

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

JABBAR J. STRAWS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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I. 2009CP3204805

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL WITH FRAUD

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Fraud: ① deceit; a trick. ② (Law) dishonest practice; Breach of confidence. ③ a cheat.

Applicant will show the Court that Counsel did and is all of these things...

Trial Counsel waived Applicant's lawful right to a preliminary hearing. One that was timely applied for by Applicant before Counsel was even appointed. By Counsel doing so was ineffective assistance of Counsel. A violation of Applicant's 6th Amendment rights of the U.S. Constitution. As well as Applicant's due process rights of the 14th Amendment. Life, liberty and property. As well as equal protection of law.

By Counsel waiving preliminary hearing, probable cause for arrest was never established. Counsel knew arrest was warrantless and did not challenge arrest. All charges against Applicant could have been exonerated at this stage.

During the few times that the Applicant met with Counsel prior to trial, (at the county jail where the Applicant was being held) Applicant asked that Counsel ask the Court to hold a preliminary hearing. As Applicant had made such a request at his bond hearing. As the Applicant felt this necessary in order to prepare for trial. (Yet Counsel's main concern seem to be ~~to~~ try and get Applicant to plead guilty, and accept a open plea bargain the prosecution had offered.

While the right to a preliminary hearing does not attach when the charge is initiated by the Grand Jury. S.C.R. [Edm. PD 26]: State v. Allen, 224 S.E. 2d. 881 (1976); State v. Nesmith, 43 S.E. 2d. 595 (1948). The jury has already found probable cause in returning a true bill, and no further pretrial showing is necessary. The supervening indictment by which prosecutors in some states can defeat the right to a preliminary examination by obtaining a true bill from the Grand Jury, after the Applicant has requested a hearing, but before the proceeding has begun is not available to solicitors in South Carolina.

S.C. Code ann: § 22-5-320 (Law co-op 1989). State v. Porcher, 257 S.E. 2d. 505 (1979). Jurisdiction in the General Session Court is precluded until a preliminary hearing is held if the request is timely made. State v. Fortner, 222 S.E. 2d. 508. Under South Carolina Code ann: § 22-5-320 of 1976 code of laws, the Applicant was entitled to a preliminary hearing if demand was therefore in writing at least ten day before convening of the next term of Court for General Sessions. which Applicant had done.

Applicant applied for hearing in the month of December. The next term of Court in eleventh Circuit, Lexington County Court of General sessions was held on the third Monday in January according to S.C. Code ann: § 14-5-760. It was held for two weeks. When a timely demand is made for a preliminary hearing the Court of General Sessions is deprived of jurisdiction, until such hearing is held. When Applicant had made a request at bond hearing that a pretrial hearing be held, and requested of Counsel that such hearing be held, [REDACTED]

The Applicant was entitled to such a hearing under South

Carolina law, and the failure of counsel to request such a hearing was ineffective assistance of counsel. Especially since Applicant had requested that counsel make available to him all evidence the state plan to produce at trial against him.

The sixth Amendment to the U.S. Constitution provides that in all criminal cases the accused shall enjoy the right to be informed of the nature, a cause of the accusation and to be confronted with the witnesses against him, U.S. Const. VI. These guarantees are applicable to the state under the fourteenth Amendment, Pointer v. Texas, 85 S.Ct. 1065 (1967). There are also specifically mandated by the South Carolina State Constitution, Art. 1 § 14.

Moreover, these rights are personal to the accused. It is the accused, not counsel, who must be informed of the nature and cause of the accusation, and who must be confronted with the witnesses against him. See Faretta v. California, 95 S.Ct. 2525 (1975). The Applicant is implying that he was not informed of the nature and cause of the actions against him, and that due process of law was violated by counsel as well.

When counsel failed to take advantage of one of the rights afforded the Applicant under S.C. Law, that would have better helped prepare the Applicant's case for trial, and better informed Applicant and counsel of how to defend Applicant at trial, by making both aware of what the state plan to produce at trial. Here counsel was clearly ineffective for violation of Applicant's due process rights protected by the fourteenth Amendment to the U.S. Constitution, when counsel failed to put the Court on notice that a preliminary hearing had been requested by her client, and the law of South Carolina provided for such a hearing, when requested.

Applicant was prejudiced by the failure to counsel to request a preliminary hearing, because valuable evidence was lost, such as possible impeachment, the warrants should have been challenged, and the fact that knowing what the state plan to produce at trial, Applicant was blind-sided with certain evidence at trial.

Counsel could have learned the strength and weakness of the prosecutions case, and would have been able to challenge certain evidence in this stage. The simple fact of the matter is Applicant requested of counsel that a preliminary hearing be held, and counsel failed to advise the court of his request, when such a hearing was a valuable tool in the defense of her client, and available under South Carolina Law. This neglect by counsel violated Applicant's due process rights, and the right to effective assistance of counsel before and at trial. (See Motion to Relieve Counsel hearing trscept. pgs. 9-30).

These acts by counsel were deliberately done with fraudulent intent. Counsel admitted to purposely waiving Applicant's preliminary hearing. (see trscept. pg. 22, Ln. 7-25; pg. 23, Ln. 1). Trial counsel also fraudulently signed her signature on a first initial appearance motion from the Court in the place of the Applicant's without his consent. Counsel is not on trial, Applicant is. Applicant knew of no such motion until months later. This motion never went through the proper procedures, and was never signed by a judge. (see trscept. pgs. 20-21; pg. 22, Ln. 1-6).

This is again where Applicant places judge on notice of the prejudice acts done against him. Trial Counsel then lies to the judge committing perjury, when explaining these allegations. (see trscept. pg. 21, Ln. 1-3). She stated, "Yes, sir. What happens is the attorneys at my office sign for the client, and then we forward them a copy of

that." (see First Initial Appearance Motion labeled Exhibit A).

As the Court can see trial counsel's signature is where motion reads, "Defendant's signature." Now, I would like ~~for~~ ^{FILED} the Court's attention to Counsel's signatures on Notice of Appeal paperwork, marked Exhibit B. As the Court can see, these are all trial counsel's signatures, and there is no need for an expert handwriting analysis, don't we all agree? Which proves counsel's actions were fraudulent, her testimony to the judge was false and she actually committed perjury.

Counsel never sat down with Applicant to establish any alibi testimony. This proves that Counsel had No real strategy going into trial. Counsel never made any challenges to the indictments until the day of trial, when realizing Applicant had been over charged on one offense. Applicant was indicted for A.B.W.I.K. on one indictment that should have been for A.B.H.A.N... Counsel motioned for a directed verdict. (see transcript, pg. 382-388, Ln. 1)

This shows that if Counsel would have challenged indictments before trial, charges against Applicant could have been dropped at least to lesser included offenses. Applicant never even received a copy of his indictments until he was convicted, and still has not seen a true copy. Counsel was ineffective by not making sure Applicant not only received true copies of his indictments, but that he also understood the nature of each offense.

Counsel was also in direct violation with Brady by not showing Applicant video evidence that the state had against him. Counsel did not do a thorough investigation of the case. Counsel was suppose to meet with one of the victims before trial (Mr. Singh), but

Never did. (See trscept. pg. 205, Ln. 11-17). She ~~stated~~ stated her reason was "an emergency," but never rescheduled to meet, showing that counsel did not do a proper investigation. FILED
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Counsel did not object to this same witness testimony (Mr Singh), when he gave perjurious testimony. When this witness was testifying to the amount of money that was taken from him the night of the allege robbery. On the report that he gave to officers the night of the robbery he stated, "\$600.00 and a \$50 cellphone was taken." (See investigative reports labeled Exhibit C). Then the day of trial he testified to the amount being "around \$3,800." (see trscept pg. 193, Ln. 18, 19). This did not come up no time before trial. This is very contrary. This was false testimony, and was actually perjury. And Counsel should have objected.

Counsel also should have moved for a change of venue after finding out about a damaging statement released by the Sheriff (James R. Metts) of the County. The sheriff released a statement to the press two days after Applicant's arrest that, "It's good we caught this individual because he would have struck again." (see WIS News Article labeled Exhibit D). This statement alone violated Applicant's rights to have a fair trial.

By the sheriff making this type of statement is saying that Applicant is guilty without be tried, and that he is dangerous. The Sheriff is a very highly respected pillar of the community, who is voted into office every term by the same citizens selected to judge Applicant. And the sheriff has been selected into this same position for nearly "35 years". Counsel failed to ask trial judge to specifically instruct the jury on this pretrial publicity according to this prejudicial statement by the sheriff.

Counsel did not object to the jury not being drawn from a fair cross section of the community, to try to help assure Applicant a fair trial because there were not enough African-Americans and No Hispanics to ~~choose~~ ^{choose} from. (see trscept. pgs. 107, 28). As the Court can see there is only one African-American to choose from out of twenty four individuals. We all know, (and this is a common sense statment) that the ratio of registered voters in Lexington County is not twenty three to one, whites to African-Americans.

We also know that they are Hispanics who are legal citizens and are registered voters in Lexington County as well. The jury was made up of only one African-American (the only one to chose from), who was also made the foreperson, and twelve white-Americans including the alternate. This was prejudicial and discriminating for Applicant to enjoy the right to a fair trial. Violating Applicant's 6th and 14th Amendments of the U.S. Constitution. Applicant is just stating that everything was done in light of the State to recieve a conviction.

Counsel did not ask trial judge to allow a Miranda right sheet signed by Applicant to enter trial. (see suppression hearing, to suppress alleged oral statement by Applicant. trscept. Pg. 61, Ln. 23-25; Pgs. 62-139, Ln. 1-13). This evidence was crucial to show the fact that Applicant did indeed invoke his 5th Amendment rights of the U.S. Constitution to remain silent as well as his 6th Amendment rights to have counsel present during interrogation.

This evidence was favorable to the defense and would have shown the only statement validly given by Applicant was, "I

have requested an Attorney." (see Miranda right sheet labeled Exhibit E). Counsel did not make a contemptuous objection to protect the rights of Applicant to any testimony given by any witness regarding any alleged oral statement given by Applicant, knowing that this evidence was obtained in violation of Applicant's 5th Amendment rights, and fell under the fruits of the poisonous tree doctrine. In violation with the exclusionary rule as well.

The 5th Amendment guarantees that "[N]o person... shall be compelled in "any" criminal case to be a witness against himself... without Due Process of Law."

Applicant inserts that police engaged in coercive conduct by willfully violating the dictates of Miranda and the 5th and fourteenth Amendment rights of the U.S. Constitution. In Miranda the U.S. Supreme Court recognized the fundamental importance of the 5th Amendment and instituted the requirement that all suspects be informed of their right to remain silent, prior to being questioned by law enforcement officials.

Applicant contends that he invoked his 5th Amendment right to remain silent, and directs the Courts attention to the following transcript pages: (trsept. pg. 120, ln. 3-16). Although, Miranda rights are not themselves rights protected by the Constitution, but [are] instead measures to insure that the right against compulsory self-incrimination [is] protected; when these measure are ignored... A suspects Constitutional rights are directly affected. See Michigan v. Tucker, 44 S.Ct. 2357 (1974).

"The aim of the requirement of Due Process is not to

exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence whether true or false." see Lisenba v. California, 42 s.ct. 280 (1941).

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Indeed, the 5th Amendment privilege is not concerned with moral and psychological pressure to confess emanating from sources other than official coercion," see Oregon v. Elstad, 105 s.ct. 1285 (1985). The relinquishment of the right must have been "voluntary" in the sense that it was the product of a free will and deliberate choice rather than intimidation, coercion or deception... [T]he record is full of suggestion that officers resorted to psychological pressure to elicit the statement.

"The fourteenth Amendment secures against state invasion... the right of a person to "remain silent" unless he chooses to speak in the unfettered exercise of his own will..." see Malloy v. Hogan, 84 s.ct. 1489 (1964). The right requires vigilant protection if we are to safe-guard the values of private conscience and human dignity. It seems quite clear that Applicant was denied Due Process of Law; In that his 5th Amendment right to remain silent went unprotected, after Applicant made "clear" his wish to remain silent, after invoking his 5th Amendment privilege. see Wolf v. People of State of Colorado, 69 s.ct. 1361.

This Court has not hesitated to enforce as strictly against the states as it does against the Federal Government the rights of free speech and of a free press, the rights to notice and to a fair, public trial, including, as it does, the right not to be convicted by use of a coerced confession. However, logically relevant it be, and without regard to it's reliability. See Rogers v. Richmond, 81 s.ct. 735 (1961).

Nothing could be more certain than that when a coerced confession is involved, "the relevant rules of evidence" are overridden without regard to "the incidence of such conduct by police, ^{FILED} slight or frequent. Why, should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc ???

The Court has found that as to the federal Government, the fourth and 5th Amendments and, as to the states, the freedom from unreasonable invasions of privacy and the freedom from convictions based upon coerced confessions do enjoy an "Intimate Relation" in their perpetuation of "principles of humanity and civil liberty [secured] only after years of struggle." see Bram v. U.S., 18 S.Ct. 187 (1897).

They express "supplementing phases of the same Constitutional purpose to maintain inviolate large areas of personal privacy." Heldman v. U.S., 64 S.Ct 1082 (1944); The philosophy of each Amendment and of each freedom is complementary to, although not dependent upon, that of the other in its sphere of influence. The very least that together they assume in either sphere is that no man is to be convicted on unconstitutional evidence. Cf. Rochin v. People of State of California, 72 S.Ct. 205 (1952).

In U.S. v. Ebie, 111 F.3d 1135 (4th Cir. 1997), the Court found that "if arrest, search or interrogation is later held to be unlawful and thus requires suppression of direct evidence found as a result, ~~derivative~~ derivative evidence must also be suppressed, when it is "fruit of the poisonous tree" U.S.A. Const. Amend. 4.

Applicant, however is not making a case as to rather or not his statement is unconstitutional because the trial Court already decided that to be the matter. Applicant cause before the Court

is to establish that evidence gained as a result of that unconstitutional statement, should have been suppressed as ~~(fruit of the tree)~~... Applicant now alleges that the "fruit of the poisonous tree doctrine" established in Wong Sun v. U.S., 83 S.Ct. 407 (1963), applies ~~to this case~~ and for that matter should be applied, to correct a great injustice.

In Oregon v. Elstad, 105 S.Ct. 1285 (1985); The Supreme Court emphasized that the Miranda Exclusionary rule "differs in significant respects" from the Fourth Amendment Exclusionary rule. A fourth Amendment violation taints a subsequent confession. Unwarned statements made during a custodial interrogation are not admissible, regardless of whether the statements were voluntary or whether a constitutional violation ~~occurred~~.

This automatic exclusion, however does not extend to evidence obtained as a result of unwarned statements because the failure to deliver Miranda warnings is not itself a constitutional violation, and the Miranda presumption "does not require that the statements and their fruits be discarded as inherently tainted." So long as the unwarned statement was voluntary under the 5th Amendment, the other evidence is admissible.

Applicant was read his rights and invoked his 5th Amendment right to remain silent, however the police disregarded that right. So that would place his statement in violation of the 5th Amendment. Now considering Wong Sun, where defendant (Toy) statement required the exclusion of evidence (Narcotics) recovered from (Toy's) statement, Applicant, states that his case is in line with, and should be viewed in the same light that the U.S. Supreme Court visioned in Wong Sun, and that the exclusion of his statement also required the suppression of any evidence gained from that statement.

Officer: Eddie Prestigiacomo, repeatedly told the Court that Applicant made clear his wish to remain silent. A finding of undesirable procedure alone does not entitle an Applicant to Post -

Conviction relief. The Court must look to see whether the Applicant had a fundamentally unfair trial amounting to a Constitutional deprivation. See Grundler v. N.C., 283 F.2d 798 (4th cir 1960); Chance v. Garrison, 537 F.2d 1212 (4th cir. 1976); As stated in Grundler, 283 F.2d 798 A 952

Normally, the admissibility of evidence, the sufficiency of evidence, and instruction to jury in state trials are matter of state law and procedure not involving federal constitutional issues. It is only in circumstances impugning fundamental fairness or infringing specific Constitutional protections that a federal question is presented...

In the Applicant case his 5th Amendment infringed giving the prosecution the edge from a coerced confession used in trial, raises to the level of federal constitutional violation. Applicant alleges that the state constitution was violated, but that the trial court failed to ensure that his constitutional rights were later safe-guarded. The Government should not have been able to use the unconstitutional evidence, gained through or by unconstitutional means.

As a guideline to applying this criterion of fundamental fairness, this circuit has repeatedly stated that the erroneous admission of prejudicial evidence can justify post-conviction relief only if the error was "material in the sense of crucial, critical, highly significant factor." see Hills v. Henderson, 529 F.2d 401.

Here, as a result of the erroneous evidentiary ruling, the jury improperly heard testimony concerning the handling and possession of a weapon by the Applicant. The jury was further given critical instructions on how the weapon should apply regarding malice. A review of the record indicates that the fact that the jury heard such evidence was indeed "crucial, critical, highly significant factor" in their decision. The demension of Applicant's trial was for afore-said reasons fundamentally unfair, and Applicant is accordingly en-

titled to relief under post conviction.

Trial counsel did not subpoena a psychiatrist to come and give expert testimony on the Applicant's condition at the time of his arrest. Applicant testified to being under the influence of alcohol, Xanax and marijuana. (see suppression hearing, trscept. pg. 113, Ln. 6-12; pgs. 114-130, Ln. 1-17). Officers even testified that Applicant had an odor of alcohol coming from him during interrogation. (see trscept. pg. 78, Ln. 23-25; pg. 102, Ln. 3-5). Officers also noticed Applicant had suffered a head injury. (see trscept. pg. 86, Ln. 1-9; pg. 102, Ln. 6-14).

Psychiatrist would have testified that the effects of alcohol and Xanax "together" will cause a chemical imbalance (Meaning temporarily insane), causing a person to suffer from a lost of memory. Especially the amounts in which Applicant testified to being under. Applicant had very little sleep, and had also suffered a concussion from head injury.

Counsel did not subpoena Applicant's medical records from the county jail that would have shown this. This shows that counsel did not have Applicant's best interest in mind. If counsel still seen case to be unwinnable, counsel could have made motion to the Court to enter a plea of temporary insanity. Counsel did not. 197 20-55

Counsel did not use defense witness to testify. Defense witness would have testified to seeing various items of evidence involved in this case, in his classroom at Lexington Highschool. This was in 2006. This is the reason why the Clerk of Court asked all potential jurors, "Before we get started, is there anyone here that attended Lexington Highschool from the years 2005-2006." One young white lady stood up. The clerk told her she was excused from jury duty for this particular trial. This was because counsel had already informed the state of

defense witness testimony.

Applicant is trying to understand why anyone that attended Lexington Highschool during this time frame would be so important if allegations of fabricated evidence was not true. Counsel was ineffective by not calling defense witness because this could have undermined the evidence that the state planned to use against Applicant. Applicant is alleging that the evidence did not go through the proper chain of custody and was fabricated.

The Evidence Custodian (Ms. Candy Kyzer) is the individual that presented the evidence to the students at the school. Ms. Kyzer testified that another custodian handled certain items collected from the scene of the crime, but this custodian never testified. Applicant still does not know who this person is. (see trscept. pg. 308, Ln. 14, 15). This shows that the evidence did not go through the proper chain of custody. S.C.R. Crim. P. Rule 6.

Ms. Kyzer also testified to storing clothes which obtained D.N.A. evidence all in one box. (see trscept. pg. 305, Ln. 23-25). She put both the Applicant's and the victim's (who was shot, Mr. Sulton) clothes all in one box together. The victim had on a red shirt the night of the incident. (see trscept. pg. 308, Ln. 17-25; pg. 309, Ln. 1-14). Then all placed into a builden with no control climate. (see trscept. pg. 309, Ln. 15-25; pg. 310, Ln. 1-7).

When Counsel asked S.L.E.D. agents there procedure on storing D.N.A. evidence it showed that the evidence when stored at the Lexington County Sheriff's department was improperly stored. D.N.A. stored in a humid area tends to evaporate and drip. (see trscept. Pg. 317, Ln. 18-25; pg. 318, Ln. 1-18; pg. 324, Ln. 10-25; pg. 325, Ln. 1-7). The S.L.E.D. forensic scientist (Ms. Kimberly Hahn) testified that alot of the D.N.A. found on the clothes, was not a match to Applicant nor the victims. This further shows that the evidence in this case was not properly handled. (see trscept. pg. 371, Ln. 14-16).

There were a few other items that were favorable to the defense that counsel failed to highlight during trial. There was D.N.A. found on a roll of duct tape that was never released or the reports of any fingerprints analysis. The crime scene investigator (Mrs. Laura Grimes - Gould) testified to lifting two finger prints from the scene as well as four prints. None were a match to Applicant. (see transcript pg. 228, ln. 7-25).

