Honor, may we do this  
8 from counsel's table?

9 THE COURT: Mr. Sabb, do you have any  
10 objection?

11 MR. SABB: I have no objections to that,  
12 Your Honor.

13 THE CLERK: Place your left hand on the  
14 Bible, raise your right hand.

15 WHEREUPON,

16 **LEVERN MCCREA,**  
17 having been duly sworn by the clerk, testified  
18 as follows:

19 THE COURT: Thank you, ma'am, for doing  
20 that.

21 Mr. Boozer.

22 MR. BOOZER: Thank you, Your Honor. I  
23 believe Mr. McCrea has some matters he'd like to  
24 address for the Court just regarding sanctions  
25 hearing that he says was not brought up at the last

1 term.

2 THE COURT: All right, sir.

3 MR. BOOZER: I'll go ahead and let  
4 Mr. McCrae.

5 THE COURT: All right. Mr. McCrea.

6 MR. MCCREA: Good morning, Your Honor.

7 THE COURT: Good morning, sir.

8 MR. MCCREA: Well, the reason we're here  
9 today is for the Court to address this blatant  
10 disrespect that Solicitor Kimberly Barr has shown  
11 the court and the applicant by deliberately  
12 disregarding the orders of three different judges to  
13 relinquish the applicant's Rule 5 Brady motion  
14 towards counsel of record that she ignored with  
15 gross negligent in violation of Rule 37(b), failure  
16 to comply with order; and rule (e), failure to  
17 participate in the farming of a discovery plan and  
18 Rule 26(f), discovery conference. Your Honor, in  
19 2014, Judge Clifton Newman issued the first order to  
20 Solicitor Kimberly Barr and the assistant attorney  
21 general. Then in 2015, the late judge Tonya Gee  
22 issued the second order, and the third order was  
23 issued by Judge Brian Gibson [sic] in 2016. All  
24 three judges instructed Solicitor Kimberly Barr and  
25 the assistant attorney general to relinquish my Rule

1 5 Brady motion to counsel of record on or before  
2 January the 3rd, 2017, that she completely ignored  
3 with any regards for the laws of this state and of  
4 the United States Constitution. It should be clear  
5 to the Court that any state solicitor of any state  
6 should be held with a higher standard of the laws,  
7 instead of breaking the same law that she swore  
8 under oath to upheld, which is clear that Solicitor  
9 Kimberly Barr has lost prospective in defending this  
10 state or any other state effectively and in no way  
11 should the Court give one of his colleagues a free  
12 pass to continually break the law and continually  
13 violate defendant's due process rights.

14 Brady discovery is one of the most  
15 important tools of a criminal defendant's case, and  
16 that rule is to protect a defendant's right to a  
17 fair trial to prevent a trial from becoming a  
18 guessing game or one of ambush. And once a Brady  
19 rule violation is established, reversal is required;  
20 and for the court to allow Solicitor Kimberly Barr  
21 to hand the applicant Brady evidence that was  
22 material, exculpatory, and impeaching, the first,  
23 second, and third day during the applicant's five  
24 day trial was a total miscarriage of justice and an  
25 egregious act of prosecutorial misconduct. Your

1 Honor, I truly believe that if I had not addressed  
2 this egregious constitutional violation perpetrated  
3 against me by Solicitor Kimberly Barr to the Court,  
4 that she would still be violating more defendants'  
5 due process right. And I'm hoping that the Court  
6 would right this wrong of injustice and corruption  
7 and fundamental miscarriage of justice took place in  
8 my case, and I'm respectfully requesting that the  
9 Court hold Solicitor Kimberly Barr in contempt of  
10 court and to impose serious sanctions and penalties  
11 here today and with the South Carolina Bar  
12 Association by suspending her license because she  
13 knew the risks before she decided to bend the rules  
14 illegally and violate the laws that she swore under  
15 oath to uphold. So what's the purpose of the rules  
16 of court and the South Carolina statutes and the  
17 laws that's been set forth under United States  
18 Constitution if no one is following the rules.

19 There is a constitution of order on this  
20 land; and if the State of South Carolina is going to  
21 take someone's liberty, sentence them to life in  
22 prison, then the State of South Carolina has got to  
23 do it right under the Fourteenth Amendment of the  
24 United States Constitution.

