

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
Sep 22 2025
S.C. SUPREME COURT

Certiorari to Berkeley County
Honorable Benjamin H. Culbertson, Trial Judge
Honorable Michael G. Nettles, Circuit Court Judge
Honorable Kristi F. Curtis, Circuit Court Judge

JOHN ALEXANDER DARRIEUX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000303

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

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

DANIELLE E. DIXON
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

VOLUME II OF II

PAGES 501-696

INDEX

INDEX i

TRIAL TRANSCRIPT DATED JANUARY 26-29, 2016.....1

POST-TRIAL MOTIONS HEARING TRANSCRIPT DATED FEBRUARY 26, 2026538

APPLICATION FOR POST-CONVICTION RELIEF FILED JUNE 14, 2018.....566

RETURN.....577

AMENDED APPLICATION FOR POST-CONVICTION RELIEF592

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 26, 2019595

ORDER OF DISMISSAL.....612

APPLICATION FOR POST-CONVICTION RELIEF FILED JULY 6, 2021627

RETURN AND PARTIAL MOTION TO DISMISS.....634

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 29, 2023643

APPLICANT’S EXHIBIT NO. 1 (LETTER FROM ATTORNEY MURPHY).....650

ORDER GRANTING BELATED REVIEW667

INDICTMENTS673

SENTENCE SHEETS689

Question from Jury

501

1 begin their deliberations. Okay. All right.

2 (Alternates released by Court.)

3 THE COURT: All right. Anything from the State before we
4 recess while the jury deliberates?

5 MR. WEST: No, Judge.

6 THE COURT: Anything from the Defense?

7 MR. DAVIS: No, Your Honor.

8 THE COURT: All right. We'll be in recess until we get a
9 verdict.

10 (Deliberations begin at 11:21 a.m.)

11 OFF THE RECORD

12 (On the record. The following takes place outside the
13 presence of the jury. Question from jury at 11:41 a.m.)

14 THE COURT: All right. We've got a request from the
15 jury. It just says, "We need a breakdown of the charges." So
16 I'm assuming they want me to go down and say the State has --
17 I mean, I'll find out, but I'm assuming they want me to say,
18 "Okay. The State has alleged that the Defendant committed
19 burglary in the first degree as a result of the alleged break-
20 in of Mr. Roberts' residence in Moncks Corner. Burglary in
21 the third degree as a result of the State's, I mean, as a
22 result of the Defendant's alleged break-in in Mr. Roberts'
23 unoccupied dwelling in Summerville, three counts of armed
24 robbery for alleged armed robbery of Mr. Roberts, alleged
25 armed robbery of Ms. Simpson and the alleged armed robbery of

1 Mr. Jones, three kidnappings, alleged kidnapping of Mr.
2 Roberts, alleged kidnapping of Ms. Simpson, alleged kidnapping
3 of Mr. Jones, and pointing or presenting a firearm for
4 allegedly having a firearm during the commission of the
5 kidnapping, the armed robbery and the alleged burglary into
6 the residence of Mr. Roberts." What's the State's position?

7 MR. WEST: Yeah. I think that all that's, that's
8 permitted is to just re-read the charge. I don't know if we
9 can go into specificity about anything at this point.

10 THE COURT: What do you want me to do? I mean, they've
11 got a verdict form that itemizes what the charges are.

12 MR. DAVIS: Your Honor, may I have a moment?

13 THE COURT: Okay.

14 MR. WEST: I think there's some confusion as to whether
15 they're talking about the instructions or the actual --

16 THE COURT: And that's what I know. All it says is, "We
17 need a breakdown of the charges."

18 MR. DAVIS: Judge, I, I think both the State and the
19 Defense, if they are asking like you were trying to explain,
20 if that's what it is, that type of a breakdown, I think the
21 State and the Defense would agree that if you simply read the
22 face of the indictments because like you said --

23 THE COURT: Okay.

24 MR. DAVIS: -- on your -- that that would suffice. If
25 they want some more then I don't know what the State or the

Question from Jury

503

1 Defense are going to say, but if it's simply what goes to
2 what, the itemized verdict form corresponds by number to the
3 indictment.

4 THE COURT: Right.

5 MR. DAVIS: You've read those at the beginning of the
6 trial. I can't imagine any prejudice to my client if you re-
7 read them number, face of it.

8 THE COURT: Okay.

9 MR. DAVIS: And I think the State was --

10 MR. WEST: I would agree with that, Judge.

11 MR. DAVIS: -- consents to that.

12 MR. WEST: If that's what they're seeking.

13 MR. DAVIS: If that's what they're seeking.

14 THE COURT: All right. All right. Anything from the
15 State before we bring the jury in?

16 MR. WEST: Nothing from the State, Judge.

17 THE COURT: Anything from the Defense?

18 MR. DAVIS: No, Your Honor.

19 THE COURT: All right. Let's bring the jury in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. Ms. Pritchett, I've got your request. It says, "We
24 need a breakdown of charges." What exactly is it that you
25 want?

1 FOREPERSON: Just basically it was the list that the
2 State presented at the beginning that described each of the
3 charges basically saying --

4 THE COURT: Okay.

5 FOREPERSON: -- this is what a first degree, this is what
6 a third degree is. That's correct? That's what you wanted?

7 THE COURT: All right. I mean, are you --

8 FOREPERSON: Clarification of the charge.

9 THE COURT: Do you want clarification as to what is
10 burglary in the first degree or do you want clarification as
11 to what the State is saying the Defendant did to commit
12 burglary in the first degree or third degree or armed robbery?

13 FOREPERSON: If we could have both that would be very
14 helpful.

15 THE COURT: Okay.

16 FOREPERSON: But of the initial note was for the first
17 one, just the basic definition of each.

18 THE COURT: Of each crime?

19 FOREPERSON: Yes, sir.

20 THE COURT: Okay. All right. Let me see counsel for a
21 minute.

22 (Whereupon, a bench conference is held in the presence,
23 but out of the hearing of the jury.)

24 THE COURT: Excuse me. Are you just wanting the elements
25 of the crime, what constitutes burglary first degree, what

Question from Jury

505

1 constitutes burglary third degree, what constitutes armed
2 robbery --

3 FOREPERSON: Yes, sir.

4 THE COURT: -- etcetera. Okay. All right. Let me see
5 counsel. Come here for a second.

6 (Whereupon, a bench conference is held in the presence,
7 but out of the hearing of the jury.)

8 THE COURT: Okay. All right. All right. Ladies and
9 gentlemen, all right, burglary in the first degree, to prove
10 the Defendant guilty of first-degree burglary, the State must
11 first prove beyond a reasonable doubt that the Defendant
12 entered a dwelling without consent. A dwelling is any
13 building or portion of a building in which a person ordinarily
14 sleeps. A building constructed as a dwelling that has never
15 been occupied cannot be considered a dwelling for purposes of
16 burglary, but a building is a dwelling even if the residents
17 are temporarily absent from the building.

18 In order to prove that the Defendant entered the
19 dwelling, the State does not have to show that the Defendant's
20 entire body entered the dwelling. The smallest entry is
21 sufficient. It may be any part of the body, such as a hand, a
22 foot or even an instrument, such as a hook or other
23 instrument. In addition, the State does not have to prove
24 that force was used to gain entry.

25 If a person enters a building by using deception,

1 artifice, trick or misrepresentation to get consent to enter,
2 this is entry without consent.

3 Next, the State must prove beyond a reasonable doubt that
4 the Defendant intended to commit a crime, either a felony or a
5 misdemeanor, at the time of the entry. The mere entry into a
6 dwelling without consent is not burglary. If the intent to
7 commit a crime is formed after the entry, it is not a
8 burglary. On the other hand, if the Defendant intended to
9 commit a crime at the time of the entry, it is a burglary even
10 if the intent was abandoned after the entry. It does not
11 matter that the intended crime was not completed. Intent may
12 be shown by acts and conducts of the Defendant and other
13 circumstances from which you may naturally and reasonably
14 infer intent.

15 Finally, the State must prove beyond a reasonable doubt
16 at least one of the following, but does not need to prove all
17 of the following: one, when entering, while in the dwelling,
18 or when fleeing, the Defendant or an accomplice was armed with
19 a deadly weapon or explosive. A deadly weapon is any article,
20 instrument or substance which is likely to cause death or
21 great bodily harm. Whether an instrument has been used as a
22 deadly weapon depends on the facts and circumstances of each
23 case. The following are examples of instruments which may be
24 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
25 dagger, a knife, a sling shot, metal knuckles, a razor,

Question from Jury

507

1 gasoline, a fire bomb or Molotov cocktail, a lighter fluid. A
2 gun may be a deadly weapon even if it's not operating. Or the
3 State may prove burglary in the first degree by showing that
4 when entering, while in the dwelling or when fleeing, the
5 Defendant or an accomplice displayed what was or appeared to
6 be a knife, a pistol, a revolver, a rifle, a shotgun, a
7 machine gun or other firearm. Or the State may prove burglary
8 in the first degree by showing that the Defendant entered or
9 remained in the dwelling in the nighttime. Nighttime is the
10 period between sunset and sunrise during which there is not
11 enough daylight to recognize a person's face, except by
12 artificial light or moonlight.

13 Now, burglary in the third degree, in order to prove
14 third-degree burglary the State must prove beyond a reasonable
15 doubt that the Defendant entered a building without consent.
16 A building is any structure, vehicle, watercraft or aircraft
17 where any person lodges or lives or where people assemble for
18 the purpose of business, government, education, religion,
19 entertainment, public transportation or public use or where
20 goods are stored. In order to prove that the Defendant
21 entered the building, the State does not have to show that the
22 Defendant's entire body entered the building. The smallest
23 entry is sufficient. It may be any part of the body such as a
24 hand or a foot or even an instrument, such as a hook or other
25 instrument. In addition, the State does not have to prove

1 that force was used to gain entry. If a person enters a
2 building by using deception, artifice, trick or
3 misrepresentation to get consent to enter this is an entry
4 without consent.

5 Next the State must prove beyond a reasonable doubt that
6 the Defendant intended to commit a crime, either a felony or a
7 misdemeanor at the time of the entry to be guilty of burglary.
8 The mere entry into a building without consent is not a
9 burglary. If the intent to commit a crime is formed after the
10 entry, it is not a burglary. On the other hand, if the
11 Defendant intended to commit a crime at the time of entry it
12 is a burglary even if the intent was abandoned after the
13 entry. It does not matter that the intended crime was not
14 completed. Intent may be shown by acts and conduct of the
15 Defendant and other circumstances from which you may naturally
16 and reasonably infer intent.

17 Now, to convict the Defendant of kidnapping the State
18 must prove beyond a reasonable doubt that the Defendant
19 knowingly and unlawfully seized, confined, inveigled, decoyed,
20 kidnapped, abducted or carried away another person without
21 authority of law. To do a thing unlawfully is to do it
22 willfully against the law. Knowingly means with knowledge,
23 consciously, not accidentally. Seize means to take hold of
24 suddenly or forcibly. Confine means to limit, restrict or
25 enclose within bounds, imprison or shut or keep in. Inveigle

Question from Jury

509

1 means to lure, entice or lead astray by false representations,
2 promises or other deceitful means. Decoy means to lure by, or
3 as if by, decoy. A decoy is something that entices a person
4 into a trap. Kidnap is to remove a person against his will by
5 unlawful force or by fraud. Abduct means to carry off
6 secretly or by force for an illegal purpose. Carry away means
7 to remove. The State does not have to prove that the
8 Defendant did all of these things. Instead, if you find
9 beyond a reasonable doubt that the Defendant did any of these
10 things, you may find the Defendant guilty of kidnapping.

11 Something done without authority of law is something
12 which the law does not sanction, permit, allow, condone or
13 provide justification for. The kidnapping does not have to be
14 for any personal or monetary gain or for any illegal purpose,
15 but may be for any reason whatsoever.

16 Now, in order to prove armed robbery the State must first
17 prove beyond a reasonable doubt that the Defendant took
18 personal property from the person or presence of another
19 person. Property is in the presence of a person if it is
20 within the person's reach, inspection, observation or control
21 so that the person could, if not overcome with violence or
22 prevented by fear, keep possession of the property.

23 The State must also prove beyond a reasonable doubt that
24 the Defendant carried the property away intending to
25 permanently deprive the owner of the property and to keep the

1 property for the Defendant's own use. The slightest removal
2 of the property or the complete possession of the property,
3 even for an instant, by the Defendant is sufficient to show a
4 taking and carrying away of the property. The taking and
5 carrying away of the property must have been done with
6 violence or by putting the owner of the property in fear of
7 violence.

8 Finally, the State must prove beyond a reasonable doubt
9 that the Defendant was armed with a deadly weapon during the
10 robbery. A deadly weapon is any article, instrument or
11 substance which is likely to cause death or great bodily harm.
12 Whether an instrument has been used as a deadly weapon depends
13 on the facts and circumstances of each case.

14 The following are examples of instruments which may be
15 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
16 dagger, a knife, a sling shot, metal knuckles, a razor,
17 gasoline, a fire or Molotov cocktail and lighter fluid. A gun
18 may be a deadly weapon even if it is not operating.

19 To convict the Defendant of possession of a weapon during
20 the commission of a violent crime the State must prove beyond
21 a reasonable doubt that the Defendant was in possession of a
22 firearm or visibly displayed what appeared to be a firearm
23 during the commission of a violent crime. A firearm means any
24 machine gun, automatic rifle, revolver, pistol or any weapon
25 which will, is designed to or may be readily converted to

1 expel a projectile. In order to find the Defendant guilty of
2 possession of a weapon during the commission of a violent
3 crime, you must first find the Defendant guilty of either
4 committing a violent crime or attempting the commission of a
5 violent crime. Burglary in the first degree, armed robbery
6 and kidnapping are violent crimes. The State must also prove
7 beyond a reasonable doubt that the weapon furthered, advanced
8 or helped in the commission of the crime.

9 All right. So that's an explanation as to what the
10 crimes are. All right. I'm going to send you back to the
11 jury room, let you continue your deliberations. If you have
12 any other questions let us know. Okay? Thank you.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. Anything further from the State?

16 MR. WEST: I think the record should reflect that it was
17 Defense's request to limit the instruction just to the reading
18 of the charges.

19 THE COURT: Okay. Yeah. I'd asked whether or not to
20 send the written charges back. The Defense objected. So I
21 didn't send it back because the parties didn't agree. So I
22 did what the Defendant requested, which was to simply read the
23 charges without sending them back. Okay?

24 MR. WEST: Thank you, Judge.

25 THE COURT: All right. Anything further from the

1 Defense?

2 MR. DAVIS: No, Your Honor.

3 THE COURT: All right. We'll stay in recess.

4 MR. DAVIS: Thank you, Your Honor.

5 THE COURT: Yeah. I'm going to mark this sheet. This'll
6 be Court's Exhibit Three.

7 (Court's Exhibit Number Three [Question from Jury]
8 appropriately marked.)

9 OFF THE RECORD

10 (On the record. The following takes place in the
11 presence of the jury. Jury enters courtroom at 1:17 p.m.)

12 THE COURT: All right. Ladies and gentlemen, welcome
13 back. I apologize for interrupting your deliberations, but I
14 just wanted to let you know that we've got lunch here for you.
15 Now, you can do one of two things. You can either deliberate
16 while you eat lunch if you want to do that or you can stop
17 your deliberations, eat lunch and then resume your
18 deliberations when you finish lunch. The only requirement is
19 that everybody must do the same thing. You can't have some
20 jurors deliberate while others do not. So I'll leave it up to
21 you as to how you want to do it. If you want to deliberate
22 while you eat you can do that or if you want to stop, eat
23 lunch and then resume your deliberations all at one time you
24 can do that as well. All right. I'll leave it up to you all
25 to decide. You all can go on back into the jury room and

1 continue.

2 OFF THE RECORD

3 (On the record. The following takes place outside the
4 presence of the jury. Note from jury received at 1:45 p.m.)

5 THE COURT: All right. I've gotten a note from the
6 foreperson. It says, "Besy P. Bayless wishes to be removed
7 from the jury panel because she doesn't want to convict
8 anyone. Morgan Pritchett, January 29th, 2016, 1:40 p.m." The
9 only thing I know to do at this point in time is to bring them
10 in, tell them I understand they've been unable to agree on a
11 verdict, that one of the jurors wishes to be removed from the
12 jury, that we cannot remove the jury simply because you've
13 been unable to reach a unanimous verdict and then just give
14 them the Allen charge to try to encourage them to reach a
15 unanimous verdict. What is the State's position on that?

16 MR. WEST: I believe that that's the only appropriate
17 course of action at this point.

18 THE COURT: Yeah. I think so, too.

19 MR. DAVIS: If I could just have a moment to explain it
20 to my client.

21 THE COURT: All right.

22 MR. DAVIS: Thank you, Your Honor. I've explained the
23 Allen charge process to my client. Because we want each
24 individual juror to vote their own conscience, I object to it,
25 but I understand and I think that -- I don't object to the

1 process. I object to the Allen charge.

2 THE COURT: Okay. So what would you suggest?

3 MR. DAVIS: And that, Judge, Defense believes in binding
4 that. I think I have to protect the record by objecting, but
5 I don't have another argument for you.

6 THE COURT: Okay. All right. Anything from the State
7 before we bring the jury in?

8 MR. WEST: Nothing from the State, Judge.

9 THE COURT: Anything from the Defense?

10 MR. DAVIS: Nothing additional, Your Honor.

11 THE COURT: All right. I'm going to overrule the
12 objection of the Defense and I'm going to proceed the way, way
13 we suggested. Let's go ahead and bring the jury in.

14 (Whereupon, the following takes place in the presence of
15 the jury.)

16 THE COURT: All right. Ladies and gentlemen, welcome
17 back. I've received a note from the foreperson saying that
18 you've been unable to reach a unanimous verdict, and one of
19 the jurors wishes to be removed from the jury, and I
20 understand that you've been unable to agree on a verdict in
21 this case and that one of the jurors wishes to be removed. We
22 cannot remove a jury -- a juror simply because you cannot
23 reach or that you've been unable to reach a unanimous verdict.
24 As I instructed you earlier, the verdict of the jury must be
25 unanimous. Now, when a matter is in dispute it isn't always

1 easy for even two people to agree. So when 12 people must
2 agree it becomes even more difficult. In most cases absolute
3 certainty cannot be reached or expected. However, you have a
4 duty to make every reasonable effort to reach a unanimous
5 verdict. In doing this you should consult with one another,
6 express your own views and listen to the opinions of your
7 fellow jurors. Tell each other how you feel and why you feel
8 that way, discuss your differences with open minds. Although
9 the verdict of the jury must be unanimous, every one of you
10 has the right to your own opinion. The verdict you agree to
11 must be your own verdict, the result of your own convictions,
12 and you should not give up your firmly held beliefs merely to
13 be in agreement with your fellow jurors. The majority should
14 consider the minority's position, and the minority should
15 consider the majority's position. You should carefully
16 consider and respect the opinions of each other and reevaluate
17 your position for reasonableness, correctness and
18 impartiality. You must lay aside all outside matters and
19 reexamine the questions before you based on the law and
20 evidence in this case. If you do not agree on a verdict in
21 this case I must declare a mistrial. In that case it does not
22 mean that anybody wins. It just means that at some future
23 time I will try this case with some other jury sitting where
24 you now sit. The same participants will come, and the same
25 lawyers will ask basically the same questions and give

1 basically the same answers, and we'll go through the whole
2 process again. Now, you were selected in the same manner and
3 from the same source as any future jury will be, and there's
4 no reason for me to suppose that the case will be ever be
5 submitted to 12 more intelligent, impartial, conscientious and
6 competent jurors than you or that more or clearer evidence
7 will be produced on one side or the other. So at this time
8 I'm going to send you back to the jury room, and I'm going to
9 ask that you resume your deliberations to see if you can reach
10 a unanimous verdict on these charges.

11 All right. Thank you very much.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Anything further from the State?

15 MR. WEST: Nothing from the State, Judge.

16 THE COURT: Anything from the Defense?

17 MR. DAVIS: No, Your Honor.

18 THE COURT: All right. We'll stay in recess. I'm
19 marking this note, I don't know if you all want to see it or
20 not, this'll be Court's Exhibit Four. All right.

21 (Court's Exhibit Number Four [Note from Jury]
22 appropriately marked.)

23 OFF THE RECORD

24 (On the record. The following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. I understand the jury has reached
2 a verdict. Anything from the State before we bring the jury
3 in?

4 MR. WEST: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: All right. Let's bring the jury in.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: All right. Ladies and gentlemen, welcome
11 back. Ms. Pritchett, I understand the jury has reached a
12 unanimous verdict on all charges; is that correct?

13 FOREPERSON: That's correct.

14 THE COURT: Have you completed the verdict form?

15 FOREPERSON: Yes, sir.

16 THE COURT: All right. If you'd please hand it to the
17 bailiff. (Complies with request. Court reviews.)

18 THE COURT: Get one of the clerks to please publish the
19 verdict.

20 THE CLERK: In the Court of, in the Court of General
21 Sessions, State of South Carolina versus John Alexander
22 Darrieux, as in -- as to indictment number 2015-GS-08-1024 for
23 burglary third degree, not guilty; indictment number 2015-GS-
24 08-1026, burglary first degree, guilty; indictment number
25 2015-GS-08-1027, armed robbery as of Charles Willard Roberts,

Verdict

519

1 guilty; indictment number 2015-GS-08-1028 for armed robbery of
2 Stephen B. Jones, guilty; indictment number 2015-GS-08-1029
3 armed robbery of Rose Simpson, guilty; indictment number 2015-
4 GS-08-1030 for kidnapping of Charles Willard Roberts, guilty;
5 indictment number 2015-GS-08-1031 for kidnapping of Stephen B.
6 Jones, guilty; indictment number 2015-GS-08-1032 for
7 kidnapping of Rose Simpson, guilty; indictment number 2015-GS-
8 08-1034 possession of a weapon during a commission of a
9 violent crime, guilty, signed by the foreperson. Ladies and
10 gentlemen of the jury, if this is your unanimous decision
11 please raise your right hand.

12 (All jurors raise right hand.)

13 THE COURT: All right. Let the record reflect that all
14 jurors raised their right hand. Any polling of the jury by
15 the Defense?

16 MR. DAVIS: Yes, please, Your Honor.

17 THE COURT: All right.

18 MR. DAVIS: May we be seated, Your Honor?

19 THE COURT: Yes. You can be seated. Ladies and
20 gentlemen, the Defense has requested that the jury be polled.
21 Now, what that means is the Clerk of Court will call your jury
22 number. When your jury number is called, if you would please
23 stand, and you're going to need to respond to two questions.
24 She's going to ask you if these are your verdicts, and then
25 she's going to ask you if these are still your verdicts, and

1 then once you respond to those questions you can then be
2 seated. So please listen up and as your jury number is
3 called, please stand and respond to the questions of the
4 clerk.

