

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

RECEIVED

AUG 28 2013

S.C. Supreme Court

CLYDE L. MCBRIDE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213470

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1 Sutherland---

2 A. Yes, sir.

3 Q. ---prior to trial?

4 A. Yes, sir.

5 Q. Did he adequately -- did he investigate that to try to
6 determine if there was any corroborating evidence that you
7 had signed something you didn't know what it was?

8 A. Well, I mean, the only thing I know he did was put a
9 motion for the Jackson versus Denno hearing. I don't know
10 about the investigation part.

11 Q. Okay. Did he actually raise or challenge the false
12 statements made in the armed robbery affidavit during the
13 Franks versus Delaware hearing?

14 A. Yes, sir.

15 Q. Okay. Now, was there an issue in your trial about
16 whether you had been properly given your Miranda rights?

17 A. Yeah, at the beginning of the Jackson versus Denno
18 hearing.

19 Q. Okay. Did your attorney, Mr. Sutherland, adequately
20 represent you in that hearing?

21 A. Yes, sir.

22 Q. He did all right?

23 A. Yes, sir.

24 Q. Okay. Now, let me ask you this: Did he adequately
25 prepare you for your trial?

1 A. Me personally, I don't think he had enough time on my
2 case because it was a high-profile case.

3 Q. Was it in the papers or something?

4 A. Yeah, it had been in the papers and the news and all
5 this. It was high profile. And when he got the case -- like
6 I said, he got the case like February the 15th. I went to
7 court like April the 2nd.

8 Q. Right. So you had, I think you said, 45 days to get
9 ready.

10 A. Yes, sir, 45 days.

11 **The Court:** All right. All right. You said it was in
12 the movies. You don't mean movies, do you?

13 **The Witness:** Yeah, it was on -- it was on the---

14 **The Court:** T.V.

15 **The Witness:** ---media and all that.

16 **The Court:** All right. I mean, this wasn't a Clint
17 Eastwood movie, was it?

18 **Mr. Belding:** Well, I don't know if you can get it on
19 Netflix or not, Your Honor.

20 **The Court:** All right. Go ahead. Go ahead. I'm not
21 picking at you, Mr. McBride. You said it was on T.V. It was
22 on the news.

23 **The Witness:** Yes, sir.

24 **The Court:** It was well publicized. Is that fair
25 enough?

1 **The Witness:** Yes, sir.

2 **The Court:** Okay. Go ahead.

3 By Mr. Belding:

4 Q. Did your attorney about the statement adequately
5 represent you in challenging the voluntariness of your
6 statement?

7 A. In the motion -- I mean, in the Jackson versus Denno
8 hearing, I don't know. I can't quote exactly what the
9 transcript was in, but it's to -- it's in the transcript
10 where the judge was basically telling him if he had an issue
11 with the statement, he could have raised the issue before the
12 jury was -- but since the jury was the decision-maker when it
13 came down to the statement... I can't quote exactly what---

14 Q. I understand. It's in -- it's in the record. That's
15 all right. Did you notice during the trial, too, that there
16 were a number of occasions where -- do you know what hearsay
17 testimony is?

18 A. Yes, sir.

19 Q. Did you see a lot of hearsay testimony come in that was
20 not objected to by Mr. Sutherland?

21 A. Yes, sir.

22 Q. Okay. I'll ask him about those. Did you think that any
23 of those hearsay -- any of that hearsay testimony prejudiced
24 your case in front of the jury?

25 A. Yeah, in a way it did because it was basically the

1 police word against my word, and being that I didn't take the
2 stand and testify in my own defense, they went with the
3 State, so, you know...

4 Q. Why didn't you take the stand to testify?

5 A. Well, one reason why I didn't take the stand and testify
6 is because my lawyer told me that being that I already had a
7 record, they would bring that before the jury and that's what
8 he was trying to keep out before the jury to keep the jury
9 from hearing about that, and the second is that he said he
10 wanted to have the last closing arguments dealing with the
11 State. So that was really the two reasons why I didn't
12 testify.

13 Q. Okay. Did you understand those -- that that was a trial
14 strategy decision?

15 A. To a certain degree I understand it, but I ain't never
16 been in trial before, so I mean, this was all new to me.

17 Q. Okay. Did you agree with Mr. Sutherland's
18 recommendation at the time?

19 A. Yes, sir.

20 Q. As you sit here today, do you think that that was
21 ineffective representation to recommend those two strategy
22 decisions to you?

23 A. Yes, sir, to a certain degree. Yeah.

24 Q. Okay. And in what way did those prejudice you in front
25 of the jury?

1 A. Well -- well, for one, not taking the stand on my
2 behalf, that definitely prejudiced me because you got -- the
3 only evidence they had, from my knowledge, was just the
4 statement itself, you know, and Investigator McDaniel's words
5 based on what he suspected or whatever the case might have
6 been. And I felt like if I would have took the stand, then
7 the jury would have had a chance to hear my side of the story
8 instead of just one side of the story.

9 Q. I understand. Do you recall the judge's trial remarks
10 where he indicated that the applicant was given the Miranda
11 rights?

12 A. Yes, sir.

13 Q. Did you ask your attorney to object to that?

14 A. No, because like I said, that was my first time going to
15 trial, so I don't know nothing about no objection and, you
16 know, I don't know nothing about that stuff like that, you
17 know.

18 Q. Well, you're not the expert in the law; is that right?

19 A. Yes, sir.

20 Q. Were you relying on your attorney---

21 A. Yes, sir.

22 Q. ---to be the expert in the law?

23 A. Yes, sir.

24 Q. Okay. All right. Now, I have some questions for Mr.
25 Sutherland, but is there anything else you would like to tell

1 Judge Manning today about why you seek post-conviction relief
2 here today?

3 A. Mainly the reason -- the reason I'm fighting my
4 conviction altogether -- you know what I'm saying? I'm not
5 asking for no resentencing or nothing. I'm actually fighting
6 the conviction altogether because I'm not guilty of the
7 crime, period. You know what I'm saying? And also I
8 realized during the course of the trial that there were a lot
9 of untruths told on behalf of the police. You know what I'm
10 saying? So basically the trial was just one-sided
11 altogether. That's just the basis. It was just one-sided,
12 and I didn't get the opportunity really to speak on my behalf
13 on the fact that my lawyer advised me not to on those two
14 conditions.

15 Q. Okay. Did you think your lawyer was able to effectively
16 rebut or question the police when they said things that you
17 thought were untrue?

18 A. I felt like he should have impeached Investigator
19 McDaniel's testimony altogether because we already had had --
20 went at him on numerous levels dealing with the courtroom
21 procedures as far as the motions and stuff like that, and a
22 lot of things came out to the point to where his credibility
23 was questionable to me just as well as it was questionable to
24 him. So I feel that he should impeach his testimony. He
25 should present, knowing the evidence that he had in his

1 possession, to discredit his credibility. That's just my
2 opinion.

3 **Mr. Belding:** I think that's -- I think that's fair.
4 All right. Mr. McBride, thank you very much. Your Honor, no
5 further questions.

6 **The Court:** Mr. Petrano?