25 In addition, September the 9th, 2011,

1 Solicitor Kimberly Barr was put on notice by all the  
2 forensic scientists: Ms. Catherine Leisy, Ms. Vicki  
3 Hallman, and the firearm ballistic expert Mr. Tracy  
4 Thrower. Under Section 17-28-310 subsection 4, that  
5 DNA profile means the results of any testing  
6 performed on a DNA sample. All of these results  
7 clearly exonerated the applicant from the crime  
8 scene after he had submitted a final swab sample to  
9 Ms. Catherine Leisy for comparison purposes. Again,  
10 Solicitor Kimberly Barr took it upon herself and  
11 failed to have the applicant released from custody,  
12 which was unprofessional, prejudicial, which is also  
13 clear from all of the State's evidence presented  
14 during the applicant's trial clearly was legally  
15 insufficient to support this guilty verdict I am now  
16 facing when the applicant was clearly exonerated  
17 through scientific evidence that excluded him from  
18 all of the State's evidence against him. Thank you,  
19 Your Honor.

20 THE COURT: Thank you, Mr. McCrae.

21 Mr. Sabb.

22 MR. SABB: Thank you, Your Honor. May it  
23 please the Court. Judge, I would simply say as it  
24 relates to the comments made by Mr. McCrae, that we  
25 believe fully in the principles that he articulated.

1 That is sound doctrine. That is the rule of law as  
2 relates to the law. We think where the confusion  
3 sets in is the skewing of the facts. Judge, I would  
4 just urge at this point you simply hear from  
5 Ms. Barr as it relates to the timeline, what was  
6 going on, all of those kinds of things, on this  
7 issue of whether or not there was a willful attempt  
8 to disobey an order of the court. Now, Judge, I  
9 will be candid with you, when Mr. McCrea goes back  
10 to 2011, there is much that we would like to say and  
11 challenge a lot of what he said. We resist the  
12 temptation of doing that, and instead, will focus  
13 narrowly on the issue as relates to what occurred  
14 posttrial.

15 The last point I want to make, Judge,  
16 before you hear from Ms. Barr, if the Court fully  
17 examines this court order of Judge Gee -- Your  
18 Honor, there is no timeline indicated in the court  
19 order as relates to a willful violation. Having  
20 said that, we want the Court to know that we believe  
21 in full disclosure. The entire time I was a  
22 solicitor in this office for 20 years, we had an  
23 open file policy as relates to any defense counsel;  
24 and I will challenge any member of the Williamsburg  
25 County bar or any other bar as relates to the

1 practice of this Solicitor's Office of when it came  
2 to sharing Brady material. And so, Judge, I know  
3 that that is a hard and fast rule that this office  
4 has maintained over the years. Having said those  
5 things, Judge, we would urge at this point that the  
6 Court allow attorney Kimberly Barr to address the  
7 Court.

8 THE COURT: Yes, sir. Did you want her to  
9 appear as a witness? I know she's an officer of the  
10 court but...

11 MR. SABB: Judge, we would certainly have  
12 no problems with her being sworn.

13 THE COURT: Okay.

14 MR. SABB: We'd have no problems as  
15 relates to her and simply addressing the Court from  
16 counsel's table just as we extended the courtesy to  
17 Mr. McCrae.

18 THE COURT: All right. Mr. Boozer, is  
19 that acceptable?

20 MR. BOOZER: Judge, that's certainly  
21 acceptable to me. I anticipated that's how we would  
22 go had she been present before Judge Gibbons  
23 previously just to provide her explanation and then  
24 leave it up to the Court.

25 THE COURT: All right. And so there are

1 no concerns at a later date about the oath factor, I  
2 would ask that she be put under oath, although she's  
3 an officer of the Court.

4 MR. BOOZER: Thank you, Your Honor.

5 MS. BARR: Your Honor, do you want me to  
6 stay here?

7 THE COURT: I don't mind. Mr. McCrae  
8 remained where he was.

9 Mr. Boozer, is that acceptable?

10 MR. BOOZER: Yes, sir, Your Honor.

11 WHEREUPON,

12 **KIMBERLY BARR,**

13 having been duly sworn by the clerk, testified  
14 as follows:

15 MS. BARR: Good morning, Your Honor.

16 THE COURT: Good morning, Ma'am.

17 MS. BARR: Judge, just by way of  
18 background regarding the disclosure of material to  
19 Mr. McCrea in preparation of trial, I would like to  
20 kind of just track when items were submitted. Your  
21 Honor, as you may know, oftentimes when we initially  
22 disclose Rule 5 material to a defendant or his  
23 counsel we disclose material as it comes into the  
24 office and so this case, as is typical with any  
25 serious case, oftentimes we don't have a lot of the

