

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**S.C. SUPREME COURT**

Certiorari to Dorchester County

Honorable Robert J. Bonds, Circuit Court Judge

HERBERT LEROY HOLMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001369

AMENDED APPENDIX

JOANNA K. DELANY  
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

L. DAVID LEGGETT, III  
Assistant Attorney General  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

DAVID PASCOE  
First Circuit Solicitor  
151 Docket Street  
Orangeburg, SC 29115  
(803) 533-6252

ATTORNEYS FOR RESPONDENT

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1 to do. And once the Supreme Court has actually opened a case, I  
2 believe it goes to indigent defense attorneys, who will be  
3 assigned to it at that time.

4 Q And you wouldn't have reason to disagree that indigent  
5 defense may have had this case but may not take up the case or  
6 open or proceed with the filing until the Court indicates that  
7 they should?

8 A I can't disagree with that.

9 Q And so it would not be a surprise to you if, in that  
10 affidavit that we stipulated to, indigent defense indicated that  
11 they did not open one because there was no request from the Court  
12 to because this was earmarked as a guilty plea?

13 A Yes, ma'am.

14 Q Let's go back a little bit. Let's talk about how long  
15 you've been practicing law.

16 A I was barred in 2007, and since then.

17 Q How much of that has been criminal?

18 A 99.9 percent.

19 Q Okay.

20 A I worked for an insurance defense for 90 days. They're the  
21 real criminals (indiscernible.)

22 Q And in this instance with Mr. Homes, were you appointed or  
23 retained to represent him?

24 A I was at the public defender's office.

25 Q Roughly how long before his trial were you appointed?

1 A I can look that up. So it looks like the file was opened in  
2 November of 2011.

3 Q Okay. And you agree this trial took place in April 2013?

4 A Yes.

5 Q Leading up to trial, do you recall roughly how many times  
6 you met with applicant?

7 A It would have been -- so usually my practice was to go to  
8 the jail at least once a month to meet with every single client  
9 that I had detained. I don't know that I did that with him, but  
10 then I would say obviously we're preparing for trial. I would  
11 have met with him specifically and alone about those issues, so  
12 multiple, multiple times. I think he testified six. That  
13 doesn't sound unreasonable to me, but I would assume it would be  
14 a few more than that.

15 Q Okay. But you don't have an independent recollection of  
16 that?

17 A I don't. And I tried to look back on my calendar, and it  
18 just says "jail". It doesn't list the people.

19 Q Okay. And in the course of your representation, you  
20 received discovery pursuant to Rule 5 and Brady in this case?

21 A Yes, ma'am.

22 Q Did you review those materials with applicant?

23 A Absolutely. And I gave him a copy of them as well.

24 Q And you would have discussed the indictment and the elements  
25 of the offenses with him as well?

1 A Yes.

2 Q Okay. Did you discuss his constitutional rights with him?

3 A Yes.

4 Q And did he ever indicate he wanted to plea in any manner, or  
5 was this always set for a trial?

6 A My recollection is that he was never given a plea offer to  
7 begin with, and it was an LWOP, so, you know, he wasn't really  
8 given -- you know, he didn't have any choice but to try it.

9 Q Trying this case, rather, was his best option --

10 A Yes.

11 Q -- because if he would have pled he would have been LWOP'd  
12 regardless?

13 A Yes. Well, I don't think we got a plea offer.

14 Q Okay.

15 A That's the best I can tell you. I know it was an LWOP case,  
16 so that kind of ...

17 Q Okay. Let's dive into allegation no. 2, which states:  
18 Trial counsel was constitutionally ineffective in failing to call  
19 critical witnesses on behalf of the defense at trial.

20 Mr. Holmes, today, has alleged that he wanted you to call  
21 the 911 caller. Do you recall having a conversation with him  
22 regarding that or investigating that further?

23 A I don't specifically recall that, but in reviewing the  
24 evidence I didn't see where they ever identified a 911 caller. I  
25 don't see where there were any 911 recordings or anything. So I

1 do not believe, even if we wanted to, that we could have, because  
2 we didn't know who that person was.

3 Q There was testimony earlier regarding the State Farm agent  
4 who testified at trial. Do you remember that testimony?

5 A Yes.

6 Q Did you investigate if there were any witnesses that you  
7 could have called as rebuttal witnesses to his testimony?

8 A I don't think that there were. Just, I don't recall.  
9 Sorry.

10 Q And Mr. Holmes surely didn't turn over any witnesses that  
11 could have refuted that testimony?

12 A No.

13 Q What did you do to investigate that case? Can you give the  
14 Court a summary of when you got the discovery to when you got to  
15 trial, your defense strategy.

16 A Sure. So first of all, there was very little in the way of  
17 police reports and things from the sheriff's office. I don't  
18 know if they had been lost or if they didn't do it, but there  
19 wasn't that much to work with. I mean, I remember going through  
20 microfiche and finding newspaper articles about, you know, the  
21 time, did a lot of studying on DNA, but I don't think that there  
22 was really much, many leads, to follow. I just don't recall.

23 Q Okay. So would you say that your main defense was the  
24 chain-of-custody defense?

25 A Absolutely.

1 Q And how did you prepare for trial getting ready for that  
2 defense?

3 A I had just gone back through my notes. I have where I typed  
4 out and written out the entire chain and followed it through, and  
5 went through each and every item. You know, just mapped it out.

6 Q And at trial do you remember making a motion to exclude DNA  
7 evidence?

8 A Yes.

9 Q And that motion was based on the chain of custody?

10 A Yes.

11 Q Okay. Your defense up against the State's case, how did you  
12 feel like this was going to fall? Did you feel like you had a  
13 fairly strong argument with that chain-of-custody motion?

14 A I think the chain of custody was completely messed up. I  
15 thought we had a very strong -- Well, I thought we had a fighting  
16 chance, you know, in getting that evidence excluded. It was a  
17 mess. It was an old case. So yeah. Now, did I -- I wasn't  
18 going to bet the farm on that but, yes, I thought that it was --

19 Q The strongest argument that you had?

20 A I think it was the only argument I really had.

21 Q Okay. And do you remember the Court making a ruling in this  
22 case regarding your motion to exclude?

23 A Yes.

24 Q And what was that ruling?

25 A She denied it.

1 Q And do you remember her giving reasons for her denial?

2 A In reading through the transcript, I do.

3 Q That refreshed your recollection?

4 A Yes.

5 Q Okay. And do you -- if memory serves, do you remember what  
6 those reasons were?

7 A I don't. I have the transcript in front of me.

8 Q You do have the transcript in front of you? If you would go  
9 to page --

10 ATTORNEY WEIDAUER: Beg the Court's indulgence for one  
11 moment, Your Honor.

12 BY ATTORNEY WEIDAUER:

13 Q -- I believe it's 275. And 275 is showing where you made  
14 that motion, and that's starting on Line 2. Do you see that?

15 A Yes, ma'am.

16 Q Okay. And moving to 276, 277, -8, and -9, that would have  
17 been your argument --

18 A Yes, ma'am.

19 Q -- on that motion to exclude. Okay.

20 ATTORNEY WEIDAUER: Beg the Court's indulgence for a moment.

21 THE COURT: Yes, ma'am.

22 BY ATTORNEY WEIDAUER:

23 Q Would you go to page 294.

24 A I'm there.

25 Q Excuse me, 295. And look at Line 14. And if you'd just go

1 ahead and refresh your memory a little bit, and I can go through  
2 page 298, if you can look through that.

3 A It looks like it was -- she ruled that it was admissible,  
4 but I could argue weight.

5 Q Okay. And so that was your main defense, and then the Court  
6 ruled that was admissible, so you were really relying on the  
7 jury?

8 A Correct. At that point, yes.

9 Q Okay. Regarding allegation no. 4 and your alleged failure  
10 to adequately cross-examine the victim regarding her version of  
11 events, can you explain why you didn't necessarily object or why  
12 you didn't cross-examine her on her statement that Mr. Holmes  
13 pointed out earlier regarding her panties?

14 A We've got to set the scene, I guess. You know, the  
15 transcript is really dry, but we've got a victim that was  
16 brutally raped. And I'm not saying she was telling the truth,  
17 but, her demeanor, she was brutally raped. She had to have an  
18 abortion after she became pregnant from this. She was an  
19 emotional wreck. And I didn't want her to add anything else.

20 It's just really hard. I don't know if you've ever been,  
21 you know, with a victim that's like that, but you don't want to  
22 dwell on that; you don't want to batter the victim, especially  
23 when your defense is not that she was victimized but that it was  
24 all about the chain and DNA. I don't know what that would have  
25 done to benefit the case.

1 I think I questioned the gun. There was discrepancies with  
2 that. What is the page of that? Is it 176?

3 Q Yeah. I believe it's 87, is where she's testifying. But,  
4 really, I'd like you to start on page 86, because I think framing  
5 her surrounding testimony will lend to what you've just testified  
6 to. And that's page 86, Line 21, and where she testified  
7 about -- quote -- I didn't have any underwear on, is on page 87,  
8 Line 15 through 17.

9 A So when she was testifying, she said that he forced her to  
10 remove her clothes, and then in another line he said something  
11 along the lines of, he told her to bend over and at that time she  
12 didn't have underwear on. I made note of that in my notes. Ash  
13 Chisolm, who was the other attorney, made note of that in his  
14 notes.

15 And in my notes for my closing argument, I put that in  
16 there. I don't know why I didn't bring it up then. I don't know  
17 if it was to, you know -- so that she couldn't say, Oh, well, I  
18 put them on, or, I put some on on the way to the hospital, or  
19 something like that. I think that I just wanted to leave it open  
20 like that.

21 But just going through my close, and my notes say bring it  
22 up, I don't see where I did bring it up.

23 Q And this trial was nine years ago at this point, so although  
24 you don't have any independent recollection for why you did not  
25 put that in your closing, your normal practice and your

1 assumption based on that normal practice would be that you didn't  
2 for a reason?

3 A I mean, there has to be a reason. I just don't -- I'm  
4 sorry. I just don't remember.

5 Q Okay. Let's move on to allegation no. 5, which is: Trial  
6 counsel in the public defender's office had a material conflict  
7 of interest in this case. We've had testimony here today that  
8 John Loy was your superior --

9 A That's correct.

10 Q -- in the public defender's office. And that's correct?

11 A Yes.

12 Q Can you explain conversations that you had with Mr. Holmes  
13 regarding Mr. Loy, that he previously prosecuted another case  
14 with Mr. Holmes?

15 A So at some point -- and I don't remember how it even came  
16 up -- I mean, John Loy had been in private practice and a public  
17 defender for years. He was only briefly at the solicitor's  
18 office, and the solicitors rotate through -- somehow we realized  
19 that he had actually prosecuted Mr. Holmes, and I would have  
20 immediately informed him of that. And I think that's how he knew  
21 that today, you know, that we had informed him that before.

22 I don't know that there is a conflict, and I don't know  
23 that -- I can't recall if we discussed it. I mean, my gut  
24 feeling -- I mean, if I told him about it, the incident was  
25 brought up; you know, the fact was brought up.

1 Q Did Mr. Loy have any involvement in Mr. Holmes's  
2 representation?

3 A No.

4 Q And so, even as your superior, he wouldn't have been  
5 dictating to you how you should proceed in your representation;  
6 you wouldn't have gone to him regarding how you should craft your  
7 defense, et cetera?

8 A No. We were very independent.

9 Q And do you recall Mr. Loy ever saying that he wanted to sit  
10 in on Mr. Holmes's trial?

11 A I mean, he was the deputy, and he would have been there  
12 anyway, and I don't -- I think it was just me and Ash and  
13 Mr. Holmes. I don't -- I don't think so. He did nothing to help  
14 or, you know, gave me no direction in the case.

15 Q Okay. And that's what I wanted to be clear about, it's your  
16 testimony that he had no involvement in this case --

17 A Yes.

18 Q -- besides being the former solicitor --

19 A Correct.

20 Q -- and prosecuting a case with Mr. Holmes?

21 A Yes.

22 ATTORNEY WEIDAUER: Beg the Court's indulgence, Your Honor.

23 THE COURT: Yes, ma'am.

24 ATTORNEY WEIDAUER: Thank you.

25 THE COURT: All right. Mr. Geel.

1 ATTORNEY GEEL: Your Honor, may I approach the witness?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY ATTORNEY GEEL:

5 Q I'm handing you, I believe it's, Applicant's 1. If you  
6 could keep the pages in order.

7 ATTORNEY GEEL: And, Your Honor, I have a copy of this for  
8 the Court if you'd like to follow along while we're going through  
9 it. And, Your Honor, your pages are numbered there.

10 BY ATTORNEY GEEL:

11 Q Mr. Farley, can we start with the first page of this, of  
12 Applicant's 1. Now, this is a letter dated April 25th signed by  
13 you to the Court of Appeals. Would you agree with that?

14 A Yes.

15 Q And that's a notice of appeal in this particular case?

16 A It's a cover for a notice. Yes.

17 Q Right, a cover letter. Now, that's dated April 25th, 2013?

18 A Yes, sir.

19 Q And I have the transcript here in front of me, but would  
20 you -- I don't know if you know this off the top of your head,  
21 but would you agree that the trial concluded on April 25th, 2013?  
22 Does that sound right to you?

23 A That sounds right.

24 Q So this is the same day that the trial concluded, in other  
25 words?

1 A That's correct.

2 Q And just to reiterate, at that time Mr. Holmes intended to  
3 appeal; he told you you wanted to appeal, and so that's why you  
4 submitted this letter with the notice of appeal?

5 A Yes, sir.

6 Q Thank you. Would you mind going to page 2, sir, in that  
7 packet. Now, this is the actual notice of appeal; correct?

8 A Yes.

9 Q All right. Now, I'd like to direct your attention -- I  
10 mean, if you'd like to read the whole document, that's fine, but  
11 I'd like to direct your attention -- specifically to the last  
12 line of the paragraph there where it says: However, counsel is  
13 not aware of any exceptions to Rule 203.

14 Are you aware of what -- how shall I say this -- what impact  
15 that statement or that sentence would have had on this appeal?

16 A It's saying we're appealing but we have no reason to appeal.

17 Q Just for the purposes of the record, I mean, Rule 203, it  
18 contemplates appeals from his guilty pleas?

19 A Guilty pleas.

20 Q And you would agree that that rule stipulates that you have  
21 to specify what your grounds for appeal are in a guilty plea, if  
22 you will?

23 A Yes.

24 Q And so would you agree that this reference to Rule 203 in  
25 this notice of appeal could arguably lead someone to conclude

1 that this is a guilty-plea appeal as opposed to a trial appeal?