7 Cross-Examination

8 By Mr. Petrano:

9 Q. You say that in retrospect perhaps you should have taken
10 the stand so that the jury could hear your side of the story?

11 A. Yes, sir.

12 Q. And so I just want to narrow that down. Basically are
13 you saying that regarding your side of the story of the
14 statement and the involve -- and the activities with
15 McDaniel?

16 A. Yes.

17 Q. Okay. Not like your side of the story as to how your
18 D.N.A. got in the truck or the car or anything like that.

19 A. To that -- to that extent to the possibility of my
20 D.N.A. being in the car but mostly toward the statement
21 itself because when you look into the statement, you see that
22 there's a lot of conversity (verbatim) dealing with the
23 statement: The time of the statement, the place the
24 statement was taken and this and that for, you know...

25 Those stuff really wasn't argued before the jury like they

1 should have been argued, you know, is what I'm---

2 Q. The way they were argued at the Denno and the -- and
3 the---

4 A. Exactly.

5 Q. ---and all the pretrial hearings.

6 A. Exactly.

7 Q. Okay. And that wasn't really possible unless you took
8 the stand.

9 A. Exactly.

10 Q. Okay. And I'm not trying to put you on the spot, but
11 ultimately I would assume some of your discussions with your
12 attorney would have been that if you did take the stand, the
13 solicitor was going to ask you how your D.N.A. got in that
14 car. Do you have an answer for that? And I'm not trying to
15 put you on the spot.

16 A. Well, the reason why my D.N.A. could possibly be in that
17 car is because at the time I was doing a lot of detail work
18 on cars.

19 Q. Okay.

20 A. That's number one, you know, but that question never
21 came up because when the investigator arrested me, he assumed
22 that he had his man, so it wasn't -- I mean, I wasn't going
23 to just sit there and just talk to the man, you know.

24 **Mr. Petrano:** Okay. Thank you very much. Nothing
25 further.

1 Mr. Belding: No redirect. Thank you, Your Honor.

2 The Court: All right. You may step down, Mr. McBride.

3 Mr. Belding: I'd like to call Mr. Tivis Sutherland.

4 The Court: Mr. Sutherland.

5 Tivis C. Sutherland, IV, after being duly sworn,
6 testified as follows:

7 The Court: Please take your seat. Tell us your full
8 name and spell your last name for the record.

9 The Witness: My full name is Tivis Colley Sutherland---

10 The Court: Colley?

11 The Witness: ---the fourth. Yes, sir. Colley.

12 C-O-L-L-E-Y. Sutherland. S-U-T-H-E-R-L-A-N-D. The fourth.

13 The Court: And you say you're from the mountains of
14 Virginia.

15 The Witness: Yes.

16 The Court: Go ahead.

17 Mr. Belding: All right. Thank you.

18 Direct Examination

19 By Mr. Belding:

20 Q. Mr. Sutherland, you recall, of course, representing Mr.
21 McBride in this matter.

22 A. Yes, sir, I do.

23 Q. And do you agree that you had 45 days to get ready?

24 A. That's correct. Yes, sir.

25 Q. Was it enough time, do you think?

1 A. I felt like we were -- we were good to go, but I mean, I
2 worked really hard on it. I mean, I felt like we were good
3 to go, and I spent a lot of time with Mr. McBride. And I was
4 ready to roll; yes, sir.

5 Q. Okay. I really just had a few points in the trial that
6 I wanted to ask you about. One was that in the Jackson
7 versus Denno hearing and I'm specifically looking -- do you
8 have a copy of the transcript?

9 A. Yes, sir.

10 Q. I'd like to---

11 A. Yes, sir.

12 Q. Do you mind turning to page 69?

13 A. All right.

14 Q. I'm leading up to this point where you were kind of
15 wandering around in your examination and I'm familiar with
16 that myself, but finally on page 69 the Court at line six
17 says -- and go on. It says, "You know, Mr. Sutherland -- and
18 the question is, Mr. Sutherland - I know you know this - is
19 whether or not the statement was voluntary. A., was he in
20 custody? B., was he interrogated? And C., was the statement
21 voluntary? That's the issue." Did you feel like the judge
22 needed to instruct you on how to conduct a Jackson versus
23 Denno hearing?

24 A. Well, I think Judge Cooper was just pulling me back and
25 pulling me back in because I get wound up. Yes, sir.

1 Q. Okay. I understand. I think -- I think you made that
2 exact statement on that page at line 17. "I was just getting
3 worked up, you know." Okay.

4 A. Yes, sir.

5 Q. All right. Do you think that that prejudiced Mr.
6 McBride any in that hearing?

7 A. I don't -- I don't -- I wouldn't imagine so, but again
8 this is -- knowing and trying cases in front of Judge Cooper
9 and knowing Judge Cooper, he knows how I am in there and it's
10 -- everything is usually -- it's okay. Everything is always
11 all right.

12 Q. Do you think in the course of that hearing you covered
13 the elements that the judge spoke about?

14 A. I'm sure I had to. I mean, I haven't read the whole
15 thing, but the whole point I think during the Jackson versus
16 Denno was one that he didn't write that, that McDaniels wrote
17 that.

18 Q. Correct.

19 A. That McDaniels couldn't get his time straight from, you
20 know, one report to the next, and I did everything that I
21 could do. I remember going on and on doing everything I
22 could do at that time.

23 Q. Do you think you did as effective a job as you could
24 have at the time of cross-examining Investigator McDaniels?

25 A. I believe -- I believe so. Again, I remember it being

1 pretty long, and actually I was rereading some of this for
2 the first time sitting over there. I was pretty mean to him.

3 Q. Did you---

4 **The Court:** You were mean to Judge Cooper?

5 **The Witness:** No. No, sir. No, sir, to Investigator
6 McDaniels.

7 **The Court:** Oh, I see. When you said him, I just didn't
8 know who you were talking about.

9 **The Witness:** I would never do that. I always tell my
10 clients: When you go in a courtroom, the judge owns the air
11 that you breathe.

12 **The Court:** Oh, come on. Let's not go that far.

13 By Mr. Belding:

14 Q. Are you getting worked up again, Mr. Sutherland?

15 A. Not yet.

16 Q. All right.

17 **The Court:** Go ahead.

18 **Mr. Belding:** Thank you.

19 By Mr. Belding:

20 Q. Did you -- did you believe Investigator McDaniels'
21 testimony?

22 A. I did not.

23 **Mr. Petrano:** Object to the grounds.

24 By Mr. Belding:

25 Q. Let me... You know, is that one of the reasons you got

1 worked up?

2 A. It was. He's -- and he and I get along, but I look at
3 -- a lot of officers are on a mission, and sometimes there's
4 some smudges and cutting corners in that because they're out
5 to make the streets safe for America's children and so forth,
6 but I just believed that he was sort of plugging the stuff in
7 there, filling in holes like happens sometimes, oddly enough
8 in the case from the other day that was pretty similar, but
9 he was changing his testimony from warrant to, you know, to
10 Schmerber, from the bond hearing to one -- there were
11 significant changes in his testimony that -- and I saw that I
12 said this on the record to the Court that just so happened to
13 plug in whatever holes I was exploring at the time and I was
14 getting -- I remember getting irritated; yes, sir.

