

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Laurens County

Honorable J. Mark Hayes, Circuit Court Judge

MAURICE ANTHONY ODOM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001223

APPENDIX

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1 document.

2 Yes sir, I believe I have it.

3 Q It is the one dealing with his conviction for
4 criminal sexual conduct, begins about two-thirds of the
5 way through the packet.

6 A Well, I thought I had it. Just one moment, sir.

7 I will keep looking if you would like to go on and
8 reference it.

9 Q I want you to be looking at the documents.

10 A Are you talking about the attachment you sent that
11 the first page is the Barnwell Public Index page?

12 Q I want to go deeper into the packet, the one that
13 talks about a conviction on August 12th of 2002 for CSC.
14 It is about two-thirds of the way through the packet.

15 A Yes, sir. I see that indictment.

16 Q You see on the public index page where it says he
17 plead guilty on August the 12th of 2002 for criminal
18 sexual conduct?

19 A I have not seen the public index for that. I see a
20 sentencing sheet.

21 Q Move closer to the front of the packet.

22 A Yes, sir.

23 Q Do you see what I am talking about?

24 A Yes.

25 Q And you would agree with me that the public index is

1 two pages?

2 A Yes, sir.

3 Q And then the next page is a sentencing sheet showing
4 that Mr. Odom got 10 years for this charge, correct?

5 A Yes, sir.

6 Q And then the next page is an indictment, actually the
7 next two pages are indictments, correct?

8 A Yes, sir.

9 Q And then if you look, the next page it shows that Mr.
10 Odom's conviction was reversed. Do you agree with me
11 there?

12 A Yes, sir.

13 Q And then let's turn back to this sentence sheet that
14 we skipped where it says that he caught 10 years from
15 Judge Keesley back on August the 12th of 2002. Do you see
16 that?

17 A I don't see any 2002 sentencing sheets.

18 Q You don't see the one right after the indictment,
19 right before the appeal reversal?

20 A Yes sir, I see the public index.

21 Q No, I am talking about the sentence sheet and I hold
22 it up to see if you can --

23 A Yeah, if you hold it up.

24 (Whereupon, Mr. Henderson holds document in front of
25 computer to show Ms. Wiygul.)

1 A Okay. So August 12th, 2002?

2 Q Right. Where it shows that Mr. Odom got five years
3 for this CSC upon it being remanded from the Appeals
4 court.

5 A Yes, sir.

6 Q And looking down a little bit below that, it says the
7 Defendant is to be given credit for time from October 27th
8 of '97. Did I read that correctly?

9 A Yes sir, you did.

10 Q Five years from October 27th of '97 would be October
11 27th of 2002?

12 A Yes, sir.

13 Q Is my math right?

14 A Yes, sir.

15 Q So if we are looking at October of 2002, the jury was
16 going to start deliberating on this case when we are here
17 on July the 11th or, June 11th of 2014, correct?

18 A Yes, sir.

19 Q Outside of 10 years or more than 10 years had
20 elapsed?

21 A Yes, sir.

22 Q Do you agree that this conviction couldn't have been
23 used against Mr. Odom?

24 A I cannot recollect why, Mr. Henderson. But under the
25 research we had done back in 2014 it was my understanding

1 that the CSC conviction would come in.

2 Q Did you ever put pen to paper like I did, just
3 running through dates?

4 A I never pulled his, I pulled the public index
5 information but I never pulled the sentencing sheet to see
6 that he was given credit for time since '97.

7 Q Do you agree if you had pulled that it would have
8 given you sort of an opinion about your advice to Mr.
9 Odom?

10 A I don't know that. I know that it would have given
11 me another research trail to follow.

12 Q Well, keep in mind, the Solicitor introduced this,
13 what I call Exhibit 7, it was introduced during the
14 sentencing phase of Mr. Odom's trial, correct?

15 A Yes, sir.

16 Q You see at the top. But again, you would agree that
17 more than 10 years had elapsed from when that sentence was
18 over?

19 A I would.

20 Q Again, I am looking through, on page 321 of the trial
21 transcript where Mr. Mowry who was the Solicitor
22 prosecuting this case, correct?

23 A Yes, sir.

24 Q And he tells His Honor on line 24, he plead for four
25 burglaries at various times beyond the 10 year period.

1 Did I read that correctly?

2 A I am assuming you did, Mr. Henderson. I am not on
3 the same page as you are.

4 Q Again, I will let you find page 321 of the trial
5 transcript.

6 A Mr. Henderson, I am sorry. I am going to have to
7 pull up my printed copy, the trial transcript seems to
8 have some wrong page numbers.

9 Q There are two sets of numbers. One on the trial
10 transcript, the small numbers and sometimes you will have
11 a different set of numbers on the record on appeal.

12 A And my transcript jumps from page 317 to page 327.
13 Do you have, can you tell me what the large number is on
14 that page?

15 Q No, I don't. It has just got 321 on it.

16 A All right. I will get right down to it.

17 My trial transcript jumps from 317 to 327. Can you
18 tell me what the first line on the top of the page is.

19 Q On 321 it is, The Court: Okay. And do you have any
20 questions about what I have explained to you.

21 A Mr. Henderson, if you would like to read. I am sorry
22 but it appears that both my electronic and printed copy of
23 my transcripts jumps from page 317 to 328.

24 Q Okay. I am going to start reading at the bottom of
25 page 321, going on to the top of page 322. And this is

1 Mr. Mowry talking to the Court.

2 A All right.

3 Q Your Honor, also the State has certified copies of
4 indictment on which the Defendant plead for four
5 burglaries at various times. Now, they are beyond the 10
6 year period but that is still within Your Honor's
7 discretion to make that determination as to whether or not
8 those can be used for impeachment purposes as well. And
9 he would certainly try to do that.

10 And your response is, That's correct, Your Honor. It
11 is my understanding that Mr. Mowry's argument would be
12 common scheme or plan.

13 A Mr. Henderson, I don't mean to interrupt you but I
14 think Mr. Odom might be having some trouble hearing us.
15 He is making some motions.

16 MR. ODOM: I am trying to hear. I was trying to tell
17 them to keep it down.

18 MS.WIYGUL: Thank you, Mr. Henderson.

19 Q And, again, you just heard me. I hate you don't have
20 a copy of it, Ms. Wiygul. But the Solicitor just conceded
21 that the four burglaries are outside the 10 year period.
22 But said it was in Your Honor's discretion to still let
23 them into evidence or being entered for impeachment
24 purposes?

25 A Yes, sir.

1 Q Let me ask you. Did the Solicitor Mowry ever put you
2 on written notice that he intended to do any conviction
3 older than 10 years to impeach Mr. Odom?

4 A I cannot recollect. I have no independent
5 recollection of him providing such and I have not seen any
6 notice of such in the file. So I would tend to say, no.

7 Q And you understand that under Rule 609, if the State
8 wants to go outside of their 10 year rule they have got to
9 give you some written notice and basically have a hearing
10 on the matter?

11 A I am not sure I realize that, Mr. Henderson.

12 Q Okay. And you didn't ask the Court for any type of
13 ruling on whether or not the CSC conviction, these four
14 burglary convictions could be used to impeach Mr. Odom,
15 did you?

16 A I did not.

17 Q You just had a, fell on your sword, for a better
18 term? Is that a fair assessment?

19 A I did not make any objection.

20 Q Okay. And you understand that Mr. Odom, Mr. Odom
21 actually tells the trial Judge that he wanted to testify
22 but he is worried about his prior record being used to
23 impeach him. Do you remember that?

24 A I do remember that.

25 Q Okay. And we had just discussed, there was a good

1 mechanism to keep his CSC conviction out and his four
2 burglaries conviction out. Would you agree with me?

3 A I would agree with you that I did not do any of that.

4 Q And if you have done that do you believe that Mr.
5 Odom could have exercised his constitutional rights to
6 testify in his own defense?

7 A I believe he could have. I do not know that he would
8 have.

9 Q But it would have made it a whole lot easier, a
10 decision to make knowing that the Government couldn't beat
11 him over the head with past convictions? Is that fair
12 enough?

13 A I am sorry, Mr. Henderson. I don't understand the
14 question. I do not know if Mr. Odom would have chosen to
15 testify or not. I know that I counseled him that I
16 believed at least some of the convictions would come in.

17 Q And you agree that I have just shown you a good road
18 map where none of the convections would have come in?

19 A I agree that that is a possibility.

20 Q Okay. And, again, if you had had this hearing in
21 front of a Judge and the Judge had kept all of these
22 convictions out, don't you think that would have made it
23 easier for Mr. Odom to get on the stand to testify?

24 A If he had wanted to, yes.

25 Q And, again, you can't make him testify? You agree

1 with that?

2 A I agree.

3 Q But he told the Court and you that he wanted to
4 testify but for these prior convictions?

5 A Well, he told the Court that. Yes, he did.

6 Q Okay. I want to turn to the twelfth allegation of my
7 amended petition. And this has to do with the Solicitor's
8 closing argument.

9 A Yes, sir.

10 Q And do you happen to have these portions of the trial
11 transcript, page 333, 334 and 340?

12 A Yes, sir.

13 Q Okay. I want to turn to page 333 of the trial
14 transcript, not the record on appeal number, but the trial
15 transcript number. And on page, on line 15 this is
16 Solicitor Mowry making his argument. He has plead guilty
17 to a lot of charges. He has been sentenced, he has paid
18 his debt and he is still appearing before you, he told you
19 to testify honestly. And you didn't object to that, did
20 you?

21 A I did not.

22 Q And you understand, we have already covered that the
23 Solicitor was vouching for Mr. Mixon in his opening
24 statement? Do you remember us talking about that, maybe
25 an hour ago, maybe not that long ago.

1 A I recollect that.

2 Q And you didn't object to that?

3 A No, I did not.

4 Q Okay. And you didn't ask the Court to strike that,
5 you didn't ask for a curative instruction?

6 A I did not.

7 Q You didn't ask for a mistrial?

8 A I did not.

9 Q You understand that the Solicitor should not be
10 vouching for his witness' credibility?

11 A Yes, sir.

12 Q Okay. And then on that same page, at line 23, I will
13 read to you verbatim. The Defense has access to it.
14 Don't you think if there had been some gross inconsistency
15 with what he said back then, of what he testified in court
16 we would have heard about it.

17 Did I read that correctly?

18 A You did.

19 Q And Mr. Odom, y'all didn't put up a defense, did you?

20 A No, sir.

21 Q The Solicitor just commented on y'all's right to
22 remain silent. Is that fair to say?

23 A Yes, sir.

24 Q You didn't object to it?

25 A I did not.

1 Q The Solicitor basically commented on your right to
2 put up a defense?

3 A Yes.

4 Q You didn't object to it?

5 A I did not.

6 Q Okay. And that is not trial strategy, is it?

7 A No, sir. Had I picked up on that I would have made
8 the objection. I would not have made the objection as to
9 the, his comments about Mr. Mixon. But I would have
10 objected to his commenting about us not putting up a
11 defense.

12 Q And on page 334 of the trial transcript, I am going
13 to start at line 18. Again, this is Solicitor Mowry
14 again. But there was never any contradictory evidence or
15 -- no alternatives scenario, no alternative individual to
16 the crimes that were shown in this DVD and in that
17 photograph that we submitted. No other scenario than the
18 one proposed by Christopher Mixon from this witness stand.
19 You didn't object to any of that, did you?

20 A I did not.

21 Q You didn't ask the Court to strike any of that?

22 A I did not.

23 Q Didn't ask the Court for a curative instruction?

24 A I did not.

25 Q You didn't ask the Court for a mistrial?

1 A I did not.

2 Q You understand that the, that the Prosecutor is not
3 supposed to comment on the Defendant's failure to present
4 evidence or to testify?

5 A Yes, sir.

6 Q That is exactly what he did?

7 A Yes, sir. As I just stated, had that struck me
8 during his closing I would have objection, I would have
9 objected. I cannot tell you why I didn't.

10 Q And then I want to turn to page 340 of the trial
11 transcript, line 1. And again, this is Solicitor Mowry.
12 The question is, who done it. Christopher Mixon admits
13 that he was one, in his uncontradicted testimony, that
14 Maurice Anthony Odom was the other.

15 Did I read that correctly?

16 A You did.

17 Q And, again, you did not put up a defense?

18 A I did not.

19 Q So when the Solicitor said uncontradicted, that is a
20 comment on the Defendant's failure to put up a defense?

21 A Mr. Henderson, I stated I would agree with you on
22 that matter.

23 Q And, again, no trial strategy about that?

24 A In retrospect, I cannot think of what it would have
25 done.

1 Q Okay.

2 A As to his commenting about the uncontradicted
3 testimony.

4 Q I want to turn to my thirteenth allegation in the
5 amended petition. And, again, this is on page 338 of the
6 trial transcript, going into page 339.

7 A Yes, sir.

8 Q And, again, this is Mr. Mowry making some more
9 closing arguments?

10 A Yes, sir.

11 Q They do their best, I submit to you that Tyrone
12 Goggins is a good, experienced police officer and
13 investigator as his 16 years would document.

14 Did I read that correctly?

15 A You did.

16 Q And you didn't object to that, did you?

17 A I did not.

18 Q Didn't ask the Court to strike it?

19 A I did not.

20 Q You didn't ask the Court for any type of curative
21 instruction?

22 A I did not.

23 Q And, again, you would agree, he is vouching for
24 Detective Goggins?

25 A I would agree. However, strategically that is not

1 something that I would have objected to.

2 Q Okay. After he had been vouching about your failure
3 to put up a defense. A comment about Mr. Odom's right to
4 remain silent and vouching for Mr. Mixon. He is doing all
5 of this during his closing argument. You would agree?
6 All I am saying is I would have been standing on my head
7 if I was listening to his closing arguments.

8 MS. SCHILL: Your Honor, sorry to interrupt. I am
9 going to object. I think he is kind of testifying as a
10 witness.

11 MR. HENDERSON: I will move along, Your Honor.

12 THE COURT: Okay. Thank you.

13 Q Let's turn to the pro se allegations, handful of pro
14 se allegations that Mr. Odom raised in his pro se
15 application. This speedy trial, he made a motion for a
16 speedy trial. Are you aware of that?

17 A I believe that motion was filed three attorneys prior
18 to me, by a Mr. Broadwater.

19 Q And so you know it is a file of the record?

20 A Yes, sir.

21 Q Okay. And do you have a copy of it in your file?

22 A I do have a copy of it, I am not sure where it came
23 from. I was provided a lot of documents in this case from
24 his prior attorneys. And then when Mr. Brown was
25 substituted, I gave him a copy of everything I had.

1 Q The speedy trial motion was filed and served on the
2 Solicitor, by somebody?

3 A Yes, sir.

4 Q Did you file your own speedy trial motion?

5 A No, sir. As I said, when I was appointed I was told
6 that it was going to trial in June.

7 Q Okay. Less than two months later?

8 A Yes, sir.

9 Q And you agree that Mr. Odom was arrested on November
10 23rd of '11?

11 A That is my understanding.

12 Q And his trial started on June the 9th of '14?

13 A Yes, sir.

14 Q So he was incarcerated this whole time, correct?

15 A That's my understanding.

16 Q He actually went, he was actually incarcerated, it
17 looks like, about 31 months prior to his trial?

18 A That is what it sounds like.

19 Q Right. And, again, he requested a speedy trial or
20 somebody had requested one on his behalf?

21 A Yes, sir.

22 Q And you did not renew that speedy trial motion at the
23 call of the case, did you?

24 A No, sir.

25 Q Okay. Had that thought crossed your mind?

1 A No. I thought that Mr. Odom would be better served
2 by waiting to go to trial. But Mr. Odom wanted to go to
3 trial as quickly as possible. Since the trial was already
4 going in June, I don't feel like filing a speedy trial
5 motion would have gotten it scheduled any sooner.

6 Q Not that it would be scheduled any sooner. You know
7 it is coming two months out. But what I am asking is why
8 didn't you renew the motion at the call of the case to
9 have a hearing on the matter to get it rolling?

10 A Because I was too busy preparing for trial.

11 Q You understand that if the Court grants a speedy
12 trial motion it trumps the case?

13 A I would not file such a motion, Mr. Henderson. I
14 would not have filed that motion in his case.

15 Q Even though, even though he has got a constitutional
16 right for a speedy trial?

17 A Yes, sir.

18 Q And you understand that by not filing that motion and
19 having it heard by the trial Judge you abandoned the right
20 to have that issue heard on direct appeal?

21 A Yes, sir.

22 Q Okay. That is why I am bringing it up today in PCR.

23 A Yes, sir.

24 Q Okay. It looks like Mr. Broadwater filed that speedy
25 trial motion right after his arrest, would you dispute

1 that?

2 A No, I would not.

3 Q I mean, pretty much, so basically around two and a
4 half years Mr. Odom was operating under a speedy trial
5 motion. You would agree with that, wouldn't you?

6 A Yes, sir.

7 Q Okay. I want to turn to, again these are pro se
8 allegations that Mr. Odom has made about the phone records
9 and the search warrant. And I would recall everyone's
10 attention to Exhibits 8 and 9 that have been entered into
11 evidence without objection by the parties. I know, Ms.
12 Wiygul, we previously discussed a little while ago that
13 there were, that you learned about the cell phone records
14 order and y'all had some sort of pretrial something or
15 another that is not on the record, is that correct?

16 A Yes, sir.

17 Q And you didn't ask to put that on the record?

18 A No, sir. The way my notes were taken it appeared to
19 me that I thought that it was part of the record. And I
20 had no idea why, I don't know.

21 Q And you understand that those phone records, phone
22 records can hang you up, they can set you free. Wouldn't
23 you agree?

24 A I would agree.

25 Q And, again, we don't know about what these phone

1 records do because nobody ever followed up. Is that fair
2 to say?

3 A That's fair to say.

4 Q And wouldn't you agree that if these phone records
5 were detrimental to Mr. Odom, don't you think the
6 Solicitor would have been screaming and waiving them
7 around?

8 A My recollection is that nobody ever saw the phone
9 records.

10 Q Did you independently verify that by any type of --

11 A Other than speaking with his prior attorneys, I don't
12 believe so.

13 Q And you were sitting in the prior PCR hearing
14 listening, correct?

15 A Yes, sir.

16 Q Where Solicitor Scott, acting as an officer of the
17 court said that he was going to go out here and find what
18 was produced in response to that Court order.

19 A Yes, sir.

20 Q Let me ask you. What he found in response to that
21 Court order, what if it shows that Mr. Odom wasn't there.

22 MS. SCHILL: Your Honor, we would object. I think
23 that is speculative.

24 THE COURT: You are going to rephrase the question?

25 MR. HENDERSON: No more speculative than what would

1 happen if it said that he was there.

2 THE COURT: If she can answer the question she can.
3 Go ahead.

4 A Mr. Henderson, hypothetically, if the phone records
5 were produced and if they showed that Mr. Odom was not in
6 the area then I would tend to think it would assist Mr.
7 Odom.

8 Q Absolutely it would have but yet you didn't go pursue
9 these documents. Is that correct?

10 A That's correct.

11 Q Okay. And then there was a search warrant served on
12 Mr. Odom's house, correct?

13 A Yes, sir.

14 Q And nothing was found pursuant to that search warrant
15 linking him to any of these crimes?

16 A That is my understanding.

17 Q Okay. And, again, that is another piece of evidence
18 that you could beat over the prosecution's head. Is that
19 correct?

20 A I am sorry. I don't understand the question.

21 Q After, you consented to documents and I will refer to
22 North Carolina DMV document and the South Carolina DMV
23 document that put law enforcement at Mr. Odom's house. In
24 the eyes of the jury, do you agree that evidence came
25 before the jury?

1 A Yes, sir.

2 Q Okay. And you would agree that, pursuant to this
3 search warrant, they didn't find any evidence in Mr.
4 Odom's house or this car linking him to the crime?

5 A Yes, sir.

6 Q Okay. And, again, don't you think that is something
7 you should have been bringing to the roof tops on your
8 cross-examination of these police officers?

9 A Mr. Henderson, I just can't recollect.

10 Q Okay. And have you looked at that telephone order
11 that Judge Griffith signed?

12 A No, sir.

13 Q Okay. You, it is Exhibit 8, I emailed it to you. I
14 just didn't know if you printed it out and looked at it.

15 A I believe I printed it and I glanced at it enough to
16 see what it was but I did not read it in depth.

17 Q And I will reference that to you and it covers this
18 robbery that Mr. Odom was tried for in Laurens, asking for
19 the exact same timeframe. You don't dispute that, do you?

20 A No, sir.

21 Q Okay. And then I want to go to another pro se
22 allegation where Mr. Odom has alleged that he wanted to
23 present a defense and wasn't allowed to or couldn't. Now,
24 as we previously discussed, he told you he wanted to
25 testify, didn't he. He told Judge Hocker he wanted to

1 testify?

2 A He told Judge Hocker he wanted to testify.

3 Q But for those prior convictions he thought he was
4 going to be impeached for?

5 A That is what he told Judge Hocker.

6 Q Right. And again, if you go do a little bit more
7 research, there is a good chance that he could have taken
8 the stand without having those prior convictions hanging
9 over his head, correct?

10 A As we had discussed earlier.

11 Q And he said he wants his wife to testify. Did you
12 ever discuss with the wife about testifying?

13 A I did. I met with Mr. Odom's wife several times. I
14 spoke with her on the phone repeatedly. She did not want
15 to testify on the day of trial.

16 Q And she was there in the courtroom on the day of
17 trial, correct?

18 A She was. I believe she had spoken with a juror the
19 night before.

20 Q Right. I am not going down that road, that is not
21 relevant to why we are here today, I am leaving all of
22 that alone. So were there other family members in the
23 courtroom?

24 A I think his mother was there.

25 Q And did you introduce yourself to them or did you

1 introduce yourself to them?

2 A I mean, I met with his wife multiple times. I just
3 don't recollect whether I talked with his mom that day or
4 not.

5 Q Let me ask you. Going back to, kind of bring some
6 stuff up with this morning's PCR hearing. You said that
7 on that Monday, during the night of 2014 the Solicitor
8 came to you with an offer, correct?

9 A I don't recall being that night. I think that -- I
10 spoke with Mr. Odom at the holding cell that day, on the
11 9th. Is that what you are referencing?

12 Q It is my understanding that from your testimony this
13 morning said that Mr. Scott came to you sometime that
14 morning or that day?

15 A Immediately after the sentencing hearing, when Judge
16 Hocker announced the sentence Mr. Scott relayed, he came
17 and made the offer to Mr. Odom that he would be willing to
18 let him plead to the Newberry charges for concurrent time
19 that he had just received. And Mr. Odom did not accept
20 that offer.

21 Q That is not what I am asking. You testified this
22 morning that sometime on the morning of June the 9th of
23 '14 that Mr. Scott came to you with an offer to wrap up
24 all the Laurens and Newberry charges for 10 years
25 nonviolent?

1 A Mr. Mowry.

2 Q Mr. Mowry, I apologize.

3 A Yes, sir. Mr. Mowry had made two alternative offers.
4 He offered to either let Mr. Odom plead, one moment and I
5 will tell you exactly.

6 Q I think it was a burglary second nonviolent, a
7 conspiracy of petty larceny. I may have it a little
8 wrong.

9 A It was something that would be 10 years, it would
10 take care of all of his charges pending in the Eighth
11 Circuit; or in the alternative, and it would be
12 nonviolent; or in the alternative he could plead to
13 accessory to before and after the fact with no
14 recommendation. Both of those offers were relayed to Mr.
15 Odom and he did not wish to accept either one of them.

16 Q And those would have wrapped up all of his charges?

17 A Yes, sir. I am sorry, in the Eighth Circuit.

18 Q That's correct. You don't have any control down in
19 the Eleventh Circuit. I understand that. Let me ask you.
20 Where were you at when Mr. Mowry made you that offer on
21 the day of court, on June the 9th?

22 A I have absolutely no idea. I would assume we were
23 either sitting in the courtroom or in Mr. Mowry's office
24 because I wrote down the plea offer and immediately went
25 back to the holding cell and relayed it to Mr. Odom.

1 Q But Mr. Odom wasn't present when the offer was made?

2 A No.

3 Q Well, when you got his wife with him to discuss this
4 offer, what was her opinion about the offer?

5 A I don't recollect. I don't recollect discussing the
6 offer with his wife. I recollect discussing the offer
7 with Mr. Odom.

8 Q I understand it. You discussed it with him but when
9 you brought his mother back, what did Mom have to say
10 about this offer?

11 A Mr. Henderson, I don't recollect discussing this
12 offer with either his mother or his wife. I may have done
13 so but I don't recollect.

14 Q And, again, you at least made them available for him
15 to discuss this offer. Let me ask you. Did Mr. Odom file
16 anything in writing saying, hey, I understand this offer.

17 A I did not.

18 Q Okay. When this case was called for trial I assume,
19 very soon after this offer. Did you go on the record and
20 say, Judge Hocker, they just made the most wonderful offer
21 in the world. I advised my client he needs to take it,
22 here is what it is; A, B, C, D.; and he rejected it. Did
23 you do that?

24 A Mr. Henderson, the offer was discussed at the same
25 time as the phone records. And I am not, give me one

1 moment and I will try and see if -- if you look on page 54
2 of the transcript, line 9.

3 Q Of the transcript of this case?

4 A Yes, sir.

5 Q Okay.

6 A And, Your Honor, one more thing just to protect the
7 record. Mr. Mowry did make a very reasonable plea offer
8 in this case, he made an offer for 10 years nonviolent
9 that would take care of these charges, concurrent time on
10 the Newberry charges; and would essentially take care of
11 all of Mr. Odom's pending charges around the State. Mr.
12 Mowry clarified that it would only be in the Eighth
13 Circuit. And then I put on the record that that offer had
14 been relayed to Mr. Odom and he did choose to proceed with
15 trial. And then Mr. Mowry put the alternative offer on
16 the record.

17 Q And Mr. Odom was there to hear all of this?

18 A I believe so, I don't believe anything went on
19 without him in the courtroom while it was on the record.

20 Q Okay. If you had to do this over again you would do
21 a lot of things differently, is that fair to say?

22 A Yes, sir.

23 Q Okay. And you think some of the things that you
24 didn't do could have severely prejudiced Mr. Odom during
25 this jury trial?

1 A It is possible.

2 Q Okay.

3 MR. HENDERSON: Your Honor, I don't think I have
4 anything further for this witness.

5 THE COURT: Okay. Before we get into
6 cross-examination let's take about a five minute break.
7 We will be right back. Mr. Odom, they are going to take
8 you out of the room. Can you tell them you need to be
9 back in five minutes.

10 MR. ODOM: Yes sir, I will stay right here.

11 THE COURT: Okay.

12 (Whereupon, a short break was taken.)

13 THE COURT: Is the State ready for the cross?

14 MS. SCHILL: Yes, Your Honor.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 By Ms. Schill:

18 Q Thank you, Ms. Wiygul. I will try not to be
19 repetitive but I also have to do my own due diligence. So
20 it might be a little bit repetitive. How long have you
21 been practicing law?

22 A For approximately 17 years.

23 Q How much of that has been in criminal law?

24 A Sixteen.

25 Q Did you discuss the elements of the offenses with Mr.

1 Odom prior to trial?

2 A I did. It is my habit to print out all the statutes
3 and go through both the statutes and the elements.

4 Q Okay. And did you discuss the possible sentence with
5 Mr. Odom prior to trial?

6 A I did.

7 Q Okay. And did you discuss his constitutional rights
8 with him prior to trial?

9 A I did.

10 Q Okay. And did you discuss the State's burden of
11 proof with Mr. Odom?

12 A Yes, ma'am.

13 Q Did he ever indicate at any point in time he didn't
14 understand your conversations?

15 A In my first meeting with Mr. Odom he was adamant that
16 he was not competent. However competency evaluations had
17 been performed. So I was able to obtain those and after
18 that, so he did not indicate he didn't understand but I
19 was concerned about his understanding until I obtained
20 copies of the competency evaluations.

21 Q Did he ask you questions if he didn't understand
22 something?

23 A He did.

24 Q Okay. Did he answer your questions appropriately and
25 in a cynical way?

1 A He did. Mr. Odom was very knowledgeable about the
2 system. He actually gave me cases to look up, is my
3 recollection.

4 Q Okay. And did you and Mr. Odom review the discovery
5 prior to trial?

6 A We did.

7 Q Okay. And I know you kind of mentioned bits and
8 pieces, but can you kind of briefly summarize the evidence
9 the State had against Mr. Odom?

10 A There was the testimony of Mr. Mixon; there was the
11 investigation of the detectives; there was the testimony
12 of the victim. Almost all of my recollections of this
13 case have come about in preparing for the PCR. I have
14 just had a lot of cases between then and now.

15 Q And there was the DVD too, correct?

16 A Yes. I believe Mr. Odom had given a statement.

17 Q Okay. Did Mr. Odom give you any names of any
18 witnesses to contact that you did not contact?

19 A No. My recollection is the only witness he talked
20 about possibly testifying was his wife. And we had put
21 her on the proposed witness list provided to the State.

22 Q And if I recall correctly, you said the wife did not
23 want to testify the day of trial. Is that right?

24 A My recollection is that, in speaking with Mr. Odom
25 and his wife, he told me that she was not comfortable

1 testifying and we decided to proceed without any
2 witnesses.

3 Q And did you discuss the possible or the defenses with
4 Mr. Odom prior to trial, any defenses you intended to
5 raise?

6 A We did. My recollection is that Mr. Odom was adamant
7 that Mr. Mixon had taken his car and committed these
8 crimes without him because he was a neighbor.

9 Q Okay. Did you feel that you had enough time to
10 prepare the case?

11 A At the time I did; in hindsight, no.

12 Q Why do you say that?

13 A In hindsight it would have been a good thing to get a
14 private investigator. There is a lot of things I could
15 have done with more time to prepare for the case.

16 However, I did explain that to Mr. Odom and he did wish to
17 go forward with trial.

18 Q Okay. So you discussed that earlier with Mr. Odom?

19 A I did.

20 Q Did you have an overall trial strategy and if so
21 could you kind of explain that for the Court.

22 A I am sure I did but I can't recollect exactly what it
23 was except to try and kind of undermine the sufficiency of
24 the investigation and point the finger at Mr. Mixon.

25 Q Okay. So is it fair to say, sort of I know you have

1 been, I guess, critiquing some things about the trial.

2 But is it fair to say that those critiques you made today
3 were the benefit of hindsight?

4 A Oh, of course.

5 Q So today sitting here and you know that you lost and
6 so therefore you sort of think of little ways or little
7 things you could have done differently?

8 A Correct.

9 Q Okay. I think you discussed the plea offer
10 sufficiently with Mr. Henderson so I will move on to the
11 specific allegations. So I guess, for the first
12 allegation, that comment that was made during voir dire,
13 correct, when the Judge, I guess, made reference to God?

14 A I believe so.

15 Q Do you typically object to each and every comment you
16 take issue to during voir dire?

17 A It would take a lot to make me object during voir
18 dire. That is not a time when I would typically object.

19 Q Do you ever sort of, when you are deciding whether to
20 object to something generally, do you ever take into
21 consideration what the jury may think of your client if
22 you make such an objection?

23 A Definitely.

24 Q Okay. Do you think that played a role here, in this
25 case?

1 A Yes, yes. I would have been very concerned about
2 alienating the jury.

3 Q Okay. And I guess I will move on to allegation two.
4 So I believe we had come to the conclusion about the, the
5 indictment did not name a coconspirator. Is it required
6 that an indictment name a coconspirator?

7 A I don't believe so. Honestly I never saw this an
8 issue at the time.

9 Q Okay. So based on what you knew at the time, is it
10 fair to say you didn't see a valid objection to the
11 indictment?

12 A Yes.

13 Q Okay. Did the indictment appear to give Mr. Odom a
14 sufficient notice of what he was being charged with?

15 MS. SCHILL: Can anyone hear?

16 THE COURT: I am sorry, I couldn't hear the answer.
17 Ms. Wiygul, your mouth was moving but I didn't hear
18 anything in response. Hang on one second, we have got a
19 -- Ms. Wiygul, did you have an answer to that question
20 because I saw your mouth moving but I couldn't hear you.

21 A I said, I believe so.

22 Q Okay.

23 THE COURT: Thank you.

24 Q I will move on to the third allegation.

25 MR. HENDERSON: Your Honor, it appears we lost Ms.

1 Wiygul again.

2 THE COURT: Sometimes we lose faces but not audio.
3 So, I am sure Ms. Wiygul will let us know if ever she
4 can't hear us and we will definitely let her know if we
5 can't hear her. But thank you for mentioning that.

6 Q Moving onto the third allegation where the Solicitor
7 indicated, you determine what the truth is. And is it
8 fair to say that the Solicitor wasn't charging the jury
9 with the law when he made that statement?