2 A Yes.

3 Q Sitting here as you are today, would you have included that  
4 sentence in a notice of appeal from a trial intentionally?

5 A No.

6 Q So that would have been a mistake. Is that fair to say?

7 A Yes.

8 Q You indicated that you asked your assistant, or parallel, to  
9 draft this for you.

10 A Yes.

11 Q And like most lawyers who try a lot of cases and do a lot of  
12 pleas, you had one of each, kind of a guilty plea notice of  
13 appeal, and a trial notice of appeal?

14 A Yes.

15 Q And I know you have to speculate here a little bit, but  
16 would you speculate that your assistant drafted this and  
17 mistakenly included that final sentence regarding Rule 203?

18 A I think that she used the form, yes. And I think that I did  
19 not thoroughly review it.

20 Q Okay. And again, as you sit here today, you would agree  
21 that that's not appropriate to include that sentence in a notice  
22 of appeal from --

23 A That's a completely incorrect form.

24 Q Okay. And moving forward to page 3 of that packet, the next  
25 page, this is just a proof of service from -- this is an

1 attachment to the prior page. Would you agree?

2 A Yes.

3 Q And again, that appears to be your signature there?

4 A Yes.

5 Q Also dated the 25th of April, 2013?

6 A Yes.

7 Q Okay. And if you could flip to page 4 of your packet. And

8 would you agree, this appears to be the envelope that you sent

9 that document in or that your office sent that document in?

10 A Yes.

11 Q And switching to page 5 -- now, this is the letter dated

12 May 3rd, 2013, another correspondence from you to the Court of

13 Appeals. And in this cover letter you indicate that you enclosed

14 some correspondence that you sent to Mr. Holmes. Is that

15 accurate?

16 A Yes.

17 Q Okay. And then the next page, page 6, does that appear to

18 be a copy of that correspondence?

19 A Yes.

20 Q Okay. And in this correspondence, which is addressed to

21 Mr. Holmes in the Department of Corrections -- just let me stop

22 there. Mr. Holmes was in the Department of Corrections at this

23 time, May 3rd, 2013; correct?

24 A Yes.

25 Q This is roughly a few weeks after the trial had concluded?

1 A Yes.

2 Q Okay. And in this correspondence to Mr. Holmes, you say:  
3 Enclosed please find a copy of correspondence received from the  
4 South Carolina Court of Appeals. Please be advised that you have  
5 20 days from the date of this letter to inform the South Carolina  
6 Court of Appeals in writing of any arguable basis that there are  
7 issues preserved for appeal.

8 And again, just getting back to the Rule 203 again, is this  
9 a letter that you would send a Rule 203 appellant?

10 A Yes.

11 Q In other words, if someone has been convicted at trial like  
12 Mr. Holmes, they're not required to provide any of these bases  
13 for the appeal prior to the appeal being docketed. Is that your  
14 understanding?

15 A Yes.

16 Q So like the sentence that we just talked about in the notice  
17 of appeal, this was in error, in other words, sending this letter  
18 to Mr. Holmes?

19 A Yes.

20 Q But it appears from this that the reason that you sent this  
21 to him is because you received some kind of notice from the Court  
22 of Appeals that they believed this was a guilty-plea appeal?

23 A Yes.

24 Q Does that look right to you?

25 A Yes.

1 Q Okay. And following on to the final page, page 7, this is  
2 an order from the Court of Appeals denying, or rather,  
3 dismissing, Mr. Holmes's appeal. You would agree that that's  
4 what this document is?

5 A Yes.

6 Q And I'll direct your attention to the last sentence where it  
7 says: Accordingly, this appeal is dismissed for failure to make  
8 a sufficient showing pursuant to Rule 203(d)(1)(B)(iv) of the  
9 South Carolina Appellate Court Rules. Now, I know you may not  
10 know the rule track in reverse, but that rule refers to  
11 guilty-plea appeals. Do you have any reason to disagree with  
12 that?

13 A No.

14 ATTORNEY GEEL: And I'd ask the Court to just take notice  
15 that that section does refer specifically to guilty-plea appeals.

16 BY ATTORNEY GEEL:

17 Q So as you read this order, it appears that it was dismissed  
18 because the Court characterized it as a guilty-plea appeal and  
19 not a trial appeal?

20 A Yes.

21 Q And so just to put a fine point on it, at no point during  
22 all this, your notice of appeal, the correspondence you received  
23 from the Court, the correspondence you sent to Mr. Holmes, at no  
24 point did you latch on to the fact that they were considering  
25 this a guilty-plea appeal as opposed to a trial appeal? I mean,

1 that just didn't click for one reason or another?

2 A This man needs an appeal, and I messed up.

3 Q Right. Okay. And at no point did he tell you he didn't  
4 want to appeal?

5 A He did not.

6 Q And then you didn't intend to withdraw or dismiss his  
7 appeal? That wasn't your intent?

8 A I did not.

9 Q Okay. Okay. Turning to the trial issues, I'm just going to  
10 ask some sort of like, I guess, broader questions here. Let's  
11 just talk about the case coming from a 30,000-foot view here.  
12 You have this incident in 1984 or '86 -- '84, excuse me. The  
13 victim, at no time, was able to identify Mr. Holmes as the  
14 perpetrator of this crime; correct?

15 A Yes.

16 Q So you have this incident where it takes place, and she's  
17 not able to say that this is the person who did it. You would  
18 agree --

19 A Yeah.

20 Q -- at trial or before when the incident happened? And then  
21 during the trial itself you have you her testifying, and on a  
22 couple of occasions suggesting that she was not wearing panties  
23 either during or after the assault took place. Is that  
24 consistent with your recollection of the trial testimony?

25 A I remember she said she took off her clothes, and then I

1 remember her saying shortly, in several sentences down, that she  
2 was not wearing panties when she was forced to bend over.

3 Q Right. So I'll direct you specifically. I know you offered  
4 this, so I won't belabor it, but in the transcript, on page 87,  
5 at Line 16 the victim says: He told me I had to bend over, and I  
6 didn't have any underwear on, and he performed anal sex on me.

7 So in this testimony she's describing the assault as it  
8 happened and indicating that at that point she was not wearing  
9 underwear/panties; correct?

10 A Yes.

11 Q And then later on during her testimony -- and this is on  
12 page 88, beginning at Line 24 -- she says -- this is after the  
13 assault took place: I got partially clothed and went out and  
14 tried to dial 911, but I don't think Summerville had 911, or I'm  
15 confused and I had to dial 0, and they didn't have it back then.  
16 I couldn't get through. I put the skirt on, and I went outside,  
17 and there's a lady sitting in the car out there and I said,  
18 You've got to help me. Something bad happened.

19 So there she indicated specifically that she put a skirt on  
20 but says nothing about putting panties on; correct?

21 A Yes.

22 Q I guess the transcript is silent as to whether she actually  
23 did, but she specifically mentions skirt, specifically mentions  
24 getting dressed, but makes no mention of putting the panties on.  
25 Correct?

1 A Yes.

2 Q So there at least is an issue there as to whether she  
3 actually put those panties on or had them on during the assault,  
4 or whether they were nearby. You agree that was a trial issue,  
5 potentially?

6 A Yes.

7 Q So then moving on, the second piece, after the evidence is  
8 all collected and you have physical evidence, a sexual assault  
9 kit, clothing items recovered from the victim, you had a very  
10 serious chain-of-custody issue in this case; would you agree?  
11 You already testified a little bit about it.

12 A Yes.

13 Q And you did challenge that. You wanted to sort of  
14 illustrate that there were flaws in the chain; correct?

15 A Yes.

16 Q And among the items in that chain of custody, that evidence  
17 collection, were this pair of panties that was alleged to have  
18 been worn by the victim. Correct?

19 A Yes.

20 Q And years later, a cutting from that pair of panties was the  
21 material that the DNA sample was ultimately collected from. Is  
22 that correct?

23 A Yes.

24 Q And that is the piece of evidence that ultimately had a  
25 CODIS hit that implicated my client in the case?

1 A Correct.

2 Q Would you agree? So I guess taking a 30000-foot view, would  
3 you agree that it was of critical importance whether these  
4 panties were actually worn by the victim; whether the panties in  
5 the chain of custody chain of custody actually were those same  
6 panties; and then whether the panties that were tested for DNA  
7 were, in fact, the same ones? In other words, whether that was  
8 the same piece of evidence through the entire course of two -  
9 three decades?

10 A Yes.

11 Q You would agree that that was of critical importance in this  
12 case?

13 A Yes, that was very important.

14 Q Okay. So talking more specifically about -- pardon me.  
15 Okay. Let's talk about the chain-of-custody issues specifically.  
16 Now, you did challenge the chain of custody. In fact, as the  
17 State has gone over, you spent 20 pages arguing about why it  
18 should be kept out. Is that consistent with your recollection?

19 A Yes.

20 Q And you argued a lot of grounds for keeping it out. Is that  
21 fair to say?

22 A Yes.

23 Q Multiple. It wasn't just one issue that you hung your hat  
24 on. You had a bunch of different things. Correct?

25 A Yes.

1 Q You argument included items were mislabeled and mishandled;  
2 correct?

3 A Yes.

4 Q That at some point it wasn't clear who was actually in  
5 custody of the evidence; correct?

6 A Correct.

7 Q The evidence, some of the materials, moved from one location  
8 to another, and it kind of wasn't well-documented as they moved  
9 between locations; is that correct?

10 A Yes.

11 Q I believe the sheriff's office or someone, they moved  
12 offices or moved to locations at some point, and it wasn't clear  
13 who took custody between those trips. For example --

14 A Yes.

15 Q -- Is that consistent with your recollection? And on top of  
16 that, the materials, some of them went to SLED on more than one  
17 occasion. Is that also consistent with your recollection?

18 A Yes.

19 Q Now, as to -- you heard Mr. Holmes talk about the fact that  
20 one or more of the individuals who is allegedly in the chain was  
21 deceased at the time of trial you. Did you have any independent  
22 recollection now of that being the case?

23 A I do, yeah. Ernest Moultrie, and this guy's name was  
24 Bert -- they used to be called Bert and Ernie, is the joke. So,  
25 yeah, Bert was definitely dead.

1 Q And as you were moving to have materials excluded,  
2 challenging the chain of custody, is that one of the things that  
3 you thought about, the fact that there were people in the chain  
4 were not available to you?

5 A Yes.

6 Q Do you recall challenging the chain on those grounds  
7 specifically?

8 A I believe so. The record will speak --

9 Q So the record will speak for itself. Let me say it this  
10 way: As you sit here, if you failed to expressly challenge it on  
11 those grounds, is there any strategic reason why you didn't do  
12 that you can think of? Would there be any strategic reason not  
13 to add that to the list of bases for exclusion?

14 A I would think that -- I mean, I can look at the transcript,  
15 but I would think that I would include the fact that there's  
16 someone who's in the chain who's not there, you know, to testify  
17 about the chain. I can't recall.

18 Q So I know it's been a long time, as well, but as you sit  
19 here today you can't think of any reason why you would not have  
20 argued that? Is that fair to say?

21 A Yes.

22 Q Strategically there was no reason why you would not have  
23 argued that?

24 A Yes.

25 Q I mean, that's a valid basis?

1 A That's a very valid basis.

2 Q And it's one of many problems that you identified with the  
3 chain of custody in this case. Is that fair to say?

4 A Yes.

5 Q Okay. Let's turn over to the other side now, the DNA test  
6 itself and the panties. What do you recall about the alleged  
7 victim's testimony when she said she wasn't wearing panties? As  
8 you sit here today, do you remember what went through your mind  
9 when she said that? Was that the first time you learned of it  
10 during her testimony? Were you expecting that?

11 A The only thing that I can say definitively is, going through  
12 my notes, I have -- so I take notes while each person is  
13 testifying -- I have, No panties, question mark. That's the best  
14 I can tell you. I don't remember strategically at that time.  
15 I'm speculating that I didn't want to go into it in detail  
16 because I would want to save that for close. I just -- I don't  
17 know.

18 Q But understandably, you are speculating, though, as to --

19 A Right.

20 Q -- there may have been a reason why you didn't bring it up?

21 A I just don't know.

22 Q You can't say --

23 A I can't tell you if it was I forgot about it; it was a  
24 mistake. You know, I don't -- I just don't know.

25 Q You said you may have been saving it for closing. I mean,

1 you would agree that that's an arguable strategic reason for not  
2 bringing it up during the cross? Would you agree with that?

3 A Yes.

4 Q So if you then did not bring it up in closing, then there  
5 wouldn't really be any strategic reason you could identify for  
6 not bringing it up on cross; right?

7 A That's correct.

8 Q If you don't do it during the exam with the intention of  
9 bringing it up later, but then you don't bring it up later, then  
10 there really is no strategic purpose?

11 A That's correct. It wasn't served to be a strategic purpose.

12 Q Right. And again, the record will sort of speak for itself.  
13 Do you remember bringing it up in closing argument that she  
14 wasn't wearing panties?

15 A I didn't see it in there.

16 Q Okay.

17 A I was focused on the chain.

18 Q And I guess just going through the same question again, when  
19 she testified that after the assault she put her skirt on and  
20 went outside, at that point do you recall thinking that her not  
21 putting panties on after the assault had some kind of impact on  
22 the evidence in this case?

23 A I can't remember that.

24 Q Okay. You would agree, though, that it would have been an  
25 important fact in this case that she put the panties back on

1 after the assault; correct?

2 A At some point, between the assault and the hospital. I  
3 mean, assuming that the chain was correct, which I still very  
4 much doubt, when she went to the hospital there would have been  
5 panties on, and theoretically the DNA would still be there. The  
6 panties had her DNA and his. You know.

7 Q So you would agree then that it was of critical importance  
8 for the State to establish that she had put these panties on  
9 after the assault?

10 A Yes. Certainly.

11 Q And so during her testimony, when she indicated she got  
12 dressed after the assault and it doesn't specifically mention  
13 putting panties on, you would agree that that's, at least,  
14 something that warrants exploration on cross?

15 A Yes.

16 Q As you sit here today, can you think of a strategic reason  
17 why you would not have gone into that on cross?

18 A No.

19 Q And you mentioned the No panties, question mark. Was it in  
20 your trial notebook?

21 A Yes.

22 Q Do you recall any kind of notation or anything like that as  
23 to the latter testimony when she got dressed?

24 A No.

25 Q And just to put a fine point on it, that not having been

1 brought up in closing argument, you can't identify a strategic  
2 reason for not bringing that up in closing, either? Is that fair  
3 to say?