15 Q. Okay. Now, did you -- when Investigator McDaniels
16 testified at the trial in front of the jury, were you able to
17 effectively cross-examine him on those points?

18 A. I did and I know that at least at one point it worked
19 because I finally got him to give me a yes-or-no answer. I
20 had quoted the confession of my client. There was a part
21 that said, "I was traveling at a high rate of speed on
22 Interstate 77 on the shoulder. I then took Exit Number 136,"
23 and that's -- my guy doesn't talk -- people don't talk like
24 that.

25 Q. Right.

1 A. And I said that's -- I read it to him, and I said,
2 "That's cop talk, isn't it?" And he said, "Yes." And then
3 he turned to the jury and he smiled, "But oftentimes I find
4 defendants want to talk to me as in sort of cop language,"
5 and the jury just sat back. But in the end we lost, but they
6 didn't buy it either.

7 Q. In the end we lost.

8 A. Yes, sir.

9 Q. Correct. Do you feel like you effectively challenged
10 him on -- you know, Mr. McBride's statement in court is he
11 didn't read very well and that he was handed paperwork and
12 said, "Sign here so you can get a lawyer."

13 A. All I remember is I did the best -- I did the best that
14 I could, and I tried really hard. That's what I remember. I
15 mean, as far as specifics of what exactly happened on
16 different pages and stuff, I just remember just going and
17 going and going at him.

18 Q. On page 106 of the transcript...

19 A. Okay.

20 Q. Again, now, you're in the Franks versus Delaware part of
21 this---

22 A. Yes, sir.

23 Q. ---trial. And, again, it looks like Judge Cooper is
24 kind of instructing or educating you on what you need to show
25 here.

1 **The Court:** What line, Mr. Belding?

2 **Mr. Belding:** Oh, I'm sorry. Thank you, Your Honor. At
3 line -- starting really with line seven.

4 **The Court:** Okay.

5 **Mr. Belding:** Or even six.

6 By Mr. Belding:

7 Q. He says, "Well, I would have to find this," as if he
8 needed to tell you, you know, what you needed to show. I was
9 curious. I mean, did you know what you needed to show at
10 that point in the trial?

11 A. I could feel -- yes, I could feel him pulling away from
12 me a little bit and I was trying to sort of bring it back,
13 but there -- I mean, there comes a point where you've just
14 kind of got to move along. But I remember distinctly feeling
15 him pulling away in some of what he was talking to me about,
16 and I was just trying to get him back in. I mean, I believed
17 that there was a misstatement in the warrant. I believed it.

18 Now, what I have -- I remember it was kind of tricky
19 arguing an omission because I think I had to go to another
20 circuit or something for a couple of cases to support the
21 position, but my argument was that that omission of the car
22 being out there for 27 days, it's exactly like I said in
23 there. That could have been down at the circus with 27
24 clowns in it over those 27 days.

25 Q. Were you able to in 45 days come up with any explanation

1 of any kind for why there would have been a D.N.A. CODIS hit
2 from the D.N.A. sample taken from the steering wheel of this
3 missing car that matched the D.N.A. of the defendant?

4 A. The only thing that I -- I remember him saying something
5 about auto detailing or something to that effect, but again
6 in 27 days it can go through any number of transitions that
7 it's missing and they find it in this one spot. Nobody knows
8 that that's where it was for the whole 27 days. I mean,
9 people could have been passing the car around.

10 Q. Well, let me ask you: Did you pursue that -- I would
11 have thought that was a pretty important point in the trial.

12 A. Yes, sir.

13 Q. I mean, he said/she said is one thing, but D.N.A.,
14 people tend to lock on that like the breathalyzer. Did you
15 find a -- successfully find a way to challenge the D.N.A.
16 hit? I mean, did you follow up on Mr. McBride's story about
17 detailing cars and try to introduce that in any way?

18 A. I think I've got some employment records from Labor
19 Ready or something to that effect, but I don't remember
20 actually having something that I was going to put in front of
21 -- put in front of the court, but I do have -- and I don't --
22 I haven't looked at them in awhile, but I do have some
23 employment records for him.

24 Q. I understand. Well, and by all means you can -- you can
25 fish through, but I don't recall seeing anything in the

1 transcript about it. I guess my question comes down to this:
2 It looked to me from reading this transcript that two things
3 hurt Mr. McBride in front of the jury: The statement and
4 this D.N.A. match.

5 A. Yes, sir.

6 Q. And I'm wanting to know and so is Mr. McBride: What did
7 you do as his lawyer to try to get the jury to understand
8 that this crime wasn't committed by Mr. McBride?

9 A. Well, what I remember -- I think we've been over with
10 respect to the statement a little bit, and I remember talking
11 to them about it and cross-examining that basically, you
12 know, he wrote this thing. My guy signed it. Normal people
13 don't talk that way. And I think they went along with that.
14 With respect to the D.N.A., it's -- the simple point is that
15 in 27 days any movable object can be moved any number of
16 times and be possessed by any number of people. And, again,
17 it was going back to sort of the dishonesty that I perceived
18 in the arrest warrant. They said that they chased him into
19 this county, recovered the car, and got his D.N.A. That's
20 not true; it was 27 days. And that's my recollection of it.

21 Q. Okay. And as we sit here today, do you think you made
22 that point as well as you could have at the time?

23 A. I don't know that that's -- I guess I should say that
24 you can always do something better if you go back and look
25 once having done it that -- and it's like I told Mr. McBride

1 after. I said: Listen. You know, you're not going to hurt
2 my feelings as far -- you know, PCR's and stuff. People make
3 mistakes. Everybody makes mistakes, and it's the last avenue
4 of relief for my clients and it doesn't bother me.

5 Q. There were also -- one other thing Mr. McBride indicated
6 to me that he felt could have been done better by you is that
7 there were a number of places in the trial where there was
8 hearsay testimony that you didn't object to. For example, on
9 page 206, lines 20 and 21, right in there -- are you on 206
10 yet? No. Okay. I'll wait.

11 A. Just about. Okay. 20 and 21.

12 Q. Do you remember the testimony of Mr. Robert C. Oates?

13 A. That was like a C.S.I. guy or a guy who gathered some --
14 something or other. I think which...

15 Q. Yeah.

16 A. Okay. Yeah. That was one of their guys that run around
17 and pick up stuff and put it in bags.

18 Q. And, you know, the only thing I remember from trial
19 class is that when somebody says, "He said," you're supposed
20 to jump and say, "Objection. Hearsay." Sometimes they get
21 it through passably, but on line 20 he testifies, "I was told
22 by the victim that the dog had blood around its -- in his
23 dollar area." That might be collar area. But you didn't
24 object. And there were several times in the trial that that
25 kind of hearsay testimony came in and you didn't object. Do

1 you have a reason why you wouldn't have objected to something
2 that's pretty clearly hearsay?

3 A. Well, it should have -- it should have been objected to,
4 and the only thing that I can -- the only thing that I can
5 think of -- no, I'm thinking about Ms. Campbell leading
6 because there comes a point where you just look like you're
7 -- you look suspicious when you're objecting all the time
8 which -- and she knows that, but with respect to that, that
9 should have -- that's objectionable. I should have objected
10 to that.

