

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM THE DORCHESTER COUNTY  
COURT OF COMMON PLEAS

Edgar W. Dickson, Chief Administrative Judge

APPELLATE CASE No. 2014-000126

Abdullah Holmes . . . . . Petitioner  
VS.  
THE STATE . . . . . Respondent

MEMORANDUM OF LAW

The petitioner hereby submits his written explanation as to why the Circuit Court's determination was improper in respect to this action being successive and/or as being untimely under the statute of limitations. Petitioner's explanation is as follows:

AFTER-DISCOVERED EVIDENCE - Petitioner contends that there is evidence of material facts not previously presented and heard that requires vacation of his conviction under the Discovery Rule, and in respect that Petitioner did not knowingly and intelligently waive his rights to trial because there is AFTER-DISCOVERED EVIDENCE that existed at the time of Petitioner's guilty plea hearing but of which Petitioner was excusably ignorant. This mentioned AFTER-DISCOVERED EVIDENCE reflects upon his innocence and violations to Petitioner's Due Process and Constitutional Rights. This evidence was discovered shortly after the completion of Petitioner's initial State Post-Conviction Relief hearing.

The Circuit Court erred in denying relief because the State failed to disclose potentially exculpatory evidence related to Petitioner's criminal case, which is also a

Statutory aggravating circumstance.

Petitioner's explanation is based on the fact that during the late months of 2009, Petitioner's DNA was obtained in relation to an investigation to his criminal case (2009-GS-18-1773) and sent to the South Carolina Law Enforcement Division (SLED). A forensic services laboratory report of the alleged victim in the above mentioned case was also submitted to SLED for examination. This information was not included within Petitioner's discovery material before or after Petitioner's guilty plea hearing.

Petitioner contends that if he would have had prior knowledge of the above mentioned forensic services laboratory report of the alleged victim prior to pleading guilty, Petitioner would have instead gone to trial with it being that the alleged victim's report indicated potentially exculpatory evidence. (See exhibit-A).

The existence of the forensic services laboratory report was never disclosed to defense Counsel prior to Petitioner's guilty plea hearing. The State's misconduct was prejudicial. Petitioner respectfully ask that this Court acknowledge that the Court adopts the rule that "a Brady violation is material in the context of a guilty plea case when there is a reasonable probability that, but for the government's failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial."

Petitioner received this After-Discovered Evidence from the South Carolina Law Enforcement Division on October 31st, 2012. This is exactly five (5) months after Petitioner's initial PCR evidentiary hearing which was held on May 24th, 2012.

SUBJECT-MATTER JURISDICTION— Petitioner contends that the Circuit Court lacked subject-matter jurisdiction to hear his guilty plea. This claim stems from the fact that during the late months of 2009, Petitioner's DNA was obtained in relation to an investigation to his criminal case. The matter of Petitioner's DNA presented an issue of a violation

of his constitutional protections in ARTICLE 1 Section 3, 9 and 10 to the South Carolina State Constitution along with his Fourth, Fifth, and Fourteenth Amendments, and provisions to Due Process of Law; Unreasonable Search and Seizure and Ex Post Facto protected under the United States Constitution, because the custodian that obtained Petitioner's DNA did not have a court order pursuant to statute governing search warrants for property connected with commission of crime that allows the government to procure evidence from the Petitioner's body. There was no consent given by Petitioner's legal counsel nor was his counsel notified prior to the State's obtainment of Petitioner's DNA.

When there is a violation of a defendant's state and/or Federal Constitutional Rights during the litigation of his/her criminal case, the Court does not have jurisdiction to hear the defendant's guilty plea until the matter of the violation is properly resolved.