4 A No, I cannot.

5 ATTORNEY GEEL: Thank you, Your Honor. That's all I have.

6 THE COURT: Redirect?

7 **REDIRECT EXAMINATION**

8 BY ATTORNEY WEIDAUER:

9 Q Just a couple questions for you, Mr. Farley. Regarding the  
10 chain of custody, you testified that was the most integral part  
11 of your defense in this trial. Correct?

12 A Yes.

13 Q And that was essentially what you were throwing against the  
14 wall for the trial clerk and the jury, was that this chain of  
15 custody was, as you put it, I think, you had serious doubts about  
16 it?

17 A Well, once the evidence was allowed in, then it was, you  
18 know, trying to call into question with the jury.

19 Q And this trial is 400-odd pages, and really there's only  
20 maybe 70 pages regarding what actually happened that night. The  
21 rest is trying to make sure that that chain is established.

22 A Yes.

23 Q And did you feel -- and sitting here today, do you feel that  
24 you had everything and all the facts in front of you to  
25 adequately argue that chain-of-custody argument and that motion

1 to exclude the DNA evidence at the time of trial?

2 A I had everything that was available. Yes.

3 ATTORNEY WEIDAUER: Thank you, Your Honor.

4 THE COURT: Anything else?

5 ATTORNEY GEEL: No, sir.

6 THE COURT: Attorney General, you can call your next  
7 witness.

8 ATTORNEY WEIDAUER: State rests.

9 THE COURT: Thank you, Mr. Farley. State rests. Okay.  
10 Anything from the defense?

11 ATTORNEY GEEL: I don't mind going first, Your Honor. If I  
12 could just have a moment.

13 THE COURT: All right. Hold on one second. Go right ahead.

14 ATTORNEY GEEL: Thank you, Your Honor. I'll start off by  
15 just briefly touching on the belated appeal issue. Your Honor, I  
16 submit to the Court that, if you look through this packet,  
17 Applicant's 1, what it makes abundantly clear here is that there  
18 was a mistake made somewhere along the way. It's not completely  
19 clear whether it could have been rectified or who was explicitly  
20 responsible for rectifying it but, at a minimum, what we have  
21 here is trial counsel submitting a notice for appeal that makes  
22 reference to Rule 203.

23 Again, I would ask the Court to take judicial notice of that  
24 appellate court rule. It indicates that counsel has to specify  
25 whether there are grounds for appeal in cases of a guilty plea.

1 So a reference to Rule 203, or at least the reference to  
2 exceptions to Rule 203, that is simply not something that you  
3 would include as a trial lawyer in a direct appeal notice from a  
4 jury trial.

5 And it appears to me from the record before the Court that,  
6 based on that reference, the appellate court docketed this in as  
7 a guilty-plea case, and then sent out the appropriate notices  
8 asking counsel to identify the grounds for an appeal. With a  
9 guilty plea, you have to specify those grounds.

10 This packet also includes Mr. Farley's letter to Mr. Holmes  
11 asking him for input on those issues. And then, of course,  
12 ultimately the Court of Appeals dismisses this appeal and it  
13 explicitly references Rule 203(d)(1)(B)(iv), which that specific  
14 subsection is -- it pertains to direct appeals from guilty pleas,  
15 and that appellants have to specify the grounds or else it will  
16 be subject to dismissal.

17 So it is abundantly clear from this record, Your Honor, that  
18 this was docketed as -- erroneously docketed as a guilty-plea  
19 appeal and dismissed on those grounds.

20 The affidavit from Mr. Dudek in appellate defense indicates  
21 that they only open a file after these proceedings have taken  
22 place; so in other words, their policy is not to open a file  
23 until the appeal has actually been docketed, or in the case of a  
24 guilty-plea one, until after those reasons have been supplied.  
25 So they never took over representation, so ultimately it was up

1 to Mr. Farley and his office to rectify those errors.

2 Even though there were a few instances that could have been  
3 caught, I would submit to the Court that ultimately it was  
4 Mr. Farley's responsibility. And you heard Mr. Holmes's  
5 testimony that he never wanted to waive that appeal.

6 So respectfully we submit to the Court that Mr. Holmes is  
7 entitled to a belated direct appeal pursuant to *White v. State*.  
8 There's nothing to indicate that he intended to knowingly or  
9 intelligently waive it, so we would submit that he's entitled to  
10 relief on our first enumerated ground.

11 Your Honor, I will submit grounds 2 and 5 to the Court  
12 without further argument. You've heard the testimony regarding  
13 the conflict of interest, as well as the testimony regarding the  
14 failure to call the 911 witness. I will submit those without  
15 further argument, and ask the Court to grant relief on those  
16 based on the testimony we heard today under the standards set  
17 forth in *Strickland*.

18 I'd like to zoom in a little bit on the third and fourth  
19 grounds which I believe are the ones that will warrant the most  
20 attention from this Court. So as I went over with Mr. Farley,  
21 this case was unusual to the extent that you have a victim who  
22 was unable to identify the perpetrator and years and years and  
23 years later a DNA match comes back and implicates my client, so  
24 you have these two pieces. Of course, you the chain of custody  
25 being such that it isn't abundantly clear -- at least we submit

1 to the Court that it's not abundantly clear -- that this evidence  
2 was handled correctly, so we can't actually have faith that the  
3 evidence made it from point A to point Z intact. And, of course,  
4 this is a critical piece of evidence, this underwear. This is  
5 where the DNA came from. This is where the DNA that implicated  
6 my client came from.

7 As you'll see, Mr. Farley spent quite a while during trial  
8 discussing these pieces of evidence. And, Your Honor, for the  
9 record -- between pages 275 and 295, Ms. Weidauer went through  
10 some of it in detail -- he discusses at length all the problems  
11 with the chain of custody, and among them is the fact that it's  
12 not clear who made the clipping from the panties and, again, it's  
13 not clear that these items were all maintained intact during the  
14 years and years and years that they were in the State's custody.  
15 So that you have, and then combined with the fact that you have  
16 some testimony from the victim here that she wasn't wearing  
17 underwear during the assault or immediately before it; and that  
18 also, later on as she went to call 911, that she dressed herself  
19 again but did not put those panties on.

20 Mr. Farley indicated during his testimony that he was aware  
21 of this fact, and, in fact, he even wrote it in his trial  
22 notebook, and yet the record speaks for itself that this was just  
23 not brought up, it was not argued. It certainly wasn't brought  
24 up on cross-examination.

25 And again, taking the whole 30,000-foot view of the case,

1 with the fact that the panties that were tested by SLED decades  
2 later were the same panties that were worn by the alleged victim  
3 on the date of the incident was of critical importance. And so,  
4 therefore, also of critical importance was the question of  
5 whether she did put on panties after the assault. And you have  
6 evidence that certainly raises the question that she did; that  
7 she didn't have them on right before; and that she didn't put  
8 them on right afterwards. At a bare minimum, this requires  
9 explanation, or exploration, by the defense lawyer.

10 Mr. Farley was not able to identify any strategic reason for  
11 not exploring it. I mean, if it were the case that there was  
12 some out-of-court statement that the victim made that indicated  
13 that she had put on panties at some point and she simply forgot  
14 to testify to it, that would be a plausible strategic basis, but  
15 Mr. Farley was not able to supply any reason in that vein. In  
16 fact, he indicated that he did want to bring it up.

17 So the fact that it wasn't raised; the fact that it wasn't  
18 argued; the fact that it wasn't explored, there's simply no  
19 strategic reason for not doing so, especially in light of the  
20 critical importance of that piece of evidence, as I said.

21 So, Your Honor, we would ask the Court to give very careful  
22 consideration, as I said, in particular to the first and third  
23 and fourth grounds that we've raised. We do believe that  
24 Mr. Holmes is entitled to relief on those grounds and, at bare  
25 minimum, we submit that he is entitled to a belated appeal here.

1           The chain of custody was the main issue in this case, and it  
2 was litigated very extensively, and the propriety of the Court's  
3 ruling on the admissibility of the entire chain has never been  
4 passed on by the Court of Appeals. That's never been reviewed.  
5 And so we submit that he has very valid grounds for indirect  
6 appeal, and he never agreed to waive them. So, at minimum, we  
7 believe that he's entitled to a belated appeal. But that beyond  
8 that, Your Honor, we do believe he's entitled to relief on the  
9 remaining grounds, and that he's entitled to a retrial on that  
10 basis. So we ask the Court to grant the application. Thank you.

11           THE COURT: All right. Attorney General, I'm happy to hear  
12 from you.

13           ATTORNEY WEIDAUER: I'd like to start off by saying that in  
14 our amended return on a partial motion to dismiss -- or return  
15 and partial motion to dismiss, rather, we had argued that the  
16 statute of limitations on all other allegations show not be  
17 entitled to an appeal. I think, based on the testimony today,  
18 specifically testimony -- I beg the Court's indulgence for a  
19 minute.

20           THE COURT: Sure.

21           ATTORNEY WEIDAUER: Specifically the testimony given from  
22 applicant and, more importantly, counsel that indicated applicant  
23 never waived his right to an appeal and had always had indicated  
24 he wanted to appeal, I think that's telling of his entitlement to  
25 a belated direct appeal.

1           As Mr. Geel mentioned, I don't know if there's one place to  
2 place the blame. I think that this is a chain of unfortunate  
3 events, unfortunately, that Mr. Farley, as he testified to, did  
4 not file the proper paperwork with his notice of appeal. That  
5 got passed on to the Court and indigent defense, who did not flag  
6 it, and then the Court ultimately dismissed the matter and  
7 indicated that it was a guilty plea, which is just false. This  
8 stems from a trial.

9           So to get to the other allegations, we only get there if he  
10 is entitled to an appeal. And I'll address those other  
11 allegations now.

12           THE COURT: Yes, ma'am.

13           ATTORNEY WEIDAUER: So should the Court find he is entitled  
14 to a belated appeal under *White*, the State would still request  
15 that this Court deny applicant's other PCR allegations.

16           As to allegation no. 2 for ineffectiveness in failing to  
17 call a critical witness on behalf of the defense, counsel  
18 testified that he didn't remember that a 911 operator was  
19 available, nor did he -- nor did Mr. Holmes give him any other  
20 witnesses, or did he find any, through investigation, that could  
21 refute the victim's testimony and that State Farm agent's  
22 testimony regarding the surroundings of the incident.

23           As to allegation no. 3, ineffectiveness for failing to  
24 adequately investigate the case and failing to challenge the  
25 chain of custody, I think, as Mr. Geel has stated, there's

1 multitudes of pages, and most of this trial, as I stated earlier,  
2 surrounds the chain of custody.

3         *Strickland* does not require perfect representation but,  
4 rather, counsel's performance is judged under a standard of  
5 reasonableness. And I think in this case Mr. Farley indicated  
6 the key defense, and he did everything he could, with it being a  
7 cold case, based on the evidence he had before him, to make those  
8 arguments to get that DNA evidence thrown out through that motion  
9 to exclude.

10         So I would argue that the failure to adequately investigate  
11 and failure to challenge the chain of custody adequately should  
12 be denied. As I said about, *Strickland* does not require perfect  
13 representation.

14         Trial counsel -- allegation no. 4 is trial counsel was  
15 ineffective for failing to cross-examine the victim. Counsel  
16 testified that the victim was very emotional during her  
17 testimony; that he did have notes on her testimony; and though he  
18 did not have an independent recollection of why he did not bring  
19 that forward in his closing, he said that he would have reviewed  
20 that and believed there was some reason for him not bringing that  
21 up.

22         And as to allegation no. 5, counsel testified that Mr. Loy  
23 was, in no way, associated with this case; made no decisions on  
24 this case. Though he did work in the public defender's office at  
25 the time, he was, in no way, part of Mr. Holmes's representation

1 during this trial.

2 So we would just ask that this Court, in full, deny  
3 Mr. Holmes's allegations. Thank you, Your Honor.

4 THE COURT: All right. Anything in reply?

5 ATTORNEY GEEL: Just some housekeeping matters before we  
6 adjourn, if that's all right, Your Honor. First thing, as  
7 Ms. Weidauer has mentioned, just to save the Court some time if  
8 you don't have the cite handy, the precedent that authorizes  
9 Mr. Holmes to address all of his PCR issues, if we are entitled  
10 to a belated appeal, is *Wilson v. State*. It's 348 S.C. 215.  
11 It's a 2002 case.

12 Just for the purposes of the record, Your Honor, what that  
13 case says is that, if it's determined that the appeal was  
14 belated -- or, they're entitled to a belated appeal, the statute  
15 of limitations does not then bar consideration of the PCR issues;  
16 in other words, we get one bite at the apple altogether. So I  
17 figured I would just submit that to the Court.

18 And then the last thing I have, Your Honor, I do have the  
19 original amended application. Can I file that up here, or should  
20 I take that downstairs, may I ask?

21 THE COURT: Whatever the clerk wants you to do.

22 ATTORNEY GEEL: Should I bring it downstairs?

23 THE BAILIFF: I'm the bailiff. The clerk is not up here.

24 ATTORNEY GEEL: I'll take it downstairs. Thank you, Judge.  
25 I'll file that as soon as we adjourn here. That's all I have.

1 Thank you, sir.

2 RULING OF THE COURT

3 THE COURT: I believe that the evidence today shows that  
4 Mr. Holmes was unconstitutionally deprived of his statutory right  
5 to a direct appeal. I think the evidence is clear that there was  
6 a mistake.

7 And, Mr. Farley, like good lawyers do, they immediately fess  
8 up to a mistake that they make, and that's something that all  
9 lawyers need to remember, because I think that's important, and  
10 that's part of what makes the justice system work.

11 So for those reasons -- and I know there was some delay in  
12 time, but, also, this gentleman is 57 years old; has, at best, a  
13 ninth-grade education; had no additional formal education that he  
14 talked about, so I'd also infer from that he doesn't even have a  
15 GED, so I think that to hold him to any standard as it relates to  
16 time would not be appropriate, and I think that clearly this was  
17 an accident perpetuated at the hands of Mr. Farley or his staff,  
18 and so I think he absolutely is entitled to an appeal.

19 As it relates to no. 2, the failing to call a critical  
20 witness, the witness, as I understand it, is the individual who  
21 either called 911 and/or maybe called the operator. I think  
22 we've got some conflicting testimony as to what that is, but this  
23 individual that made a call. Mr. Holmes has the burden of proof,  
24 and what I would say is that basically this witness was not  
25 called here today, and the reality of it is we don't know what

1 that witness would say. There's just no evidence. And I think  
2 that the fact that we have no evidence as to what that witness  
3 may say here today, I think that's going to -- unfortunately for  
4 Mr. Holmes, I think that fails. He failed to meet his burden. I  
5 don't think it's enough just to say, you know, We don't know what  
6 she would have said, but I don't like it. I just don't think  
7 today is the day, and with him maintaining the burden, I think he  
8 falls short there.

