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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable R. Ferrell Cothran, Circuit Court Judge

CHRISTOPHER CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000755

APPENDIX

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S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466

U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional

assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

Findings as to Specific Claims Raised

Applicant has alleged six specific claims of ineffective assistance of trial counsel and asserts that as a result of counsel's purported errors, he is entitled to a new trial. This Court has thoroughly reviewed the record, scrutinized the credibility of the witnesses presented, and researched applicable case law. After a thorough review of all records and evidence before this Court, this Court finds has failed to meet his requisite burden of proof as to each allegation.

The issues before the Court is whether Trial Counsel was ineffective for failing to object to admission of evidence, jury composition, and trial court's comments and language; failing to

preserve issues for appeal; failing to request complete Logan charge; and failing to communicate plea to applicant. This Court disagrees and finds the combined record from the trial and evidentiary hearing establishes Applicant received effective assistance of counsel.

ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO OBJECT

Applicant alleged Trial Counsel was ineffective for failing to object to composition of the jury, comment of the trial court seemingly identifying Applicant as the robber in surveillance video, the trial court's language in opening statement of "search for truth", and the solicitor's speculative and bolstering questioning. Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. 466 U.S. 668.

> No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant...representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another...[j]udicial scrutiny of counsel's performance must be highly deferential."

Id. at 688-691. 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); Whitehead v. State, 308 S.C. 119. 122. 417 S.E.2d 529, 531 (1993) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel."). Courts take a case-by-case approach to decide what is or is not a valid trial strategy, and counsel's conduct is measured under an objective standard. Solomon v. State, 347 S.C. 635, 557 S.E.2d 666 (2001); Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002).

Allegation of Failing to Object to Composition of Jury

Regarding the allegation of ineffectiveness for failing to object composition of a jury panel, jury selection is a process inherently falling within expertise of counsel. Palacio v. State, 333 S.C.

506, 511 S.E.2d 62 (1999). Importantly, "a criminal defendant has no right to any particular jury, but only a right to a trial by a competent and impartial jury." Palacio, 333 S.C. 506. Trial Counsel testified he chose to keep or strike jurors based on the specifics of the case, doing his best to eliminate any bias against Applicant. Trial Counsel struck jurors who had been victims of a violent crime, had a bias for law enforcement, and jurors who had just convicted a defendant in a previous case; some of these juror's included black jurors. Applicant complains the jury was not representative of him because he is black, but then stated in his testimony that one of the black jurors did not represent him as they were not of the same social and economic status. Applicant's own statements show race is not the most important factor to him in jury selection, and Trial Counsel had valid reasons for striking the jurors he did. Additionally, Trial Counsel testified he avoided a Batson challenge because he did not believe he had sufficient basis to challenge on Batson and did not want to risk reshuffling a jury he was content would be fair to Applicant.

This Court finds the testimony of Trial Counsel credible, and finds Applicant failed to show Trial Counsel's failure to challenge composition of jury was deficient and resulted in prejudice to Applicant. Therefore, Applicant's allegations are **DENIED** and **DISMISSED** with prejudice.

Allegation of Failing to Object to Court's Comment on Surveillance Video

Applicant testified that during his trial the Trial Judge commented, in the hearing of the jury, "that's him" during the showing of the surveillance video of the robber entering the restaurant. Applicant alleged this prejudiced him because the jury could infer the trial court was referring to Applicant. In trials, the decision of all questions of fact is left exclusively to the jury and must be uninfluenced by any expressions or opinion by the judge. S.C. Const. Art. V, § 21; State v. White, 15 SC 381 (1881). A judge's comment that is mere explanation and not a comment on the weight, sufficiency, or credibility of evidence is not error warranting reversal. State v. Lewis, 293 S.C. 107, 359 S.E.2d 66 (1987) (judge's comment concerning written statement which

was redacted to delete reference to codefendant before admission did not constitute charge to jury in respect to matter of fact as prohibited by South Carolina Constitution, because comment was merely explanation of what had been done procedurally to statement, and was not comment on weight, sufficiency, or credibility of evidence).