Counsel did not object to the Prosecutor (Lawrence Wade Kind) entering jury room on more than one occasion without defense Counsel or Court Report present, to set up showing of video evidence to jurors during deliberation. Counsel did a poor job, Applicant feels conspired against. What other reason would Counsel do or not do these things expected of her except to "sale out" Applicant.

Counsel fail below a professional norm according to Strickland v. Washington. In McMann v. Richardson, 397 u.s. 759, 771 n.14 (1970): "The 6th Amendment right to Counsel is right to effective assistance of Counsel." Applicant is saying that if Trial Counsel would have done all things before trial, and a few "fundamentally" things during trial, We win.

II.

Prosecutorial Misconduct

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The Solicitor in this case prejudice Applicant's due process rights by not allowing Applicant a preliminary hearing. The accused has the right to know the charges that are being brought against them as well as the nature of each offense. This was brought to the prosecutor's attention during the hearing to relieve counsel, (see transcript Pgs 9-30).

The Prosecution knew there was no probable cause ever established in this case. This was a violation of Applicant's 4th Amendment right to the U.S. Constitution. Applicant would also have to argue that the Prosecutor's Character in this case was very fraudulent. In statements and in actions shown before and during trial.

The Prosecution was in direct violation of S.C.R. crim. P. 3(e) by not taking action on the warrants in the case within the "90 day" period allowed by the rule. The indictments against Applicant was not clocked, dated and stamped by the Clerk of Court. This is outside of procedure according to South Carolina law.

Lack of subject matter jurisdiction "may not" be waived and "May be" raised at anytime. (see State v. Guthrie, 572 S.E. 2d 309 (S.C. App. 2000)). The Applicant contends that his Kidnapping indictment (2006-GS-32-1298), A.B.W.I.K. indictment (2006-GS-32-1299), ~~Armed Robbery Indictment (2006-GS-32-1300)~~, ~~A.B.W.I.K. indictment (2006-GS-32-1301)~~, Possession of Firearm or Knife during Commission of Violent Crime indictment (2006-GS-32-1302), Kidnapping indictment (2006-GS-32-1304); were all "sham legal processes" that failed to confer subject matter Jurisdiction upon trial court to convict Applicant.

A "sham legal process" is defined under S.C. Code § 16-17-735 in relevant part, as follows: "... the issuances display, reliance on an instrument that is not lawfully issued ... which purpose to ... (b) assert Jurisdiction or authority over ~~or~~ determine or adjudicate the legal status, rights dispute or privilege of a person ..."

Here, Applicant's indictments indicate that he was indicted for Kidnapping (2), A.B.W.I.K. (2), Armed Robbery and possession of Firearm or Knife during Commission of Violent Crime by a Grand Jury at the April term of Lexington County, Eleventh Circuit, General sessions Court. However there is no such term according to S.C. Code ann: § 14-5-760. The South Carolina legislature has enacted the following schedules for Lexington County General sessions Court: "... the terms for the Eleventh Circuit, Lexington County Court of General Sessions shall be held on the third Monday in January, the fourth Monday in May, and the Tuesday following the first Monday in September. Each term of the Court of General sessions shall be for two weeks."

In conjunction, the S.C. Legislature has enacted S.C. code § 14-9-170, which mandates the following provisions for convening of the Grand Jury for service upon the General sessions Court: "The Grand Jury as lawfully drawn in accordance with law for service upon the Court of General Sessions in each of the Counties shall constitute the Grand Jury for the County Court and shall meet with the County Court at each of its terms, except the next term succeeding each session of circuit court, at which term the Grand Jury need not meet."

Further, the S.C. Legislature has enacted S.C. Code § 14-9-210, which imposes the following lawful requirement upon the County Solicitor to obtain indictment: "The County Solicitor shall prepare, and through the presiding Judge of the Court, of General Session, sub-

mit to Grand Jury while in attendance upon the Court of General sessions," bill of indictment in all cases in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days (Emphasis added).

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As can be shown from the plain and unambiguous language of the foregoing statutory enactments, the S.C. Legislature has not enacted any "April Term" of General Sessions Court in Lexington County as is indicted by Applicant's indictments. Thus, Applicant's indictments allegedly obtained by the solicitor at a "April Term" of General Session for Lexington County, while no lawful Grand Jury was in attendance, operate as "sham legal processes" that failed to confer Subject Matter Jurisdiction upon trial Court since there was no "legally existing" Grand Jury in attendance at a nonexistent term contrary to §§ 14-9-170, and 14-9-210. See, e.g., State v. Hann, 12 S.E. 2d. 726 (1940).

Not with standing as a threshold matter, in Brown v. State, 449 S.E. 2d. 494 (1994), the Court dealt with an issue similar to Applicant's issue. In the Brown case, the indictment indicated that the Grand Jury Foreman signed the indictment "true bill" on 10-19-90, while the indictment's caption indicated that the Grand Jury convened on 10-22-90. The Court ultimately held that "by order of the Chief Justice, the Chief Judge for Administrative purposes in each County within the Circuit could convene the Grand Jury when the Circuit Court was not in Session, and that the different dates on Brown's indictment only indicated that the Grand Jury took action on the indictment earlier than they made their report to Court." Brown's claim was denied.

Conversely, Applicant contends that in his case any reliance on the Brown decision to deny his claim would be misplaced. To begin

with § 14-7-50-70 (cited in Brown's case) has since been repealed and re-instituted under § 14-7-1520 (Entitled drawing of [lawful] grand Jury), which mandates in relevant part the following provisions: "Not less than fifteen days before the convening of the first term of the General Sessions Court for the Calendar year. The Jury Commission shall proceed to draw... Grand Jurors which the... Administrative Judge for the Circuit has determined to be sufficient in order to impanel a Grand Jury... Immediately after these Grand Jurors are drawn, the Clerk shall issue writ of Venire facias for these Grand Jurors, requiring their attendance on the first day of the first week of Criminal Court in the County..." (Emphasis added).

In reviewing the plain and unambiguous language of § 14-7-1520 (Formerly § 14-7-1550-70 during the Brown decision), it is clear that the S.C. Legislature did not (nor could not under Article 1, sec. 8, S.C. Constitution) empower the Chief Justice or Administrative Judge to Convene a Grand Jury outside a term of General Sessions Court, but did rather empower the Administrative Judge to determine the sufficiency of empaneled Grand Jury for convening with General Sessions Court to return indictments for trial. (see Gilfillin v. Giffilin, 544 S.E. 2d 829 (2001)). Applicant is looking at the fact that the Prosecutor moved to have Applicant indicted in an April term when a May term under S.C. Code, § 14-5-700 was only weeks away. Applicant was not tried until June 26, 2006.

Finally, Applicant contends that any reliance on the recently decide case of State v. Gentry, 610 S.E. 2d 494 (2005), would be misplaced as well since he is challenging the Court's "statutory or constitutional power" to adjudicate his indictments, and not their sufficiency."

This further shows that the Court lack subject matter jurisdiction to try Applicant. In hearing to relieve Counsel, the

Solicitor stated that the letter to my attorney was sent to him from Applicant. (see trscept. pg. 9, Ln. 5-13). Applicant showed a copy of the letter to the Court. (see copy of letter to lawyer labeled Exhibit F).

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 Applicant showed a copy of the letter to the Court. As the Court can see, the letter is clearly addressed to Applicant's Counsel, not the Solicitor. This is where both Counsel and Solicitor perjured themselves by lying to the Judge concerning this matter. (see trscept. pg. 9, Ln. 5-21).

Counsel had actually recieved this letter, took it to the solicitor to discuss the contentence thereof and came up with this fabricated story to tell the judge. The prosecutor continued to make false statements going into trial. Stating to the Court that at some point during the trial, "sisters of one of the victims. They will testify." Then turned around after finding out that one of the jurors knew one of these same sister that, "she will not be testifing." (see trscept. pg. 36, Ln. 16, 17; pg. 143, Ln. 20-25).

These are all facts to paint the Court a picture of the Prosecutor's Character in this case. The last issue was actually in regards to a potential juror, and a juror selected. Both persons knew the sister of one of the victims in the case.

The Prosecutor would also ask Applicant questions outside of the scope of what the hearing was for during a hearing to suppress any oral statement believed to be given by Applicant. Trying to get Applicant to make incriminating statements against himself, which is a violation of Applicant's 5th Amendment rights under the U.S. Constitution. (see trscept. pg. 122, Ln. 5-7).

The Prosecutor went on to violate Applicant's 6th Amendment rights. "The right to a fair trial by an impartial jury." By the Prosecutor asking the judge to keep juror # 109, this prejudice the Applicant

from have a fair trial by an impartial jury. This particular juror knew, and went to school with the victim's sister in this case. (see transcript pg. 142, Ln. 25; pg. 143, Ln. 1-4).

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In the opening arguments the prosecution gave their personal opinions as to what occurred the night the alleged crime was committed. Pointing and identifying Applicant as the perpetrator. This was not only prosecutorial misconduct, but this prejudice was extra influence to the jury as well. (see transcript pg. 147, Ln. 19-25; pg. 148, Ln. 1-19).

This was the type of misconduct that was continued throughout the course of the trial. The Prosecutor lead numerous witnesses, asked witnesses for speculation testimony and at some point during the trial testifying themselves. (see transcript pgs. 155-160; 189; 200; 202; 219; 227; 232-238; 249; 252; 258; 275; 321; 339-341; 346-347; 374-375; 406-408). These were all the times the prosecutor lead a witness, asked for speculation testimony, testified themselves or used some sort of unbalanced tactic during the trial. This was extra influence to the minds of the jurors. This type of misconduct warranted for a mistrial. It got so out of hand that the judge had to ask, "Solicitor please don't lead." (see transcript pg. 219).

The Prosecution knew and allowed the store owner to give perjurious testimony. The testimony given by this witness went totally against the police reports taken the night of the incident. (see transcript pg. 152-213). This is like a director shooting a film and the actors are going off the script. The Prosecutor also asked the judge to qualify several witnesses for expert testimony that did not qualify in those particular fields. (see transcript pgs. 246-247; 346-347).

The Prosecution admitted to the Court that "they" had change or modified the D.V.D. that was admitted as evidence, State's I.D. #4. (see trscept, pg. 184, Ln. 4-6). The defense made an contemptuous objection to this piece of evidence. The ~~D.V.D.~~ ^{DAVID} 28: Ant 52 go through the proper chain of custody. This evidence was fabricated and should not have been admissible.

This D.V.D. or no other D.V.D. was ever shown to Applicant. Nor was it enclosed in Applicant's discovery. This prejudice Applicant's due process rights according to Brady v. Maryland. Applicant had the right to know the evidence against him. Applicant was "blind sided" with this piece of evidence.

The Prosecution also withheld other evidence that was favorable to the defense. For example, the results of the G.S.R. kit, (see trscept, pg. 308, Ln. 2-7; pg. 425, Ln. 16-20). There was a 380 caliber gun clip found. The Prosecution never introduced it as evidence nor did they released the results of the finger prints found thereof.

The defense made an objection to the Prosecution using any items in his closing that was not admitted as evidence during the trial, and any other tactics to attempt to influence the jury. (see trscept pgs. 393-398). In closing arguments the Prosecution again voiced their personal opinion as to what took place. Pointing and making their own in Court identification as to the Applicant being the perpetrator. (see trscept, pg. 401, Ln. 18-22).

The Prosecutor went on to speculate by stating, "he fell into the blood of the victim with his elbow... that's how it got there." (see trscept, pg. 413, Ln. 4-5). There was no evidence to confirm these allegations. The Prosecution never produced any witness that could make any in-court identification. (see trscept, pg. 418, Ln. 9-13).

No expert witness even testified to analyzing the D.V.D. nor was there anyone brought in to compare the facial structures of the Applicant to that of the person on the D.V.D. (see trscept. pg. 418, Ln. 19-23). No D.N.A of the Applicant was ever found anywhere on the scene of the crime. (see trscept. pg. 424, Ln. 5-8). Nor was there any money, gloves or gun ever recovered. (see trscept. pg. 425, Ln. 14-15). 709 OCT 28 A 4:52

All of these issues go to show that the Prosecution in this case did not prove "every" element of the case beyond a reasonable doubt. Violating Applicant's 5th Amendment rights of the U.S. Constitution by unconstitutionally shifting the burden of proof over to the defense. With the Prosecution's Misconduct, it completely took away the fundamental fairness from the trial. With these acts of prejudice there was no way for Applicant to enjoy the right to a fair trial. Violating his 14th Amendment rights of the U.S. Constitution.

III.

Ineffective Assistance of Appellant Counsel

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A defendant is "Constitutionally" entitled to effective assistance of Appellant Counsel. (See Anderson v. State, 581 S.E. 2d 834 (S.E. 2003); Tucker v. Catoe, 221 F.3d. 600 (4th cir. 2000).

Appellant Counsel failed to raise the trial judge abused his discretion by forcing Applicant to go into trial with Counsel or represent himself, when there was an obvious conflict. Leaving Applicant with no other options, but to waive all rights to counsel, knowing the dangers of one representing themselves. This violated Applicant's 6th Amendment rights to have effective assistance of Counsel under the U.S. Constitution. (See U.S. v. Cronin, 466 U.S. 648, 80 L.ed 2d 657, 104 S.Ct. 2039). This issue was brought before the Court in a pretrial motion to relief Counsel. (trsept. pgs. 9-30).

In this same hearing the judge heard the Applicant express his rights. Putting the Court on notice on several different occasions during the hearing that the defense Counsel had waived his lawful rights to a preliminary hearing. One that was applied for by Applicant within ten days given by the Court to apply, applied to before Counsel was even appointed. Counsel even admitted to doing so. (see trsept. p. 22).

Appellant Counsel was ineffective by not raising the fact that the trial judge erred by allowing a coerced statement to enter the trial, which was hearsay evidence, violating Applicant's 5th Amendment of the U.S. Constitution. (see trsept. pgs. 62-139). Trial Counsel moved for this statement to be suppressed. Officers stories conflicted with each other, they did not have times right, they had no rough draft notes where they wrote anything down and officer Richardson who

was in the interrogation room at some point, did not testify on his own behalf as to what actually occurred that day. (see trsept. pg. 82, Ln. 16-19). FILED

Officers admitted to smelling the sent ~~2011 02 28~~ Acc#52g from the Applicant and seeing an open wound on his forehead. Officers never asked Applicant had he been drinking or on drugs. Nor did they ask Applicant if he needed medical attention for his head injury.

Applicant did admit to writing a statement on the bottom of the Miranda right sheet, where it reads, "Statement." The statement that was given by Applicant was, "I have requested an Attorney," which means all questions stop until counsel is present. After this is when officers say they obtained an oral statement from Applicant.

This Miranda right sheet that Applicant signed was labeled "states' I.D. or Exhibit #1" for trial. (see trsept. pgs. 65-66). The judge did not allow this evidence to be used in trial. This prejudice the Applicant from being able to show that he indeed exercised his 5th Amendment right to remain silent as well as his 6th Amendment right to counsel.

Applicant testified to being under the influence of alcohol and several drugs during interrogation. The judge still ruled that statement was admissible. (see trsept. pgs. 136-139). Appellant counsel was ineffective by not raising the judge erred when allowing a juror (#109) to remain on the jury who admitted to knowing one of the victim's family members. Even after allowing a potential juror to be dismissed because of the same reasons.

Both juror's were from the same area as the defendant in this case. Both knew and were exposed to rumours, and pre-trial publicity. Both had personal dealings with family members of the victims in the case. Besides these facts, the jury in this trial was not made up from a fair cross of the Com-

community. This raising another bias violation argument. A prejudice that violated Applicant's 6th Amendment right of the U.S. Constitution. The right to be tried by a "fair and impartial" jury. As well as "equal" protection of the law by the 14th Amendment. 2020.007.28 A 9:52

Appellant Counsel was ineffective by not attacking the store owner's (Mr. Singh's) testimony at trial. The state never had a Neil V. Biggar hearing on identification, but this witness still made in-court identification. Not only did he state, but he pointed at the Applicant stating, "a man came in the store pointing a gun just like this man sitting right over there." (see trscept, pgs. 155-159).

Not only was this in-court identification, but this statement also tainted the minds of the jury. This prejudice Applicant. This statement is not only considered racially motivated, but stereotypical as well. Being that the statement he gave to officers the night of the alleged crime was, "the man had on a mask." So how could he even know if it was actually male or female or what nationality the person was.

Defense Counsel moved for a mistrial. The judge overruled this motion, allowing this witness to continue to give perjurious testimony. (see trscept, pgs. 155-177). Appellant Counsel was ineffective by not raising that the judge erred by allowing "State's I.D. or Exhibit #4" to enter the trial. Knowing that this evidence had not gone through the proper chain of custody. (see trscept, pgs. 173-183).

Defense Counsel made a contemptuous objection concerning this particular evidence. (see trscept, pgs. 186-191). This evidence was "fabricated" and should not have been allowed to enter the trial whatsoever.

Appellant Counsel was ineffective by not raising that the judge erred when qualifying the doctor as an expert witness in fields that he was not qualified in. (see transcript pgs. 246, 247). The judge continued to abuse his discretion by allowing J.L.E.D., D.N.A. analysis, as a expert in the field of statistics or mathematical analysis when this person did not qualify. (see transcript pgs. 339-358).

Trial counsel made a contemptuous objection to any testimony given from this witness as to population probabilities or statistical probabilities as to the results of the test. The judge still allowed the prejudicial testimony to continue. Defense Counsel moved for a directed verdict on all charges. (see transcript pgs. 382, Ln. 1-7). State v. Mitchell, 535 S.2. 2d. 126, 127 (2000), "The Court should not refuse to grant the direct verdict motion when the evidence merely raises a suspicion that the accused is guilty. Id. at 127."

Trial counsel then singled out the one particular charge of A.B.W.I.K. against the store owner as an example to show that the state had not produced any substantial evidence from which the jury could "reasonably" conclude beyond a reasonable doubt that the state had proved every element of each offense charged. In State v. Langley, the Court held that "while the circumstantial evidence was sufficient to present this case to the jury on the state's theory, the evidence failed to establish overwhelming evidence of Appellant's guilt."

Thus as the circumstantial evidence in Applicant's is similarly to the Langley case and as there was a reasonable likelihood of a reversal had this issue been raised and properly argued. The Applicant's Appellant Counsel refusal and failure to do so was ineffective assistance of Appellant Counsel that prejudice Applicant's right to a fair Appellant review of a critical issue. (see patrick v. State, 2002.

The judge erred by not granting Applicant a directed verdict. (see trscept. pgs. 385, 386) The judge knew that the burden of proof falls upon the State. (see trscept. pg. 387, Ln. 4-20). By the judge not granting a directed verdict he allowed the burden of proof to be shifted upon the defense.

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Trial Counsel then moved for a motion in limine later in the trial. Asking the Court not to allow the state to use anything in closing arguments that was not brought into trial as evidence, and that would cause extra influence to the minds of the jurors. The judge allowed certain items to be used that was not admitted as evidence. (see trscept. pgs. 393-397).

The defense made several objections during the prosecution's closing arguments. The judge allowed this type of conduct by the prosecution to go on. (see trscept. pgs. 406, 407). The Prosecution went as far as speculating and making in-court identification to Applicant being the perpetrator. The judge allowed all of these prejudicial things to take place and Appellant Counsel attacks none of it. (see trscept. pgs. 408-414).

Before sentencing trial Counsel made a second motion for a new trial. The judge again denied the motion and reaffirmed all of his rulings. Both evidentiary and otherwise. All pretrial rulings as well. (see trscept. pg. 471). By the judge doing so, he is excepting responsibility for all his incorrect judgements. Appellant Counsel argues none of it.

As far as Applicant being in possession of a weapon, the victim (Mr. Singh) did not give any convincing testimony as to a weapon. He actually stated he never actually saw a weapon. (see trscept. pg. 193, Ln. 2,3). The other victim, (Mr. Sulton) who was supposedly shot never

testified. This violated Applicant's 8th Amendment of the U.S. constitution. The right to confront his accuser. Applicant is doing a sentence that directly involve this individual. That's prejudicial. **FILED**

Applicant would also challenge the length of his sentence. ^{2009 OCT 28 A 9:52} Applicant is sentenced to serve "110 year" sentence. Although, it does not exceed the maximum sentencing, it does seem that Applicant was punished for inserting his right to trial. Applicant was offered less time to plead guilty.

Applicant does not see the logic in this sentencing when the victims in this case ages where 54 and 51 years of age. The average life expectancy of a man is 65 to 70 years old. This means that Applicant would still be serving this sentence after victims are deceased.

The only person who lost their life in this case is the Applicant. They are people that have committed murder that have less time than the Applicant. Applicant is arguing that this is cruel and unusual punishment. A violation of his 8th Amendment right of the U.S. constitution.