9 As it relates to the third, trial counsel was  
10 constitutionally ineffective in failing to act in investigating  
11 the case and failing to challenge the chain of custody  
12 adequately, I think that he did investigate this case.  
13 Mr. Farley seemed to be thorough in his investigation, in his  
14 examination of this matter, and I think he did challenge the  
15 chain of custody adequately.

16 I think Mr. Farley went on, from my review of this -- and I  
17 read this transcript -- he went on with a very lengthy argument  
18 as to why the chain of custody should not -- or, why it was  
19 faulty and, as a result, why the DNA should be excluded.

20 I agree with counsel. I do not believe that Mr. Holmes is  
21 entitled to a perfect defense, even a critical issue, Mr. Geel,  
22 and I also believe that the burden's on him, and he's got to show  
23 that the conduct so undermined the proper function of the  
24 adversarial process that it can't be relied upon as having had a  
25 just result. He's got to show that there's a reasonable

1 probability but for counsel's unprofessional errors, the  
2 proceeding would have been different.

3 And I just think that, you know, the failure to address one  
4 portion -- Mr. Farley's a good lawyer and he sat there, and  
5 during direct at one portion indicated maybe he did or maybe he  
6 didn't have a strategic reason, and on cross he sort of indicated  
7 that he didn't have a strategic reason.

8 And I think that when you look at that, I just think that,  
9 again, given the probably 15 or 20 pages of argument that he  
10 presented, I think that that was -- I think that was sufficient  
11 and showed that he has adequately challenged the chain and, quite  
12 frankly, I think that the judge, again, would probably allow it  
13 to just go to the weight as far as the admissibility. I just  
14 don't think that that would have changed anything, and I think  
15 Mr. Farley covered his argument sufficiently from my review of  
16 the transcript and what I picked up on testimony today.

17 As relates to no. 4, trial counsel was constitutionally  
18 ineffective for failing to adequately cross-examine the victim  
19 concerning her version of events, if you've ever tried cases like  
20 this with a victim, Mr. Farley's on the money, when it comes to  
21 certain times, your cross-examination has got to be limited in  
22 scope, focusing in on one or two things that you think are  
23 important, because if you've got a volatile witness on the stand,  
24 if you've got somebody who is fragile, you've got to really be  
25 careful because it can blow up in your face. And I think that he

1 was aware of that, and I think that's why he conducted his  
2 cross-examination in the fashion that he did.

3 As it relates to the situation involving the panties, you  
4 know, he indicated that he did make a note of that. I think he  
5 sufficiently explained why he did not bring that up on  
6 cross-examination. As it relates to closing, my recollection is  
7 that, in his initial testimony, he indicated that he doesn't  
8 recall bringing it up but he believes that there had to have been  
9 a reason why he didn't, though he couldn't recall. On  
10 cross-examination, he indicated, in my opinion, at that point  
11 that it's absolutely something that he should have brought up.

12 I think that given his testimony -- and again, I think  
13 Mr. Farley's a good lawyer. I think Mr. Farley's still looking  
14 out for Mr. Holmes's best interest in this case, but I just  
15 don't -- I just don't see this as being -- I don't see the  
16 failure to mention this or discuss that in closing as being so  
17 detrimental that it falls to the level of being unprofessional.  
18 But even if it did, even if it did, you know, is there a  
19 reasonable probability but for that, you know, this was going to  
20 change anything or undermine the competence in the outcome of the  
21 trial? I just don't think that that would be the case.

22 As it relates to no. 5, trial counsel and the public  
23 defender had a material conflict of interest in this matter, I  
24 think that Mr. Farley's supervisor was a prosecutor, according to  
25 Mr. Farley, many years ago. Mr. Farley indicated that he did

1 not talk, he doesn't recall speaking, with his supervisor about  
2 the merits of the case and so, to that extent, he does recall,  
3 perhaps, his supervisor wanting to sit in or was in the courtroom  
4 during the trial but, again, he also indicated, Mr. Farley  
5 indicated, that he did not participate in the trial; he didn't  
6 advise him; supervise him in any way; and Mr. Farley indicated at  
7 the public defender's office, at that time each defendant was  
8 very autonomous in handling his/her own cases the way they wanted  
9 to handle them.

10 And so for those reasons, I think -- again, I think, really,  
11 on all of these, I think Mr. Holmes has failed to meet his burden  
12 of proof in this case. And so for those reasons, I'm going to  
13 respectfully deny all of the reasons set forth in the application  
14 but for the direct appeal that I believe that he absolutely is  
15 entitled to. So that would be my ruling today.

16 Attorney General, have I covered all of the grounds in this  
17 matter?

18 ATTORNEY WEIDAUER: Yes. I believe so, Your Honor.

19 THE COURT: Have I covered all the grounds, Mr. Geel?

20 ATTORNEY GEEL: Yes. I believe so, Your Honor.

21 THE COURT: All right. In that case, I'd like the Attorney  
22 General to prepare an order consistent with my ruling today.  
23 Please get a copy of that to Mr. Geel for his review, and I will  
24 then sign that, and we'll get going.

25 Good luck with your appeal, sir.

1 MR. HOLMES: Thank you.

2 (End of Transcript of Record)

3  
4 CERTIFICATE OF REPORTER

5 I, Cathy J. Provost, Official Court Reporter for the  
6 Fourteenth Judicial Circuit of the State of South Carolina, do  
7 hereby certify that the foregoing is a true, accurate and  
8 complete Transcript of Record of the proceedings had and evidence  
9 introduced in the trial/proceedings of the captioned case in the  
10 Court of Common Pleas for Dorchester County, South Carolina, on  
11 the 19th day of May, 2022.

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

14  
15 Date: October 9, 2022

16  
17 /s/ Cathy J. Provost  
18 Cathy J. Provost, RMR  
19 Official Circuit Reporter  
20  
21  
22  
23  
24  
25

# Office of the Public Defender

First Judicial Circuit



**MARK A. LEIENDECKER**  
Circuit Public Defender

107 W. 6th North Street  
Suite 100  
Summerville, SC 29483  
(843) 821-9800  
FAX (843) 871-0523

5200 East Jim Bilton Boulevard  
Dorchester County Courthouse  
St. George, SC 29477  
(843) 832-0154

Please respond to Summerville Office

Courthouse, 190 Gibson, Room 110  
PO Box 1112  
Orangeburg, SC 29116-1112  
(803) 536-4858  
FAX (803) 536-9986

716 Huff Drive  
St. Matthews, SC 29135  
(803) 874-2100  
FAX (803) 874-2400

April 25, 2013

Jeanette Barber, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE:** State of South Carolina v. Herbert Leroy Holmes  
Indictment No.: 2011-GS-18-00256, 2011-GS-18-00257

Dear Clerk:

Enclosed please find the original Notice of Appeal and Proof of Service in the above referenced matter.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,

Mitchell E. Farley  
Assistant Public Defender

MEF/sb

Enclosures  
cc: First Circuit Solicitor's Office  
Client

**RECEIVED**

APR 29 2013

**SC Court of Appeals**



THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of General Sessions

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-GS-18-00256, 2011-GS-18-00257

The State, .....Respondent.


v.

Herbert Holmes, .....Appellant.

NOTICE OF APPEAL

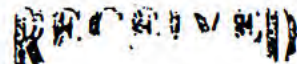
Herbert Leroy Holmes, appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Diane S. Goodstein, on April 25, 2013. This appeal is filed at the request of Defendant Herbert Holmes, Scdc #00139850. However, counsel is not aware of any exceptions to Rule 203.

April 25, 2013

  
\_\_\_\_\_  
Mitchell E. Farley  
107 West 6th North Street  
Summerville, SC 29483  
(843) 821-9800  
Attorney for Defendant

Other Counsel of Record:

Glenn Justis  
Assistant Solicitor  
140 North Main Street, Suite 102  
Summerville, SC 29483  
(843) 871-2640



APR 29 2013

SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of General Sessions

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-GS-18-00256, 2011-GS-18-00257

The State, .....Respondent.

v.

Herbert Holmes, .....Appellant.

PROOF OF SERVICE

PERSONALLY APPEARED before me, Mitchell E. Farley, who first being duly sworn, deposed and says:

That on the 25 day of April, 2013, he personally served a copy of the Notice of Appeal on Glenn Justis, Assistant Solicitor, via first class, postage paid wrapper, properly addressed, in a post office or official depository under the exclusive care and custody of the United States Postal Service to 140 North Main Street, Suite 102, Summerville, South Carolina 29483.

*[Handwritten Signature]*  
Mitchell E. Farley  
107 West 6th North Street  
Summerville, SC 29483  
(843) 821-9800  
Attorney for Defendant

SWORN to before me this  
25 day of April, 2013.

*Shekema Bennett*  
My commission expires: 9/9/2021  
Notary Public for South Carolina



APR 29 2013  
SC Court of Appeals

**Office of the Public Defender**

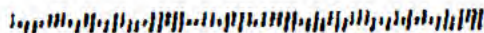
FIRST JUDICIAL CIRCUIT  
107 WEST 6<sup>th</sup> NORTH STREET, SUITE 100  
SUMMERVILLE, SOUTH CAROLINA 29483



Jeanette Barber, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
APR 29 2013  
SC Court of Appeals

29211+1629



# Office of the Public Defender

First Judicial Circuit



**MARK A. LEIENDECKER**  
Circuit Public Defender

107 W. 6th North Street  
Suite 100  
Summerville, SC 29483  
(843) 821-9800  
FAX (843) 871-0523

5200 East Jim Bliton Boulevard  
Dorchester County Courthouse  
St. George, SC 29477  
(843) 832-0154

Courthouse, 190 Gibson, Room 110  
PO Box 1112  
Orangeburg, SC 29116-1112  
(803) 536-4858  
FAX (803) 536-9986

716 Huff Drive  
St. Matthews, SC 29135  
(803) 874-2100  
FAX (803) 874-2400

Please respond to Summerville Office

May 3, 2013

Jenny A. Kitchings, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE:** State of South Carolina v. Herbert Leroy Holmes, Scdc #00139850  
Case No.: 2013-000907

Dear Clerk:

Enclosed please find a copy of correspondence sent to Mr. Holmes regarding the above referenced matter.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,

Mitchell E. Farley  
Assistant Public Defender

MEF/sb

Enclosures

cc: First Circuit Solicitor's Office  
Client

**RECEIVED**  
MAY 09 2013

**SC Court of Appeals**

# Office of the Public Defender

First Judicial Circuit



**MARK A. LEIENDECKER**  
Circuit Public Defender

107 W. 6th North Street  
Suite 100  
Summerville, SC 29483  
(843) 821-9800  
FAX (843) 871-0523

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FAX (803) 536-9986

716 Huff Drive  
St. Matthews, SC 29135  
(803) 874-2100  
FAX (803) 874-2400

Please respond to Summerville office.

May 3, 2013

Mr. Herbert Leroy Holmes, Scdc #00139850  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

**RE:** State of South Carolina v. Herbert Leroy Holmes, Scdc #00139850  
Case No.: 2013-000907

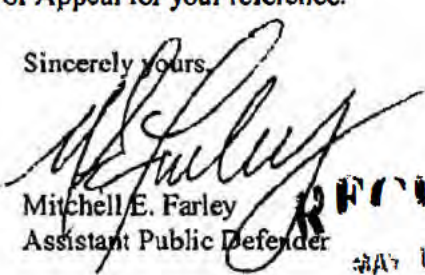
Dear Mr. Holmes:

Enclosed please find a copy of correspondence received from the South Carolina Court of Appeals. Please be advised that you have twenty (20) days from the date of this letter to inform the South Carolina Court of Appeals, in writing, of any arguable basis that there are issues preserved for appeal. The Court's address is as follows:

South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

I have enclosed another copy of the Notice of Appeal for your reference.

Sincerely yours,

  
Mitchell E. Farley  
Assistant Public Defender

**RECEIVED**

MAY 09 2013

MEF/sb  
Enclosure

SC Court of Appeals

## The South Carolina Court of Appeals

The State, Respondent,

v.

Herbert Holmes, Appellant.

Appellate Case No. 2013-000907

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### ORDER

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This Court has received counsel's letter explaining that there are no reviewable issues on appeal from Appellant's guilty plea. Counsel forwarded the explanation to Appellant and Appellant has not forwarded a response to this Court. Accordingly, this appeal is dismissed for failure to make a sufficient showing pursuant to Rule 203 (d)(1)(B)(iv) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:

Mitchell Edward Farley

Robert Michael Dudek

Salley W. Elliott

FILED  
JRS 6/10/13

STATE OF SOUTH CAROLINA )  
 COUNTY OF DORCHESTER )  
 Herbert Leroy Holmes, #139850, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS  
 THE FIRST JUDICIAL CIRCUIT

Case No. 2017- CP-18-01925

AFFIDAVIT OF  
 ROBERT M. DÜDEK

PERSONALLY appeared before me the Affiant, Robert M. Dudek, who being duly sworn, deposes and says:

1. Undersigned counsel is the Chief Appellate Defender for the Division of Appellate Defense, the Commission on Indigent Defense. Counsel has been an Appellate Defender since 1990, and has been the Chief Appellate Defender since 2010.

2. Counsel understands that on April 25, 2013, trial attorney Mitchell Farley filed a notice of intent to appeal in the case of State v. Herbert Holmes. In the notice of intent to appeal Counsel Farley wrote: "This appeal is filed at the request of defendant Herbert Holmes, SCDC#00139850. However, counsel is not aware of any exceptions to Rule 203."

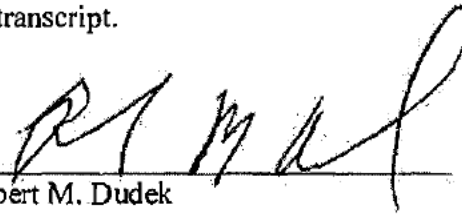
3. Undersigned counsel understands that the Court of Appeals on April 30, 2013, sent a "form guilty plea letter" to counsel Farley instructing him to forward his [guilty plea] explanation to his client, and instruct his client to inform the Court of Appeals in writing of any arguable basis for there being a legal issue preserved for appeal.

4. The Division of Appellate Defense in guilty plea cases does not open a file unless and until the Court of Appeals informs Appellate Defense that the guilty plea appeal is going forward and instructs this office to order the transcript. Thus, the Division of Appellate Defense would not have opened a file in this case since we would have had no notice that the appeal was not from a guilty plea given the notice of intent to appeal and the subsequent court documents involved in this

case all were common to a standard guilty plea. The Division of Appellate Defense would not have conducted any independent investigation on its own.