Applicant's allegation is based on the trial court's comments while the jury watched the surveillance footage from the robbery, as follows:

> THE COURT: Please play that. You may be seated. Get wherever is closest for you to watch.
>
> (Video played.)
>
> THE COURT: That's him coming in and then you can play the whole thing.
>
> (Video played)

ROA P. 308, lines 24-25 – P. 309, lines 1-5. Trial Counsel testified he did not object to the trial court's comments because he merely remarked "that's him" which made reference to fact person in video was male and not to fact Applicant was the robber. Trial Counsel testified he does not believe jurors took trial court's remark to mean robber was Applicant but just used the short phrase to refer to the person in the video. While a judge is prohibited from charging a jury in respect to matters of fact, even so, prejudice must be shown in order to require reversal. Litchfield Co. of S.C. v. Sur-Tech, Inc., 289 S.C. 247, 345 S.E.2d 765 (Ct. App. 1986). Applicant did not present evidence, and it is not intuitive from the trial transcript, that there was resulting prejudice from the trial court's comment the person in the video was a "him". There is no evidence indicating the comment has an effect on the outcome on Applicant's case or how the exclusion of the comment would have changed to the outcome.

This Court finds testimony of Trial Counsel credible, and finds Applicant failed to show Trial Counsel was deficient and resulting prejudice. The trial court's comment was not a charge to

the jury that the person in the surveillance video was Applicant, but a mere statement the person was a "him". There is no evidence indicating the jury took the trial court's comments to be more than that. Additionally, the comment was harmless, and would not have changed the outcome of Applicant's case. Therefore, Applicant's allegation is **DENIED** and **DISMISSED** without prejudice.

Allegation of Failure to Object to Trial Court's Language in Opening Statement

Applicant alleged Trial Counsel was ineffective for failing to object to the trial court's statement including "search for the truth" language in preliminary remarks to the jury. Applicant relies on Beaty, a case decided in 2018, about four years after Applicant's case was decided. 423 S.C. 26, 813 S.E.2d 502 (2018). The Court in Beaty established preliminary remarks by trial judge stating jury's role was to "search for the truth", determine the "true facts", and render a "just verdict" had the potential effect of lessening State's burden of proving offense beyond reasonable doubt, and therefore, were improper. Id. 423 at 33, 813 at 506. However, prior to the decision in Beaty, the general sessions bench book the Court provided to all circuit judges contained the disputed language. Id. 423 at 34 n. 2.

Trial Counsel testified objecting to the Trial Judge's language in his preliminary remarks did not cross his mind as Beaty had not yet been decided, but if such language had been used in Court's closing statement, it would have been on his mind to object. State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000) (jury instructions on reasonable doubt which also charge the jury to "seek the truth" or "search for the truth" run the risk of unconstitutionally shifting the burden of proof to the defendant). Even though the Court in Beaty found error in the trial court's use of the language, and urged trial judges to avoid such language, the Court found Beaty could not show prejudice warranting reversal. Beaty, 423 at 34, 813 at 506.

The Trial Judge in Applicant's case addressed the jury, stating in part:

> This is a real trial, which is a fundamental right of our democracy. It's a search for the truth to ensure that justice is done. And I will remind you that searching for the truth and ensuring that justice is done is often slow, deliberate, repetitive; the exact opposite of what you've seen on TV, movies, or read in books.

ROA P. 5, line 11-17. Later, the Trial Judge expressly informed the jury:

> Now, ladies and gentlemen, what I'm going to tell you now is just intended to be — to serve as an introduction to the trial of this case. The remarks that I'm making are not a charge on the law. I will charge you on the law that is applicable to this particular case at the end of the trial. This is merely an explanation so you may better know what procedures that we will follow, so you can understand what is happening.