5 THE CLERK: Juror Number 130, please stand. Is this your
6 verdict?

7 JUROR 130: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR 130: Yes.

10 THE CLERK: Thank you.

11 Juror Number 160.

12 JUROR 160: Yes, ma'am.

13 THE CLERK: Is this your verdict?

14 JUROR 160: Yes, ma'am.

15 THE CLERK: Is this still your verdict?

16 JUROR 160: Yes, ma'am.

17 THE CLERK: Thank you.

18 Juror Number 134. Is this your verdict?

19 JUROR 134: Yes.

20 THE CLERK: Is this still your verdict?

21 JUROR 134: Yes.

22 THE CLERK: Thank you.

23 Juror Number 68. Is this your verdict?

24 JUROR 68: Yes.

25 THE CLERK: Is this still your verdict?

1 JUROR 68: Yes.

2 THE CLERK: Thank you.

3 Juror Number 128. Is this your verdict?

4 JUROR 128: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR 128: Yes.

7 THE CLERK: Thank you.

8 Juror Number 9. Is this your verdict?

9 JUROR 9: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR 9: Yes.

12 THE CLERK: Thank you.

13 Juror Number 70 -- 79, excuse me. Is this your verdict?

14 JUROR 79: Yes, ma'am.

15 THE CLERK: Is this still your verdict?

16 JUROR 79: Yes, ma'am.

17 THE CLERK: Thank you.

18 Juror Number 146. Is this your verdict?

19 JUROR 146: Yes, ma'am.

20 THE CLERK: Is this still your verdict?

21 JUROR 146: Yes, ma'am.

22 THE CLERK: Thank you.

23 Juror Number 177. Is this your verdict?

24 JUROR 177: Yes.

25 THE CLERK: Is this still your verdict?

1 JUROR 177: Yes.

2 THE CLERK: Thank you.

3 Juror Number 60. Is this your verdict?

4 JUROR 60: Yes, ma'am.

5 THE CLERK: Is this still your verdict?

6 JUROR 60: Yes, ma'am.

7 THE CLERK: Thank you.

8 Juror Number 14. Is this your verdict?

9 JUROR 14: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR 14: Yes.

12 THE CLERK: Okay. Thank you.

13 Juror Number 50. Is this your verdict?

14 JUROR 50: Yes.

15 THE CLERK: Is this still your verdict?

16 JUROR 50: Yes.

17 THE CLERK: Thank you.

18 Your Honor, all the jurors have been polled and the
19 verdict stands.

20 THE COURT: Thank you very much.

21 (Jury excused by Court.)

22 THE COURT: All right. Are there any post-trial motions
23 at this time?

24 MR. WEST: Nothing from the State, Judge.

25 THE COURT: All right.

1 MR. DAVIS: Judge, I would renew all my post the State
2 resting motions. I would renew those now. I would also add
3 to that a motion for a new trial, but I have no additional
4 argument than what I made then.

5 THE COURT: Okay. All right. Your motions are noted.
6 However, I'm going to deny those motions, let the verdict
7 stand. Any reason why we cannot go ahead and impose
8 sentencing at this time?

9 MR. DAVIS: If I could have a moment with my client and
10 the State on that issue for just a moment, Your Honor?

11 THE COURT: All right. Sounds good.

12 MR. WEST: Mr. Poulos is printing sentencing sheets.

13 THE COURT: Okay. Sounds good.

14 MR. DAVIS: Your Honor, there is no reason on the Defense
15 we'd be asking for you to wait beyond the time it takes to get
16 the sentence sheets. Probation from here in Berkeley is
17 talking to my client right now. There is a Charleston
18 conviction, supervised by Dorchester County of which this
19 would be a violation and we've provided the appropriate
20 paperwork. I'll go ahead and tell the Court, it was a three-
21 sentence suspended to three years probation. Clearly while we
22 may dispute, we respect the jury's verdict, 15-year mandatory
23 minimum on the burglary would --

24 THE COURT: Okay.

25 MR. DAVIS: -- overwhelm that. So we're prepared to have

1 you deal with that today if you see fit even though it's from
2 a different county we'd be -- we'd, we'd be prepared to have
3 you deal with that today as well.

4 THE COURT: All right. And what is that for?

5 MR. DAVIS: I'll approach, Your Honor?

6 THE COURT: Yeah.

7 MR. DAVIS: It's, it's -- well, it's two indictments,
8 both of them from 2013-GS-10, both of them from Charleston
9 County, 1791 and 1792. Both of them appear to be possession
10 of cocaine first, sentenced by Judge Jefferson on October 7th,
11 2013, so a year before this incident.

12 THE COURT: Okay. And --

13 MR. DAVIS: And he's being served with the warrant by a
14 Berkeley Probation Officer right now.

15 THE COURT: All right. And do you have the sentencing
16 date?

17 MR. DAVIS: The sentencing date was, I'm sorry, October
18 7th, 2013, so a year before this incident.

19 THE COURT: All right. All right. Sounds good.

20 PROBATION OFFICER: May I approach, sir?

21 THE COURT: Yes, sir.

22 (Probation Officer and Court confer.)

23 THE COURT: Are we ready? All right. Mr. Davis, do you
24 also represent Mr. Darrieux in his violation of probation?

25 MR. DAVIS: In an abundance of caution, Judge, if you

1 could order that I'm appointed because I was appointed on this
2 case, but I, I'd be happy to, to deal with it today.

3 THE COURT: Okay. All right. Then I'll appoint you as
4 his attorney for purposes of his violation of probation --

5 MR. DAVIS: Thank you, Your Honor.

6 THE COURT: -- hearing as well. Have you received a copy
7 of the violation report and a copy of the arrest warrant for
8 his --

9 MR. DAVIS: I have, Your Honor.

10 THE COURT: Have you had an opportunity to go over those
11 reports and warrants with your client?

12 MR. DAVIS: I've talked in general, if you'd just give me
13 one second, please, I'm sorry.

14 THE COURT: Okay.

15 (Defendant and counsel confer.)

16 MR. DAVIS: Your Honor, I've had a chance to review it
17 with him. Just housekeeping, Charleston conviction,
18 Dorchester supervision, he has indicated, and if you need to
19 ask him on the record, but he's indicated that he wishes to
20 waive this being handled in either Charleston or Dorchester
21 County and have you handle it here in Berkeley County today,
22 and we agree that -- Judge, it's a moot point. We're not -- I
23 don't have information to agree or disagree on what's found in
24 the warrant and violation report. These convictions by the
25 jury today is a violation of probation. We have -- while we

1 may dispute the verdict, we have no dispute that the
2 convictions today violate this probation.

3 THE COURT: All right. All right. So the Defendant
4 admits that he's willfully violated the terms of his
5 probation?

6 MR. DAVIS: By this conviction, yes, Your Honor.

7 THE COURT: And he consents to having or he waives venue
8 and consents to having his violation of probation disposed of
9 here in Berkeley County?

10 MR. DAVIS: Yes, Your Honor.

11 THE COURT: All right. Anything in mitigation with
12 regard to the convictions for burglary in the first degree,
13 armed robbery, kidnapping and possession of a weapon during
14 the commission of a violent crime or anything in mitigation
15 with regard to his violation of probation?

16 MR. DAVIS: Let me start with that, Your Honor. Judge,
17 with that being a three-year sentence he's been in the
18 Berkeley County Jail since October 21st of 2014, approximately
19 15 months. While we can never be sure how it will be
20 calculated by the Department of Corrections, a year and a half
21 active time usually satisfies a three-year sentence, first of
22 all. Second of all, Your Honor, he's been in there since
23 October of '14. This warrant was obtained on May of '15, not
24 served until today. There's a Blakeney case that I could
25 argue for credit. What I'm going to ask you to do, Judge,

1 just terminate that. Certainly that -- normally I would, I
2 would understand a conviction while on probation why give a
3 benefit, you've got more than ample sentencing ability on the
4 multiples charges he's convicted of today, rather than having
5 to deal with time credit and all that, I just simply ask that
6 you, you simply just terminate this probation.

7 Then, Judge, as to the convictions today, as I'm sure you
8 understand, John and I have talked. He'll, he'll not be
9 addressing the Court, but on behalf of my client I do want you
10 to know a little bit more about John and what he was dealing
11 with at the time that he was arrested.

12 Judge, he was actually born in Hawaii. He's been living
13 here most of his adult life. He was born in 1978, September
14 of '78. While not married, he was the stepfather to Lucas,
15 who is now, I guess, a year and a half about old.

16 MR. DARRIEUX: No. He's just turned six.

17 MR. DAVIS: I'm sorry. I've got -- I misread it as
18 months, not years. He just turned six. So I had it as five
19 months, I was saying he was a year and a half, he just turned
20 six. I apologize, and then he also is biological father of
21 his son Julian, who Julian would be almost two now or right
22 around two now.

23 Judge, he does have some medical issues that I think you
24 should know about, not as an excuse for any conviction but for
25 future purposes. He has been diagnosed with Hepatitis C. I

1 have medical records if I need to submit those, but I've
2 followed up once he -- once I was appointed to check in on
3 that. He has been diagnosed. He is Hepatitis C positive.
4 While at the jail over these past 15 months, you know, folks,
5 I've, I've visited many folks at the Department of
6 Corrections, and certainly that's no place anybody wants to
7 be, but I'm not sure in my 20 years of doing this it's not
8 worse in the county jail. This is a fine facility here, but
9 it's understaffed and overpopulated. In his 15 months there
10 he has fallen, had a severe testicular injury. He had a hand
11 injury separate and apart from that while here at the jail. He
12 is on medication. We addressed this on Tuesday, not to the
13 extent to cause me any concern about competency, but he has
14 suffered and been diagnosed and been prescribed medication for
15 depression, ADHD, post traumatic stress, acute anxiety. The
16 medication he's received at the jail has been adequate at
17 best, but he, he does suffer from those issues.

18 Judge, in addition to that, he has struggled with
19 substance abuse issues, and again, we've, we've raised this
20 not in -- in mitigation, Your Honor, in mitigation. It's,
21 it's just an issue that can afflict anyone, from, from the
22 highest of careers to the lowest of careers, from any economic
23 portion of our society, and he struggles with that. That is
24 one positive I would think over the last 15 months of being
25 clean. He's been bright eyed. He's been very involved in

1 preparations on this case. When we circle back and tied it in
2 though, Judge, which I, one of the issues that I know is an
3 overarching influence on John's life, the mother of Julian,
4 when he was born, had also been a substance abuser. DSS got
5 involved and that child has not been in their custody from
6 birth. That was an incredibly difficult time. That would
7 have been the summer of 2014, Judge. Any traumatic event like
8 that cannot be relied on as an excuse for any conduct.
9 However, I can't imagine, I'm not a father myself, and I can't
10 imagine, and that, that's been an overarching shadow over John
11 even at our meetings.

12 Judge, he does have family here. In fact, in the
13 courtroom with us today is his father. His father works down
14 at MUSC down in Charleston. He was here on the first day, has
15 been very supportive of both me representing John in this case
16 and very supportive of John. I know they've stayed in touch
17 throughout this, and it's got to be difficult on his father as
18 well, but he's been there for him. He loves his son, and he's
19 here with us today. If you can give me just a moment to see
20 if he wants to address the Court.

21 THE COURT: All right.

22 MR. DAVIS: He'd like to address the Court, Your Honor.
23 I'm not sure where you want him to stand. He'd like to
24 address the Court.

25 THE COURT: I'll hear from anybody. Whenever you finish

1 I'll hear from anybody that wants to speak on his behalf.

2 MR. DAVIS: So, Judge, what we would ask is this, we know
3 the range. It's something I've made sure to talk with him
4 about during this whole process. He is 36 years old, 37. Get
5 the dates right. In September he just turned 37. As you
6 know, Judge, there's a flat five on the possession of a weapon
7 during a violent crime. He's got to serve that flat five. We
8 also know that it's 85 percent on every other charge. We know
9 that there's a mandatory minimum ten on the armed robberies.
10 We know there's a mandatory minimum of 15 on the burglary in
11 the first degree. 85 percent must be served of that. That's
12 12 years, nine months. He's done about 15. That's nearly a
13 dozen years still left if the minimum were given, and a dozen
14 years on 37 is, is 50 years old. I don't have it for you here
15 today, Judge, but on another case I recently pulled the stats
16 on the natural life expectancy, not some accident or crime in
17 prison, but natural life expectancy and it's fifties, early
18 fifties for males in Department of Corrections, natural life.
19 It's, it's a hard life. We would ask you respectfully to
20 consider the minimum on the burglary first as the lead
21 sentence and we would argue that is more than sufficient. We
22 hope at some point if he survives that sentence at that age
23 with his history, with his health issues, that at that point,
24 one, he would not be a danger to anyone when he's released,
25 and if he does have time left he could be a productive member

1 of society at that point.

2 That's all I have to present. Now, if you'd hear from
3 his father, Your Honor.

4 THE COURT: All right. He needs to come forward. He
5 needs to --

6 MR. DAVIS: Where do you wish him to stand, Judge?

7 THE COURT: Either slide the microphone over or if he
8 wants to come to this microphone right up here. If you would
9 give the court reporter your name.

10 MR. MARCELL DARRIEUX: My name is Marcell Darrieux.

11 THE COURT: I'm sorry?

12 MR. MARCELL DARRIEUX: Marcell Darrieux.

13 THE COURT: Could you spell your last name?

14 MR. MARCELL DARRIEUX: D-A-R-R-I-E-U-X. It's John's,
15 I'm his father.

16 THE COURT: All right, Mr. Darrieux, what would you like
17 to say?

18 MR. MARCELL DARRIEUX: I'd like to speak as John's dad
19 but also as a person who understands what a significant,
20 important and difficult job you have in trying to uphold the
21 law and also understanding that no one is necessarily all evil
22 or all good.

23 John, this is John as well, a person who talked to me not
24 too long ago and we were talking about the trial and he told
25 me he sensed that I was upset and concerned and worried, and

1 he said, "I want you to know, don't worry that whatever
2 happens I'll be okay." That was a solicit -- a solicitude for
3 me and, and, and something that he has shown on other
4 occasions as well, a solicitude to others. He has told me on
5 many occasions how he's -- his love for his mom and his hope
6 that she would think him a worthwhile person, and he wanted to
7 try to behave that way.

8 On a relatively minor note, it was not uncommon to have
9 people tell me how John was respectful of them and polite.
10 Then he, he's also always expressed to me, you know, owning
11 this, to take responsibility for his actions. I don't know
12 that he's ever really skirted that, and I guess the one thing
13 I would say is that's, you know, also the person who sits
14 before you today who has those characteristics and those
15 desires to, to be worthwhile. He sits there, too, and hope is
16 a, is a very important thing to have and it's devastating in a
17 way to not have it. I would, I would ask that whatever
18 verdict you hand down, he's still a young man, and with help
19 and the Lord I think he can still have hope that he, he
20 ultimately has time left for a life with his family and with
21 his children.

22 THE COURT: Thank you, sir.

23 All right. Mr. Darrieux, is there anything you'd like to
24 say?

25 MR. DARRIEUX: That would be all, Your Honor.

1 THE COURT: Excuse me?

2 MR. DARRIEUX: That will be all, Your Honor.

3 THE COURT: All right. Any of the victims wish to speak?

4 MR. WEST: Yes, Your Honor.

5 THE COURT: All right. You need to come forward to the
6 podium.

7 All right. Please give the court reporter your name.

8 MS. SIMPSON: My name is Rose Simpson.

9 THE COURT: All right. Ms. Simpson, what would you like
10 to say?

11 MS. SIMPSON: Your Honor, I come before you. I'll try to
12 be calm today. My heart goes to John. I hope and pray that
13 he seeks the Lord and that he leans on him because that's the
14 way that I've had to get through this. I have PTSD now. It's
15 destroyed my relationship with Charles. I cannot be in that
16 home overnight, fear, but I have forgiven John. I just hope
17 he can forgive himself and find God because that's the only
18 way he's going to be able to live in peace, that the healing
19 inside of me. He's destroyed me. I'm not the same person,
20 and I've wanted to die, but if it wasn't for God I would have
21 killed myself over this because I thought I was going to die
22 that night.

23 THE COURT: All right. Thank you, ma'am.

24 Anyone else? Please give the court reporter your name.

25 Give the court reporter your name.

1 MR. ROBERTS: My name is Charles W. Roberts.

2 THE COURT: All right. Mr. Roberts, what would you like
3 to say?

4 MR. ROBERTS: I just wanted to tell you that John really
5 -- he disrupted my, my home and, and that he -- I've had --
6 since then I've had to put bars on my door to keep people from
7 breaking in and I, and I, I was afraid for, for my life. I'm
8 afraid for Rose's life, and I don't believe that he should be
9 -- have the opportunity to do this again. I do forgive him
10 tough.

11 THE COURT: All right. Thank you, sir.

12 Anyone else?

13 MS. LAUDANO: Yes. Hi. I'm Stephanie Laudano.

14 THE COURT: Could you spell your last name?

15 MS. LAUDANO: L-A-U-D-A-N-O.

16 THE COURT: All right. And how are you -- are you a
17 victim?

18 MS. LAUDANO: No. This is my family. My father and
19 Charles Roberts were very close as I was growing up, and they
20 are all the family that I have left.

21 THE COURT: Okay. But are you related to them?

22 MS. LAUDANO: Not blood, no.

23 THE COURT: Okay. All right. And I don't want to cut
24 you short, but I think I'm going to limit it to the victims of
25 the crime. Okay?

1 MS. LAUDANO: Okay.

2 THE COURT: Thank you very much.

3 MS. LAUDANO: All right. Thank you.

4 THE COURT: All right. Anyone else? All right.

5 Anything further from the State?

6 MR. WEST: Yes, Your Honor, as you're aware, Mr. Darrieux
7 has a prior history. Would you like for me to go into it?

8 THE COURT: Yeah. I was getting ready to ask you what
9 are his prior convictions.

10 MR. WEST: 2014 open container from this stemming
11 incident; 2013 financial transaction card theft and possession
12 of methamphetamines; 2011 burglary in the second degree,
13 driving under suspension; 2010 breach of trust and possession
14 of stolen motor vehicle; 2009 trespassing; 2006 possession of
15 a controlled substance; 1998 possession of a controlled
16 substance.

17 THE COURT: All right. All right. First of all on the
18 violation of probation, I find that as a result of these
19 convictions there is a willful violation of probation. I'm
20 going to just give him credit for time served and terminate
21 probation on those charges.

22 As to charge of burglary in the first degree, the
23 sentence of the Court is that you be confined to the State
24 Department of Corrections for 30 years. On the charge of each
25 of the armed robberies and each of the kidnappings you're to

1 be confined to the State Department of Corrections for 30
2 years. On the possession of a weapon during the commission of
3 a violent crime you're to be committed to the Department of
4 Corrections for a period of five years. All sentences will
5 run concurrent and you'll be given credit for any time served
6 thus far.

7 MR. DAVIS: Thank you very much, Your Honor.

8 THE COURT: All right. Anything else?

9 MR. WEST: Nothing from the State, Judge.

10 THE COURT: All right. Thank you very much.

11 Oh, oh, I'm sorry. I need to put back on here, I just
12 noticed on here, the kidnappings --

13 MR. DAVIS: Thank you, Your Honor.

14 THE COURT: -- I'm putting that there is -- did not
15 involve sex offense or attempted sex offense, therefore, no
16 sex offender registry is required at the conclusion of the
17 sentence. Okay?

18 MR. DAVIS: Thank you very much, Your Honor.

19 THE COURT: All right. Thank you very much.

20 (Adjourned.)

21

22

23

24

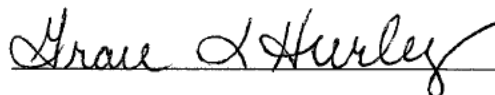
25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Trial held in the case of State versus John A. Darrieux, held in the Court of General Sessions for Berkeley County, Berkeley County Courthouse, Moncks Corner, South Carolina, on January 26-29, 2016.

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



Grace L. Hurley, CVR-CM-M
Official Reporter

June 28, 2016.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY) 2015-GS-08-01026 to 1032
2015-GS-26-01034

STATE OF SOUTH CAROLINA,)
)
Plaintiff,) **Transcript of Record**
)
vs.)
) February 26, 2016
JOHN ALEXANDER DARRIEUX,)
)
Defendant.)

B E F O R E:

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

E. Mason West, Esquire
Attorney for Plaintiff

Rodney D. Davis, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

State v. Darrieux
INDEX

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

February 26, 2016

Pg.

By the Court	3
Katie Shuler	
Direct by West	9
Cross by Davis	16
Redirect by West	21
Kevin McGowan	
Direct by West	21
Argument by Davis	25
Argument by West	26
Ruling of the Court	27
Certificate of Court Reporter	28

E X H I B I T S

No.

ID

EV

S123A CD "John Darrieux" 10/31/14 - 1/11/15
S-B Affidavit of Katie Shuler
S-C Affidavit of Kevin McGowan

(Exhibits were admitted for Proffer.)

State v. Darrieux
BY THE COURT

3

1 **(February 26, 2016)**

2 THE COURT: All right. We've got State v. Darrieux. Is
3 Mr. Darrieux here?

4 MR. DAVIS: He is, Your Honor.

5 THE COURT: All right. Who wants to go ahead and put a
6 caption on the record for the court reporter?

7 MR. WEST: I have a copy of the verdict form but I was
8 just gonna read the indictments into the record.

9 THE COURT: Okay. That'll be good.

10 MR. WEST: Your Honor, we're here before you -- Mason
11 West on behalf of the 9th Circuit Solicitor's Office of
12 Berkeley County as well as Mr. Daniel Poulos. We also have in
13 attendance Mr. Keven McGowan, an investigator with our office,
14 as well as Sergeant Shuler with the Berkeley County Sheriff's
15 Office. We're here regarding the matter of State versus John
16 Alexander Darrieux. Mr. Darrieux was convicted on Friday,
17 January the 29th of 2016 of several indictments in Berkeley
18 County starting with 2015-GS-08-01026 through 2015-GS-08-
19 01034, burglary in the first degree, three counts of armed
20 robbery, three counts of kidnapping and possession of a weapon
21 during the commission of a violent crime. After Mr. Darrieux
22 was convicted, I was informed by Sergeant Shuler of the
23 Berkeley County Sherriff's Office that there was a discrepancy
24 in her testimony and some of the evidence that was presented
25 to the State. At trial, State's Exhibit Number 123 was

State v. Darrieux
BY THE COURT

4

1 introduced as a copy of a CD that contained phone calls from
2 Mr. Darrieux at the jail. The Jury was able to hear State's
3 123 during the trial. It was later discovered that the
4 original CD produced by Sergeant Shuler was not the CD that
5 was actually introduced at the trial, rather it was a
6 duplicate CD introduced at the trial. Once I was informed of
7 this discrepancy, I notified Defense counsel the following
8 Monday first thing. This was a late verdict that Friday, so
9 we got with Mr. Davis as soon as we could. I had my
10 investigator fill out an affidavit, as well as Sergeant Shuler
11 fill out an affidavit of sort of the procedural aspects of why
12 things went the way they did. I have those affidavits in hand
13 if they need to be made part of the record, Your Honor. I
14 also have a copy of the original CD and we can -- we have
15 Sergeant Shuler available to take some further testimony about
16 the handwriting on the top of that CD. One thing I do think
17 the record should reflect is the CDs are identical. The only
18 thing different is the labeling on top of the CDs. The actual
19 handwriting labeling on top of the CDs is the only distinction
20 between the two. So, there is no prejudice to the Defense
21 because the same call would've been played to the Jury at the
22 time of the trial to the Jury from the CD that we're now
23 trying to proffer to the Court. Prior to Sergeant Shuler's
24 testimony, she was shown the CD that was in evidence and she
25 had indicated that the signature on top of the CD was her

State v. Darrieux
BY THE COURT

5

1 signature. That's by way of authentication the way that the
2 CDs are produced for the State is she downloads a certain
3 software program that's secure software that contains certain
4 phone calls and the way she -- she copies them onto a CD is
5 unalterable. The program is unable to be changed. And, she
6 produces them for our office and signs the front of the CD to
7 indicate that this is the CD that she in fact produced. So,
8 of course, she testified -- again she was shown State's
9 Exhibit Number 123 during her testimony. She did show some
10 hesitation as to the handwriting on top of the CD and
11 indicated such during her testimony. However, during her
12 testimony I was relying on our further -- our previous meeting
13 that the signature on the CD was in fact hers. So, I directed
14 her to the signature and asked if that was her initials and
15 her response was yes. So, the CD authenticated and introduced
16 into evidence and played for the Jury. Several questions were
17 asked after, after the initial authentication in regards to
18 the contents of the CD, the labeling. She was even -- she
19 even came down from the stand and described the software on
20 the computer before it was played to the Jury showing the
21 labeling of the secure system and such.

22 So, the purpose of today's hearing, Your Honor, is simply
23 to supplement the record with this CD that should've been
24 introduced but inadvertently was not. A duplicate CD was
25 produced and the best evidence rule that we have with our

State v. Darrieux
BY THE COURT

6

1 evidentiary rules are -- there's obviously no harm here and a
2 copy is permissible. I think the only issue that we had that
3 I felt ethically needed to be brought forward was the
4 discrepancy and the signature on the CD.