5. Counsel is informed and believes that the Court of Appeals dismissed the appeal on June 10, 2013, for the failure of Mr. Holmes to provide the Court with an explanation of any arguable [guilty plea] issues on appeal after trial counsel had informed the Court that there were no reviewable issues on appeal.

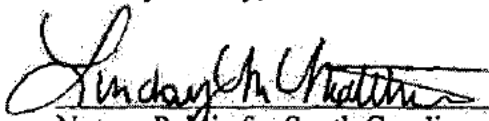
6. In short, the Division of Appellate Defense in guilty plea cases does not become involved in the appeal unless and until the Court of Appeals notifies this office that the appeal is going forward and instructs our office to order the transcript.



Robert M. Dudek  
Chief Appellate Defender

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

SWORN to before me on this  
18<sup>th</sup> day of May, 2022.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: October 22, 2024.

STATE OF SOUTH CAROLINA  
 COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS  
 CERTIFIED COPY FOR THE FIRST JUDICIAL CIRCUIT

Herbert Leroy Holmes, SCD #139850, Case No. 2017-CP-18-01925

Applicant,

*Cheryl B. Holman*  
 CLERK OF COURT  
 DORCHESTER COUNTY

v.

State of South Carolina,

Respondent.

) **ORDER DENYING POST-CONVICTION**  
 ) **RELIEF BUT GRANTING BELATED**  
 ) **APPELLATE REVIEW PURSUANT**  
 ) **TO *WHITE V. STATE***

This matter comes before this Court by way of post-conviction relief action commenced by Applicant Herbert Leroy Holmes on November 21, 2017. An evidentiary hearing into the matter convened before the undersigned on May 19, 2022. Applicant was present and represented by Christopher R. Geel, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing. Trial counsel, Mitchell Farley, Esquire, also testified.

In addition to the pleadings in this action, this Court had before it a copy of the Dorchester County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records from Applicant's direct appeal, and the pleadings and records in this post-conviction relief action.

After a full review of the record before the Court, and after observing the testimony presented, this Court finds Counsel was not ineffective and Applicant's allegations regarding ineffective assistance of counsel at trial are without merit. However, this Court finds Applicant is entitled to a belated appeal pursuant to *White v. State*<sup>1</sup>.

<sup>1</sup> *White v. State*, 263 S.C. 110, 208 S.E.2d 35, (1974).

### I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its May 2011 term, the Dorchester County Grand Jury indicted Applicant for criminal sexual conduct – first degree (2011-GS-18-0257) and kidnapping (2011-GS-18-0256). On April 22-25, 2013, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. Mitchell Farley and Ash Chisholm, Esquires, represented Applicant. Glenn Justis and Phil Giese of the First Circuit Solicitor's Office prosecuted the case. At the conclusion of trial, the jury found Applicant guilty as indicted. Following the verdict, Judge Goodstein sentenced Applicant to concurrent terms of life imprisonment for the kidnapping charge and thirty years for the criminal sexual conduct charge<sup>2</sup>.

Applicant filed a timely notice of appeal. On June 10, 2013, the Court of Appeals improperly dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient showing. *State v. Holmes*, (S.C. Ct. App. filed June 10, 2013). The case was remitted back to the circuit court on June 27, 2013.

Following the filing of the remittitur, Applicant wrote a letter to the Court of Appeals, received by the Court on October 16, 2017. In this letter, Applicant states his appeal did not arise from a guilty plea - rather, from a trial. Applicant contended the Court of Appeals improperly processed his direct appeal. By letter dated January 10, 2018, the Court of Appeals Clerk of Court replied, informing Applicant the sending of the remittitur ended the Court's jurisdiction over the appeal and therefore, the Court could take no further action. Applicant commenced this PCR action on November 21, 2017.

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<sup>2</sup> These sentences were to run consecutively to the life sentence Applicant was already serving on unrelated charges.

## II. Factual Summary

On October 25, 1984, Ms. P.R. was working by herself at a local bookstore in Summerville called The Bookbag when a young black male walked in and asked her where the mystery section was. (Tr. pp. 83-85). She pointed him to it, he went and looked around, and then headed to the cash register. (Tr. pp. 84-85). He walked behind the register, pulled a gun on Ms. P.R., and told her to empty the cash register, which she did. Tr. pp. (85-86). When she was done with that, he pointed her to a back room in the same store. (Tr. p. 86). He then demanded she take her clothes off and he forced her to perform oral-sex on him, then anally and vaginally raped her. Tr. pp. 87-88. He asked her to take her wedding ring off, he took it then fled the scene. (Tr. p. 88). Paramedics were eventually called, and Ms. P.R. was taken to the hospital where evidence was taken from her clothing and from her body. (Tr. pp. 89-90). Detectives Burt Salvely and James Knight went to the hospital and took the victim's statement. (Tr. p. 137). Ms. P.R. was able to describe the assailant, but she was not able to identify anyone in a photo lineup. (Tr. pp. 84-85, 92, 150).

Evidence was submitted to SLED in 1985, and Kenneth Bogan performed a visual examination of the clothing evidence and chemical analysis of the body fluid stains. (Tr. p. 308). Bogan prepared a report of his findings for the Dorchester's Sheriff's Office which stated he was able to identify male reproductive cells from the vaginal wash evidence. (Tr. p. 308). Bogan also identified semen on the skirt of the victim, but the vaginal swab analysis was inconclusive. (Tr. p. 309). Bogan testified at trial that he was unsuccessful in finding any blood or semen on the rest of the clothing. (Tr. p. 309). Bogan then repackaged and resealed the evidence and sent it back to the Sherriff's Office. (Tr. p. 310). In 1988, the Sherriff's Office resubmitted the evidence because it identified a person of interest, Barry Daniels, but SLED was not capable of performing a DNA

analysis at that time. (Tr. pp. 165, 310-316). It was then resealed and returned back to the Sherriff's Office. (Tr. p. 314, 316).

After years of an unsuccessful investigation, Lieutenant Asbell went back to this case and decided to send the evidence back to SLED for DNA analysis in 2009. (Tr. p. 203, 317). Bogan extracted DNA from the vaginal wash and swabs but was only able to get a partial profile. (Tr. p. 321). However, this time he was also able to get DNA from the victim's panties and skirt. (Tr. p. 321). From those items, Bogan obtained a DNA mixture of at least two individuals and a partial profile from a major contributor. (Tr. p. 322). The profile from the major contributor on the panties was from a male individual, and the profile from the major contributor on the skirt came from the victim. (Tr. p. 322). The minor contributor on the panties came from the victim. (Tr. p. 322). Bogan received a reference sample of Applicant's DNA, developed a profile, and compared it to the DNA extracted from the victim's clothing and body. (Tr. p. 324).

SLED then requested secondary DNA samples from Applicant. (Tr. pp. 216-17). Following that request, Detective Parker became involved in the case, contacted Applicant, and obtained a search warrant for his DNA. (Tr. p. 217). Bogan testified at trial that Applicant's DNA was found on the victim's panties. (Tr. pp. 271, 330-331).

### **III. Issues Before This Court**

In his original application for post-conviction relief, filed May 27, 2017, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective assistance of counsel
  - a. "Counsel failed to call critical witnesses";
  - b. "Trial counsel failed to adequately investigate";
2. Ineffective assistance of appellate counsel
  - a. "Appellant counsel improperly processed appeal";
3. "Denial of direct appeal"; and
4. "Violation of my 14<sup>th</sup> amendment due process rights".

Pursuant to Rule 71.1, SCRPC, on May 24, 2022, Applicant, through PCR counsel, filed an amendment to his application to include the following allegations (verbatim):

1. The Applicant is entitled to a belated direct appeal, pursuant to White v. State, 263 S.C. 110 (1974). Applicant never received a direct appeal, and Applicant never knowingly and intelligently waived this right.
2. Trial counsel was constitutionally ineffective in failing to call critical witnesses on behalf of the defense at trial.
3. Trial counsel was constitutionally ineffective in failing to adequately investigate the case and failing to challenge the chain of custody adequately.
4. Trial counsel was constitutionally ineffective in failing to adequately cross examine the victim regarding her version of events.
5. Trial counsel (and the public defender office) had a material conflict of interest in this case.

To the extent the allegations set forth in Applicant's application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

#### **IV. Relevant Testimony Presented at Evidentiary Hearing**

##### ***Applicant Herbert Leroy Holmes' Testimony***

By way of background, Applicant testified he is fifty-seven years old and completed the 9<sup>th</sup> grade; Applicant further testified he had family issues and left home and school during his 10<sup>th</sup> grade year. Applicant stated he has previously worked as an electrician, as a carpet installer, a flagpole and sign installer, in brick masonry, and in janitorial work. Regarding the subject crimes, Applicant testified he discovered he had been charged with them after learning the South Carolina Department of Corrections (SCDC) had a hold on his account when he was up for parole. Applicant testified that though he was eligible for parole, he was never released on bond. Rather, Applicant stated he was transferred from SCDC to the St. George Detention Center to await trial on the

instant indictments.

Applicant testified Mitchell Farley (Counsel) was appointed to his case in 2013. When asked how many times he met with Counsel, Applicant testified they met approximately six times. Applicant testified Counsel reviewed discovery with him and informed him of the elements of the crimes he was indicted for. Applicant further testified Counsel discussed possible defenses for trial with him. Specifically, testifying to one defense – getting the trial court to quash the evidence due to an improper chain of custody. Applicant further testified he believed SLED had mislabeled his evidence.

Regarding Applicant's allegation he is entitled to a belated direct appeal, Applicant testified it was always his intention to appeal his case and believed Counsel had properly appealed the matter on his behalf. Applicant testified he received the Order of Dismissal from the Court of Appeals in 2013 and did not file his application for post-conviction relief until 2017; however, Applicant further testified he continued to want an appeal from his convictions from 2013 to 2017.

Regarding Applicant's allegation Counsel was ineffective for failing to call a critical witness on his behalf at trial, Applicant testified that neither the 911 operator nor the 911 caller were called to testify at his trial. Applicant posited no testimony was elicited at trial regarding the state of the victim when she entered the shop next door seeking help. Applicant testified he believed the caller's testimony would have helped his case because the caller could have testified to what she observed at the scene. On cross-examination, the State further inquired regarding Applicant's allegation. Applicant testified he did not recall a witness testifying to victim's appearance following the incident. Applicant further testified he did not recall testimony from Rick Campbell<sup>3</sup>, a witness from the office next door, who testified at trial to Applicant's state following

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<sup>3</sup> Mr. Campbell testified he worked at a State Farm Insurance agency located next to The Bookbag, the store where the incident occurred. Mr. Campbell testified: "I was in the office at the time and my receptionist

the incident. Applicant further testified he believed the 911 caller's testimony would have differed. Applicant stated he did not have a discussion with his attorney regarding not calling witnesses.

Applicant further alleged Counsel was ineffective for failing to investigate and challenge the chain of evidence. Applicant testified he believed the evidence in this matter had been mislabeled and asserted there were detectives involved in the chain of evidence who were deceased and who could no longer be called to testify. Applicant asserted he brought this alleged issue to Counsel's attention positing, there was no discussion at trial regarding any chain of evidence issue. Applicant testified he believed Counsel should have investigated how the evidence in this case was collected, who the evidence was passed to and from, and who tested the evidence.

Regarding Applicant's allegation Counsel was ineffective for failing to adequately cross-examine the victim, Applicant testified Counsel did not question the victim regarding the identity of the assailant. Applicant testified he learned from discovery there was a white suspect and a black suspect in this matter. Applicant further testified SLED received information on both him and the white suspect. Applicant asserted Counsel failed to look into both suspects law enforcement had in this case. Applicant testified Counsel did not question the victim regarding the identity of the assailant, specifically, whether the assailant was an African American. When asked whether Applicant remembered victim testifying, at trial, that the assailant was a black male, Applicant testified he did not remember.

Additionally, Applicant testified he was concerned with Counsel's performance because Counsel failed to question victim regarding her panties, as panties were sent to SLED for testing in this case. Applicant suggested that because victim testified, at trial, she did not have panties on

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screamed and I ran up front and – twenty-nine years so I do remember [victim], she had come out of the front door and she was holding her clothes up around her and my receptionist was comforting her. (Tr. 96-97).

at some point during her attack, the panties that were tested could not have been hers<sup>4</sup>. Applicant contends that if victim was not wearing panties at the time of the offense, there should not have been any panties in evidence to test.

Regarding Applicant's allegation trial counsel and the public defender's office had a material conflict in this case, Applicant testified attorney John Loy, who had previously prosecuted Applicant in a separate matter, was Counsel's superior at the time of trial. Applicant testified Counsel discussed with him Mr. Loy's involvement in Applicant's prior case and informed him Mr. Loy may sit in on his hearing; however, Applicant contended he never saw Mr. Loy. Applicant testified he did not learn of the potential conflict until his second meeting with Counsel. Applicant testified Counsel did not say anything further to him about the alleged conflict and again confirmed he never saw Mr. Loy at trial, nor spoke with him.

#### *Trial Counsel Mitchell Farley's (Counsel) Testimony*

Counsel testified he has been practicing law since 2007 and that 99% of his practice since that time has been criminal law. Counsel testified Applicant's file was opened in 2011 and this matter was tried in 2013. When asked how many times Counsel met with Applicant, Counsel testified it is his practice to meet with clients at least once a month; Counsel further stated he does not independently recall how many times he met with Applicant, but believes it was between six and ten times. Counsel testified during those meetings he reviewed discovery with Applicant and discussed the indictments with Applicant. Counsel testified Applicant did not receive any plea offers from the State. Counsel further testified he believed trying the case was Applicant's best option as Applicant was facing life without parole (LWOP).

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<sup>4</sup> At trial, the solicitor questioned victim witness as follows: "Okay. After he forced you to have oral sex with him, what happened then?" Victim responded: "He told me I had to bend over and I didn't have any underwear on and he performed anal sex on me." (Tr. 87).

Regarding Applicant's allegation he is entitled to a belated direct appeal, Counsel testified Applicant asked him to file a direct appeal on his behalf. Counsel testified he submitted a letter with the notice of appeal on the date trial concluded. Counsel testified he believes his paralegal drafted the notice of appeal on his behalf, conceding he did not properly review the notice of appeal prior to filing. Counsel testified he did not realize he had incorrectly filed Applicant's notice of appeal and cited to the incorrect standard (the guilty plea standard) until after the order dismissing the appeal was returned to him. Counsel stated he did not intend to withdraw Applicant's appeal on his behalf. Additionally, Applicant's counsel and the State stipulated to an affidavit from Chief Appellate Defender, Robert M. Dudek, regarding his understanding as to why Applicant's matter was not reviewed by Appellate Defense prior to the Court's dismissal<sup>5</sup>. (See Applicant's Exhibit #1 – Affidavit of Robert M. Dudek).