ROA P. 6, line 16-24. Applicant cannot rely on Beaty to show Trial Counsel was ineffective, not only because the prohibition on using such language had not been established, but using such language was common and recommended. Id. 423 at 34 n. 2. Additionally, regardless of Beaty, the trial court's remarks were a mere statement to the jury and not a charge on the law. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000). In Aleksey, the court condemned use of such language where linked to reasonable doubt or circumstantial evidence charges. Id. 343 at 27, 538 at 251. Lastly, the evidence against Applicant—namely the testimony of his cousin implicating him as the robber and fingerprints found at the scene—weighed heavily against Applicant in such away he cannot show prejudice from Trial Judge's use of this language.

This Court finds the testimony of Trial Counsel credible, and finds Applicant cannot establish deficient performance or resulting prejudice from Trial Counsel's failure to object to language Trial Judge used in opening remarks to the jury. Trial Counsel's performance was obviously not ineffective, as he can not be expected to foresee a decision by the Supreme Court years into the future and object to commonly used language by most, if not all, circuit judges. The Trial Judge's use of the now prohibited language was used to broadly explain the trial process, and not to place an obligation on the jury. Moreover, Applicant cannot establish he was prejudiced by

use of the language, especially considering the weight of the evidence against him, both direct and circumstantial. Therefore, Applicant's allegations are **DENIED** and **DISMISSED** with prejudice.

Allegation of Failure to Object to Solicitor's Speculative Questioning

Applicant alleged Trial Counsel was ineffective for failing to object to questioning by Solicitor that was speculative. Specifically, Applicant alleged Solicitor's questioning was speculative when he asked Christopher Riley ("Mr. Riley"), an employee of the restaurant robbed:

> Q. Do you think you would have been allowed to continue working there if you were involved in this at all?
>
> A. No.

ROA P. 81, lines 2-5. Applicant also alleged questioning of Russell Brown ("Mr. Brown") concerning the restaurant handle was speculative:

> A. It is a handle to pull the door open.
>
> Q. And, Mr. Brown, what do — what do the employees of the store generally know about the handle?
>
> A. Well, they know the handle is a dummy. They just grab the main handle. They know the thumb piece is obsolete. So when they grab the door and when I grab the door, we just grab it by the handle and pull it open.
>
> Q. Is it necessary for you or other employees to place your thumb on the latch —
>
> A. No, sir.

ROA P. 169, lines 20-25 – P. 170, lines 1-6.

Regarding the questioning of Mr. Riley, Trial Counsel testified he did not object to this line of questioning because the solicitor's question came after Trial Counsel had somewhat implicated Mr. Riley in the crime. The solicitor's question could be construed as speculative, however the Solicitor was merely trying to counter Trial Counsel's line of questioning, and Trial Counsel decided not to object because he did not want to pursue the argument of implicating Mr.

Riley. Trial Counsel testified it was very unlikely that Mr. Riley was implicated in the crime, and it believed it was an obvious point that Mr. Riley would have been fired if he was suspected of being involved in the robbery. Trial Counsel testified the State was not relying heavily on Mr. Riley's testimony to convict Applicant, but the testimony of Leslie Green which the State primarily relied on. Leslie Green's testimony identifying Applicant and the thumb fingerprint of Applicant was the main evidence the State was relying on.

Regarding the questioning of Mr. Brown, Trial Counsel testified he was not sure if this line of questioning was speculative or not. The State argued employees would know the thumb latch was decorative, and the handle of the door only needed to be pulled to open the door to the restaurant. The witness, Mr. Brown, runs several Firehouse Sub stores, one being the restaurant targeted by Applicant in this crime. Trial Counsel testified he would not characterize this line of questioning as speculative, but maybe as Mr. Brown lacking personal knowledge. Trial Counsel failed to object on either basis, but he testified though the State was relying on evidence of Applicant's thumb print, the State's main and strongest evidence was the direct evidence of Leslie Green testifying Applicant was the robber.