11 Q. Okay.

12 **The Court:** Did the victim testify in this case? I
13 assume he did.

14 **Mr. Petrano:** She, yes.

15 **Mr. Belding:** Yes. And, in fact, she could have
16 testified.

17 **The Court:** Huh?

18 **Mr. Belding:** And she could have so testified; you're
19 right.

20 **The Court:** That's all right. I'm just...

21 By Mr. Belding:

22 Q. And just -- there are several of these, but let me just
23 point out one more for just the Court on a couple of pages.
24 Page 208 and, again, this is Mr. Oates and he's saying, you
25 know, "I approached the victim, got her information. She

1 told me that, of course, the suspect was out at her vehicle,"
2 and you didn't object to the hearsay there, either; correct?

3 A. Yeah. I mean, as a general -- as a general matter, you
4 should -- I would, just looking at that and not remembering
5 the specific incident sitting here reading that, I would
6 object to that. I mean, I don't know what was going on at
7 the time, but I would just say you should object to this
8 stuff, so I should have.

9 Q. Well, I guess my question -- the final area I'm getting
10 into was -- was -- you kind of touched on it. Was this a
11 trial strategy kind of decision that I don't want to be
12 objecting every two minutes because it will look like I'm
13 trying to hide something or is this just something that got
14 by you and was missed?

15 A. What I recall, I recall at one point where I was
16 objecting to her leading and it was just almost every two
17 minutes or something, and finally I just sat there. And I
18 remember Judge Cooper just looking up over his glasses at me
19 from the bench that -- just what am I going to do? Keep
20 doing that. I don't remember that with respect to the
21 hearsay. I mean, it's possible, depending on the number of
22 the times that it had happened before, but I can't sit here
23 and tell you what I was thinking. But looking at this, I
24 should have objected to that.

25 Q. And on the subject of objections, has it been your

1 experience, Mr. Sutherland, that if you object even a number
2 of times, if it's always sustained, doesn't it start looking
3 like the other side is doing something wrong, not you?

4 A. It is for people that are up there and acutely aware of
5 what's going on. After my last trial I had, one of the
6 members of the victim's family came up and she was talking to
7 me, and she said, "You know, you seem like a very nice
8 person, but why were you objecting all the time?" And I
9 didn't really object. It's just -- it depends on the
10 perception of who's watching and where they were. I just
11 notice being disruptive is useful if I've got somebody on the
12 stand and I'm sort of pushing them in a certain direction.
13 But just -- and sometimes you do want to interrupt the flow
14 of stuff that's going on as well. But with respect to these
15 particular instances here, I don't remember whether I was
16 like, "I've just got to stop doing this," or whether I missed
17 it, but objectively I should have objected to those instances
18 there.

19 **Mr. Belding:** Okay. And you're right. Sometimes I
20 notice Mr. Petrano didn't object to your hearsay, so that's
21 fair enough. No further questions, Your Honor.

22 **The Court:** Mr. Petrano?

23 Cross-Examination

24 By Mr. Petrano:

25 Q. You said he mentioned the auto detailing, and one of the

1 suggestions or the questions, directly or indirectly, was:
2 Why didn't you put any evidence in? My question is then:
3 One, would you lose closing argument and, two, how would you
4 do that?

5 A. Well, that is correct, and I guess you would -- you
6 would have to put -- you'd obviously have to put the employer
7 up there or perhaps someone who had had their car detailed in
8 that respect. I just remember as far as that, that wasn't
9 really knocking around up here too much. And, again, the
10 only thing I remember as far as employment records was some
11 stuff from Labor Ready which I did that stuff in college. I
12 mean, you know, you've got to get by, but I don't remember
13 processing that as far as what I was trying to do there.

14 Q. And to do that though, wouldn't you also eliminate one
15 of your main arguments that you were maintaining? One of
16 your common themes was that perhaps this D.N.A. was not a
17 match. So if you were to say, "Well, he does auto
18 detailing," you would be conceding that it was a match, and
19 obviously that had to be a concern.

20 A. Well, that's correct. Again, I knew this was all -- all
21 about McDaniels, and Mr. McBride helped me with that because
22 he sat down and we went over every little thing and we went
23 over everything. This was sort of -- I just remember feeling
24 that it was all about McDaniels in pretrial. It's all about
25 McDaniels during the trial. You know, you've got to knock

1 him down. You've got to knock him down. You've got to knock
2 him down.

3 Q. And I'm not trying to ask silly law school questions or
4 anything, but you're aware obviously that you can't object to
5 hearsay if it's not being offered for the truth of the matter
6 because then by definition it's not hearsay?

7 A. Oh, sure, but I mean, as soon as I hear -- as soon as I
8 hear something that is hear -- I don't even go that far. I
9 mean, I should just know, and then, well, it's not for the
10 truth -- then you can sort that out. But when they start
11 saying he said/she said, that's the kind of stuff, like I
12 say, as a general matter that you should object to and then
13 you can sort it out.

14 Q. Thank you.

15 A. You're welcome.

16 **The Court:** Did Mr. McBride take the stand at all?

17 **The Witness:** During pretrial, yes, sir.

18 **The Court:** So the answer is no then because pretrial is
19 in camera.

20 **The Witness:** Oh, then, no, sir, he did not. He did
21 not.

22 **The Court:** Was there an alibi defense or anything?

23 **The Witness:** Not to---

24 **The Court:** I'm not trying to put you on the spot.

25 **The Witness:** I understand. I understand. I don't -- I

1 don't recall there being one available.

2 **The Court:** Okay. That's all right. I was just curious
3 for my own benefit.

4 **The Witness:** Yes, sir.

5 **The Court:** And anybody else's D.N.A. found in the car
6 besides the owner's, I guess?

7 **Mr. Petrano:** Oddly I don't even think they found the
8 owner's. I'm sorry. Were you just asking generally or---

9 **The Court:** Just generally. I don't care who answers
10 it.

11 **Mr. Petrano:** I think---

12 **The Court:** Do we know? I assume the owner of the car's
13 D.N.A. was---

14 **Mr. Petrano:** Actually -- actually the only D.N.A.---

15 **The Court:** Was his?

16 **Mr. Belding:** Yeah.

17 **Mr. Petrano:** Was his.

18 **Mr. Belding:** So it was -- it was odd. Odd. Very odd.

19 **The Court:** Go ahead. That is odd.

20 **Mr. Belding:** And no -- no---

21 **The Court:** Well, it's a stolen car. Somebody could
22 have wiped it. Who knows? But, anyway, it's a car and only
23 one...

24 **Mr. Belding:** Yeah, 27 days later.

25 **Mr. Petrano:** Which he did point out so...

1 **The Court:** Yeah. All right.

2 **Mr. Belding:** No redirect, Your Honor.

3 **The Court:** All right. Anything further?

4 **Mr. Petrano:** No.

5 **Mr. Belding:** No.

6 **The Court:** All right. Mr. Sutherland, you may step
7 down.

8 **The Witness:** Thank you, sir.

9 **Mr. Belding:** And that would be the applicant's case,
10 Your Honor.

11 **The Court:** Thank you both for your presentation. I'll
12 think about it and let you know my decision in due course.

13 **Mr. Belding:** I appreciate it.

