

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Edward W. Miller, Circuit Court Judge

RECEIVED

SEP 4 2012

S.C. Supreme Court

KORRELL BATTLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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PAGES 501-591

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evidence in which Trooper wrote that her license was suspended cannot be used as any evidence that her license was suspended, because conviction was reversed.

But case I just cited applies to my case! I argue that ALL elements of D.V.S. must be met. In my case, the state cannot prove I received actual or legal notice of suspension telling me my license had been suspended. PLUS, D.M.V. have already admitted to the fact that no final notice of suspension were mailed to me. Therefore it cannot be established that I committed the offense of driving with a suspended license. It doesn't matter what type of information malenki claim he received from dispatcher, malenki's statement at trial does not establish the fact of suspension. No uniform traffic ticket which malenki wrote that my license was suspended cannot be used as evidence of my guilt, no driver's license history or any certified copy of a department of public safety record was submitted to judge, no driving record was obtained from a computer terminal lawfully connected to the South-Atlanta I.E. computer.

Now there I last fact I want to point out. Under 56-1-350 there is a Attorney General opinion which say... [When suspension of license for drunk driving begins] "suspension of driver license of a person convicted of drunk driving does not begin until affirmative action is taken by the Highway Department notifying such person of the suspension. (1970-71 of atty GEN No 3109 p4)"

This opinion of attorney general applies to my case! Now the impending suspension date in my case was 9/26/2006. But that does not mean D.M.V. took "affirmative action" on that date in suspending my license. The suspension of my license does not begin until affirmative action is taken by the Highway Department notifying me of the suspension. In my case I have given D.M.V. never notified me of the suspension, therefore on the impending suspension date of 9/26/2006 that is not the real beginning of suspension of my license. By me being pulled over in Marietta on 10/4/2006 by officer Gentry who said my license was not suspended, this proves that D.M.V. did not take affirmative action in suspending my license on 9/26/2006.

In State v. OAR 276 SE 2d 346 the Georgia court of appeals say that Code 16-7-131(d) Ga L. 1995, p 1168, 1169 provides that "all provisions and suspensions provided for in this title shall be effective on the day the driver receives actual knowledge or legal notice thereof, which ever occurs first."

if the impending suspension date was scheduled for the suspension of my license does not become effective until the day I receive actual or legal notice that license has been suspended. I did not know my license was suspended until I was arrested on 1/13/2006 for D.V.O.
From 9/16/2005 to 10/13/2006 I had no actual or legal notice of suspension.

NOTE: Letter from D.M.V. dated 11/13/2006. Per D.M.V.

Did not notify me that license has been suspended on 9/16/2005.

(12) Ineffective Assistance of Counsel

I received Ineffective Assistance of Counsel at Trial in that Trial Counsel failed to ~~object to the inadmissible~~ object to the Inadmissible Hearsay Testimony from Majewski that information he received from dispatcher that my license came back suspended.

The rule against Hearsay. In State v. Williams 331 S.E.2d 354 (S.C. App. 1985) the South Carolina Court of Appeals says the rule against Hearsay prohibits the admission of testimony (or written evidence) of a statement made out of court, offered in court to prove the truth of the matter asserted, unless an exception to rule is applicable. *Player v. Thompson*, 143 S.E.2d 531 (1992). The reasons for excluding Hearsay are succinctly set out in *Jones v. Charleston and W.C. Ry Co* 142 S.E.2d 516 (1986).

Rule 801(c) S.C.R.E. The South Carolina Rules of Evidence define Hearsay as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. R.

In *State v. Bolton* (S.C. 1990) 333 S.C. 396 516 S.E.2d 226 the Court said there was error in admitting Hearsay testimony of police officer, that he relayed Defendant's name and date of birth to dispatcher and obtained match with suspended license was harmless, in prosecution for D.V.S. in light of testimony and documents that establish both that Defendant's license has been suspended and that the view of suspension.

In alleging Counsel Pax was ineffective for failing to object to Hearsay statements from Majewski that he heard from Dispatcher Sherry Woodward.

THAT LICENSE WAS SUSPENDED.

Failure to object to solicitor's.

(Pg 36 Transcript) MAJEWSKI - IN camera direct was questioned by solicitor mose
solicitor asked - what happened next?

MAJEWSKI answered - He wanted me the information... I can't though dispatch
and it came out that he was suspended."

(Pg 171 Transcript) MAJEWSKI - Redirect Examination - was questioned by
Solicitor Mose

Solicitor asked - officer, what you got that license and you saw it, tell me
why the defendant was arrested."

MAJEWSKI answered - Because we were advised by dispatch that the subject
was driving under suspension for unpaid Traffic Fines.

Failure to object to solicitor statements during closing argument

(Pg 317 Transcript) The evidence is there. Its right in front of you. Believe
these folks. Believe the all dispatcher who goes to work and works 12 hour
shifts and sits there and answers the telephone and types while she
works and documents exactly what those calls come in. They can tell you
exactly what exactly what the person was dispatched and tell you exactly
what the stop was made.

"Law Analysis

(1) must show that his trial counsel performance was deficient, meaning that
counsel made errors so serious that counsel was not functioning as the
counsel guaranteed the defendant by the 6th Amendment.

(2) must demonstrate that this deficiency prejudiced him to the point that the
trial whose results is reliable.

① Deficient Performance

COUNSEL BAX HAVE A DUTY TO OBJECT TO HENRY TESTIMONY THAT IS INADMISSIBLE AND PREJUDICIAL TO ME.

There is no proof nor no evidence that Sherry Woodward told majewski that my license was suspended. And to prove that there is no evidence of this is 2 things:

(1) on the cab incident reports typed by Sherry Woodward, she does not say that she told him my license was suspended.

(2) Sherry Woodward presented testimony on stand under oath and not under did she say that she told majewski my license was suspended.

With these 2 facts, then all there is simply majewski saying what he heard. As for us, I'm concerned he could be lying and making that up. A possible question that need to be asked is "What if she did not tell majewski my license was suspended?"

It was a serious error not object to this hearsay information.

Not only that, at end of trial, during closing argument, the solicitor told jury to believe all dispatcher and types while she work.

This was prejudicial to me because all dispatcher never testified on stand as to her telling majewski license was suspended, nor did she type on cab

incident report her telling him my license was suspended. So prosecutor was misleading jury partially and counsel should object.

Not only that counsel made a statement that shows that in his mind he believed the officer was telling the truth and receiving my ~~partial~~ information from dispatcher that license was suspended. Counsel Bax say "I have no argument that the officers acted in good faith on that dispatch."

(Pg. 82 Transcript) This statement shows what counsel was thinking. Counsel believed Officer to be truthful, so this would explain why counsel never bothered to question dispatcher or if she told officer my license was suspended, and would explain why counsel did not object to Officer's deficient performance.

② Prejudice

I suffered prejudice because of counsel performance that was deficient. Counsel's error in failing to object to Hearsay statements had an effect on the judgment against me. There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. I was prejudiced because if this he would not objected to this Hearsay testimony. Had this Hearsay testimony would not have been used to convict me.

I believe I have established the requisite prejudice for a claim of ineffective assistance of counsel.

Counsel's failure to object to Hearsay testimony was irrational.

me y... -

(P) on 10-13-2006 OFFICER masewski did a license check on my Drivers license. HE say the Dispatcher told him that my Drivers License was suspended for me failing to pay a fine. He charged me for that and D.V.S. then search my car and found Evidence of Arson, Robbery crime. At my Trial During suppression hearing "In camera Direct", masewski say I handed him my information and he ran it through dispatch, and it came back suspended (Pg 36 Transcript). And "In camera Cross", masewski say that information he got from dispatch was that I was driving under suspension for unpaid traffic ticket and it ended indefinitely. (see pg 63 transcript). Then later on "ReDirect Examination" masewski say dispatch advised him I was driving under suspension for an unpaid traffic ticket, (Pg 171 transcript). on masewski "Additional narrative" he say dispatch told him I was D.V.S. for an unpaid traffic ticket. I asked my attorney to question the dispatcher on whether or not if she really told masewski my license was suspended. Ms Sherry Woodward the dispatcher got on stand and was questioned by solicitor, but at one time did he ask her about whether or not if she told masewski

As for other case of "General Conspiracy" by Joz W. South Carolina I plead guilty to General Conspiracy and the original charge I was charged with of Armed Robbery was dropped. General Conspiracy was not a crime at that time. But General Conspiracy and Armed Robbery under 16-11-33, are 2 totally separate and distinct crimes. Armed Robbery might be considered moral turpitude, but I argue General Conspiracy is not moral turpitude. In South Carolina state v. Ball 354 SE 2d 906 (S.C. 1987) court say a "crime of moral turpitude is an act of baseness, villainess or depravity in the private and social duties which man owes to his fellow man or to society in general, contrary to the customary and accepted rule of right and duty between man and man. There are many different types of conspiracy laws in S.C. code of laws but all are not the same. General conspiracy is a crime alone and separate by itself. It is called "General conspiracy", not "General conspiracy to commit Armed Robbery". So I believe if General conspiracy under 16-11-410 is not moral turpitude then it should never had been used to impeach me. (SEE PAGES 84-94 of Trial Transcript).

Also in error is what the court said "court say" it does appear on Ind. sheet for general conspiracy that is of a true bill indictment for Armed Robbery. That they used the same indictment number on the sentence sheet for general conspiracy that is of a true bill indictment for Armed Robbery. The Docket Number is 2002-GO-HO-0427. I was not convicted of this crime nor plead guilty to Armed Robbery. I plead guilty to General conspiracy and received a plea bargain. I plead guilty to General conspiracy and received a 4 years non-violent sentence. Now on the indictment for General conspiracy the was never presented to the Grand Jury for a true bill. But they still typed the Docket Number of 2002-GO-HO-0427 on that indictment which is same Docket Number as for the Armed Robbery indictment which is same Docket Number used in sentence sheet. They did this simply because both armed Robbery and general conspiracy were both under same docket. But just because they add the same Docket Number that doesn't make General conspiracy under 16-11-410.

my license was suspended. After he asked, ~~the judge~~ ~~my attorney~~ ~~MR~~ ~~BAX~~ ~~say~~ ~~... "Nothing further, your Honor."~~ ~~The judge say ... "Thank you, solicitor, MR BAX."~~ ~~my attorney say~~
 "No questions your Honor," (Pg 136 transcript).

My argument is that the information from Dispatcher that Matlewski say he received of my license being suspended is "Hearsay" testimony coming from Matlewski. He's telling us that this is what he heard. I wanted to hear from Dispatcher myself say out of her mouth that she told Matlewski my license was suspended, but when it came time for Mr BAX to question her he say "no questions your Honor." The 2 Prong Test for Ineffective assistance of counsel is ... (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that, but for counsel's error, there is a reasonable probability the result would have been different. *Martinez v State* 403 S.E.2d 113 (1991)

A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Martinez v State*; *supra* [quoting *Strickland v Washington* 104 S.Ct. 2052 (1984)].