10 MS.WIYGUL: Everyone has frozen up.

11 THE COURT: Okay. Everybody take a pause for a
12 moment. Okay, I can actually see everybody. Now, if we
13 have an audio problem which is fine because we don't have
14 a jury and I think I watched y'all enough where I can
15 judge the witness' credibility or like thereof or her
16 voracity based upon what I have seen already. But she
17 comes in and out visually. So as long as the witness can
18 hear the question and we can hear the witness I would say
19 let's proceed.

20 MS. SCHILL: I didn't hear her answer, Your Honor,
21 did she have an answer.

22 THE COURT: Ask the question.

23 MS.WIYGUL: I couldn't hear the question.

24 MS. SCHILL: Okay.

25 Q My question was, was the Solicitor, is it fair to say

1 the Solicitor was not charging the jury while, legal
2 instructions on the law at the time he made that
3 statement, right?

4 A Correct.

5 Q Okay. And was it your testimony that you did not
6 find his comment --

7 COURT REPORTER: Judge, I did not get her answer on
8 that last question. Did you hear it?

9 THE COURT: Okay. Everybody, let's take a couple
10 minutes break and we are going to reconvene. Let's
11 everybody flip off their video, their video on pause and
12 their mute on pause as well. We will come right back.

13 (Whereupon, a short break was taken.)

14 THE COURT: Okay, we are going to try it again. If
15 it starts doing it again we might have to reconvene.
16 There is, we are showing, I am not a technology genius and
17 I am technology challenged. We have in our side, since we
18 are hosting it, we have a system that feeds us a ban-width
19 information, receipts information as to what is coming in,
20 what is not coming in. And it is showing us that it might
21 be Ms. Wiygul's computer or somewhere from Ms. Wiygul's
22 position is where maybe our larger system is having a
23 problem. I am not saying that is right. I don't know,
24 that's just the information that they are telling us. So,
25 we will try it again. If we can't hear the questions or

1 we can't hear the answers, please, y'all let us know it.
2 It could be I am hearing, I am seeing and y'all are not,
3 especially the Court Reporter because she is the one that
4 makes the record. So just interrupt us if y'all can't.
5 But at this time we are going to try to pick back up with
6 the Attorney General.

7 COURT REPORTER: Judge, I did not get that last
8 answer.

9 MS. SCHILL: I will just start with my first question
10 I had with the third allegation.

11 Q I believe the first question I had asked was whether
12 the Solicitor was in charge of charging the jury with
13 instructions on the law, and if he was doing so at the
14 time the statement was made.

15 A He was not.

16 Q Okay. And was it your testimony that you did not
17 find this objectionable or that you did find it
18 objectionable but decided not to for a particular reason?

19 A In general I would not object to something like that
20 because I think it would bring more attention to it. So I
21 would not object to it.

22 Q The allegation for, I believe you had, I believe it
23 was established that Mr. Mixon had a criminal record. Is
24 that correct?

25 A That's my recollection from reviewing the transcript.

1 Q And I believe, did you question Mr. Mixon about his
2 potential motives for testifying in this case?

3 A I don't (inaudible.)

4 Q So was it your testimony that you did not find this
5 comment as improper vouching. Is that correct?

6 A It is not something that I would have objected for,
7 to. I would have been more likely to address it in some
8 other manner.

9 Q Okay. By some other manner. I am guessing you are
10 referring to your closing statement?

11 A Yes, ma'am.

12 Q With respect to the fifth allegation. Did your
13 statement, after you had objected and said on the record,
14 you made that statement on the record about how you were
15 objecting that Mr. Patel had testified about an occurrence
16 that happened a couple of weeks prior. Did your comment
17 implicate Mr. Odom specifically at all?

18 A No, I don't believe it did.

19 Q And did Mr. Patel's statement implicate Mr. Odom to
20 some degree?

21 A I don't believe it did.

22 Q So it is fair to say that it was just sort of a
23 general other burglary that was referred to?

24 A That is true. However, taken in context, I do feel
25 like I should have asked for a sidebar.

1 Q Okay. And with respect to allegation six, this is
2 more about the DVD. If I recall correctly, is it true
3 that you had objected to the introduction of the DVD as it
4 related to that specific witness?

5 A Yes, ma'am.

6 Q Is it true that you indicated the foundation could be
7 laid under a different witness, you referred to an
8 officer?

9 A That's my recollection.

10 Q So you were never challenging the validity of the DVD
11 itself. Is that fair to say?

12 A Correct.

13 Q So you were, okay. And I believe that you testified
14 that you didn't see, you didn't interpret the comment to
15 be vouching for the Solicitor's ethics or anything like
16 that. Is that correct?

17 A Correct.

18 Q Okay. I am moving on to allegation seven. This was
19 about the driver's license issue with Christopher Mixon.
20 Do you recall having a discussion about whether or not Mr.
21 Mixon's license or ID or driver's license card was, in
22 fact, a driver's license?

23 A I vaguely recall some type of discussion about it.
24 But I just don't remember the details. And from my review
25 of the transcript and the record I can't, I can't recreate

1 a reasoning for why I would not have impeached him with
2 that document. I just can't remember.

3 Q Okay. If you could, could you go to page 175 of the
4 trial transcript.

5 A Yes, ma'am.

6 Q So I mean you can take a little bit of time to review
7 that. Do you recall Mr. Mowry, Mr. Scott and yourself,
8 along in the Court's presence, calling, agree to called
9 the 800 number of the DMV to determine whether or not Mr.
10 Mixon's ID was a driver's license or not?

11 A Uh-huh. I see the argument. I just don't remember,
12 I don't have any independent recollection of it.

13 Q Okay.

14 MS. SCHILL: I beg the Court's indulgence, Your
15 Honor.

16 Q I will move on to the eighth allegation regarding
17 your questioning of Mr. Mixon and his gang coalition. So
18 is it fair to say, I believe you testified before, that
19 you were attempting to make Mr. Mixon look like an
20 unfavorable witness.

21 A We were trying to develop testimony that would kind
22 of bring out the fact that Mr. Mixon was involved with
23 this gang that routinely stole cars and did stuff with
24 them, to try to tie it in to the fact that he had taken
25 Mr. Odom's car and committed these crimes. It didn't work

1 out but I think that is where we were hoping it would
2 lead.

3 Q And I believe you had also asked Mr. Mixon about his
4 drug use, is that correct?

5 A Yes, ma'am.

6 Q Okay. With respect to allegation nine. That is the
7 NCIC document. Did Mr. Odom ever deny owning the car. I
8 believe you mentioned something about that before, about
9 him, with the car situation?

10 A Yes, ma'am. He never denied owning the car. His
11 whole thing was, he said Mr. Mixon had taken his car and
12 committed these crimes.

13 Q Okay. So is it your understanding that if you had,
14 in fact, brought a DMV person in to testify about the
15 document, as Applicant alleges, it's likely it would have
16 come back as Mr. Odom's car?

17 A Yes.

18 Q Did you potentially think that the document could
19 have been under the business records exception?

20 A It is very likely.

21 Q And do you also think that had to do with your
22 decision not to object to the admission of the document?

23 A It is likely.

24 Q Okay. Is it a requirement to prove the elements of
25 the offenses Mr. Odom was charged with, that he be driving

1 the car or owned the car or anything like that?

2 A No.

3 Q Okay. And for the next allegation. Do you recall
4 also objecting under, on the Best Evidence Rule?

5 A I recall seeing it in the transcript. I don't have
6 any independent recollection of those arguments. But I
7 have reviewed it in the transcript.

8 Q Okay. But you would agree that it is in the
9 transcript that you had mentioned the Best Evidence Rule?

10 A Yes.

11 Q Okay. And then for the eleventh allegation. I
12 believe it was your testimony earlier, that you and Mr.
13 Odom's previous counsel had extensively researched the
14 issue with the CSC case and whether it could be brought
15 in?

16 A That is my recollection.

17 Q Did Mr. Odom say that, say on the record that his
18 only concern was whether or not his convictions would come
19 in when he was deciding whether to testify or not?

20 A I can't recall.

21 Q Okay. So I know you said you don't recall too much
22 about this but do you have any recollection of
23 conversations you had about whether or not he would
24 testify and what, any other concerns might be?

25 A The only other thing I recollect him mentioning is he

1 was concerned about them mentioning his other pending
2 charges and we had discussed in-chambers with Judge Hocker
3 or during pretrial, a pretrial conference. I can't
4 recollect whether it was on the record. But we had
5 established that they would not be able to reference his
6 other pending charges, if he did decide to take the stand.

7 Q Okay. Allegation twelve. Did you interpret the
8 statement to be the comment on his right to remain silent
9 when the Solicitor mentioned that no other motives or
10 explanations were provided in reference to the case?

11 A I didn't at the time. However, in reviewing the
12 transcript I believe it probably would be interpreted that
13 way and I feel like I should have made an objection.

14 Q Okay. I believe you had testified before that you
15 would not have objected to the statement where the
16 Solicitor briefly mentioned that, the theory was
17 uncontradicted, that word specifically?

18 A I just cannot recollect at this time. Had I
19 interpreted his comments as commenting on Mr. Odom's
20 failure to put up a defense then I feel like I should have
21 objected. And the only thing I can think of it that it
22 just did not strike me at the time.

23 Q Okay. When you are deciding whether or not to object
24 to something, do you, is it your common practice to maybe
25 look at the jury and look at their body language and

1 whether they are paying attention or not or that type of
2 thing?

3 A It is.

4 Q Do you think there is a chance that could have played
5 a role?

6 A There is always a chance.

7 Q And then allegation thirteen. This was the statement
8 about Mr. Goggins. Did you cross-examine Mr. Goggins
9 about the circumstances under which he left the sheriffs
10 office or whatever agency he was with at the time?

11 A I cannot recollect. I know that, I know that Mr.
12 Goggins still holds a grudge against my cross-examination
13 during this trial. I have not reviewed that part of the
14 transcript. I do apologize.

15 Q That's okay.

16 A I think I would have --

17 Q Give me one minute. I can provide the citation of
18 that real quick.

19 A I think my cross starts on 299.

20 Q Okay. It is on page 303, I think is where it starts.

21 A Yes, ma'am.

22 Q Okay. Do you think that played a role in your
23 reasoning for not objecting to the statement you referred
24 in allegation thirteen?

25 A Likely.

1 Q Okay. Did you see this as a proper vouching
2 regardless of cross-examination?

3 A In retrospect possibly. I just, in general that is
4 not something that I would objected to.

5 Q And what is your reasoning for that?

6 A I feel like it draws extra attention to it and is
7 better addressed in another manner.

8 Q And once again, another manner, closing statement or
9 something of that sort?

10 A Yes.

11 Q Okay. And regarding the speedy trial type of
12 allegation. I believe you had mentioned that you were the
13 fourth or fifth attorney on the case. Is that right?

14 A Yes, ma'am.

15 Q Do you know what happened with his prior attorneys or
16 why they were relieved or what the deal that was?

17 A I can't recollect.

18 MS. SCHILL: I beg the Court's indulgence.

19 Q Just one more. I am going to go back to the
20 allegation about Mr. Mixon's driver's license or ID or
21 that scenario. I believe I have pointed to, a point in
22 the trial where you and Mr. Scott called the 800 number
23 for the DMV. And the DMV indicated it was just a State
24 identification card.

25 A Yes, ma'am.

1 Q Do you think that played a role in your decision to
2 not impeach Mr. Nixon with that?

3 A Yes, that absolutely explains it. I just did not
4 recollect that whole situation.

5 Q Sorry, if this is something you don't recollect. But
6 do you recall Mr. Scott or Mr. Mowry having a discussion
7 with the Court about the whole scenario with the driver's
8 license and whether or not it was a driver's license. And
9 the Court telling you to move on?

10 A I do, after having reviewed it today, after Mr.
11 Henderson's questions.

12 Q So is it fair to say that it's, you are unsure as to
13 whether, the Court might not have even let you impeach
14 him?

15 A After having reviewed the transcript of the
16 discussion I do not believe the Court would have permitted
17 me to use that document to impeach him.

18 Q Okay. Did you both collectively, agree to call the
19 800 number to resolve the situation?

20 A Yes.

21 Q And the 800 number informed you that it was a State
22 identification card as opposed to a driver's license. Is
23 that correct, your recollection?

24 A Yes.

25 Q Okay.

1 MS. SCHILL: So I guess I will point the Court to
2 that part of the transcript, the scenario, Ms. Wiygul
3 understandably doesn't recall each and every detail, the
4 discussion about that on the transcript. I believe that
5 is all the questions I have, Your Honor.

6 THE COURT: All right. Mr. Henderson, you can do it
7 in thirty minutes or you want us to break?

8 MR. HENDERSON: Your Honor, my redirect shouldn't be
9 too terribly long.

10 THE COURT: Okay. Redirect limited to what she went
11 into.

12 REDIRECT EXAMINATION

13 By Mr. Henderson:

14 Q You keep saying you don't like to use the word, I
15 object, during openings, closings. Am I hearing you
16 right?

17 A No, sir. You heard me say that as a general rule I
18 don't object during closings and openings if I feel like
19 it can be better addressed in another fashion.

20 Q And you agree that you could stand up and say, Your
21 Honor, we need to approach?

22 A Yes, sir.

23 Q I mean there is other things you can do other than
24 saying, I object. You agree with that?

25 A Yes, sir.

1 Q And you say you like to handle your issues in other
2 manners. Do I hear you correctly?

3 A Yes, sir.

4 Q What is the alternative manner to handle issues
5 preservation?

6 A Issue preservation, I did not think we were
7 discussing that. I apologize, I thought we were
8 discussing comments that were made during openings and
9 closings. It should be addressed at another time, I would
10 agree with you that that would not preserve the record.

11 Q Right. If your preservation has to be
12 simultaneously, you agree?

13 A Yes, sir.

14 MS. SCHILL: I am going to object. I don't think the
15 preservation issue was raised at any time.

16 THE COURT: Okay. Mr. Henderson, I agree. I think
17 your line of questioning is proper but I think you are
18 raising the issue of, I think you are raising the new
19 issue of issue preservation. I think your line of
20 questioning is proper but not that way.

21 MR. HENDERSON: I understand, Your Honor.

22 Q You agree you need to object simultaneously?

23 A Yes, sir.

24 Q Preserve the record?

25 A Yes, sir.

1 Q Okay. Let's go back to this seventh allegation on
2 Mr. Mixon's driver's license.

3 A Yes, sir.

4 Q You had this Exhibit that we have introduced into
5 evidence. And you said that you were intending to use
6 that to cross-examine Mr. Mixon, correct?

7 A I don't recollect saying that but I would assume that
8 was, I think that would be a fair statement, Mr.
9 Henderson.

10 Q Right. It was produced to you in discovery
11 responses, correct?

12 A Correct.

13 Q And it is some evidence, at least at face value
14 indicating that Mr. Mixon had a driver's license, correct?

15 A Yes, sir.

16 Q After, this was at a point where he had only
17 testified that he didn't know how to drive and didn't have
18 a driver's license.

19 A Yes, sir.

20 Q And looking at the testimony of the trial transcript
21 that the Attorney General just pointed out, it looks like
22 you were getting ready to cross-examine Mr. Mixon on this
23 document and the Solicitor objected. Do you remember
24 that?

25 A I don't, if it is in the transcript I would agree to

1 that.

2 Q And the Solicitor was the one that started talking
3 about, we don't know if this is a driver's license. Do
4 you remember that?

5 A Mr. Henderson, I have no independent recollection of
6 this case but if it is in the transcript I would not
7 disagree with it.

8 Q And after the Solicitor said it is confusing, you
9 agree it was confusing. Do you remember that?

10 A Mr. Henderson, I have absolutely no independent
11 recollection of this case but if that is what the
12 transcript says I would not disagree with it.

13 Q Exhibit number 4, Mr. Mixon's three year driver's
14 record. Tell me, what is so confusing about the face of
15 that document?

16 A Mr. Henderson, I do not recollect at this time.

17 Q Why on earth did you agree for anybody to call
18 1-800-DMV?

19 A Mr. Henderson, I do not recollect at this time.

20 Q You understand what DMV tells you on the telephone is
21 not admissible evidence?

22 A Mr. Henderson, I do not recollect.

23 Q Okay. But you would agree with me, as a statement of
24 hearsay law, that what DMV tells you on the telephone is
25 not admissible evidence?

1 A Yes, sir.

2 Q Okay. And you did not proffer this document into
3 evidence and I am talking about Exhibit number 4? You
4 didn't proffer it into evidence, did you?

5 A If the transcripts says I did not proffer it into
6 evidence then I did not.

7 Q Right. And you didn't. But at least the transcript
8 doesn't show that you did. And, again, it looks like that
9 the Solicitor saw where you were going, that you were
10 fixing to very severely impact their witness, Mr. Mixon
11 and they threw a monkey wrench into it and you went along
12 with the monkey wrench. Does that make sense to you?

13 A Not especially. However, I would agree with whatever
14 is reflected in the transcript.

15 Q But you would agree with, let's call the DMV and see
16 what they said about it on the telephone?

17 A If I agree on the transcript then that is what I did,
18 Mr. Henderson.

19 Q Okay. And based on what you heard on the telephone
20 from DMV, you didn't go forward with this document to
21 impeach Mr. Mixon, correct?

22 A I believe that was more based on the Judge's attitude
23 at the time. I cannot recollect exactly but I know the
24 Judge had asked me to move on.

25 Q You understand you have got to protect the record for

1 your client regardless to what the Judge wants to do. Do
2 you understand that? Yes or no?

3 A Of course, Mr. Henderson.

4 Q Okay. Going to number nine, going back to that North
5 Carolina DMV document, that is allegation number nine. I
6 heard Ms. Schill ask you, one reason is that you didn't
7 object is because business records exception. Did I hear
8 that correctly?

9 A I believe so.

10 Q Okay. And let me ask you. This record, it wasn't
11 normally kept in the Clinton Police Department during the
12 normal course of business, was it?

13 A Mr. Henderson, I have no way of knowing that.

14 Q Let me ask you. Use your common sense. When is the
15 last time that Clinton Police Department normally keeps
16 North Carolina DMV documents during their regular course
17 of business?

18 A Mr. Henderson, I have no idea what the Clinton Police
19 Department keeps.

20 Q I understand. But it is fair to say, they don't keep
21 with the records custodian with the North Carolina DMV
22 driver's record, are there?

23 A I have no idea.

24 Q Okay. Isn't it fair to say that business records is
25 not an applicable hearsay exception?

1 A I am sorry. You have confused me, I don't mean to be
2 dense.

3 Q You didn't object to this document coming into
4 evidence. We have already gone over that and you said you
5 should have objected to it?

6 A I believe I have already said that several times, yes
7 sir.

8 Q Ms. Schill, on cross-examination said, hey, is one of
9 the reasons that you failed to object, was it because of
10 the business records exception to the hearsay rule?

11 A It is possible that that could have been. I cannot
12 recollect. I have seen documents objected to under
13 hearsay come in under the business records exception. So
14 it is possible, I have no independent recollection.

15 Q Okay. But that is why I am asking you, Clinton
16 Police Department in their regular course of business
17 normally maintains and upkeep the North Carolina DMV
18 records?

19 A I have no idea.

20 Q I will take that as a no.

21 A I would appreciate it if you took it as a, I do not
22 know.

23 Q Okay.

24 MS. SCHILL: I am going to object to that, Your
25 Honor, kind of changing the witness' testimony.

1 THE COURT: Okay. I think we can move on.

2 MR. HENDERSON: I will move on.

3 Q And then on the tenth allegation, about Mr. Odom's
4 DMV records. Talking about one reason you objected on the
5 Best Evidence Rule as well as relevant. And the Court let
6 it in anyway. Do you remember that?

7 A I recollect just speaking to Ms. Schill about it.

8 Q Right. But, again, you didn't raise hearsay as an
9 issue?

10 A If the transcript reflects that then I would agree to
11 that.

12 Q I will represent to you that you did not raise that.

13 A All right.

14 Q On my eleventh allegation in my amended petition, it
15 says that you and some of Mr. Odom's prior counsel all
16 researched this CSC issue and determined it was a moral
17 turpitude issue. Did I hear that right?

18 A I am sorry, Mr. Henderson. If I could have just one
19 moment, please. Mr. Henderson, could you please repeat
20 the last question.

21 Q It says, you told Ms. Schill that you and some of Mr.
22 Odom's prior attorneys had all researched and got together
23 and discussed or however that this CSC conviction was a
24 crime of moral turpitude?

25 A No, sir. What I stated was that, it is my

1 recollection that I had done significant research on it,
2 that I spoke to Mr. Odom about it as well as some of his
3 prior counsel, I cannot remember which prior counsel; that
4 Mr. Odom also informed me that his prior counsel had
5 looked into that matter and had been talking to him about
6 it.

7 Q I understand but you didn't go get these -- did you?

8 A No, sir. As I told you earlier I did not.

9 Q Okay. And I think you said we discussed this CSC
10 conviction, more likely than not it may not have been
11 admissible. Do you remember discussing that?

12 A I remember you stating that.

13 Q Do you remember discussing the four prior burglary
14 convictions that the Solicitor conceded, outside the ten
15 year rule. Do you remember that?

16 A Yes, sir.

17 Q And also they had not put you on any notice that they
18 wanted to use convictions outside the ten year rule. Did
19 I hear that?

20 A Well, I recall you asking me about that and me
21 telling you I had not seen anything of that nature in the
22 discovery and had no recollection being provided that
23 evidence.

24 Q On Ms. Schill's cross-examination you also brought up
25 something else that is not in the transcript. You said

1 that Judge Hocker had done a pretrial ruling, that they
2 could not talk about any of Mr. Odom's other pending
3 criminal charges.

4 A Yes, sir. And I relayed that information to Mr.
5 Odom.

6 Q Right. So, again, if you could keep out his pending
7 charges, the CSC conviction and the burglary conviction,
8 that would have been real ripe for him to testify,
9 correct?

10 A I don't understand the nature of your question, I
11 apologize. It was relayed to Mr. Odom.

12 Q The way I see it with Mr. Odom talking to the Court
13 in the transcript, his fear about testifying was his
14 criminal record. Is that fair to say?

15 A That is what he relayed to the Court.

16 Q Okay. And, again, on allegation number 12, the one
17 where the Solicitor got into vouching, the right to remain
18 silent, criticizing you, all of that. Ms. Schill asked
19 you, you admitted that there is always a chance that you
20 could upset a jury by objecting. Did I hear that right?

21 A Mr. Henderson, I apologize, but you are throwing so
22 much in there, I am not comfortable just saying you heard
23 that right. But I would reiterate all of my testimony and
24 answers thus far.

25 Q Okay. But you understand there is a way not to say I

1 object if you are worried about upsetting the jury? You
2 could say, Your Honor, may we approach. You would agree
3 with that, wouldn't you?

4 A Just like I did before. Yes sir, Mr. Henderson, I
5 understand, I agree with that.

6 Q I think part of your testimony was, when Ms. Schill
7 was cross-examining you, prior to us getting into the
8 specific allegations that your trial strategy was, to the
9 best of your recollection, was to undermine the
10 sufficiency of the investigation?

11 A That is my recollection.

12 Q And you would agree that not objecting to that North
13 Carolina DMV document didn't undermine the sufficiency of
14 the investigation?

15 A Mr. Henderson, I did not object to, I just don't
16 understand what it is you are wanting me to say.

17 Q I want you to say the truth.

18 A Well, you are asking me things that I have already
19 answered repeatedly so I feel like you want me to say
20 something different or that I am misunderstanding the
21 question in some manner.

22 MR. HENDERSON: Your Honor, I don't have anything
23 further.

24 THE COURT: Okay. Given the hour that it is we are
25 going to take a break. So we are through with Ms. Wiygul

1 for purposes of being called by the Applicant. Does the
2 State know yet if they intend to recall her?

3 MS. SCHILL: At this exact moment I don't believe so
4 but if Your Honor is willing to, after we break I would
5 like the chance to review what was said here since so much
6 went on.

7 THE COURT: Let me reask the question in another way.
8 Is Mr. Wiygul needed for us to continue to proceed with
9 this hearing?

10 MS. SCHILL: I don't believe so, Your Honor.

11 THE COURT: Okay. Because I know Ms. Wiygul had a
12 judicial obligation tomorrow. So what I would suggest is
13 if the Attorney General can find out if they can get Mr.
14 Odom tomorrow afternoon. I would say let's try to do it
15 tomorrow afternoon. But that is a lot of if's, we have
16 got to get Mr. Odom back; DOC has got to have room for
17 him. So just, I know we are together again in the
18 morning. Ms. Schill, can we get Mr. Neubauer to help out
19 since he didn't wear a tie, get him to call. See what you
20 can find out so when we get together tomorrow morning
21 maybe we will know if we are going to get, send Mr.
22 Henderson a message. Your other witnesses, are they
23 available, Mr. Henderson?

24 MR. HENDERSON: I am sorry. My other witness will be
25 my client, Mr. Odom.

1 THE COURT: Okay. If we can get him back I would
2 suggest maybe let's start about 2:00 tomorrow afternoon
3 and see if we can do that. If by chance that DOC doesn't
4 have him or they don't have the technology available we
5 will, we will get back together for rescheduling. But,
6 Mr. Odom, I encourage you to stay in touch with Mr.
7 Henderson, he might be reaching out to you tomorrow at
8 some point, if not tomorrow, stay in touch with him, he
9 will get in touch with you and we will reschedule the
10 remainder of this as soon as we can. So, Ms. Wiygul, good
11 luck tomorrow with your hearing and thank you very much.
12 If we don't see you again, thank you for participating
13 today.

14 MS.WIYGUL: Thank you, sir. And I am happy to make
15 myself available if you will need me.

16 THE COURT: Okay. Thank you very much.

17 January 27, 2022

18 THE COURT: All right, we are going to resume with
19 the questions with Mr. Odom.

20 MR. ODOM: Yes, sir.

21 THE COURT: Mr. Odom, I need to remind you that you
22 under oath, so you are obligated to tell me the truth. I
23 would also remind you of our technology issues. Since we
24 have a Court Reporter and we are not together face to face
25 in person please speak slowly so we can all understand you

1 but also speak up loud enough so we all can hear you. Do
2 not speak over other people, and will let other people
3 know not to speak over you. And ever if you cannot hear
4 any of us immediately let us know and we will speak up as
5 well. Again, it is good to see you. At this time we will
6 resume the hearing, the matter of Maurice Odom versus the
7 State of South Carolina, 2016-CP-30-0251. Okay. Yes sir,
8 or Madam, who is going to go?

9 MR. HENDERSON: Your Honor, Mr. Odom is my witness.
10 Before we do that I would like to put a couple things on
11 the record in regards to testimony yesterday. Because
12 when Your Honor is deliberating I want to call your
13 attention to a couple of transcript portions.

14 THE COURT: Okay, I have the transcript.

15 MR. HENDERSON: Okay. Your Honor, as to the issue of
16 the order to Your Honor's attention to page 36 and page 37
17 of the trial transcript. And, Your Honor, and I noticed
18 and I looked in my file, I received two versions of the
19 trial transcript. One that is complete and one that is
20 missing some pages. And, again, if I reference something
21 y'all don't have I will be glad to send it to you.

22 THE COURT: Let me turn to page 36 and 37. I have
23 got page 36 and I have got page 37. Okay.

24 MR. HENDERSON: And, Your Honor, I know the Court's
25 record for the Court review in making its determination in

1 this matter. On those pages you will see that Solicitor
2 Mowry was not familiar with this cell phone order and to
3 his knowledge he said there wasn't any cell phone order on
4 the Eighth Circuit pending case. And, again, Your Honor,
5 we know that is not accurate for whatever reason. I see
6 Solicitor Scott on, in the lobby is here and he agreed
7 yesterday, Your Honor, that he would make a diligent look
8 through the Solicitors files to see if they could find any
9 of these records. And I would ask that His Honor require
10 the Solicitor to do that in this case as well as making a
11 diligent search for the Newberry County Sheriffs Office
12 for any records that were received in response to that
13 order and set a time limit for him to report back to the
14 Court.

15 THE COURT: Okay. I mean, that's sounds like a
16 reasonable request. Does anybody have a problem doing
17 that?

18 MS. SCHILL: Your Honor, I don't know if it is proper
19 at this point, engage in discovery during the hearing
20 process. That just would be a concern I have.

21 THE COURT: I tell you what, we will take it. I tell
22 you what, Mr. Henderson, it doesn't seem like it is an
23 issue. I mean I am sure, an issue are those that existed.
24 If they are not there, they are not there. So I would
25 assume that they are not there. Does that make any sense.

1 MR. HENDERSON: I follow you, Your Honor. But I
2 would ask that you require the Solicitor to at least make
3 a diligent search and report back to the Court. And he
4 may find nothing, the answer may be there is nothing. I
5 don't know.

6 THE COURT: Let me approach it like this, Mr.
7 Henderson. Let me see if I can say it more evidentiary
8 correctly. Okay. I think I can draw an inference that is
9 in your client's favor if the State does not produce
10 something that is within their control. So absent there
11 being some type of presentation made on behalf of the
12 State, I think that inference goes to your client's favor,
13 from an evidentiary standpoint.

14 MR. HENDERSON: I agree with you, Your Honor.

15 THE COURT: As opposed to me ordering people to go
16 out and dig things --

17 MR. ODOM: -- and maybe my client can't hear.

18 THE COURT: Mr. Odom, anything you want to tell your
19 lawyer, you can't tell him with all of us sitting here.
20 So just reach out to your lawyer and have a conversation
21 with him outside of our presence.

22 MR. ODOM: Show what y'all are speaking about.

23 THE COURT: Again, Mr. Odom, I am sure your lawyer
24 loves your diligence and appreciates it very much. But
25 that is something you need to say to him in private.

1 Okay.

2 MR. HENDERSON: But, Your Honor, I understand that
3 and I appreciate your comments about the inferences as
4 well.

5 THE COURT: Okay.

6 MR. HENDERSON: And also another cite for Your Honor
7 yesterday where Ms. Wiygul was talking about that Judge
8 Hocker ruled that the State basically, any Lyle evidence
9 of other pending burglary charges. And Your Honor, Judge
10 Hocker's ruling on page 51 of the trial transcript.

11 THE COURT: Tell me again what is on page 51?

12 MR. HENDERSON: There is, you know, Ms. Wiygul
13 testified yesterday that I didn't have the complete copy
14 of the transcript in front of me so I had a difficult time
15 to put my hands on it. But she testified that Judge
16 Hocker, as it relates to my client's criminal activities
17 or criminal records for the State to go into what I call
18 maybe Lyle evidence about any other pending burglary. I
19 just want to bring that to the Court's attention to the
20 specific cite that Judge Hocker rules. That is on page 51
21 of the trial transcript, on line 21.

22 THE COURT: Yes sir, I see it. Yes.

23 MR. HENDERSON: May I proceed, Your Honor?

24 THE COURT: Yes, sir.

25 MR. HENDERSON: Your Honor, Mr. Odom is under oath.

DIRECT EXAMINATION

By Mr. Henderson:

Q Mr. Odom, how are you today?

A I am fine, sir.

Q You understand why we are here, you are asking the Court to grant you PCR relief?

A Yes, sir.

Q And yesterday, in your other case in Newberry His Honor kind of went over some LWOP issue. Do you understand that?

A Yes, sir.

Q And you understand that I am not here to give you any advice on what the Court's ruling in this particular case to do to you in regards to your LWOP case. Do you understand that?

A Yes, sir.

Q And it could help you, do you understand that?

A Yes, sir.

Q A ruling could hurt you?

A Yes, sir.

Q And do you still want to go forward with your PCR?

A Yes, sir.

Q And you understand that the only relief that His Honor can grant to you here today is to grant you a new trial. Do you understand that?

1 A Yes, sir.

2 Q And that you would be remanded to grant you a new
3 trial to the Laurens Detention Center. Do you understand
4 that?

5 A Excuse me?

6 Q Do you understand that if you were granted a new
7 trial you would be remanded back to the Laurens County
8 jail?

9 A Yes, sir.

10 Q With no bond?

11 A Yes, sir.

12 Q You heard Ms. Wiygul's testimony yesterday, didn't
13 you?

14 A Yes, sir.

15 Q Based upon your listening to her testimony you agree
16 that Ms. Wiygul was ineffective of her representation of
17 you?

18 A Yes, sir.

19 Q Okay. Do you believe that you were prejudiced by Ms.
20 Wiygul's ineffectiveness?

21 A Yes, sir.

22 Q Based upon what you heard yesterday?

23 A Yes, sir.

24 Q If Ms. Wiygul had done things differently, as we
25 discussed yesterday, do you think that there is a

1 reasonable probability that there would have been a
2 different jury trial result?