The Circuit Court has determined that Petitioner's PCR action is barred as being successive and/or being untimely under the statute of limitations. The Circuit Court's determination is in error due to the following:

- 1.) The Court ruled in *Brown v. State*, 540 S.E. 2d 846, 848 (S.C. 2001), that subject-matter jurisdiction may be raised at "anytime".
- 2.) *Anderson v. Anderson*, 382 S.E. 2d 897, 900 (1989). Lack of subject-matter jurisdiction may not be waived even by consent of both parties, and should be taken notice of by the Court.

Therefore, the Circuit Court's determination is without merit.

Petitioner also contends that the Court lacked subject-matter jurisdiction to hear his guilty plea due to the fact that Petitioner's plea is "NOT" valid because Petitioner waived presentment to an

offense that is not a lesser-included offense of the crime charged in indictment.

On September 30th, 2009, Petitioner was arrested for Criminal Sexual Conduct with a minor 2nd degree. Petitioner was indicted on January 31st, 2011 for the same. Petitioner pled guilty on March 8th, 2011 to Assault and Battery of a High and Aggravated Nature (ABHAN).

#### FACT OF LAW

ABHAN is a lesser included offense of Criminal Sexual Conduct, 2nd degree "EXCEPT" for the element of touching the victim.

Petitioner's guilty plea was based on the element of "taking indecent liberties with a female"; NOT sexual battery. The General Sessions Court has failed to strictly satisfy the element test in respect that ABHAN includes the element of taking indecent liberties with a female, which is "NOT" included in CSC 2nd; therefore, rendering ABHAN as not included in the charge of CSC 2nd. State v. Elliot 335 S.C. 512, 517 S.E. 2d 713 S.C. App. 1999, May 3, 1999 and State v. Brock 516 S.E. 2d 212 S.C. App. 1999.

#### CRIMINAL SEXUAL CONDUCT: DEFINITION

sexual battery - sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight of any part of a person's body.

#### ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE: DEFINITION

Indecent liberties - Unlawful behavior towards a female or child.

#### NOTICE

Unlawful behavior and sexual intercourse is no way in relation to each other when regarding ABHAN or CSC 2nd degree because sexual battery is not an element of ABHAN. Therefore, the Court lacked subject-matter jurisdiction to accept Petitioner's guilty plea because Petitioner's

Charge of ABHIAN, due to taking indecent liberties with a female or child is "NOT" included as a lesser included offense of CSC 2nd. (See South Carolina Criminal Law Manual 2009, Criminal Laws, Rules and Regulations from the South Carolina Code of Laws).

Except for certain minor offenses, the Circuit Court does not have subject-matter jurisdiction to hear a guilty plea unless the charge is a lesser included offense of the crime charged in the indictment. *Murdock v. State* 417 S.E. 2d 543 (1992); *State v. Norton* 286 S.C. 95, 332 S.E. 2d 531 (1985); S.C. Code Ann. §17-19-10 (1985); *State v. Mathis* (S.C. 1986) 287 S.C. 589, 340 S.E. 2d 538; *State v. Schumpert* (S.C. 1993) 317 S.C. 502, 435 S.E. 2d 859; *Campbell v. State* (S.C. 2000) 342 S.C. 100, 535 S.E. 2d 928; *Carter v. State* 329 S.C. 355, 362, 495 S.E. 2d 773, 777 (1998); *State v. Brock* (S.C. App. 1999) 335 S.C. 267, 516 S.E. 2d 212; *Doe by Doe v. Greenville* (S.C. App. 1994) 323 S.C. 320 S.C. 235, 464 S.E. 2d 124; *State v. Elliott* 335 S.C. 512, 517 S.E. 2d 713 S.C. App. 1999 May 3, 1999.

INEFFECTIVE ASSISTANCE OF COUNSEL - The matter of Petitioner's DNA presented an issue of a Due Process and State/Federal Constitutional violation of which Petitioner's former pre-trial counsel did not regard as important. Had Petitioner known about such violations, he would not have pled guilty, but would have addressed this matter to the court. Because Petitioner's former pre-trial counsel informed Petitioner that the matter of the improper DNA request was a "non-issue," Petitioner made an unknowingly and unintelligent plea. (see exhibit - B).

