

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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Appellate Case No. 2015-002214

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RECEIVED

JUN - 8 2016

SC SUPREME COURT

QUINTIN LINEN, 238553,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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APPENDIX  
TO  
PETITION FOR WRIT OF CERTIORARI

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1           (Matter came before the Court on April 7, 1997, at  
2   11:20 A.M.)

3           THE COURT: Ladies and gentlemen of the jury, I find  
4   that those of you who are remaining with us are qualified  
5   to serve on the jury panel.

6           What I'd like to do now is tell you a little bit  
7   about what to expect from jury service.

8           As jurors for this week, you are the fact-finders of  
9   the cases that we will try this week. I don't have an  
10   opinion about the facts and I'm not allowed to have an opin-  
11   ion about the facts.

12          The facts in each case are entirely up to you jurors,  
13   so as the judges of the facts you necessarily then need to  
14   be able to determine the credibility and believability of  
15   the witnesses who testify.

16          In determining credibility and believability, you do  
17   not need any special degree or any special training. You  
18   just need to come in here with your good common sense and  
19   judgment.

20          Leave your preconceived ideas and notions about what  
21   you think the law is or what you think it ought to be outside  
22   of here, and you decide each case based on the testimony and  
23   evidence that's presented in the case that you are hearing.

24          In determining credibility and believability of the  
25   witnesses and hearing the testimony in the case, you probably

1 will hear conflicts in the testimony. One witness may come  
2 in here and say something happened at ten o'clock in the  
3 morning and the very next witness may say the same thing  
4 happened at ten o'clock at night.

5 Your job is to find the truth of the matter. In doing  
6 that, you can believe all or some or none of what a particu-  
7 lar witness says but under your oath you are obligated to  
8 listen to all of the witnesses with an open mind and after  
9 hearing everything then you decide how much of a witness'  
10 testimony to believe; that is, all, some or none, of a parti-  
11 cular witness' testimony.

12 The procedure we will use for jury selection will be  
13 generally the same in each case, and it will go something  
14 like this.

15 The Clerk has all of your names in a barrel up here,  
16 and we will pull out the names one at a time.

17 When your name is called, you get to come to the front,  
18 stand here and face the attorneys, and be uncomfortable for  
19 a few minutes while they give you the once-over.

20 Now, I apologize for that, but that's the way it works.

21 As you stand there, you will hear the attorneys say,  
22 seat the juror, or swear the juror. That means you are on  
23 the jury panel.

24 If you hear excuse the juror, that means you get to  
25 go back and sit in the audience and wait for further

1 instructions.

2 We'll go through that procedure until we have selected  
3 twelve jurors and at least one alternate.

4 After you are seated, you will be sworn in by the  
5 Clerk of Court and you will hear the testimony presented in  
6 a case.

7 Since this is criminal court, the State of South  
8 Carolina goes first, and the burden's upon the State to  
9 present enough evidence to prove a Defendant guilty beyond  
10 a reasonable doubt.

11 I will explain that to you further in each case.

12 After the State has presented its case the Defense  
13 will have an opportunity if they choose to to put up a case,  
14 but, again, the burden is on the State and not on a Defend-  
15 ant.

16 After all the testimony is in, you will hear closing  
17 arguments in a case. Closing arguments is the opportunity  
18 that the attorneys have to persuade you to their point of  
19 view.

20 All of you need to keep in mind that the attorneys in  
21 these cases are advocates for their particular sides. They  
22 are trying to persuade you.

23 Keep in mind also that when the attorneys argue to  
24 you if they say I heard so and so or I take the testimony to  
25 mean this or that or the other--whatever they might say,

1 if they heard the testimony different from the way you  
2 heard it you need to remember the testimony the way you  
3 heard it because you are the finders of the facts.

4 No attorney is going to come in here and purposely  
5 try to mislead you, but as all of you know two people can  
6 listen to the same thing and hear it differently. That  
7 is why we have twelve jurors, so we will have twelve fact-  
8 finders in a case.

