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STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable G. Edward Welmaker, Trial Judge
The Honorable R. Markley Dennis, Jr., Post-Conviction Relief Judge

Appellate Case No. 2013-000426

James E. Waiters, Jr., ... Respondent,

v.

State of South Carolina, ... Petitioner.

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Greenville

C/P No.: 2006-GS-23-6230-6233

James E. Waiters, #235965, ... Applicant,

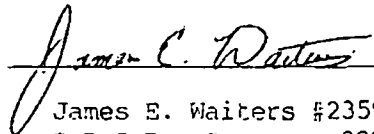
v.

State of South Carolina, ... Respondent.

Initial Brief of Applicant

Submitted this 21 day of DECEMBER, 2010

Respectfully submitted,

 #235965

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Issues Presented

- Issue A: Was Counsel ineffective for failing to move the Court to dismiss the invalid Armed Robbery Indictments?
- Issue B: Was Counsel ineffective for not moving the Trial Court for a new trial when it "Constructively Amended" the Armed Robbery Indictments?
- Issue C: Was Defense Counsel ineffective for not objecting to or challenging the State's stacking of the charges against the Applicant in violation of procedural due process and double jeopardy?
- Issue D: Was Defense Counsel ineffective for not Motioning To Suppress Evidence due to an Illegal Arrest, Search and Seizure, as well as evidence in violation of Miranda and Rules of Evidence?
- Issue E: Was Counsel ineffective by not objecting to the State's prejudicial use of Applicant's prior conviction?
- Issue F: Was Counsel ineffective for failing to object to the State's prejudicial closing arguments?
- Issue G: Was Counsel ineffective for not objecting to the Court's erroneous Jury instructions or at least requesting the Court to recharge the Jury?
- Issue H: Was Counsel ineffective for not providing Applicant with the necessary investigation, interviewing of witnesses, or otherwise preparation for trial?
- Issue I: Was Appellate Counsel ineffective for not arguing the Directed Verdict issue on Appeal?
- Issue J: Was Defense Counsel ineffective for not using the prior inconsistent statement's against the State's witnesses that was made pre-trial and during trial?
- Issue K: Was Counsel ineffective for failing to argue a Double Jeopardy violation by the Armed Robbery indictments and Possession Of A Weapon During The Commission Of A Crime indictment being charged against him by the State in this case at trial?

Statement Of The Case

Applicant was indicted by the Greenville County Grand Jury for three (3) separate Indictments for Armed Robbery (Indictment Numbers: 2006-GS-23-6230; -6231; -6232), and one (1) Indictment for Possession Of A Weapon During The Commission Of A Crime pursuant to S.C. Code Ann. §16-23-490 (Indictment Number: 2006-GS-23-6233). Applicant proceeded to trial on March 11-12, 2008 before the Honorable Edward G. Welmaker and a Jury. The Jury found the Applicant guilty of all charges as indicted, except for one (1) of the Armed Robbery Indictments (Indictment Number: 2006-GS-23-6232). The Honorable Edward G. Welmaker sentenced the Applicant to concurrent sentences of seventeen (17) years. Applicant was represented by Timothy Sullivan of the Greenville Public Defenders Office and the State by Douglas Webb of the Thirteenth Circuit Solicitors Office. An Appeal was timely filed and the Appeal was perfected by J. Falkner Wilkes, of Greenville, S.C. 29601. The conviction and sentence was affirmed and the Appeal was dismissed on May 27, 2010.

Now comes this Application for Post-Conviction Relief, with an Initial Brief.

Issue A: Argument

Issue A: Was Counsel ineffective for failing to move the Court to dismiss the invalid Armed Robbery Indictments?

The State indicted Applicant on three (3) Armed Robbery Offenses on separate indictments (2006-GS-23-6230; -6231; -6232). Applicant was found guilty of two of these Armed Robbery charges, but not guilty of Indictment Number 2006-GS-23-6232). See: (ROA p. 241, Lns. 1-12). Outside of the indictments alleged victims being different, the remaining allegations were identical to each other. The Armed Robbery indictments alleges: "That James Emanuel Waiters, Jr. did in Greenville County, on or about the 10th day of June, 2006, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon, that (name of victims) reasonably believed to be a deadly weapon, attempted to and/or did take by means of force or intimidation, goods or monies described as U.S. Currency.

However, after review of the indictments language, it is quite obvious that the State failed to allege the essential element of "asportation" - the taking and carrying away the property of another. Now let us review in regards to the essential and needed element of Asportation.

The Armed Robbery Indictments failed to allege the essential elements of "Asportation" which made the indictments invalid, as well as, insufficiently appraising the Applicant of what he must be prepared to defend against. An indictment is sufficient if the offense is stated with enough certainty and particularity to enable the Applicant to know what he is called upon to answer and whether he may plead an acquittal or conviction therein. S.C. Code Ann. §17-19-20. The true test of sufficiency of an indictment is not whether it could be made more definite and certain whether it contains the necessary elements of the offense intended to be charged and sufficiently appraises the defendant of what he must be prepared to meet. State v. Smalls, 336 S.C. 301, 519 S.E.2d 793 (1999). The language within the charge of the Armed Robbery Indictments failed to sufficiently list the necessary elements of "Asportation" thereby making them invalid. Let us review further.

The indictments in question all failed to allege the common law element of "asportation". This common element must be alleged in an indictment for Armed Robbery before an accused can be lawfully convicted of the offense of Armed Robbery. Not only must the State prove the element of asportation, but it must also be alleged in the indictment returned by the grand jury in accordance with the well established constitutional rights of the accused, as well as his established statutory rights. S.C. Const. Art. 1, §11; U.S. Const. Amend. Five; §16-11-330(A).

Common law offenses are not "abrogated" because there is a Statutory offense proscribing similar conduct. Rather, it is presumed that no change in the common law

Issue A: Continued

requirements are intended unless the legislature explicitly indicates such an intention by language in the Statute, which is certainly not the case at hand here. Citing, State v. Parker, 571 S.E.2d 288, 292 (2002); State v. Brown, 260 S.E.2d 719 (1979); State v. Beam, 518 S.E.2d 297 (1999).

Compare: S.C. Code Ann. §16-11-330(A)(Supp. 2000) to S.C. Code Ann. §16-13-30 (Supp. 2000) for support to this exact principle of law. Larceny is the felonious taking and carrying away of the goods of another. Thus, elements of Robbery and Armed Robbery include asportation of the property. State v. Moore, 374 S.C. 463, 649 S.E.2d 84 (2007); State v. Douglas, 369 S.C. 42, 632 S.E.2d 845 (2006). These essential elements must be alleged in an indictment for Robbery or Armed Robbery in accordance with the constitutional rights of the accused. See: Locke v. State, 533 S.E.2d at 325 (2000); State v. Moultrie, 322 S.E.2d 663 (1984). The simple inclusion of the Statute or any reference to the Statute in an indictment, standing alone, is not sufficient to allege the essential element of the common law offense of Armed Robbery (Asportation: the taking and carrying away the goods of another). State v. Bullard, 560 S.E.2d 436 (2002).

It is elementary that every ingredient of the crime must be charged in the indictment. A general reference to the provisions of a Statute is insufficient. It is well established that failure for an indictment to recite an essential element of an offense is not amenable to harmless error review. U.S. v. Spruiell, 118 F.3d 221 (4th Cir. 1997).

Without the essential element of asportation within the language of the Armed Robbery indictments made the indictments invalid, as well as failed to apprise the Applicant of what to prepare for a defense against these serious offenses. S.C. Code §17-19-20; State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); See also State v. Perry, 87 S.C. 583, 70 S.E. 304 (1911). A defendant is entitled to be sufficiently apprised of the offense charged so that he can adequately prepare his defense. This did not happen in this case. State v. Hardee, 279 S.C. 409, 413, 308 S.E.2d 521, 524 (1983). A trial or plea cannot be fair unless the nature of the charges against the accused are adequately made known to him or her in a timely fashion. Strickland v. Washington, 466 U.S. 668 (1984). No principle of procedural due process is more clearly established than that notice of the specific charges and a chance to be heard in a trial of issues raised by the charges, if desired, are among the Constitutional rights of every accused in a criminal proceeding in all courts "State and Federal". Rabe v. Washington, 405 U.S. 313, 31 L.Ed.2d 258, 92 S.Ct. 993 (1972). Furthermore, due process requires that a criminal defendant be properly served with a valid indictment. A conviction rendered upon an invalid indictment is null and void. The Armed Robbery indictments here were insufficient and thereby invalid. State v. Smalls, 364 S.C. 343, 613 S.E.2d 754 (2005).

Here, the Applicant did not receive the adequate notice of the charges against him for

Issue A: Continued

a necessary and meaningful chance to be heard on the issues raised by the charges at trial and his Counsel's actions not to challenge the indictments in a timely manner in this particular case was indeed error. Counsel had plenty of time and opportunity before the jury was sworn to move the Court to dismiss the insufficient and invalid indictments, but he failed to do so. See: State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Defense Counsel's failure to motion the Court to dismiss or quash the Armed Robbery Indictments was not sound strategy for any defense to the serious charges against the Applicant. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22(1987); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). This could not have been an informed tactical decision by Counsel. Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988).

An Attorney's competency is measured accordingly to what an objectively reasonable attorney would have done under the circumstances. An objectively reasonable attorney would have at least challenged the sufficiency and validity of the Armed Robbery indictments before allowing his client to be denied a fair trial and found guilty by a degree of proof less than that required by the sound standards of Jackson v. Virginia or In re Winship. Savino v. Murray, 82 F.3d 593, 599 (4th Cir. 1996). Defense Counsel was indeed ineffective for failing to move the Court to dismiss the charges, which prejudiced Applicant to being unfairly convicted and sentenced because of the invalid indictments that failed to notify and inform Applicant of what to prepare for trial. Counsel could not have been more ineffective had he actually tried to be. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); U.S. Const. Amend. Six.

A reversal is well warranted.

Issue B: Argument

Issue B: Was Counsel ineffective for not moving the Trial Court for a new trial when it "Constructively Amended" the Armed Robbery Indictments?

The Trial Court gave its instruction on Armed Robbery to the Jury. While so doing, the Court instructed the Jury to consider the elements of "Asportation". (ROA p. 217, Lns. 5-10). As previously argued in Issue A of this Initial Brief, the Armed Robbery Indictment Numbers 2006-GS-23-6230; -6231 failed to charge the essential elements of "asportation" (the taking and carrying away the goods of another). The Grand Jury did not pass upon an indictment alleging the "asportation" in this case and the Trial Court was in error by constructively amending the Armed Robbery Indictments by its charge to the Jury, thereby denying Applicant of a fundamentally fair trial by an impartial Jury. Counsel should have brought this error to the Court's attention as well as Motion for a new trial. Let us review this Law Analysis in regards.

Law Analysis

Constructive amendments of an indictment are per se violations of the Fifth Amendment that require a reversal even without a showing of prejudice. The Fifth Amendment requires that a defendant be tried only upon the charges handed down by the Grand Jury; and thus, after an indictment has been returned, its charges may not be broadened through amendment except by Grand Jury; since amendment usurps the constitutionally guaranteed role of the grand jury. U.S. v. Fogel, 901 F.2d 23 (4th Cir. 1990); U.S. v. Randall, 171 F.3d 195, 210 (4th Cir. 1999); U.S. v. Dawson, 423 U.S. at 355, 104 S.Ct. at 96. A defendant may only be tried on charges alleged in an indictment and only the Grand Jury may broaden or alter the charges within the indictment. U.S. v. Bolden, 325 F.3d 471 (4th Cir. 2003).

The Court's Jury instructions constructively amend the indictments, resulting in the denial of a fair trial and fair notice requiring reversal. See: U.S. v. Fogel, *supra*; State v. Austin, 299 S.C. 133, 355 S.E.2d 270 (1987); State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981). Actually, the constructive amendment here, did broaden the scope of the indictments and changed the nature of the offenses as originally charged before the Jury instructions were given. Stirone v. U.S., 361 U.S. 212, 217-19 (1960). Furthermore, it could be contended that the Court's constructive amendment deprived the Trial Court of jurisdiction in which to enter a conviction or impose a sentence. State v. Meyers, 313 S.C. 391, 438 S.E.2d 236 (1993); Weinhauer v. State, 334 S.C. 327, 513 S.E.2d 340 (1999). The constructive amendment of the Armed Robbery Indictments voided the Applicant's conviction and sentence. State v. Guthrie, 572 S.E.2d 309 (2002); State v. Sowell, 85 S.C. 278, 67 S.E. 316 (1910).

Issue B: Continued

For Trial Counsel not to move the Court for a new trial when it denied the Applicant a fair trial during this critical stage of the trial by constructively amending the Armed Robbery Indictments constituted ineffective assistance of Counsel. Wertz v. State, 349 S.C. 291, 562 S.E.2d 654 (2000). Counsel's actions here could not be an exercise of sound professional judgement, nor an informed tactical decision. Dandy v. State, 301 S.C. 303, 391 S.E.2d 381 (1990); Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988).

Here, Counsel rendered assistance well below the standard of "reasonableness" within professional norms "for a criminal defense attorney" and the proper functioning of the "adversarial trial process." Tucker v. Moore, 56 F.Supp.2d 611 (1999), affirmed 221 F.3d 600 (4th Cir.), cert. denied 531 U.S. 1054, 121 S.Ct. 661, 148 L.Ed.2d 563. His performance was highly deficient. If not for Counsel's error here, the outcome of the trial would have been different. This is a reasonable probability considering that Counsel could have at least preserved a strong issue for Appellate review, whereas he preserved none. Counsel was indeed ineffective. Humphries v. Ozmint, 397 F.3d 206 (4th Cir. 2005); Strickland v. Washington, 466 U.S. 668 (1984).

This case should be reversed for a new trial.

Issue C: Argument

Issue C: Was Defense Counsel ineffective for not objecting to or challenging the State's stacking of the charges against the Applicant in violation of procedural due process and double jeopardy?

The State indicted the Applicant on three (3) separate counts of Armed Robbery in three (3) separate indictments for a single criminal transaction or criminal act. The State alleged that the Applicant committed an armed Robbery against three (3) separate victims on or about the 10th of June, 2006. (Tr. p. 8, Ln. 13 - Tr. p. 9, Ln. 3). See also: the indictments (Tr. p. 252-271).

The State charged the Applicant with three (3) separate and distinct criminal acts of Armed Robbery. However, when both sides rested, it was totally apparent that only one Armed Robbery was committed on June 10th, 2006, if any. The State stacked the charges against the Applicant in a very prejudicial way that lowered his odds of defending against all three (3). The Applicant was actually found not guilty of Indictment Number: 2006-GS-23- 006232, the armed robbery of Dionne Griffith (Tr. p. 241, Lns. 9-12; Tr. p. 270-271). Dionne was one of the alleged robbery victims, although the other two alleged victims (Erica Cheeks and Cora Griffith) were part of the very same criminal act of an Armed Robbery occurring at exactly the same time. Not only would this offend the Applicant's procedural due process rights, but also, his right against double jeopardy. Now comes this Law Analysis in regards.

Law Analysis

Indictments charging a single offense in different counts are multiplicitous. Such indictments may result in multiple sentences for a single offense, in violation of constitutional double jeopardy provisions, or otherwise prejudice the defendant. Multiplicitous indictments may result in multiple sentences for one (1) crime and may suggest to Jury that defendant committed several crimes, instead of one (1), such as in this instant case. See: U.S. v. Stewart, 256 F.3d 231, 248 (4th Cir. 2001); U.S. v. Colton, 231 F.3d 890, 909-10 (4th Cir. 2003); U.S. v. Dunford, 148 F.3d 385, 390 (4th Cir. 1998).

An indictment is "multiplicitous" when it charges a single offense as an offense multiple times, in separate counts, when, in law and fact only one (1) crime has been committed. There was only one (1) armed robbery committed here in this case. All the facts within this trial have showed that only one (1) offense was committed at the very same place and time. U.S. v. Elliott, 849 F.2d 886, 890 (4th Cir. 1988).

The "Multiplicity Doctrine" is based upon the Fifth Amendment which assures that a

Issue C: Continued

Court does not exceed its legislative authorization by imposing multiple punishments for the same offense. In addition to the double jeopardy problem with the multiple charges here, the evil in charging a single offense in more than one count is that it may create an impression in the mind of the Jury of more criminal activity on the part of the defendant than in fact may have occurred. See: U.S. v. McNally, 417 U.S. 948, 94 S.Ct. 3074, 41 L.Ed.2d 663 (1972). Let us note, the Jury found the Applicant not guilty of the Armed Robbery of Dionne Griffith as explained previously in this argument. The point here should be crystal clear, that the possibility of the Applicant receiving a fair trial, with three (3) indictments charging him with the same facts and law, was null and void. This prejudiced the Applicant, even further, from receiving a fair trial by an impartial Jury, for if any one Juror was affected by the multiplicity of the indictments, then the result is also affected as though all Jurors were affected by them. Francis v. Franklin, 471 U.S. 301, 105 S.Ct. 1965 (1985); Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450 (1979).