This advice was not within the range of competence demanded of attorneys in criminal cases.

Petitioner's claim of ineffectiveness of counsel is based on the fact that once his pre-trial counsel became aware of the improper DNA request, Counsel was supposed to investigate whether or if the person that obtained Petitioner's DNA was authorized to take a DNA sample from Petitioner's body before

persuading Petitioner to plea guilty.

If Petitioner's pre-trial counsel would have conducted an investigation of this matter, Counsel would have found that the State of South Carolina by way of and through the South Carolina Law Enforcement Division, Dorchester County Solicitor's Office, Dorchester County Detention Center, and St. George Police Department violated Petitioner's Fourth, Fifth, and Fourteenth Amendments and provisions to Due Process of Law; Unreasonable Search and Seizure, and Ex Post Facto protected under the United States Constitution.

Because of Petitioner's pre-trial Counsel's lack of investigation of the improperly obtained DNA Sample, Counsel failed to follow the steps to protect the Petitioner's rights nor made an attempt to rectify the wrong that has been made regarding Petitioner's rights. Otherwise, Petitioner's Counsel would not have told Petitioner that the improper DNA request was a non-issue.

Petitioner's pre-trial Counsel also failed to ensure that the proceedings served the function of adjudicating guilt or innocence, while failing to protect the rights of the Petitioner. Because Petitioner's pre-trial Counsel did not adequately advise Petitioner of possible defenses in regards to the improperly obtained DNA Sample. Counsel should have acted competently to safeguard the information relating to representation of Petitioner against inadvertant or unauthorized collection of Petitioner's DNA.

It was Counsel's duty to provide Petitioner with an informed understanding of Petitioner's legal rights and obligations and explain their practical implications.

It was also Counsel's duty to challenge the rectitude of official action and to uphold legal process and seek improvement of the law, access to the legal system, the administration of justice, and quality of service rendered by the legal profession. Clearly, this did not occur, otherwise, Counsel would not have told Petitioner that the improper DNA request was a non-issue.

Petitioner's pretrial counsel was supposed to investigate whether an order was issued pursuant to statute governing search warrants for property connected with commission of crime that allows the government to procure evidence from a person's body before persuading Petitioner to plea guilty.

Petitioner's pre-trial counsel was supposed to investigate the possible constitutional violations before advising Petitioner to plea guilty.

Here, it is clearly shown that Petitioner's pre-trial counsel's advice about the improper DNA request not being an issue was dishonesty and misleading information. This advice also shows an attempt to mislead Petitioner into believing that there were no issues of Due Process and Constitutional violations that could have been presented to the Court's attention prior to Petitioner's guilty plea. The above mentioned violations effected Petitioner's case because it made Petitioner a prisoner under the sentence of a Court established by Act of Congress while his sentence was imposed in violation of the Constitution and laws of the United States.

PROSECUTIONAL MISCONDUCT- Petitioner contends that the prosecution failed to disclose Brady material (exculpatory evidence) that was in the possession of investigory agencies. During the litigation of Petitioner's criminal case, the solicitor in Petitioner's case failed to notify Petitioner's pre-trial counsel about the Forensic Services Laboratory Report of the alleged victim in Petitioner's criminal case. Therefore, denying Petitioner to inspect any and all discovery material prior to Petitioner's guilty plea. (See exhibit - A).

Rule 5. Disclosure in criminal cases

(c) Continuing Duty to Disclose: If prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the Court of the existence of the additional evidence or material.

Petitioner has come to find that the physical examinations and scientific test of the alleged victim in Petitioner's criminal case produced exculpatory results that still could exonerate Petitioner of his criminal charge. If Petitioner could have been allowed to inspect these documents prior to his guilty plea, Petitioner would have instead gone to trial.