9 After closing arguments, I will tell you what the  
10 law is and that is called a charge on the law.

11 Under your oath, you are obligated to accept and to  
12 apply the law that I give to you.

13 After that, the case will be turned over to you and  
14 you will then go into the jury room and deliberate. Under  
15 your oath you cannot talk about a case until I tell you to  
16 begin your deliberations.

17 That is, either among yourselves back in the jury  
18 room or with anyone else, and I will remind you about that  
19 as you come into the Courtroom and leave the Courtroom for  
20 breaks and for lunch or to go home in the evening.

21 So please don't talk about a case among yourselves un-  
22 til you are instructed to do so by the Courts.

23 Also, don't talk to anybody about a case. If anybody  
24 tries to talk to you about a case, that is improper. That  
25 is something that I need to deal with.



1           Or if anybody has contacted you already or if they  
2           contact you while you're serving on a jury, tell them you  
3           are on a jury and you cannot talk to them.

4           If they persist in talking to you, find out their  
5           name and let me know that because that is improper and it  
6           is something I need to deal with for you.

7           Generally we will run Court from nine thirty in the  
8           morning until one o'clock in the afternoon. We will break  
9           for lunch from one to two. We'll come back and run from  
10          two or two thirty in the afternoon until five thirty or  
11          six in the evening.

12          Now, I'll be the first to tell you it is sometimes dif-  
13          ficult to keep Court on an exact schedule. Sometimes things  
14          move a lot quicker than we anticipate, or sometimes they  
15          might run longer than we anticipate.

16          If we run late in the evening, we'll allow you to  
17          call home and let your family know where you are. If we  
18          run through things a little quicker than we anticipate, you  
19          might get to go home a little bit earlier that evening.

20          Ladies and gentlemen, we are now going to select a  
21          jury in the case of the State of South Carolina versus  
22          Quinton Linen.

23          The indictment charges Mr. Linen with armed robbery.  
24          The indictment alleges that Mr. Linen did in Charleston  
25          County on or about the 28th day of October, 1996, while

1       armed with a deadly weapon; to wit, a knife, feloniously  
2       take from the person in the presence of Cheryl Ann Wood,  
3       by means of force or intimidation goods or moneys of the  
4       said Cheryl Ann Wood, this being in violation of the Code  
5       of Laws of the State of South Carolina.

6               To this indictment, Mr. Linen pleads not guilty. Mr.  
7       Linen, would you stand, please, and face the jury panel.

8               (Defendant standing in Courtroom with counsel)

9               Is there any member of the jury panel who is connected  
10       by blood, related by marriage, or acquainted in any way  
11       with the Defendant in this case, Mr. Quinton Linen?

12              If you are, please stand.

13              (No response from Courtroom)

14              Mr. Linen, you may be seated. Thank you. (Defendant  
15       being seated with counsel)

16              Now, ladies and gentlemen, when I ask you questions  
17       about if you are connected by blood or related by marriage  
18       or acquainted with someone, I mean any connection, however  
19       slight.

20              So if you are remotely connected with somebody or you  
21       know about them or have met them or whatever, please let  
22       me know that. (Juror standing)

23              Tell me your name, please.

24              JUROR: Marilyn Saunders.

25              THE COURT: Okay.

1 JUROR: This involves my husband's place of employ-  
2 ment, a game room.

3 THE COURT: Okay.

4 JUROR: And they have a check cashing . .

5 THE COURT: Come up and talk to me up here. I can't  
6 hear you back there.

7 (Juror coming forward to the bench with counsel)

8 THE COURT: Okay?

9 JUROR: This involves my husband's place of employment,  
10 which is a game room, and it's near the check cashing place  
11 so I know all of them.

12 THE COURT: Would that have any effect on your ability  
13 to be fair and impartial?

14 JUROR: I don't know. I've never done anything like  
15 this before.

16 THE COURT: I need your best judgment about whether  
17 you still can be fair, knowing what you know about the  
18 case.

19 JUROR: I don't think so.

20 THE COURT: Then you are excused from service on  
21 this case, but stay with us until you are told when you  
22 need to report back.

23 (Juror excused for this case)

24 THE COURT: Is there any member of the jury panel  
25 who is connected by blood, related by marriage or acquainted

1 in any way with the alleged victim in the case, Cheryl Ann  
2 Wood? If you are, please stand.

