

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County
R. Ferrell Cothran, Jr., Circuit Court Judge

WILLIAM DAVID YARBOROUGH,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-000229

PRO SE MEMORANDUM
TO JOHNSON PETITION FOR WRIT OF CERTIORARI

WILLIAM DAVID YARBOROUGH
PRO SE PETITIONER
4460 Broad River Road
Columbia, S.C. 29210

INDEX

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ISSUE PRESENTED

Did the PCR Court err in failing to find plea counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly?

STATEMENT

On May 17, 2010, Yarborough filed an application for post-conviction relief (PCR). He filed an amended PCR application on October 29, 2013. The State filed a return on November 15, 2013. An evidentiary hearing was held on December 16, 2013 before the Honorable R. Ferrell Cothran, Jr. Yarborough was represented by Charles T. Brooks, and the State was represented by Daniel Gourley. App. 59. On January 14, 2014, Judge Cothran issued an order denying Yarborough's PCR application and dismissing it with prejudice. App. 138 – App. 149. Yarborough's attorney filed a timely notice of appeal. This petition follows.

ARGUMENT

The PCR Court erred in failing to find plea counsel ineffective for not insuring that Petitioner's guilty plea was entered freely, voluntarily and knowingly.

Ineffective Assistance of Counsel

First, there was a conflict of interest. Petitioner's trial counsel never informed him that he had represented the 2007 victim and her family prior to representing petitioner on this case. U.S. v. Cronie, 466 U.S. 648, 659 (1984). Counsel was supposed to have informed petitioner, giving him the option rather or not to proceed forward with him into trial.

Trial counsel was ineffective for knowing that conflicting statements by the 2002 victim existed and never attacked them at preliminary hearing or pretrial.

Trial Counsel was ineffective for knowing that the indictments had no victims' names on them. Knowing that any defects to indictments had to be raised prior to trial, and the indictments due to these facts were sham legal processed.

Trial counsel was ineffective by not having petitioner receive a mental evaluation when he knew petitioner had been treated while in the marines for alcohol addiction and when he drank, he frequently did not remember things. Counsel knew that petitioner was also diagnosed with Post Traumatic Stress Disorder (PTSD), and receives a 60% disability rating from the V. A. This could have determined a plea of not guilty by way of insanity.

Trial counsel was ineffective for not doing a proper investigation.

In Strickland, 466 U.S. at 692 (right to effective assistance of counsel impaired when defense counsel operates under conflict of interest because "counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties"). U.S. Const. Amendment 6. In Javor v. United States, 724 F. 2d 831, 834 (CA 9 1984) ("Prejudice is inherent in this case because unconscious or sleeping counsel is equivalent to no counsel at all.") Petitioner was abandoned by trial counsel as well as PCR counsel. Thus, the Court must presume prejudice Strickland, 466 U.S. 692, 104 S. Ct. at 2067. Trial counsel acted as a second solicitor. Doing more damage than the State. Rickman v. Bell 131 F. 3d 1150 96th Cir. 1997).

Violation Under Brady

The State, its prosecutors and petitioner's attorney were in violation of petitioner's Due Process Rights of the 5th Amendment of the U.S. Constitution according to Brady v. Maryland, 373 U.S. 83, 87 (1963). Critical evidence was withheld that could have acquitted the petitioner. Such as the results of the rape kit that was performed on the 2002 and 2007 victim, statements by victims and witnesses, pictures of the kitchen window, phone records and finger and foot prints in the 2007 case that the Williamsburg County Sheriff's Department had found.

The pictures of the window that the 2007 victim claimed that the petitioner allegedly climbed through was too small for the 6' foot 2" inches, 250 pound petitioner to even fit in, the finger or foot prints did not match and the phone records would have proved an off the job relationship.

A jury merely needs reasonable doubt. We see that reasonable doubt clearly exist in this case. Therefore, if the petitioner had knowledge of the information that he has now he would not of pled guilty but most certainly would have requested a trial.

App. page 6 line 1 thru 13: Treated in the marines for alcohol

App. page 6 line 16 thru page 9 line 3: All the medication I take and what they are for

App. page 8 line 5 thru line 19: Lawyer acting as a psychologist when answering the judge about my mental state.

App. page 19 line 8: unknown white male

App. page 19 line 9: came toward her in bed

App. page 19 line 17 thru line 18: individual that committed that crime gained entry to her house through the back door.

App. page 20 line 3 thru line 4: I guess, 10:00 in the morning that she woke up and felt that it was the Defendant who was in her room.

App. page 20 line 1 thru line 12: the police were called about five or six in the morning

App. page 22 line 22 thru line 25: victims did not wish to address the court

App. page 23 line 7 thru page 24 line 6: About service in the Marine Corps

App. page 24 line 7 thru line 12: It tells me that we have two David's

App. page 24 line 14 thru line 17: David he lived in the neighborhood

App. page 24 line 19 thru line 24: the date entered into the service and while in the service being treated for alcohol addiction

App. page 25 line 1 thru line 19: we have two different David's and alcohol addiction

App. page 26 line 9 thru line 10: we do have two David's and alcohol addiction

App. page 28 line 22 thru page 29 line 4: diagnosed with PTSD and what I went through in the war

App. page 35 question 10: A) Ineffective assistance of counsel
B) Involuntary and unknowing guilty plea
C) Due process violation

App. page 35 question 11: A) Trial counsel failed to inform me fully of the facts surrounding the DNA testing
B) Trial counsel failed to point out inconsistencies in the testimony of the alleged victims

- App. page 42 thru page 44: Post conviction relief issues
A) Erroneous sentencing advice
B) Counsel told client if he went to trial he would get a life sentence
- App. page 45 thru page 50: Ineffective for failing to conduct pretrial investigation both factual and legal before advising applicant to enter a plea of guilty
- App. page 46: Reason for being terminated from job because of relationship with daughter. Mother's statement in court that says that she woke her daughter up after 6:00 a.m.
- App. page 47: Father did not like the age difference and fired me. Mr. McKenzie was clearly aware applicant had been represented by prior counsel Mr. Charles D. Barr and therefore could have obtained the transcript of the bond hearing. Applicant asserts that if he had been provided this information he would not have pled guilty.
- App. page 48 thru page 50: Ineffective assistance of counsel, victim in 2002 and 2007 gave multiple inconsistent statements, ineffective assistance of counsel for not doing pretrial investigation.
- App. page 54: Return issue II 1-3
- App. page 61 line 14 thru line 25: Ineffective assistance of counsel failing to inform of the facts of DNA, failing to point out inconsistencies of the victims testimony, involuntary plea, due process violation, failing to do a pretrial investigation to get all the information that was missing from file
- App. page 62 line 4 thru line 9: Continuance for February to get all the information that was missing from file
- App. page 62 line 25 thru page 63 line 3: Not going to get a copy of the solicitor's file outside of the Rule 5 or the Brady material
- App. page 63 line 20 thru line 25: missing items out of file
- App. page 64 line 1 thru line 8: missing items out of file
- App. page 65 line 22 thru line 25: erroneous plea advice
- App. page 66 line 1 thru line 25: erroneous plea advice
- App. page 67 line 2 thru 13: DNA report not seen until after plea
- App. page 67 line 15 thru 25: missing item in discovery
- App. page 68 line 17 thru line 23: named items missing in discovery