If the Dispatcher would have got on that stand and would have said "No" she did not tell Matlewski my license was suspended or that my license was suspended not suspended then that would have probably got all the evidence suppressed or other outcome in my favor, this could have possibly got the case dismissed! My attorney just "Assumed" that Matlewski was being truthful. I do not believe Matlewski, and I believe he was lying. I believe the Dispatcher never told him my license was suspended. And to prove this there was only one way to find out and that is to ask the Dispatcher. But my attorney did not do this.

I believe my attorney representation fell below an objective standard of reasonableness and if it was it for his error on the issue then there is a reasonable probability the result would have been different. I was seriously prejudiced by counsel's failure to question Dispatcher. Also, the South Carolina rules of Evidence define Hearsay as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c) S.C.R.E. In *State v Williams* 331 S.E.2d 354 (S.C. App. 1985) the rule against Hearsay prohibits the admission of testimony or written evidence of a statement

made out of court, offered in court to prove the truth of the matter asserted, unless an exception to rule is applicable.

In State v Baker 510 SE.2d 226. The court says there was error in admitting Hearsay testimony of Police officer that he related defendant's name and date of birth to dispatcher and obtained match with a suspended license. This proves that majewski's testimony of stand and in report is hearsay. Another reason why I believe majewski is lying is because prior to my arrest on 10/13/2006, 10 days earlier I was in Newberry County and was pulled over for speeding on 10/4/2006 by Highway Patrol officer Mr Gentry Columbus Unit 2224. Dispatcher who checked my driver's license for him at 19:56:58 was KymcBride, Incident number GWT06CAD035239. She told him my license was "not suspended" but "clear" meaning valid! So this proves by clear and convincing evidence that my license was not suspended on 10/4/2006. So if it wasn't suspended on 10/4/2006 then what way it could have been suspended on the "proposed suspension date" of 9/26/2006, cause if it was suspended on 9/26/2006 then why did dispatcher say it was suspended on 10/4/2006 in Newberry?? But here is Brian majewski in Irmo on 10/13/2006 saying the dispatcher "Sherry Woodward" told him my license was suspended for a unpaid fine. This unpaid fine was a charge he charge me with along with D.U.S. But both of these charges was later dismissed on 8/22/2007 by Honorable Mr Joe Epps in Town of Irmo Court. Reason why they were dismissed is because I had in fact "paid" the fine to City of Forest Acres Court on 9/1/2006. 9/1/2006 is 1 month and 13 days before majewski arrested me on 10/13/2006, but yet he say dispatcher told him it was "unpaid".

I believe it was serious error for my attorney to let question Sherry Woodward. For the foregoing reasons I ask for appropriate relief relating to this claim, or reversal.

~~I request ineffective assistance of counsel at trial in that counsel~~
~~did not interview me prior to trial and did not interview me after trial~~

(P)

Ineffective Assistance of Appellate Counsel

I received Ineffective Assistance of Appellate Counsel in that the counsel
 solicited significant and adverse legal issues on appeal for primary issues that
 were already fully litigated at trial.

My trial counsel after trial filed a timely appeal.

I was appointed a appellate counsel EHEUNOR clarry and we discussed
 many many issues I felt she should raise. mainly, I wanted her to
 raise issue dealing with left turn signal / and issue that factor if
 road was wrong / and issue that I should not have been arrested for a
 D U S I T / and issue that counsel should have objected to hearsay
 testimony material: Hears from dispatcher / and issue

Appellate counsel did not raise none of these issues, but raised only 1
 issue that she can argue with her self.

The issue she raised was a double / only violation and it was settled.

Appellate counsel did not do a investigation into any of the laws I listed
 her to raise.

Ineffective Assistance of Counsel

A defendant is constitutionally entitled to effective assistance of counsel.

Appellate counsel is not required to raise every non frivolous issue that is
 presented by the facts. Appellate counsel has a professional obligation to raise
 pertinent issues including to the merits. where the appellate counsel
 excused certain issues on appeal to focus on appellate professional negligence
 is a failure to provide effective assistance of counsel.

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. *Plitt v State*, 349 S.E.2d 323, 349 S.E.2d 324; *Gonzalez v State*, 612 S.E.2d 702; *Anderson v State*, 591 S.E.2d 834 (Ga.). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine whether appellate counsel failed to present significant and obvious issues on appeal. Although the presumption that I.P.C. will be harmless only when ignored issues are clearly stipulated or waived is not raised in appeal, where the result of appeal would have been different, harmless error not found. Deficient, the appropriate remedy is to grant a new trial. *Elzy v State*, 590 S.E.2d 835 (Ga.).

Large appellate ~~record~~ was ineffective for raising claims N/O/P/A on direct appeal.

① Deficient Performance

Appellate counsel had a duty to do a reasonable investigation which at a minimum includes discovering. She did not conduct a reasonable investigation, and excluded all my issues and raised 1 simple issue.

Her failure to raise any of my issues resulted in viable issues overlooked which would have benefited me substantially.

Prejudice

Appellate counsel errors had an effect on the judgment of conviction against me. There is a reasonable probability that, but for counsel's errors in not raising the issues I listed here to raise, then the result of the proceedings I set appeal would have been different. A reasonable probability is a probability that the issues raised by my claims were not raised in appeal would have been raised. My issues were raised in the trial court. The defendant's prejudice.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No.: 2010-CP-32-2120
COUNTY OF LEXINGTON	)	
Korell Battle, # 292294,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed May 19, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the January 2007 term of the Lexington County Grand Jury for Possession of a Firearm or Knife During Commission of a Violent Crime (2007-GS-32-0030), Armed Robbery (2007-GS-32-0031). He was represented by Aric Bax, Esquire, and Elizabeth Fullwood, Esquire. On May 1-2, 2007, the Applicant underwent trial, pursuant to which he was found guilty as charged. He was sentenced by the Honorable R. Knox McMahon to confinement for a period of thirty (30) years for the armed robbery charge and a concurrent term of five (5) years for the possession of a firearm charge.

A timely notice of appeal was filed and an Anders brief was submitted on the Applicant's behalf. The South Carolina Court of Appeals subsequently affirmed the Applicant's conviction by decision dated May 27, 2009.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions; and the Applicant's records from the South Carolina Department of Corrections.

II.

In his current application, the Applicant alleges he is currently being held in custody unlawfully based on the following grounds:

1. Ineffective Assistance of Counsel
2. Trial Court Errors

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 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.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that the Applicant's second 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). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

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September 1, 2010.

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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3

RESPONDENT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Letter w/order		5

APPLICANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Traffic stop documentation		5
2	Case (State v. Goodman)		5

1 (The following proceedings are reported on
2 November 28, 2011.)

3 MS. ELLIOTT: Your Honor, the first case for
4 this morning is Korrell Battle versus State. Mr. Battle
5 has filed a timely post conviction relief action
6 challenging a conviction following a jury trial for
7 armed robbery and possession of a firearm during the
8 commission of a violent crime.

9 Judge McMahon presided during the trial, and
10 Mr. Battle was represented by Arie Bax and Beth
11 Fullwood. He received a sentence of 30 years and 5
12 years concurrent for those offense. He appealed. The
13 convictions were affirmed by the Court of Appeal after a
14 full merits review.

15 He has filed an application and amendments to
16 the application. He has alleged a number of trial court
17 error claims, which the State would submit is not
18 properly before the Court, but then he also is alleging
19 a number of ineffective assistance of trial and
20 appellate counsel claims. The State is ready to
21 proceed.

22 THE COURT: All right.

23 MR. DUNCAN: Your Honor, in addition we have
24 three items, three exhibits, that we want to introduce
25 into evidence. We have marked them already, two on

COLUMBUS GENTRY -- DIRECT -- MR. DUNCAN

1 behalf of the claimant, the Petitioner, and one on
2 behalf of the State. We move those into evidence at
3 this time.

4 MS. ELLIOTT: Yes, Your Honor.

5 (Applicant's Exhibits Number 1-2 are received
6 into evidence.)

7 MS. ELLIOTT: I move mine in as well.

8 (Respondent's Exhibit Number 1 is received
9 into evidence.)

10 THE COURT: All right.

11 MR. DUNCAN: Your Honor, I want to call
12 Trooper Gentry, please.

13 THE COURT: Trooper Gentry, if you would come
14 around and be sworn.

15 COLUMBUS EARL GENTRY, being
16 first duly sworn, testified as follows:

17 CLERK: State your name for the court.

18 THE WITNESS: My name is Lance Corporal
19 Columbus Earl Gentry.

20 DIRECT EXAMINATION

21 BY MR. DUNCAN:

22 Q Trooper Gentry, you are employed by the South
23 Carolina Highway Patrol?

24 A Yes, sir.

25 Q And in what capacity?

1 A I have been with the Highway Patrol for fixing to
2 go on 22 years, been stationed in Newberry County
3 going on for about 19 years.

4 Q Now, as I understand it -- we have gone over this
5 morning some documents that collectively are listed
6 as Applicant's Exhibit Number 1?

7 A Yes.

8 Q You and I have looked over those. These are
9 records involving a traffic stop for speeding and a
10 warning ticket you wrote on October the 4th of
11 2006?

12 A That's what is on the paper, but I don't remember
13 it.

14 Q But that's what the documents purport or
15 document --

16 A Yes.

17 Q -- is that these papers document that traffic stop?

18 A Yes.

19 Q But you have no independent memory of this thing?

20 A No, I do not.

21 Q In reviewing these records, was there any
22 indication at that time that Mr. Battle -- this
23 involved a traffic stop of Korrell Battle, the
24 applicant; correct?

25 A Yes, sir.

COLUMBUS GENTRY -- DIRECT -- MR. DUNCAN

7

1 Q Was there any indication on October the 4th of
2 2006, that his driver's license was suspended?

3 A Not at that time.

4 Q All right, sir. And would that have been part of
5 your routine to check?

6 A Yes, sir, it could have been on that. Like on some
7 days and stuff like that, the D.M.V. files will go
8 down, and I would not have no opportunity to have
9 knowledge of the driving record history.

10 Q But that is just speculation on your part?

11 A Yes, sir.

12 Q And on the last page is a log, as I recall?

13 A Yes, sir.

14 Q And at the very bottom, there is one word, I
15 believe, it's clear?

16 A Yes, sir.

17 Q And what does that mean?

18 A It stated here that I am cleared from the stop.

19 Q Okay, sir. During that stop you found no
20 indication from your records or the Highway
21 Department records that Mr. Battle's driver's
22 license was suspended?

23 A That's correct.

24 Q Answer any questions that the Attorney General has
25 for you.

1 CROSS EXAMINATION

2 BY MS. ELLIOTT:

3 Q Thank you, Lance Corporal. The "clear" just means
4 that you are being released, that the operator is
5 being --

6 A I am cleared from the stop and notified from
7 dispatch that everything is okay. I am continuing
8 on.

9 Q It doesn't have anything to do with Mr. Battle's
10 driving record?

11 A No, sir -- no, ma'am.

12 Q You indicated that sometimes you have access to
13 D.M.V. computer records and sometimes you do not;
14 is that correct?