It should have been obvious to any legally prudent person that the State prosecuted the Applicant by charging him with multiple charges of the same offense to gain an unfair advantage. If the multiple charges for one offense did not offend the double jeopardy clause, State v. Nelson, 336 S.C. 186, 195, 519 S.E.2d 786, 790 (1999); State v. Easler, 32 S.C. 121, 132, 489 S.E.2d 617, 623 (1997), it certainly prejudiced the Applicant by forcing him to try and prove his innocence to the State's stacking of the charges which shifted the burden of proof upon the Applicant from the very initiation of the charges throughout trial, but specifically, through the Jury's deliberation, into sentencing.

Substantive due process prohibits such actions as engaged in here, no matter how many safeguards it employs. When State actions deprive a person of life, liberty, or property without fair procedures it violates the First Amendment rights of "Liberty Interest" as incorporated by the due process clause of the Fourteenth Amendment, as well as procedural due process in an arbitrary and discriminatory manner. See: Lane v. Wilson, 307 U.S. 368, 59 S.Ct. 375, 95 L.Ed.2d 110; and Hicks v. Oklahoma, 447 U.S. 443, 100 S.Ct. at 2227-28 (1980); Rochin v. California, 342 U.S. 165, 96 L.Ed. 183, 72 S.Ct. 205 (1952). The State's procedures here would also offend the U.S. Const. Amends. Five and Six. Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 505 S.E.2d 598 (1998). For Counsel not to at least challenge the indictments before trial begun constituted ineffective assistance. Counsel had plenty of time and opportunity before the Jury was sworn to challenge the three (3) multiplicitous indictments that prevented the Applicant from receiving a fair trial. See: State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Counsel's actions not to challenge these indictments because of the unfair due process procedures was not sound strategy for any purpose or defense to these serious charges.

Issue C: Continued

Nor could this been an informed tactical decision by Counsel. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002); Stone v. State, 294 S.C. 286, 368 S.E.2d 903 (1988).

If not for Counsel's error here, there is a reasonable probability that the outcome of this proceeding would have been different. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

This case should be reversed for a new trial.

Issue D: Argument

Issue D: Was Defense Counsel ineffective for not Motioning To Suppress Evidence due to an Illegal Arrest, Search and Seizure, as well as evidence in violation of Miranda and Rules of Evidence?

The State entered a gun and Consent to Search Form into evidence as Exhibits 1 and 2. Defense Counsel objected to the Gun because this evidence had no Chain of Custody, however, Counsel just withdrew his objection and that was that, sort of speaking (Tr. p. 57, Ln. 7 - Tr. p. 55, Ln. 19). It is inconceivable that Defense Counsel would even consider objecting to the Chain of Custody to a gun and Consent to Search Form in the first place, but what is more puzzling is why Counsel failed to Motion for an In-Camera hearing to suppress the evidence. Not only should he had objected to the gun, but also to statements, identifications and a very prejudicial video tape of the Applicant in the back of Police car in handcuffs (Tr. p. 50, Ln. 9 - Tr. p. 53, Ln. 1). Counsel made no attempt to have any of these very prejudicial evidence suppressed for any reason. Counsel should have requested a suppression hearing for the following reasons.

Officer Jonathon Phillips was leaving the scene of the alleged incident in question when he received a call from Erica Cheeks telling him that the suspect (Applicant) was standing in front of his apartment, 24-G. (Tr. p. 49, Ln. 24 - Tr. p. 50, Ln. 4). He met with Officers Smith and Hamilton whom advised him they had the suspect in the back of Officer Hamilton's patrol car. Then, he claimed to have went over there and through the rolled down window read him his Miranda rights and had a conversation with him after he said that he was willing to talk to me. (Tr. p. 50, Ln. 19 - Tr. p. 51, Ln. 5). With the elicited information given to him, he retrieved Applicant's driver license or picture I.D. card and showed it to the alleged victims whom identified him as the robber. He then told the Applicant he was under arrest. He took Applicant from the City Patrol Car and placed him in the rear of his vehicle. After receiving information about a gun from a video tape recording of the Applicant, he called the Applicant's girlfriend, April Woods, to the scene (Tr. p. 52, Lns. 1-25). He obtained a consent to search form, which was signed by Ms. Woods and Officer Hamilton, and located a firearm (a .380 HiPoint Pistol). (Tr. p. 53, Lns. 1-6). He was not there when he was first taken into custody (Arrested) by the City Police Officer. (Tr. p. 61, Lns. 21-23).

City Police Officer Craig Smith testifies to the following details. He arrived at the 25 Building of Ramsey Court where he met and spoke with Deon Griffith. (Tr. p. 115, Lns. 3-21). Afterwards, he knocked on the door of Applicant's girlfriend's apartment and he came to the door. When he stepped outside, Deon Griffith started yelling, "that's the man who robbed me." At that point, he placed him in handcuffs and took everything out of his pockets to make sure he wasn't armed. He told him he was under investigative detention:

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without any Miranda Warnings. (Tr. p. 123, Lns. 21-24). Here, Officer Hamilton described Applicant as being very upset and swearing. (Tr. p. 124, Lns. 22-25). Officer Smith testified that there were no problems with Applicant. (Tr. p. 119, Ln. 23 - Tr. p. 120, Ln. 2). Whereas Officer Phillips testified to Officer Hamilton's Patrol Car window being rolled down; Officer Hamilton himself testifies to the windows being up with the air-conditioning going. However, he claimed that on the audio to the videotape the Applicant was whispering "refrigerator" (Tr. p. 124, Ln. 22 - Tr. p. 125, Ln. 16). He notified the deputy that they did not ask him any questions and that he uttered in the back of his patrol vehicle, the gun was in the refrigerator where the Icehouse was at. At that time he filled out a consent to search form and he went in with the deputy and found a gun in the refrigerator, where the Icehouse was at. (Tr. p. 126, Lns. 4-15). The State places the videotape into evidence as State's Exhibit No. 3; and then played it to the Jury. (Tr. p. 129, Lns. 3-13). There is no objection by Defense Counsel.

It was not difficult to see during cross-examination that the City Police did not possess the necessary information at that particular time in which they indeed did arrest and not merely detain for investigation. The Applicant was already (illegally searched), was not attempting to do any harm, and not attempting to flee the scene. (Tr. p. 129, Ln.

Issue D: Continued

20 - Tr. p. 131, Ln. 11). Yet, Defense Counsel still had a opportunity to Motion To Suppress the Gun and Video at that very point, but did not. After all, in this State, everything following this illegal arrest would warrant suppression. There were more incredible testimony in regards to the arrest, search and video. Let us review.

All three (3) alleged victims claimed to have been the one that spotted the Applicant in front of his girlfriend, April's apartment after the robbery. They further claimed to be the one that called and advised the Police of his whereabouts. (Tr. p. 71, Lns. 6-23; Tr. p. 87, Ln. 11 - Tr. p. 88, Ln. 9; Tr. p. 104, Ln. 6 - Tr. p. 105, Ln. 2). Cora and Deon Griffith alleged that Applicant led the Police on a chase after being spotted. They also describe the chase differently. See: (Tr. p. 88, Ln. 10 - Tr. p. 89, Ln. 7; Tr. p. 96, Ln. 15 - Tr. p. 97, Ln. 21; Tr. p. 105, Lns. 3-17; Tr. p. 111, Ln. 6-12). Erica Cheeks and her mother supposedly gave Cora and Deon a ride back to the apartments, but she did not say anything about a chase, nor did any of the Police Officer's. (Tr. p. 70, Ln. 23 - Tr. p. 72, Ln. 2). and See, also (Tr. p. 49, Ln. 23 - Tr. p. 51, Ln. 5; Tr. p. 115, Ln. 3 - Tr. p. 116, Ln. 25; Tr. p. 121, Lns. 8-24). Not only did Cora and Deon's testimony differ about a chase, but Deon Griffith gave an incredible story about the housing authority assisting the Police in the search and they mention nothing of April Woods being at the apartment at that time. (Tr. p. 104, Ln. 8 - Tr. p. 106, Ln. 2; Tr. p. 111, Ln. 6 - Tr. p. 113, Ln. 8). Again, no mention of these events in any of the Officer's testimony. There is one main point to this line of testimony in regards to the arrest, search and seizure and the videotape that should be obvious to any prudent mind. Someone, if not everyone, was either lying about these events or mistaking the facts about the entire case. In other words, Counsel was ineffective for not moving the Court for pre-trial, in-camera hearings for the suppression of the gun, the videotape and testimony in regards. Now, let us review this Analysis.

Law Analysis

All the State's evidence in relation to Applicant's arrest, search and seizure of his and his girlfriend's apartment as well as the videotape lacked any indicia of reliability whatsoever. Counsel had a duty to at least investigate this incident to see if the City Police had probable cause for the investigative detention that was actually in every sense of the term, an arrest. It is clear by the record that the Applicant wasn't given his Miranda Warnings until after the Officer viewed the videotape. Why was the window down in the City Patrol car according to Officer Phillips? Why did Officer Hamilton claim that the Applicant was trying to tell someone where the gun was located, when he said he had the air conditioning running and the windows was up? There are so many questions

Issue D: Continued

unanswered here that could have benefited the defense in suppression of the evidence if Counsel had done his duty to his client and investigated properly and made timely motions for a Jackson v. Denno and suppression hearings.

The City Police claimed that they only placed Applicant in investigative detention, when it is quite obvious that they indeed arrested him short of having probable cause. (Tr. p. 119, Lns. 14-20); from City Officer Hamilton (Tr. p. 131, Lns. 3-11). As previously mentioned, it was the County police who possessed all of the necessary particular information at that time to establish any probable cause that may have existed at that time. (Tr. p. 48, Ln. 5 - Tr. p. 50, Ln. 8). As we well know, an arrest is not justified by what a subsequent search turns up later; as here in this case. State v. Moultrie, 316 S.C. 547; 451 S.E.2d 34 (1994). At the time of arrest the City Police lacked the articulable facts necessary for a probable cause determination. State v. Bellamy, 323 S.C. 199, 473 S.E.2d 838 (1996). Furthermore, a later search and seizure based upon probable cause derived from information gained during an unconstitutional investigative detention would also be illegal and evidence so obtained was tainted. U.S. v. Torres, 77 F.3d 91 (4th Cir. 1995). The Fourth Amendment was meant to prevent wholesale intrusions, such as the one in this case upon the personal security, whether these intrusions be termed arrest, protective custody, or investigatory detentions. Davis v. Mississippi, 394 U.S. 721, 726-27 (1969); Collidge v. New Hampshire, 403 U.S. 443, 466-67 (1971); Johnson v. U.S., 333 U.S. 10, 14 (1948). The fruits of an improper seizure or improper warrantless search cannot be used to justify or "boot-strap" an arrest. Sibron v. New York, 392 U.S. 40, 885 S.Ct. 1339 (1968). The City Police physical force and show of authority causing the Applicant to yield to their commands was a seizure of a person with the equivalent to arrest. U.S. v. Wilson, 953 F.2d 116 (4th Cir. 1991). This was unreasonable arrest and seizure of person. Segara v. U.S., 468 U.S. 796, 806 (1984).

At the time, the Applicant was in police custody and free to leave. As a result, his Miranda requirements were triggered, but for them to wait until they reviewed the videotape to give him Miranda Warnings was too late. Miranda v. Arizona, 86 S.Ct. 1602 (1966); State v. Easler, 471 S.E.2d 745 (S.C. App. 1996). Interrogation is the express questioning, or its functional equivalent which includes words or actions on the part of the police...that the police should know are reasonably likely to elicit an incriminating response. Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 1690 (1980). It was undisputed that Applicant did not receive Miranda Warnings upon his initial arrest (investigative detention). The City Officers should have known their actions of allowing so many people around the police cruiser with the windows down that Applicant most likely would talk to them or they make attempted to elicit conversation, particularly with two of the alleged victims right at the car. Id. Indeed, Applicant statements were calculated to

Issue D: Continued

elicit an incriminating response from Applicant. Cf. State v. Council, 335 S.C. 1, 515 S.E.2d 500, 516 (1993). The prosecution may not use statements obtained as a result of the custodial interrogation or the voluntary statement of a defendant unless the defendant was advised of and voluntarily waived his Miranda rights, by the Arresting Officers. Applicant wasn't given his Miranda Warning until after the statements were given, if he was given them at all. Dickerson v. U.S., 530 U.S. 423 (2000).

Officer Jonathon Phillips (County Deputy), after receiving information about a gun from the videotape of the City Police's car, he obtained a consent to search form, which he claimed was signed by April Woods and Officer Hamilton to conduct a search of Applicant's apartment and located a firearm. (Tr. p. 52, Ln.1 - Tr. p. 53, Ln. 6). However, Officer Hamilton testified that after notifying the deputy about the statement about the gun, then he filled out a consent to search form, at which time he and the deputy went in and found the gun. (Tr. p. 126, Lns. 4-15). As we know, police may conduct a search without warrant and without probable cause if they have voluntary consent to search. U.S. v. Smith, 513 U.S. 1028, 115 S.Ct. 604, 130 L.Ed.2d 514 (1994); U.S. v. Boone, 245 F.3d 352 (4th Cir. (S.C.) 2001). However, constitutional immunity from unreasonable searches and seizures must be waived by a valid consent. From the totality of the circumstances leading up to consent to search and seize evidence we can see there may not even been a consent in the first place, nevertheless a valid consent. Palacio v. State, 333 S.C. 506, 511 S.E.2d 62 (S.C. 1999). The consent to search the Applicant's girlfriend's apartment was tainted by the illegal detention. Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). Furthermore, statements obtained as product of that illegal detention are inadmissible and cannot be used to fabricate probable cause or consent. U.S. v. Sullivan, 130 F.3d 126 (4th Cir. 1998); U.S. Const. Amend. Four.

Whenever evidence allegedly obtained by conduct violative of the defendant's constitutional rights is introduced, defendant is entitled to have the trial judge conduct an evidentiary hearing out of the presence of the Jury to establish the circumstances under which it was seized. State v. Blassingame, 271 S.C. 44, 244 S.E.2d 528 (1973). The State's burden should have been put to the test, by a determination as to whether there was a consent to search, and if so, was it voluntary. State v. Dorce, 465 S.E.2d 772 (1995). Actually once the City Officer had handcuffed, detained and searched the Applicant as soon as he came out of the apartment door and seen he wasn't armed, they had no right to continue the intrusive of the search further unless there was an incriminating object turned up by the pat-down. State v. Abrams, 471 S.E.2d 716 (1996). This was no routine investigation. State v. Easler, 471 S.E.2d 745 (1996).

Counsel failed to put the State's case-in-chief to any meaningful adversarial test by moving the Court to suppress the gun, statements, the video and any testimony in that

Issue D: Continued

regard. The State nor anyone else seemed to be concerned about whether April Woods, the Applicant's girlfriend, should have testified about the search. There were many possible eye witnesses to this event, but Counsel never investigated or interviewed anyone that could have benefited the defense in pre-trial motions that could have suppressed the very prejudicial evidence. This evidence had to be the main factor in the Jury's verdict, specifically by the Jury viewing the videotape and seeing Applicant in handcuffs. Counsel should have Motioned for a mistrial even if the Trial Court denied any other prior motion for exclusion. Why Counsel did not use the common resources available in this case is not understandable. Counsel had numerous of witnesses, specifically a girl inside the apartment during the time of the arrest of the Applicant. (Tr. p. 149, Ln. 23 - Tr. p. 150, Ln. 14). Counsel was indeed ineffective for not making any attempt to have this evidence suppressed and Counsel's performance prejudiced the Applicant from receiving a fundamentally fair trial. Sikes v. State, 323 S.C. 23, 448 S.E.2d 560 (1994). Counsel is unable to articulate a valid strategic or tactical decision by not attempting to have the evidence suppressed. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002); Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988). If not for Counsel's error here, there is a reasonable probability that the outcome of this proceeding would have been different. Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005); Strickland v. Washington, 456 U.S. 668 (1984).

A new trial is well warranted here.

Issue E: Argument

Issue E: Was Counsel ineffective by not objecting to the State's prejudicial use of Applicant's prior conviction?

