

THE HONORABLE JENN'A. KITCHING

FEB 01 2024

Clerk of the South Carolina Court of Appeals SC Court of Appeals

Post office BOX 11629

Columbia, S.C. 29211

January 29, 2024

RE: MR. LEVERN McCrea #348291 VS. STATE OF S.C.

Appellate Case NO: 2020-001426

DEAR MS. KITCHING:

ENCLOSED you will find petitioner Pro-se MOTION CONCERNING A "Brady violation" that was addressed by P.C.R. COUNSEL LANCE BOOZER. WHERE THE P.C.R. COURT heard all three (3) issues and DENIED relief. HOWEVER, My prior Appellate Counsel Taylor Davis Gilliam ONLY addressed two (2) of petitioners claims. (1) PETITIONER BEING shackled throughout the entire trial. And (2) PETITIONER WAS DENIED his right to counsel at trial. Appellate Counsel neglected to address petitioners Brady violation during writ of certiorari Appeal. And ONCE Taylor Gilliam was relieved from working at the office of indigent defense. They appointed Attorney Wanda H. Carter. PETITIONER wrote several letters to Ms. Carter requesting her to Amend the Brady issue. Under § 18-1-100 Amendment to cure failure to perfect Appeal. Counsel of record refused to Amend. Petitioner believes that all the Exhibits enclosed will demonstrate (1) the Brady evidence was favorable to accused. (2) it was in the possession of, or known to the prosecution. (3) it was suppressed by the prosecution. And (4) it was material to guilt or punishment. Petitioner believes that Appellate Counsel Wanda Carter, violated RULE 407 of the South Carolina Appellate Court rules of professional conduct.

**LEGAL MAIL
MAIL ROOM**

THE SUPREME COURT OF SOUTH CAROLINA
South Carolina Court of Appeals
Clerk of Court Office
Post Office Box 11629
Columbia, S.C. 29211

~~January 29, 2024~~
RECEIVED

FEB 01 2024

SC Court of Appeals

Dear Clerk of Court:

I, Mr. LEVERN McCrea has Attached
COUNSEL of record, Ms. Wanda Carters two (2) letters
that she SENT to me on January 17, 2024. That I
RECEIVED from the mail room on January 22, 2024.
My counsel of record intentionally withheld the
Courts ORDER from me for 45-days. That she EN-
closed with her January 17, 2024 letter to me. And
that's why I'm now, sending the Court of Appeals
my Pro-se Motion of discovery evidence intention-
ally left out of my Appeal Volumes for writ of
Certiorari Appeal. By prior Appellate Counsel Taylor
Davis Gilliam, who never addressed the "Brady vio-
lation" during my Appeal. Along with my other two
(2) issues that was heard and ruled on by the Court,
which were legitimate ground for Mr. Gilliam to
raise during my Appeal for writ of certiorari.
IN addition, to Mr. Gilliam neglecting to include
the sanction hearing transcripts against solicitor
Kimberly Barr. IN violation of RULE 407 of the
South Carolina Appellate Court Rules of profes-
sional conduct. RULE 1.1 Competence and RULE
1.4 Communication.

**LEGAL MAIL
MAIL ROOM**



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 17, 2024

Levern McCrea, #348291
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Re: Your Case

Dear Mr. McCrea:

Enclosed please find a copy of the Court of Appeals' order granting your Petition for Writ of Certiorari in regard to Question 1 only. In essence, this means a detailed brief of this issue raised in the Petition for Writ of Certiorari will be presented for the Court's consideration. This document, the Brief of Petitioner, is due to be filed with the Court on January 30, 2024. A copy will be forwarded to you at that time.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

BRS/sl

Enclosure

The South Carolina Court of Appeals

Levern McCrea, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-001426

ORDER

This matter is before the Court on a petition for a writ of certiorari. Based on the vote of the panel, the petition for a writ of certiorari is granted as to Question 1 and denied as to Question 2. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

FOR THE COURT
BY Catherine Hannibal, deputy
CLERK

Columbia, South Carolina
December 7, 2023

cc:

The Honorable George M. McFaddin, Jr.
David A. Spencer, Esquire
Wanda H. Carter, Esquire
Levern McCrea, 348291

PETITION FOR A WRIT OF CERTIORARI
IN POST-CONVICTION RELIEF ACTION

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY
COURT OF COMMON PLEAS

HONORABLE GEORGE M. McFADDIN, CIRCUIT JUDGE
APPELLATE CASE NO: 2020-001426

Mr. LEVERN McCrea #348291

Petitioner

vs.