For having to serving all of this time on an illegal sentence. Especially after trial counsel asked the Court for current sentences. Appellant Counsel was ineffective by failing to raise any of the following issues that was raised in pretrial or during trial that was objected to and preserved for Appellant review. Applicant wrote Appellant counsel (Joseph Savitz, III) asking him to raise these same things. (See prose brief).

This prejudice Applicant from receiving relief from the Appellate Court. Appellate Counsel was ineffective. Violating Applicant's 6th Amendment rights of the U.S. Constitution. Guaranteeing Applicant effective assistance of Appellate Counsel. FILED
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These errors in Applicant's case were plain. These errors were clear or obviously made and affected the Applicant's substantial rights. These violations are cognizable amounting to Constitutional violations of Applicant's due process rights of the U.S. Constitution, and is a fundamental miscarriage of justice.

The trial judge's errors had a substantial and injurious effect on the trial by allowing certain evidence to enter trial that should not have been allowed. The Prosecutorial Misconduct before and during trial caused contamination by extraneous influences to the minds of the jury. The government had intrusion into attorney-client relationship. And counsel was just plain ineffective. Both Trial and Appellate, Applicant feels that he was conspired as well as discriminated against.

Conclusion

WHEREFORE, the Court should grant this Post Conviction Application in the interest of Judicial Economy, and do to the violations to Applicant's due process rights. In violations with his 4th, 5th, 6th, eighth and fourteenth Amendments

of the U.S. Constitution. It is hereby asked of the Court to
 Vacate all sentences against Applicant with prejudice and
 Applicant be released from Respondent's custody within "15"
 Working day upon the Court's decision. 2009 OCT 28 A 9 52

RECEIVED
 CLERK OF COURT
 2009 OCT 28

Sworn to and subscribed before me
 this _____ day of _____, 20____.

 Notary Public

My commission Expires: _____

Respectfully Submitted,


 Jabbar Jino Straus, # 231018,
 Applicant

532

205 East Main St. 2009CP3204805
Lexington, S.C. 29072

FILED

OCT 28 2009

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Dear Clerk;

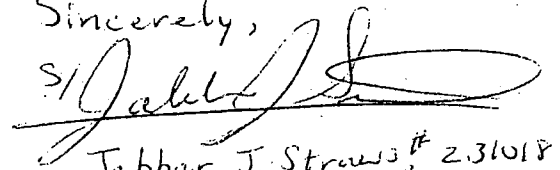
BETH A. HARRIS
CLERK

Enclosed you will find a copy of my Post Conviction Application. I am asking you to please file my application and send me a clocked-in, dated copy for my own personal files.

Thank you for your assistance . . .

Date: October 22, 2009

Sincerely,



Jabbar J. Straws # 231018
Applicant

Lee CI/Da
Jabbar Straws # 231018
990 Wisacky Hwy.
Bishopville, S.C. 29010

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE 11TH JUDICIAL CIRCUIT
) Case No.: 2009-CP-32-04805

Jabbar J. Straws, #231018

)
)
) Applicant,
)

v.

)
)
) **RETURN**
)

State of South Carolina,

)
)
) Respondent.
)
)

Respondent, making its Return to the application for post conviction relief (PCR) filed October 28, 2009, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the April 2006 term of the Lexington County Grand Jury for two counts of kidnapping (2006-GS-32-1298, -1304), two counts of assault and battery with intent to kill (ABWIK), possession of firearm or knife during commission of violent crime (2006-GS-32-1302), and armed robbery. Elizabeth C. Fulwood, Esquire, represented him. On June 26-28, 2006, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable R. Knox McMahon sentenced him to confinement for a period of thirty (30) years for each count of kidnapping; five (5) years of possession of a firearm; twenty (20) years for each count of ABWIK; and thirty (30) years for armed robbery. The sentence for kidnapping were ordered to be served consecutively to each other. The sentence for armed robbery was ordered to be served consecutively to both kidnapping sentences and the sentence for ABWIK. The sentence for ABWIK was ordered to be served consecutively to the sentences for

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kidnapping.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Straws, Op. No. 2009-UP-425 (S.C. Ct. App. filed September 8, 2009). The Remittitur was sent on September 24, 2009.

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

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
2. Lack of Subject Matter Jurisdiction.
3. Prosecutorial Misconduct.
4. Ineffective Assistance of Appellate Counsel.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), citing Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's

unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. 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 this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (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, *supra*; 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 that 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 and -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, supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicants burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic

decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

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

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation. Sharper, Id.

VII.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel and appellate counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

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

IX.

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

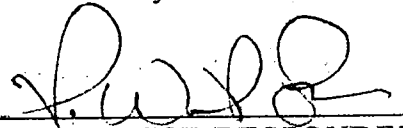
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

2/23, 2010.

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

Jabbar Straws,)
)
 PLAINTIFF,) PCR HEARING
) 2009-CP-32-4805
)
 -VS-)
)
 State of South Carolina,)
)
 DEFENDANT.)
 _____)

BEFORE THE HONORABLE R. LAWTON McINTOSH, JUDGE

FEBRUARY 3, 2011

LEXINGTON, SOUTH CAROLINA

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

Jonathan Goode, Esq.
For the Applicant

A. West Lee, Esq.
For the State

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

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1 (The defendant, together
2 with counsel, was personally present in the
3 courtroom.)

4 THE COURT: Would you call your case,
5 please?

6 MR. LEE: Yes, Your Honor. This is Jabbar
7 Straws versus the State of South Carolina. Again,
8 that's 2009-CP-32-4805, and it comes to the Court by
9 way of application for post-conviction relief filed
10 October 28, 2009.

11 The applicant was indicted at the
12 April 2006 term of the Lexington County Grand Jury
13 for two counts of kidnapping, two counts of assault
14 and battery with intent to kill, possession of a
15 firearm or a knife during the commission of a
16 violent crime, and armed robbery.

17 He was represented by Ms. Elizabeth
18 Fullwood, and from June 26 to June 28, 2006, the
19 applicant underwent trial pursuant to which he was
20 found guilty as indicted.

21 The Honorable R. Knox McMahon
22 sentenced him to confinement for a period of thirty
23 years for each count of kidnapping, five years for
24 possession of a firearm, twenty years for each count
25 of ABWIK, and thirty years for armed robbery.

1 The sentences for kidnapping were
2 ordered to be served consecutively to each other.
3 The sentence for armed robbery was ordered to be
4 served consecutively to both kidnapping sentences.
5 And the sentence for ABWIK was ordered to be served
6 consecutively to the sentences for kidnapping.
7 Timely notice of appeal --

8 THE COURT: Was the weapon concurrent?

9 MR. LEE: It appears that way, Your Honor.

10 THE COURT: Okay.

11 MR. LEE: Timely notice of appeal was
12 filed on the applicant's behalf, and that appeal was
13 perfected. The South Carolina Court of Appeals
14 dismissed the applicant's appeal by order filed
15 September 8, 2009, and a remittitur was sent done on
16 September 24, 2009.

17 In his current application, the
18 applicant alleges he's being held in custody
19 unlawfully for the following reasons: ineffective
20 assistance of counsel, there's a claim raised of
21 lack of subject matter jurisdiction, ineffective
22 assistance of appellate counsel, and prosecutorial
23 misconduct.

24 I understand the applicant has made
25 several more specific claims, which I will allow his

1 attorney, Mr. Goode, to expand on. I think all
2 told, Your Honor, I think it was 110 years total.
3 At this time, I'll turn it over to Mr. Goode.

4 THE COURT: Mr. Goode?

5 MR. GOODE: Thank you, may it please the
6 Court?

7 THE COURT: Yes, sir.

8 MR. GOODE: We would call Mr. Jabbar
9 Straws.

10 THE COURT: Okay, sir, will you come up
11 here and place your left hand on the Bible and raise
12 your right hand? You are Jabbar Straws?

13 MR. STRAWS: Yes, sir.

14 (The witness was sworn.)

15 THE COURT: Very good. Thank you, sir.

16 So let me make sure. You have
17 ineffective assistance of counsel, lack of subject
18 matter jurisdiction, ineffective assistance of
19 appellate counsel, and prosecutorial misconduct.
20 Those are your grounds?

21 MR. GOODE: Yes, sir.

22 THE COURT: Are you asserting any other
23 grounds other than those?

24 MR. GOODE: No, sir, Your Honor.

25 THE COURT: Okay, go ahead.

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1 JABBAR STRAWS, having first been duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GOODE:

5 Q Mr. Straws, you have applied for post-
6 conviction relief. Can you tell us about Ms.
7 Fullwood's representation and why you feel it's
8 deficient?

9 A Okay.

10 MR. STRAWS: First of all, I would like to
11 say good afternoon, Your Honor and ladies and
12 gentlemen of the Court. It's the actual claim of
13 ineffective assistance of trial counsel with fraud,
14 too, Your Honor. That was the actual --

15 THE COURT: Ineffective assistance of
16 trial counsel with fraud?

17 MR. STRAWS: Yes, sir.

18 THE COURT: Okay.

19 MR. STRAWS: And before we actually get
20 started, I would like to state for the record that
21 on page eleven of my initial PCR application, I said
22 it in a brief way.

23 And in the second paragraph of the
24 PCR application, I added transcript page 170, lines
25 eight through eighteen. I also added pages -- I

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1 will go to that -- second paragraph on page eleven
2 where it states, "During the day of trial, he
3 testified to the amount being around \$3,800. See
4 transcript page" -- I added page 170, lines eight
5 through eighteen. And I also added -- I'm asking
6 the Court to go to page 15.

7 THE COURT: Fifteen on your petition?

8 MR. STRAWS: Yes, sir.

9 THE COURT: Okay.

10 MR. STRAWS: And the last paragraph where
11 I stated, "Applicant hereby is making a case as to
12 whether or not the statement is unconstitutional,"
13 instead of saying -- I said I added "although."
14 "Although the Trial Court already decided that --
15 decided that not to be a matter."

16 And I continued on, on page 16, the
17 first line. And I continued on by saying that
18 "Applicant comes before the Court is to also
19 establish that evidence given as a result of that
20 unconstitutional statement."

21 I also added page -- the first
22 paragraph, page 17 -- last paragraph, excuse me,
23 where I said, "Here as a result of the area's
24 evidentiary hearing, the jury impartially heard
25 testimony concerning the charges of holding and

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1 having possession of a weapon during the commission
2 of a violent crime."

3 The words I put there was "charge of
4 assault and battery with the intent to kill as to
5 the applicant.

6 THE COURT: Okay.

7 MR. STRAWS: The third paragraph of page
8 18, I added was that "If counsel still sees my case
9 to be unwinnable, counsel could have made a motion
10 to the Court to enter a plea of temporary insanity
11 or self-defense. Counsel did not. See transcript
12 page 197, lines 20 through 25; pages 38, 39, lines
13 17 through 25; and page 360, lines one through six."

14 And, last, I added on page 34, there
15 were some minor errors I had made on my word. I ask
16 the Court's patience with me. It's actually
17 supposed to be "This violates the applicant's Sixth
18 Amendment right" and not the Fifth Amendment.

19 THE COURT: Any other modifications of the
20 petition?

21 MR. STRAWS: No, sir, Your Honor.

22 THE COURT: We'll make those notes for the
23 record and find it so modified.

24 MR. STRAWS: Thank you.

25 THE COURT: All right, go ahead, counsel.

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1 EXAMINATION CONTINUED

2 BY MR. GOODE:

3 Q Mr. Straws, at your bond hearing, did you
4 request a preliminary hearing?

5 A Yes, I did. Yes, I did, Your Honor. At
6 my bond hearing where they give you the application
7 to apply for a preliminary hearing, I did so within
8 the ten days that is ordered by the Court to do so.

9 MR. STRAWS: I would also like to say
10 before we get started, I would just like to point
11 out the fact that I do understand the reason why
12 we're here today.

13 THE COURT: Let me say something to you.
14 I'm not going to let you get up and make running
15 commentary, Mr. Straws. I want you to listen to the
16 questions that are asked of you and answer those
17 questions. If you need to expound on your answers,
18 you can do so.

19 But I'm not going to have you in here
20 making a running commentary on everything that goes
21 on, okay? If it's relevant to your petition, you
22 need to say it. But we're not going to have asides
23 as we go through this testimony. You understand?

24 MR. STRAWS: I understand, sir.

25 THE COURT: Okay, go ahead, Mr. Goode.

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1 MR. STRAWS: It is relevant.

2 THE COURT: Go ahead, Mr. Goode.

3 Q Could you tell us about what happened
4 after you requested your preliminary hearing?

5 THE COURT: Just one second. I want to
6 make sure I didn't cut you up. I want you to
7 express yourself fully. I just don't want a problem
8 down the road. You understand?

9 MR. STRAWS: Yes, sir.

10 THE COURT: You were going to say
11 something about your preliminary hearing, that you
12 made a request, a timely request for a preliminary
13 hearing?

14 MR. STRAWS: Yes, I did. But I was a
15 little ahead of myself. That's the only reason,
16 Your Honor. I was going to try to go back from
17 there.

18 Q Were you represented at the time of your
19 bond hearing?

20 A Yes, I was.

21 Q Was your attorney present at your bond
22 hearing?

23 A No, she was not.

24 Q And did you request a preliminary hearing
25 at your bond hearing?

1 A Yes, I did.

2 Q And did you ever have that preliminary
3 hearing?

4 A Yes, sir, one preliminary hearing was
5 scheduled.

6 Q Did it ever occur?

7 A No, it did not.

8 Q Why did your preliminary hearing never
9 occur?

10 A The Judge told me that Ms. Fullwood waived
11 my preliminary hearing.

12 Q And did y'all ever discuss that, you and
13 Ms. Fullwood?

14 A Yes, I actually asked the Judge to repeat
15 it, because I didn't believe it at first. And when
16 he told me that again, I said, "Thank you, Your
17 Honor." And from that point, I told the Judge she
18 was fired.

19 Q Who was fired?

20 A I told the Judge that Ms. Fullwood was
21 fired.

22 Q Well, tell us about the conversation you
23 and Ms. Fullwood had regarding a preliminary
24 hearing.

25 A Okay. She came and visited me one time

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1 before prior to that. But the next day after she
2 had waived my preliminary hearing without my
3 consent, she came to the county jail to visit me.

4 And we got into a heated argument where I
5 had verbally expressed to her that I no longer
6 wanted her as my attorney. And she got -- she said
7 -- her words to me were, "Oh, don't get mad at me
8 because you're facing these -- these are some
9 serious charges you're facing. So don't get upset
10 with me about that."

11 I just asked her why she did not consult
12 with me before she waived my preliminary hearing,
13 that I applied for, that I thought was my right to
14 have.

15 Q Do you feel like maybe there could have
16 been some other disposition of this case had you had
17 your preliminary hearing?

18 A I truly -- by her making the decision to
19 do it on her own position as to defending herself,
20 she took the power and the decision of a Judge's
21 hand, when my case could have been abolished in
22 Magistrate's Court.

23 Q I know you have some notes that you're
24 looking at. What is your next complaint as far as
25 Ms. Fullwood's representation being deficient?

1 A Well, I just -- I was going to say that --
2 that she didn't raise all the points, all the things
3 that she had needed to do according to the facts of
4 the law, and the facts of failure to meet with the
5 client in this case.

6 I wanted to bring that to the Court's
7 attention, and it was a great injustice. And
8 essentially I'm asking the Court to straighten this
9 injustice. I think it speaks volumes as far as the
10 ethics, the morals and duties of honesty and
11 integrity of the Courts.

12 Under the South Carolina Constitution, 14,
13 it states, paragraph 12, "Effective representation,"
14 "The effective assistance of counsel is a necessary
15 requirement" --

16 THE COURT: Let me stop you there, Mr.
17 Straws. I don't need you to read the law. I've got
18 your brief. The attorneys have the brief. I want
19 you to tell me the factual basis for your petition.

20 And let me ask you this, and I don't
21 mean to interrupt you, Mr. Goode, but let me see if
22 I can't get it so we have some kind of understanding
23 of the fashion.

24 Your attorney tells me that one of
25 the grounds you raised is ineffective assistance of

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1 trial counsel. You added also "with fraud."

2 MR. STRAWS: Yes, sir.

3 THE COURT: If you would, as to that
4 ground, I want to ask you for each one of your
5 premises, go over the facts applicable to that
6 contention. Then we'll move to the next one. Could
7 we do it that way, please?

8 MR. GOODE: Yes, sir.

9 THE COURT: Okay, thank you.

10 Do you understand what I'm asking you
11 to do?

12 MR. STRAWS: Yes, I do, Your Honor.

13 THE COURT: Okay.

14 MR. STRAWS: I'm prepared.

15 THE COURT: Go ahead.

16 A The reason my claim is ineffective
17 assistance of counsel with fraud is because Ms.
18 Fullwood, she breached the confidence in our
19 relationship. A relationship is give and take.

20 So she broke that trust to where I
21 didn't have any more trust for her after she made
22 the decision to waive my preliminary hearing without
23 my consent. She showed me that she was not doing
24 things in the best interest of me, which is the
25 defendant, and not her.

1 She was actually -- she was actually
2 -- I would state that Ms. Fullwood was actually
3 acting as a second prosecutor on my case as far as
4 the decisions she was making, because the decisions
5 she was making were -- she helped to shift the
6 burden of proof over to the defense as my attorney
7 by not challenging the probable cause of the initial
8 arrest, which was reckless.

9 Q So she shifted the burden of proof over to
10 you, not asking for a preliminary hearing?

11 A And challenging the probable cause in
12 doing those things. That's what that hearing was
13 for, to challenge the probable cause of the arrest.
14 And the arrest was warrantless.

15 And the arrest was supposed to be -- the
16 officers were supposed to receive a tip of some
17 kind, right. And this tip from -- which obviously
18 was not from a confidential or reliable informant.

19 This tipster never was revealed, and the
20 officers portrayed the case as they made a lot of
21 these discoveries on their own, which was false. So
22 I'm saying that I felt that Ms. Fullwood from the
23 beginning was against me.

24 And I'm not the smartest person in the
25 world, but I know when somebody's with me and when

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1 someone's against me.

2 Q Okay. Now, did you have any issues with a
3 plea offer?

4 A Yes, we did. But what it was, was Ms.
5 Fullwood came to me after I had already verbally
6 expressed to her the visit she came to me after the
7 preliminary hearing that she was fired, and I no
8 longer wanted her as my attorney.

9 She said, "Oh, don't get mad at me because
10 you're facing serious charges," dah, dah, dah, dah,
11 dah. That still didn't change the fact that I told
12 her that she -- I did not want -- no longer wanted
13 her as my counsel.

14 So she left that day, I guess assuming
15 that she still was going to represent me. So that's
16 when I drew up a letter to the Court to have her
17 relieved as my counsel. She claimed that she never
18 received the letter, and I have copies of it, which
19 will be presented to the Court.

20 THE COURT: Is that in your package, Mr.
21 Goode?

22 MR. GOODE: Yes, sir, Your Honor.

23 MR. STRAWS: It's actually marked Exhibit
24 F.

25 THE COURT: That's in your application?

1 MR. STRAWS: Yes, sir, it is.

2 MR. GOODE: Your Honor, I was under the
3 impression it was attached with the application.

4 THE COURT: I think that's what he just
5 said.

6 MR. GOODE: There should be six exhibits -
7 -- Exhibits A, B, C, D, E, and F.

8 MR. STRAWS: Your Honor, I don't think you
9 have a copy of that.

10 THE COURT: I have 36 pages, but I don't
11 have any exhibits.

12 MR. STRAWS: He does not have actual
13 copies of the exhibits.

14 MR. GOODE: I have one copy that I will be
15 happy to share with opposing counsel and the Court.

16 THE COURT: You can go ahead and make
17 these -- I've been handed Exhibits A, B, C, D, E,
18 and F. Is that all the exhibits that were attached
19 to your petition, Mr. Straws?

20 MR. STRAWS: Yes, it is, Your Honor.

21 THE COURT: I'm going to make those
22 exhibits for the record and just let them have the
23 letter designation that's given to them.

24 COURT REPORTER: Is that Court exhibits,
25 Your Honor, or plaintiff's exhibits?

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1 THE COURT: Ma'am?

2 COURT REPORTER: Court exhibits or
3 plaintiff's?

4 THE COURT: It would Exhibits A through F,
5 and I'll hand them to you. He's already marked
6 these, so I'll just give them to you and keep the
7 same lettering.

8 MR. STRAWS: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 (Court's Exhibits A through F were
11 entered in evidence.)

12 EXAMINATION CONTINUED

13 BY MR. GOODE:

14 Q Mr. Straws, do you feel like you were
15 properly informed about the charges against you?

16 A I feel that I was not represented properly
17 at all. I'd like to give a demonstration of -- on
18 an automobile, and I'm a first time buyer.

