

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County
Michael G. Nettles, Circuit Court Judge

RECEIVED

JUL 25 2014

S.C. Supreme Court

LEWIS D. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000652

APPENDIX

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1 communicate with the Court in writing. If you need any
2 aid or assistance you need to communicate with the Court
3 in writing. If you get close to lunch time and you want
4 food brought in, we will do so at county expense. If you
5 tell me at 11:30 it will be 12:30 before we get it here.
6 If you tell me at 12 it will be one before I get it here.
7 One hour lag time once you tell me. Everybody on the jury
8 now go to the jury room except the alternate.

9 Ms. Alternate, wait right there, Ms. Robinson. Do not
10 begin discussion now. Why? I'm required to let these
11 lawyers object to anything I've said and I must let them
12 object in your absence. Please wait for further
13 instructions. As soon as I send the exhibits and the
14 verdict form, start talking. Please go to your jury room.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 10:15 a.m., and the following proceedings
17 commenced in open court.)

18 THE COURT: Ms. Robinson, thank you for your
19 time and talent. Thank you for being available in regards
20 to the alternate status. As you can see, I had to use
21 alternate one but I now am in a position to turn you loose
22 and let you go for the week. Come by here, let me just
23 shake your hand, tell you thank you and good-bye.

24 (Alternate was excused.)

25 THE COURT: Exceptions or objections from the

1 State?

2 MS. PARR: The State has none, Your Honor.

3 THE COURT: From the Defense?

4 MR. MCLAURIN: Your Honor, we would renew our
5 request at the beginning of our jury instruction

6 conference to charge the plea agreement charge I presented
7 and the accomplice charge that I presented and also the
8 lesser included offenses as we had previously discussed.
9 We would just renew that and preserve that for the record.

10 THE COURT: Let the record show the prior ruling
11 by the Court in regard to the jury instruction request by
12 the Defendant, those two requested charges are denied
13 based on the actual constitutional provisions of the
14 constitution of the State of South Carolina, which
15 prohibit the trial Court from charging on the facts. The
16 two cases that I heretofore cited for the record
17 articulate the rule that would prohibit the utilization of
18 these two charges because these two charges are clearly
19 charges on the facts. Now visiting the idea notion of a
20 lesser included offense, as to armed robbery the evidence
21 in my judgment is simply straightforward. It's either
22 armed robbery or not guilty. There's no question or issue
23 in between. In regard to burglary first it's simply
24 burglary first or not guilty. There's nothing in between.
25 And that's also applies to the third charge of possession

1 of a weapon during commission of a crime of violence.

2 All rights are reserved. All rights are protected for
3 purposes of appellate review. Lawyers, would you come
4 forward and help the Court, aid the court reporter in
5 identifying the exhibits and what actually goes in the
6 jury room please.

7 Ms. Bailiff, here are the verdict forms.

8 MR. MCLAURIN: That's it.

9 THE COURT: Counsel for Defense, you have
10 reviewed the exhibits?

11 MR. MCLAURIN: Yes, sir.

12 THE COURT: Okay. Ms. Solicitor, you have
13 reviewed the exhibits?

14 MS. PARR: Yes, Your Honor.

15 THE COURT: All right, counsel, I would make
16 this request of you, stay close by. You never know when a
17 question is going to emanate from the jury, and today the
18 Court has waited long enough.

19 (WHEREUPON, a recess was taken from the proceedings st
20 10:54 a.m.)

21 THE COURT: All right, the record shows that I
22 have the following bill adieu from the jury. It reads,
23 quote, can we get the law book the judge was reading from
24 please? And Forelady has signed it. My response on that
25 note is as follows: "No, I will be happy to recharge any

1 part of my charge in the courtroom. Ralph King Anderson,
2 circuit judge." Anything from the State?

3 MS. PARR: Nothing from the State, Your Honor.

4 THE COURT: Defense?

5 MR. MCCLAURIN: Nothing from Defense. All right.
6 Hand that to them. Tell them not to throw it away.

7 (Note was taken back to the jury room.)

8 THE BAILIFF: I'm sorry, another note.

9 THE COURT: Let the record show we're back on
10 the trial case and there is a very detailed request
11 emanating from the jury: "We're requesting lunch." All
12 right, Counsel, I'm just going to make this a part of the
13 record.

14 (Court's Exhibit Number 1 was
15 marked and made a part of the record.)

16 THE COURT: All right, lawyers in the case with
17 the jury out, I would ask that you stay around the
18 facility but if you need to go out to get a sandwich or
19 something come right back 'cause you can see this is a
20 note writing jury.

21 (WHEREUPON, court was in recess.)

22 THE COURT: The note from the jury reads, "What
23 is the criteria for armed robbery?" Signed by the
24 forelady and dated today. I am going to recharge on armed
25 robbery in haec verba. I also am going to charge the

1 hand-of-one hand-of-all because that is a natural
2 progression of armed robbery in terms of its applicability
3 and efficacy in the case. Anybody want to be heard before
4 I bring the jury out?

5 MR. MCLAURIN: Judge, we would object to the
6 charge of the hand-of-one hand-of-all in connection with
7 that since they only asked about the armed robbery.

8 THE COURT: Well, how is it justified that I
9 could omit the hand-of-one hand-of-all from a complete
10 charge on armed robbery because armed robbery is coupled
11 with the hand-of-one hand-of-all in this case?

12 MR. MCLAURIN: I just think that's what they
13 asked for. I don't want any kind of insinuation if you
14 read that particular charge so that would be my objection.

15 THE COURT: Okay, I understand. My ruling is
16 this: I conclude it would simply be a very grave
17 oversight on my part if I omitted the charge of the
18 hand-of-one hand-of-all and charging the jury in a
19 recharge setting in regard to their request of armed
20 robbery. The offense of armed robbery does not in this
21 case completely present itself without the applicability
22 and efficacy of the hand-of-one hand-of-all doctrine. I
23 believe I'm correct, but if I have committed an egregious
24 error those in higher places will correct it. I just
25 simply would disagree absolutely. Bring the jury out.

1 (Court's Exhibit Number 2 was marked
2 and made a part of the record.)
3 (WHEREUPON, the jury was returned to the courtroom at
4 approximately 11:21 a.m., and the following proceedings
5 commenced in open court.)
6 THE COURT: Thank you, jurors. I appreciate the
7 question, and I now respond to you. What is armed
8 robbery? The defendant is charged with armed robbery.
9 Section 16-11-330 of the Code of Laws provides that armed
10 robbery is defined as a robbery committed while armed with
11 a pistol, dirk, slingshot metal knuckles, razor, or other
12 deadly weapon, or while alleging either by action or words
13 he was armed while using a representation of a deadly
14 weapon or any object which a person present during the
15 commission of the robbery reasonably believed to be a
16 deadly weapon. To convict the defendant of armed robbery
17 the State must prove the defendant: One, committed a
18 robbery; two, while armed with a pistol or other deadly
19 weapon. Robbery is larceny from the person or immediate
20 presence of another by violence, intimidation, or by
21 putting such person in fear. A thing is in the presence
22 of a person in respect to robbery which is so within its
23 reach, inspection, observation, or control that he could,
24 if not overcome violence or prevented by fear, retain his
25 possession of it. Robbery is basically larceny compounded

1 or aggravated by intimidation or force used in the taking
2 of property from the person or in the presence of another.

3 Larceny is the felonious taking and carrying away of
4 the goods of another against the owner's will or without
5 his consent with the intent to appropriate them to one's
6 own use and to permanently deprive the owner of possession
7 of his property. There are five elements the State must
8 establish beyond a reasonable doubt to prove larceny.
9 Each of these elements must be present to make out the
10 crime of armed robbery. The elements of larceny are:
11 One, a taking; two, the act of carrying the property away.
12 This is called asportation in the law. Asportation is the
13 act of carrying away. Three, of the personal property of
14 another. Four, without the consent or against the will of
15 the owner. And five, with the intent to steal. The
16 asportation of stolen property is an indispensable element
17 of larceny and can be established by the slightest removal
18 of the property with felonious intent. The defendant must
19 intend to permanently deprive the owner of possession by
20 converting the property to his own use. In addition to
21 the elements of larceny, the crime of robbery requires two
22 additional elements. These are: One, the property must
23 be taken from the person or immediate presence of another;
24 and two, the taking must be accomplished by violence,
25 intimidation, or by putting the person in fear. This

1 violence must be actual personal violence or the threat of
2 it. The degree of force used is immaterial so long as
3 such force or threat of force is actually sufficient to
4 overcome the victim's resistance. The violence or
5 intimidation must either precede or be contemporaneous
6 with the taking. Finally, to constitute armed robbery the
7 State must show the additional element that the robbery
8 was committed while armed with a pistol or other deadly
9 weapon.

10 What is a deadly weapon? That is a factual matter that
11 the jury must decide or determine. You must answer that
12 question factually based on this evidentiary record before
13 you. A deadly weapon is any article, instrument, or
14 substance which is likely to cause death or great bodily
15 harm. Whether an instrument or object has been used as a
16 deadly weapon depends on the facts and circumstances of
17 each case.

18 I now charge you the doctrine of the hand-of-one
19 hand-of-all. Under the hand-of-one the hand-of-all
20 theory, one who joins with another to accomplish an
21 illegal purpose is liable criminally for everything done
22 by his confederates incidental to the execution of the
23 common design and purpose. A principal in a crime is one
24 who either actually commits the crime or who is present
25 aiding, abetting, or assisting in the commission of the

1 crime. When two or more persons aid, abet, and encourage
2 each other in the commission of a crime, all being
3 present, each is guilty as a principal. Prior knowledge
4 that a crime is going to be committed without more is not
5 sufficient to make a person guilty of that crime. The
6 mere knowledge that another person is going to commit a
7 crime, even if the defendant is present when the crime is
8 committed is not sufficient to convict the defendant as a
9 principal. Guilt as a principal is shown by actual or
10 constructive presence at the scene as a result of a prior
11 arrangement. The State must prove beyond a reasonable
12 doubt by competent evidence the theory of the hand-of-one
13 is the hand-of-all.

14 A principal in a crime is one who either in person
15 perpetuates the crime or who being present aids, abets,
16 and assists in the commission of that crime. When a
17 person does an act in the presence of and with the
18 assistance of another, the act is done by both. Where two
19 or more acting with a common design or a common intent are
20 present at the commission of a crime it matters not by
21 whose immediate agency that crime is committed because all
22 would be guilty. The hand of one is the hand of all.

23 Thank you for your attention and for your
24 consideration. Let me please explain to you in regard to
25 the request that you made concerning getting the charge or

1 copy of the charge. The state supreme court in a recent
2 case called the State versus Covert ruled that ordinarily
3 the jury would not get a copy of the charge in the jury
4 room. But if the jury did in fact get a copy it would be
5 mandatory that the full complete charge be presented. I
6 couldn't give any one segment of the charge. And that's
7 the holding in State versus Covert. And in addition, the
8 state supreme court used this language in State versus
9 Covert: Rarely if ever do we believe that this procedure
10 should be used. So please bear with me in terms of
11 complying with the law at the present time.

12 Now if you need further assistance do not hesitate to
13 let me know and I will present this to you again, but once
14 again, in open court with all of you present. Thank you.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 1:31 p.m., and the following proceedings
17 commenced in open court.)

18 THE COURT: Any objection or exception from the
19 State?

20 MS. PARR: None from the State, Your Honor.

21 THE COURT: From Defense?

22 MR. MCLAURIN: None, except for my previous
23 objection, Your Honor.

24 THE COURT: Okay. Counsel, if you would now
25 please stay close by. We are getting notes in regard to

1 this jury so please stay with me. Thank you.

2 (WHEREUPON, court was in recess.)

3 THE COURT: I'm not going to have any person
4 respond to the jury verdict. I'm not going to have any
5 outbursts at all. And if there is, I want the person
6 arrested immediately and taken from the courtroom. I want
7 the person arrested immediately and taken from the
8 courtroom. I'm not going to allow any outburst or any
9 kind of response, no kind of response. Now sometimes I
10 don't make myself clear and sometimes my remarks are
11 ambiguous or ambivalent. If you haven't understood just
12 slide your hand up just like you were in church and I'll
13 try to make it clearer. If you haven't understood slide
14 your hand up, just slide it up.

15 (There was no response.)

16 THE COURT: All right, deputies, once again, I
17 want you all through the courtroom. Have I got enough
18 deputies in the courtroom?

19 THE DEPUTY: I've got Thomas on the way up.

20 THE COURT: All right, I'll wait.

21 (Pause.)

22 THE COURT: All right, deputies. I want you
23 around the courtroom. I don't want any outburst of any
24 nature whatsoever, period.

25 Bring the jury out.

1 (WHEREUPON, the jury was returned to the courtroom at
2 approximately 1:43 p.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: Ms. Clerk, you're recognized.

5 THE DEPUTY CLERK OF COURT: Members of the jury,
6 have you agreed upon a verdict?

7 THE FORELADY: Yes, we have.

8 THE DEPUTY CLERK OF COURT: May I have it.

9 (Document tendered to the Court.)

10 THE DEPUTY CLERK OF COURT: State of South
11 Carolina versus Lewis David Williams, verdict, indictment
12 number 2008-GS- 21-1800, guilty of armed robbery. Signed
13 Forelady, Mary Dubose, dated June 18th, 2009. Guilty of
14 burglary first degree, signed foreperson, Mary Dubose,
15 dated June 18th, 2009. Guilty of possession of a weapon
16 during the commission of a violent crime, foreperson,
17 signed Mary Dubose, dated June, 18th, 2009. Members of
18 the jury, if this is your verdict please raise your right
19 hand.

20 (All jurors complied by raising their hand.)

21 THE DEPUTY CLERK OF COURT: That's all of them,
22 Judge.

23 THE COURT: Let the record show unanimity in the
24 jury verdict. Is there any further requests for voir dire
25 of the jury in regard to the verdict?

1 MS. PARR: State has none, Your Honor.

2 THE COURT: Defense?

3 MR. MCLAURIN: Could we ask for an individual
4 polling, Your Honor?

5 THE COURT: You can. Do you do that?

6 MR. MCLAURIN: Do you want me to do that?

7 THE COURT: Well, no, I'm just -- do you want
8 it?

9 MR. MCLAURIN: Yes, sir.

10 THE COURT: Granted. All right, Ms. Clerk.

11 THE DEPUTY CLERK OF COURT: Members of the jury,
12 I'm going to ask you two questions. Please respond to my
13 question.

14 Mary Dubose, was this your verdict then?

15 JUROR DUBOSE: Yes.

16 THE DEPUTY CLERK OF COURT: Is it still your
17 verdict now?

18 JUROR DUBOSE: Yes.

19 THE DEPUTY CLERK OF COURT: Karen Torgersen, is
20 this your verdict then?

21 JUROR TORGERSEN: Yes.

22 THE DEPUTY CLERK OF COURT: Is it still your
23 verdict now?

24 JUROR TORGERSEN: Yes.

25 THE DEPUTY CLERK OF COURT: Justin Bazen, is

1 this your verdict then?

2 MR. BAZEN: Yes.

3 THE DEPUTY CLERK OF COURT: Is it still your
4 verdict now?

5 MR. BAZEN: Yes.

6 THE DEPUTY CLERK OF COURT: Andy Bostick, is
7 this your verdict then?

8 JUROR BOSTICK: Yes.

9 THE DEPUTY CLERK OF COURT: Is it still your
10 verdict now?

11 JUROR BOSTICK: Yes.

12 THE DEPUTY CLERK OF COURT: Naomi Parker, is
13 this your verdict then?

14 JUROR PARKER: Yes.

15 THE DEPUTY CLERK OF COURT: Is it still your
16 verdict now?

17 JUROR PARKER: Yes, ma'am.

18 THE DEPUTY CLERK OF COURT: William Gibbs, is
19 this your verdict then?

20 JUROR GIBBS: Yes.

21 THE DEPUTY CLERK OF COURT: Is it still your
22 verdict now?

23 JUROR GIBBS: Yes.

24 THE DEPUTY CLERK OF COURT: Clyde Cusack, is
25 this your verdict then?

1 JUROR CUSACK: Yes.
2 THE DEPUTY CLERK OF COURT: Is it still your
3 verdict now?
4 JUROR CUSACK: Yes.
5 THE DEPUTY CLERK OF COURT: Martha Pressley, is
6 this your verdict then?
7 JUROR PRESSLEY: Yes.
8 THE DEPUTY CLERK OF COURT: Is it still your
9 verdict now?
10 JUROR PRESSLEY: Yes.
11 THE DEPUTY CLERK OF COURT: Mary George, is this
12 your verdict then?
13 JUROR GEORGE: Yes.
14 THE DEPUTY CLERK OF COURT: Is it still your
15 verdict now?
16 JUROR GEORGE: Yes.
17 THE DEPUTY CLERK OF COURT: Chad Oddo, is this
18 your victim then?
19 JUROR ODDO: Yes.
20 THE DEPUTY CLERK OF COURT: Is it still your
21 verdict now?
22 JUROR ODDO: Yes.
23 THE DEPUTY CLERK OF COURT: Malike Mooney, is
24 this your verdict then?
25 JUROR MOONEY: Yes.