15 A The dispatch does, yes, ma'am.

16 Q The dispatch does. And what would cause you not to
17 have access or the dispatch not to have access to
18 those records?

19 A It could be, like I stated to you, sometimes on
20 Sunday afternoons -- like on this date and time, I
21 don't know if it was a Sunday. Like I said, I
22 don't remember the incident. I know sometimes on
23 Sundays, D.M.V. files are being updated, and we do
24 not have access to the files.

25 Q And is there a delay -- in your experience is there

COLUMBUS GENTRY -- CROSS -- MS. ELLIOTT

1 sometimes a delay in the information for a
2 suspended license showing up for access for your
3 operator --

4 A There have been, yes.

5 Q -- and between when their actual suspension goes
6 into effect and when the records are available?

7 A I have -- can I give you an example?

8 Q Yes.

9 A I have one day stopped an individual, and then the
10 following day the dispatch -- I mean, the same day
11 that I stopped this subject, a subject, it would
12 be, as you stated, the following day would be the
13 subject going under suspension.

14 Q Okay. So it's not always instantaneous? Say, if
15 Mr. Battle was to be in a D.U.S. status on
16 September 26th, that doesn't necessarily mean or
17 show up on the records on October 4th?

18 A That's correct.

19 Q It's when your dispatch operator is trying to check
20 that information?

21 A That's correct.

22 Q And if I may ask you too: What is the policy and
23 procedure of the Department of Public Safety as far
24 as use of a left-turn signal in a left-turn-only
25 lane?

1 A Any time you move to the left or right side of the
2 roadway, you have to put on -- use a signal which
3 direction you are traveling.

4 Q And the purpose is to signal other drivers in the
5 area so that they will be on notice about where you
6 are going and what you are doing?

7 A That's correct.

8 Q Regardless of whether you are in a left-turn-only
9 lane, you still must use that signal?

10 A Yes, ma'am.

11 Q Thank you.

12 MS. ELLIOTT: That's all I have, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. DUNCAN:

15 Q Trooper, would it be a traffic violation for a
16 person in a left-turn-only lane to do anything
17 other than turn left? To go straight? Go right?
18 Go backwards?

19 A If they are in the turning lane, they should go
20 left.

21 Q So it would be a violation from them to go anywhere
22 but left?

23 A That's correct.

24 Q So putting people on notice, if they are in the
25 left-turn lane, the notice is there for them to go

COLUMBUS GENTRY -- RECROSS -- MS. ELLIOTT

1 left; is that correct?

2 A That's correct.

3 MR. DUNCAN: That's all I have.

4 MS. ELLIOTT: If I may ask one more question?

5 THE COURT: Sure.

6 RECROSS EXAMINATION

7 BY MS. ELLIOTT:

8 Q Is it necessarily -- is the oncoming traffic, say
9 if you are not -- if you don't frequent the area
10 generally and not familiar with the roadway, is
11 there a signal on the other side for approaching
12 traffic to know whether a lane is left turn only or
13 not?

14 A I don't know. It's based on the situation.

15 Q If I may ask also: If you have someone not using a
16 left-turn signal and that person is stopped for a
17 traffic violation, and you receive information from
18 the dispatch that he is driving under suspension
19 and he is the only occupant in a car, what is the
20 procedure?

21 A Usually the subject is placed under arrest for
22 driving under suspension based on the circumstances
23 there and sort of based on the officer, but
24 technically a subject should be under arrest.

25 Q Thank you.

1 MS. ELLIOTT: That's all I have.

2 MR. DUNCAN: Your Honor, could this witness be
3 excused?

4 THE COURT: Sure. Have you got any objection?

5 MS. ELLIOTT: No, Your Honor. Thank you.

6 Thank you very much for coming.

7 MR. DUNCAN: Thank you.

8 (Witness leaves the witness stand.)

9 MR. DUNCAN: Your Honor, for context here and
10 as far as the claims, Mr. Battle was arrested -- this
11 traffic stop took place on October the 4th of 2006.

12 THE COURT: Okay.

13 MR. DUNCAN: And he was arrested on October
14 the 13th, some nine days later. The probable cause by
15 the arresting officer was he was in a left-turn-only
16 lane, and he did not use his signal. The officer pulled
17 him over at that time.

18 When he ran a license check, the officer
19 testified that his license came back as being suspended
20 for failure to pay a traffic ticket sometime earlier in
21 2006. That gives you just some context as to why we are
22 here.

23 THE COURT: Does the State agree that that is
24 a correct recitation?

25 MS. ELLIOTT: Yes, Your Honor.

KORRELL BATTLE -- DIRECT -- MR. DUNCAN

13

1 MR. DUNCAN: Your Honor, could Mr. Battle have
2 one hand released?

3 THE COURT: Sure, as far as I am concerned.
4 (Pause.)

5 MR. DUNCAN: I call Mr. Battle.

6 KORRELL ROBERT FLOYD BATTLE,
7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. DUNCAN:

10 Q Mr. Battle, what is your full name?

11 A Korrell Robert Floyd Battle.

12 Q And, Mr. Battle, you are currently incarcerated?

13 A Yes, I am.

14 Q And where is that at?

15 A Lieber Correctional Facility.

16 Q And you have been there since?

17 A May 2007.

18 Q Mr. Battle, you heard the officer testify as to his
19 traffic stop or concerning the records of the
20 traffic stop of October the 4th. Would you briefly
21 tell the Court why your contention is your license
22 was not suspended on October the 13th, 2006?

23 A I was arrested -- let me back up. As the Highway
24 Patrol officer, Mr. Gentry, just gave testimony, he
25 pulled me over on October 4th, 2006. I was

1 supposed to pay -- when he pulled me over, it came
2 back that my license was not suspended. That was
3 October 4th. Now, on September 26, 2006, I was
4 supposed to have paid a fine by that date or else
5 my license was going to be suspended.

6 Q That was a fine for a traffic ticket in the City of
7 Forest Acres?

8 A Yes, sir.

9 Q All right.

10 A That fine had occurred from a traffic stop in the
11 City of Forest Acres on August 1, 2006. I had went
12 down to the court, and I paid half of the fine.
13 Michelle Morrison, which is the clerk there, and me
14 and the officer had stipulated that I would have
15 like 30 days to pay the rest of the fine.

16 So I had paid the rest of the fine by
17 September 1st, 2006, and she had recorded that on a
18 compliance notice, which is like a receipt that the
19 clerk gives you once you pay the full fine. She
20 recorded that as being paid September 1st, 2006.

21 Q And so your belief is that your license was not
22 under suspension on October the 13th?

23 A No, it wasn't. Because after my trial, the D.M.V.
24 had sent me some documentations from discovery --

25 MS. ELLIOTT: Your Honor, I will object to any

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15

1 hearsay testimony he is going to offer.

2 THE COURT: I will let him testify to it. Go
3 ahead.

4 A These right here is documentations that the D.M.V.
5 sent me with discovery in a civil action that I
6 filed. They say that my license -- that the date
7 that my licensed was returned was September 1st,
8 2006.

9 Now, once I returned my license to the Clerk
10 of Court, I no longer had a license. So in order
11 for me to obtain another license, I had to go down
12 to the D.M.V., and they had to reissue me another
13 license.

14 I don't know the exact date, but they reissued
15 me a license between September 6, 2006, and the
16 date that I was arrested, which is October 13,
17 2006.

18 Somewhere between that time frame, they had
19 reissued me a new license. Now, if my license
20 would have been suspended, they would have never
21 reissued me a license.

22 Q Now, your allegation as to why we are in court
23 today is that your trial counsel did not
24 investigate that?

25 A Yes, sir.

1 Q And if your trial counsel had investigated that,
2 your belief is that that would have reflected
3 negatively on the veracity of the arresting
4 officer, his credibility?

5 A Yes. I also have documentation from the D.M.V.
6 They had sent me documentation on the 6th. It was
7 a proposed suspension. They say, "Mr. Battle, you
8 have until September 26th to pay the fine. If you
9 don't pay the fine by this time, we are going to
10 suspend your license."

11 Now, under the South Carolina Code of Laws,
12 there is four or five different laws which is
13 notification laws. D.M.V. has to notify you that
14 your license has been suspended.

15 D.M.V. has sent me documentation after my
16 trial saying that they have not sent me no final
17 notice, no final notice of suspension, or no
18 actual notice of suspension that my license was
19 suspended.

20 MS. ELLIOTT: Same objection, Your Honor.

21 THE COURT: Okay. I will allow that.

22 BY MR. DUNCAN:

23 Q So your contention is that your trial counsel
24 should have investigated that and determined that
25 your license was not under suspension, and the

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17

1 officer's credibility could be challenged on that
2 point?

3 A Correct.

4 Q Now, Mr. Battle, also, the officer -- we talked
5 briefly about the left-hand turn signal.

6 MR. DUNCAN: Your Honor, the basis for the
7 probable cause for the stop was that Mr. Battle had not
8 made -- had not turned on his turn signal for his left
9 turn from the left-turn lane in the Town of Irmo.

10 THE COURT: Yes, sir.

11 BY MR. DUNCAN:

12 Q So, Mr. Battle, when you made that left hand turn,
13 your contention is that that did not constitute
14 probable cause; correct?

15 A Yes, sir.

16 Q And the basis for that is research that you had
17 conducted?

18 A Yes, sir.

19 Q And I will call your attention to Applicant's
20 Exhibit Number 2. It is a case, the State versus
21 Goodman, 220 Ga. App. 169, 469 S.E.2d 327, 1996.
22 That case briefly stands for the proposition that
23 is not probable cause?

24 A Yes, sir.

25 Q Did you find other cases across the country, in

1 addition to that one, as a representative case?

2 A My legal research at Lieber is limited, but I have
3 found three other cases, which is all from Georgia
4 Court of Appeals. I have wrote them down in my
5 papers which is...

6 Q But this is a representative case for that?

7 A Yes, that's the main case. That case right there
8 specifically applies to the left-turn signal issue
9 in a left-turn-only lane.

10 Q Okay. And your contention is that your trial
11 counsel did not research that point, that legal
12 point?

13 A Mr. Bax gave a pretty good argument for my
14 suppression hearing, but my argument in my P.C.R.
15 is that his suppression argument lacked any type of
16 case laws.

17 And if he would have presented that case law
18 right there or the other case laws, then I think
19 the judge would have looked at that and probably
20 granted the suppression hearing.

21 Q You feel that the lack of statutory citations made
22 his argument not persuasive?

23 A Yes.

24 Q And as I understand it, that is also your complaint
25 against appellate counsel, Ms. Cleary?

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19

1 A She was part of -- she was there at the trial, but
2 I didn't make no arguments against her because it
3 was just mainly Mr. Bax that was --

4 Q I'm sorry. You are talking about Ms. Fullwood?

5 A Yes, Ms. Fullwood.

6 Q But also on appeal you wished -- you wanted that
7 point raised?

8 A Right.

9 Q On appeal?

10 A Right.

11 Q So your allegation is that your appellate counsel,
12 Ms. Cleary --

13 A Ms. Cleary.

14 Q -- did not make that legal argument on appeal?

15 A Yes, I had asked her to present that argument. She
16 only presented one issue out of like four or five
17 issues that I wanted her to raise.