3 A Yes, sir.

4 Q Okay. I want the -- things for him. Do you believe
5 that Ms. Wiygul should have put into evidence Mr. Mixon's
6 driver's license record?

7 A Yes, sir.

8 COURT REPORTER: Judge, I am getting a lot of
9 feedback. I am not sure why. Maybe if Mr. Carson could
10 back up a little bit.

11 THE COURT: And, Mr. Odom, you are hearing us okay?

12 MR. ODOM: Okay.

13 THE COURT: Are you getting a lot of echo words?

14 MR. ODOM: A little bit, not, it goes and comes.

15 THE COURT: Okay. And Mr. Carson, I notice this is
16 an odd request to you but just speak a little slower.

17 MR. HENDERSON: Yes, sir.

18 THE COURT: And, Mr. Henderson, we are just getting a
19 lot of whoa, whoa, whoa. I muted myself.

20 Q Mr. Odom, do you believe that Ms. Wiygul should have
21 introduced Christopher Mixon's driver's license records?

22 A Yes, sir.

23 Q Do you believe you were prejudiced by her failure to
24 introduce that document?

25 A Yes, sir.

1 MS. SCHILL: Your Honor, I am sorry to interrupt.
2 Just for the record, I object to that question. Mr.
3 Henderson is referring to the prejudice. Mr. Odom doesn't
4 have any legal -- to the standards.

5 THE COURT: I will allow the question. Go ahead.

6 Q And now I am going to go to what has been marked as
7 Exhibit 5, Maurice. Okay. Do you believe that you were
8 prejudiced and do you believe you were prejudiced by Ms.
9 Wiygul not objecting to the North Carolina DMV document?

10 A Yes, sir.

11 Q So you believe that she should have objected to that?

12 A Yes, sir.

13 Q And you understand that her failure to object at the
14 trial jury (inaudible.)

15 A Yes, sir.

16 Q And you believe you were harmed about that?

17 A Yes, sir.

18 Q Mr. Odom, I am going to call your attention to
19 Exhibit 6, the South Carolina Driver's License. Do you
20 believe that you were prejudiced or negatively impacted by
21 Ms. Wiygul not properly objecting to keep that out of
22 evidence?

23 A To keep it out of evidence?

24 Q To keep it out of evidence.

25 A Yes, sir.

1 Q Do you believe that she should have properly tried to
2 keep it out of evidence?

3 A Yes, sir.

4 Q And because it came into evidence you believe you
5 were negatively impacted?

6 A Yes, sir.

7 Q I am going to call your attention of what has been
8 marked as Exhibit 7. This is a record of your prior
9 convictions.

10 A Yes, sir.

11 Q Is this, did Ms. Wiygul ever discuss with you that
12 that CSC conviction was outside the ten year rule?

13 A No, sir.

14 Q Okay. Did she discuss with you and the Solicitor
15 admitted on the record that the burglary convictions were
16 outside the ten year rule. You heard that, didn't you?

17 A Can you repeat that, please?

18 Q Yes. You heard my questioning yesterday of Ms.
19 Wiygul and I referred to what the Solicitor said at trial
20 where he admitted that the burglary convictions were
21 outside the ten year rule. Do you understand that?

22 A Yes, sir.

23 Q Okay. And yet your lawyer didn't, Ms. Wiygul didn't
24 proffer any testimony or challenge any of these
25 convictions, did she?

1 A No, sir.

2 Q Did you want to testify?

3 A Yes sir, I did.

4 Q Okay. Is it fair to say that the only reason you
5 didn't testify is because you were afraid of getting
6 impeached by your prior criminal record?

7 A Yes.

8 Q If the trial Judge had said that none of those
9 convictions could have been used against you, would you
10 have testified?

11 A Yes, sir. That's correct.

12 Q And you heard yesterday when Ms. Wiygul testified
13 that she, Ms. Wiygul already obtained a ruling that
14 couldn't talk about any other pending arrests of yours,
15 correct?

16 A Yes, sir.

17 Q And you heard the examination yesterday when the, Ms.
18 Wiygul admitted that she should have objected with the
19 Solicitor in his closing argument commented on your right
20 to remain silent and commented on you not putting up a
21 defense. Do you remember that?

22 A Yes, sir.

23 Q Do you think you were prejudiced by Ms. Wiygul's
24 failure to object to that?

25 A Yes, sir.

1 Q You think that hurts you?

2 A Yes, sir.

3 Q Okay. Mr. Odom, I know we have heard a lot of talk,
4 you had several lawyers, correct?

5 A Yes, sir.

6 Q But during all this time, you filed a speedy trial
7 motion right off the getgo, didn't you?

8 A Yes, sir.

9 Q Even though going through several lawyers, did you
10 want to have this trial heard in a speedy manner?

11 A Yes, sir.

12 Q Yesterday, actually Ms. Wiygul testified that you
13 wanted it heard in a speedy manner. Do you remember that?

14 A Yes, sir.

15 Q Okay. And if I am not mistaken, you filed an order
16 or one of your first lawyers filed your initial speedy
17 trial motion and became in 2012, is that correct?

18 A Yes, that is correct.

19 Q That is about two and a half years prior to you going
20 to trial?

21 A Yes, sir.

22 Q Okay. And, again, you heard His Honor just have a
23 conversation with me about the cell phone records. But I
24 see you are holding up a document. What is that document?

25 A This document, it is a document that changed the

1 agency, an indication --

2 MS. SCHILL: Your Honor, I will object. I don't
3 think a foundation has been laid, I don't know what this
4 document is.

5 MR. ODOM: I can fax it to you.

6 THE COURT: Wait a minute, Mr. Odom. Mr. Carson has
7 just asked, what is that document. So I will receive it
8 right now, as to what that document is.

9 MR. ODOM: It is a telephone communication --

10 THE COURT: No, no. I have ruled.

11 Q Mr. Odom, if I may, back up a little bit. I will
12 back up from the microphone. What is that document
13 titled.

14 A It is Nexus Communication for Newberry Sheriffs
15 Department, a subpoena for the records for it.

16 Q Where did you get that document from?

17 A I just found it last night.

18 Q I understand you may have found it in your records.
19 But where did it originate from. Who gave it to you?

20 A Ms. Wiygul.

21 Q Ms. Wiygul did?

22 A Yes.

23 Q Okay. Is there a, do you have a document indicating
24 a response from the phone company to the subpoena?

25 A I have seen something, I have got a lot -- I will try

1 to find something but I definitely saw something, seen it,
2 this response.

3 Q Is that the response to the subpoena or is that the
4 actual subpoena? I understand that you may not understand
5 but we can't see the document.

6 A I think it goes to the company. It is from the
7 Newberry, it is from the Newberry Sheriffs Department to
8 the company.

9 Q Let me ask you. Do you have any document from the
10 telephone company by Newberry County Sheriffs Department?

11 A I don't think I have anything like that. I really
12 don't think I have.

13 Q Related to this cell phone order or subpoena, is your
14 testimony, it came from Ms. Wiygul?

15 A Yes, sir.

16 Q And do you believe Ms. Wiygul should have done
17 further investigation on that matter?

18 A Yes, because, she didn't know I had the telephone
19 records but she is the one that gave me, gave it to me.

20 Q So yes or no, you believe she should have done
21 further investigation?

22 A Yes, sir.

23 Q Okay. And on the search warrant entered into
24 evidence, is it correct that nothing was found at your
25 house?

1 A That's correct.

2 Q Or in your car?

3 A That's correct.

4 Q Linking you to this crime?

5 A Nothing.

6 Q You believe Ms. Wiygul should have hammered home on
7 that matter?

8 A Can you repeat that, please.

9 Q Do you believe that she should have brought this to
10 the jury?

11 A Yes, sir.

12 Q And you believe you were prejudiced by her not doing
13 that?

14 A That's correct.

15 Q And I think, previously testified that you would have
16 presented a defense, you would have testified but for the
17 -- from Ms. Wiygul about your criminal record. Is that
18 correct?

19 A That's correct.

20 Q And I know there was a lot of talk yesterday about
21 the trial. And, again, you didn't realize that the ten
22 year nonviolent offer for everything in the Eighth
23 Circuit, is it your position that you didn't realize that
24 until after this Laurens County jury trial?

25 A She told me it was for one charge. That is when it

1 came out, the ten years for everything. She didn't give
2 me the right information. What she told me that, she told
3 me that she had a misunderstanding.

4 Q Is it your position that you didn't understand that
5 the State had offered you ten years nonviolent to wrap up
6 everything in the Eighth Judicial Circuit?

7 A Yes, sir.

8 Q And, Maurice, are you asking His Honor to grant you a
9 new trial?

10 A Yes, sir.

11 Q Okay. And you understand that if His Honor grants
12 you a new trial that you go back to the Laurens County
13 jail with no bond?

14 A Yes, sir.

15 Q And he put, His Honor would put you back where you
16 were before this trial ever happened.

17 A Yes, sir.

18 Q If he grants your PCR relief you go back to the time
19 you were at the time of the jury trial. Do you understand
20 that?

21 A Yes, sir.

22 Q And that was the Laurens County jail?

23 A Yes, sir.

24 Q That was with no bond?

25 A Yes, sir.

1 Q And, again, you understand that what His Honor does,
2 good, bad or ugly, you understand that puts you back, your
3 LWOP you have got here. Do you understand that?

4 A Yes, sir.

5 Q It could help it, it could hurt it. Do you
6 understand that?

7 A Yes, sir.

8 Q And none of us can foresee the future, can we?

9 A Yes, sir.

10 Q You can't foresee the future, can you?

11 A No, sir.

12 Q But you still want His Honor to grant you PCR relief?

13 A Yes, sir.

14 MR. HENDERSON: Your Honor, I don't have any further
15 questions.

16 THE COURT: Is the Attorney General ready?

17 MS. SCHILL: Yes sir, just a couple of brief
18 questions.

19 CROSS-EXAMINATION

20 By Ms. Schill:

21 Q Mr. Odom, you believe you said before that you had
22 several attorneys before Ms. Wiygul with respect to your
23 Laurens County case. Is that correct?

24 A Yes, ma'am.

25 Q What happened with your prior attorneys?

1 A I never really had a permanent attorney. It was
2 people they just gave me. And when he transferred me from
3 Newberry County after the first year, I think, after the
4 first year, they tried, they just gave me an attorney.
5 And I think they gave me another one -- I think and so
6 they ended up giving me another one. Because they said I
7 got to have an attorney here, I have got to have one.
8 Why, I don't know. I was just sitting in the County jail
9 without an attorney.

10 Q I think you are mixing up your Newberry and your
11 Laurens. Let's talk about your Laurens. Did you ever
12 file any motions to relieve your counsel in your Laurens
13 case?

14 A Yes, I did.

15 Q Okay. What was the basis for those motions?

16 A Excuse me?

17 Q What was the basis for those motions?

18 A Not, I think because, if I recall correctly, I think
19 because they wasn't coming to see me, they wasn't coming
20 to see me. They wouldn't tell me anything.

21 Q But you filed your one motion to relieve counsel. Am
22 I correct assuming that for every attorney you had prior
23 to Ms. Wiygul, you had filed a motion to relieve counsel?

24 A They were several of my attorneys. Which attorney
25 are you speaking about?

1 Q On Page 37, Mr. Mowry says, Ms. Wiygul is at least
2 the fifth attorney that I have dealt with in regard to Mr.
3 Odom. And then he mentions Jerry Spring, Tom Broadwater,
4 Tara Waters and Chelsea McNeill.

5 A Jerry Spring was never my attorney for Laurens or
6 Newberry. He was an attorney for a whole another county,
7 that has nothing to do with this Circuit right here. I
8 think, if I am not mistaken and I think the Waters, I
9 don't know if that was a conflict of interest.

10 Q Do you recall approximately how many motions you had
11 filed to relieve attorneys for this particular Laurens
12 case?

13 A Say that again, please.

14 Q Do you recall how many motions to relieve counsel you
15 filed with respect to this particular case in Laurens
16 County?

17 A No, I don't.

18 Q But you do recall filing at least one motion to
19 relieve?

20 A Yes.

21 Q You say it was more than one?

22 A I really don't remember. I know I did file one, I
23 know definitely I filed one. I remember filing something.
24 I really, I don't know.

25 Q Okay. And did I hear Ms. Wiygul correctly in that

1 your version of the case was that Mr. Mixon stole your car
2 to commit the crime. Is that fair?

3 A I wouldn't say he stole it because he got, I keep my
4 keys inside, and he had used my car before. He got my car
5 before, he got it.

6 Q Okay. So in other words though, you never contested
7 owning the car that was found at the scene? You don't
8 contest owning the car that links you to the crime?

9 MR. HENDERSON: The Solicitor is getting into
10 something through the backdoor that trial counsel
11 inadvertently led him through the front door during trial.
12 Is whether or not counsel was effective or anything in
13 allowing that piece of evidence, i.e. North Carolina DMV
14 document into evidence. He is sitting here saying, this
15 is my car today, is totally irrelevant.

16 MS. SCHILL: It is not irrelevant because he is
17 arguing, when he is arguing that Wiygul should have
18 brought in a DMV person to contest the document that
19 states he owns the car. It matters, in fact, that he owns
20 the car because Ms. Wiygul testified that had she got, had
21 she brought someone from the DMV, based on her
22 conversations the DMV would have verified, in fact, that
23 he owned the car. That is why she didn't call a DMV
24 person. That would have been an extra unnecessary step.

25 MR. HENDERSON: Your Honor, if I may please, going

1 back to the, my ninth allegation. I believe that the
2 Attorney General is misunderstanding what my argument is.
3 I am not objecting to the introduction of this document in
4 demanding that the State bring in the proper records
5 custodian. Ms. Wiygul basically waived her right to
6 cross-examine that employee for the North Carolina
7 Department of Motor Vehicles. It would have been
8 malpractice for Ms. Wiygul to call a witness from DMV.
9 That is not what I am arguing at all. Her letting that
10 document in and she made it too easy for the State to
11 impeach my client, Your Honor. I want to make sure I am
12 not arguing that Ms. Wiygul should have called anybody to
13 get this document in.

14 THE COURT: Okay. I think I understand Mr.
15 Henderson's position which is, summarize. The State has
16 the burden of proof in a criminal trial. They have to
17 prove everything that establishes their case against the
18 Defendant beyond a reasonable doubt. And I believe that
19 Mr. Henderson's argument is that, trial counsel just let
20 them have it and let them have it to what he contends to
21 be in an improper manner thus she should have objected to
22 something that should not have been admitted. And by her
23 not objecting to it she is, she lessened the State's
24 burden of proof in a criminal case.

25 MR. HENDERSON: I couldn't have said it better

1 myself, Your Honor.

2 THE COURT: I am sure that you could have but you are
3 very nice to say that. Anyway, so I think I understand
4 his position. So I don't think the witness' response in
5 today's hearing in 2021, does he contest he owns a car or
6 not is really -- the PCR.

7 MS. SCHILL: Okay. I will move on. I think that is
8 all the questions I have, Your Honor.

9 THE COURT: Okay. Mr. Henderson, do you have
10 anything else for the witness?

11 MR. HENDERSON: No sir, Your Honor.

12 THE COURT: All right. Do we have another witness?

13 MR. HENDERSON: For Mr. Odom, no sir. The Applicant
14 rest, Your Honor.

15 THE COURT: Okay. Is the State going to present
16 another witness?

17 MS. SCHILL: Yes, Your Honor. The State would call
18 Mr. Dale Scott.

19 THE COURT: We will take a short break.

20 (Whereupon, a short break was taken.)

21 THE COURT: Okay. Ms. Schill.

22 MS. SCHILL: The State calls Mr. Dale Scott.

23 Dale Scott, being
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 By Ms. Schill:

2 Q Ms. Scott, were you one of the Solicitor's who
3 prosecuted Mr. Odom's case in Laurens County, that is the
4 subject of this PCR?

5 A This is going to sound silly but I think so, was my
6 name in the transcript?

7 Q Yes, it was.

8 A I remember Mowry, I believe he was the lead
9 prosecutor but I must have had some involvement.

10 Q And I will first draw your attention to the order for
11 phone records and cell phone towers that I had sent you,
12 one of the Applicant's exhibit's. I am not sure exactly
13 the Exhibit number.

14 A I saw it.

15 Q Okay. I guess we will start out, have you seen that
16 order prior to this PCR matter or the, either of Mr.
17 Odom's PCR matters?

18 A I don't recall it. I reviewed it during lunch today.
19 I have no independent recollection of it.

20 Q Okay. So do you know if anything, if any cell phone
21 records were ordered pursuant to this order?

22 A I don't. I don't recall ever seeing any results from
23 any kind of cell phone search. If that answers the
24 question.

25 Q Okay. Is that something, is there, is it possible

1 that Mr. Mowry had ordered anything pursuant to the order
2 and you wouldn't know about it?

3 A Possible. The order I saw was a Newberry order. Is
4 that the one you are referring to?

5 Q Yes, that was my next question. I guess you kind of
6 answered the question. Does the caption of the order say
7 Laurens or is it a different County?

8 A I don't have it in front of me. But I know Robert
9 Dennis was, at the time he was the Captain at the Sheriffs
10 Department, he is now a Major there. I saw Judge Griffith
11 signed off on it, he was a Newberry Judge at the time,
12 primarily in Newberry. Let me pull my email. Those make
13 me believe it was a Newberry order, I really didn't look
14 at the caption, let me take a look at it real quick.
15 Okay, yes. County of Newberry, so yes, this would have
16 been a Newberry order.

17 Q And while you are looking at the document, do you see
18 a file stamp on the order, indicating it was filed with
19 the Court?

20 A I don't. I am looking at one Laura Saunders sent me,
21 imagine y'all are looking at the same one. Mine does not
22 have a Clerk's stamp on it. Can I add something?

23 Q Sure.

24 A Thinking about this case, was very well the way it
25 happened is, my recollection is the Newberry burglary

1 happened first, right. All they knew at the time was, I
2 believe two black males. Because if I recall the MO was
3 for a smash, smashed a window, go in and get all the
4 cigarette boxes you could. I believe within a month the
5 Clinton City burglary happened. And you referenced the
6 car, they did get a description of a car at the scene that
7 did link back up to Mr. Odom and it was the same MO at the
8 Clinton City burglary. So it is possible that this order
9 was out there and then after they were able to link Mr.
10 Odom to a crime that is very much mirrored the Newberry
11 crime and other crimes all over this area, perhaps at that
12 time the telephone cell tower location records potentially
13 fell to the wayside. I wouldn't call it speculation but
14 that very well may have been what happened because I do
15 believe I would have some recollection if there had been
16 results garnered from this order as far as cell site
17 location. Does that make sense. I hate to speculate, in
18 my mind that seems like something that very well could
19 have happened.

20 Q Okay. I think that makes sense. I guess just sort
21 of go off and what we had done in the Newberry PCR case,
22 would you be amenable to looking at your Solicitor's file
23 again to see if there is any documentation or response or
24 any sort of thing related to this order?

25 A Yes. I have done that. We have since got a new case

1 management system so I had a portion of the file scanned
2 into our system. I did not locate that order during my
3 look through it, what we had digitally. What I could also
4 do though is contact Greenwood, I am in Newberry right
5 now, but Greenwood is our kind of, I guess, base for our
6 circuit where we keep our files, paper files and see if
7 they can look through what we have over there in storage
8 and see if they can locate it. And I will check on that.

9 Q Okay. Let's move onto the search warrant Exhibit.
10 Sorry, I am not sure what Exhibit number it is, a search
11 warrant for Mr. Odom's -- do you recall a search warrant
12 in Mr. Odom's Laurens case being executed?

13 A I listened to Mr. Odom testify earlier. It sounds
14 right, but I don't recall it independently, but I don't
15 remember finding any incriminating evidence in his house,
16 I don't remember anything about that.

17 Q Okay. Had you received any evidence pursuant to the
18 search warrant would you provide it to Defense counsel?

19 A Oh, certainly. Let me add this and y'all stop me if
20 this is objectionable, obviously. But we got information
21 from the codefendant that the MO, they would steal these
22 cartons of cigarettes and immediately take them to New
23 York to sell at --

24 MR. HENDERSON: Your Honor, I have an objection.

25 A -- so we wouldn't expect to find --

1 THE COURT: There is an objection.

2 MR. HENDERSON: Your Honor, MO is irrelevant. We are
3 here for the Newberry PCR. You know, the Solicitor has
4 testified that nothing was found pursuant to this search
5 warrant. The fact that any other MO is just irrelevant as
6 to whether or not Ms. Wiygul was ineffective during this
7 trial.

8 THE COURT: Madam Attorney General, do you agree with
9 that?

10 MS. SCHILL: Sorry, Your Honor. For the purpose of
11 the search warrant, counsel was allegedly ineffective, I
12 can move on. Okay.

13 Q Do you recall Mr. Odom having several attorneys prior
14 to Ms. Wiygul?

15 A Yes. He had at least five of them, he had five in
16 Newberry and five in Laurens.

17 Q I know Mr. Odom's memory was a little, he referenced
18 certain things. Do you recall what the issues were with
19 his other prior attorneys?

20 A I don't, I don't recall. I know that is one of the
21 reasons we couldn't get him tried or couldn't get him
22 resolved quicker was because every time we turned around
23 there was a new attorney to deal with and we had to start
24 back over from square one.

25 Q Also, you may not remember this and its okay if you

1 don't. But do you recall Judge Hocker giving the jury a
2 charge regarding the fact that Mr. Odom didn't testify at
3 trial and instructing the jury to, that they must
4 disregard the fact that Mr. Odom did not testify at trial?

5 A Not in this specific case. I have tried a lot of
6 cases with Judge Hocker and he routinely does that, that
7 is his practice in every trial I have ever done with him
8 that I can recall.

9 Q Okay. And just --

10 MR. HENDERSON: Your Honor, you called this a
11 qualified objection, I guess. We are not here for what
12 Judge Hocker does with his charge. We are here for what
13 Ms. Wiygul allegedly did not do to objection wise during
14 the Solicitor's closing. I want to make sure we stay on
15 point.

16 THE COURT: Okay. You are noted for the record.

17 MS. SCHILL: Your Honor, on page 359 on the trial
18 transcript, just for that purpose.

19 I think that is all the direct questions I have.

20 Q Mr. Scott, is there anything else you feel a need to
21 tell the Court?

22 A No, I don't think anything comes to mind.

23 THE COURT: We will let Mr. Henderson ask you
24 questions. Yes sir, Mr. Henderson.

25 MR. HENDERSON: Very briefly, Your Honor.

CROSS-EXAMINATION

1
2 By Mr. Henderson:

3 Q Solicitor, how are you today, sir?

4 A I am good, thank you.

5 Q I am looking at this cell phone order, that is
6 Petitioner's exhibit number 8. And you will see in the
7 text of the order that it references other, Newberry
8 County burglary and other burglaries in Laurens County?

9 A Yes, I see that.

10 Q And if you look down, do you see where two phone
11 numbers are listed at?

12 A I see that.

13 Q And there is a paragraph right below the phone number
14 on one of the time periods that is being asked for, is
15 11/11/2001 at 24:00 hours, to 11/11/2001 at 05:00 hours.
16 Did I read that correctly?

17 A Just to repeat. Here is what I am reading. November
18 11, 2011, 24:00 hours; to November 11, 2011, 05:00 hours,
19 5:00 a.m.

20 Q Right. Basically midnight to 5:00 a.m., correct?

21 A Yes.

22 Q And I will represent to you and I think you would
23 agree that the burglary that Mr. Odom was convicted of
24 happened during that five hour span?

25 A I don't have the incident report in front of me but

1 certainly you guys are a little bit at an advantage to me,
2 but that sounds about right. I know it was at night time.

3 Q I will represent to you, that's the time that the
4 burglary happened.

5 A Okay. I will accept that.

6 Q And whenever this order was signed, law enforcement
7 knew, they knew Mr. Odom's name and also the fact that he
8 was a suspect in a particular Laurens County burglary, you
9 would agree with that?

10 A What they are looking for is somebody named, Maurice
11 Odom or Horace Franklin Odom of Barnwell County.

12 Q Okay. And you would agree that my client here today
13 is Maurice Odom?

14 A That is how I know him, I don't know who Horace
15 Franklin Odom is.

16 Q I don't either. So I have Maurice Odom. I think you
17 said you were going to look, get with Greenwood here at
18 the main office to look for any responses to that cell
19 phone order?

20 A I will do what I can, yes sir.

21 Q Do you mind reaching out to the Newberry County
22 Sheriffs Department to see what they may have in their
23 archives in response to this order?

24 A I did that today.

25 Q Are they looking?

1 A Yes and I said, they had no independent recollection
2 either. I sent them a copy of this order and they don't
3 recall any results either. He was reminding me of the
4 facts, that is kind of what led to my earlier, you know,
5 what I call, you know, educated speculation that the
6 reason why there might not have been any results.

7 Q Who did you talk to at the Sheriffs office?

8 A Robert Dennis.

9 Q Who would be -- on the order, correct?

10 A That's right.

11 Q When was, when will Officer Dennis get back with you?

12 A I was talking with him on the phone just a minute ago
13 while I was on mute. He is going to continue to look. I
14 will stay on him about it.

15 Q And you will report back to the Attorney General when
16 he finds something or doesn't find something?

17 A Can I ask you something. I will, I will. Can I ask
18 you something, Henderson?

19 Q Yes, sir.

20 A And I am trying, what I am trying to do is rack my
21 brain around the issue. What specifically is the issue
22 surrounding this order. I am lost with that. What are
23 you alleging?

24 Q I just want to see whether or not there were any
25 responses to the order.

1 A Okay. That is what I thought. You just want to know
2 if we got any kind of cell site location information in
3 response to that order.

4 Q Correct. Good, bad or ugly; correct?

5 A I have got you. I feel like I could say convoluted,
6 I have never seen anything like that. Because if it had
7 of put him in Barnwell I would never have pursued any
8 charges against him. If it would have put him at the
9 scene I would have hammered that in front of a jury. Does
10 that make sense?

11 Q It does make sense.

12 A Okay.

13 Q I don't have anything further, Your Honor.

14 THE COURT: Any redirect limited to what he went
15 into?

16 MS. SCHILL: I don't think so, Your Honor.

17 THE COURT: Okay. Well, Mr. Scott, thank you for
18 showing up today.

19 MR. SCOTT: Thank you.

20 THE COURT: Any reason why Mr. Scott could not be
21 excused to go on to bigger and better things?

22 MS. SCHILL: No, Your Honor.

23 THE COURT: You may go on to bigger and better
24 things, Mr. Scott.

25 MR. SCOTT: Thank you, everyone.

1 THE COURT: Yes sir, thank you. Does the State have
2 any other witness?

3 MS. SCHILL: No, Your Honor. The State rests.

4 THE COURT: And, Mr. Henderson, do you have anything
5 in reply?

6 MR. HENDERSON: No reply, rebuttal, Your Honor, none.

7 THE COURT: Okay. Well, Mr. Odom, it has been a
8 pleasure meeting you. I would ask if you would stay in
9 touch with your lawyer. I have to take the matter under
10 advisement. And he will advise as to when a decision is
11 made. If you have any questions about anything that we
12 have done or I need to provide with any other information
13 just reach out to your lawyer and he will be available to
14 receive your questions or provide your answers. Mr. Odom,
15 thank you very much. It has been a pleasure. And I
16 believe that concludes our PCR's for today.

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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21
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25

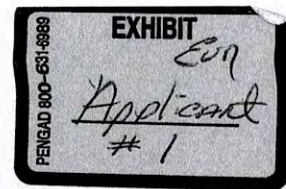
1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Laurens, South
14 Carolina on the 26th and 27th days of January, 2021.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
18

19 May 22, 2022

20 *Joy E. Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25



590

State vs. Maurice
ODOM

2012 GS 30-311, -314 &
-317

June 10, 11, 2014

A TRUE COPY OF ORIGINAL
K. Michelle Simmons
K. Michelle Simmons
Laurens County CCCP & GS

COURT OF COMMON PLEAS AND GENERAL SESSIONS
EXHIBIT RECORD AND RECEIPT FORM



PLAINTIFF State of South Carolina DEFENDANT Maurice Ordum
ATTORNEY Warren Mowery ATTORNEY Elizabeth P. Wiggel
CASE NO. 2012-GS-30-311, 314, 317 JUDGE Donald Hocker
DATE STARTED 6/9/14 COURT REPORTER Stacy S. Johnson
DATE ENDED _____

PLAINTIFF'S EXHIBITS

DEFENDANT'S EXHIBITS

1. Enlarged aerial photograph
2. Photo
3. Photo
4. Photo
5. Photo
6. Photo
7. Photo
8. Photo
9. Photo
10. Photo
11. Photo
12. Photo
13. Photo
14. Photo
15. Photo
16. Photo
17. Photo
18. Photo
19. Photo
20. Photo

1. None
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. Courts Exhibits
11. Juror note
12. Prior convictions
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____

TRUE COPY OF ORIGINAL

K. Michelle Simmons
Laurens County CCCP & GS

Stacy S. Johnson
Court Reporter

Lynne W. Lancaster
Clerk of Court

COURT OF COMMON PLEAS AND GENERAL SESSIONS

EXHIBIT RECORD AND RECEIPT FORM

PLAINTIFF State of South Carolina DEFENDANT Maurice Odom
 ATTORNEY Warren Mowery ATTORNEY Elizabeth P. Wiggall
2012-65-30-311, 314, 317
 CASE NO. _____ JUDGE Donald Hochar
 DATE STARTED 6/9/14 COURT REPORTER Stacy S Johnson
 DATE ENDED _____

PLAINTIFF'S EXHIBITS

21. Photo
22. Photo
23. Photo
24. Photo
25. Photo
26. Photo
27. Photo
28. Photo
29. Photo
30. Photo
31. DVD
32. Rock
33. Inventory
34. Inventory
35. Paper bag
36. Paper bag
37. Paper bag
38. NCIC printout
39. Driver record
40. Advisement of Rights

DEFENDANT'S EXHIBITS

1. _____
2. _____
3. _____
4. _____
5. _____
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K. Michelle Simmons
 Clerk of Court
 Laurens County CCP & GS

Stacy S Johnson
 Court Reporter

Lynn W. Rancaster
 Clerk of Court



3 YEAR DRIVER RECORD



Customer No: 32587899	Driver License No: [REDACTED]
Name: MIXON, CHRISTEPHOR LAMAR	
Address: [REDACTED] PATTERSON MILL RD	
City: BARNWELL	State: SC
County: BARNWELL	Zip: 298126508
DOB: [REDACTED] 1990	Sex: M
	Driver Training: N
Status - DL: NO SUSPENSION	CDL: NO DISQUALIFICATION

Point Summary

Total Current Points:	0
Driver Credit:	-0
Adjusted Current Points:	0

End of Report

--[Response: CDM00001 -]--

594
T594LNPD001 85000 20111111 05:43:15 0008395370
FROM: NLETS 16339793 20111111 05:43:15 1F3F01A039
RR.NCDCI0000
03:40 11/11/2011 86879
03:40 11/11/2011 11982 SC0300200
*1F3F01A039
TXT

N.C. VEHICLE REGISTRATION SYSTEM

RESPONSE BASED ON:

PLATE NO: YEAR: LICENSE: TAGS:

ATTENTION:

VEHICLE DETAIL RESPONSE

VIN: TITLE NO: PURCHASE DATE: 04/06/2011

CUSTOMER ID: 20479546 DOB: HANDICAP PLACARD
MAURICE ANTHONY FROM PLACARD STATUS
WILSHIRE CHRD TAX COUNTY: NEW HANCOCK
APT WILMINGTON NC 28403-4261 ELT STATUS: ACTIVE

CURRENT PLATE NO: WGT: ISSUE DT: 07/05/2011 VALID THRU: 07/05/2017
INS CO: STANDARD FIRE INSURANCE CO POLICY: 9894727021011

*END OF MESSAGE



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K. Michelle Simmons
K. Michelle Simmons
Laurens County CCCP & GS





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K. Michelle Simmons
 K. Michelle Simmons
 Laurens County CCCP & GS

3 YEAR DRIVER RECORD



Customer No: 24898498 Driver License No: [REDACTED]
 Name: ODOM, MAURICE ANTHONY
 Address: [REDACTED] CANNA ST
 City: BARNWELL State: SC Zip: 298122830
 County: BARNWELL
 DOB: [REDACTED] 1975 Sex: M Driver Training: N
 Status - DL: NO SUSPENSION CDL: NO DISQUALIFICATION

License Information

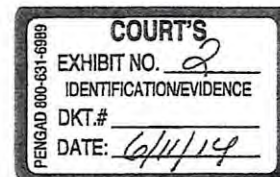
Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
Current							
DL	D	Duplicate	05/17/2011	02/15/2018	07/18/2003	N	N
Prior							
DL	D	Renewal	02/19/2008	02/15/2018	07/18/2003	N	N
DL	D	Duplicate	09/19/2008	02/15/2018	07/18/2003	N	N
DL	D	Duplicate	08/06/2003	02/15/2008	07/18/2003	N	N
DL	D	Duplicate	10/23/2007	02/15/2008	07/18/2003	N	N
DL	D	Modify	12/12/2005	02/15/2008	07/18/2003	N	N
DL	D	BP to DL	07/18/2003	02/15/2008	07/18/2003	N	N
BP	D	Returned	10/31/2002	10/31/2003	10/31/2002	N	N
BP	D	Original	10/31/2002	10/31/2003	10/31/2002	N	N

Point Summary

Total Current Points: 3
 Driver Credit: -0
 Adjusted Current Points: 3

VIOL: 421 - Speeding 10-mph or less
 Violation: 02/23/2011 Conviction: 04/04/2011
 ACD: S51 Conviction Loc Ref:
 Conviction State: SC

Ticket#: 77675FB
 Recd: 05/04/2011 Post: 05/25/2011
 Conviction Reference:
 Court Type: MUN
 Violation Points: 2 Current Points: 2

26
Pages
[Barnwell County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

The State of South Carolina VS Maurice A Odom

Case Number:	D176389	Court Agency:	General Sessions	Filed Date:	05/13/1992
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Peeples, Rodney A.	Disposition Judge:	Peeples, Rodney A.
Disposition:	Pled Guilty				
Disposition Date:	05/18/1992	Date Received:	02/24/1992	Arrest Date:	02/24/1992
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	1992GS0600070	Waiver Date:	
Probation Case:					

ORIGINAL
K. Michelle Simmons
Laurens County CCCP & GS

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Barbara R Morgan					Solicitor		
Brenda, Wingard					Court Reporter		
Morgan, Barbara R.	Attorney at Law 341 Dupree Pl. Aiken SC 29801				Defendant Attorney		
☒ Odom, Maurice A	Po Box 252 Blackville SC 298170000	Black	M	1975	Defendant		
☒ Perry, Bruce Harris	Attorney at Law 212 Ridge Hill Rd. Mechanicsburg PA 17050				Defendant Attorney		

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Odom, Maurice A	0081-Burglary / Burglary (After 06/20/85) - Third degree (no longer used) (see 0427, 0428)	0082-Burglary / Burglary and grand larceny - Third degree (no longer used)(see 0427, 0428, 0478, 0479)	05/18/1992

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	REST 405.00/100.00 PER MOS						
	5YRS SUSP 10MOS/30MOS PROB						
	30DYS AFTER RELEASE/GED						

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Odom, Maurice A	Restitution/Probation	Filing		05/13/1992-00:00		

Financials**Summary**

Fine/Costs:	\$416.85	Total Paid for fine/costs:	\$10.00	Balance Due:	\$406.85
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Collection Fee for Converted Cases	CFEECC	\$11.85		\$0.00
Restitution	RESTIT	\$405.00		\$10.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
02/25/1993	129503	LB	PY	\$10.00

SENTENCE

STATE OF SOUTH CAROLINA }
COUNTY OF BARNWELL }

CASE NO. 92-GS-06-70
TICKET/WARRANT NO. D-176389
TICKET/WARRANT NO. _____

The defendant Maurice A. Odom, is committed to the State Dept. of Corrections/Barnwell County Detention Center for a term of 5 ~~days/months~~/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of 10 ~~days/months~~/years and/or payment of \$ _____ plus pay/waive costs and assessments as applicable*; the balance suspended with probation for 30 months/~~years~~. Special conditions: urinalysis at random every _____ days during first _____ months; must perform _____ days/hours, 8 hours per day, community service for _____ with _____ in charge in lieu of jail; must attend and complete ASAP within _____ months. MUST obtain I.E.S.