Petitioner was also prejudiced and deprived of liberty without due process of law when the State assisted in applying Petitioner's DNA to the State's DNA Database Act without proper jurisdiction and without notifying Petitioner's pre-trial counsel.

Where DNA is needed only to determine DNA type to match existing evidence, a warrant "MUST" be obtained even though there has been a lawful arrest. *Gantt v. State*, 354 S.C. 183, 580 S.E. 2d 133 (2003).

An order issued pursuant to statute governing search warrants for property connected with commission of crime that allows the government to procure evidence from a person's body "MUST" comply with constitutional and statutory guidelines of which constitutes a search and seizure under the Fourth Amendment. *State v. Baccus* (S.C. 2006) 367 S.C. 41, 625 S.E. 2d, 216.

In this case, there was no such order previously mentioned that shows justification of the invasive seizure. As a pre-trial detainee Petitioner should've retained a legitimate expectation of privacy, thus of which that did not violate his due process and constitutional rights. (See exhibit-B).

The acting solicitor's role in this case did not comply with the standards of justice when the acting solicitor failed to notify Petitioner's counsel about the obtaining of the Petitioner's DNA and also of the missing evidence which is of concern of Petitioner's DNA. The acting solicitor's act was an act of official misconduct due to corrupt violations of assigned duties by malfeasance coupled with wanton

misconduct in reckless disregard of the Petitioner's rights.

Petitioner hereby submits an affidavit by his pre-trial counsel, Mary P. LeMatty dated January 18th, 2013. In this affidavit, Mary P. LeMatty states that after being notified about the DNA request by Petitioner, she spoke with the Assistant Solicitor, Russell Hilton regarding this matter. Mary P. LeMatty stated that the Solicitor was not aware of the DNA request. (See exhibit-C).

Petitioner hereby submits After-Discovered Evidence of which he received on October 31st, 2012. This evidence is a SLED Forensic Services Laboratory Request addressed to Lt. Allen D. Kinsey of the St. George Police Department, from which is submitted by Jennifer L. Clayton, A forensic Scientist. This request is dated November 10th, 2009. Also, a courtesy copy has been sent to the Dorchester County Solicitor's Office. (See exhibit-A).

This matter should present a question of exceptional importance within this Court's mind of which is as follows:

1.) If Solicitor Russell D. Hilton had no knowledge of the illegally obtained DNA sample, then why did (SLED Forensic Scientist, Jennifer L. Clayton) submit a "courtesy copy" request to the Dorchester County Solicitor's Office?

It seems to Petitioner that a collusion to commit illegal acts, obstruction of justice, Conspiracy to conceal evidence, malicious prosecution, and additional extenuating circumstances exists.

CONSPIRACY TO CONCEAL EVIDENCE - According to Exhibits - B, C, and D, it is clearly indicated that Mary P. LeMatty and Russell D. Hilton both violated Rule 8.4. (d) titled MISCONDUCT OF THE APPELLATE COURT RULES - S.C. STATE RULES OF COURT PROCEDURE because their conduct involved dishonesty, deceit, and misrepresentation by conspiring together to suppress illegally

Seized property. Neither Petitioner's pre-trial counsel or the acting solicitor in Petitioner's criminal case had an pre-indictment order to suppress the Petitioner's improper DNA requests.

Both parties were supposed to obtain a pre-indictment order from the court that has anomalous jurisdiction to grant an order suppressing Petitioner's illegally seized DNA. (See Criminal Law Key 394.5(1); Fed. Key 7; Searches and seizures Key 84. C.J.S. Criminal Law §§ 794, 797; Equity § 20; Searches and seizures §§ 217-226).

