VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Nov 25 2024

S.C. SUPREME COURT

Certiorari to Beaufort County

Honorable Kristi F. Curtis, Circuit Court Judge

TERRANCE SEABROOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000930

APPENDIX

KATHRINE H. HUDGINS
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 28th of February 2012.

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

June 5, 2014

Amanda K. Haffenden

Circuit Court Reporter

WITNESSES

Chapman/BCSO

ARREST WARRANT NUMBER

M056515

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: DEC 16 2010

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO.: 2010GS0702220

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

Dec.
~~November~~ **Term 2010**

THE STATE

vs.

Terrance Seabrook

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910
CDR Code:0095

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

Defendant

I _____

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

Defendant

Witness:

C.C.C. PLS. and G.S.

502

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0702320

At a Court of General Sessions, convened on November 18, 2010, the Grand Jurors of Beaufort County present upon their oath:

Kidnapping / Kidnapping

That in BeaufortCounty, South Carolina, on or about October 4, 2010, the Defendant, Terrance Seabrook, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Sean Kirkpatrick, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

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

Solicitor

WITNESSES

Chapman/BCSO

ARREST WARRANT NUMBER

M056516

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: DEC 16 2010

VERDICT

Foreperson of Petit Jury
Date:
INDICT

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

~~November~~ Dec. **Term 2010**

THE STATE

vs.

Terrance Seabrook

Indictment for

Robbery / Armed Robbery, robbery while armed or allegedly armed

SC Code: 16-11-0330(A)
CDR Code:0139

rights, I hereby waive presentment to the Grand Jury.

504

Defendant

I _____

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0702321

At a Court of General Sessions, convened on November 18, 2010, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That on or about October 4, 2010, in Beaufort County, South Carolina, the Defendant, Terrance Seabrook, at 1702 Sea Island Parkway St. Helena, SC, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Sean Kirkpatrick with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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

Solicitor

506

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort)
STATE VS.)
Terrance Seabrook)
AKA:)
Race: B Sex: M Age: 40)
DOB: [redacted] SS#:)
Address:)
City,State,Zip:)
DL#: SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS0702321
A/W#: M056516
Date of Offense: 10/4/2010
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

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

ATTEST:

Bannon, Jim	77414			
	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of life without Parole days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.70
TOTAL		$ 133.70

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

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

Clerk of Court/ Deputy Clerk Lu Sanders & Jones
Court Reporter: Deborah Everett
Presiding Judge
Judge Code: 2142
Sentence Date: 3/21/2012

Certified - A True Copy

FORM 5 later on to amended 507

STATE OF SOUTH CAROLINA)
)
County of General Session)

IN THE COURT OF COMMON PLEAS

RECEIVED
FEB 15 2019
P.C.I. MAILROOM

Terrence C. Sobrale 154020) 2019CP0700369
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
02 FEB 20 PM 12:12

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution

2. Name and location of Court which imposed sentence Beaufort County General Session

3. Name(s) of co-defendant(s) (if any) Shabazz, Shatike Justice

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) armed robbery mo 56516

508

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Life without parolled April 27, 2019

(b) N

(c) N

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) ✓ after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

~~MAYBE~~ YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. N

iii. N

(b) the result in each such Court to which you appealed:

i. N/A

ii. N

iii. N

(c) the date of each such result:

i. N/A

ii. N

iii. N

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N

iii. N

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) Ineffective Assistance of counsel

(b) violation of my 14th, 6th, And 5th Amen

(c) lack of subject matter jurisdiction

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

(a) the counsel didn't give a time objection

(b) and the all of my rights of due proc

(c) ess

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. n/a

ii. "

iii. "

iv. "

(b) the name and location of the Court in which each was filed:

i. n/a

ii. "

iii. "

510

iv. 11

(c) the disposition thereof:

i. N/D

ii. 11

iii. 11

iv. 11

(d) the date of each such disposition:

i. 11

ii. 11

iii. 11

iv. 11

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. 11

ii. 11

iii. 11

iv. 11

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

11

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/D

ii. 11

iii. 11

(b) the proceedings in which each ground was raised:

i. 11

ii. 11

iii. 11

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/P

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? denied

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Larry W. Woodner II esquire address unknown

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Mr Woodner did the trial and motion for reconsideral of

ii. sentence

iii. _____

19. State clearly the relief you seek in filing this application:

vacation of sentence, and given a new trial

20. Are you now under sentence from any other court that you have not challenged?

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Beaufort)

I, Terrence L. Seabrook, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Terrence Seabrook

SWORN to and subscribed before me this 15 day of February, 2019.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: Sept-25-2023

2019CP0702309 513

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Terrence L. Seabrook, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Terrence Seabrook

Applicant

SWORN or affirmed to and subscribed before me this 15 day of February, 2019.

Tamara Cornwell

Notary Public

My Commission Expires: Sept-25-2023

RECEIVED

FEB 15 2019

P.C.I. MAILROOM

COPY

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS IN THE FOURTEENTH JUDICIAL CIRCUIT
Terrance Seabrook, #188620, Applicant,	)	Case No.: 2019-CP-07-0369
v.	)	**RETURN AND PARTIAL MOTION TO DISMISS**
State of South Carolina, Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed by Terrance Seabrook ("Applicant") on February 20, 2019, would respectfully show this Court:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. In December 2010, the Beaufort County Grand Jury indicted Applicant for kidnapping (2010-GS-07-2320) and armed robbery (2010-GS-07-2321). Larry W. Weidner, II, Esquire, represented the Applicant. Assistant Solicitor James M. Bannon represented the State. Appellant's case was called to trial on February 27, 2012 before the Honorable Roger M. Young, Sr., and a jury. On February 28, 2012, Judge Young granted Appellant's motion for a continuance. Appellant's case was again called to trial on March 19, 2012 before the Honorable Carmen T. Mullen, and a jury. On March 21, 2012, the jury acquitted Appellant of kidnapping, but found him guilty of armed robbery. On March 31, 2012, Judge Mullen sentenced Applicant to confinement for life without parole.

Applicant filed a timely Notice of Intent Appeal on May 4, 2012. Appellate Defender Lara M. Caudy of the South Carolina Commission on Indigent Defense – Division of Appellate Defense perfected the appeal (Appellate Case No. 2012-212388). On May 2, 2014, Appellant

filed a motion requesting his case be remanded to the circuit court to reconstruct the record. By order filed June 11, 2014, this Court granted Appellant's motion and remanded the case.

On April 15, 2015 a hearing was held in Beaufort County before Judge Mullen to reconstruct the remaining portions of Appellant's trial. At the conclusion of the hearing, Judge Mullen ruled the record had been sufficiently reconstructed to allow for meaningful appellate review. On April 23, 2015, Appellant filed a Notice of Intent to Appeal from Judge Mullen's oral ruling. Judge Mullen subsequently filed a written order adopting her oral findings on August 12, 2015.

By order filed August 21, 2015, this Court granted Appellant's motion to hold the appeal of his conviction and sentence in abeyance pending resolution of his appeal from the order reconstructing the records. Appellant filed an Initial Brief of Appellant and Designation of Matter on December 14, 2015 challenging the trial court's finding that the record of Appellant's trial had been sufficiently reconstructed to allow for meaningful appellate review. The state filed an Initial Brief of Respondent and designation of matter on March 15, 2016. By opinion filed April 19, 2017, this Court affirmed the trial court's finding. State v. Seabrook, Op. No. 2017-UP-164 (S.C. Ct. App. Filed April 19, 2017).

Subsequently, Appellate Defender Caudy filed an Anders[1] brief and moved to be relieved as counsel for Applicant. On January 1, 2018 the South Carolina Court of Appeals dismissed the appeal and granted Counsel's motion to be relieved. State v. Seabrook, Unpub. Op. No 2018-UP-040 (S.C. Ct. App. Filed January 31, 2018). The remittitur was returned on February 16, 2018.

First Post-Conviction Relief Application

The Applicant subsequently filed his first application for PCR on March 10, 2014 (2014-CP-07-0562), in which he alleged the following grounds for relief:

[1] *Anders v. California*, 386 U.S. 738 (1967).

1. Ineffective Assistance of Trial Counsel
2. 5th, 6th, and 14th Amendment Violations
3. Due Process Violations
4. Lack of Subject Matter Jurisdiction.

The Honorable Perry M. Buckner, III, issued an order of dismissal without prejudice denying Applicant's application for post-conviction relief until such time as the direct appeal is resolved.

II. Current Application

In this second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel
   a. "the counsel didn't give a time objection"
2. Violation of Due Process Rights under 5th, 6th, & 14th Amendments
3. Lack of Subject Jurisdiction

Applicant filed an amendment to his application on November 20, 2019. Applicant alleged the following:

1. "Counsel failed to investigate the olloqotion in the case or the evidence and discovery and furthermore; failed to attend scheduled preliminary hearing set forth by Hon. Carmen T. Mullen. The dates of December 3, 2010 and this new date set by Mr. Mullens was 10, 2010. This was a violation of Applicant's due process rights of the 6th and 14th Amendment."

Applicant seeks relief and request this court vacate conviction and remand for a re-trial.

Attached to this Return and incorporated by reference are the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records for the South Carolina Department of Corrections, Applicant's appellate records, Applicant's prior post-conviction records, and his current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges he was denied the right to effective counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300

S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

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

Thus, a fair assessment of attorney performance requires every effort be made to

eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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

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

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

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

Respondent submits Applicant cannot satisfy either requirement of the Strickland test for any of this various claims of ineffective assistance of counsel. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve

these allegations of ineffective assistance of counsel. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Due Process Violations

Applicant also alleges he was denied due process of law based on a general claim that the State failed to obtain exculpatory evidence. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must ". . . specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to this allegation. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegation of a due process violation. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive

amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. Failure to Investigate

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014). Respondent submits that Applicant cannot meet his burden in regards to any claims that counsel was ineffective for failure to investigate.