1 SLED analysis reports in and there are things that  
2 are not available to us at the initial disclosure  
3 Rule 5 material. Judge, my records — and I'll be  
4 happy to provide defense counsel and the Court  
5 copies of those — but my records reflect that the  
6 initial Rule 5 disclosure was made to the defendant  
7 by virtue of his then counsel of record Cezar  
8 McKnight on October the 5th, and it included some  
9 SLED reports, some statements. I indicated to  
10 counsel at that time that we had photographs of the  
11 crime scene and autopsy available for inspection.

12 The second Rule 5 disclosure was made to  
13 the defendant by way of his counsel Hank Anderson at  
14 that time on June the 13th of 2011, and it included  
15 additional transcribed statements and other SLED  
16 reports. Another supplemental Rule 5 disclosure was  
17 made to Mr. Anderson on behalf of the defendant on  
18 August the 11th of 2011 which included supplemental  
19 reports and photographs of some of the items that  
20 were seized into evidence, as well as a disk  
21 containing autopsy and crime scene photos.

22 Another Rule 5 disclosure was made to  
23 Mr. Anderson on August the 17th of 2011. Another  
24 Rule 5 disclosure was made to the defendant on  
25 September the 20th directly because Mr. Anderson had

1 been relieved as his counsel by that time. Another  
 2 Rule 5 disclosure — and these are additional  
 3 documents; they're not the same documents over and  
 4 over. But another Rule 5 disclosure was made, →  
 5 directly to Mr. McCrea at the Florence County  
 6 Detention Center on September the 27th of 2011. He  
 7 had — Mr. McCrae had written to the Solicitor's  
 8 Office demanding certain documents that were related  
 9 and unrelated to this case, and I responded to him  
 10 and included additional discovery material per his  
 11 request on October the 7th of 2011. Additional →  
 12 discovery material was provided directly to the  
 13 defendant, I hand delivered to him on October  
 14 the 12th. Those included SLED reports. And of  
 15 course, Rule 5 disclosure was made per Judge  
 16 Gibbons' order to Mr. Boozer on December the 9th of  
 17 2016. And Judge, it does not appear that any  
 18 additional disclosure was made to Mr. Boozer as PCR  
 19 counsel that was separate apart from matters that  
 20 were disclosed to the defendant or his counsel prior  
 21 to trial.

22 Judge, by way of background and  
 23 explanation, I can tell you that between, sometime  
 24 between June and December of 2016, I received a copy  
 25 of the order requiring the State to disclose Rule 5

They gave  
me two (2)  
weeks to  
prepare for  
this trial

Lying

1 material to Mr. Boozer. I do not have an  
2 independent recollection of when I received that  
3 order; I'll be candid with the Court. During this  
4 time in the summer of 2016 -- I believe it was  
5 July 2016 -- I was prosecuting a murder trial that  
6 took a week to prosecute. My co-counsel, my  
7 assistant solicitor fell ill that week, and so I  
8 tried the case on my own. The normal schedule of  
9 criminal court during this time was we had court one  
10 week each month and so typically we were either in  
11 court or preparing to go to court. I worked at the  
12 Solicitor's Office as a part-time prosecutor for  
13 probably 11 or 12 years by that point, and I was  
14 also employed as an -- in private practice as well.

15 And so, shortly after I received the  
16 order, -- and I'm presuming that it came from  
17 Mr. Boozer -- my cocounsel Julie Swilley who was an  
18 assistant solicitor here, resigned from the  
19 Solicitor's Office so we had a staff turnover.  
20 Warren Anderson, who is the current solicitor who  
21 succeeded me, was kind enough to come from Clarendon  
22 County during terms of court to assist because we  
23 had lost a full-time solicitor. So during the span  
24 of all of that is when the request or the order  
25 would have come in from defense counsel, and I do

1 recall talking to Mr. Boozer and telling him that I  
2 will get the discovery material to him as soon as  
3 possible. Judge, I was offering this by way of  
4 explanation. ✓