19 And I need Ms. Fullwood as the co-signer
20 of this vehicle. And when we buy this car and we
21 drive it off the lot, it's an oil leak. And she --
22 first, we hear a tick or something in the engine.

23 And being that she's the more experienced
24 car owner or mechanic, she says -- I say, "Did you
25 hear that?" and she says, "Yes, but it's nothing."

1 And we keep driving down the street. We stop and
2 get gas, and we pull up at the gas station. And we
3 get gas, and I notice the oil spilling -- there's a
4 leak in the oil pan, and she says, "Oh, it's
5 nothing, keep going."

6 And eventually the car breaks down. I'm
7 saying that to say that she's the more experienced -
8 - she was the more experienced person of the law,
9 and she's supposed to have been advising me of the
10 right thing to do according to the law, when I was
11 simply a layperson and was ignorant to that fact.

12 Q And you feel like she did not inform you
13 of the nature of the charges against you?

14 A She did not.

15 Q And do you think that you would have maybe
16 made some different decisions had you been fully
17 informed of the charges against you?

18 A Like you stated earlier, there were some -
19 - there were some issues with a plea agreement. Ms.
20 Fullwood, after I verbally expressed to her that she
21 was -- I no longer wished to have her as my
22 attorney, she came back and visited me again with a
23 plea agreement from the prosecutor.

24 She told me that we will be -- the
25 prosecutor offered to drop four charges, and I would

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1 give the plea to an open plea of armed robbery and
2 assault and battery with intent to kill.

3 My exact words to Ms. Fullwood were,
4 "That's not a bad deal, but ask the prosecutor to
5 give me some numbers." That was on Friday. That
6 Monday, I was on the jail van on the way to the
7 courthouse.

8 When I got there, she came to me in the
9 jury room and told me that the prosecutor wanted to
10 talk to me. He came to me and said, "I have a plea
11 for you today. You can sign the indictments to and
12 plead guilty to armed robbery and kidnapping."

13 I said, "I thought it was armed robbery
14 and assault and battery with intent to kill." He
15 said, "It's armed robbery and kidnapping. And you
16 plead today, or you go to trial."

17 So when I had -- at the hearing to have
18 Ms. Fullwood relieved as my counsel, I brought this
19 before Judge Knox McMahon, which was the Trial
20 Judge. This was on June 23, 2006. He stated -- and
21 I stated these same facts before the Judge.

22 And the prosecutor said, "Oh, no, it was
23 actually armed robbery and assault and battery with
24 intent to kill." So we was going back and forth,
25 kind of beating a dead horse, because the Judge

1 said, "The hearing that we're at now is not
2 pertaining to any plea agreement, because hasn't he
3 been indicted on all charges?"

4 And the prosecutor said, "Yes, he has been
5 indicted on all charges." And the Judge said, "So
6 that means twelve out of the twenty or so jurors
7 found him most probably guilty?" And he said,
8 "Yes."

9 And I said, "Well, Your Honor, I thought
10 the preliminary hearing stage came before the Grand
11 Jury stage." I said, "She waived my preliminary
12 hearing without my consent, meaning that I did not
13 go to -- that the indictments lacked subject matter
14 jurisdiction to even be before you today."

15 Q Did Ms. Fullwood ever discuss with you any
16 options or witnesses that might be available to
17 provide any kind of alibi?

18 A Well, like I stated earlier, after she --
19 she not only waived my preliminary hearing without
20 my consent, she signed the first initial appearance
21 motion.

22 Where it says "defendant's signature," she
23 signed her signature, again acting like the
24 defendant. And from the waiving of my preliminary
25 hearing, I had totally lost confidence in my trial

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1 attorney. I no longer -- I expressed that verbally,
2 and I expressed it in writing to the Court.

3 The Judge said he was not finding her to
4 be ineffective, and I had two options. He said
5 either I go to trial with Ms. Fullwood, or I go to
6 trial representing myself pro se on the 26th of
7 June. And this was on the 23rd of June, which only
8 gave me two days to prepare for trial if I was to
9 represent myself.

10 And you have some of the strongest legal
11 minds in the world that couldn't prepare for a trial
12 in two days. So really I was given no option but to
13 go into trial with Ms. Fullwood anyway.

14 Q Do you feel like Ms. Fullwood properly
15 investigated the case?

16 A No, she did not. She did not meet with
17 any of the witnesses. As you can see in the
18 transcript, I would have to direct you to the
19 correct page. But she was interviewing Mr. Singh.
20 I will give you it you verbatim.

21 She was interviewing Mr. Singh, one of the
22 witnesses, one of the accusers in the case. He said
23 -- when she first comes to interview him, he says --
24 he says, "Oh, I was waiting for you to come talk to
25 me Saturday."

1 She said, "Oh, something came up that was
2 an emergency, and I will talk to you today." That
3 means she did not talk to neither one of the victims
4 in the case. One victim never testified to
5 anything. It was a DVD in the trial in the case.

6 One accuser never testified whatsoever
7 that that was him in the video, that was his DNA
8 that was found on the evidence that was obtained
9 illegally that Ms. Fullwood should have moved for to
10 have suppressed under -- as far as under the United
11 States -- under my Fourth Amendment right under the
12 United States, under fruits of the poisonous tree.

13 COURT REPORTER: Under what?

14 MR. STRAWS: Fruits of the poisonous tree.

15 COURT REPORTER: Thank you.

16 Q And do you feel like you were prejudiced
17 by her not properly investigating the case?

18 A I feel that -- I feel that the -- again,
19 I'd like to use the illustration of the car. I feel
20 the car was out of line from the beginning, meaning
21 that Ms. Fullwood came in, again acting as a second
22 prosecutor and not a defense attorney, not doing
23 what was best in my -- doing what was best in my
24 best interest.

25 She's acting as, oh, it's not her life.

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1 It's not her life. So she's just going to make the
2 decisions on her own instead of advising with me.
3 And like I stated, if the Court would take notice,
4 Exhibit -- of Exhibit A where Ms. Fullwood signed
5 the first initial appearance motion, she stated at
6 the hearing

7 -- I said, "Your Honor" -- I talked to Judge Knox
8 McMahon.

9 I said, "Your Honor, she waived my -- she
10 signed the first initial appearance motion without
11 my consent." He stated, and Ms. Fullwood stated
12 that, "What happens, Your Honor, is the attorneys at
13 my office sign for the client when they're in jail.
14 And if you'll notice, they've got 'jail' written at
15 the bottom."

16 But I ask the Court, do we need a
17 handwriting analysis as you observe Exhibit B, on
18 the notice of appeal paperwork, that that is not Ms.
19 Fullwood's signature, as well as on Exhibit A.

20 But she stated to the Judge clearly that
21 her attorneys sign for her. I don't think that the
22 Court would need to have a handwriting expert. As
23 you can see, that's Ms. Fullwood's signature. That
24 was the act of -- that was a fraudulent act, again
25 acting outside of my best consent and not in my best

1 interest.

2 Q Can you tell us about any issues with the
3 jury that you felt like Ms. Fullwood was deficient
4 in not objecting to?

5 A As far as the jury, she made an objection
6 to one specific juror. But the issue with the jury
7 was that it was supposed to be a defense witness on
8 this case pertaining to some of the evidence in the
9 case.

10 So the Clerk of Court asked before the
11 jury process took place -- before the selection of
12 the jury, the Clerk of Court stated, "Is there
13 anybody who went to school in Lexington County from
14 the year -- or Lexington High School from the year
15 2005 to 2006?"

16 One young white lady stood up. And she
17 said, "You may be relieved for this particular
18 trial." And I wondered -- and I thought about why
19 she asked that question. That was because the
20 defense witness was at Lexington High School at that
21 time, and this case had been brought up in a class
22 at Lexington High School, somewhat of a criminal
23 justice class or whatever, and the case was still
24 open.

25 And the issue with the removal of certain

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1 evidence was going to be testified to, which I
2 didn't trust Ms. Fullwood to give her this
3 information until the Judge forced me to have no
4 other choice but to go into trial with Ms. Fullwood
5 or represent myself in two days.

6 That's when I gave it to her, on January
7 the 23rd. Up to that point, I really didn't -- I
8 sat down and really -- I didn't trust Ms. Fullwood
9 to give her any information, because I felt that she
10 was working against me. But the jury, after that,
11 going to the jury, one juror was already selected
12 that knew the victim's -- one of the victim's
13 sisters, the victim that did not testify.

14 She came back and told the Judge that she
15 noticed somebody -- she recognized somebody on the
16 side of the prosecution. And it was the victim's
17 sister that she had went to school with.

18 So Ms. Fullwood asked for her to be
19 striked. She did move to have that defendant
20 striked -- I mean, that particular juror striked.
21 The Judge found it not to be an issue. But I felt
22 that she, by her personal relationship with that
23 family member, that she acted just as -- she was
24 just as a character -- she acted just as good as a
25 character witness in the jury room.

1 Q Back to the defense witness, was that
2 defense witness ever called?

3 A That defense witness? That day I gave Ms.
4 Fullwood the defense witness, she did go out and --
5 she did go out to obtain a statement from this
6 witness which I have never seen.

7 Q I'm sorry, I don't mean to cut you off.
8 But was she ever called to testify at your trial?

9 A The actual witness, they was present
10 during the trial but was never called.

11 Q What else do you have?

12 A I have an issue with Ms. Fullwood did not
13 make a contemporaneous objection once we got into
14 trial dealing with the -- the first victim who
15 testified, the only victim who testified.

16 He stated in his police reports that the
17 alleged robbers took \$600 and a \$50 cell phone from
18 him --

19 -- which is Exhibit C, Your Honor.

20 And when he stated that that happened, a
21 second report was never filed before trial. Then
22 the day he got into trial, he testified that, oh, it
23 was \$3,800 that was taken. Ms. Fullwood never
24 objected.

25 Doing a proper investigation, she would

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1 have knowed this. You understand? So by him
2 stating that the \$3,800 was taken instead of the
3 \$600 that he initially claimed, how credible is this
4 witness, is what I'm trying to point out.

5 And that's why I was stating that Ms.
6 Fullwood didn't even take notice of -- she didn't
7 even object to that perjured statement.

8 Q And correct me if I'm wrong. Is what
9 you're trying to say that you feel prejudiced
10 because that -- because his credibility was not put
11 at issue there --

12 A Exactly.

13 Q -- when there was an opportunity?

14 A It would have drawn reasonable -- it
15 would have gave the jury a reasonable doubt to even
16 trust anything he was saying from that point, if she
17 would have presented to the Court that that was not
18 actually what he told the police that night.

19 Q Are there any other issues you have with
20 Ms. Fullwood's representation?

21 A Yes. Exhibit D, she did not move for a
22 change of venue, which I felt was very important.
23 And the sheriff actually made a damaging statement
24 finding me -- not only acting as the Judge and the
25 jury.

1 He acted as the Judge and the jury two
2 days after I was arrested. That's Exhibit D. His
3 exact words, Sheriff Metts stated, "It's good we
4 caught this individual because he would have struck
5 again."

6 By making that statement, he is saying
7 that the individual that's stated in -- that's named
8 in this news report, which is Jabbar Straws. He
9 clearly says my name in the statement, in the actual
10 report. By him making that statement, he was saying
11 that I was already guilty.

12 And I -- and I felt that Ms. Fullwood
13 because of that fact and being the trial was being
14 held in Lexington where she is an pillar of the
15 community and voted in by the citizens of the
16 community and, what, maybe nearly thirty years or
17 so, that his influence alone had a bearing on the
18 trial.

19 Q Are there any other issues you'd like to
20 raise regarding Ms. Fullwood's representation?

21 A Yes. I felt that she did a poor job by
22 not asking the Judge to allow Exhibit E into trial
23 when the prosecutor stated that he was wanting to
24 use an oral statement that was given by -- that was
25 supposedly given by me, and I was -- and then we had

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1 a Jackson versus Denno hearing.

2 And I was stating to the Judge that there
3 was no such oral statement. The officers took
4 advantage of me when I was under the influence of
5 drugs and alcohol. I stated I was under the
6 influence of Xanaxes, alcohol, and marijuana at the
7 time of my arrest, and that they -- what they did
8 was manipulate a drunk man that did not even know
9 what he was doing at the time, whether he was coming
10 or going.

11 I felt that Ms. Fullwood was ineffective
12 by not subpoenaing a psychiatrist who would have
13 testified to the -- to the condition that I was
14 during the time of the arrest, that a psychiatrist
15 would have stated that the mixture of alcohol and
16 Xanaxes causes a chemical imbalance that causes
17 memory loss.

18 I also had suffered a head injury that
19 occurred, and I was actually bleeding from my head.
20 And the Court may can still see the scar on my head
21 -- forehead, right here. There's a scar right here
22 on my forehead.

23 I was bleeding. It's like an inch -- it
24 was like an inch-deep gash in my head. And Ms.
25 Fullwood did not subpoena the medical records that

1 the nurse stated that I suffered a slight concussion
2 from a head blow.

3 It was also issues of self-defense that
4 was -- possibly could have been raised that Ms.
5 Fullwood decided that she was -- on her own not to
6 raise. She never consulted with me with the issue
7 of temporary insanity if she seen the case to be
8 unwinnable, or she did not discuss with me the
9 possibilities of self-defense even being raised as
10 an option.

11 She stated -- in the transcript, Mr.
12 Singh, the accuser -- one of the accusers -- he
13 stated that "It was a fight in there, and they went
14 to fighting." What fight? This never came up in
15 trial.

16 And this DVD didn't show -- it never
17 showed any fight. I'm thinking it may be a part of
18 what -- the modifications that the prosecution had
19 made to the DVD. Was that what happened where the
20 fight was not mod -- where the fight actually was
21 maybe not taken away because they knew that this
22 particular accuser was not going to be testifying?

23 One accuser never testified to anything,
24 which is my Sixth Amendment right to confrontation.
25 He never testified that that was him in the DVD. He

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1 never testified that he gave any swabs. He never
2 testified that he gave any swabs as far as DNA
3 testing or anything.

4 This defendant has yet to -- this accuser
5 has yet to testify to any of it. I -- also dealing
6 with the oral statement, Exhibit E was given to me
7 when I was placed in custody. And it was a Miranda
8 rights sheets stating that "These are my Miranda
9 rights, and I initialed by each one of them that I
10 have the right to remain silent," so forth and so
11 on.

12 At the bottom, it says, "You understand
13 these rights. I make the following statement." The
14 following statement was "I have requested an
15 attorney," meaning that all questioning stopped.
16 The arresting officers state that I continued on,
17 and I said various things.

18 But they don't even have the times
19 correct. If you take notice at the bottom of the
20 page, it says, "End of statement, 12/16/05." At the
21 top of the page, it says 10:55. One officer said it
22 was like -- more like 10:30, and the other officer
23 said it was more like 11:00.

24 One detective that was in the -- that
25 initially was in the interrogation room, he left,

1 and another one came in. What did he hear? He
2 never testified to any of what was alleged to be
3 said at no time.

4 But they was bringing his name up. They
5 testified on a third person saying "Oh" -- one some
6 hearsay saying that "Oh, Detective Richardson was
7 present at some point." But what did Detective
8 Richardson observe that day?

9 His statement was never given. He never
10 gave an affidavit. He never testified. Detective
11 Richardson never did. And, like I stated, the time
12 wasn't right or nothing. And it clearly states on
13 the paper that I have requested an attorney.

14 The oral statement itself was prejudicial,
15 and there's no way possible that I can say that that
16 did not have a bearing on the verdict from that
17 trial.

18 Q Are there any other issues as far as the
19 ineffective assistance of counsel?

20 A Only that Ms. Fullwood, along with the
21 prosecution, committed perjury, as well. Like I
22 stated to the Court earlier, I had lost total
23 confidence in my attorney.

24 She did various things against -- without
25 my consent and against everything that I had

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1 originally planned or intended to do as far as a
2 defense. And she never advised me of various
3 things. We never discussed any alibi testimony
4 whatsoever.

5 And after I verbally expressed it, I went
6 and drewed a letter up to have Ms. Fullwood removed.
7 Ms. Fullwood stated she never received the letter.
8 But as the Court can take notice, Exhibit F, it
9 clearly states that, at the top of the page, it was
10 sent to Lexington County Detention to Defender's
11 Agency, Incorporated, 206 East Main Street,
12 Lexington County, South Carolina 29072.

13 I don't know if the address has changed
14 since, but that was the present address at that time
15 of the Public Defender's Office, which was mailed to
16 them. At the time, they said -- when the Judge
17 asked them to present that letter that I was talking
18 about, he stated -- or the prosecutor stated, "Oh, I
19 don't have it right here with me, Your Honor."

20 And we all know if they have anything in
21 their favor, they're going to present that. So I
22 said, "Your Honor, I have a copy right here." And I
23 presented this same copy to the Judge to show the
24 Judge that they had conspired against me and what
25 was actually going on.

1 I really felt conspired against. And I
2 feel that the evidence -- I feel that the evidence
3 that was favorable to the defense, such as the
4 Miranda rights sheet, the -- the results of the GRS
5 kit, which was a gun residue kit; and the
6 fingerprints and footprints found at the crime
7 scene; other camera views.

8 See transcript page 169, lines 24 through
9 25, and page 170, lines one through five, where the
10 victim stated that he had other cameras at that
11 time, the camera views; the fight that happened
12 during the robbery between the robber and the
13 assault -- and the absent accusers.

14 See transcript page 197, lines 20 through
15 25; page 389, lines 17 through 25; page 390, lines
16 one through six. Was the fight caught on tape, or
17 was this part of the prosecution's modifications of
18 the DVD? See transcript page 184, lines five
19 through six.

20 The gun clip that was found in the absent
21 victim's pocket, the victim that never testified, it
22 was a gun clip actually found in his pocket. This
23 was never brought out in trial.

24 The victim's testimony itself was a major
25 issue, according to the Sixth Amendment right, the

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1 confrontation clause. The violation and the -- the
2 victim and the robber both had on gray sweaters that
3 night. That issue was never raised.

4 The kind of gun the prosecution stated was
5 issued, it releases shell casings. The shell
6 casings were never presented as evidence in this
7 trial. Where were they?

8 Last, but not least, the defense witness
9 who came to trial and was there present in trial,
10 ready to testify, was never called. I never even
11 knowed what the statement was that was given by him
12 and what he would have testified -- well, I knew
13 what he would testify but.

14 But it was that he was never called, and
15 Ms. Fullwood never discussed with me what -- and I
16 never received a copy of the statement that he had
17 gave her. And I was never -- I allege a Brady
18 violation on her
19 -- against Ms. Fullwood as well, because she sent me
20 discovery material, but I never seen this DVD of
21 this crime scene -- of this crime scene -- until the
22 day of trial.

23 I never was view -- I never was able to
24 view the evidence. That evidence would have been
25 viewed in that preliminary hearing. All these

1 things would have been challenged. She also waited
2 until trial to ask for a lesser included offense on
3 one of the assault and battery with intent to kill
4 on the -- on one of the victims, Mr. Singh -- when
5 the Judge asked the jury to consider a lesser
6 included offense because it was a question of law
7 dealing was it actually assault and battery with
8 intent to kill.

9 If she would have did a proper
10 investigation, she would have made this -- she would
11 have had a pre-trial hearing pertaining to this
12 particular charge or indictment. She would have
13 challenged this indictment before trial.

14 A seasoned trial lawyer would have done
15 this. That's why I know -- and I'm not trying to
16 undercut Ms. Fullwood in any way. I think that Ms.
17 Fullwood is actually a good attorney. But I think
18 that she had no intentions of being a good attorney
19 on my case.

20 Q Are there any other issues you would like
21 to raise? I just want to be sure that you raise
22 them all now.

23 A I certainly appreciate it. Counsel was --
24 counselor had no real strategy. I know that all of
25 these things that I've stated as evidence that was

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1 favorable to the defense, if it was favorable to the
2 State, then I could guarantee you they would have
3 been brandished. They would have been presented as
4 evidence.

5 But being that they were not favorable to
6 them, they didn't even bring it out, and my attorney
7 didn't either. So she's just as good as the
8 prosecutor. She made no challenge to arrest or
9 evidence whatsoever.

10 She did exactly what was expected of her
11 to do, and that was to sell the applicant out, for
12 whatever reason. The Judge erred by forcing the
13 applicant to go into trial with this counsel after
14 being informed that the applicant had a conflict of
15 interest with counsel before going into trial.

16 The Trial Judge gave the applicant two
17 options: to go into trial with counsel or represent
18 himself pro se in two days. You have some of the
19 smartest legal minds in the world that could not
20 prepare for a trial in two days, yet a lone
21 applicant, being a layperson, was really given no
22 option.

23 By all these things that Ms. Fullwood did
24 and did not do, it helped shift the burden of proof
25 over to the defense, which makes it impossible for

1 me to have the right to enjoy a fair trial.