VI. Subject Matter Jurisdiction

Applicant alleges a lack of subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act — notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 640 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V., § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

IX. Request for an Evidentiary Hearing on Ineffective Assistance of Counsel Claims

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on the allegations of ineffective assistance of counsel as set forth in the application.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

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July 13, 2020

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
2020 JUL 17 PM 2:06	)	
Terrance Seabrook, #184020 JERRI ANN ROSENEAU BEAUFORT COUNTY, S.C. CLERK OF COURT	)	Case No.: 2019-CP-07-0369
Applicant,	)	
v.	)	Certificate of Service by Mail
State of South Carolina	)	
Respondent,	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Terrance Seabrook, #184020 (Q3B-0102-T)
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

DATED this 13th day of July, 2020.

Jennifer Jennison

Jennifer Jennison, Administrative Coordinator
for Respondent

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

Terrance Seabrook,

Petitioner,

vs.

Transcript of Record
2019-CP-07-0369

State of South Carolina,

Respondent.

July 21, 2022
Beaufort, South Carolina

B E F O R E:

The HONORABLE KRISTI F. CURTIS

A P P E A R A N C E S:

James K. Falk, Representing the Petitioner

Lauren Mims, Representing the Respondent

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

THE COURT: The next matter is Terrance Seabrook.

(Off the record.)

THE COURT: Okay. Now, we're here on Terrance Seabrook. Case number 2019-CP-07-00369, and this is Mr. Falk on behalf of the applicant.

And then that's you, Miss Mims?

MS. MIMS: Yes, ma'am.

THE COURT: Okay. If you want to start us off, ma'am.

MS. MIMS: May it please the Court?

THE COURT: Yes.

MS. MIMS: For the record, I'm Lauren Mims and I'll be representing the State of South Carolina.

This the post-conviction matter of Terrance Seabrook v. State, docket number 2019-CP-07-00369. This matter is before the Court based on an application for post-conviction relief filed Mr. Seabrook in Beaufort County on February 20, 2019.

In December 2010, the Beaufort County Grand Jury indicted applicant for kidnapping and armed robbery. Larry Wagner, Esquire, represented the applicant, Assistant Solicitor James Banner,

represented the State. Applicant's case was called to trial on February 27, 2012 before the Honorable Roger M. Young, Sr. and the jury. On February 28th, Judge Young granted applicants motion for a continuance.

Applicant's case was again called to trial on March 19th, 2012 before the Honorable Carmen T. Mullen and the jury.

On March 21st, the jury acquitted applicant but found him guilty of armed robbery.

On March 31st, 2012, Judge Mullen sentenced applicant to confinement for life without parole.

Applicant filed a timely notice of appeal on May 4, 2012. Appellant defender Lara Caudy of the South Carolina Commission of Indigent Defense, division of appellant defense perfected the appealed.

On May 2nd, 2014, she filed a motion requesting this case be remanded to the circuit court to reconstruct the record by order filed June 11, 2014. This Court granted applicant's motion and remanded the case.

On April 15th, 2015, a hearing was held in Beaufort County before Judge Mullen to

reconstruct the remaining portion of applicant's trial. At the conclusion of the hearing Judge Mullen ruled on the record --ruled the record has been sufficiently reconstructed to allow for meaningful appellate review. On April 23rd, 2015, applicant filed a notice of attempt to appeal from Judge Mullen's ordered ruling. Judge Mullen subsequently filed a written order and adopted her ruling on August 12, 2015.

By order filed August 21st, 2015, this Court granted applicant -- excuse me -- granted applicant's motion to hold the appeal of his conviction and sentenced in abeyance pending the resolution of his appeal from the order reconstructing the record.

Applicant filed an initial brief of Appellant and designation matter on December 14, 2015 challenging the trial court's finding that the record of the applicant's trial had been sufficiently reconstructed to allow meaningful appellate review.

The State filed initial brief responding and designation of matter on March 15, 2016.

By opinion filed on April 19th, 2017, this Court affirmed the trial court's finding.

Subsequently, Appellant defendant Caudy filed an Anders brief and moved to be relieved as counsel for applicant. January 1st, 2018, the South Carolina of Court of Appeals dismissed the appeal and granted counsel's motion to be relieved. The remittitur was returned on February 16, 2018.

Applicant subsequently filed his first application for PCR on March 10, 2014, the Honorable Perry M. Buckman, issued an order of dismissal without prejudice denying application for post-conviction relief until such time the directed bill had been resolved and this matter followed.

At this time, I would ask Mr. Falk to place the issues on the record.

MR. FALK: Your Honor, we're going forward on these five issues. It's an allegation that trial counsel failed to request a jury charge advising the Court -- or advising the jury that they had to take precautions when hearing a voluntary confession. There is, what I always call, a voluntariness charge, with respect to the skinny statements made by the defendant.

We're saying that trial counsel failed to

request the *Logan* circumstantial evidence charge, which we believe that there's a lot of circumstantial evidence in this case, and the *Logan* charge, I believe, is more favorable for defendants in circumstantial evidence cases.

And we believe that trial counsel failed to object to the prosecution, primarily in their closing argument, pitting the testimony of Shabazz, the State's primary witness, against the statements that the defendant made.

This is another case where there was a -- where the jury came back with a question regarding one of the elements of attempted murder -- excuse me -- of attempted of armed -- excuse me -- of armed robbery. And we believe, especially under the facts of this case, that the Court should done something more than just recharge the jury. And, again, I'm citing to the *State vs. Smith* case. I can provide that cite. It's back at my desk.

And, finally, and this is why we have Miss Caudy on the phone, there's a series of statements that were made. Mr. Seabrook came to the courthouse and made several statements to the police, none of which necessarily inculpate -- you know, incriminated him in this case. And trial

counsel objected on several grounds to the admissibility of that. He is arguing that they were hearsay statements and that they would not be allowed under 801(c) because these were not admissions made by the defendant, nor would they qualify under 804(b)(3), and the trial court so argued that they admissible under either one of them.

So, I mean, trial counsel said that there was a 403 issue and they weren't admissible because they are more prejudicial than probative. They were -- they didn't -- they were not not hearsay under the 801(c), and they are -- don't fit the hearsay exception of 804 -- 801(d)(2).

Now, the reason I have Miss Caudy on the phone is because this transcript had to get reconstructed, and it wasn't clear to me whether or not the issue was, in her appellate brief -- she did not raise this issue in the appellate brief, and the issue is, did she feel that trial counsel failed to preserve the issue on appeal, or did she feel that the issue was not meritorious.

THE COURT: Okay. Let me unmute so she can hear what I'm saying. So your issue regarding the appeal is that the trial counsel objected to

the admissibility of some of the statements. His argument against it at trial was that they were not admissions, and they did not follow any of the hearsay exceptions.

MR. FALK: Correct.

THE COURT: And, of course, the trial judge ruled against him, and so you think that was an issue for appeal.

MR. FALK: Yes, Your Honor. But it's unclear from the actual record from the court reporter whether or not the issue was properly preserved.

And this was an Anders brief, I believe. And so, a lot of times, with these Anders briefs it's because, you know, a lot times issues aren't preserved. So I just need some clarification on that point.

THE COURT: Okay.

Miss Mims, anything else you need to know before we go forward?

MS. MIMS: No, Your Honor. Those are the issues that I have received from Mr. Falk.

THE COURT: Okay. You can go ahead and call her.

MR. FALK: Miss Caudy, can you hear me?

MS. MIMS: You're muted.

THE COURT: Now you're unmuted.

MR. FALK: Miss Caudy, can you hear me? I can't hear you. Are you talking?

THE COURT: Yes, she is. She is muted. Try that again.

MR. FALK: Are we all here?

THE WITNESS: Good morning.

MR. FALK: Very well.

THE COURT: Let me get our clerk to swear the witness.

THE CLERK: If you'll just raise your right hand. Do you solemnly swear or affirm that the testimony that you give to the Court in this trial shall be the truth so help you God?

THE WITNESS: I do.

THE CLERK: Thank you.

WHEREUPON:

LARA CAUDY,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FALK:

Q Miss Caudy, can you hear me?

A I can.

Q So you heard my -- were you able to hear me when I

was stating what these issues were?
A No, sir. I heard the judge repeat the allegation though.
Q Here's the -- you recall that at this trial, there were some statements that Mr. Seabrook gave to the police; is that correct?
A That's correct.
Q And they were played -- and there was video -- it looks like three video statements; is that correct?
A I recall two.
Q Okay.
A I do recall two. But, yes, there were multiple statements that were recorded.
Q And none of those statements necessarily incriminated him; is that correct?
A I have no independent recollection. I'm only going off of what I wrote in my Anders brief. But in the brief I wrote that he gave inconsistent statements but not necessarily anything that I think incriminated himself.
Q Okay. So what issue did you raise on appeal?
A From his conviction and sentence -- there were two separate appeals because of the -- we had to reconstruct the record of the pretrial hearing because the court reporter couldn't transcribe the

transcript. But in the appeal from his conviction and sentence, I filed an Anders brief. And in that brief, I challenged the admissibility of his statements.

I only raised one ground that was raised by trial counsel below, and I argued that the course of techniques used by officers rendered the statement involuntarily.

Q Okay. So you are familiar with the statements. Well, I mean, you're familiar that there were statements made and there they were inconsistent?

A That's correct.

Q Okay. Now, trial counsel -- and the reason why I have you here is because I wasn't sure -- and I know I sent you an email on this -- I wasn't sure if you didn't raise this issue because you didn't think it was adequately preserved, or you didn't think it was meritorious.

Now, trial counsel raised the issue that the statements are not admissible because the statements would not qualify under -- you know, statements that are not hearsay under 801(c) because they do not amount to an admission by the defendant. And they go further. They wouldn't be admissible under hearsay exception for statements against interest, which would

be 801(d)(2).

Now, did you see that -- in the reconstructed transcript, did you see the trial counsel was trying to argue those issues?

A Again, this was over five years ago, so I have no independent recollection. I didn't go back and read the transcript from the reconstruction hearing.

I was the attorney who represented Mr. Seabrook at the reconstruction hearing, so I do have a vague recollection of it. Again, I'm going off of mostly what I wrote in my Anders brief which says that, trial counsel testified at the reconstruction hearing that he objected. The allegation that you're referring to was that they were not an admission under rule 801(d)(2). I don't recall him stating that he also objected because it was not a statement against interest.

Q Okay. Well, would those have been grounds to have raised on appeal?