3 (No response from jury panel)

4 Ladies and gentlemen, I'm going to call out a list  
5 of the prospective witnesses in the case. These are the  
6 witnesses who may be called. They do not all have to be  
7 called.

8 If you are connected by blood, related by marriage,  
9 or acquainted in any way with any of these potential wit-  
10 nesses, please stand when that name is called?

11 Cheryl Ann Wood

12 Benita Benton

13 Freemon Brown

14 Detective Harry Roper

15 Harry Chaffin

16 Detective Paul Hernandez

17 Officer Karen Cordray

18 Daniel K. Brown

19 Sonya Linen

20 Jo Ella Cobb

21 (No response from jury panel)

22 Solicitor, would you stand and introduce yourself  
23 to the panel, and tell us about the Solicitor's Office,  
24 please, sir.

25 MR. BECK: Thank you, Your Honor. Good morning, ladies

1       and gentlemen. My name is Peter Beck, and I'm an Assistant  
2       Solicitor for Charleston County.

3               My boss is the elected Solicitor for the Ninth Judi-  
4       cial Circuit which is Berkeley and Charleston Counties.

5               We have the task of prosecuting all crimes in General  
6       Sessions Court which occur typically within Charleston  
7       County.

8               This is Garren Williams, who is also an Assistant  
9       Solicitor in our office, and this is Detective Harry Roper.

10              THE COURT: Is there any member of the jury panel who  
11       is connected by blood, related by marriage, or acquainted  
12       in any way with Mr. Beck, Mr. Williams, Mr. Sckwacke, or  
13       anybody else with the Solicitor's Office, either in their  
14       capacity as attorney or as staff or support personnel?

15              If so, please stand.

16              Tell me your name, please?

17              JUROR: Don Blincow.

18              THE COURT: And who do you know on the staff, or do  
19       you know most of the attorneys?

20              JUROR: I wouldn't say most. I know David Schwacke  
21       and I know Glen Churchill and Jack . .

22              THE COURT: Would that have any effect on your ability  
23       to be fair and impartial in this case?

24              JUROR: No, sir.

25              THE COURT: Yes, sir?

1 JUROR: Likewise, Your Honor, I know some of the  
2 attorneys in the Solicitor's Office.

3 THE COURT: Tell me your name, please.

4 JUROR: John Duffy.

5 THE COURT: Would that have any effect on your ability  
6 to be fair and impartial in this case?

7 JUROR: No, it would not.

8 THE COURT: Thank you. Mr. Vitetta, would you stand  
9 and introduce yourself to the panel, and tell us about the  
10 Public Defender's Office?

11 MR. VITETTA: Yes, sir. Good morning, my name is  
12 Guy Vitetta, and I'm an attorney with the Public Defender's  
13 Office. Sitting with me and assisting me in this case is  
14 Carmen Tevis, also an attorney in the Public Defender's  
15 Office.

16 There are twelve attorneys in the Public Defender's  
17 Office who represent Defendants in General Sessions Court,  
18 and we are assigned to represent indigent person who have  
19 been charged with violating the criminal laws of the State of  
20 South Carolina.

21 THE COURT: Is there any member of the jury panel who  
22 is connected by blood, related by marriage, or acquainted  
23 in any way with Mr. Vitetta, Ms. Tevis, or anybody else  
24 with the Public Defender's Staff?

25 If so, please stand.

1 (Juror standing)

2 THE COURT: All right, tell me your name again,  
3 please, sir.

4 JUROR: John Blincow. I know casually some of them.

5 THE COURT: Would that have any effect on your ability  
6 to be fair and impartial in this case?

7 JUROR: No, sir.

8 THE COURT: Thank you, sir.

9 JUROR: John Douglas, Your Honor. I know casually some  
10 of the attorneys in the office.

11 THE COURT: Would that have any effect on your ability  
12 to be fair and impartial in this case?

13 JUROR: No, sir.

14 THE COURT: Thank you, sir. Ladies and gentlemen, I  
15 keep asking people, whether I know their names or not, to  
16 tell me their names because we are making a record, and  
17 your responses to my questions are on the record, just like  
18 my questions are.