1 THE DEPUTY CLERK OF COURT: Is it still your
2 verdict now?

3 JUROR MOONEY: Yes.

4 THE DEPUTY CLERK OF COURT: And Tiffany Cade, is
5 this your verdict then?

6 JUROR CADE: Yes.

7 THE DEPUTY CLERK OF COURT: Is it still your
8 verdict now?

9 JUROR CADE: Yes.

10 THE DEPUTY CLERK OF COURT: That's all of them.

11 THE COURT: Let the record show that we have
12 conducted the individual voir dire of the jury in regard
13 to the verdict and the record reveals unanimity in the
14 response. Jurors, thank you so much for serving in this
15 case. Thank you so much for working with the Court this
16 week. I appreciate your time and talent. I thank you for
17 being here. We're going to release you now for the week.
18 Let me just shake your hand and tell you thank you.

19 (Court's Exhibit Number 3 was marked
20 and made a part of the record.)

21 (Jury was excused.)

22 THE COURT: Motions by Defense please.

23 MR. MCLAURIN: Your Honor, we would make a
24 motion for a judgment notwithstanding the verdict or a
25 motion for the Court to render a verdict of an acquittal.

1 Your Honor, we --

2 THE COURT: Counsel, let me help you in regard
3 to the nomenclature of the motion. A judgment NOV is not
4 efficacious or applicable in the criminal court under
5 State versus Miller and its progeny where the state
6 supreme court said a judgment NOV was never proper in a
7 criminal trial and they emphasize that the motion would be
8 for a new trial.

9 MR. MCLAURIN: Yes, sir. So with that we would
10 make a motion for a new trial, Your Honor. Based on the
11 fact that, you know, part of it was the in-court
12 identification that occurred. We feel like we didn't have
13 a proper notice of that situation and would like to be
14 able to have a new trial to explore that particular issue.
15 We felt like that we provided enough evidence to where
16 there was more than -- well, beyond a reasonable doubt
17 there was certainly enough evidence for the jury to acquit
18 the defendant of the charges, Your Honor.

19 THE COURT: All motions are respectfully denied
20 and all rights are reserved and protected for purposes of
21 appellate review. Bring him forward for sentencing
22 please.

23 MR. MCLAURIN: Yes, sir.

24 MS. PARR: Your Honor, I'm completing the
25 sentencing form. If I could have a minute to do that.

1 THE COURT: All right, you may do that.

2 (Attorney McLaurin confers with defendant.)

3 THE COURT: All right, anything from the State
4 in regard to sentencing?

5 MS. PARR: Your Honor, in terms of a prior
6 record the defendant has a prior conviction for
7 trespassing after notice; but in November 13th, 2000, he
8 had a conviction for grand larceny, greater than 5,000 and
9 a burglary second.

10 THE COURT: Burglary second?

11 MS. PARR: That's correct, Your Honor.

12 THE COURT: Where was that?

13 MS. PARR: When? November 13th, 2000.

14 THE COURT: And where, what county?

15 MS. PARR: That was in Darlington County. Your
16 Honor, February 2nd, 2002, he had a conviction for
17 possession of cocaine base first. That was also in
18 Darlington. And then on July 4th, 2008, he had a
19 conviction for shoplifting and simple assault and battery
20 and that may have been in Florence County.

21 THE COURT: Is that record correct, sir?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right, what's the correct
24 record?

25 THE DEFENDANT: The shoplifting, that was from

1 2001.

2 THE COURT: I see. The other record, the prior
3 burglary, that's correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right, anything else from the
6 State?

7 MS. PARR: Your Honor, the only other thing, one
8 of the witnesses, victim, Sherelle Brooks, wanted us to
9 express to the Court that she is fearful of the
10 repercussions from this event.

11 THE COURT: All right, counsel, you're
12 recognized and we'll proceed. You obviously understand we
13 have some mandatory minimums?

14 MR. MCLAURIN: Yes, sir.

15 THE COURT: In regard to both of the offenses of
16 burglary and armed robbery.

17 MR. MCLAURIN: Yes, sir. Your Honor, I have
18 represented Lewis since I think in the fall of last year
19 is when we started on the case. Been very respectful to
20 me. Seems like a humble human being to talk to. He had
21 turned his life around at the point in time that this
22 occurred. He had -- he was working at QVC when this
23 occurred. Prior to that he had spent about two or three
24 years working at Honda. He was halfway through his
25 welding degree at Florence Darlington TEC at the time that

1 this arrest occurred so he was unable to complete what
2 particular program. He was spending a lot of time with
3 his grandmother who is disabled who is in the courtroom
4 here, helping take care of her. Didn't have any children.
5 Of course his mother is also here in the courtroom. But
6 he tells me he had turned his life around and really was
7 not running around with people like he had back in, as you
8 heard earlier, 2001, 2002, back in those days, I guess, in
9 his early 20s. So I think that's why maybe this process
10 has been so difficult for him. I think he respects, of
11 course, the jury decision but he's always maintained his
12 innocence to me.

13 You know, his brother has already sentenced to 15 years
14 in this particular charge, and you've heard the two other
15 individuals here. So we'd ask the Court to be lenient on
16 him, and I know he went to trial and he understood that
17 the possibilities. We discussed that. We went through
18 that very thoroughly with him about the possibilities, but
19 he just maintains his innocence and felt like that he was
20 not a part of this. So we would ask the Court to just be
21 as lenient as possible and consider, you know, it was a
22 bad act. It was a terrible thing that was done that
23 particular evening. Fortunately no one injured, and there
24 were just a small amount of items that were taken from the
25 house. So while it is a very serious charge fortunately

1 there not any real serious outcomes from their acts so we
2 would ask the Court to take that into consideration and
3 just be as lenient as you could. Thank you, Your Honor.

4 THE COURT: Thank you.

5 Mr. Williams, you want to tell me anything?

6 THE DEFENDANT: Yes, sir. I respect the jury
7 decision, you know what I'm saying, and I respect the
8 courtroom and this situation I'm in right now. But I
9 do -- I am innocent, Your Honor, and I'd like to say that.
10 In my heart I feel I'm still innocent but, you know, the
11 jury found me guilty. And since my earlier 2000 situation
12 I ain't never got in no more trouble. I turned my life
13 around and everything. I don't run with young children,
14 you know what I'm saying. I hang -- me and my personal
15 self, I hang with older people, older people like 40s and
16 30s that can teach me something, keep me on a level basis.
17 And this situation here, I feel like a bunch of lies got
18 me going to prison for, you know. And then my little
19 brother, I was trying to teach him the same thing too,
20 keep him in school so he could finish and graduate, but I
21 told him about people he hang with was no good. That why
22 they took his life from him and he just graduated, you
23 know what I'm saying. And I didn't want him to go through
24 what I went through my early years. I graduate and
25 everything and I want him to have a good.

1 Life. And my mother, she can speak on my behalf. My
2 grandma, she right here. And they can tell you the same
3 thing. Everybody who knows me, they know that I'm a
4 humble person. I don't bother nobody. I respect
5 everybody. And I don't want to do no bodily harm to
6 nobody. That can go from my record right there; I'm not a
7 violent person.

8 THE COURT: Thank you, sir. Thank you.

9 MS. PARR: Your Honor, at the appropriate time
10 the State has one other thing to provide.

11 THE COURT: All right, go ahead.

12 MS. PARR: Your Honor, also the defendant will
13 be going with a detainer on him. He has pending
14 indictments for a series of other armed robberies that
15 have occurred after this incident before he was arrested,
16 in June, in early part of July.

17 THE COURT: Well, that's for another day.

18 MS. PARR: But anyway.

19 THE COURT: And Counsel, I assume you did advise
20 him of the mandatory minimums as to burglary and armed
21 robbery?

22 MR. MCLAURIN: Yes, sir.

23 THE COURT: The sentence of the Court on
24 burglary in the first degree, the defendant is committed
25 to the State Department of Corrections for a term of 20

1 years. The sentence of the Court on armed robbery, the
2 defendant is committed to the custody of the Department of
3 Corrections for a term of 20 years and it is concurrent.
4 It is concurrent in all aspects. The sentence of the
5 Court on possession of a weapon during commission of a
6 crime of violence is five years, and it is concurrent in
7 all aspects. Thank you very much.

8
9 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

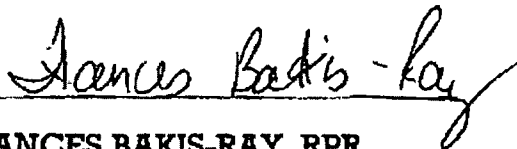
1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)
5 COUNTY OF FLORENCE)

6
7 I, FRANCES BAKIS-RAY, Registered Professional
8 Reporter (RPR), court reporter for the State of South
9 Carolina, Twelfth Judicial Circuit, do hereby certify that
10 the foregoing proceeding is a stenographic report and was
11 transcribed through computer-aided transcription; that the
12 foregoing transcript contains a true record of the
13 proceedings.

14 I further certify that I am neither counsel for,
15 nor related to nor employed by any of the parties
16 connected to the action, nor am I financially interested
17 in the action.

18 Witness my hand at Florence, South
19 Carolina, this 10th day of November, 2009.

20
21 
22
23 FRANCES BAKIS-RAY, RPR
24 My Commission Expires: 9-13-2014
25

STATE OF SOUTH CAROLINA) In the Court of Common Pleas

County of FLORENCE)Lewis David Williams #286960)

Full name and prison number, if any, of applicant.)

v.)

State Of South Carolina)

Name of Respondent)

2012 CP21 2694

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
990 Wisacky Highway Bishopville, South Carolina 29010.
2. Name and location of Court which imposed sentence Florence County Court Of General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2008-GS-21-1800 1st Degree Burglary Note: Three Count Indictment
 - (b) 2008-GS-21-1800 Armed Robbery
 - (c) 2008-GS-21-1800 Possession Of A Weapon during Commission violent Crime.
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____
 - (b) _____
 - (c) _____

RECEIVED: A TRUE COPY
2012 Nov 15 10:00 AM
CLERK OF COURT
FLORENCE COUNTY, S.C.

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty (YES)

(c) after a plea of nolo contendere _____

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

(YES)

7. If you answered "yes" to (6), list

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

i. SC COURT OF APPEALS

ii. _____

iii. _____

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

i. Conviction Was Affirmed And Petition For Rehearing Was Denied

ii. _____

iii. _____

(c) the date of each such result:

i. Heard on March 12, 2012 and Filed March 21, 2012 & Petition For Rehearing Denied May 4, 2012.

ii. _____

iii. _____

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

i. Appeal No.: Opinion No. Unpublished 2012-UP-197

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) Ineffective Assistance Of Counsel

(b) Denied Due Process Of Law

(c) Denied Constitutional Right To A Fair Trial

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) SEE ATTACHED PAGES

SEE ATTACHED PAGES

(b) SEE ATTACHED PAGES

SEE ATTACHED PAGES

(c) SEE ATTACHED PAGES

SEE ATTACHED PAGES

11. Prior to this application have you filed with respect to this conviction

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

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(NO)

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) (NO)

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

(NO)

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

Continued from Page Three of PCR Application - (Question 10-A)

Ground One (A) (1)

Ineffective Assistance Of Trial Counsel

Supporting facts:

Trial Counsel was ineffective for failing to request (make a Motion) for a Directed Verdict, specifically, as to the Burglary charge at the conclusion of the State's presentation of it's entire case because there was "No" evidence presented during the entire trial to show Applicant planned, participated, or had any fore-knowledge that a Burglary was going to occur.

See page 212, Line 12, which was the alleged purpose; to commit an Armed Robbery... Therefore, if Applicant could be properly found guilty of a crime under the theory of, 'The hand of one, is the hand of all', it would be Armed Robbery...

The record also shows that during the commission of the Armed Robbery that the Applicant's desire was to bring the robbery to an end and for the others to return to the car and leave, not to commit any Burglary, or other crimes; See Trial transcript page 215, Lines 14, 15, and 20. Then, on page 216, Line 5, where Applicant tells them to come back and leave...

When ruling on a Motion for a Directed Verdict, the trial court is concerned with the existence or non-existence of evidence, not it's weight. State V. Conery (S.C. App. 2002) 349 S.C. 184, 562 SE 2d. 320; Long V. Norris and Associates (S.C. App. 2000) 342 S.C. 561, 538 S.E. 2d. 5

Also, Trial Judges are encouraged to grant direct verdict motions when evidence merely raises a suspicion that the accused is guilty, State V. Cherry (S.C. App. 2001) 348 S.C. 281; 559 S.E. 2d. 297

Therefore, Applicant was entitled to a Directed Verdict of Not Guilty or dismissal of the Burglary charge. And had trial counsel made the Motion for Directed Verdict, it would likely have been granted and the results of the proceedings would have been different, as to the Burglary charge and possibly toward the Armed Robbery charge, because it was clear from the record the jurors in their deliberations had some concerns about Armed Robbery. See Trial transcript page 454, Lines 22-23

Ground One (A) (2)

Ineffective Assistance Of Trial Counsel

Supporting facts:

Trial Counsel was ineffective for failing to determine whether the co-defendants had personal first hand knowledge that Applicant was, in fact, in a gang or whether their belief Applicant was in a gang based on rumor or what someone else told them, which would be hearsay. And had it been determined that co-defendants beliefs were based on mere hearsay. The Judge may have disallowed any mention of gangs. We all are aware of the negative light the public views gang members and any activities associated with it.

In Old Chief, the United States Supreme Court recognized that some titles or descriptions of information have the strong potential of making jurors see the defendant (accused) as being a bad person who needs to be punished...

The jury in this case could have seen the Applicant, who was much older, as a violent gang leader misleading young children into a life of crime and his using gang status to silence them, or worse; thereby believing Applicant needed to be punished. See Old Chief V. U.S. 117 S.Ct. 644; 519 U.S. 172

The risk to Applicant not receiving his Constitutional right to a fair trial by allowing any mention to the jury of his being in a gang, without first establishing whether the co-defendants belief was based on first hand knowledge or hearsay was denial of Applicant's Constitutional right to a fair trial...and ineffective assistance of counsel.

We believe the prejudicial effect far outweighed any probative value, even under the circumstances it was allowed in, and had it been determined to be hearsay, the Judge could have found the risk too great and disallowed any mentions of gangs. The trial counsel's failure also constituted a denial of Due Process.

Ground One (A) (3)

Ineffective Assistance Of Trial Counsel

Supporting facts:

Trial Counsel was ineffective for failing to make a Motion for a Mistrial, or asking the Judge to instruct the jury to disregard the Applicant's Alibi Witness Statement, stating, "I just want to apologize to the people for what my nephew had done to them and give them my sympathy." See trial transcript page 395, Lines 6,7, and 8

the prejudice is that the jury could have interrupted the statement as her having first hand knowledge that Applicant was, in fact, guilty and that he had admitted guilt to her.

Such statement acts as an admission of guilt or guilty plea. See Florida V. Nixon 543 U.S. 175 (2004).

The Applicant asserts that had trial counsel requested a mis-trial or instructions to disregard the statement, the outcome (results) of the proceeding would have been different.