App. page 69 line 1 thru line 8: no polygraph test results

App. page 69 line 13 thru line 25: inconsistencies of victims story
Two male DNAs

App. page 70 line 3 thru line 11: reasonable doubt to a jury about two male DNAs

App. page 70 line 14 thru line 18: false statement to procure an arrest warrant

App. page 71 line 11 thru line 25: erroneous plea advice

App. page 72 line 18 thru line 25: DNA two male donors

App. page 73 line 4 thru line 8: The DNA report would show that the victim was lying

App. page 73 line 15 thru line 16: consensual sex defense

App. page 74 line 1 thru line 3: Didn't remember having sex with victim

App. page 74 line 5 thru line 25: about the Marine Corps and my problems

App. page 75 line 16 thru line 21: no mental evaluation prior to plea

App. 75 line 21 thru line 25: indictment doesn't state a victims name

App. page 76 line 1 thru line 20: no victims statement so what went in front of the grand jury

App. page 76 line 23 thru line 25: no defense by lawyer

App. page 77 line 4 thru line 10: James Timmons

App. page 77 line 14 thru line 25: 2007 case nothing matched me in case but a statement no DNA
report

App. page 78 line 11: DNA only in 2002 case no DNA report in 2007 case

App. page 79 line 1 thru line 24: cooperation with police and statement of 2007 case

App. page 81 line 1 thru 19: DNA 2 donors, didn't see report until after I pled

App. page 82 line 11 thru line 25: Avoiding a life sentence by plea under counsel's erroneous
advice

App. page 83 line 3 thru line 7: reasonable doubt to a jury

App. page 83 line 11: plead to avoid a life sentence under counsel's erroneous advice

App. page 83 line 22 thru page 84 line 7: lawyer told me I would get a life sentence if I didn't take plea and my trial would start the next day

App. page 84 line 14 thru line 25: lawyer fell below standards

App. page 86 line 16 thru line 20: being represented to the fullest

App. page 86 line 22 thru line 25: withholding knowledge from client and forcing him to plea by erroneous advice

App. page 87 line 8 thru line 23: DNA match 2007 case, the DNA reports were never given to me

App. page 88 line 12 thru line 17: why I apologized hoping one of the alleged victims would confess that they were lying

App. page 88 line 18 thru line 25: why I pled guilty answered erroneous advice of counsel

App. page 89 line 6 thru line 25: took the word of my lawyer to heart and thought that he had given me all the evidence and investigated my case, which he didn't

App. page 90 line 13 thru line 25: gun mentioned that allegedly I used in 2007 but only in victims statement

App. page 91 line 13 thru page 92 line 2: evidence that goes against the 2007 victim

App. page 93 line 10 thru line 20: my mother's statement on telling my lawyer about investigating my case

App. page 94 line 10 thru line 11: no proof of any rape

App. page 95 line 1 thru line 8: after the plea seeing what was in the file my mother after being a paralegal for 12 years would have never advised me to plead guilty

App. page 96 line 7 through line 13: no rape kit produced or shown

App. page 97 line ___ thru line 12: relied on advice of lawyer

App. page 101 line 3 thru line 6: McKenzie said he went over the Rule 5 with me. So where are the missing items

App. page 101 line 10 thru line 25: 2007 case and how he represented me

App. page 102 line 1 thru line 10: McKenzie statement on how weak the case was in 2007

App. page line 7 - line 10; lawyer said that I lived in the area
with victim in 2002 case on HWY 52.
App. page 103 line 22 thru line 25: lawyer admits positive match to DNA 2007 case but I was never
shown nor given DNA report

App. page 104 line 14 thru line 25: James Timmons first suspect. There had to be a reason why
he was a suspect where is that statement or report.

App. page 106 line 1 thru line 3: admits there is a rape kit done but I never saw any results or
evidence in a rape kit

App. page 107 line 19 thru line 20: you can tell by the answers he gives on the 2002 case he not
only didn't know the case but there was no investigation done

App. page 108 line 2 thru line 13: McKenzie confirms the threat of a life sentence with not written
notice

App. page 109 line 9 thru line 20: McKenzie states that a jury will convict a person on DNA alone

App. page 110 line 16 thru line 20: contradicts his prior statement about length of the sentence by
saying the judge would probably give you a life sentence

App. page 111 line 19 thru line 22: McKenzie states that he laid it on the line with me that if
convicted I would serve a life sentence

App. page 112 line 3 thru line 7: admits that he did receive all the Rule 5 and Brady material. So
he withheld it.

App. page 113 line 9 thru line 14: stated there are two David's

App. page 113 line 20 thru line 22: stated victim testified at plea hearing but no alleged victim
addressed the court

App. page 113 line 22 thru line 24: stated I got him the best deal I could get him, he's going to
spend the rest of his life in jail

App. page 114 line 10 thru line 20: McKenzie stated that Carroway was my original lawyer
appointed to me but in fact McKenzie brought him in to so
call assist him

App. page 115 line 21 thru line 25: McKenzie admits that he represented me on all charges

App. page 116 line 14 thru line 25: "two DNAs" McKenzie says I don't know if I told Mr.
Yarborough or explained to Mr. Yarborough about the two
DNAs

App. page 117 line 17 thru line 25: McKenzie admits there is a report from 2002 about James Timmons. He never told me of any such report and I do not have it in my file

App. page 119 line 1 thru line 12: McKenzie admits again that he doesn't remember if he told me about the two DNAs

App. page 120 line 2 thru line 9: McKenzie changes his story and says he did tell me of the two DNAs

App. page 121 line 17 thru line 25: inconsistent with his story one minute he says that he showed me the next minute he says he turned it over to the State

App. page 122 line 19 thru line 25: Brooks asked McKenzie whether or not he discussed the facts about the two DNAs

App. page 123 line 5: McKenzie answered from what I recall McKenzie is not sure

App. page 123 line 9 thru line 11: McKenzie admits there was a rape protocol kit done in 2002

App. page 125 line 1 thru line 9: McKenzie states that James Timmons was the original suspect named by someone

App. page 126 line 24 thru line 25: did you investigate possible consensual sex

App. page 127 line 8: McKenzie admits he didn't hire and investigator

App. page 128 line 5 thru line 11: McKenzie never investigated Ms. Powell he said he felt like he didn't have to

App. page 128 line 12 thru line 19: McKenzie said it was his opinion that I was guilty without ever investigating the case and the possibility of consensual sex

App. page 129 line 2 thru line 11: McKenzie states client and Ms. Belding was in a relationship and had consensual sex in the past could win that case but let it ride with the 2002 case

App. page 129 line 11 thru line 24: McKenzie doesn't know the case and it shows in his statements. And his story about what the judge says about the life sentence changes again.

App. page 130 line 3 thru line 6: McKenzie never explored whether or not Ms. Powell had had consensual sex with his client. McKenzie answered no.