☒ Find indigent - waive fees for Probation and ASAP

**Restitution (YES/NO) in the amount of \$ 405 to be paid in equal consecutive ~~weekly~~/monthly payments of \$ 100 beginning 30 days after release to Clerk of Court for _____ (victim)

Allowed to serve sentence on weekends beginning _____ at _____ A.M. until _____ P.M.

Date: 5/18/92

R. D. A. People
Presiding/Resident Judge - Second Judicial Circuit

*Fine \$ _____
Law Enforcement/Hall of Fame \$ _____
Solicitors/Appellate Defense \$ _____
Community Corrections Assessment/Waive-Indigent \$ _____
25% of Fine or \$14.00 \$ _____
BA Test, if applicable \$ _____
Total Fines and Costs \$ _____

PRIOR RECORD — NONE

DATE OFFENSE SENTENCE

NONE

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County,

South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

Rhonda D. McElveen
Clerk of Court, Barnwell County, SC

By: SR Date: 6-6-94

Paid in full, _____

To be paid in full by _____

To be paid in equal, consecutive weekly/monthly payments of \$ _____ beginning _____ until _____ paid in full as condition of probation.

**Pay to Victims' Compensation Fund if subrogated.

FOUND GUILTY _____ OF:]

PLEAD _____ TO:]

CONCURRENT _____

CONSECUTIVE _____

Clerk of Court/Deputy Clerk

Age: 17 S.S. No. _____

M ☒ F _____ Married _____ Single ☒ Divorced _____

Date of birth: 75

Attorney/Public Defender B. Perry

599

WITNESSES

KENNETH DYCHES, BLACKVILLE PD

ARREST WARRANT NO. D-176389

082 16-11-313

ACTION OF GRAND JURY

*True Bill**Calvin W. Roberts 5/18/92*
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 92-GS-06-70

The State of South Carolina,

County of BARNWELL

COURT OF GENERAL SESSIONS

May 18th TERM 1992

THE STATE

vs.

MAURICE A. ODOM

COUNT 1-BURG. IN THE THIRD DEGREE

COUNT 2-GRAND LARCENY *AR*Indictment for
Larceny

AND

BURG. IN THE THIRD DEGREE

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELLI, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.By: *Rhonda D. McElveen*
Clerk of Court, Barnwell County, SCDate: 6-6-14*Barnwell County, S. C. May 18 1992**Maurice A. Odom* appear in my own proper person
and plead guilty to ~~the~~ within indictment. Burglary 3rd

Attest:

C. C. C. P. & G. S.

19

600



Barnwell County Second Judicial Circuit Public Index



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Switch View

The State of South Carolina VS Maurice Odom

Case Number:	D941210	Court Agency:	General Sessions	Filed Date:	09/17/1993
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Brown, Luke N. Jr.	Disposition Judge:	Brown, Luke N. Jr.
Disposition:	Pled Guilty				
Disposition Date:	11/01/1993	Date Received:	09/17/1993	Arrest Date:	09/17/1993
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	1993GS0600235	Waiver Date:	
Probation Case:					

Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Morgan, Barbara R.	Attorney at Law 341 Dupree Pl. Aiken SC 29801				Plaintiff Attorney		
Morgan, Barbara					Solicitor		
☒ Odom, Maurice	Po Box 252 Blackville SC 298170000	Black	M	1975	Defendant		

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Odom, Maurice	0080-Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree	0080-Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree	11/01/1993

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	YOA 5(C)-NOT TO EXCEED THAT						
	PROVIDED BY LAW. PAY RESTITUTI						
	OF \$2000						

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Odom, Maurice	Restitution/Probation	Filing		09/17/1993-00:00		

Financials**Summary**

Fine/Costs:	\$2,060.00	Total Paid for fine/costs:	\$0.00	Balance Due:	\$2,060.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Restitution	RESTIT	\$2,000.00		\$0.00
Collection Fee for Converted Cases	CFEECC	\$60.00		\$0.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
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None

SENTENCE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)

CASE NO. 93 -GS-06-235
 TICKET/WARRANT NO. D94210
 TICKET/WARRANT NO. Burg 2nd

The defendant, Maurice Odom, is committed to the State Dept. of Corrections / Barnwell County Detention Center for a term of 905(c) not to exceed that provided for days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus pay/waive costs and assessments as applicable*; the balance suspended with probation for _____ months; must perform _____ days/hours, 8 hours per day, community service for _____ with _____ in charge in lieu of jail; must attend and complete ASAP within _____ months.

Find indigent - waive fees for Probation and ASAP Random Urinalysis - Days
 **Restitution (YES/NO) in the amount of \$ 2000 to be paid in equal consecutive weekly/monthly payments of \$ _____ beginning _____ to Clerk of Court for _____

Allowed to serve sentence on weekends beginning _____ at _____ A.M. until _____ P.M.

Date: Nov. 1, 1993

Rubel B...
 Presiding/Resident Judge - Second Judicial Circuit

* Fine \$ _____
 Law Enforcement/Hall of Fame \$ _____
 Solicitors/Attorney Gen. Office \$ _____
 Community Corrections
 Assessment/Waive-Indigent \$ _____
 25% Of Fine Or \$50.00 Whichever is Greater \$ _____
 BA Test, if applicable \$ _____
 IDF 10% Of Fine Up To \$500.00 \$ _____
 (On Offenses After July 1, 1993)
 Total On Fines And Costs \$ _____
 To be paid in full by _____ Pd in full _____
 To be paid equal, consecutive weekly/monthly payments of \$ _____ beginning _____ until _____ paid in full as condition of probation.

**Pay to Victims' Compensation Fund if subrogated.
 FOUND GUILTY _____ OF:)

PLEAD _____ TO:)
 CONCURRENT _____
 CONSECUTIVE ✓

PRIOR RECORD - NONE

DATE	OFFENSE	SENTENCE
2/24/92	Burg 3 rd /6/L	5 yrs 10m 30m prob \$405 rest.

STATE OF SOUTH CAROLINA
 COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

By: SR Date: 6-6-14

Clerk of Court/Deputy Clerk

Age: 18 S.S. No. _____
 M X F _____ Married _____ Single X Divorced _____
 Date of birth: 75
 Attorney/Public Defender J Early

WHITE - CLERK OF COURT
 CANARY - DETENTION CENTER
 PINK - PROBATION

SENTENCE

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

CASE NO. 93 - GS-05 - 196
 TICKET/WARRANT NO. D090163
 TICKET/WARRANT NO. Burg 2nd

The defendant, Maurice Odom, is committed to the State Dept. of Corrections/Bamberg County Detention Center for a term of 405 (9) months days/months/years and/or to pay a fine of \$; provided the sentence be suspended upon the service of days/months/years and/or payment of \$ plus pay/waive costs and assessments as applicable*; the balance suspended with probation for months/years. Special conditions: urinalysis at random every days during first months; must perform days/hours, 8 hours per day, community service for with in charge in lieu of jail; must attend and complete ASAP within months.

Find indigent - waive fees for Probation and ASAP

**Restitution (YES/NO) in the amount of \$ 2000 to be paid in equal consecutive weekly/monthly payments of \$ beginning to Clerk of Court for (victim)

Allowed to serve sentence on weekends beginning at A.M. until P.M.

Date: Nov. 1, 1993

Presiding/Resident Judge - Second Judicial Circuit

*Fine \$Law Enforcement/Hall of Fame \$Solicitors/Appellate Defense \$Community Corrections \$Assessment/Waive-Indigent \$25% of Fine or \$50.00 (whichever is greater) \$BA Test, if applicable \$IDF 10% of Fine up to \$500.00 \$

(On Offenses After July 1, 1993)

Total Fines and Costs \$Paid in full To be paid in full by . Pd. in full

To be paid in equal, consecutive weekly/monthly payments of

\$ beginning until

paid in full as condition of probation.

**Pay to Victims' Compensation Fund if subrogated.

FOUND GUILTY OF:]

]

PLEAD

TO:]

CONCURRENT CONSECUTIVE

PRIOR RECORD — NONE

DATE	OFFENSE	SENTENCE
2/24/92	Burg 3rd/G/L	54 SS 10m, 30m pr \$405 rest

Clerk of Court/Deputy Clerk

Age: 18 S.S. No. M X F Married Single X Divorced Date of Birth: Attorney/Public Defender J. Early

A TRUE COPY

Attest

J. B. Hein
 CLERK OF COURT
 BAMBERG COUNTY, SC

A TRUE COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BAMBERG)

INDICTMENT FOR BURGLARY.....
 (BUILDING)

Attest J. B. Hein
 CLERK OF COURT
 BAMBERG COUNTY, SC

At a Court of General Sessions, convened on November 1, 1993,
 the Grand Jurors of Bamberg County present upon their oath:

COUNT ONE — BURGLARY IN THE SECOND DEGREE

(BUILDING)

That Maurice Odom
 did in Bamberg County on or about August 29, 1993,
 willfully and unlawfully enter without consent and with the intent to commit a crime therein, a building,
 to wit: a building belonging to W.E. Brooker, located on South Palmetto Ave.,
Denmark, S.C.
 and the defendant did enter during the nighttime hours

COUNT TWO — BURGLARY IN THE THIRD DEGREE

(BUILDING)

That _____
 did in _____ County on or about _____,
 willfully and unlawfully enter without consent and with intent to commit a crime therein a building,
 to wit: _____

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

for Debra Morgan
 BARBARA R. MORGAN
 SOLICITOR



Barnwell County Second Judicial Circuit Public Index



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Switch View

The State of South Carolina VS Maurice Odom

Case Number:	F162024	Court Agency:	General Sessions	Filed Date:	10/02/1996
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Brown, Luke N. Jr.	Disposition Judge:	Brown, Luke N. Jr.
Disposition:	Pled Guilty				
Disposition Date:	10/27/1997	Date Received:	10/02/1996	Arrest Date:	10/01/1996
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	1997GS0600035	Waiver Date:	
Probation Case:					

Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Barbara Morgan					Solicitor		
☒ Moore, E.	The Moore Firm, LLC P.O. Box 160 Barnwell SC 29812				Defendant Attorney		
Odom, Hakim	922 Oak Street Blackville SC 298170000	Black	M	1975	Alias		
☒ Odom, Maurice	922 Oak Street Blackville SC 298170000	Black	M	1975	Defendant		

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Odom, Maurice	0080-Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree	0080-Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree	10/27/1997

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	10 YEARS CONCURRENT						

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Odom, Maurice	Bond Comment To Notes Screen	Filing		05/14/2010-23:11	05/14/2010-23:11	
Odom, Maurice	Active - Non Probation	Filing		10/02/1996-00:00		

606

Financials**Summary**

Fine/Costs:	\$103.00	Total Paid for fine/costs:	\$0.00	Balance Due:	\$103.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Victim Conviction Surcharge \$100 / \$25	CVSRCH	\$100.00		\$0.00
Collection Fee for Converted Cases	CFEECC	\$3.00		\$0.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
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None

Bonds**Bond Information**

Bond Id	Set Date	Amend Date	Set By	Type	Amount	Type	Amount	Condition
1997GS0600035	10/02/1996			Surety Bond	\$0.00		\$0.00	

Post Information

Bond Id	Bond Type	Amount	Date Posted	Posted By
1997GS0600035	Surety Bond	\$0.00	07/15/2010	Odom, Maurice

SENTENCE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)

CASE NO. 97-GS-06-055
 TICKET/WARRANT NO. F/6 2024
 TICKET/WARRANT NO. Burg 2nd

The defendant Maurice Odom PNB, is committed to the State Dept. of Corrections/Barnwell County Detention Center for a term of 10 days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus pay/waive costs and assessments as applicable*; the balance suspended with probation for _____ months/years. Special conditions: urinalysis* at random every _____ days during first _____ months; must perform _____ days/hours, 8 hours per day, community service for _____ with _____ in charge in lieu of jail; must attend and complete ASAP within _____ months.

_____ Find indigent - waive fees for Probation and ASAP

**Restitution (YES/NO) in the amount of \$ _____ to be paid in equal consecutive weekly/monthly payments of \$ _____ beginning _____ to Clerk of Court for _____ (victim)

Allowed to serve sentence on weekends beginning _____ at _____ A.M. until _____ P.M.

Date: 10-17-17

Presiding/Resident Judge - Second Judicial Circuit

* Fine \$ _____
Conviction Surcharge 100.00
 62% \$ _____
 TOTAL \$ 100.00

PRIOR RECORD - NONE		
DATE	OFFENSE	SENTENCE
5-18-92	Burg 3	5y 5510m, 30m Prob.
9-12-93	Burg 2	40A

STATE OF SOUTH CAROLINA
 COUNTY OF BARNWELL
 I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.
Rhonda D. McElveen
 Clerk of Court, Barnwell County, SC
 By: SR Date: 10-10-14

CLERK OF COURT/DEPUTY CLERK

To be paid in full by _____. Pd in full _____
 To be paid equal, consecutive weekly/monthly payments of \$ _____ beginning _____ until _____ paid in full as condition of probation.

*Pay to Victims' Compensation Fund if subrogated.
 FOUND GUILTY _____ OF:)

PLEAD _____ TO:)
 CONCURRENT ☒
 CONSECUTIVE _____

Age: 21 S.S. No. _____
 M ☒ F _____ Married _____ Single ☒ Divorced _____
 Date of birth: 75
 Attorney/Public Defender T Weeks

WHITE - CLERK OF COURT
 CANARY - DETENTION CENTER
 PINK - PROBATION

WITNESSES

BLPD - Bamberg

ARREST WARRANT NO. F 162024

0080 \$16-11-312

ACTION OF GRAND JURY

True Bill

Brenda J. Odom 1/27/97
Foreman of Grand Jury

VERDICT

608

Foreman of Petit Jury

Date:

DOCKET NO. 97-GS-06-035

The State of South Carolina,

County of BARNWELL

COURT OF GENERAL SESSIONS

January 27 TERM 1997

THE STATE

vs.

MAURICE ODOM

Indictment for Burglary
(Building) non-volent

I, Maurice A. Odom
appear in my own proper person and plead Guilty to
the within indictment, Burglary 22 non-volent

Witness: Rhonda D. McElveen
10-27-97

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

By: Rhonda D. McElveen
Clerk of Court, Barnwell County, SC
Date: 10-27-97

AL2-PSEL731ED



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Switch View

The State of South Carolina VS Maurice Anthony Odom

Case Number:	D551015	Court Agency:	General Sessions	Filed Date:	07/31/1997
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Keesley, William P.	Disposition Judge:	Keesley, William P.
Disposition:	Pled Guilty				
Disposition Date:	08/12/2002	Date Received:	07/31/1997	Arrest Date:	07/31/1997
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	1997GS0600365	Waiver Date:	
Probation Case:					

Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Grant Gibbons					Solicitor		
☒ Koger, Joshua Jr					Defendant Attorney		
☒ Odom, Maurice Anthony	940 Oak Street Blackville SC 298170000	Black	M	1975	Defendant		

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Odom, Maurice Anthony	0397-Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second degree	0161-Sex / Criminal sexual conduct - Second degree	08/12/2002

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	10 YEARS CONCURRENT W/ YOA						
	REVOCATION CREDIT FOR 13MOS						
	5YRS. DEF IS TO BE GIVEN CREDI						
	FOR TIME FROM 10/27/97						

610

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Odom, Maurice Anthony	Case Restore Date GS	Filing		08/08/2002-00:00	08/08/2002-00:00	
Odom, Maurice Anthony	Active - Non Probation	Filing		07/31/1997-00:00		
Odom, Maurice Anthony	PCR IS REVERSED/PETIONER'S PLEA IS HEREBY VACATED 07/18/02	Filing				

Financials**Summary**

Fine/Costs:	\$103.00	Total Paid for fine/costs:	\$0.00	Balance Due:	\$103.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Victim Conviction Surcharge \$100 / \$25	CVSRCH	\$100.00		\$0.00
Collection Fee for Converted Cases	CFEECC	\$3.00		\$0.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
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None

SENTENCE

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

CASE NO. 97-GS-06-365
TICKET/WARRANT NO. FILE 3028
TICKET/WARRANT NO. Cont. Del. Minor
D 551015
CSC w/minor

The defendant Maurice Odom, is committed to the State Dept. of Corrections/Barnwell County Detention Center for a term of 10 days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus pay/waive costs and assessments as applicable*; the balance suspended with probation for _____ months/years. Special conditions: urinalysis at random every _____ days during first _____ months; must perform _____ days/hours, 8 hours per day, community service for _____ with _____ in charge in lieu of jail; must attend and complete ASAP within _____ months. Find indigent - waive fees for Probation and ASAP

**Restitution (YES/NO) in the amount of \$ _____ to be paid in equal consecutive weekly/monthly payments of \$ _____ beginning _____ to Clerk of Court for (victim) _____

Allowed to serve sentence on weekends beginning _____ at _____ A.M. until _____ P.M.

Date: 10-27-97

Presiding/Resident Judge - Second Judicial Circuit

* Fine _____ \$ _____
Conviction Surcharge 100.00
62% _____ \$ _____
TOTAL _____ \$ 100.00

CLERK OF COURT/DEPUTY CLERK

To be paid in full by _____ Pd in full _____
To be paid equal, consecutive weekly/monthly payments of \$ _____ beginning _____ until _____ paid in full as condition of probation.

**Pay to Victims' Compensation Fund if subrogated.
FOUND GUILTY _____ OF:)
PLEAD _____ TO:)
CONCURRENT _____
CONSECUTIVE _____

PRIOR RECORD - NONE
DATE OFFENSE SENTENCE
5-18-92 Burg 3 5y 5510m 30m Prob.
9-12-93 Burg 2 Yo A

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

By: Rhonda D. McElveen
Clerk of Court, Barnwell County, SC
Date: 6-6-14

Age: 21 S.S. No. _____
M X F _____ Married _____ Single X Divorced _____
Date of birth: _____
Attorney/Public Defender T Weeks

WHITE - CLERK OF COURT
CANARY - DETENTION CENTER
PINK - PROBATION

WITNESSES

BLPD - Bamberg

ARREST WARRANT NO. D 551015

159 §16-3-655

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

612

Foreman of Petit Jury

Date:

DOCKET NO.

97-65-06-365

The State of South Carolina,

County of BARNWELL

COURT OF GENERAL SESSIONS

October 27 TERM 1997

THE STATE

vs.

MAURICE A. ODOM

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE

I, Maurice A. Odom
appear in my own proper person and plead Guilty to
the within indictment, ESC w/ gun

Witness: Maurice A. Odom

10-27-97

Rhonda D. McElveen

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

By: SR Date: 10-26-97
Clerk of Court, Barnwell County, SC

STATE OF SOUTH CAROLINA

COUNTY OF Barnwell
STATE VS.Maurice A. Odom

AKA:

Race: B Sex: M Age: 27DOB: [REDACTED] SS#: [REDACTED]Address: Oak St.Blackville, SCDL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

97-GS-06-365A/W#: D551015Date of Offense: 6-1-96S.C. Code §: 16-3-653CDR Code #: 0/1/6/1☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Criminal Sexual Conduct w/ Minor 2nd Degree
in violation of § 16-3-653 of the S.C. Code of Laws, bearing CDR Code # 0/3/9/7☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, 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.☒ The Defendant is to be given credit for Time from 10/27/97 days/months/jail time☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§14-1-206 (Assessments 100%).....\$ _____

§14-1-211(A)(1) (Surcharge).....\$ _____

§14-1-211(A)(2) (Surcharge).....\$ _____

§56-5-2995 (DUI Assessment).....\$ _____

3% to County (if paid in installments)...\$ _____

TOTAL.....\$ -0-[Signature]
Clerk of Court/Deputy ClerkCourt Reporter: [Signature]

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELLI, [Signature], Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

Clerk of Court, Barnwell County, SC

By: [Signature]Date: 6-6-02

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: DSS Registry; Sex Offender Registration;DNA; pay purchase w/in 2 years; recommendthat def. have no contact w/ victim or her child,
except in strict compliance w/ a Family Court order
issued after this date (Recommended as condition of any supervised
PRESIDING JUDGE [Signature]Judge Code: 101510Sentence Date: August 12, 2002

10000 614
10/1/02

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Maurice Anthony
Odom, Petitioner,

v.

State of South Carolina, Respondent.

ON WRIT OF CERTIORARI

Appeal From Barnwell County
Rodney A. Peeples, Judge

Opinion No. 25490
Submitted May 30, 2002 - Filed July 1, 2002

REVERSED

Senior Assistant Appellate Defender Wanda H.
Haile, of S.C. Office of Appellate Defense, of
Columbia, for petitioner.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Donald J. Zelenka, and
Senior Assistant Attorney General Kenneth P.
Woodington, all of Columbia, for respondent.

FILED FOR RECORD
02 JUL 18 PM 12:02
GEORGE K. FICKLING, JR.
CLERK OF COURT
BARNWELL COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

By: [Signature] Date: 6-6-14
Clerk of Court, Barnwell County, SC

~~STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, George K. Fickling, Clerk of Court for Barnwell County,
South Carolina, do hereby certify that this is a true and
correct copy of the original document filed in my office.~~

~~By: George K. Fickling
Clerk of Court, Barnwell County, SC
5 day of Aug 20 02~~

shall have the defendant sign a waiver of the presentment by the grand jury and his plea of guilty.” Similarly, S.C. Code Ann. § 17-23-140 (1985) provides that “upon signing the waiver of presentment” the defendant may plead guilty. We have held compliance with these sections is mandatory and, further, that they require a written waiver. Phillips v. State, 281 S.C. 41, 314 S.E.2d 313 (1984); State v. Martin, 278 S.C. 256, 294 S.E.2d 345 (1982); Summerall v. State, 278 S.C. 255, 294 S.E.2d 344 (1982); *see also State v. Clarkson*, 337 S.C. 518, 523 S.E.2d 817 (Ct. App. 1999), *rev’d on other grounds*, 347 S.C. 115, 553 S.E.2d 450 (2001).

In light of the statutory language requiring the defendant to sign a waiver of presentment, we find an oral waiver is not sufficient. The trial court had no subject matter jurisdiction to accept petitioner’s plea. Accordingly, the denial of PCR is reversed and petitioner’s plea is hereby vacated.

REVERSED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 17, 2002

REMITTITUR

The Honorable George K. Fickling
Post Office Box 723
Barnwell, SC 29812-0723

Re: Odom, Maurice Anthony v. State
97-CP-06-324

Dear Mr. Fickling:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Very truly yours,

CLERK

DES/ps
Enclosure

cc: (without enclosure)
Senior Assistant Appellate Defender Wanda H. Haile
Assistant Deputy Attorney General Allen Bullard

FILED FOR RECORD
02 JUL 18 PM 12:02
GEORGE K. FICKLING, JR.
CLERK OF COURT
BARNWELL COUNTY, S.C.



GEORGE K. FICKLING

BARNWELL COUNTY CLERK OF COURT

Barnwell County Courthouse

P.O. BOX 723
BARNWELL, S.C. 29812

TELEPHONE 803-541-1020
FAX 803-541-1025

October 03, 1996

Maurice (Hakim) Odom
922 Oak Street
Blackville, SC 29817

Re: Court Appointed Attorney for Warrant Nos. F162024
F162028

Mr. Odom:

This is to inform you that your court appointed attorney
is Robert C. Adams, you can reach him at (803) 259-3525.

If I can be of assistance to you, please let me know.

Sincerely,

s/George K. Fickling

George K. Fickling
Clerk of Court

GKF/tpt

ecc: Honorable Barbara R. Morgan, Solicitor

WITNESSES

KENNETH DYCHES, BLACKVILLE PD

ARREST WARRANT NO. D-176389

082 16-11-313

ACTION OF GRAND JURY

True Bill

Calvin W. Roberts 5/18/92
Foreman of Grand Jury

VERDICT

618

Foreman of Petit Jury

Date:

DOCKET NO. 92-GS-06-70

The State of South Carolina,

County of BARNWELL

COURT OF GENERAL SESSIONS

May 18th TERM 1992

THE STATE

vs.

MAURICE A. ODOM

COUNT 1-BURG. IN THE THIRD DEGREE

COUNT 2-GRAND LARCENY

Indictment for
Larceny

AND

BURG. IN THE THIRD DEGREE

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

By: *Rhonda D. McElveen*
Clerk of Court, Barnwell County, SC
Date: 6-6-14

Barnwell County, S. C. May 18 1992
I, Maurice A. Odom appear in my own proper person
and plead guilty to ~~a~~ within indictment, Burglary 3rd

Attest:

C. C. P. & G. S.

19

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

INDICTMENT FOR LARCENY

No. 1 Pro 5/18/92
[Signature]

At a Court of General Sessions, convened on May 18, 1992,
the Grand Jurors of Barnwell County present upon their oath:

~~COUNT ONE~~ ^{TWO} — GRAND LARCENY

That MAURICE A. ODOM
did in BARNWELL County on or about FEBRUARY 22, 1992,
feloniously take and carry away the personal goods of EVON S. DIAMOND,
of the value of more than Two Hundred Dollars, described as follows:
nine (9) cases of assorted chips

with intent to deprive the owner permanently of such property.

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

[Signature]
BARBARA R. MORGAN
SOLICITOR

A TRUE COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BAMBERG)

INDICTMENT FOR BURGLARY
 (BUILDING)
 Attest J. B. Hein
 CLERK OF COURT
 BAMBERG COUNTY, SC

At a Court of General Sessions, convened on November 1, 1993,
 the Grand Jurors of Bamberg County present upon their oath:

COUNT ONE — BURGLARY IN THE SECOND DEGREE

(BUILDING)

That Maurice Odom
 did in Bamberg County on or about August 29, 1993,
 willfully and unlawfully enter without consent and with the intent to commit a crime therein, a building,
 to wit: a building belonging to W.E. Brooker, located on South Palmetto Ave.,
Denmark, S.C.
 and the defendant did enter during the nighttime hours

COUNT TWO — BURGLARY IN THE THIRD DEGREE

(BUILDING)

That _____
 did in _____ County on or about _____,
 willfully and unlawfully enter without consent and with intent to commit a crime therein a building,
 to wit: _____

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

for De M. T. Sullivan
 BARBARA R. MORGAN
 SOLICITOR

621

WITNESSES

DPD - Captain Bell

ARREST WARRANT NO. D 090163

0080 §16-11-312

ACTION OF GRAND JURY

MS Helch
True Bill 10/29/93
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 93-GS-05-196

The State of South Carolina,

County of BAMBERG

COURT OF GENERAL SESSIONS

November 1 TERM 1993

THE STATE

vs.

MAURICE ODOM

Indictment for Burglary
(Building)

Bamberg County, S. C. Nov. 1 1993

I, *Maurice Odom* appear in my own proper person
and plead guilty to the within indictment.

Attest:

Patt. P. Jeffcoat
Deputy C. C. & G. S.
Nov. 1 1993

WITNESSES

BLPD - Bamberg

ARREST WARRANT NO. F 162024

0080 \$16-11-312

ACTION OF GRAND JURY

True Bill

Brenda J. Allen 1/27/97
Foreman of Grand Jury

VERDICT

622

Foreman of Petit Jury

Date:

DOCKET NO. 97-GS-06-035

The State of South Carolina,

County of BARNWELL

COURT OF GENERAL SESSIONS

January 27 TERM 1997

THE STATE

vs.

MAURICE ODOM

Indictment for Burglary
(Building) nm-volent

I, Maurice A. Odom
appear in my own proper person and plead Guilty to
the within indictment, Burglary 22

nm-volent

Witness: *[Signature]*

10-27-97

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

By: *[Signature]* Date: 12-12-17
Clerk of Court, Barnwell County, SC

ALP-5000-10-950

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

INDICTMENT FOR BURGLARY
(BUILDING)

At a Court of General Sessions, convened on January 27, 1996,
the Grand Jurors of Barnwell County present upon their oath:

COUNT ONE — BURGLARY IN THE SECOND DEGREE
(BUILDING)

That Maurice Odom
did in Barnwell County on or about September 23, 1996,
willfully and unlawfully enter without consent and with the intent to commit a crime therein, a building,
to wit: Miller's Bread Basket in Blackville, S.C.

and the defendant did enter during the nighttime hours

~~**COUNT TWO — BURGLARY IN THE THIRD DEGREE**~~
~~**(BUILDING)**~~

~~That~~
~~did in _____ County on or about _____,~~
~~willfully and unlawfully enter without consent and with intent to commit a crime therein a building,~~
~~to wit: _____~~

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


for BARBARA R. MORGAN
SOLICITOR

WITNESSES

BlPD - Bamberg

ARREST WARRANT NO. D 551015

159 §16-3-655

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO.

97-65-06-365

The State of South Carolina,

County of BARNWELL

COURT OF GENERAL SESSIONS

October 27 TERM 1997

THE STATE

vs.