18 Q And your contention is that that constitutes
19 ineffective assistance of appellate counsel?

20 A Yes. Because that's the main issue right there
21 that I had wanted the appeals court to hear, and
22 she just ignored it.

23 Q And you raised other -- you raised other points in
24 your application, but you concede that those
25 involve direct appeal issues?

1 A Yes, sir. Yes.

2 Q Okay. This would have been where Mr. Bax or other
3 counsel raised these issues, and the ruling of the
4 Court was against their position?

5 A Yes.

6 Q Answer any questions that the Attorney General or
7 the Court might have.

8 CROSS EXAMINATION

9 BY MS. ELLIOTT:

10 Q Just really briefly, Mr. Battle, so I can kind of
11 get everything in context and we can put it in
12 context for the judge. You received a ticket, a
13 traffic ticket, for failure to stop for a stop sign
14 or something like that in Forest Acres on
15 August 1st, 2006; is that correct?

16 A Yes, ma'am.

17 Q And that's the ticket that you were fined 200-some
18 dollars for; is that correct?

19 A Yes, ma'am.

20 Q And then you were to have paid the fine or -- you
21 didn't appear for trial on October 10, 2006, and
22 that resulted in the imposition of that fine; is
23 that correct?

24 A What date was that?

25 Q August 10th was the date of the trial.

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21

- 1 A I did appear in court but I was late.
- 2 Q Okay. But you weren't there for your trial; is
- 3 that correct?
- 4 A No.
- 5 Q And then you paid the fine -- when did you say --
- 6 on February 1st?
- 7 A No, September 1st.
- 8 Q September 1st. Okay. And then on September 5th,
- 9 there was a notice sent from Forest Acres to D.M.V.
- 10 that the fine had not been paid; isn't that
- 11 correct?
- 12 A That's what they say.
- 13 Q And then on September 6th, the next day, D.M.V.
- 14 sent a notice saying that your license would be
- 15 suspended on September 26th for failure to pay the
- 16 fine. And if you paid it, then you need to come
- 17 and straighten the situation out; is that correct?
- 18 A Yes, ma'am.
- 19 Q And D.M.V., I believe in that other civil action,
- 20 indicated that they had mailed that notice to you?
- 21 Is that also correct?
- 22 A Yes, ma'am.
- 23 Q And it was your responsibility to show proof of
- 24 payment of the fine?
- 25 A Yes, ma'am.

1 Q And eventually -- I believe on October 20th -- the
2 Department of Motor Vehicles indicated you had
3 complied, that you paid the fine, and all of that
4 was straightened out on October 20, 2006; is that
5 correct?

6 A That's what they say, but I have got documentation
7 that say it was -- they give me two different type
8 of dates. They are saying that, like you say, at
9 first they were saying it was October 20th. But
10 after my trial date, I had received additional
11 information from D.M.V., and they turn around and
12 saying it was August 20th.

13 Q Well, in that other civil action you initiated
14 against the Department of Motor Vehicles, isn't
15 that what the judge found? That D.M.V. sent the
16 notice of compliance on October 20, 2006?

17 A What was that date again?

18 Q October 20, 2006.

19 A I don't recall. I believe so.

20 Q That's one of the exhibits for the Respondent that
21 we have admitted into evidence for the record for
22 the judge, but I just wanted to clarify all those
23 dates and the findings and those dates. Your
24 offense, this particular offense for armed robbery
25 and the possession of the weapon, occurred on

KORRELL BATTLE -- CROSS -- MS. ELLIOTT

1 October 13, 2006?

2 A Yes, ma'am.

3 Q And I know the officer indicated that he pulled you
4 over, that there was a traffic stop for failure to
5 use your left-turn signal; is that correct?

6 A Yes.

7 Q The officer also indicated or testified about other
8 factors that caused him to have reasonable
9 suspicion that you might have been involved in the
10 Kentucky Fried Chicken armed robbery? Is that also
11 correct?

12 A Yes.

13 Q Didn't the trial judge find that there was a valid
14 traffic stop for failure to use a left-hand turn
15 signal? He didn't suppress the evidence. He said
16 that he believed the officer when the officer said
17 that you didn't use a left-turn signal and that was
18 necessary? It was a necessary thing for you to do;
19 is that correct? Do you recall that?

20 A He just say that he was going to agree with the
21 officer's testimony.

22 Q And I believe you had testified that you did use a
23 left-turn signal? Is that also correct during the
24 suppression hearing?

25 A Yes, ma'am.

1 Q Didn't the judge, the trial judge, also find as an
2 alternative basis for not suppressing the evidence
3 that there was reasonable suspicion for the officer
4 to stop you for armed robbery in addition to the
5 traffic violation?

6 A I don't recall that. The only thing --

7 Q And then since -- I'm sorry. Go ahead.

8 A The only thing that I recall is the officer saying
9 that the reason why he pulled me over was because
10 of the left-turn signal. That's what he say in the
11 transcript.

12 Q Initially when he was first asked by the solicitor
13 why he was pulling you over, he went into some of
14 those factors that caused him to be suspicious, to
15 provide reasonable suspicion, about why you also
16 might have been a participant in the armed robbery;
17 is that correct?

18 A That was a hunch. That was a hunch that he thought
19 that was me, but he had no actual probable cause or
20 reasonable suspicion to pull me over for an armed
21 robbery.

22 Q I believe after you were pulled over, you provided
23 your driver's license and insurance information.
24 The officer -- the testimony was -- the officer ran
25 the information, and the dispatcher advised the

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25

1 officer that you were driving under suspension and
2 you were placed under arrest; is that correct?

3 A That's what the officer is saying, but at my trial
4 the solicitor did not question the dispatcher about
5 if she told him that my license was suspended. If
6 you read the transcript, Mr. Bax did not ask her if
7 she told Mr. Majewski if my license was suspended.

8 Q But the officer testified about why he took that
9 particular action of arresting you for driving
10 under suspension; is that correct?

11 A Yes.

12 Q Okay.

13 A And one more thing. This is the on the incident
14 report from the dispatcher. She did not say on
15 this, her report, if my license was suspended. The
16 only thing she mentioned, Your Honor, was my
17 driver's license number, and that's it.

18 Q Mr. Battle, you are relying on a Georgia case for
19 your proposition that a traffic violation did not
20 occur for failing to use a left-turn signal; is
21 that correct?

22 A Yes.

23 Q Not any South Carolina cases?

24 A I could not find no case in South Carolina relating
25 to a left-turn signal issue. So that case is the

1 only case that I could come up with.

2 MS. ELLIOTT: That's all I have, Your Honor.

3 Thank you.

4 MR. DUNCAN: Nothing further.

5 THE COURT: Thank you very much, Mr. Battle.

6 You can step down.

7 (Witness leaves the witness stand.)

8 MR. DUNCAN: That would be our case, Your

9 Honor.

10 THE COURT: Okay.

11 MS. ELLIOTT: Your Honor, the State would call

12 Mr. Bax.

13 THE COURT: All right, Mr. Bax.

14 ARIE BAX, being

15 first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MS. ELLIOTT:

18 Q State your full name, please.

19 A My name is Arie Bax. The last name is spelled

20 B-A-X.

21 Q And you are an attorney?

22 A I am still, yeah.

23 Q And in 2006 how were you employed or in 2007?

24 A I was employed with the Lexington County Public

25 Defender Agency.

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27

1 Q And how long had been working with the Public
2 Defender's Office?

3 A I started at the Lexington Public Defender's Office
4 in January of 2006.

5 Q And at the time of this trial, had you handled
6 trials of serious cases, serious crimes?

7 A Yes, ma'am.

8 Q And had you handled armed robbery cases before?

9 A Yes, I had.

10 Q Had you handled cases involving search and seizure
11 issues?

12 A Yes.

13 Q And are you familiar with the Department of Motor
14 Vehicle license suspension issues?

15 A I am.

16 Q And prior to -- when were you admitted to the bar?

17 A 2004, May of 2004.

18 Q Before that, before working for the Public
19 Defender's Office, did you have any experience
20 dealing with criminal law?

21 A I did. I worked with the Attorney General's Office
22 handling post conviction relief cases.

23 Q And that requires application of criminal law to
24 civil procedure; is that correct?

25 A That's correct.

1 Q To the civil issues. You were appointed to
2 represent Mr. Battle; is that correct?

3 A I was the second attorney that was appointed to
4 represent Mr. Battle from the Public Defender's
5 Office. Initially it was assigned to Sally Henry.
6 Then after some difficulty between Ms. Henry and
7 Mr. Battle, it was transferred to me.

8 Q And Ms. Fullwood, I notice, participated some at
9 the end of the trial and is shown on the
10 transcript. Did she also assist in this trial?

11 A She was primarily there as backup for me. I asked
12 her to assist me in trial but only a very short
13 time before the trial started. I was primarily
14 responsible for the preparation and argument of the
15 case.

16 Q Okay. So you conducted all the research, you
17 interviewed the witnesses, and prepared --
18 investigated the case and prepared the case for
19 trial?

20 A That's correct.

21 Q Were you prepared for trial?

22 A I believe I was.

23 Q What investigation had you conducted?

24 A I had done a number of things. Obviously I had
25 spoken with Mr. Battle on a number of occasions. I

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1 had had lengthy discussions with Ms. Henry in order
2 to get caught up on the case and what she had done
3 up to that point and what discussions she had had
4 with Mr. Battle.

5 After discussing the case with Mr. Battle, I
6 began my investigation by looking at the
7 suppression issues. Because in my estimation the
8 evidence that was seized from Mr. Battle or the
9 vehicle that Mr. Battle was driving at the time in
10 question was the most harmful thing in this
11 particular case. It was the link. So it really
12 came down to that issue.

13 Obviously based on my discussions with
14 Mr. Battle, there was an issue about the validity
15 of the stop. I kind of addressed that in a couple
16 of different aspects. The first thing that I
17 looked at was the turn signal issue.

18 Initially I wanted to find out if not using a
19 left-turn signal in a left-turn-only lane was
20 actually a traffic violation. In order to do that,
21 I looked up the statutes that govern that and
22 discovered that those rules are contained in the
23 D.M.V. driving manual, and that is the ruling
24 document to look at.

25 That was what my research showed; so I

1 contacted D.M.V. counsel --

2 Q Was that Mr. Valenta?

3 A Mr. Valenta. He sent me a current copy, at that
4 time the most current copy of the Department of
5 Motor Vehicles' driver's handbook, and I looked it
6 up in there.

7 Unfortunately -- what I felt unfortunately for
8 us in our argument -- it clearly states that any
9 time a driver changes direction -- left, right,
10 lane change or full turn -- they must use a turn
11 signal, irregardless of whether they are in a
12 turn-only lane. Despite the fact that that was
13 what I discovered in my research, I still did go
14 ahead with trying to suppress the evidence.