5 THE COURT: All right. Mr. Davis, what's the Defendant's
6 position?

7 MR. DAVIS: Thank you, Your Honor. Out of an abundance
8 of caution and we've spoke with Your Honor's office by email
9 and the Solicitor included and I certainly -- first of all, I
10 appreciate their transparency on this, notifying me on Monday
11 afterward. It's a novel situation, I think, I'm speaking for
12 all of us, that we've dealt with and so out of an abundance of
13 caution I did two things. First of all, may I approach, Your
14 Honor?

15 THE COURT: Yes.

16 MR. DAVIS: I filed a motion. That motion relies on Rule
17 29, which is after-discovered evidence. Those cases don't
18 fall in line factually with this but I wasn't sure of another
19 mechanism to provide a paper trail as to this hearing. I
20 think that's the biggest purpose of being here today is to
21 provide a record. Following the verdict and the sentencing,
22 my client, who is present with us today, had advised me he
23 wanted to appeal the conviction. And so thirty days would be
24 this coming Monday. I wanted to provide that, file that with
25 the Clerk to extend that deadline based on, obviously, any

State v. Darrieux
BY THE COURT

7

1 ruling Your Honor makes today, so that provides a paper trail.
2 Obviously, in it, we're asking as the rule provides for a new
3 trial based on after-discovered evidence or any other relief
4 you deem appropriate. I believe the Solicitor has stated the
5 factual scenario appropriately. What I would ask, especially
6 with the State bringing both the investigator from their
7 office who made the copying, it's my understanding, made the
8 copies and then the records custodian Shuler, who actually
9 testified. Not to instruct the Court but I think it would be
10 worthwhile, since we're here making a record of this, the
11 solicitor certainly paraphrased what happened but I think it
12 would be appropriate to make the record as to why there's two
13 different -- an original and a copy introduced.

14 Judge, the only final thing that I would correct, and I
15 don't know that it's that big of a deal, but in the -- in the
16 reciting of the indictments, I believe it's 1026 through 1032
17 and I believe 1033 was skipped over.

18 MR. WEST: That's correct.

19 MR. DAVIS: So it's in sequence, he was convicted of 1026
20 through 1032 separately, also indictment 1034. So, that's the
21 -- on my motion, I just put the warrant numbers but they
22 should correspond.

23 So, we would asked the Court to hear not just the summary
24 of the scenario but the actual factual testimony from the
25 individuals involved the copying the original and we'd ask to

State v. Darrieux
BY THE COURT

8

1 make a record of that and then for Your Honor to deal with it
2 appropriately once that's been put on the record.

3 THE COURT: All right. Well, let's go ahead and I guess
4 for the purposes of this hearing and some of our pretrial -- I
5 mean, some of our prehearing conferences and emails, let's go
6 ahead and just proceed as though you were going to introduce
7 now this -- the original CD. And, I guess, the best way is
8 let's go ahead and mark it -- can we put it as 123A? I think
9 the best -- best way -- let's mark it for identification as
10 State's Exhibits 1 -- State's Exhibit 123A.

11 MR. WEST: And, Your Honor, would the Court like to
12 inquire of Sergeant Shuler or would you ---

13 THE COURT: No, I -- I think you need to go ahead as
14 though we're in the trial and you're seeking to introduce 123A
15 and we'll let it go that way. Okay?

16 MR. WEST: Thank you. State would call Sergeant Katie
17 Shuler.

18 THE COURT: All right. And all of this is proffered
19 testimony at this point in time. Okay?

20 Yes, let's swear her in.

21 KATIE SHULER, HAVING BEEN DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK: Would you please state and spell your name for
24 the record?

25 MS. SHULER: Katie Shuler, K-A-T-I-E S-H-U-L-E-R.

1 CLERK: Thank you.

2 DIRECT EXAMINATION OF KATIE SHULER BY MR. WEST:

3 Q: Sergeant Shuler, could you state for the record your place
4 of employment and title and rank?

5 A: I work Hill-Finklea Detention Center. I'm an admin
6 specialist.

7 Q: And you had an opportunity to testify in the case against
8 this Defendant, didn't you?

9 A: Yes.

10 Q: Okay. As your -- could you tell the Court your duties at
11 the Hill-Finklea Detention Center?

12 A: I process all of the inmate funds, canteen, any requests,
13 phone recordings that's done by subpoenas, just pretty much
14 help the inmates do what they need to do.

15 Q: Okay. And did you produce any phone recordings for this
16 case?

17 A: Yes.

18 Q: Okay. Tell the Court how those phone recordings are
19 produced.

20 A: Once I receive a subpoena, then I look at the information
21 in the secured system, I download those files and burn them to
22 a CD.

23 Q: Once that file is burned to a CD, is there any way to
24 change the contents of that CD?

25 A: No. The system that I have to burn the CD in, it does not

State v. Darrieux
KATIE SHULER - DIRECT BY WEST

10

1 let you allow any alteration on that CD.

2 Q: No way to add, subtract, delete, modify or alter in any
3 way?

4 A: No.

5 Q: I'm gonna show you what's been marked as State's Exhibit
6 123A. Do you recognize that?

7 A: Yes.

8 Q: How do you recognize that?

9 A: It's my handwriting and I have my initials on it.

10 Q: Okay.

11 A: And is everything on the labeling of that CD in your
12 handwriting?

13 A: Yes.

14 Q: Okay. Could you read for the Court what you have written
15 on that CD?

16 A: I have John Darrieux' name on there, it had ninety-four
17 calls, it has my initials and then it has 10/31/14 through
18 1/11/15.

19 Q: The initials that you have indicated on State's Exhibit
20 123A, is that your -- what you would consider your signature?

21 A: Yes, that's my signature and my handwriting.

22 Q: Okay.

23 A: Is it common practice for you to actually listen to the
24 phone calls once you've produced the test -- the CD?

25 A: If I have to, I listen to them. It's not -- I don't -- I

State v. Darrieux
KATIE SHULER - DIRECT BY WEST

11

1 mean, if I like listened to ninety-four calls every time or
2 or, you know, I mean, I wouldn't get my other stuff done. So,
3 if I have to go to trial or something and I'm asked to listen
4 to particular phone calls, then, yes, I do, but on a day-to-
5 day basis, I don't just listen to them.

6 Q: Did you listen to any of the calls on this CD that you
7 produced?

8 A: When we were in court originally, you know, before, I
9 heard the calls.

10 Q: Okay. So, during the trial is the first time you heard
11 any of the calls?

12 A: Yes.

13 Q: But you're positive this is the CD you produced as part of
14 the evidence in reply to the subpoena that you were given from
15 the Solicitor's office?

16 A: Yes.

17 MR. WEST: At this time, the State would move State's
18 Exhibit 123A into the record.

19 THE COURT: All right. I'm gonna let 123A be proffered
20 as an exhibit by the State over Defendant's objection. So,
21 it's part of the record as a proffered exhibit.

22 MR. DAVIS: And, Judge what I'll do is I would reference,
23 rather than going through our whole argument about this whole
24 issue because if you recall we had a in camera hearing about
25 the whole issue of the jail tapes, I would just renew all

State v. Darrieux
KATIE SHULER - DIRECT BY WEST

12

1 objections just briefly. We had hearsay, confrontation,
2 probative versus prejudicial, authentication. The only one
3 I'd touch -- I renew all those. The issue I think this raises
4 is just the issue of authentication, primarily. We raised it
5 then. We now have the fact that a duplicate was introduced
6 rather than the original. So, I'm renewing all the old
7 objections to the issue.

8 THE COURT: All right. As I said, it's not an exhibit as
9 far as the trial transcript but it's being proffered into the
10 record. If the Appellate Court wants to review it, they can,
11 or deal with it how they deem appropriate. Okay?

12 All right, sir.

13 MR. WEST: Would you like to take any further testimony
14 as to the way it unfolded?

15 THE COURT: I don't think so. I think I -- we -- you
16 don't have to for me. I don't know if you need to -- you
17 know, as I said, I'm sure this is gonna go up on appeal so, if
18 there's anything else you want in the record, you need to go
19 ahead and get it in in your proffered testimony.

20 MR. WEST: Okay. Thank you.

21 BY MR. WEST:

22 Q: Sergeant Shuler, prior to your testimony, were you shown a
23 CD by me?

24 A: Yes.

25 Q: Okay. And the CD that was produced into evidence, one --

1 State's Exhibit 123, was that the same CD ---

2 A: Yes.

3 Q: --- that you were shown prior to your testimony?

4 A: Yes.

5 Q: And at that initial encounter, prior to your testimony,
6 did you indicate that that was in fact your signature on the
7 CD?

8 A: I did but it was from a distance. I mean, I didn't
9 physically hold it in my hand and look at the handwriting. I
10 did see that it appeared like my initials and I did not
11 recognize it -- realize that it was not mine until I
12 physically had it in my hand.

13 Q: Okay. And when you were on the stand testifying during
14 the case against this Defendant, did you -- while you had
15 discrepancies with the handwriting, the labeling on the top,
16 did you indicate that those were your initials on the CD?

17 A: I did and, you know, my initials is KS, so that was my
18 initials but I -- then I also stated that that was not my
19 handwriting.

20 Q: And you brought that to the State's attention very soon
21 after the trial, correct?

22 A: Yes. Once I left the courtroom, I went back to my office
23 and pulled my copies of the paperwork and, you know, sent over
24 a copy of the original copy of the CD, the printer copy of
25 what they signed when they come to pick it up.

State v. Darrieux
KATIE SHULER - DIRECT BY WEST

14

1 Q: Okay. And you were asked to complete an affidavit in
2 regards to that progression of events?

3 A: Yes.

4 MR. WEST: How would you like this to be marked, Your
5 Honor?

6 THE COURT: See, I don't know how many exhibits we had.

7 MR. WEST: I have the exhibit list.

8 (REPORTER'S NOTE: Court confers with Court Reporter.)

9 MR. DAVIS: Your Honor, in talking with opposing counsel,
10 would you allow it to be a Court's exhibit and would be a
11 letter for the number?

12 THE COURT: Well, that's the thing is we've got a -- we
13 had a number of Court's exhibits at the trial, too, so I don't
14 know how many we had.

15 MR. DAVIS: What I would suggest is I think those are all
16 numbered and it would be A as to differentiate it from the
17 trial.

18 THE COURT: Well ---

19 MR. DAVIS: I don't want to overcomplicate things but I
20 know what you're trying to get at.

21 THE COURT: All right. Since we've got State's Exhibit
22 123A proffered, let's put this -- just identify it as State's
23 Exhibit B.

24 BY MR. WEST:

25 Q: I'm showing the witness State's Exhibit B ---

State v. Darrieux
KATIE SHULER - DIRECT BY WEST

15

1 COURT REPORTER: I'm sorry, I put the wrong number on
2 there. Do you want it as State's or Court's?

3 MR. WEST: Court's Exhibit B.

4 THE COURT: Since you're putting it in, I'd prefer it to
5 be State's.

6 BY MR. WEST:

7 Q: State's Exhibit B. Do you recognize this?

8 A: Yes.

9 Q: How do you recognize it?

10 A: This is the affidavit that I wrote and gave to you guys.

11 Q: Okay. At this time, we would ask State's Exhibit B be
12 entered into the record.

13 THE COURT: All right. State's Exhibit B is admitted as
14 proffered exhibit into the record over Defendant's objection.

15 MR. DAVIS: No objection to the affidavit, Your Honor.

16 THE COURT: Okay.

17 MR. DAVIS: Yes, sir.

18 THE COURT: Admitted as proffered exhibit.

19 MR. DAVIS: Yes, sir.

20 STATE'S EXHIBIT B

21 ADMITTED FOR PROFFER

22 MR. WEST: No further witnesses or no further questions
23 for this witness.

24 THE COURT: All right. Do you wish to conduct any cross
25 examination?

State v. Darrieux
KATIE SHULER - CROSS BY DAVIS

16

1 MR. DAVIS: Just very briefly, Your Honor.

2 CROSS EXAMINATION OF KATIE SHULER BY MR. DAVIS:

3 Q: Ma'am, you had a chance to review Exhibit 123A, which is
4 the CD.

5 A: This one here?

6 Q: Yes, ma'am.

7 A: Yes.

8 Q: You reviewed it. Were you able to compare it to your
9 recollection of the one that was introduced at trial?

10 A: Well, I have a -- the original that I give them when they
11 come and pick it up, I make a photocopy of and that's what
12 they sign and date when they pick it up. So, I -- whenever I
13 physically seen the original one in trial, I knew that that
14 was not the one that -- the hard copy that I had given them.

15 Q: Which is 123A?

16 A: Yes.

17 Q: Okay. So, you weren't -- since 123 was put into evidence,
18 you have not actually compared it to that but you've compared
19 it to copies that you had, photocopies; is that right?

20 A: Yes.

21 Q: Okay. Were you -- since the trial, have you had an
22 opportunity to review the content of 123A?

23 A: No.

24 Q: Who has had custody of 123A from the time you gave it to
25 the Solicitor's office, are you aware?

1 A: It would -- I mean, it would be David Young come and
2 picked it up, so I mean, that would be the last known person
3 that I would know of because that's who I physically handed it
4 to.

5 Q: And that's an employee with the Ninth Circuit Solicitor's
6 Office, Berkeley County?

7 A: Yes.

8 Q: But you've had a chance to look at 123A today and it looks
9 in substantially the same condition as it was when you gave it
10 to Mr. Young?

11 A: Yes.

12 Q: Just so we're clear, can you tell the Court what, what did
13 you put on that original CD, 123A, what did you download onto
14 that CD?

15 A: I downloaded calls from inmate John Darrieux in the
16 timeframe that's notated on there, that would be the calls
17 that he made from Hill-Finklea Detention Center during that
18 timeframe.

19 Q: At the request of the Solicitor's office?

20 A: Yes.

21 Q: And I believe during your initial testimony, you indicated
22 that you reviewed -- to obtain that information you review it
23 by name of inmate and by the account number, correct?

24 A: Yes, their pin number.

25 Q: The Solicitor asked you at trial and again today about

State v. Darrieux
KATIE SHULER - CROSS BY DAVIS

18

1 inability to alter the contents, right?

2 A: Yes.

3 Q: And it's my understanding that once it's been transferred,
4 the content, meaning the words, the length of the call, all
5 that, they cannot be altered, correct?

6 A: Correct.

7 Q: Okay. It is possible though -- the State could've asked
8 for a wider call range, correct, and you would've been able to
9 put that on the CD?

10 A: Yes.

11 Q: Okay. Am I also correct in recalling that the last call
12 on the 123A was not Mr. Darrieux' or it was not from Mr.
13 Darrieux' account; is that right? Do you recall that, putting
14 a single call from another account?

15 A: I don't recall that.

16 Q: Okay. Is that possible for you to do that?

17 A: That -- explain it to me again.

18 Q: Sure. Is it possible to pull a single call from another
19 inmate's account and burn it onto the same CD as this -- all
20 of Mr. Darrieux' calls?

21 A: Yes. It just depends on what they ask for with the
22 subpoena. If -- sometimes, I get -- they want all calls from
23 that particular inmate and then sometimes they state that they
24 want calls from a particular number also. So, yes, on that
25 one CD I would add all of that information on that one CD

1 because it was all on one subpoena.

2 Q: You know, I just want to be clear about, about what can be
3 altered or not. You can pull apart calls but the content of
4 the call cannot not be edited; is that the testimony?

5 A: What are you -- what do you mean by pulling apart calls?

6 Q: Meaning, if he made 127 calls but there's only 94 on
7 there, that's because you only pulled 94 of them, correct?

8 A: Yes. Whatever timeframe I put in in the computer, that's
9 the timeframe that it's gonna pull up.

10 Q: And so similarly you could pull those 93 and add on to
11 that CD from a different date, different time?

12 A: I could but I only put on the information that is asked in
13 the subpoena.

14 Q: Certainly. But, what I'm trying to get it is my
15 recollection -- and I don't mean to testify. If you don't
16 recall this, that's fine. If the State had asked for a
17 certain range of calls from Mr. Darrieux and in addition a
18 single call from another inmate, could you put those on the
19 same CD?

20 A: Yes.

21 Q: Okay.

22 A: As long as the information is what was asked in the
23 subpoena.

24 Q: So, when the Solicitor asked you about being able to --
25 there's no way to add or subtract or edit, we're talking about

State v. Darrieux
KATIE SHULER - CROSS BY DAVIS

20

1 content of a call not date, time, or content of the call, you
2 couldn't not add, subtract or edit the content of the phone
3 calls; is that accurate?

4 A: No, you cannot add -- you cannot alter that call in any
5 way.

6 Q: That 123A could be wiped, could be cleaned, could be
7 deleted, however, correct? You could still delete the
8 contents of that CD, right?

9 A: No, because it's in the secure system.

10 Q: But those are files on that CD, you pull them off with a
11 secure system and copy them onto that original CD, correct?

12 A: Yes.

13 Q: Okay. And as with any computer file, could we not simply
14 put that in a computer and delete the contents of that CD?

15 A: I don't think you can delete anything off of the CD.

16 Q: All right.

17 A: I know you cannot change it in any way of the format that
18 it's in.

19 Q: So, getting back to -- to content of the phone calls you
20 can't mess with but whether you can delete that file or not,
21 you're not sure? You don't believe you can, correct?

22 A: I don't know.

23 Q: Okay. Judge, if I may have a moment?

24 THE COURT: All right.

25 Q: Thank you, Your Honor. Thank you, Ms. Shuler, I don't

State v. Darrieux
KEVIN MCGOWAN - DIRECT BY WEST

21

1 have any other questions.

2 THE COURT: All right. Anything on redirect?

3 REDIRECT EXAMINATION OF KATIE SHULER BY MR. WEST:

4 Q: Once you put it onto a CD, can any investigator or any
5 member of the Solicitor's office change what you put onto that
6 CD?

7 A: No.

8 Q: No. The system doesn't allow any modifications?

9 A: True, yes.

10 Q: Okay. Thank you.

11 THE COURT: All right. You may step down.

12 Anyone else?

13 MR. WEST: Just for clarification, Your Honor, we would
14 call Investigator Kevin McGowan.

15 THE COURT: All right.

16 KEVIN MCGOWAN, HAVING BEEN DULY

17 SWORN, TESTIFIES AS FOLLOWS:

18 CLERK: Please state and spell your name for the record.

19 MR. MCGOWAN: It's Kevin McGowan, M-C capital G-O-W-A-N.

20 DIRECT EXAMINATION OF KEVIN MCGOWAN BY MR. WEST:

21 Q: Kevin, could you tell for the record where you work?

22 A: Currently, I'm at the Berkeley County Ninth Solicitor's
23 Office as an investigator.

24 Q: What is your position?

25 A: I'm an investigator.

State v. Darrieux
KEVIN MCGOWAN - DIRECT BY WEST

22

1 Q: And what do some of those duties include?

2 A: Basically, I help the attorneys prepare for cases whether
3 it's locating people, making a copy of the CD, reports,
4 whatever.

5 Q: Did you have an opportunity to copy CDs in this case?

6 A: Yes, sir.

7 Q: Okay. State's Exhibit 123, are you familiar with it?

8 A: Oh, yes.

9 Q: Okay. Did you also have an opportunity to have in your
10 possession, State's Exhibit 123A?

11 A: Yes, sir.

12 Q: Okay. When you -- did you make any copies of State's
13 123A?

14 A: Yes, sir.

15 Q: Did you make any changes to the contents of that CD?

16 A: No, sir.

17 Q: Okay. You didn't add anything, delete anything, modify
18 anything, alter anything in any way?

19 A: No, sir, just make a copy of the CD and turn it back over.

20 Q: It was a duplicate of what you were produced by Sergeant
21 Shuler?

22 A: Yes, sir.

23 Q: Okay. Now, on the copies that you made, did you write
24 anything on the copies?

25 A: Yes, sir. I duplicate whatever is on the CD that I'm

1 making, the only change or only thing you put on there is the
2 triangle which indicates that it is a copy.

3 Q: Okay. And you did that in this case?

4 A: Yes, sir.

5 Q: Okay. And that included a duplication of Sergeant
6 Shuler's signature?

7 A: Yes, sir. Anything that's on the front of the CD gets put
8 on a copy.

9 Q: Okay. Was that duplication substantially similar to the
10 manner and style of Sergeant Shuler's handwriting?

11 A: It's in my handwriting. I mean, I don't ---

12 Q: Was it substantially similar though?

13 A: Yeah, yes, sir.

14 Q: Okay. No further questions for the witness.

15 THE COURT: All right.

16 Anything on cross examination?

17 MR. WEST: Your Honor, briefly.

18 BY MR. WEST:

19 Q: Investigator, did you complete an affidavit in regards to
20 your duties in this case?

21 A: Yes, sir.

22 Q: I'd like to mark this as State's Exhibit C.

23 Do you recognize this?

24 A: Yes, sir. This is the affidavit that I typed up.

25 Q: And how do you recognize that?

State v. Darrieux
KEVIN MCGOWAN - DIRECT BY WEST

24

1 A: It's what I did.

2 Q: Did you have it notarized?

3 A: Yes, sir.

4 MR. WEST: At this time, we would move State's Exhibit C
5 into the record as well?

6 THE COURT: Any objection?

7 MR. DAVIS: No objection to the affidavit, Your Honor.

8 THE COURT: All right. So, State's Exhibit C is admitted
9 as a proffered exhibit for the record without objection.

10 STATE'S EXHIBIT C

11 ADMITTED FOR PROFFER

12 MR. WEST: Thank you. No further questions for this
13 witness at this time.

14 MR. DAVIS: I have no questions for this witness, Your
15 Honor.

16 THE COURT: All right. You can step down.

17 A: Thank you.

18 THE COURT: No other witnesses, Your Honor.

19 THE COURT: All right. Let me see the attorneys for a
20 second.

21 (REPORTER'S NOTE: A bench conference was held off the
22 record.)

23 THE COURT: All right. All of the witnesses and exhibits
24 admitted thus far I'm gonna allow to be added to the record as
25 proffered testimony. It certainly didn't go to the Jury or

State v. Darrieux
ARGUMENT BY DAVIS

25

1 anything of that nature.

2 Mr. Davis, any arguments you want to place on the record?

3 ARGUMENT BY DAVIS:

4 MR. DAVIS: Yes, Your Honor. Thank you so much. Judge,
5 when the evidence was originally proffered, we had several
6 objections to it. The one that I think is most in play now is
7 the authentication issue. Clearly, there was a discrepancy as
8 to what was actually admitted versus what is now being
9 proffered. That goes directly to that concern, is it what it
10 claims to be. We understand the testimony that 123A is the
11 original that was copied by Sergeant Shuler in a request from
12 the State from the Solicitor's office. But the testimony at
13 the trial and again today shows that what was put on that CD
14 is by request and it's simply from a name and an inmate
15 number, and especially with the confusion of identifying it at
16 the time of trial, we think it brings into concern the
17 authentication issue as well as all other arguments we made at
18 the time. I would obviously cite rules of evidence that the
19 best evidence rule requires that if available, the originals
20 should be the evidence that is used, whether it's a contract
21 or it's a picture or a phone call. And in this case, we
22 certainly, and I want to be real clear, we've had personal
23 communications about this, I am not placing any intentional
24 blame as to Sergeant Shuler or the Ninth Circuit Solicitor's
25 Office. I do not believe it was intentionally done in any way

State v. Darrieux
ARGUMENT BY WEST

26

1 and I have no evidence of that and we're not making that
2 claim. However, the original exists and was not used and we
3 would argue that we discovered it obviously after the trial,
4 conviction and sentencing. Under Rule 29, it allows the
5 Court, if the Court deemed appropriate, to grant a new trial.
6 Also, in my motion, of course, I asked for whatever relief
7 that you may deem appropriate. It is a novel issue. In my
8 contact with your office and with the Solicitor's office, and
9 for the record, I did my own investigation on this novel
10 issue. I contacted attorneys at Appellate Defense to try to
11 determine what I ethically needed to do. I couldn't find a
12 clear path on that either. So, we thank Your Honor, and we
13 appreciate having this opportunity to at least proffer this
14 testimony and the evidence on the record. But, in an
15 abundance of caution on behalf of my client, I would renew our
16 prior objections and argue that you either grant a new trial,
17 you could -- in general -- you could grant a new trial and
18 order that the prior exhibits, prior evidence was admitted
19 improperly, and I'll do the catchall, or any other relief you
20 deem appropriate. That's our presentation, Your Honor.