It is clear and very likely that the Judge would have granted a mis-trial had it been requested given Judge's earlier statement - See Trial transcript page 395, Lines 2 & 3

We believe we are entitled to a new trial under the Strickland V. Washington and Cronic Presumption of Prejudice Standard.

Ground One (A) (4)

Trial Counsel was ineffective for failing to make a Motion to suppress any and all information obtained from the State's witness, Hakeem Randy Costa, because when Police Officers went to his home with the sole purpose of making an arrest and obtaining information, and indiscriminating statements, Hakeem Randy Costa was a minor, only 16 years of age, and without parental consent or being an adult present, the Police illicited incriminating information and entered the premises, and removed minor from home all without parental consent, which was a violation of the law, and Hakeem Randy Costa's rights.

It is clear from the trial transcript that the Police were aware of the minor's rights and that they were supposed to talk tot he minor's parent before pursuing the course they did. See Trial transcript, State V. Miller 626 SE 2d. 328 / 367 S.C. 328

Normally, defenoants do not have standing to challenge the violations of another's rights, or a co-defendant's rights. However the S.C. Court of Appeals have recognized that there are situations where a defenoant does have standing to challenge a violation of co-defenoant's rights when he has a substantial personal stake in the admissibility of the evidence, and Applicant herein believes he has such substantial personal stake.

Much of the evidence that led to the arrest and conviction of Applicant was obtained from Hakeem Randy Costa, and had that evidence and testimony from him been suppressed, Applicant believes there was a strong possibility that the results would have been different. See: State V. Miller 367 S.C. 329; 626 S.E. 2d. 328

Went to Hakeem Randy Costa's apartment. Trial transcript page 336, Lines 3-18. It is clear from this record that Police were going to Hakeem's house to make an arrest. Page 335, Lines 17-22

Page 337, Lines 21-23, and page 338, Lines 1-19; from this, it's clear the minor was petrified and scared, with no parent or adult being present. See Trial transcript page 337, Lines 23-24, where Police testified minor was petrified.

From Page 340, Lines 6-11, it indicates the Police knew that these were minors and needed and should have had their parents or guardians permission before speaking to them

It was also clear from the record that when the Police went to Hakeem Randy Costa's apartment; both of the minors were put under arrest and kept separate, they were not free to leave.

Ground Two (B) (I)

Denied Due Process of Law

Supporting facts:

Applicant was denied Effective Assistance Of Appellate Counsel in Direct Appeal proceedings when Appellate Counsel failed to raise and or challenge on Appeal the Trial Judge's reading of the Hand of One is the Hand of All charge when the jury only requested the criteria for Armed Robbery. Trial transcript Page 454, Lines 22-25 and continued on Page 455, Lines 1-4.

And proper objections were made by Trial Counsel; trial transcript Page 455, Lines 5-7 and the Trial Counsel explained that it insinuated Applicant was guilty. Euroen Shifting...

This error was compounded by the Solicitor misleading the jury that the Hand of One of All is a Law, which it is not. Trial transcript Page 12, Lines 13-17 in opening statement to the jury.

The prejudice is that the Judge tells the jury that they are the sole deciders of the facts and He cannot interfere with their duties or role, and He (Judge) is the sole judge of the law and basically they must go along with the law he gives whether they like it or not, whether they agree with it, or not. So, by portraying to jury that a Prosecutor's theory is the Law, and they must believe it and see it the way the Prosecutor sees it, deprives the Defendants of a fair trial and for Judges to continue to portray a Prosecutor's "theory"

Ground Three (C) (I)

Denied Constitutional Right To A Fair Trial

Supporting facts:

The Applicant was denied his Constitutional Right to a fair trial when Trial Judge injected a prosecutors theory into the deliberating process of a jury which gave the Prosecutor an unfair and undue advantage and reduced the State's burden of proof... (Burden Shifting)

See Page 454, Lines 22-25 and 455, Lines 1-14

Also: See where Solicitor had (misrepresented) this Prosecutor's "theory" to the Jury as being a LAW in her opening statement to the jury Page 12, Lines 13-17 "Judge Ancerson will give you a charge. That means he will give you the law in this case and we believe one of **the charges** he will give you is, 'The Hand of One Is The Hand of All.'" The reason why Prosecutor used the logoc 'The Hand of One Is of All', instead of just defining in a charge what an accessory before and after the fact or accomplice liability, or a principle, which would be sufficient, **is it lessens the Prosecutor's burden of proof**...

Note: Just because the State and it's Courts and even it's State Supreme Court has done something for a long time, does not mean it's not un-Constitutional. This is clear from the Yates case where the U.S. Supreme Court found the instruction given in Yates and similar cases to be un-Constitutional (Burden Shifting)...

We contend if the un-Constitutional logoc of "Hand of One is Hand of All" had not misrepresented the Prosecutors "theory" as a Law, the result of the proceedings would likely have been different.

Note: Please be advised that there are three (3) other grounds that need to be amended once an Attorney is appointed...

The Applicant is not an Attorney and is a laymen unlearned in the law and will need an Attorney to put the included in application grounds in their proper context and develop them...

Therefore, Applicant will need counsel to come visit him, as soon as, he is appointed to represent him in this PCR Application.

(Attachment 6 of 6)

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? (NO)

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? (YES)
- (c) your sentencing? (YES)
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
(YES)

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? (NO)

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Trial: C. Stevens McLaurin PO BOX 1461 Florence SC 29503

ii. Sentencing: C. Stevens McLaurin

iii. Appeal: Office Of Appellate Defense Wanda H. Carter

(b) the proceedings at which each such attorney represented you:

i. Jury Trial

ii. Sentencing

iii. Direct Appeal

18. State clearly the relief you seek in filing this application.

(NEW TRIAL)

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

(NO)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Florence)

VERIFICATION

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

Sworn to and subscribed before me

This 9 day of Oct, 2012

Debra Surge L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

FILED
 OCT 12 PM 1:12
 FLORENCE COUNTY, SC

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

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

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

Applicant

Sworn to and subscribed before me

This 9 day of Oct, 2012

Debra Surge L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

FILED: A TRUE COPY
 10/10/12
 COURT OF APPEALS
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2012-CP-21-2694
	)	
Lewis David Williams, 286960	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed October 12, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted by the Florence County Grand Jury for first degree burglary, armed robbery and possession of a weapon during a violent crime (2008-GS-21-1800). C. Stevens Mcl Lauren, Esquire, represented Applicant.

On June 18, 2009, Applicant was tried and convicted as indicted and was sentenced by the Honorable Ralph King Anderson to twenty years imprisonment. Applicant filed a timely notice of intent to appeal. The South Carolina Court of Appeals confirmed Applicant's conviction.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available the

transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial counsel"
2. "Denied Due Process of Law" (Effective Assistance of Appellate Counsel)
3. "Denied constitutional right to a fair trial"

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON

Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

2/5, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2012-CP-21-2694

LEWIS DAVID WILLIAMS, #286960)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

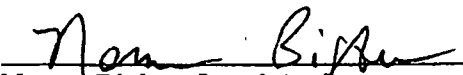
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Jerome Scott Kozacki, Esquire
P.O. Box 1909
Florence, SC 29503

DATED this 5TH day of February, 2013.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COMMON PLEAS
	)	
County of Florence	)	2012-CP-21-2694
	)	
LEWIS DAVID WILLIAMS,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

February 10, 2014
Columbia, South Carolina

BEFORE:

THE HONORABLE MICHAEL NETTLES, JUDGE.

APPEARANCES:

J. SCOTT KOZACKI, ESQ.
Attorney for the Applicant

JOSHUA LEE THOMAS, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
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LEWIS DAVID WILLIAMS

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Cross By Mr. Thomas	44
Redirect By Mr. Kozacki	48

> > > < < <

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APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	affidavit	32	

1 MR. KOZACKI: Scott Kozacki.

2 This case arises, of course, from Mr. Williams'
3 application for post conviction relief following his
4 conviction of burglary first, armed robbery, and
5 possession of a weapon. He was sentenced to 20 years
6 current on the sentence.

7 Mr. Williams is alleging that he received ineffective
8 assistance of both trial counsel, as well as appellate
9 counsel, and we are here today to present those issues and
10 we're ready to proceed.

11 THE COURT: All right. You may call your first
12 witness.

13 MR. KOZACKI: Your Honor, we'd call Mr. Steve
14 McLaurin to the stand.

15 THE COURT: I'm going to ask you if you could to
16 place your left hand on the Bible, raise the right hand,
17 as the clerk administers the oath.

18 STEVE MCLAURIN, after being duly
19 sworn, testified as follows:

20 THE CLERK: Please and seated. State your name for
21 the record.

22 THE COURT: Mr. McLaurin, I'm going to ask you if you
23 could to pull up real close to that microphone, speak up
24 loudly clearly and slowly. Start with your full name.

25 THE WITNESS: Sure. Steve McLaurin.

1 THE COURT: Very good.

2 DIRECT EXAMINATION:

3 BY MR. KOZACKI:

4 Q Mr. McLaurin, did you have an opportunity to
5 represent Mr. Lewis David Williams in connection with a
6 jury trial occurring on or about June 15th, 2009?

7 A I did.

8 Q And do you recall what those charges against
9 Mr. Williams were?

10 A Yeah, burglary first, armed robbery, and possession
11 of a weapon, I think felon in possession of a weapon.

12 Q And what did you do to prepare for Mr. Williams'
13 trial?

14 A Well, of course, I represented him throughout the
15 process. I think we handled the preliminary hearing for
16 him. I was appointed to help him out very early on.

17 Of course, we went out and interviewed him on
18 numerous occasions at the jail. We came up with a
19 strategy, researched it, talked with a witness or two that
20 he had, potential alibi witnesses, and you know, talked
21 with the solicitor's office, engaged in the exchange of
22 discovery with them and gathered the evidence that they
23 had against him, which was really consisting of numerous
24 codefendant statements that had been made against
25 Mr. Williams and negotiated some with the solicitor's

1 office, and eventually, we made a decision to go to trial
2 with the case.

3 Q And what was your basic understanding as to the
4 defense strategy or the trial strategy of you and
5 Mr. Williams?

6 A Well, there really was no one that had identified him
7 at the crime scene, so you know, of course, it was
8 attacking his codefendants and the fact that they had
9 given various statements that were conflicting. So
10 impeaching them and attacking the codefendants and, you
11 know, then the actual victims, they really did not
12 identify Mr. Williams. So it just involved, you know,
13 making sure they stuck with their stories.

14 Q You testified moments ago that you had also discussed
15 the testimony of alibi witnesses. How many different
16 alibi witnesses did you interview?

17 A We had one that we called which was, if I remember
18 right, his aunt, Rosa Williams I think was her name.
19 There was another guy, Quincy. I cannot remember his last
20 name, but Quincy was another one that he thought was a
21 potential alibi witness.

22 Q Do you recall what Quincy was going to say had he
23 been called at trial?

24 A Yeah, yeah. Once we got down -- once I had
25 interviewed Quincy, he did not -- he was not able to

1 identify the specific date that we needed him to -- the
2 actual date of the offense. So we had made the decision
3 and just didn't feel like he would be a good potential
4 witness because he wasn't able to provide information on
5 that particular day.

6 Q Do you recall what the scope of Ms. Rosa Williams'
7 testimony was relative to the testimony of Mr. Williams?

8 A Yeah, not in detail, but I do remember that she was
9 able to say that he was there at her residence, or she was
10 at his residence on the night in question.

11 Q Is it fair to say that your defense at trial was
12 simply that Mr. Williams wasn't present at the crime
13 scene?

14 A That's a fair statement, yes.

15 Q And that no -- none of the victims could identify
16 Mr. Williams?

17 A Correct; that's correct.

18 Q All right. Did you ever speak with a gentleman by
19 the name of Christian Richardson?

20 A The name -- not that I know of. I mean if you could
21 tell me who he is, it might would ring a bell, but is he a
22 relative? I don't know.

23 Q He would have been one of the persons who testified
24 on behalf of the prosecution during the trial of his case.

25 A That was -- he was his brother? Was he? I don't

1 know. I don't know. I don't know if I did or not. If it
2 was his brother, I think maybe I did, but I cannot
3 remember specifically.

4 Q So you don't -- you don't recall if there was any
5 specific relationship between Mr. Williams and
6 Mr. Richardson?

7 A I know that his brother was part of the codefendants,
8 and I know that we had gotten an order for the judge to
9 transport him from the jail, and I think I had spoken with
10 him when he got up to the courthouse is what I remember.

11 Q Prior to Mr. Richardson testifying at trial, did you
12 have any specific conversations with Mr. Williams as to
13 his expected trial testimony?

14 A Once again, I do not remember the details, but I do
15 remember that he would have said that, you know, that
16 Lewis was not present, that Mr. Williams was not present
17 and did not participate in this particular crime.

18 Q Do you recall Mr. Richardson testifying at trial that
19 Mr. Williams was in a gang?

20 A I remember gang being a part of it. I don't remember
21 who that testimony came from, but I do remember gang being
22 part of it. I remember making a motion in limine
23 concerning that testimony coming into evidence.

24 Q Tell me what your recollection is as to the motion in
25 limine that you had made.

1 A Well, just that I did not think it was proper for
2 there to be reference to gang activity in this particular
3 case. I didn't feel like it was proper to say that.

4 I think the nature of the testimony was that the
5 codefendants initially when they all gave their initial
6 statements did not implicate Mr. Williams when they gave
7 their first statements. Then they changed their testimony
8 and gave a second statement implicating Mr. Williams, and
9 their reasoning for changing their testimony was their
10 fear because he was in a gang. They had fear about that,
11 and that's why they had not told the truth in their first
12 statement. So that's why I was trying to limit that
13 testimony.

14 THE COURT: Is Mr. Williams here?

15 Mr. Williams, you can have a seat over there if you
16 would like.

17 BY MR. KOZACKI:

18 Q Mr. McLaurin, would it surprise you if Mr. Richardson
19 had testified at trial, specifically on page 229 of the
20 trial transcript, that Mr. Williams was in a gang?

21 A Yeah, I remember than coming out, and I thought I
22 maybe renewed my motion to keep that out at the time. I
23 don't remember if I did or not, but I do remember it
24 actually coming into evidence, that fact.

25 Q At any point of your cross-examination of

1 Mr. Richardson, did you inquire as to whether or not
2 Mr. Richardson had either firsthand knowledge that the
3 Applicant was a member of a gang or whether or not it was
4 simply a rumor that he had been in a gang?

5 A Well, I remember as a trial strategy thinking that,
6 you know, that happened so briefly that the mentioning of
7 that gang activity that I really did not want to focus on
8 that and bring that back out.

9 Of course, as you know, asking a question that you
10 don't know the answer to is often a thing that is very
11 difficult as a lawyer to make that strategic decision.

12 I decided not to bring that up and to follow up on
13 the questioning on that because I was afraid that he would
14 say yeah, I know first hand, and I'll tell you about it.
15 So I didn't want to open that door. I made a trial
16 strategy decision not to pursue any questioning about the
17 gang activity.

18 Q Did you ever discuss that trial strategy with
19 Mr. Williams?

20 A After every witness I would ask him if he had any
21 follow up questioning, and he did not indicate that he
22 wanted me to ask any questions. So it was kind of
23 something at -- in the spur of the moment at the time, and
24 so I thought that was the right decision at that time.

25 Q You specifically recall discussing with Mr. Williams

1 whether or not he wanted to go into this alleged direct
2 knowledge or indirect knowledge of his alleged gang
3 involvement?

4 A I did not discuss that in specific detail. We did
5 discuss it. We would try to keep gang activity out, which
6 I did pursue that via the motion in limine and the motion
7 or the objection to it coming in. But as far as following
8 up on that specifically, no, we did not discuss that.

9 Q Okay. You didn't think it was important to go ahead
10 and essentially try to, in essence, rehabilitate
11 Mr. Williams with respect to his alleged gang involvement?

12 A I don't understand that question.

13 Q All right. Let me rephrase it. As to his alleged
14 gang involvement, there was testimony by Mr. Richardson, I
15 think you have already alluded to that said he was a
16 member of a gang, correct?