The Court had denied the Defense's Motion For A Directed Verdict. (Tr. p. 136, Lns. 1-5). Afterwards, Defense Counsel brought to the attention of the Court of his client's old heroin charge. He further stated, "If they want to use that, that's no problem. It's not close enough to this type situation to be highly prejudicial. (Tr. p. 137, Lns. 9-16). Indeed, the State took full advantage of this opportunity to prejudice the Applicant in the minds of the Jury that he was a drug addict or even a drug dealer; that if he was hooked on heroin he would do anything to get it, including Armed Robbery. The State brought this to the Jury's attention right at the end of the Applicant's testimony. (Tr. p. 180, Lns. 13-21). This totally eclipsed any doubt in the Jury's mind that the Applicant's version of what happened on June 9-10, 2006 had any truth to it at all. Of course, that was the designed purpose. The State's use of this prior conviction was very prejudicial. The Possession of Heroin conviction was remote and irrelevant to any issues and Counsel could not have had any trial strategy by stipulating to such prejudicial use of this conviction. Counsel was indeed ineffective and this prior conviction should have been objected to instead of stipulating to for the following Legal reasons argued in this legal analysis.

Law Analysis

Admission of prior convictions to impeach the credibility of a defendant if the Court determines that probative value of admitting this evidence outweighs its prejudicial effect to the accused. Rule 609, S.C.R.E. This Rule is consequently subject to Rule 403, S.C.R.E. as well as 404; S.C.R.E.

In weighing the probative value of a prior conviction, a circuit court should consider all relevant factors including but not limited to: (1) impeachment value of prior crime; (2) point in time of conviction and witnesses subsequent history; (3) similarity between past crime and charged crime; (4) importance of defendant's testimony; and (5) centrality of credibility issue. Rule 609(a)(1). State v. Bryant, 356 S.C. 485, 589 S.E.2d 775 (2003). Thanks to the Defense Counsel's stipulation to the State's use of the prior Possession Of Heroin charge these factors were never taken into consideration by the Court, but they certainly should have. As we know, evidence of other crimes must be put to a rather severe test before admission. The acid test of admissibility is the logical relevancy of the other crimes. The Trial Judge must clearly perceive the connection between the other crime(s) and the crime charged. State v. Timmons, 488 S.E.2d 323 (1997).

Issue E: Continued

There must be a close degree of similarity or connection between the other prior crime and the crime charged. State v. Parker, 315 S.C. 230, 433 S.E.2d 831 (1993). See, also, State v. Douglas, 302 S.C. 508, 397 S.E.2d 98 (1990). There was no similarity or connection between the possession of heroin and Armed Robbery charge. State v. Stokes, 279 S.C. 191, 304 S.E.2d 814 (1983).

The possession charge also failed to prove the specific crime charged. It could not competently establish (1) motive, (2) intent, (3) absence of mistake or accident, (4) a common scheme or plan, (5) the identity of the wrongdoer. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Evidence of other crimes must be strickly scrutinized before its admission, since "the inevitable tendency of such evidence is to raise a legal spurious presumption of guilt in the minds of the jurors." Lyle, at 125 S.C. 412, 118 S.E. at 807. If there is any doubt as to the connection between the acts, the accused is to be given the benefit of the doubt and the evidence should not be admitted. Furthermore, it is well established that evidence of other crimes is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. See, U.S. v. Johnson, 610 F.2d 194 (4th Cir. 1979); State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). Even if other crimes is deemed relevant and admissible, the evidence may still be excluded if its probative value is substantially outweighed by the danger of undue prejudice or misleading the jury. State v. Wilson, 274 S.C. 635, 266 S.E.2d 426 (1980). Implicit in the rules of evidence which permit the introduction of prior crimes into evidence is prerequisite that they establish some element of the crime charged. State v. Huggins, 285 S.C. 361, 329 S.E.2d 759 (1985).

The Applicant's prior conviction of "Possession Of Heroin" was not relevant to any of the issues of this case; did not establish any material fact or element of the crime charged; could only mislead the Jury in believing that he was no more than a drug addict with no care about anything, specifically what he had to do to get more drugs, even commit this Armed Robbery. A Jury may not premise a criminal verdict on a defendant's character and prior conviction during their deliberations; which very well, could have influenced the verdict that was reached here. State v. Bryant, 356 S.C. 485, 589 S.E.2d 775 (2003); State v. Smith, 357 S.C. 182, 592 S.E.2d 302 (2004); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (2004); Rule 403 and 404(b), S.C.R.E.

The admission of this prior conviction did not fall within a recognized exception for admitting such evidence and did prejudice the Applicant. State v. Drew, 316 S.E.2d 367 (1984). No prudent mind could see Counsel's stipulating the use of the Applicant's prior conviction as being an informed tactical or strategic decision. Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988); Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002).

Issue E: Continued

Counsel's performance did not reach the range of competence required of Attorney's in criminal cases. Turner v. Bass, 753 F.2d 342 (4th Cir. 1985). Counsel's failure to object to the State's use of Applicant's prior conviction instead of encouraging its use is inconceivable and does indeed constitute ineffective assistance of Counsel. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). If not for Counsel's error here, there is a reasonable probability that the outcome of the trial would likely have been different. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Strickland v. Washington, 466 U.S. 668 (1984); U.S. v. Russell, 221 F.3d 615 (4th Cir. 2000).

Counsel's performance was deficient for failing to argue against the prior offense and to stipulate to the State's use of it as indication to the Jury as to the Applicant's character. U.S. v. Breckenridge, 93 F.3d 132 (4th Cir. 1996).

The conviction and sentence should be reversed.

Issue F: Argument

Issue F: Was Counsel ineffective for failing to object to the State's prejudicial closing arguments?

At the end of the presentation of their cases the State waived the opening final summation or argument to allow the defense to proceed first and they would get the last word to the Jury about the State's case. (Tr. p. 184, Lns. 7-15). The State gives their closing argument. (Tr. p. 196, Ln. 14 - Tr. p. 206, Ln. 13).

In their closing the State bolstered their weak case of mere suspicion by inappropriate means. Even the State Prosecutor knew how weak their case was as he tells the Jury not to pay attention to the fact they never proved that the Applicant carried away any goods (Asportation). (Tr. p. 198, Lns. 7-13). The State continued to bolster as the Solicitor insinuates that he possesses knowledge of some kind of evidence that implicates guilt as well as interjecting his personal opinion that because the Applicant uses the word "snitch" that he admitted to doing the crime. (Tr. p. 201, Lns. 8-18). The Solicitor further interjected his opinion to what the Applicant was thinking through this alleged incident. (Tr. p. 203, Lns. 10-17; Tr. p. 206, Lns. 4-5). The State Prosecutor also had to comment on their witnesses veracity and trustworthiness of their testimony, (Tr. p. 201, Ln. 24 - Tr. p. 202, Ln. 2; Tr. p. 205, Lns. 19-23), although the Solicitor was very aware that their testimonies were very inconsistent. (Tr. p. 198, Lns. 7-13). The State went as far as to give a prejudicial description of the elements of the Armed Robbery by purposely leaving out the essential elements of "asportation" (the carrying away of the goods of another). Consequently, the Indictment failed to charge those very elements and the State failed to prove the "asportation" beyond a reasonable doubt. This basically lessened the State's burden of proof of every essential element of the crime, beyond a reasonable doubt.

The State's closing argument was very prejudicial and Counsel should have objected and requested the Court to require the Solicitor to refrain from this type of actions. This constituted ineffective assistance of Counsel and now follows this Law Analysis in regard to this prejudicial error.

Law Analysis

The Solicitor's closing argument was both inherently prejudicial and a flagrant disregard for fairness and justice. Rule 407, S.C.A.C.R. A Prosecutor may not make suggestions, insinuations, and assertions calculated to mislead the Jury. A Prosecutor may argue that evidence gives rise to inference, but suggested inference must be drawn reasonably from the facts in evidence, not the Prosecutor's suggestions. U.S. v. Wilson,

Issue F: Continued

135 F.3d 291 (4th Cir. 1998). The Solicitor interjected his personal opinion to both the facts and Applicant's guilt. By doing so, the Solicitor insinuated that he had possession of personal knowledge of facts offered in evidence and presupposed the Applicant's guilt, when such comments have been long held improper. It is not only improper for the Solicitor to interject his personal beliefs about the evidence into closing arguments, but it is impermissible to do so. Matthews v. State, 565 S.E.2d at 766 (2002); Gilchrist v. State, 350 S.C. 221, 565 S.E.2d 281 (2002). A Solicitor may not vouch for the credibility of a State's witness based on his personal knowledge. State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001). Prosecutors may not place the prestige of the State behind a witness. State v. King, 561 S.E.2d 640 (2002); State v. Gathers, 369 S.E.2d 140 (1988); Mincey v. State, 314 S.C. 355, 444 S.E.2d 510 (1994).

It is crystal clear that the Solicitor's bolstering by inappropriate means allowed the Jury to reach a verdict based upon mere speculation, conjecture and suspicion more so than fact. The Solicitor's conduct was highly improper, constitutionally impermissible and prejudicially affected the Applicant's substantial due process rights so as to deprive him of a fair trial. U.S. v. Golding, 168 F.3d 700, 702 (4th Cir. 1999). The Solicitor's actions eclipsed the defense's theory of the case by attacking and pitting the credibility of the defendant against the alleged victim's and the Police Officers testimony. State v. Rudd, 355 S.C. 543, 586 S.E.2d 153 (2004); State v. Kelsey, 502 S.E.2d 63 (S.C. 1998); State v. Sapps, 295 S.C. 484, 369 S.E.2d 145 (1988).

The Solicitors actions in this case have been universally held to be improper and highly impermissible by our Courts. U.S. v. Young, 470 U.S. 118, 105 S.Ct. 1038 (1985); U.S. v. Hawkins, 76 F.3d 545 (4th Cir. 1996); State v. Jones, 466 S.E.2d 733-34 (1996). The verdict in this case could very well have been based upon the improper closing argument of the Solicitor. It cannot be said that the burden of proof was not shifted upon the Applicant at trial by the Solicitor's improper and inherently prejudicial remarks. Sandstrom v. Montana, 442 U.S. 510, 514 (1979); U.S. v. Loayza, 107 F.3d 257, 261 (4th Cir. 1997).

The Solicitor's conduct is not at all harmless beyond a reasonable doubt. U.S. v. Golding, 168 F.3d 700, 702 (4th Cir. 1999). For Defense Counsel not to object to such highly impermissible bolstering, which is so inherently prejudicial, as to be an error of law constituting ineffective assistance of Counsel and must be deemed as such; as the credibility of the State's witnesses was crucial to the State's case-in-chief. State v. Kelly, 540 S.E.2d 851 (2001); State v. Shuler, 545 S.E.2d 805 (2001). This could not be a sound strategy or informed tactical decision by Counsel here. Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002); Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988). If not for Counsel's error here, there is a reasonable probability that the outcome of the trial

Issue F: Continued

would have likely been different. Thrift v. State, 397 S.E.2d 523 (1990); Strickland v. Washington, 466 U.S. 668 (1984).

The conviction and sentence should be reversed for a new trial.

Issue G: Argument

Issue G: Was Counsel ineffective for not objecting to the Court's erroneous Jury instructions or at least requesting the Court to recharge the Jury?

The Trial Court gave its Jury Charge in its entirety. (Tr. p. 206, Ln. 14 - Tr. p. 220, Ln. 17). The Trial Court states: "Now, in this particular case there are multiple indictments, multiple charges, three different counts of armed robbery along with possession of a weapon. Each of these indictments is a separate and distinct offense and must be decided by you separately based on the evidence and the law applicable to the case."

The Trial Court instructs the Jury to the Law in relation to reasonable doubt. (Tr. p. 209, Ln. 1 - Tr. p. 210, Ln. 13). The Court further stated: "you are to weigh all the evidence in the case and after weighing the evidence if you're not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty." (Tr. p. 213, Lns. 6-10). Then, the Court informed the Jury that the State must prove beyond a reasonable doubt that the Defendant: took personal property from the person or presence of another individual; carried the property away, intending to permanently deprive the owner of the property for the Defendant's own use; and was armed with a deadly weapon during the robbery. (Tr. p. 216, Ln. 14 - Tr. p. 217, Ln. 16).

Although the Trial Court gave instructions here in relation to the elements of Armed Robbery and reasonable doubt, the Court failed altogether to inform the Jury that these were the essential elements of Armed Robbery, and the State must prove every essential element of the crime charged beyond a reasonable doubt as required by In re Winship standard of proof. Counsel should have at least asked the Court to explain to the Jury that it was giving them the essential elements of the charged crime and that all of these essential elements had to be proven beyond a reasonable doubt. This is a cardinal rule of Jury instruction that Counsel should have made known to the Trial Court before allowing the Applicant to be found guilty to the charges without the Court giving the adequate and necessary charge as explained within this Law Analysis.

Law Analysis

It is the duty of the trial judge under South Carolina Constitution Article V, Section 21, to charge the Jury on so much of the law as is applicable to the issues made by the evidence adduced at trial, and to do so in a legally accurate manner. The charge given here fails to do so. State v. Stone, 285 S.C. 386, 330 S.E.2d 286 (1985). The charge involving the essential elements in relation to reasonable doubt should have been given in a complete legal fashion so as not to deprive the Applicant of a fair trial, as it did here. The Constitutional question is "whether there is a reasonable likelihood that the

Issue G: Continued

Jury understood the instruction to allow a conviction based on proof insufficient to meet the Winship standard. Victor v. Nebraska, 114 S.Ct. 1239 (1985); U.S. Const. Amend. Fourteen.

The United States Supreme Court has recognized that the prosecution must prove each and every element of crime charged beyond a reasonable doubt. In re Winship, 397 U.S. 158 (1970). The burden of proof on any element cannot be shifted to the defense, because doing so decreases the State's burden of proving the crime beyond a reasonable doubt. See, Mullaney v. Wilbur, 421 U.S. 684 at 701 (1975); Sandstrom v. Montana, 442 U.S. 510 (1979). Such a jury instruction given here was in violation of the due process clause as guaranteed by the Fourteenth Amendment to the United States Constitution. Jackson v. Virginia, 443 U.S. 307, 316 99 S.Ct. 2781, 2787 (1979). The Court's charge did lessen that standard of proof and the State's burden in that regard; resulting in the denial of a fair trial. Fiore v. White, 121 S.Ct. 712 at 714 (2001). Further, the Jury charge was also not a correct statement of the law in violation of Article 5, Section 21 of the South Carolina Constitution. The Court's erroneous charge is not amenable to harmless error. See, Sullivan v. Louisiana, 113 S.Ct. 2078 (1993).

Here, Defense Counsel simply stood by allowing the burden of proof to be shifted from the State onto his client. That very action denied the Applicant a fair trial and further denied him effective assistance of Counsel at a most critical stage of the trial. Such actions by an attorney in regards to his client must be deemed as ineffective assistance of Counsel. Dandy v. State, 301 S.C. 303, 391 S.E.2d 381 (1990); Carter v. State, 301 S.C. 396, 392 S.E.2d 184 (1990); Chalk v. State, 313 S.C. 25, 437 S.E.2d 19 (1993). This could not be considered sound strategy for defense against the serious charges by Counsel. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Nor, could Counsel's actions have been an informed tactical decision by Counsel. Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988).

Counsel's failure to place an objection, take exception or request a recharge to the erroneous Jury instructions to at least preserving a good issue for appeal, was indeed ineffective assistance of Counsel. High v. State, 300 S.C. 88, 386 S.E.2d 463 (1989). Based upon the record, Counsel was ineffective for not objecting to the erroneous burden shifting instructions. Tate v. State, 351 S.C. 418, 570 S.E.2d 522 (2002). If not for Counsel's error here, there is a reasonable probability that the outcome of this trial would likely have been different. Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984); Strickland v. Washington, 466 U.S. 668 (1984).

The Applicant's conviction and sentence should be reversed for a new trial.

Issue H: Argument

Issue H: Was Counsel ineffective for not providing Applicant with the necessary investigation, interviewing of witnesses, or otherwise preparation for trial?

Defense Counsel was fully aware of the serious nature of the three (3) armed robberies in this case, which could have yielded three (3) consecutive sentences, if convicted, of at least forty-five (45) years. There were many State's witnesses and a very prejudicial videotape, lurking against his client. It should be quite obvious by the case records that the Applicant's Counsel did not have his client's best interest in mind, as he failed to investigate, research, interview witnesses or otherwise prepare for trial. Counsel's actions and lack of action could not have been any informed or sound strategy or tactics for a defense. Applicant was prejudiced from having a complete defense and fundamentally fair trial by Counsel's failure to put the State's case to a meaningful adversarial test. Counsel was indeed ineffective, as revealed here in this issue, as well as the previous issues.