21 THE COURT: All right. Anything from the State?

22 ARGUMENT BY WEST:

23 MR. WEST: Thank you, Your Honor. I do believe the rules
24 at this time, including the best evidence rule, elaborate that
25 I think it can be introduced at trial. We have testimony here

1 from Investigator McGowan that if -- this was simply a
2 duplicate CD, that none of the contents were altered in any
3 way. The contents are the same as was introduced at trial and
4 therefore there's no prejudice to the Defense. There was one
5 phone call that was actually published to the Jury, so we're
6 not dealing with the entirety of what is the contents of the
7 CD, we're just dealing with that one phone call which is
8 present on 123A and 123. And since there is no prejudice to
9 the Defense, we would respectfully request that you deny any
10 motions for a new trial.

11 RULING BY THE COURT:

12 THE COURT: All right. All right. I'm gonna deny the
13 motion for a new trial. As I said, the testimony and exhibits
14 were proffered into the record. The Appellate Court can do
15 with it as they deem appropriate. Okay?

16 MR. WEST: Thank you, Judge.

17 THE COURT: All right. Thank you very much.

18

19 (ADJOURNED.)

20

21

22

23

24

25

ORIGINAL

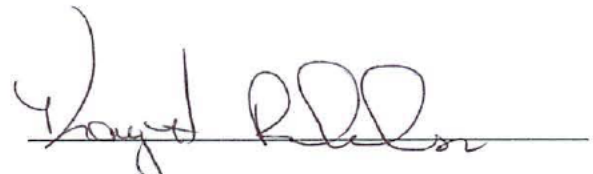
State v. Darrieux
CERTIFICATE OF COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus John A. Darrieux, held in the Court of General Sessions for Berkeley County, Berkeley County Courthouse, Georgetown, South Carolina, on February 26, 2016.

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



Kay H. Richardson
Official Court Reporter

August 30, 2016.

STATE OF SOUTH CAROLINA)
)
 County of Berkeley)
)
John Alexander Darrieux)
 Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2018-CP-08-1068

v.

State of South Carolina)
)
)
)
)

APPLICATION FOR
POST-CONVICTION RELIEF

2018 JUN 14 AM 10:29
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

FILED
 [Handwritten signature]

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution, 430 Oaklawn Rd, Pelzer, SC, 29669
2. Name and location of Court which imposed sentence General Sessions / (Berkeley county)
3. Name(s) of co-defendant(s) (if any) Tristen Brower, Natalia Chisolm, Joseph Arsenaull
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-08-01027 / 1028 / 1029 - Armed Robbery
 - (b) 2015-GS-08-01030 / 1031 / 1032 - Kidnapping

JAD

FILED

(c) 2015-GS-3-01026/Burglary 1st, 2015-GS-3-1034/Pass of Weapon Violent Cri

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

(a) (January 29, 2016) (30 years), (concurrent)

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. (Affirmed)

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted April 1, 2018 - Filed May 9, 2018

ii. _____

iii. _____

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

i. Unpublished Opinion No. 2018-UP-197

ii. _____

iii. _____

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

(a) N/A

(b) _____

(c) _____

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

(a) (See Attachments)

(b) _____

(c) _____

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

(a) (See Attachments)

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

10(A) Ineffective assistance of counsel for failure to discharge his^{§69} duty of due diligence to investigate the evidence, facts, and witness(es) in this case.

(B) Ineffective assistance of counsel for failure to provide a proper defense for physical evidence in this case.

(C) Ineffective assistance of counsel for failure to have a valid strategy for trial.

(D) Ineffective assistance of counsel for abandonment of his client during trial.

(11)(1) Counsel failed to properly and fully investigate the case.

(2) Counsel failed to investigate the Investigator's informant "Tristen Brower", to make sure he was registered with Sled, for a violent crime investigation for kidnaping, armed robbery, possession of a firearm during the commission of a violent crime, burglary first degree, burglary second degree. The informant "Tristen Brower" was not registered with Sled, pursuant to Policy 13.30 "Use of informants for investigations, and furthermore this investigation was unlawful and illegal.

(3) Counsel failed to investigate the informant's video recorded statement of the investigator's, and to make sure their was an application processed, for the Interception of Wire, Electric, or Oral communications, pursuant to S.C. Code § 17-30-70, for a violent crime investigation. Furthermore, the Investigators violated § 17-30-70, by using a video recorded statement, by the co-defendant "Tristen Brower", during the trial, and failing to process an application.

That must be initiated by the Chief of Sted. AP - reviewing the application, the Attorney General may authorize the submission of the application to a judge of competent jurisdiction, and the judge may grant in conformity with this chapter.

(4) Counsel failed to investigate and make sure an application for an order authorizing or approving the Interception of Wire, Electric, or Oral communications must be made in writing upon oath or affirmation to a judge of competent jurisdiction, pursuant to S.C. Code § 17-30-80.

(5) Failure of counsel to request and require as part of Discovery, that copies of the application process of all intercepted communications be provided as they are gathered so that a proper defense for physical evidence can be built as is provided for by S.C. Code § 17-30-105.

(6) Failure of counsel pursuant to S.C. Code § 17-30-130 to ensure that no impropriety occurred in the reporting of the intercepted communications to the Administrative Office of the United States Court as outlined in 18 U.S.C. subsection 2519.

(7) Counsel failed to suppress the video recorded statement, pursuant to S.C. Code § 17-30-110, as the Investigators obtained the evidence in violation of the Interception of Wire, Electric, or Oral communications act.

(8) Failure of counsel to advise me and inform the court that none of these subsections in Chapter 30, title 17 were adhered to, and that these actions and/or lack thereof were illegal, pursuant to S.C. Code § 17-30-20 (Prohibited acts)

(9) Counsel failed to properly and fully prepare Petitioner for testimony in the case.

(10) Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony through direct and cross-examination of relevant evidence related to the matter.

(11) Counsel failed to request a preliminary hearing so Petitioner could more adequately be informed about case.

(12) Counsel failed to spend adequate time with Petitioner reviewing discovery with him.

(13) Counsel failed to challenge the testimony of the State's witness(es) and failed to adequately object and preserve objections to portions of the witness(es) testimony, and failed to effectively cross-examine the witness(es) on their testimony.

(14) Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient.

(15) Counsel failed to move for a pretrial motion for a Directed Verdict.

(16) Counsel failed to move for a mistrial when the Solicitor violated a cardinal trial rule and expressed his own opinion of the Petitioner's guilt, by making a comment about the Petitioner. (Tr. p. 461 Line 10, 11, 12)

(Quote) "If kids are inside I'm going to break their fingers."

That's sadistic. That's terror. That's the way this Defendant was thinking before he changed these people's lives forever. For this comment by the Solicitor, tainted the jury about Petitioner's guilt.

(17) Counsel failed to provide a valid defense for trial.

(18) Counsel failed to object about the State's circumstantial evidence being admitted at trial.

16(A)(B) and (C) Ineffective assistance of counsel: This is the only venue I am aware of for these type of claims.

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

N/A

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

- (a) (See Attachments)
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 - i. (Rodney Davis)(esq) 4000 Faber Place Drive, Suite 300
Charleston, SC 29405
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Jury Trial - (Rodney Davis)
 - ii. _____
 - iii. _____

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

(Reverse and Remand)

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

No

STATE OF SOUTH CAROLINA)
County of Berkeley)

VERIFICATION

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

John Darrieux

SWORN to and subscribed before me this 6th day of June, 2018.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: ~~My Commission Expires~~ September 25, 2023

RECEIVED

JUN 06 2018

P.C.I. MAIL ROOM

ARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2018 JUN 14 AM 10:29

FILED

2018-CP-08-1068

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Handwritten signature]
Applicant

SWORN or affirmed to and subscribed before me this 6th day of June, 2018.

[Handwritten signature: Tamara Conwell]
Notary Public

My Commission Expires: September 25, 2023

RECEIVED

JUN 06 2018

P.C.I. MAILROOM

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2018 JUN 14 AM 10:29

[Handwritten: HAK]
FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
)	
John Alexander Darrieux, #366929	)	Case No.: 2018-CP-08-1068
)	
Applicant,)	
	)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on June 14, 2018, would respectfully show this Court:

I. Procedural History

John Alexander Darrieux (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. In June 2015, the Berkeley County Grand Jury indicted Applicant for first-degree burglary (2015-GS-08-1026), third-degree burglary (2015-GS-08-1024), three counts of armed robbery (2015-GS-08-1027, -1028, -1029), three counts of kidnapping (2015-GS-08-1030, -1031, -1032) and possession of a weapon during the commission of a violent crime (2015-GS-08-1034). Rodney Davis, Esquire represented Applicant. Assistant Solicitor E. Mason West, Esquire prosecuted the case. On January 26-29, 2016, Applicant proceeded to jury trial before the Honorable Benjamin H. Culbertson. The jury found Applicant guilty as indicted for all charges except third degree burglary. Judge Dennis sentenced Applicant to imprisonment for concurrent terms of thirty years for first degree burglary, for each count of armed robbery and kidnapping and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Lanelle Cantey Durant, Esquire, of the Office of Appellate Defense perfected the appeal. Applicant raised the following issues on appeal:

1. Did the trial court err in denying Applicant Darrieux' s motion for a new trial based on after discovered evidence that the CD with the jail call Applicant made to his girlfriend that was presented at trial was not the original when the original was available which was a violation of Rule 1002, SCRE and Rule 1004, SCRE and which was prejudicial to Applicant because the state argued to the jury that this jail call was "critical evidence"?
2. Did the trial court err in admitting the jail call that Applicant Dairieux made to his girlfriend when the state did not authenticate that it was Darrieux because no witness was called to identify the voice as Darrieux or that the witness talked to him, and the records custodian admitted that another inmate could use the account and name of Darrieux if Darrieux agreed and provided his name?

The South Carolina Court of Appeals affirmed Applicant's conviction on May 9, 2018. State v. Darrieux, Op. No. 2018-UP-197 (S.C. Ct. App. filed May 9, 2018). The remittitur was returned to the circuit court on May 25, 2018.

II. Summary of Facts Adduced at Trial

Initial Robbery of the Home of Charles Roberts

On October 21, 2014, Charles Roberts went to sleep around 2 A.M. at the home he shared with his friend, Stephen Jones, and his girlfriend, Rose Simpson. R. pp. 108-09. At around 4:00 A.M., Roberts awoke to a man pointing a gun at him. R. p. 109. Roberts testified that while there were four people that broke into his home that evening, he only physically saw two of them. R. p. 118. Roberts stated the intruders kicked in the door to the home and knocked the door frame loose. R. pp. 109-10. Roberts was forced to stay inside his bedroom while the intruders were in the home. R. p. 119. While in his bedroom, Roberts observed the intruders carry out every item

in his bedroom that they deemed to be of value, including tools, electronics, his wallet, cash, medicine, and a number of chess sets which were part of a collection Roberts acquired over the years. R. pp. 120-21. Roberts noticed one of the intruders was not wearing a mask, and that another intruder was a female with long black hair and a distinct accent. R. p. 118. Roberts noted that while he was being held in his bedroom, he did not know where Simpson and Davis were; however, they were later escorted into Roberts's bathroom. R. p. 125. Roberts testified the intruders were in the home for an hour or more. R. p. 125. When the four intruders finally left his home, Roberts ran to a neighbor's house to call 911 because he, Davis, and Simpson all had their cell phones stolen. R. p. 126. Roberts also noted he owned another home on Cindy Drive that was unoccupied at the time. R. pp. 126-27.

Rose Simpson testified she was asleep on the couch in the home's living room when she heard "a big bam." R. p. 54. Simpson stated three people came through the door and asked her, "where's the old man?" R. p. 55. Simpson explained that she believed they were referring to Roberts, because he was a lot older than anyone else in the house. R. p. 55. When the intruders entered the home, Simpson noticed all three were armed with handguns. R. pp. 55-56. Simpson also noticed the robbers were wearing what appeared to be Halloween masks. R. p. 55. Simpson remained on the couch for around an hour. R. p. 57. Jones was removed from his bedroom by the intruders and placed on a loveseat in the living room. R. p. 57. One of the intruders told Simpson that if she moved, he would kill her. R. p. 57. Simpson testified she and Jones were later forced into a bedroom and ordered to stand against a vanity. R. p. 58. While in the bedroom, one of the intruders stood by the bedroom closet and pointed a gun at Simpson and Jones. R. p. 58. In the courtroom, Simpson identified Applicant as the individual who pointed the gun at them. R. p. 58. Simpson stated Applicant was not wearing a mask, as he had taken his off because it was too hot

inside the home. R. p. 58. Simpson testified she was one-hundred percent sure Applicant was the unmasked intruder she observed in the home. R. p. 59. Simpson testified that while Applicant had his mask off, he told her “don’t look at me, put your head down.” R. p. 59. Simpson recalled the only thing that was personally taken from her during the robbery was her purse. R. p. 59. Simpson testified the female intruder taunted her, stating, “I got your purse, bitch.” R. pp. 60-61. Simpson estimated the intruders were in the home for an hour or more. R. p. 63. Simpson described Applicant as “very trigger-happy, went around pointing to make sure that Stephen and I knew he was the boss over the gun.” R. p. 64. Simpson stated Applicant took “just about anything he could get his hands on” from the house. R. p. 64. After loading their SUV with the goods stolen from the home, the intruders left the house. R. p. 65.

Stephen Jones recalled being awoken by a loud bang and a bunch of yelling during the early morning hours of October 21, 2014. R. p. 85. While hurriedly getting dressed, Jones turned and found two people behind him and a gun pointed at his head. R. p. 86. Jones stated the intruders were wearing masks and they ordered him to go into the living room. R. p. 86. Once in the living room, Jones was forced to sit down on a loveseat while the intruders ransacked the house. R. p. 87. Jones testified one of the intruders was not wearing a mask. R. p. 89. Jones stated he got a “pretty good” look at that intruders face because there were several times during the robbery where he got in Jones’s face. R. p. 89. Jones then identified Applicant in the courtroom as the individual without a mask that robbed him on October 21, 2014. R. p. 89. Jones testified Applicant and the other intruders stole a TV from his bedroom, his wallet, and a number of other personal belongings including several car radios that were in his bedroom. R. p. 97. Jones lamented that the thieves were so thorough that they even stole his pillowcases. R. p. 97. Jones recalled that he was held in the living room for over an hour. R. p. 98. Jones testified that

as the robbers left, they took him into the bathroom in Roberts's bedroom and told him that if they were to call the cops, they would come back and kill them. R. p. 98.

Subsequent Burglary of Property Owned by Charles Roberts and Later Arrest of Culprits

In October of 2014, Courtney Pringle lived with her sister on Cindy Drive. R. pp. 196-97. On October 21, 2014, Pringle observed Natalia Chisolm, a woman she used to work with, drive up to a nearby residence in a Dodge Durango. R. p. 197. Pringle testified she saw "Natalia and a couple of men breaking in a home." R. p. 197. Pringle observed the intruders carry a mattress and other items out of the home. R. p. 197. Pringle subsequently called the police. R. p. 199.

Sergeant Cassandra Drew of the Berkeley County Sheriff's Office received a call from dispatch telling her to be on the lookout for a Dodge Durango with mattresses on top of the vehicle. R. p. 206. Sergeant Drew subsequently spotted two people loading a large TV into a Durango. R. p. 207. Sergeant Drew testified there were three males and one female in or around the Durango. R. p. 207. Sergeant Drew spoke with the occupants, who advised her that a friend told them they could have the TV. R. p. 207. Corporal Cody Graff of the Berkeley County Sheriff's Office responded to the scene of the stop. R. pp. 209-10. Corporal Graff stated Applicant was one of the four suspects that were stopped. R. p. 213. When he approached the vehicle, Corporal Graff noticed an open can of Bud Light Raz-Ber-Rita on the console. R. p. 211. Corporal Graff then searched the vehicle and found "a lot of things" including televisions, car radios, and tool boxes. R. p. 213. Corporal Graff recovered a firearm in the vehicle that was concealed inside of a black glove. R. p. 216. Corporal Graff subsequently placed all four individuals under arrest. R. pp. 217-18.

Detective Shane Cook of the Berkeley County Sheriff's Office executed a search warrant at the home of Natalia Chisolm on October 21, 2014. R. p. 239. Inside the residence, officers

recovered a tremendous amount of property including Roberts's driver's license, prescription bottles bearing the name "Charles Roberts," Roberts's social security card, miscellaneous tools, bank cards, jewelry, cell phones, numerous chess sets, and keys. R. pp. 240-41. Detectives also recovered masks from the master bedroom closet. R. p. 243. Detectives also recovered a BB gun, a Ruger SR-9C handgun, and a Lorcin 25 caliber pistol. R. pp. 243-44.

Tristen Brower's Testimony

Tristen Brower is the adoptive nephew of Natalia Chisolm. R. p. 152. On the weekend of the robbery, Brower was staying at Natalia's house. R. p. 152. Brower testified that Applicant and Joseph Arsenault were also staying with Chisholm that weekend. R. p. 153. Brower noted that Applicant went by the nickname "Chopper." R. p. 154. On October 21, 2014, Brower got into a Dodge Durango with Chisholm, Applicant, and Arsenault. R. pp. 154-55. Brower testified he did not know where they were going until "the last moment." R. p. 156. Brower stated it was his understanding that Arsenault knew the residents of the home they were traveling to. R. p. 156. Brower testified he did not know a robbery was about to happen until they reached the residence and Chisholm handed him a gun. R. p. 157.

Brower recalled that Applicant knocked down the door in order to allow them to enter the house. R. p. 159. Brower stated that everyone except for Applicant was wearing a mask throughout the robbery. R. p. 158. Brower testified the group members were all armed with semi-automatic handguns. R. p. 164. Once inside the house, Brower observed Applicant, Arsenault, and Chisolm carry electronics, tools, and jewelry out of the house. R. p. 162. Brower testified Natalia was in charge of the group. R. p. 163. Before entering the home, Brower recalled Applicant stating, "if there was kids in the house that fingers would be broken." R. p. 164. Brower described Applicant's demeanor inside Roberts's home as "energetic." R. p. 164.

Brower testified the group was in Roberts's house for "a very long time." R. p. 163. After leaving Roberts's home, Brower, Applicant, Arsenault, and Chisolm went back to Chisolm's apartment. R. p. 168. The stolen goods were subsequently unloaded into Chisolm's apartment. R. p. 168. Later in the day, Brower rode with Applicant, Chisolm and Arsenault to "a house that Natalia said she knew." R. p. 169. Brower observed Applicant walk to the back of the home. R. p. 170. Applicant and Chisolm later carried two mattresses out of the home and place them on top of the Durango. R. p. 170. After leaving the scene, the group was arrested and placed in separate police cars while picking up a TV by the side of the road. Brower testified there was no doubt in his mind that Applicant was the individual who committed the charged crimes.

Applicant's Jail Calls

At trial, the State called Sergeant Katie Shuler, an employee of Berkley County's Hill-Finklea detention center. R. p. 266. One of Sergeant Shuler's responsibilities at the detention center is overseeing the jail phone call system. R. p. 267. Sergeant Shuler explained:

Once an inmate is booked in they have their information in the computer and then they will have an actual PIN number that is connected to their information to their name. So every time they make a phone call they have to punch in that PIN number. Then they have to say their name and if it doesn't recognize it then they can't make a phone call. It helps with people stealing their PIN numbers, and you know, other people using their phone account when they're not allowed to.

R. p. 267. The State subsequently introduced a phone call made by Applicant into evidence as State's Exhibit 123. R. p. 269. During the phone call, Applicant stated "I fucked up big time" and "I fucked up and I'm sorry." R. p. * (State's Exhibit 123). Applicant also stated "Fortunately no one got hurt real bad with this situation here." R. p. * (State's Exhibit 123).

Immediately after trial, the Solicitor discovered that the CD played at trial was not the initial copy given to him by Shuler, but was a duplicate. R. p. 396. The Solicitor informed Defense Counsel, who promptly made a motion for a new trial based on after-discovered

evidence. R. p. 396, R. p. 445-46 (Motion for New Trial (After Discovered Evidence)). The trial judge subsequently held a hearing on Applicant's motion on February 26, 2016. R. pp. 393-419. At the hearing, the Solicitor made it clear that the two CDs were identical and that the only distinction was the labeling on the top of the CD. R. p. 396. For purposes of the hearing, the "original" CD was moved into the record as State's Exhibit 123A. R. p. 403.

At the hearing on Applicant's motion for a new trial, Sergeant Shuler testified regarding how the phone recordings are produced. R. p. 401. Sergeant Shuler stated that once she receives a subpoena, she downloads the files and burns them to a CD. R. p. 401. Sergeant Shuler was then asked whether there was any way to alter the contents of the CD. Sergeant Shuler testified that alterations were not possible, as the system she uses to burn the CD does not allow alterations or deletions. R. pp. 401-02.

Kevin McGowan, an investigator with the Ninth Circuit Solicitor's Office testified during the hearing. R. p. 413. Investigator McGowan testified that as part of his duties, he helps the attorneys in the office with various aspects of trial preparation, including making copies of CDs. R. p. 414. Investigator McGowan testified that in Applicant's case, he made a copy of State's Exhibit 123A. R. p. 414. Investigator McGowan did not make any changes to the contents of the CD. R. p. 414. Investigator McGowan duplicated the writing on the top of the CD and added a triangle to indicate it was a copy. R. pp. 414-15.

III. Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
 - a. "Counsel failed to properly and fully investigate the case"
 - b. "Counsel failed to investigate the investigator's informant "Tristen Brower" to make sure he was registered with SLED for a violent

crime investigation for kidnapping, armed robbery, possession of a firearm during the commission of a violent crime, burglary first degree, burglary second degree. The informant was not registered with sled, pursuant to policy 13.30, use of informants for investigations and furthermore this investigation was unlawful and illegal”

- c. “Counsel failed to investigate the informant’s video recorded statement of the investigator’s and to make sure their was an application processed, for the interception of wire, electric or oral communications, pursuant to S.C. Code 17-30-70, for a violent crime investigation. Futhermore, the investigators violated 17-30-70, by using a video recorded statement, by the co-defendant Tristen Brower, during the trial and failing to process an application that must be initiated by the chief of SLED. After reviewing the application, the attorney general may authorize the submission of the application to a judge of competent jurisdiction, and the judge may grant in conformity with this chapter.”
- d. “Counsel failed to investigate and make sure an application for an order authorizing or approving the interception of wire, electric, or oral communications must be made in writing upon oath or affirmation to a judge of competent jurisdiction, pursuant to S.C. Code 17-30-80.”
- e. “Failure of counsel to request and require as part of discovery that copies of the application process of all intercepted communications be provided as they are gathered so that a proper defense for physical evidence can be built as is provided for by S.C. Code 17-30-105”
- f. “Failure of counsel pursuant to S.C. Code 17-30-130 to ensure that no impropriety occurred in the reporting of the intercepted communications to the administrative office of the United States Court as outlined in 18 U.S.C. subsection 2519.”
- g. “Counsel failed to suppress the video recorded statement, pursuant to S.C. Code 17-30-110, as the investigators obtained the evidence in violation of the interception of wire, electronic or oral communications act”
- h. “Failure of counsel to advise me and inform the court that none of these subsections in chapter 30, title 17 were adhered to and that these actions and/or lack thereof were illegal, pursuant to S.C. Code 17-30-20 (prohibited acts).”
- i. “Counsel failed to properly and fully prepair petitioner for testimony in the case”
- j. “Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepaired to present testimony through direct and cross-examination of relevant evidence related to the matter’
- k. “Counsel failed to request a preliminary hearing so petitioner could

- more adequately be informed about case”
- l. “Counsel failed to spend adequate time with petitioner reviewing discovery with him”
 - m. “Counsel failed to challenge the testimony of the state’s witnesses and failed to adequately object and preserve objections to portions of the witnesses testimony and failed to effectively cross-examine the witnesses on their testimony”
 - n. “Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient”
 - o. “Counsel failed to move for a pretrial motion for a directed verdict”
 - p. “Counsel failed to move for a mistrial when the Solicitor violated a cardinal trial rule and expressed his own opinion of the Petitioner’s guilt by making a comment about the petitioner. (Tr. p. 461 Line 10-12) “If the kids are inside I’m going to break their fingers” That’s sadistic. That’s terror. That’s the way this defendant was thinking before he changed these people’s lives forever. For this comment by the solicitor, tainted the jury about petitioner’s guilt”
 - q. “Counsel failed to provide a valid defense for trial”
 - r. “Counsel failed to object about the state’s circumstantial evidence being admitted at trial”
 - s.