Regarding Applicant's allegation Counsel was ineffective for failing to call critical witnesses at trial, Counsel testified he does not recall Applicant ever asking about a 911 caller, nor does he remember seeing a 911 call that would have been admissible at trial. Counsel testified he did not believe there were any rebuttal witnesses regarding the state of victim following the incident, nor did Applicant produce any witnesses to Counsel for him to investigate.

Applicant further alleged Counsel was ineffective for failing to investigate and challenge the chain of evidence. Counsel testified his main defense in this matter involved the chain of

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<sup>5</sup> In Mr. Dudek's affidavit, he states that within the notice of intent to appeal, Counsel wrote: "This appeal is filed at the request of defendant Herbert Holmes, SCDC#00139850. However, counsel is not aware of any exceptions to Rule 203." (Applicant's Exhibit #1 – Affidavit of Robert M. Dudek). Mr. Dudek further states the Court sent a letter to Counsel instructing him to forward his guilty plea explanation to Applicant and to instruct Applicant to inform the Court of Appeals on any arguable basis for there being a legal issue preserved for appeal. (*Id.*) Mr. Dudek further stated that the Division of Appellate Defense does not open a file in guilty pleas unless and until the Court of Appeals informs Appellate Defense that the plea appeal is going forward and therefore would not have opened a file in Applicant's matter as they had no notice the appeal was not from a guilty plea. (*Id.*)

custody; Counsel further testified he believed the State had a very serious chain of custody issue. Specifically, Counsel stated the chain of custody was not well documented – the offices where the evidence in this matter had been kept had moved, SLED had tested some of the evidence more than once, and there was a deceased person in the chain of evidence. Additionally, Counsel added there was very little by way of chain of custody produced from the sheriff's office.

Counsel testified that prior to trial he thoroughly prepped and investigated each part of the chain of custody, mapping it out. Counsel further testified he made a motion to exclude the DNA evidence because of chain of custody issues and believed Applicant had a fighting chance to get the evidence excluded<sup>6</sup>. Counsel testified the trial court ultimately denied the motion to exclude – ruling the evidence was admissible but that the parties could argue the weight of the evidence. Counsel testified the chain of custody was the most integral part of his trial defense strategy and that most of the trial revolved issue with the chain of custody, not what happened the night of the incident.

Regarding Applicant's allegation Counsel was ineffective for failing to adequately cross-examine the victim, Counsel testified the victim in this case was brutally raped. Counsel further testified victim was very emotional during her testimony and as such, he did not want to appear to batter her regarding the incident more than was necessary. Counsel testified he did not believe asking about victim's panties would have helped Applicant's case when their main defense was to tear down the chain of custody. Counsel testified he remember noting at trial that victim testified she did not have on panties during the attack; however, despite testifying he believed he may have had reason to not bring that point up during closing, Counsel could not recall why he did not argue

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<sup>6</sup> Counsel moved to exclude the evidence on the basis the chain had not been produced as well as on the basis the evidence had possibly been contaminated. (Tr. 274). Following Counsel's lengthy argument in support of his motion to exclude the DNA evidence, the trial court denied Applicant's motion to exclude, noting Applicant's concerns went to the weight of the evidence rather than to the admissibility (Tr. 298).

victim's inconsistent testimony to the jury.

Furthermore, Counsel agreed with Applicant's counsel when asked whether it was important to ensure the panties were the same pair of panties the entire time. However, Counsel did not recall challenging the chain of custody on that specific ground. Counsel testified that though victim testified she had no panties on when the assault occurred, she later stated in her testimony she put her clothes back on after the assault.

Regarding Applicant's allegation trial counsel and the public defender's office had a material conflict in this case, Counsel testified he did inform Applicant about John Loy's employment with the Public Defender's Office. However, Counsel further testified he did not believe there was a conflict. Counsel testified Mr. Loy had no involvement in the case whatsoever and confirmed Mr. Loy gave him no direction regarding the case. Counsel testified he does not recall Mr. Loy asking to sit in on Applicant's case.

#### **V. Standard of Review**

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore

available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction: 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are

alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’” *Dunn v. Reeves*, 594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." *Dunn*, 594 U.S. \_\_\_, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland's* deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s

burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

#### **VI. Findings of Fact & Conclusions of Law**

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments made by counsel and Applicant, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised and finds all to be without merit except Applicant's allegation pursuant to *White v. State*. Therefore, pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

#### ***Allegation Counsel Failed to File a Direct Appeal***

Applicant alleged Counsel failed to file an appeal from his trial after Applicant requested Counsel to do so. Applicant testified it was his intention to appeal and believed Counsel had properly filed an appeal on his behalf. Additionally, Counsel testified Applicant asked him to file a direct appeal on his behalf. Counsel testified he attempted to file an appeal, but incorrectly cited the guilty plea standard; Counsel further stated he did not realize he had cited the incorrect appeal

standard until after the order dismissing the appeal was returned to him. Therefore, based on the foregoing, this Court finds Applicant is entitled to a belated direct appeal pursuant to *White v. State*, and **GRANTS** relief in the form of a belated appeal only.

***Allegation Counsel was Ineffective for Failing to Call Critical Witness***

Applicant claims Counsel was ineffective for failing to call the 911 operator and/or the 911 caller to testify at trial. At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018). Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew

the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial). Further, to demonstrate prejudice, Applicant was required to present the evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Though Applicant testified no testimony was elicited at trial regarding the state of the victim following the incident, this Court finds the record shows a witness did testify to the victim's state and appearance following the incident. Applicant further alleged at the evidentiary hearing he believed the 911 caller's and/ or 911 operator's testimony would have been different than that of the other witness following the incident; however, Applicant failed to address how the 911 caller or 911 operator's testimony would have differed or been helpful to his defense. Moreover, this Court finds Counsel credibly testified Applicant did not produce any witnesses for him to investigate and he did not review a 911 call in this case that would have been admissible at trial. Additionally, this Court finds Counsel is only required to act reasonably in this regard and his

failure to call these witnesses almost thirty years after the crime was committed was not deficient as they would not made a difference at trial.

Moreover, Applicant failed to call any witnesses at the evidentiary hearing to meet his burden of proof regarding the prejudice prong on the *Strickland* analysis. Accordingly, Applicant fails on both prongs of the *Strickland* analysis concerning this allegation and, thus, his claim of failure to investigate and call witnesses must be rejected. Accordingly, this Court finds this allegation must be **DENIED**.

***Allegation Counsel was Ineffective for Failing to Investigate & Challenge Chain of Custody***

Applicant contends Counsel was ineffective for failing to adequately investigate the case and failing to properly challenge the chain of custody. Counsel credibly testified prior to trial he investigated each aspect of the chain of custody. Counsel further testified he believed the State had a serious issue regarding the chain of custody in this case and that attacking the chain of custody was the most integral part of Applicant's defense. Counsel testified he believed there was a strong chance the DNA evidence would be excluded due to the State's chain of custody issues.

The record shows Counsel moved to exclude the DNA evidence asserting the chain of evidence had not been produced and asserting the evidence had possibly been contaminated. (Tr. 274). Specifically, Counsel argued: the victim testified the incident occurred on the 24<sup>th</sup> when all other documentation states the incident occurred on the 25<sup>th</sup>; neither of the nurses who collected and/or labeled the evidence were able to confirm they were present during the examination; and Deputy Knight could not confirm whether he brought the rape kit into the hospital or if the nurse kit was provided by the hospital. (Tr. 275-276). Additionally, Counsel argued the SLED records were not clear and that SLED did not follow their own protocols at the time of the incident; therefore, he posited the results are not trustworthy. (Tr. 276-287). Counsel entered into lengthy

argument and explanation to the trial court regarding each piece of the chain whereafter Judge Goodstein denied Counsel's motion stating the trial court believed Applicant's concerns regarding the chain of evidence went to the weight of the evidence rather to the admissibility of the evidence. (Tr. 295). Furthermore, Counsel moved to renew his motion for a directed verdict and all other motions made throughout Applicant's trial. (Tr. 370). The trial court denied Counsel's motions and noted Counsel's objections. (Tr. 371).

Therefore, this Court finds Applicant has failed to present any evidence Counsel was ineffective in failing to investigate the chain of custody and/ or was ineffective in his handling of Applicant's chain of custody argument. In *State v. Hatcher*, our Supreme Court analyzed cases in other jurisdictions where "[c]ourts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts." 392 S.C. 86, 94, 708 S.E.2d 750, 754 (2011). The Court ultimately held that "the State need not establish the identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable." *Id.* at 95, 708 S.E.2d at 755. This Court finds that Counsel credibly testified he thoroughly investigated the chain of custody, as well as testified challenging the chain of custody was the most integral part of the defense. Moreover, because Counsel did in fact move to exclude the DNA evidence and vehemently argued his basis for his motion to the trial court, this Court finds no deficiency.

This Court further finds Applicant has failed to establish any resulting prejudice from Counsel's alleged deficiency. Specifically, this Court agrees with the trial court and finds a sufficient chain of custody was established at trial. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional

ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice. Accordingly, this allegation is **DENIED**.

***Allegation Counsel was Ineffective for Failing to Challenge Witness's Testimony***

Applicant also alleges trial counsel was ineffective for failing to effectively cross-examine victim at trial regarding her version of the events. This Court finds Applicant has failed to meet his burden and finds no deficiency on the part of Counsel nor prejudice therefrom for this allegation.

The manner and extent of cross-examination should not be second-guessed. *See Sallie v. North Carolina*, 587 F.2d 636, 640 (4th Cir. 1978) (*Marzullo* is not intended to promote judicial second guessing on questions of strategy as basic as handling of a witness); *United States v. Nersesian*, 824 F.2d 1294, 3121 (2d Cir. 1987) (“decisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature” and will not support an ineffective assistance claim); *Gustave v. United States*, 627 F.2d 901, 906 (9th Cir. 1980). *Strickland* requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689.

This Court finds Counsel credibly testified the victim in this case was brutally raped and extremely emotional during her testimony. Additionally, Counsel testified he did not want to appear to the jury as though he was battering the victim regarding the incident more than was necessary for his defense. Though Counsel failed to ask victim about inconsistencies in her testimony regarding whether she was wearing her panties during the rape, Counsel credibly testified that he did not believe further inquiry regarding the victim’s panties would have helped

Applicant's case. As Counsel testified, his main strategy in this case was to tear down the chain of custody. Additionally, Counsel noted that despite victim's testimony she had no panties on when the rape occurred, she later testified she put her clothes back on. Therefore, this Court finds Counsel was not deficient. Additionally, this Court finds Applicant was not prejudiced by any alleged deficiency as Counsel articulated strategic reasonings for failing to vigorously cross-examine and require the emotional rape victim to recount the incident. Specifically, this Court finds Counsel was reasonable in his decision not to further 'batter' the victim in front of the jury when Applicant's main defense strategy was to emphasize the weaknesses in the State's chain of custody. Accordingly, this Court finds this allegation must be **DENIED**.

***Allegation Regarding Conflict of Interest by the Public Defender's Office***

Applicant claims he is entitled to relief because Counsel allegedly had a conflict of interest because his supervisor at the First Circuit Public Defender's Office, John Loy, previously prosecuted Applicant for a prior offense. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)). An actual conflict of interest occurs where counsel owes a duty to a party whose interests are adverse to the applicant's. *Fuller v. State*, 347 S.C. 630, 633-34, 557 S.E.2d 664, 665 (2001). Where an applicant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance, prejudice is presumed. *Gonzales v. State*, 419 S.C. 2, 10, 795 S.E.2d 835, 839 (2017) (citing *Strickland*, 466 U.S. at 692) (emphasis added). However, "[t]he mere possibility of a conflict of interest is insufficient to impugn a criminal conviction." *Fuller*, 347

S.C. at 634, 557 S.E.2d at 665.

“The Sixth Amendment right to conflict-free representation, like the right to counsel itself, may be the subject of a waiver.” *United States v. Swartz*, 975 F.2d 1042, 1048 (4th Cir. 1992). “The state can establish a waiver only by proving an intentional relinquishment or abandonment of the right.” *Hoffman v. Leeke*, 903 F.2d 280, 288 (4th Cir. 1990). “To be valid, a waiver of a conflict of interest must not only be voluntary, it must be done knowingly and intelligently.” *Thomas v. State*, 346 S.C. 140, 144, 551 S.E.2d 254, 256 (2001) (citing *Swartz* at 1048-49). “Whether there has been a waiver depends on the particular facts of each case and the court must make as thorough and long an inquiry as necessary to determine whether the accused is voluntarily, knowingly[,] and intelligently waiving his right.” *Hoffman*, 903 F.2d at 288.

This Court finds that Applicant is not entitled to relief based upon a conflict of interest. First, Applicant seemingly was aware that Counsel’s supervisor had previously prosecuted him for a prior offense. This is borne out by his testimony that Counsel informed him of such during their second meeting. Applicant further testified he did not see or meet with Mr. Loy during this case. Additionally, Counsel credibly testified he informed Applicant about Mr. Loy’s employment with the Public Defender’s Office but not believe a conflict existed. Counsel additionally testified Mr. Loy had no involvement in Applicant’s case and gave Counsel no direction in Applicant’s case.

Even if this potential conflict was not waived, Applicant has failed to show any prejudicial effect of the potential conflict. There has been no showing that the potential conflict impacted Counsel’s performance or strategic decisions. Applicant has merely acknowledged a possibility of a conflict existing, which does not warrant relief. Accordingly, this allegation is **DENIED**.

## VII. Conclusion

Based on all the foregoing, this Court finds Applicant did not knowingly and intelligently


waive his right to a direct appeal and, as such, he may petition the Supreme Court of South Carolina pursuant to *White v. State*. See generally Rule 243(i), SCACR; *Davis*, 388 S.C. 390, 342 S.E.2d 60 (setting forth procedures for a *White* appeal, prohibiting other forms of relief on this basis). This Court further finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application on the remaining issues.

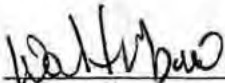
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). 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 Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. Applicant is granted belated appellate review of direct appeal issues pursuant to *White v. State*;
2. All other allegations for post-conviction relief are denied and dismissed with prejudice;
3. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 19 day of Sept, 2022.