15 Q And did you argue that as the basis or one of the
16 bases for the motion to suppress?

17 A I did. In my estimation, you know, in arguing this
18 case, while not using a left-turn signal in a
19 left-turn-only lane is technically a violation
20 under the handbook, as anyone can say from common
21 experience, that is not something that officers
22 typically pull people over and give them tickets
23 for.

24 I think that is probably one of the most
25 common misunderstandings or just things that people

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1 don't do is turn on their turn signal in a
2 turn-only lane.

3 I tried to argue in my questioning of Officer
4 Majewksi -- if I am saying that correctly -- and in
5 my argument at the end of the motion was that there
6 was an element of pretextual about this.

7 The other reason the officer stated in his
8 testimony was that the Cadillac he had seen was at
9 the Circle K. with the hood up in a dark area. I
10 argued through my testimony to the officer that
11 having your hood up at a gas station is not
12 something that should arouse suspicion, seeing as
13 how gas stations are where one goes for motor oil
14 and things like that in a driving situation where
15 you might need to do something to keep your car
16 running.

17 He did admit that that in and of itself was
18 not suspicious. He also admitted the car was
19 parked in an area that you can park in. It was a
20 parking lot.

21 He additionally -- there was some questioning
22 that I did of him about the fact he stated in his
23 testimony that the Cadillac exited the Circle K. at
24 a high rate of speed; however, the distance it was
25 traveling was basically three lanes sideways.

1 You are only talking about maybe 20-, 30 feet.
2 So there was an argument I also made about the fact
3 that you can't really achieve a high rate of speed
4 when pulling out of there. That was a somewhat
5 objective thing to say. Unfortunately those
6 arguments were not successful.

7 Q Could you just very briefly describe the testimony
8 for the judge about what led to all this, what the
9 officer observed during several trips around that
10 area, the Circle K., which I believe is near the
11 Kentucky Friday Chicken that was robbed; is that
12 correct?

13 A It is. It is kind of up the hill, basically in
14 that area of Saint Andrews Road and Lake Murray
15 Boulevard. Lake Murray comes up to Saint Andrews
16 Road and then goes back down. It's kind of like
17 Saint Andrews rides along that ridge.

18 I did go out to the scene with Ms. Fullwood.
19 We went and we looked at the K.F.C. We spoke to
20 the manager of the K.F.C. at the K.F.C. that was
21 going to be a witness and was the manager at the
22 time, was present at the time of the robbery.

23 We also went up to the Circle K. and looked at
24 the parking spots. In Officer Majewski's
25 testimony, in reviewing the transcript and in my

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1 memory, he described in his report and in his
2 testimony that he was on property patrol.

3 He was going up and down this area in Irmo,
4 Lake Murray and Saint Andrews -- alternately
5 checking businesses and looking for anything
6 suspicious, basically your quintessential patrol.
7 He described going by the Circle K. and seeing a
8 red Cadillac with a hood up in a dark area.

9 Q And it was on the side that is rarely used; is that
10 correct? The unlighted side?

11 A According Officer Majewski's testimony, it's rarely
12 used because the streetlight is out there.

13 Q That was about 8:20. Then 20 minutes later, what
14 did the officer say he observed?

15 A Well, he testified -- and there were some areas I
16 tried to attack on credibility, both in pretrial as
17 well as trial, because initially he had testified
18 that it was around 6:00 when he saw this.

19 Then he later changed that after the
20 prosecution handed him up his supplemental report
21 because the robbery dispatch call didn't come out
22 until about 9-something if I remember correctly.
23 So that didn't jive.

24 Ultimately he testified that it was around
25 8:30 or so he saw this. He came back by. The car

1 was no longer there. He came back by a third time,
2 I think, and then that's when he saw it pulling
3 out.

4 But that was when he was coming back because
5 he had gotten a call saying, "The K.F.C. has been
6 robbed." He turned around and headed back that
7 way.

8 As he was headed from Lake Murray Boulevard
9 onto Saint Andrews Road -- from my memory -- he
10 says the Cadillac come out of the Circle K. Then
11 He does a U-turn and pulls in behind him.

12 Q The Cadillac -- the third time he came around when
13 he was responding to the Kentucky Fried Chicken --
14 at that point was backed into the same dark side of
15 the Circle K.; is that correct?

16 A I'm a little unsure about whether he says that he
17 saw it parked and then pull out or if he saw it
18 pull out. I think my memory is that when he saw it
19 the third time, it was at Circle K. getting ready
20 to come into traffic and then pulled out. I don't
21 know that he -- I can't remember if he said that it
22 was coming out of that parking spot again or not.

23 Q But the manner in which the car was parked, the
24 location when the officer first went by, before
25 there was any indication of an armed robbery, it

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1 was odd enough and suspicious enough that it caught
2 the officer's attention, and he looked for it again
3 on his second driveby; is that correct?

4 A That's what he testified to.

5 Q And the car was not there then, but it was there
6 maybe 20 minutes later the third time when he was
7 responding to the scene of the Kentucky Fried
8 Chicken; is that correct?

9 A That's correct.

10 Q The applicant has testified that you should have
11 cross examined or mentioned -- a complaint -- that
12 you did not ask the dispatcher when she testified
13 whether she reported the license suspended. Did
14 you have a discussion with the applicant about
15 that? And if so, what was your determination about
16 whether you should ask that question or not?

17 A Well, I did have a discussion with him. In fact, I
18 had several discussions with him about it. Because
19 the disconnect, I think, between Mr. Battle's view
20 of this and what I felt like the Court's view of
21 this was going to be under the case law is that --
22 you know, I had the discussion with him that the
23 officer has the duty to act in good faith based on
24 the information he had been provided.

25 It was his report at the time and his

1 testimony after the fact that he was told by
2 dispatch that my client's license was suspended.
3 We had several discussions about the fact that even
4 if that suspension was incorrect or the information
5 was incorrect, if the Court believes and if the
6 jury believes that the officer was given this
7 information and acted based on that information,
8 then he had a good faith basis to make the arrest
9 and do the subsequent searches.

10 Q And did some of this come out during the trial?

11 A It did.

12 Q And did you elicit that testimony and evidence?

13 A It did get elicited in evidence. In fact, I think
14 Solicitor Moore, I believe was the one who was
15 questioning the officer during the pretrial
16 hearing, asked those questions.

17 Additionally, from my memory -- of course, I
18 have to state in my testimony here today that I
19 don't have my file. The Public Defender's Office
20 retains those files, and they have not been able to
21 provide me the file.

22 But in my memory from discovery and in
23 discussing with my client, one of the reasons why
24 the dispatcher was not much of an issue is I
25 believe there was C.A.D. report that said the

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1 officer -- they will list the officer by their unit
2 number, and they will say, "Unit such and such will
3 ask a question," and dispatch will come back with a
4 response.

5 It will all be on the C.A.D. report, which
6 stands for Computer Assisted Dispatch. I believe
7 in the discovery it indicated that dispatch told
8 him it was suspended.

9 Q Okay. And along that line he is complaining that
10 you didn't investigate sufficiently and present
11 evidence about the disconnect, I guess, or the
12 events that occurred that caused his driver's
13 license to be suspended. Did you not, in fact,
14 introduce and have him testify about the compliance
15 report from the Forest Acres Police Department?

16 A I did. And to give some more context to that, I
17 did that despite the fact that, from a legal
18 standpoint -- and I had had this discussion with
19 him -- whether or not he was accurately under
20 suspension didn't to my view really address the
21 issue.

22 The issue was whether or not there was
23 probable cause for the officer to place him under
24 arrest and search him. As I discussed with him,
25 despite the fact I did try to go down that road at

1 trial and I did have him testify and I did attempt
2 to introduce those documents and that testimony,
3 which I think we did, the issue -- and the judge
4 did what I expected -- whether or not the
5 suspension was accurate or not, if the officer
6 believed he was under suspension because he was
7 given information from a source that he is allowed
8 to rely on, i.e., dispatch, that that is the
9 controlling issue as far as whether or not he had
10 the right to search.

11 Q And that was ultimately the way Judge McMahon
12 ruled; is that correct?

13 A That's correct.

14 MS. ELLIOTT: If I may have one moment, Your
15 Honor.

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 BY MS. ELLIOTT:

19 Q Did you have any means of challenging the officer's
20 credibility regarding whether or not the license
21 had been suspended? I guess if I can ask you: I
22 know you have addressed your position and the
23 evidence on the driving under suspension.

24 But the applicant is alleging you should have
25 presented more evidence to challenge the officer's

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1 credibility, I guess, asserting that he was not
2 telling the truth when it was reported to him that
3 the applicant was driving under suspension. Did
4 you have any information that the officer was not
5 telling the truth?

6 A I didn't have any information, and I'm not sure
7 what else I could have done in order to show that.
8 All the evidence that I had, both through discovery
9 from the Solicitor's Office, as well as our own
10 investigation, showed that he had been told that by
11 dispatch.

12 Trying to say that he was lying about that
13 would have required some kind of corroborating
14 evidence, aside from just attacking him -- I mean,
15 I would have needed something to introduce, either
16 someone saying that that was specifically not what
17 he was told or something along those lines. I
18 didn't have that. That was not something we were
19 able to discover.

20 MS. ELLIOTT: I believe that's all I have,
21 Your Honor. Thank you.

22 THE COURT: Okay.

23 CROSS EXAMINATION

24 BY MR. DUNCAN:

25 Q Mr. Bax, do you recall -- independently recall --

1 what was in your file?

2 A I recall that I had -- not only did I have the
3 discovery that was provided by the State, but I
4 know that I met with Shawn Graham to make sure that
5 I had all the discovery and looked at his file in
6 his office.

7 I don't recall there being any discovery
8 violation issues in the trial that came up during
9 trial. I don't see any in my review of the
10 transcript. So I know I had discovery.

11 Independently I also had my own notes and
12 research, which included legal research on the
13 issue of the turn-signal issue and the copy of the
14 D.M.V. manual I was provided by Mr. Valenta.

15 I did do some research. I only searched South
16 Carolina case law. I didn't come up with anything.
17 That is my recollection of what was in the file
18 generally.

19 Q So you were not aware of any authority outside
20 South Carolina, the jurisdiction of South Carolina?

21 A No, I was not.

22 Q And as far as the issue of the license suspension,
23 did you review the license -- the ticket that
24 Mr. Battle got, the warning ticket, from October
25 the 4th of 2006?

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1 A Yeah. I remember that he told me about that. In
2 my recollection I think maybe he even showed me
3 that. I can't recall if I got the copy or if a
4 copy was already there because Sally had gotten it,
5 but I think there was something in there in the
6 file indicating he had gotten that because he told
7 us about that repeatedly.

8 He said, "I had been pulled. My license was
9 clean. How is it that it's suspended a month
10 later, and I have gotten nothing?" That was a
11 discussion we had many times.

12 Q And was there any -- did you consider any time
13 calling Trooper Gentry or anyone from the Highway
14 Department about that stop showing -- or at least
15 inferring -- that his license was not under
16 suspension?