STATE OF SOUTH CAROLINA

Respondent

PETITION FOR WRIT OF CERTIORARI

Ms. JANELL H. GREGORY

Assistance Attorney General
Post office Box 11549
Columbia, S.C. 29211

RECEIVED

FEB 01 2024

SC Court of Appeals

Mr. Robert Dux

S.C. Commission on Indigent Defense
P.O. Box 11589
Columbia, S.C. 29211

Mr. LEVERN McCrea #348291

Allendale County
11057 REVOLUTIONARY Trail
Fairfax, S.C. 29827
Pro-SE Petitioner

MOTION TO AMEND, ALTER, CORRECT
AND RECONSIDER

Please take judicial notice that the Petitioner, Mr. LEVERN McCrea #348291 comes now, and moves with his Pro-se motion to AMEND, ALTER, CORRECT, IN PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE (RULE 59(e)) and to the South Carolina Rules of Civil Procedure, Rule 11(b).

MOTION FOR REHEARING

Petitioner believes, do to Appellate Counsel's incompetence for not including that "Brady" violation in the record on petitioner's Appeal, Perjudice Petitioner's Appeal. That includes the "letter of Leniency" that offered the states star witness a deal for his trial testimony. Where the P.C.R Judge, ruled on that Letter of Leniency, but DENIED petitioner relief. Which were legitimate grounds for Appellate Counsel Taylor D. Gilliam to address during petitioner's Appeal for relief. Please see: STATE vs Dunbar, 356 S.C 138. 142. 587 S.E. 2d 691-693-94 (2003). It's clear by the record that the missing Brady evidence was favorable to the accused. And it was in the possession of, or known to the prosecution. PLEASE SEE: PCR Hearing Transcripts of Exhibits: pages 171 to 176. And Trial Transcripts pages 40:2 at NO: 10 to 25. And page (6) of the Supplemental Report, top of page. Please also see: Brady vs. Maryland 373 U.S. 83, 83, S. Ct. 1194 10 L. Ed 2d 215 (May 13, 1963) The Sanction Hearing against Solicitor Kimberly Barr was held on June 26, 2018. And page 596 at No: 3 to 22 of the Trial Transcripts.

ARGUMENT

Appellate Counsel Taylor Davis Gilliam, intentionally sabotaged petitioner appeal by NOT including in the record on appeal, were 'Sanction Hearing Transcripts' against solicitor Kimberly Barr, who deliberately ignored three (3) judges order's to relinquish a complete RULE-5 Brady Motion. TO petitioner's P.C.R Attorney Lance Boozer, Long before January 3, 2017. And for those reason's, solicitor Kimberly Barr was in violation of RULE 37 (b), failure to comply with order; and rule (e) failure to participate in the forming of a discovery plan and RULE 26 (f), discovery conference. Where as, the court ruled on solicitor Kimberly Barr violation's, but DENIED relief to petitioner. Which were legitimate grounds for Appellate Counsel to include in the record, in petitioner appeal. PLEASE SEE: STATE VS. DUNBAR, 356 S.C 138. 142. 587 S.E. 2d 691, 693-94 (2003). It's clear by the Sanction Hearing transcripts, that those transcripts were favorable for Appellate Counsel Taylor Davis Gilliam, to include in the record for petitioner appeal.

ARGUMENT

Appellate Counsel Taylor D. Gilliam intentionally sabotage petitioner's appeal by not including, in the record on appeal, were all three (3) of the state's star witnesses prior police interview transcripts. That contradicts their trial testimony of perjury. Ms. Roberta Smith, police interview transcripts of March 28, 2010. Christopher Briggs, March 29, 2009, his April 1, 2009 and his March 31, 2010 police interview transcripts.

This intentional wrong doing by petitioner's Appellate Counsel, could have hurt petitioner's appeal for writ of certiorari appeal. It's clear by the record, that Appellate Counsel could have deprived petitioner out of a fair ruling on appeal. In addition, the petitioner never received Christen Green/Young police interview transcripts, or any statements to investigators to start this investigation against petitioner. Ms. Green was allowed to testify during petitioner trial. These police interview transcripts would have been favorable for petitioner trial and Appeal.

MOTION FOR RELIEF

Petitioner's motion for relief from judgment in pursuant to RULE 60 (b)(2) UNDER NEWLY DISCOVERED EVIDENCE OF THE RULES OF CIVIL PROCEDURES, FOR good CAUSE SHOWN, PETITIONER'S motion for relief from judgment should be granted.