A Certainly they're potential grounds. I don't think they have any merit in this case.

I think giving inconsistent statements as to where you were and what you were doing would certainly be a statement against interest.

Q So it's your testimony that most likely you didn't raise them because you didn't think they were meritorious?

A Not most likely. I did not raise the issue because I did not think it had any merit.

Q Fair enough. I wasn't trying to put words in your mouth. That's all.

A Yes.

Q But, you weren't concerned that it was an error preservation issue?

A No. I think we were able to reconstruct what the nature of the objections were during the reconstruction hearing.

Now, again, I did appeal that decision of the record of the trial hearing had it been sufficiently reconstructed to allow for a meaningful appellate review.

But given the Court of Appeals holding that it was sufficiently reconstructed and given Mr. Weidner's testimony that he objected on those three various grounds, I thought that it was sufficiently preserved to raise it, particularly given that I think the Court of Appeals would have been somewhat lenient knowing that we were working from a reconstructed record.

Q Fair enough.

MR. FALK: I have no further questions.

THE COURT: Miss Mims.

MS. MIMS: Briefly, Your Honor.

CROSS-EXAMINATION

BY MS. MIMS:

Q Good morning, Miss Caudy. How are you doing?

A I'm doing well. Thank you.

Q In your general practice, how do you decide to file an Anders brief? Or, how do you come to that conclusion, if you can answer that?

A Sure. When I'm first assigned a case, I requested all of the trial exhibits, any sort of written motions or orders that were filed during the trial.

When I ultimately get to the case, I read through the trial transcripts. I summarize all the testimony, all the motions and objections. Once I'm finished with that, I will look at the research and all the various preserved issues and decide whether any of them have merit.

If I conclude that none of the issues that are preserved have merit, then I will file an Anders brief.

Q And it's your testimony that's what happened in

this case, correct, regarding the statements?
A That's correct. Again, this case is very unique in that we did not have portions of the transcript. But ultimately, yes, that's what I did.

MS. MIMS: No further questions, Your Honor.

THE COURT: Okay. Anything further, Mr. Falk?

MR. FALK: No redirect. Thank you.

THE COURT: Any objection to me releasing Miss Caudy?

MS. MIMS: No, Your Honor.

MR. FALK: No, Your Honor.

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: Any other witnesses?

MR. FALK: Yes, Your Honor. We would like to call trial counsel.

THE CLERK: Could you raise your right hand? Do you solemnly swear or affirm that the testimony that you give to the Court in this trial shall be the truth so help you God?

THE WITNESS: I do.

THE CLERK: Have a seat. Just to keep

the record clear, whenever you get settled, state your first name and spell out your last name for the court reporter.

THE WITNESS: My name is Larry, W-e-i-d, as in Delta, n-e-r.

WHEREUPON:

LARRY WEIDNER,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FALK:

Q Mr. Weidner, how did you become involved in this case?

A I'm pretty sure I was appointed.

Q Okay. So what is your practice, generally.

A Really basic, four areas. I do a lot of family law and family law medication, criminal law, both state and federal, military court marshals, and I represent aviators. I'm an aviator, so I represent aviators when they get in trouble with the FAA.

Q And so your office -- where's your primary office?

A On Lady's Island here in Beaufort.

Q Can you just tell me a little bit -- just so we're all brought up to speed, what were the State's

allegations in this case?
A Kidnapping and armed robbery.
Q And they occurred at a -- sort of a popular convenience store, gas station kind of thing?
A It's one that's located out on Lady's Island.
Q Okay.
A I'm sorry. Saint Helena.
Q And Mr. Seabrook was questioned in the case?
A Yes.
Q And he gave some statements to the police; is that correct?
A Yes.
Q And is it fair to say that those -- so did he incriminate -- did he ever incriminate himself with those statements?
A I did not believe he did.
Q Did he ever -- okay. But the statements -- you heard appellate counsel raise an issue that she thought the statements were inconsistent. Would you agree with that?
A Yes.
Q All right. Now, just so I get your argument, and, again, we're working off a reconstructed transcript and it's hard to figure out what end is up. It seemed to me that you were arguing that those statements

would have not been admissible as non-hearsay under 801(c); is that accurate?

A And you're right, we're operating off of a reconstructed transcript and my memory of a case 10 years ago, so -- but I remember this was one of the central issues. I wanted to keep those statements out.

The government -- or prosecutor was obviously intent on putting them in, and I took the position that, first of all, they were more prejudicial than probative.

Second, that they were not an admission or a confession because they were not declarative statements. We got third-grade English. We got imperative, declarative, exclamatory, and something else, interrogative.

And my understanding on the hearsay was that they would need to be declarative statements admitting to his involvement in the offense, or confessing, if you will. And I took the position that they were not that, nor were they statements against -- nor could they come in as -- the way the government was going to do it, they were going to put those in in their case in chief, and my position was that couldn't do that because, essentially, they're improperly bolstering

their case and burden shifting to my client, which was impermissible.

Now, if Mr. Seabrook had testified, then they could certainly come in as prior inconsistent statements. I get that. But to lead out with them, I didn't think was proper, and so I raised those three and I thought one other.

Q Can I help you?

A Yeah.

Q Well, one of them was that it's not falling into the hearsay exception. That hearsay exception applies when declarant is not available, so he's not going to testify. He's not available. And then there's that exception for statements against interest.

A Right.

Q Is that what you were, kind of, thinking maybe?

A Candidly, I was going after everything I could get.

Q Fair enough.

A I mean, I raised as many of those issues that I can. I don't -- I had a 403. I always took the position they were prior inconsistent statements, so they shouldn't come in unless or until he testified, and then I took the position they were not admissions or confessions and, therefore,

shouldn't come in because they weren't admissions, or, you know, statements against, or whatever.

Q And so if the reconstructed transcript of the pretrial hearing said that, you were also arguing that it felt -- you know, it's not an exception under whatever that one was, 801(d)(2). You're not disputing that, that you had argued that point as well?

A I believe I did, yeah.

Q Yeah, okay.

A I went after everything I could think of on that. I really didn't want those statements in.

Q Now --

MR. FALK: One moment, Your Honor.

BY MR. FALK:

Q So he made some -- was there some consideration that maybe the police were, sort of, tricking him into making these statements, or sort of saying, hey, this guy is saying this?

A Was there some consideration, yes.

Q Okay. What I'm getting at is that, when I looked at the jury charges, there wasn't, sort of, that typical charge or charge that's sometimes used where you're going to warn the jury that when a statement comes in from a defendant that the jury has to make

their own, sort of, independent evaluation whether or not they thought it was voluntarily?

A Okay.

Q And let me just show you one that's frequently used. This is -- if you could just read this highlighted section right there. It goes on to the second page. And just read that to yourself.

A Okay.

MR. FALK: Your Honor, in my haste to leave my office last night, I had sent a copy of this statement to Miss Mims. The copies that I made I think are still on my desk. Could you -- I have forward to your clerk the statement that I had him just read.

THE COURT: That's the charge you just had him read?

MR. FALK: The charge, yes.

THE COURT: Sure.

MS. MIMS: I would ask that you briefly summarize --

MR. FALK: I was just trying to -- before I asked any questions. Hopefully, it's going to show up.

THE COURT: So what are you -- are you trying to send it to him so that we can --

MR. FALK: So that you've -- you know what I just showed him.

THE COURT: Okay. Do you want to email that to Miss Mims also?

MS. MIMS: He's provided a copy to me.

MR. FALK: She's the only one that has it.

THE COURT: I got you.

MR. FALK: I'm forwarding the email that I sent to Miss Mims last night.

THE COURT: Okay.

MS. MIMS: And I just wanted to clarify. Is this admitted into evidence?

THE COURT: I think -- I mean, if you read it right now, then it will be in the record.

MS. MIMS: Okay.

MR. FALK: All right.

BY MR. FALK:

Q So I'm going to go ahead and read this statement. It's a page and a half here. And so this is a jury charge that you frequently see in cases where defendants make a statement that defense counsel ask for, and it's what I -- sometimes it's described as the voluntarily discharge and it goes: "There's been

a statement alleged to have been made by the defendant that has been admitted into evidence in this case. And while the court has determined that the statement is admissible, I instruct you that you, the jury, make the ultimate decision of whether or not the defendant made the statement. If you defendant did make the statement, you must determine whether the statement was made by the defendant voluntarily and of his own free will. This means that the statement was not caused by police misrepresentation, pressure, force, fear, threats, coercion, or intimidation, or by the hope of a promise of leniency or a reward of any kind. In determining whether the statement was voluntary, you should consider both the characteristics of the defendant and the details of the question. Some of the factors you should consider are the age of the defendant, the defendant's education or lack of education, defendant's mental ability or capacity, the defendant's IQ or intelligence, the defendant's background environment, the place and length of detention, the nature of the questioning, and the advice or lack thereof to the defendant of his constitutional rights, including, but not limited to, the right to remain silent, that any statement could be used against him in a court of a law, the right to

have a lawyer present, that if he could not afford a lawyer, a lawyer would be appointed to represent him without any cost, and that he could stop making statements at any time.

"You must carefully consider all these circumstances before you give any weight to an alleged statement. The statement has the burden of proof beyond" -- excuse me. "The State has the burden of proof beyond a reasonable doubt that the alleged statement was voluntary. If you determine that it was, you may give the statement any further consideration that you deem is proper. You must decide what weight, if any, should be given to the alleged statement.

"If you determine that the alleged statement was not a free and voluntarily statement of the defendant, you should not consider the statement at all."

All right. You had an opportunity to read it. Would that have -- was there a reason why you didn't ask that type of question -- ask for that type of jury charge?

A Well, the whole -- it kind of went back to the fact that I felt the State had been allowed to put the cart before the house. In other words,

they got their statements in in their case in chief. So I had gotten shot down on that. So that bell had been rung.

So then, sort of, the strategy was -- and the cops did, you know, a credible job, I guess, or a good job. I mean, the State took them through a lot of those factors.

So, I had investigated pretty hard pretrial, and then we had a Jackson v. Denno hearing and the cops withstood that.