17 A I did not contact Trooper Gentry. I did contact
18 D.M.V. on his and my paralegal also did. In fact,
19 we had to contact them repeatedly before we
20 actually got them on the phone trying to verify
21 when the suspension went into place and some of
22 these things.

23 And what we were told is that the suspension
24 was placed on the record sometime during that time
25 period. I don't recall exactly what time they said

1 it was placed on there.

2 Q So you never considered calling Trooper Gentry to
3 establish that the records of the Highway
4 Department -- at least on October the 4th --
5 indicated that his license was not suspended?

6 A I didn't because I didn't -- in looking at this
7 case, the status of his D.M.V. or his license
8 status on October 4th was not the relevant factor.
9 It was the license status on the date of the
10 incident, which was, as we have talked about today,
11 some time after that. So, no, I did not.

12 Q Was there anything that occurred between October
13 the 4th and the date of this incident, October
14 the 9th -- I'm sorry -- the October the 13th that
15 would have affected the status of his driver's
16 license?

17 A Are you talking about when the -- I'm not sure what
18 you are asking me. Are you asking me about an
19 event?

20 Q You just made the distinction that there was
21 nothing -- that the date of October the 4th, when
22 there was no suspension, that that did not reflect
23 the state of his license on October the 13th. Was
24 there anything that occurred in those nine days
25 that would have changed the October the 4th status

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1 of no suspension?

2 A Yes. The event was the D.M.V. placing it under
3 suspension which happened in that interim time.

4 Q And what date would that have been?

5 A Like I said, we contacted them. I can't recall
6 exactly what date they said that they put it on
7 their system. It was sometime in there. In fact,
8 I think if I recall correctly, we might have even
9 gotten a couple of different answers.

10 MR. DUNCAN: Excuse me just one second.

11 THE COURT: Sure.

12 (Pause.)

13 BY MR. DUNCAN:

14 Q And did you talk to anyone at the City of Forest
15 Acres?

16 A No, I did not.

17 Q And so you did not examine any actions that the
18 clerk or any other personnel at Forest Acres sent
19 to the Department concerning the status of his
20 license?

21 A No.

22 MR. DUNCAN: That's all.

23 THE COURT: Any redirect?

24 MS. ELLIOTT: One moment, Your Honor.

25 THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

1

2 BY MS. ELLIOTT:

3

Q But you had the documentation about the compliance notice from Forest Acres because you used that in your examination during the suppression hearing; is that correct?

6

7

A Yeah, we did.

8

Q And it says, "Notice of withdrawal of suspension."

9

The payment had been made covering the fines and costs on September 1st; is that correct?

10

11

A That's correct. And I also want to state that I did not contact Forest Acres; however, I don't recall if Sally did or not because I had her notes and her work in the file. I don't recall if the paralegal that was working on it did. I just know that we had that and that I attempted to introduce that at trial in order to show the suspension wasn't valid.

18

19

Q And I believe you also testified during that suppression hearing under your examination that he was pulled over in Newberry and testified at that time that his license was clear and not suspended or it showed up as clear and not suspended, and he received a warning ticket; is that correct?

24

25

A That's correct. I mean, I did try to put out there

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1 what he was arguing. The problem is that the
2 argument I was -- I knew I was running into this
3 problem because I knew that Shawn and Jake Moore
4 both knew where I was going. They knew where I was
5 going with this.

6 They knew that all they had to argue was that
7 the officer had a good faith reason to believe that
8 this individual had a suspended license. Whether
9 it was validly suspended or not does not affect
10 whether or not he can act based on what he was
11 provided and search the car and find the bag full
12 of the money, the gun, the mask, and the coupons
13 from the K.F.C.

14 Q Within moments of the actual crime?

15 A Within moments of the robbery.

16 MS. ELLIOTT: That's all I have, Your Honor.

17 THE COURT: Anything else?

18 MR. DUNCAN: Nothing else.

19 THE COURT: Thanks.

20 THE WITNESS: Thank you, Judge.

21 (Witness leaves the witness stand.)

22 MS. ELLIOTT: Your Honor, the next witness the
23 State would like to call is Eleanor Clary.

24 ELEANOR DUFFIE CLEARY, being
25 first duly sworn, testified as follows:

1 first duly sworn, testified as follows:

2 CLERK: Have a seat and state your name for
3 the Court.

4 THE WITNESS: Eleanor Duffie Cleary,
5 C-L-E-A-R-Y.

6 DIRECT EXAMINATION

7 BY MS. ELLIOTT:

8 Q Ms. Cleary, you are a practicing attorney; is that
9 correct?

10 A Yes.

11 Q And how long have you been practicing law?

12 A Since 1994.

13 Q Beginning in 1994 how were you employed? I guess
14 if you could give us just a brief background of
15 your professional experience.

16 A I worked for the South Carolina Senate writing
17 legislation, researching legislation. Then I began
18 working for the Office of Appellate Defense, which
19 is now the Division of Appellate Defense, the
20 Commission on Indigent Defense in November of 2000.
21 I left there in August of 2008 and since then I
22 have been in private practice in Columbia.

23 Q Did you represent Mr. Battle on his appeal to the
24 South Carolina Court of Appeals?

25 A Yes.

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1 Q And you were at the Office of Appellate Defense at
2 that time?

3 A Yes.

4 Q And had been there about seven years?

5 A Almost eight years.

6 Q Eight years by that time. About how many appeals
7 per each year did you handle approximately?

8 A About 200.

9 Q Two hundred. So you had handled a lot of appeals
10 by the time you reviewed Mr. Battle's case; is that
11 correct?

12 A Yes.

13 Q And how did you keep yourself apprized of the
14 current status of the law and the opinions and the
15 trends of the Court?

16 A Well, obviously I would read the advance sheets as
17 they came out.

18 Q Okay.

19 A And then we had a South Carolina Association of
20 Criminal Defense Listserv that would keep us
21 abreast of a lot of the issues and just discussions
22 with the other lawyers in the office and then going
23 to the Public Defender Conference and that sort of
24 thing.

25 Q And presenting oral argument? Did that help you

1 get a feel for the issues that the members of the
2 appellate courts felt were important and which were
3 more the hot-button issues during your oral
4 argument presentations and the opinions that were
5 issued, published and unpublished, after those
6 arguments?

7 A Yes.

8 Q And at Appellate Defense what were your duties?

9 A I represented people before the Court of Appeals
10 and the Supreme Court on a direct appeal, and then
11 we also did appeals from post conviction relief
12 denial.

13 Q So you had -- by the time you represented
14 Mr. Battle in 2007 -- I believe I have already
15 asked you, but you had conducted a lot of research
16 on a great number of criminal issues, criminal
17 appeal issues; is that correct?

18 A Yes.

19 Q And were you able, over your period of eight to
20 nine years of experience handling appellate cases,
21 were you able to discern a pattern from the Court
22 about what issues were viable, what were more
23 viable claims to raise on appeal than others?

24 A Yes.

25 Q Which ones would be more likely to result in

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1 reversal of a conviction, I guess is what I'm
2 trying to say?

3 A Yes.

4 Q And you took that experience with you when you
5 reviewed Mr. Battle's case; is that correct?

6 A Yes.

7 Q And tell me how you prepared his appeal. Once you
8 were assigned this case, tell me what you did to
9 produce the final product, which was the brief in
10 this case?

11 A What I do is when we first get the transcript
12 assigned to us is go through and read it fairly
13 quickly but taking note of the big issues. In this
14 case the whole suppression issue took about a
15 hundred pages of the transcript. So that would be
16 something I would identify as a big issue.

17 You would kind of go through and see generally
18 who is testifying and who the -- you know, what the
19 whole story is. Then I would go back. If there
20 were issues that I just completely was not familiar
21 with, I would research them then.

22 But otherwise I would go back with a legal pad
23 and read it again. This time you write down the
24 page number and the line number of all the relevant
25 things that you are going to need to write your

1 brief. Then you go back and do further research
2 on, say, the search issue or whatever issues come
3 up.

4 Q Did you look for motions that are made? Objections
5 that are made --

6 A Right.

7 Q -- in review of the transcript?

8 A Yes.

9 Q Why is that important?

10 A Well, because on appeal -- and a lot of the clients
11 don't understand that -- on appeal the only thing
12 the appellate court is concerned about is judicial
13 error.

14 That has to be something that was raised to
15 and ruled upon by the judge. So I make note of
16 almost every objection unless it was extremely
17 trivial.

18 Q And did you review or identify issues in this case
19 for appeal?

20 A Yes.

21 Q And you did not file an Anders' brief; is that
22 correct?

23 A Right.

24 Q So you did identify meritorious -- what I would
25 call meritorious issues -- issues you felt were

ELEANOR CLEARY -- DIRECT -- MS. ELLIOTT

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1 meritorious for appeal?

2 A Yeah; but the Court of Appeals disagreed with me.

3 Q And what issue or issues did you identify for
4 briefing?

5 A I ended up raising the Doyle issue where the State
6 was able to question him on why he hadn't told his
7 story before.

8 Q And why did you select this as the issue to raise
9 on appeal as opposed to others, such as the
10 suppression hearing and the rulings on the
11 suppression motion?

12 A I don't have a specific memory of why I chose this,
13 but I can just tell you why it would have
14 eliminated other issues if you want me to do that.

15 Q Yes.

16 A The suppression issue obviously was the main one,
17 but once the judge makes a finding that the officer
18 is credible, we are not going to get anywhere on
19 appeal with that because the Supreme Court or the
20 Court of Appeals will not second guess a judge's
21 finding on that officer's credibility.

22 He had a good faith belief based on the
23 suspension. As far as the turn signal, I know what
24 the statute says. You are supposed to use a turn
25 signal.

1 I also thought that the officer probably had a
2 totality of circumstances reason going on,
3 considering that he was getting information about a
4 robbery and that he had seen -- supposedly seen --
5 him coming out of the Circle K. at a high rate of
6 speed.

7 So all of those combined, I didn't see how the
8 appellate court was going to reverse on that basis.

9 Q So the judge made alternative rulings, one about
10 the turn signal?

11 A The officer had reasonable suspicion.

12 Q Based on your experience in raising similar issues
13 to the appellate courts before under different
14 factual scenarios, you did not feel this was a good
15 issue for appeal --

16 A Correct.

17 Q -- the suppression issue was a good issue for
18 appeal. That includes the left-turn signal issue;
19 is that correct?

20 A Yes.

21 Q And how binding is the Georgia opinion offered by
22 the applicant in this case?

23 A Not at all.

24 Q Did you brief every issue, every objection made,
25 and every motion made during this trial?

ELEANOR CLEARY -- CROSS -- MR. DUNCAN

1 A No. We never do that because if you brief every
2 possible issue, if you have a good issue, it's
3 going to be completely diluted by all the other
4 issues. You also lose credibility with the Court
5 if you argue things that are trivial.

6 Q They are just not going to pick through and try to
7 find which one actually might be a good issue?

8 A Right.

9 Q And in this case did you brief what you thought was
10 the most meritorious of the preserved issues in the
11 transcript?