MAURICE A. ODOM

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE

I, Maurice A. Odom
appear in my own proper person and plead guilty to
the within indictment, ESC by unguar

Witness: Maurice A. Odom

10-27-97 Rhonda D. McElveen

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

By: Rhonda D. McElveen Date: 10-27-97
Clerk of Court, Barnwell County, SC

624-PS/07-1-ED

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE

At a Court of General Sessions, convened on October 27, 1997,
the Grand Jurors of Barnwell County present upon their oath:

That MAURICE A. ODOM did in Barnwell County between June 1, 1996
and August 31, 1996, wilfully and unlawfully commit a sexual battery
upon [REDACTED], a minor child of fourteen years of age, by
having sexual intercourse with said minor child.

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

BARBARA R. MORGAN

SOLICITOR



STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

The State)

V.)

Maurice Anthony Odom)

In re: Burglary)

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

ORDER

FOR TELEPHONE RECORDS AND CELL

TOWER LOCATIONS

This matter comes before me upon motion of Lt. Robert Dennis, Investigator for the Newberry County Sheriff's Office, requesting a Court Order for telephone records and cell tower locations relating to the investigation which is described in greater detail in the attached affidavit of Lieutenant Robert Dennis. The State is investigating a Burglary that occurred at 11746 Highway (Around the Clock BP) Newberry County and three other Burglaries in Laurens County that are connected. That the State has linked the last Burglary to a suspect named Maurice Odom or AKA, "Horace Franklin Odom" of Barnwell County. The State contends these records are not overly intrusive to the Subject and believes that the State is entitled to such records. The State has set forth in its affidavit in support of this Order specific and articulable facts, which meet the Probable Cause threshold requirements of 18 USC 2703 (d) as well as the promulgations under State v. Odom S.C. Sup. Ct. Order dated March 30, 2009 (Shearhouse Adv. Sh. No. 26624).

NOW THEREFORE, IT IS ORDERED THAT:

Allied Wireless Communications Corporation (AWCC) is ordered to furnish any and all subscriber information, credit information, and cell tower location information on the following mobile phone numbers for the listed dates:

(803) 671-5555

(803) 300-3448

Information is requested for the following dates and time periods: 10/06/2011 2200hrs to 10/07/2011 0500hrs and 11/11/2011 2400hrs to 11/11/2011 0500hrs.

You may surrender the above named records to Lt. /Inv. Robert Dennis of the Newberry County Sheriff's Office, Newberry, SC at (803) 405-7705, by facsimile at (803) 405-7805 or email rdennis@ncso.sc.gov.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'E. Griffith, Jr.', written over a horizontal line.

The Honorable Eugene C. Griffith, Jr.
Eighth Judicial Circuit Judge

Signed at Newberry, SC

November 17th, 2011

STATE OF SOUTH CAROLINA

County of BAI NWELL

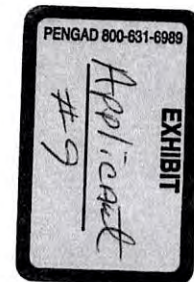
11-9241

A11-11-9097

SEARCH WARRANT

Date 11-18-11

Officer Any Lawful Officer



627

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Search Warrant



Form approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF BARNWELL COUNTY

It Appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

THE RESIDENCE LOCATED AT [REDACTED] CANNA STREET IN THE COUNTY OF BARNWELL AND STATE OF SOUTH CAROLINA FURTHER DESCRIBED AS A BRICK HOME LOCATED ON THE LEFT SIDE OF CANNA STREET FROM CLINTON STREET. THE MAIL BOX IN THE FRONT OF THE RESIDENCE HAS THE NUMBERS [REDACTED] ON IT. THIS IS THE RESIDENCE OF ONE MAURICE ANTHONY ODOM. THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLE HAS THIS RESIDENCE LISTED AS THAT OF MAURICE ANTHONY ODOM. THIS SEARCH TO INCLUDE ALL VEHICLES ASSOCIATED WITH THIS PROPERTY TO INCLUDE A RED IN COLOR DODGE CHARGER, A WHITE IN COLOR LINCOLN AND A BLACK IN COLOR CHRYSLER 300 BEARING NC LICENSE [REDACTED] AND VIN [REDACTED]. THE CHRYSLER 300 IS LOCATED AT THE BARNWELL COUNTY SHERIFF'S OFFICE IMPOUND LOT. THE SEARCH OF THE PROPERTY INCLUDES ALL OUT BUILDINGS AND THE SURROUNDING LAND.

Now, therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

CLOTHING ITEMS RELATED TO THE BURGLARY OF BP GAS STATION IN NEWBERRY COUNTY AND LAURENS COUNTY DESCRIBED AS LIGHT BLUE GYM PANTS, RED LONG SLEEVE SWEAT SHIRT, BLACK AND GREY STRIPED SHIRT, BLACK PANTS, SHORT SLEEVE JUMP SUITE AND MASKS AND GLOVES. A LARGE OF ASSORTMENT OF CIGARETTES, LIGHTERS, AND CIGARS. ANY AND ALL OTHER ITEMS ASSOCIATED WITH THE BURGLARIES LISTED IN THE ATTACHED AFFIDAVIT.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to The Honorable JUDGE HOLLAND within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such persons as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

BARNWELL, S.C.

NOVEMBER 18, 2011
(L.S.)

Signature of Judge

Return

I received the attached Search Warrant Nov 18, 20 11. And have executed it as follows:
 On Nov 18, 20 11 at 1315 o'clock P M. I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Tometrius Odom

Name of the person searched or "at the place of search" with. _____

Together with a receipt for the items seized. _____

The following is an inventory of property taken pursuant to the warrant:

None

This inventory was made in the presence of Inv. J.A. Croft (BCSO)
 AND LE Robert Dennis (NCSO)

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 18

day of Nov, 2011

J.A. Croft
 (Signature of Officer Executing Warrant)

[Signature] (L.S.)
 Signature of Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)	FOR THE EIGHTH JUDICIAL CIRCUIT	
COUNTY OF LAURENS	)		
	)	2016-CP-30-251	
Maurice Anthony Odom,	)		
SCDC # 199677	)		
	)		
Applicant,	)		
	)	ORDER OF DISMISSAL	
v.	)		
	)		
State of South Carolina,	)		
	)		
Respondent.	)		
	)		

LAURENS COUNTY
CLERK OF COURT

2021 AUG -9 AM 10:32

K. MICHELLE SIMMONS

This matter comes before this Court by way of a post-conviction relief application, filed by Maurice Odom (Applicant) on March 17, 2016. Respondent made its Return on March 30, 2017, requesting an evidentiary hearing be convened. The evidentiary hearing was held on January 26, 2021, via the Webex Virtual Courtroom platform. Applicant was present at the hearing and represented by Carson Henderson, Esquire. Assistant Attorney General Brianna L. Schill of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf at the hearing. Eli Wiygul, Esquire (Counsel) and Deputy Solicitor C. Dale Scott also testified. After a thorough review of all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof in establishing he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

PROCEDURAL HISTORY

Applicant was indicted at the February 2012 term of the Laurens County Grand Jury for burglary (2012-GS-30-311), criminal conspiracy (2012-GS-30-314), and grand larceny (2012-GS-30-317). Counsel represented him. Deputy Solicitors Warren Mowery and C. Dale Scott



prosecuted the case. On June 9-11, 2014, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker, after which he was found guilty as indicted. Applicant was sentenced to imprisonment for fifteen years for burglary (second degree, violent), five years for criminal conspiracy, and five years for grand larceny. All sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by briefing by Appellate Defender Lara M. Caudy. The South Carolina Court of Appeals affirmed Applicant's conviction by an unpublished opinion. *State v. Odom*, Op. No 2015-UP-561 (Ct. App. Filed Dec. 23, 2015). The remittitur was sent January 8, 2016.

CURRENT ACTION BEFORE THIS COURT

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

- (1) Ineffective assistance of counsel
- (2) Malicious prosecution/Prosecutorial misconduct
- (3) Violation of 8th Amendment
- (4) Denied Directed Verdict
- (5) "Insufficiency of the evidence"
- (6) "Unlawful conduct of judge..."
- (7) Speedy Trial Violation
- (8) "I wasn't there for the qualification of the jurors..."
- (9) "The juror was also involved in premature deliberations..."
- (10) "the dogman stated the dog didn't take him to a car on the side of the road."
- (11) "They told the judge that they didn't know anything about phone records that judge Griffith order-ed to see if I was in the area at the time but the fact remains Judge Griffith did order[] that record."
- (12) Juror misconduct/conflict of interest

On January 8, 2021, Applicant filed an amended Application alleging the following claims:

- (1) Failure to Object to Judge's Reference to God
- (2) Failure to Object to the Indictment
- (3) Failure to Object to the Solicitor's Statement: "You Determine what the Truth Is."
- (4) Failure to object, ask for a curative instruction, and request a mistrial for the solicitor's opening statement: "But I submit to you that he [co-defendant and witness Christopher Mixon] is before you with no promises, no rewards, no hope of anything like that. He is simply here to tell you the truth and I believe you will find him in spite of his criminal record to be a credible witness."

- (5) Ineffective assistance of counsel based on “the way [counsel] objected to the following testimony from witness Ramesh Patel”: “It looked all too familiar because it had just happened two weeks ago the same way.”
- (6) Failure to object to the following statement: “Well, if he knows that the DVD is what he – he made a DVD according to his testimony and I would have to assume that Solicitor would not show him a DVD that was not made by him[.]”
- (7) Failure to introduce document indicating Christopher Mixon had a driver’s license.
- (8) Ineffective for asking a witness if Christopher Mixon was “a member of the gang called Boss.”
- (9) Failure to object to NCIC document indicating Applicant was the owner of the vehicle.
- (10) Failure to object to Applicant’s South Carolina DMV Record
- (11) Failure to properly preserve the record regarding which of the Petitioner’s convictions could be used against him if he testified during the trial.
- (12) Failure to object to portions of the solicitor’s closing argument.
- (13) Failure to object to solicitor’s closing statement in which he told the jurors: “they do their best. And I submit to you that Tyrone Goggins is a good, experienced, capable police officer and investigator as his sixteen years would document.”

At the commencement of the hearing, Applicant indicated he would be going forward on the allegations contained in his amended application for post-conviction relief, and the following allegations from his initial application: (1) speedy trial violation allegation (2) allegation regarding phone records (“They told the judge that they didn’t know anything about phone records that judge Griffith order-ed to see if I was in the area at the time but the fact remains Judge Griffith did order[] that record”); and the allegation that “Applicant wanted to present a defense but wasn’t allowed to.” The remaining allegations contained in Applicant’s original application are hereby deemed waived an abandoned, and accordingly, will not be addressed in this order.

FACTUAL BACKGROUND

Just after 2:43 a.m. on November 11, 2011, Deputy Nick Moyer of the Laurens County Sheriff’s Office heard a security alarm going off as he drove by a BP gas station and convenience store located on Highway 72 in Clinton, South Carolina, a short distance away from an exit off of Interstate 26.¹ (Tr. p. 75; pp. 78-79; p. 93; p. 263). Upon hearing the alarm, Deputy Moyer notified

¹ The store’s hours of operation were 8:00 a.m. to 10:00 p.m. (Tr. p. 92).

dispatch of what he had heard, learned the store's security company had just reported the alarm to law enforcement, and drove towards the store to investigate. (Tr. pp. 76-77). As he approached the store, he observed one of the store's side windows had been shattered, and, when he drove closer, he saw a man climb out of the broken window and flee towards the back of the store. (Tr. pp. 81-84; p. 90). In response, Deputy Moye pursued the fleeing man but was unable to apprehend him before the man escaped into a wooded area directly behind the store. (Tr. pp. 83-84). The deputy then returned to the store, secured the scene, and waited for other officers to arrive. (Tr. p. 83).

Shortly thereafter, numerous law enforcement officers arrived at the scene along with Hardik Patel, the owner of the store, and his brother, Ramesh Patel ("Ramesh"). (Tr. p. 84; pp. 91-94). Once the store was secured, the Patels looked inside, discovered substantial damage to the store, and found merchandise scattered all over the store's floor. (Tr. p. 83). They then reviewed the surveillance footage captured by the store's security system and observed two masked burglars smash one of the store's windows with a rock, enter the store, and fill black trash bags with cartons of cigarettes along with money from a cash register drawer. (Tr. pp. 102-104; pp. 111-113). Additionally, they observed one of the burglars smash the store's office's mirrored window, enter the office, and steal more cigarettes and money from inside. (Tr. p. 104; p. 107). The brothers then took an inventory of the money and goods gathered by the burglars during the break-in and determined those items had a cumulative value of over \$5,000. (Tr. pp. 98-98; pp. 122-123; p. 273).

Meanwhile, the investigating officers attempted to locate the suspects involved in the burglary and found a black Chrysler 300 parked nearby along the eastbound side of Interstate 26 a short distance away from an exit ramp. (Tr. p. 264; p. 268). Officer Tyrone Goggins of the

Clinton Department of Public Safety then responded to the vehicle's location, verified the vehicle had not been there long due to the fact its engine was still warm, and learned the vehicle was registered to Applicant Maurice Anthony Odom at an address in Wilmington, North Carolina. (Tr. p. 261; pp. 264-265; p. 267). In response, Officer Goggins asked another officer to remain in position to watch the vehicle while he confirmed there were no other vehicles parked along Interstate 26 in that area. (Tr. pp. 268-270; p. 272). After verifying Applicant's vehicle was the only vehicle in the area, Officer Goggins returned to the store, requested assistance from a State Law Enforcement Division ("SLED") tracking team, met with the victims, reviewed the surveillance footage of the incident, and inspected the scene. (Tr. pp. 272-280). During his inspection, the officer located the burglars' abandoned trash bags, which were filled with cartons of cigarettes from the store, along with a rock on the floor of the store's office. (Tr. p. 171; pp. 278-280). Officer Goggins then collected the rock as evidence and returned the stolen property to the Patels after it was inventoried. (Tr. p. 114; p. 278; pp. 281-282).

Shortly thereafter, at approximately 5:00 a.m., members of the SLED tracking unit, including Senior Agent Reid Creswell, arrived at the scene of the incident. (Tr. pp. 188-190; p. 193; p. 202; p. 215; p. 237; p. 251). Upon arriving, Senior Agent Creswell was advised of the specific location where the suspect entered the wooded area behind the store after the break-in and verified the suspect's trail had not been contaminated by anyone else entering the woods. (Tr. pp. 208-209; p. 216; p. 237). He then deployed Judy, a bloodhound-bluetick hound mixed-breed dog trained in tracking human scents, at a neutral location near where the suspect entered the wooded area and followed her into the woods. (Tr. pp. 191-192; pp. 207-208; p. 239). Shortly after Judy entered the wooded area, she indicated she had picked up a scent and began tracking the scent through the woods. (Tr. pp. 218-219; pp. 240-241). As Senior Agent Creswell followed Judy

through the woods, he personally observed signs of environmental disturbances confirming a person had recently fled along the path Judy was tracking and eventually began observing footprints. (Tr. p. 219; p. 242; pp. 246-247). As they continued along the trail, Judy led Senior Agent Creswell to a location near Interstate 26 where the footprints the agent had observed converged with another set of footprints. (Tr. p. 222; pp. 243-246). Judy then led Senior Agent Creswell to a location along Interstate 26 directly across from where Applicant's car had been parked a short time earlier before she lost the suspect's scent.² (Tr. p. 212; p. 214; p. 222; pp. 248-249). However, by that time, Applicant's car was no longer present because someone had removed it from its position along the side of Interstate 26 when the officer who had been asked to maintain surveillance of the car failed to do so during the time period the tracking team was following the suspect's trail. (Tr. pp. 286-287).

Subsequently, on November 18, 2011, Officer Goggins drove to an address he found for Applicant in Barnwell, South Carolina, in an attempt to speak with him about the incident and see if his vehicle was at that address. (Tr. pp. 290-291). After arriving at Applicant's address, Officer Goggins was unable to locate Applicant. (Tr. p. 292). However, he found Applicant's vehicle parked there and verified it was the same vehicle that had been parked along Interstate 26 at the time of the incident. (Tr. pp. 297-298). Furthermore, the officer located Christopher Mixon at that location, and Mixon was taken into custody based on outstanding warrants for his arrest.³ (Tr. p. 292). Thereafter, Officer Goggins spoke with Mixon, Mixon inculpated himself and Applicant in the burglary of the BP gas station and convenience store on the date of the incident, and

² During trial, Senior Agent Creswell explained vehicles rapidly travelling along Interstate 26 would have dissipated the scent that had been left there by the suspect, which explained why Judy lost the trail at that location. (Tr. pp. 211-212; pp. 223-224; p. 247).

³ At the time of Mixon's arrest, an officer from the Barnwell Police Department was assisting Officer Goggins. (Tr. p. 292).

Applicant was arrested for his crimes. (Tr. p. 181; p. 296). Applicant was then indicted for second-degree burglary, grand larceny, and conspiracy, and he proceeded to trial. (Tr. p. 13; Indictments).

Mixon testified for the prosecution and recounted the details of his and Applicant's roles in the incident. (Tr. pp. 153-154). Specifically, Mixon stated Applicant drove the two of them to the BP gas station and convenience store located on Highway 72 on November 11, 2011, they dropped off a rock Applicant had brought with them at the store, and Applicant then drove them away from the store and parked his vehicle along the side of Interstate 26. (Tr. pp. 155-159). After that, Mixon indicated the two of them walked back to the store, Applicant smashed one of the store's windows with the rock, an alarm went off, and they climbed through the window and began loading the store's tobacco products into some trash bags they had brought along with them. (Tr. pp. 160-163; p. 165). Shortly after that, Mixon testified he saw a police officer arrive at the store, Applicant also saw the officer, and Applicant quickly fled back out of the broken window and away from the scene. (Tr. pp. 166-167). After Applicant fled, Mixon stated he ran across the street from the store, went into the woods, and began making his way back to Applicant's vehicle. (Tr. pp. 167-168). Roughly two hours later, Mixon testified he met back up with Applicant and the two of them fled from the area in Applicant's car. (Tr. pp. 169-170). Mixon stated he then received some money from Applicant for his participation in the break-in, returned home, and was arrested some time later. (Tr. pp. 170-171).

Officer Goggins testified about his investigation into the burglary, which led to Applicant's arrest. (Tr. pp. 261-298). During his testimony, Officer Goggins confirmed to the jury Applicant's car was parked along Interstate 26 at the time of the incident and its engine was still warm at that time. (Tr. pp. 264-268). Additionally, the officer stated someone removed the car from the area during the search for the burglars at a time when no officers were watching the vehicle, and he

noted the SLED tracking team tracked the suspect who fled through the woods to a location in close proximity to where Applicant's car had been parked. (Tr. pp. 268-269; pp. 286-288). Furthermore, Officer Goggins noted Applicant's vehicle was later found at Applicant's home in Barnwell just a few days after the incident in the same area where he located Applicant's accomplice in the crimes. (Tr. pp. 288-293; pp. 297-298).

Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, records submitted by the parties, exhibits presented at the PCR hearing, and applicable law. Before this Court are Applicant's Laurens County Clerk of Court records, Applicant's South Carolina Department of Correction records, the trial transcript, Applicant's direct appeal records, and the PCR action records. Additionally, this Court heard the testimony presented at the evidentiary hearing, and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Pursuant to South Carolina Code Annotated, Sections 17-27-70 and -80, this Court dismisses the application based upon the following findings:

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense

counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Object Trial Judge's Reference to God

Applicant alleges Counsel was ineffective for failing to object to a reference to God made by the trial judge during *voir dire*. More specifically, Applicant argues Counsel was ineffective for failing to object to the following statement made by the trial judge: "Just ask God for some guidance, some wisdom, and understanding, and he'll take care of you." (Trial Tr. 11, l. 10-11). This Court disagrees and denies and dismisses this allegation with prejudice.

In *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d. 248 (2000), the South Carolina Supreme Court held that jury instructions on reasonable doubt which also charge the jury to "search for the truth" run the risk of unconstitutionally shifting the burden of proof to the defendant, but nonetheless found there was no reversible error in the charge given there because the "seek the truth" language was given in conjunction with the credibility charge, and not with either the reasonable doubt or circumstantial evidence charge.

Recently, the South Carolina Supreme Court again considered the use of "truth seeking" language by the trial court in *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018). The *Beaty* Court concluded:

[A] trial court should refrain from informing the jury, whether through comments or through its charge, that its role is to search for the truth, or to find the true facts, or to render a just verdict. These phrases may be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the

verdict it believes best serves the jury's perception of justice. We caution trial judges to avoid these terms and any other that may divert the jury from its obligation in a criminal case to determine, based solely on the evidence presented, whether the State has proven the defendant's guilt beyond a reasonable doubt. Although there was error here, our review of the entirety of the judge's opening comments and the entire trial record convinces us that Applicant has not shown prejudice from this error sufficient to warrant reversal.

Id. The *Beaty* opinion signified the first time the Court issued a general and blanket admonishment to the bench and bar that such "truth-seeking" language should be avoided at any point during the trial, but nonetheless found a harmless error analysis applied if such charges or commentary was given by the trial court.

In both *Aleksey* and *Beaty*, the South Carolina Supreme Court determined that while the trial court's use of "truth seeking" language was improper, the error was not significant enough to warrant reversal of the convictions.

This Court finds Applicant has not and cannot show he was prejudiced by this alleged deficiency in this case, and therefore, addresses only the prejudice prong for this allegation. *Strickland*, 466 U.S. 668 (1984) (If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed.). Even considering only *Aleksey*⁴, this Court finds Applicant has not and cannot prove that the result of his trial would have been different with reasonable probability had Counsel objected to the statement. *Aleksey* and its progeny have held that truth finding statements are not reversible error, even when such statements were given during actual jury charges, which is not the case here. Although this statement concerns a reference to God, as opposed to a "truth" statement, this Court finds the statement at issue here akin to a truth statement or other superfluous statements. Applicant's argument is even weaker

⁴ Applicant's trial occurred before the *Beaty* decision in 2018.

than that in *Aleksey*, because the trial judge's reference to God here was not made during formal jury instructions or a charge on the law, but rather during *voir dire*, prior to the jury even being selected and sworn in. The trial judge went on to make the proper reasonable doubt and burden of proof charge during the jury charge. (Trial Tr. 353-356; 360). Therefore, this Court finds Applicant has not and cannot prove he was prejudiced by this comment or Counsel's failure to object to it. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to Challenge Indictment

Applicant alleges Counsel was ineffective for failing to challenge the indictment because the indictment did not name his co-defendant, Christopher Mixon. This Court disagrees and denies and dismisses this allegation with prejudice.

An indictment is valid under South Carolina law if it "contains the necessary elements of the offense intended to be charged and sufficiently apprised the defendant of what he must be prepared to meet." *State v. Guthrie*, 352 S.C. 103, 572 S.E.2d 309 (2002) (citations omitted). "South Carolina courts have held the sufficiency of an indictment must be viewed with a practical eye. All the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." *State v. Guthrie*, 352 S.C. 103, 572 S.E.2d 309 (2002) (citations omitted). Thus, an indictment passes legal muster if it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood. *State v. Reddick*, 348 S.C. 631, 560 S.E.2d 441 (Ct.App.2002). Importantly, it is not necessary that the co-conspirator be named in the indictment. *State v. Hightower*, 221 S.C. 91, 69 S.E.2d 363 (1952) ("While two or more persons must combine to constitute a conspiracy, the weight of authority is against the contention of appellant that it is essential that one or more coconspirators must be named in the indictment").

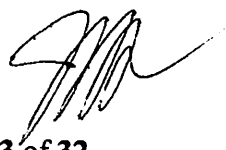
This Court finds the indictment contained the proper language from the statute such that it sufficiently apprised the Applicant of the charge against him, and that the indictment need not include the name of the co-conspirator. Accordingly, this Court finds Counsel was not ineffective for failing to challenge the indictment on that basis, and denies and dismisses the allegation with prejudice.

Failure to Object to Solicitor's "Truth" Statement

Applicant alleges Counsel was ineffective for failing to object to the following statement made by the solicitor: "You Determine what the Truth Is." This Court finds Applicant has failed to meet the burden imposed upon him, and accordingly denies and dismisses the allegation with prejudice.

A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (recognizing that a "Golden Rule" argument which suggests to jurors to put themselves in the shoes of the victim is generally impermissible because it encourages the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than evidence).

To find whether a prosecutor's comments in closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. *Fortune v. State*, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019). The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Brown v. State*, 383 S.C. 506, 680 S.E.2d (2009) (citing *Humphries v. State*, 351 S.C. 362, 373, 570 S.E. 2d 160, 166 (2002)).



To the extent, Applicant argues this is a *Beaty*⁵ violation, this Court finds this argument not persuasive. As an initial matter, Applicant's trial began occurred prior to the South Carolina's decision in *Beaty* and Counsel is not expected to be clairvoyant in the law. *Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). Even if *Beaty* was established legal authority at the time of Applicant's trial, *Beaty* would still not apply here as *Beaty* concerned jury charges given from trial court judges, not arguments from prosecutors. This statement in question was made by the solicitor during his closing argument, which is not considered evidence and not a charge of law to the jury.

To the extent Applicant contends this comment constitutes a Golden Rule violation or other improper statement, and that Counsel was ineffective for failing to object on that basis, this Court similarly finds the statement does not constitute a Golden Rule violation or other improper statement, and therefore, Counsel cannot be deemed deficient for not objecting. This statement does not ask the jury to put themselves in the victim's shoes, or the shoes of any party involved. The statement does not ask the jury to take into account any information not contained in the record. In fact, the solicitor goes on to say, "Now I can submit all day to you what the truth is, but y'all have to make that determination based on the facts and the evidence that comes before you, okay?" (Trial Tr. 71). Accordingly, this Court finds Counsel was not deficient for failing to object to the solicitor's statement.

This Court also finds Applicant has failed to establish how he was prejudiced by this alleged deficiency, as he has failed to show solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Brown v. State*, 383 S.C. 506, 680 S.E.2d (2009). As noted above, immediately after making the statement, the solicitor

⁵ See pages 10-11, *supra*.

informed the jury they must make the determination based upon the facts and the evidence. Moreover, as discussed above, the appellate courts of this state have held that even when such truth statements are made by judges during jury instructions and charges of law, they are harmless error, and therefore, this statement made by the solicitor on one occasion during his closing argument cannot plausibly be prejudicial error. The trial court informed the jury that the evidence only consisted of testimony from witnesses, any exhibits, and any stipulations or agreements of counsel. (Trial Tr. 356). The trial judge went on to tell the jurors that the judge was the sole judge of the law. (Trial Tr. 356). This Court finds Applicant has failed to meet the burden imposed upon him, and accordingly denies and dismisses the allegation with prejudice.

Failure to Object to Solicitor's Alleged Witness Credibility Statements⁶

It appears Applicant contends the solicitor made several witness credibility vouching statements during his closing arguments, and that Counsel was ineffective for failing to object, request a curative instruction, and move for a mistrial on that basis. More specifically, Applicant takes issues with the following statements:

- (1) "But I submit to you that he [co-defendant and witness Christopher Mixon] is before you with no promises, no rewards, no hope for anything like that. He is simply here to tell you the truth and I believe you will find him in spite of his criminal record to be a credible witness." (Trial Tr. 73, l. 10-14);
- (2) "They do their best. And I submit to you that Tyrone Goggins is a good, experienced, capable police officer and investigator as his sixteen years would document." (page 338, l. 25 – page 339, line 3); and
- (3) "Okay. Now while we can prove, ladies and gentlemen, that crimes were committed, a lot of the who done it part is gonna come down – is gonna rise and fall on the believability in your minds of Christopher Mixon.

Should you believe him? That's the question you're gonna have to ask. I'm not asking you whether you should like him, I'm not asking you to take him home to Sunday dinner. All

⁶ This section discusses allegations four, twelve, and thirteen of Applicant's amended PCR application.

I'm asking you to do is consider whether or not his testimony is worthy of your belief. Yes, he was convicted of several burglaries. Yes, he has charges arising from the same time frame, the same time frame as the burglary on Highway 72 that we're dealing with today, but he's pled guilty to a lot of charges, he's been sentenced, he's paid his debt, and he's still appearing before you, as he told you, to testify honestly.

Now you heard from Tyrone Goggins that Mr. Mixon made a statement to law enforcement on November 18th of 2011. Mixon apparently said on – well, he said on the witness stand he didn't remember making the statement. The defense has access to it. Don't you think if there had been some gross inconsistency with what he said back then and what he testified to in court we would have heard about it?"

(Trial Tr. 333, l. 2 – 334, l. 1).

This Court finds Applicant failed to meet the burden imposed upon him, and accordingly denies and dismisses the allegations with prejudice.

"It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence." *United States v. Francisco*, 35 F.3d 116, 120 (4th Cir. 1994); *see also State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) ("Undoubtedly, a Solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony."). A prosecutor should "prosecute with earnestness and vigor" and "may strike hard blows, [but] is not at liberty to strike foul ones." *Berger v. United States*, 295 U.S. 78, 88 (1935). "If a Solicitor's closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs." *New*, 338 S.C. at 319, 526 S.E.2d at 240. "On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury's passions or prejudice." *Id.* "[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none." *Berger*, 295 U.S. at 88.

“Generally, the assessment of witness credibility is within the exclusive province of the jury.” *Tappeiner v. State*, 416 S.C. 239, 250, 785 S.E.2d 471, 476 (2016) (quoting *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012)). Solicitors may not make explicit personal assurances or indicate there is information not presented which supports the testimony, i.e. vouch, as doing so improperly invades the province of the jury and places the government’s prestige behind the witness. *Id.*, 416 S.C. at 250, 785 S.E.2d at 477 (citing *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004))

To find whether a prosecutor’s comments in closing argument violated a defendant’s due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. *Fortune v. State*, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019). The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Brown v. State*, 383 S.C. 506, 680 S.E.2d (2009). “Improper comments do not automatically require reversal if they are not prejudicial to the defendant.” *Id.*, citing *Humphries*, 351 S.C. at 373, 570 S.E.2d at 873. A PCR court must view the alleged impropriety of the prosecutor’s argument in the context of the entire record, and the Applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.*

The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. *State v. Cooper*, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). The granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. *State v. Beckham*, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999), *abrogated on other grounds by State v. Wright*, 391 S.C. 436, 706 S.E.2d 324 (2011). A

mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial. *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). “A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons.” *State v. Patterson*, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct.App.1999). “Whether a mistrial is manifestly necessary is a fact specific inquiry. ‘It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge.’ ” *State v. Rowlands*, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct.App.2000) (quoting *Gilliam v. Foster*, 75 F.3d 881, 895 (4th Cir.1996)). The trial court should exhaust other methods to cure possible prejudice before aborting a trial. *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999).

This Court finds Counsel was not deficient as the comments were not improper witness credibility vouching statements. Counsel cannot be deemed deficient for failing to object to statements that are not improper. The solicitor made no personal assurances regarding the credibility of the witnesses, nor did he directly or indirectly assert he had personal knowledge of any information outside of the record that would support the witness’s credibility. With respect to the solicitor’s first statement regarding Christopher Mixon, the solicitor merely referred to Mixon’s testimony in which Mixon indicated his pending charges were not affecting his decision to testify in Applicant’s case. (Trial Tr. 152, l. 18-24). Moreover, with respect to the statement regarding Officer Goggins, the solicitor was attempting to counteract an argument presented by the defense, during which the defense questioned Goggins regarding alleged misconduct of other officers, as well as alleged traffic violations of Goggins, by addressing testimony given at trial. (Trial Tr. 303-305). More specifically, the solicitor merely used other information from the record, Goggins’s sixteen years of law enforcement service, to counteract the defenses argument. (See Trial Tr. 261).

With respect to the third statement, the solicitor once again used the record to highlight why he believes the jury should find Christopher Mixon credible. In fact, the solicitor pointed to weaknesses of Christopher Mixon's history, namely his prior charges and pending charges, which were discussed during Mixon's testimony. The solicitor made no assurances or references to personal knowledge, and in fact, stressed that it was up to the jury to determine whether he was credible by stating, "should you believe him? That's the question you are going to have to ask...All I'm asking you to do is consider whether or no his testimony is worthy of your belief" (Trial Tr. 333, l. 6-10). Because these statements are not improper, Counsel is likewise not deficient for failing to ask for a mistrial. Even if these statements were improper, they do not rise to the level of manifest necessity warranting a mistrial. Accordingly, these comments are not improper, and therefore, Counsel cannot be deemed deficient for failing to object to the statements or move for a mistrial.

This Court finds that Applicant has failed to prove that he was prejudiced by Counsel's failure to object to the solicitor's statements, as Applicant has failed to show that the comments infected the trial with unfairness as to make his conviction a denial of due process. *See e.g. State v. Durden*, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975); *Brown v. State*, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009). Moreover, Applicant has failed to show that a mistrial would have been granted if Counsel had moved for a mistrial. As discussed above, none of the statements rise to the level of manifest necessity required to warrant a mistrial. Accordingly, Applicant has failed to meet the burden imposed upon him, and therefore, this allegation is denied and dismissed with prejudice.