14 **Mr. Petrano:** Thank you, Your Honor.

15 **The Court:** Good luck to you, Mr. McBride.

16 (Whereupon, the proceedings were concluded. There were
17 no exhibits introduced.)

18

19

20

21

22

23

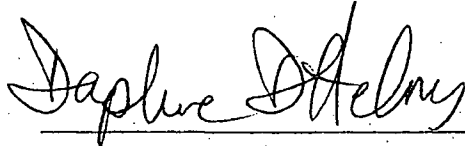
24

25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 16th of November, 2011.

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

March 26, 2013

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in black ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4005492

Clyde Leroy McBride

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol: Not a Suit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
FILED
2012 NOV 20 AM 10:52
JEANETTE W. McBRIDE
C.C.P. CLERK

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 November 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Clyde Leroy McBride

David Edward Belding

Brian T. Petrano

Clyde Leroy McBride

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

McBride, Clyde L, 00237724,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

2010CP4005492.

JEANETTE W. McBRIDE
C.C.P. & S.S.

2012 NOV 19 PM 3:09

RICHLAND COUNTY
FILED

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 16, 2010. The Respondent made its Return on February 24, 2011. An evidentiary hearing into the matter was convened on November 16, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by David Belding, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Tivis Colley Sutherland, IV, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the documents from the Applicant's direct appeal, and the Applicant's records from the South Carolina Department of Corrections.

SCANNED

The Applicant is presently incarcerated following an April 4, 2007 jury trial before the Honorable G. Thomas Cooper, Jr. He was convicted and sentenced to the following:

Grand Jury Term	Indictment Number	Charged Offense	Potential Sentence	Received a Lesser Sentence
3-06	2006GS4012482	0139 16-11-0330(A) * 10-30 * Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon	30	No
3-06	2006GS4012480	0079 16-11-0311 * 15-L * Burglary / Burglary (After June 20, 1985) - First degree	30	No
2-06	2006GS4012481	0095 16-03-0910 * 30 * Kidnapping / Kidnapping (HO REGISTRY)	30	No
NOTES				TOTAL AS POSSIBLE 90 Life, 50

The Applicant appealed his plea. The South Carolina Court of Appeals denied the appeal. State v. McBride, Op. No. 2010-UP-357 (S.C. Ct. App. filed July 12, 2010). The Remittitur was dated July 28, 2010.

STATEMENT OF FACTS

On August 29, 2005, a woman was robbed at gunpoint in her Richland County, South Carolina, home. The robber stole money and the victim's car. (Record on Appeal [R.], pp. 160-186). Police spotted the car, but lost it after a high speed chase down an interstate highway. (R., pp. 3-5-307).

Approximately one month later, the victim's car was found in some woods in Lexington County, South Carolina. Local police contacted a towing service to collect the car and take it to the Richland County Sheriff's Department. A Lexington County Sheriff's deputy secured the scene until the tow truck arrived. (R., pp. 231-232, 235-239).

When processing the car for evidence at the Richland County Sheriff's Department, an officer collected a DNA sample from the steering wheel. (R., pp. 255-259). A CODIS search revealed the DNA matched Appellant Clyde Leroy McBride ("McBride"), who was subsequently arrested in Orangeburg County, South Carolina. (R., pp. 279-284, 291-298). After his arrest, McBride confessed to the robbery. (R., pp. 302-313).

On March 15, 2006, the Richland County Grand Jury indicted McBride on one count of kidnapping, one count of first degree burglary, and one count of armed robbery. The matter was called for a jury trial on April 2, 2007, before the Honorable G. Thomas Cooper, Jr., Circuit Court Judge.

The State presented testimony regarding the robbery and subsequent recovery of the victim's car. The tow truck driver testified he was dispatched to an area in Lexington County to tow a car for the Richland County Sheriff's Department. He stated a Lexington County deputy was at the location when he arrived, and told him not to touch anything in the car. He then towed the car to the Richland County Sheriff's Department on Two Notch Road in Columbia. (R., pp. 235-239).

After testimony regarding collection of evidence from the car, the State called a DNA expert witness. McBride objected to the DNA testimony on the ground the State failed to establish a complete chain of custody for the car. He contended the Lexington County deputy who was at the scene when the tow truck driver arrived

was a vital link in the chain of custody. The State argued the tow truck driver was the first one to actually take the car and move it, and all chain witnesses from that point had been presented. The circuit court admitted the evidence, finding there was no evidence the Lexington County Sheriff's Department deputy took custody of the car. (R., pp. 270-279).

The DNA expert testified he compared the DNA found in the car to a sample taken from McBride and determined they matched. He stated the probability the DNA belonged to someone else was one in twenty-four quadrillion for the African-American population, and there are only six billion people on Earth. (R., pp. 278-289).

The jury convicted McBride of all charges, and the circuit court sentenced him to thirty years incarceration on each charge, to run concurrent. (R., pp. 411-426). This appeal followed.

Appellate counsel initially submitted a no merit brief pursuant to Anders v. California, 386 U.S. 738 (1967). By Order dated August 5, 2009, the South Carolina Court of Appeals ordered briefing on the following issue:

In order to establish a complete chain of custody for the DNA, must the State also establish a complete chain of custody for the vehicle in which the DNA was discovered?

In the PCR application, the Applicant made the following allegations:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) TOTAL COURT ABUSE OF DISCRETION

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) SEE ATTACHED SHEET

(b) _____

(c) _____

18. State clearly the relief you seek in filing this application. CONVICTION VACATED, REVERSED, REMANDED

(~~Order~~): ~~reversal and~~ ~~reinstatement~~ ~~of~~ ~~rights~~ ~~and~~ ~~release~~ ~~from~~ ~~custody~~.

(~~Order~~): ~~release~~ ~~from~~ ~~custody~~ ~~and~~ ~~reinstatement~~ ~~of~~ ~~rights~~.

ATTACHMENT

TO

(9)(A) and (20)(A)

Applicants JUST-CONVICTION RELIEF APPLICATION.

AS A MATTER OF INTRODUCTION, THE APPLICANT, Clyde McBride, Respectfully submits that the EVENTS WHICH TRANSPIRED IN THE INSTANT CASE CONSTITUTE A DENIAL OF THE APPLICANT'S RIGHTS TO DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION; THESE ERRORS WAS NOT MERELY PROCEDURAL, BUT SUBSTANTIALLY INFRINGED UPON THE APPLICANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW. AT A MINIMUM, THE APPLICANT REQUEST A HEARING BE HELD ON THE ISSUES.