The State's case essentially revolved around the testimony of Erica Cheeks, Cora Griffith and Deon Griffith, the three (3) alleged victims of an armed robbery and evidence obtained from an illegal investigative detention of the Applicant and statements he made on a videotape as previously argued. (See: Issue: D).

The State's three (3) alleged victims testimony differed about almost every single factor having any relevance to the robbery and the arrest of the Applicant; the search and seizure of the Applicant and the Applicant's girlfriend's apartment. They are particularly inconsistent about the weapon; amount of money taken; who called the police after spotting the Applicant after the robbery; and about a chase involving the Police and Applicant.

Let us note, that there were a tremendous amount of possible eye witnesses that Counsel never interviewed that could have been very helpful to the defense specifically since there were so many inconsistent statements made by the three (3) alleged robbery victims. (Tr. p. 50, Lns. 2-21; Tr. p. 52, Lns. 16-22; Tr. p. 63, Lns. 7-18; Tr. p. 82, Lns. 1-23; Tr. p. 111, Lns. 6-18; Tr. p. 112, Ln. 1 - Tr. p. 113, Ln. 8; Tr. p. 115, Ln. 3 - Tr. p. 116, Ln. 10; Tr. p. 146, Ln. 6 - Tr. p. 147, Ln. 24; Tr. p. 148, Ln. 14 - Tr. p. 149, Ln. 9; Tr. p. 150, Lns. 2-11). Even if Counsel would have been unable to interview or subpoena most of these people, he did not try to locate and subpoena any of them. Why he didn't at least secure April Woods, the Applicant's girlfriend, whose apartment was searched and the gun was seized in, for trial is inconceivable. Furthermore, there was a girl inside of the apartment that they called Fats that Counsel could have used in suppressing the evidence as well as other people he could have used to discredit the

Issue H: Continued

State's entire case and benefited Applicant in pre-trial evidentiary hearings that could have exposed the State witnesses inconsistencies even more.

There was a very puzzling factor about this entire alleged robbery that was not covered by the State nor the defense that is so significant and relevant to the issues and facts that can't be understood. There was so much testimony and involvement in regards to Erica Cheeks Mother; such as the card game and robbery happening right there in her home and she was there according to testimony the whole time but there was no mention of what she was doing while the robbery happened. Counsel could not have investigated or prepared anything for trial of any serious effort. The State's weak case was not tested and Counsel was ineffective. Now comes this Law Analysis in regards.

Law Analysis

To prove that Counsel was ineffective, the Applicant must show that Counsel's performance was deficient and that there is a reasonable probability that, but for Counsel's errors, the result of the proceeding would have been different, with a "reasonable probability" being a probability sufficient to undermine confidence in that proceeding. Payne v. State, 355 S.C. 642, 586 S.E.2d 857 (2003); Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005).

Trial Counsel had an obligation to investigate possible methods for impeaching the prosecution's witnesses. Tucker v. Ozmint, 350 F.3d 433 (4th Cir. (S.C.) 2003). Applicant was also entitled to access the evidence for testing. Counsel made no attempt to have the alleged weapon used in the robbery (found at the apartment during the search) tested for fingerprints, nor did he question the Officer in that regards. Erica Cheeks suggested that the Police took the glass Applicant supposedly drunk from during the robbery for fingerprints. (Tr. p. 78, Ln. 25 - Tr. p. 79, Ln. 3). Although this is odd, Counsel should have inquired more with the Police about any physical evidence, specifically whether the purported robbery weapon was tested for "fresh" prints. Cora Griffith was known to have a gun, but she claimed not to have it at the time of the robbery. Counsel never inquired into accessing the gun for any test. Toney v. Gammon, 79 F.3d 693 (8th Cir. 1996). Counsel did not bother to investigate that possibility nor did he interview any of the many possible eyewitnesses. He seemed to be willing to accept the State's version of the facts. This certainly calls Counsel's representation into serious question of inadequacy. U.S. v. Matos, 905 F.2d 30 (2nd Cir. 1990); Strickland v. Washington, 466 U.S. 668 (1984).

Trial Counsel did not do the necessary investigative research or trial preparation required of professional defense attorneys under the ABA standards of professional norms.

Issue H: Continued

Counsel's performance in this case did not reach the range of competence required of attorneys in a criminal case. Turner v. Bass, 753 F.2d 342 (4th Cir. 1985). Reliance on a State Court record tainted by ineffective assistance of Counsel is unacceptable. Grier v. State, 299 S.C. 321, 384 S.E.2d 722 (1989); Hyman v. Aiken, 824 F.2d 1405 (4th Cir. 1987).

Defense Counsel's failure to investigate his options and make a reasonable choice between them foreclose's any "strategic decision" that may have existed, specifically, since he made no pre-trial motions to suppress the tainted evidence. Jackson v. Herring, 42 F.3d 1350; See also, Crisp v. Duckworth, 743 F.2d 580 (7th Cir. 1984). There could not have been any "reasonable trial strategy" by Counsel's failure to adequately investigate and prepare and this lack of performance by Counsel cannot be deemed harmless error in a case where credibility was a key factor in the verdict, specifically, since Applicant was found not guilty of robbing one of the alleged robbery victims (Deon Griffith). See: State v. Weaverling, 337 S.C. 365, 523 S.E.2d 787 (1999); Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002).

Counsel's poor performance prejudiced the Applicant from having a complete defense and fundamentally fair trial, as well as, preserving some strong meritorious issues for appeal purposes if the trial was not successful. If not for Counsel's errors, there is a reasonable probability that the outcome of the proceeding would have been different. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Strickland, supra.

This case should be reversed for a new trial.

Issue I: Argument

Issue I: Was Appellate Counsel ineffective for not arguing the Directed Verdict issue on Appeal?

The Applicant was charged with three (3) Armed Robberies by three (3) separate indictments (Indictment Nos.: 2006-GS-23-6230; -6231; -6232) and Possession Of A Weapon During The Commission Of A Crime (Indictment No.: 2006-GS-23-6233). (Tr. p. 252-272). Consequently, Applicant was found not guilty of the Armed Robbery of Dionne Griffith (Indictment No.: 2006-GS-23-6232), but found guilty on the other two Armed Robberies of Erica Cheeks and Cora Griffith. (Tr. p. 241, Lns. 1-12).

The State presented their case and rested. Defense Counsel moved for a Directed Verdict due to the State's incompetent and incredible evidence. (Tr. p. 134, Ln. 22 - Tr. p. 135, Ln. 21). Counsel explained to the Court of the inconsistencies in relationship to the elements of the charged crime. Counsel pointed out where one alleged victim claimed she could not even see the pistol because it was at her chest and she was looking at the Applicant, where as others has the pistol down at his side. There were even more inconsistencies in regards to their testimony about the pistol that strongly suggest that this was a fabricated story as suggested to the Court by Defense Counsel. However, the Court denied the Motion. (Tr. p. 136, Lns. 1-5).

After the return of the "not guilty" verdict, Defense Counsel also Motioned to set aside the convictions as inconsistent and evidence that the Jury might have been comprised. "I don't understand it. Under the facts, he either robbed them all or he didn't rob anybody. So I move for a new trial." The Court denied his Motion again. (Tr. p. 244, Ln. 1 - Tr. p. 246, Ln. 16).

The Court was incorrect to deny the directed verdict in the first instance and for the following logical reasoning. First, all of the victims testified to being robbed after a night of playing cards at one of the alleged victims (Erica Cheeks) mothers house, by the Applicant, at gun-point. However, all three (3) of the alleged robbery victims description of what happened from the beginning to the end of this story was so incredible that their testimony could and should have been viewed by the Court as incompetent and a directed verdict should have been granted. Let us review testimony in regard.

Officer Jonathon Phillips responded to a call about an incident reported as only a single armed robbery at Monroe Street on the morning of the 10th of June, 2006 and met with the three (3) alleged victims. (Tr. p. 48, Ln. 18 - Tr. p. 49, Ln. 3). He took his report, notified his supervisor of the situation and left. (Tr. p. 49, Lns. 21-24). According to his report, the Applicant showed up at about 9:15 to 9:30 and asked for a drink. They gave him a glass of tequila (a shot of tequila). He went to the restroom and came out with a gun. Supposedly, Applicant then took \$1,000.00 from Erica Cheeks, \$375.00

Issue I: Continued

from Cora Griffith, and \$250.00 from Deon or Dionne Griffith, totalling \$1,625.00. (Tr. p. 59, Ln. 7 - Tr. p. 60, Ln. 3). All three alleged victims told Officer Phillips that a red laser light came from the weapon used in the robbery. However, the pistol preported by the State as the weapon used in the robbery has no laser light, sight, or any other such device. (Tr. p. 60, Ln.4 - Tr. p. 61, Ln. 4). These very same three (3) alleged victims details about this entire alleged robbery are so incredible and inconsistent it is difficult to comprehend that a prudent mind could see their testimony as anything more than incompetent at best. Let us review further.

As previously noted, the description of the pistol was less than reliable as being the weapon used during the robbery, if there was a weapon or robbery. Testimony of Erica Cheeks: "I never looked at the gun, I was looking at him the whole time" (Tr. p. 65, Lns. 20-22). The gun was positioned and pointed at her waist. (Tr. p. 66, Lns. 15-22; Tr. p. 68, Lns. 4-6). Erica didn't know what the gun looked like even after he had pointed it at her for five (5) to ten (10) minutes. (Tr. p. 68, Lns. 7-13). He and Erica went to the kitchen where he grabbed a bottle of liquor with the gun on her still. He then left out the door but she could not see the door from the kitchen. (Tr. p. 68, Ln. 17 - Tr. p. 69, Ln. 13).

Cora Griffith's version of the alleged robbery was very inconsistent with the story given by Erica Cheeks. Cora testifies to the following. After everybody returned inside to use the bathroom, with the defendant being last, he returned with a pistol down to his side, not pointed at Erica. (Tr. p. 83, Lns. 18-24). She was standing right beside him, then he raised the gun to Erica and she started pulling the money from her pocket. Now, Cora said she was sitting and not standing. (Tr. p. 93, Ln. 7 - Tr. p. 94, Ln. 7). She further stated that the Applicant took the pistol off of Erica and pointed at her. (Tr. p. 85, Ln. 25 - Tr. p. 86, Ln. 6). She claimed to have recognized (State's Exhibit No.: 2) as the weapon used in the alleged robbery because she remembered it having a little red dot on it that she thought was a laser. (Tr. p. 86, Lns. 11-24). He asked for a drink after he got the money from the living room, then he went to the kitchen where they were (Erica and her) and took their whole bottle of liquor, then gave them his address. Then he led Erica through the living room and went on out the door. (Tr. p. 95, Ln. 7 - Tr. p. 96, Ln. 9). This bizarre description of events did not remotely add up.

Cora's daughter, Deon, testified to even more inconsistent details to this alleged robbery. Deon Griffith stated that she doesn't know how the Applicant got to Erica's house. He was there when she got there. (Tr. p. 107, Lns. 1-8). They stopped playing cards at about 6:00 a.m. (Tr. p. 100, Lns. 10-12). She doesn't know what time the Applicant left. (Tr. p. 100, Lns. 6-9). As they were going out the door, he returned and met them at the door, said he wanted to play more cards and he wanted to use the bathroom.

Issue I: Continued

(tr. p. 100, Lns. 13-24). He went to the bathroom, came out with a gun and pointed it at Erica. (tr. p. 101, Lns. 2-10). She claimed that the gun marked as State's exhibit No.: 2 was the same gun used in the robbery. (Tr. p. 101, Lns. 13-20). Deon further stated that she got a good look at the purported gun (State's Exhibit No.: 2) used in the alleged robbery right before trial. (Tr. p. 106, Lns. 9-20). She also states that everyone told the Officer that there was a red light coming from the gun. Everyone, because everyone seen it "like a laser light." However, the State's Exhibit No.: 2 does not have a laser light or sight on it. (Tr. p. 110, Ln. 19 - Tr. p. 111, Ln. 5). All three alleged victims give a different description of the weapon itself and the position and manner in which the Applicant supposedly used it during the alleged robbery. According to Deon, the Applicant told Erica to walk him out the door, opened the door and he left. (Tr. p. 103, Lns. 7-22). Compare to Erica's testimony. (Tr. p. 69, Lns. 10-13).

The weapon was not the only thing that these three (3) ladies would testify in contrast about. Whereas Erica Cheeks claimed that the Applicant took \$1,000.00 from her, \$375.00 from Cora Griffith, and \$250.00 from Deon; the other two (2) alleged victims gave a different account altogether; yet none gave a straight story about where the money was in relation to the robbery. See: (Tr. p. 59, Ln. 7 - Tr. p. 60, Ln. 3; Tr. p. 85, Lns. 2-6; Tr. p. 89, Ln. 18 - Tr. p. 90, Ln. 2; Tr. p. 93, Ln. 20 - Tr. p. 94, Ln. 22; Tr. p. 102, Lns. 2-25). As Counsel had argued the alleged victim's claim that the Police had to chase the Applicant and ran him into an apartment. This was probably the most ridiculous part of all their testimony, according to the Officer's involved in this case. (Tr. p. 50, Ln. 9 - Tr. p. 51, Ln. 1; Tr. p. 115, Ln. 3 - Tr. p. 117, Ln. 14).

All three (3) victims story about the essential elements of any robbery in this case was incredible. When the State rested, they had failed to prove no more than conjecture, speculation and suspicion. There is absolutely no mention of the Applicant actually "carrying away the goods of another" (the Asportation). No money was found on the Applicant and nobody saw him with any money after he left Erica's house. The directed verdict issue should have been argued on Appeal as a single issue or in support of conjunction with the "Inconsistent Verdict Issue" raised by Appellate Counsel. Applicants odds of reversal could only have been strengthened by this additional issue and Appellate Counsel was indeed ineffective for not arguing the issue. Now, this Law Analysis follows in regards.

Law Analysis

The evidence presented does not, at all, prove the allegations of the indictments and the Trial Court should have granted a directed verdict by the facts, if any, presented.

Issue I: Continued

State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 171 (2003); State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916). The State's evidence in this case was far from being overwhelming. In fact, there wasn't any clear and convincing evidence that an Armed Robbery even occurred in the first instant, nevertheless did the State prove the essential elements of the "Asportation", specifically the carrying away of the money, as the State knew. (Tr. p. 198, Lns. 7-13).

If there is any direct or substantial circumstantial evidence Reasonably tending to prove the guilt of the accused, the Court must find the case is properly submitted to the Jury. State v. Harris, 351 S.C. 643, 653, 572 S.E.2d 267, 273 (2002). There was no reasonable evidence tending to prove guilt or that guilt may be fairly and logically deduced. See, State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). The State failed to produce evidence of the offenses charged and the Applicant was entitled to a directed verdict. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001); State v. Padgett, 354 S.C. 268, 271, 580 S.E.2d 159, 161 (2003); State v. Perry, 358 S.C. 633, 595 S.E.2d 883 (2004).

The Trial Court erred and the conviction on the charges should have been reversed on Appeal because of the State's failure to establish these critical essential elements of the crimes charged beyond a reasonable doubt. State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006); In re Winship, 397 U.S. 158 (1970). However, due to Appellate Counsel's overlooking of this vital issue, the Applicant was unable to have an opportunity for that reversal. Further, the Trial Court should have granted a directed verdict where the evidence presented merely raises conjecture, speculation, and suspicion as to any of the essential elements of the charges as in this case. State v. Horne, 324 S.C. 372, 379, 478 S.E.2d 289, 293 (1996); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984). "Suspicion" implies a belief or opinion, as to guilt based upon facts or circumstances which do not amount to proof. State v. Hyder, 242 S.C. 372 131 S.E.2d 96 (1963); State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). Suspicion, however strong, is not enough to sustain this conviction. State v. Lyles-Gray, 328 S.C. 458, 492 S.E.2d 802 (1997); Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005). The evidence presented by the State does not support the conviction. State v. Bethea, 120 S.E.2d 239 (1923); State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004).

The scenario of the facts presented do not support a logical or reasonable hypothesis of guilt arising from the doctrine of chances that the facts charged are likely to be true. State v. Manis, 214 S.C. 99, 51 S.E.2d 370 at 371 (1949); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Sweat, 70 S.E.2d 234 (1952). The Trial Court is not required to find that the evidence inferred guilt to the contrary of any other reasonable

Issue I: Continued

hypothesis. Cherry, 361 S.C. at 594, 606 S.E.2d at 478.