In relief sought, Applicant is seeking “reverse and remand”.

Attached to this Return and incorporated by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied

upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, 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.

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances

with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent **634 investigation of the facts and circumstances of the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). “[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014). Respondent submits that Applicant cannot meet his burden in regards to any claims that counsel was ineffective for failure to investigate.

Respondent submits Applicant can satisfy neither 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).

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings

will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VI. Response to Any and All Other Allegations

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

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH
Assistant Attorney General

By: Benjamin Limbaugh
ATTORNEYS FOR RESPONDENT

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

October 23, 2018

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	
	)	2018-CP-08-1068
)	
JOHN A. DARRIEUX, #366929)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent,)	
_____)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
1419 Pendleton Street
Columbia, SC 29201

DATED this the 23rd day of October, 2018.



 Jennifer Jennison, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)

John Darrieux) C/A No.2018-CP-08-1068
Applicant,)
 -vs-) **AMENDED PCR APPLICATION**
State of South Carolina) **PURSUANT TO RULE 15, SCRPC.**
Respondent,)
_____)

Introduction

COMES NOW, above captioned Applicant John Darrieux, by and through attorney of record, Christopher L. Murphy, respectfully moving the Court to amend the Original PCR application in case no.2018-CP-08-1068, pursuant to Rule 15(c), SCRPC.

The issue to be amended is as follows:

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING
TO OBJECT TO THE TRIAL COURT INSTRUCTING
THE JURY ON THE ALLEN CHARGE ON THE
GROUNDS THAT THE JURY WAS NOT DEADLOCKED
AND THEREFORE THE ALLEN CHARGE WAS NOT
APPROPRIATE UNDER THE FACTS AND
CIRCUMSTANCES IN QUESTION.

FACTS

During jury deliberations the jury sent out a note advising the Court that Juror 14, Besy P. Bayless, wanted to be removed from the jury and the following colloquy was recorded:

THE COURT: All right. I've gotten a note from the foreperson. It says, "Besy P. Bayless wishes to be removed from the jury panel because she doesn't want to convict anyone. Morgan Pritchett, January 29, 2016, 1:40 pm." The only thing I know to do at this point in time is to bring them in, tell them I understand they've been unable to agree on a verdict, that one of the jurors wishes to be removed from the jury, that we cannot remove the jury simply because you've been unable to reach a unanimous verdict and then just give them the Allen charge to try to encourage them to reach a unanimous verdict. What's the State's position on that?

MR. WEST: I believe that that's the only appropriate course of action at this point.

THE COURT: Yeah. I think so too.

MR. DAVIS: If I could just have a moment to explain it to my client.

THE COURT: All right.

MR. DAVIS: Thank you, Your Honor. I've explained the Allen charge process to my client. Because we want each individual juror to vote their own conscience, I object to it, but I understand and I think that -- I don't object to the process. I object to the Allen charge.

THE COURT: Okay. So what would you suggest?

MR. DAVIS: And that, Judge, Defense believes in binding that. I think I have to protect the record by objecting, but I don't have another argument for you.

[Tr.p.513, 1.2-p.514, 1.5.

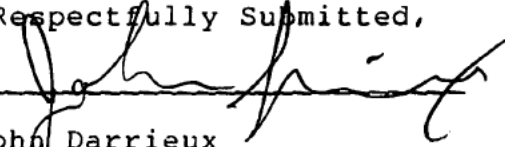
As is clearly seen in the above colloquy the Court was in error in giving the Allen charge in this matter. The Allen charge is only appropriate when the jury is "deadlocked" and cannot reach a verdict. Here, the note from the foreperson specifically said "Besy P. Bayless wishes to be removed from the jury panel because she doesn't want to convict anyone". Id. The statement alone

suggests that the jury was not deadlocked. The statement supports a finding that Bayless was being hindered in some way during deliberations because during voir dire Bayless said she had served on a jury before and even said she could decide the case based solely on the evidence and then for reasons unknown "Bayless wants to be removed from the jury." The appropriate action would have been to bring out juror Besy P. Bayless and inquire into why she now felt this way and attempt to remedy the situation properly. Instead, the Court erroneously instructed the jury with the Allen charge and within minutes, whatever was happening internal, Bayless simply changed her mind to a guilty verdict just to get it over with. Petitioner was denied his right to a fair and impartial jury of his peers.

While trial counsel did somewhat object, counsel's objection was non-specific and never stated the Allen charge was not appropriate under the facts in issue and therefore was not sufficient to be raised on direct appeal.

The error complained of here had a substantial and injurious affect on the jury's verdict that amounts to a structural error in the constitutional mechanism of the trial.

Applicant is entitled to a new trial on this claim.

Respectfully Submitted,
/s/ 
John Darrieux

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

C/A No. 2018-CP-08-1068

John Darrieux -- Applicant,

-vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed PCR Amendment on the persons whose names and addresses appear below, by placing the aforesaid in properly addressed, first-class postage affixed envelopes and placed in the U.S. Mail this 19th day of March 2019.

Those Served:

Clerk of Court
Mary P. Brown
P.O. Box 219
Moncks Corner, SC. 29461-0219

Assistant Attorney General
Benjamin H. Limbaugh
.O. Box 11549
Columbia, SC. 29211

Respectfully Submitted,

/s/ John Darrieux
John Darrieux

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 20 DAY OF March, 2019

Tamara Conwell
NOTARY PUBLIC

MY COMM. EXPIRES My Commission Expires
September 25, 2023

RECEIVED

MAR 20 2019

P.C.I. MAILROOM

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
POST-CONVICTION RELIEF HEARING	
RODNEY DAVIS	
Direct Examination by Mr. Limbaugh	8
Cross-Examination by Mr. Murphy	12
RULING BY THE COURT	14
CERTIFICATE OF THE COURT REPORTER	17

INDEX TO EXHIBITS

No Exhibits were introduced

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing
July 26, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

MR. LIMBAUGH: May I approach, Your Honor?

THE COURT: Yes.

[Whereupon, Mr. Limbaugh proffers documents to the Court]

[Whereupon, Mr. Darrieux enters the courtroom]

THE COURT: Mr. Limbaugh, you are recognized.

MR. LIMBAUGH: May it please the Court, Your Honor?

This is the case of Mr. John Darrieux, case number 2018-CP-08-1068. Mr. Darrieux is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court.

In June 2015 the Berkeley County Grand Jury indicted Applicant for 1st degree burglary, 3rd degree burglary, three counts of armed robbery, three counts of kidnapping, and possession of a weapon during the commission of a violent crime.

Mr. Rodney Davis, Esquire represented Applicant. Assistant Solicitor E. Mason West, Esquire prosecuted the case. On January 26th through 29th, 2016 Applicant proceeded to trial before the Honorable Benjamin H. Culbertson. The jury found Applicant guilty as indicted for all charges except 3rd degree burglary. Judge Dennis sentenced Applicant to prison for concurrent terms of 30

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing
July 26, 2019

1 years for 1st degree burglary, for each count of armed
2 robbery and kidnapping and five years for possession of a
3 weapon during the commission of a violent crime.

4 Applicant filed a timely notice of appeal. LaNelle
5 Cantey DuRant, Esquire, of the Office of Appellate
6 Defense perfected the appeal. Applicant raised the
7 following issues on appeal:

8 That the trial court erred in denying Applicant
9 Darrieux's motion for a new trial based on after
10 discovered evidence that the C.D. with the jail call
11 Applicant made to his girlfriend that was presented at
12 trial was not the original when the original was
13 available, which is a violation of Rule 1002 SCRE and
14 Rule 1004 SCRE and which was prejudicial to Applicant
15 because the State argued to the jury that this jail call
16 was critical evidence.

17 Second, that the trial court erred admitting the
18 jail call that Applicant Darrieux made to his girlfriend
19 when the State did not authenticate it was Darrieux
20 because no witness was called to identify the voice as
21 Darrieux or that the witness talked to him and a records
22 custodian admitted that another inmate could use the
23 account in the name of Darrieux if Darrieux agreed to
24 providing his PIN.

25 The South Carolina Court of Appeals affirmed

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing
July 26, 2019

1 Applicant's conviction on May 9th, 2018. The remittitur
2 was returned to the Circuit Court on May 25th, 2018. The
3 State would hand it over to Applicant at this time to
4 delineate these allegations.

5 THE COURT: Yes, sir?

6 MR. MURPHY: Thank you, Your Honor. May it please
7 the Court? I've spoken with Mr. Darrieux several times.
8 I've also spoken with Mr. Rodney Davis and we have a
9 single issue that we are going to raise with this PCR
10 application.

11 And it starts on page 513 of the transcript. And at
12 that point Judge the juror gave a question which stated
13 quotation marks Bessie P. Bayliss [phonetic] wishes to be
14 removed from jury panel because she doesn't want to
15 convict anyone. And that was at 1:45 p.m.

16 The Judge spoke with the attorneys, the Prosecutor
17 and Mr. Davis, and indicated that he was going to give an
18 Allen charge. Mr. Davis objected to the Allen charge but
19 could not explain a reason as to why he objected. The
20 Allen charge was given and less than a half hour later a
21 jury came back with a verdict against Mr. Darrieux.

22 Now, the basis for objection Judge is at the
23 beginning of every trial a jury swears under oath that if
24 the evidence meets the burden of proof applied to the
25 State they would convict a person. Likewise if they

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing
July 26, 2019

1 don't meet that burden they would be able to acquit the
2 defendant.

3 In this case the juror said via note she doesn't
4 want to convict anyone. And we believe the proper course
5 for the Court would have been to question the juror as to
6 exactly what she means; whether or not she personally
7 cannot convict anyone or whether or not the evidence was
8 such that she doesn't believe that she can convict
9 anyone.

10 At that time the Court could make a decision as to
11 whether to keep her on the jury and give the Allen charge
12 or dismiss her and appoint an alternate juror to take his
13 place, or take her place. That was never done and we
14 believe that was error that would entitle Mr. Darrieux to
15 a new trial.

16 And that would be the sole issue here. I would say
17 Judge that that was objected to again. This is kind of
18 that grey area. It was objected by Rodney Davis but it
19 wasn't an issue for an appeal. So to the extent that it
20 was an error by counsel yes, he objected, but he didn't
21 enunciate anything.

22 And if that did perfect an appeal or his right to an
23 appeal it wasn't appealed; it was not an issue raised for
24 the Appellate Court. So, therefore, we believe that he
25 should get his application. And that would be all, Your

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing
July 26, 2019

1 Honor.

2 THE COURT: Do you -- would you like to call any
3 witnesses or will you stand on the record ---

4 MR. MURPHY: --- we're going to stand on the
5 record, Judge.

6 THE COURT: And essentially review the record and
7 it's essentially a question of law?

8 MR. MURPHY: That's correct.

9 THE COURT: Mr. Limbaugh, I'll be glad to hear from
10 you.

11 MR. LIMBAUGH: Your Honor, I'd just like to call
12 Mr. Davis to the stand briefly.

13

14

15

16

17

18

19

20

21

22

23

24

25

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing-Rodney Davis-Direct Examination by Mr. Limbaugh
July 26, 2019

1 THE COURT: Okay. You may come forward Mr. Davis.

2 [Whereupon, Mr. Davis comes forward]

3 THE COURT: I'm going to ask you if you could to
4 place your left hand on the Bible and raise your right
5 hand as the Clerk administers the oath.

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 THE CLERK OF COURT: Please be seated. State your
9 full name for the record and please spell your last name.

10 THE WITNESS: Rodney Davis, D-A-V-I-S.

11 MR. LIMBAUGH: May it please the Court?

12 THE COURT: Yes.

13 - - - - -

14 RODNEY DAVIS,

15 Having been first duly sworn,

16 Was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LIMBAUGH:

19 Q. Good morning, Mr. Davis.

20 A. Good morning.

21 Q. It's going to be fairly brief. I just want to ask
22 you a couple of questions to lay a foundation. How long
23 have you been practicing criminal law?

24 A. Twenty-four; since 1996.

25 Q. And I believe most of that was with the Public

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing-Rodney Davis-Direct Examination by Mr. Limbaugh
July 26, 2019

1 Defender's Office, is that correct?

2 A. Yes. My longest term has been as a public defender.

3 Q. Okay. Now did you get a chance to review the record
4 in this case?

5 A. Yes, sir.

6 Q. Do you recall making the objection to the Allen
7 charge being given?

8 A. Yes.

9 Q. It seems like you tried to give an explanation for
10 your objection but can you kind of explain your thought
11 process there?

12 A. Sure. When there is an issue, this is a unique one
13 where the information was the juror can't convict anyone.
14 And that was unique. And I'll be honest I think it threw
15 me a little bit.

16 But anytime the jury comes back and says they are at
17 an impasse as a defense attorney I think it's appropriate
18 you object to the Allen charge even though it's approved
19 in the sense that it might overtly influence the
20 minorities; meaning the smaller group of the vote.

21 I tried to state that on the record however artfully
22 or inartfully but I know that the Allen charge is
23 approved and so I didn't have an alternative for the
24 Judge to substitute for that. So, I wanted to note my
25 objection and preserve the issue for appeal. Certainly

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing-Rodney Davis-Direct Examination by Mr. Limbaugh
July 26, 2019

1 if the Judge ruled in my favor great but it was mostly a
2 precautionary one to ensure that I marked it similar to
3 directed verdict even if I don't think there is a whole
4 lot of value in it I'm going to make it because you've
5 got to put that place mark down.

6 Q. You believe you made a contemporaneous objection as
7 would preserve it for appeal?

8 A. Yes.

9 Q. Okay. And one final question. What generally is
10 your understanding of the purpose of an Allen charge to
11 be?

12 A. In fact just this week I was reading a new case come
13 down, and I'm not going to remember it right now, that
14 kind of dealt with this issue; that was just this week.

15 In my explanation of it it's sort of a come on why
16 don't you give it one more try. Everybody listen to
17 everybody else.

18 And then the Judge did say that in there I did not
19 object following it to the content of it and having read
20 the case this week maybe I should have objected to the
21 content but now we're how many years later.

22 But the purpose is we've come this far, it's in your
23 hands, are you sure you're deadlocked? And while I
24 understand that there is a need for that on behalf of my
25 client I objected because the fear is that's an undue

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing-Rodney Davis-Direct Examination by Mr. Limbaugh
July 26, 2019

1 influence from the Court on the jurors.

2 Q. And no one could expect you to object to reasoning
3 from a case that just came out a few years ago, is that
4 correct?

5 A. Right.

6 Q. Okay.

7 MR. LIMBAUGH: That's all the State has for Mr.
8 Davis, Your Honor.

9 THE COURT: All right. Any cross-examination?

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing-Rodney Davis-Cross-Examination by Mr. Murphy
July 26, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

BY MR. MURPHY:

Q. Did you have any discussions with the jurors after the verdict about whether this was or specifically with Ms. Bayliss [phonetic] as to whether or not she had a personal belief about convicting or not convicting verses a question of the evidence?

A. I don't recall any contact with her. I'm not sure I had any contact with any jurors. If I -- I could check, I've got the box back there with my file but I truly don't remember any contact with any jurors.

There are occasions that after trial; this was when I was in private practice, if it was an appointed case, a conflict case from the Public Defender's office up here in Berkeley.

When I was in the Public Defender's office or years ago in the Solicitor's office we would sometimes send out questionnaires afterward. I don't believe in private practice that I did that.

Q. Thank you. That's all I have.

THE COURT: All right. Anything further?

MR. LIMBAUGH: Nothing further from the State, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you, Your Honor.

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing-Rodney Davis-Cross-Examination by Mr. Murphy
July 26, 2019

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Does that conclude your ---

4 MR. LIMBAUGH: --- that does conclude the State's
5 case, Your Honor.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing
July 26, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RULING BY THE COURT

THE COURT: All right. One of the things that sort of appears to be relevant in this case is the Rules of Evidence, Rule 606(b). And it says [Reading]:

Inquiry into validity of a verdict or indictment. Upon an inquiry into the validity of a verdict or indictment a juror may not testify as to any matter or statement occurring during the course of the jury's deliberation or to the effect of anything upon that or any other juror's mind or emotion as influencing the jury to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

So as a general rule you can't inquire into jurors what they say in their deliberations. There has been as I recall, and I don't recall the name of the case, there is a case where there was a mention of a juror stating a racial bias and that was brought out in a question. And

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing
July 26, 2019

1 the Supreme Court said that when there is an outside
2 prejudicial influence you can ask about that. But that
3 was not the case in this instance. And if it were it's
4 still a matter for an appeal and not for post-conviction
5 relief. I think it's an appellate issue and not one for
6 my consideration.

7 But I do note that the Allen charge that was given
8 is a good one. And I particularly note that in the Allen
9 charge it says [Reading]:

10 Although the verdict of the jury must be unanimous
11 every one of you has the right to your own opinion.
12 That's important. The majority should consider the
13 minority's position and the minority should consider the
14 majority's position.

15 And it goes on to say: The verdict you agree on
16 must be your own verdict, the result of your own
17 convictions and you should not give up your firmly held
18 beliefs merely to be in agreement with your fellow
19 jurors.

20 I don't think it could be said any better than that.
21 I think the Allen charge that was in the most recent case
22 was clearly one that was focusing on putting pressure on
23 the minority. But this right here is language that says
24 exactly the way it ought to be that don't give up a
25 firmly held belief just by virtue of coming to an

John A. Darrieux v State of South Carolina
Post-Conviction Relief Hearing
July 26, 2019

1 agreement. The majority should listen to the minority
2 and the minority should listen to the majority. And
3 everyone has a right to their own opinion.

4 I remember reading that case and that was the focus
5 of the opinion was don't put pressure on the jury to
6 alter their firmly held beliefs. And I think obviously
7 this charge took place long before that opinion. And
8 there are some judges that say, I think Judge Powell
9 [phonetic] has the very worst. He would really bear down
10 on the minority and kind of put pressure on them.

11 But this is a very good Allen charge that correctly
12 states what should be stated. So I am going to deny the
13 post-conviction relief. I'm going to ask that you
14 discuss in there Rule 606 to whatever extent is relevant
15 to this case that there was no prejudice or anything such
16 as that was brought up that would allow the Court to
17 engage in what their thought process was.

18 And the record speaks for itself as far as the
19 merits of the Allen charge, which I believe was a good
20 charge. But you're protected on the record in that
21 regard for appellate purposes. Good luck to you.

22 MR. MURPHY: Yes, sir. Thank you, Judge.

23 MR. LIMBAUGH: Thank you, Your Honor.

24 THE COURT: All right.

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

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
 John Alexander Darrieux, #366929)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-08-1068

ORDER OF DISMISSAL

LEARN CHERIE DURR
 CLERK OF COURT
 BERKELEY COUNTY, SC

[Signature]
 20 JAN 14 AM 11:55
FILED

John Alexander Darrieux (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. In June 2015, the Berkeley County Grand Jury indicted Applicant for first-degree burglary (2015-GS-08-1026), third-degree burglary (2015-GS-08-1024), three counts of armed robbery (2015-GS-08-1027, -1028, -1029), three counts of kidnapping (2015-GS-08-1030, -1031, -1032) and possession of a weapon during the commission of a violent crime (2015-GS-08-1034). Rodney Davis, Esquire represented Applicant. Assistant Solicitor E. Mason West, Esquire prosecuted the case. On January 26-29, 2016, Applicant proceeded to jury trial before the Honorable Benjamin H. Culbertson. The jury found Applicant guilty as indicted for all charges except third degree burglary. Judge Dennis sentenced Applicant to imprisonment for concurrent terms of thirty years for first degree burglary, for each count of armed robbery and kidnapping and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Lanelle Cantey Durant, Esquire, of the Office of Appellate Defense perfected the appeal. Applicant raised the following issues on appeal:

1. Did the trial court err in denying Applicant Darrieux' s motion for a new trial based on after discovered evidence that the CD with the jail call Applicant made to his girlfriend

that was presented at trial was not the original when the original was available which was a violation of Rule 1002, SCRE and Rule 1004, SCRE and which was prejudicial to Applicant because the state argued to the jury that this jail call was "critical evidence"?

2. Did the trial court err in admitting the jail call that Applicant Dairieux made to his girlfriend when the state did not authenticate that it was Darrieux because no witness was called to identify the voice as Darrieux or that the witness talked to him, and the records custodian admitted that another inmate could use the account and name of Darrieux if Darrieux agreed and provided his name?

The South Carolina Court of Appeals affirmed Applicant's conviction on May 9, 2018. State v. Darrieux, Op. No. 2018-UP-197 (S.C. Ct. App. filed May 9, 2018). The remittitur was returned to the circuit court on May 25, 2018.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
 - a. "Counsel failed to properly and fully investigate the case"
 - b. "Counsel failed to investigate the investigator's informant "Tristen Brower" to make sure he was registered with SLED for a violent crime investigation for kidnapping, armed robbery, possession of a firearm during the commission of a violent crime, burglary first degree, burglary second degree. The informant was not registered with sled, pursuant to policy 13.30, use of informants for investigations and furthermore this investigation was unlawful and illegal"
 - c. "Counsel failed to investigate the informant's video recorded statement of the investigator's and to make sure their was an application processed, for the interception of wire, electric or oral communications, pursuant to S.C. Code 17-30-70, for a violent crime investigation. Futhermore, the investigators violated 17-30-70, by using a video recorded statement, by the co-defendant Tristen Brower, during the trial and failing to process an application that must be initiated by the chief of SLED. After reviewing the application, the attorney general may authorize the submission of the application to a judge of competent jurisdiction,

- and the judge may grant in conformity with this chapter.”
- d. “Counsel failed to investigate and make sure an application for an order authorizing or approving the interception of wire, electric, or oral communications must be made in writing upon oath or affirmation to a judge of competent jurisdiction, pursuant to S.C. Code 17-30-80.”
 - e. “Failure of counsel to request and require as part of discovery that copies of the application process of all intercepted communications be provided as they are gathered so that a proper defense for physical evidence can be built as is provided for by S.C. Code 17-30-105”
 - f. “Failure of counsel pursuant to S.C. Code 17-30-130 to ensure that no impropriety occurred in the reporting of the intercepted communications to the administrative office of the United States Court as outlined in 18 U.S.C. subsection 2519.”
 - g. “Counsel failed to suppress the video recorded statement, pursuant to S.C. Code 17-30-110, as the investigators obtained the evidence in violation of the interception of wire, electronic or oral communications act”
 - h. “Failure of counsel to advise me and inform the court that none of these subsections in chapter 30, title 17 were adhered to and that these actions and/or lack thereof were illegal, pursuant to S.C. Code 17-30-20 (prohibited acts).”
 - i. “Counsel failed to properly and fully prepare petitioner for testimony in the case”
 - j. “Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony through direct and cross-examination of relevant evidence related to the matter”
 - k. “Counsel failed to request a preliminary hearing so petitioner could more adequately be informed about case”
 - l. “Counsel failed to spend adequate time with petitioner reviewing discovery with him”
 - m. “Counsel failed to challenge the testimony of the state’s witnesses and failed to adequately object and preserve objections to portions of the witnesses testimony and failed to effectively cross-examine the witnesses on their testimony”
 - n. “Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient”
 - o. “Counsel failed to move for a pretrial motion for a directed verdict”
 - p. “Counsel failed to move for a mistrial when the Solicitor violated a cardinal trial rule and expressed his own opinion of the Petitioner’s guilt by making a comment about the petitioner. (Tr. p. 461 Line 10-12) “If the kids are inside I’m going to break their fingers” That’s sadistic. That’s terror. That’s the way this defendant was

- thinking before he changed these people's lives forever. For this comment by the solicitor, tainted the jury about petitioner's guilt"
- q. "Counsel failed to provide a valid defense for trial"
 - r. "Counsel failed to object about the state's circumstantial evidence being admitted at trial"

In relief sought, Applicant is seeking "reverse and remand". Applicant amended his application on March 20, 2019 to include the allegation that counsel was ineffective for failing to object to the trial court instructing the jury on the Allen charge on the grounds that the jury was not deadlocked and therefore the Allen charge was not appropriate under the facts and circumstances in question. Applicant proceeded solely on the Allen charge issue at the evidentiary hearing.