I asked some questions, if I remember right, of the cops when they were on the witness stand in the trial, but, you know, they essentially said, we brought him in. He talked to us. In fact, he reinitiated with us. We Mirandized him. I asked -- there was either two or three cops that I asked all that for. So that a boxed canyon I was flying into. I mean, I wasn't going to get anything there, and that bell had been rung.

So then what I decided to do, to the best of my recollection was, I had to manage and damage control that.

So, what I did was, I went after the cops to get them to say as many times as I could that every time they talked to Mr. Seabrook he said, *I didn't do*

it. So then it became, not a game in the sense of a ha-ha game, but a game as in, you know, strategic decision-making and a dynamic environment game to get them to say, *Every time we talked to him he said, I don't know.* And you talked to him again and he said, *I don't know.* And he came back to the talk to you and he said, *I don't know.*

So the last thing I wanted after all of that was for him to be saying, *I don't know,* and then for a judge to be reading an instruction that said, well, he made a voluntarily confession, so I mean -- right? Or, let me tell you about the voluntariness of confessions or admissions or statements. I mean, like the only thing the jury would have heard, was, well, the judge just said he confessed. Like, what are we doing here? So I felt like that was not going to be beneficial to my case.

Q Thank you.

Okay. Now, did you think that was any problematic circumstantial evidence in this case? Or, what did you think the strength of the State's case would be?

A The strength of the State's case? Well, their challenge was to put Mr. Seabrook at the scene. I mean, we had the video. You know, what

happened was really not a question. It was more of a whodunit kind of a thing. And so that was their challenge, and they fixed it. That's why it got continued the day before trial, because they fixed it by giving Shatike Shabazz immunity and he put Mr. Seabrook there. So I guess that was their challenge and they fixed it by giving Shatike Shabazz the immunity that they did.

I mean, that, sort of, rocked the whole of the defense theory, and that's why I think the Court gave me a continuance. I was like, Judge, I came in here prepared with a defense theory and plan. It's just gotten bombed.

Q Do you think -- I mean, you're familiar with some of the different circumstantial evidence charges that are used?

A I am.

Q And there's one that comes from the *Logan* case out of South Carolina. So the circumstantial evidence charge that was given --

MR. FALK: May I approach the witness?

THE COURT: Yes.

BY MR. FALK:

Q It starts right there. It's on page 266 of the record on appeal.

A Well, there's circumstantial, and then the rest of it, it has to do with credibility.
Q Right.
A So you're just talking about circumstantial one?
Q Just the circumstantial evidence charge.
A Okay.
Q All right. So, for the record, what page is that?
A 266.
Q So on 266 is where the Court's circumstantial evidence charge was. Now, I'm going to read the Logan circumstantial evidence charge from *State vs. Logan*, 405 S.C. 83 where it goes, "There are two types of evidence which are generally presented during a trial; direct evidence and circumstantial evidence.

"Direct evidence directly proves the existence of a fact. It does not require deduction.

"Circumstantial evidence is a proof of a chain of facts as circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between to the weight or value to be given to either direct or circumstantial evidence.

"However, to the extent the State relies on

circumstantial evidence, all of the circumstances must be consistent with each other, and, when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.

"If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed."

Does -- by talking about that there needs to be a chain that the State has to establish and the chain has to -- you know, end up conclusively at guilt as opposed to just suspicious, would you agree that that circumstantial evidence charge may be more favorable towards defendants than the one that was charged?

A I would. I would, yeah.

Q All right.

A Of the two, I'd rather have that one. Yes.

Q All right. Is there a reason why you didn't request the *Logan* charge?

A This case was tried in 2012.

Q Okay.

A *Logan* came out in, what, '14, '15, somewhere in there. So, I mean, that charge didn't really exist then in the matter of -- there was no *Logan* charge, as I recall. That's after.

Q All right. Now, I had some concerns. I'm going to show you on page 247 of the transcript, and I'm going to refer to --

MR. FALK: Your Honor, I'm referring to 247 of the transcript, lines 2 through 25.

BY MR. FALK:

Q If you could, kind of just look over that part of the closing argument.

A Okay.

Q It may just be my opinion, but it would seem that the State was trying to pit Shabazz's testimony against the statements that came in to the Court -- that were played to the Court that came from Mr. Seabrook, you know.

A Was it him or the clerk's --

Q Did you consider objecting to that portion of the closing argument?

A I went after that portion of the closing argument. I think I wanted to. I mean, one of the big central issues was this guy -- yeah.

So what I did was, I went in -- I attacked to him to the teeth on that. I said, in this case, what you wind up with is to get Walter Jenkins, a/k/a Shabazz, a/k/a, Justice, a/k/a Bruiser immunity.

In other words, it was sort of, *That's the*

best you have got, right? The only thing you've got that puts Terrance Seabrook at that site is the testimony of Walter Jenkins, a/k/a Shabazz, a/k/a Justice, a/k/a Bruiser. That's it? That's what you've got? And the only way you got him in here was to give him immunity? And the cops didn't even believe him the first time because they arrested him too and he was charged with this right up until two weeks ago. The credibility issues were huge.

And if I was going to be able to argue that my guy kept saying, *I didn't do it, I didn't do it, I wasn't involved*, and the best they've got is that Shatike Shabazz guy, I mean, yeah, that was -- I happy to go after that.

Q But did you consider objecting to -- stopping him from going further down that page and objecting to the closing argument?

A I mean, sir, you're asking me what thought I had in the middle of a trial ten years ago.

Q Fair enough.

A I can't answer that.

Q Thank you.

Now, let's talk a little bit about the clerk in this case. Is there -- was there maybe a suspicion in this case that the clerk might not really have been

scared of the person who took money out of the till?
A That was part of my theme and theory of the case.
Q Because there was testimony that, somewhere along the line, you know, the money got handed over -- well, first of all, he opened the door for the guy, right?
A Right.
Q And then he handed what was in the top of the till, and then, sort of, on his own, picked up the till and pulled all the money out of the bottom.
A Correct.
Q And there was also testimony that there was more money in the bottom than should be because normally, when they get a hundred bucks, they put it in the safe, something like that?
A The only thing I remember is, there was something about he was supposed to be doing drops and he didn't. In other words, dropping the money into some sort of safe that he couldn't get into. There was something about that. I just remember something about drops, and he hadn't done all his drops. That's what I remember.
Q So would you agree that, possibly, a weakness in the State's case was whether or not the clerk was actually a victim of an armed robbery?

A I argued that, yes.
Q Okay.
A I said they didn't make their elements because he wasn't a victim, and he wasn't under force or threat or violence.
Q All right. So on page 277, the jury came back with a question.
A Okay.
Q So based on them, sort of, asking for elements there, do you think it's fair to assume that the jury might have, sort of, been accepting part of your argument?
A I don't remember speculating one way or the other, but I thought it was a good sign that they were coming back and asking for a definition because I felt like the government -- or the State hadn't proven that Mr. Seabrook had taken the money through threats or force or violence because the clerk was in on it. I felt like that was the element that they couldn't prove, or that I had -- if that answers your question.
Q Okay.
Now, this case does predate the trial of Seabrook, this case that I'm going to point you to. And I'm going to point you to a case that I have here

and it's *State vs. Smith*. Let me just get the section for you.

In, sort of, this last paragraph of the case. And to sort of bring you along in that case, and this is --

MR. FALK: Let me give you the cite. Judge, I'll provide the cite at the end.

BY MR. FALK:

Q And in that case, under the facts of the *State vs. Smith* case, it appeared that maybe the jury had a question about the definition of malice and the jury asked for the Court to recharge on malice. And in the case, the judge, as I said, opened up the charge book and just recharged on malice.

And that's really what -- is it fair to say that's what happened in this case, the jury had a question about armed robbery and the judge just recharged armed robbery?

A Well, I mean, we can look at it again. But my -- just from reading that, it says they asked specifically for something and they got it.

Let's see. Page 277, line 6: THE COURT: All right. The jury would like the lawful definition of armed robbery.

Q And then if you read further, the judge --

A Then she read the lawful definition of armed robbery. Yeah, that's what happened.

Q Right.

Well, in this Smith case, the court found fault with the judge just merely -- it would appear that the jury comes up with a, you know, well-phrased question -- a well-stated question, that, really, the job of the judge at this time is to try to answer the question and not just reread the charge. And they call upon South Carolina trial court judges to try and come up with something maybe a little bit more creative or a response that actually answers the jury's question.

So if the jury was asking, you know, *Do you have to take something away from somebody by force in order for it to be armed robbery?* Which you would probably agree that might be what the jury was thinking, especially with the way that you had your closing argument, you could have suggested to the Court -- well, first of all, objected to the judge's recharging and suggested to the Court --

MS. MIMS: Your Honor, this is argument.

THE COURT: I'm going to allow the question.

BY MR. FALK:

Q Did you ever consider objecting to the judge's recharging an armed robbery?

A Can I read this first?

Q Yes.

A I guess -- I guess my response to you is this: This case says, and I think -- I mean, I wouldn't presume. I've never been a judge. I wouldn't presume to speak for them, but the Court says: "Quite often the judge must tailor, mold, or even sculpt the law and fashion an answer to fit the question." I think that's probably one of the challenging, not to -- and to be, essentially, neutral in the instructions that you're giving.

In this case, they ask a question that was not just, *Give us the definition.* This was, "With voluntarily manslaughter to have legal provocation, does a person need to be struck himself or is it enough to see someone else being assaulted for there to be enough cause to act?"

We've all been in trials where juries come out with these questions and it becomes, I would expect, a challenge for the Court to address their answer.

But, in this case, it was a fairly -- it was, *Give us the definition*, and she did. I don't

know that -- that I think is different than this where the jury comes out with a well-formed question, but there's a lot of elements to explaining that or answering that to a jury.

But when they come out and say, *Give us the definition,* and the judge gave them the definition again, I don't know what else I would have done.

Q Could you have considered saying, if the State does not prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty?

A I think that's in a reasonable doubt charge. That's not in the answer to the question issue, right?

Q I don't doubt that it is.

I'm just saying, when you have an opportunity to recharge the jury, would that have been something that you could have asked for?

A Well, I didn't hear anything about elements. I mean, I was looking to jump on something. Because that was essentially my defense, is that they have not proven one of the critical elements.