App. page 130 line 9 thru line 25: McKenzie shows in his statement and reading from his notes that he doesn't know the case at all

App. page 131 line 22: no alleged victim testified at the preliminary hearing

App. page 132 line 15: my statement about knowing Ms. Powell

App. page 133 line 1 thru line 17: my statement about knowing Ms. Powell

App. page 134 line 6 thru line 25: no evidence that a rape took place in the rape protocol kit. The only evidence is DNA like McKenzie said you know her story was that they went out on a date together and he raped her, that's argument about consensual sex. Never given any true facts on rape other than a DNA sample, no victim's statement and no doctor exam to prove rape.

App. page 135 line 1 thru line 10: consensual sex no trauma and tearing

App. page 135 line 12 thru line 14: Yarborough never got anything else from the so called rape kit other than DNA and he was wondering how to obtain that information

App. page 135 line 15 thru line 22: asking for a continuance to get all the evidence in my case dealing with the rape kit and all other evidence missing from file

App. page 135 line 23 thru page 136 line 1: whether or not plea was voluntarily given and whether or not we could have explored the avenue of consensual sex on the first case

App. page 136 line 2 thru line 5: Judge granted ten days to contact the Solicitor's office to get all the missing items in file but attorney Brooks failed to make any attempt to do so

App. page 140 thru page 149: This will show that petitioner's attorney never did any investigation of the case.

This was my first attorney, Charles D. Barr, before he was relieved off of my case I would like the Court to take notice about items he requested in the Motion of Discovery and in what detail he requested them. This is to show the Court that I had two attorneys request a Motion of Discovery and this is all I received explained in the brief. And when an attorney is relieved and a new attorney is hired or appointed by the State the new attorney will request a copy of the previous attorney's file.

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

THE STATE,)

Plaintiff,)

vs.)

WILLIAM YARBOROUGH,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT
WARRANT NOS.: K-246024 & K246025
A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT

WILLIAMSBURG COUNTY
CONSENT ORDER RELIEVING
COUNSEL AND SUBSTITUTION
OF COUNSEL

AND

08 OCT 6 PM 3:34
FILED
CLERK OF COURT
KINGS TREE, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

THE STATE,)

Plaintiff,)

vs.)

WILLIAM YARBOROUGH,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT
WARRANT NOS.: J-991054 & J-991055

CONSENT ORDER RELIEVING
COUNSEL AND SUBSTITUTION
OF COUNSEL

WHEREAS, the Defendant has retained the legal services of Charles David Barr,
Esquire, to represent him in this matter; and

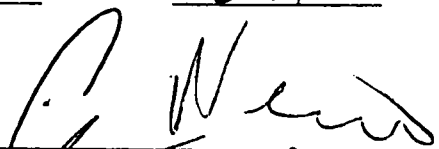
WHEREAS, the Defendant desires to relieve Charles David Barr, Esquire, and all of its attorneys, from any representation in this matter. Charles David Barr, Esquire, being relieved as attorneys is not for the purpose of delay or prejudice of any party in this case.

NOW THEREFORE, IT IS ORDERED, that based upon the Defendant's desire and consent of all parties in this matter, Charles David Barr, Esquire, and all of its attorneys, are hereby relieved from further representation of the Defendant in this matter.

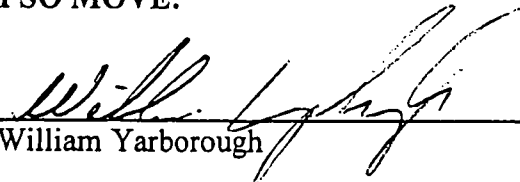
IT IS SO ORDERED THIS 6th DAY OF Oct 2008.

Kingstree, South Carolina

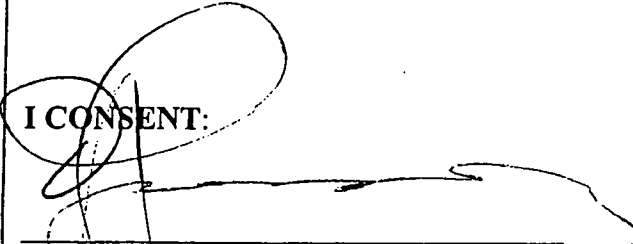
October 6, 2008


The Honorable C. H. Newman
Third Judicial Circuit

I SO MOVE:


William Yarborough

I CONSENT:


Charles David Barr, Esquire
Attorney for the Defendant

Johnson, McKenzie & Robinson, LLC
Attorneys at Law
2 North Brooks Street
Manning, South Carolina 29102

William H. Johnson*
Steven S. McKenzie
Scott L. Robinson

Telephone 803.435.0909
Facsimile 803.435.2858

October 2, 2008

Charles D. Barr
Barr & Barr, PA
PO Box 83
Kingstree, SC 29556

Re: State vs. William D. Yarborough

Dear Charles:

Please be advised that I have been retained by Mr. Yarborough to represent him in the above referenced matter. I have enclosed herewith a Consent Order Relieving Counsel prepared for your signature along with a copy of the Continuing or Durable Power of Attorney that has been signed by Mr. Yarborough and filed with the Williamsburg Clerk of Court's Office. Said Power of Attorney gives Ms. Pamela Gowdy the power to manage Mr. Yarborough's affairs. Once you have signed the Consent Order please return in the envelope provided.

Should you have any questions or concerns please feel free to give my office a call.

Sincerely yours,

Steven S. McKenzie

SSM:gpb
enc.
cc: Pamela Gowdy

existence of which is known, or by the exercise of due diligence may become known to the attorney for the State;

6. All evidence favorable to the defendant, or which would be helpful in the preparation of a defense or in mitigation of punishment. This includes, but is not limited to, the following:

a. All information relevant to the credibility of any State witness;

b. All information concerning the conduct, character and reputation of such witnesses which is relevant to his or her truthfulness or untruthfulness;

c. The criminal record of such witness, including specifically, any prior conviction of a crime punishable by death or imprisonment in excess of one (1) year or which involved dishonesty or false statements;

d. The substance of any agreement, or proposed agreement, either oral or written, made in the name of the State as to any State witness, the subject of which deals either directly or indirectly with the promise of immunization from prosecution, of favored treatment or leniency in return for either pleas of guilty, nolo contendere or favorable testimony in this case or in any other criminal or civil litigation or sentencing procedure;

e. All evidence tending to show that any acts or conduct by the defendant were done without criminal intent;

f. This request specifically includes any information, which could show that at the time of any alleged act, that the defendant was neither present, mentioned nor involved directly or indirectly;

g. All names and present addresses of persons who have any knowledge of the existence of any evidence which might be relevant to acts charged as a crime in the indictment against the defendant, including all persons who (a) will be witnesses for the State upon the trial of this case, or (b) will not be called as witnesses by the State;

h. The transcript of testimony of any and all persons who testified before the Grand Jury in this case; and

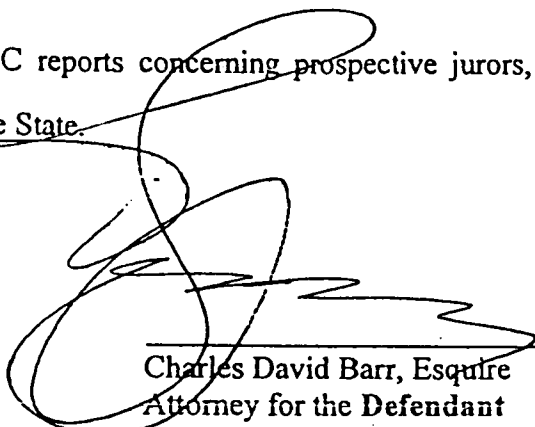
i. All evidence or information which may be favorable to the defendant and discoverable pursuant to Brady vs. Maryland, 373 USC 83 (1976).