This Court finds the testimony of Trial Counsel credible, and finds Applicant cannot show deficient performance of Trial Counsel or resulting prejudice. Trial Counsel articulated a reasonable and valid trial strategy for failing to object to these lines of questioning by the solicitor. Trial Counsel did not object to these lines of questioning because he did not want to focus on arguments he did not intend to pursue, and draw attention to issues that were ancillary. However, even if Trial Counsel's failure could be construed as deficient, Applicant cannot show he was prejudiced. There was direct evidence from Green, the cousin of Applicant who was present during the robbery and suspected of being involved, that Applicant was the robber. The questioning of

solicitor on these two issues did not substantially add to the strength of the State's case against Applicant, and objecting to the questioning would not have done much to alleviate the strength of the evidence against him. Therefore, Applicant's allegations are **DENIED** and **DIMISSED** with prejudice.

ALLEGATION OF FAILURE TO PRESERVE ISSUE OF ADMISSION OF EVIDENCE FROM SEARCH FOR APPEAL

Applicant alleged Trial Counsel was ineffective for failing to preserve issue of Trial Court's admission of search of Applicant's residence and seizure of sneakers. Specifically, Applicant alleges Trial Counsel waived his objection in his opening argument and failed to object when testimony was given concerning the sneakers seized in the search. Trial counsel may be ineffective where they fail to object to admission of excludable or other improper evidence. Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994) (Trial counsel ineffective for failing to move to suppress evidence obtained in violation of Fourth Amendment where counsel explained he did think police were doing anything out of the ordinary when police stopped Applicant because car had paper tags in "high crime" area).

In Milledge, defense counsel made a *motion in limine* to suppress drugs found on defendant when frisked by law enforcement during a traffic stop. Milledge v. State, 422 S.C. 366, 811 S.E.2d 796 (2018). The trial court denied defense counsel's motion, and later on at trial, defense counsel did not contemporaneously object to admission of drugs. Milledge, 422 S.C. at 373, 811 S.E.2d at 800. Milledge later filed a PCR action, alleging like Applicant, defense counsel was deficient for failing to renew his objection when evidence from search was admitted into evidence at trial. Id. The Court in Milledge determined there was no prejudice as an appellate court would likely reaffirm the trial court's denial of motion to suppress. Id. 422 S.C. at 380, 811 S.E.2d at 804.

PCR courts should view a trial court's ruling through the same lens that would be applied on appeal. Id.; see State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459–60 (2002) (explaining that on appeal from a Fourth Amendment motion to suppress, an appellate court will only reverse the trial court if there is clear error, and will affirm if there is any evidence to support the ruling). In Applicant's case, the search was of his residence. Generally, a search warrant is required where a search is conducted by government actors, subject to a few exceptions. Katz v. United States, 389 U.S. 347 (1967); State v. Wright, 391 S.C. 436, 706 S.E.2d 324 (2011) (Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement). A search warrant may be issued where there is a finding of probable cause, the South Carolina General Assembly has enacted a requirement that search warrants may be issued "only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant." S.C. Code Ann. § 17-13-140; State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999); State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009). The standard for probable cause to support a search warrant is "mere probability that a crime is being committed, rather than a prima facie showing of criminal activity". State v. Dean, 282 S.C. 136, 139 317 S.E.2d 744, 745 (1984).

In Applicant's case, Trial Counsel, like defense counsel in Milledge, filed a motion to suppress the search of Applicant's residence, but his motion was denied by the trial court. Trial Counsel testified his argument to suppress the evidence was not great because the warrant contained an affidavit from a co-defendant identifying Applicant as the robber and statement from Applicant confirming he lived at the residence for some time. Because the motion had been denied and Trial Counsel felt his argument was weak for suppression, Trial Counsel made the decision to embrace the introduction of the evidence from the search. Trial Counsel did this by mentioning the sneakers seized in his opening arguments, arguing the sneakers were common, and putting up

two witnesses, Applicant's mother and uncle, that could counter the argument the sneakers belonged to applicant.