Here, the State failed to prove its case-in-chief by the evidence presented of every essential evidence of the crimes charged beyond a reasonable doubt by any clear or convincing credible evidence. Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir. 1994); Fiore v. White, 121 S.Ct. 712 at 714 (2001). The Trial Court erred in not granting the defense's directed verdict Motion. Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005); State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006).

Defense Counsel was correct for his grounds for a directed verdict. Trial Court committed reversible error and Appellate Counsel was ineffective for not bringing this Issue on Appeal. The Directed Verdict issue certainly consisted of a strong arguable basis in law and fact. It also stood an excellent opportunity for success on Appeal. McLean v. U.S., 566 F.3d 391, 399 (4th Cir. 2009); See, also, Neitz v. Williams, 490 U.S. 319, 325 (1989). For Appellate Counsel to overlook this directed verdict that would have made a solid companion issue with inconsistent verdict issue presented on Appeal was not at all a logical strategic or tactical decision. Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988). Appellate Counsel has a duty to argue the meritorious issue in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S.Ct. 746, 765, 145 L.Ed.2d 756 (2000); Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). Applicant was entitled to more effective assistance on Appeal. Evitt v. Lucey, 469 U.S. 387 (1985).

Appellate Counsel's decision not to bring this vital and meritorious issue on Appeal prejudiced the Applicant from receiving a fundamentally fair proceeding. Counsel's performance was deficient. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (S.C. 2005). Furthermore, Appellate Counsel was ineffective and Applicant was inherently prejudiced by Counsel's poor performance. If not for Counsel's error here, there is a reasonable probability that the outcome of this Appeal proceeding would have been different. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 at 836 (1999); quoting, Strickland v. Washington, 466 U.S. 668 (1984). The appropriate remedy for ineffective assistance of Appellate Counsel is a reversal for a new trial. Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (S.C.S.Ct. 2001).

A new trial is required in this particular case.

Issue J: Argument

Issue J: Was Defense Counsel ineffective for not using the prior inconsistent statement's against the State's witnesses that was made pre-trial and during trial?

Defense argued to the Court the inconsistencies of the three (3) alleged victims testimony during trial and that they just fabricated this entire story. Counsel further asked for a directed verdict due to the lack of competent evidence, but the Court denied Counsel's Motion. (Tr. p. 134, Ln. 22 - Tr. p. 136, Ln. 5). Defense recalled State's witness, Officer Jonathon Phillips, whereas he questioned him about his Report being based on what all three (3) alleged victims told him on the morning of the alleged Armed Robbery. (Tr. p. 181, Ln. 15 - Tr. p. 183, Ln. 4). The Officer's testimony confirmed the inconsistencies made by the three (3) alleged victims. However, this wasn't enough to convince the Trial Court nor the Jury. The Jury found him not guilty of one of the Armed Robberies, but guilty of the other two. (Tr. p. 241, Lns. 1-12).

Let us note, if the Jury was convinced that the Applicant did not rob Deon Griffith who was with the other two alleged victims, was there something that could have convinced the Jury that the Applicant did not rob anyone? The answer to that is yes. Let us review further.

Defense Counsel had many other inconsistent out-of-court statements and/or other reports that strongly suggest that these three (3) alleged victims did indeed fabricate a story against the Applicant. At his disposal was the following statements and reports that Counsel never used at trial to discredit these three witnesses, as well as the Officer's testimony. See: (Attachments: A through P) in regards.

There are some very interesting factors within these many Police Reports if exposed to the Jury, the verdict may very well have been different if Counsel would have brought these statements and other reports to their attention. Let us review further.

There were Incident and Supplemental Reports made by five (5) different City Police Officers of the Greenville Police Department, as well as Incident and Supplemental Reports from two (2) County Officers of the Greenville County Sheriffs Office. In Lt. M.A. Peterson's Report (Greenville County DPS Forensic Investigation Report), it is shown to have been originally four (4) alleged victims with victim #2 giving the robbery suspect a shot glass full of tequilla, whereas Lt. Peterson collected the shot glass for latent print processing with positive results. Also, another interesting factor is that alleged victim #2 would be Juanita Huff of Monroe Street, the location of the alleged robbery. This is totally in contrast with any and all testimony at trial. There were also four (4) victims alleged in Master Deputy Jonathon Phillip's Reports. In his Incident Report, it has the Applicant originally charged with the additional charge of Burglary 2nd Degree

Issue J: Continued

along with the Armed Robberies. In Officer Phillip's two (2) page Supplemental Report it not only has four (4) victims listed, but it also list a Cary Banks as a witness that was never subpoenaed as a witness at trial or mentioned by any of the other lay witnesses or Police at trial. This report also alleged that the Applicant reached inside both Cora's and Deon's purse. He supposedly took \$375.00 from Cora and \$250.00 from Deon. In fact, on page two (2) of Officer Phillip's Supplemental Report, the information varies substantially to the testimony of all of the State's witnesses on almost every single detail of this case, specifically, about the in-car camera video and who actually signed the consent to search form. The Report states: "Ms. Booker responded and signed a consent to search form to search her residence for any items used or received from this crime." See the following Attachments in regards to the aforementioned account. (Attachments A through D).

The remaining reports were from five (5) City Police Officers. All of their reports gives a totally different story about the arrest of the Applicant and the search and seizure of his and his girlfriend's apartment than what the Officer's testified to during trial. See: (Attachments E through P).

After reviewing the inconsistent testimony and comparing it with the prior inconsistent statements made in these many Reports, it is quite obvious, if Counsel would have utilized these reports in regards to cross-examination of these many State Witnesses, the Jury would have been able to realize for themselves, that the State had only raised a case of suspicion, speculation, and conjecture. Instead of finding Applicant not guilty of one of the armed robberies, the Jury would have realized that the entire story was lacking any indicia of reliability, that they would have found Applicant not guilty of any of the charges against him, if the Trial Court did not grant the Defense's Motion for a Directed Verdict. Counsel would have stood a very good chance of having the evidence suppressed in pre-trial hearings had he used these many Reports with these inconsistent statements. The point here is, these Reports were available to him, so what could possibly be the reason he failed to use them. This was not sound strategy. If Counsel had used these inconsistent statements made in these reports, the Jury would have had no problem in disregarding all the State's evidence, as it was incompetent, as well as untrue, and a true verdict could have been reached. When the State fails to correct false testimony from their witnesses it calls for the case to be reversed. The State had a duty to correct, what should be obvious to the prudent mind, the false testimony given by its witnesses. See: Daniels v. Lee, 316 F.3d 477 (4th Cir. 2003). The State had their obligation, as well as Defense Counsel to seek the truth in this matter. This type of prejudice could not be overcome by the Applicant. Counsel's failure to investigate, interview witnesses, and prepare for trial is evident here, for there is no explanation as

Issue J: Continued

to why Counsel did not use the inconsistent statements made pre-trial and during trial. Was Counsel acting as a second prosecutor in this case? Counsel was ineffective and now comes this Law Analysis in regards.

Law Analysis

Prior statements of witnesses are subjected to the provisions of S.C. Code Ann. §§19-1-80-100. If a witness admits making the prior inconsistent statement, then the witness has been impeached and no further extrinsic evidence of the statements, including the statements themselves are admissible. State v. Lynn, 277 S.C. 222, 284 S.E.2d 786 (1981); McMillan v. Ridges, 229 S.C. 76, 91 S.E.2d 883 (1956); Rule 613(b), S.C.R.E. Counsel never confronted the witnesses with their prior inconsistent statements and the testimony in regard to them far outweighed any probative value at the trial of this instant case. State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976); State v. Jones, Op. No. 25242 (S.Ct. 2001); 98 C.J.S. Witnesses, §460; Rule 608(b), S.C.R.E.

It is crystal clear that because Counsel did not challenge these statements, this allowed the prior inconsistent statements and testimony in regards to them, to prejudice Applicant by denying him a fundamentally fair trial. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001).

Cross-examination of government "star" witnesses is important, and a presumption favors free cross-examination by a defendant on possible bias, motive, ability to perceive and remember, and general character for truthfulness. U.S. v. Novation, 271 F.3d 968 (11th Cir. 2001). Furthermore, truthfulness of testimony is vital to a fair trial. "The dignity of the United States Government will not permit the conviction of any person on tainted testimony." This case really indicates the testimony is quite tainted. Mesareosh v. U.S., 352 U.S. 1, 1 L.Ed.2d 1, 77 S.Ct. 1 (1956). Counsel cannot demonstrate any reasonable strategy for not confronting these "star" government witnesses with the untruthfulness of their inconsistent statements during cross-examination. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

There is a reasonable probability, if not for Counsel's error here, the result of this proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984). Counsel's representation fell below the objective standard of reasonableness which prejudiced Applicant from receiving the necessary cross-examination for a fair trial or to reach a true verdict. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989); Tucker v. Ozmint, 350 F.3d 433 (4th Cir. (S.C.) 2003).

A reversal is well warranted in this case.

Issue K: Argument

Issue K: Was Counsel ineffective for failing to argue a Double Jeopardy violation by the Armed Robbery indictments and Possession Of A Weapon During The Commission Of A Crime indictment being charged against him by the State in this case at trial?

In this case at hand, the State indicted the Applicant and alleged that he committed Armed Robberies (Indictment Numbers: 2006-GS-23-6230; -6231; -6232). The allegations state that on or about the 10th of June , 2006, that he was either armed with a deadly weapon or made allegations by actions or words that he had a weapon by representation and that he took certain property by means of force and intimidation. In addition to those three charges of armed robbery, there's also a charge through indictment of possession of a weapon during the commission of a violent crime which is against the statutory law of South Carolina. (Trial Judge introduction of case, See: Tr. p. 8, Ln. 13 - Tr. p. 9, Ln. 9).

This offends the principles of the Double Jeopardy Clause of both the U.S. Const. Amend. Five, as well as the S.C. Const. Art. 1, Sect. 12 for the following reasons.

"Possession of a weapon during the commission of a violent crime" pursuant to S.C. Code, §16-23-490 and Indictment No.: 2006-GS-23-6233 are essential elements that fit squarely with the greater charge of Armed Robbery which is a violent crime as defined in S.C. Code, §16-1-60. See and compare; S.C. Codes, §§16-23-490 and 16-11-330. Although the legislature has allowed for additional punishment by the language of S.C. Code, §16-23-490, it fails to bar the Applicant from a subsequent trial for punishment upon the very same elements of either crime. This violates the same element test. See: Blockburger v. U.S., 284 U.S. 299 (1932).

The Applicant's conviction and punishment on both offenses violated the principles of the Double Jeopardy Clause, and both offenses were based upon the same operative facts. Claims of Double Jeopardy should be analyzed on a case by case basis and just to the same elements test. The Double Jeopardy Clause protects against: "a second prosecution for the same offense after conviction; and multiple punishment for the same offense. Thus, there was only one crime committed and the "Possession Of A Weapon During The Commission Of A Violent Crime" meets the same elements test and the conviction and sentence of both charges does violate the principles of Double Jeopardy. State v. Elliott, 552 S.E.2d 727 (2001); State v. Norton, 332 S.E.2d 531, 532 (1985); Matthews v. State, 387 S.E.2d 258 (1990).

The Constitutional right not to be placed in double jeopardy, being a vital safeguard in American Society, should not be given a narrow, grudging application. Green v. U.S., 335 U.S. 184, 87 S.Ct. 221, 2 L.Ed.2d 199 (1961). Also, the Double Jeopardy Clause would

Issue K: Continued

be violated by the insufficiency of the indictment. Citing, State v. Easler, 489 S.E.2d at 617; Illinois v. Vitale, 447 U.S. 410, 419-420, 100 S.Ct. 2260, 2266-2267 (1980); U.S. v. Wicks, 187 F.3d 426, 427 (4th Cir. 1999); Rutledge v. U.S., 517 U.S. 292, 302-03 (1996); Ohio v. Johnson, 467 U.S. 493, 501-02 (1984). Counsel was ineffective for not at least arguing these points to the Court, to have at least one or the other charge dismissed.

For Counsel to simply make no effort to at least argue this issue for his client was a deficient performance that indeed constituted ineffective assistance. Dandy v. State, 301 S.C. 303, 391 S.E.2d 381 (1990). This could not be considered to be any sound strategy for a defense against these serious charges by Counsel. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Nor, could Counsel's actions here have been an informed tactical decision by Counsel. Stone v. State, 294 S.C. 286, 386 S.E.2d 903 (1988).

Counsel's failure to argue this issue to at least preserve the issue for appeal purposes, was ineffective assistance. If not for Counsel's error here, there is a reasonable probability that the outcome of this proceeding would have been different. Dandy, supra; Strickland v. Washington, 466 U.S. 668 (1984); Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994).

The Applicant's convictions and sentences in this case should be vacated, set aside, or at the least, a new trial granted.

Conclusion

For the legal reasons and principles cited in this Post-Conviction Relief Application, with an Initial Brief, the conviction and sentence should be vacated, reversed for a new trial, or a judgement of acquittal entered.

Wherefore, the Applicant prays.

Respectfully submitted,

James E. Walters #235965

James E. Walters #235965
B.R.C.I. Congaree 229
4460 Broad River Road
Columbia, S.C. 29210

STATE OF SOUTH CAROLINA
County of Greenville

IN THE COURT OF COMMON PLEAS

Case No.: 2006-GS-23-6230-6233

C/A No.: _____

James E. Waiters, #235965, ... Applicant,

v.

State of South Carolina, ... Respondent.

Motion To Address All Issues

Now comes the Applicant, James E. Waiters, #235965, by and through his court appointed attorney, who ask this Honorable Court to require the attorney's involved in this Post-Conviction Relief Action and any amendment thereof, to be meticulous in the preparation of any Order prepared in this matter.

Specifically, the Applicant request that each and every Issue in the Post-Conviction Relief Application and any Amendment thereof, at the hearing, be addressed in the Order of the Court at the conclusion of the Evidentiary Hearing in this matter.

The Applicant request this Motion pursuant to S.C. Code Ann. §17-27-80. Citing Pruitt v. State, 423 S.E.2d 127 (1992); Bryson v. State, 493 S.E.2d 500 (1997).

Wherefore, the Applicant request the Motion be granted.

Sworn to and Subscribed before me
this 21 day of Dec, 2010.