7. All statements of witnesses producible under the South Carolina Rules of Criminal Procedure.

8. Copies of all NCIC reports concerning prospective jurors, provided such information has been made available to the State.

Kingstree, South Carolina

February 12, 2007



Charles David Barr, Esquire
Attorney for the Defendant
BARR & BARR, P.A.
Attorneys and Counselors At Law
319 W. Main Street *P.O. Box 83
Kingstree, South Carolina 29556
843-355-8001 Fax #: 843-355-8003

Incident Report 0211798

Incident Date: 06/13/2002

Time of Incident: 0530

Time that the Incident was called in to the Sheriff Dept: 0541

Time of dispatch to the Sheriff Dept: 0543

Time of the Sheriff Dept arrival on scene: 0550

- 1) On the above date and time R/O responded to the above address to speak with the victim.
- 2) The victim stated an unknown subject entered her back door around 0530 hrs.
- 3) The victim stated the subject set down on the side of the bed and put his hands over her mouth.
- 4) The victim stated the subject was wearing gloves.
- 5) The victim stated the subject said be quiet for your childs sake.
- 6) The victim stated the subject then push her over on her stomach, pulled off her shorts and had intercourse with her from behind, while holding her face into the pillow.
- 7) The victim stated the baby started crying and the unknown subject ran out the back door.

INCIDENT REPORT

| INCIDENT TYPE | COMPLETED | FORCED ENTRY | PREMISE TYPE | UNITS ENTERED | TYPE VICTIM |
|----------------------------------|---|---|--------------|---------------|---|
| 1. 11A - CRIMINAL SEXUAL CONDUCT | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <input type="checkbox"/> YES <input type="checkbox"/> NO | 20 | | <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off. |
| 2. 220 - BURGLARY 1ST DEGREE | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO | 20 | | |
| 3. | <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> YES <input type="checkbox"/> NO | | | |

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) **397 WILLIAMSBURG HWY, KINGSTREE SC** ZIP CODE **29556** WEAPON TYPE **99**

| INCIDENT DATE | 24 HR. CLOCK | TO | DATE | 24 HR. CLOCK | DISPATCH DATE/TIME 24 HR. CLOCK | LOCATION NO. |
|---------------|--------------|----|------------|--------------|--|--------------|
| 06/13/2002 | 0541 | | 06/13/2002 | 0541 | DISP. DATE: 06/13/2002 DISP. TIME: 0543 TIME ARRIVED: 0550 DEPART. TIME: 0650 | |

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) **CHANDLER, ERICA POWELL** RELATIONSHIP TO SUBJECT #1 #2 #3 RESIDENT RACE SEX AGE ETH DAYTIME PHONE EVENING PHONE
 #1 #2 #3 J S O U W F 29 N 843-373-0183 H B H B

ADDRESS **345 MALLARD ROAD** CITY **COWARD** STATE **SC** ZIP CODE **29530** LOCATION NO.

VICTIM'S NAME (LAST, FIRST, MIDDLE) **POWELL, ERICA** RELATIONSHIP TO SUBJECT #1 #2 #3 RESIDENT RACE SEX AGE ETH DAYTIME PHONE EVENING PHONE
 #1 #2 #3 A Q J S O U W F 23 U 843-382-5229 H B H B

HEIGHT **5-8** WEIGHT **105** HAIR **XXX** EYES **XXX** FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS **397 WILLIAMSBURG CTY HWY** CITY **KINGSTREE** STATE **SC** ZIP CODE **29556** LOCATION NO.

VISIBLE INJURY (VICT. 1) YES NO EXPLAIN - **Apparent Minor Injur**
 VICTIM (NO. 1) USING: ALCOHOL: YES NO UNK. DRUGS: YES NO UNK.

TWO-MAN VEH. ONE-MAN VEH. DETECTIVE/SPLASMT. OTHER ALONE ASSISTED **J - This Jurisdiction S - State O - Out of State U - Unknown**

SUSPECT SUBJECT NAME (LAST, FIRST, MIDDLE) **YARBOROUGH, WILLIAM DAVID** RACE **W** SEX **M** AGE **29** ETH **N** DATE OF BIRTH **10/16/1978** HEIGHT **6-1** WEIGHT **250** HAIR **BRO** EYES **BRO**

RUNAWAY FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

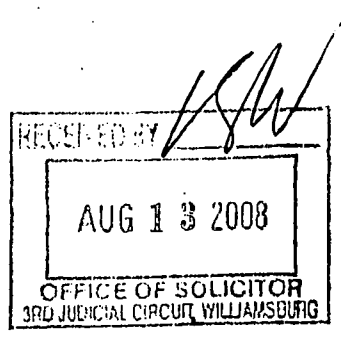
WANTED ADDRESS **110 CHURCH ST** CITY **KINGSTREE** STATE **SC** ZIP CODE **29556** LOCATION NO.

ARREST JAIL SUBJECT (NO. 1) USING: ALCOHOL YES NO UNK. ARRESTED NEAR OFFENSE SCENE YES NO DATE/TIME OF OFFENSE **06/13/2002 0541** DATE/TIME OF ARREST **07/24/2008 1700**

SUMMONS DRUGS: YES NO UNK. TYPE: TOTAL # ARRESTED **1** **06/13/2002 0541 07/24/2008 1700**

BURGLARY 1ST CSC (POWELL) [Narrative ID = 0211798 INS001001]
 Added 06/13/2002 - 09:23:00 By WILLIAMS C A

ON THE ABOVE DATE AND TIME R/O RESPONDED TO THE ABOVE ADDRESS TO SPEAK WITH THE VICTIM. THE VICTIM STATED AN UNKNOWN SUBJECT ENTERED HER BACK DOOR AROUND 0530HRS. THE VICTIM STATED THE SUBJECT SET DOWN ON THE SIDE OF THE BED AND PUT HIS HANDS OVER HER MOUTH. THE VICTIM STATED THE SUBJECT WAS WEARING GLOVES. THE VICTIM STATED THE SUBJECT SAID BE QUIET FOR YOUR CHILDS SAKE. THE VICTIM STATED THE SUBJECT THEN PUSHED HER OVER ON HER STOMACH, PULLED OFF HER SHORTS AND HAD INTERCOURSE WITH HER FROM BEHIND, WHILE HOLDING HER FACE INTO THE PILLOW. THE VICTIM STATED THE BABY STARTED CRYING AND THE UNKNOWN SUBJECT RAN OUT THE BACK DOOR.