It could be argued that the failure to object and preserve this issue for appeal was deficient performance, even taking Trial Counsel's strategy into consideration. However, Applicant cannot, and has not shown resulting prejudice. As stated above, Applicant must show a motion to suppress the evidence would have been successful on appeal. Milledge, 422 S.C. at 380, 811 S.E.2d at 804. Here, the residence of Applicant was searched pursuant to a search warrant that confirmed Applicant lived at the residence and included a statement by a co-defendant, who was an employee of the restaurant robbed and was present during the robbery, that Applicant was the robber. The denial of Trial Counsel's motion to suppress would likely have been affirmed on appeal, as the facts supporting the search warrant would constitute sufficient probable cause.

This Court finds the testimony of Trial Counsel credible, and finds Applicant failed to prove deficiency and resulting prejudice. Trial Counsel failed to make a contemporaneous motion to suppress the evidence admitted at trial, but Applicant suffered no resulting prejudice from this, as denial of the motion would likely have been affirmed on appeal. Therefore, Applicant's allegations are **DENIED** and **DISMISSED** with prejudice.

ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO REQUEST LOGAN CHARGE

Applicant alleged Trial Counsel was ineffective for failing to request the entire Logan charge. For a jury instruction to be proper, the facts of the case must support it. State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003). South Carolina law dictates jury instruction, when analyzed, must be considered in their entirety. Todd v. State, 355 S.C 396, 585 S.E.2d 305 (2003); State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994) (Jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not

constitute reversible error). There is no particular verbiage that must be instructed to the jury, but the substance of the law must be instructed. Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994). The test for sufficiency of a jury charge is what a reasonable juror would have understood the charge to mean. State v. Simmons, 310 S.C. 439, 427 S.E.2d 175 (1993), judgment rev'd on other grounds Simmons v. S.C., 512 U.S. 154, 114 S. Ct. 2187, 129 L. Ed. 2d 133 (1994). Harmless error will be applied where counsel ineffective in requesting jury charge if no reasonable probability existed outcome of case would have been different. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (in light of the overwhelming evidence of Ford's guilt, the Supreme Court found no reasonable probability that the result of the trial would have been different had counsel accepted the alibi charge).

The Supreme Court of South Carolina recognized the necessity for particular instruction to jury in evaluating circumstantial evidence, meaning evidence that is proof of a chain of facts and circumstances indicating existence of a fact. State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955). A circumstantial evidence charge is a construct that requires the State to prove its case beyond a reasonable doubt and provides a framework for "rational" and "cumulative" assessment to guide the jury's consideration of circumstantial evidence. State v. Grippon, 327 S.C. 79, 87-88, 489 S.E.2d 462, 466 (1997) (citing Rosenberg, 31 Hous. L.Rev. at 1412–13).

In a criminal case where the State relies in whole or in part on circumstantial evidence, and once a proper reasonable doubt instruction is given, Grippon established the jury should be instructed as follows:

> There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater

> degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

Grippon, 327 S.C. 79, 489 S.E.2d 462 (holding modified by State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). Logan did not prohibit use of the Grippon charge, but when requested by defendant, trial courts should utilize the following language:

> There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
> Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.
> The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Logan, 405 S.C. at 99, 747 S.E.2d at 452.

Applicant's case relied mainly on direct evidence, but the State also had circumstantial evidence against Applicant. A statement from Leslie Green, who was present at the robbery and had a close relationship to Applicant, identified Applicant as the robber and fingerprints place Applicant at the place of the robbery. Following his instruction to the jury on governments burden to prove the case beyond a reasonable doubt, the trial court gave an instruction on circumstantial evidence, stating:

> Now, ladies and gentlemen, there are two types of evidence that are generally presented. There's direct evidence and there's circumstantial evidence during a trial. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

> Circumstantial evidence is proof of a chain of facts of circumstances indicating the existence of the fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. The circumstantial evidence is based on inference and not on personal knowledge or observation.
>
> The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.
>
> Ladies and gentlemen, you should weigh all of the evidence in this case. And after weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty.