Failure to Object to: "It looked all too familiar because it had just happened two weeks ago the same way."

A handwritten signature in black ink, appearing to be the initials 'AM' followed by a stylized flourish.

It appears Applicant argues Counsel was ineffective for failing to properly object to a statement in which the store owner insinuated his store had been broken into two weeks prior to the incident at issue in this PCR. This Court finds Applicant has failed to meet the burden imposed upon him, and accordingly denies and dismisses the allegation with prejudice.

Applicant takes issue with the following exchange:

Solicitor: "When you got to the store, what did you observe?"

Witness: "Well, I observed that there were lots of police cars and a broken window on the side of the building and it looked all too familiar because it had just happened two weeks ago the very same way."

Counsel: "Objection, Your Honor."

[....]

Counsel: "He's discussing a break-in that occurred at this store and at some point in the past."

Court: "Okay. Any relevancy of a prior —"

Solicitor: "No, sir. I would ask that that be stricken. That's fine."

Court: "This is stricken from the record and consequently the objection is sustained."

(Trial Tr. 95).

Applicant argues Counsel improperly objected to this statement because she did not request a sidebar, but instead objected on the record. This Court finds Applicant has not and cannot show he was prejudiced by this alleged deficiency, and therefore, addresses only the prejudice prong for this allegation. *Strickland*, 466 U.S. 668 (1984) (If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed.).

As an initial matter, this Court notes that the statement did not implicate Applicant in the earlier burglary, and therefore, any argument that Applicant was prejudiced is highly speculative. This Court is not aware of any requirement that attorneys request a sidebar each and every time

they make an objection. The solicitor acknowledged Counsel's objection and even conceded to striking the testimony, and the trial court subsequently ordered the testimony be stricken. During the jury charge, the Court advised the jury: "If there was any testimony ordered **stricken** from the record in this case during the trial, **you must be disregard that testimony.**" (Trial Tr. 356) (emphasis added). The jury was properly advised to disregard the testimony, and accordingly, Applicant has not shown the proceeding would have been different had Counsel asked for a sidebar. *Cherry*, 300 S.C. at 117-18. Accordingly, this Court finds Applicant has failed to meet his requisite burden of proof, and denies and dismisses this allegation with prejudice.

Failure to Object to Trial Judge's Statement Regarding the DVD

Applicant alleges Counsel was ineffective for failing to object to the following statement from the trial judge: "Well, if he knows that the DVD is what he – he made a DVD according to his testimony and I would have to assume that Solicitor would not show him a DVD that was not made by him . . ." (Trial Tr. 100). This Court disagrees and denies and dismisses the allegation with prejudice.

This Court finds Applicant has not and cannot show he was prejudiced by this alleged deficiency, and therefore, addresses only the prejudice prong for this allegation. *Strickland*, 466 U.S. 668 (1984) (If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed.). The record shows the defense had no valid objection to the DVD's authenticity in general, but the defense only objected to the extent they believed the DVD should be admitted as an exhibit by way of Officer Goggins, not the store owner, Mr. Patel. (Trial Tr. 99-100). The DVD was ultimately admitted as an exhibit by way of Officer Goggins. (Trial Tr. 274). To the extent Applicant alleges this statement created a blanket credibility statement regarding the solicitor, this Court is equally unpersuaded. Any such argument

that Applicant's trial was prejudiced by this statement would be highly speculative. This statement and Counsel's failure to object to it is substantially outweighed by the evidence Against Applicant. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Applicant has not shown the proceeding would have been different had Counsel objected to the statement. *Cherry*, 300 S.C. at 117-18. Accordingly, this Court finds Applicant has failed to meet the burden imposed upon him, and denies and dismisses the allegation with prejudice.

Speedy Trial Allegation

Applicant alleges he was denied his right to a speedy trial. This Court disagrees and denies and dismisses the allegation with prejudice.

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally-guaranteed right to a speedy trial. *See* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right to a speedy and public trial[.]"). That right is designed to protect against anxiety stemming from public accusation of a crime and to limit the possibility of a lengthy pre-trial delay impairing an accused's defense. *State v. Langford*, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012). However, the right to a speedy trial is chiefly designed to prevent undue pre-trial impairment of liberty. *United States v. Loud Hawk*, 474 U.S. 302, 312 (1986). Critically though, the criminal trial process is designed to move deliberately due to the many procedural safeguards involved, and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. *United States v. Ewell*, 383 U.S. 116, 120 (1966); *see Beavers v. Haubert*, 198 U.S. 77, 87 (1905) ("The right of a speedy trial is necessarily relative. It is

consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.”).

In order to trigger a speedy trial analysis, a criminal defendant’s trial must have been delayed for a period of time that is presumptively prejudicial, which is necessarily dependent on the particular circumstances of each case. *Langford*, 400 S.C. at 442, 735 S.E.2d at 482. Notably, “a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case.” *Id.* In South Carolina, a delay of over two years has previously been found to be sufficient to trigger a speedy trial analysis. *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—be presumptively prejudicial. *See Doggett v. United States*, 505 U.S. 647, 652, n.1 (1992) (“Depending on the nature of the charges, the lower courts have generally found postaccusation delay ‘presumptively prejudicial’ at least as it approaches one year.”). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination “*is not based on the passage of a specific period of time*” and delay alone is not singularly dispositive. *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (emphasis added).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant’s speedy trial rights have been violated is necessarily dependent on the specific circumstances of the case. *State v. Robinson*, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. *State v. Kennedy*, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) whether any prejudice was suffered by the

defendant as a result of the delay. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Notably though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. *Id.* at 533. Instead, “they are related factors and must be considered together with such other circumstances as may be relevant.” *Id.* “In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.” *Id.*

Even assuming *arguendo*, the speedy trial analysis was triggered in this case, Applicant has not established a speedy trial violation under the facts of this case. Applicant was arrested on or about November 22, 2011, and was indicted by the Laurens County Grand jury in February 2012. Applicant’s trial commenced on June 9, 2014. Applicant had a related case pending in Newberry County, and Applicant received a few plea offers that would have disposed of both of these pending cases at once. These investigations coincided with each other and were intertwined. The record also indicates Applicant filed many motions to relieve counsel and had several different attorneys representing him throughout his case. (Trial Tr. 37). Accordingly, this Court finds Applicant has failed to establish a violation of his right to a speedy trial, and therefore, denies and dismisses this allegation with prejudice.

Allegations Regarding Cell Phone Records

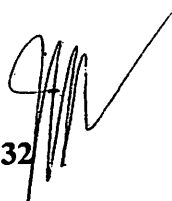
In his application, Applicant alleges Counsel was ineffective for failing to investigate cell phone records and telephone tower records allegedly obtained by the prosecution. This Court disagrees and denies and dismisses this allegation with prejudice.

Strickland makes clear that defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness

[under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Applicant testified Charles Verner gave him a copy of an order authorizing cell phone tower records. Applicant could not recall whether or not he discussed this Order with Counsel. Counsel testified he was not aware of an Order authorizing access to telephone records and phone locations during her representation, and similarly was not aware of any records that might have been produced pursuant to that Order. Counsel testified Applicant did not give her the name of any witnesses or leads to investigate that she did not investigate. Scott testified he believed the prosecution did not obtain any cell phone or telephone tower records pursuant to the Order.

This Court finds Counsel’s and Scott’s testimony credible, while also finding Applicant’s testimony on this issue credible only to the extent he testified she was aware an Order authorizing phone records and telephone tower records existed. Although an Order authorizing cell phone records and telephone tower appears to have been issued, this Court finds the evidence does not show records were ever obtained by the prosecution pursuant to this Order. *See Glover*, 318 S.C. at 498-99. It appears the prosecution did not obtain phone records or cell phone tower records pursuant to the Order, and therefore, neither the prosecution nor Counsel were in possession of any such records. Counsel investigated all of the disclosed discovery materials and performed an independent investigation. Applicant has not proven any such records would have placed him outside of the vicinity of the crime or otherwise helped his case. *See Glover*, 318 S.C. at 498-99. Applicant did not give Counsel any leads or witnesses to investigate that Counsel did not investigate. Accordingly, Applicant has failed to show Counsel was deficient.



Moreover, Applicant has failed to show how he was prejudiced by this alleged deficiency. Applicant has failed to show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Cherry*, 300 S.C. at 117-18. Moreover, the alleged deficiency is substantially outweighed by the evidence against Applicant. In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018), *citing Strickland*, 466 U.S. at 695-96, 104 S.Ct. at 2069, 80 L.Ed.2d at 698-99 (explaining that the court must analyze how individual errors of counsel affect the important factual findings in a particular case). As stated above, Applicant failed to produce any telephone records and show how they would have changed the outcome of his case. Accordingly, Applicant has failed to meet his burden as to both deficiency and prejudice, and therefore, this Court denies and dismisses this allegation with prejudice.

Allegation of Ineffectiveness for Asking Witness if He Belonged to a Gang called "Boss"

In his application, Applicant alleges Counsel was ineffective because she asked Christopher Mixon, a witness for the prosecution, whether Mixon belonged to a gang called "Boss."

On the defense's cross-examination of Christopher Mixon, the following exchange took place between Counsel and Mixon:

Counsel: "Okay. And were you a member of a gang back then?"

Mixon: "No, ma'am."

Counsel: "You weren't a member of the gang called Boss?"

Mixon: "No. Ma'am."

(Trial Tr. 180-181).

Later, the following exchange between Detective Tyrone Goggins and the solicitor took place:

Solicitor: "You were in the courtroom yesterday when [Counsel] was asking Christopher Mixon if he had belonged to a gang named Boss; is that right?"

Goggins: "Yes."

Solicitor: "Are you aware of any reference to anything referring to Boss as far as this case is concerned?"

[...]

Goggins: "That's what several individuals called [Applicant]."

(Trial Tr. 296).

It appears Applicant takes issue with Counsel's line of questioning because Mixon denied belonging to the "Boss" gang and because, according to Applicant, Counsel's question to Mixon resulted in Tyrone Goggins' testifying that Applicant was nicknamed "Boss." This Court finds Applicant has failed to meet the burden imposed upon him, and therefore, denies and dismisses this allegation with prejudice.

"Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Strickland*, at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119,

417 S.E.2d 529 (1992).

Counsel testified at the PCR hearing she asked Mixon this question with the intention of showing the jury that Mixon was not a credible witness due to his affiliation with a gang. Counsel acknowledged that this attempt was not successful per se because Mixon denied being a member of the gang.

This Court finds Counsel's testimony on this issue very credible. This Court also finds Applicant has failed to show how Counsel was ineffective for asking Mixon about his gang affiliation. First, Counsel was not deficient. Counsel articulated a reasonable and valid trial strategy for asking the question: to attempt to show that Mixon was not a credible witness for the State. Applicant cannot argue Counsel was ineffective merely because a strategy was unsuccessful. Accordingly, this Court finds Applicant has failed to show how Counsel was deficient.

Moreover, Applicant has failed to show how he was prejudiced by this alleged deficiency. Applicant has failed to show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Cherry*, 300 S.C. at 117-18. Moreover, the alleged deficiency is heavily outweighed by the evidence against Applicant. In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018), citing *Strickland*, 466 U.S. at 695-96, 104 S.Ct. at 2069, 80 L.Ed.2d at 698-99 (explaining that the court must analyze how individual errors of counsel affect the important factual findings in a particular case). Applicant was convicted based upon the compelling evidence against him, such as the testimony from his co-defendant, presence of his car, and video evidence, not based upon the testimony that Applicant was nicknamed "Boss." Applicant has

failed to meet the burden imposed upon him and therefore, this Court denies and dismisses this allegation with prejudice.

*Failure to Introduce Document Indicating Christopher Mixon Had a Driver's License,
Failure to Object to NCIC document indicating Applicant Was the Owner of the Vehicle, and
Failure to Object to Applicant's DMV Records⁷*

Applicant alleges Counsel was ineffective for failing to introduce a document indicating Christopher Mixon had a drivers' license, and Counsel was also ineffective for failing to object to Applicant's DMV records. Applicant also alleges Counsel was ineffective for failing to object to the NCIC document indicating Applicant was the owner of the Chrysler 300. It appears Applicant contends that Counsel should have used these actions to argue that Christopher Mixon must have been driving the car, and Applicant could not have been driving the car. Applicant also argues that because Counsel did not object to the DMV record and "demand[]" the State call a witness from the South Carolina DMV, she waived her right to confront a DMV witness about the information contained in the document. This Court finds Applicant has failed to show how Counsel was ineffective, and therefore, denies and dismisses this allegation with prejudice.

Counsel testified Odom never denied owning the Chrysler 300. This Court finds Counsel's testimony credible. This Court finds Applicant has not and cannot show he was prejudiced by this alleged deficiency, and therefore, addresses only the prejudice prong for this allegation. *Strickland*, 466 U.S. 668 (1984) (If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed.). This alleged deficiency would not with reasonable probability change the outcome of the case as driving a vehicle to commit a burglary is not a requirement or element of burglary. Even if Mixon could have driven himself and Applicant to the BP station to commit the crime, Applicant would still be equally as culpable.

⁷ This section analyzes allegations seven, nine, and ten of the Amended Application.

To the extent Applicant alleges should have challenged the DMV/NCIC information indicating he was the owner of the vehicle, and therefore, his address was associated with the vehicle, this Court also finds Applicant cannot prove prejudice as Counsel testified Applicant never denied owning the vehicle found near the scene. This Court finds cross-examining a South Carolina DMB representative would not have changed the outcome of Applicant's case. Accordingly, Applicant has failed to establish prejudice, and accordingly, denies and dismisses this allegation with prejudice.

Allegations Regarding Applicant's Decision Not To Testify⁸

Applicant argues Counsel was ineffective because Counsel prohibited him from testifying at trial and because counsel "failed to properly preserve the record regarding which of the Petitioner's convictions could be used against him if he testified during the trial." Applicant alleges he wanted to testify at trial but did not do so because Counsel would not allow him, or alternatively, because he was not aware of what convictions could be used against him. This Court disagrees and denies and dismisses this allegation with prejudice.

It is ultimately solely Petitioner's decision whether to testify on his own behalf. *See* U.S. Const. Amend. V ("[n]o person ... shall be compelled in any criminal case to be a witness against himself"); *See generally Brown v. State*, 340 S.C. 590, 533 S.E.2d 308 (2000).

Rule 609 of the South Carolina Rules of Evidence states:

(a) General Rule. For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was

⁸ This section analyzes the following allegations: (1) Amended Application: "Failure to properly preserve the record regarding which of the Petitioner's convictions could be used against him if he testified during the trial"; and (2) Original Application: "Applicant wanted to present a defense but wasn't allowed to."

convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

SCORE 609.

This Court finds Applicant has failed to meet his burden as to prejudice, and therefore, disposes of this allegation on that basis. *Strickland*, 466 U.S. 668 (1984) (If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed.). As an initial matter, to the extent Applicant contends Counsel explicitly prohibited him from testifying, this Court finds this argument meritless, as Applicant was given a thorough colloquy regarding his Fifth Amendment rights. (Trial Tr. 319-322). As part of that lengthy colloquy, the Court informed Applicant: “You have the right to testify in your own behalf; however, no one can make you testify.” (Trial Tr. 319).

Moreover, with respect to his amended allegation that Counsel was ineffective for failing to determine what convictions would have been used against Applicant had he testified, Applicant has failed to show that this alleged deficiency would have changed the outcome of the case with reasonable probability. Applicant failed to provide information regarding what his testimony would have been at trial, and how this testimony would have changed the outcome of his case with

reasonable probability. Any allegation that Applicant was prejudiced by this alleged deficiency is highly speculative. Accordingly, this Court denies and dismisses the allegation with prejudice.

Conclusion

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notifies Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the PCR application must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of South Carolina Department of Corrections.

AND IT IS SO ORDERED this 2nd day of August, 2021.

Laurens, South Carolina.

J. MARK HAYES, II.
Presiding Judge
Eighth Judicial Circuit

A TRUE COPY OF ORIGINAL
K. Michelle Simmons
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
MAURICE ANTHONY ODOM	)	
(#199677),	)	
	)	
Petitioner,	)	
	)	PETITIONER'S MOTION TO RECONSIDER
v.	)	
	)	C/A No. 2016-CP-30-251
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

The Petitioner Maurice Anthony Odom, by and through his attorney of record, respectfully asks the Court to reconsider its Order of Dismissal dated August 2, 2021, wherein the Court dismissed the Applicant's PCR application. The Petitioner's attorney received a signed but not filed copy of the Order by first-class mail from the Office of the Attorney General on Monday, August 9, 2021.

K. MICHELLE SIMMONS
 2021 AUG 12 AM 9:17
 CLERK OF COURT
 LAURENS COUNTY

The Petitioner's jury trial should have been a straightforward swearing contest case. At trial, this should have been the proverbial "he said, she said" case, in which the jury could have believed the testimony of the co-defendant, or else could have believed the Petitioner's testimony if the Petitioner had testified. However, because of trial counsel's deficiencies and the resulting prejudice, the Petitioner's right to a competent defense was torpedoed and the Petitioner never had a realistic opportunity to testify in his own defense. Remember, there was no physical evidence at the crime scene linking the Petitioner to the burglary, and the co-defendant was the only person who identified the Petitioner as the other person on the store video.

The Petitioner submits that the Court should reconsider its Order and thereafter amend its Order as follows:

[Handwritten signature]

1. Failure to object to trial judge's reference to God. The Court's Order compares the trial judge's God statement to "search for the truth" and "truth seeking" jury charges. However, this is comparing apples to oranges. In the "truth" cases, the "truth" language was charged to the jury immediately prior to deliberations, after all evidence had been presented to the jury. The "truth" language has the tendency to instruct the jury to play detective regarding the evidence presented at trial, instead of determining whether the state has proven guilty beyond a reasonable doubt. Here, at the call of the case and prior to jury selection, the trial judge authorized the jury panel to rely on outside evidence (i.e., the will of God) during the Petitioner's trial if selected for the trial jury, and not solely on the evidence introduced during the trial of the Petitioner's case. Here, the jury panel was instructed to pray, not to play detective. The trial judge's God statement changed the State's burden of proof from strictly beyond a reasonable doubt to include divine intervention. Trial counsel presented no valid trial strategy as to why she failed to object to this statement, failed to ask for a curative instruction, failed to ask for the statement to be stricken from the record, or failed to ask for a mistrial.

2. Failure to challenge indictment. The Court misconstrues the Petitioner's argument. The indictment alleges a crime. The Petitioner has never argued otherwise. Here, the conspiracy indictment included language that the Petitioner's co-conspirator was an unknown person. This is not true, as the co-defendant was arrested before the Petitioner and before the Petitioner was indicted, and the co-defendant implicated the Petitioner leading to the Petitioner's arrest. The State allowed an indictment to be presented to the grand jury that contained inaccurate language, and the trial judge read the same inaccurate language to the jury panel. Trial counsel should have objected to the indictment and moved to quash the indictment, so that

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the grand jury could have received accurate information. Trial counsel presented no valid trial strategy as to why she failed to object to the indictment.

3. Failure to object to solicitor's "truth" statement. Trial counsel knew or should have known that the crux of every criminal prosecution is whether the State can prove the defendant's guilt beyond a reasonable doubt. The issue isn't whether the jury can determine the truth of what actually happened. Trial counsel presented no valid trial strategy as to why she failed to object to this statement, failed to ask for a curative instruction, failed to ask for the statement to be stricken from the record, or failed to ask for a mistrial. The jury's duty isn't to determine the truth. The jury isn't composed of detectives whose job is to solve crimes and determine what happened. The jury's sole duty is to determine whether the State has proved the allegations contained in the indictments beyond a reasonable doubt. The solicitor's statement lowered the State's burden of proof.

4. Failure to object to solicitor's alleged witness credibility statements. The solicitor vouched for the credibility and trustworthiness of the co-defendant in his opening statement when he told the jurors: "But I submit to you that he [co-defendant and witness Christopher Mixon] is before you with no promises, no rewards, no hope of anything like that. He is simply here to tell you the truth and I believe you will find him in spite of his criminal record to be a credible witness." (Page 73, lines 10-14.) The co-defendant was the only witness who testified about the Petitioner's involvement in the burglary. Moreover, the State presented no forensic evidence of the Petitioner's involvement, such as fingerprints, DNA, hair fibers, or footprints. No evidence of the crime was found during a search of the Petitioner's house and property.

5. The solicitor vouched for the co-defendant's credibility and trustworthiness again in his closing argument. (Page 333, line 2 - page 334, line 23). Moreover, the solicitor commented on the Petitioner's failure to challenge evidence and the Petitioner's failure to present an alternative theory of the crime that didn't include the Petitioner. The solicitor shifted the burden to the Petitioner to establish his innocence. See also page 340, lines 1-3, where the solicitor refers to the co-defendant's testimony as "uncontradicted," which was a comment on the Petitioner's right to remain silent and his right not to present a defense.

6. The solicitor vouched for the credibility and trustworthiness of a police officer in his closing argument: "They do their best. And I submit to you that Tyrone Goggins is a good, experienced, capable police officer and investigator as his sixteen years would document[.]" (Page 338, line 25 - page 339, line 3.)

7. Trial counsel presented no valid trial strategy as to why she failed to object to these statements, failed to ask for curative instructions, failed to ask for the statements to be stricken from the record, or failed to ask for a mistrial. These statements weren't just summaries of facts to be presented to the jury or already presented to the jury. With these statements, the solicitor vouched for the credibility of the State's witnesses, and also said the co-defendant's testimony was "uncontradicted."

8. Failure to object to: "It looked all too familiar because it had just happened two weeks ago the same way." Here, trial counsel actually objected to testimony from witness Ramesh Patel, when he intimated that another burglary occurred at the store two (2) weeks prior. Trial counsel was correct to object, but then she proceeded to argue the objection in the presence of the jury when she should have requested a sidebar, thereby confirming to the jury that a prior

break-in had occurred, and allowing the jury to speculate whether the Petitioner was involved. The jury heard evidence of a prior break-in from the witness and trial counsel herself. Trial counsel presented no valid trial strategy as to why she failed to ask for a sidebar, failed to ask for a curative instruction, or failed to ask for a mistrial.

9. Failure to object to trial judge's statement regarding the DVD. The trial judge vouched for the credibility and trustworthiness of the solicitor when he said: "Well, if he knows that that DVD is what he -- he made a DVD according to his testimony and I would have to assume that Solicitor would not show him a DVD that was not made by him[.]" (Page 100, lines 3-6.) The trial judge vouching for the solicitor is more prejudicial than the solicitor vouching for the state's witnesses, as the jury looks to the trial judge for guidance and rightfully so. Trial counsel presented no valid trial strategy as to why she failed to object to this statement, failed to ask for a curative instruction, failed to ask for the statement to be stricken from the record, or failed to ask for a mistrial.

10. Allegations regarding cell phone records. The cell phone order was issued in the Petitioner's Newberry case. Trial counsel knew about the Newberry case. (Trial counsel moved to be relieved as the Petitioner's lawyer on his remaining charges. (Page 402, line 18 - page 403, line 13.)) Trial counsel failed to inspect the Newberry case file. Trial counsel knew or should have known to inspect all pending case files, wherever located, regarding the Petitioner, as case files can provide valuable material. If trial counsel had inspected the Newberry file, she would have known about the cell phone order and could have followed up with the solicitor's office about whether these documents had been obtained. The Order was signed November 17, 2011. The Petitioner was tried in June 2014. It's common knowledge that cell phone records are kept for a finite period of time. Trial counsel's failure prevented these records from being obtained.

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Trial counsel presented no valid trial strategy as to why she failed to inspect the Newberry case file.

11. Allegation of ineffectiveness for asking witness if he belonged to a gang called "Boss." Why on Earth did trial counsel ask co-defendant Christopher Nixon if he was "a member of the gang called Boss"? (Page 181, lines 2-3.) Gang activity had absolutely nothing to do with this case. However, it opened the door to witness Tyrone Goggins testifying to Boss being the Petitioner's nickname. (Page 296, lines 11-18.) This could have led the jury to believe that the Petitioner was involved in gang activity, after trial counsel previously had equated "Boss" with a gang. Trial counsel presented no valid trial strategy as to why she asked the question in the first place, failed to object to Goggins' testimony, failed to ask for a curative instruction, failed to ask for the statement to be stricken from the record, or failed to ask for a mistrial.

12. Failure to introduce document indicating Christopher Nixon had a driver's license, failure to object to NCIC document indicating Applicant was the owner of the vehicle, and failure to object to Applicant's DMV records. The co-defendant testified that he didn't have a driver's license and couldn't drive. There was also testimony that the co-defendant and the Petitioner lived near each other, and that police located the co-defendant at the Petitioner's address in Barnwell. Trial counsel should have introduced a document produced by the State in discovery indicating that the co-defendant had a driver's license. (Page 174, line 23 - page 180, line 10.) Trial counsel said she was "confused" by the document. Trial counsel could have used the document to impeach the co-defendant's testimony, and suggest to the jury that the co-defendant drove himself to the burglary.

13. Trial counsel failed to object, and then consented, to the introduction of the NCIC document which indicated that the Petitioner owned the vehicle located near the crime scene. (Page 264, line 2 - page 268, line 12.) This sunk the Petitioner's ship. It's one thing for the co-defendant to say the Petitioner owned the vehicle, but quite another for a government document to show the Petitioner owned the vehicle. It's irrelevant what the Petitioner told trial counsel in private about owning the car. Trial counsel had an obligation to object to inadmissible evidence. The information contained in this document was hearsay, and no hearsay exceptions apply. Trial counsel should have demanded that the State call a witness from North Carolina DMV to get this document into evidence. Furthermore, by not objecting, trial counsel waived her right to confront a North Carolina DMV witness about the information contained in this document. After this document was entered into evidence without objection, the State and its witnesses repeatedly referred to the Petitioner as the owner of the vehicle. This document strengthened the State's case against the Petitioner.

14. Trial counsel objected, on an improper basis, to the introduction of the Petitioner's South Carolina DMV record. (Page 288, line 14 - page 291, line 16.) This further sunk the Petitioner's ship. Trial counsel argued relevance. The information contained in this document was hearsay, and no hearsay exceptions apply. Trial counsel should have demanded that the State call a witness from South Carolina DMV to get this document into evidence. After this document was entered into evidence, the State and its witnesses repeatedly referred to the Petitioner's address as being the place where the Petitioner's vehicle was located. This document strengthened the State's case against the Petitioner.

15. Trial counsel presented no valid trial strategy as to why she failed to introduce the co-defendant's driver's license and failed to object or object properly to the NCIC documents

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and the Petitioner's DMV records. Sinking your client's case isn't a valid trial strategy, and basing evidentiary objections (or the lack thereof) on what your client told you confidentially isn't a valid trial strategy.

16. Allegations regarding applicant's decision not to testify. Trial counsel failed to properly preserve the record regarding which of the Petitioner's convictions could be used against him if he testified at trial. (Page 321, line 3 - page 322, line 6.) Trial counsel folded on this issue. At the PCR hearing, trial counsel acknowledged researching moral turpitude as it related to a CSC conviction. Trial counsel didn't inspect the Petitioner's certified convictions in the State's possession.

17. The Petitioner pled guilty to burglary third degree (Indictment No. 1992-GS-06-00070) on May 18, 1992, and received ten (10) months followed by probation for thirty (30) months.

18. The Petitioner pled guilty to burglary second degree x2 (Indictment Nos. 1993-GS-06-00196 & 00235) on November 1, 1993, and received a YOA sentence.

19. The Petitioner pled guilty to burglary second degree (Indictment No. 1992-GS-06-00035) on October 27, 1997, and received ten (10) years.

20. The Petitioner pled guilty to CSC with minor (Indictment No. 1997-GS-06-00365) on October 27, 1997, and received ten (10) years. This conviction was reversed on appeal. The Petitioner again pled guilty to CSC with minor (Indictment No. 1997-GS-06-00365) on August 12, 2002, and received five (5) years, with credit for time served since October 27, 1997 (which was almost five (5) years).

21. By the time the Petitioner's case came to trial on June 9, 2014, more than ten (10) years had elapsed since the Petitioner's release from confinement on all of these convictions.

The trial transcript doesn't indicate that the State gave trial counsel advance written notice of the State's intention to use convictions outside the ten (10) year threshold contained in SCRE 609(b).

22. The Petitioner wanted to testify. Trial counsel should have gotten a ruling from the trial judge about whether the prior convictions could be used at all to impeach the Petitioner. If the Court allowed the State to introduce any convictions, trial counsel should have asked the Court to forbid the State to mention the nature of the convictions (because of the prejudicial nature of sex crimes and/or the similarity of the burglary convictions to the current charge) and to only mention that it was a felony.

23. Trial counsel didn't challenge the use of the burglary convictions because the State intended to argue "common scheme or plan." That's not a permissible reason for the State to impeach with prior burglary convictions which happened years prior to the burglary that the Petitioner was on trial for. Trial counsel could have asked the Court, if the Court allowed the State to introduce the burglary convictions, to forbid the State to mention the nature of the convictions (because of their prejudicial and similar nature to the case at hand) and to only mention that they were felonies. Furthermore, the trial transcript doesn't indicate that the State intended to argue that the Petitioner's pending Newberry charges were part of a common scheme or plan with the Laurens charges. (Page 321, line 1 - page 322, line 6.)

24. The Court doesn't believe that the Petitioner would have testified if all his prior convictions had been ruled inadmissible, or if his prior convictions were allowed before the jury only in generic terms. The Petitioner isn't sure this ruling makes sense. The Petitioner has every incentive to tell his story to the jury if his prior record isn't admissible or is else presented in generic terms. And this Court has no reason to believe that the Petitioner would have confessed

his guilt during his testimony. Furthermore, there's no evidence in the trial transcript that the State intended to argue common scheme or plan with the Newberry charges.

25. Cumulative error. All of the issues raised by the Petitioner, combined, demonstrate that trial counsel was ineffective, in over her head, and without a grasp of the rules of evidence. If trial counsel had been effective, there is a reasonable probability that the trial result would have been different. The Petitioner was especially prejudiced, cumulatively, by the State's vouching, the State's comment on his right to remain silent, the introduction of the NCIC record, the introduction of the Petitioner's DMV record, and the Petitioner's failure to testify because trial counsel didn't challenge the admissibility of his prior convictions.

RESPECTFULLY SUBMITTED.

THE HENDERSON LAW FIRM, P.C.
Attorney for the Petitioner

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Greenwood, South Carolina

August 10, 2021



LAW OFFICE

THE HENDERSON LAW FIRM, P.C.**Carson M. Henderson**

ATTORNEY AND COUNSELOR AT LAW

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August 10, 2021

Hon. Michelle Simmons
Laurens County Clerk of Court
P.O. Box 287
Laurens, S.C. 29360Re: Maurice Anthony Odom v. State of South Carolina
Laurens C/A No. 2016-CP-30-251K. MICHELLE SIMMONS
2021 AUG 12 AM 9:17
LAURENS COUNTY
CLERK OF COURT

Dear Ms. Simmons:

Please record the enclosed Petitioner's Motion to Reconsider and return a clocked copy to me in the enclosed self-addressed and stamped envelope. By copy of this letter, I'm serving this document on Judge Mark Hayes and Attorney General Michael Neubauer.

My email address is carson@carsonhendersonlawfirm.com.

Thank you for your assistance and cooperation in this matter.

Cordially yours,

THE HENDERSON LAW FIRM, P.C.

Carson M. Henderson

CMH/ckb

Enclosures as indicated

#1

Cc: Honorable J. Mark Hayes, II
Circuit Court Judge
180 Magnolia Street
Spartanburg, S.C. 29306

Michael Neubauer, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

LEGAL MAIL – PERSONAL AND CONFIDENTIAL

Maurice Anthony Odom (#199677)
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210

#2

State South Carolina)
) Court of Common Pleas
County of Laurens)
2016-CP-30-251

Maurice Anthony Odom)
vs.) Transcript of Record
)
)
State of South Carolina)
Defendant)

June 22, 2022
Newberry, South Carolina

VIRTUAL-WEBEX

B E F O R E:

Honorable John C. Hayes, Judge

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

Zachery Jones, Assistant Attorney General
Attorney for the State

Carson Henderson, Esq.
Attorney for Maurice A. Odom

Joy E. Holston
Official Court Reporter

1 THE COURT: We now move to the case of Maurice
2 Anthony Odom versus State of South Carolina. I have got
3 this as 2016-CP-30-251. We are here today on a motion for
4 reconsideration of this Court's prior ruling that had been
5 filed by Mr. Henderson on behalf of Mr. Odom. What we
6 will do, Mr. Odom, I do not anticipate that you will be
7 speaking today so please just listen to the arguments.
8 And when we are done, please feel free to reach out to Mr.
9 Henderson, I am sure he will be able to answer any
10 questions you might have or update you as what is taking
11 place. But at this time I will turn the matter over to
12 Mr. Henderson to receive his arguments and then we will
13 hear from the State. And then, Mr. Henderson, since he
14 has the burden of proof, he will have an opportunity to
15 close and reply. So at this time I will hear from Mr.
16 Henderson.