Appellate Counsel Taylor D. Gilliam NEVER included this EVIDENCE in the record for petitioner's appeal.

1. Appellate Counsel Taylor D. Gilliam NEVER included "ANY" of the THREE (3) STATES STAR WITNESSES Taped RECORDED police interview transcripts, within petitioner's VOLUMES for the COURT of appeal to compare a complete record of [ALL] EVIDENCE during petitioner's appeal.
2. Appellate Counsel NEVER included in petitioner's appeal, WERE Solicitor Kimberly Barr SANCTION HEARING transcripts, Dated JUNE 26, 2018, that shows prosecutorial MISCONDUCT.
3. Appellate Counsel NEVER included in the record, for petitioner's appeal. That includes that "letter of LENIENCY" that offered the STATES STAR witness Christopher Briggs, A deal for his trial testimony within those VOLUMES. For the COURT of appeal's to review a complete record on petitioner's appeal.
4. Appellate Counsel NEVER included in the petitioner's appeal records, WERE ATTORNEY LANCE BOOZER July 3, 2018 Post-Hearing Brief in support of P.C.R application. That addresses "ALL" THREE (3) of petitioner's claims for relief within the volumes for petitioner's appeal.
5. Appellate Counsel NEVER included in the record on petitioner's appeal, WERE ATTORNEY LANCE BOOZER'S, February 6, 2017, E-mail request to solicitor Anderson. Nor did he include Christen Green / Young police interview transcripts, or any statements that she made to investigator's to start this case against petitioner.

Your Honorable Court, the petitioner's appellate counsel Taylor Davis Gilliam, knowingly and intentionally violated Rule 107 of the South Carolina Appellate Court Rules of Professional Conduct. Rule 101 competence and Rule 104 communication.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Counsel Taylor Davis Gilliam, has failed to do so. More importantly, Brady discovery is one of the most important tools of a criminal defendant's case, and that rule is to protect a defendant's rights to a fair trial. Not one of Ambush and once a Brady rule violation is established, reversal is required. It's clear by the record, that appellate counsel Taylor Davis Gilliam, erred in a manner that a reasonably proficient attorney would not. And this might prejudice petitioner's appeal. Appellate counsel Taylor Gilliam deliberately and intentionally left important evidence out of petitioner's appeal. Only to deprive the petitioner out of a fair ruling from the court of appeal. When it's a mandatory procedural requirement, that appellate counsel include "All" taped recorded police interviews transcripts within petitioner's appeal for relief. So that the courts of appeal, can review a complete record of all evidence, presented during a petitioners appeal for relief. The evidence that petitioner included on this record by way of exhibits, should prove to the court of appeals.

Counsel's conduct so undermined the proper functioning of the adversarial process, that the trial cannot be relied on as having produced a just result. Strickland vs. Washington, 466 U.S. 668, 686, 104 S.Ct 2052, 80 L.Ed 2d 674 (1984). Appellate Counsel Taylor D. Gilliam, intentionally suppressed a Brady issue illegally, that was heard by the court and ruled on by P.C.R. court. Which were legitimate grounds for Appellate Counsel to raise during petitioner's Appeal. That prejudice petitioner's Appeal. Petitioner is respectfully requesting that the Supreme Court Chief Justice, Judge Beatty, Review the petitioner's enclosed exhibit's of evidence intentionally left out of petitioner's Appeal. By Appellate Counsel Taylor Gilliam.

CONCLUSION

Based on the foregoing, petitioner respectfully requests that this court reverse the P.C.R. court and remand for a new trial.

1 Mr. Lavern McGee

SWORN TO AND AFFIRMED TO BY THE AFFIANT
THIS 29th day OF January 2024.

Wheley Vanacore

NOTARY PUBLIC

My COMMISSION Expires: 9/9/32.