But what they said was, *Give us the definition,* and she -- the judge gave them the definition.

I didn't see room -- well, I don't know. Again, we're asking for an instantaneous thought or instinct that I had at trial 10 years ago, but I don't think, and I certainly don't recall one way or the other, an opportunity there to jump up and start trying to editorialize it with the Court. I think I would have gotten a poor reaction.

Q Fair enough.

MR. FALK: Your Honor, I'll give you the cite for the Smith case. It's the one that I -- I think it was Jailynn Williams in Charleston, and it is 403 S.E.2d 162, Court of Appeals, 1991.

May I have a moment, Your Honor?

THE COURT: Yes.

MR. FALK: May I have a moment, Your Honor?

THE COURT: Sure.

MR. FALK: Your Honor, may we approach?

THE COURT: Sure.

(Bench conference off the record.)

MR. FALK: Your Honor, I was going to ask one other question, which was -- raise one other issue that my client wanted to raise that was in the five that I brought forward. I'm not making any comment on its meritoriousness. I'm just

saying my client wants to raise and it's probably something that needs to be raised. It is not something that I gave Miss Mims in advance, and I don't think it's fair certainly for me to ask this question without her having a little bit of opportunity to prepare. So I would suggest that maybe if we could have a brief recess and she could speak with her witness before I ask the question.

THE COURT: And, again, you've already told Miss Mims what you're getting ready to ask him.

MR. FALK: Right.

THE COURT: And you don't have any objection to her speaking with him.

MR. FALK: Not at all.

THE COURT: Even though he's mid testimony.

MR. FALK: Right.

THE COURT: Okay.

Miss Mims, do you want -- anything you want to say on the record?

MS. MIMS: We consent to a recess. I can ask Mr. Weidner about this.

THE COURT: Okay. Let's just be at

recess for a few minutes. I need a little short break anyway.

(A break was taken from 11:48 a.m. to 12:07 p.m.)

THE BAILIFF: All rise. Court is back in session.

THE COURT: Thank you, you-all. Please have a seat.

Go right ahead.

BY MR. FALK:

Q How much time did they give you between -- what length of continuance did you get in this case? I mean, was it weeks or months?

A I think it was two weeks. We started on the 27th or -8th of February, just because I had to read all that into the record, so I think this thing got tried in, like, the middle of March. So maybe two weeks. That's all I remember. I don't know.

Q Did the State supply with you with the NCIC for Mr. Shabazz prior to the second trial?

A I'm sure they would have. I actually do remember I did get that and on the clerk.

Q Beg your pardon?

A I had some record on Shabazz and on the clerk.

Q Was he on any type of probation at the time of this trial?
A I have no recollection of it. I don't know.
Q If you're trying a case and a witness in a case is on probation, is that something that you would generally impeach them with?
A If it's within the 10-year rule. I don't know. Was he convicted and when? I mean, I'm sure I looked at that, but I don't recall the thought process at this point.
Q You would agree -- would you agree that if it were admissible under the rules of evidence that somebody had a criminal record or was on probation at the time that that is fertile ground to impeach him with?
A I would agree that it is fertile ground for impeachment, but that does not necessarily mean that I would go there if I had a better horse to ride.
Q Would there be a reason why you would not -- if he were on probation -- and I know I'm asking you to speculate -- if he were on probation, would there be a reason why you wouldn't have tried to impeach?
A This is all speculation. But let's -- like in this case -- let me think about that. Well,

there's a lot of X's in that equation. For example, I don't know how long prior to that, or what he had been convicted of. I'm assuming that you-all have information that he was convicted of something at some point. I don't know when or where that was. I have no recollection of that.

But let's assume for the moment there was something out there. If it was attenuated and I had -- like in this case, I mean, they had charged him -- they had given him immunity on the eve of trial to say one thing and one thing only, that Terrance Seabrook got out of his truck that day.

Everything else, this guy was all over the page about. What was he wearing? Who he was with. He even said at one point that the guy that got out of the truck didn't look like Terrance Seabrook because he was bigger. Like this guy was all over the page.

So where I was headed -- I remember that much. Where I was headed, you're essentially getting out of getting charged to say one thing, and that is Terrance Seabrook got out of there. And everything else you told this jury -- and it was all over the page -- right?

I mean, it was at one point, I remember -- I had him pinned into a corner, and I said, essentially.

I'm sure it's in the record. But I said essentially that your ground of immunity hinges upon one thing and one thing only, and that is putting that Terrance Seabrook as getting out of your truck. He said something like, *Well, when you put it that way.*

I said, *I am putting it that way to you. That's exactly what you're here to do, right? Like, your whole immunity hinges on that.* I remember that moment actually, surprisingly.

Because he said, *Well, when you put it that way.* I was like, *I'm putting it that way. That's exactly what you're doing.*

Blasting that, I don't think that -- I'd have to be in the moment, but I'm not sure I would want him to get that shotgun blast at this guy, and then say, *Oh, by the way, you were convicted 12 years ago*, or something. I think it would lose steam.

So it would depend -- I guess my answer to your question is, it would depend on how I felt the evidence and how that trial was going and where I could make my best punches and get the jury to remember it.

MR. FALK: No further questions.

THE COURT: Yes, ma'am. Miss Mims.

CROSS-EXAMINATION

BY MS. MIMS:

Q Good morning, Mr. Weidner.

A Good morning.

Q How long have you been practicing law?

A Since -- well, I passed bar in 1988, so -- and then for the first eight years, I was in and out of the legal community because I was on active duty as a Marine. So practicing some and not. And then I got out in '96, and I've been practicing since then full time.

Q And you testified a little bit earlier that you do a little bit of criminal law?

A Yes.

Q Okay. And you've also testified that you were appointed to Mr. Seabrook?

A That's my recollection, yes.

Q Okay. And did you represent him throughout the entire process, do you remember?

A I think originally -- I think mostly, yes. I mean, Traci -- I think Traci Campbell had this case first, or she had some -- because I remember talking to Traci, and I don't know if that's because she had represented Mr. Seabrook before or whether she had the case before and then I picked it up from her because of a conflict.

I just remember talking to a PD, public defender friend about this case because she had had some involvement with Mr. Seabrook. That's the best I got.

Q Okay. Can you give a brief summary of the evidence that the State provided you in this case?

A I got the initial police reports. I got some videos at some point.

And then at some point -- like, this thing got tried in 2012, so there was some -- the statements I think I got in the -- like around -- I'm not sure. But it was late in the game. Because I was really upset because candidly I said, *Don't be to talking on that phone. It's recorded.* And then, all of a sudden, Mr. Bannon, you know, me with, *Hey, Pal, I think you're going to want to hear these.* It was one of those, wait, what, kind of moments. So that came in pretty late. Some of those statements came in late that he used.

Q When you able to --

A They weren't a surprise, but I got them -- you know, it was kind of a throw punch to get those tapes.

Q Okay. And you were able to discuss those with your client?

A Oh, yeah.
Q Okay. And what trial strategy did you develop after getting the State's Rule 5 discovery based on your interaction with Mr. Seabrook?
A Well, for a while I didn't. I was struggling with that. Because, in all candor, I met with Mr. Seabrook. He told me one sequence of events. I went and looked. It didn't add up. Then I got another sequence of events.

Like, I went down a number of rabbit holes trying to build an alibi defense because he had said he wasn't there. So I spent a bunch of time trying to develop an alibi defense that ultimately just didn't play out.

So that left me with what the government had. And I watched that tape over and over and over and over and over again. And then that's when I got onto -- there's a point -- I mean, I know you-all don't know the case, but there's a point where the clerk comes out and somebody starts around the corner and you can see the fellow's shoes. And the car pulls in, and the clerk leans back against the wall and the shoes go back. And then the car leaves. The clerk goes in, takes care of him, comes back out, and that's when, you know, the guy in the Scream mask, let's call

it, comes around the corner, and I was like, that's it. Right? They know each other. He just came out. He's smoking a cigarette. He looks at the guy who's going to go down. And then a car comes back and he steps back.

Well, like, if you were a clerk and you were sitting there smoking a cigarette and somebody came around the corner with a Scream mask, right, he wouldn't just come back out and start smoking another cigarette. And he held the door for him.

The guy walks -- you know -- I mean, the guy in the Scream mask says, hey, the clerk opens the door for him, like, *no, no, you go into, please.* I'm like, they're in cahoots.

So that's when I got on to the biggest part of the defense, which was they can't -- this is not a robbery -- I mean, this was not an armed robbery and it's not kidnapping because there's no force or threats or force there. They're in on this together. It may be a larceny from the store owner. They're in conspiracy to do that, and I think I argued that. But I was like, this is no armed robbery. They know each other.

Q And so going off of that, let's dive in a little bit to applicant's allegation about the jury question

in which the jury asked, *What's the law definition of armed robbery?*

Comparing that to your case, did you think to object to Judge Mullen's recharging of the jury?

A Actually, I -- the way I remember it, and I could be wrong, I thought that was a good sign because I thought that that would go -- that that might indicate -- and, of course, we've all been in trials where we speculate on what we think the jury is going to do and then it's completely different. But I thought that might indicate that they were hanging up on that force or threats issue that I had raised and argued.

So I thought that that objection -- given the definition again would help us. And she did. They just said, *Give us the definition,* and she did. It wasn't like it was some kind of wonky question that she had to frame a response to. The question was, *Give us the definition,* and that's what she did. I don't know how she would have changed it anyway, but -- you know.

Q And there wasn't any indication that the jury wasn't satisfied with the recharging of the jury?

A Well, they didn't ask any follow-up questions, you know. I don't remember exactly.

They came in. Judge Mullen read them the thing again and they went out.

And I sort of have this image in my mind because I think I was looking at them pretty hard, like trying to get a read on, is that a good thing, is that bad thing? I just have that flashcard memory and that's all I got.

Q Let's jump back a little bit. You were discussing, you know, the discovery. Did you find anything that was particularly problematic in the discovery? I know you testified earlier about the statements. Was there anything else that maybe was --

A Well, yeah. Of course, the statements were a problematic. That whole case wound up being a big argument between -- about those statements and -- I don't know how to answer that question.

Q That's fine. We'll move on.

Let's go to the next allegation, the failure to request a voluntarily statement charge.