2 Q Can you explain to the Court your
3 allegation of prosecutorial misconduct?

4 A My -- I allege prosecutorial misconduct
5 because I was stating that the prosecution was doing
6 everything in their power to receive a conviction,
7 no matter if it was shortcuts and no matter if those
8 shortcuts were violations to the rules that they
9 have to be governed by.

10 Two wrongs never makes a right. So the
11 short -- moving to have those indict -- those
12 warrants before taking action on by the Clerk of
13 Court, it was, "Oh, we're going to skip all that
14 because" -- and I'm stating that in the opening
15 arguments, certain things was stated, like the
16 prosecution pointed and made their own in-court
17 identification, which there was no Neal versus
18 Biggers hearing held in this trial, meaning that
19 this was a trial with no identification.

20 And the prosecution actually pointed and
21 said that "This is the man right here that did these
22 things," when there was no in-court identification
23 whatsoever. And all the testimony given by any
24 witnesses concerning the accuser that was not
25 present was hearsay testimony, and was prejudicial

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1 to the applicant, and should not have been allowed
2 in trial, according to South Carolina Constitution,
3 Article I, section 14, paragraph 14.

4 The prosecutor played on the sympathy of
5 the jury with the hearsay evidence dealing with this
6 accuser stating about his condition and everything
7 of that nature. The juror that the prosecutor asked
8 to remain on the jury was a friend of the absent
9 accuser's family and served as a character witness
10 in the jury room.

11 This was very prejudicial and critical to
12 the outcome of the trial. See case of State versus
13 Williams, where the Appeal Court --

14 THE COURT: I don't need you to cite the
15 cases. I want you to tell the facts, please. We
16 have your brief. Thank you, sir.

17 MR. STRAWS: Okay, sir.

18 A The initial witness was poorly coached --
19 I mean, the prosecution's -- one of the accusers
20 that did testify. He was very poorly coached.
21 That's why he was committing perjury and saying all
22 kind of things like, "This man right here came in
23 the store with a gun."

24 And Ms. Fullwood objected and asked for a
25 mistrial at that particular time for that issue.

1 And the Judge ruled it not to be. But all this came
2 from just being poorly coached as a witness by the
3 prosecution.

4 This prejudicial testimony, again, I'm not
5 rocket scientist, but the math with the amounts of
6 money were not adding up, and it was -- what else
7 did this witness lie about?

8 The DVD was not completely authenticated
9 without the other accuser's testimony, because he
10 never testified to him being in the DVD whatsoever.
11 I'm just stating that the prosecution did everything
12 in their power to make it impossible for applicant
13 to have a fair trial, shifting the burden of proof
14 over to the defense, depriving applicant of his due
15 process rights guaranteed by the Constitution.

16 Applicant is stating that the prosecution
17 is governed by rules, and their condition was very
18 unprofessional. And Ms. Jean Toal made a ruling on
19 this. By the prosecution giving false testimony,
20 leading witnesses, speculating, and demonstrating,
21 this was very -- this was very disturbing to me.
22 The prosecution's job is to present a case and let
23 the evidence speak for itself --

24 THE COURT: Let me stop you. Are you
25 reading off your petition?

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1 MR. STRAWS: No, I'm not, sir. These are
2 notes.

3 THE COURT: These are notes, okay.

4 MR. STRAWS: Yes, sir.

5 THE COURT: I was going to say, please
6 don't read your petition. I have that and will read
7 that.

8 MR. STRAWS: Yes, sir.

9 THE COURT: Okay. Go ahead.

10 A This alone shows that the prosecution in
11 this case did not prove every element of the crime
12 beyond a reasonable doubt. It could have been
13 impeachable testimony from this witness that did not
14 testify.

15 And I'm just asking Your Honor that
16 the Court straighten out this injustice that has
17 been done pertaining to this case. I'm going to go
18 ahead and wrap it up, Your Honor.

19 I just wanted to state that -- okay.
20 Counsel never discussed possible strategy for
21 temporary insanity or self-defense, again showing
22 that counsel did not have the client's best interest
23 in mind. By counsel being ineffective, it helped to
24 shift the burden of proof over to the defense again.
25 Applicant was forced to go into trial with

1 this counselor. This was a conflict in interest
2 according to U.S. versus Clyatt (PH). At this time,
3 applicant would like to reaffirm every issue he
4 raised on the initial PCR application, as well as
5 attachment brief.

6 Also amend every issue which was raised
7 prior to this proceeding on pro se brief alone with
8 every motion that was raised before and during trial
9 in applicant's case, which made it impossible for
10 applicant to enjoy the right to a fair trial
11 guaranteed him by the United States -- by the South
12 Carolina Constitution, Article I, section three, as
13 well as the Fourteenth Amendment of the United
14 States Constitution, guaranteeing one life, liberty,
15 or property as well as equal protection of the law,
16 which applicant has not been awarded.

17 Applicant's due process rights were denied
18 by the Court. This is a fundamental miscarriage of
19 justice, including all the prosecutorial misconduct
20 that took place, and let's not forget the
21 prejudicial statement made publicly by the sheriff.

22 All of these things were critical to the
23 outcome of the applicant's trial, as well as the
24 juror who was a friend of the family serving as a
25 character witness in the jury room. There are --

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1 these are all of the violations of applicant's
2 rights that took place..

3 The prejudice is the fact that all of
4 these things led to the incarceration of applicant.
5 The applicant in this case been denied due process
6 of law, has been unjustly accused, and still has not
7 been given a fair trial, making him illegally
8 detained and, according to the law, kidnapped, a
9 violation of applicant's South Carolina Constitution
10 right and, of course, the Article I, section 15, as
11 well as the Eighth Amendment right of the United
12 States Constitution, making this sentence cruel and
13 unusual punishment.

14 And applicant -- and appellate counsel did
15 not raise any of the above issues, even after being
16 asked to do so by applicant, making him ineffective,
17 as well. Applicant makes the -- feels that he was
18 conspired against as well as discriminated against.

19 I also feel that in closing, Your Honor,
20 that I am asking the Court to reverse and remand
21 this case for a new trial.

22 THE COURT: Thank you very much. Would
23 you answer any questions that Mr. Lee may have,
24 please?

25 MR. LEE: No questions for this witness,

1 Your Honor.

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

4 Mr. Goode?

5 MR. GOODE: Yes, sir. Thank you.

6 THE COURT: Does the applicant have any
7 other witnesses, Mr. Goode?

8 MR. GOODE: No, Your Honor.

9 THE COURT: Thank you very much.

10 Mr. Lee?

11 MR. LEE: Thank you, Your Honor. The
12 State would call Ms. Elizabeth Fullwood to the
13 stand, please.

14 (Whereupon, the witness was
15 sworn.)

16 ELIZABETH FULLWOOD, having first been
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LEE:

20 Q Ms. Fullwood --

21 A Yes, sir.

22 Q -- are you currently employed with the
23 Eleventh Circuit Public Defender's Office?

24 A Correct.

25 Q Were you employed with the Eleventh

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1 Circuit Public Defender's Office at the time of Mr.
2 Straws' trial?

3 A That's right.

4 Q And were you appointed pursuant to your
5 duties with the Public Defender's Office to
6 represent Mr. Straws?

7 A I was.

8 Q Now, subsequent to being appointed to the
9 case, did you have the occasion to meet with the
10 applicant?

11 A I did.

12 Q And do you recall about how many times you
13 may have met with him prior to trial?

14 A My notes show that I met with him four
15 times at the detention center and once when he was
16 at the courthouse.

17 Q Okay. And when you met with him, did you
18 review the charges against him?

19 A I did.

20 Q Did you get his version of the events in
21 the case?

22 A I did.

23 Q And do you recall what that version of the
24 events consisted of?

25 A I do.

1 Q Do you mind filling us in?

2 A Yes, sir. He said that he had been a
3 regular customer of that convenience store. On the
4 night, he was drunk, so he decided to rob it. He
5 took duct tape to the store, went in, said he had a
6 weapon with his hands in his pocket.

7 He got a gun from behind the register.
8 The victim moved to the office area, because he said
9 the money was in the office. Mr. Straws asked for
10 the surveillance tape. The victim said he didn't
11 have it.

12 He was trying to open the door. He set
13 the gun down. Victim number two grabbed the gun.
14 They got into a tussle, and victim number two was
15 shot.

16 Q Okay. That's Mr. Straws' version of the
17 events?

18 A That's right.

19 Q Okay. Now, thereafter, did you file a
20 Rule 5 Brady motion in the case?

21 A I did.

22 Q And were you provided with the State's
23 evidence?

24 A I was.

25 Q Do you recall what that evidence consisted

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1 of?

2 A It consisted of police reports, witness --
3 I don't know whether or not witness statements, not
4 written statements from the witnesses. There were
5 two witnesses, one of whom was probably the -- well,
6 I'll get to that later -- at least a synopsis of
7 what they said had happened.

8 There was results of DNA testing. There
9 were still photographs taken by the Sheriff's
10 Department of the scene of the convenience store.
11 And there was high-resolution digital video that
12 showed most of the events that had happened at the
13 store during the robbery.

14 Q Okay. And you mentioned the high-res
15 digital video. Did that digital video happen to
16 contain an image of the perpetrator of the crime?

17 A It did. As he was leaving -- he was
18 wearing a ski mask during the robbery. There was a
19 camera right over the door. And as he was leaving,
20 he took off the mask and looked right into the
21 camera.

22 Q And who was the person that looked into
23 the camera?

24 THE COURT: Just one second. Go ahead.

25 Q Was the person who looked into the camera,

1 the digital video, were they identified?

2 A Well, my recollection is that no one
3 identified him per se at the trial. In other words,
4 Mr. Singh admitted that he did not see the robber's
5 face during the course of the robbery.

6 But he, of course, had seen the video.
7 And there was at least the implication that he
8 believed it was Mr. Straws. There was also a
9 photograph of Mr. Straws taken when he was arrested.
10 He was wearing some sort of military cut sweater, or
11 jacket, or something.

12 It's very distinctive looking. In the
13 video of the robbery and at the time of his arrest,
14 his hair was also in small braids around his head.
15 And so the jury had, of course, the digital video
16 and then the still picture of what he looked like
17 less than 24 hours later, in the same clothing and
18 the same hairstyle. But, again, that's my
19 recollection of what the evidence was.

20 Q Certainly. And the DNA evidence, was
21 there DNA evidence establishing that Mr. Straws was
22 at the scene?

23 A No.

24 Q Okay. Was there anyone hurt in the course
25 of these events?

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1 A Yes. There was a Mr. Sultan there. He
2 was a customer of the video store, and the video
3 showed the robber -- there's a counter, and then
4 there was a corridor, and then, of course, a wall or
5 whatever where there's a corridor aisle, Mr. Sultan
6 being in the aisle while going into the aisle.

7 And here I think he might have even seen a
8 flash of the gunshot, and there was one shot. And
9 he was shot here at the top of the neck. He has had
10 catastrophic type of injuries to where he could not
11 move at all from the neck down. So he did not
12 testify at trial.

13 Q Okay. To the best of your knowledge, that
14 would be the testifying witness or the non-
15 testifying witness that Mr. Straws was referring to
16 during his direct examination?

17 A I'm sure that's who he means.

18 Q Okay. So after speaking with Mr. Straws
19 and reviewing the State's evidence, was he -- was he
20 able to provide you with any defenses to investigate
21 on his behalf, any witnesses to contact?

22 A No. I think the witness that he is
23 talking about is a cousin, or friend of a cousin, or
24 a friend or something who attended Lexington High
25 School.

1 And he claimed that person said that they
2 had brought in the clothing he was wearing to a
3 criminal justice class and waved it around the class
4 and said, "The person who wore these clothes is
5 guilty."

6 My paralegal talked to someone, and I'm
7 not sure who. And they did say that they saw some
8 clothes. It was sort of vague. And, in any event,
9 it didn't matter, because one of the things we had
10 going for us is the clothing he was wearing had, of
11 course, his DNA on it, but had the DNA of Mr. Sultan
12 on it, blood.

13 And it had the DNA of other individuals on
14 it where we could argue, well, maybe the coat was at
15 the scene of the robbery, but that doesn't put the
16 person of Mr. Straws at the scene of the robbery.
17 Twelve hours later, someone could have given him the
18 coat. It could be a dupe.

19 So trying to prove that the coat might
20 have gone over to Lexington High School and gotten
21 contaminated with other DNA would not be helpful to
22 us.

23 Q So at any given point, did you engage in
24 plea negotiations on the applicant's behalf?

25 A I did. Mr. Wedekind made a plea offer at

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1 a second appearance on March 23, 2006, and that
2 offer was to plead to one count of armed robbery and
3 one count of assault and battery with intent to
4 kill, with no recommendation as to sentencing.

5 And it looked like -- looks like we
6 discussed this on April 26, although at that time,
7 Mr. Straws was more concerned with some federal
8 charge that he had also pending. And he didn't so
9 much want to talk about this particular charge.

10 Q Okay. But you would have communicated the
11 plea --

12 A Absolutely.

13 Q -- offer to him?

14 A Absolutely.

15 Q And do you recall what his response to
16 this plea offer was?

17 A Well, it looks like I did talk to him on
18 the 26th and again on the 12th, probably to
19 reiterate to him that there was not going to be any
20 sentencing cap or anything like that.

21 Later on, Mr. Wedekind brought him to
22 court on May 15, 2006. Now, I don't -- I don't
23 remember Mr. Wedekind talking to him. He could
24 have; he could not have. I don't know. But at that
25 time, Mr. Straws declined the plea offer, and a

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1 trial date was set for June the 19th.

2 Q Okay. So at that point, you had --
3 basically, at that point, you were going to trial?

4 A That's right.

5 Q Okay. And did you have some conversations
6 with the applicant about what your trial strategy
7 would be?

8 A Well, he knew that we were just going to
9 have to pick at the evidence, you know, poke holes
10 at every weakness in the State's case to try to
11 paint an overall picture that there was reasonable
12 doubt to believe that he was the perpetrator of this
13 offense.

14 Q And is one of those sort of attacks on the
15 State's evidence your I guess having the Jackson v.
16 Denno hearing on the voluntariness of the statement?

17 A Well, you would do that in any case in
18 which there's a statement the State wanted to put
19 in. As far as trying to establish a weakness in
20 that evidence, it was showing the jury that it was
21 never put into writing for him to sign. It was
22 memorialized in a police report.

23 It was not audio or videotape, even though
24 the police had the means to do so, and arguing that
25 the failure to preserve or somehow record the

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1 statements to make them doubt, first of all, that
2 there was a statement made; and, second of all, the
3 contents of the statement.

4 Q Do you recall what the contents of the
5 statement allegedly were?

6 A I do not recall. It was inculpatory,
7 though. It was an inculpatory statement. It was a
8 confession.

9 Q Okay. So your trial strategy, if I'm
10 hearing you correctly, was just to basically poke
11 holes at the State's case?

12 A That's right. And I went to the scene of
13 the robbery. I saw the layout where the cameras
14 were, talked to the people there. So I established
15 -- since the robbery had happened, they had new
16 cameras to cover all of the store in case something
17 happened again.

18 So I established where each camera was and
19 what locations in the store were depicted in that
20 videotape. I interviewed the DNA technician from
21 SLED at length to really pin down what DNA was on
22 that jacket that didn't belong to Mr. Straws or Mr.
23 Sultan so I could really hit on it during the trial.

24 Q Okay. I want to back up and ask you some
25 specific questions regarding the applicant's direct

1 testimony. He stated that he at his bond hearing
2 requested a preliminary hearing but didn't get one.
3 Do you have independent recollection concerning
4 that, why he may not have had one or why you waived
5 it?

6 A I don't have any independent recollection.
7 I did look at the transcript, and apparently when it
8 was scheduled, I already had discovery, and it was
9 an exercise in futility.

10 Q Did you ever consider that a challenge to
11 the probable cause of the initial arrest might be an
12 option?

13 A Well, no, because it wouldn't be.

14 Q And why is that?

15 A Once he's indicted, the case goes to
16 court.

17 Q Again, you did inform him of any plea
18 offers that were made?

19 A Oh, yes.

20 Q And with respect to your investigation,
21 you mentioned that you attempted -- you spoke with
22 or attempted to speak with witnesses, you went out
23 to the scene, etc. Is there any additional steps
24 you took in investigating the case?

25 A Well, I did legal research, especially in

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1 the area of ABWIK versus ABHAN, to try to get the
2 Judge just to send an ABWIK to the jury -- no, ABHAN
3 to the jury with respect to the store owner.

4 Q And did you ever consider making a move --
5 a motion at the outset of trial to suppress evidence
6 based on fruit of the poisonous tree? I believe the
7 applicant made some reference to that.

8 A I'm not aware of them putting in evidence
9 that were the results of any search. I mean, the
10 transcript is what it is.

11 Q Now, there are some allegations made with
12 regard to the jury. I think you may have mentioned
13 it earlier. But there was an allegation made by Mr.
14 Straws, who took issue to a student being relieved
15 from service on the jury? Do you have any
16 independent recollection of that -- something about
17 the criminal justice class that we had?

18 A I'm not sure. It could be that I got the
19 Court -- that I had a voir dire question about
20 whether or not people had been students at Lexington
21 High during the period of time that the jacket may
22 or may not have been in the criminal justice class.
23 That's so I would know if they had been. I would
24 have struck them from the jury.

25 Q Okay. Now, there was some allegation made

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1 with respect to the amount of money that was
2 allegedly taken from the scene. It changed from
3 \$600 at one point to \$3,800 at some point. Do you
4 recall anything about that?

5 A Well, the initial incident report doesn't
6 have any amount on it. And then there's another one
7 in the discovery where \$600 is written down. But I
8 understood from my talks with law enforcement that
9 it was in the thousands of dollar level.

10 Six hundred might have been what the store
11 owner just had in his pocket, because he -- you
12 know, he robbed him, and they went to the back where
13 he was keeping the store's money. So that could
14 account for the discrepancy.

15 Q It's safe to say that you didn't see any
16 objectionable issue there?

17 A Well, the thing is, the amount is
18 irrelevant in an armed robbery case. Under the
19 facts of this case and the way, the particular
20 manner, this witness -- that you would, you know,
21 impeach that way -- was testifying, it wouldn't have
22 been helpful to try to do that.

23 Q Now, there was an allegation made with
24 respect to I guess the publicity the case was
25 receiving in the community, that you should have

Elizabeth Fullwood - Direct

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1 made a motion for a change of venue. Did you
2 consider doing that?

3 A Well, if after voir dire of a sufficient
4 number of jurors said that they had been exposed to
5 pre-trial publicity or had discussed the case in the
6 community at large, I would have. There was nothing
7 to show that there was exposure to the extent that
8 you would need to make that motion.

9 Q The applicant made a couple of allegations
10 with regard to the voluntariness of his statement
11 and tacks that you could have taken to try and prove
12 that it was involuntary.

13 Did you ever -- did he ever consult with
14 you about obtaining a psychologist or a psychiatrist
15 to testify about his statement being involuntary, or
16 did that occur to you?

17 A No.

18 Q Do you think that it would have been
19 helpful?

20 A No.

21 Q Did he ever alert you to any possible
22 concussion that he may have been suffering at the
23 time of his statement?

24 A No, my notes don't show anything like
25 that.

Elizabeth Fullwood - Direct

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1 Q Did you ever consider or have discussions
2 with the applicant about raising an affirmative of
3 self-defense?

4 A No, because it wouldn't be available in
5 this case. It doesn't fall within the four
6 elements.

7 Q And did you have any discussions or
8 consider raising temporary insanity?

9 A No, he never communicated to me that he
10 had ever suffered from any mental illness or was
11 insane.

12 Q And did you see any objectionable issues
13 with his Miranda statement or his Miranda form that
14 he filled out where he said "I requested a lawyer"
15 at the bottom?

16 A I would have to look at that. If I could
17 -- I would have to read through the discovery of the
18 transcript to put this in context.

19 Q Okay, sure.

20 A I just don't know, so there could be
21 several explanations. But if I thought that they
22 had talked to him after he requested an attorney,
23 that would certainly have been raised.

24 Q Okay. Obviously, when you try a case and
25 you get an outcome that's not in your favor whenever

Elizabeth Fullwood - Direct

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1 it's decided, you're going to be disappointed. But
2 do you feel you provided effective assistance of
3 counsel to Mr. Straws in this case?

4 A I do.

5 Q Thank you. No further questions.

6 THE COURT: Mr. Goode?

7 CROSS-EXAMINATION

8 BY MR. GOODE:

9 Q Ms. Fullwood, do you remember having a
10 conversation with Mr. Straws regarding his
11 preliminary hearing and him wanting to have a
12 preliminary hearing?