Eugene Keith (J.S.)
Notary Public for South Carolina
My Commission Expires April 4, 2018
My Commission Expires: _____

Respectfully submitted,

James E. Waiters #235965
James E. Waiters #235965
B.R.C.I. Congaree 229
4460 Broad River Road
Columbia, S.C. 29210

GREENVILLE COUNTY DPS FC...NSIC INVESTIGATION REPORT

490

CRIME SCENE INFORMATION							
Requesting Agency: Greenville County Sheriff's Office				Response Date: 6/10/08		Case #: 1-08-074723	
Offense: ARMED ROBBERY				Secondary Offense:		Area: 08	
Location: 1 MONROE STREET				City: GREENVILLE		State: SC	
Secondary Location:				City:		State:	
Accd: 1000		En Route: 1000		Arrived: 1020		Cleared: 1030	
Investigating Officer: PHILLIPS				Officer Unit #: B20		On scene upon arrival: Yes ☒ No ☐	
VICTIM / COMPLAINANT INFORMATION							
1	Victim/Individual	Name: CHEEKS, ERICA		Address: 11 BIRNIE STREET		City: GREENVILLE	State: SC
2	Victim/Individual	Name: HUFF, JUANITA		Address: 1 MONROE STREET		City: GREENVILLE	State: SC
3	Victim/Individual	Name: GRIFFITH, CORA		Address: 100 ATKINSON STREET		City: GREENVILLE	State: SC
Vehicle Information		1	Make:	Model:	Year:	VIN / Tag:	
		1	Registered Owner:	Address:			
		1	Make:	Model:	Year:	VIN / Tag:	
		1	Registered Owner:	Address:			
1		1	Make:	Model:	Year:	VIN / Tag:	
		1	Registered Owner:	Address:			
INCIDENT NARRATIVE							
Narrative: Victim #4 - Griffith, Diane 50 Ramsey Ct. Greenville, SC The R/O met with the Investigating officer. He stated that a known suspect knocked on the door of Victim #2's residence. All four victims were in the residence when the suspect asked for a drink. The suspect was given a shot glass full of tequila by Victim #2. After taking a drink, the suspect robbed the four victims and fled the scene. The suspect was not believed to have touched anything except the shot glass within the residence. The R/O observed the shot glass on the dining room table and collected the said item (MP1) for latent processing and swabbing for potential DNA analysis. No further action was taken on scene. Upon return to the Crime Scene Unit office, a swabbing of the glass rim was obtained (MP2), and then item MP1 was processed for latent prints with positive results. MP1 and MP2 were were packaged and placed in the DPS Property & Evidence Section. The latent prints were forwarded to the Latent Division for comparison.							
DISPOSITION							
Photographs ☐		Photo I.D. #		Photo I.D. #		Notes:	
Collected Items Processed: ☒		Results: Yes		Remarks: Placed in DPS Property Section			
Forensic Investigation Disposition		Latents forwarded to DPS Latent Division: ☒		Elimination prints forwarded to DPS Latent Division: ☐			
		Evidence items packaged and placed in DPS P&E: ☒		Total evidence items placed into P&E: 2			
REPORTING OFFICER		Lt. M.A. Petersen		STAR #	8565	UNIT #	912
REPORTING OFFICER				STAR #		UNIT #	
APPROVING SUPERVISOR				STAR #	8565	UNIT #	912

(Attachment: A)

JUN 14 15:29

EDGTS-06E

6/11/04 C.8 E

6/11/04 ESE

OF

AGENCY I.D.
SC0290000Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CLASS NUMBER

(011060000074723)

52

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIM	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	Armed Robbery / Burglary
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL DEFENSE	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	08
				PAIR	02 02

THE SUSPECT THEN REACHED INTO DIONNE'S PURSE AND TOOK \$250 IN CASH. THE SUSPECT NEVER APPROACHED CAREY FOR MONEY. THE SUSPECT POINTED HIS WEAPON AT ERICA DURING THIS INCIDENT. I WAS TOLD THAT A RED BEAM OF LIGHT (LASER) CAME OUT OF THE WEAPON. THE SUSPECT TOLD THEM TO SIT DOWN AND NOT TO MOVE PRIOR TO LEAVING. THE SUSPECT FLED IN AN UNKNOWN DIRECTION AND BY UNKNOWN MEANS. JUANITA (VICTIM #4/OWNER OF THE RESIDENCE) RETURNED HOME AFTER GOING TO THE BUS STATION AND WAS ADVISED OF WHAT JUST OCCURRED. JUANITA TOLD ERICA THAT SHE NEEDED TO CALL THE POLICE. FORENSICS WAS CALLED AND LT. PETERSON (P12) RESPONDED. LT. PETERSON EMPTIED THE SHOT GLASS AND TOOK POSSESSION OF IT FOR PROCESSING. SGT. BRYAN (B2) WAS ADVISED OF THE INCIDENT.

ERICA CALLED ME AND ADVISED THAT SHE JUST DROVE DIONNE HOME AND OBSERVED THE SUSPECT GO INTO APARTMENT 24-G. I ADVISED SGT. BRYAN OF THE NEW INFORMATION. I WAS ENROUTE TO THE LOCATION TO LOCATE THE SUSPECT. AS I WAS GETTING READY TO GET OTHER UNITS TO ASSIST ME, I WAS ADVISED BY DISPATCH THAT THE CITY POLICE DEPARTMENT WAS AT THE LOCATION WITH MY SUSPECT DETAINED. UPON ARRIVAL I MET WITH PFC. STEVEN SMITH (237) AND CPL. HAMILTON (211) WITH THE GREENVILLE CITY POLICE DEPARTMENT ALONG WITH OTHERS FROM THE DEPARTMENT. THE SUSPECT WAS IDENTIFIED AS JAMES EMANUEL WAITERS JR. PFC. STEVENS ADVISED ONE OF MY VICTIMS CALLED THEM ADVISING THE ROBBERY SUSPECT WAS AT APARTMENT 24-G. PFC. STEVENS ADVISED WHILE TALKING TO THE VICTIM AT THE SCENE SHE POINTED OUT THE SUSPECT ADVISING THAT WAS HIM. THE SUSPECT WAS DETAINED AND PLACED IN CPL. HAMILTON'S PATROL VEHICLE. I ACTIVATED MY CAMERA SYSTEM AND WENT TO THE REAR OF CPL. HAMILTON'S VEHICLE. THROUGH THE ROLLED DOWN WINDOW I GAVE THE SUSPECT HIS MIRANDA RIGHTS WHICH HE ADVISED HE UNDERSTOOD AND WAS WILLING TO TALK TO ME. I NOTED THE SUSPECT DID HAVE ZIG ZAG STYLE BRAIDS, WAS WEARING A SHORT SLEEVE WHITE SHIRT THAT HAD TWO BUTTONS AT THE COLLAR, AND HE HAD BLUE JEANS ON. AFTER TALKING TO THE SUSPECT, HE ADVISED THAT HE WAS PLAYING CARDS AT AN UNKNOWN LOCATION WHERE HE WAS DROPPED OFF AND HE WON ABOUT \$400 FROM SOME PEOPLE. THE SUSPECT ADVISED HE HASN'T ROBBED ANYONE. AFTER ASKING HIM WHERE THE MONEY WAS, HE ADVISED THAT HE HAD TO PAY BACK A FRIEND. THE SUSPECT DENIED OWNING OR EVER HAVING A GUN.

I WENT TO APARTMENT 25-E AND MET WITH ALL OF THE VICTIMS. I SHOWED THEM THE SUSPECT'S IDENTIFICATION TO MAKE SURE THIS ONE THE SAME PERSON THEY IDENTIFIED TO THE CITY POLICE OFFICERS AS BEING THE ONE THAT ROBBED THEM. ALL ADVISED THAT IT WAS. THIS WAS RECORDED BY MY IN-CAR VIDEO SYSTEM. I THEN WENT BACK TO CPL. HAMILTON'S VEHICLE AND GOT THE SUSPECT OUT. I ADVISED THE SUSPECT HE WAS UNDER ARREST. THE SUSPECT WAS THEN PLACED IN THE REAR OF MY VEHICLE AND I PLACED MY CAMERA ON HIM. THE SUSPECT ADVISED HE DID NOT LIVE AT APT. 24-G AND NEVER HAS EVEN THOUGH HIS IDENTIFICATION CARD HAD THAT ADDRESS LISTED ON IT. THE SUSPECT ADVISED THE APARTMENT BELONGS TO HIS GIRLFRIEND (APRIL WOODS B/F, 864-990-8747). I CALLED MS. WOODS AND SHE ADVISED THAT IT WAS HER APARTMENT AND THAT SHE WOULD MEET WITH ME. CPL. HAMILTON ASKED TO SPEAK TO ME AND HE ADVISED THAT HE HAD HIS VIDEO SYSTEM IN HIS CAR RECORDING WHILE THE SUSPECT WAS IN THE REAR OF HIS CAR. AFTER PLAYING BACK THE TAPE THE SUSPECT IS HEARD TELLING A BY STANDER OUT THE WINDOW THAT THE GUN WAS IN THE REFRIGERATOR. SEE GREENVILLE CITY REPORT #06-045769. CPL. HAMILTON ADVISED HE WOULD PUT THE VIDEO INTO EVIDENCE.

MS. DOOKER RESPONDED AND SIGNED A CONSENT TO SEARCH FORM TO SEARCH HER RESIDENCE FOR ANY ITEMS USED OR RECEIVED FROM THIS CRIME. I WENT TO THE REFRIGERATOR AND OPENED THE BOTTOM LEFT BIN AND RECOVERED A H&P POINT FIREARM (MODEL #380/SERIAL #P793284). THE WEAPON WAS LOADED AND HAD ONE LIVE ROUND WINCHESTER 380 ROUND IN THE CHAMBER WITH THREE ROUNDS IN THE MAGAZINE. THE MAGAZINE CONTAINED ONE (1) WINCHESTER 380 ROUND AND TWO (2) WOLF 380 ROUNDS. I DID NOT OBSERVE A LASER ATTACHED TO THE WEAPON. CPL. HAMILTON WITNESSED THE SEIZURE OF THE WEAPON AND SIGNED THE CONSENT TO SEARCH FORM. MS. WOODS ADVISED THE WEAPON DOES NOT BELONG TO HER AND SHOULD NOT BE IN HER REFRIGERATOR. MS. WOODS WAS GIVEN A COPY OF THE FORM INDICATING I SEIZED THE WEAPON.

THE SUSPECT WAS TRANSPORTED/RELEASED TO THE DETENTION CENTER IN GOOD CONDITION. I OBTAINED THE PREVIOUSLY LISTED WARRANTS FROM MAGISTRATE GARRISON. MAGISTRATE GARRISON SET THE SUSPECT'S BOND AT \$25,000 FOR EACH CHARGE. THE SUSPECT WAS CLEAR WITH NCIC AND WARRANTS. THE FIREARM WAS CHECKED THROUGH NCIC AND WAS CLEAR.

PROPERTY TURNED INTO EVIDENCE:

- A) HI-POINT FIREARM MODEL #380 SERIAL #P793284 VALUE: \$100
B) MY IN CAR VIDEO VHS TAPE

SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE ADMIN. CLOSED	ARRESTED UNDER 18	EX-CLEARED UNDER 18
YES NO	YES NO	UNFOUNDED	ARRESTED 18 AND OVER	EX-CLEARED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE NO ARREST				
REPORTING OFFICER(S)	DATE	UNIT NO. / STAB.	APPROVING OFFICER	DATE
Master Deputy J. Phillips *565	6/10/06	B20	<i>[Signature]</i>	6/10/06
		FOUO WAP INVESTIGATION	YES NO	(OFFICER)

6/11/06 C8E

(Attachment D)

CASE NUMBER

0, 6, 0 00, 0, 4, 5, 7, 6?

10. OVERFLOW

ON 061006 AT APPROX. 1120, WE RESPONDED TO 50 RAMSEY CT. # 24-G TO ASSIST OTHER UNITS IN LOCATING A ROBBERY SUSPECT FROM THE COUNTY. UPON ARRIVAL SUBJECT #1 WAS BEING PLACED INTO A PATROL UNIT AND WE WALKED OVER TO THE ABOVE LISTED APARTMENT TO ASSIST IN CLEANING THE INTERIOR. AS I ENTERED THE APARTMENT I MET WITH CPL. CHATOS (225) WHO WAS POSTED AT THE BOTTOM ON THE STAIRWAY. I PULLED MY SERVICE WEAPON AND CPL. CHATOS (225) AND MYSELF PROCEEDED TO WALK UPSTAIRS TO CLEAR THE SECOND LEVEL. ONCE AT THE TOP OF THE STAIRWAY, SUBJECT #2 WAS LOCATED LAYING FACE DOWN ON A BED IN THE BEDROOM TO THE RIGHT OF THE STAIRS. THE SUBJECTS HANDS WERE HIDDEN UNDER A PILLOW. I POINTED MY WEAPON AT THE SUBJECT AND THE SUBJECT WAS GIVEN VERBAL COMMANDS TO PLACE HER HANDS ON HER HEAD. THE SUBJECT TURNED TOWARDS OUR DIRECTION AND THE SUBJECT WAS ONCE AGAIN GIVEN A VERBAL COMMAND TO PLACE HER HANDS ON HER HEAD AND REMAIN STILL. THE SUBJECT COMPLIED WHEREAS I APPROACHED SUBJECT #2 AND PLACED SUBJECT #2 IN HANDCUFFS (DOUBLE-LOCKED). SUBJECT #2 WAS THEN ESCORTED OUTSIDE AND DETAINED UNTIL FURTHER INVESTIGATION WHEREAS THE SUBJECT WAS CLEARED AND RELEASED.

USE OF FORM COMPLETED.

(Attachment: F)

PROPERTY	TYPE									TOTAL VALUE
	STOLEN									
	CHARGED									
	LOANED									
	RECOVERED									
	REMARKS									
ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMON. CLOSED ☐ YES ☐ NO ☐ YES ☐ NO		☐ UNRESTRICTED LICENSE 18 ☐ UNRESTRICTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENSE DATA 2. ☐ NO PROSECUTIONAL 3. ☐ MULTIJURISDICTIONAL COORDINATION 4. ☐ EXTRACTION DENIED 5. ☐ UNRECORDED ARREST									
	REPORTING OFFICER(S) BY STAR #		DATE	UNIT NO	APPROVING OFFICER		DATE		UNIT NO	
	LUSK - B.W. 981		061006	215			6/10/06		201	
	ABALDO - D.A. *559		061006	404	[Stamp: SEARCHED, SERIALIZED, INDEXED, FILED] JUNE 10 2006 FBI - NEW YORK		OFFICE # 100-100000			

ROLL CALL

mus 6/14/00

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AGENCY I.D.
SCO230200

GREENVILLE POLICE DEPARTMENT
SUPPLEMENTAL REPORT

AGE NUMBER **55** NCIC
061000-145769

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

PERCENT TYPE: ROBBERY SUSPECT
PATROL DISTRICT: GAMMA PAGE 2 OF 2 PAGES

I.D. OVERFLOW

☐ COMPLAINT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ MISSING ☐ JAIL

NAME (LAST, FIRST, MIDDLE) _____ VICTIM RELATIONSHIP TO SUSPECT _____
ADDRESS _____ CITY _____ STATE _____ ZIP CODE _____ PATROL DISTRICT _____
HEIGHT _____ WEIGHT _____ HAIR _____ EYES _____ FACIAL MARK, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. _____
COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES ☐ UNK
VICTIM LIVES ALCOHOL: ☐ NO ☐ YES ☐ UNK
TWO-MAN VEHICLE: ☐ DETECTIVE/SPL. ADM. ☐ ALYON
ONE-MAN VEHICLE: ☐ OTHER ☐ ACCIDENT
SUBJECT NO. _____ USING ALCOHOL: ☐ NO ☐ YES ☐ UNK
LEADS DRUGS: ☐ NO ☐ YES ☐ UNK
ARRESTED ON CURRENT OFFENSE: ☐ UNK
Cleared by arrest on prior offense: ☐

ARRESTEE ARMED: ☐ YES ☐ NO WEAPON TYPE: _____
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY

WHILE SPEAKING TO THE COMP, SHE PROVIDED ME INFORMATION THAT THE SUBJECT THAT ROBBED HER LIVES IN APARTMENT 24G AT 50 RAMSEY COURT. AT THIS TIME, PFC. BLAIR (UNIT 231) AND I WENT TO APARTMENT 24G AND SPOKE WITH A BLACK MALE NAMED TAURUS ROBINSON WHO WAS SITTING ON THE FRONT PORCH OF APARTMENT 24G. (TAURUS ROBINSON 50 RAMSEY CT. APT 24H PHONE # 864-235-6208 DL# 90471306)

I BEGIN SPEAKING TO ROBINSON AND I ASKED HIM IF HE LIVES AT APARTMENT 24G AND HE STATED THAT HE DID NOT LIVE THERE, HE LIVES IN APARTMENT 24H. I THEN ASKED HIM IF HE KNEW WHO LIVES IN APARTMENT 24G AND HE STATED THAT HIS FRIEND BUBBA DOES. I THEN ASKED ROBINSON IF BUBBA WAS INSIDE APARTMENT 24G NOW, AND ROBINSON STATED THAT BUBBA WAS INSIDE.

I THEN ASKED THE DISPATCHED TO ADVISE IF THE COMP PROVIDED A NAME FOR THE SUBJECT AND DISPATCH STATED THAT THE COMP STATED THE SUBJECT GOES BY THE NAME OF BUBBA.

I THEN KNOCKED ON THE DOOR OF APARTMENT 24G AND ADVISED THAT I WAS A POLICE OFFICER AND I NEEDED TO SPEAK TO YOU. AFTER A BRIEF PERIOD, THE ABOVE SUBJECT OPEN THE DOOR AND WALKED OUTSIDE THE APARTMENT ON HIS OWN FREE WILL. AT THAT TIME, THE COMP WHO WAS A SHORT DISTANCE AWAY, SHOUTED, "THAT IS THE MAN WHO ROBBED ME!" I THEN PLACED THE SUBJECT INTO INVESTIGATIVE DETENTION UNTIL A COUNTY DEPUTY COULD ARRIVE AND TAKE OVER THE CASE.

WHILE TRANSPORTING THE SUBJECT TO A PATROL CAR, THE COMP KEPT REPEATING OVER AND OVER, "THAT IS THE MAN WHO ROBBED ME!"

ONCE DEPUTY PHILLIPS (B20) ARRIVED, THE SUBJECT WAS RELEASED TO HIM. AFTER DEPUTY PHILLIPS INVESTIGATED THE SITUATION, HE RETURNED TO ME AND STATED THAT THE SUBJECT IS POSITIVELY THE ONE WHO ROBBED THE COMP.