What was your general question regarding requesting or objecting to jury charges?

A I get -- now I'm embarrassed because I can't think of the name of the author, but I get the standard jury charge book from the bar judge. I can't remember which judge it is, but I read

through those. And then I look through some case law seeing if I can craft something that I can convince the judge a little better. Sometimes you can, sometimes you can't. And then those are my jury charges. And I have a checklist of charges I think I want to get.

Q Okay. Would you have wanted a voluntarily statement charge in this case?

A No, because, at the time, I think that's what I answered earlier. Where I was going was, I did not want to have a situation where I had led the cops down the road to say, he denied it, he denied it, he denied it, he denied it, and then have a judge read them something that says, okay, let me tell you about voluntarily statements or confessions. That just puts in their mind, oh, well, you confessed, or, you know, a statement -- that just was not where my theory of the case was headed.

I wanted to try to do damage control with those statements by having them say one -- Shabazz is all over the page. They want to say my guy is all over the page. Well, then the one consistency is my guy saying he didn't do it.

Q And would have said this would have been --

A I did not want that categorized in any way as an admission or a confession, or anything else.
Q I know this is a bit speculative, but would say that was a was strategic decision to leave out the voluntariness statement?
A What I can say is, that's probably accurate. I do not remember making a decision at a decision point. But going back and looking at it, I know that I would not have wanted somehow the jury to get from the judge that this guy had volunteered that he had done something or he had confessed. There was that whole fight. The whole case was about confessions and admissions and what that meant, and that was not going to help me.
Q Okay. I think you testified a little bit earlier regarding the circumstantial evidence charge, that you would have wanted the *Logan* charge if you had the opportunity to have this trial today, correct?
A Yes.
Q But that wasn't available to you at the time, correct, or that --
A That's what I was saying. That decision -- this case predated that decision.
Q Okay. So there was no *Logan* charge for you to request from the judge?

A No.
Q And I want to talk to you a little bit about applicant's allegation of pitting the witness -- pitting the testimony of Shitake Shabazz versus applicant.
You testified a little earlier that you wanted the opportunity to be able to attack Shitake, correct?
A Yeah. First of all, I'm not sure I agree with the characterization of what I read in that record as "pitting the two against each other." I think counsel for the State was making an argument about credibility of witnesses. I'm not sure that that is pitting statements. His argument was more about credibility of the witnesses, and I definitely wanted to comment on the credibility of Shatike Shabazz.
Q So it would have been -- you wouldn't have objected to --
A I didn't take it as pitting. I took it that he was -- he was commenting on the credibility of the witnesses trying to say, well, my witness is more credible. I have to go back and look at that, but I think he used the word credibility.
Q Do you want me to pass it up?

A No, I'm fine. It was more about credibility, and I definitely wanted to hit into credibility on Shatike Shabazz.

Q And so you think you overcame everything?

A I do not recall -- I mean, again, that's a question about what was the decision point or a decision that I made at the time 10 years ago. I don't know.

But just rereading it, I think where I was headed, I know, because it's right out the gate. What I argued was, Shatike Shabazz is the liar here. Fine. If they want to say two guys and one's got to be a liar, that's the bad guy. I definitely wanted to argue that.

MS. MIMS: I beg the Court's indulgence.

No further questions for the witness, Your Honor.

THE COURT: Mr. Falk.

MR. FALK: May I approach? May I approach the bench?

THE COURT: Yes.

(Bench conference off the record.)

MR. FALK: I have no further questions.

THE COURT: Thank you, sir. You may step down.

THE WITNESS: May I be excused?

MR. FALK: I have no objection to him being excused.

THE COURT: Miss Mims, any objection to Mr. Weidner being excused?

MS. MIMS: No, Your Honor.

THE WITNESS: Thank you, ma'am.

THE COURT: Have a good day.

MR. FALK: Oh --

THE COURT: You were so close.

THE WITNESS: I'm going to have to learn to move faster.

BY MR. FALK:

Q I didn't know if you had any personal identifiers for Shabazz, if you have his date of birth or anything. I would like to try to direct somebody to run an NCIC on him.

A His real name was Walter Jenkins. I mean, I had those at my fingertips because of what I read there. He had a number of aliases.

Q I mean, do you have anywhere in your notes what his date of birth was?

MS. MIMS: Do you have a report?

THE WITNESS: Well, let's see.

MR. FALK: Oh, wait a minute. If he was

arrested on the charge, it might be on the --

THE WITNESS: Yeah, he was arrested.

MR. FALK: It might be on the sccourts.

MS. MIMS: They don't have the birthdays on the public index.

THE WITNESS: Let me see if I got it.

MR. FALK: Your Honor, I realize all we need to do is find the warrant that he was arrested on and we can probably contact the Beaufort solicitor's office and get that.

THE COURT: Okay.

MR. FALK: I only have him up there to see if he knows his date of birth.

THE WITNESS: I have a thing from court of general sessions term an indictment, but it's a 1990. That's probably not going to help you. Walter Jenkins. I don't see that on here.

MS. MIMS: May we approach?

(Bench conference off the record.)

THE COURT: All right. Thank you, sir. You can step down. If you find anything, if you'll just let them know.

THE WITNESS: I got their email. He's got a record here in Beaufort County, so that may pull it up. But it's under Walter -- well, he had

a number aliases, but it was under -- I saw one that was in my notes. I looked into this guy, apparently. Walter Jenkins. And then there was some question about whether Walter Jenkins or Walter Jenkins, Jr. So be careful there. And then he, at some point, changed his name to Shatike Shabazz. And then I had one note in here. So somewhere he's out there as Walter Bruiser Jenkins. So I chased him -- I chased his identity around a little bit for a while.

MR. FALK: Thank you.

THE COURT: All right. Appreciate it.

THE WITNESS: Thank you, ma'am.

THE COURT: Yes, sir.

MR. FALK: I call my client to the stand.

THE CLERK: If you'll raise your right hand real quick for me. Do you solemnly swear or affirm that the testimony you give to the court in this trial shall be the truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Have a seat. Once you get seated, state your first name and spell out your last name, okay?

THE WITNESS: My first name Terrance Seabrook. My last is S-e-a-b-r-o-o-k.

WHEREUPON:

TERRANCE SEABROOK,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FALK:

Q Mr. Seabrook, I just have a couple of questions for you. So your lawyer, he was appointed to represent you in this case?

A Yes, he was.

Q Okay. Did you ever have any information -- I mean, did you know Shabazz very well prior to this?

A Yes, I do. He grew up with me.

Q You just got to answer. I got to keep you on line here.

A Yes. Yes.

Q You knew Shabazz prior to this, right?

A Yes.

Q And did you have any information that he had a record at the time of this trial?

A Yes, sir.

Q And did you advise your lawyer about Mr. Shabazz having a record?

A I made mention of this, and I was told that they would look into it. But when Miss Campbell was told about it, she told me, *Oh, don't worry*

about it. It will be taken care of.

Q When you said Miss Campbell, that was your prior counsel?

A Yes.

Q Traci Campbell?

A Yes.

MR. FALK: Your Honor, I'm going to ask him if he knows what it is. Is that okay?

THE COURT: Sure.

BY MR. FALK:

Q What was your -- don't tell me what he told you. What did you think his record was?

A From what I was told and from what I know was counterfeiting.

Q Okay. And did you think he was on probation at the time?

A Yes, he was.

Q Do you think he was on state or federal probation?

A Federal.

MR. FALK: No further questions.

CROSS-EXAMINATION

BY MS. MIMS:

Q Mr. Seabrook, how are you doing?

You testified a little bit ago that you told Miss Campbell about this prior record of Mr. Shabazz,

correct?
A Yes, I made mention about it to acquire information as to finding out what the circumstances were behind that because I did some reading myself on 609, impeachment of a witness that has been convicted of a crime. I did some extensive reading on that and I say, well, I'm not going to make mention of anything else other than asking the mere question to see what I can get back.
Q So you asked the solicitor, Traci -- you asked -- let me make sure I understand and it's clear for the record.

You asked Miss Campbell to give you information about impeachment of a witness because you had been doing your own further research?
A I asked information to find out the question to see if this would spark a situation to bring forward the allegations and to her looking into a whole lot of different other stuff dealing with him because he had been into a whole lot of different things that got individuals locked up.
Q Okay. Did you mention this to Mr. Weidner?
A No, I didn't.
Q Okay.

MS. MIMS: No further questions, Your Honor.

MR. FALK: Just redirect.

REDIRECT EXAMINATION

BY MR. FALK:

Q When the Traci Campbell was representing you, Shabazz was your co-defendant at the time, right?

A Yes. They had me -- Shabazz, no he wasn't my co-defendant. Shabazz had, later on, became my co-defendant after they came and tried to interrogate me at the county jail. And told them, I was not going to answer any more questions because you're running me around the rabbit hole and you're trying to make me say something that I can't -- I'm not going to sit down and lie to you.

Q Okay.

A I'm going to be honest.

Q So you got arrested on the charges. Traci Campbell is representing you. And then somehow Shabazz gets drawn in and then Shabazz becomes a witness against you.

A Right.

Q Okay. But it's your recollection that when you talked to Traci Campbell, Shabazz was -- was what? A possible suspect?

A He had just became suspect number 1 on the sheriff's list, and they came and asked me about the situation. I told them I have no knowledge of that.

Q Okay.

A I can't give you no information I have no knowledge of. And then he says, *Oh, let me ask you a question. Do you know Shabazz?*

Q We can't -- I don't want you to -- to hearsay. I think we have what we need. Thank you very much.

MR. FALK: No further questions.

THE COURT: Miss Mims?

MS. MIMS: None from the State.

THE COURT: You can step down, sir.

Anything else, Mr. Falk?

MR. FALK: We have no further witnesses.

THE COURT: Okay. Ms. Mims?

MS. MIMS: No further witnesses, Your Honor.

THE COURT: Okay. Anything you-all want to be heard on?

MR. FALK: Your Honor, just that we want the opportunity to try and nail down whether or not Mr. Shabazz had a record because, regardless of what trial counsel said about if he did have a record for a crime of dishonesty like

counterfeiting, I think that would infer grounds for impeachment, that no reasonable trial strategy lawyer -- that would not be a reasonable trial strategy not to include impeachment.