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

3 A: Coming back from Johnsonville.

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

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

8 Q: Eleven point five miles from Highway 378?

9 A: Yes, ma'am. *prosecutorial misconduct/perjury*

Start at 7 (10)

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

15 A: No, ma'am.

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

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

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

22 A: Yes, ma'am.

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

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

1 A: No, ma'am. ^{STOP}

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

3 A: No.

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

7 A: Back to the jail.

8 Q: Right back to jail.)

9 A: Yes, ma'am.

10 Q: Is that right?

11 A: Yes, ma'am.

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

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

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

21 A: I did.

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

INCIDENT REPORT SUPPLEMENTAL

1 of 1

Case Number: 0902123

Officer: 1727 LAMBERT, BRENDA

Date Entered/Changed: 03/15/2009

Reviewer:

Review Date:

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

ON JULY 30, INVESTIGATOR BROWN ALONG WITH LT COLLINS, AND CHIEF JOHNSON MADE A LETTER FOR CHRIS BRIGGS WHICH STATED BASE ON OUR RECENT CONVERSATIONS, WE BELIEVE THE YOU HAVE VITAL INFORMATION ABOUT CORA BROWN DEATH. AT THIS POINT WE DO NOT BELIEVE THAT YOU ARE THE ACTUAL SHOOTER AND IF YOU FREELY AND VOLUNTARILY PROVIDE ALL OF THE TRUTHFUL DETAIL SURROUNDING CORA DEATH, AND PASS THE POLYGRAPH. CHRIS WILL BE CHARGED WITH ASS, AFTER THE FACT. THE LETTER WENT ON TO SAY THAT WE WILL TALK WITH THE JUDGE AND THE SOLICITOR TO GET CHRIS BRIGGS LENIENCY ON HIS CHARGE.

INVESTIGATOR BROWN ALONG WITH LT COLLINS WENT TO ST. PETER CHURCH, AND MADE CONTACT WITH BISHOP NESMITH, WHO WAS ABLE TO MAKE CONTACT WITH CHRIS BRIGGS. BISHOP NESMITH STATED THAT CHRIS HAD TOLD HIM THAT HE DO NOT WANT TO TALK WITH US, WITH OUT A LAWYER. BISHOP NESMITH STATED THAT HE WILL EXPLAIN THE LETTER TO CHRIS AS SOON AS HE CAN GET IN TOUCH WITH HIM.

*****WILLIE BROWN***** LETTER OF LENIENCY Bishop Nesmith

JULY 30, 2009 LT COLLINS MADE CONTACT WITH BISHOP NESMITH WHO STATED THAT HE WILL TALK WITH US BUT IT WILL BE AFTER MONDAY, CHRIS BRIGGS WANTS TO TALK WITH A LAWYER FIRST.

*****WILLIE BROWN*****

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

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

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

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

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

I NEVER RECEIVED ANY OF THIS MISSING BRADY EVIDENCE
Prior to, or during trial. This is a clear Brady violation.

2

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

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February 6, 2017

Via Email

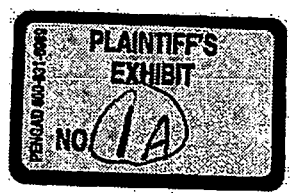
Warren Anderson
Assistant Solicitor
125 West Main Street
Kingstree, South Carolina 29556

**RE: Levern McCrea, #348291 v. State of South Carolina
2012-CP-45-363**

Dear Mr. Anderson:

As you are aware, I represent Mr. McCrea in his pending PCR case. I am in receipt of the Rule 5 discovery materials your office recently provided to me in Mr. McCrea's general sessions case and have delivered the same to him. He believes certain items exist and were not provided or disclosed in the materials he recently received. Below please find his descriptions of these items:

- * * 1. ✓ Clinton Dorsey police interview statements/reports. *Brady violations*
- * * 2. ✓ Dee Franklin police interview statements. *Brady ??*
- * * 3. ✓ Christen Green/Young police interview transcripts and police reports. *Brady ??*
- * * 4. ✓ Robert Smith 6/28/10 police interview transcripts. *Brady ??*
- * * 5. ✓ Carolina Pushia police interview statements and report. *Brady ??*
- * * 6. ✓ Actual time of death on coroner report. *Brady ??*
- * * 7. ✓ Letter of leniency for Christopher Briggs. *Brady ??*
- * * 8. ✓ Christopher Briggs' April 2009 polygraph test. *The test that he passed*
- * * 9. ✓ Letter Mr. McCrea entered on the record during a pre-trial hearing before Judge Newman. *Brady ??*
- 10. Mr. McCrea's booking record.
- 11. Commitment calendar.