12 A Yes.

13 MS. ELLIOTT: That's all I have, Your Honor.

14 Thank you.

15 THE COURT: Cross.

16 CROSS EXAMINATION

17 BY MR. DUNCAN:

18 Q Did you discuss possible issues with Mr. Bax before
19 you wrote your brief?

20 A I don't have any memory of that. I may have.
21 There have been times when I have talked to
22 Mr. Bax.

23 Q Do you find that to be helpful?

24 A You know, sometimes, but it has got to be in that
25 record. If it's not in this cold, hard record,

1 then whatever Mr. Bax tells me is not going to
2 matter anyway.

3 Q And did you talk to Mr. Battle before you wrote
4 your brief?

5 A No. He may have written me, but I don't know.

6 Q You don't have your file?

7 A No, Appellate Defense has it.

8 Q So if Mr. Battle raised this issue with you, you
9 don't have any independent memory of ever reviewing
10 it or discussing it with him?

11 A No. Can I tell you generally what I do? When I
12 get letters -- or what I did -- when I got letters
13 from inmates, I would look at the issue. Then most
14 times I would write them and explain why I wasn't,
15 but I don't know whether I did that in this case.
16 I know I looked at the search issue.

17 MR. DUNCAN: Nothing else.

18 THE COURT: Anything else?

19 MS. ELLIOTT: That's all, Your Honor.

20 THE COURT: Thank you, ma'am.

21 (Witness leaves the witness stand.)

22 MS. ELLIOTT: That would be the State's case.

23 THE COURT: Okay.

24 MR. DUNCAN: Nothing further.

25 THE COURT: Anything y'all want to tell me?

1 MR. DUNCAN: No, sir, I think the record is
2 clear.

3 THE COURT: Okay.

4 MS. ELLIOTT: We would submit that the
5 attorneys in this case exercised professional --
6 reasonable professional -- judgment in conducting the
7 investigation and research that was necessary based on
8 the facts of the case and their discussions with the
9 client. The matters were fully explored.

10 We would submit that based on the order in the
11 other case, D.M.V. had indicated -- or D.M.V.'s records
12 showed a suspension of Mr. Battle's driver's license at
13 the time he was arrested on October 13th, and the
14 officer acted in good faith on that information. These
15 other factors are not relevant to that particular
16 arrest.

17 THE COURT: Okay.

18 MS. ELLIOTT: We would ask the Court to deny
19 the application.

20 THE COURT: All right. Mr. Battle, I noticed
21 you raised your hand. Is there something you want to
22 say?

23 MR. BATTLE: I just want to know is there
24 anything that I can personally say pertaining to this?

25 THE COURT: Is there something you want to

1 tell me about it?

2 MR. BATTLE: Just one thing -- sorry.

3 THE COURT: That's all right.

4 MR. BATTLE: It's just one issue that I had
5 wanted to raise. The solicitor had say that the Court
6 has sent D.M.V. on the 5th a suspension to suspend my
7 license and that D.M.V. on the 6th had sent me a
8 proposed suspension.

9 Well, I have after -- newly discovered
10 evidence after my trial. The Clerk of Court, Michelle
11 Morrison, on August 18, 2009, sent me these papers right
12 here.

13 She say, "I am sending you a copy of the
14 suspension withdrawal. There is no back to this form.
15 It don't show in the computer where there was any form
16 sent to the Highway Department letting them know that
17 you didn't pay the ticket."

18 Now, this is the form that the City of Forest
19 Acres would have sent to D.M.V. This form is not signed
20 by the judge and is not signed by the Clerk of Court.
21 So I'm basically arguing that this unsigned document is
22 not an authorized form sent to D.M.V. to suspend my
23 license.

24 There still is not no evidence in the record
25 of D.M.V. sending me a final notice of suspension on the

1 26th letting me know that my license was suspended.

2 This is from the D.M.V.

3 They say -- I had send them an interrogatory.

4 I say, "From September 20 to October 13, 2006, D.M.V.

5 did not mail me any final notice of suspensions."

6 Their response was, "The defendant admits that

7 no final notice of suspension were mailed to the

8 plaintiff."

9 If my license was suspended on the 26th, it

10 was required by the law to send me a final notice of

11 suspension or actual notice of suspension to let me know

12 that, "Mr. Battle, your license is suspended."

13 So from September 26th to the date of my

14 arrest, October 13th, I had no idea that my license was

15 suspended. As the trooper testified, on October 4th

16 when he checked my license, on October 4th my license

17 showed that it wasn't suspended.

18 THE COURT: Okay.

19 MR. BATTLE: That's just basically what I

20 wanted to put forth to the Court.

21 THE COURT: Okay. Thank you. You did a lot

22 of research on that. Well, let me tell you. We are not

23 here to litigate the practices of the Department of

24 Motor Vehicles.

25 We are here to see whether or not your trial

1 counsel or your appellate counsel, their conduct in
2 representing you, fell below what we call an objective
3 standard of reasonableness.

4 MR. BATTLE: Yes, sir.

5 THE COURT: You are clearly an intelligent
6 guy. I think you probably know that. To be perfectly
7 honest with you, Mr. Battle, I don't find that their
8 conduct fell below an objective standard of
9 reasonableness.

10 It certainly appears that they were diligent
11 in their representation of you and did everything they
12 could to represent you fully. So I will have to deny
13 your petition. I will ask the attorney general to
14 prepare an order along those lines. I wish you the best
15 of luck. How are things down in Lieber?

16 MR. BATTLE: It's okay.

17 THE COURT: Is it?

18 MR. BATTLE: Yeah.

19 THE COURT: Well, good.

20 MS. ELLIOTT: Thank you, Your Honor.

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

22

23

24

25

C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh 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 the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 28th day of November, 2011.

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

March 7, 2012

L Coconut Pantsari

Court Reporter

ORIGINAL

(2)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON,	)	
	)	
	)	2010-CP-32-2120
Korell Battle, # 292294,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 19, 2010, as well as subsequently filed amendments to the Application. The State made Return dated September 1, 2010. An evidentiary hearing into the matter was convened on November 28, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by John E. Duncan., Esquire. The Respondent was represented by Salley W. Elliott, Assistant Deputy Attorney General.

The Applicant, Arie Bax, Esquire, Eleanor Duffy Cleary, Esquire, and Earl Gentry of the South Carolina Department of Public Safety testified at the hearing. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Lexington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the briefs and opinion from Applicant's direct appeal, and exhibits introduced at the hearing.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted for armed robbery (2007-GS-32-0031) and possession of a firearm or knife during the

commission of a violent crime (2007-GS-32-0030). Applicant was represented by Arie Bax, Esquire, and Elizabeth Fullwood, Esquire. On May 1 - 2, 2007, Applicant proceeded to trial before the Honorable R. Knox McMahon, and a jury. Applicant was found guilty as charged and was sentenced to confinement for a period of thirty (30) years for armed robbery and a concurrent term of five (5) years for the possession of a firearm charge.

A timely notice of appeal was served and filed on Applicant's behalf and an appeal was perfected. After considering the briefs of the parties, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Battle, 2009-UP-224 (S.C. Ct. App. filed May 27, 2009). The remittitur was issued on June 12, 2009.

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 (2003).

Ineffective Assistance of Trial Counsel

At the evidentiary hearing, Applicant contended that he received ineffective assistance of trial counsel for counsel's failure to investigate the facts pertaining to the suspension of his driver's license. He also testified that his trial attorney presented a good argument for suppression of evidence on the ground the officer lacked probable cause to conduct a traffic stop; however, he complained that counsel provided ineffective assistance for failing to offer authority from Georgia to support the argument. This Court finds the allegations concerning trial counsel to be without merit and are denied and dismissed for the reasons set forth below.

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in the application. 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. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 386 S.E.2d at 625, *citing* Strickland, 466 U.S. at 668. "Where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 634 S.E.2d 642 (2006). 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.

1. Failure to Offer Legal Authority from Georgia

At trial, counsel moved to suppress evidence of the tools and fruits of an armed robbery found in Applicant's possession as a result of a traffic stop for failure to use a turn signal and

subsequent arrest for driving under suspension. At the suppression hearing, Officer Brian Majewski testified that he stopped Applicant's vehicle on October 13, 2006, when Applicant made a left turn without using a turn signal. (Tr. p. 30, lines 11 – 15; p. 34, line 22 – p. 36, line 3). Officer Majewski requested Applicant's license, registration and insurance card and thereafter arrested Applicant when advised by the 911 dispatcher that Applicant's license was suspended. (Tr. p. 36, lines 7 – 18; p. 63, lines 9 – 15). A Crown Royal bag containing bullets was found in Applicant's pocket. (Tr. p. 17 – 25). An inventory search of Applicant's vehicle yielded a black bag with a Scream mask, gloves, bag of money, coupons from Kentucky Fried Chicken, and a gun. (Tr. p. 37, lines 5 – 18).

Trial counsel then examined Officer Majewski. Officer Majewski testified that Applicant pulled into a "left turn only" lane that has a light specifically for that lane of travel. The officer testified that the failure to use a turn signal in a "turn only" lane is not uncommon and that he does not always make a traffic stop for this particular infraction. (Tr. p. 54, lines 3 – 25). Majewski informed Applicant that he was stopped for failure to use a turn signal. (Tr. p. 59, lines 12 – 17). Counsel also elicited testimony from Applicant at the suppression hearing. Applicant testified as to his recollection that he was in a "turn only" lane and that he used his turn signal when he made the turn. (Tr. p. 72, lines 4 – 21; p. 82, lines 1 – 8).

Counsel moved to suppress the evidence found as a result of the stop on the grounds that (1) Applicant used his turn signal; (2) the officer was operating on a mere hunch that Applicant was involved in the armed robbery and lacked reasonable, articulable suspicion that Applicant was engaged in criminal activity to support the stop; and (3) the officer lacked probable cause to initiate a traffic stop because Applicant was not required to use a turn signal in a "turn only" lane. (Tr. p. 97, line 19 – p. 105, line 20). The trial judge denied Applicant's motion to

suppress finding that Applicant was required to use a turn signal and did not use one. The trial court determined that Applicant's failure to use a turn signal provided probable cause for the traffic stop. See State v. Rivera, 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009) ("When probable cause exists to believe a traffic violation has occurred, the decision to stop the automobile is reasonable per se."); see also Whren v. U.S., 517 U.S. 806 (1996). The trial court also alternatively determined that, based upon the totality of the circumstances, the officer possessed reasonable, articulable suspicion to believe that Applicant was involved in criminal activity to support the stop. (Tr. p. 105, line 23 – p. 108, line 11).

At the evidentiary hearing, Applicant expressed satisfaction with the argument presented by counsel in support of the motion to suppress at trial; however, Applicant contends that his attorney provided ineffective assistance for failing to offer legal authority from Georgia to make his argument about the turn signal more persuasive.