2-17-14

Respectfully Submitted,  
Abdullah Holmes  
Petitioner

(EXHIBIT - A)

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY  
*Governor*



MARK A. KEEL  
*Chief*

October 25, 2012

Abdullah Holmes # 345105  
Kershaw CI  
4848 Goldmin Hwy.  
Kershaw, SC 29067

RE: Freedom of Information Act Request

Dear Mr. Holmes:

Per your payment received October 24, 2012, please find enclosed the information available to you under the Freedom of Information Act.

Sincerely,

Thomas Berry  
Freedom of Information Coordinator

2013 APR 22 PM 3:41  
OFFICE OF THE  
ATTORNEY GENERAL





# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

## FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD  
Governor



REGINALD I. LLOYD  
Director

Lt. Allen D. Kinsey  
St. George Police Department  
601 S. Parler Ave.  
St. George, SC 29477

**DNA ANALYSIS**  
August 17, 2010  
SLED LAB: L09-13447  
Your Case No: 09090067  
Incident Date: 9/29/2009  
[S] Abdullah Holmes  
[V] Jonetta Cobb

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This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director  
South Carolina Law Enforcement Division

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### SEROLOGY ANALYSIS

#### Items Submitted:

#### Results of Examinations:

1	Sexual Assault Evidence Collection Kit from Jonetta Cobb		
1.1	Blood standard labeled "Cobb, Jonetta"	1.1	See DNA analysis.
1.2	Buccal swab from Jonetta Cobb	1.2	No analysis performed.
1.3	Smears - vaginal, oral, and rectal	1.3	No spermatozoa identified.
1.4	Vaginal swabs	1.4	No semen identified.
1.5	Oral swabs	1.5	No semen identified.
1.6	Rectal swabs	1.6	Semen indicated. See DNA analysis.



**Items Submitted:**

**Results of Examinations:**

1.7	Fingernail scrapings		
1.7.1	Fingernail scrapings from left hand	1.7.1	See DNA analysis.
1.7.2	Fingernail scrapings from right hand	1.7.2	See DNA analysis.
1.8	Pubic hair combings	1.8	No hairs found.
1.9	Debris	1.9	Nothing of serological evidentiary value found.
1.10	Panties	1.10	No semen indicated.
3	Buccal swab from Abdullah Holmes	3	No analysis performed.

**DNA ANALYSIS**

**ITEMS ANALYZED:**

1.1 Blood standard labeled "Cobb, Jonetta"  
1.6 Rectal swabs from Jonetta Cobb  
1.7.1 Fingernail scrapings from left hand  
1.7.2 Fingernail scrapings from right hand

**EXAMINATIONS**

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

**RESULTS**

No DNA profile foreign to Jonetta Cobb was developed from item 1.6.

No DNA profile was developed from items 1.7.1 and 1.7.2.

**Note:** Any remaining evidence and/or packaging will be returned to the requesting agency.

**Note:** Item 1.10 (panties) was examined by DNA Evidence Processing Technician Jozetta Blair.



Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1338	TH01	D13S17	D16S19	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
1.1 Jonetta Cobb	8,15	28,32,2	10,12	10	14,15	7,8	11,12	9,13	19,23	12,13	15,17	6,8	16,18	12,13	20,22	X
1.6P Rectal	8,15	28,32,2	10,12	10	14,15	7,8	11,12	9,13	19,23	12,13	15,17	6,8	16,18	12,13	20,22	X
1.7.1 Left hand fingernail scrapings	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
1.7.2 Right hand fingernail scrapings	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.

.. = no results



*Jasper E. Humbert*  
Jasper E. Humbert  
Forensic Scientist



(EXHIBIT - B)

# Office of the Public Defender

First Judicial Circuit

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



**MARK A. LEIENDECKER**  
Chief Public Defender

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 the Summerville Office

February 17, 2011

Mr. Abdullah M. Holmes  
Dorchester County Detention Center  
100 Sears Street  
St. George, SC 29477

**RE: State of South Carolina v. Abdullah M. Holmes**  
Warrant No.: I-665618 CSC w/Minor(<16 yoa) 2nd

Dear Mr. Holmes:

[REDACTED]

I am not sure what you are talking about with this subpoena for DNA or the "copy of the papers that you signed." Please help me understand what you are asking for. I do not have any documents other than what I have already given you in discovery. The Solicitor agrees that the DNA request was not proper and has informed me that the sample was not tested and is not going to be used in any way in your case. Therefore, that is a non-issue that we do not need to spend time on.