THE SUBJECT WAS ARRESTED BY THE GREENVILLE COUNTY SHERIFFS OFFICE.

(Attachment G)

PROPERTY	TYPE						TOTAL VALUE	
	STOLEN							
	DAMAGED							
	BURNED							
	RECOVERED							
ADMIN	SUBJECT ENTERED	☒ YES ☐ NO	SUBJECT LOCATED	☒ YES ☐ NO	ACTIVE	☐ ADMIN CLOSED ☐ UNFOUNDED	ARRESTED UNDER 18	☐ EN-CLEAR UNDER 18
	REASON FOR EXCEPTIONAL CLEARANCE	1. ☐ OFFENSE ON DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM/DECEASED COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE NO ARREST						
	REPORTING OFFICER(S) BY STAR #	DATE	UNIT #	APPROVING OFFICER	DATE	UNIT #		
	SC SMITH *504	06-10-2006	237					
				FOLLOW-UP BY SHERIFF INVESTIGATION	☐ YES ☐ NO	(OFFICER)		

CRIME ANALYSIS PIO RECORDS DETECTIVES ROLL CALL

was 6/14/06

2006-10-20-2006

56

AGENCY I.D. 0C0210200 971 DAY GREENVILLE POLICE DEPARTMENT CASE NUMBER 061000-45769 INCIDENT REPORT

ROBBERY SUSPECT
50 RAMSBY COURT GREENVILLE, SC 29607
06-10-2006 1117
SBB VICTIM
GRIFFITH-DIONNE
50 RAMSEY COURT (APT. 25B) GREENVILLE SC 29607
WAITERS - JAMES EMANUEL JR
50 RAMSEY COURT (APT. 24G)
LONG WHITE T-SHIRT, BRAIDED HAIR
GREENVILLE SC 29607
06-10-2006 0900
ON THE ABOVE DATE AND TIME, THE COMP CONTACTED THE GREENVILLE POLICE DEPARTMENT AND STATED THAT THE SUBJECT WHO ROBBED HER IS CURRENTLY AT JESSE JACKSON TOWN HOMES. THE COMP. IS THE VICTIM OF AN ARMED ROBBERY INCIDENT THAT OCCURRED IN THE JURISDICTION OF THE GREENVILLE COUNTY SHERIFFS OFFICE, THE CASE NUMBER IS 06-74723. THE COMP STATED THAT THE SUBJECT IS A BLACK MALE APPROXIMATELY 30 YEARS OF AGE AND IS WEARING A LONG WHITE T-SHIRT. THE COMP ALSO STATED THAT HE DOES HAVE BRAIDS IN HIS HAIR. UPON ARRIVAL, I MET WITH THE COMP THAT STATED THAT SHE OBSERVED THE SUBJECT LOITERING IN THE AREA OF RAMSEY COURT JUST A FEW MINUTES PRIOR TO OUR ARRIVAL TO THE AREA.

CRIME ANALYSIS PIO RECORDS DETECTIVES ROLL CALL

WMS 6/14/06

AGENCY I.D. OFFENSE CLASS DAY
SC0230200 971

GREENVILLE POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER
060000-45762

NCIC
ENTRY

57

INCIDENT TYPE		OFFENSE COMPLETED		FORCED ENTRY		PREMISE TYPE		LATCH EXTENDED		TYPE OF VEHICLE	
1. ROBBERY SUSPECT		YES ☒ NO ☐		YES ☒ NO ☐		28 Apartment/Condos				☒ OTHER ☐ PASSENGER ☐ OFFENSE VEHICLE ☐ BUS, TRUCK ☐ MOTORCYCLE ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.	
INCIDENT LOCATION (INFORMATION, HILL VILLAGE, APARTMENT AND NUMBER, STREET NAME AND NUMBER)										ZIP CODE	
50 RAMSEY COURT GREENVILLE, SC										29607	
INCIDENT DATE		TIME		TO		DATE		TIME		PATROL DISTRICT	
06-10-2006		1117						1117		1300 GAMMA	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RESIDENT		RACE		AGE	
SEE VICTIM											
ADDRESS				CITY		STATE		ZIP CODE		PATROL DISTRICT	
VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RESIDENT		RACE		AGE	
GRIFFITH-DIONNE								J B F		N/A	
ADDRESS				CITY		STATE		ZIP CODE		PATROL DISTRICT	
50 RAMSEY COURT (APT. 25E)				GREENVILLE		SC		29607		GAMMA	
VEHICLE MAKE (Y/N) ☐ YES ☒ NO EXPLAIN - COMPLAINT OF ANY NOT-VEHICLE RELATED ☐ YES ☒ NO											
VICTIM (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK. TYPE											
☐ SUSPECT		NAME (LAST, FIRST, MIDDLE)				RACE		AGE		DATE OF BIRTH	
☐ SUSPECT		WAITERS - JAMES EMANUEL JR				B M		32		12-27-1973	
☐ SUSPECT		ADDRESS				RACE		AGE		DATE OF BIRTH	
☐ SUSPECT		50 RAMSEY COURT (APT. 24G)				B M		32		12-27-1973	
☐ SUSPECT		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, DOCUMENTS, ETC.				CITY		STATE		ZIP CODE	
☐ SUSPECT		LONG WHITE T-SHIRT, BRADED HAIR				GREENVILLE		SC		29607	
☐ SUSPECT		SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK. TYPE				APPEARED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE OF OFFENSE		DATE OF ARREST	
☐ SUSPECT		DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE				TOTAL # ARRESTED		06-10-2006 0900		06-10-2006 1132	
ARRESTED ARMED ☐ YES ☒ NO ☐ WEAPON TYPE: ☐ ALM-AUTG ☐ HEL-AUTG ☐ ARRESTED ON CURRENT OFFENSE ☐ CLEARED BY ARREST ON PRIOR OFFENSE											
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY ☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY											
CHARGES											
ARRESTED BY THE GREENVILLE COUNTY SHERIFFS OFFICE FOR ARMED ROBBERY											
☐ STOLEN ☐ RECOVERED ☐ SUSPECT ☐ VICTIM TWO WHEELER ☐ STATE ☐ YEAR ☐ MAKE ☐ MODEL ☐ STYLE ☐ COLOR TAO ONLY ☐ ADDITIONAL VEHICLE DESCRIPTION											
TWO-WAY TYPE ☐ ONE-WAY VEH. ☐ DETECTIVE/PA-AEPT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J. - THIS JURISDICTION IS STATE OUT OF STATE UNKNOWN											
ON THE ABOVE DATE AND TIME, THE COMP CONTACTED THE GREENVILLE POLICE DEPARTMENT AND STATED THAT THE SUBJECT WHO ROBBED HER IS CURRENTLY AT JESSE JACKSON TOWN HOMES. THE COMP. IS THE VICTIM OF AN ARMED ROBBERY INCIDENT THAT OCCURRED IN THE JURISDICTION OF THE GREENVILLE COUNTY SHERIFFS OFFICE, THE CASE NUMBER IS 06-74723. THE COMP STATED THAT THE SUBJECT IS A BLACK MALE APPROXIMATELY 30 YEARS OF AGE AND IS WEARING A LONG WHITE T-SHIRT. THE COMP ALSO STATED THAT HE DOES HAVE BRAIDS IN HIS HAIR. UPON ARRIVAL, I MET WITH THE COMP THAT STATED THAT SHE OBSERVED THE SUBJECT LOITERING IN THE AREA OF RAMSEY COURT JUST A FEW MINUTES PRIOR TO OUR ARRIVAL TO THE AREA.											
(Attachment: I)											
JURISDICTION OF THEFT JURISDICTION OF RECOVERY											
TYPE ☐ STOLEN ☐ DAMAGED ☐ RECOVERED ☐ SEIZED TOTAL VALUE											
SUBJECT IDENTIFIED ☒ YES ☐ NO ☐ SUBJECT LOCATED ☒ YES ☐ NO ☐ ACTIVE ☐ ARMED ☐ UNK. ☐ CLEARED ☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☒ YES ☐ NO ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER ☐ CN											
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM DECLINED COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST											
REPORTING OFFICER SC SMITH STAR # 504 DATE 06-10-2006 UNIT # 237 APPROVED OFFICER <i>[Signature]</i> DATE 6/10/06 UNIT NO 201											
FOLLOW UP ☐ YES ☒ NO ☐ OFFICER											

CRIME ANALYSIS

PIO RECORDS

DETECTIVES

ROLL CALL

WMS 6/14/06

AGENCY I.D.
SC0230200

GREENVILLE POLICE DEPARTMENT
SUPPLEMENTAL REPORT

CASE NUMBER

061000-45769

58

NOIC
WEL DAY

☒ ORIGINAL REPORT	☐ OTHER CHARGES	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL SUSPECTS/PROPERTY	ARREST TYPE: ROBBERY SUSPECT	
☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL OFFENSES	☐ ADDITIONAL RECEIVED PROPERTY	PATROL DISTRICT: OASMA		PAGE 2 OF 2
I.D. OVERFLOW	☐ COMPLAINT		VICTIM NAME: [REDACTED]		LOCATION: [REDACTED]
	☐ VICTIM #		ADDRESS: [REDACTED]		CITY: [REDACTED]
	☐ SUSPECT #		STATE: [REDACTED]		ZIP CODE: [REDACTED]
	☐ SUSPECT #		PATROL DISTRICT: [REDACTED]		DATE: [REDACTED]
	☐ SUSPECT #		FACIAL MARKS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PARTICULARS, ETC.		
	☐ SUSPECT #		VICTIM USING WEAPON: ☐ YES ☐ NO ☐ UNKNOWN		☐ THREATENED VICTIM ☐ PHYSICAL ABUSE ☐ OTHER
	☐ SUSPECT #		VICTIM USING WEAPON: ☐ YES ☐ NO ☐ UNKNOWN		☐ THREATENED VICTIM ☐ PHYSICAL ABUSE ☐ OTHER
	☐ SUSPECT #		VICTIM USING WEAPON: ☐ YES ☐ NO ☐ UNKNOWN		☐ THREATENED VICTIM ☐ PHYSICAL ABUSE ☐ OTHER
	☐ SUSPECT #		VICTIM USING WEAPON: ☐ YES ☐ NO ☐ UNKNOWN		☐ THREATENED VICTIM ☐ PHYSICAL ABUSE ☐ OTHER
	☐ SUSPECT #		VICTIM USING WEAPON: ☐ YES ☐ NO ☐ UNKNOWN		☐ THREATENED VICTIM ☐ PHYSICAL ABUSE ☐ OTHER
ARRESTEE ARMED: ☐ YES ☐ NO WEAPON TYPE: [REDACTED]		ON VIEW ARREST: ☐ SUMMONED: ☐ CUSTODY: ☐			
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY					

WHILE SPEAKING TO THE COMP, SHE PROVIDED ME INFORMATION THAT THE SUBJECT THAT ROBBED HER LIVES IN APARTMENT 24G AT 50 RAMSEY COURT. AT THIS TIME, PFC. BLAIR (UNIT 231) AND I WENT TO APARTMENT 24G AND SPOKE WITH A BLACK MALE NAMED TAURUS ROBINSON WHO WAS SITTING ON THE FRONT PORCH OF APARTMENT 24G. (TAURUS ROBINSON 50 RAMSBY CT. APT 24H PHONE # 864-235-6208 DL# 90471306)

I BEGIN SPEAKING TO ROBINSON AND I ASKED HIM IF HE LIVES AT APARTMENT 24G AND HE STATED THAT HE DID NOT LIVE THERE, HE LIVES IN APARTMENT 24H. I THEN ASKED HIM IF HE KNEW WHO LIVES IN APARTMENT 24G AND HE STATED THAT HIS FRIEND BUBBA DOES. I THEN ASKED ROBINSON IF BUBBA WAS INSIDE APARTMENT 24G NOW, AND ROBINSON STATED THAT BUBBA WAS INSIDE.

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I THEN KNOCKED ON THE DOOR OF APARTMENT 24G AND ADVISED THAT I WAS A POLICE OFFICER AND I NEEDED TO SPEAK TO YOU. AFTER A BRIEF PERIOD, THE ABOVE SUBJECT OPEN THE DOOR AND WALKED OUTSIDE THE APARTMENT ON HIS OWN FREE WILL. AT THAT TIME, THE COMP WHO WAS A SHORT DISTANCE AWAY, SHOUTED, "THAT IS THE MAN WHO ROBBED ME!" I THEN PLACED THE SUBJECT INTO INVESTIGATIVE DETENTION UNTIL A COUNTY DEPUTY COULD ARRIVE AND TAKE OVER THE CASE.

WHILE TRANSPORTING THE SUBJECT TO A PATROL CAR, THE COMP KEPT REPRATING OVER AND OVER, "THAT IS THE MAN WHO ROBBED ME!"

ONCE DEPUTY PHILLIPS (B20) ARRIVED, THE SUBJECT WAS RELEASED TO HIM. AFTER DEPUTY PHILLIPS INVESTIGATED THE SITUATION, HE RETURNED TO ME AND STATED THAT THE SUBJECT IS POSITIVELY THE ONE WHO ROBBED THE COMP.

THE SUBJECT WAS ARRESTED BY THE GREENVILLE COUNTY SHERIFFS OFFICE.

(Attachment J)

PROPERTY	TYPE						TOTAL VALUE	
	STOLEN							
	DAMAGED							
	RECOVERED							
	LOST							
ADMIN	OBJECT IDENTIFIED		PROPERTY LOCATED		☐ HOME ☐ ARMED, CLOTHED ☐ UNARMED, UNCLAD		☐ SUSPECTED UNDER 18 ☐ SUSPECTED 18 AND OVER	
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNEMPLOYED ☐ EMPLOYED		☐ SUSPECTED UNDER 18 ☐ SUSPECTED 18 AND OVER	
	REASON FOR INTERVIEW: 1. ☐ OFFENSE COMPLAINT 2. ☐ NO PROSECUTION 3. ☐ WORKING ON CASE 4. ☐ DETENTION ON DUTY 5. ☐ SUSPECTED INCIDENT							
	OFFICER'S OFFENSE #		DATE		UNIT NO.		DATE	
	SC SMITH #504		06-10-2006		237			
	OFFICER'S OFFENSE #		DATE		UNIT NO.		DATE	
	OFFICER'S OFFENSE #		DATE		UNIT NO.		DATE	
	OFFICER'S OFFENSE #		DATE		UNIT NO.		DATE	

CRIME ANALYSIS

PIO RECORDS

DETECTIVES

ROLL CALL

WMS 6/16/06

300 10/12/02

GREENVILLE POLICE DEPARTMENT
SUPPLEMENTAL REPORT

CASE NUMBER

59

NCIC

AGENCY I.D.
600200200

060000045769

INQ. ENT.

☐ PERSONAL REPORT	☐ OTHER CHARGES	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	REPORT TYPE: <u>Armed Robbery Suspect</u>
☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL OF FINGERPRINTS	☐ ADDITIONAL OF FINGERPRINTS	☐ ADDITIONAL RECOVERED PROPERTY	MATTER ORIGIN: <u>General</u> PAGE: <u>1</u> OF <u>3</u> PAGES

LI. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUSPECT		RESIDENT	RACE	DOB	DOB	ETH
	☐ VICTIM	<u>Whitney, James Emanuel Jr</u>			<u>8</u>	<u>B</u>	<u>8</u>	<u>32</u>	<u>12371929</u>
	☒ SUSPECT	<u>50 Ramsey Ct Apt 246 Greenville SC 29607 G</u>	CITY	STATE	ZIP CODE	PATROL DISTRICT			
	☐ PROBATION	<u>55 157 BUC DAO</u>							
☐ WANTED	LOCAL MARK SCARS TATTOOS, SCARS, CLOTHING, PHYSICAL, IDENTIFIERS ETC.								
☐ WARRANT	☐ VICTIM NO. <u>1</u> VEHICLE SEIZURE: ☐ YES ☒ NO ☐ COMPLAINT OF NON-TRAFIC VIOLATION: ☐ NO ☒ YES ☐ VEHICLE TYPE: <u>TRUCK</u> ☐ NO ☒ YES TYPE: <u>TRUCK</u>								
☐ ARREST	☐ TWO-WHEEL VEHICLE OR OBJECTIVE/VEHICLE, ASMT. ☐ ALONE ☐ ONE-WHEEL VEHICLE OR OTHER ☐ ASSOCIATED								
☐ WORKING	☐ ARRESTED OR CURRENT OFFENSE ☐ RELEASED BY ARREST OR PRIOR OFFENSE								
☐ JAIL	☐ ARRESTED OR CURRENT OFFENSE ☐ RELEASED BY ARREST OR PRIOR OFFENSE								
☐	☐ ARRESTED OR CURRENT OFFENSE ☐ RELEASED BY ARREST OR PRIOR OFFENSE								
ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE: <u>None</u> ☐ REVOLVER ☐ SEMI-AUTO ☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY									
JUVENILE DISPOSITION: ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY									

On 6-10-2006 at approximately 11:17 AM I responded to 50 Ramsey Ct in reference to locating a black male subject possibly involved in an armed robbery reference case # 06-74723. While en route we were given a description of a black male with 2 1/2 289 corn rows braids, white shirt, black shorts, white tennis shoes, and gold front teeth. Upon arrival I spoke to the complainant who stated that the subject was in apartment 246. Myself, Officer Smith, Officer Sims, and Cpl. Chabre approached the apartment with Cpl. Chabre securing the rear door on myself, Officer Smith, and Officer Sims securing the front door. Officer Smith knocked on the door and received no response. Officer Smith again knocked on the door and it was opened by the subject. I observed that the subject fit the description given. I removed my department issued firearm, targeted the subject and ordered him to show his hands. Subject removed his hands from behind his back and placed them to his sides.