| TYPE (GROUP) | | JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY | TOTAL VALUE | |
|--|---|--|--|--|-------------|
| urned | | | | | |
| ount./Forged | | | | | |
| est./Damaged | | | | | |
| covered | | | | | |
| ized | | | | | |
| olen | | | | | |
| nkown | | | | | |
| SUBJECT IDENTIFIED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | SUBJECT LOCATED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <input type="checkbox"/> ACTIVE <input checked="" type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED | <input type="checkbox"/> ARRESTED UNDER 18 <input checked="" type="checkbox"/> ARRESTED 18 AND OVER | <input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER | |
| REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE - NO CUSTODY | | | | | |
| REPORTING OFFICER(S) | DATE | UNIT NUMBER | APPROVING OFFICER | DATE | UNIT NUMBER |
| ICCULLOUGH R | 06/13/2002 | | FOLLOW-UP INVESTIGATION OFFICER <input type="checkbox"/> YES <input type="checkbox"/> NO SGT JUSTIN WHACK | | |

Incident Report Supplemental Case # 0211798

Date Entered/Changed 07/23/2008

Detailed statement of Investigation: On the 22nd of July, 2008 Inv. Whack received a letter addressed from S.L.E.D. stating there was a positive match for DNA on a sample submitted on a criminal sexual conduct case.

Inv. Whack then took the case number provided from the letter and found the incident report and found the victim to be Mrs. Erica (Powell) Chandler.

The DNA sample came back to William David Yarborough.

After reading the letter Inv. Whack made contact with Mrs. Chandler and asked her could she come to the Sheriff Office in reference to her case and she stated she could come to the office on the 23rd of July, 2008 and meet with Inv. Whack.

* On the 23rd of July, 2008 Inv. Whack did make contact with Mrs. Chandler at the Sheriff Office.

1) Mrs. Chandler stated the incident took place on the 13th of June, 2008 around the time of 0530 Hrs. at 397 North Williamsburg County Highway located in the Kingtree area of Williamsburg County.

2) Mrs. Chandler stated she then opened her eyes and saw a person then she closed her eyes and opened them again cause she thought she might have been dreaming.

3) Mrs. Chandler stated when she opened her eyes the second time the person had made his way to her bed.

4) Mrs. Chandler stated the person then grabbed her and covered her mouth.

5) Mrs. Chandler stated after covering her mouth the person told her if she said anything he would kill her child.

6) Mrs. Chandler stated she then complied and that is when the person turned her onto her stomach and proceeded to force his penis inside her.

7) Mrs. Chandler stated after the person was finished they left the same way that they had come.

8) Mrs. Chandler stated the person had on leather work gloves and his voice was real rough.

9) Mrs. Chandler stated she could not tell who the person was or the body size of the person because the house was dark but she do know it was a white male.

10) Mrs. Chandler stated the person had entered the residence through the back door.

INCIDENT REPORT SUPPLEMENTAL

Case Number: 0211798

icer:1865 WHACK, JUSTIN

Date Entered/Changed: 07/23/2008

Reviewer:

Review Date:

MAILED STATEMENT OF INVESTIGATION: ON THE 22ND OF JULY, 2008 INV. WHACK RECEIVED A LETTER ADDRESSED FROM S.L.E.D. TING THERE WAS A POSITIVE MATCH FOR DNA ON A SAMPLE SUBMITTED ON A CRIMINAL SEXUAL CONDUCT CASE. INV. WHACK THEN K THE CASE NUMBER PROVIDED FROM THE LETTER AND FOUND THE INCIDENT REPORT AND FOUND THE VICTIM TO BE MRS. CA (POWELL) CHANDLER. THE DNA SAMPLE CAME BACK TO WILLIAM DAVID YARBOROUGH. AFTER READING THE LETTER INV. WHACK E CONTACT WITH MRS. CHANDLER AND ASK HER COULD SHE COME TO THE SHERIFF OFFICE IN REFERENCE TO HER CASE AND SHE TED SHE COULD COME TO THE OFFICE ON THE 23RD OF JULY, 2008 AND MEET WITH INV. WHACK.

THE 23RD OF JULY, 2008 INV. WHACK DID MAKE CONTACT WITH MRS. CHANDLER AT THE SHERIFF OFFICE. MRS. CHANDLER STATED INCIDENT TOOK PLACE ON THE 13TH OF JUNE, 2008 AROUND THE TIME OF 0530HRS AT 397 NORTH WILLIAMSBURG COUNTY HIGHWAY ATED IN THE KINGSTREE AREA OF WILLIAMSBURG COUNTY. MRS. CHANDLER STATED SHE WAS IN HER RESIDENCE SLEEPING AND IT T LIKE SOMEONE WAS WATCHING HER. MRS. CHANDLER STATED SHE THEN OPENED HER EYES AND SAW A PERSON THEN SHE CLOSED EYES AND OPENED THEM AGAIN CAUSE SHE THOUGHT SHE MIGHT HAVE BEEN DREAMING. MRS. CHANDLER STATED WHEN SHE OPENED EYES THE SECOND TIME THE PERSON HAD MADE HIS WAY TO HER BED. MRS. CHANDLER STATED THE PERSON THEN GRABBED HER AND ERED HER MOUTH. MRS. CHANDLER STATED AFTER COVERING HER MOUTH THE PERSON TOLD HER IF SHE SAID ANYTHING HE WOULD L HER CHILD. MRS. CHANDLER STATED SHE THEN COMPLIED AND THAT IS WHEN THE PERSON TURNED HER ONTO HER STOMACH AND CEDED TO FORCE HIS PENIS INSIDE HER. MRS. CHANDLER STATED AFTER THE PERSON WAS FINISHED THEY LEFT THE SAME WAY T THEY HAD COME. MRS. CHANDLER STATED THE PERSON HAD ON LEATHER WORK GLOVES AND HIS VOICE WAS REAL ROUGH. MRS. NDLER STATED SHE COULD NOT TELL WHO THE PERSON WAS OR THE BODY SIZE OF THE PERSON BECAUSE THE HOUSE WAS DARK BUT DO KNOW IT WAS A WHITE MALE. MRS. CHANDLER STATED THE PERSON HAD ENTERED THE RESIDENCE THROUGH THE BACK DOOR.

Inconsistencies of Statements made by Mrs. Chandler.

Incident report supplemental Dated 7/23/2008

- 1) Mrs. Chandler stated she was sleeping
- 2) Mrs. Chandler stated the person had made his way to her bed
- 3) Mrs. Chandler stated after covering her mouth the person told her if she said anything he would kill her child.
- 4) Mrs. Chandler stated she then complied
- 5) Mrs. Chandler stated that is when the person turned her onto her stomach and proceeded to force his penis inside her.
- 6) Mrs. Chandler stated after the person was finished they left the same way that they had come.
- 7) Mrs. Chandler stated the person was wearing leather work gloves.
- 8) Mrs. Chandler stated his voice was real rough.
- 9) Mrs. Chandler stated it was so dark that she could not tell who the person was or the body size of the person but she knew it was a white male.
- 10) Mrs. Chandler stated the person had entered the residence through the back door.