5           Because of the seriousness of this case  
6 and the volume of the Solicitor's file, it required  
7 me to look personally through the discovery material  
8 in order to provide it to defense counsel. The file  
9 was rather voluminous. There were supplemental  
10 reports and different items of evidence that had to  
11 be redacted to alleviate the disclosure of  
12 confidential information and so it was in no short ✓  
13 terms, a time monster that I could not delegate to a  
14 staff member simply respond to discovery because  
15 obviously the sensitive nature of the case and the  
16 volume of the case, it required me to review it and  
17 that was a substantial task in and of itself. And  
18 just, quite frankly, during this time frame time was  
19 an essential element that I just quite frankly did ✓  
20 not have. I had already decided based on the fact  
21 that my then boss had offered me a partnership in  
22 our firm to resign from the Solicitor's Office so I  
23 was winding down my role in the Solicitor's Office  
24 during this time. We were getting a new solicitor  
25 to come in. We lost an assistant solicitor so it ✓

1 was just a matter of having the time to dedicate to  
2 copying this material.

3 A number of photographs that at one point  
4 we had in the Solicitor's Office, we introduced them  
5 into evidence so I didn't have the physical  
6 photographs of the items that we introduced into  
7 evidence anymore so we were trying to obviously get  
8 extra copies of those, and so it's just a monumental  
9 feat and we were not able due to restrictions to get  
10 that to the defendant in what I can see to be a  
11 timely fashion. But it certainly was not  
12 intentional. All of the information that I  
13 disclosed to Mr. Boozer as PCR counsel was documents  
14 the defendant already had in his possession by  
15 virtue of the prior State disclosure.

16 THE COURT: Yes, ma'am.

17 Mr. Sabb, anything else you want to add or  
18 ask?

19 MR. SABB: Judge, I think she covers it  
20 and I guess the take away that we would urge from  
21 the Court, Judge, is that we've always taken these  
22 kinds of situations seriously, understanding that we  
23 have a role in the justice system and that as the  
24 defendant indicated, due process is the hallmark of  
25 our system. And so, Judge, we would just share with

1 the Court that there were no willful actions on the  
2 part of the State withholding evidence. At the end  
3 of the day all of the information was shared, though  
4 we concede not as timely as it should have been; but  
5 there were exigent circumstances, we believe, that  
6 at least gives the Court a basis, bird's eye view,  
7 as to all that was happening at that time. And so,  
8 Judge, we would simply urge the Court in light of  
9 the fact that there was no time, deadline set in the  
10 court's order for the Court to find that there was  
11 no willful conduct on behalf of Ms. Barr. Thank  
12 you.

13 THE COURT: Mr. Boozer, anything you want  
14 to say in passing?

15 (Attorney Boozer confers with Mr. McCrea.)

16 MR. BOOZER: Your Honor, my client just  
17 wants me to point out that there was a deadline that  
18 Judge Gibbons imposed. I understand I think  
19 Mr. Sabb is talking about Judge Gee's order not  
20 having a deadline, but Mr. McCrae wants to point out,  
21 that there was a deadline in Judge Gibbons' order  
22 for disclosure that — for Rule 5 materials.

23 THE COURT: Yes, sir.

24 MR. BOOZER: So I just add that for his  
25 behalf.

1 THE COURT: Yes, sir.

2 MR. SABB: And Judge, I would just share  
3 with the Court that that deadline was adhered to.  
4 She fully complied with that deadline and that's why  
5 I didn't address it.

6 THE COURT: Yes, sir. All right. As I  
7 stated earlier in our last meeting in this matter, I  
8 took lots of notes about the PCR issue and the  
9 sanctions issue. I've taken lots today. I, as you  
10 well know probably by now, I don't like to issue  
11 rushed rulings. Both parties here today, Ms. Barr  
12 and Mr. McCrae, are entitled to fair ruling. I try  
13 to be fair, although I'm mindful that fairness is  
14 like justice perceived and beauty perceived; it  
15 depends on who wants to describe it. But I will get  
16 a ruling on this soon. It will be — my usual  
17 method is to email it to you, Mr. Boozer,  
18 Ms. Coleman, Mr. Sabb.

19 MR. SABB: Yes, sir, Your Honor.

20 THE COURT: I thank all of you for your  
21 patience very much. And I also want to thank the  
22 Department of Corrections for yet again helping us  
23 with this matter. Thank you very much.

24

25 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

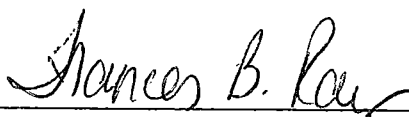
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STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE        )

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 8th day of December, 2021.

  
\_\_\_\_\_  
FRANCES B. RAY, RPR

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