MS. MIMS: Your Honor, I would object to holding the record open.

Mr. Weidner testified that it may have been -- he could have used the impeachment to, I guess, further his theory of defense, but his main theory of defense was nailing down that he got immunity because of this specific crime.

And, furthermore, I think that Mr. Falk has presented this issue without doing his due diligence and seeing that it is meritorious because I don't -- I believe that -- we object to holding the record open any further.

MR. FALK: I don't know what due diligence I can do on that. I mean, I can't run an NCIC. I mean, I guess I could have tried to get a discovery motion to get somebody to run it for me, but I can't run an NCIC.

MS. MIMS: If we were presented this issue before today's hearing, we would have been able to help Mr. Falk in nailing this issue down, but that is not the case here.

MR. FALK: No question that it came in at the last minute.

THE COURT: Well, if he was on federal probation, I guess you would not have been able to. If it's not on the Beaufort County website, you would have to get somebody to do that for you.

Listen, I agree with you a hundred percent. This is not something you could have anticipated. The issue that I have is just, as many things that we can take care of at this point, I think helps everybody down the road, that we're not leaving any loose threads out anywhere.

MS. MIMS: Okay.

THE COURT: So, if you-all can run an NCIC. Now, I can't -- I can't make them run something if they don't have the correct information to be able to run it. So I guess I would say that I'm not going to leave it open, like, past next Friday.

MS. MIMS: Okay.

MR. FALK: Thank you.

THE COURT: I'm then going to be gone for two weeks, and then this will be last thing on my mind when I get back. So I'll leave the record open until next Friday. If you-all can find

identifying information from him, and, Mr. Falk, if you can contact the solicitor's office and see what you can find, if he provides you with the information by next Friday, that you-all can get that.

MS. MIMS: And just so I'm clear, since the record is being left open, can we then call Mr. Weidner back if he's available?

THE COURT: I would just think that you-all could provide me with that information.

MS. MIMS: Okay. Okay.

THE COURT: I think we got everything we need on the record from Mr. Weidner.

MS. MIMS: So the record is essentially just left open to find --

THE COURT: Just for that limited purpose.

MR. FALK: Thank you.

THE COURT: Thank you-all.

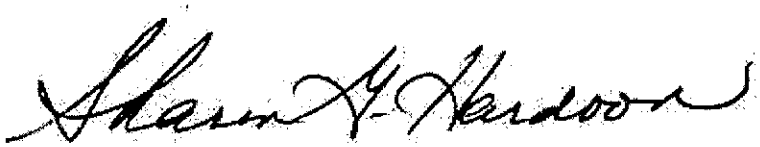
(The hearing was concluded.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the PCR hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Beaufort County, South Carolina.

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

July 18, 2023



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Terrance L. Seabrook, #184020, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2019-CP-07-00369 **ORDER OF DISMISSAL**

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Terrance L. Seabrook (Applicant) on February 15, 2019. On July 21, 2022, an evidentiary hearing convened before the Honorable Kristi F. Curtis. Applicant was present and represented by James K. Falk, Esquire. Assistant Attorney General Lauren Mims represented Respondent. At the hearing, Applicant testified on his behalf and called as witnesses Appellate Defender Lara M. Caudy and trial counsel Larry W. Weidner, Esquire. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In December 2010, the Beaufort County Grand Jury indicted Applicant for kidnapping (2010-GS-07-2320) and armed robbery (2010-GS-07-2321). On March 19-21, 2012, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen.[1] Larry W. Weidner, II, represented Applicant, and Assistant Solicitor James M. Bannon prosecuted the case. The jury

[1] Applicant's case was initially called to trial on February 27, 2012, before the Honorable Roger M. Young, Sr., but that trial was continued at Applicant's request.

acquitted Applicant of kidnapping but found Applicant guilty of armed robbery. On March 31, 2012, Judge Mullen sentenced Applicant to life without parole for armed robbery.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Lara M. Caudy (App. Case No. 2012-212388). On June 11, 2014, following a motion by Applicant, the Court of Appeals remanded the case to the circuit court to reconstruct the record. On April 15, 2015, a reconstruction hearing was held before Judge Mullen. At the conclusion of the hearing, Judge Mullen found the record had been sufficiently reconstructed for meaningful appellate review.[2] Thereafter, Appellate Defender Caudy file an Anders[3] brief. The Court of Appeals dismissed the appeal pursuant to Anders, and the remittitur was sent February 16, 2018.[4]

SUMMARY OF TRIAL TESTIMONY

At trial, the State presented evidence that Applicant robbed an Exxon gas station while armed with a handgun on October 4. 2010. Shatike J. Shabazz, a/k/a Walter Jenkins, testified he drove Applicant to an Exxon gas station on October 4, 2010, in a blue Ford explorer that belonged to Staff Sergeant Shawn Boyd. Shabazz recalled Applicant was wearing a blue and white striped shirt. He testified he left the gas station and went to his mother's house but returned later that day. After Shabazz could not find Applicant, he left again and did not return. Shabazz stated he did not see Applicant the rest of that night. (R. 106-111).

Sean Kirkpatrick (Victim), a clerk at the gas station, testified Applicant was one of his regular customers whom he knew as "Terrance." Victim testified he was taking a smoke break when he was approached by an individual wearing a mask and holding a gun. The individual

[2] Applicant appealed that order, and on appeal the Court affirmed the circuit court's finding that the record had been sufficiently reconstructed. State v. Seabrook, Op. No. 2017-UP-164 (Ct. App. filed Apr. 19, 2017).
[3] 386 U.S. 738 (1967).
[4] While his direct appeal was pending, Applicant filed a PCR application that was dismissed without prejudice due to the pending direct appeal. 2014-CP-7-562.

pointed the gun at Victim's head, forced him inside, and ordered him to open the cash register. Victim testified the individual emptied the drawer and forced Victim to lie on the ground. After the individual left, Victim locked the door and called 911. Victim described the perpetrator as an "African-American male, about 5–4 to 5–8" with a slender build, weighing "between 120 and 160 pounds." He stated the man wore gloves and a *Scream* Halloween mask. (R. 74-76, 85).

Investigator Michael James Pierce testified Sergeant Boyd's vehicle matched the description of a vehicle used in an armed robbery. Agent Pierce further testified he took pictures of two individuals driving that vehicle, and he identified one of the individuals as Applicant. (R. 140-41, 144). Investigator Chapman testified he interviewed Applicant twice after Applicant was in custody, and Applicant changed his story multiple times during the interviews. (R. 179-80).

CURRENT APPLICATION

On February 15, 2019, Applicant filed this current PCR application alleging:

1. Ineffective Assistance of Counsel
    a. "the counsel didn't give a time objection"
2. "Violation of my 14th, 6th, and 5th [Amendment]"
    a. "and the [all] of my rights of due [process]"
3. Lack of Subject Matter Jurisdiction

On November 20, 2019, Applicant filed an amendment to his application alleging:

1. "Counsel failed to investigate the olloqotion in the case or the evidence and discovery and furthermore; failed to attend scheduled preliminary hearing set forth by Hon. Carmen T. Mullen. The dates of December 3, 2010 and this new date set by Mr. Mullens was 10, 2010. This was a violation of Applicant's due process rights of the 6th and 14th Amendment."

At the evidentiary hearing, Applicant relayed he was proceeding on the following claims of ineffective assistance of trial counsel:

1. Counsel failed to request a jury charge advising the jury to take precautions when hearing a voluntary confession;

2. Counsel failed to request the Logan[5] circumstantial evidence charge;
3. Counsel failed to object to the solicitor's statements in closing argument pitting Shabazz's testimony against Applicant's statements;
4. Counsel failed to object pursuant to State v. Smith[6] when the jury asked a question regarding the elements of armed robbery and the court recharged the jury on armed robbery.
5. Counsel failed to impeach Shabazz with prior convictions.[7]

Additionally, Applicant alleged appellate counsel was ineffective for not raising an issue related to the trial court overruling counsel's hearsay objection to Applicant's statements.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of Applicant's past and current PCR actions. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusious of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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[5] 405 S.C. 83, 747 S.E.2d 444 (2013).
[6] 304 S.C. 129, 403 S.E.2d 162 (Ct. App. 1991).
[7] This issue was raised in the middle of the evidentiary hearing. At the conclusion of the hearing, this Court agreed to leave the record open until July 29, 2022, to provide Applicant time to investigate Shabazz's criminal history. On July 29, 2022, Respondent notified this Court and PCR counsel with information regarding Shabazz's criminal record.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 687-88. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to request charge on voluntary confession

Applicant contends trial counsel was ineffective for failing to request a jury charge advising the jury to take precautions when hearing a voluntary confession. This Court finds counsel articulated a valid strategic reason for not requesting this charge and thus was not ineffective. See Brown v. State, 375 S.C. 464, 481, 652 S.E.2d 765, 774 (Ct. App. 2007) ("[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." (alteration in original)). At the PCR hearing, counsel testified Applicant repeatedly denied to police that he committed the robbery. Counsel stated he attempted to have Applicant's statements excluded, but once the court determined they were admissible, counsel believed his best strategy was to elicit testimony from law enforcement that Applicant never admitted to committing the armed robbery. Trial counsel further explained he did not want

the jury charged on the meaning of a voluntary confession when his primary argument was that Applicant did *not* confess. This Court finds counsel's testimony credible. This Court further finds counsel articulated a valid, strategic reason for not requesting this charge and thus was not deficient. Likewise, this Court finds it is not reasonably likely the outcome would be different had counsel requested and the Court provided this charge. Applicant has thus failed to prove deficiency or prejudice, and this claim is denied.

Failure to request Logan charge

Applicant next contends counsel was ineffective for not requesting the circumstantial evidence charge articulated in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). This Court finds Applicant has failed to meet his burden of proof in this regard. Critically, counsel testified he would have preferred a Logan charge but did not request it because Applicant's trial occurred before Logan was decided. Applicant's case was tried in March 2012, whereas Logan was not decided until August 14, 2013. Because Logan had not been decided at the time of Applicant's trial, counsel cannot be ineffective for not requesting the charge. See Frierson v. State, 417 S.C. 287, 299, 789 S.E.2d 762, 768 (Ct. App. 2016), aff'd as modified, 423 S.C. 257, 815 S.E.2d 433 (2018) ("Our courts have "never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial."). Thus, this claim is denied.