STATEMENT OF FACTS ADDUCED AT TRIAL

Initial Robbery of the Home of Charles Roberts

On October 21, 2014, Charles Roberts went to sleep around 2 A.M. at the home he shared with his friend, Stephen Jones, and his girlfriend, Rose Simpson. R. pp. 108-09. At around 4:00 A.M., Roberts awoke to a man pointing a gun at him. R. p. 109. Roberts testified that while there were four people that broke into his home that evening, he only physically saw two of them. R. p. 118. Roberts stated the intruders kicked in the door to the home and knocked the door frame loose. R. pp. 109-10. Roberts was forced to stay inside his bedroom while the intruders were in the home. R. p. 119. While in his bedroom, Roberts observed the intruders carry out every item in his bedroom that they deemed to be of value, including tools, electronics, his wallet, cash, medicine, and a number of chess sets which were part of a collection Roberts acquired over the years. R. pp. 120-21. Roberts noticed one of the intruders was not wearing a mask, and that another intruder was a female with long black hair and a distinct accent. R. p. 118. Roberts noted that while he was being held in his bedroom, he did not know where Simpson and Davis were; however, they were later escorted into Roberts's bathroom. R. p. 125. Roberts testified the intruders were in the home for an hour or more. R. p. 125. When the four intruders finally left his home, Roberts ran to a

neighbor's house to call 911 because he, Davis, and Simpson all had their cell phones stolen. R. p. 126. Roberts also noted he owned another home on Cindy Drive that was unoccupied at the time. R. pp. 126-27.

Rose Simpson testified she was asleep on the couch in the home's living room when she heard "a big bam." R. p. 54. Simpson stated three people came through the door and asked her, "where's the old man?" R. p. 55. Simpson explained that she believed they were referring to Roberts, because he was a lot older than anyone else in the house. R. p. 55. When the intruders entered the home, Simpson noticed all three were armed with handguns. R. pp. 55-56. Simpson also noticed the robbers were wearing what appeared to be Halloween masks. R. p. 55. Simpson remained on the couch for around an hour. R. p. 57. Jones was removed from his bedroom by the intruders and placed on a loveseat in the living room. R. p. 57. One of the intruders told Simpson that if she moved, he would kill her. R. p. 57. Simpson testified she and Jones were later forced into a bedroom and ordered to stand against a vanity. R. p. 58. While in the bedroom, one of the intruders stood by the bedroom closet and pointed a gun at Simpson and Jones. R. p. 58. In the courtroom, Simpson identified Applicant as the individual who pointed the gun at them. R. p. 58. Simpson stated Applicant was not wearing a mask, as he had taken his off because it was too hot inside the home. R. p. 58. Simpson testified she was one-hundred percent sure Applicant was the unmasked intruder she observed in the home. R. p. 59. Simpson testified that while Applicant had his mask off, he told her "don't look at me, put your head down." R. p. 59. Simpson recalled the only thing that was personally taken from her during the robbery was her purse. R. p. 59. Simpson testified the female intruder taunted her, stating, "I got your purse, bitch." R. pp. 60-61. Simpson estimated the intruders were in the home for an hour or more. R. p. 63. Simpson described Applicant as "very trigger-happy, went around pointing to make sure that Stephen and I knew he

was the boss over the gun.” R. p. 64. Simpson stated Applicant took “just about anything he could get his hands on” from the house. R. p. 64. After loading their SUV with the goods stolen from the home, the intruders left the house. R. p. 65.

Stephen Jones recalled being awoken by a loud bang and a bunch of yelling during the early morning hours of October 21, 2014. R. p. 85. While hurriedly getting dressed, Jones turned and found two people behind him and a gun pointed at his head. R. p. 86. Jones stated the intruders were wearing masks and they ordered him to go into the living room. R. p. 86. Once in the living room, Jones was forced to sit down on a loveseat while the intruders ransacked the house. R. p. 87. Jones testified one of the intruders was not wearing a mask. R. p. 89. Jones stated he got a “pretty good” look at that intruders face because there were several times during the robbery where he got in Jones’s face. R. p. 89. Jones then identified Applicant in the courtroom as the individual without a mask that robbed him on October 21, 2014. R. p. 89. Jones testified Applicant and the other intruders stole a TV from his bedroom, his wallet, and a number of other personal belongings including several car radios that were in his bedroom. R. p. 97. Jones lamented that the thieves were so thorough that they even stole his pillowcases. R. p. 97. Jones recalled that he was held in the living room for over an hour. R. p. 98. Jones testified that as the robbers left, they took him into the bathroom in Roberts’s bedroom and told him that if they were to call the cops, they would come back and kill them. R. p. 98.

Subsequent Burglary of Property Owned by Charles Roberts and Later Arrest of Culprits

In October of 2014, Courtney Pringle lived with her sister on Cindy Drive. R. pp. 196-97. On October 21, 2014, Pringle observed Natalia Chisolm, a woman she used to work with, drive up to a nearby residence in a Dodge Durango. R. p. 197. Pringle testified she saw “Natalia and a

couple of men breaking in a home.” R. p. 197. Pringle observed the intruders carry a mattress and other items out of the home. R. p. 197. Pringle subsequently called the police. R. p. 199.

Sergeant Cassandra Drew of the Berkeley County Sheriff’s Office received a call from dispatch telling her to be on the lookout for a Dodge Durango with mattresses on top of the vehicle. R. p. 206. Sergeant Drew subsequently spotted two people loading a large TV into a Durango. R. p. 207. Sergeant Drew testified there were three males and one female in or around the Durango. R. p. 207. Sergeant Drew spoke with the occupants, who advised her that a friend told them they could have the TV. R. p. 207. Corporal Cody Graff of the Berkeley County Sheriff’s Office responded to the scene of the stop. R. pp. 209-10. Corporal Graff stated Applicant was one of the four suspects that were stopped. R. p. 213. When he approached the vehicle, Corporal Graff noticed an open can of Bud Light Raz-Ber-Rita on the console. R. p. 211. Corporal Graff then searched the vehicle and found “a lot of things” including televisions, car radios, and tool boxes. R. p. 213. Corporal Graff recovered a firearm in the vehicle that was concealed inside of a black glove. R. p. 216. Corporal Graff subsequently placed all four individuals under arrest. R. pp. 217-18.

Detective Shane Cook of the Berkeley County Sheriff’s Office executed a search warrant at the home of Natalia Chisolm on October 21, 2014. R. p. 239. Inside the residence, officers recovered a tremendous amount of property including Roberts’s driver’s license, prescription bottles bearing the name “Charles Roberts,” Roberts’s social security card, miscellaneous tools, bank cards, jewelry, cell phones, numerous chess sets, and keys. R. pp. 240-41. Detectives also recovered masks from the master bedroom closet. R. p. 243. Detectives also recovered a BB gun, a Ruger SR-9C handgun, and a Lorcin 25 caliber pistol. R. pp. 243-44.

Tristen Brower’s Testimony

Tristen Brower is the adoptive nephew of Natalia Chisolm. R. p. 152. On the weekend of the robbery, Brower was staying at Natalia's house. R. p. 152. Brower testified that Applicant and Joseph Arsenault were also staying with Chisholm that weekend. R. p. 153. Brower noted that Applicant went by the nickname "Chopper." R. p. 154. On October 21, 2014, Brower got into a Dodge Durango with Chisholm, Applicant, and Arsenault. R. pp. 154-55. Brower testified he did not know where they were going until "the last moment." R. p. 156. Brower stated it was his understanding that Arsenault knew the residents of the home they were traveling to. R. p. 156. Brower testified he did not know a robbery was about to happen until they reached the residence and Chisholm handed him a gun. R. p. 157.

Brower recalled that Applicant knocked down the door in order to allow them to enter the house. R. p. 159. Brower stated that everyone except for Applicant was wearing a mask throughout the robbery. R. p. 158. Brower testified the group members were all armed with semi-automatic handguns. R. p. 164. Once inside the house, Brower observed Applicant, Arsenault, and Chisolm carry electronics, tools, and jewelry out of the house. R. p. 162. Brower testified Natalia was in charge of the group. R. p. 163. Before entering the home, Brower recalled Applicant stating, "if there was kids in the house that fingers would be broken." R. p. 164. Brower described Applicant's demeanor inside Roberts's home as "energetic." R. p. 164.

Brower testified the group was in Roberts's house for "a very long time." R. p. 163. After leaving Roberts's home, Brower, Applicant, Arsenault, and Chisholm went back to Chisolm's apartment. R. p. 168. The stolen goods were subsequently unloaded into Chisolm's apartment. R. p. 168. Later in the day, Brower rode with Applicant, Chisolm and Arsenault to "a house that Natalia said she knew." R. p. 169. Brower observed Applicant walk to the back of the home. R. p. 170. Applicant and Chisolm later carried two mattresses out of the home and place them on top of

the Durango. R. p. 170. After leaving the scene, the group was arrested and placed in separate police cars while picking up a TV by the side of the road. Brower testified there was no doubt in his mind that Applicant was the individual who committed the charged crimes.

Applicant's Jail Calls

At trial, the State called Sergeant Katie Shuler, an employee of Berkley County's Hill-Finklea detention center. R. p. 266. One of Sergeant Shuler's responsibilities at the detention center is overseeing the jail phone call system. R. p. 267. Sergeant Shuler explained:

Once an inmate is booked in they have their information in the computer and then they will have an actual PIN number that is connected to their information to their name. So every time they make a phone call they have to punch in that PIN number. Then they have to say their name and if it doesn't recognize it then they can't make a phone call. It helps with people stealing their PIN numbers, and you know, other people using their phone account when they're not allowed to.

R. p. 267. The State subsequently introduced a phone call made by Applicant into evidence as State's Exhibit 123. R. p. 269. During the phone call, Applicant stated "I fucked up big time" and "I fucked up and I'm sorry." R. p. * (State's Exhibit 123). Applicant also stated "Fortunately no one got hurt real bad with this situation here." R. p. * (State's Exhibit 123).

Immediately after trial, the Solicitor discovered that the CD played at trial was not the initial copy given to him by Shuler, but was a duplicate. R. p. 396. The Solicitor informed Defense Counsel, who promptly made a motion for a new trial based on after-discovered evidence. R. p. 396, R. p. 445-46 (Motion for New Trial (After Discovered Evidence)). The trial judge subsequently held a hearing on Applicant's motion on February 26, 2016. R. pp. 393-419. At the hearing, the Solicitor made it clear that the two CDs were identical and that the only distinction was the labeling on the top of the CD. R. p. 396. For purposes of the hearing, the "original" CD was moved into the record as State's Exhibit 123A. R. p. 403.

At the hearing on Applicant's motion for a new trial, Sergeant Shuler testified regarding how the phone recordings are produced. R. p. 401. Sergeant Shuler stated that once she receives a subpoena, she downloads the files and burns them to a CD. R. p. 401. Sergeant Shuler was then asked whether there was any way to alter the contents of the CD. Sergeant Shuler testified that alterations were not possible, as the system she uses to burn the CD does not allow alterations or deletions. R. pp. 401-02.

Kevin McGowan, an investigator with the Ninth Circuit Solicitor's Office testified during the hearing. R. p. 413. Investigator McGowan testified that as part of his duties, he helps the attorneys in the office with various aspects of trial preparation, including making copies of CDs. R. p. 414. Investigator McGowan testified that in Applicant's case, he made a copy of State's Exhibit 123A. R. p. 414. Investigator McGowan did not make any changes to the contents of the CD. R. p. 414. Investigator McGowan duplicated the writing on the top of the CD and added a triangle to indicate it was a copy. R. pp. 414-15.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a “ ‘reasonably competent attorney.’ ” 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, 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.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins, 539 U. S., at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687; Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even

under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." *Id.* at 689; see also *Bell v. Cone*, 535 U. S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S. at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U. S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. *Id.* at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693; *Harrington*, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

Allegation: Failure to object to Allen Charge

Applicant alleges trial counsel was ineffective for failing to object to the trial court given the jury the Allen charge. The record is dispositive as to this issue. The trial transcript directly refutes this allegation, showing that counsel did object to the Allen charge being given to the

jury. Tr. P. 513, ln 22-25. Counsel explained the Allen charge process to Applicant and decided he needed to protect the record by making the objection. Counsel did not make a specific argument as to his objection other than wanting “each individual juror to vote their own conscience.” Tr. P. 513, ln. 24. Counsel testified that he knew that the trial judge would not sustain his objection, but that he wanted to make it for the record. Counsel acknowledged that he did not have a significant arguable basis for the objection, as the Allen charge given was not itself flawed. This Court finds that Applicant has failed to show any ineffectiveness on the part of trial counsel. This issue is one not appropriate for post-conviction relief, but rather, for direct appeal. The Allen charge itself was pristine in quality, stating that the majority should consider the views of the minority and vice versa. The record does not indicate that any juror was giving up a firmly held belief to reach a unanimous decision and Rule 606 (b) precludes jurors from testifying about any jury deliberations. Therefore, this Court finds that Applicant has failed to meet his burden in regards to this allegation and it is dismissed with prejudice.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

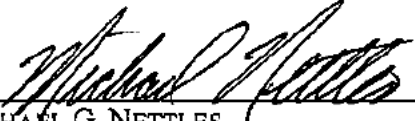
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review,

PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 26 day of Dec, 2019.



MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Berkeley)
)
John Alexander Darcieux)
 Full name and prison number (if any) of Applicant)
SCDC No. - 316829)
 v.)
)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

2021-CP-08-01370

APPLICATION FOR

POST-CONVICTION REVIEW

LEAH GUERRY DUPREE
 CLERK OF COURT
 BERKELEY COUNTY, SC

21 JUL -6 PM 3: 18

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institute / SCDC
- 430 Oaklawn Road, Pelzer, South Carolina 29669
2. Name and location of Court which imposed sentence South Carolina
County of Berkeley / General-Sessions Court
3. Name(s) of co-defendant(s) (if any) Natalia Chisalm, Tristen Brower,
Joseph Arsenault
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-08-1026 / First-Degree Burglary
 - (b) 2015-GS-08-1027, 1028, 1029 / three-counts of Kidnapping

cc:
 F.A.D.

(c) 2015-GS-08-1034/Possession-Weapon during a Violent-Crime

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

(a) January 29, 2016

(b) ~~With~~ Same-As-Above

(c) Same-As-Above

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty Convicted by Jury

(c) after a plea of nolo contendere _____

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

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

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

i. South Carolina Court of Appeals

ii. S.C. Court of Common-Pless / Berkeley County (PCR)

iii. _____

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

i. AFFIRMED on May 9, 2018

ii. DISMISSED on December, 26, 2019

iii. _____

(c) the date of each such result:

i. May 09, 2018

ii. December 26, 2019

iii. _____

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

i. State v Darrieux, OP. No. 2018-UP-197 (S.C. Ct. App. May 9, 2018)

ii. John A Darrieux v State, 2018-CP-08-1068 (PCR)

iii. _____

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

(a) _____

(b) _____

(c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Denial of Due Process / Excessive Attorneys Fees
- (c) Ineffective Assistance, PCR Counsel

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

- (a) Petitioner presented sufficient facts at the
- (b) PCR hearing to warrant a new trial.
- (c) PCR Counsel failed to file appeal

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

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
 - i. Direct Appeal
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. SC Court of Appeals
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

i. DISMISSED

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. December 26, 2019

ii. _____

iii. _____

iv. _____

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

i. ● 2018-CP-08-1068

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(Austin V State) Austin Review, I would like my right to appeal the denial of my PCR and seek Austin Appeal

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

No

FILED

21 JUL -6 PM 3:19
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA

County of Greenville

VERIFICATION

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

[Signature]

SWORN to and subscribed before me this 30 day of June 2021.

Jamarc Conwell (L.S.)
Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this
30 day of June, 2021.

[Signature]
Notary Public

My Commission Expires: September 25, 2023

FILED
21 JUL -6 PM 3:19
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS FOR
) THE NINTH JUDICIAL CIRCUIT

)
) 2021-CP-08-01370

) John Alexander Darrieux, #366929,
)
) Applicant,

) v.

) State of South Carolina,

) Respondent.
)
)
)

) RETURN AND PARTIAL
) MOTION TO DISMISS
) (Counsel Already Appointed)

LEAH GUEBRY, JUDGE
 CLERK OF COURT
 BERKELEY COUNTY, SC

2022 JAN 21 AM 11:35

FILED

In response to the Application for Post-Conviction Relief (PCR) filed by John A. Darrieux (Applicant) on July 6, 2021¹ and received by Respondent on September 15, 2021, Respondent makes this return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its June 2015 term, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2015-GS-08-1026), third-degree burglary (2015-GS-08-1024), three counts of armed robbery (2015-GS-08-01027; 2015-GS-08-01028; 2015-GS-08-01029), three counts of kidnapping (2015-GS-08-01030; 2015-GS-08-01031; 2015-GS-08-01032) and possession of a weapon during the

¹ Respondent's return was due to be filed on December 13, 2021. *See* Rule 12(a), SCRPC (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”) Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

SCANNED

commission of a violent crime (2015-GS-08-01034). Rodney Davis, Esquire represented Applicant. Assistant Solicitor's E. Mason West and Daniel Poulos of the Ninth Circuit Solicitor's Office prosecuted the case. On January 26, 2016, Applicant appeared in the Charleston County Court of General Sessions in front of the Honorable Benjamin H. Culbertson, circuit court judge and proceeded to trial. Applicant was found guilty for all three counts of kidnapping, all three counts of armed robbery, possession of a weapon during the commission of a violent crime, and first degree burglary. Applicant was acquitted on the charge of third-degree burglary. Judge Culbertson sentenced Applicant to imprisonment for terms of thirty years for each charge of kidnapping, armed robbery and first-degree burglary, five years for possession of a weapon during the commission of a violent crime, to be served concurrently.

Applicant filed a timely notice of appeal and was represented by Lanelle Cantey Durant, Esquire of the South Carolina Office of Indigent Defense-Office of Appellate Defense. Applicant raised the following issues on appeal:

1. Did the trial court err in denying Applicant Darrieux's motion for a new trial based on after-discovered evidence that the CD with the jail call Applicant made to his girlfriend that was presented at trial was not the original when the original was available which was a violation of Rule 1002, SCRE and Rule 1004, SCRE and which was prejudicial to Applicant because the state argued to the jury that this jail call was "critical evidence"?
2. Did the trial court err in admitting the jail call that Applicant Darrieux made to his girlfriend when the state did not authenticate that it was Darrieux because no witness was called to identify the voice as Darrieux or that the witness talked to

him, and the records custodian admitted that another inmate could use the account and name of Darrieux if Darrieux agreed and provided his name?

The South Carolina Court of Appeals affirmed Applicant's conviction on May 9, 2018. *State v. Darrieux*, Op. No. 2018-UP-197 (S.C. Ct. App. filed May 9, 2018). The remittitur was returned to the circuit court on May 25, 2018.

Applicant's First Application for Post-Conviction Relief (2018-CP-08-01068)

Applicant commenced his first Post-Conviction Relief action in this matter on June 14, 2018. Applicant made the following allegations: for the following reasons:

- I. "Ineffective Assistance of Counsel," in that:
 - a. "Counsel failed to properly and fully investigate the case"
 - b. "Counsel failed to investigate the investigator's informant "Tristen Brower" to make sure he was registered with SLED for a violent crime investigation for kidnapping, armed robbery, possession of a firearm during the commission of a violent crime, burglary first degree, burglary second degree. The informant was not registered with sled, pursuant to policy 13.30, use of informants for investigations and furthermore this investigation was unlawful and illegal"
 - c. "Counsel failed to investigate the informant's video recorded statement of the investigator's and to make sure their was an application processed, for the interception of wire, electric or oral communications, pursuant to S.C. Code 17-30-70, for a violent crime investigation. Futhermore, the investigators violated 17-30-70, by using a video recorded statement, by the co-defendant Tristen Brower, during the trial and failing to process an application that must be initiated by the chief of SLED. After reviewing the application, the attorney general may authorize the submission of the application to a judge of competent jurisdiction, and the judge may grant in conformity with this chapter."
 - d. "Counsel failed to investigate and make sure an application for an order authorizing or approving the interception of wire, electric, or oral communications must be made in writing upon oath or affirmation to a judge of competent jurisdiction, pursuant to S.C. Code 17-30-80."
 - e. "Failure of counsel to request and require as part of discovery that copies of the application process of all intercepted communications be provided as they are gathered so that a proper defense for physical evidence can be built as is provided for by S.C. Code 17-30-105"
 - f. "Failure of counsel pursuant to S.C. Code 17-30-130 to ensure that no impropriety occurred in the reporting of the intercepted communications to the administrative office of the United States Court as outlined in 18 U.S.C. subsection 2519."
 - g. "Counsel failed to suppress the video recorded statement, pursuant to S.C. Code 17-30-110, as the investigators obtained the evidence in violation of the

- interception of wire, electronic or oral communications act”
- h. “Failure of counsel to advise me and inform the court that none of these subsections in chapter 30, title 17 were adhered to and that these actions and/or lack thereof were illegal, pursuant to S.C. Code 17-30-20 (prohibited acts).”
 - i. “Counsel failed to properly and fully prepare petitioner for testimony in the case”
 - j. “Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony through direct and cross-examination of relevant evidence related to the matter”
 - k. “Counsel failed to request a preliminary hearing so petitioner could more adequately be informed about case”
 - l. “Counsel failed to spend adequate time with petitioner reviewing discovery with him”
 - m. “Counsel failed to challenge the testimony of the state’s witnesses and failed to adequately object and preserve objections to portions of the witnesses testimony and failed to effectively cross-examine the witnesses on their testimony”
 - n. “Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient”
 - o. “Counsel failed to move for a pretrial motion for a directed verdict”
 - p. “Counsel failed to move for a mistrial when the Solicitor violated a cardinal trial rule and expressed his own opinion of the Petitioner’s guilt by making a comment about the petitioner. (Tr. p. 461 Line 10-12) “If the kids are inside I’m going to break their fingers” That’s sadistic. That’s terror. That’s the way this defendant was thinking before he changed these people’s lives forever. For this comment by the solicitor, tainted the jury about petitioner’s guilt”
 - q. “Counsel failed to provide a valid defense for trial”
 - r. “Counsel failed to object about the state’s circumstantial evidence being admitted at trial”

Respondent made its return on October 23, 2018. On March 20, 2019, Applicant amended his application to include the allegation that counsel was ineffective for failing to object to the trial court instructing the jury on the Allen charge on the grounds that the jury was not deadlocked and therefore the *Allen*² charge was inappropriate under the facts and circumstances during trial. An evidentiary hearing into the matter was convened in front of the Honorable Michael G. Nettles. Christopher L Murphy, Esquire represented Applicant. Assistant Attorney General Benjamin Limbaugh represented Respondent. At the hearing, Applicant proceeded only the issue of the *Allen*

² *Allen v. United States*, 164 U.S. 492 (1896)

charge. Following the hearing, Judge Nettles issued a written order denying and dismissing the application with prejudice dated December 26, 2019.

II. CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully due to:

1. Ineffective Assistance of Counsel
 - a. Petitioner presented sufficient facts at the PCR hearing to warrant a new trial.
2. Denial of Due Process/Erroneous Allen Charge
3. Ineffective Assistance PCR Counsel
 - a. PCR Counsel failed to file appeal.