  
 ROBERT J. BONDS  
 Presiding Judge  
 First Judicial Circuit

  
 South Carolina

**WITNESSES**

2017 NOV 27 PM 5:04  
R Parker  
CLERK OF COURT  
DORCHESTER COUNTY

Dorchester County Sheriff

**ARREST WARRANT NUMBER**  
M471382

Arrested: February 10, 2011

**ACTION OF GRAND JURY**

TRUE BILL

DATE

*Brian Jones*  
Foreperson of Grand Jury  
Date: May 5, 2011

**VERDICT**

Foreperson  
Date:

DOCKET NO. 2011GS18-0256

**The State of South Carolina**  
County of DORCHESTER

**COURT OF GENERAL SESSIONS**

May 9, 2011 TERM

**THE STATE**  
vs.

Herbert Holmes

**Indictment for**  
KIDNAPPING

SC Code

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

Defendant

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

Defendant

Witness:

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

FILED - RECORDED  
2011 MAY -5 PM 1:30  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )

INDICTMENT  
 2011GS18-0256  
 CERTIFIED COPY  
 2017 NOV 27 PM 5:04

At a Court of General Sessions, convened on May 9, 2011 the Grand Jurors of  
 Dorchester County present upon their oath:

*Cheryl Abraham*  
 CLERK OF COURT  
 DORCHESTER COUNTY

### KIDNAPPING

That in Dorchester County, South Carolina, on or about October 24, 1984, the  
 Defendant, Herbert Holmes, unlawfully did seize, confine, inveigle, decoy,  
 kidnap, abduct or carry away the victim, [REDACTED] P. R., without authority of law.  
 This offense in violation of Section 16-03-910, of the South Carolina Code of  
 Laws, as amended

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

*Glenn P. Justis*

Glenn P. Justis, Solicitor

WITNESSES

2017 NOV 27 PM 5:01  
R Parker  
CLERK OF COURT  
DORCHESTER COUNTY

Dorchester County Sheriff

ARREST WARRANT NUMBER  
M471383

Arrested: February 10, 2011

ACTION OF GRAND JURY  
TRUE BILL

DATE  
*Brian [Signature]*  
Foreperson of Grand Jury  
Date: May 5, 2011

VERDICT

Foreperson of Grand Jury  
Date:

DOCKET NO. 2011GS18-0257

The State of South Carolina  
County of DORCHESTER

COURT OF GENERAL SESSIONS

May 9, 2011 TERM

THE STATE  
vs.  
Herbert Holmes

Indictment for  
CRIMINAL SEXUAL CONDUCT - FIRST  
DEGREE

SC Code: 16-3-10

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

Defendant

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

Defendant

Witness:  
C.C.C. PLS. AND G.S.

FILED - RECORDED  
2011 MAY -5 PM 1:30  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY



STATE OF SOUTH CAROLINA  
COUNTY OF Dorchester  
STATE VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS18-0256

Herbert Holmes

A/W#: M471382

AKA: \_\_\_\_\_

Date of Offense: 10/24/1984

Race: BLACK Sex: M Age: 47

S.C. Code §: 16-3-910

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 0095

Address: Lieber Correctional Institute

City, State, Zip: Ridgeville, SC 29472

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

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: Kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-37

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

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

ATTORNEY: Justis, Glenn P. 76606 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 Life days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 4-25-2013 but Consecutive to State  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied currently served  
by the State Department of Corrections Final 2-F-2011  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 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	\$ 3.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: Must register as a sex offender because the sexual kidnapping

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

Clerk of Court/ Deputy Clerk Cheryl Graham  
Court Reporter: Melissa Singletary

Presiding Judge Diana S. [Signature]  
Judge Code: 2112  
Sentence Date: 4-25-2013

STATE OF SOUTH CAROLINA  
COUNTY OF Dorchester  
STATE VS.  
Herbert Holmes

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS18-0257  
A/W#: M471383  
Date of Offense: 10/24/1984  
S.C. Code §: 16-3-652  
CDR Code #: 0160

AKA:  
Race: BLACK Sex: M Age: 47  
DOB: [REDACTED] SS#: [REDACTED]  
Address: Lieber Correctional Institute  
City, State, Zip: Ridgeville, SC 29472  
DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Criminal sexual conduct - First degree

CONVICTED OF or  PLEADS

in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0160  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-  
w/minor 1st or Lewd Act)

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

ATTORNEY: Glenn P. Justice 76606 Defendant Attorney for Defendant SC Bar#  
Justis, Glenn P. 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 \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of consecutive  
probation, which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: Sentenced on 4-25-2013 and carried  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied to sentence  
by the State Department of Corrections. February 1, 2011  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

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

Recipient: \_\_\_\_\_

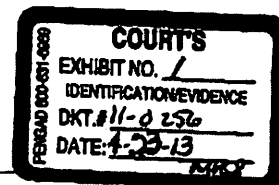
*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 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 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: Must register as sex offender and have life GPS monitoring w/ rear track  
SCDC

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

Clerk of Court/ Deputy Clerk Cheyl Graham  
Court Reporter: Melissa Singleton  
SCCA/217 (03/2011)

Presiding Judge Diane S. [Signature]  
Judge Code: 2112  
Sentence Date: 4-25-2013



Items sent to SLED 1/2/85

- A) Vaginal wash
- B) Vaginal Swab
- C) Wood's Lamp
- D) Oral Swab
- E) Rectal Swab
- F) Saliva
- G) Oral wash

Items sent to SLED 1/31/1985

- H) Blouse
- I) Hose
- J) Bra
- K) Chux
- L) Chux
- M) Skirt
- N) panties
- O) Slip
- P) left fingernail scrapings
- Q) right " "
- R) pubic Hair Plucking
- S) " " Combing

582

Dorchester



Medical University of South Carolina  
171 ASHLEY AVENUE / CHARLESTON, SOUTH CAROLINA 29403

10-25-84

558281

NURSES' PROGRESS NOTES

DATE	TIME	RECORD: ADMISSION, PERTINENT OBSERVATIONS, TREATMENT AND DISCHARGE (SIGN ALL ENTRIES)
10/25/84		EVIDENCE RELEASED TO: <i>X James S. Knight DEED</i> 8:27p
		BY: <i>M. Amerson</i>
		✓ CLOTHING: <i>hose, bra, panties, slip, skirt, blouse</i>
		✓ CHUX X 2.
		✓ PHOTOS: <i>full length</i>
		✓ R & L FINGERNAIL SCRAPPINGS.
		✓ PUBIC HAIR COMBINGS.
		✓ PUBIC HAIR CLIPPINGS <i>plucking</i>
		NA FOREIGN MATERIAL:
		✓ VAGINAL WASHING WITHOUT FIXATIVE.
		✓ VAGINAL SWAB FOR ABO.
		✓ WOODS' LAMP + SWAB.
		✓ FILTER PAPER WITH SALIVA.
		✓ OTHER EVIDENCE: <i>oral washing without fixative</i>
		<i>oral ABO</i>
		<i>rectal ABO</i>



SOUTH CAROLINA LAW ENFORCEMENT DIVISION  
REQUEST FOR LABORATORY ANALYSIS

FILED CASE NO. L85-0026  
COUNTY DORCHESTER

S.C. LAW ENFORCEMENT DIVISION  
RECEIVED

Do not write in the space above  
RECEIVED DATE: 12-20

Print or type all information except as noted (Do not write in this space)

Contributing Agency ORI SCO \_\_\_\_\_ Contributing Agency Case No. \_\_\_\_\_  
New Case  Additional Evidence  Case Number \_\_\_\_\_  
Incident Type (Type of Crime) CRIMINAL SEX. COND.  
Incident Date 10-25-84 To \_\_\_\_\_  
Incident Address BOOK BAG - DAKBROOK PLAZA

DL CHEMISTRY LAB  
Name of Individual Receiving Report  
DCSD 893-5111  
Department Telephone number  
100 Sears St.  
Street Address of Post Office Box  
St. George, S.C. 29943  
City

**INCIDENT**

**VICTIMS**

Name of First Victim LAST \_\_\_\_\_ FIRST \_\_\_\_\_ MIDDLE \_\_\_\_\_  
Name of Second Victim LAST \_\_\_\_\_ FIRST \_\_\_\_\_ MIDDLE \_\_\_\_\_  
Name of Third Victim LAST \_\_\_\_\_ FIRST \_\_\_\_\_ MIDDLE \_\_\_\_\_  
(If more than 3 victims use additional sheet)

D L Number \_\_\_\_\_  
SS No., or FBI No. \_\_\_\_\_  
Race W Sex E DOB \_\_\_\_\_  
D L Number \_\_\_\_\_  
SS No., or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_  
D L Number \_\_\_\_\_  
SS No., or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_

**SUBJECTS**

Name of First Subject UNK. LAST \_\_\_\_\_ FIRST \_\_\_\_\_ MIDDLE \_\_\_\_\_  
Name of Second Subject LAST \_\_\_\_\_ FIRST \_\_\_\_\_ MIDDLE \_\_\_\_\_  
Name of Third Subject LAST \_\_\_\_\_ FIRST \_\_\_\_\_ MIDDLE \_\_\_\_\_  
(If more than 3 subjects use additional sheet)

D L Number \_\_\_\_\_  
SS No., or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_  
D L Number \_\_\_\_\_  
SS No., or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_  
D L Number \_\_\_\_\_  
SS No., or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_

**AGREEMENT**

The items submitted hereto will be examined and the assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for testing or forensic examination.

St. Dale New... [Signature]  
PRINT Name of Submitting Officer SIGNATURE OF Submitting Officer

**EVIDENCE**

Specimens submitted for examination:

- ① Specimen Kit from MUSE
- Containing 5 glass vials, one plastic container, one paper envelope
- ② vaginal wash ③ sweat socks ④ dental work
- ⑤ vaginal swab ⑥ dental swab
- ⑦ tooth's hair ⑧ saliva

EXAM REQ.

Space for additional evidence is provided on reverse side  
Additional evidence (if any) (to list) \_\_\_\_\_  
048-824 (REV 8/83)

SIGNATURE of person receiving evidence

STATE'S EXHIBIT  
47313 18  
M.W.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION  
REQUEST FOR LABORATORY ANALYSIS

ADDITIONAL EVIDENCE

SLRD CASE NO. 485-0026  
COUNTY \_\_\_\_\_ Character: \_\_\_\_\_  
Print or type all information except as noted Do not write in this space

S.C. LAW ENFORCEMENT DIVISION  
RECEIVED

1985 JAN 31 10 51 AM

Contributing Agency ORI SC0 180000 Contributing Agency Case No. \_\_\_\_\_  
Incident Type (Type of Crime) CRIM-SEX COND + ARMED ROBBERY  
Incident Date 11-25-84 TO \_\_\_\_\_  
Incident Address: BOOK BAG STORE - DAKARROOK PLAZA - SULLY, S.C.

DALE HENNING LAB  
Name of Individual Receiving Report \_\_\_\_\_  
DOR. CO. SHERIFF DEPT. - 872-5111  
Department Telephone Number  
100 SEARS ST.  
Street Address or Post Office Box  
ST. GEORGE, S.C. 29527  
City State Zip Code

VICTIMS  
First Victim's Name \_\_\_\_\_  
Second Victim's Name \_\_\_\_\_  
Third Victim's Name \_\_\_\_\_  
(If more than 3 victims use additional sheet)

D L Number, SS No. or FBI No. \_\_\_\_\_  
Race W Sex F DOB \_\_\_\_\_  
D L Number, SS No. or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_  
D L Number, SS No. or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_

SUBJECTS  
First Subject's Name KMS  
Second Subject's Name \_\_\_\_\_  
Third Subject's Name \_\_\_\_\_  
(If more than 3 subjects use additional sheet)

D L Number, SS No. or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_  
D L Number, SS No. or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_  
D L Number, SS No. or FBI No. \_\_\_\_\_  
Race \_\_\_\_\_ Sex \_\_\_\_\_ DOB \_\_\_\_\_

AGREEMENT  
The items submitted below will be examined with your consent and the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.  
17. DALE P. NEWINS 1-21-85 Dale P. Newins  
PRINT Name Of Submitting Officer SIGNATURE Of Submitting Officer

EVIDENCE  
Specimens submitted for examination  
① - SLIP  
② - FINGERNAIL SCRAPING  
③ - FINGERNAIL SCRAPING  
④ - PUBIC HAIR COMING