17 A That's what I remember the testimony being, yes.

18 Q All right. And you didn't do any cross-examination
19 whatsoever to determine whether or not that information
20 was learned either through firsthand knowledge or through
21 some other source?

22 A That's correct. I did not follow up on that.

23 Q And once Judge Anderson had ruled that the mention of
24 the term gang could come in, you didn't think it was
25 appropriate to go ahead and try cross-examination based

1 upon your trial strategy?

2 A That's correct.

3 Q And it's your testimony you didn't actually discuss
4 that aspect of trial because -- or that aspect of trial
5 strategy with Mr. Williams; is that correct?

6 A Not -- not at the moment. Like I said, we discussed
7 keeping it out in general, but we did not discuss
8 questions about the details of his gang activity.

9 Q Okay. You said not at that moment. Was there any
10 point at all during this trial that you discussed how to
11 address the mention of the term gang with Mr. Williams?

12 A I do not remember addressing that specifically with
13 him, no.

14 Q Okay. And you testified a little bit earlier, I
15 believe, that you had called Ms. Rosa Williams, his aunt,
16 as an alibi witness; is that correct?

17 A That's correct.

18 Q All right. And did you discuss Ms. Williams'
19 testimony with her prior to her taking the stand?

20 A Yes.

21 Q Okay. And based upon your discussions with her, what
22 is your understanding as to what she would testify to?

23 A That she was going to be able to provide an alibi
24 that he was not at the crime scene during the time in
25 question and that she could verify where he was.

1 Q Okay. Did you discuss with Mr. Williams calling
2 Ms. Williams --

3 A Oh, yeah.

4 Q -- Rosa Williams as a potential alibi witness?

5 A Yes, I did.

6 Q All right. And did you discuss the nature or the
7 scope of her testimony with Mr. Williams?

8 A Yes.

9 Q All right.

10 A He was the one who suggest calling her.

11 Q How many different occasions did you meet with
12 Ms. Williams?

13 A I met with her. I talked with her by phone. I met
14 with her, and then I think I talked with her briefly when
15 she was at the courthouse getting ready to testify is what
16 I remember.

17 Q And do you recall Ms. Williams actually testifying as
18 an alibi witness?

19 A I do.

20 Q All right. And do you recall after you had finished
21 questioning her, the State had finished with their
22 cross-examination, her indicating to Judge Anderson that
23 she wished to make an unsolicited comment?

24 A I don't remember that specifically, but I saw that in
25 the motion. And I don't remember it being set up that she

1 wanted -- that she asked to make an unsolicited remark. I
2 don't remember that.

3 Q Okay. Do you recall Ms. Williams specifically saying
4 that she wanted to apologize to the people for what my
5 nephew had done?

6 A Yes, I remember that. So Lewis' brother was one of
7 the codefendants, and so I mean, I just took it that she
8 was talking about one of the codefendants, her other
9 nephew, not Lewis.

10 Q But Lewis was actually her nephew, as well?

11 A Lewis was her nephew, but she had just testified for
12 45 minutes saying that he wasn't there.

13 Q Okay.

14 A So I didn't think there was any understanding.

15 Q All right. You didn't move for a mistrial when that
16 statement was made, did you?

17 A I don't think so I did.

18 Q Okay. And the reason that you didn't move for a
19 mistrial on that basis was that it was your testimony you
20 thought she was -- Ms. Rosa Williams was referring to the
21 other nephew?

22 A Well, yeah, because she had just spent an hour saying
23 that Lewis was not there and was not present. So I just
24 didn't think there was any misunderstanding about who she
25 was referring to.

1 Q Did you feel the need to request of Judge Anderson
2 any type of curative instruction indicating that it wasn't
3 Mr. Williams that she was referring to when they were
4 discussing what her nephew had done?

5 A I did not ask that.

6 Q Okay. Why didn't you feel that was necessary?

7 A Like I said before, I just didn't think there was any
8 misunderstanding about that particular issue since she had
9 just spent an hour testifying about where Lewis was.

10 Q Okay. Is it possible the jury could have understood
11 the term nephew to be referring to Mr. Williams?

12 A I didn't think it was possible.

13 Q But you didn't think it was possible. Did you think
14 it was possible -- the members of the jury didn't think
15 that?

16 A I didn't think they would think that.

17 Q So it was your testimony that it was essentially a
18 tactical decision on your part not to go ahead and address
19 that issue by curative instruction or through moving for a
20 mistrial?

21 A That's correct. I didn't think there was any
22 misunderstanding.

23 Q Looking back at it now, would you ask for a mistrial,
24 ask for a curative instruction?

25 A I don't think so. I think it was -- at the time, it

1 was the right decision.

2 Q Okay. Do you also remember a gentleman by the name
3 of Hakeem Randy Costa in connection with this case?

4 A That's correct.

5 Q All right. And who was Mr. Costa?

6 A He was a codefendant who testified against
7 Mr. Williams.

8 Q Okay. Do you know if there was any relationship
9 between Mr. Williams and Mr. Costa?

10 A I don't think any family relationship. I think they
11 were supposed friends, or he was a friend with Lewis'
12 brother is what I remember.

13 Q Okay. And at the time of this incident that
14 occurred, the robbery of the apartment complex, was
15 Mr. Costa a minor?

16 A I think he may have been. I think he was maybe 16 or
17 so, 15, 16, something, yes.

18 Q Did Mr. Costa actually testify at trial?

19 A Yes.

20 Q Okay. And did -- at any point in the trial
21 proceedings, did you move to have any information obtained
22 from Mr. Costa precluded from going into the record --

23 A I --

24 Q -- as any fruit of the poisonous tree or anything
25 like that?

1 A No, no. I mean, you know, no, I did not, no.

2 Q You realize that when Mr. Costa was first questioned
3 by police in this matter that he didn't have a mother,
4 parent or a guardian present during that questioning; is
5 that correct?

6 A I don't know that I knew that. I think that's a
7 possibility. Of course, when he gave his first statement,
8 he did not implicate Lewis Williams. So, of course, I
9 wanted that to come into evidence, the first statement,
10 because it said nothing about Lewis Williams. So I
11 thought that was good for us for that to come in.

12 Q During those initial conversations, was there mention
13 of a fourth individual?

14 A You're talking about in the statement that he gave?

15 Q Yes.

16 A I don't remember that. I don't.

17 Q All right. Is it possible that there may have been
18 some --

19 A I remember the first statement was just wonderful for
20 us. I mean, I remember it saying nothing about Lewis, a
21 fourth individual. That's what I remember. I'm not sure
22 that I thought I had -- I could do that, really. I didn't
23 know that maybe I -- I'm not sure I have standing to
24 object to the voluntariness of someone else's statement
25 coming into evidence but...

1 THE COURT: Let me ask you, do you -- I hate to
2 interrupt you and interrupt your train of thought, but you
3 sort of indicated that it's improper for law enforcement
4 to speak with a minor without a lawyer or a parent. What
5 is the law that supports that?

6 MR. KOZACKI: Your Honor, I don't have the case
7 citations in front of me, but it was my understanding as a
8 minor, there would have to be some type of parent/guardian
9 present in that regard. I don't have the case citations
10 in front of me.

11 THE WITNESS: I mean, just as a comment, I remember
12 being in juvenile court, I was -- and you being able to do
13 that, actually. I mean, I remember objecting to that
14 before and not having any basis for it, but anyway, that's
15 what I remember.

16 BY MR. KOZACKI:

17 Q What is your understanding of the law as it relates
18 to whether or not a minor can, in fact, be questioned?

19 A I think a minor can be questioned. That's what I
20 remember.

21 THE COURT: I think all those issues actually go to
22 voluntariness, but we'll talk about that a little bit
23 later. If they can't, I'd like to know that statute of
24 the case.

25 THE WITNESS: And like I said, I'm not sure that I

1 have standing to object to the voluntariness of the
2 codefendant's statement coming into evidence, but like I
3 said, the first statement -- all that aside, the first
4 statement was all good for us is what I remember.

5 BY MR. KOZACKI:

6 Q Did Mr. Williams ever make any complaints to you as
7 to how the trial was proceeding or things that he believed
8 you were, in fact, doing improperly?

9 A No. In fact, he was very pleased.

10 Q He wasn't pleased with the outcome, though, was he?

11 A No. He wasn't pleased with the outcome, none of us
12 were.

13 Q Why is that?

14 A Well, I thought he had a good chance at trial. I
15 thought we had a good strategy and put on a good trial for
16 him.

17 MR. KOZACKI: Nothing further from this witness, Your
18 Honor.

19 THE COURT: All right. Cross-examination?

20 MR. THOMAS: May it please the Court.

21 THE COURT: Yes.

22 CROSS-EXAMINATION:

23 BY MR. THOMAS:

24 Q Thanks for being here, Mr. McLaurin. I'd like to do
25 some background stuff first. How many years had you been

1 practicing law?

2 A Twenty. Well, when I tried it, I guess maybe 15 or
3 so. Was it five years ago or so, something like that?

4 About 15 years.

5 Q How many meetings did you have with Mr. Williams
6 before the trial?

7 A You know, probably six, seven -- six or seven
8 meetings. You know, we got together for the preliminary
9 hearing. I mean, I represented him longer than I would
10 typically in those appointed cases.

11 Q And so you feel like you had -- you had enough
12 meetings with him to sort of --

13 A Yeah, typically, I don't know why I got appointed
14 before the preliminary hearing but I was. I have a
15 transcript from that, and I participated in that.

16 Q And I'm assuming that means you also filed the Rule 5
17 and Brady motions?

18 A Yeah. Yes, I did; yeah.

19 Q And do you think the State provided a complete
20 response to that?

21 A Well, eventually they did. We had to go over some
22 issues once we got to court about records for the
23 juveniles and things like that that were eventually
24 provided for me.

25 Q They eventually provided you with that letter from

1 damage that said they didn't have any record.

2 A Basically, that's right; that's right. I remember
3 that.

4 Q Did you have a chance to review discovery with
5 Mr. Williams?

6 A I did.

7 Q And did you have a chance to review with him what the
8 State's evidence was against him?

9 A We did.

10 Q What was his version of events?

11 A That he was not present and that these people were
12 trying just to help themselves out in terms of reduction
13 in their sentences and were implicating him; that he was
14 not present for the actual crime.

15 Q And so that was your trial theory going forward?

16 A That's correct.

17 Q Did you get a chance to discuss with him any elements
18 -- or all of the elements to all of the charges?

19 A We did go over that.

20 Q And did he give you any leads to investigate other
21 than these two alibi witnesses?

22 A That's all I remember for those two.

23 Q And you had an opportunity to interview both of those
24 witnesses?

25 A I know I talked with the one we had at trial, and I

1 know I've got a statement from the Quincy guy. I talked
2 with him also is what I remember.

3 Q What kind of plea bargain did you engage in with the
4 State? Do you remember if there was an offer?

5 A Yeah, there was an offer, and I don't -- for some
6 reason 15 years rings a bell. I really, the actual
7 numbers, I just don't remember the actual numbers.

8 Q But it's safe to say you communicated that offer to
9 him?

10 A Oh, yeah, yeah. We talked about it.

11 Q And whose decision was it to decline that?

12 A He made that decision.

13 Q Did he ever give you an indication that he wanted to
14 plea as opposed to going to trial?

15 A No, no. He did not.

16 Q So he always wanted a trial?

17 A That was -- that's what I remember, yes.

18 Q I know this is probably a little bit redundant, but
19 your argument to the jury was basically that he had an
20 alibi and that the codefendants were fabricating his
21 involvement?

22 A Yeah. They had given inconsistent statements. You
23 know, I got to get into how much their time was actually
24 reduced because they entered the plea and how much
25 exposure they had if they had not cooperated, so we felt

1 pretty good about impeaching the credibility of the
2 codefendants.

3 Q And so regarding Mr. Costa's statement, I know you
4 said this, but impeachment value of his first statement
5 was -- in your opinion, it was very high, correct?

6 A Yeah, yeah. I mean, he didn't implicate Lewis at all
7 so...

8 Q And as far as the standard for a minor's confession,
9 would you agree with me when I say it's pretty much the
10 same standard as an adult's confession. It's the totality
11 of the circumstances that you look at?

12 A Yeah, I would agree.

13 Q And there's no requirement that a parent be present?

14 A That was my memory of the law. Now, that's what I
15 remember.

16 Q Was each of the codefendants represented by counsel
17 to your knowledge or remembrance?

18 A Yes, and I remember Judge Anderson was very specific
19 about putting them on notice of the fact that they were
20 here -- there at the trial testifying. Yeah, yeah, that
21 was my memory.

22 Q So it's safe to say that those represented
23 codefendants, you would have had a difficult time meeting
24 with them to discuss their testimony before trial?

25 A Yeah, yeah. No, I don't feel like I could have

1 gotten very far with that.

2 Q You did object in a motion in limine to any mention
3 of Mr. Williams' gang involvement?

4 A That's correct.

5 Q And you -- it's on page 229 of the record. You
6 contemporaneously made an objection to any mention of him
7 being in a gang?

8 A I thought I did. I thought I would have, yeah.
9 Yeah, I did.

10 Q Was there any further testimony that the crime was
11 gang related?

12 A Not that I remember, just that one reference.

13 Q And you remember the solicitor harping on his gang
14 involvement in closing or in arguments or at any point in
15 time?

16 A Not that I remember, not that I remember, but I don't
17 remember that.

18 Q So it's safe to say that the only reference to him
19 being in a gang came from the two codefendants who said
20 that's why they changed the stories?

21 A That -- that was the basis for the gang stuff to come
22 in.

23 Q So in light of that, you said you made a strategic
24 decision to not explore that any further?

25 A Yeah, I did not feel like that would be the right way

1 to handle that, that situation.

2 Q At trial, didn't one of the victims ID Mr. Williams
3 as the fourth suspect that came to the door?

4 A Yeah. That was the big surprise in the case. Every
5 victim had indicated that they could not identify him, and
6 then in the middle of the trial, one of the victims
7 implicated him and said she could identify him.

8 Q And you objected to that testimony but --

9 A Oh, yeah, yeah. We tried to fight that. I thought
10 that was a big surprise and was damaging to our case.

11 Q Regarding the aunt's statement, two of the other
12 codefendants were actually her nephews; isn't that
13 correct?

14 A Yeah, I think that is right.

15 Q One of them was Mr. Williams' brother, and the other
16 one was Mr. Williams' cousin?

17 A You are right. That is correct.

18 Q And a mistrial or a curative instruction, it's safe
19 to say you certainly made a decision not to object to that
20 because you didn't want to draw attention to it, her
21 statement?

22 A Yes. I just made that decision at that time.

23 Q Now, Mr. Costa's -- I know this first statement you
24 said was helpful to you and that you didn't want to keep
25 that out. His statement he gave that implicated

1 Mr. Williams, he gave that at a later date after he was
2 already represented by counsel?

3 A That's correct.

4 MR. THOMAS: Thank you, Mr. McLaurin. That's all I
5 have.

6 THE WITNESS: Thank you.

7 THE COURT: Any redirect?

8 MR. KOZACKI: Yes, Your Honor.

9 REDIRECT EXAMINATION:

10 BY MR. KOZACKI:

11 Q Mr. McLaurin, you testified that, correct me if I'm
12 wrong, that you were actually present at the preliminary
13 hearing?

14 A I think my law partner went to the preliminary
15 hearing.

16 Q You weren't actually present?

17 A No, I wasn't, but I had the transcript, and I've got
18 the recording.

19 Q Now, as far as the implication that there had been an
20 offer, a plea offer in connection with the case --

21 A Uh-huh.

22 Q -- it was your testimony that you relayed that to
23 Mr. Williams?

24 A Yes. Yes, we talking about plea offers.

25 Q Are you sure about that?

1 A Yes. We would have talked about plea offers.

2 Q How many times did you discuss with Mr. Williams plea
3 offers?

4 A I mean, I'm certain I would have talked to him in the
5 jail about it because it would have involved us getting
6 ready for trial if he didn't want to plead, so I'm certain
7 two times there and probably in the courthouse when we
8 were getting ready to try the case, I'm sure I would have
9 talked to him about it.