Inconsistencies of Statements made by Mrs. Chandler.

Incident report Dated 6/13/2002

- 1) Mrs. Chandler stated an unknown subject entered her back door around 0530
- 2) Mrs. Chandler stated the subject set down on the side of her bed and put his hands over her mouth.
- 3) Mrs. Chandler stated the subject was wearing gloves.
- 4) Mrs. Chandler stated the subject said be quiet for your child's sake.
- 5) Mrs. Chandler stated the subject pushed her over on her stomach.
- 6) Mrs. Chandler stated the subject pulled off her shorts.
- 7) Mrs. Chandler stated the subject had intercourse with her from behind while holding her face into a pillow.
- 8) Mrs. Chandler stated the baby started crying and the unknown subject ran out the back door.

- 1) The only mention of a child being in bed with Mrs. Chandler were in the Arrest-Warrants.
- 2) The only mention of the child by Mrs. Chandler was where she stated in the Incident Report made in June 13, 2002. When Mrs. Chandler stated the baby started crying and the unknown subject ran out the back door.
- 3) All other mentions of a child Mrs. Chandler stated the subject made.
- 4) No mention of what race the unknown subject was whether white or black

- 1) Mrs. Chandler stated the crime started at 0530
- 2) Mrs. Chandler called Sheriff Dept. at 0541
- 3) Sheriff's Dept. dispatched time 0543
- 4) Sheriff's Dept. arrived on scene at 0550

- 1) Mrs. Chandler statement in 2008 has changed substantially from her original statements in 2002.
- 2) Mrs. Chandlers interview in 2008 with the sheriff dept. it seems she was most likely led by the interviewer into what to say in her statement.
- 3) How did Mrs. Chandler know that the crime started at 0530 as she stated.
- 4) In the incident report supplemental taken in July 22, 2008 Mrs. Chandler stated she woke by a feeling of someone watching her and when she opened her eyes and saw a person she then closed her eyes again and opened them again because she though that she might have been-dreaming.
- 5) In the two statements there is an inconsistency of how Mrs. Chandler woke up or if she was sleeping at all.
- 6) In the Incident Report Supplemental taken in July 22, 2008 Mrs. Chandler stated the subject made his way to the bed implying that she watched him enter the house.
- 7) In the incident report taken in June 13, 2002 there is no statement made by Mrs. Chandler that she had been sleeping. The way the statement is given by Mrs. Chandler is that she watched as the subject entered the back door.

There is no confusion by Mrs. Chandler on where and when the unknown subject entered her house but everything Mrs. Chandler says past that point changes substantially in each statement.

* There was more than one DNA found in this case

* The Indictment was signed on October 9, 2008 by Mrs. Monica West the foreperson of the Grand Jury.(on my indictment papers it states that the Grand Jury convened on October 13,2008 to indict me.)

* The Indictment was signed, stamped, and filed by the clerk of court on October 9, 2008. (The Grand Jury didn't convene until the 13, how did they sign, stamp, and file my indictment before the Grand Jury meet.

J-991055

Arrest Warrant

- 1) On the 13TH day of June, 2002, around the time of 0530 hrs.
- 2) While at the residence of 397 north Williamsburg county highway located in the Kingstree area of Williamsburg County, William David Yarborough did commit the offense of criminal sexual conduct in the first degree.
- 3) William Yarborough did unlawfully enter the residence of the victim and while inside used aggravated force and sexually battered the victim and threatened to kill the victim's child that was in the bed with her at the time.
- 4) Criminal sexual conduct in the first degree is in violation of S.C. code of laws.

J-991054

Arrest Warrant

- 1) On the 13TH day of June, 2002, around the time of 0530 hrs.
- 2) While at 397 North Williamsburg County Highway located in the Kingstree area of Williamsburg County, William David Yarborough did commit the offense of burglary in the first degree.
- 3) William Yarborough did enter the residence of the victim without permission and while inside did forcibly hold the victim down and cause harm to her by having sex with her without permission.
- 4) While performing the sex act, William Yarborough did threaten to kill the victim's child that was in the bed with her if she said anything.
- 5) Burglary in the first degree is a violation of S.C code of laws.

State's Response to Defendant's Motion for Discovery

The listed numbers are the items missing from the motion of discovery.

Items missing: 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25

Motion for Discovery and Inspection
Prepared by Steve McKenzie

Motion for Brady and other favorable material
And incorporated memorandum of law
Prepared by Steve McKenzie

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF WILLIAMSBURG) THIRD JUDICIAL CIRCUIT
)
 State of South Carolina,)
) INDICTMENT NO.: 2008-GS-45-219
 vs.) INDICTMENT NO.: 2008-GS-45-220
)
 William David Yarborough,) STATE'S RESPONSE TO DEFENDANT'S
) MOTION FOR DISCOVERY
)
 Defendant.)
)

TO: DEFENDANT AND HIS ATTORNEY, STEVEN S. MCKENZIE

NOW COMES the State of South Carolina, responding to the Defendant's motions for discovery pursuant to Rule 5, South Carolina Rules of Criminal Procedure, and Brady v. Maryland and produces the following documents:

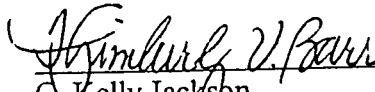
1. Indictment No.: 2008-GS-45-219
2. SLED DNA Analysis Report of Adrienne Riley dated 10/17/2002;
3. Arrest Warrants J-991054 and J-991055;
4. Williamsburg County Sheriff's Office report of R. McCullough dated 06/13/2002;
5. Williamsburg County Sheriff's Office supplemental report of Justin Whack dated 07/23/2008;
6. Rap Sheet of William David Yarborough;
7. SLED Forensic Services Lab Report of Nancy Skraba dated 07/17/08;
8. SLED Photographic Lineup Request Form;
9. Photographic lineup of six white males;
10. Photograph of William David Yarborough;
11. Indictment No.: 2008-GS-45-220
12. Williamsburg County Sheriff's Office report of J. Hyman dated 01/15/2007;
13. Arrest Warrants K-246024 and K-246025;
14. Handwritten statement of victim Belding (5 pages);
15. North Topsail Beach Police Department Incident Report;
16. SLED Polygraph Report of C. Belding dated February 8, 2007;
17. SLED Polygraph Report of Defendant dated January 29, 2007;
18. SLED Forensics Laboratory Report of Adrienne Riley dated 07/15/2008;
19. Miranda Waiver Forms of Defendant dated 01/25/2007;
20. Miranda Waiver Forms of Defendant dated 01/29/2007;
21. Miranda Waiver Forms of Defendant dated 01/31/2007;
22. Miranda Waiver Forms of Victim dated 01/25/2007;
23. Transcribed statement of victim (01/25/07) consisting of 17 pages;
24. Transcribed statement of Defendant (01/25/07) consisting of 17 pages;

25. Physical evidence, photographs available for your inspection.

After having complied with Rule 5, South Carolina Rules of Criminal Procedure, the State hereby requests production and/or inspection from the defendant copies of all books, papers, documents, photographs, tangible objects, or portions thereof of any item that is in the possession, custody or control of the defendant or his attorney, and that he intends to introduce as evidence at the trial of these cases. The State further requests inspection and/or production of all results or reports of any physical or mental examinations and of any scientific tests or experiments made of or on behalf of each defendant, of which the defendant intends to introduce as evidence at the trial of this case and the name, address and telephone number of the witness who prepared the report.