17 MR. HENDERSON: Yes sir, Your Honor. I probably
18 detailed the argument very thoroughly in my motion to
19 reconsider. But just to hit some of the high points.
20 This should have been the proverbial he said, she said
21 case, Your Honor. That if you had a codefendant, the
22 codefendant could have got up all day long and testified
23 to say that Maurice Odom, he was with me. Fine, if
24 somebody wants to get up there and testify to that, fine,
25 they are subject to cross-examination. This gentleman had

1 a bad record, all this type of stuff. Again, there was no
2 physical evidence linking my client for the burglary at
3 the crime scene, there was no DNA, no fingerprints, no
4 nothing, but should have been; basically it is a he said,
5 she said case. The codefendant could have testified, and
6 then Maurice testified in this last hearing, he wanted to
7 testify and tell his story, that I wasn't involved. That
8 could have been the crux of this case, Your Honor. And if
9 the jury is just going to make its decision based upon
10 that but trial counsel, I don't know what trial counsel
11 would do, Your Honor. But just kind of guessing stuff,
12 letting stuff into evidence without objecting, objecting
13 wrongly, not investigating my client's criminal history.
14 All of this type stuff made this a whole lot worse in a he
15 said, she said case, that it rightfully could have been.
16 Your Honor, I am going to hit all of my points that are in
17 my motion. Number one, I mean, when the trial Judge at
18 this case, called on the jury panel, you know, when they
19 have to make the decision, you know, to rely on the word
20 of the Lord. I just have real objections with that, Your
21 Honor. Now, if jurors want to independently pray to
22 themselves for guidance then all means, I hope all of them
23 do. For the Court to be out here telling this jury panel
24 that they need to listen to the will of God in making a
25 decision, I just have a major problem with that, probably

1 inappropriate. Trial counsel did not object to that.
2 Number two, you know, challenge one of the indictments,
3 trial counsel did not do that. And I think the State,
4 possibly the Court misconstrued my argument. That this
5 conspiracy indictment, conspiracy indictment says that my
6 client's coconspirator was an unknown person. Absolutely
7 not true. In fact, the other gentleman that was arrested
8 and actually testified against my client was arrested
9 before my client. So the State clearly knew who this
10 person was and the State actually went and presented
11 indictments to the Grand Jury that became inaccurate
12 information and the trial Judge read the same indictment
13 with inaccurate information to the trial jury, to the jury
14 panel out there while the jury was being selected. Trial
15 counsel should have objected to that indictment and moved
16 to quash that indictment. Trial counsel, I don't believe,
17 presented any valid reason, like she didn't make, she
18 didn't object to those indictments. And, again, number
19 three, failure to object to the true statement. Again,
20 there was the Solicitor stating in arguments that the
21 jury's obligation is to search for the truth, that is just
22 not accurate. You know, our Supreme Court said, that is
23 not accurate and it lowers, it lowers the State's burden
24 of proof. Number four, Your Honor, about the Solicitor
25 vouching for the credibility and trustworthiness of the

1 codefendant in opening statement. And, again, this
2 codefendant is the only person who testified that my
3 client was involved in this robbery. And I will read it
4 verbatim but I would submit to you that he, that is the
5 codefendant, Christopher Mixon, M-I-X-O-N, is before you
6 with no promises, no rewards, no hope of anything like
7 that. He is simply here to tell you the truth. I believe
8 you will find him, in spite of his criminal record, to be
9 a credible witness. That is clearly vouching for the only
10 witness who can put my client at this crime scene, Your
11 Honor. And, again, and the State presented no forensic
12 evidence of my client's involvement at all. No DNA, no
13 fingerprints, no hair fibers, no footprints. Actually
14 when my client - the property was searched, no evidence
15 was found of this robbery. Again, why trial counsel did
16 not object to that, I don't know. Number five, so again,
17 the Solicitor's closing argument, for Mr. Mixon's,
18 M-I-X-O-N, credibility and trustworthiness again.
19 Basically where, in all of those shifting, that the
20 Solicitor committed on my client's failure to challenge
21 evidence and my client's failure to present an alternative
22 theory of the crime that didn't include my client. That
23 is clearly a burden. Trial counsel didn't object to any
24 of that, Your Honor. And also in the closing argument the
25 Solicitor called the codefendant's testimony, Mr. Mixon's

1 testimony uncontradicted, which again, is a comment on my
2 client's right to remain silent. Number six, when the
3 Solicitor is vouching for the credibility and
4 trustworthiness of a, on one of the witnesses who
5 testified. Your Honor, and trial counsel presented no
6 valid strategy why she didn't object, why she didn't move
7 to strike, why didn't you ask for a curative instruction;
8 why didn't you ask for a mistrial, none of that, Your
9 Honor. Number eight, where the owner of the store that
10 was robbed was talking about a prior robbery that happened
11 at the store two weeks ago. Your Honor, trial counsel did
12 the right thing. She objected, properly objected but then
13 proceeded to make this argument in front of the trial
14 jury. This was just further brought up before the jury's
15 eyes that not only did the guy get robbed two weeks ago
16 but it could be, it could be my client. So she is sitting
17 there arguing about the admissibility of this while my
18 client is sitting next to her, twelve members of the jury
19 are sitting across the courtroom. She presented no valid
20 strategy why she didn't move to have a sidebar, why she
21 didn't move to have a trial jury excused from the
22 courtroom. Lots of stuff there, Your Honor. And, again,
23 with the jury hearing all this bad stuff that happened at
24 this location, they couldn't help but think or to blame my
25 client for it. And number nine, with trial Judge's

1 statement regarding DVD. The trial Judge was bolstering
2 the Solicitor involving to introduce a document into
3 evidence, Your Honor. And when the Judge starts vouching
4 for somebody, I mean, that is more extreme and more severe
5 than when the lawyers start vouching for people's
6 believability and credibility and trustworthiness. The
7 jury does look for the Judge for guidance. Again, trial
8 counsel didn't object to that. Your Honor, then we get
9 down to these cell phone records. Your Honor, actually,
10 during this trial, we actually had one of the Solicitor's,
11 one of the Solicitor's down in Newberry come and testify
12 about the matter they found in the record. Your Honor,
13 trial counsel was supported to represent Mr. Odom in
14 Laurens and Newberry County at the same time. Obviously
15 different counties and different paper but appointed on
16 all on his pending charges. So she should have been well
17 aware of what was in the Laurens file, what we are dealing
18 with, and what was also in the Newberry file. The cell
19 phone records order was actually in the Newberry file even
20 though it dealt with some from Laurens, in the Newberry
21 file. And by the time I ever got appointed to start
22 learning about this, figuring out that there was Newberry
23 charges, copying that file, I learn about the cell phone.
24 The State had actually gone up here and tried to get cell
25 phone records and see if they could find my client through

1 the robbery that occurred in Laurens County that we are
2 here about today. And, again, it looks like, as best as I
3 can tell, that the Solicitor sent that order in, it looks
4 like, from the best I can tell but we have no results from
5 that order, no cell phone records, no nothing. And, of
6 course, by the time I ever get into this it is way too
7 late to start getting stuff. But if trial counsel had
8 done her job up front and followed up on the cell phone
9 order, the records that may have been a, ping, (phonetic)
10 pursuant to that cell phone order, it could have been
11 something in the order that truly, in those records that
12 truly exonerates my client. He is adamant that he wanted
13 to testify and tell his story and I will get into that
14 later, he wasn't there. We have got these records out
15 here that could have exonerated him. Trial counsel just
16 dropped the ball on following up on this stuff, Your
17 Honor. Number eleven, asking Mr. Mixon, if he belongs to
18 a gang called Boss. Your Honor, I have no idea why trial
19 counsel did that. I don't think she ever said or gave a
20 good reason or any reason as to why she asked about gang
21 activity when there was no allegation about gang related
22 activity in this matter, Your Honor, except trial counsel
23 brings it up. The next thing you know, there is a police
24 officer, crams that down. Trial counsel says hey, my
25 client is called, again, the jury somewhat speculates that

1 my client is in a gang, maybe there was a gang called
2 Boss. All of this stuff that trial counsel opened the
3 door to that wasn't relevant. Didn't amount to a hill of
4 beans of why they were in court, yet significantly
5 prejudiced my client by her asking these questions.
6 Number twelve, the codefendant, Mr. Mixon, testified that
7 he didn't have a drivers license and couldn't drive. Your
8 Honor, we entered into evidence that the, about this, that
9 Mr. Mixon had a drivers license. Again, trial counsel
10 said she was confused by that document and didn't
11 understand that document. At the very least she could
12 have cross-examined Mr. Mixon on this. So keep in mind,
13 Mr. Mixon is saying, I can't drive, somebody had to take
14 me. And we actually found out that Mr. Mixon had a
15 drivers license, I mean he could drive. That would
16 severely un-protect his testimony to the jury, I can't
17 drive, I don't know how to drive and Mr. Odom is the one
18 that drove me to the robbery. Yet trial counsel just
19 dropped the ball about that, saying, she was just confused
20 about that. And then, Your Honor, we had the NCIC
21 documents about the, my client owned the vehicle located
22 at the crime scene. Clearly hearsay. I mean no attempt,
23 Your Honor, it is an out-of-state document for that
24 matter. There is a copy of it is in the Court's file and
25 was introduced as an exhibit. Trial counsel did not

1 object to that at all. And from there, it is truly, my
2 client's case, the Solicitor just kept harping on that my
3 client owned the car that was found near the robbery. And
4 Mr. Mixon got up there and said, trial counsel left this
5 document into evidence without objecting to it. Hearsay
6 and confront the contents of this document. You know,
7 trial counsel should have demanded that the State call a
8 witness from North Carolina and get this document into
9 evidence. Just didn't do that. You are waiting for the
10 right to confront the witness about this by presenting
11 this document. But again, and then, Your Honor, we have
12 got my client's South Carolina DMV records which shows his
13 address, Your Honor. Trial counsel objected but argued
14 relevant, wrong argument. Again, it is a hearsay
15 argument, she should have objected. Again, it demands
16 that the State call somebody from South Carolina DMV to
17 get this document into evidence. Again, once this
18 document was into evidence, you know, the State's witness
19 kept mentioning that my client's address was the place
20 where his car was located. Now, we just, trial counsel by
21 failing to object and, objecting wrongly, makes it worse
22 and worse and worse for my client. Again, trial counsel
23 presented no valid reason as to why, hearsay. Your Honor,
24 number sixteen, again, talking about my client not
25 testifying. If you read the trial transcript, Your Honor,

1 the Court asked my client if he wanted to testify and my
2 client said yes but I am not because of all this bad
3 records that is going to come in against him. He made the
4 decision, hey, I am not going to testify because I don't
5 want to get impeached by my prior record. Your Honor,
6 trial counsel never had any hearing in front of the trial
7 Judge for the Court to determine, which, if any, of my
8 client's prior convictions were admissible against him if
9 he testified. But, Your Honor, I went in the Clerk's
10 file, I got copies of all the convictions that the State
11 was intending to try to use. And, again, on paragraph 17
12 there is a burglary third degree conviction; 18, there is
13 a burglary second degree conviction; number 19, there is a
14 burglary second degree conviction; number 20, there was a
15 CSC conviction that actually went up on appeal and came
16 back. And by the time my client came to trial all of
17 those convictions were older than ten years, I done the
18 math. And the State never put trial counsel on notice
19 that they wanted to use convictions that were longer, that
20 were older than ten years. But, again, my client is
21 wanting to testify, he is concerned about all of this bad
22 stuff coming out against him, when none of that bad stuff
23 should have been admissible, unless he happened to open
24 the door when he testified. But that is a different
25 issue, Your Honor. Trial counsel should have gotten the

1 ruling from the Court on the particular issue, just did
2 not do it. Trial counsel, did this colloquy with my
3 client about wanting to testify. Saying that she didn't,
4 she was worried about these other convictions coming in
5 for a common scheme or plan. And, again, that is not a
6 permissible reason for all of these old convictions to
7 come in, number one. Number two, they are older than ten
8 years. And, again, even if the Court for some reason had
9 allowed some of these burglary convictions to come in, I
10 think trial counsel could have gotten it redacted to the
11 burglary convictions because this is a burglary too, going
12 back to the case of Green versus State. And it is a
13 felony. And, again, there is nothing in the trial
14 transcript that indicated that the Solicitor's office
15 wanted to use the Newberry charges in part of a common
16 scheme or plan. So I think that the trial counsel just
17 completely dropped the ball on my client not being able to
18 get up on the stand and present on the Bible and tell his
19 side of the story. I think he was mislead by trial
20 counsel about what was permissible. And again, Your
21 Honor, the reading Your Honor's order, that it sounds like
22 that the Court didn't believe my client would testify
23 because of stuff that was kept out; or only, the time, got
24 two felonies. So as I say on page nine, Your Honor, that
25 ruling by the Court, my client, every client has the

1 incentive to get on the stand and tell his side of the
2 story, that he is not going to be impeached by a prior bad
3 record or evidence presented. Of course, he told the
4 trial Judge under oath, he wanted to get up there and tell
5 his side of the story but couldn't because of his bad
6 record. And Your Honor, number 25 is similar to the, I
7 mean, all the issues I have raised, Your Honor, show the
8 deficiency by trial counsel. Again, I think a lot of
9 trial counsel, she is a friend but she was in over her
10 head, very, very deficient. And I think we have
11 demonstrated that my client was clearly prejudiced by
12 these deficiencies. And, again, Your Honor, you were
13 asking the question in the last hearing about how do we
14 prepare, you know, guilty plea, apples, (phonetic), to
15 trial verdict. And, again, this is a case where my client
16 went to trial, exercised his constitutional right to trial
17 and he had very deficient representation. If this case
18 had been limited to, you know, Mr. Mixon's word against my
19 client's word, and the store owner talking about, hey, I
20 have been robbed. That is a completely different case
21 than what actually got to trial. And, again, on that
22 particular case, my client walks, I just don't think the
23 State can prove that beyond all and any reasonable doubt
24 he was involved in this burglary but for all the
25 deficiencies of the trial counsel did, Your Honor. Again,

1 that is my argument, Your Honor.

2 THE COURT: Thank you for that. Now, Mr. Henderson,
3 you made the argument in 25, a cumulative error. We, in
4 South Carolina adopted a cumulative error, for analysis
5 for purposes of PCR?

6 MR. HENDERSON: Your Honor, I am not sure we have but
7 my mentor, Mr. Wise, always, when I have a lot of
8 cumulative errors, he always says raise the issue. Maybe
9 some day we will end up with cumulative errors, Your
10 Honor. Even outside of that, a couple of these errors in
11 and of itself should be enough to grant a new trial. So
12 with all together, cumulatively, likely or wrongly, I
13 think it is definitely enough to grant Mr. Odom a new
14 trial.

15 THE COURT: Thank you for that. Alright, I will be
16 more than happy to hear from the State.

17 MR. JONES: Thank you, Your Honor. First of all, to
18 get this out of the way. The State of South Carolina has
19 not adopted the cumulative error standard and in fact
20 cumulative error has been expressly rejected by the Fourth
21 Circuit Court of Appeals and the majority of Federal
22 Circuit Court of Appeals in the PCR context. So as far as
23 that goes, I think this case is going to have to stand or
24 fall on individual issues, not on the accumulation of
25 issues. With that being said, going through the

1 individual issues. The first one brought up by Mr.
2 Henderson is the Judge's statement and what the Judge
3 actually says, I believe, is he asked that the jury to, or
4 ask God for wisdom, guidance and understanding or
5 something like that; which Mr. Henderson, in his argument
6 just now, said he doesn't have a problem with jury's
7 praying for guidance from God. That is, which is all the
8 Judge asked them to do. I certainly would not
9 characterize this as instructing the jurors to consider
10 evidence outside the record. For one, nothing that the
11 Judge said mentioned going with the will of God as opposed
12 to any other evidence or in addition to any other evidence
13 or anything like that. Again, what he said was, ask God
14 for wisdom, guidance and understanding. I would suggest
15 that there is nothing incorrect about that. And
16 furthermore, even if there was, trial counsel articulated
17 a valid trial strategy for not objecting to it when she
18 said that she believed objecting to it would alienate more
19 jurors and harm Mr. Odom's case more than just leaving it
20 in would harm his case. So to my view that is a very
21 valid strategy. So for that reason I would say there was
22 no, neither deficiency nor prejudice as to that first
23 argument. Second, whether the indictment should have been
24 quashed. It is true the indictment incorrectly stated
25 that applicant's coconspirator was unknown. However, that

1 is not a material misstatement. I don't know if it was a
2 clerical error or they were trying to draft the indictment
3 more generally in case there was some other
4 coconspirators. But I don't know what caused them to put
5 that there, but it was incorrect. However, it is not a
6 material element of the crime and, in fact, according to
7 the Hightower case, which I believe was cited in Your
8 Honor's order, there is no requirement to even name
9 coconspirators in a conspiracy indictment. So I would
10 submit that there was no grounds to move to quash that
11 indictment. And therefore counsel was not deficient for
12 failing to do so. And if, would not, and would not have
13 prejudiced Mr. Odom. For the next issue, the truth
14 seeking statements and the Solicitor's argument. This
15 again, the Supreme Court has adepracated the use of truth
16 seeking statements in jury instructions. And I will go
17 ahead and grant that if they are inappropriate for jury
18 instructions, perhaps they are inappropriate for a
19 Solicitor's closing argument, although that is not the
20 same thing and there are many cases which do draw that
21 distinction. However, even if it was held inappropriate,
22 the case that held them inappropriate was State v. Beatty
23 which was decided originally in 2016 and then reissued in
24 2018. And that case, prior to that case there would not
25 have been the same issue with the truth seeking statements

1 in the Solicitor's argument. In fact, the Beatty case
2 includes in a footnote, I believe, that the Supreme Court
3 acknowledges that its own bench book contains truth
4 seeking language and instructed that for the, for jury
5 instructions. So the, at the time that this trial took
6 place there, it was not only permissible, it was in fact
7 encouraged by the Supreme Court for these truth seeking
8 statements to be put into jury instructions which are held
9 to a much higher standard than the arguments of counsel.
10 So because that case had not come down, however, and we do
11 not impose a requirement that trial counsel be clairvoyant
12 and anticipate the future changes in the law, it was not
13 deficient for fail, trial counsel was not deficient for
14 failing to object to it. And the objection would have had
15 no precedential basis for being sustained. So even if she
16 had objected the result would not have changed. As for
17 the next argument, these are all bundled in Your Honor's
18 order under one section regarding witness credibility. I
19 am going to try to go through them as Mr. Henderson
20 pointed them out, one by one. The first one that the
21 witness, Mixon, was there to tell the truth, not because
22 of promises or rewards or anything like that. Again, that
23 was based on Mr. Mixon's own testimony in which he denied,
24 in which he explained that he had not been promised any
25 reduction in his sentence or any other rewards for

1 testifying as he did. And so I would submit that this was
2 a permissible, credibility argument based on the record
3 State v. New, that is a Court of Appeals case. And for
4 the opposite position that its improper to, for the
5 Solicitor to vouch for a witness based on personal
6 assurances or illusions to information not in the record.
7 That would, of course, be Tap, (phonetic) v. State. That
8 is the definition of vouching and that is not what we had
9 here because there was not, based on out of the record,
10 statements or personal assurances by the Solicitor. Then
11 when the Solicitor said that Mr. Mixon's testimony was
12 uncontradicted and he also alluded to Mr. Mixon's prior
13 statement that trial counsel, defense counsel had brought
14 up in cross-examination of Mr. Mixon. The Solicitor did
15 say that Mr. Mixon's testimony was uncontradicted and that
16 the statement, that his prior statement was not,
17 suggestive that the fact the defense had not introduced
18 the prior statement, that the prior statement was not, was
19 arguably not favorable to the defense. That is a, that is
20 a permissible argument, that is not a comment on the
21 failure of the Defendant to testify or to put up a
22 defense. The distinction is a pretty narrow one but it is
23 known as the missing witness rule. And our Supreme Court
24 upheld that Rule and, in the case of In Re Gonzalez in
25 which the Supreme Court goes into great detail to explain

1 the distinction. What the distinction is, is basically,
2 if you have a case where there is evidence that is
3 available to the defense that is admissible and that if it
4 existed would arguably help, could help the Defense rebut
5 an element of the State's case then the State can argue to
6 the jury from the absence of that particular piece of
7 evidence, an adverse inference against the Defense. And
8 that, that matches the facts here in relation to Mr.
9 Nixon's prior statement which, again, that was brought up
10 by defense counsel in her cross-examination of Mr. Nixon.
11 He denied saying anything, I believe he denied remembering
12 making the statement and then she asked him several more
13 questions about his involvement in gangs which he denied.
14 And then at the end of the trial the Solicitor got up and
15 said, if that statement had said something in there that
16 was, that reflected poorly on Mr. Nixon's credibility then
17 the Defense had the opportunity to introduce that
18 statement and they didn't do it. That is a permissible
19 inference that the Solicitor can make from the argument
20 according to the missing witness Rule. Again, that case
21 is In Re Gonzalez. Finally, at the end, in amongst all of
22 that argument the Solicitor said that whether the jury
23 believed Nixon, was up to them. He correctly stated that
24 the issue of Mr. Nixon's credibility was for the jury and
25 they had the authority to believe him or not to believe

1 him. And I think that statement would have cured any
2 possible impression that the Solicitor was vouching or was
3 otherwise improperly bolstering the testimony of Mr.
4 Nixon. Similarly, I don't think there was any prejudice
5 from the Solicitor's statement regarding Officer Goggins.
6 If you look, the full context of that statement it occurs
7 in a paragraph where the Solicitor is, I am sorry, yes,
8 the Solicitor is talking about the failure of law
9 enforcement to take, to keep watch over the getaway
10 vehicle resulting in the escape of the burglars. And the
11 full statement was, law enforcement officers are human and
12 they are fallible, they might miss something. And only
13 then does she go on, or does the Solicitor go on to soften
14 the blow by saying, I submit to you that this officer was
15 a good experienced, capable officer and investigator. But
16 what I tell you is we don't have a perfect case. So to me
17 that is a far cry for vouching for the credibility of the
18 officer in this case. What is clearly being said is that
19 the, that law enforcement did make a mistake in this case
20 and rather than, you know, burring bad blood between the
21 Solicitor's office and the law enforcement community by
22 wagging the finger too strongly at them, the Solicitor
23 included this little statement that the officers are fine
24 but they do make mistakes. And that was the total effect
25 of this statement, it had nothing to do with, was not even

1 presented in the context of elevating the credibility of
2 any of the officers in regards to their testimony.
3 Because none of the statements, I submit, were
4 objectionable, trial Counsel would not have been deficient
5 for failing to object to them. And if she had objected,
6 under the law the objections would not have been
7 sustained. So there could be no prejudice, no deficiency,
8 therefore under Strickland there was no ineffective
9 assistance of counsel as to those issues. For the next
10 issue, first of all I would point out that, of course,
11 trial counsel did object to Mr. Patel's statement that
12 there had been a prior break-in at his establishment. As
13 far as I can make it out, the only argument is whether
14 that objection should have happened on the record, which
15 it did or should have been made off the record in a
16 sidebar to prevent the jury from hearing, from hearing it.
17 But, of course, the damage had already been done. Mr.
18 Patel made the statement on the record that is, that his
19 establishment had been broken into, I believe he said two
20 weeks prior to the break-in on which the charges were
21 based. And that was, so any harm that could have arisen
22 from that statement already did arise. And to the extent
23 it could have been cured by an objection and a motion to
24 strike, that objection and motion were made. So, and the
25 Judge later instructed the jury not to consider any

1 evidence that had been struck. So the, so I would submit
2 there could be no prejudice even if there had been a
3 sidebar conference, the evidence would still have been,
4 nothing would have changed as far as Mr. Patel's,
5 substance of what Mr. Patel actually said. But it is
6 worth pointing out also that nothing in Mr. Patel's
7 statement indicated that Mr. Odom was involved in the
8 prior break-in. All he said was that there was a prior
9 break-in. So trial counsel properly objected to that
10 because it is not relevant but also, even if there had
11 been no objection or even if the jury had improperly, is
12 considered Mr. Patel's statement, it said nothing
13 incriminating about Mr. Odom. So I would submit there was
14 no prejudice from that either. As for the, whether the
15 Judge vouched for the Solicitor as with regards to the
16 authentication of the DVD, all the Judge said was that he
17 didn't think there was any reason for the Solicitor to
18 try, to introduce a DVD that was not the DVD Mr. Patel had
19 made. And that, because, I don't find anything
20 objectionable about that. All he is saying is that it
21 didn't, it would not have made sense, there would have
22 been no reason to introduce a different DVD. He is not
23 saying that the Solicitor is some kind of unquestionable
24 moral paragon or anything, even a later version of that.
25 And he is not saying that the Solicitor's arguments are

1 necessarily, are necessarily credible. It was simply a
2 statement, and a brief statement I might add, in
3 connection with the authentication of this particular DVD.
4 As for the cell phone records, the trial counsel and the
5 Solicitor both testified that they were not aware of any
6 cell phone orders. And the Applicant testified that he
7 did not remember telling trial counsel about the order.
8 So it is unclear to me how trial counsel could have been
9 deficient for failing to obtain an order that no one told
10 her about. However, even if there was a deficiency there
11 could have been no prejudice, or at least Applicant has
12 not shown any prejudice because he has not produced any
13 evidence at the PCR, evidentiary hearing that would have
14 been introduced had the order, had trial counsel obtained
15 the order. Again, that is, the Applicant has the burden
16 to show in these cases that the failure to conduct an
17 investigation prejudiced him by showing what evidence
18 could have been discovered if a more thorough
19 investigation had taken place. Applicant has not met that
20 burden in this case because all we have got was the
21 speculation that, well, maybe there would have been
22 something exonerated in those records. We don't have the
23 records, we don't have any indication that there was
24 anything exonerating in them. So I would submit that that
25 burden has not been met. As in regards to the Boss Gang.

1 The trial counsel testified that she was told by Mr. Odom
2 that Nixon was a member of a gang called Boss, that was
3 her testimony at the PCR hearing. And then she said,
4 furthermore that their notice on memoranda was to steal
5 vehicles and go out and commit crimes in those vehicles
6 and then, and so doing avoid detection. That would have,
7 if that, if Mr. Nixon had testified consistently with that
8 then it would have greatly helped the Defense's case
9 obviously because the Defense's theory was that the, was
10 that Mr. Nixon had perpetrated the crime without Mr.
11 Odom's help, by stealing Mr. Odom's car and driving it to
12 the scene and then later making a getaway in that car. So
13 obviously, if her questioning had been successful then it
14 would have been greatly helpful to Mr. Odom's case.
15 Counsel made a calculated risk, as all counsel has to do,
16 that the witness would not give the answer that she
17 expected and that is in fact what happened. But, again,
18 counsel is not required to be clairvoyant and a risky
19 strategy can still be a valid trial strategy and I would
20 submit that this was a valid trial strategy. In addition,
21 the only thing that the Solicitor was able to bring up on
22 redirect was Mr. Nixon's testimony that Boss, referred to
23 Mr. Odom. But, again, that is not inculpatory. There was
24 no indication that an additional evidence kept out anyone
25 named Boss, having any more involvement in this case. It

1 was just evidence that that was Mr. Odom's nickname. So
2 even if the Solicitor got that idea from listening to
3 trial counsel's questioning of Mr. Odom, I am sorry, Mr.
4 Nixon, it could not have prejudiced Mr. Odom. As for the
5 drivers license and the related DMV and NCIC documents.
6 First of all, trial counsel testified that Mr. Odom never
7 claimed he didn't own the car. So she had no reason to
8 object to evidence suggesting that he did own it, except,
9 of course, for the making a relevance objection since it
10 was not a dispute. She did make a relevance objection at
11 one point and, I don't believe that is an indication of
12 deficiency. Furthermore, of course, it doesn't actually
13 matter who drove the car. So the issue of the drivers
14 license is, is also, it is similarly not something that
15 would have been relevant at the time of trial. The, it
16 was a little difficult for me to piece together, from the
17 trial transcript, but there was significant discussion of
18 whether the documents which trial counsel initially
19 believed was a drivers license was, in fact, for
20 identification only, or was an actual drivers license.
21 And it wasn't clear to me whether that is the same
22 document mentioned that Mr. Henderson contends should have
23 been used to impeach Mr. Nixon or not. Of course, if it
24 is the same document then trial counsel was aware of it
25 and would have noticed at trial that it was not useful for

1 impeaching Mr. Nixon. However, as I have said, trial
2 counsel had no reason to contest the ownership or who
3 drove the car because Mr. Odom never denied that he owned
4 the car. His position was, or the position rather, that
5 he told trial counsel was that Nixon and the rest of this
6 gang would steal cars and go commit crimes and then bring
7 the cars back. And that that is what happened in this
8 case. And that is, of course, relevant also to the
9 question about questioning DMV personnel. Whether trial
10 counsel was deficient for failing to set up a situation in
11 which that would have been permissible. Again, there is,
12 as before, that is speculation of prejudice there because
13 no personnel were presented at the evidentiary hearing to
14 substantiate what their testimony would have been had they
15 been called by Defense counsel. Applicant, again, has the
16 burden to produce more than a mere speculation of
17 prejudice, he has to make a showing of prejudice by
18 showing what testimony would have come in had counsel
19 acted differently and called different witnesses. And
20 that did not happen in this case. Furthermore, I would
21 just say that any DMV record could have come in arguably
22 on their Rule 803(8), as public records which is an
23 exception to the hearsay requirement. I don't see why
24 that would not have sufficed for the DMV records that did,
25 in fact, come in. So under that, under that exception

1 trial counsel was not deficient for failing to object.
2 The next issue, I believe the final issue is, of course,
3 Mr. Odom's decision not to testify. And it was Mr. Odom's
4 decision. The trial Court informed him that it was his
5 decision whether or not to testify, that his trial counsel
6 could not make him testify. And the, that there was no
7 evidence that trial counsel did prevent him from
8 testifying against his will. The only question in this
9 respect is whether the, whether I suppose trial counsel
10 correctly advised him of his prior convictions to be used
11 against him if he didn't, if he did testify. And, of
12 course, those convictions could have been used against him
13 because there was no absolute bar on using old convictions
14 against, for the Defendant to testify. It is in the
15 Judge's discretion. And the trial counsel simply decided
16 that it was not a risk, she considered worth taking and
17 apparently Mr. Odom agreed, because he agreed not to
18 testify. Again, it was his voluntary decision, it was not
19 trial counsel's decision for him. Most importantly, Mr.
20 Odom has not presented what his testimony would have been
21 if he had testified at trial. Again, there are cases,
22 plenty of cases saying that you need to show prejudice by
23 showing what you, what you would have testified to and
24 that is causation. If you had been, if you had exercised
25 your right to testify and failing that, as I have said,

1 there was no deficiency because there was no indication or
2 rather because there was no guarantee that these old
3 convictions would not come in. And there was no prejudice
4 because, or at least, the Applicant has not met his burden
5 of showing prejudice because the, because he hasn't given
6 what his testimony would have been if he had testified.
7 Now, the record does say that trial counsel expressly said
8 at the trial, the Solicitor told her he did intend to
9 bring out those prior convictions, at least the CSC
10 conviction if Mr. Odom decided to testify. So in my view,
11 because there was no absolute bar, because the Solicitor
12 threatened to bring it up, it was professionally
13 reasonable for trial counsel to decide not to advise Mr.
14 Odom to testify. So for that reason I would submit that
15 there was no ineffectiveness on that issue or any of the
16 other issues. And I hope I have covered all of them. But
17 if Your Honor has any questions I will be happy to address
18 those now.

19 THE COURT: Does the State acknowledge that probably
20 the better practice though when it comes to clarity on the
21 existence of a prior record is to ask the Judge in-camera
22 or on the record, outside of the jury, to get a ruling on,
23 about the prior record, the position that it was not
24 error. Would the State concede it is probably better
25 practice to ask the Judge?

1 MR. JONES: In general I would not have a problem
2 with saying that it might be the best price. Of course,
3 trial counsel is not required to give impeccable
4 performance, only professionally reasonable performance.
5 And I would argue that that bar has been cleared here.
6 There is always more that trial counsel could do but the
7 question is was it reasonable, actually ended up doing.