★

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

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

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

24 A It appears to.

★

25 Q Okay. Why was that not turned over?

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

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

9 A I think it would've been.

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

11 A Yeah. I ---

12 Q Okay.

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

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

18 A I believe he did.

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

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

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

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

2 A It is.

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

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

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

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

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

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

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

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

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

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

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

7 Q Have you checked with law enforcement?

8 A I did.

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

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

12 Q When did that issue come up?

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

17 Q Well, you're saying ---

18 A --- induce him to testify.

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

23 A It did not.

24 Q Okay.

25 A No.

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

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

5 Q Yeah. So ---

6 A About the letter.

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

9 A Correct.

10 Q -- about this letter.

11 A Correct.

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

14 A No, sir.

15 Q Okay.

16 A No, sir.

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

23 A That'd be great.

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

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

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

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

July 3, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)	FOR THE THIRD JUDICIAL CIRCUIT
)	
Levern McCrea, #348291,)	2012-CP-45-363
)	
Applicant,)	
)	POST-HEARING BRIEF IN SUPPORT
v.)	OF PCR APPLICATION
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

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

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

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

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

2
were "justified by an essential state interest" such as courtroom security as the law requires.

Applicant need not demonstrate actual prejudice as it is "inherently prejudicial." Id. at 635.

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

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

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

Applicant alleged and testified the State withheld evidence subject to Rule 5 Brady disclosure even after repeated requests for disclosure. Applicant alleged and testified in addition to discovery being "spoon fed" to him prior to and even during trial, photographs of bullets, a statement he believed was taken of Roberta Smith on or about June 28, 2018, a Clinton Dorsey police interview/statement, and a "letter of leniency" were withheld. At the PCR hearing, Applicant introduced a supplemental investigative report marked Exhibit #6. The report was prepared by the Williamsburg County Sheriff's Department during their investigation into the case. The report stated:

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

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

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

Applicant respectfully submits his PCR application should be granted.

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

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

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

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


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

2
1996). Applicant submits he could neither have waived his right to counsel either affirmatively or by conduct as no Faretta warnings were ever given to Applicant.

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

Applicant respectfully submits his PCR application should be granted.

Respectfully submitted,



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THE BOOZER LAW FIRM, LLC

July 3, 2018

Columbia, South Carolina.

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

SANCTION HEARING TRANSCRIPTS

STATE OF SOUTH CAROLINA)	}	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER		

LEVERN MCCRAE)
 PETITIONER,)

TRANSCRIPT OF RECORD
 12-CP-45-363

v.)

STATE OF SOUTH CAROLINA,)
 RESPONDENT.)

June 26, 2018
 Kingstree, South Carolina

BEFORE :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE

APPEARANCES:

LANCE BOOZER, ESQ.
 Attorney for Applicant

JULIE COLEMAN, ESQ.
 Attorney for Respondent

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

FRANCES B. RAY, RPR
 Circuit Court Reporter

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(There were no exhibits submitted.)

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

2 MS. COLEMAN: Good morning, Your Honor.

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

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

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

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

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

16 MR. BOOZER: Correct.

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

19 (Attorney Boozer confers with Mr. McCrae.)

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

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

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

1 be something new that you have not heard.

2 THE COURT: All right.

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

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

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

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

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

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

15 WHEREUPON,

16 **LEVERN MCCREA,**

17 having been duly sworn by the clerk, testified
18 as follows:

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

21 Mr. Boozer.

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

1 term.

2 THE COURT: All right, sir.

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

5 THE COURT: All right. Mr. McCrea.

6 MR. MCCREA: Good morning, Your Honor.

7 THE COURT: Good morning, sir.

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

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

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

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

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

25 In addition, September the 9th, 2011,

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

20 THE COURT: Thank you, Mr. McCrae.

21 Mr. Sabb.

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

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

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

I should have
objected to

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

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

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

13 THE COURT: Okay.

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

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

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

25 THE COURT: All right. And so there are

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

4 MR. BOOZER: Thank you, Your Honor.

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

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

9 Mr. Boozer, is that acceptable?

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

11 WHEREUPON,

12 **KIMBERLY BARR,**

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

15 MS. BARR: Good morning, Your Honor.

16 THE COURT: Good morning, Ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

16 THE COURT: Yes, ma'am.

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

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

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

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

15 (Attorney Boozer confers with Mr. McCrea.)

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

23 THE COURT: Yes, sir.

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

1 THE COURT: Yes, sir.

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

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

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

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

24

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

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

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

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

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

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County
Honorable George M. McFaddin, Circuit Court Judge

LEVERN McCrea,

RECEIVED Petitioner

vs.

FEB 01 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

Respondent

APPELLATE CASE NO: 2020-001426

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on
this 29 Day of January 2024, The petitioner
has provided copies to the Respondent, Mr.
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