[REDACTED]

Very truly yours,

*Mary P. LeMatty/mm*

Mary P. LeMatty  
Assistant Public Defender

MPL/mm  
Enclosure  
Dictated but not read.

(EXHIBIT-C)

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER ) IN THE COURT OF COMMON PLEAS  
Abdullah Holmes, ) Case No. 2012-CP-18-1917  
Plaintiff, )  
-versus- ) AFFIDAVIT OF MARY P. LeMATTY  
Corporal Hightower / )  
Sheriff L.C. Knight )  
Defendants. )

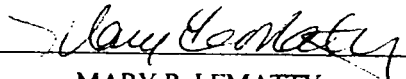
After first being duly sworn MARY P. LEMATTY says:

1. I am an attorney with the Public Defender's Office for the First Judicial Circuit located in Summerville, S.C. I've been a member of the South Carolina Bar since 1992. I am an Assistant First Judicial Circuit Public Defender.
2. I have read the Statement of Claim filed by plaintiff. I am not a named defendant in this lawsuit. I am making this affidavit in support of the defendants' Motion for Summary Judgment.
3. In 2009, as Public Defender, I was assigned to defend plaintiff Abdullah Holmes in criminal proceedings when he was charged with Criminal Sexual Conduct with a Minor for having sex with a thirteen (13) year old female, a violation of S.C. Code §16-3-655.
4. During my representation, Mr. Holmes contacted me and advised me of the supposed taking of a sample of his DNA while he was in the Dorchester County Detention Center. I had no knowledge of this, and wrote him a letter asking for more information. (See Exhibit A).
5. I recall speaking with Russell Hilton, the assistant solicitor prosecuting the case, about the alleged DNA sample being taken from Mr. Holmes. Attorney Hilton was not aware that any such DNA sample had been taken, or by whom. We agreed that if any such had been taken that it would not be used in court or in the case, and if a sample was ever needed for trial and deemed relevant, that the prosecution would seek to obtain another sample.
6. The charge against Abdullah Holmes was a "violent offense" under S.C. Code §16-3-655 and S.C. Code §16-1-60. If found guilty under that charge Mr Holmes would have no


right to parole, meaning he would to serve 85%-100% of his sentence. The charge carried up to twenty (20) years in prison. If convicted he would also be mandated to register as a sex offender and required to provide DNA to the database for SLED upon his release. Additionally, he would also be subject to the violent predator statute, which meant that the Attorney General's office would have a petition to review his case upon his release and if they deemed him to be a violent predator they could confine him pursuant to the terms of the statute.

7. After consulting with my client and explaining the evidence the state had, including his admission of guilt and possible sentences, Mr. Holmes pled guilty to the former definition of Assault and Battery of a High and Aggravated Nature (ABHAN). In June, 2010, the sentencing changed for ABHAN. Mr. Holmes plead under the old ABHAN statute, which was considered a non-violent misdemeanor, and he faced only up to a ten (10) year sentence. He was parole eligible, and my last check showed SCDC currently has him getting out sometime next year, with a max out date of 2015.
8. After the sentencing, for my representation and efforts on his behalf, Mr. Holmes filed a Post Conviction Relief petition against me, but it was withdrawn the day it was scheduled to be heard.
9. If any DNA was taken from Mr. Holmes while he was incarcerated at the Dorchester County Detention Center, it was never used against him, and was not involved in any way in the case I handled for him.

FURTHER AFFIANT SAITH NOT AT THIS TIME.