8 THE COURT: And in a lot of PCR hearings, looking in
9 the rearview mirror and retrospect there is always a lot
10 more that can be done. Okay. Thank you. Mr. Henderson,
11 anything in brief reply?

12 MR. HENDERSON: Yes, Your Honor. Going back to
13 number one about the trial Judge's reference to God. The
14 Attorney General is right, I have no problem with jurors
15 praying themselves, on their own volition. But the trial
16 Judge was correcting them, a big difference. That is my
17 concern. And, again, I will hit the high points. Going
18 to number four about the Solicitor's statements about the
19 credibility of the codefendant. On page three of my
20 motion there are two sentences and I know the Attorney
21 General basically concentrated on the first sentence of
22 it. But the second sentence is, he is typically here to
23 tell you the truth. And I believe you will find him, in
24 spite of his criminal record, to be a credible witness.
25 If that is not vouching and bolstering I don't know what

1 is. Even if you take out the first sentence, this second
2 sentence is again telling the jury this guy is not going
3 to lie to you. I am putting him on the stand and he is
4 credible. That in my mind's eye, that is very
5 inappropriate argument, Your Honor. Going to number five,
6 going to this missing witness rule argument that trial
7 counsel asked codefendant, Mixon, about this. Like I
8 said, he denied making the statement and didn't remember
9 that type of stuff. You are never going to get that into
10 evidence when the purported purpose to make the statement
11 says I didn't make it, or don't remember making it. I
12 don't think you can attack that collaterally. But the
13 trial counsel is stuck with that, with Mr. Mixon's answer.
14 So when the State argued that you didn't present an
15 alternative theory, the Defendant doesn't have to present
16 any theory. And then also saying that Mr. Mixon's
17 testimony was uncontradicted. Yes, but Mr. Mixon stuck to
18 his story and denied making another statement. The jury
19 has heard all of that so when it is uncontradicted, the
20 only person that the jury could reasonably infer that the
21 Solicitor is talking about is Mr. Odom. I think that is a
22 direct comment on his right to remain silent and his right
23 not to present a defense. So, Your Honor, I think that is
24 improper argument, Your Honor. Going down to number eight
25 about the robbery, two weeks at the same convenient store.

1 The objection was proper to be on the record. I mean, you
2 got to make an objection on the record, I understand that.
3 But the argument should have been in private, outside of
4 the presence of the jury, have the jury leave so the Court
5 Reporter could still take down this argument or the Court
6 Reporter, they can move into the Judge's chambers. The
7 Court Reporter can move his or her recording equipment
8 closer to the lawyers at the sidebar. This should have
9 been fledged out. And the Attorney General is saying
10 that, even if you had asked for a curative instruction,
11 the cat is out of the bag, maybe so but trial counsel
12 should have asked for a mistrial. That is entirely
13 prejudicial when my client is on trial for an offense that
14 also allegedly happened two weeks earlier. What my client
15 is doing, there is no way for the jury to see or to have a
16 link to these two events in time and to blame my client
17 for that. My client, absolutely, credit for that certain
18 point. If anything, it is hurting him to his detriment.
19 Number ten, the cell phone order. The cell phone order
20 was a public record. It is not like trial counsel had to
21 go out here and do any great scavenger hunt to find this
22 document. And in both counties, she could have gone and
23 completely copied both files, the Laurens files and the
24 Newberry files and she would have found this document.
25 And at the very least, should have followed up with the

1 Solicitor, that would have been very recent which is the,
2 appointed of the trial and they could have found out about
3 these records, were these records produced, did the
4 Solicitor get them and loose them. Were they not
5 produced, we don't know. And you are right, it is on me
6 to show what they would, I guess a theory to show. I
7 don't know what else I can do to prove or disprove what is
8 in these records but trial counsel was there, you know,
9 within months of this order. She should have gotten these
10 records and found out where these records were at. So
11 that is kind, that is where we are at there. And also on
12 this gang thing. Before asking any questions like this,
13 trial counsel didn't do any investigation. It sounds
14 like, she was listening to something my client was telling
15 her and again, the Attorney General argued you make a risk
16 when you ask a question but by golly don't ever ask a
17 question unless you absolutely don't know the answer to
18 it. That is exactly what trial counsel did here and got
19 crammed down my client's throat. Basically equating his
20 nickname with the name of a gang. I have no idea why
21 trial counsel did that. Going down to this drivers
22 license. That document should have been, Mr. Mixon should
23 have been questioned about that document in an attempt to
24 impeach him about not being able to drive. And, again,
25 trial counsel is saying she is confused by a DMV document,

1 Your Honor. I don't like that answer, I don't find that
2 is reasonable. Then you talk about the NCIC document that
3 shows my client owned the vehicle. What my client told
4 trial counsel in private is what they told trial counsel
5 in private. That is no green light for her to not object
6 to inadmissible evidence. No matter what he told her in
7 private, what acknowledgment he made to her private. But
8 the State is trying to get in a document that is
9 inadmissible hearsay, she should have objected especially
10 when the document doesn't give service to her client's
11 case. Which, again, this document did a great disservice
12 for Mr. Odom's case. So her testimony about he told me
13 that in private, Your Honor, that does not excuse her from
14 not objecting. Then we go down to the DMV record. I am
15 not quite sure I necessarily understood the Attorney
16 General's argument about that. But, again, that document
17 is out, Your Honor. It is not a public record in extent
18 that we think of public records. Going to the Clerk's
19 office and getting a copy of a certified is a public
20 record, the public has access. I am not sure DMV driver
21 history is a public record. I don't get to access your
22 driver record, can't access my driver record. I think
23 they are public record as the Rules of evidence indicate,
24 Your Honor. And, again, trial counsel should have
25 objected and demanded that the Government bring in

1 somebody that could get that document into evidence.
2 Going down to my client's decision not to testify. You
3 know, he told, at the trial he told the trial Judge he
4 wanted to testify but for his record. And I agree with
5 the Attorney General that there is no absolute bar on
6 using old convictions. However, they have put the Defense
7 on notice in writing, pursuant to the rule of evidence
8 609(b) that you intend to use convictions older than ten
9 years. That was not done in this case, Your Honor. The
10 fact that the Solicitor tells trial counsel, oh, I am
11 going to use the CSC. And trial counsel just folded on
12 it, when he had not put the Defendant on written notice
13 pursuant to the Rule, had not been done. You know, again,
14 I don't think that any of these convictions, none of these
15 convictions fall, they are all outside the ten year point,
16 Your Honor. And, again, the Attorney General is
17 complaining about we don't know what my client's testimony
18 would have been. I am just thinking, are you kidding.
19 Three words, I didn't do it. That was what the testimony
20 was going to be. And, again, as I have told him, he
21 wanted to tell his side of the story, he wanted to
22 testify. I didn't do it and then you can extrapolate from
23 that. This guy is making this stuff up about me, whatever
24 reason. But, again, it all boils down to I didn't do it.
25 And I think a fair reading and a fair reading of the

1 transcript in this matter and my client's testimony, all
2 indicate that he was, his position was denying involvement
3 in this. But I will not testify because my client, my
4 attorney gave me bad advice about my prior record. And,
5 again, Your Honor, it is just kind of confusing about the
6 common scheme or plan. But the State didn't put or there
7 is nothing in the record indicating what trial counsel
8 meant by saying common scheme or plan. There is nothing
9 in the Court's file from the trial about saying, any
10 notice of any, trying to get in, trying to plow in the
11 Newberry case or trying to use these ten-year-old
12 convictions. It is nothing like that. I am not sure what
13 trial counsel's arguing about common scheme of plan was
14 but it is not well thought out. And, again, better would
15 have been to get a ruling from the trial Judge on every
16 one of these convictions and every one of his current
17 pending charges, even the Newberry charges and let the
18 Court making the ruling. And then from that point Mr.
19 Odom or any Defendant would be in a much better position
20 to evaluate whether or not, do I want to testify or not
21 testify. And, again, that will be my argument, my
22 rebuttal argument.

23 THE COURT: Okay. Thank y'all very much for the
24 arguments. Mr. Odom, it is a pleasure seeing you again,
25 sir. Stay in touch with Mr. Henderson. What I will do,

1 is I will take the matter under advisement, take a look at
2 it and i will issue an opinion. Stay in touch with Mr.
3 Henderson. I am sure he will be able to answer any
4 questions you might have but good luck to you, sir, okay.
5 Thank y'all very much.

6 MR. HENDERSON: Thank you, Your Honor, y'all have a
7 good day.

8 MR. JONES: Thank you, Your Honor.

9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER

2
3 State Of South Carolina)
4)
5 County of Newberry)
6
7

8 I, Joy E. Holston, Official Court Reporter, do hereby
9 certify that the foregoing is a true, accurate and
10 complete transcript of record of the proceedings had and
11 evidence introduced in the trial of the captioned case,
12 relative to appeal, in the County of Laurens, South
13 Carolina, (this proceeding heard through virtual-webex) on
14 the 22nd day of June, 2022.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17

18 December 8, 2022
19

20 Joy E. Holston
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Maurice Anthony Odom, #199677,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

2016-CP-30-251

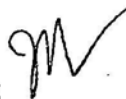
**ORDER DENYING
MOTION FOR
RECONSIDERATION**

This matter comes before the Court by way of a motion for reconsideration filed by Applicant Maurice Anthony Odom on August 12, 2021, challenging this Court's order of dismissal filed August 9, 2021. A hearing to consider Applicant's motion was held remotely via the WebEx virtual courtroom on June 22, 2022. Applicant was present at the hearing and represented by Carson Henderson, Esquire. Assistant Attorney General Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent the State of South Carolina. After once again reviewing the matter, this Court declines to alter or amend its prior order.

PROCEDURAL HISTORY

Applicant was indicted at the February 2012 term of the Laurens County Grand Jury for burglary (2012-GS-30-311), criminal conspiracy (2012-GS-30-314), and grand larceny (2012-GS-30-317). Eli Wiygul, Esquire, represented him. Deputy Solicitors Warren Mowery and C. Dale Scott prosecuted the case. On June 9-11, 2014, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker, after which he was found guilty as indicted. Applicant was sentenced to imprisonment for fifteen years for burglary (second degree, violent), five years for criminal conspiracy, and five years for grand larceny. All sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by



briefing by Appellate Defender Lara M. Caudy. The South Carolina Court of Appeals affirmed Applicant's conviction by an unpublished opinion. *State v. Odom*, Op. No 2015-UP-561 (Ct. App. Filed Dec. 23, 2015). The remittitur was sent January 8, 2016.

Applicant filed an application for post-conviction relief on March 17, 2016, alleging he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
2. Malicious prosecution/Prosecutorial misconduct
3. Violation of 8th Amendment
4. Denied Directed Verdict
5. "Insufficiency of the evidence"
6. "Unlawful conduct of judge..."
7. Speedy Trial Violation
8. "I wasn't there for the qualification of the jurors..."
9. "The juror was also involved in premature deliberations..."
10. "the dogman stated the dog didn't take him to a car on the side of the road."
11. "They told the judge that they didn't know anything about phone records that judge Griffith order-ed to see if I was in the area at the time but the fact remains Judge Griffith did order[] that record."
12. Juror misconduct/conflict of interest

On January 8, 2021, Applicant filed an amended Application alleging the following claims:

1. Failure to Object to Judge's Reference to God
2. Failure to Object to the Indictment
3. Failure to Object to the Solicitor's Statement: "You Determine what the Truth Is."
4. Failure to object, ask for a curative instruction, and request a mistrial for the solicitor's opening statement: "But I submit to you that he [co-defendant and witness Christopher Mixon] is before you with no promises, no rewards, no hope of anything like that. He is simply here to tell you the truth and I believe you will find him in spite of his criminal record to be a credible witness."
5. Ineffective assistance of counsel based on "the way [counsel] objected to the following testimony from witness Ramesh Patel": "It looked all too familiar because it had just happened two weeks ago the same way."
6. Failure to object to the following statement: "Well, if he knows that the DVD is what he - he made a DVD according to his testimony and I would have to assume that Solicitor would not show him a DVD that was not made by him[.]"
7. Failure to introduce document indicating Christopher Mixon had a driver's license.
8. Ineffective for asking a witness if Christopher Mixon was "a member of the gang called Boss."
9. Failure to object to NCIC document indicating Applicant was the owner of the vehicle.
10. Failure to object to Applicant's South Carolina DMV Record.

11. Failure to properly preserve the record regarding which of the Petitioner's convictions could be used against him if he testified during the trial.
12. Failure to object to portions of the solicitor's closing argument.
13. Failure to object to solicitor's closing statement in which he told the jurors: "they do their best. And I submit to you that Tyrone Goggins is a good, experienced, capable police officer and investigator as his sixteen years would document."

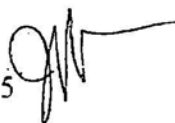
Respondent filed a Return on March 30, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 26, 2021, via the WebEx virtual courtroom platform. Applicant was present at the hearing and represented by Carson Henderson, Esquire. Assistant Attorney General Brianna L. Schill, of the South Carolina Attorney General's Office, appeared on behalf of Respondent.

At the commencement of the hearing, Applicant indicated he would be going forward on the allegations contained in his amended application for post-conviction relief, and the following allegations from his initial application: (1) speedy trial violation allegation (2) allegation regarding phone records ("They told the judge that they didn't know anything about phone records that judge Griffith ordered to see if I was in the area at the time but the fact remains Judge Griffith did order[] that record"); and the allegation that "Applicant wanted to present a defense but wasn't allowed to."

After a review of the record and all evidence presented, this Court denied and dismissed the application with prejudice. The Court's order of dismissal set forth specific findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80. Upon Applicant's motion for reconsideration, this Court declines to alter or amend any of the findings and conclusions set forth in its order of dismissal, all of which are adopted and incorporated in this order.

SUMMARY OF FACTS

Just after 2:43 a.m. on November 11, 2011, Deputy Nick Moye of the Laurens County Sheriff's Office heard a security alarm going off as he drove by a BP gas station and



convenience store located on Highway 72 in Clinton, South Carolina, a short distance away from an exit off of Interstate 26.¹ (Tr. p. 75; pp. 78–79; p. 93; p. 263). Upon hearing the alarm, Deputy Moye notified dispatch of what he had heard, learned the store's security company had just reported the alarm to law enforcement, and drove towards the store to investigate. (Tr. pp. 76–77). As he approached the store, he observed one of the store's side windows had been shattered, and, when he drove closer, he saw a man climb out of the broken window and flee towards the back of the store. (Tr. pp. 81–84; p. 90). In response, Deputy Moye pursued the fleeing man but was unable to apprehend him before the man escaped into a wooded area directly behind the store. (Tr. pp. 83–84). The deputy then returned to the store, secured the scene, and waited for other officers to arrive. (Tr. p. 83).

Shortly thereafter, numerous law enforcement officers arrived at the scene along with Hardik Patel, the owner of the store, and his brother, Ramesh Patel. (Tr. p. 84; pp. 91–94). Once the store was secured, the Patels looked inside, discovered substantial damage to the store, and found merchandise scattered all over the store's floor. (Tr. p. 83). They then reviewed the surveillance footage captured by the store's security system and observed two masked burglars smash one of the store's windows with a rock, enter the store, and fill black trash bags with cartons of cigarettes along with money from a cash register drawer. (Tr. pp. 102–04; pp. 111–13). Additionally, they observed one of the burglars smash the store's office's mirrored window, enter the office, and steal more cigarettes and money from inside. (Tr. p. 104; p. 107). The brothers then took an inventory of the money and goods gathered by the burglars during the break-in and determined those items had a cumulative value of over \$5,000. (Tr. pp. 98–98; pp. 122–23; p. 273).

¹ The store's hours of operation were 8:00 a.m. to 10:00 p.m. (Tr. p. 92).

Meanwhile, the investigating officers attempted to locate the suspects involved in the burglary and found a black Chrysler 300 parked nearby along the eastbound side of Interstate 26 a short distance away from an exit ramp. (Tr. p. 264; p. 268). Officer Tyrone Goggins of the Clinton Department of Public Safety then responded to the vehicle's location, verified the vehicle had not been there long due to the fact its engine was still warm, and learned the vehicle was registered to Applicant Maurice Anthony Odom at an address in Wilmington, North Carolina. (Tr. p. 261; pp. 264-65; p. 267). In response, Officer Goggins asked another officer to remain in position to watch the vehicle while he confirmed there were no other vehicles parked along Interstate 26 in that area. (Tr. pp. 268-70; p. 272). After verifying Applicant's vehicle was the only vehicle in the area, Officer Goggins returned to the store, requested assistance from a State Law Enforcement Division ("SLED") tracking team, met with the victims, reviewed the surveillance footage of the incident, and inspected the scene. (Tr. pp. 272-80). During his inspection, the officer located the burglars' abandoned trash bags, which were filled with cartons of cigarettes from the store, along with a rock on the floor of the store's office. (Tr. p. 171; pp. 278-80). Officer Goggins then collected the rock as evidence and returned the stolen property to the Patels after it was inventoried. (Tr. p. 114; p. 278; pp. 281-82).

Shortly thereafter, at approximately 5:00 a.m., members of the SLED tracking unit, including Senior Agent Reid Creswell, arrived at the scene of the incident. (Tr. pp. 188-90; p. 193; p. 202; p. 215; p. 237; p. 251). Upon arriving, Senior Agent Creswell was advised of the specific location where the suspect entered the wooded area behind the store after the break-in and verified the suspect's trail had not been contaminated by anyone else entering the woods. (Tr. pp. 208-09; p. 216; p. 237). He then deployed Judy, a bloodhound-bluetick hound mixed-breed dog trained in tracking human scents, at a neutral location near where the suspect entered the wooded



area and followed her into the woods. (Tr. pp. 191-92; pp. 207-08; p. 239). Shortly after Judy entered the wooded area, she indicated she had picked up a scent and began tracking the scent through the woods. (Tr. pp. 218-19; pp. 240-41). As Senior Agent Creswell followed Judy through the woods, he personally observed signs of environmental disturbances confirming a person had recently fled along the path Judy was tracking and eventually began observing footprints. (Tr. p. 219; p. 242; pp. 246-47). As they continued along the trail, Judy led Senior Agent Creswell to a location near Interstate 26 where the footprints the agent had observed converged with another set of footprints. (Tr. p. 222; pp. 243-46). Judy then led Senior Agent Creswell to a location along Interstate 26 directly across from where Applicant's car had been parked a short time earlier before she lost the suspect's scent.² (Tr. p. 212; p. 214; p. 222; pp. 248-49). However, by that time, Applicant's car was no longer present because someone had removed it from its position along the side of Interstate 26 when the officer who had been asked to maintain surveillance of the car failed to do so during the time period the tracking team was following the suspect's trail. (Tr. pp. 286-87).

Subsequently, on November 18, 2011, Officer Goggins drove to an address he found for Applicant in Bamwell, South Carolina, in an attempt to speak with him about the incident and see if his vehicle was at that address. (Tr. pp. 290-91). After arriving at Applicant's address, Officer Goggins was unable to locate Applicant. (Tr. p. 292). However, he found Applicant's vehicle parked there and verified it was the same vehicle that had been parked along Interstate 26 at the time of the incident. (Tr. pp. 297-98). Furthermore, the officer located Christopher Mixon at that

² During trial, Senior Agent Creswell explained vehicles rapidly travelling along Interstate 26 would have dissipated the scent that had been left there by the suspect, which explained why Judy lost the trail at that location. (Tr. pp. 211-12; pp. 223-24; p. 247).

location, and Mixon was taken into custody based on outstanding warrants for his arrest.³ (Tr. p. 292). Thereafter, Officer Goggins spoke with Mixon, Mixon inculpated himself and Applicant in the burglary of the BP gas station and convenience store on the date of the incident, and Applicant was arrested for his crimes. (Tr. p. 181; p. 296). Applicant was then indicted for second-degree burglary, grand larceny, and conspiracy, and he proceeded to trial. (Tr. p. 13; Indictments).

Mixon testified for the prosecution and recounted the details of his and Applicant's roles in the incident. (Tr. pp. 153-54). Specifically, Mixon stated Applicant drove the two of them to the BP gas station and convenience store located on Highway 72 on November 11, 2011, they dropped off a rock Applicant had brought with them at the store, and Applicant then drove them away from the store and parked his vehicle along the side of Interstate 26. (Tr. pp. 155-59). After that, Mixon indicated the two of them walked back to the store, Applicant smashed one of the store's windows with the rock, an alarm went off, and they climbed through the window and began loading the store's tobacco products into some trash bags they had brought along with them. (Tr. pp. 160-63; p. 165). Shortly after that, Mixon testified he saw a police officer arrive at the store, Applicant also saw the officer, and Applicant quickly fled back out of the broken window and away from the scene. (Tr. pp. 166-67). After Applicant fled, Mixon stated he ran across the street from the store, went into the woods, and began making his way back to Applicant's vehicle. (Tr. pp. 167-68). Roughly two hours later, Mixon testified he met back up with Applicant and the two of them fled from the area in Applicant's car. (Tr. pp. 169-70). Mixon stated he then received some money from Applicant for his participation in the break-in, returned home, and was arrested some time later. (Tr. pp. 170-71).

³ At the time of Mixon's arrest, an officer from the Barnwell Police Department was assisting Officer Goggins. (Tr. p. 292).

Officer Goggins testified about his investigation into the burglary, which led to Applicant's arrest. (Tr. pp. 261–98). During his testimony, Officer Goggins confirmed to the jury Applicant's car was parked along Interstate 26 at the time of the incident and its engine was still warm at that time. (Tr. pp. 264–68). Additionally, the officer stated someone removed the car from the area during the search for the burglars at a time when no officers were watching the vehicle, and he noted the SLED tracking team tracked the suspect who fled through the woods to a location in close proximity to where Applicant's car had been parked. (Tr. pp. 268–69; pp. 286–88). Furthermore, Officer Goggins noted Applicant's vehicle was later found at Applicant's home in Barnwell just a few days after the incident in the same area where he located Applicant's accomplice in the crimes. (Tr. pp. 288–93; pp. 297–98).

APPLICANT'S MOTION FOR RECONSIDERATION

In his motion for reconsideration, Applicant raises twenty-five arguments for amending the Court's order of dismissal. The Court has considered—and rejected—each of these arguments for the following reasons:

1. Failure to Object to the Trial Judge's Reference to God

Applicant reiterates his argument that Trial Counsel was ineffective for failing to object when the trial judge exhorted jurors to ask God for wisdom, guidance, and understanding. This Court analogized the trial judge's comment to a "truth-seeking" jury charge, which the South Carolina Supreme Court has held improper under *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000), and *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018). However, the Court found Applicant had failed to prove prejudice regarding the language used in this case.

Applicant now argues the trial judge's statement was not analogous to a "truth-seeking" instruction; instead, he claims it was an invitation for the jurors to consider "outside evidence"—

i.e., the will of God—in Applicant's trial. This Court is not persuaded that a juror's private prayers to God constitute "outside evidence" and are, therefore, inappropriate during jury deliberations. Moreover, Applicant has provided no legal authority for this proposition. Therefore, this Court declines to alter its initial disposition of this issue.

2. Failure to Challenge Indictment

Applicant admits that the indictment *does* sufficiently allege a crime, as this Court found; however, he contends the indictment was still improper because it erroneously stated Applicant's co-conspirator was "unknown," when in fact Nixon had been arrested before Applicant and had implicated Applicant in the conspiracy.

If, as Applicant concedes, the Court correctly found that the issue of a co-conspirator's identity is immaterial to the validity of a conspiracy indictment, then such a minor inaccuracy in identifying a co-conspirator must, likewise, be immaterial. Applicant cites no authority to the contrary in his motion for reconsideration. Therefore, this Court declines to alter its initial disposition of this issue.

3. Failure to Object to Solicitor's "Truth" Statement

Applicant reiterates his argument that Trial Counsel was ineffective for failing to object to the solicitor's use of "truth-seeking" language during statements to the jury, arguing those statements were improper and misstated the jury's duty to hold the State to its proper standard under the "reasonable doubt" burden of proof.

This Court acknowledges that the State embraced "truth-seeking" language during its presentation that was later deemed improper in *Beaty*. However, as discussed in the prior order, *Beaty* was decided after Applicant's trial and concerned only statements by judges, not arguments from prosecutors; therefore, Trial Counsel—who is not required to be clairvoyant in anticipating



changes in the law—had no grounds to object to that language at the time. Even if Trial Counsel should have objected, failure to do so in this case was not prejudicial because the comments did not so infect the trial with unfairness as to constitute a denial of due process. Applicant has not argued against any of the reasons this Court gave for ruling as it did. Therefore, this Court declines to alter its initial disposition of this issue.

4, 5, 6, and 7. Failure to Object to Solicitor's Witness Credibility Statements

Applicant repeats his contention that the solicitor “vouched” for Applicant’s co-defendant Mixon and for Officer Tyrone Goggins. This Court’s prior order explained that the solicitor’s arguments regarding the credibility of those witnesses were properly based on permissible inferences from the record, rather than on impermissible personal assurances or information not presented to the jury. Applicant’s motion for reconsideration does not engage at all with this Court’s lengthy legal analysis of this issue in its order of dismissal.

Applicant also argues that Trial Counsel should have objected when the solicitor characterized Mixon’s testimony as “uncontradicted.” Applicant asserts, without any citation to supporting authority, that this amounted to an improper comment on Applicant’s failure to testify. Of course, a prosecutor may not directly comment on a defendant’s failure to testify. In general, however, it is not improper for a prosecutor to remark that some portion of the State’s evidence is unexplained or uncontradicted. *See, e.g., 23A C.J.S. Criminal Procedure and Rights of the Accused § 1762; Comment or Argument by Court or Counsel that Prosecution Evidence is Uncontradicted as Amounting to Improper Reference to Accused’s Failure to Testify, 14 A.L.R.3d 723.* In this case, the solicitor did not directly mention Applicant’s failure to testify or claim that only Applicant could contradict Mixon’s testimony. The Court, therefore, declines to reconsider its findings or conclusions on this issue.



8. Failure to Request a Sidebar to Argue Objection to Ramesh Patel's Testimony that Another Burglary had Occurred Two Weeks Prior

Applicant contends that Trial Counsel should have requested a sidebar when she objected to Ramesh Patel's statement regarding previous burglaries at the site of the break-in. Applicant argues this failure allowed the jury to hear Mr. Patel's statement and to speculate that Applicant might have been involved in the earlier break-in.

This Court found no prejudice could have resulted from the Trial Counsel's omission because nothing about the statement implicated Applicant in the prior burglary. In addition, the Court noted the statement was struck from the record, and the jury was instructed to disregard it. Applicant has not presented any facts or legal arguments refuting these findings. Therefore, the Court sees no reason to alter its prior disposition of this issue.

9. Failure to Object to the Trial Court's Statement Regarding the DVD

Applicant argues the trial judge vouched for the solicitor when he said, "I would have to assume that [the] Solicitor would not show [the witness] a DVD that was not made by him." This Court has already considered Applicant's vouching argument regarding this issue and rejected it as unpersuasive. As explained in this Court's order of dismissal, the trial judge's remark was made in the context of admitting the DVD into evidence, and the defense had no valid objection to the DVD's authenticity. The only question was whether the DVD should be admitted as an exhibit by way of Officer Goggins or Mr. Patel. In this context, there was no likelihood that the jury would interpret the trial judge's remark as a general endorsement of the solicitor's credibility or trustworthiness. Because Applicant has still failed to show any prejudice arising from the judge's comment, this Court declines to alter its prior order.

10. Allegations Regarding Cell Phone Records

Applicant claims Trial Counsel should have inspected Applicant's case files from his pending case in Newberry, which would have allowed Trial Counsel to obtain cell phone records using the cell phone order from that case. However, Applicant has failed to show that the cell phone records would have exonerated him. The burden is on Applicant to prove, by a preponderance of the evidence, that his attorney's alleged errors prejudiced his case. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Without knowing what the cell phone records would have revealed, Applicant's claim that he was prejudiced by Trial Counsel's failure to obtain them is merely speculative. Accordingly, this Court declines to amend its prior findings on this issue.

11. Allegation of Ineffective Assistance for Asking Witness if he Belonged to a Gang Called "Boss"

"Why on Earth," Applicant asks, did Trial Counsel cross-examine Mixon about whether he belonged to a gang called Boss? Applicant's question was answered at the evidentiary hearing: Trial Counsel testified that Applicant *told her* Mixon was a member of a gang call Boss. This Court recalls Trial Counsel's demeanor at the evidentiary hearing and finds her testimony highly credible.

Contrary to Applicant's claims in his motion for reconsideration, Trial Counsel *did* present a valid trial strategy for pursuing that line of questioning: she was attempting to impeach Mixon with evidence of his involvement in gang activity. Trial Counsel testified that Applicant seemed very confident Mixon would "flub his testimony" if pressed about his gang affiliations. This Court finds no reason to depart from its previous findings on this issue.

12, 13, 14, and 15. Failure to Introduce Document Showing Mixon had a Driver's License or to Object to Evidence Regarding Applicant's Ownership of the Vehicle

Applicant claims Trial Counsel should have introduced evidence that Mixon had a driver's license in order to prove that Mixon could have driven the car that was used to escape from the crime scene. He also contends Trial Counsel should have kept out evidence showing that Applicant owned the getaway car. The Court considered these arguments in its order of dismissal and found them meritless, as the identity of the driver was not material to the issue of Applicant's culpability in the burglary. In addition, Trial Counsel credibly testified that Applicant never denied owning the car in his conversations with her. Applicant cites no legal authority justifying departure from the court's prior findings. For these reasons, the Court declines to alter or amend its prior findings on these issues.

16, 17, 18, 19, 20, 21, 22, 23, and 24. Allegations Regarding Applicant's Decision Not to Testify

Applicant alleges he wanted to testify at trial, but he was unable or unwilling to do so because Trial Counsel did not seek a ruling limiting the use of Applicant's prior convictions to impeach him. Applicant states he has multiple prior convictions for burglary and CSC with a minor and was afraid of the prejudicial effect those convictions would have if admitted to impeach his testimony; therefore, Applicant claims he reluctantly declined to testify at trial.

The Court acknowledges that the State is required to disclose to defense counsel, in writing, the prior record of a defendant and which part(s) of the prior record it intends to use to impeach a defendant, when (as in this case) more than ten years have elapsed since the defendant's release from confinement. *See* Rule 609, SCRE. Trial Counsel should have required this disclosure from the State. However, any prejudice resulting from Trial Counsel's failure to do so in this case is purely speculative. At the evidentiary hearing, Applicant did not present any testimony he would have given at trial but for Trial Counsel's errors. Applicant also failed to show how his testimony at trial would likely have led to a different result. Therefore, Applicant has not met his burden of

proving prejudice by a preponderance of the evidence. Rule 71.1(e), SCRCP; *Butler*, 286 S.C. 441, 334 S.E.2d 813. Accordingly, this Court declines to alter or to amend its prior findings on these issues.

25. Cumulative Error

Applicant urges this Court to find that the above issues had a cumulatively prejudicial effect. However, the cumulative error doctrine is not recognized in South Carolina. Rather, our PCR courts apply the standard articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). That is, for each allegation of ineffective assistance of counsel, the applicant must prove both deficiency and prejudice. Appending a general assertion of prejudice to a list of alleged deficiencies, based on the purported "cumulative error" of those deficiencies, is not enough to support the individualized findings of prejudice required under *Strickland* and our precedents.

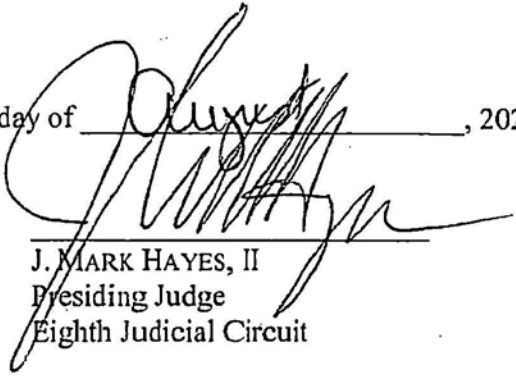
CONCLUSION

The Court finds Applicant has failed to present any information or argument that would require this Court to reconsider, alter, or amend its previous order. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (stating the purpose of a motion to alter or amend is to "enable the [Court] to rule properly after it has considered all relevant facts, law, and arguments"); *see also Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to, but not ruled upon by, the trial court). Accordingly, Applicant's motion to alter or amend pursuant to Rule 59(e), SCRCP, is **DENIED**.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453,

409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED this 19th day of August, 2022.


J. MARK HAYES, II
Presiding Judge
Eighth Judicial Circuit

Laurens, South Carolina