EXHIBIT (A)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

TRIAL COUNSEL WAS INADEQUATE, AND CONSTITUTIONALLY
 INEFFECTIVE ASSISTANCE COUNSEL, AND DID RENDER
 DEFICIENT PERFORMANCE IN FAILING TO:

- (1) RAISE (OR) CHALLENGE FALSE STATEMENT IN A
 ARMED ROBBERY WARRANT AFFIDAVIT DURING A
 FRANKS V. DELWARE HEARING ON A MOTION TO SUPPRESS;
- (2). CONDUCT AN INDEPENDENT INVESTIGATION INTO
 THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING
 THE ARREST WARRANT AFFIDAVIT INFORMATION AND
 ARREST;
- (3). CONDUCT AN INDEPENDENT INVESTIGATION INTO
 THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING
 APPLICANT MCCRACKEN RIGHTS AND A POST-ARREST
 STATEMENT;
- (4) ADEQUATELY PREPARE APPLICANT CASE FOR TRIAL; AND
 PRESENT APPLICANT A DEFENSE;

- (5) PURSUE AT SUPPRESSION HEARING THE ISSUE OF WHETHER CONFLICTING EVIDENCE RENDERED STATEMENT INVOLUNTARY;
- (6) MAKE A CONTEMPORANEOUS OBJECTION TO THE STATEMENT BEING READ IN TO EVIDENCE;
- (7) REQUEST TRIAL COURT TO INSTRUCT THE JURY REGARDING A STATEMENT, REGARDING ISSUES WHERE THERE WAS CONFLICTING EVIDENCE;
- (8) OBJECT TO TRIAL JUDGE'S REMARKS WHICH TENDED TO INDICATE HIS OPINION AS TO WHEN APPLICANT WAS GIVEN HIS MIRANDA RIGHTS, AND WHEN INTERROGATION BEGAN AND WHEN THE STATEMENT WAS GIVEN, AND WHEN APPLICANT WAS ARRESTED;

TRIAL COURT ABUSE OF DISCRETION:

- (9) TRIAL COURT ABUSE OF DISCRETION BY NOT GIVING THE JURY PROPER INSTRUCTION REGARDING THE ISSUES WHERE THERE WAS CONFLICTING EVIDENCE ABOUT THE STATEMENT.

At the PCR hearing, through his appointed counsel, the Applicant submitted a pre-trial brief outlining his allegations:

APPLICANT'S TRIAL BRIEF

The Applicant hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on August 16, 2010, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by *Order* of the Honorable Alison Renee Lee dated March 7, 2011 (filed March 9, 2011).

B. Applicant seeks relief from three (3) sentences of thirty (30) years imprisonment, running concurrently, following his convictions on the following indictments:

- i. Indictment No. 2006-GS-40-12480 (Burglary 1st);
- ii. Indictment No. 2006-GS-40-12481 (Kidnapping); and,
- iii. Indictment No. 2006-GS-40-12482 (Armed Robbery).

C. Applicant was brought to trial on Monday, April 2, 2007. He was represented by Tivis Colley Sutherland, IV, before the trial judge, the Hon. G. Thomas Cooper, Jr.

D. Applicant was arrested in December 2005 and remained in jail for approximately sixteen (16) months prior to trial. His attorney did not get the case until February 2007 and had only about forty-five (45) days to prepare. During this period,

Applicant saw his attorney at the jail almost every Friday until the trial [approximately seven (7) times]. Applicant implored his attorney to investigate the discovery that had been provided by the State (particularly the "statement" allegedly signed by the Applicant and the totality of the circumstances surrounding the arrest warrant affidavit) in order to be prepared to challenge them at trial; however, the attorney performed no investigation.

E. This case had two (2) unusual aspects: i) the DNA evidence implicating Applicant was taken from a car stolen from the victim that had been missing for twenty seven (27) days prior to being processed by crime scene investigators; and, ii) the Applicant's "statement" was presented to Applicant for signature by a law enforcement officer who told Applicant that he needed to sign the pages to get a lawyer. It is clear that the DNA evidence and the "statement" were the basis of the jury's verdict of guilty - without them, it is inconceivable that a verdict could have been returned beyond a reasonable doubt.

F. Additionally, during the trial, Applicant's counsel failed to object to a number of instances of hearsay testimony which further prejudiced the Applicant.

G. At Applicant's insistence, his attorney moved for a Franks vs. Delaware hearing to challenge the arrest warrant. At Applicant's insistence, his attorney also moved for a Jackson v. Denno hearing to challenge the voluntariness of Applicant's "statement".

H. Applicant's attorney was clearly ineffective in representing Applicant's interest in the Jackson v. Denno hearing; in fact, the trial judge had to stop the attorney's cross-examination of the arresting officer to explain the three questions to be addressed in such a hearing. (Tr. pg. 69, lines 7-11).

I. Applicant's attorney was clearly ineffective in representing Applicant's interest in the Franks vs. Delaware hearing; in fact, the trial judge advised the attorney on the required showing. (Tr. pg. 106, lines 4-18).

II. Legal Issues

Plea counsel was deficient in representing Applicant and, but for such errors, there is a reasonable probability that the outcome would have been different, to wit:

a. In Franks v. Delaware, the United States Supreme Court held that the Fourth and Fourteenth Amendments gave a defendant the right in certain circumstances to challenge the veracity of a warrant affidavit after the warrant had been issued and executed. State v. Missouri, 337 S.C. 548, 553, 524 S.E.2d 394, 396 (1999).

Franks outlined a two-part test for challenging the warrant affidavit's veracity. Franks v. Delaware, 438 U.S. 154, 155-56 (1978). First, to mandate an evidentiary hearing, there must be allegations of deliberate falsehood or of reckless disregard for the truth [as to statements included in the warrant affidavit] and those allegations must be accompanied by an offer of proof. Id. at 171. At the hearing, the defendant has the burden of proving the allegations of perjury or reckless disregard for the truth by a preponderance of the evidence. Id. at 155-56; see State v. Jones, 342 S.C. 121, 126-27, 536 S.E.2d 675, 678 (2000) (holding a defendant is entitled to challenge misstatements in a warrant affidavit if the following criteria are met: "(1) the defendant's attack is more than conclusory and is supported by more than a mere desire to cross-examine; (2) the defendant makes allegations of deliberate falsehood or of reckless disregard for the truth which are accompanied by an offer of proof; and (3) the affiant has made the allegedly false or reckless statement").

Second, if the deliberate falsehood or reckless disregard for the truth has been established, the court must consider the affidavit's remaining content, with the affidavit's false material set to one side, to determine if it is sufficient to establish probable cause. If the court determines probable cause does not exist after the false material is omitted from the analysis, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit. Franks, 438 U.S. at 155-56; see Missouri, 337 S.C. at 553-54, 524 S.E.2d at 396-97 (adopting the two-prong Franks test).

b. Applicant was entitled to a *Jackson v. Denno* (378 U.S. 368 (1964)) independent evidentiary hearing outside the presence of the jury to challenge the introduction of evidence that was allegedly obtained by conduct violative of the defendant's constitutional rights. *State v. Patton*, 322 S.C. 408, 410, 472 S.E.2d 245, 247 (1996) (quoting *State v. Blassingame*, 271 S.C. 44, 47-48, 244 S.E.2d 528, 530 (1978)). If the State seeks to introduce a defendant's statement into evidence, the trial court is charged with making an initial determination, through an evidentiary hearing, as to whether the statement was voluntarily made. *State v. Washington*, 296 S.C. 54, 55, 56, 370 S.E.2d 611, 612 (1988). The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience, and conduct of the accused. *State v. Franklin*, 299 S.C. 133, 138, 382 S.E.2d 911, 914 (1989).

Applicant submits that his attorney failed to adequately present Applicant's challenge to the voluntariness of the "statement", thereby prejudicing Applicant's case by allowing into evidence a purported "confession" to be considered by the jury.