EXAM REC  
HAIR  
Semen  
APD  
Tissue

Space for additional evidence is provided on reverse side  
Additional evidence (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z) (aa) (ab) (ac) (ad) (ae) (af) (ag) (ah) (ai) (aj) (ak) (al) (am) (an) (ao) (ap) (aq) (ar) (as) (at) (au) (av) (aw) (ax) (ay) (az) (ba) (bb) (bc) (bd) (be) (bf) (bg) (bh) (bi) (bj) (bk) (bl) (bm) (bn) (bo) (bp) (bq) (br) (bs) (bt) (bu) (bv) (bw) (bx) (by) (bz) (ca) (cb) (cc) (cd) (ce) (cf) (cg) (ch) (ci) (cj) (ck) (cl) (cm) (cn) (co) (cp) (cq) (cr) (cs) (ct) (cu) (cv) (cw) (cx) (cy) (cz) (da) (db) (dc) (dd) (de) (df) (dg) (dh) (di) (dj) (dk) (dl) (dm) (dn) (do) (dp) (dq) (dr) (ds) (dt) (du) (dv) (dw) (dx) (dy) (dz) (ea) (eb) (ec) (ed) (ee) (ef) (eg) (eh) (ei) (ej) (ek) (el) (em) (en) (eo) (ep) (eq) (er) (es) (et) (eu) (ev) (ew) (ex) (ey) (ez) (fa) (fb) (fc) (fd) (fe) (ff) (fg) (fh) (fi) (fj) (fk) (fl) (fm) (fn) (fo) (fp) (fq) (fr) (fs) (ft) (fu) (fv) (fw) (fx) (fy) (fz) (ga) (gb) (gc) (gd) (ge) (gf) (gg) (gh) (gi) (gj) (gk) (gl) (gm) (gn) (go) (gp) (gq) (gr) (gs) (gt) (gu) (gv) (gw) (gx) (gy) (gz) (ha) (hb) (hc) (hd) (he) (hf) (hg) (hh) (hi) (hj) (hk) (hl) (hm) (hn) (ho) (hp) (hq) (hr) (hs) (ht) (hu) (hv) (hw) (hx) (hy) (hz) (ia) (ib) (ic) (id) (ie) (if) (ig) (ih) (ii) (ij) (ik) (il) (im) (in) (io) (ip) (iq) (ir) (is) (it) (iu) (iv) (iw) (ix) (iy) (iz) (ja) (jb) (jc) (jd) (je) (jf) (jg) (jh) (ji) (jj) (jk) (jl) (jm) (jn) (jo) (jp) (jq) (jr) (js) (jt) (ju) (jv) (jw) (jx) (jy) (jz) (ka) (kb) (kc) (kd) (ke) (kf) (kg) (kh) (ki) (kj) (kk) (kl) (km) (kn) (ko) (kp) (kq) (kr) (ks) (kt) (ku) (kv) (kw) (kx) (ky) (kz) (la) (lb) (lc) (ld) (le) (lf) (lg) (lh) (li) (lj) (lk) (ll) (lm) (ln) (lo) (lp) (lq) (lr) (ls) (lt) (lu) (lv) (lw) (lx) (ly) (lz) (ma) (mb) (mc) (md) (me) (mf) (mg) (mh) (mi) (mj) (mk) (ml) (mm) (mn) (mo) (mp) (mq) (mr) (ms) (mt) (mu) (mv) (mw) (mx) (my) (mz) (na) (nb) (nc) (nd) (ne) (nf) (ng) (nh) (ni) (nj) (nk) (nl) (nm) (nn) (no) (np) (nq) (nr) (ns) (nt) (nu) (nv) (nw) (nx) (ny) (nz) (oa) (ob) (oc) (od) (oe) (of) (og) (oh) (oi) (oj) (ok) (ol) (om) (on) (oo) (op) (oq) (or) (os) (ot) (ou) (ov) (ow) (ox) (oy) (oz) (pa) (pb) (pc) (pd) (pe) (pf) (pg) (ph) (pi) (pj) (pk) (pl) (pm) (pn) (po) (pp) (pq) (pr) (ps) (pt) (pu) (pv) (pw) (px) (py) (pz) (qa) (qb) (qc) (qd) (qe) (qf) (qg) (qh) (qi) (qj) (qk) (ql) (qm) (qn) (qo) (qp) (qq) (qr) (qs) (qt) (qu) (qv) (qw) (qx) (qy) (qz) (ra) (rb) (rc) (rd) (re) (rf) (rg) (rh) (ri) (rj) (rk) (rl) (rm) (rn) (ro) (rp) (rq) (rr) (rs) (rt) (ru) (rv) (rw) (rx) (ry) (rz) (sa) (sb) (sc) (sd) (se) (sf) (sg) (sh) (si) (sj) (sk) (sl) (sm) (sn) (so) (sp) (sq) (sr) (ss) (st) (su) (sv) (sw) (sx) (sy) (sz) (ta) (tb) (tc) (td) (te) (tf) (tg) (th) (ti) (tj) (tk) (tl) (tm) (tn) (to) (tp) (tq) (tr) (ts) (tt) (tu) (tv) (tw) (tx) (ty) (tz) (ua) (ub) (uc) (ud) (ue) (uf) (ug) (uh) (ui) (uj) (uk) (ul) (um) (un) (uo) (up) (uq) (ur) (us) (ut) (uu) (uv) (uw) (ux) (uy) (uz) (va) (vb) (vc) (vd) (ve) (vf) (vg) (vh) (vi) (vj) (vk) (vl) (vm) (vn) (vo) (vp) (vq) (vr) (vs) (vt) (vu) (vv) (vw) (vx) (vy) (vz) (wa) (wb) (wc) (wd) (we) (wf) (wg) (wh) (wi) (wj) (wk) (wl) (wm) (wn) (wo) (wp) (wq) (wr) (ws) (wt) (wu) (wv) (ww) (wx) (wy) (wz) (xa) (xb) (xc) (xd) (xe) (xf) (xg) (xh) (xi) (xj) (xk) (xl) (xm) (xn) (xo) (xp) (xq) (xr) (xs) (xt) (xu) (xv) (xw) (xx) (xy) (xz) (ya) (yb) (yc) (yd) (ye) (yf) (yg) (yh) (yi) (yj) (yk) (yl) (ym) (yn) (yo) (yp) (yq) (yr) (ys) (yt) (yu) (yv) (yw) (yx) (yz) (za) (zb) (zc) (zd) (ze) (zf) (zg) (zh) (zi) (zj) (zk) (zl) (zm) (zn) (zo) (zp) (zq) (zr) (zs) (zt) (zu) (zv) (zw) (zx) (zy) (zz)

SIGNATURE of person receiving evidence



Additional Evidence  
SOUTH CAROLINA LAW ENFORCEMENT DIVISION  
REQUEST FOR LABORATORY ANALYSIS

KLB

JUL 21 PM 1:57

FILED CASE NO. L85-0026  
COUNTY DORCHESTER

Print or type all information except as noted (Do not write in this space)

Reports should be mailed to:

Contributing Agency ORI SCO 50180000 Contributing Agency Case No. \_\_\_\_\_

DALE P. NEVINS LT.  
Name of Individual Receiving Report Rank

New Case  Additional Evidence  Case Number \_\_\_\_\_

DORCHESTER CO. SHERIFF-DEPT. 879-5111  
Department Telephone Number

Incident Type (Type of Crime) RAPE

100 SEARS ST.  
Street Address of Post Office Box

Incident Date 10-25-84 To \_\_\_\_\_

ST. GEORGE, S.C. 29477  
City ZIP Code

Incident Address SUMMERVILLE, S.C.

BOOK BAG STORE

Markings may be required, please refer to manual & attach on back

INCIDENT

VICTIMS

Name of First Victim \_\_\_\_\_ MIDDLE

D L Number  
SS No., or FBI No.  
Room W Box E DOB

Name of Second Victim LAST FIRST MIDDLE

D L Number  
SS No., or FBI No.  
Room \_\_\_\_\_ Box \_\_\_\_\_ DOB

Name of Third Victim LAST FIRST MIDDLE

D L Number  
SS No., or FBI No.  
Room \_\_\_\_\_ Box \_\_\_\_\_ DOB

(If more than 3 victims use additional sheets)

SUBJECTS

Name of First Subject DANIELS BARRY MIDDLE

D L Number  
SS No., or FBI No.  
Room B Box M DOB

Name of Second Subject LAST FIRST MIDDLE

D L Number  
SS No., or FBI No.  
Room \_\_\_\_\_ Box \_\_\_\_\_ DOB

Name of Third Subject LAST FIRST MIDDLE

D L Number  
SS No., or FBI No.  
Room \_\_\_\_\_ Box \_\_\_\_\_ DOB

(If more than 3 subjects use additional sheets)

AGREEMENT

The items submitted below will be examined with your cooperation that the submitted questions have not been nor will be referred to any other laboratory or agency for technical or forensic examination.

DALE P. NEVINS  
PRINT Name of Submitting Officer

Dale P. Nevins  
SIGNATURE OF Submitting Officer

EVIDENCE

Specimens submitted for examination DNA

EXAM FEE  
325

Space for additional evidence is provided on reverse side  
Additional evidence (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z) (aa) (ab) (ac) (ad) (ae) (af) (ag) (ah) (ai) (aj) (ak) (al) (am) (an) (ao) (ap) (aq) (ar) (as) (at) (au) (av) (aw) (ax) (ay) (az) (ba) (bb) (bc) (bd) (be) (bf) (bg) (bh) (bi) (bj) (bk) (bl) (bm) (bn) (bo) (bp) (bq) (br) (bs) (bt) (bu) (bv) (bw) (bx) (by) (bz) (ca) (cb) (cc) (cd) (ce) (cf) (cg) (ch) (ci) (cj) (ck) (cl) (cm) (cn) (co) (cp) (cq) (cr) (cs) (ct) (cu) (cv) (cw) (cx) (cy) (cz) (da) (db) (dc) (dd) (de) (df) (dg) (dh) (di) (dj) (dk) (dl) (dm) (dn) (do) (dp) (dq) (dr) (ds) (dt) (du) (dv) (dw) (dx) (dy) (dz) (ea) (eb) (ec) (ed) (ee) (ef) (eg) (eh) (ei) (ej) (ek) (el) (em) (en) (eo) (ep) (eq) (er) (es) (et) (eu) (ev) (ew) (ex) (ey) (ez) (fa) (fb) (fc) (fd) (fe) (ff) (fg) (fh) (fi) (fj) (fk) (fl) (fm) (fn) (fo) (fp) (fq) (fr) (fs) (ft) (fu) (fv) (fw) (fx) (fy) (fz) (ga) (gb) (gc) (gd) (ge) (gf) (gg) (gh) (gi) (gj) (gk) (gl) (gm) (gn) (go) (gp) (gq) (gr) (gs) (gt) (gu) (gv) (gw) (gx) (gy) (gz) (ha) (hb) (hc) (hd) (he) (hf) (hg) (hh) (hi) (hj) (hk) (hl) (hm) (hn) (ho) (hp) (hq) (hr) (hs) (ht) (hu) (hv) (hw) (hx) (hy) (hz) (ia) (ib) (ic) (id) (ie) (if) (ig) (ih) (ii) (ij) (ik) (il) (im) (in) (io) (ip) (iq) (ir) (is) (it) (iu) (iv) (iw) (ix) (iy) (iz) (ja) (jb) (jc) (jd) (je) (jf) (jg) (jh) (ji) (jj) (jk) (jl) (jm) (jn) (jo) (jp) (jq) (jr) (js) (jt) (ju) (jv) (jw) (jx) (jy) (jz) (ka) (kb) (kc) (kd) (ke) (kf) (kg) (kh) (ki) (kj) (kk) (kl) (km) (kn) (ko) (kp) (kq) (kr) (ks) (kt) (ku) (kv) (kw) (kx) (ky) (kz) (la) (lb) (lc) (ld) (le) (lf) (lg) (lh) (li) (lj) (lk) (ll) (lm) (ln) (lo) (lp) (lq) (lr) (ls) (lt) (lu) (lv) (lw) (lx) (ly) (lz) (ma) (mb) (mc) (md) (me) (mf) (mg) (mh) (mi) (mj) (mk) (ml) (mm) (mn) (mo) (mp) (mq) (mr) (ms) (mt) (mu) (mv) (mw) (mx) (my) (mz) (na) (nb) (nc) (nd) (ne) (nf) (ng) (nh) (ni) (nj) (nk) (nl) (nm) (nn) (no) (np) (nq) (nr) (ns) (nt) (nu) (nv) (nw) (nx) (ny) (nz) (oa) (ob) (oc) (od) (oe) (of) (og) (oh) (oi) (oj) (ok) (ol) (om) (on) (oo) (op) (oq) (or) (os) (ot) (ou) (ov) (ow) (ox) (oy) (oz) (pa) (pb) (pc) (pd) (pe) (pf) (pg) (ph) (pi) (pj) (pk) (pl) (pm) (pn) (po) (pp) (pq) (pr) (ps) (pt) (pu) (pv) (pw) (px) (py) (pz) (qa) (qb) (qc) (qd) (qe) (qf) (qg) (qh) (qi) (qj) (qk) (ql) (qm) (qn) (qo) (qp) (qq) (qr) (qs) (qt) (qu) (qv) (qw) (qx) (qy) (qz) (ra) (rb) (rc) (rd) (re) (rf) (rg) (rh) (ri) (rj) (rk) (rl) (rm) (rn) (ro) (rp) (rq) (rr) (rs) (rt) (ru) (rv) (rw) (rx) (ry) (rz) (sa) (sb) (sc) (sd) (se) (sf) (sg) (sh) (si) (sj) (sk) (sl) (sm) (sn) (so) (sp) (sq) (sr) (ss) (st) (su) (sv) (sw) (sx) (sy) (sz) (ta) (tb) (tc) (td) (te) (tf) (tg) (th) (ti) (tj) (tk) (tl) (tm) (tn) (to) (tp) (tq) (tr) (ts) (tt) (tu) (tv) (tw) (tx) (ty) (tz) (ua) (ub) (uc) (ud) (ue) (uf) (ug) (uh) (ui) (uj) (uk) (ul) (um) (un) (uo) (up) (uq) (ur) (us) (ut) (uu) (uv) (uw) (ux) (uy) (uz) (va) (vb) (vc) (vd) (ve) (vf) (vg) (vh) (vi) (vj) (vk) (vl) (vm) (vn) (vo) (vp) (vq) (vr) (vs) (vt) (vu) (vv) (vw) (vx) (vy) (vz) (wa) (wb) (wc) (wd) (we) (wf) (wg) (wh) (wi) (wj) (wk) (wl) (wm) (wn) (wo) (wp) (wq) (wr) (ws) (wt) (wu) (wv) (ww) (wx) (wy) (wz) (xa) (xb) (xc) (xd) (xe) (xf) (xg) (xh) (xi) (xj) (xk) (xl) (xm) (xn) (xo) (xp) (xq) (xr) (xs) (xt) (xu) (xv) (xw) (xx) (xy) (xz) (ya) (yb) (yc) (yd) (ye) (yf) (yg) (yh) (yi) (yj) (yk) (yl) (ym) (yn) (yo) (yp) (yq) (yr) (ys) (yt) (yu) (yv) (yw) (yx) (yz) (za) (zb) (zc) (zd) (ze) (zf) (zg) (zh) (zi) (zj) (zk) (zl) (zm) (zn) (zo) (zp) (zq) (zr) (zs) (zt) (zu) (zv) (zw) (zx) (zy) (zz)

SIGNATURE of person receiving evidence



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

CARROLL A. CAMPBELL, JR.  
Governor



ROBERT M. STEWART  
Chief

DISPOSITION OF EVIDENCE



DEPARTMENT: Worcester Co SO

COUNTY: Worcester

CASE #	RAPE KIT	ENVELOPE	BAG	OTHER
<u>L89-5292</u>			<u>✓</u>	
<u>L89-10493</u>			<u>✓</u>	
<u>L86-5560</u>		<u>✓</u>		
<u>L87-2932</u>		<u>✓</u>		
<u>L88-4380</u>		<u>✓ (9x12)</u>		
<u>L87-8247</u>		<u>✓</u>		
<u>L85-26</u>		<u>✓ (9x12)</u>		
<u>L89-8247 am</u>		<u>✓ (9x12)</u>		

TO: F. Emory Rush F. Emory Rush 12-19-89 1:22 AM  
SIGNATURE NAME PRINTED DATE TIME

FROM: Carolyn W. Reese CAROLYN W REESE 12-19-89 1:22 AM  
SIGNATURE NAME PRINTED DATE TIME

..... SPECIMENS SUBMITTED FOR EXAMINATION (Continued)

PRINT OR TYPE ALL INFORMATION

EVIDENCE	1 woods lamp
	saliva on filter paper
	vaginal wash
	oral swab
	2 vaginal wash
EVIDENCE	
EVIDENCE	