Further, the State hereby requests notice of the defense of insanity and/or of alibi by the defendant. The State maintains that the crime set forth in indictment number 2008-GS-45-219 occurred on or about June 13, 2002 at 397 Williamsburg Highway, Kingstree, South Carolina between 2:00 a.m. and 6:00 a.m. The State maintains that the crime set forth in indictment number 2008-GS-45-220 occurred on or about the evening of January 24, 2007 through morning of January 25, 2007 at 149 Oakland Drive Kingstree, South Carolina between 11:00 p.m. and 5:00 a.m.

**OFFICE OF THE SOLICITOR
THIRD JUDICIAL CIRCUIT**



C. Kelly Jackson
Ronnie A. Sabb
Kimberly V. Barr

December 4, 2008.

Certificate of Service

I hereby certify that the documents listed above were served on the attorney for the Defendant by mailing copies of the same to his attorney of record, Steven S. McKenzie, as follows: 2 N. Brooks Street, Manning, South Carolina, 29102.

on the _____ day of _____ 2008.

Linda S. Woods

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF WILLIAMSBURG)
)
 State of South Carolina,)
)
 vs.)
)
 William D. Yarborough,)
)
 Defendant.)
 _____)

MOTION FOR DISCOVERY AND INSPECTION

NOW COMES the Defendant, by and through his undersigned counsel of record, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, and moves prosecution to permit Defendant to inspect and copy or photograph, within thirty (30) days of service of this Motion, and at least within ten (10) days prior to trial, including but not limited to, the following, with the express provision that the duty of disclosure be a continuing one in the event that any such materials come into existence or become available after initial disclosures:

1. Any written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;
2. The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the Defendant, whether before or after arrest, in response to interrogation by any person then known to the Defendant to be a prosecution agent;
3. A copy of the Defendant's prior criminal record, if any, as if within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise by due diligence may become known, to the attorney for the prosecution;
4. All books, papers, documents, photographs, tangible objects, buildings or places, or copies or prosecution, the existence of which is known, or control of the prosecution, and which are material to the defense, or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;
5. All results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody and control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense and are intended for use by the prosecution as evidence in chief at the trial;

6. The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; and

7. The criminal history of any witness to be called by the prosecution to testify in this case.

The Defendant further moves that compliance with the foregoing request be made within ten (10) days from the service of this motion, and upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge for an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or such Order as the Court in its discretion deems just under the circumstances.

For purposes of this Motion, the Defendant asserts that any item requested in Paragraphs (a), (b), (c), (d), (e), (f) and (g) above is material to the preparation of the defense in this case.

JOHNSON, MCKENZIE & ROBINSON, LLC

By 

Steven S. McKenzie
Attorneys for the Defendant
2 North Brooks Street
Manning, SC 29102
(803) 435-0909

October 3, 2008

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF WILLIAMSBURG)
)
 State of South Carolina,)
)
 vs.)
)
 William D. Yarborough,)
)
 Defendant.)
 _____)

**MOTION FOR BRADY AND OTHER FAVORABLE MATERIAL
 AND INCORPORATED MEMORANDUM OF LAW**

COMES NOW the Defendant, by and through undersigned counsel, and files this Motion for **Brady** and other favorable material and incorporated Memorandum of Law requiring the production of material to the Defendant within thirty days of the receipt of this request or at least ten (10) days prior to trial. As grounds therefor, the undersigned would show as follows:

1. Under the United States Supreme Court Decision in Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963), the Solicitor has an obligation to produce all Brady material for the Defendant well in advance of the scheduled trial date.

2. Defendant claims under **Brady** and is progeny, as well as the language and spirit of Giglio v. United States, 405 U.S. 105, 92 S.Ct. 763 (1972); United States v. Tashman, 478 F.2d 129 (5th Cir. 1973); and Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959); Alcounta v. Texas, 355 U.S. 28 (1957); Mooney v. Halliham, 294 U.S. 103 (1935); and Moore v. Illinois, 408 U.S. 786 (1962); that he/she is entitled to any and all records, memoranda and documents, as well as a statement of the Circuit Solicitor and all appropriate state, federal and local law agencies as to:

- a. All statements by the Defendant, whether oral or written; if written, whether signed or unsigned.
- b. All handwritten notes made by police or other investigating officers of their interview or conversation with the Defendant or any other witness.
- c. Any oral, written or recorded statements made by any person to the Solicitor's office, Grand Jury or any law enforcement agency in connection with this case.

d. A copy of all tape recordings, audio or video, made by a Defendant, witness or any other person in connection with this case. If these tape recordings have been transcribed, then a copy of the transcribed conversation is also requested.

3. Any and all investigation reports, information or material which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will or may call at trial. Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793 (1967); Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959); Giglio v. U.S., supra.

4. The names and addresses of all witnesses interviewed by the Solicitor's office or any other law enforcement agency who might establish the Defendant's innocence, mitigate punishment, or impeach, discredit, or contradict the testimony of any witness of the State whether or not the witness may testify at trial.

5. Any and all photographs taken of the Defendant or any portion of his body.

6. Any and all photographs taken at the scene of the alleged crime and/or the alleged victim or prosecuting witness.

7. Any photographs that have been exhibited to any person for the purpose of establishing the identity of the perpetrator of the crime charged and the name and current address of the person or persons to whom the photographs were shown.

8. Any scientific or medical report which tends to establish the Defendant's innocence, to mitigate punishment or to impeach, discredit, or contradict the testimony of any witness whom the State may call at trial. Ashley v. Texas, 319 F.2d 80 (5th cir.), cert. denied, 375 U.S. 931, 84 S. Ct. 331 (1963). This request shall include any reports by or to the State Law Enforcement Division (SLED) criminalistic laboratory, Federal Bureau of Investigation laboratories, County Sheriff's Department laboratory, Medical University of South Carolina laboratory, or any other law enforcement laboratory concerning any examination made by said laboratories and/or personnel thereof, of any physical, photographic, oral or written evidence concerning the investigation of this case.

9. All reports from the State Law Enforcement Division (SLED), Sheriff's Department, or any other law enforcement agency, including the Federal Bureau of Investigation, concerning fingerprints checked in connection with this case.

10. All records or arrests or criminal convictions of the Defendant or any co-defendant and all State's witnesses in relation to this case. Giglio v. U.S., supra.

11. All "inconsistent" statements made by a particular witness or between witnesses, whether written or oral, that is known to the Solicitor's Office or any other law enforcement agency.

12. Any statement or admission by a witness for or on behalf of the State with respect to the witness' memory or loss thereof.

13. Whether or not any witness called before the Grand Jury, or who was or will give testimony to any investigative agency or at trial has ever been psychiatrically hospitalized or undergone psychiatric treatment, examination, mental status examination or care, and if so, a list of names and addresses of the psychiatrists, hospitals and copies of any and all relevant records and reports.