  
MARY P. LEMATTY

SWORN to and subscribed before  
me this 18<sup>th</sup> day of January, 2013.

  
\_\_\_\_\_  
NOTARY PUBLIC OF SOUTH CAROLINA

My Commission Expires: 4-12-2016

(EXHIBIT - D)  
**Office of the Public Defender**  
First Judicial Circuit

107 W. 6th North Street  
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5200 East Jim Bilton Boulevard  
Dorchester County Courthouse  
St. George, SC 29477  
(843) 832-0154



**MARK A. LEIENDECKER**  
Circuit Public Defender

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Orangeburg, SC 29116-1112  
(803) 536-4858  
FAX (803) 536-9986

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

Please respond to the Summerville Office

August 28, 2012

Mr. Abdullah M. Holmes, SCDC# 345105  
Kershaw Correctional Institute  
4848 Goldmine Highway  
Kershaw, SC 29067

**RE:** State of South Carolina v. Abdullah M. Holmes  
Warrant No.: I-665618

Dear Mr. Holmes:

I am in receipt of your letter dated August 20, 2012 and have reviewed the DNA issue you raised with Mrs. LeMatty. In her discussions with the Solicitor regarding your case, the Solicitor handling your case agreed that the DNA sample taken from you on December 4, 2009 would not be used in any way in the trial of your case. He further informed her that the sample had not been tested and would not be tested. There is no correspondence in your file with SLED or the Sheriff's Office regarding the sample as it was never tested. Mrs. LeMatty did her job in preventing that DNA sample from being used in your case. Further, if a Court had found your Fourth Amendment rights were violated in some way by the collection of that sample, the only remedy for such a violation is suppression of that particular evidence. This is the same result Mrs. LeMatty achieved in her discussions with the Solicitor by gaining his agreement not to use or test the December 4, 2009 DNA sample.

Very truly yours,

Mark A. Leindecker  
Chief Public Defender

MAL/mm

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM THE DORCHESTER COUNTY  
COURT OF COMMON PLEAS

Edgar W. Dickson, Chief Administrative Judge

APPELLATE CASE No. 2014-000126

Abdullah Holmes . . . . . Petitioner  
VS.  
THE STATE . . . . . Respondent

PROOF OF SERVICE

Abdullah Holmes hereby certifies that a copy of a Memorandum of Law has been served upon Daniel E. Shearouse (Clerk of Court) and Megan E. Harrigan (Assistant Attorney General) on February 17, 2014 by mailing a copy in the United States mail, postage paid addressed to:

Daniel E. Shearouse  
Clerk of Court  
Post Office Box 11330  
Columbia, S.C. 29211

Megan E. Harrigan  
Assistant Attorney General  
Post Office Box 11549  
Columbia, S.C. 29211

Abdullah Holmes  
Petitioner

Abdullah M. Holmes #345105  
Petitioner

Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

February 17, 2014

Daniel E. Shearouse  
Clerk of Court  
P.O. Box 11330  
Columbia, S.C. 29211

Re: Abdullah Holmes v. State  
Appellate Case No. 2014-000126

Dear Mr. Shearouse:

Please find enclosed a written explanation as to why the circuit court's determination was improper. This explanation is in the form of a Memorandum of Law accompanied by a proof of service on both yourself and Megan E. Harrigan (Assistant Attorney General). Please forward a clocked copy to me indicating that you were served.

Respectfully submitted,  
Abdullah M. Holmes  
Petitioner

**RECEIVED**

FEB 21 2014

S.C. SUPREME COURT

Abdullah Holmes # 345105 (PB-52)  
Kershaw Corr. Inst.  
4848 Goldmine Hwy.  
Kershaw, S.C. 29067

The Supreme Court of South Carolina  
Daniel E. Shearouse  
Clerk of Court  
Columbia, S.C. 29211

**RECEIVED**

AUG 17 2013

KCI

BUSINESS OFFICE