13 A No, I don't.

14 Q Do you -- do you remember having an
15 argument with him about -- about his wanting to have
16 a preliminary hearing after the fact of --

17 A No, I don't remember that.

18 Q Were you aware of his head injury at the
19 time of his arrest?

20 A No, not to my recollection.

21 Q Did you ever discuss with Mr. Straws the
22 possibility of any alibi testimony?

23 A No. He told me that he was there.

24 Q As far as the challenge you made to the
25 indictment, was there a reason why you made that

1 trial after the beginning of the -- or made that,
2 I'm sorry -- made the challenge to the indictment
3 after the trial began?

4 A I'm sorry, I'm not sure what you're
5 referring to. I could look in the transcript. Do
6 you know where in the transcript I did that, Mr.
7 Goode?

8 Q I believe it's page ten.

9 A Page ten.

10 Q I'll come back to that. You just
11 testified on direct that you didn't see any issue
12 with credibility of the witness who changed his
13 story from the time of the incident report to the
14 time that he testified at trial?

15 A That's not what I thought I said.

16 Q Oh, I apologize if I misquoted you.

17 A To clarify, the demeanor of that witness
18 and the way he seemed to be coming off in his
19 testimony led me to believe that it -- well, I
20 wouldn't have tried to impeach him in that way, just
21 based on his general demeanor. It wouldn't have
22 helped Mr. Straws with the jury.

23 Q Did Mr. Straws -- strike that. That's
24 all.

25 MR. LEE: Nothing on redirect, Your Honor.

Elizabeth Fullwood - Cross

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1 THE COURT: Excuse me?

2 MR. LEE: I said nothing on redirect.

3 THE COURT: Okay, I'm sorry. I was
4 reading some of the transcript.

5 Okay, you may step down.

6 MS. FULLWOOD: Thank you, Your Honor.

7 THE COURT: Anything further from the
8 State?

9 MR. LEE: That would be the State's case,
10 Your Honor.

11 THE COURT: Okay. Any reply from Mr.
12 Goode? Mr. Goode, do you have any reply?

13 MR. GOODE: No, sir, Your Honor.

14 THE COURT: Thank you.

15 All right, gentlemen, I've got a
16 large transcript and a lot of documents. I'm going
17 to take this matter under advisement, and I'll give
18 my decision shortly.

19 MR. LEE: Thank you, Your Honor.

20 THE COURT: Thank you, both attorneys, for
21 being well prepared.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON FEBRUARY 3, 2011, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE NINTH DAY OF MAY, 2011.

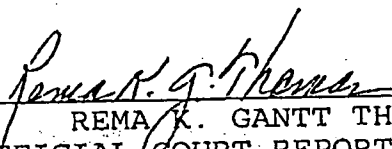

REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

THE STATE

RECORD OF FIRST APPEARANCE
and

VS

NOTICE OF SECOND APPEARANCE

JABBAR JOMO STRAWS

Defendant

The Defendant made the first appearance in court as required on January 25, 2006 with/without his attorney, **Elizabeth C. Fullwood**

✓ The Defendant is hereby notified and ordered that you and your attorney shall appear in General Sessions Court at the Lexington County Judicial Center at 9:00 a.m. on March 23, 2006 for a Second Appearance. At that time, it will be determined whether your case will be disposed of by guilty plea or trial.

_____ The Defendant and his attorney must appear on _____, 2006 at 9:00 AM for a Follow-Up Appearance.

YOU ARE NOT TO LEAVE COURT UNTIL YOU ARE EXCUSED BY THE SOLICITOR OR THE JUDGE. THIS IS THE ONLY NOTICE YOU WILL RECEIVE. FAILURE TO APPEAR WILL RESULT IN A BENCH WARRANT FOR YOUR ARREST.

I have read this form or had it read to me. I understand these instructions and have been given a copy to keep.

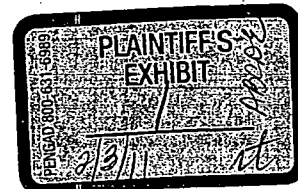
Defendant's Signature

S/

Circuit Judge

01/25/2006

Date _____



A-2003-32-01267

Lawrence Gerard Wedekind

LEXINGTON COUNTY DEFENDER AGENCY, INC.
206 E. MAIN STREET
LEXINGTON, SOUTH CAROLINA 29072
(803) 957-8873
FAX: (803) 957-1443

ELIZABETH C. FULLWOOD
Public Defender

SALLY J. HENRY
Deputy Public Defender

ARIE D. BAX
Assistant Public Defender

MATTHEW C. BUCHANAN
Assistant Public Defender

BOARD OF DIRECTORS

GEORGE W. BRANSTITER
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LEX A. ROGERSON, JR.

JONATHAN R. HENDRIX

C. VANCE STRICKLIN, JR.

THOMAS P. BELLINGER

EXHIBIT B

June 29, 2006

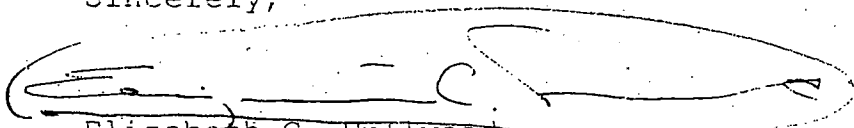
The Honorable Beth Carrigg
Clerk of Court for Lexington County
Lexington County Courthouse
Lexington, South Carolina, 29072

RE: The State v. Jabbar Jomo Straws- Appeal

Dear Mrs. Carrigg:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,



Elizabeth C. Fullwood
Chief Public Defender
206 E. Main Street
Lexington, SC 29072
(803) 957-8873

cc: Larry G. Wedekind, ✓
Assistant Solicitor
205 East Main Street
Lexington, SC 29072

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Honorable R. Knox McMahon, Circuit Court Judge

Case Nos.: 2006-GS-32-1298-1302, -1304

The State, ... Respondent.

V.

Jabbar Jomo Straws, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Lawrence G. Wedekind, by depositing a copy of it in the United States Mail, postage prepaid, on June 29, 2006, addressed to Larry G. Wedekind, Deputy Solicitor, 205 East Main Street, Lexington, SC 29072.

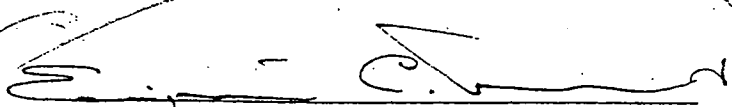

 Elizabeth C. Fullwood
 Chief Public Defender
 206 E. Main Street
 Lexington, SC 29072

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

Case Nos.: 2006-GS-32-1298-1302, -1304

The State, ... Respondent.

V.

Jabbar Jomo Straws, ... Appellant.

NOTICE OF APPEAL

Jabbar Jomo Straws appeals the conviction and sentence in this case. The conviction and sentence was imposed by the Honorable R. Knox McMahon on June 28, 2006.



Elizabeth C. Fullwood
Chief Public Defender
206 E. Main Street
Lexington, SC 29072
(803) 957-8873

OTHER COUNSEL OF RECORD:
Lawrence G. Wedekind,
Assistant Solicitor
205 East Main Street
Lexington, SC 29072

LEXINGTON COUNTY DEFENDER AGENCY, INC.
 206 E. MAIN STREET
 LEXINGTON, SOUTH CAROLINA 29072
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C. VANCE STRICKLIN, JR.

THOMAS P. BELLINGER

EXHIBIT B

June 29, 2006

The Honorable Kenneth A. Richstad
 Clerk of Court for Court of Appeals
 1015 Sumter Street
 Columbia, SC 29201

Re: The State vs. Jabbar Jomo Straws -Appeal

Dear Mr. Richstad:

Please find enclosed an original and one (1) copy of a Notice to Appeal in the above matter for filing in your office. Please file the original and return the date/time stamped copy to me in the envelope provided.

I am, by copy of this letter, serving a copy of this Notice to Appeal on Larry G. Wedekind, and Joseph L. Savitz, III, together with my Certificate of Service.

Thank you for your assistance in this matter. With kind regards, I am

Sincerely,



Elizabeth C. Fullwood

Enclosures

cc: Larry G. Wedekind,
 Assistant Solicitor
 205 East Main Street
 Lexington, SC 29072

Joseph L. Savitz, III
 Appellate Defender Agency
 1330 Lady Street, Ste 401
 Columbia, SC 29201

608

AGENCY I.D.
SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE

INVESTIGATIVE REPORT

CASE NUMBER

05099989

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 of 3 PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME: SINGH-CHARAN AKA: CHARLIE

DATE OF BIRTH: 05-14-1951

STREET ADDRESS: 203 CAMELOT COURT

HT: 506 WT: 160

RACE: SEX: M

CITY - STATE - ZIP: LEESVILLE, S.C. 29070

CADL: A3711444

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

NAME: UNKNOWN

DATE OF BIRTH: UNKNOWN

STREET ADDRESS: UNKNOWN

RACE: B SEX: M

CITY - STATE - ZIP: UNKNOWN

AGE:

RECOVERED PROPERTY DOLLAR AMOUNT: \$

CANCEL NCIC ENTRY: YES NO

CLOSEST TO THE MOBILE HOME PARK. CSI LAURA GRIMES-GOULD WAS ADVISED OF THE FINDING. SHE PHOTOGRAPHED AND SECURED THE DOLLAR BILL.

IT WAS LATER FOUND THAT THE SUSPECT HAD GOTTEN APPROXIMATELY \$600.00.

THE SUSPECT HAD TAKEN A SET OF KEYS WHEN HE LEFT AND HAD APPARENTLY DROPPED THEM IN FRONT OF THE ICE MACHINE THAT IS NOT BEING USED. AFTER CSI LAURA GRIMES-GOULD COMPLETED HER CRIMES SCENE INVESTIGATION, A KEY TO THE STORE WAS ON THE KEY RING AND CSI GRIMES-GOULD SECURED THE DOOR PRIOR TO ALL OFFICERS DEPARTURE. GRIMES-GOULD ALSO KEPT THE KEYS IN ATTEMPTS TO PROCESS THEM.

ADDITIONAL NOTE: DETECTIVE COLLINS RESPONDED TO PALMETTO HEALTH RICHLAND REGARDING THE SHOOTING VICTIM. AFTER LEAVING PALMETTO HEALTH RICHLAND, HE RESPONDED TO LEXINGTON MEDICAL CENTER TO SPEAK WITH SINGH AGAIN. HE WAS ABLE TO OBTAIN A WRITTEN STATEMENT FROM SINGH REGARDING THIS INCIDENT.

SGT McINTOSH WAS ADVISED OF THE FACTS AS THEY WERE OBTAINED AND ALSO RESPONDED TO THE SCENE.

SUBJECT IDENTIFIED

SUBJECT LOCATED

YES ☐ NO ☒YES ☐ NO ☒☒ ACTIVE
☐ UNFOUNDED
☐ ADMINIST.
CLOSED☐ ARRESTED UNDER 18
☐ ARRESTED 18 AND OVER☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVERREASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM/WITNESS DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

MICHELLE L. HORTON

12-16-2005

315

SGT O. L. McINTOSH

12/16/05

311

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

UNAPPROVED REPORT

AGENCY I.D. LEXINGTON COUNTY SHERIFF'S DEPARTMENT
SCO 320000 INCIDENT REPORT

CASE NUMBER

05099989

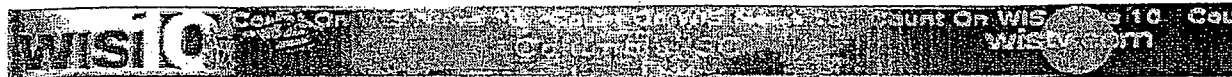
NCIC

INQ. ENTO.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	TYPE VICTIM
1 ROBBERY Armed Robbery		☒ YES ☐ NO	☐ YES ☐ NO	Convenience Store	☒ Individual
2		☐ YES ☐ NO	☐ YES ☐ NO		☐ Business
3		☐ YES ☐ NO	☐ YES ☐ NO		☐ Financial Inst.
					☐ Government
					☐ Relig. Organ.
					☐ Soc./Public
					☐ Other
					☐ Unknown
					☐ Police Off.
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE
Family Mart / 2289 Pond Branch Road Leesville SC				29070	Handgun
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK
12/15/05		2330		12/15/05	2339
DISPATCH DATE		TIME	24 HR. CLOCK	DISPATCH DATE	TIME
12/15/05		2343		12/15/05	2352
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	Resident	RACE	SEX
SAME AS VICTIM		#1 #2 #3	J S O U	B	M
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
203 Camelot Court		Leesville	SC	29070	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	Resident	RACE	SEX
Sing - Charan NMN		#1 #2 #3	J S O U	B	M
HEIGHT		WEIGHT	HAIR	EYES	FACE
507		160	BLK	BLK	HAIR
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
203 Camelot Court		Leesville	SC	29070	
VISIBLE INJURY (VICT 1)		☒ YES ☐ NO	EXPLAIN - Severe Laceration		
VICTIM (NO 1) USING ALCOHOL		☐ YES ☐ NO ☒ UNK	COMPLAINT OF ANY NON-VISIBLE INJURIES ☒ YES ☐ NO		
TWO-MAN VEH		ONE-MAN VEH	DETECTIVE/SPLASMT	OTHER	ALONE
ASSISTED		J - This Incident S - Same Off of State U - Unknown			
NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH
Unknown - Unknown Unk.		B	M	25	40
DATE OF BIRTH		HEIGHT	WEIGHT	HAIR	EYES
		511	160	BLK	BLK
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		Black Beard, Mustash, Corn rows in his head.			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
Unk. Unknown		Unknown	UNK	00000	
SUBJECT (NO 1) USING ALCOHOL		☐ YES ☐ NO ☒ UNK	ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		
DRUGS		☐ YES ☐ NO ☒ UNK	DATE / TIME OF OFFENSE		
TOTAL # ARRESTED		0			
VICTIM BILL OF RIGHTS (COPY PROVIDED) ☐ YES ☒ NO BOND HEARING (DATE / TIME)					
VICTIM WISHES TO BE NOTIFIED OF FUTURE LEGAL PROCEEDINGS? ☐ YES ☒ NO					
Reporting officer received a dispatched call about an armed robbery that just occurred on Pond Branch Road. Reporting officer advised dispatch that r/o was on Barr Road and would be in route. R/o arrived on scene and advised dispatch to have the ambulance come to the scene, that we had two victims and one was bleeding laying on the floor. The other victim #1 (Singh) stated that he was hit in the head and that his hands had been confined by the suspect tapping them together. Reporting officer could see that the victim #1 had tape around one wrist and his head was bleeding from the temple. The victim stated that he had been struck in the head with the suspects					
VICTIM SIGNATURE		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
TYPE (GROUP)		TOTAL VALUE			
CASH		ELECTRONICS - CELLPHONE		650	
STOLEN		600		650	
DAMAGED					
BURNED					
RECOVERED					
SEIZED					
FORGED					
UNKNOWN					
NONE					
SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADM. CLOSED	
☐ YES ☒ NO		☐ YES ☒ NO		☐ UNFOUNDED	
REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY					
REPORTING OFFICER(S)		DATE		UNIT NUMBER	
Barrett - S		12/16/05		576	
APPROVING OFFICER		DATE		UNIT NUMBER	
OFFICER		12/16/05		521	
INVESTIGATION		YES ☒ NO ☐		Prest	
DATE		12/16/05		331	

EXHIBIT D

<<Back



Lexington Co. officers arrest man based on surveillance video of robbery

(Batesburg-Leesville) Dec. 16, 2005 - A convenience store owner was pistol whipped and a customer shot during a robbery. The suspect might have made a clean get-a-way, but officials say he made one major mistake.

The Family Mart on Pond Branch Road in Batesburg-Leesville was closed Friday afternoon after a late-night robbery landed store owner, 54-year-old Charan Sing, and customer, 51-year-old Vernon Sulton, in the hospital.



Surveillance image shows suspect

Sheriff James Metts says, "You don't usually see someone pistol whip the clerk and then shoot a customer. We don't know why he did this."

Officials with the Lexington County Sheriff's Office have arrested Jabbar Straws, 29.

Investigators say late Thursday night, a man walked into Family Mart with a handgun. Then, according to Sheriff James Metts, "He made all the customers lay down on the floor and pistol whipped the clerk and then shot the customer in the torso."

The Sheriff's Department arrested Straws Friday morning, after a witness identified him on the surveillance video. Deputies say Straws was found sitting along a busy highway with evidence all over him.

Metts comments, "He's not the brightest criminals to be walking down the street hours after the crime with blood-stained shirt and to try to disable the camera and then take your mask off in front of the camera. That doesn't make much sense."

Straws has been charged with one count of armed robbery, two counts of kidnapping, two counts of assault and battery with intent to kill and one count of using a firearm during the commission of a violent crime. Friday afternoon, he was being held at the Lexington County Detention Center while awaiting a bond hearing.

Investigators say Straws has a long rap sheet, dating back to 1992. He is currently wanted by the US Marshall Service for an illegal firearm charge.

Metts says, "It's good we caught this individual because he would have struck again."

Friday night Sulton is listed in critical condition and Sing is recovering from his wounds at home.

Reported by Tamara King

Updated 12:00am by Chantelle Janelle



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EXHIBIT E

050999611
ARMED ROBBERY

DATE 12-16-05

PLACE LEWISTON CO. S.D.

TIME STARTED 1055 A.M.

I, the undersigned, JAMAR JONIA STRAUS, am 29 years of age, my date and place of birth being the 11 day of MARCH, 1976, at NEW YORK, N.Y.

My present address is HOME LESS

Before answering any questions or making any statements, EDDIE PESTIGLIANO / ERIC RUSSELL a person who identified himself as a DETECTIVES - USA.

DULY WARNED AND ADVISED ME:

- J.S. 1. That I have the right to remain silent and not make any statement at all.
- J.S. 2. That any statement I do make can be used against me in court.
- J.S. 3. That I have the right to have an attorney present at any time during questioning.
- J.S. 4. That if I cannot afford an attorney, I can apply to the court to have one appointed at no cost to me.
- J.S. 5. That if I decide to talk to an officer without an attorney present, I may stop at any time and request an attorney be present for further questioning.

UNDERSTANDING THESE RIGHTS, I MAKE THE FOLLOWING STATEMENT:

I have requested an attorney -

END OF
STATEMENT
12-16-05

Witness [Signature] 12-16-05

Notary Public _____

My Commission expires _____

Person giving Statement _____

Date _____

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Jabbar J. Straws, #231018)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
Case No.: 2009-CP-32-04805**ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 28, 2009. Respondent made its Return on February 23, 2010. An evidentiary hearing into the matter was convened on February 3, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Jonathan Goode, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Ms. Elizabeth Fullwood, Esquire (Ms. Fullwood) Applicant's trial counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior appeal proceeding.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the April 2006 term of the Lexington County Grand Jury for two counts of kidnapping (2006-GS-32-1298, -1304), two counts of assault and battery with intent to kill (ABWIK), possession of firearm or knife

during commission of violent crime (2006-GS-32-1302), and armed robbery (2006-GS-32-1300). Elizabeth C. Fulwood, Esquire, represented him. On June 26-28, 2006, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable R. Knox McMahon sentenced him to confinement for a period of thirty (30) years for each count of kidnapping; five (5) years of possession of a firearm; twenty (20) years for each count of ABWIK; and thirty (30) years for armed robbery. The sentences for kidnapping were ordered to be served consecutively to each other. The sentence for armed robbery was ordered to be served consecutively to both kidnapping sentences and the sentence for ABWIK. The sentence for ABWIK was ordered to be served consecutively to the sentences for kidnapping.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Straws, Op. No. 2009-UP-425 (S.C. Ct. App. filed September 8, 2009). The Remittitur was sent on September 24, 2009.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
2. Lack of Subject Matter Jurisdiction.
3. Prosecutorial Misconduct.
4. Ineffective Assistance of Appellate Counsel.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing the Applicant testified that at his bond hearing he requested a preliminary hearing and that he was represented by counsel at the time of his bond hearing, but

counsel was not present at the bond hearing. (Tr. p.10, lines 3-5; p.11, lines18-25). Applicant testified that his preliminary hearing was scheduled but never occurred because the Judge told Applicant, Applicant's attorney waived the preliminary hearing. (Tr. p.12, lines2-11). Applicant testified that his attorney visited him one time prior to Applicant being told, that his attorney had waived the preliminary hearing. (Tr. p.12, line24 – p.13, line2). Applicant testified that his attorney visited him the day after she waived his preliminary hearing and that Applicant told his attorney at that time he did not want her to represent him anymore. (Tr. p.13, lines4-6). Applicant testified that with regard to his claim of ineffective assistance of counsel with fraud, his attorney breached the confidence in their relationship and that she broke that trust to where Applicant did not have anymore trust for her after she made the decision to waive Applicant's preliminary hearing without Applicant's consent. (Tr. p.15, lines16-25). Applicant testified that his trial counsel helped shift the burden of proof over to the defense because she did not challenge the probable cause of Applicant's initial arrest. (Tr. p.16, lines1-8). Applicant testified the arrest was warrantless. (Tr. p.16, line14).