10 Q Tell me how it is as a defense attorney you normally
11 receive a plea offer from the prosecution?

12 A Various ways: Verbally I've received them, and I've
13 received them in writing.

14 Q Okay. Does your file in any way reflect a written
15 plea offer on behalf -- to my client?

16 A I'm not sure. I could look real quick if you want me
17 to look and see.

18 Q Did you -- did you look through your file?

19 A I did. I did, and I can't remember whether I saw it
20 or not. If you want me to look, I'll be glad to look.

21 Q If you would, please.

22 A Yeah.

23 Q Beg the Court's indulgence.

24 (Pause.)

25 A I see one plea offer in here, but I think that was in

1 regard to other charges. Mr. Williams was charged with
2 other offenses that were -- involved a string of motel
3 robberies, and I see a couple of plea offers regarding the
4 Red Roof Inn and the Super 8 motel.

5 Q Those written plea offers were not made in connection
6 with the underlying charges, though?

7 A It does not look like it on this one, no, no.

8 Q Is it possible you may have been confused as to
9 whether or not my client actually received plea offers in
10 connection with this case?

11 A No. I'm sure we got plea offers on this case. I'm
12 sure we did.

13 Q You're just not sure whether it would have been in
14 writing or orally; is that correct?

15 A Yeah. Was the address for this -- I see one for
16 Toledo Road. If that's it, I've got one for Toledo Road,
17 15 years, as I discussed.

18 Q Who would have been the person that conveyed the plea
19 offers to you?

20 A Pat Parr.

21 Q Do you recall on how many different occasions
22 Ms. Parr had gone ahead and offered you some type of plea
23 arrangement in this case?

24 A Yeah. I mean, she communicated in writing to me, and
25 once again, I'm -- you know, when we got up to the

1 courthouse and got ready to try the case, we talked about
2 plea offers. We discussed it in the trial, so yeah. So
3 we talked about it several times.

4 Q Would it surprise you if Mr. Williams has indicated
5 that he believes you never conveyed any plea offers to
6 him?

7 A That would surprise me.

8 Q Normally when you receive an oral plea offer, do you
9 maintain a record of that in your file?

10 A I don't have a record of that. Yeah, I mean
11 sometimes I would make a note of it, yes, I would.

12 Q Okay. Did you do that in this case?

13 A I don't remember. I don't think I've got any notes
14 about an oral plea offer like a handwritten note I wrote
15 out or something. I think because I had it in writing.

16 Q Is it your testimony then that you did have a plea
17 agreement in writing in this case?

18 A That's what it looks like. This is Toledo Road,
19 which is the address where it was at, then yes, we did
20 have a written plea offer.

21 Q If I can just go ahead and look at this. If I can
22 approach, Your Honor?

23 THE COURT: Sure.

24 (Pause.)

25 MR. KOZACKI: Nothing further of this witness, Your

1 Honor.

2 THE COURT: Very good.

3 MR. THOMAS: Brief redirect, Your Honor?

4 RE CROSS-EXAMINATION:

5 BY MR. THOMAS:

6 Q Would it surprise you if I told you the victims in
7 this case lived at [REDACTED], [REDACTED],
8 Forest Park complex?

9 A That's what I thought I remembered. I thought that
10 was Toledo Road, yes.

11 Q And you have in your file a written --

12 THE COURT: This is actually recross, isn't it?

13 MR. THOMAS: Or recross, I apologize.

14 THE COURT: There's no such thing as recross. That's
15 it.

16 MR. KOZACKI: Your Honor, I apologize.

17 THE COURT: All right. Very good. You may step
18 down.

19 THE WITNESS: Thank you, Judge.

20 MR. KOZACKI: Your Honor, at this time we would
21 proffer the affidavit of Mr. Lewis David Williams pursuant
22 to South Carolina code section 17-27-80.

23 MR. THOMAS: No objection.

24 THE COURT: All right. What does the affidavit say?

25 MR. KOZACKI: It essentially lays out these

1 allegations in connection with this case and the grounds
2 that he believes he is entitled to relief.

3 THE COURT: What do you have to say about that,
4 Mr. Thomas, about the propriety of introducing an
5 affidavit?

6 MR. THOMAS: Your Honor, I would -- I would submit
7 that the best evidence is probably his testimony, but I'm
8 not quite sure I'm familiar with the code section
9 Mr. Kozacki just cited.

10 THE COURT: Why don't we look at that code section
11 because typically, a statement of an individual is not
12 admissible whether it's a sworn statement or otherwise.

13 You can call them to the witness stand, subject them
14 to cross-examination, and you can ask him what's in the
15 affidavit. If there's anything inconsistent, then they
16 can cross-examine them about it but...

17 MR. KOZACKI: Your Honor, my --

18 THE COURT: That's the general rule, but let me hear
19 what you have to say.

20 MR. KOZACKI: Your Honor, the specific code section
21 I'm referring to, Your Honor, is 17-27-80 specifically
22 says that the court may receive proof by affidavits,
23 depositions, oral testimony or other evidence and may
24 order the applicant brought before it for a hearing, so it
25 specifically provides and allows for --

1 THE COURT: In a Post Conviction Relief?

2 MR. KOZACKI: In a Post Conviction Relief proceeding.

3 THE COURT: Very good. All right.

4 MR. THOMAS: Your Honor, I would just -- would that
5 affidavit have to be -- would that be subject to the
6 hearsay rule? I mean, this is clearly introduced for the
7 truth of the matter asserted. He is not an unavailable
8 witness at this point, so I'm not sure this is admissible
9 on hearsay grounds.

10 MR. KOZACKI: Your Honor, my intention is to go ahead
11 and offer the affidavit of the applicant on the stand to
12 testify to additional grounds not contained in that
13 affidavit.

14 THE COURT: I think then I'm going to allow it in,
15 and you'll have an opportunity to cross-examine him. Any
16 objection other than what's been stated?

17 MR. THOMAS: No, Your Honor. I'll note that I read
18 through it this morning when it was given to me. It's the
19 same thing that's in the application, so there is nothing
20 new in this application.

21 THE COURT: All right. Over the State's objection,
22 the affidavit is in evidence.

23 (WHEREUPON, Applicant Exhibit No. 1 was marked for
24 identification only.)

25 MR. KOZACKI: Your Honor, we'd call Mr. Lewis David

1 Williams to the stand, please.

2 THE COURT: Mr. Williams, please come forward. I'm
3 going to ask if you could, place your left hand on the
4 Bible, raise your right hand as they administer the oath.

5 LEWIS DAVID WILLIAMS, after being duly
6 sworn, testified as follows:

7 THE CLERK: Please be seated, and state your name for
8 the record.

9 THE COURT: Take your time. Pull up close to that
10 microphone. Speak loudly, clearly and slowly so we can
11 hear everything you've got to say. Start with your full
12 name, please, sir.

13 THE WITNESS: Yes, sir. My name is Lewis David
14 Williams.

15 THE COURT: All right. Mr. Williams, pay very close
16 attention.

17 DIRECT EXAMINATION:

18 BY MR. KOZACKI:

19 Q Mr. Williams, you are incarcerated at Lee
20 Correctional Institution within the South Carolina
21 Department of Corrections; is that correct?

22 A That's right.

23 Q That is as a result of your conviction for the crimes
24 which are the subject of this application for post
25 conviction relief; is that correct?

1 A Yes.

2 Q All right. And it's my understanding that those
3 sections are -- you received a 20-year sentence
4 essentially running concurrent -- or you were convicted on
5 all three charges and received a 20-year sentence; is that
6 correct?

7 A Yes.

8 Q All right. Tell me, if you would, please, when was
9 the first time your spoke with Mr. McLaurin in connection
10 with his representation of you on the underlying charges?

11 A First time I met with him was probably about a month
12 after -- because they appointed me a public defender at
13 first, but he had got conflict of interest because he was
14 representing one of my other codefendants. They appointed
15 me Mr. McLaurin about a month later.

16 Q And up to and including the time of trial, how much
17 different times did you have occasion to meet with
18 Mr. McLaurin?

19 A Three or four times.

20 Q Okay. And during that time did y'all discuss trial
21 strategy or defense strategy?

22 A Yes.

23 Q Okay. Do you specifically recall discussing with
24 Mr. McLaurin how y'all were going to deal with your
25 alleged gang involvement by Mr. Richardson?

1 A At the time, we didn't know nothing about no gang
2 activity whatsoever.

3 Q Okay. You didn't know that Mr. Richardson was going
4 to testify that you were in a gang; is that correct?

5 A No, sir.

6 Q Did Mr. McLaurin ever indicate to you, or did you
7 ever indicate to Mr. McLaurin that there may be some
8 mention of a gang at trial?

9 A When we found out, it was like really basically
10 during the trial or like a couple of days before the trial
11 actually got kicked off.

12 Q All right. How was it you came to that
13 understanding?

14 A That was -- they said that the reason they gave that
15 second statement was, you know, that where I would come in
16 at because they never would have wrote the second
17 statement because he was asking the prosecutor do they
18 have a copy of the second statement. She said no, that
19 they had gave the statement to them verbally with a lawyer
20 present.

21 Q All right. Was that your understanding based on what
22 Mr. McLaurin had told you?

23 A Yes.

24 Q And so at least a couple of days before the trial,
25 then, Mr. McLaurin was aware of the possibility of the

1 mention of gang at trial; is that correct?

2 A Yes.

3 Q All right. Did you have any -- did you have any
4 discussions with you as to how he was going to proceed to
5 try to lessen the impact of the mention of the term gang?

6 A The only thing was on repinning of the motion and on
7 the day that we picked the jury.

8 Q That was the only discussion that you had with Mr.
9 McLaurin in that regard?

10 A Yes.

11 Q Okay. Did you ever tell him, suggest or indicate,
12 that you wanted him to find out whether that -- the
13 mention of the gang was based upon Mr. Richardson's
14 firsthand experience or through some rumor mill?

15 A Not to my knowledge I haven't.

16 Q Okay. So you never discussed that with Mr. McLaurin;
17 is that correct?

18 A Uh-huh.

19 Q Is that a yes?

20 A Yes.

21 Q And did you discuss with Mr. McLaurin the testimony
22 of Ms. Rosa Williams?

23 A When he first asked me did I have an alibi, that's
24 when I told him, I said my aunt. I gave him the name.
25 They spoke, whatsoever. She told him that I was at my

1 grandma's house at the time present, when it happened.

2 Q And Ms. Rosa Williams is also the aunt of which of
3 the other witnesses in this case?

4 A Shakeem Williams and Hakeem Costa.

5 Q So she was the aunt of all three of you?

6 A All three of us, yes.

7 Q All right; is that correct?

8 A It was four, four all together.

9 Q Four all together. Did you have any discussions with
10 Mr. McLaurin as to Ms. Williams ever indicating that she
11 wanted to apologize for your actions at any point in time?

12 A No.

13 Q Okay. Now, during the trial of your case,
14 Ms. Williams was called to testify, is that accurate?

15 A Yes.

16 Q Okay. She testified that, in fact, you had an alibi;
17 is that correct?

18 A Yes.

19 Q All right. What is your understanding of what she
20 testified to?

21 A She had testified telling me that the time that I
22 came to my grandma's house and the time that she left and
23 the time I was still there when she left and what went on
24 that day when I was there.

25 Q Okay.

1 A Particularly what happened that day.

2 Q Do you recall after Ms. Williams had finished
3 testifying she wanted to go ahead and make a statement to
4 the jury?

5 A Yes.

6 Q Okay. And did she specifically indicate -- was she
7 specifically allowed at that time to make the statement
8 that she wanted to apologize to the people for what my
9 nephew had done?

10 A Yes.

11 Q Okay. What was -- when she said that, what was your
12 understanding as to what she meant?

13 A I was -- I was kind of shocked because at the time, I
14 ain't know what she was talking about.

15 Q Okay.

16 A You know, it could have been me, my brother, but he
17 wasn't there. It was just me and my boy. My cousin was
18 there. So she couldn't have been talking about him.

19 Q Did that statement concern you?

20 A The way she said it, the way I took it, she was
21 concerning me.

22 Q Okay. At that point, did you attempt to nudge your
23 attorney or talk to your attorney and tell him that you
24 were concerned about that particular statement?

25 A At the time no, no.

1 Q Why not?

2 A Because it still -- it was still rushing through my
3 head like what she had just said because at first, the
4 judge was trying to stop her from saying anything before
5 she got off the stand.

6 Q Something to the effect that he didn't want to mess
7 up the trial.

8 A Yeah, ain't going to mess up the trial, right.

9 Q And did -- at that time, did Mr. McLaurin discuss
10 with you at all the raising of any type of objection or
11 curative instruction in connection with that statement?

12 A No.

13 Q Now, as far as your appellate counsel, you're also
14 unhappy with how the appellate counsel handled your --

15 A Direct appeal, yeah.

16 Q Your direct appeal?

17 A Yes.

18 Q Why is that?

19 A Well, I think that she could have raised a little
20 more issues than it was.

21 Q Okay. What specific issues are you referring to that
22 you think that your appellate counsel should have raised?

23 A The false accusation that he gave in the statement
24 wise and when -- and the objection to the dismissal of all
25 charges and lack of evidence and that they didn't have no

1 evidence against me.

2 Q Did you also complain in your application for Post
3 Conviction Relief for the second reading of the hand of
4 all doctrine by Judge Anderson?

5 A Yes.

6 Q Okay. Tell -- tell the Court, if you would, please,
7 what you meant by that.

8 A At first, I ain't really know what was the knowledge
9 of the hand of one, hand of all. I took it as like how
10 can two people sit in the courtroom and admit to something
11 that he did, you know, and they get to go home but there's
12 testimony for this lying on the stand, the testimony that
13 he gave on a person that didn't have really nothing to do
14 with the crime.

15 Q Did you think it was appropriate for Judge Anderson
16 to use the -- or give the hand of all jury charge on not
17 one but two occasions?

18 A Yes.

19 Q You think that was right?

20 A No, that was wrong.

21 Q You thought that was wrong? Why was that wrong?

22 A Mr. McLaurin objected towards telling him that. They
23 only asked for one, for -- a charge for the armed robbery.
24 They didn't ask for a charge for the hand of one, hand of
25 all. That's basically just throwing it in there saying,

1 well, I'm guilty of all charges.

2 Q So Mr. McLaurin entirely properly raised the
3 objection to the hand of one, hand of all charge to the
4 jury; is that correct?

5 A Yes.

6 Q Okay. He did that right?

7 A Say it again.

8 Q You said he did that right?

9 A Yes.

10 Q Okay. But your appellate -- your appellate lawyer
11 didn't do that; is that correct?

12 A No.

13 Q Did you have any discussions with your appellate
14 lawyer what about grounds you raised?

15 A I ain't never got a chance to speak with them.

16 Q Okay. You never spoke once with your appellate
17 defender?

18 A The only thing I got was letters saying that -- when
19 my court date would be and then when some paperwork they
20 sent to me when my briefing would be done.

21 Q Did you ever try to contact the Public Defender's
22 Office and tell them?

23 A Yes.

24 Q Let me finish my question. Tell them the additional
25 grounds that you wanted to go ahead and raise?

1 A Yes. At one point in time, I had send him like three
2 or four letters. I never got a response back because of
3 -- when he had did the briefing that they tried to say
4 that my brother had wrote a statement against me in the
5 briefing, but he never wrote no statement against me.

6 I was writing her telling her that they got the
7 statements -- got it mixed up, and they got it wrong. I
8 never got a response back or nothing.

9 Q Did you ever specifically tell your appellate -- your
10 appellate defender that you wanted to raise the objection
11 of the second reading of the hand of one, hand of all jury
12 charge?

13 A Yes, yes.

14 Q Okay. And you never received a response from them in
15 that regard?

16 A No.

17 Q Who was the appellate defender who was representing
18 you?

19 A I got the name right here. I can look here.

20 Q Yes.

21 A Give me one minute.

22 (Pause.)

23 Wendy H. Carter.

24 Q Ms. Carter?

25 A Yes, Ms. Carter.

1 Q Okay. And it's your testimony that she never
2 corresponded to you at all concerning the grounds that you
3 wanted to raise in your appeal; is that correct?