Attached to and incorporated herein are the Charleston County Clerk of Court records regarding the subject convictions, the trial transcript, and record of direct appeal, the record of Applicant's previous PCR action, and the PCR transcript, and the current application. Respondent reserves the right to amend the Return upon receipt of any relevant materials.

III. RESPONSE TO AUSTIN CLAIM

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application when his previous PCR counsel failed to timely file a notice of appeal of the denial of that action. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). Because this allegation raises questions of fact which cannot be conclusively refuted by the record, Respondent requests an evidentiary hearing limited to this ground for relief.

IV. MOTION TO DISMISS ALL OTHER ALLEGATIONS

All of Applicant's other allegations must be summarily dismissed as successive to Applicant's previous applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) provides:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 450,409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised. . . in the previous application." *Id.* at 450, 409 S.E.2d at 394. Here, Applicant alleged again that there was an erroneous *Allen* charge given at this trial, which made counsel ineffective. However, this allegation was discussed and ruled upon at Applicant's previous evidentiary hearing.

Furthermore, an allegation of ineffective assistance of PCR counsel is not a valid reason for allowing a successive application. The South Carolina Supreme Court in *Kelly v. State* specifically held the holding in *Martinez v. Ryan* is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions. 404 S.C. 365, 745 S.E.2d 377 (2013).

Therefore, the ruling in *Martinez* has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. Therefore, any allegations regarding his previous PCR counsel's representation, other than the *Austin* claim, are barred as successive and should be summarily dismissed.

V. DENIAL OF ALL REMAINING ALLEGATIONS

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

VI. CONCLUSION

WHEREFORE, Respondent requests that an evidentiary hearing be held limited to Applicant's claim that he was denied his right to appeal the dismissal of his 2018 Post-Conviction Relief application.

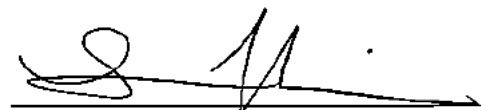
Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LAUREN MIMS
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

January 19, 2022

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
)
 John Alexander Darrieux, #366929)
)
) Applicant,)
)
) vs)
)
 State of South Carolina,)
)
) Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

2021-CP-08-01370

CERTIFICATE OF SERVICE BY MAIL

2022 JAN 21 AM 11:34
 LEAH QUERRY, CLERK
 CLERK OF COURT
 BERKELEY COUNTY, SC
 FILED

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Denise G. Swope, Esquire
The Swope Law Firm, P.A.
1525 Sam Rittenberg Boulevard, Suite 208
Charleston, SC 29407

DATED this 19th day of January, 2022.

Vickie Hall

 Vickie Hall, Legal Assistant
 For Respondent

State of South Carolina	)	Court of Common Pleas
County of Berkeley	)	Ninth Judicial Circuit
)	
JOHN A. DARRIEUX,	)	Case Number:
	)	2021-CP-08-01370
Applicant,)	
)	
vs.)	
)	
STATE OF SOUTH CAROLINA,	)	POSTCONVICTION MOTION
)	
Respondent.	)	TRANSCRIPT OF RECORD
_____)	

June 29, 2023
Moncks Corner, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis

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

MS. DENISE G. SWOPE,
Appointed Counsel,
for the Applicant;

MS. DANIELLE DIXON,
Assistant Attorney General,
for the Respondent.

Jamie Bickett
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESSES

<u>NAME</u>	<u>PAGE</u>
None	

EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>EV</u>
Applicant's 1	Letter from Attorney Murphy	6

1 (The following proceedings were had in open court.)

2 MS. DIXON: May it please the Court.

3 I'm Danielle Dixon, assistant attorney general for the
4 State of South Carolina.

5 This is the case of John Darrieux v. State, Docket
6 Number 2021-CP-08-1370. Mr. Darrieux is serving a 30-year
7 sentence.

8 He was indicted in June of 2015 for first-degree
9 burglary, third-degree burglary, three counts of armed
10 robbery, three counts of kidnapping, and possession of a
11 weapon during a violent crime.

12 In January of 2016 he proceeded to a jury trial before
13 the Honorable Benjamin Culbertson. He was represented by
14 Rodney Davis. Assistant solicitors Mason West and Daniel
15 Poulos prosecuted the case. Mr. Darrieux was acquitted of
16 third-degree burglary but convicted of all other charges and
17 sentenced to 30 years each for kidnapping, armed robbery, and
18 burglary, and then five years for the weapon charge. Those
19 were all concurrent.

20 He filed a notice of appeal. It was perfected by
21 Appellate Defender LaNelle Cantey DuRant. It was affirmed.
22 The remittitur was sent May 25, 2018.

23 He filed his first PCR action June 14, 2018. That's
24 Docket Number 2018-CP-08-1068. He raised various grounds of
25 ineffective assistance of counsel. There was an evidentiary

1 hearing before the Honorable Michael G. Nettles. He was
2 represented by Chris Murphy. An order of dismissal was
3 issued December 26, 2019. He did not file an appeal from
4 that first PCR action.

5 He filed his second and current PCR January 21, 2022,
6 and raised ineffective assistance of counsel, denial of due
7 process, erroneous *Allen* charge, and ineffective assistance
8 of PCR counsel for failing to file an appeal.

9 Your Honor, our understanding today is that the only
10 issue they're going forward on is the late appeal of the
11 first PCR, which the State believes, based on the evidence,
12 he is entitled to.

13 And at this time, I will turn it over to Ms. Swope.

14 THE COURT: Yes, ma'am.

15 MS. SWOPE: Yes, your Honor. Denise Swope here for
16 Mr. John Darrieux.

17 As the attorney general just stated, the case was -- the
18 order was issued in the end of December in 20-- -- okay, 2019.
19 That's correct. And the order itself correctly states that,
20 pursuant to *Austin*, an applicant has a right to appellate
21 counsel's seeking review and the PCR counsel must file a
22 notice of appeal on applicant's behalf.

23 The order was apparently sent to my client from prior
24 counsel on September 10, 2020, so it was a great number of
25 months. According to the letter from the attorney general's

1 office, it was sent to the trial -- to the PCR counsel
2 January 10 of 2020. I understand things get lost in the
3 mail. However, regardless, the order that he sent to my
4 client -- and I'll hand you up a copy of it as well -- says,
5 "Enclosed is the order of dismissal. I understand you want
6 to seek an appeal, and this is how you do that," and gave him
7 addresses and stuff. It was after the time period when he
8 could have.

9 And secondly, it is our contention, your Honor, that
10 counsel should have submitted notice of intent to appeal on
11 behalf of our client and he did not.

12 So today we would be asking that he be allowed to have
13 the appeal pursuant to *Austin*.

14 And I'm handing the letter from Mr. Murphy up to the
15 clerk to put it in the record.

16 THE COURT: And I guess we'll mark this as Applicant's
17 Exhibit --

18 MS. SWOPE: Yes.

19 THE COURT: Do you have a copy for -- and this is the
20 Court copy?

21 MS. SWOPE: It is.

22 THE COURT: Okay. Then we'll mark that as Applicant's
23 Exhibit 1.

24 Okay?

25 MS. DIXON: And the State has no objection to the

1 letter.

2 (Applicant's Exhibit Number 1 admitted into evidence.)

3 THE COURT: Okay. Anything else from the applicant?

4 MS. SWOPE: Nothing, your Honor. My client just wants
5 to have his review that I believe he's legally entitled to.

6 THE COURT: Okay.

7 Any response from the State?

8 MS. DIXON: Nothing further from the State. We do
9 believe under these circumstances he did not voluntarily
10 waive his appeal of the first PCR.

11 THE COURT: Okay. I'm glad to sign an order to that
12 effect, that he's entitled to a belated appeal of the first
13 PCR denial.

14 MS. SWOPE: Thank you, your Honor.

15 (End of proceedings.)

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina

County of Berkeley

I, Jamie L. Bickett, an Official Court Reporter 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 hearing of the captioned case in the Ninth Judicial Circuit, the Court of Common Pleas for Berkeley County, South Carolina.



Official Court Reporter

Dated this 21st day
of April, 2025.



RESNICK & LOUIS, P.C.
ATTORNEYS AT LAW

Christopher L. Murphy
Admitted in SC
cmurphy@rlattorneys.com

REPLY TO THE CHARLESTON OFFICE
146 Fairchild Street, Suite 130
Charleston, SC 29492
(843) 800-1187

September 10, 2020

VIA U.S. MAIL

Mr. John Darrieux, SCDC #366929
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: *John Darrieux v. State of South Carolina*
2018-CP-08-1068

Dear Mr. Darrieux:

Enclosed please find the Order of Dismissal in your case. It is my understanding that you now wish to file an appeal on this matter. You will need to file your appeal with the following:

The Honorable Brenda F. Shealy
Clerk of South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

You will need to send copies of your appeal to: (1) Assistant Attorney General on your case, Benjamin H. Limbaugh, SC Office of the Attorney General, Rembert C. Dennis Building, PO Box 11549, Columbia, SC 29211-1549; (2) The Honorable Leah Guerry Dupree, Berkeley County Clerk of Court, PO Box 219, Moncks Corner, SC 29461-0219; and (3) Robert M. Dudek, Chief Appellant Defender, SC Office of the Appellate Defense, PO Box 11433, Columbia, SC 11433.

You will be assigned an appellate counsel.

This concludes my representation of you in this matter and I will close my file. Best of luck to you.

With kindest regards, I am

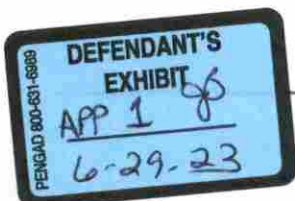
Sincerely,

/s/ Christopher L. Murphy
Christopher L. Murphy, Esq.

CLM/am

ALBUQUERQUE | BAKERSFIELD | CHARLESTON | DALLAS | DENVER | FT LAUDERDALE | HOUSTON | JACKSON | LAS VEGAS | LOS ANGELES | MIAMI | ORANGE COUNTY | ORLANDO | PHOENIX | RIVERSIDE | SACRAMENTO | SALT LAKE CITY | SAN DIEGO | TAMPA | LONDON, UK

www.rlattorneys.com



STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
)
 John Alexander Darrieux, #366929)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-08-1068

ORDER OF DISMISSAL

[Signature]
 20 JAN 14 AM 11:55
 LEAN CANTHEY DURANT
 CLERK OF COURT
 BERKELEY COUNTY, SC
FILED

John Alexander Darrieux (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. In June 2015, the Berkeley County Grand Jury indicted Applicant for first-degree burglary (2015-GS-08-1026), third-degree burglary (2015-GS-08-1024), three counts of armed robbery (2015-GS-08-1027, -1028, -1029), three counts of kidnapping (2015-GS-08-1030, -1031, -1032) and possession of a weapon during the commission of a violent crime (2015-GS-08-1034). Rodney Davis, Esquire represented Applicant. Assistant Solicitor E. Mason West, Esquire prosecuted the case. On January 26-29, 2016, Applicant proceeded to jury trial before the Honorable Benjamin H. Culbertson. The jury found Applicant guilty as indicted for all charges except third degree burglary. Judge Dennis sentenced Applicant to imprisonment for concurrent terms of thirty years for first degree burglary, for each count of armed robbery and kidnapping and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Lanelle Cantey Durant, Esquire, of the Office of Appellate Defense perfected the appeal. Applicant raised the following issues on appeal:

1. Did the trial court err in denying Applicant Darrieux' s motion for a new trial based on after discovered evidence that the CD with the jail call Applicant made to his girlfriend

that was presented at trial was not the original when the original was available which was a violation of Rule 1002, SCRE and Rule 1004, SCRE and which was prejudicial to Applicant because the state argued to the jury that this jail call was "critical evidence"?

2. Did the trial court err in admitting the jail call that Applicant Dairieux made to his girlfriend when the state did not authenticate that it was Darrieux because no witness was called to identify the voice as Darrieux or that the witness talked to him, and the records custodian admitted that another inmate could use the account and name of Darrieux if Darrieux agreed and provided his name?

The South Carolina Court of Appeals affirmed Applicant's conviction on May 9, 2018. State v. Darrieux, Op. No. 2018-UP-197 (S.C. Ct. App. filed May 9, 2018). The remittitur was returned to the circuit court on May 25, 2018.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
 - a. "Counsel failed to properly and fully investigate the case"
 - b. "Counsel failed to investigate the investigator's informant "Tristen Brower" to make sure he was registered with SLED for a violent crime investigation for kidnapping, armed robbery, possession of a firearm during the commission of a violent crime, burglary first degree, burglary second degree. The informant was not registered with sled, pursuant to policy 13.30, use of informants for investigations and furthermore this investigation was unlawful and illegal"
 - c. "Counsel failed to investigate the informant's video recorded statement of the investigator's and to make sure their was an application processed, for the interception of wire, electric or oral communications, pursuant to S.C. Code 17-30-70, for a violent crime investigation. Futhermore, the investigators violated 17-30-70, by using a video recorded statement, by the co-defendant Tristen Brower, during the trial and failing to process an application that must be initiated by the chief of SLED. After reviewing the application, the attorney general may authorize the submission of the application to a judge of competent jurisdiction,

- and the judge may grant in conformity with this chapter.”
- d. “Counsel failed to investigate and make sure an application for an order authorizing or approving the interception of wire, electric, or oral communications must be made in writing upon oath or affirmation to a judge of competent jurisdiction, pursuant to S.C. Code 17-30-80.”
 - e. “Failure of counsel to request and require as part of discovery that copies of the application process of all intercepted communications be provided as they are gathered so that a proper defense for physical evidence can be built as is provided for by S.C. Code 17-30-105”
 - f. “Failure of counsel pursuant to S.C. Code 17-30-130 to ensure that no impropriety occurred in the reporting of the intercepted communications to the administrative office of the United States Court as outlined in 18 U.S.C. subsection 2519.”
 - g. “Counsel failed to suppress the video recorded statement, pursuant to S.C. Code 17-30-110, as the investigators obtained the evidence in violation of the interception of wire, electronic or oral communications act”
 - h. “Failure of counsel to advise me and inform the court that none of these subsections in chapter 30, title 17 were adhered to and that these actions and/or lack thereof were illegal, pursuant to S.C. Code 17-30-20 (prohibited acts).”
 - i. “Counsel failed to properly and fully prepare petitioner for testimony in the case”
 - j. “Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony through direct and cross-examination of relevant evidence related to the matter”
 - k. “Counsel failed to request a preliminary hearing so petitioner could more adequately be informed about case”
 - l. “Counsel failed to spend adequate time with petitioner reviewing discovery with him”
 - m. “Counsel failed to challenge the testimony of the state’s witnesses and failed to adequately object and preserve objections to portions of the witnesses testimony and failed to effectively cross-examine the witnesses on their testimony”
 - n. “Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient”
 - o. “Counsel failed to move for a pretrial motion for a directed verdict”
 - p. “Counsel failed to move for a mistrial when the Solicitor violated a cardinal trial rule and expressed his own opinion of the Petitioner’s guilt by making a comment about the petitioner. (Tr. p. 461 Line 10-12) “If the kids are inside I’m going to break their fingers” That’s sadistic. That’s terror. That’s the way this defendant was

- thinking before he changed these people's lives forever. For this comment by the solicitor, tainted the jury about petitioner's guilt"
- q. "Counsel failed to provide a valid defense for trial"
 - r. "Counsel failed to object about the state's circumstantial evidence being admitted at trial"

In relief sought, Applicant is seeking "reverse and remand". Applicant amended his application on March 20, 2019 to include the allegation that counsel was ineffective for failing to object to the trial court instructing the jury on the Allen charge on the grounds that the jury was not deadlocked and therefore the Allen charge was not appropriate under the facts and circumstances in question. Applicant proceeded solely on the Allen charge issue at the evidentiary hearing.

STATEMENT OF FACTS ADDUCED AT TRIAL

Initial Robbery of the Home of Charles Roberts

On October 21, 2014, Charles Roberts went to sleep around 2 A.M. at the home he shared with his friend, Stephen Jones, and his girlfriend, Rose Simpson. R. pp. 108-09. At around 4:00 A.M., Roberts awoke to a man pointing a gun at him. R. p. 109. Roberts testified that while there were four people that broke into his home that evening, he only physically saw two of them. R. p. 118. Roberts stated the intruders kicked in the door to the home and knocked the door frame loose. R. pp. 109-10. Roberts was forced to stay inside his bedroom while the intruders were in the home. R. p. 119. While in his bedroom, Roberts observed the intruders carry out every item in his bedroom that they deemed to be of value, including tools, electronics, his wallet, cash, medicine, and a number of chess sets which were part of a collection Roberts acquired over the years. R. pp. 120-21. Roberts noticed one of the intruders was not wearing a mask, and that another intruder was a female with long black hair and a distinct accent. R. p. 118. Roberts noted that while he was being held in his bedroom, he did not know where Simpson and Davis were; however, they were later escorted into Roberts's bathroom. R. p. 125. Roberts testified the intruders were in the home for an hour or more. R. p. 125. When the four intruders finally left his home, Roberts ran to a

neighbor's house to call 911 because he, Davis, and Simpson all had their cell phones stolen. R. p. 126. Roberts also noted he owned another home on Cindy Drive that was unoccupied at the time. R. pp. 126-27.

Rose Simpson testified she was asleep on the couch in the home's living room when she heard "a big bam." R. p. 54. Simpson stated three people came through the door and asked her, "where's the old man?" R. p. 55. Simpson explained that she believed they were referring to Roberts, because he was a lot older than anyone else in the house. R. p. 55. When the intruders entered the home, Simpson noticed all three were armed with handguns. R. pp. 55-56. Simpson also noticed the robbers were wearing what appeared to be Halloween masks. R. p. 55. Simpson remained on the couch for around an hour. R. p. 57. Jones was removed from his bedroom by the intruders and placed on a loveseat in the living room. R. p. 57. One of the intruders told Simpson that if she moved, he would kill her. R. p. 57. Simpson testified she and Jones were later forced into a bedroom and ordered to stand against a vanity. R. p. 58. While in the bedroom, one of the intruders stood by the bedroom closet and pointed a gun at Simpson and Jones. R. p. 58. In the courtroom, Simpson identified Applicant as the individual who pointed the gun at them. R. p. 58. Simpson stated Applicant was not wearing a mask, as he had taken his off because it was too hot inside the home. R. p. 58. Simpson testified she was one-hundred percent sure Applicant was the unmasked intruder she observed in the home. R. p. 59. Simpson testified that while Applicant had his mask off, he told her "don't look at me, put your head down." R. p. 59. Simpson recalled the only thing that was personally taken from her during the robbery was her purse. R. p. 59. Simpson testified the female intruder taunted her, stating, "I got your purse, bitch." R. pp. 60-61. Simpson estimated the intruders were in the home for an hour or more. R. p. 63. Simpson described Applicant as "very trigger-happy, went around pointing to make sure that Stephen and I knew he

was the boss over the gun." R. p. 64. Simpson stated Applicant took "just about anything he could get his hands on" from the house. R. p. 64. After loading their SUV with the goods stolen from the home, the intruders left the house. R. p. 65.

Stephen Jones recalled being awoken by a loud bang and a bunch of yelling during the early morning hours of October 21, 2014. R. p. 85. While hurriedly getting dressed, Jones turned and found two people behind him and a gun pointed at his head. R. p. 86. Jones stated the intruders were wearing masks and they ordered him to go into the living room. R. p. 86. Once in the living room, Jones was forced to sit down on a loveseat while the intruders ransacked the house. R. p. 87. Jones testified one of the intruders was not wearing a mask. R. p. 89. Jones stated he got a "pretty good" look at that intruders face because there were several times during the robbery where he got in Jones's face. R. p. 89. Jones then identified Applicant in the courtroom as the individual without a mask that robbed him on October 21, 2014. R. p. 89. Jones testified Applicant and the other intruders stole a TV from his bedroom, his wallet, and a number of other personal belongings including several car radios that were in his bedroom. R. p. 97. Jones lamented that the thieves were so thorough that they even stole his pillowcases. R. p. 97. Jones recalled that he was held in the living room for over an hour. R. p. 98. Jones testified that as the robbers left, they took him into the bathroom in Roberts's bedroom and told him that if they were to call the cops, they would come back and kill them. R. p. 98.

Subsequent Burglary of Property Owned by Charles Roberts and Later Arrest of Culprits

In October of 2014, Courtney Pringle lived with her sister on Cindy Drive. R. pp. 196-97. On October 21, 2014, Pringle observed Natalia Chisolm, a woman she used to work with, drive up to a nearby residence in a Dodge Durango. R. p. 197. Pringle testified she saw "Natalia and a

couple of men breaking in a home." R. p. 197. Pringle observed the intruders carry a mattress and other items out of the home. R. p. 197. Pringle subsequently called the police. R. p. 199.

Sergeant Cassandra Drew of the Berkeley County Sheriff's Office received a call from dispatch telling her to be on the lookout for a Dodge Durango with mattresses on top of the vehicle. R. p. 206. Sergeant Drew subsequently spotted two people loading a large TV into a Durango. R. p. 207. Sergeant Drew testified there were three males and one female in or around the Durango. R. p. 207. Sergeant Drew spoke with the occupants, who advised her that a friend told them they could have the TV. R. p. 207. Corporal Cody Graff of the Berkeley County Sheriff's Office responded to the scene of the stop. R. pp. 209-10. Corporal Graff stated Applicant was one of the four suspects that were stopped. R. p. 213. When he approached the vehicle, Corporal Graff noticed an open can of Bud Light Raz-Ber-Rita on the console. R. p. 211. Corporal Graff then searched the vehicle and found "a lot of things" including televisions, car radios, and tool boxes. R. p. 213. Corporal Graff recovered a firearm in the vehicle that was concealed inside of a black glove. R. p. 216. Corporal Graff subsequently placed all four individuals under arrest. R. pp. 217-18.

Detective Shane Cook of the Berkeley County Sheriff's Office executed a search warrant at the home of Natalia Chisolm on October 21, 2014. R. p. 239. Inside the residence, officers recovered a tremendous amount of property including Roberts's driver's license, prescription bottles bearing the name "Charles Roberts," Roberts's social security card, miscellaneous tools, bank cards, jewelry, cell phones, numerous chess sets, and keys. R. pp. 240-41. Detectives also recovered masks from the master bedroom closet. R. p. 243. Detectives also recovered a BB gun, a Ruger SR-9C handgun, and a Lorcin 25 caliber pistol. R. pp. 243-44.

Tristen Brower's Testimony

Tristen Brower is the adoptive nephew of Natalia Chisolm. R. p. 152. On the weekend of the robbery, Brower was staying at Natalia's house. R. p. 152. Brower testified that Applicant and Joseph Arsenault were also staying with Chisholm that weekend. R. p. 153. Brower noted that Applicant went by the nickname "Chopper." R. p. 154. On October 21, 2014, Brower got into a Dodge Durango with Chisholm, Applicant, and Arsenault. R. pp. 154-55. Brower testified he did not know where they were going until "the last moment." R. p. 156. Brower stated it was his understanding that Arsenault knew the residents of the home they were traveling to. R. p. 156. Brower testified he did not know a robbery was about to happen until they reached the residence and Chisholm handed him a gun. R. p. 157.

Brower recalled that Applicant knocked down the door in order to allow them to enter the house. R. p. 159. Brower stated that everyone except for Applicant was wearing a mask throughout the robbery. R. p. 158. Brower testified the group members were all armed with semi-automatic handguns. R. p. 164. Once inside the house, Brower observed Applicant, Arsenault, and Chisolm carry electronics, tools, and jewelry out of the house. R. p. 162. Brower testified Natalia was in charge of the group. R. p. 163. Before entering the home, Brower recalled Applicant stating, "if there was kids in the house that fingers would be broken." R. p. 164. Brower described Applicant's demeanor inside Roberts's home as "energetic." R. p. 164.