Applicant testified that he wrote a letter to the court requesting Ms. Fullwood be relieved as his counsel and that Ms. Fullwood claimed she never received the letter. (Tr. p.17, lines14-19). Applicant testified that he felt he was not properly represented at all and that his attorney did not inform Applicant of the charges against him. (Tr. p.19, lines16-17; p.20, lines12-14). Applicant testified that after he told his attorney he wanted her relieved from his case, Applicant's attorney subsequently met with the Applicant about a plea offer from the prosecutor. (Tr. p.20, lines18-23). Applicant testified that trial counsel told Applicant the prosecution offered to drop 4 charges and Applicant would plead to armed robbery and assault and battery with intent to kill. (Tr. p.20, line25 – p.21, line2). Applicant testified that he told trial counsel that was not a bad deal and asked his

attorney to speak with the prosecutor about 'numbers,' which was on a Friday and then Applicant was taken to court the following Monday. (Tr. p.21, lines8-16).

Applicant testified trial counsel did not properly investigate his case, did not meet with any of the witnesses, and did not speak with either of the victims. (Tr. p.23, lines14-20; p.24, lines1-5). Applicant testified that trial counsel should have moved to have the DNA suppressed because it was obtained illegally. (Tr. p.24, lines6-12). Applicant testified that trial counsel made one objection to one specific juror. (Tr. p.26, lines5-9). Applicant testified that he gave trial counsel a name for a defense witness and that counsel went to meet with said witness and that counsel obtained a statement from the witness, but Applicant never saw the statement. (Tr. p.28, lines3-6). Applicant also testified that said witness was present during the trial but was never called to testify. (Tr. p.28, lines7-10). Applicant testified that trial counsel did not make a contemporaneous objection to the first victim's perjured statement. (Tr. p.28, lines12-15; p.29, lines1-7). Applicant testified that trial counsel should have moved for a change of venue because the Sheriff made a statement in a news report that, "It's a good thing we caught this individual because he would have struck again," and that by making the statement, the Sheriff was saying that Applicant was already guilty. (Tr. p.29, lines21-25; p.30, lines1-5; p.30, lines9-11).

Applicant testified that trial counsel failed to obtain a psychiatrist, who would have testified to the condition that Applicant was in at the time of arrest. (Tr. p.31, lines11-17). Applicant testified that trial counsel failed to obtain medical records concerning the concussion suffered by the Applicant. (Tr. p.31, line23 - p.32, line2). Applicant testified that trial counsel should have raised self-defense and that trial counsel never consulted with Applicant about the issue of temporary insanity. (Tr. p.32, lines3-6; p.32, lines6-8). Applicant testified that the DVD never showed any fight, maybe because the prosecutor modified the video, and that one accuser never testified, which

violated Applicant's right to confrontation. (Tr. p.32, lines 16-25). Applicant testified that the oral statement Applicant allegedly gave to the police was prejudicial and trial counsel should not have let it come in at trial. (Tr. p.34, lines 14-17). Applicant testified that trial counsel did not discuss alibi testimony with him and that trial counsel sent Applicant the discovery material, but that the DVD of the crime scene was never provided to Applicant until the day of trial. (Tr. p.35, lines 1-4; p.37, lines 19-22). Applicant testified that trial counsel should have challenged the indictment at the preliminary hearing that trial counsel waived. (Tr. p.38, lines 9-13).

Applicant testified that the trial judge gave Applicant two options, which included: to go to trial with his counsel or represent himself *pro se* in two days. (Tr. p.39, lines 16-22). Applicant further testified that the following constituted prosecutorial misconduct: an in-court identification, lack of a Biggers hearing, hearsay testimony, and that the prosecutor played on the sympathy of the jury. Lastly, Applicant testified that the DVD was not completely authenticated. (Tr. p.42, line 25).

Ms. Fullwood's Testimony

At the evidentiary hearing Applicant's trial counsel testified that she met with the Applicant 4 times at the detention center and 1 time when Applicant was brought to court, and that during the meetings she reviewed the charges with the Applicant and his version of the events. (Tr. p.47, lines 12-22). Trial counsel testified that the Applicant's version of the facts were that he was a regular customer of the convenience store; on the night of the incident, Applicant was drunk, so he decided to rob the store; Applicant took duct tape to the store, went inside, said he had a weapon with hands in his pocket; Applicant got a gun from behind the register and asked for the surveillance tape; when Applicant was trying to open the door he set down the gun and victim number two grabbed the gun, they got into a tussle and victim number two was shot. (Tr. p.48). Trial counsel testified that she filed a Rule 5 Brady motion, received the State's evidence, and that the evidence consisted of police

reports, synopsis of what the witnesses said happened, results of DNA testing, photographs, and a digital video of the store. (Tr. p.48, lines19-24; p.49, lines1-13). Trial counsel testified that one of the victims was shot at the top of his neck and paralyzed from the neck down so that victim did not testify at trial. (Tr. p.51, lines7-12). Trial counsel testified that after meeting with the Applicant, the only witnesses Applicant provided her with was a cousin, or a friend of a cousin, or a friend who attended Lexington High. (Tr. p.51, lines18-25). Trial counsel testified that the clothing Applicant wore that night had DNA of the victim on it, the victim who did not testify. (Tr. p.52, lines6-12).

Trial counsel testified she engaged in plea negotiations on behalf of the Applicant and that the solicitor made a plea offer at the second appearance on March 23, 2006, which was one count of armed robbery and one count of assault and battery with intent to kill. (Tr. p.52, line23 – p.53, line4). Trial counsel testified that she discussed this offer with the Applicant on April 26, 2006, but that Applicant was more concerned with federal charges he had pending at that time. (Tr. p.53, lines5-9). Trial counsel testified that she met again with the Applicant to discuss the plea offer on May12, 2006, and probably reiterated there would be no sentencing cap recommended by the solicitor. (Tr. p.53, lines17-20). Trial counsel testified that the solicitor brought the Applicant to court on May15, 2006, and Applicant declined the plea offer and a trial date was set for June 19, 2006. (Tr. p.53, lines21 – p.54, line1).

Trial counsel testified that she discussed trial strategy with the Applicant, which included attacking the state's evidence with a Jackson v. Denno hearing on the voluntariness of the statement. (Tr. p.54, lines5-18). Trial counsel testified that the trial strategy was to show the jury the oral statement was never put into writing for the Applicant to sign, and that the statement was memorialized in a police report. (Tr. p.54, lines17-22). Trial counsel testified further that the trial strategy was arguing the failure to preserve or somehow record the statements to make the jury

doubt: first, that there was statement made; and second, the contents of the statement. (Tr. p.54, line23 – p.55, line3). Trial counsel testified that the trial strategy was to poke holes in the state's case, and that she went to the scene of the robbery and spoke with the people there. (Tr. p.55, lines12-17). She testified that she interviewed the DNA technician from SLED and that when the preliminary hearing was scheduled trial counsel already had the discovery materials and it was an exercise in futility. (Tr. p.55, lines20-23; p.56, lines6-9). Trial counsel testified that she did not consider a challenge to the probable cause of the initial arrest as an option because once the Applicant is indicted the case goes to court. (Tr. p.56, lines10-16).

Trial counsel testified her investigation of the Applicant's case also included legal research in the area of ABWIK versus ABHAN, to try to get the Judge just to send an ABWIK to the jury, and no ABHAN charge to the jury with respect to the store owner. (Tr. p.56, line25 – p.57, line3). Trial counsel testified she did not make a motion to suppress evidence based on a search because she was not aware of the State offering evidence that was the result of any search. (Tr. p.57, lines4-10). Trial counsel testified that she would have struck from the jury anyone who had been a student at Lexington High during the voir dire of the jury. (Tr. p.57, lines18-24). Trial counsel testified that she did not see anything objectionable with respect to the amount of money involved in the robbery because the amount of money is irrelevant in an armed robbery case, that under the facts of the case and the way, the particular manner this witness that you would impeach that way, it would not have been helpful to try to do that. (Tr. p.58, lines17-22). Trial counsel testified that she did not make a motion for a change of venue because after the voir dire of jurors there was nothing to show that there was exposure to pre-trial publicity to the extent that you would need to make that motion. (Tr. p.59, lines1-8).

Trial counsel testified that she did not consult with a psychologist or a psychiatrist concerning the voluntariness of Applicant's statements because it would not have been helpful. (Tr. p.59, lines13-20). Trial counsel testified that the Applicant never alerted her that Applicant may have been suffering from a slight concussion at the time Applicant gave the statement. (Tr. p.59, lines21-25). Trial counsel testified that she did not discuss with the Applicant self-defense because it was not available and that it did not fall within the four elements. (Tr. p.60, lines1-6). Trial counsel also testified that she did not discuss with the Applicant the issue of temporary insanity because the Applicant never communicated to trial counsel that he had ever suffered from any mental illness or was insane. (Tr. p.60, lines7-11). Trial counsel testified that in regards to the Applicant's written request for an attorney on the Miranda rights sheet, that if she thought they had talked to the Applicant after he requested an attorney, trial counsel would have raised the issue. (Tr. p.60, lines12-23). Trial counsel further testified that she felt she provided Applicant with effective assistance and that they did not discuss alibi testimony because the Applicant told trial counsel he was at the scene of the crime. (Tr. p.61, lines21-23).

III. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistant and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

1. Ineffective Assistance of Counsel

(a) Applicant's allegation that trial counsel was ineffective based on fraud.

Applicant's allegation that trial counsel was ineffective based on fraud is without merit. The Applicant claims he was prejudiced by trial counsel waiving the preliminary hearing because

valuable evidence was lost such as possible impeachment, warrants should have been challenged, and knowing what the state planned to produce at trial was important. Trial counsel testified that when the preliminary hearing was scheduled, she had already received the discovery materials from the State. Trial counsel also testified that she did not consider a challenge to the probable cause of the initial arrest as an option because once the Applicant is indicted, the case goes to trial. Trial counsel stated under oath that she gave the discovery materials to the Applicant and met with him multiple times to discuss Applicant's case. This Court finds no evidence suggesting any type of fraudulent actions by trial counsel. Applicant has failed to meet his burden of proving trial counsel's performance was deficient. This Court finds that Applicant failed to show that he was prejudiced by counsel's alleged deficient performance. Furthermore, our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Applicant's trial counsel articulated valid strategic reasons for waiving the preliminary hearing. This Court finds that Applicant has not shown that counsel was deficient in that choice of tactics. Therefore, this allegation is denied and dismissed.

(b) Applicant's allegation that trial counsel was ineffective for failing to spend enough time with Applicant in preparing for trial.

Applicant's alleges that trial counsel was ineffective for failing to spend enough time with Applicant preparing for trial; specifically, the Applicant alleges trial counsel was ineffective for failing to inform Applicant of the nature and elements of the charges against him; for failing to discuss defenses of self-defense and temporary insanity; and for failing to discuss and/or investigate

alibi testimony. As to Applicant's allegation trial counsel failed to inform him of the nature and elements of the charges, this Court finds Applicant's testimony to be not credible. This Court does find trial counsel credible. Trial counsel stated under oath that during her meetings with the Applicant, trial counsel reviewed the charges with the Applicant and discussed with him the Applicant's version of the events. This Court finds and the record reflects the Applicant was fully apprised of the charges against him and the nature of such charges, therefore Applicant is unable to prove trial counsel's performance was deficient.

As to Applicant's allegation trial counsel failed to discuss potential defenses of self-defense and temporary insanity, this Court finds Applicant has failed to meet his burden of proof. Trial counsel testified that she and the Applicant did not discuss self-defense because it would not be available to the Applicant because Applicant's case and the facts surrounding his case did not fall within the four (4) elements. Additionally, trial counsel testified that she and the Applicant did not discuss the defense of temporary insanity because the Applicant never communicated to trial counsel that he had ever suffered from any mental illness or was insane. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds that trial counsel articulated valid strategic reasons for not pursuing defense of self-defense and temporary insanity. The Applicant has not shown that counsel was deficient in that choice of tactics.

As to Applicant's allegation that trial counsel failed to discuss and/or investigate alibi testimony, this Court finds Applicant's allegation is without merit. To establish an alibi defense and thus be entitled to an instruction of alibi, a defendant must present some evidence that he was at

another place at the time of the crime and could not therefore have committed the crime. State v. Diamond, 280 S.C. 296, 297, 312 S.E.2d 550 (1984), *quoting* State v. Robbins, 275 S.C. 273, 271 S.E.2d 319 (1980). A simple denial of one's presence at the scene does not constitute an alibi. *Id.*

This Court finds the Applicant presented no evidence of any alleged alibi. Trial counsel testified that she did not discuss alibi testimony with the Applicant because the Applicant told trial counsel that he was present at the scene of the crime. Furthermore, Applicant failed to produce any alibi witnesses at the PCR evidentiary hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). This Court finds that the Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

(c) Applicant's allegation that trial counsel was ineffective for failing to interview witnesses and victims prior to trial, and not calling witness to testify at trial.

This Court finds that Applicant's allegations that trial counsel was ineffective for failing to interview witnesses and victim prior to trial and not calling a witness to testify at trial are without merit. At the PCR evidentiary hearing, the Applicant presented no witnesses on his behalf nor did either of the victims testify. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). An Applicant must produce the testimony of a favorable witness

or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). This Court finds that the Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

(d) *Applicant's allegation that trial counsel was ineffective for failing to investigate and failing to review discovery material.*

Applicant alleges that trial counsel was ineffective for failing to adequately investigate Applicant's case and preparing for trial, for failing to challenge the indictments, and for failing to review discovery materials with the Applicant. As to Applicant's allegation that trial counsel failed to adequately investigate Applicant's case, this Court finds Applicant's allegation is without merit. At the PCR evidentiary hearing, trial counsel testified that she filed a Rule 5 Brady motion and received the state's evidence. Said evidence consisted of police reports, synopsis of witness statements, results of DNA testing, photographs, and a digital video of the store. Trial counsel testified she and the Applicant reviewed the discovery materials together. Trial counsel testified that in her investigation she interviewed the DNA technician from SLED; trial counsel conducted legal research in the area of ABWIK versus ABHAN; and trial counsel visited the scene of the robbery and spoke with people at the scene. Additionally, trial counsel testified that she and the Applicant met four (4) times, during which they discussed the charges against the Applicant and the Applicant's version of the events. This Court finds that, contrary to Applicant's claim, counsel conducted an investigation into the Applicant's case and the Applicant's assertions are mere speculation. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). To establish counsel failed to adequately

prepare for trial, Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). Here, the Applicant did not present any evidence of what counsel failed to discover or other defenses that could have been pursued had counsel more fully prepared. This Court finds there has been no showing by the Applicant of what counsel could have discovered based upon additional investigation. Id. This Court finds that Applicant has failed to meet his burden of showing that counsel was deficient in his investigation; therefore this allegation is denied and dismissed.

(e) Applicant's allegation that trial counsel was ineffective for the trial strategy employed at trial.

Applicant alleges that trial counsel was ineffective for the trial strategy employed at trial in the following ways: failing to object to perjurious testimony by the victim regarding the amount of money taken; failure to put Miranda right sheet (signed by Applicant and asking for an attorney) into evidence; and failing to object to any testimony regarding oral statement given by Applicant in violation of Applicant's 5th Amendment rights. As to Applicant's allegation that trial counsel was ineffective in failing to object to inconsistent testimony regarding the amount of money taken by the victim, this Court finds this allegation is without merit. Trial counsel testified that she did not see anything objectionable with respect to the amount of money involved in the robbery because the amount is irrelevant in an armed robbery case. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Trial counsel further stated that under the facts of the case and the way, the particular manner this witness

that you would impeach that way, it would not have been helpful to try to do that. This Court finds that trial counsel articulated valid strategic reasons for not objecting to testimony regarding the amount of money involved in the robbery, and that Applicant has not shown that counsel was deficient in that choice of tactics. This Court, further, finds that the Applicant has failed to show that he suffered any prejudice from counsel's alleged deficient performance. This Court finds that Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

As to Applicant's allegations that trial counsel was ineffective for failing to put the Miranda right sheet signed by Applicant into evidence, as well as for failing to object to any testimony regarding the oral statement given by the Applicant, this Court finds that Applicant has failed to meet his burden of proving trial counsel's performance was deficient. At the PCR evidentiary hearing, trial counsel testified that if she had thought that the police had talked to the Applicant after Applicant requested an attorney, then trial counsel would have raised the issue. Also, trial counsel testified that her trial strategy concerning this matter was to show the jury the Applicant's oral statement was never put into writing for the Applicant to sign, that it was memorialized in a police report. Trial counsel further explained the strategy included arguing failure to preserve [on the part of the investigating officers] or somehow record the statements to make the jury doubt; first, that there was a statement; and second, the contents of the statement. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds that trial counsel articulated valid strategic reasons for not introducing the Miranda right sheet into evidence and not objecting to testimony regarding oral statements made by the Applicant, and that Applicant has not shown that counsel was deficient in that choice of tactics. This Court finds

that Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

(f) Applicant's allegation that trial counsel was ineffective for failing to employ a psychiatrist at trial and failing to obtain Applicant's medical records.

Applicant alleges that trial counsel was ineffective for failing to employ a psychiatrist at trial to testify about Applicant's condition at the time of his arrest, and for failing to obtain Applicant's medical records to show Applicant's condition. At the PCR evidentiary hearing, trial counsel testified that she did not consult a psychiatrist concerning the voluntariness of Applicant's statement because it would not have been helpful. Trial counsel also testified that the Applicant never alerted her that he may have been suffering from a slight concussion at the time Applicant gave the statement. This Court finds that Applicant did not present any testimony from a psychiatrist or psychologist regarding his mental state and/or condition at the time of Applicant's arrest at the PCR hearing. This Court finds that prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post conviction relief hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). This Court further finds that Applicant did not present any medical records at the PCR hearing. The

Applicant failed to present any such witnesses or evidence at the PCR hearing. This Court finds that Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

(g) *Applicant's allegation that trial counsel was ineffective for failing to move for a change of venue and in the jury selection process.*

This Court finds Applicant's allegations that trial counsel was ineffective for failing to move for a change of venue and during the jury selection process are without merit. At the PCR evidentiary hearing, trial counsel testified that she did not make a motion for a change of venue because after voir dire of the jurors there was nothing to show that there was pre-trial publicity exposure to the extent that one would need to make that motion. Exposure to pretrial publicity does not automatically disqualify a prospective juror. Instead, an Applicant must show that the jury was unable to lay aside any impressions or opinions and could not render a verdict based on the evidence presented at trial. "The relevant question is not whether the community remembered the case, but whether the jurors...had such fixed opinions that they could not judge impartially the guilt of the defendant." Patton v. Yount, 467 U.S. 1025, 1035, 104 S. Ct. 2885, 2891, 81 L.Ed.2d 847, 856 (1984). The defendant bears the burden of showing actual prejudice. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). This Court finds that aside from his bare assertions, the Applicant has failed to present any support, testimony, or evidence that the jury at Applicant's trial was unable to lay aside any impressions and could not render an impartial verdict. This Court finds that Applicant failed to meet his burden of proof that trial counsel's performance in not moving for a change of venue was deficient. The Applicant additionally, has failed prove any resulting prejudice from trial counsel's alleged deficient performance. This Court finds that this allegation is denied and dismissed.

As to Applicant's allegation that trial counsel was ineffective during the jury selection

process, the Applicant alleges that "counsel did not object to the jury not being drawn from a fair cross-section of the community." At the PCR evidentiary hearing, trial counsel testified that in regards to the jury selection, she would have struck anyone who had been students at Lexington High. In order to establish a prima facie violation of the fair cross-section requirement, the defendant must show that 1) the group excluded is a "distinctive" group in the community; 2) the representative of this group in venires from which juries are selected is not a fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to a systematic exclusion of the group in the jury selection process. State v. Patterson, 324, S.C. 5, 21, 482 S.E.2d 760, 767-68 (1997). This Court finds that except for the Applicant's broad assertion that the jury pool was not an adequate cross-section of the community, the Applicant has failed to provide any evidence or testimony concerning this matter. The Applicant has not offered a different strategy than what trial counsel used, nor has the Applicant shown he was prejudiced by the jury. This Court finds that Applicant has not presented any evidence that a distinctive group was underrepresented or that there was a systematic exclusion of a distinctive group. This Court finds that Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

2. Lack of Subject Matter Jurisdiction

The Applicant alleges that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (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, supra; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d

598 (1994).

This Court finds that 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, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. This Court finds that the Applicant has failed to present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, this Court finds that this allegation is denied and dismissed.