4 A Yes.

5 Q Other than the grounds that we've already discussed
6 and which one was included in your affidavit, do you feel
7 there's any other reasons why you should be entitled to
8 the relief you're now requesting?

9 A Yes.

10 Q What?

11 A Like -- like --

12 MR. THOMAS: I'm going to object, Your Honor. None
13 of these other grounds have been raised in the pleading at
14 this point.

15 MR. KOZACKI: Your Honor, he has raised the issue of
16 ineffective assistance of counsel, and those additional
17 grounds go to that particular reason. I think they need
18 to be admissible.

19 THE COURT: I'll allow them to ask it.

20 THE WITNESS: The lack of evidence that they have
21 against me, and then there's one more, the identification.

22 MR. KOZACKI: Okay.

23 THE WITNESS: I never was put in a lineup when I
24 requested to be in a lineup. They never put me in a
25 lineup to see, you know, could the victims.

1 BY MR. KOZACKI:

2 Q Any other basis?

3 A No, that's it.

4 MR. THOMAS: May it please the Court.

5 CROSS-EXAMINATION:

6 BY MR. THOMAS:

7 Q Mr. Williams, did you have a chance to review
8 discovery with your attorney?

9 A Yes.

10 Q And you told him your version of events, IE, you
11 weren't there?

12 A Yes.

13 Q Okay. And you discussed with him the elements of the
14 crimes?

15 A Yes.

16 Q Did you discuss the hand of one, hand of all theory
17 at some point before trial?

18 A No.

19 Q Did you give him any lead to witnesses to investigate
20 other than that your aunt?

21 A Quincy O'Neil.

22 Q And it was your decision to go to trial on this case,
23 wasn't it?

24 A No, not -- not exactly.

25 Q But you never told Mr. McLaurin you wanted a plea

1 deal?

2 A No, sir.

3 Q In fact, you maintained for the entire time that you
4 weren't present when these crimes happened?

5 A Yes.

6 Q And regarding your aunt's apology, you discussed that
7 with Mr. McLaurin immediately after she got off the stand,
8 didn't you?

9 A No. We didn't -- we didn't really speak about it,
10 no.

11 Q He didn't tell you that he thought it wasn't
12 something you should raise an issue on? You should just
13 ignore it and let it go?

14 A No, he didn't say nothing.

15 Q Regarding the hand of one, hand of all charge, you
16 said you thought it was wrong that the judge gave it?

17 A Yes.

18 Q Did you think it was wrong for him to give it the
19 first time?

20 A When he first was giving the jury the charges.

21 Q You thought he shouldn't have charged the hand of
22 one, hand of all the first time?

23 A Yes, sir. When he first was given the charges before
24 they went to the back to do the verdict.

25 THE COURT: I'm not real sure whether he thinks the

1 law should be charged is an appropriate point of inquiry.
2 It's either ineffective or not. When his view of that is
3 probably not appropriate. Am I right in that regard?

4 MR. THOMAS: I don't disagree with Your Honor. I'll
5 move on.

6 THE COURT: Very good.

7 MR. THOMAS: Regarding this --

8 THE COURT: A lot of lawyers don't know what the hand
9 of one is the hand of all is.

10 MR. THOMAS: Sometimes I'm not sure I do either, Your
11 Honor.

12 BY MR. THOMAS:

13 Q Regarding this inquiry of whether they had any
14 personal knowledge of you being in a gang, they didn't
15 have any personal knowledge of you being in a gang?

16 A No. At the time trial, they had a gang investigator
17 that came in from Darlington County. Like he said on the
18 stand, he said he never had no knowledge of me being in no
19 type of gang, but he knows that Hakeem and Chris
20 Richardson was in one because that's how he said he know
21 where they stayed, know their nickname.

22 Q But you went over -- basically, you went over with
23 your attorney the fact that it was best to let that
24 sleeping dog lie and not to point out to the jury again
25 that they had mentioned that you were in a gang.

1 MR. KOZACKI: Object to the form of the question,
2 Your Honor.

3 MR. THOMAS: I'll rephrase.

4 Mr. McLaurin explained to you that strategy on
5 keeping that gang information out, didn't he?

6 THE COURT: I think that's cross-examination. What's
7 your objection to the question?

8 MR. THOMAS: I don't think that's a proper question,
9 Your Honor. It's a poorly worded question. He didn't
10 understand.

11 THE COURT: He can't lead though, can he?

12 MR. KOZACKI: Yes, he can, Your Honor.

13 THE COURT: All right. Then go ahead and lead him
14 however you want to be lead him.

15 MR. THOMAS: It was probably in-artfully worded, Your
16 Honor.

17 BY MR. THOMAS:

18 Q You discussed with Mr. McLaurin the fact that he was
19 going to raise a motion before trial to keep that gang
20 reference out, didn't you?

21 A No, he did that on his own.

22 MR. THOMAS: I think that's all the questions I have,
23 Your Honor.

24 THE COURT: All right. Very good.

25 Any redirect?

1 MR. KOZACKI: Yes, Your Honor, briefly.

2 REDIRECT EXAMINATION:

3 BY MR. KOZACKI:

4 Q Mr. Williams, as I understand it, the relief that
5 you're seeking in this case is to have your conviction
6 reversed and set aside; is that correct?

7 A Yes, sir.

8 Q You want a new trial, is that right?

9 A Yes, sir.

10 Q You understand that if you are granted the relief you
11 requested that the potential penalties you could face at
12 the new trial would be up to including life imprisonment?

13 A Yes, sir.

14 Q Despite doing that, you still want to go forward with
15 this application today; is that correct?

16 A Yes, sir.

17 MR. KOZACKI: Nothing further, Your Honor.

18 THE COURT: All right. Very good. You may step
19 down.

20 You may call your next witness.

21 MR. KOZACKI: Nothing further, Your Honor.

22 THE COURT: All right. State, do you have any -- any
23 additional evidence to offer?

24 MR. THOMAS: Nothing from the State, Your Honor.

25 THE COURT: All right. I'll be glad to hear from

1 applicant's counsel. I think probably the better way to
2 do it would be for us to start with ineffective assistance
3 of counsel. Let's set forth each allegation, and we'll
4 set them one at a time. I'm going to let the State
5 respond.

6 MR. KOZACKI: Your Honor, as you are aware, there's
7 several bases for ineffective assistance of counsel. The
8 first as I've identified it is the failure to determine
9 whether or not the codefendants have personal knowledge of
10 whether the Applicant was in a, quote, gang. They're in
11 the transcript page 229.

12 It's our position that counsel, trial counsel,
13 unfortunately was deficient in that regard. What should
14 have happened is there should have been cross-examination
15 as to whether or not they had personal knowledge or they
16 didn't.

17 THE COURT: What do you think about what trial
18 counsel said about -- you have no idea what they're going
19 to say in response to that. They very well could have
20 said, "Yes, he was initiated last Thursday night, the
21 Thursday night before the crime. We were initiated and we
22 were blood brothers in the Crips or something like that.

23 MR. KOZACKI: At least we would have known where they
24 stood, Your Honor.

25 THE COURT: Well, that would have been worse, don't

1 you think?

2 MR. KOZACKI: Well, it couldn't be any worse. The
3 worst it could be, he was ultimately convicted in
4 connection with the matter.

5 He had -- according to what -- the testimony that I
6 have heard, I'm not sure there was extensive conversation
7 between Mr. Williams and Mr. McLaurin as to any type of
8 gang involvement of being involved in any way.

9 Mr. Williams has always maintained he has not been a
10 member of a gang. He testified a few moments ago there
11 was some indication by one of the gang enforcement
12 officers that they didn't know who he was.

13 THE COURT: And I'm going to review the transcript in
14 detail, but as I understand it as it's been presented here
15 today -- and I have not read the transcript as of yet --
16 as I understand it, it came up in conjunction with why
17 they changed their story.

18 MR. KOZACKI: That is correct.

19 THE COURT: The essence -- the implication was made
20 that he was a dangerous person and a member of a gang and
21 they felt intimidated.

22 MR. KOZACKI: Yes, Your Honor.

23 THE COURT: And I understand that Mr. McLaurin made a
24 motion. You read the transcript here recently. I haven't
25 read it yet. Mr. McLaurin, it's been five years since he

1 tried the case. What was the basis for the motion? Was
2 it adequately preserved, and what was Judge -- was it
3 Judge Anderson?

4 MR. KOZACKI: It was, Your Honor.

5 THE COURT: What was Judge Anderson's ruling?

6 MR. KOZACKI: My understanding, Your Honor,
7 ultimately it was allowed in. There was a motion in
8 limine. That was made. It was properly preserved. We're
9 not claiming that that motion was not properly made.

10 What we're actually claiming is that it was deficient
11 when it was mentioned, the term gang was mentioned, that
12 he didn't properly cross-examine those witnesses, that
13 witness, in particular Mr. Richardson to determine whether
14 or not he had personal knowledge of this alleged gang
15 involvement or just rumor mill.

16 THE COURT: All right.

17 MR. KOZACKI: And --

18 THE COURT: Do you think that -- that facing that
19 particular situation, of course, Mr. McLaurin didn't want
20 him to talk about gangs. Judge Anderson allowed it in.
21 Once he allows it in, you don't think that -- do you
22 conceive of a situation where it would be better sometimes
23 just not to talk about it at all rather than to make it
24 worse?

25 MR. KOZACKI: Your Honor, in this instance, the horse

1 was out of the proverbial barn, and what should have
2 happened is if he would have turned around and asked the
3 question, they would have said yeah, he was involved in a
4 gang. He was initiated last week, and I was personally
5 there, would it have been any more damning than where
6 we're at right now, my answer to that is no. He was
7 convicted based upon the single usage of the term gang,
8 which was --

9 THE COURT: Well, now, do you think the jury
10 convicted him because of that reference to gang?

11 MR. KOZACKI: Well, the question is --

12 THE COURT: Or maybe the other witness who identified
13 him, maybe?

14 MR. KOZACKI: Your Honor, the question is whether or
15 not that was -- that that omission by Mr. McLaurin was, in
16 fact -- whether it was deficient, of course, or
17 prejudicial.

18 THE COURT: But your position is there was no way in
19 the world under those circumstances that could be a valid
20 strategy.

21 MR. KOZACKI: I'm not -- I'm not saying that. That
22 may have been a strategy and maybe because we're looking
23 at it in hindsight, unfortunately, it was the wrong choice
24 or strategy.

25 THE COURT: Okay.

1 MR. KOZACKI: We believe that it was, in fact,
2 deficient and should have questioned him at the time.

3 THE COURT: Okay. Very good.

4 MR. KOZACKI: Your Honor, I don't know if you want to
5 hear from the State or have me go through the other
6 grounds?

7 THE COURT: Oh, I'd like to hear with regard to the
8 issue of a gang.

9 MR. THOMAS: Your Honor, I think you maybe asked the
10 questions I would have responded to myself. To start
11 with, Mr. McLaurin testified that all of the codefendants
12 were represented. There was no way he was going to be
13 able to interview them beforehand to discuss their
14 knowledge of Mr. Williams' gang involvement.

15 So really, you're left at trial with the choice of
16 asking for further information or letting it go where it
17 was. He testified that he made that strategic decision
18 not to shine a light on it.

19 Honestly, I don't think -- I think aside from the one
20 reference, the solicitor doesn't talk about it in her
21 closing. There is no further mention of it. The State
22 does a very good job in this trial of trying not to give
23 any appearance, from that record.

24 They use it for the limited purpose of explaining why
25 they changed their stories. Honestly, if the question had

1 been asked, and they had said, "Yes, we were initiated
2 last weekend. Let me tell you all about it," then we
3 probably would be saying Mr. McLaurin was ineffective for
4 bringing forth that information, and we could have left it
5 out.

6 THE COURT: And you maintain that it was not a focal
7 point of the argument, and Mr. Kozacki, you have read the
8 transcript recently. Do you agree with that
9 categorization that it was not a focus of his argument, of
10 the State's argument?

11 MR. KOZACKI: Certainly, Your Honor. It was very
12 concerning prior to trial that Mr. McLaurin had made the
13 motion in limine to preclude that evidence from coming in.
14 He did what he was supposed to in that regard.
15 Unfortunately, he received an unfavorable ruling from
16 Judge Anderson who did allow it in.

17 THE COURT: Well, my question to you is not about all
18 of that. We've already covered it. My question to you is
19 simply this: After having read and studied the closing
20 argument, was the gang reference a focus of his closing
21 argument?

22 MR. KOZACKI: It was not, Your Honor.

23 THE COURT: Okay. And the State's position is that
24 he was vigilant with regard to keeping out references to a
25 gang. He made a motion, got an unfavorable ruling. It

1 was denied, and you -- it's the State's position it's a
2 valid strategy not to emphasize any further -- reemphasize
3 any reference to a gang.

4 It was just a reference in passing and that it was a
5 focus of the closing argument, and based on the State's
6 review of the record, it did not affect the fairness of
7 the trial? Is that essentially your position?

8 MR. THOMAS: That's correct, Your Honor.

9 THE COURT: Infect or affect the fairness of the
10 trial, rather.

11 All right. What's the next grounds for ineffective
12 assistance of counsel?

13 MR. KOZACKI: The next ground, Your Honor, is
14 Mr. McLaurin's failure to move for a mistrial and/or ask
15 for a curative instruction followed the applicant's alibi
16 witness, Ms. Rosa Williams' statement, that she wanted to
17 apologize to the people for what my nephew had done.

18 Specifically, Your Honor, page 395 of the trial
19 transcript and beginning, actually, at page 394 at the
20 trial transcript, the indication was -- by the witness, "I
21 should get up, but I'd like to say something, please."

22 The court, Judge Anderson said, "Well, I don't want
23 to mess up this trial now," but still, he allowed the
24 witness to go ahead and make a statement that she wanted
25 to apologize to the people for what my nephew had done and

1 give them my sympathy. Unfortunately, Mr. Williams' aunt
2 was, indeed, the nephew that we contend she was referring
3 to.

4 THE COURT: Wasn't one of the other codefendants a
5 nephew?

6 MR. KOZACKI: They were.

7 THE COURT: There was some discussion about cousin or
8 brother, but as we -- as we stand here today, you
9 unequivocally take the position there were two nephews:
10 This Mr. Williams, the defendant, and one of the
11 codefendants was, indeed, a nephew?

12 MR. KOZACKI: That is correct, Your Honor.

13 THE COURT: Were there three nephews or two?

14 THE APPLICANT: Three.

15 THE COURT: Very good.

16 MR. KOZACKI: We feel that easily -- that problem
17 itself could have been easily been solved had there been a
18 curative instruction by Judge Anderson to simply disregard
19 that particular statement.

20 THE COURT: All right. And as I understand it, the
21 -- how many of the three nephews testified against
22 Mr. Williams, the Applicant, here today?

23 MR. KOZACKI: Just one.

24 THE COURT: Just one, and he essentially said that he
25 did it and this applicant was with him and participated?

1 MR. KOZACKI: Correct, Your Honor.

2 THE COURT: All right. So if that is, indeed, the
3 facts that were presented at trial, then wouldn't you
4 agree that the assertion that trial counsel made that it
5 was reasonable for the jury to conclude it was the other
6 nephew would be wouldn't reasonable --

7 MR. KOZACKI: I --

8 THE COURT: Because she spent an hour saying he
9 wasn't there. He was with me.

10 MR. KOZACKI: Well, I think that's where the problem
11 lies, Your Honor. I don't think it's reasonable to
12 conclude that because they weren't. This case wasn't
13 about the other codefendants. The other codefendant -- it
14 was Mr. Williams who was on trial, should be testifying on
15 behalf of Mr. Williams.

16 I think the jury could most reasonably -- their
17 understanding could have been easily been he was the
18 nephew that she was, in fact, referring to apologizing for
19 what he had done.

20 THE COURT: In the closing argument -- and I'm just
21 asking this. It might not make a whole lot of difference.
22 Did the solicitor in prosecuting this case -- I assume it
23 was Mr. Richardson; is that correct? Was Mr. Richardson
24 the prosecutor?

25 MR. KOZACKI: Pat Parr.

1 THE COURT: Pat Parr. Okay. Did Pat Parr say that
2 he's got to be guilty because the aunt stood up on the
3 stand and said that -- apologized?