PROPERTY	TYPE		TOTAL VALUE
	STOLEN		
	DAMAGED		
	RECOVERED		
ADVISOR	SUBJECT IDENTIFIED ☒ YES ☐ NO SUBJECT LOCATED ☒ YES ☐ NO ☐ ACTIVE ☐ ADMS. CLOSED ☐ UNPUNISHED ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER ☐ ELIGIBLE UNDER 18 ☒ ELIGIBLE 18 AND OVER		
	REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFICER DEATH ☐ NO PROSECUTION ☐ VICTIM'S RELATIVE COMPLAINANT ☐ EXTRADITION DENIED ☐ INEXHAUSTIVE SEARCH		
	REPORTING OFFICER	DATE	UNIT NO.
	<u>Blair, C. #457</u>	<u>06/10/2006</u>	<u>231</u>

RECORDS

8-8-06

GREENVILLE POLICE DEPARTMENT
SUPPLEMENTAL REPORT

CASE NUMBER

60

NCIC

AGENCY I.D.
6C0230200

060.0.0.045769

INCL. PWT.

☐ CRIMINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIM	☐ ADDITIONAL SUSPECT	RECEIPT TYPE <u>Armed Robbery Suspect</u>
☒ OFFICIAL REPORT	☐	☐	☐	PATROL DISTRICT <u>Greene</u> PAGE <u>2</u> OF <u>3</u> PAGES

ADDITIONAL INFO	☐ CONSPIRACY	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUSPECT		RESIDENT	RACE	SEX	DOB	ETH	
	☐ VICTIM	ADDRESS		CITY	STATE	ZIP	PATROL DISTRICT	DAY PHONE	EVENING PHONE		
	☐ SUSPECT	HEIGHT		WEIGHT	HAIR	EYES	FACIAL MARKS, SCARS, TATTOOS, JEWELRY, CLOTHING, PHYSICAL ABILITIES, ETC.				
	☐ WANTED	VICTIM NO.		VEHICLE NO.		VEHICLE TYPE		VEHICLE MAKE			
	☐ FUGITIVE	COMPLAINT OF		VICTIM NO.		VEHICLE NO.		VEHICLE TYPE			

Subject was ordered to turn around and place his hands behind his back. Subject complied at which point Officer Smith placed handcuffs on the subject. Officer Smith then led the subject away from the apartment.

In an effort to secure the residence myself, Officer Sims and Cpl. Chotas continued through the front door of the residence. Myself and Officer Sims performed a sweep of the downstairs area and while doing so I observed an empty holster, black in color, lying on a round plastic table positioned in the main room downstairs. We finished cleaning the downstairs area and I proceeded up the stairs to assist Cpl. Chotas and Cpl. Luck with cleaning the remaining portions of the residence. As I reached the landing I heard Cpl. Chotas and Cpl. Luck giving loud verbal commands to a subject that had been located in a bedroom lying on the bed. I entered the bedroom with Cpl. Luck, maintained a position of cover

TYPE	STOLEN	CHARGED	RECOVERED	VALUED	TOTAL VALUE
(Attachment L)					

SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE	ADJUDICATED	ARRESTED UNDER 18	EX-CLEAR UNDER 18
YES	YES	NO	NO	NO	YES
REASON FOR EXCEPTIONAL CLEARANCE	OFFENDER DEATH	NO PROSECUTION	NO VICTIM/RELATIVE COOPERATION	EXTRADITION DENIED	NO AND NO ARREST
DISPOSITION OFFICER	DATE	UNIT NO.	APPROVING OFFICER	DATE	UNIT NO.
Blair, CM #457					

RECORDS

8-8-06

**GREENVILLE POLICE DEPARTMENT
SUPPLEMENTAL REPORT**

AGENCY I.D.
000230200

CASE NUMBER

61

NCIC

IND. ENT.

06000045769

☐ PERSONAL INQUIRY	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL OFFENSES	INCIDENT TYPE: <u>Armed Robbery Suspect</u>
☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL OFFENSES	☐ ADDITIONAL RECOVERED PROPERTY	PATROL OFFICER: <u>Conner</u>	PAGE <u>3</u> OF <u>3</u> PAGES

ID. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUSPECT			RESIDENT	AGE	SEX	RACE	DOB	ETH
	☐ VICTIM	ADDRESS		CITY	STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE	EVENING PHONE			
	☐ SUSPECT											
	☐ ROADBLOCK											
	☐ WANTED											
	☐ WALKABOUT											
	☐ ARREST											
	☐ INCIDENT											
	☐ JUVENILE											
	☐ OTHER											
VICTIM NO. _____		VARIABLE INQUIRY: ☐ YES ☐ NO		COMPLAINT OF NON-PROSECUTABLE NATURE: ☐ NO ☐ YES		VICTIM LIVES ALONE: ☐ NO ☐ YES ☐ LINK		☐ TWO-WAY VEHICLE ☐ DETECTIVE/ARMY ☐ ALONE		☐ ONE-WAY VEHICLE ☐ OTHER ☐ ASSAULTED		
SUBJECT NO. _____		LIVES ALONE: ☐ NO ☐ YES ☐ LINK		LIVES ALONE: ☐ NO ☐ YES ☐ LINK		LIVES ALONE: ☐ NO ☐ YES ☐ LINK		☐ ARRESTED ON CURRENT OFFENSE		☐ CLEARED BY ARREST ON PRIOR OFFENSE		
ARRESTEE ARMED: ☐ YES ☐ NO WEAPON TYPE: ☐ HANDGUN ☐ STUN BATON ☐ KNIFE ☐ OTHER												
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY												

As Cpl. Lusk secured the subject, the remainder of the residence was cleared without incident.

* Use of force form attached *

(Attachment M)

PROPERTY	TYPE									TOTAL VALUE
	STOLEN									
	DAMAGED									
	RECOVERED									
	RECOVERED									
ADMIN	SUBJECT IDENTIFICATION		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN. CLOSED ☐ UNLOCATED		☐ ARRESTED UNDER 18 ☐ PARASITIC 18 AND OVER		☐ CLEAR UNDER 18 ☐ CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENSES OBTAIN 2. ☐ NO PROSECUTION 3. ☐ VICTIM/COOPERATION 4. ☐ EXTRADITION ORDER 5. ☐ AVOIDANCE ARREST									
	REPORTING OFFICER	DATE	UNIT NO.	APPROVING OFFICER	DATE	UNIT NO.				
	BLAIR, C.M. #457	06/10/2006	251							

RECORDS

8-806

NO.	ENT.
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97-58.20

EST.

5d.	Err.
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~~88-06~~ 2

GREENVILLE POLICE DEPARTMENT
SUPPLEMENTAL REPORT

CASE NUMBER

64

NCIC

AGENCY I.D.
BC9200200

06000049769

NO. ENT.

☐ CRIMINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIM	☐ ADDITIONAL VICTIM PROPERTY	ACCIDENT TYPE <u>Use of Force</u>
☒ SUPPLEMENTAL REPORT	☐	☐ ADDITIONAL CHARGE	☐ ADDITIONAL KNOWN OR SUSPECTED PROPERTY	PATROL DISTRICT <u>Comm</u> PAGES <u>3</u> OF <u>3</u> PAGES

ADDITIONAL INFORMATION	☐ COMPLAINT	NAME, GAIT, PHYS. BUILDS		VICTIM RELATIONSHIP TO SUSPECT			REPORT	TIME	PER	AGE	DOB	ETH	
	☐ VICTIM 1			11	12	13	J S D U						
	☐ SUBJECT 1	ALLEGED		CITY	STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE		EVENING PHONE			
	☐ FURNITURE	HEIGHT	WEIGHT	HAIR	EYES	PHYS. MARKS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ WAREHOUSE												
	☐ VEHICLE	VICTIM NO. _____ VEHICLE INJURY: ☐ YES ☐ NO		COMPLAINT OF NON-VIOLENT PEACE OFFICER: ☐ NO ☐ YES		VICTIM LEADS ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-WHEEL VEHICLE ☐ DETECTIVE/SPL. ARMT. ☐ ALONG		☐ ONE-WHEEL VEHICLE ☐ OTHER ☐ ADVERTISED			
	☐ VEHICLE	EXPLANATION				CRUISED NO. ☐ YES ☐ NO ☐ UNK							
	☐ JAIL	SUBJECT NO. _____ LEADS ALCOHOL: ☐ NO ☐ YES ☐ UNK				☐ UNK		☐ ADVERTISED ON CURRENT OFFENSE					
	☐	LEADS DRUGS: ☐ NO ☐ YES ☐ UNK				☐ UNK		☐ CLEARED BY ARREST ON PRIOR OFFENSE					
	☐												
ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE: ☐ HAND AUTO ☐ FULL AUTO ☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY													
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY <u>until the threat of force</u>													

was used. The subject then was placed in investigative detention until an identity could be verified. It then escorted her and place her in a vehicle without further incident.

(Attachment P)

PROPERTY	TYPE						TOTAL VALUE
	STOLEN						
	DAMAGED						
	LOANED						
	RECOVERED						
ADMIN	ALLEGED IDENTIFIED	☐ YES ☐ NO	SUBJECT LOCATED	☐ YES ☐ NO	☐ ACTIVE ☐ ADMIN CLOSED ☐ UNPROCESSED	☐ ARRESTED UNITS 1-16 ☐ ARRESTED 17 AND OVER	☐ EX-CLEAR UNDER 16 ☐ EX-CLEAR 17 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENSE 2. ☐ NO PROSECUTION 3. ☐ VICTIM/COOPERATION 4. ☐ EXTRA-DUTY DEVIATION 5. ☐ AMENDMENT ARREST						
	REPORTING OFFICER	DATE		UNIT NO.	APPROVING OFFICER		
	<u>Sgt. G</u>	<u>06/10/2006</u>		<u>208</u>			

RECORDS

628-8-86

STATE OF SOUTH CAROLINA
County of Greenville

IN THE COURT OF COMMON PLEAS

Case No.: 2006-GS-23-6230-6233

C/A No.: _____

James E. Waiters, #235965, ... Applicant,

v.

State of South Carolina, ... Respondent.

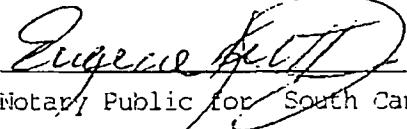
Certificate of Service

I, the Applicant in the above captioned matter, do hereby under oath and penalty of perjury certify that I have served copies of the same documents upon the below listed parties on this exact date.

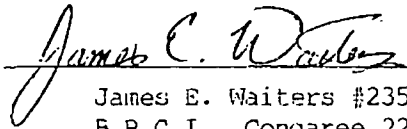
(1) Mr. Henry D. McMaster
Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

(2) Mr. Paul B. Wickensimer
Greenville County Clerk of Court
305 E. North Street, Rm 224
Greenville, S.C. 29601-2120

Sworn to and Subscribed before me
this 21 day of Dec, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: _____

Respectfully submitted,

 #235965
James E. Waiters #235965
B.R.C.I. Congaree 229
4460 Broad River Road
Columbia, S.C. 29210

Robert M. Ariail Jr
 11 North Ervine Street Suite 11
 Greenville, S.C. 29601

Date: OCT 15 2012

RE: James E. waiters v. The State
2010-CP-23-10380: Notice to amend
issues to P.C.R. application

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 2012 OCT 30 A 10:10
 WLE

Mr. R. Mills. Ariail,
 The applicant hereby inform you as the applicant's P.C.R.
 Counsel to amend the below listed issues to the P.C.R.
 Counsel's amended application.

The basis of the applicant's allegation, that the applicant
 is being held in custody Unlawfully:

- (1) was the trial counsel ineffective in failing to apprise the
 trial court that the jury had not been sworn before
 commencing the opening arguments.
- (2) was Appellate Counsel ineffective in failing to raise
 the issue that the lower court was without jurisdiction
 to impose a sentence, due to lack of subject matter
 jurisdiction, due to the failure to swear the jury.

Atty copy to AA

However the applicant was deprived of the right of a jury trial as well as due process of law that which the applicant is entitled, in which is secured by both the state and federal constitutions due to the failure to swear the jury as required by S.C. code §14-7-1100, See State v. Hollman 102 S.E. 2d 873. The applicant conviction and sentence were in violation of the constitution of the United States; and the South Carolina Constitution art. 1 §14 was violated in the lower Court.

The lower court was without jurisdiction to impose sentence, due to lack of subject matter jurisdiction. The issue of subject matter jurisdiction can be raised at any time, including for the first time on appeal or P.C.R. See State v. funderburk 259 S.C. 256 191 S.E. 2d 520 (1972)

The burden of proof is on the applicant in post conviction proceeding to prove the allegation in his application. Butler v. State (S.C. 1985) 286 S.C. 471 334 S.E. 2d 813 certiorari denied 106 S.Ct. 869. 774 U.S. 1094 88 L.Ed. 2d 908.

The record within the meaning of rule supra. that record of a criminal trial must Affirmatively show that jury was sworn or conviction must be reversed See Hollman 102 S.E. 2d 873 see Code 1952 § 38-210; Supreme Court Rules 4 and 3.

Wherefore the applicant respectfully advise his P.C.R. counsel to amend the herein listed issues to the P.C.R. counsel amended application

The applicant's final request of his P.C.R. counsel that the attorney quickly respond to the applicant concerning this matter due to the scheduled P.C.R. hearing for the 31st day October. 2012

Sincerely yours

James C. Waiters Jr.

James Emanuel Waiters Jr.

SEDC # 235965

Broad River Correctional Inst

4460 Broad ~~River~~ River Road

Columbia. S.C. 29210

Sworn to and subscribed before
me this 15th day of October 2012.

Susan H. Frye

My Commission Expires
March 5, 2018

STATE OF SOUTH CAROLINA
County of Greenville

James E. Waiters

Applicant

IN THE COURT OF COMMON PLEAS

Case# 2010-CP-23-10380

v.

CERTIFICATE OF SERVICE

State of South Carolina

Respondent

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 2012 OCT 30 A 10:19
 WL4

I the above listed applicant hereby certify that I have forwarded a letter titled RE: James E. Waiters v The State 2010-CP-23-10380: Notice to amend issues to P.C.R application to the law office of R. Mills Ariail, Jr addressed at 11 North Irvine Street, Suite 11 Greenville, S.C 29601 and hereby certify that the below listed party has been served with the same.

Office of the Clerk of Court
 Paul B. Wickensimer
 Greenville County Court house
 305 East North street
 Greenville County S.C 29601
James E. Waiters Jr
 James E. Waiters Jr # 235965

Sworn to and subscribed before me

This 15th day of October 2012
Susan H. Dyer
 Notary for South Carolina.

My Commission Expires
 March 5, 2013



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

APR 29 2014

S.C. Supreme Court

April 29, 2014

Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: James E. Waiters, Jr. v. State
Appellate Case No. 2013-000426

Dear Mr. Shearouse:

On April 11, 2014, opposing counsel in the above-captioned post-conviction relief appeal submitted a Petition to File Supplemental Appendix. On page 3 of this Petition, opposing counsel correctly noted that I consented to his filing of this Petition and would not oppose it. As such, I did not file a formal return to this Petition and am instead filing the Supplemental Appendix. I have enclosed an unbound original and one copy of such and have sent two copies to opposing counsel. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

Enclosures

cc: Robert M. Dudek, Esquire