III. Legal Authority

For Applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that he was prejudiced by his counsel's ineffective assistance. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Brown v. State*, 340 S.C. 590, 533 S.E.2d 308 (2000). Applicant believes his counsel's performance fell below the professional norms and believes the record supports this contention.

The second step in the analysis—whether Applicant was prejudiced by the deficient representation—*Strickland v. Washington*, 466 U.S. at 687. The Applicant's convictions clearly show the prejudice he suffered.

At the evidentiary hearing, Applicant proceeded on the allegations stated in the pre-trial brief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified and explained that he had three (3) lawyers and the last one was Mr. Sutherland (trial counsel).¹ The Applicant explained that he met with trial counsel about every Friday and they discussed strategy. The Applicant explained that he wanted to pursue a Franks hearing.² Because the officer left off the fact that twenty-seven (27) days had passed and that was a misleading statement left out of the warrant/affidavit. The Applicant explained that Judge Cooper denied that motion saying that the time period was irrelevant because his DNA was a hit (which had been in CODIS all along). The Applicant explained that his statement should not have been admitted because he does not read well and

¹ This Court notes that it may have entertained a past general sessions matter regarding a motion to relieve counsel in this case, the Applicant has not alleged any sort of conflict.

² Franks v. Delaware, 438 U.S. 154 (1978).

that he asked for an attorney. The Applicant explained that the officer told him the papers he was signed were for an attorney and he did not read any of the papers because he took the officer at his word that the papers were just that. The Applicant testified that he does not think counsel had enough time to spend on his case, especially because it was so high profile. The Applicant explained that he did not take the stand because he did not want his record to come in before the jury and because counsel told him that he wanted last closing argument. The Applicant explained that he thinks this may have been bad advice because the jury never got to hear his side of the story. For example, the Applicant explained that his DNA could have gotten in the car because he does a lot of car detailing work.

Trial counsel testified that he recalled his representation of the Applicant and that he had the case for about forty-five (45) days prior to the trial. Trial counsel explained that he worked diligently to prepare and that they were ready. Trial counsel explained that he spent a lot of time with the Applicant. Counsel explained that he had a lot to cover at the Denno hearing and that Judge Cooper was just reeling him back in because he had a tendency to get wound up with that particular officer. Counsel explained that he did get to all the points he wanted to make at that pre-trial hearing. Trial counsel explained that he did not believe the officer's testimony and that he appeared to be making things up as the pre-trial hearing went along. Counsel explained that his examination of that officer was relentless. Counsel explained that even in hindsight he is not so sure it would be

advantageous for the Applicant to take the stand. Counsel explained that he does not repeatedly object once an objection has been made.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have

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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Trial counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. Specifically, the Applicant's claims about the Franks/Denno hearings are without merit. Trial counsel zealously advocated for the Applicant during that pre-trial hearing. The trial judge made his ruling. The Applicant's DNA was in the recovered vehicle. The Applicant failed to satisfy his burden of proof and demonstrate that counsel's performance was deficient and that he was prejudiced. Last argument, which is "a substantial right." State v. Mouzon, 326 S.C. 199, 203-04, 485 S.E.2d 918, 921 (1997) (where a defendant in a criminal prosecution introduces no testimony, he is entitled to the final closing argument to the jury); State v. Pinkard, 365 S.C. 541, 543, 617 S.E.2d 397, 398 (Ct.App 2005) ("The right to open and close the argument to the jury is a substantial right, the denial of which is

reversible error"); State v. Rodgers, 269 S.C. 22, 24-25, 235 S.E.2d 808, 809 (1977).

One or more of the Applicant's claims are that the trial judge erred in the pre-trial rulings. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

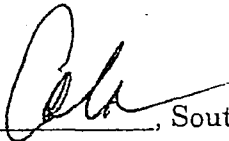
relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

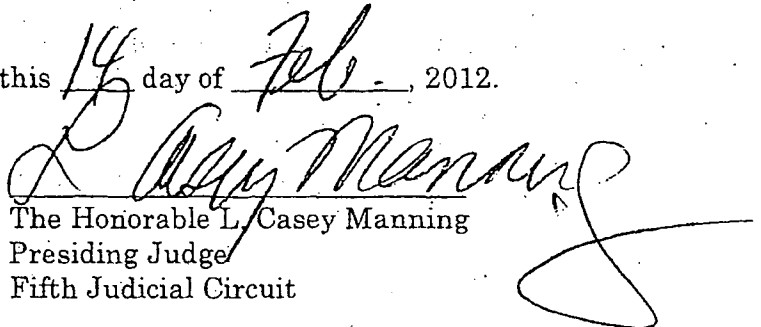
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of Feb, 2012.



, South Carolina.


 The Honorable L. Casey Manning
 Presiding Judge
 Fifth Judicial Circuit

547

1-975233

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

THE STATE 0508328629
against

Clyde Leroy McBride

Address: [Redacted]
Columbia, SC 29210-

Phone: [Redacted] SSN: [Redacted]
Sex: M Race: B Height: 5 6 Weight: 150

DL State: SC DL #: [Redacted]

DO: [Redacted] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Walter McDaniels

Offense: Burglary - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Clyde L. McBride on 12/08/05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

County/ Municipality of

Richland Bond Court

Personally appeared before me the affiant Walter McDaniels being duly sworn deposes and says that defendant Clyde Leroy McBride did within this county and state on 08/29/2005 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Richland Bond Court) in the following particulars:

DESCRIPTION OF OFFENSE: Burglary - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 08/29/05 while at [Redacted] in the Lykesland Magisterial District of Richland County, one Clyde L. McBride did commit the crime of Burglary 1st in that he did while armed with a handgun enter the victim's residence by prying the screen door open. While inside the defendant did with great disparity in gender, age, and physical size assault the victim by grabbing her arm, and ordering her to relinquish the money from her pocketbook. The subject was able to steal the victim's 1999 Dodge Stratus bearing SC tag#114KHE and \$320.00 in US currency. The defendant gave a sworn written statement admitting to his involvement. Affiant and others are witness to prove the same.

Signature of Affiant

FSC MCDANIELS

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

Affiant's Address: 5623 Two Notch Road
Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 8/29/2005 defendant Clyde Leroy McBride did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Richland Bond Court) as set forth below:

DESCRIPTION OF OFFENSE: Burglary - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 12/08/2005

Signature of Issuing Judge (L.S.)