19 So that helps us to identify who is talking if this  
20 ever needs to be transcribed, and that is why we are doing  
21 that. We're making a record.

22 Is there any member of the jury panel who knows anything  
23 about this case other than what I've told you already? If  
24 so, please stand.

25 (No response from jury panel)

1           Is there any member of the jury panel who has formed  
2           or expressed any opinion about this case or about the guilt  
3           or the innocence of the Defendant, Mr. Linen? If so,  
4           please stand.

5           (No response)

6           Is there any member of the jury panel who was a mem-  
7           ber of the grand jury that found the indictment in this  
8           case? If so, please stand.

9           (No response)

10          Is there any member of the jury panel who either your-  
11          self or if you have a family member who is now or has ever  
12          been employed by any law enforcement agency, state or fed-  
13          eral? If so, please stand.

14          Tell me your name, please?

15          JUROR: Boyer. My father-in-law is the captain at the  
16          county jail.

17          THE COURT: Would that have any effect on your ability  
18          to be fair and impartial in this case?

19          JUROR: No, sir.

20          THE COURT: Thank you, sir. Is there any member of the  
21          jury panel who either yourself or if you have a family mem-  
22          ber who has been the victim of a violent crime? If so,  
23          please stand.

24          All right, I need your name and number, please.

25          JUROR: Number 62, Don Hrabe.



1 THE COURT: Would that have any effect on your ability  
2 to be fair and impartial in this case?

3 JUROR: No, sir.

4 THE COURT: Yes, sir.

5 JUROR: Frank McPherson and I was a victim of an  
6 armed robbery about two years ago.

7 THE COURT: Would that have any effect on your ability  
8 to be fair and impartial in this case?

9 JUROR: I don't believe so, Your Honor.

10 THE COURT: All right. Thank you, sir. Stay with  
11 us.

12 CLERK: Number 164.

13 THE COURT: Is there any member of the jury panel who  
14 is a member of or a contributor to any organization such  
15 as Mothers Against Drunk Driving, Citizens Against Violent  
16 Crime, CAVE, CADRE, PAR, or any other such organization?

17 If so, please stand.

18 (No response from jury panel)

19 Is there any member of the jury panel who has any bias  
20 or prejudice in connection with this case, or as to the  
21 parties to this case? If so, please stand.

22 (No response)

23 Is there any member of the jury panel who knows of  
24 any reason why you could not be fair and impartial both to  
25 the State of South Carolina and the Defendant, Mr. Linen?

1           If so, please stand.

2           (No response from jury panel)

3           Anything further from the State?

4           MR. BECK: Nothing further.

5           THE COURT: From the Defendant?

6           MR. VITETTA: No, sir.

7           THE COURT: Okay, strikes are five and ten, please,  
8 and would the attorneys approach for just a minute.

9           (Conference at the bench off the record between  
10 counsel and the Court)

11          Give us a jury, please, Madam Clerk.

12          CLERK: Yes, sir.

13          (Whereupon, jury was chosen and seated.)

14          (Strike list attached to record.)

15          (John Blincow was appointed Foreman of the jury by  
16 the Court.)

17          (Following bench conference was held following the  
18 calling of Juror 37, John H. Douglas.)

19          MR. VITETTA: I would ask that the Court stike the  
20 juror for cause. He works for the U. S. Department of Justice  
21 which is the prosecuting agency of the United States Govern-  
22 ment.

23          MR. BECK: Your Honor, he is a former attorney with  
24 the Public Defender's Office as well.

25          MR. VITETTA: What I'm saying is that he is in law

1 enforcement. He carries a badge.

2 THE COURT: Does he work on the criminal side or the  
3 civil side? I agree that he ought to be excused for cause  
4 in any event.

5 Mr. Douglas, you are excused. Thank you, sir.

6 (Following bench conference held following the call  
7 of Juror 164, Frank McPherson.)

8 MR. VITETTA: We would ask that this juror also be  
9 struck for cause because he answered that he was a victim of  
10 armed robbery, which is the charge in the trial today.

11 Number two, he is a consultant for law enforcement  
12 agencies. He does some type of thing with computers--he's  
13 a computer consultant.