ROA P. 295, lines 14-25 – P. 296, lines 1-14. The instruction given by the trial court includes language from the Grippon charge and Logan charge. In Logan, the issue before the court was not the weight of circumstantial evidence, as observed in Grippon, but the proper means for evaluating circumstantial evidence. 405 S.C. at 97, 747 S.E.2d at 451. The additional language in the Logan charge distinguishes circumstantial evidence from direct evidence, serving to alert the jury to their "analytical responsibility". Id.

In Applicant's case, the trial court correctly distinguished circumstantial evidence from direct evidence, giving the jury a framework to analyze the circumstantial evidence. The language in the trial court's instruction does not exactly mimic the language recommended in Logan, but that is not a requirement. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994). Taking the language of the circumstantial evidence instruction as a whole shows the trial court conveyed the substance of the law to the jury, and Trial Counsel had no reason to object to its language. Todd, 355 S.C 396, 585 S.E.2d 305 (2003). Additionally, Trial Counsel testified he did not think to request the Logan charge because Applicant's case mainly relied on direct evidence, and requesting the charge would not have made a difference in the verdict.

This Court finds finds Applicant failed to show deficient performance or resulting prejudice. Trial Counsel was not deficient in failing to request the entire Logan charge, as the trial

court's circumstantial evidence charge to the jury sufficiently conveyed the substance of the law. Additionally, such a charge would not have made a difference in the verdict, as there was ample direct evidence against Applicant. Therefore, Applicant's allegations are **DENIED** and **DISMISSED**.

ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO COMMUNICATE PLEA DEAL

Applicant informally alleged Trial Counsel was ineffective for failing to communicate plea deal of ten-years to Applicant prior to trial, testifying he would have taken such a deal under consideration. The Sixth Amendment right to effective assistance of counsel applies to all critical stages of criminal proceedings, and claims based on ineffective assistance of counsel in plea bargaining context are governed by deficiency and prejudice test of Strickland. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). Generally, counsel has a duty to communicate formal offers from prosecution to accept plea on terms and conditions that may be favorable to the accused, and failure to inform defendant constitutes deficient performance. Missouri v. Frye, 566 U.S. 134 (2012).

To establish prejudice where plea offer has lapsed or been rejected due to deficient performance, defendant must show a reasonable probability not only that defendant would have accepted plea offer, but that plea offer would be entered into without cancellation by prosecution or trial court refusing it if they had discretion under the law. Frye, 566 U.S. at 147. If applicant would have proceeded to trial regardless of plea being presented to him, applicant cannot then assert the failure to communicate plea offer prejudiced him.

The Court finds the testimony of Trial Counsel credible, and finds Applicant failed to show Trial Counsel's performance was ineffective. Trial Counsel testified he was not sure why Applicant's case was transferred to him, either due to Ms. Dicus passing or fact Ms. Dicus had

been unsuccessful in plea negotiations and Applicant's case was nearing trial. Applicant testified Ms. Dicus had communicated an eight-year plea offer to him, which he testified he took under consideration, but ultimately he did not accept it. Trial Counsel testified he was unaware of an eight-year plea offer, but a ten-year offer was communicated to Applicant. The offer was communicated in March 2013 and available until December 2013, but Applicant rejected the offer. Applicant contends he never heard of the ten-year offer, testifying he was on vacation in Pigeon Forge in December. However, Trial Counsel references his notes on Applicant's case, evidencing he spoke with Applicant over the telephone in March and met in person in late March, which was around the time the plea offer was made. This gave Applicant about ten months to consider and accept the offer, which he ultimately did not. Additionally, Applicant contends he would have accepted ten-year plea offer when he had previously rejected an eight-year offer.