4 MR. KOZACKI: Did not.

5 THE COURT: Did not happen?

6 MR. KOZACKI: Did not.

7 THE COURT: And Ms. Parr didn't think she was talking
8 about your applicant, or she would have certainly said
9 that, understand?

10 MR. KOZACKI: I can't speak for Ms. Parr.

11 THE COURT: I mean, that would be reasonable,
12 wouldn't it?

13 MR. KOZACKI: I don't know if it would or would not
14 be. I don't know what her thought process was in that
15 regard.

16 THE COURT: I'll be glad to hear from the State with
17 reference to the apology offered on behalf of the nephew.

18 MR. THOMAS: Yes, Your Honor. Again, I think the
19 testimony from Mr. McLaurin was that he -- he didn't think
20 there was any way the jury could have assumed that she was
21 talking about the defendant. Again, Mr. McLaurin said he
22 didn't think that was the case.

23 He also testified that sort of the same issue, past
24 issue, about the gang reference that it was a decision not
25 to ask for a mistrial or curative instruction to shine the

1 light on it, the apology.

2 Your Honor, is correct. It's not mentioned in the
3 closing, and I'm sure Ms. Parr would have taken every
4 opportunity to impeach the aunt's testimony if she thought
5 she could with that information.

6 THE COURT: What do you -- in reviewing the
7 transcript, Mr. Thomas, what do you think the most damning
8 evidence was, the testimony of the witness who I assume
9 was a codefendant who changed the testimony and said that
10 they could identify him, or was that just a witness?

11 MR. THOMAS: Your Honor, I think it was combination
12 of the -- two of the codefendants testified that he was
13 the fourth individual. I think Mr. McLaurin also
14 testified, the most damning thing was one of the victims
15 got on the stand and identified him in court as the fourth
16 person that came to the door.

17 THE COURT: So two codefendants testified and said
18 this Applicant was the one who did it, and one of the
19 victims who previously said they could not identify her
20 had an epiphany during the trial and said that she could?

21 MR. THOMAS: Yes, Your Honor.

22 THE COURT: Did Mr. McLaurin point out the fact that
23 she had previously said that she could not identify?

24 MR. THOMAS: Your Honor, he objected to that, and
25 Judge Anderson made a very lengthy ruling on the record

1 about in-court identifications and how those aren't
2 generally subject to the Biggers analysis, Neil vs.
3 Biggers analysis.

4 THE COURT: Was it a long order he gave?

5 MR. THOMAS: It was -- it was an oral order. It was
6 about a page, I believe, a page-and-a-half.

7 THE COURT: I can't imagine that.

8 MR. THOMAS: There were many words I had to look up,
9 and he cross-examined her on that fact, as well, is my
10 recollection.

11 All right. The next area of ineffectiveness,
12 Mr. Kozacki?

13 MR. KOZACKI: Your Honor, the next area we move to
14 suppress any and all information obtained by the minor
15 codefendant, Hakeem Randy Costa. I know we touched on
16 this earlier.

17 The issue becomes whether or not Mr. McLaurin should
18 have written -- at least attempted to raise that issue
19 staying that his client had standing to raise that issue
20 because it was misstate the significance of what he was
21 facing or what he was looking at. It's our belief that
22 that issue should have been raised with the trial judge,
23 and it was not.

24 THE COURT: The -- Mr. Kozacki, can you envision a
25 situation where you have a witness who has been referred

1 to in the trial who -- a witness or a codefendant who has
2 been referred to in the trial who now maintains that the
3 defendant did it, but previously there had been a recorded
4 statement or a statement given to law enforcement that he
5 did not do it?

6 Can you envision a strategy where even though that
7 witness has changed their story and says that he was
8 involved in it, the State does not call that witness?
9 Could you envision it being a proper strategy for the
10 defense? I know that wasn't what happened here, but the
11 defense to actually call that witness to the witness stand
12 to establish that he was there, knew what was going on.
13 He was questioned about it on a given occasion, and he
14 maintained that the defendant was not there? I mean,
15 could that be a proper strategy to bring that out that
16 there was an exhaustive discussion with law enforcement,
17 and this witness said that he was not involved in it?

18 MR. KOZACKI: Obviously, Your Honor, hypotheticals
19 are very fact specific.

20 THE COURT: Maybe?

21 MR. KOZACKI: Potentially, yes.

22 THE COURT: All right. And wouldn't you say that
23 with regard to the minor's testimony -- didn't I
24 understand the testimony that's been presented in this
25 hearing to be correct in that the minor's testimony, the

1 initial story that was given after an exhaustive
2 interview, was that this defendant, your applicant, was
3 not involved?

4 MR. KOZACKI: That was the initial indication, Your
5 Honor.

6 THE COURT: Okay.

7 MR. KOZACKI: But there were also other facts to
8 determine such as the existence or the potential existence
9 of a fourth person.

10 THE COURT: I got you. Very good. All right.

11 I'd like to hear the State with regard to the minor's
12 testimony.

13 MR. THOMAS: Just to clarify one thing, Your Honor.
14 I don't think the first statement ever affirmatively
15 denied Mr. Williams was involved. It just simply didn't
16 mention it.

17 THE COURT: Right.

18 MR. THOMAS: In regards to the minor's testimony, and
19 Mr. McLaurin testified that he wanted that first statement
20 to come in. There was no strategic reason for him to keep
21 it out. It helped his case. It helped him impeach the
22 witness's testimony.

23 As you mentioned, if we had a case where, say, that
24 witness had stuck by his original statement, that Mr.
25 Williams wasn't involved, then certainly, that would have

1 been something that the State wanted -- had the State not
2 called him, that is certainly -- conceivably not
3 realistically, but that is something that maybe would
4 want -- the defendant would want to put in front of the
5 jury to show that he was not involved.

6 Regarding standing, I have some questions. I'm going
7 to have a little concern about trying to challenge the
8 induction of someone else's statement. Again, I feel like
9 maybe the defendant can -- or the witness himself is the
10 only one that has standing to challenge that, but
11 regardless, the allegation that maybe the parent should
12 have been involved or anything like that, I don't think
13 that is the standard.

14 The standard is the same thing for an adult. Was it
15 a knowing and voluntary statement, and you look at the
16 totality of the circumstances, the age, maturity, the
17 length of the detention, sort of the witness's experience
18 with law enforcement, issues like that.

19 There has really been no evidence presented today
20 regarding the conditions of that interrogation, but I will
21 note in the record, it is not -- I apologize --

22 THE COURT: Hasn't there been a decision within the
23 past year where a minor was being interrogated at a
24 jailhouse? He was in detention, and he asked for his
25 mother and asked for a lawyer, and then they didn't get it

1 for him. Then he resumed discussions with law
2 enforcement. They didn't get the mother or the lawyer.

3 He resumed the interrogation or resumed the
4 questioning or the discussions with law enforcement, and
5 they allowed that to go forward even though the minor
6 child asked for a parent.

7 MR. THOMAS: You're correct.

8 THE COURT: It was something like that. I can
9 remember -- it's been a long time since I --

10 MR. THOMAS: You're correct. It was either a parent
11 or maybe it was his DJJ officer he was asking to speak to.

12 THE COURT: Well, I think there was one with DJJ and
13 one with within a year's time that dealt with that issue
14 of the minor. I know that on one occasion, if I'm not
15 mistaken, he asked for a parent and did not trigger a
16 bright line rule where they couldn't -- where they had to
17 get the parent.

18 MR. THOMAS: That's --

19 THE COURT: I never understood that to be the law
20 anyway.

21 MR. THOMAS: That's been my understanding of it, Your
22 Honor.

23 THE COURT: All right.

24 Very good.

25 MR. KOZACKI: Yes, Your Honor. As an additional

1 basis for relief, Mr. Williams has -- he indicated that he
2 receive ineffective assistance of appellate counsel on
3 direct appeal, as well, specifically that he failed to
4 raise and challenge the trial judge's second reading of
5 the hand of one, hand of all doctrine despite no request
6 from the jury.

7 The jury specifically requested only that they be
8 provided the criteria for armed robbery. Judge Anderson
9 went ahead and decided to go ahead and charge not only
10 armed robbery but the hand of one, hand of all again.

11 Mr. McLaurin did properly raise an objection to that.
12 Unfortunately, appellate counsel not only did they not
13 raise that, they never addressed any of my client's
14 concerns. In fact, they never even so much as
15 corresponded with him in that regard.

16 THE COURT: Mr. Thomas, what do you have to say about
17 that? As a general rule, my personal practice is I only
18 answer the question that's asked. What do you think about
19 that?

20 MR. THOMAS: I think that's the general practice,
21 Your Honor, but Judge Anderson makes a very good rationale
22 when he discusses with everybody the fact that that's
23 going to recharge the hand of one, hand of all. He talks
24 about how there is no evidence that the defendant actually
25 entered the room or took anything off of anyone, and so he

1 basically was of the impression that the jury needed to
2 hear both the hand of one and the armed robbery charge.

3 What I was trying to get out on my examination of
4 Mr. Williams was that the hand of one, hand of all charge
5 was not improper. It's not an improper charge based on
6 the facts of this case.

7 THE COURT: But it might be prejudiced in view of the
8 fact that they had already heard it once, and Judge
9 Anderson just assumed that they had forgotten it or
10 weren't paying attention to it.

11 MR. THOMAS: That could have been the case, Your
12 Honor. It was sort of his decision. As you know, trial
13 judges are given great deference in terms of the
14 instructions that they give the jurors.

15 There was some evidence in this case that -- even if
16 you want to talk about armed robbery charge, there was
17 some evidence that he had provided the handgun that was
18 used in the robbery.

19 So I think based upon the facts of the case and the
20 testimony he heard, he thought that the hand of one, hand
21 of all was inextricably linked to any of the underlying
22 charges.

23 MR. KOZACKI: Your Honor, Judge Anderson himself was
24 concerned about the second reading of the hand of one,
25 hand of all. I can refer Your Honor to the transcript,

1 page 455.

2 It specifically indicates, "I believe I'm correct,
3 but if I have committed an egregious error, those in
4 higher places will correct it. I just simply would
5 disagree, absolutely."

6 THE COURT: Say that again, said we will disagree --

7 MR. KOZACKI: "I just simply would disagree,
8 absolutely." So --

9 THE COURT: He would disagree with who?

10 MR. KOZACKI: We would just disagree with the...

11 THE COURT: Appellant --

12 MR. KOZACKI: Yes.

13 THE COURT: Reversed him?

14 MR. KOZACKI: That it would reverse him, that's
15 right.

16 THE COURT: Okay.

17 MR. KOZACKI: At least that's my understanding of the
18 reading, Your Honor.

19 MR. THOMAS: It seems to be a common theme in Judge
20 Anderson's trials.

21 MR. KOZACKI: I won't go so far as to say that.

22 THE COURT: He was not equivocating his decision?

23 MR. KOZACKI: No, sir.

24 That would be all from the Applicant, Your Honor.

25 THE COURT: To reiterate what the State's position is

1 that in order for there to be a proper charge on armed
2 robbery given these facts, you would have to charge the
3 hand of one is the hand of all because of the facts of
4 this case and the fact that he provided the gun?

5 MR. THOMAS: That's correct, Your Honor. I think
6 just to add to that, I mean, there's -- we have to give
7 great deference to appellate counsel's judgment in
8 selecting the issue on appeal. I think she probably chose
9 not to brief this issue because of the -- if the jury was
10 simply instructed on the armed robbery charge. It
11 would -- it would have required them to find that he
12 actually physically held someone at gunpoint, which was
13 not the facts that were presented.

14 THE COURT: The facts that were alleged and put forth
15 by the State is that he was present when all of this took
16 place, but he didn't hold a gun to anybody?

17 MR. THOMAS: Just if I can summarize it. Please
18 somebody correct me if I misstate it. Basically, the
19 State's case was he -- his brother picked him up with a
20 couple of the other codefendants.

21 They all drove to these apartments. The defendant
22 provided a handgun to the brother. The brother and the
23 two other codefendants held the victims at gunpoint, went
24 into the apartment, took their things.

25 While they were in the apartment, he popped his head

1 in the door, said, "Hey, it's time to go," and he drove
2 them away. That's basically the State's position.

3 THE COURT: But he -- if you take the State's version
4 of the facts, he was the getaway driver who had some minor
5 involvement in that he came and stuck his head in the
6 door.

7 MR. KOZACKI: Correct.

8 THE COURT: That he was the getaway driver?

9 MR. THOMAS: Correct.

10 THE WITNESS: I would like to say something, sir.

11 THE COURT: All right. Well, now is not the time for
12 that. You can speak with your lawyer if you like.

13 (Pause).

14 Would you like to add anything, Mr. Kozacki?

15 MR. KOZACKI: Nothing further, Your Honor.

16 THE COURT: What were the issues that were briefed
17 for appeal, or was it an Anders brief?

18 MR. THOMAS: Your Honor, if I may, the issue on
19 appeal was the reference to the gang.

20 THE COURT: Okay. I got you.

21 MR. THOMAS: That's what appellate counsel clearly
22 thought was the issue.

23 MR. KOZACKI: My understanding was that was the only
24 issue raised, Your Honor.

25 THE COURT: Let me just ask you a theoretical

1 question, Mr. Kozacki. Did -- at the judicial conference
2 that we were -- not the judicial conference but the South
3 Carolina Bar, did you attend that?

4 MR. KOZACKI: Which one, Your Honor?

5 THE COURT: The one this past -- a couple of weeks
6 ago.

7 MR. KOZACKI: Did not attend that, Your Honor.

8 THE COURT: You know, they -- the South Carolina Bar
9 hired an appellate expert who is supposed to be the very
10 best in the world. The first thing that he told the
11 lawyers at the South Carolina Bar was that you need to
12 pick your strongest argument and not to dilute your
13 arguments with weaker arguments, and that that's something
14 that appellate counsel is required to do in order to be
15 effective. You've got to do that. You've got to pick
16 your best argument and not water it down with weaker ones.
17 Who do you think about that?

18 MR. KOZACKI: I would agree with that, Your Honor, in
19 a situation where there has been one egregious error that
20 far outweighed all of the others, but when you have
21 multiple errors, I've always taken the position that it's
22 better to address all of them.

23 I'd be more concerned with my interpretation of the
24 strongest argument not being that of perhaps the appellate
25 justices.

1 In a situation like this, unfortunately, there is --
2 we believe there's been several instances of deficient
3 performance, and my client has indicated that he wishes to
4 pursue all of that.

5 THE COURT: All right. Anything further from
6 anybody?

7 MR. KOZACKI: Nothing further from the Applicant,
8 Your Honor.

9 MR. THOMAS: Nothing from the State.

10 THE COURT: Very good.

11 Mr. Williams, I'm going to take this matter under
12 advisement. These are very important matters. I'm going
13 to have to have an opportunity to review the transcript
14 and the affidavit that's been presented here today.
15 You'll receive a decision through your counsel. He will
16 receive an order, and he'll provide that to you. Thank
17 you. Good luck to you.

18 THE WITNESS: Appreciate it.

19 MR. KOZACKI: Thank you, Your Honor.

20

21 (Whereupon, the proceedings were concluded.)