Trial counsel testified, and this Court finds, that counsel fully investigated the issue respecting Applicant's failure to use a turn signal and the validity of the stop. Counsel reviewed the applicable statute, regulation and handbook as well as discussed the use of a turn signal in a "turn only" lane with counsel for the Department of Motor Vehicles (DMV). Counsel testified that he also conducted extensive research for authority in this State respecting use of a turn signal in a "turn only" lane. The testimony offered to this Court by Earl Gentry of the Department of Public Safety indicates that drivers are required to use a turn signal in a "turn only" lane. Nevertheless, counsel argued to the trial court that Officer Majewski lacked probable cause to initiate the traffic stop because Applicant was not required to use a turn signal in a "turn only" lane. This Court finds that counsel fully developed Applicant's position respecting use of a turn signal in a "turn only" lane and the lack of probable cause to initiate the traffic stop.

As in Whren v. U.S., 517 U.S. 806 (1996), the trial court in this case determined that Applicant's failure to use a turn signal provided the officer with probable cause to believe a traffic violation had occurred and that the decision to stop the vehicle was reasonable. Trial counsel's failure to offer non-binding authority from another state would not have changed this ruling, particularly in light of the distinguishing facts of the case upon which Applicant relies. In State v. Goodman, 469 S.E.2d 327 (Ga. App. 1996), the Georgia Court of Appeals was presented with the question whether the use of a turn signal in a "turn only" lane is necessary to alert other drivers of a motorist's intention to turn. The court, in Goodman, determined the defendant was not required to use a turn signal under the discrete facts of that case because there was no evidence that other vehicles were in the vicinity at the time of Goodman's turn and because Goodman's sole legal option was to make a turn. Unlike in Goodman, there were other vehicles in the vicinity when Applicant failed to use his turn signal.

This Court finds that counsel properly investigated and conducted research on the issue of the turn signal and fully developed the record through testimony and argument to the trial court. The legal authority Applicant offers from Georgia is not binding, is distinguishable and would not have altered the trial court's ruling in this case, particularly where the trial court found the evidence admissible on an alternate ground. Applicant's allegation is without merit and is denied and dismissed.

2. Failure to Investigate Applicant's License Suspension

As set forth above, the testimony presented at the suppression hearing indicates that, after the initial traffic stop for failing to use a turn signal, Applicant was arrested for driving under suspension. The search yielded tools and fruits of the armed robbery. Applicant contends that his license was not suspended when he was stopped by Office Majewski on October 13, 2006.

and that trial counsel provided ineffective assistance for failing to conduct a proper investigation into the suspension of his license and for failing to challenge the veracity of the arresting officer on this point at trial. He asserts that the report from the 911 dispatcher reflects that his license was not suspended at the time and counsel should have questioned the dispatcher and officer on this point. In addition to his own testimony that he paid the fine to lift the license suspension before the incident in question, Applicant presented the testimony of Earl Gentry of the South Carolina Department of Public Safety who reviewed documents indicating that he stopped Applicant for speeding on October 4, 2006. Gentry had no independent recollection of the matter but testified that the records presented to him at the hearing did not include a notation that Applicant's license was reported as suspended during this traffic stop. However, Gentry provided a number of reasons why the suspension might not have been reported to him during the traffic stop, including the fact that there is often a delay in entering the information into the database after a suspension and that access to the computer information is periodically unavailable to officers.

Trial counsel testified at the hearing as to his experience in the trial of criminal cases, including armed robbery cases, and trials presenting search and seizure issues. Counsel fully reviewed and was knowledgeable of the evidence the State would present against Applicant at trial and conducted legal research respecting the issues involved in the case. Counsel also spoke with Applicant concerning his version of the events and any possible defenses. Counsel visited the scene and interviewed the victim of the armed robbery before trial. Counsel carefully reviewed and investigated the circumstances surrounding the traffic stop. Applicant's arrest for driving under suspension, the search and seizure, and grounds for moving to suppress the evidence found as a result. Counsel also testified about his extensive trial preparation and this

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Court finds counsel was well prepared for trial.

Counsel testified that he reviewed the warning ticket issued to Applicant on October 4, 2006. Counsel also testified that Applicant repeatedly told counsel that he was not considered driving under suspension when the warning ticket was issued approximately nine days before the incident. Counsel testified that he conducted extensive research into the issue and discussed the matter of Applicant's suspension with DMV officials to verify the suspension of Applicant's license. Counsel did not call Gentry as a witness at trial because the status of Applicant's license on an earlier date would not have had a bearing on the status of Applicant's license on the date of the crime, as Gentry easily explained at the hearing. Instead, counsel repeatedly contacted DMV and learned that Applicant's license was suspended at the time of the incident on October 13, 2006. Nevertheless, counsel elicited testimony from Applicant during the suppression hearing to support Applicant's contention that his license was not suspended, including evidence that the compliance notice contained a notation stating the fine for the traffic ticket was paid and that "suspension imposed for this violation may be withdrawn." (Tr. p. 75, lines 2 – 15; see also p. 87, lines 3 – 19). Applicant also testified at the suppression hearing that he was stopped for speeding before the incident on October 13, 2006, that "all of his paperwork came back clear, and the dispatch said my license was not suspended at that time." (Tr. p. 77, line 13 – p. 78, line 7). However, on cross-examination, Applicant admitted that the DMV notice indicated that Applicant's license was suspended on September 26, 2006, and that the suspension would continue until Applicant received notice for DMV that the suspension had been cleared. (Tr. p. 85, line 20 – p. 86, line 23).

This Court finds that Applicant failed to establish that his license was not suspended at the time of the incident. Counsel confirmed that the information provided to Officer Majewski

by the dispatch officer was correct and reviewed the summary verifying that the dispatcher informed the officer that Applicant's license was suspended. Counsel testified that he failed to find any evidence in his investigation to establish that the officer was not telling the truth about the suspended license. This Court finds counsel's testimony credible. This Court also finds that Applicant failed to present any credible proof at the post-conviction relief hearing to establish that the officer was not truthful in his testimony on this point.

Moreover, counsel testified that he and Applicant discussed the issue of the officer's good faith belief that Applicant was driving under suspension and the officer's duty to act on the information supplied to him. Counsel stated that he informed Applicant that even if Applicant's license was not actually suspended at the time of the arrest, the trial court would find that the officer had a good faith basis to make the arrest. Nevertheless, counsel elicited testimony to bring Applicant's concerns and position to the attention of the trial judge.

Contrary to Applicant's claim, it was not possible for counsel to establish that Applicant's license was not suspended on October 13, 2006. Nevertheless and as counsel stated and the trial court ruled, it did not matter whether Applicant's license was actually suspended at the time of his arrest on October 13, 2006. The evidence shows that Officer Majewski acted in good faith in arresting Applicant for driving under suspension based upon information conveyed to him by the 911 dispatch officer. (Tr. p. 87, line 3 – p. 88, line 21). See Davis v. U.S., 131 S. Ct. 2419 (2011); Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005); see also State v. Herring, 387 S.C. 210, 692 S.E.2d 490 (2009); State v. Cuevas, 365 S.C. 198, 616 S.E.2d 718 (Ct. app. 2005); State v. Swiling, 249 S.C. 541, 155 S.E.2d 607 (1967). Accordingly, Applicant failed to show that counsel's performance in this regard was deficient or that he suffered the requisite prejudice.

Ineffective Assistance of Appellate Counsel

Applicant also asserts that he received ineffective assistance of appellate counsel for appellate counsel's failure to present on appeal the issue that the arresting officer lacked probable cause to initiate a traffic stop based upon Applicant's failure to use a turn signal in a "turn only" lane.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, Id. at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds that Applicant's appellate counsel has extensive experience in the trial and appeal of criminal cases. Counsel reviewed and considered the requests from Applicant and

thereafter conducted a thorough analysis of the trial transcript and law respecting issues preserved for appellate review. Due to the nature of her appellate practice, counsel is also aware of developing legal trends and the issues that might be more favorably received by the appellate courts at any given time. Counsel in this case engaged in thorough research of the issues preserved for appellate review and also relied upon research and her experience in presenting similar issues on appeal in other cases. Counsel thereafter chose what she considered to be the most meritorious of the issues for inclusion in the appellate brief for review by the South Carolina Court of Appeals. Counsel chose not to raise each and every issues preserved, including the issue about which Applicant complains as a matter of appellate strategy. This Court finds counsel's appellate strategy to be reasonable based upon the issue counsel included in the brief on appeal, issue Applicant suggested and Applicant's failure to argue or show that the issue would have been successful on appeal, particularly in light of the alternate ruling of the trial judge in this case and the totality of the circumstances surrounding the stop, search, and seizure. Applicant's allegation concerning appellate counsel is without merit and must be denied and dismissed.

This Court finds the Applicant failed to meet his burden of proving either deficient performance on the part of trial or appellate counsel, or any prejudice arising from the alleged deficiency. Counsel's performance did not fall below reasonable professional norms in the Applicant's case and there is no reasonable probability that a different result would have been reached but for any alleged errors.

Trial Court Issues

The Applicant also raised on number of allegations in his application and amendments to the application in which he contended the trial court erred in its rulings during trial. Applicant

concedes that allegations of trial court error are not proper for post-conviction relief and elected not to pursue those claims. This Court agrees. Allegations pertaining to issues that could or should have been raised at trial and/or on appeal therefrom and are not proper for consideration in a post-conviction relief action. An application for post-conviction relief is not a substitute for an appeal and does not afford relief in cases of alleged error for which remedies were available during the trial or on appeal therefrom. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

The allegations are denied and dismissed.

CONCLUSION

Based on 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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

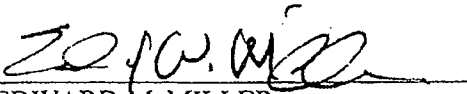
This Court cautions the parties that in order to secure the appropriate appellate review, notice of appeal must be served within thirty (30) days after receipt of written notice of entry of this Order by counsel. This Court directs the attention of the parties to South Carolina Appellate Rule 243 for appropriate procedures after notice has been timely served and filed. This Court notes that post-conviction relief counsel must advise Applicant of the right to seek appellate review of the order. Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance is seeking review of the denial of post-conviction relief.

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 30 day of January, 2012.


EDWARD M. MILLER
Presiding Judge
Eleventh Judicial Circuit

Greenville, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP3202120

Korell Battle	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. Nonsuit);
☐ 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: _____

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 JUDGMENT ENTRY

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 (List amount(s) below)

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.**

	2130	2/10/2012
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **9th day of February 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **9th day of February 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

John E Duncan 137 East Butler St/Ste 3 Lexington, SC
29072

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kaelon E May Office Of The S.C. Attorney General Post
Office Box 11549 Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

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

KORELL BATTLE, #292294,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

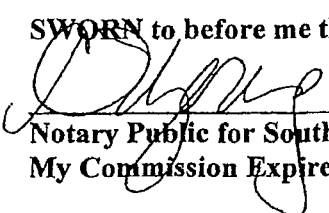
John E. Duncan, Esquire
137 E. Butler St., Ste. 3
Lexington, SC 29072

This 22nd Day of February, 2012.



Lena Pelishenko
Legal Assistant for Respondent

SWORN to before me this 22nd Day of February, 2012.


Notary Public for South Carolina.

My Commission Expires: 10/28/2014