Mildred W Mc Duffie

Judge Code: 5017

Judge's Address 201 John Mark Dial Drive
Columbia, SC 29209-

Judge's Telephone (803)576-3281

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

COPY OF ORIGINAL FILED IN CLERK'S OFFICE RICHLAND COUNTY SOUTH CAROLINA

RECORDED & INDEXED PAGE 15

ARREST WARRANT

1-890662

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland / Olympia Magistrate

THE STATE

against

Clyde Leroy McBride

Address:

Phone: SSN:

Sex: M Race: B Height: Weight:

DL State: DL #:

DOB: Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Walter McDaniels

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Clyde Leroy McBride on 12-08-05

Sgt. W. McDaniels Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Olympia Magistrate 1601 Shop Road Columbia, SC 29201

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland / Olympia Magistrate

Personally appeared before me the affiant Walter McDaniels who

being duly sworn deposes and says that defendant Clyde Leroy McBride did within this county and state on 08/29/2005 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Richland / Olympia Magistrate) in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly v

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 08/29/05 while at in the Lykesland Magisterial District of Richland County, one Clyde Leroy McBride did commit the crime of Arm Robbery in that he did while armed with a hand gun rob the victim of her car keys and \$320.00 in US currency. The defendant used the car keys to steal the victim's 1999 Dodge Stratus bearing SC tag# 114KHE. Immediately after the robbery the suspect was involved in a car chase that lead into Lexington County. The vehicle was recovered and a DNA profile was collected from the steering wheel. Based on Forensic analysis, the DNA profile recovered from the victim's vehicle is the same DNA profile that belongs to the defendant. Affiant and others are witness to prove the same. RCSD Case# 05083266.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland / Olympia Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on 8/29/2005 defendant Clyde Leroy McBride

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Richland / Olympia Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly v

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me /16/2005

Signature of Issuing Judge Harold A. Cuff (L.S.)

Judge Code: 5906

Judge's Address 1601 - B Shop Road

Columbia, SC 29201-4847

Judge's Telephone (803)576-2550

Issuing Court: County/ Municipality/ Circuit

548

ORIGINAL

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Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

ORIGINAL

AFFIDAVIT

ENTERED NCIC NIC #W SC #16/2005

700 OCT 19 PM 15

277

548

WITNESSES

(S) *Wen*
Walter McDaniels, RCSD

ARREST WARRANT NUMBER

1975233

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: MAR 15 2006

VERDICT

Guilty

Elizabeth Southern Caule
Foreperson of Petit Jury
Date: 4/4/07

DOCKET NO. 2006-GS-40-12480

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2006

42

THE STATE
vs.

CLYDE LEROY MCBRIDE

Indictment for

BURGLARY/(AFTER 6/20/85)
1ST DEGREE

SC Code: 16-11-311
CDR Code: 079
Class FEL-EXM(V)

After being fully advised as to legal rights, I hereby waive present and future rights to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
James H. W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on MARCH 15, 2006, the Grand Jurors of Richland County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That CLYDE LEROY MCBRIDE did in Richland County on or about August 29, 2005, willfully and unlawfully enter the dwelling of Gail Roberts, without consent and with the intent to commit a crime therein and the defendant was armed with a deadly weapon, and/or cause physical injury to a non-participant in the crime, and/or used or threatened the use of a dangerous instrument, and/or displayed what was or appeared to be a pistol or other firearm, and/or the entering or remaining occurred in the nighttime. All in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

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

Warren B. Giese
 Warren B. Giese, SOLICITOR

551

WITNESSES

(S) Walter McDaniel, RCSD

1975234

ARREST WARRANT NUMBER

1975234

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury MAR 15 2006

VERDICT

Guilty

Elizabeth Southern Calk

For person of Petit Jury

Date: 4/4/07

DOCKET NO. 2006-GS-40-12481

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2006

42

THE STATE
vs.

CLYDE LEROY MCBRIDE

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code:0095
Class FEL/A(V)

After being fully advised as to my legal rights, I hereby waive presence to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Clyde Leroy McBride
D.C.C.P.R.G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on MARCH 15, 2006, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That CLYDE LEROY MCBRIDE did in Richland County on or about August 29, 2005, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: Gail Roberts, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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


Warren B. Giese, SOLICITOR

WITNESSES

W
(S) Walter McDaniels, RCSD.

ARREST WARRANT NUMBER

1890662

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: MAR 4 5 2006

VERDICT

Foreperson of P... Jury
Date:

DOCKET NO. 2006-GS-40-12482

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2006

42

THE STATE
vs.

CLYDE LEROY MCBRIDE

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised of my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

434

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on MARCH 15, 2006, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That CLYDE LEROY MCBRIDE did in Richland County on or about August 29, 2005, commit robbery by feloniously taking from the person or presence of Gayle Roberts by means of force or intimidation goods or monies of Gayle Roberts, such goods or monies described as U.S. Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

06 INDICTMENT/CASE# 12480
- GS - 10

AKA: Clyde Leroy McBride
Race: W Sex: M Age: _____
DOB: _____
Address: _____
City, State, Zip: Orangeburg SC 29115
DL# _____ SID# _____

AW#: I975233
Date of Offense: August 29 2005
S.C. Code §: 16-11-311
CDR Code #: 017191
 CASE RESTORED
 SENTENCE SHEET
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Burg

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 017191
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ARREST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 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.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS

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

Recipient: _____
*Fine: _____
\$14-1-206 (Assessments 107.5%) _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 _____
\$14-1-211(A)(2) (DUI Surcharge) \$100 _____
\$56-5-2995 (DUI Assessment) \$12 _____
§35.13 (Public Def/Prob) \$500 _____
§73.3, 1B TP (Law Enforce. Funding) \$25 _____
§33.7, 1B TP (Drug Court Surcharge) \$100 _____
§50-21-114(BUI Breath Test Fee) \$50 _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea _____
3% to County (if paid in installments) _____
TOTAL \$ _____

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Barbara A. Scott PF
Clerk of Court, Deputy Clerk
Court Reporter: J. Williams

PRESIDING JUDGE [Signature]
Judge Code: 2111216
Sentence Date: 4-4-07

501,125828

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#:
06 - GS - 40 - 12481

Clyde Leroy McBride
AKA:
Race: R Sex: M Age: 39
DOB: [REDACTED]
Address: [REDACTED]
City, State, Zip: Orangeburg, SC 29115
DL# _____ SID# _____

AW#: I975234
Date of Offense: August 29, 2005
S.C. Code §: 16-3-910
CDR Code #: 0101915
 CASE RESTORED
SENTENCE SHEET
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Kidnapping
in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC \$17-25-45
w/minor 1st or Lewd Act)

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

ATTEST:
[Signature] Solicitor
_____ Defendant
[Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 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.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
 set by SCDPPPS _____

PTUP _____
days/hours Public Service Employment

Recipient:	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	\$ _____

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

Other: Defendant's Social No. is LISTED ON
Sexual Offender Registry

Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Barbara A. Scott PF
Clerk of Court, Deputy Clerk
Court Reporter: J. Williams

PRESIDING JUDGE [Signature]
Judge Code: 2121216
Sentence Date: 4-4-07

5011 2007

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

06 INDICTMENT/CASE#: 40-12482
-GS-

AKA: Clyde Leroy McBride
Race: D Sex: M Age: 39
DOB: [REDACTED]
Address: [REDACTED]
City, State, Zip: Columbia, SC 29115
DL# SID#

A/W#: I890662
Date of Offense: August 29, 2005
S.C. Code §: 16-11-330(A)
CDR Code #: 011319
 CASE RESTORED
SENTENCE SHEET
 PLEA TRIAL

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

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 011319
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 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.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____
Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

Barbara A. Scott PF
Clerk of Court/Deputy Clerk
Court Reporter: J. Williams

PRESIDING JUDGE [Signature]
Judge Code: 211216
Sentence Date: 8-4-07

CA 11 22217