14 THE COURT: Any response?

15 MR. BECK: He said he could be fair and impartial in  
16 the case.

17 THE COURT: He will not be struck for cause.

18 (Juror McPherson seated on jury panel.)

19 (Alternate juror selected as James Petty, III.

20 MR. VITETTA: Please note my exception for the  
21 record as to Mr. McPherson.

22 THE COURT: Yes, sir. Mr. Petty is the alternate.  
23 That will always be your chair, please, sir. Nobody else  
24 has a reserved seat. When you come back into the Court-  
25 room, please file all the way to the end of the row. You do

132

Date: 4/7/97

County: ~~De~~ CMS

## VOIR DIRE

Case No: 97-924

Judge: Whitstone

Pl./State: St

State/Pl's. Atty:

Defendant: Quintin Lisen

Defense Atty:

Court Reporter: Querry

| Juror. No. | Name               | Sex | Race | *Court | Strikes    |         |        |
|------------|--------------------|-----|------|--------|------------|---------|--------|
|            |                    |     |      |        | Plaintiff  | Defense | Accept |
| 154        | Donnie Boyer       | W   | M    |        |            | 1       |        |
| 48         | Patricia Garza     | W   | F    |        |            |         | 1      |
| 55         | Judith Harris      | W   | F    |        |            |         | 2      |
| 16         | Lynn H. Brown      | W   | F    |        |            | 2       |        |
| 72         | Mattie Just        | W   | F    |        |            | 3       |        |
| 155        | Heather Brinknight | W   | F    |        |            |         | 3      |
| 7          | Shirley Berger     | W   | F    |        |            | 4       |        |
| 141        | Martha Brarely     | W   | F    |        |            |         | 4      |
| 136        | Darlene Washington | B   | F    |        | 1          |         |        |
| 53         | Arthur Kudmuckon   | W   | M    |        | 2          |         |        |
| 10         | John Blincow       | W   | M    |        | foreperson |         | 5      |
| 12         | Minda Brehmer      | W   | F    |        |            |         | 6      |
| 18         | Sera Brown         | B   | F    |        |            |         | 7      |
| 132        | Michel V. Hain     | W   | M    |        |            | 5       |        |
| 68         | Ashley Jennings    | W   | F    |        |            | 6       |        |
| 96         | Ridley Page        | W   | M    |        |            | 7       |        |
| 59         | Edurn Holcombe     | W   | M    |        |            | 8       |        |
| 107        | William Rowe       | B   | M    |        | 3          |         |        |

\*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.



1 not have to go back to the chair you are sitting in now,  
2 with the exception of Mr. Petty.

3 Please step in the jury room briefly. I have a matter  
4 I need to take up with the attorneys.

5 Please don't talk about the case, yet.

6 (Jury excused from Courtroom at 11:31 A.M.)

7 THE COURT: Any matters in regard to jury selection  
8 from the State?

9 MR. BECK: No issues from the State.

10 THE COURT: From the Defendant?

11 MR. VITETTA: Yes, sir.

12 THE COURT: Okay, ladies and gentlemen of the jury  
13 panel, I have a matter that I need to take up out of your  
14 presence.

15 I need for all of the jurors to leave the Courtroom,  
16 please, and we'll call you back in in about fifteen min-  
17 utes.

18 (Balance of jurors excused from Courtroom)

19 THE COURT: I'll be glad to hear from you.

20 MR. VITETTA: The Defense at this time would move  
21 under Battson for a request for the State to show race-  
22 neutral reasons for striking Juror 136, black female, and  
23 Juror 107, black male.

24 The State used two of its three strikes on black  
25 people, Your Honor.

1           THE COURT: Okay, Solicitor, would you stand, please,  
2           and articulate your race and/or gender-neutral reasons for  
3           your strikes of all three jurors that you struck, please,  
4           sir?

5           MR. BECK: Absolutely, Your Honor. Juror Number  
6           136, a black female, was convicted of fraudulent check.

7           Juror 53 was a white male who was arrested for mari-  
8           juana.

9           Juror 107, a black male, was arrested for assault and  
10          battery with intent to kill.

11          Those were the only jurors who came up for selection  
12          who had any type of arrest or conviction, Your Honor.