22

23

24

25

1 CERTIFICATE OF REPORTER:

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF FLORENCE)

5

6

7 I, Karen Ambroziak, Official Court Reporter for the

8 5th Judicial Circuit of the State of South Carolina, do

9 hereby certify that the foregoing is a true, accurate and

10 complete Transcript of Record of the proceedings had and

11 evidence introduced in the trial of the captioned case,

12 relative to appeal, in the Court of Common Pleas for

13 Florence County, South Carolina, on the 10th day of

14 February, 2014.

15

16

17 April 30, 2014

18 Karen Ambroziak

19

20 Karen Ambroziak, RPR

21 Circuit Court Reporter

22

23

24

25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C/A NO. 2012-CP-21-2694
	)	
LEWIS DAVID WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF LEWIS
vs.	)	DAVID WILLIAMS
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
_____	)	



Personally appeared before me the undersigned who being sworn deposes and states as follows:

1. I am over the age of 18 and familiar with the information contained in this affidavit.
2. That I am the Applicant in the above-referenced action for post-conviction relief.
3. That I am currently incarcerated at Lee Correctional Institution in Bishopville, South Carolina, following my conviction for 1st Degree Burglary (Indictment No. 2008-GS-21-1800), Armed Robbery (Indictment No. 2008-GS-21-1800), and Possession of a Firearm During the Commission of a Violent Crime (Indictment No. 2008-GS-21-1800).
4. That I was convicted of the above-referenced charges following a jury trial on or about June 15, 2009. At trial, I was represented by C. Stevens McLaurin, Esq.
5. That, following my conviction, I was sentenced to a concurrent term of 20 years for 1st Degree Burglary, 20 years for Armed Robbery, and 5 years for Possession of a Firearm During Commission of a Violent Crime for the above-referenced charges.
6. That I believe I am being held in custody unlawfully for the following reasons: I received ineffective assistance of legal counsel (both at the trial and appellate levels), I was denied due process, and I was denied my constitutional right to a fair trial.
7. In particular, my trial counsel was ineffective, since he failed to move for a mistrial and/or seek a curative statement, when my aunt, Ms. Rosa Williams, was inexplicably and wrongfully allowed to tell the jury that she wanted to "apologize to the people for what my nephew had done to them..." (Trial Transcript p. 395, lines 6-8). The effect of such was that the jury was led to believe that my alibi witness believed I was guilty when I was not. I believe that my counsel's ineffectiveness in this regard was deficient and that I was seriously prejudiced. My legal counsel's conduct so undermined the proper functioning of the

adversarial process that my trial cannot be relied upon as having produced a fair result. I also firmly believe that there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. Similarly, counsel's performance was so deficient that prejudice should be presumed. Indeed, just as the trial judge had forewarned before the statement was allowed to be given, "I don't want to mess up this trial" (Trial Transcript p. 395, lines 2-3).

8. Moreover, my trial counsel was also ineffective for failing to inquire of the co-defendants as to whether they had any personal knowledge of him ever being in a gang. Notably, had trial counsel made such an inquiry, and it was determined that the co-defendants had no personal knowledge of any alleged gang involvement, the trial judge may have disallowed any usage of the term "gang" at trial. My legal counsel's conduct so undermined the proper functioning of the adversarial process that my trial cannot be relied upon as having produced a fair result. I firmly believe that there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. Similarly, counsel's performance was so deficient that prejudice should be presumed.
9. Furthermore, my trial counsel was also ineffective for failing to make any motion to suppress the testimony of co-defendant Hakeem Randy Costa. Notably, at the time of his questioning by police, Mr. Costa was a minor of 16 years of age. Without parental consent and/or their being a parent present, Mr. Costa provided a statement which implicated me. That statement was illegally and wrongfully obtained and its contents should not have been admitted. Again, my legal counsel's conduct so undermined the proper functioning of the adversarial process that my trial cannot be relied upon as having produced a fair result. I firmly believe that there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. Similarly, counsel's performance was so deficient that prejudice should be presumed.
10. Additionally, my appellate counsel was also ineffective for failing to raise and/or challenge the trial judge's second reading of the "Hand of One is the Hand of All" charge when the jury requested only the "criteria for armed robbery" (Trial Transcript p. 454, lines 2-3). Despite trial counsel's timely and proper objection thereto, the trial judge improperly and wrongfully once again charged the law on the "Hand of One is the Hand of All." The improper effect of the second charge was that I was guilty, when I was not. I also believe that my appellate counsel's ineffectiveness in this regard was so deficient and that my appeal was seriously prejudiced. I also firmly believe that there is a reasonable probability that, but for appellate counsel's deficient performance, the result of the proceeding would have been different.
11. I understand that making any false statements within this affidavit may subject me to criminal liability.
12. For the reasons set forth herein, I respectfully request that my criminal conviction and sentence be vacated and set aside. I also request that I be afforded a new trial.

13. I further attest that I am making these statements freely and voluntarily, without coercion or duress.
14. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.



Lewis David Williams

Sworn to before me this 10
day of January, 2014.


Notary Public, State of South Carolina
My commission expires: 6-5-16

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
CIRCUIT

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL

Lewis David Williams, # 286960,

Case No. 2012-CP-21-02694

Applicant,

v.

ORDER

State of South Carolina,

Respondent.

FILED
2014 MAR 10 AM 11:05
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed on October 12, 2012. Respondent filed a Return on or around February 5, 2013. The Court convened a hearing in Florence County on February 10, 2014, at which time Applicant, Lewis David Williams (Applicant) was present in court and represented by Jerome Scott Kozacki, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented the Respondent, State of South Carolina (Respondent).

BACKGROUND

The Florence County Grand Jury, during the December 2008 term, indicted Applicant for first-degree burglary, armed robbery, and possession of a weapon during a violent crime (2008-GS-21-01800). The court appointed C. Stevens McLaurin, Esquire from the private bar to represent Applicant at trial. On June 18, 2009, a jury convicted Applicant as indicted on all charges. The Honorable Ralph King Anderson sentenced Applicant to concurrent twenty years imprisonment on each offense.

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Subsequently, Applicant filed a timely notice of appeal. Deputy Chief Appellate Defender, Wanda H. Carter, Esquire, represent Applicant on appeal. The South Carolina Court of Appeals confirmed Applicant's conviction on or around March 12, 2012. Applicant is presently confined by the South Carolina Department of Corrections.

ISSUES PRESENTED

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of (Trial) Counsel"
2. "Denied Due Process of Law" (Ineffective assistance of appellate counsel)
3. "Denied Constitutional Right to a Fair Trial"

STANDARD OF REVIEW

The Sixth Amendment of the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amen. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E.2d 674 (1984); Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011). A defendant is also entitled to effective assistance of appellate counsel. Tisdal v. State, 357 S.C. 474, 594 S.E.2d 166 (2004).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.E.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 80 L.E.2d 674). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

SUMMARY OF TESTIMONY

Applicant testified that his trial counsel was ineffective in the following ways: (a) failed to challenge references to gang activity; (b) allowed witness to address the jury; and (c) failed to make a motion to suppress information obtained from the State's witness, Hakeem Costa (Costa), through police interrogation.

First, Applicant stated that he met with his attorney on multiple occasions prior to trial to discuss the following: Applicant's charges, their elements, and potential defenses; trial strategy; and potential witnesses. Applicant testified that his trial counsel should have objected to any reference of his alleged gang involvement by any witness. Applicant averred that because

counsel permitted the State's witnesses to testify that Applicant was in a gang, the jury was misled and thus, readily convicted him.

The Court also heard testimony from Applicant's trial counsel, Mr. McLaurin. McLaurin testified that prior to trial he made a motion in limine regarding any potential "gang" allegations. The trial judge, however, denied his motion and determined that a gang reference would be permitted, so long as it is a reference and not an etiology on Applicant's alleged gang membership. Therefore, McLaurin averred that he made a difficult strategic decision to not object or cross a witness on any gang reference so as not to draw any unwanted attention to this allegation or open the door to potentially harmful testimony. Additionally, McLaurin stated that he asked Applicant after every witness if Applicant wanted him to ask any follow-up questions, yet Applicant never did.

Second, Applicant testified that his Aunt, Rosa Williams (Rosa), served as his alibi witness at trial. At the conclusion of her testimony, Rosa, without any prompt from the court or an attorney, turned to the jury and stated, "I just want to apologize to the people for what my nephew had done to them and give them my sympathy." Applicant argued that this improper statement prejudiced him in that it implicated Applicant and convinced the jury of his guilt.

Again, the Court heard McLaurin state that he made a strategic decision to withhold any object^W regarding Rosa's statement. McLaurin testified that Rosa is the aunt to three individuals involved in this crime. McLaurin contended that during the moment, he did not believe Rosa—the final witness in the trial and Applicant's alibi witness—was referring to Applicant, but another nephew who admitted to the crime.

Third, Applicant testified that trial counsel was ineffective by counsel's failure to suppress Hekeem Randy Costa's initial statement to police. Applicant contended that Costa's constitutional rights were violated when he gave the statement because he was a minor and Costa's parents were not present during this confession. Applicant averred that his trial counsel had standing to suppress this statement. However, McLaurin testified that he was unsure about Applicant's standing to object to any violation of Costa's constitutional rights. Despite this legal quandary, McLaurin contented that Costa's initial statement was an integral part of Applicant's defense strategy, which was to discredit any witness who placed Applicant at the scene and introduce Applicant's aunt Rosa as an alibi witness. McLaurin averred that because Costa provided police with two conflicting statements, McLaurin could use these statements to impeach and discredit ^eone of the State's eye-witnesses.

Finally, Applicant testified that his appellate counsel was deficient. Applicant claimed he is entitled to relief because his appellate counsel failed to raise the fact that the trial judge charged the jury twice on the "hand-of-one is the hand-of-all" doctrine. Respondent contends that this was a strategic decision by appellate counsel. Furthermore, Respondent argued that this claim was frivolous; therefore, appellate counsel was not required to raise this issue on appeal.

ANALYSIS

The Court has reviewed the record in its entirety, heard the testimony and arguments presented at the PCR hearing, and reviewed the relevant case law. The Court has further had the opportunity to observe each witness who testified at the hearing and closely pass upon their credibility. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

I. Ineffective Assistance of Trial Counsel

Where trial counsel articulates valid reasons for employing certain strategy, the court will not deem his or her conduct as ineffective assistance. Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992); Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Furthermore, the court measures this strategy under an objective standard of reasonableness. Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002).

Here, trial counsel defended his actions as strategic decisions and his supporting logic was reasonable and manifold. It appears that Applicant and McLaurin developed a clear strategy prior to trial. This strategy focused on Applicant's alibi. McLaurin made several strategic decisions during the course of Applicant's trial in furtherance of this goal: he chose not to dwell or probe any witnesses about gang references; he did not object to Rosa's apology because he believed it helped strengthen her credibility; and he did not suppress Costa's initial statement to police because he wanted to use Costa's conflicting statements for impeachment. As such, this Court finds that Applicant's trial counsel was not deficient.

II. Ineffective Assistance of Appellate Counsel

Although appellate counsel must provide effective assistance of counsel, "appellate counsel is not required to raise every nonfrivolous issue that is presented by the record." Tisdal, 357 S.C. at 476, 594 S.E.2d at 167 (citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every "colorable" claim suggested by a client would disserve the very goal of vigorous and effective advocacy. . . ." Id. The burden of proof is on respondent to show that counsel's performance was deficient as measured by prevailing

professional norms, and that respondent was prejudiced by this deficiency. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Southerland, 524 S.E.2d at 836. On appeal, counsel for Applicant only raised the trial court's decision to admit the testimony of Applicant's alleged gang membership. It appears that counsel did not raise any other issues on appeal.

During the trial, it appears that the jury asked for the judge to re-charge them on the law regarding armed robbery. The court determined that the evidence presented at trial necessitated that he also re-charge the jury on the "hand-of-one is the hand-of-all" doctrine. McLaurin objected; the judge disagreed.

Trial court judges are required to charge the jury on the law, not to matters of fact. S.C. CONST Art. V, § 21. A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence presented at trial. State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002). If any evidence exists to support a charge, it should be given. State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999). A jury charge which is substantially correct and covers the law does not require reversal. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996). Furthermore, the court of appeals, when reviewing jury charges for error, consider the jury charge as a whole in light of the evidence and issues present at trial. State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

In the present case, the trial judge determined that upon the jury's request to be recharged on armed robbery he would reread his charge on the "hand-of-one is the hand-of-all" doctrine.

In doing so the judge stated,

It would be a very grave oversight on my part if I omitted the charge of the hand-of-one hand-of-all and charging the jury in a recharge setting in regard to their request of armed robbery. The offense of armed robbery does not in this case completely present itself without the applicability and efficacy of the hand-of-one hand-of-all doctrine.

This Court finds that the judge's accurate reading of the applicable law did not prejudice Applicant. As such, appellate counsel was not deficient for failing to raise this colorless claim on appeal. Assuming, *in arguendo*, that this charge was improper, his request for post-conviction relief fails because appellate counsel is not required to raise every potential claim on appeal.

CONCLUSION

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

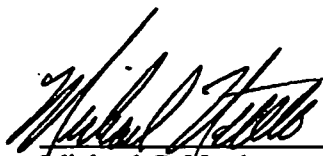
The Court notes that Myers must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the

applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is DENIED.
2. That Applicant be remanded to the custody of the Department of Corrections to complete the remainder of his sentence.

AND IT IS SO ORDERED this 7 day of March, 2014.



Michael G. Nettles
Presiding Judge, Twelfth Judicial Circuit



, South Carolina

FILED
2014 MAR 10 AM 11:05
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES
LT. JAMES RODGERS FPD

Barley

PROS: PSP
D/O: 06-05-2008

ARREST WARRANT NO.

J398298 (1), J398300 (1), J398302 (1),
J398496 (1), J398297 (2), J398299 (2),
J398301 (2), J398495 (2), J398297 (3),
J398299 (3), J398301 (3), J398495 (3).

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2008 - GS - 21 - 01800

The State of South Carolina,

County of FLORENCE

PSP

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE
vs.

HAKHEEM RANDY COSTA
CHRISTIAN RAYNORD RICHARDSON
LEWIS DAVID WILLIAMS
SHAKIM KEITH WILLIAMS

Indictment for

ARMED ROBBERY,
BURGLARY (FIRST DEGREE),
AND
POSSESSION OF WEAPON
DURING COMMISSION OF VIOLENT CRIME

2008 NOV 20 PM 1:21
COUNTY CLERK
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
J. R. Spear
CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
ARMED ROBBERY, BURGLARY (FIRST DEGREE),
AND POSSESSION OF WEAPON DURING COMMISSION
OF VIOLENT CRIME

At a Court of General Sessions, convened on NOVEMBER 20, 2008, the Grand Jurors of FLORENCE

County present upon their oath:

✓
COUNT ONE - ARMED ROBBERY

That HAKEEM RANDY COSTA, CHRISTIAN RAYNORD RICHARDSON, LEWIS DAVID WILLIAMS AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about June 05, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, did feloniously rob Corey Byrd, Matthew Rogers, Jessica Waters, Barry Poston and Sherelle Brooks, by means of force or intimidation, goods or monies of the said victims, to-wit: U.S. currency, cellphones, wallets and a purse.

COUNT TWO - BURGLARY FIRST DEGREE

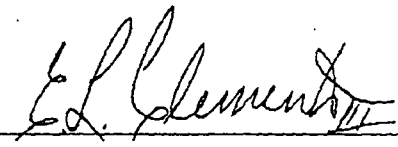
That HAKEEM RANDY COSTA, CHRISTIAN RAYNORD RICHARDSON, LEWIS DAVID WILLIAMS AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about June 05, 2008, violate Sections 16-11-0311 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did enter the dwelling of Matthew Rogers, without consent and with the intent to commit a crime therein; and/or said defendant entered or remained in said dwelling in the nighttime; and/or when effecting entry or while in the dwelling or in immediate flight therefrom, they or another participant in the crime were armed with a deadly weapon or explosive; and/or caused physical injury to a person who is not a participant in the crime; and/or used or threatened the use of a dangerous instrument; and/or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the said HAKEEM RANDY COSTA, CHRISTIAN RAYNORD RICHARDSON, LEWIS DAVID WILLIAMS AND SHAKIM KEITH WILLIAMS, has two or more prior convictions for Burglary or Housebreaking or a combination of both.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ARMED ROBBERY, BURGLARY (FIRST DEGREE), AND POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME WITH THE AFORESAID NAME(S) OF HAKEEM RANDY COSTA, CHRISTIAN RAYNORD RICHARDSON, LEWIS DAVID WILLIAMS AND SHAKIM KEITH WILLIAMS SHOWN THEREON:

COUNT THREE - POSSESSION OF WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

That HAKEEM RANDY COSTA, CHRISTIAN RAYNORD RICHARDSON, LEWIS DAVID WILLIAMS AND SHAKIM KEITH WILLIAMS did in FLORENCE County on or about June 05, 2008, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that they were in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun, during the commission of a violent crime, to wit: Burglary First Degree and Armed Robbery.

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


SOLICITOR