Thus, this Court finds Trial Counsel testimony credible, and finds Trial Counsel was not deficient, having communicated the plea offer to Applicant. Additionally, even if Trial Counsel was deficient, Applicant cannot demonstrate resulting prejudice, as he did not present evidence or other specific testimony he would have accepted plea offer if it had been communicated to him. Therefore, this Courts **DENIES** and **DISMISSES** Applicant's allegations with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief requested in his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notifies the Applicant that she 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), an Applicant has the 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's attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 18 day of April, 2023.

R. Ferrell Cothran

R. FERRELL COTHRAN, JR.
Presiding Circuit Court Judge
First Judicial Circuit

Manning, South Carolina

SAV20110502832

WITNESSES

Lauren Glover
Charleston City Police Department

AGENCY CASE NUMBER

1107282

ARREST WARRANT NUMBER

M640209

DATE OF ARREST

May 7, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury AUG 1 - 2011
Date:

VERDICT

Guilty

Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2011GS1004830

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

CHRISTOPHER D CAMPBELL
DOB: [redacted]
B/M

Indictment for

Armed Robbery

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 1, 2011 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about May 4, 2011, in Charleston County. South Carolina, at 357 King Street by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun. the Defendant, CHRISTOPHER D CAMPBELL, while acting in concert with another, did take and carry away goods and/or monies from the person or immediate presence of Christopher Riley with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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

DALE SAVAGE
ASSISTANT SOLICITOR

SAV20110502832

WITNESSES

Lauren Glover
Charleston City Police Department

AGENCY CASE NUMBER

1107282

ARREST WARRANT NUMBER

M640210

DATE OF ARREST

May 7, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury AUG 1 - 2011
Date:

VERDICT

Guilty

Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2011GS1004831

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

CHRISTOPHER D CAMPBELL
DOB: [redacted]
B/M

Indictment for

Possession of a Firearm During the Commission of a Violent Crime

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 1, 2011 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about May 4, 2011, the Defendant, CHRISTOPHER D CAMPBELL, did possess a a gun or visibly display what appeared to be a gun during the commission, or attempted commission, of Armed Robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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

DALE SAVAGE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Christopher D Campbell)
AKA:)
Race: BLACK Sex: M Age: 28)
DOB: [redacted] SS#: [redacted])
Address: [redacted] Champaign Ln)
City,State,Zip: Charleston, SC 29412-8804)
DL#: [redacted] SID#: SC01865773)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1004830
A/W#: M640209
Date of Offense: 5/4/2011
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Alex J. Ziegler 101014

Ziegler, Alexander J.	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed ____ years
and/or to pay a fine of $ ____; provided that upon the service of ____ days/months/years and/or payment
of $ ____; plus costs and assessments as applicable*; the balance is suspended with probation for ____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 319 Days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

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

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

Clerk of Court/ Deputy Clerk Jamie Causey
Court Reporter: Denise Lawler

Presiding Judge
Judge Code: 215L
Sentence Date: 23 Oct 2014

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Christopher D Campbell)
AKA:)
Race: BLACK Sex: M Age: 28)
DOB: [redacted] SS#: [redacted])
Address: [redacted] Champaign Ln)
City,State,Zip: Charleston, SC 29412-8804)
DL#: [redacted] SID#: SC01865773)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1004831
A/W#: M640210
Date of Offense: 5/4/2011
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of a Firearm or Knife During Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Alex J. Ziegler 101014
Ziegler, Alexander J. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 319 Days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.40
TOTAL		$ 133.40

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

Clerk of Court/ Deputy Clerk Laurel Clary
Court Reporter: Dixie Lawler
Presiding Judge
Judge Code: 2156
Sentence Date: 23 Oct 2014

SCCA/217 (03/2011)