13          THE COURT: Mr. Vitetta, glad to hear you further on  
14          it.

15          MR. VITETTA: Nothing further. Thank you, Your Honor.

16          THE COURT: Okay, your motion is denied with regard to  
17          jury selection. I find the reasons articulated by the  
18          State are race-neutral and the jury stands as selected.

19          MR. VITETTA: Thank you.

20          THE COURT: Now I think we have some pleas we can do  
21          and start this case at two thirty.

22          Objection from the State?

23          MR. BECK: No objection.

24          THE COURT: Objection from the Defendant?

25          MR. VITETTA: No, sir.

1           THE COURT: Call the jury panel back in, please. We  
2 will dismiss this panel until two thirty.

3           (Jury returned to the Courtroom. Balance of panel  
4 excused.)

5           THE COURT: Ladies and gentlemen of jury panel, we  
6 are going to start the trial of this case at two thirty,  
7 this afternoon. We have some other matters that we will be  
8 taking up for the balance of this morning.

9           Please be back in the jury room at two thirty. Between  
10 now and then please do not talk to anybody about the case and  
11 don't let anybody talk to you about the case.

12          Anybody who tries to talk to you about the case,  
13 let me know who that person is when you come back. That is  
14 improper and something I need to deal with.

15          Does everybody understand? (Affirmative response from  
16 jurors)

17          It is perfectly permissible for two or more of you to  
18 go to lunch together, if you choose to, but you just cannot  
19 talk about the case yet.

20          You're excused. Please be back in the jury room at  
21 two thirty.

22          Thank you.

23          (Jury excused from Courtroom)

24          (Court stood in recess as to this case until 2:30 P.M.)

25          THE COURT: We need Mr. Linen back, please.



1           (Defendant brought into Courtroom. All parties pre-  
2   sent.)

3           THE COURT: All right, I'll be glad to hear what  
4   motions you have.

5           MR. VITETTA: Your Honor, first is a request and motion  
6   for disclosure of evidence. This is just a more detailed  
7   continuing request for Brady information that was served on  
8   the Solicitor on last Friday.

9           THE COURT: What are you seeking that you don't already  
10   have?

11          MR. VITETTA: Your Honor, it is just putting on the  
12   record in case there is something out there that I don't  
13   have. I don't know what I don't have, but this is a motion  
14   just specifying in detail any Brady information and that  
15   sort of thing.

16          If the Solicitor has anything like that at this time  
17   which hasn't been disclosed.

18          THE COURT: Solicitor?

19          MR. BECK: Your Honor, we have complied with all Brady  
20   discovery. They may not have the rap sheets on witnesses  
21   but they will be made available to them before they testify.

22          THE COURT: Are they available now?

23          MR. BECK: Not yet. They're downstairs.

24          THE COURT: How about make them available to them,  
25   please, sir.

1           MR. VITETTA: My next motion is just a formal motion  
2           to require the State to prove chain of custody according to  
3           Rule Six.

4           THE COURT: Yes, sir.

5           MR. VITETTA: I would ask that the witnesses in this  
6           case be sequestered, Your Honor. All witnesses.

7           THE COURT: Okay, the witnesses are sequestered. You  
8           may keep your investigating officer, and that goes for  
9           Defense witnesses also.

10          All Defense witnesses are sequestered as well as the  
11          State's witnesses.

12          MR. VITETTA: Your Honor, my client has a prior con-  
13          viction for armed robbery from what I'm given by the State,  
14          and I would move under State v. Lyle to keep any evidence  
15          of that as coming in to be used in this case. I don't know  
16          if the State is planning to do that or not.

17          MR. BECK: Your Honor, we would not use that prior con-  
18          viction in our case in chief. However, if the Defendant  
19          chooses to take the stand, we will use it for impeachment.

20          THE COURT: Okay. That is appropriate and that is the  
21          way we'll handle it.

22          MR. VITETTA: Your Honor, my next motion would be any  
23          statements made by my client while he was in police custody.