14. All notes or memoranda by psychiatrists or other medical or mental health examiners of their conversations with the Defendant.

15. Any and all plea bargains, promises, rewards, reductions, dismissals, agreements not to bring criminal charges or any other inducements made to any witness herein, whether or not they have testified before any State or Federal Grand Jury, or other investigative agency, and regardless of whether or not they will testify at trial.

16. Any offers or grants of immunity to any witness from loss of property, fine, forfeiture, prosecution or punishment in this case or any other case, related or otherwise.

17. In addition, Defendant requests copies of any and all memoranda, reports and correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal and local law enforcement agencies regarding the investigation herein.

18. Any and all physical or tangible items in the possession, custody or control of or which could reasonably be brought within the possession, custody or control of the Solicitor's Office, State, Federal or local law enforcement agency.

19. Defendant contends that this Court should specifically direct the Government in the spirit of fairness and equity, seek and produce for the Defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether or not a witness' statement or a particular letter or exhibit can "help" the Defendant. The Defendant and his/her attorney, not the Solicitor, should be the judge of his/her defense and the documents relevant thereto and necessary in support of same.

20. To the extent the Defendant is specifically required to demonstrate the materiality of the requested information, the Defendant submits that this requirement is satisfied in this motion. United States v. Agurs, 427 U.S. 97 (1976).

21. Recognizing the Brady v. Maryland, *supra*, and other authorities cited require that information favorable to the Defendant be made available, and further recognizing that a genuine disagreement may arise as to whether or not a particular item of evidence is favorable, it will be requested that the Court provide for an in-camera inspection of the items

sought to be discovered should you feel such items are not favorable to the Defendant. By permitting the Court to examine the items requested, the legitimate interest of the State will be protected in that no disclosure in excess of **Brady, et al.** will occur. Further it will be requested of the Court that said Order will be a continuing one, and if, prior to or during trial, the prosecution discovers additional evidence or material requested, the prosecution is hereby requested promptly to notify counsel for the Defendant of the existence of the additional evidence or material.

It is further requested that the prosecution promptly respond to the within request by notifying counsel for the Defendant of the existence and availability of the information requested herein within thirty days of this motion and at least ten (10) days prior to trial.

WHEREFORE, the undersigned prays for such Order requiring production of the above listed materials and for that which is just and proper.

JOHNSON, MCKENZIE & ROBINSON, LLC

By 

Steven S. McKenzie
Attorneys for the Defendant
2 North Brooks Street
Manning, SC 29102
(803) 435-0909

October 3, 2008

DISCOVERY

Government's Constitutional Disclosure Duties. Defendants have no general constitutional right to disclosure in criminal proceedings. Nevertheless, Courts have fashioned rules providing for the disclosure of certain types of evidence when necessary to safeguard a defendant's due process rights. In Brady v. Maryland, the Supreme Court held that due process requires the prosecution to disclose evidence favorable to an accused upon request when such evidence is material to guilt or punishment. In United States v. Bagley, the Court held that evidence is material if there is a reasonable probability that disclosure of the evidence would have changed the outcome of the proceeding. A "reasonable probability" is defined as a probability sufficient to undermine confidence in the outcome. The assessment of the effect of nondisclosure must take into account the cumulative effect of the suppressed evidence in light of other evidence, not merely the probative value of the suppressed evidence standing alone.

The government's obligation to disclose favorable evidence under Brady not only covers such exculpatory evidence but was also expanded in Giglio v. U.S. to include information that could be used to impeach government witnesses. In particular, the due process clause requires that an agreement made with a government witness for testimony in exchange for monetary compensation or favorable treatment in the criminal justice system should be disclosed as impeachment evidence, especially where the witness's testimony is an important part of the government's case. The government's duty under Brady arises regardless of whether the defendant specifically requests the favorable evidence. The Brady doctrine does not require the prosecution to disclose material impeachment information under Giglio prior to the entry of a guilty plea. However, it is unclear whether the prosecution must disclose material exculpatory evidence under Brady before a guilty plea is entered.

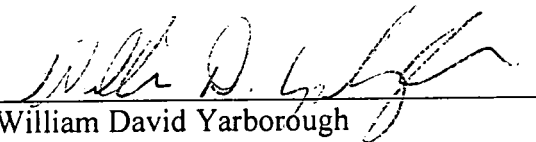
The government's duty to disclose favorable evidence does not compel it to draw and disclose inferences from the evidence; nor does the Brady doctrine mandate open file discovery. The government need not disclose: (1) neutral, irrelevant, speculative, or inculpatory evidence; (2) evidence available to the defense from other sources; (3) evidence the defense already possesses; or (4) evidence the prosecutor could not reasonably be imputed to have knowledge of or control over. Nevertheless, even when the prosecutor does not himself or herself possess Brady material, he or she has a duty to learn of any favorable evidence known to other government agents, including the police, if those agents are involved in the investigation.

Although the government's constitutional duty to disclose continues throughout the proceedings, tardy disclosure of Brady material does not constitute a Brady violation and will not result in sanctions unless the defendant can show that the delay denied him or her a fair trial.

CONCLUSION

Based on the above, certiorari should be granted and the order of the PCR Court reversed and the case remanded.

Respectfully Submitted,



William David Yarborough

PRO SE PETITIONER

This 13th day of February 2015

William Yarborough 334712
Broad River Correctional Institution
4460 Broad River Road
Columbia, S. C. 29210

February 13, 2015

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

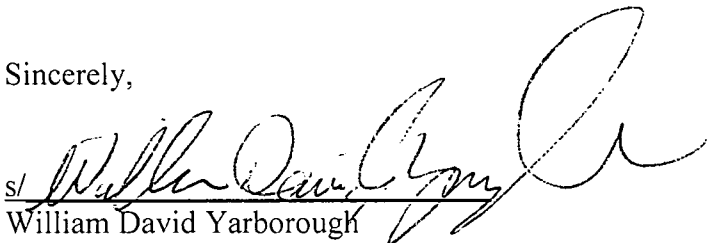
Re: William Yarborough v. State
Appellate Case No.: 2014-000229

Dear Honorable Clerk,

Please find enclosed a true copy of Pro Se Memorandum to Johnson petition for Writ of Certiorari. Please file.

Thank you for your assistance.

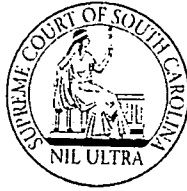
Sincerely,


sl William David Yarborough
William David Yarborough

RECEIVED

FEB 18 2015

S.C. SUPREME COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

January 08, 2015

William Yarborough, 334712
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210

Re: William Yarborough v. State
Appellate Case No. 2014-000229


Dear Petitioner:

Your counsel has submitted a petition for writ of certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition and Appendix.

You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* response to the petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a *pro se* response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy should not be stapled or bound in any manner.

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

cc: Daniel Francis Gourley, II, Esquire
LaNelle Cantey DuRant, Esquire

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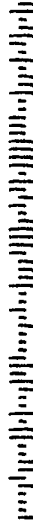
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