3. Prosecutorial Misconduct

The Applicant has alleged prosecutorial misconduct in the following instances: by not allowing a preliminary hearing; by the solicitor inserting his personal opinion in opening and closing arguments as to what occurred the night of the crime and pointing and identifying Applicant as the perpetrator; by the solicitor eliciting perjurious testimony; and Brady violations. It is Applicant’s burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). This Court finds that trial counsel waived the preliminary hearing, and that the prosecution did not engage in any misconduct. Additionally, this Court finds that the Applicant has not pointed to any specific comments made by the solicitor during his opening and closing, except for Applicant’s broad assertion that the solicitor inserted his personal opinion. This Court finds that the solicitor’s closing arguments must be viewed in the context of the entire record. McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). While the State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence, State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); to be entitled to a new trial for improper closing arguments

Applicant must show "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). After reviewing the entire record, this Court does not find that any comments or questions by the solicitor so infected the trial that a new trial is warranted. This Court is not convinced that the solicitor's arguments even reach the level of being improper, but certainly there is no evidence that Applicant was prejudiced.

As to Applicant's allegation of a Brady violation, this Court finds this allegation is without merit. Trial counsel testified that she received the state's evidence, including but not limited to police reports, summaries of witness statements, DNA results, photographs, and a digital video of the store. The Applicant provided no evidence or testimony showing that the state withheld any evidence from the defense in this case at the PCR hearing. In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268. Accordingly, the Applicant has failed to meet his burden of proof, therefore this allegation is denied and dismissed.

4. Ineffective Assistance of Appellate Counsel

This Court finds that Applicant's allegation that appellate counsel was ineffective is without merit. The Applicant did not present testimony or evidence concerning this claim at the PCR hearing. This Court finds that a defendant is constitutionally entitled to effective assistance of appellate

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

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, Id. at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id. This Court finds there is nothing in the record to indicate that the alleged ignored issues are clearly stronger than those actually raised. This Court finds that Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

V. CONCLUSION

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

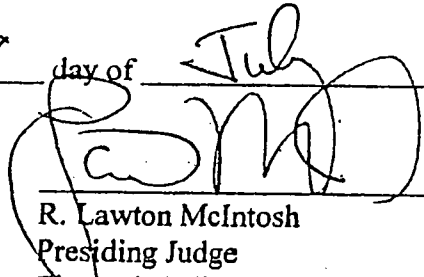
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty

(30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g). SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28 day of July, 2011.


 R. Lawton McIntosh
 Presiding Judge
 Eleventh Judicial Circuit

, South Carolina

The Supreme Court of South Carolina

Jabbar J. Straws, #231018,

Petitioner,

v.

FILED
2011 OCT 12 P 1:12

South Carolina,

Respondent.

The Honorable R. Lawton McIntosh
Lexington County
Trial Court Case No. 2009-CP-32-04805

ORDER

In this post-conviction relief case, the circuit court issued an order of dismissal on July 28, 2011. The Form 4 accompanying this order indicates that a copy of the order was sent to petitioner's counsel, S. Jahue Moore, Jr., Esquire, on August 2, 2011.

Petitioner has now filed a *pro se* motion dated October 18, 2011, asking this Court to accept an out of time appeal. He has not provided this Court with a notice of appeal or a proof of service showing that a notice of appeal has been served on counsel for the State. Additionally, even if the *pro se* motion could be construed as a notice of appeal, he has not provided this

Court with a proof of service showing that a copy of the motion has been served on counsel for the State.¹

The service of notice of appeal on opposing counsel is a jurisdictional requirement, and the time to serve the notice of appeal may not be extended. *Hill v. South Carolina Dept. of Health and Environmental Control*, 389 S.C. 1, 698 S.E.2d 612 (2010); Rule 263(b), SCACR.

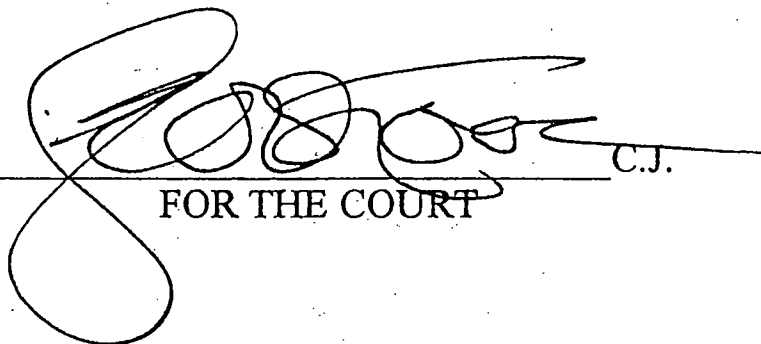
Based on the failure of petitioner to show that a notice of appeal has been timely served on counsel for the State,² the motion to allow late filing is denied, and this matter is dismissed. This dismissal is without prejudice to whatever right petitioner may have to seek relief in the circuit court under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). The remittitur will be

¹ The proof of service petitioner has provided with the motion states that a copy was sent by mail, but fails to indicate who was served and at what address.

² Since petitioner was represented by counsel below, the time to appeal under Rules 243(b) and 203(b)(1), SCACR, ran from when his counsel received written notice of entry of the order. *Cf. Williams v. Williams*, 335 S.C. 386, 517 S.E.2d 689 (1999) (an attorney is the alter ego of the client and stands in the place of his client, and notice to an attorney is effective as notice to the client when the notice is received in the course of the transaction in which the attorney is acting); *see also* Rule 77(d), SCRCP ("...in post-conviction relief actions, the post-conviction relief judge shall submit the signed order or judgment to the clerk of court for filing and the clerk shall promptly provide notice of the entry of judgment and serve a copy of the signed order to the parties. Pursuant to Rule 5(b) service shall be made solely on the attorney when the applicant is represented by counsel ...").

sent as provided by Rule 221, SCACR.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

November 14, 2011

cc: Mr. Jabbar J. Straws, #231018
S. Jahue Moore, Jr., Esquire
Office of the Attorney General

2011 NOV 22 2 1:13

FILED

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

RECEIVED

R. Lawson McIntosh, Circuit Court Judge

JAN 31 2012

S.C. Supreme Court

Case No. 2009-CP-32-04805

State of South
Carolina.....Respondent,

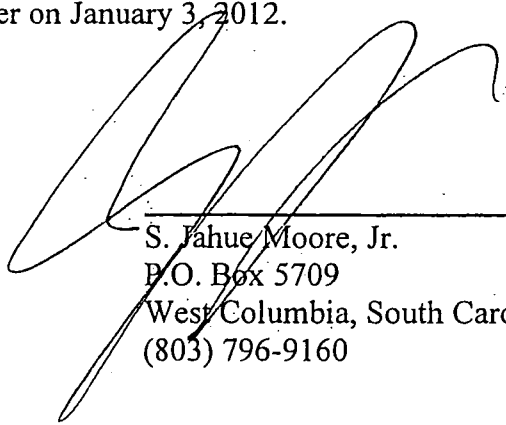
v.

Jabbar J. Straws, #231018.....Appellant.

NOTICE OF APPEAL

Jabbar J. Straws appeals the order of the Honorable R. Lawson McIntosh dated July 28, 2011. Counsel of record for Appellant was served with written notice of entry of this Order on January 3, 2012.

January 31, 2012



S. Fahue Moore, Jr.
P.O. Box 5709
West Columbia, South Carolina 29171
(803) 796-9160

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Lawson McIntosh

Case No. 2009-CP-32-04805

RECEIVED

JAN 31 2012

S.C. Supreme Court

State of South Carolina.....Respondent

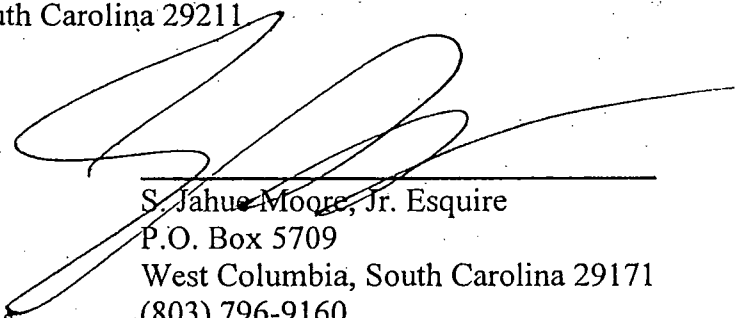
v.

Jabbar J. Straws, #231018.....Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on January 31, 2012, addressed to its attorney of record Salley Elliot, Post Office Box 11549, Columbia, South Carolina 29211

January 31, 2012


S. Jahue Moore, Jr. Esquire
P.O. Box 5709
West Columbia, South Carolina 29171
(803) 796-9160

DOCKET NO. 2006-GS-32-1278

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs.

Jabbar Jomo Straws
AKA Jabbar J Straws

WITNESSES

LCSD
Prestigacomio, E

A-2006-32-00030 4/11/2006 1:01 PM

ARREST WARRANT NUMBER

K017528

ACTION OF PETIT JURY
TRUE BILL

Barry A. Lucas

Foreperson of Grand Jury
Date: 29 April 06

VERDICT

Guilty

Kim Hall

Foreperson of Petit Jury

6/28/06

Date:

CDR# 0095

Indictment for

Kidnapping

\$16-3-910

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Kidnapping

§16-3-910

At a Court of General Sessions, convened on APRIL, 2006, the Grand Jurors of Lexington County present upon their oath:

That Jabbar Jomo Straws, did in Lexington County on or about December 15, 2005, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Charan ^{Singh} Sing by any means whatsoever without authority of law, and without his consent, to wit: the defendant did restrain the hands of the victim by binding his hands in order to accomplish the robbery at the Family Mart located at 2289 Pond Branch Road, Leesville, SC, in violation of § 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 statute in such case made and provided.



ASSISTANT SOLICITOR

DOCKET NO. 2006-GS-32-1299

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs.

Jabbar Jomo Straws

WITNESSES

LCSO
Prestigacomio, E

4/11/2006 12:54 PM

A-2006-32-00030

ARREST WARRANT NUMBER

K017526

ACTING CLERK OF COURT
TRUE BILL

Barry A. Lucas
Foreperson of Grand Jury
Date: 24 April 06

Foreperson of Grand Jury
Date: 24 April 06

VERDICT

Guilty

Donald V. Myers
Foreperson of Petit Jury
Date: 4/28/06

DONALD V. MYERS, SOLICITOR

CDR# 0014

Indictment for

Assault and Battery with Intent to Kill

§16-3-620

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Assault and Battery with Intent to Kill

§16-3-620

At a Court of General Sessions, convened on APRIL, 2006, the Grand Jurors of Lexington County present upon their oath:

That Jabbar Jomo Straws, did in Lexington County on or about December 15, 2005, with malice aforethought, willfully and unlawfully commit a violent injury to the person of another, Vernon Ray Sulton, in that the defendant, Jabbar Jomo Straws, did restrain the hands of the victim and he shot him two times with a handgun striking him in the leg and back, in violation of the 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR

WITNESSES

LCSD
Prestigacomio, E

A-2006-32-00030

4/11/2006 12:48 PM

ARREST WARRANT NUMBER

K017524

ACTION FILED AND JUDICIAL
TRUE BILL

8037851281

Barry A. Lucas
Forfeiture of Grand Jury
Date: 24 Apr 06

VERDICT

Gilty

1:19

Donald V. Myers
Forfeiture of Petit Jury
Date: 6/28/06

DOCKET NO. 2006-GS-32-1306

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs.

Jabbar Jomo Straws

CDR# 0139

Indictment for

Armed Robbery

§16-11-330(A)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 Armed Robbery

§16-11-330(A)

At a Court of General Sessions, convened on APRIL, 2006, the Grand Jurors of Lexington County present upon their oath:

That Jabbar Jomo Straws, did in Lexington County on or about December 15, 2005, knowingly and willfully while armed with a deadly weapon, to wit: a handgun did enter the Family Mart located at 2289 Pond Branch Road in Leesville, SC and feloniously take from the person or presence of employees of Family Mart, Charan ^{Singh} Sing and/or Vernon Ray Sulton, by means of force, threats or intimidation goods or monies being described as follows: U. S. currency, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR

DOCKET NO. 2006-GS-32-1301

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs.

Jabbar Jomo Straws

WITNESSES

LCSD

Prestigacomio, E

A-2006-32-00030 4/11/2006 12:52 PM

ARREST WARRANT NUMBER

K017525

ACTING GRAND JURY
TRUE BILLBong A Lucas
Foreperson of Grand Jury
Date: 21 April 06

VERDICT

GuiltyRobert Hill 6/18/06
Foreperson of Petit Jury Date:

CDR# 0014

Indictment for

Assault and Battery with Intent to Kill

§16-3-620

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Assault and Battery with Intent to Kill

§16-3-620

At a Court of General Sessions, convened on APRIL, 2006, the Grand Jurors of Lexington County present upon their oath:

That Jabbar Jomo Straws, did in Lexington County on or about December 15, 2005, with malice aforethought, willfully and unlawfully commit a violent injury to the person of another, Charan ^{Singh} Sing, in that the defendant, Jabbar Jomo Straws, did restrain the hands of the victim with duct tape and did strike him several times in the head with the handgun, in violation of the 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR

DOCKET NO 2006-GS-32-1302

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs.

Jabbar Jomo Straws

CDR# 0549

Indictment for

Possession of Firearm or Knife during
Commission of Violent Crime

\$16-23-490

DONALD V. MYERS, SOLICITOR

WITNESSES

LCSD

Prestigacomano, E

A-2006-32-00030 4/11/2006 12:46 PM

ARREST WARRANT NUMBER

K017523

ACTION AND JURY
PROBATE BILLBonny A LucasForeperson of Grand Jury
Date: 24 Apr 06

VERDICT

GuiltyRené Hall 6/28/06
Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Possession of Firearm or Knife during Commission of
Violent Crime

§16-23-490

At a Court of General Sessions, convened on APRIL, 2006, the Grand Jurors of Lexington County present upon their oath:

That Jabbar Jomo Straws, did in Lexington County on or about December 15, 2005, knowingly and willfully possess a firearm during the commission of an armed robbery, to wit: a handgun during an armed robbery of the Family Mart at 2289 Pond Branch Road, Leesville, SC, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

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



ASSISTANT SOLICITOR

WITNESSES

LCSD
Prestigacomio, E

A-2006-32-00030

4/11/2006 12:56 PM

ARREST WARRANT NUMBER

K017527

DOCKET NO 2006-GS-32-1304

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE
vs.
Jabbar Jomo Straws

ACTION FILED JURY
TRUE BILL

Barry A. Lucas

Foreperson of Grand Jury
Date: 24 April 2006

VERDICT

Guilty

Indictment for
Kidnapping
§16-3-910

CDR# 0095

Donald V. Myers
Foreperson of Petit Jury
Date: 6/28/06

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Kidnapping

§16-3-910

At a Court of General Sessions, convened on APRIL, 2006, the Grand Jurors of Lexington County present upon their oath:

That Jabbar Jomo Straws, did in Lexington County on or about December 15, 2005, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Vernon Sulton, by any means whatsoever without authority of law, and without his consent, to wit: the defendant did restrain the hands of the victim by binding his hands in order to accomplish the robbery at the Family Mart located at 2289 Pond Branch Road, Leesville, SC, in violation of § 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 statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.
AKA: Jabbar Juma Strawn
Race: B Sex: M Age: 27
DOB: 3/11/76 SS# 101
Address: _____
City, State, Zip _____
DL# _____ SID# _____

INDICTMENT/CASE#: 2006 -GS- 32 - 1298
A/W#: 107528
Date of Offense: 12-15-05
S.C. Code §: 16-3-910
CDR Code #: 0 1 0 1 9 1 5
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

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

TO: Kidnapping
in violation of 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0 1 0 1 9 1 5
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

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

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: With 2006-65-32-13044 1299
☐ 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.

SPECIAL CONDITIONS:

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

Recipient: _____ \$
*Fine: _____ \$
§14-1-206 (Assessments 107.5%) \$100 \$ 100.00
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§14-1-211(A)(2) (DUI Surcharge) \$12 \$
§56-5-2995 (DUI Assessment) \$500 \$
§ 35.13 (Public Def/Prob) \$25 \$ 25.00
§73.3, 1B TP (Law Enforce. Funding) \$100 \$
§33.7, 1B TP (Drug Court Surcharge) \$50 \$
§50-21-114(BUI Breath Test Fee) \$40/ea \$
§56-5-2942(J) (Vehicle Assessment) 3% to County (if paid in installments) \$125.00
TOTAL

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: Not sexual related

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

PRESIDING JUDGE: Th. Mc. Mahan
Judge Code: 8111415
Sentence Date: 28 JUN 06

Clerk of Court Deputy Clerk: Bill A. Carrigan
Court Reporter: Cartan

ut

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.AKA: Jabbar Jono Strauss
Race: B Sex: M Age: 30
DOB: 3/11/76 SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____

INDICTMENT/CASE#:

2006 -GS- 32 - 1304
AW#: K017527
Date of Offense: 12-15-05
S.C. Code §: 16-3-910
CDR Code #: 0101915☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Kidnappingin violation of §16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: With 2006-65-32-1298 & 1304
☐ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§56-5-2995 (DUI Assessment)	\$12 \$
§35.13 (Public Def/Prob)	\$500 \$
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$
§50-21-114(BUI Breath Test Fee)	\$50 \$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$
TOTAL	\$125.00

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

Not sexual related☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

John M. [Signature]
2111415
28 JUN 06

Court Reporter:

Clerk of Court/Deputy Clerk

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS

INDICTMENT/CASE#:

2006 -GS- 32 - 1300

AKA: Abbar Jomo Steura
Race: B Sex: M Age: 30
DOB: 3/11/76 SS# _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____

A/W#: 1017524
Date of Offense: 12-15-05
S.C. Code §: 16-11-330(A)
CDR Code #: 0 1 1 1 3 1 9

☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery
in violation of 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 3 1 9
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted; ☐ Lesser Included Offense; ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation; ☐ Negotiated Sentence; ☐ Recommendation by the State.
ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: With 2006-65-32-13041299, 1298
☐ 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.

SPECIAL CONDITIONS:

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

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

Recipient: _____
*Fine: _____
\$14-1-206 (Assessments 107.5%) \$100 \$100.00
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$
\$14-1-211(A)(2) (DUI Surcharge) \$12 \$
\$56-5-2995 (DUI Assessment) \$500 \$
§ 35.13 (Public Def/Prob) \$25 \$25.00
\$73.3, 1B TP (Law Enforce. Funding) \$100 \$
\$33.7, 1B TP (Drug Court Surcharge) \$50 \$
\$50-21-114(BUI Breath Test Fee) \$40/ea \$
\$56-5-2942(J) (Vehicle Assessment) 3% to County (if paid in installments) \$125.00
TOTAL

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

Beth A. Carrigan
Clerk of Court/Deputy Clerk
Court Reporter: C. Cantrell

PRESIDING JUDGE John E. Mah
Judge Code: 28 1 1 1 4 1 5
Sentence Date: 28 JUN 4 06

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.
AKA: Jabbar Yona Straws
Race: B Sex: M Age: 30
DOB: 3/11/76 SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 2006 -GS- 32 - 1301
AW#: K017523
Date of Offense: 12-15-05
S.C. Code §: 16-3-620
CDR Code #: 010114
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

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

TO: ABWIK
in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 010114
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

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

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 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.

SPECIAL CONDITIONS:

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

Recipient: _____
*Fine: _____
§14-1-206 (Assessments 107.5%) \$100 \$ 100
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§14-1-211(A)(2) (DUI Surcharge) \$12 \$
§56-5-2995 (DUI Assessment) \$500 \$
§35.13 (Public Def/Prob) \$25 \$ 25
§73.3, 1B TP (Law Enforce. Funding) \$100 \$
§33.7, 1B TP (Drug Court Surcharge) \$50 \$
§50-21-114(BUI Breath Test Fee) \$40/ea \$
§56-5-2942(J) (Vehicle Assessment) 3% to County (if paid in installments) \$ 125
TOTAL

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

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

Beth A. Carson
Clerk of Court/ Deputy Clerk
Court Reporter: Montrose

PRESIDING JUDGE DMH
Judge Code: 2111415
Sentence Date: 28 JAN 4 06

STATE OF SOUTH CAROLINA

COUNTY OF Sevin
STATE

VS.

AKA: Jabbar Juma StraussRace: B Sex: M Age: 30DOB: 3/11/76 SS#: ---

Address: _____

City, State, Zip _____

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006 -GS- 32 - 1302AW#: K017523Date of Offense: 12-15-05S.C. Code §: 16-23-490CDR Code #: 0151419☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Per Firman Alvarado Violent Crimein violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0151419☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 625.00

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Mr. M. MahJudge Code: 2111415Sentence Date: 28 June 06Court Reporter: C. PantaniClerk of Court/ Deputy Clerk H