Brower testified the group was in Roberts's house for "a very long time." R. p. 163. After leaving Roberts's home, Brower, Applicant, Arsenault, and Chisholm went back to Chisolm's apartment. R. p. 168. The stolen goods were subsequently unloaded into Chisolm's apartment. R. p. 168. Later in the day, Brower rode with Applicant, Chisolm and Arsenault to "a house that Natalia said she knew." R. p. 169. Brower observed Applicant walk to the back of the home. R. p. 170. Applicant and Chisolm later carried two mattresses out of the home and place them on top of

the Durango. R. p. 170. After leaving the scene, the group was arrested and placed in separate police cars while picking up a TV by the side of the road. Brower testified there was no doubt in his mind that Applicant was the individual who committed the charged crimes.

Applicant's Jail Calls

At trial, the State called Sergeant Katie Shuler, an employee of Berkley County's Hill-Finklea detention center. R. p. 266. One of Sergeant Shuler's responsibilities at the detention center is overseeing the jail phone call system. R. p. 267. Sergeant Shuler explained:

Once an inmate is booked in they have their information in the computer and then they will have an actual PIN number that is connected to their information to their name. So every time they make a phone call they have to punch in that PIN number. Then they have to say their name and if it doesn't recognize it then they can't make a phone call. It helps with people stealing their PIN numbers, and you know, other people using their phone account when they're not allowed to.

R. p. 267. The State subsequently introduced a phone call made by Applicant into evidence as State's Exhibit 123. R. p. 269. During the phone call, Applicant stated "I fucked up big time" and "I fucked up and I'm sorry." R. p. * (State's Exhibit 123). Applicant also stated "Fortunately no one got hurt real bad with this situation here." R. p. * (State's Exhibit 123).

Immediately after trial, the Solicitor discovered that the CD played at trial was not the initial copy given to him by Shuler, but was a duplicate. R. p. 396. The Solicitor informed Defense Counsel, who promptly made a motion for a new trial based on after-discovered evidence. R. p. 396, R. p. 445-46 (Motion for New Trial (After Discovered Evidence)). The trial judge subsequently held a hearing on Applicant's motion on February 26, 2016. R. pp. 393-419. At the hearing, the Solicitor made it clear that the two CDs were identical and that the only distinction was the labeling on the top of the CD. R. p. 396. For purposes of the hearing, the "original" CD was moved into the record as State's Exhibit 123A. R. p. 403.

At the hearing on Applicant's motion for a new trial, Sergeant Shuler testified regarding how the phone recordings are produced. R. p. 401. Sergeant Shuler stated that once she receives a subpoena, she downloads the files and burns them to a CD. R. p. 401. Sergeant Shuler was then asked whether there was any way to alter the contents of the CD. Sergeant Shuler testified that alterations were not possible, as the system she uses to burn the CD does not allow alterations or deletions. R. pp. 401-02.

Kevin McGowan, an investigator with the Ninth Circuit Solicitor's Office testified during the hearing. R. p. 413. Investigator McGowan testified that as part of his duties, he helps the attorneys in the office with various aspects of trial preparation, including making copies of CDs. R. p. 414. Investigator McGowan testified that in Applicant's case, he made a copy of State's Exhibit 123A. R. p. 414. Investigator McGowan did not make any changes to the contents of the CD. R. p. 414. Investigator McGowan duplicated the writing on the top of the CD and added a triangle to indicate it was a copy. R. pp. 414-15.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a " 'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, 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.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins, 539 U. S., at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687; Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even

under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

Allegation: Failure to object to Allen Charge

Applicant alleges trial counsel was ineffective for failing to object to the trial court given the jury the Allen charge. The record is dispositive as to this issue. The trial transcript directly refutes this allegation, showing that counsel did object to the Allen charge being given to the

jury. Tr. P. 513, ln 22-25. Counsel explained the Allen charge process to Applicant and decided he needed to protect the record by making the objection. Counsel did not make a specific argument as to his objection other than wanting "each individual juror to vote their own conscience." Tr. P. 513, ln. 24. Counsel testified that he knew that the trial judge would not sustain his objection, but that he wanted to make it for the record. Counsel acknowledged that he did not have a significant arguable basis for the objection, as the Allen charge given was not itself flawed. This Court finds that Applicant has failed to show any ineffectiveness on the part of trial counsel. This issue is one not appropriate for post-conviction relief, but rather, for direct appeal. The Allen charge itself was pristine in quality, stating that the majority should consider the views of the minority and vice versa. The record does not indicate that any juror was giving up a firmly held belief to reach a unanimous decision and Rule 606 (b) precludes jurors from testifying about any jury deliberations. Therefore, this Court finds that Applicant has failed to meet his burden in regards to this allegation and it is dismissed with prejudice.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

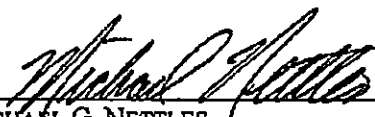
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review,

PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 26 day of Dec, 2019.



MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit



ALAN WILSON
ATTORNEY GENERAL

January 10, 2020

The Honorable Leah Guerry Dupree
Clerk of Court, Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

Re: John Darrieux, #366929 v. State of South Carolina
2018-CP-08-1068

Dear Ms. Dupree:

Enclosed please find the original **Order of Dismissal** signed by the Honorable Michael G. Nettles, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Benjamin H. Limbaugh
Assistant Attorney General

BHL/fj

cc: Christopher L. Murphy, Esquire (without enclosure)

commission of a violent crime (2015-GS-08-01034). Rodney Davis, Esquire represented Applicant. Assistant Solicitor's E. Mason West and Daniel Poulos of the Ninth Circuit Solicitor's Office prosecuted the case. On January 26, 2016, Applicant appeared in the Berkeley County Court of General Sessions in front of the Honorable Benjamin H. Culbertson, circuit court judge and proceeded to trial. Applicant was found guilty for all three counts of kidnapping, all three counts of armed robbery, possession of a weapon during the commission of a violent crime, and first degree burglary. Applicant was acquitted on the charge of third-degree burglary. Judge Culbertson sentenced Applicant to imprisonment for terms of thirty years for each charge of kidnaping, armed robbery and first-degree burglary, and five years for possession of a weapon during the commission of a violent crime, to be served concurrently.

Applicant filed a timely notice of appeal and was represented by Lanelle Cantey Durant, Esquire of the South Carolina Office of Indigent Defense-Office of Appellate Defense. Applicant raised the following issues on appeal:

1. Did the trial court err in denying Applicant Darrieux's motion for a new trial based on after-discovered evidence that the CD with the jail call Applicant made to his girlfriend that was presented at trial was not the original when the original was available which was a violation of Rule 1002, SCRE and Rule 1004, SCRE and which was prejudicial to Applicant because the state argued to the jury that this jail call was "critical evidence"?
2. Did the trial court err in admitting the jail call that Applicant Darrieux made to his girlfriend when the state did not authenticate that it was Darrieux because no witness was called to identify the voice as Darrieux or that the witness talked to

him, and the records custodian admitted that another inmate could use the account and name of Darrieux if Darrieux agreed and provided his name?

The South Carolina Court of Appeals affirmed Applicant's conviction on May 9, 2018. State v. Darrieux Op. No. 2018-UP-197 (S.C. Ct. App. filed May 9, 2018). The remittitur was returned to the circuit court on May 25, 2018.

APPLICANT'S 1ST APPLICATION FOR POST CONVICTION RELIEF (2018-CP-08-01068)

Applicant commenced his first Post-Conviction Relief action in this matter on June 14, 2018. Applicant made the following allegations: for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
 - a. "Counsel failed to properly and fully investigate the case"
 - b. "Counsel failed to investigate the investigator's informant "Tristen Brower" to make sure he was registered with SLED for a violent crime investigation for kidnapping, armed robbery, possession of a firearm during the commission of a violent crime, burglary first degree, burglary second degree. The informant was not registered with SLED, pursuant to policy 13.30, use of informants for investigations and furthermore this investigation was unlawful and illegal"
 - c. "Counsel failed to investigate the informant's video recorded statement of the investigator's and to make sure there was an application processed, for the interception of wire, electric or oral communications, pursuant to S.C. Code 17-30-70, for a violent crime investigation. Furthermore, the investigators violated 17-30-70, by using a video recorded statement, by the co-defendant Tristen Brower, during the trial and failing to process an application that must be initiated by the chief of SLED. After reviewing the application, the attorney general may authorize the submission of the application to a judge of competent jurisdiction, and the judge may grant in conformity with this chapter."
 - d. "Counsel failed to investigate and make sure an application for an order authorizing or approving the interception of wire, electric, or oral communications must be made in writing upon oath or affirmation to a judge of competent jurisdiction, pursuant to S.C. Code 17-30-80."
 - e. "Failure of counsel to request and require as part of discovery that copies of the application process of all intercepted communications be provided as they are gathered so that a proper defense for physical evidence can be built as is provided for by S.C. Code 17-30-105"
 - f. "Failure of counsel pursuant to S.C. Code 17-30-130 to ensure that no impropriety occurred in the reporting of the intercepted communications to the administrative office of the United States Court as outlined in 18 U.S.C. subsection 2519."
 - g. "Counsel failed to suppress the video recorded statement, pursuant to S.C. Code 17-30-110, as the investigators obtained the evidence in violation of the

interception of wire, electronic or oral communications act"

- h. "Failure of counsel to advise me and inform the court that none of these subsections in chapter 30, title 17 were adhered to and that these actions and/or lack thereof were illegal, pursuant to S.C. Code 17-30-20 (prohibited acts)."
- i. "Counsel failed to properly and fully prepare petitioner for testimony in the case"
- J. "Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony through direct and cross-examination of relevant evidence related to the matter'
- k. "Counsel failed to request a preliminary hearing so petitioner could more adequately be informed about case"
- l. "Counsel failed to spend adequate time with petitioner reviewing discovery with him"
- m. "Counsel failed to challenge the testimony of the state's witnesses and failed to adequately object and preserve objections to portions of the witnesses testimony and failed to effectively cross-examine the witnesses on their testimony"
- n. "Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient"
- o. "Counsel failed to move for a pretrial motion for a directed verdict"
- p. "Counsel failed to move for a mistrial when the Solicitor violated a cardinal trial rule and expressed his own opinion of the Petitioner's guilt by making a comment about the petitioner. (Tr. p. 461 Line 10-12) "If the kids are inside I'm going to break their fingers" That's sadistic. That's terror. That's the way this defendant was thinking before he changed these people's lives forever. For this comment by the solicitor, tainted the jury about petitioner's guilt"
- q. "Counsel failed to provide a valid defense for trial"
- r. "Counsel failed to object about the state's circumstantial evidence being admitted at trial"

Respondent made its return on October 23, 2018. On March 20, 2019, Applicant amended his application to include the allegation that counsel was ineffective for failing to object to the trial court instructing the jury on the *Allen* charge on the grounds that the jury was not deadlocked and therefore the *Allen*¹ charge was inappropriate under the facts and circumstances during trial. An evidentiary hearing into the matter was convened in front of the Honorable Michael G. Nettles. Christopher L Murphy, Esquire represented Applicant. Assistant Attorney General Benjamin Limbaugh represented Respondent. At the hearing, Applicant proceeded only the issue of the *Allen* charge. Following the hearing, Judge Nettles issued a written order denying and dismissing the application with prejudice dated December 26, 2019.

CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully due to:

1. Ineffective Assistance of Counsel
 - a. Petitioner presented sufficient facts at the PCR hearing to warrant a new trial.
2. Denial of Due Process/Erroneous Allen Charge
3. Ineffective Assistance PCR Counsel
 - a. PCR Counsel failed to file appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Berkeley County Clerk of Court records regarding the subject convictions, the trial transcript, and record of direct appeal, the record of Applicant's previous PCR action, and the PCR transcript, and the current application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly. Applicant alleged that he was denied the right to appeal the dismissal of his previous post-conviction relief application when his previous PCR counsel failed to timely file a notice of appeal of the denial of that action. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). This Court affirmatively finds that the Applicant requested and was denied an opportunity to seek appellate review. *Odom*

v. *State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999).

CONCLUSION

Based on the foregoing, this Court concludes that Applicant is entitled to petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his PCR application.

IT IS THEREFORE ORDERED:

1. This application for PCR as to the right to petition the South Carolina Supreme Court for belated discretionary review of the dismissal of Applicant's previous application pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991); and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 8th day of Jan., 2025

Kristi F. Curtis
KRISTI F. CURTIS
Presiding Judge
Ninth Judicial Circuit

Sumter, South Carolina

PSS/0235376/2014-10-02467

WITNESSES

Shawn L. Smith

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401266

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Louise Duan
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01026

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

CASE NO.
MARY P. BROWN, CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

LLH

✓
AMM

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

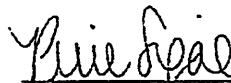
INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

BURGLARY FIRST DEGREE

That in Berkeley County, South Carolina on or about October 21, 2014, the Defendant John Alexander Darrieux, did enter the dwelling of Charles Willard Roberts without consent and with the intent to commit a crime therein. That, in addition, said entry or remaining occurred in the nighttime; and/or the defendant displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the defendant was armed with a deadly weapon or explosive; in violation of Section 16-11-311 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.



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0235376/2014-10-02467

WITNESSES

Sharon L. Pugh

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401267

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Sharon Dyer
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01027

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

CASE NO. 2015-08-01027
MARY B. BROWN, CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

2/10

AMA

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about October 21, 2014, in Berkeley County, South Carolina, the Defendant, John Alexander Darrieux, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Charles Willard Roberts with the intent to permanently deprive the victim of possession thereof, in violation of §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.



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0235376/2014-10-02467

WITNESSES

Thom L. Shuler

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401268

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Susan Dwyer
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01028

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

CASE NO. 2015-08-01028
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

[Handwritten initials]

[Handwritten signature]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

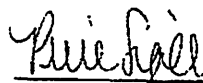
INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about October 21, 2014, in Berkeley County, South Carolina, the Defendant, John Alexander Darrieux, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Stephen B Jones with the intent to permanently deprive the victim of possession thereof, in violation of §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.



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0235376/2014-10-02467

WITNESSES

Sharon L. Miller

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401269

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Sarah Dwyer
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01029

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

CASE NO. BARRY P. BROWN CLERK OF COURT BERKELEY COUNTY, SC

JUN 23 2015

FILED

JLH

✓
AMH

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about October 21, 2014, in Berkeley County, South Carolina, the Defendant, John Alexander Darricux, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Rose Simpson with the intent to permanently deprive the victim of possession thereof, in violation of §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.



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0235376/2014-10-02467

WITNESSES

James L. Shuler

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401270

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Dawn D. Dyer
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01030

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

CASE NO.
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

Ed to

✓
AMA

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about October 21, 2014, the Defendant, John Alexander Darrieux, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Charles Willard Roberts, without authority of law; all in violation of Section 16-3-910 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.



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0235376/2014-10-02467

WITNESSES

Shain L. Jumper

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401271

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Sarah D. ...
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01031

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

CASE NO.
MARTY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

22H

Amma

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

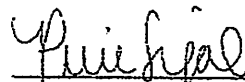
INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about October 21, 2014, the Defendant, John Alexander Darrieux, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Stephen B Jones, without authority of law; all in violation of Section 16-3-910 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.



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0235376/2014-10-02467

WITNESSES

David L. Smith

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401272

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Sarah Dyer
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01032

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

CASE NO. 2015-08-01032
MARY P. BRIDEN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

JLH

✓
AMH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about October 21, 2014, the Defendant, John Alexander Darrieux, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Rose Simpson, without authority of law; all in violation of Section 16-3-910 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.



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0235376/2014-10-02467

WITNESSES
Jason A. Jule

Berkley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401277

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Sarandis *6-23-15*
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2015-GS-08-01034

The State of South Carolina
County of Berkeley

COURT OF GENERAL SESSIONS
JUNE TERM 2015

THE STATE
VS.
JOHN ALEXANDER DARRIEUX

Indictment for
POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

CASE NO.
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

FILED
JUN 23 2015

JAN

CLS

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

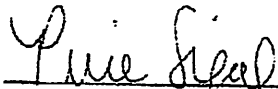
INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Berkeley County, South Carolina, on or about October 21, 2014, the Defendant, John Alexander Darrieux, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Burglary 1st Degree, Armed Robbery, and/or Kidnapping; in violation of Section 16-23-490, 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.



PRICE S. SIGAL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY
STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:
Race: White Non-Latino/Caucasian Sex: M
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 2015-GS-08-01026
A/W: 2014A0810401266
Date of Offense: 10/21/2014
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Burglary First Degree

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

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

ATTEST: E. Mason West 100788 Defendant [REDACTED] 12396
E. Mason West, Assistant Solicitor SC Bar # _____ Attorney for Defendant SC Bar # _____

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 X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1/29/2016
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____
*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>18.90</u>
TOTAL		\$ <u>648.90</u>

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 Defense Fund
Other: _____
 Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.

FILED
JAN 29 2016
NO
CASE NO. _____
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

Clerk of Court/Deputy Clerk: K. Mills
Court Reporter: Grace Hurley

Presiding Judge: Maryann T. Culbertson
Judge Code: 2148
Sentence Date: Jan. 29, 2016

**CERTIFIED TRUE COPIES OF RECORDS
IN THIS COUNTY**
Mary P Brown
DATE 3/21/16 CLERK OF COURT, C.P. & G.S.
BERKELEY COUNTY Att

Kum

COUNTY OF BERKELEY
STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:
Race: White Non-Latino/Caucasian Sex: M
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 2015-GS-08-01027
A/W: 2014A0810401267
Date of Offense: 10/21/2014
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Armed Robbery

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

E. Mason West 100788 Defendant [REDACTED] 12396
E. Mason West, Assistant Solicitor SC Bar # Attorney for Defendant SC Bar #

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 X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1/29/2016

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____ Obtain GED

Payment Terms: _____

Set by SCDPPPS _____

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 _____

Other: _____

Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: Maryann T. Culbertson

Judge Code: 2148

Sentence Date: Jan. 29, 2016

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Court Reporter Grace Hurley
Clerk of Court Deputy Clerk R. Mills
Court Reporter R. Mills
Deputy Clerk R. Mills

CERTIFIED TRUE COPY OF RECORD
IN THIS COUNTY

Mary P Brown
DATE 3/21/16
CLERK OF COURT, C.P. & G.S.
BERKELEY COUNTY

FILED
JAN 29 2016
NO. 127
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

KWJ

COUNTY OF BERKELEY

STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:

Race: White Non-Latino/Caucasian Sex: M

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Armed Robbery

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, _____ (def.'s initials)

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

ATTEST:

E. Mason West

100788

12396

E. Mason West, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

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 X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1/29/2016

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ \$ _____ Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

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

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Court Reporter
Clark of Court Deputy Clerk
Court Reporter
Deputy Clerk

Grace Hurley
R. Mills

CERTIFIED TRUE COPIES OF RECORD
IN THIS COUNTY

Presiding Judge: *Marianne Williams*
Judge Code: 2148
Sentence Date: Jan. 29, 2016

Mary P Brown
DATE 3/21/16 CLERK OF COURT, C.P. & G.S.
BERKELEY COUNTY

FILED

JAN 29 2016

CASE NO. 16-0100
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

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

KWJ

COUNTY OF BERKELEY
STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:
Race: White Non-Latino/Caucasian Sex: M
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 2015-GS-08-01029
A/W: 2014A0810401269
Date of Offense: 10/21/2014
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Armed Robbery

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

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

ATTEST:

E. Mason West 100788 [Signature] 12396
E. Mason West, Assistant Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

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 X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1/29/2016
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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: _____

FILED

JAN 29 2016

CASE NO. [initials]
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

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

Presiding Judge: [Signature]
Judge Code: 2148
Sentence Date: Jan. 29, 2016

Court Reporter: Grace Hurley
Clerk of Court/Deputy Clerk: K. Mills

TRUE COPIES OF RECORD
IN THIS COUNTY

Mary P Brown
DATE 3/21/16 CLERK OF COURT, C.P. & G.S.
BERKELEY COUNTY

KWM

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY

STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:

Race: White Non-Latino/Caucasian Sex: M

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL# [redacted] SID# [redacted]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Kidnapping

In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (def.'s initials)

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

ATTEST:

E. Mason West, Assistant Solicitor SC Bar # 100788

Attorney for Defendant SC Bar # 12396

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 X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1/29/2016

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

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

Payment Terms: _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

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 _____

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: NO Sex offense or attempted Sex offense. No Sex offense registry.

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

Presiding Judge: [Signature]

Sentence Date: Jan. 29, 2016

FILED

JAN 29 2016

MARY P. BROWN CLERK OF COURT BERKELEY COUNTY, SC

Court Reporter: Grace Husley
Clerk of Court/Deputy Clerk: K. Mills
Court Reporter/Deputy Clerk: [Signature]

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY

Mary P Brown
DATE 3/21/16 CLERK OF COURT, C.P. & G.S. BERKELEY COUNTY

[Handwritten initials]

COUNTY OF BERKELEY
STATE VS.

JOHN ALEXANDER DARRIEUX

INDICTMENT/CASE#: 2015-GS-08-01031
A/W: 2014A0810401271
Date of Offense: 10/21/2014
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

AKA:
Race: White Non-Latino/Caucasian Sex: M
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

CONVICTED OF or PLEADS

In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

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

ATTEST: E. Mason West 100788 Defendant [Signature] 12396 Attorney for Defendant
E. Mason West, Assistant Solicitor SC Bar # [REDACTED] Defendant [REDACTED] Attorney for Defendant SC Bar # [REDACTED]

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 X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1/29/2016
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED Attend Voc. Rehab. Or Job Corp. _____
 Set by SCDPPPS _____ May serve W/E beginning JAN 29 2016

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Substance Abuse Counseling Random Drug/Alcohol Testing CASE NO X
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: NO Sex offense or attempted sex offense. no Sex offense registry.

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

Clerk of Court/Deputy Clerk: Grace Hurley Presiding Judge: [Signature]
Court Reporter: Grace Hurley Judge Code: 20148 Sentence Date: Jan. 29, 2016

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY
Mary P Brown
DATE 3/21/16 CLERK OF COURT, C.P. & G.S. BERKELEY COUNTY ANNT

KWJ

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

695

COUNTY OF BERKELEY
STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:
Race: White Non-Latino/Caucasian Sex: M
DOB: 02/11/1977 SS#: 999-06-5882
Address: 201 Tallspice Dr
City, State, Zip: Summerville, SC 29483-7933
DL#: 007300770 SID#: SC010025421

INDICTMENT/CASE#: 2015-GS-08-01032
A/W: 2014A0810401272
Date of Offense: 10/21/2014
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

CONVICTED OF or PLEADS

In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

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

ATTEST:

E. Mason West 100788 12396
E. Mason West, Assistant Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

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 X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1/29/2016
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

FILED
JAN 29 2016
MARY P. BROWN, CLERK OF COURT
BERKELEY COUNTY, SC
Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal cons. pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: NO sex offense or attempted sex offense. No sex offense registry.

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

Presiding Judge: Annunzio Calabrese
Judge Code: 2148
Sentence Date: June 29, 2016

Recipient: _____
*Fine: _____ \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ \$ 3.90
TOTAL \$ 133.90

Clerk of Court/Deputy Clerk: K. mills
Court Reporter: Grace Hurley

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY

Mary P Brown
DATE 3/21/16 CLERK OF COURT, C.P. & G.S. BERKELEY COUNTY

KWJ

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY
STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:
Race: White Non-Latino/Caucasian Sex: M
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-08-01034
A/W: 2014A0810401277
Date of Offense: 10/21/2014
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

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

ATTEST: [Signature] 100788
E. Mason West, Assistant Solicitor SC Bar #

Defendant [Signature] 12396
Attorney for Defendant SC Bar #

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 X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1/29/2016
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____ Obtain GEID

Payment Terms: _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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

FILED

JAN 29 2016

CASE NO. [REDACTED]
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

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

Clerk of Court/Deputy Clerk: K. Mills
Court Reporter: Grace Hurley

Presiding Judge: [Signature]
Judge Code: 2148
Sentence Date: Jan. 29, 2016

CERTIFIED TRUE COPY OF RECORD
IN THIS COUNTY
Mary P Brown
DATE 3/21/16
CLERK OF COURT, C.P. & G.S.
BERKELEY COUNTY

[Signature]