Failure to object to closing argument

Applicant contends counsel was ineffective for not objecting to pitting in the State's closing argument. Specifically, Applicant contends counsel failed to object when the solicitor attempted to pit Shabazz's testimony against the statements Applicant made to police. In support, Applicant pointed to the following portion of the State's closing argument:

> Out of all this stuff, you need to ask yourselves what makes the most sense. Out of the different versions of events that you've heard,

> which is the one you can believe?
>
> If you believe Mr. Shabazz's testimony, which was consistent from now back to when he first talked with the police back in 2010, or—I don't know—the five different stories that Mr. Seabrook has, some of which conflict from minute to minute, and with the same people that he's talking to.
>
> Who seems more credible? I have tried to let you visualize what happened that evening from the evidence we have. Now, the description that we get from the Clerk is that there was a skinny black male, around five foot seven.
>
> That represents many possibilities, millions if not billions of possibilities. Could be any skinny black male who is roughly five foot seven. It puts Mr. Seabrook right there.
>
> Now, Mr. Shabazz identifies Mr. Seabrook as the person who gets out of his car. Okay? So we'll mark that as being Mr. Seabrook.
>
> And you can see on the video this person is wearing a blue shirt, dark pants and white shoes. Again, anyone can be that skinny black male, wearing a blue, white piped shirt, dress pants, white shoes.

(R. 247).

This Court finds Applicant has failed to show counsel was ineffective in this regard. This Court agrees with counsel's assessment that the foregoing argument was a proper argument that commented on Shabazz's credibility. Cf. State v. Busse, 439 S.C. 104, 111, 886 S.E.2d 208, 212 (2023) ("[A] prosecutor is expected to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer."); id. (finding the State's argument regarding "the importance of facts in evidence to the *jury's* determination of the victim's credibility" was not improper argument). Additionally, counsel explained he rebutted the solicitor's closing argument by attacking Shabazz's credibility in closing. This Court finds counsel's performance was reasonable under prevailing professional norms and not deficient. Applicant has not set forth any objectionable, improper comments by the solicitor and has not met his burden of proving deficiency or prejudice. Thus, this claim is denied.

Failed to object to recharge on armed robbery

Applicant contends counsel was ineffective for failing to object when the trial court recharged the jury on armed robbery. This Court finds Applicant has failed to show counsel was ineffective in this regard.

During deliberations, the jury asked the Court for "the lawful definition of armed robbery." (R. 277). The Court recharged the jury on armed robbery as follows:

> The Defendant is charged with armed robbery. In order to prove this offense the State must first prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person.
>
> Property is in the presence of a person when it is within the person's reach, inspection, observation or control, so that the person could, if not overcome with violence or prevented by fear, keep possession of the property.
>
> The State must also prove beyond a reasonable doubt that the Defendant cared the property away, intending to permanently deprive the owner of it, and to keep the property from the Defendant's own use.
>
> The slightest removal of the property or the complete possession of the property even for an instant by a Defendant is sufficient to show a taking and carrying away of the property.
>
> The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear.
>
> Finally, the State must prove beyond a reasonable doubt that the Defendant was armed with a deadly weapon during the robbery.

(R. 277-78). At the PCR hearing, counsel relayed he did not believe the judge erred in recharging the jury on armed robbery when the jury asked for the definition.

This Court agrees there was no basis for counsel to object when the judge, in response to the jury's question, recharged armed robbery. Critically, the judge's recharge on armed robbery answered the question asked and was not misleading. Contra State v. Smith, 304 S.C. 129, 131,

403 S.E.2d 162, 163 (Ct. App. 1991) ("The error of the trial judge is manifest and twofold. In the first place, he did not answer the question asked. Moreover, his response was misleading. The examples he gave may very well have caused the jury to think that sufficient provocation could only arise out of an assault on the defendant himself. This is not the law."). Here, the jury asked for the definition of armed robbery, and the judge recharged the jury on armed robbery. This Court agrees with trial counsel's assessment that there was no basis to object to this recharge. Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Trial Counsel Failed to Impeach Shabazz's Credibility Under Rule 609, SCRE

Finally, Applicant contends counsel was ineffective for not impeaching Shabazz with prior criminal convictions. Specifically, at the PCR hearing, Applicant averred Shabazz was on federal probation for a counterfeiting conviction, which he told his initial attorney (Trasi Campbell). This Court finds Applicant has failed to show counsel was ineffective in this regard.

At the PCR hearing, counsel agreed prior convictions were fertile ground for impeachment, but he explained "that does not necessarily mean that I would go there if I had a better horse to ride." Although he did not recall the details of Shabazz's prior convictions (if any), he averred the State would have provided him a copy of Shabazz's NCIC report. He explained his strategy for cross-examining Shabazz as follows:

> [L]et's assume for the moment there was something out there. If it was attenuated and I had—like in this case, I mean, they had charged him—they had given him immunity on the eve of trial to say one thing and one thing only, that [Applicant] got out of his truck that day.
>
> Everything else, this guy was all over the page about. What was he wearing? Who he was with. He even said at one point that the guy that got out of the truck didn't look like [Applicant] Seabrook because he was bigger. Like this guy was all over the page.
>
> So where I was headed—I remember that much. Where I was

> headed, you're essentially getting out of getting charged to say one thing, and that is [Applicant] got out of there. And everything else you told the jury—and it was all over the page, right?
>
> I mean, it was at one point, I remember—I had him pinned into a corner, and I said, essentially. I'm sure it's in the record. But I said essentially that your ground of immunity hinges upon one thing and one thing only, and that is putting [Applicant] as getting out of your truck. He said something like, *Well, when you put it that way.*
>
> I said, *I am putting it that way to you. That's exactly what you're here to do, right? Like, your whole immunity hinges on that.* I remember that moment actually, surprisingly.
>
> Because he said, *Well, when you put it that way.* I was like, *I'm putting it that way. That's exactly what you're doing.*
>
> Blasting that, I don't think that—I'd have to be in the moment, but I'm not sure I would want him to get that shotgun blast at this guy, and then say, *Oh, by the way, you were convicted 12 years ago,* or something. I think it would lose steam.
>
> So it would depend—I guess my answer to your question is, it would depend on how I felt the evidence and how that trial was going and were I could make my best punches and get the jury to remember it.

This Court finds credible counsel's foregoing testimony regarding his strategy for cross-examining Shabazz. This Court further finds counsel's strategy and cross-examination of Shabazz was reasonable under prevailing professional norms and not deficient. Counsel recalled receiving Shabazz's criminal history but did not remember what the record contained or if Shabazz was on probation. Counsel further testified that even if he was aware of Shabazz's past criminal convictions, he may not have used it if it caused his cross-examination to "lose steam." Ultimately counsel's strategy of impeaching Shabazz based on his receipt of immunity from the State was reasonable under prevailing professional norms and not deficient. Likewise, this Court has examined counsel's cross-examination of Shabazz and finds it reasonable under prevailing professional norms and not deficient. (R. 117-23, 129-31). Critically, counsel elicited testimony

from Shabazz that the person in the video with the gun did not look like Applicant (R. 121-23); and "If I thought that was [Applicant], I would say that was [Applicant]" (R. 131). Counsel also elicited testimony from Shabazz insinuating his immunity rested on him testifying that Applicant was the person he dropped off at the gas station. (R. 131). Ultimately counsel effectively cross-examined Shabazz and was not deficient. Finally, although this Court held the record open for additional evidence, Applicant never provided a record of Shabazz's federal conviction and subsequent release from incarceration.[8] Thus, Applicant failed to meet his burden of proving prejudice, and this claim is denied.

Ineffective Assistance of Appellate Counsel

Applicant contends his statements to police that were introduced at trial constituted hearsay, and appellate counsel was ineffective for not raising this issue on appeal. This Court finds Applicant did not prove this ground.

"A defendant is constitutionally entitled to the effective assistance of appellate counsel." Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). However, "appellate counsel is not required to raise every nonfrivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). The "goal of vigorous and effective advocacy" would not be served if judges "second-guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client." Jones, 463 U.S. at 754.

At the reconstruction hearing during Applicant's direct appeal, trial counsel testified the

[8] Respondent relayed via email that Shabazz had a prior federal conviction for manufacturing / passing counterfeit currency; he was arrested August 23, 2000, pled guilty September 19, 2001, was sentenced to sixty months' jail time, and was placed on supervised release on April 7, 2005. This Court finds, based on counsel's cross-examination of Shabazz, that it is not reasonably likely the outcome would have been different had counsel further elicited information about this prior conviction.

trial court held a Jackson v. Denno hearing, and he argued against the admissibility of Applicant's statements to police based on relevance, unfair prejudice, hearsay, and coerciveness. (R. 351-64). Specific to the hearsay objection, counsel averred Applicant's statements to police were not confessions and thus could not come in as an exception to hearsay under Rule 801(d)(2). (R. 359-63). At the PCR hearing, appellate counsel testified she did not raise this issue because she did not believe it had merit. She averred that providing "inconsistent statements as to where you were and what you were doing would certainly be a statement against interest." Counsel further testified she believed the issue was adequately preserved.

This Court agrees with appellate counsel's assessment that this argument did not have merit. Specifically, this Court finds Applicant's custodial statements were not hearsay. See Rule 801(d)(2) (providing a statement is not hearsay if it "is offered against a party and is (A) the party's own statement in either an individual or a representative capacity . . . ."). Applicant has not set forth any legal argument or caselaw to support his contention that this statement was hearsay, and this Court is not aware of any. Thus, Applicant has not met his burden of proving deficiency or prejudice, and this claim is denied.

CONCLUSION

Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgement entry's written notice to secure appropriate appellate review. See Rule 203, SCAR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR.

Rule 71.1 (g). SCRCP provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to custody of Respondent.

AND IT IS SO ORDERED this 17th day of May, 2023.

Kristi F. Curtis

HON. KRISTI F. CURTIS
Presiding Judge
Fourteenth Judicial Circuit

Sumter, South Carolina.