24          MR. BECK: Your Honor, we're not going to offer any  
25          statements made by the Defendant.

1 THE COURT: Okay, no statements will be offered.

2 MR. VITETTA: There is a motion to determine the ad-  
3 missibility of prior convictions.

4 THE COURT: What are they besides armed robbery?

5 MR. BECK: Your Honor, he has an armed robbery which  
6 is a 1988 conviction.

7 THE COURT: That would be admissible.

8 MR. BECK: And then he also has a 1987 false pretenses  
9 which is a magistrate's level offense. However, the State  
10 would believe that is . . .

11 THE COURT: That motion is denied. You cannot use  
12 that one, but you can use the armed robbery.

13 MR. VITETTA: Finally, Your Honor, I would ask--there  
14 is a motion for continuance that was filed last week. My  
15 client has a PCR application pending that was filed on Wed-  
16 nesday in the Charleston County Clerk of Court's Office,  
17 and what that PCR is going to be challenging is the prior  
18 conviction which enhances the penalty in this case to life  
19 without parole.

20 My client is out of jail. The case is less than  
21 six months old, and I would ask that the case be continued  
22 until such time as that PCR application can be resolved.

23 THE COURT: What do you say, Solicitor?

24 MR. BECK: Your Honor, we opposed the motion for con-  
25 tinuance. I think it would be properly dealt with in the

1 sentencing phase rather than the determination of guilt.

2 Your Honor, in a capital case if the Defendant on en-  
3 hancement of prior conviction makes a motion for PCR, it  
4 doesn't prevent the capital case from going forward.

5 It is merely reconsidered on the sentencing aspect.  
6 I understand the Defendant is out on bond right now, and  
7 he hasn't fled yet.

8 However, he is looking at a possible sentence of life  
9 without parole upon conviction. The victim alleges the  
10 Defendant threatened her with a knife, is present, and I  
11 think it is only fair to the State and to the witnesses that  
12 we continue with the trial today.

13 THE COURT: I don't find that the filing of a PCR  
14 application is sufficient basis to warrant continuing this  
15 matter.

16 That action rises and falls on its own merits just  
17 like this one does. They are separate independent causes  
18 of action, and I'm not going to delay this case pending a  
19 hearing on that. The motion is denied.

20 MR. VITETTA: Thank you, sir. The only motion left  
21 is the motion to suppress the out-of-Court identification  
22 of my client, as being unduly suggestive.

23 We'd ask to have a hearing on that.

24 THE COURT: Okay. Solicitor, you may call whatever  
25 witnesses you have in regard to that.

1           MR. BECK: Thank you, Your Honor. I would ask my  
2 witnesses to step out.

3           THE COURT: The State's witnesses are sequestered,  
4 so I need for all of you to leave the room, please.

5           MR. BECK: I understand Defense witnesses are also  
6 sequestered.

7           THE COURT: That is correct.

8           (Witnesses leaving Courtroom)

9           THE COURT: Call your witness, please.

10          MR. BECK: We would call Benita Benton to the stand.

11                                   BENITA BENTON, being  
12 duly sworn, testified as follows, out of the presence of the  
13 jury:

14          DIRECT EXAMINATION BY MR. BECK:

15          Q.     Ms. Benton, you were at Budget Check Cashing on  
16 October 28, 1996?

17          A.     That's correct.

18          Q.     And you were a witness and present when an armed rob-  
19 bery took place?

20          A.     Yes.

21          Q.     Do you know who this man is who is sitting at the  
22 end of the table?

23          A.     That's Detective Roper.

24          Q.     Did you assist him in the investigation of this case?

25          A.     Well, I gave a statement and I looked at the photo

1 lineup.

2 Q. Talking about the photographic lineup, do you remember  
3 what date that was?

4 A. It was approximately a week after. I don't remember  
5 the date specifically.

6 Q. Do you remember where you were when this took place?

7 A. When what took place?

8 Q. The photographic lineup?

9 A. North Charleston Police Department.

10 Q. Okay, and did he call you to come down?

11 A. Yes, he did.

12 Q. And you went to the North Charleston Police Department?

13 A. Yes.

14 Q. Where were you there? Where were you in the Police  
15 Department?

16 A. Well, there's a little room in the detective unit that  
17 we went into.

18 Q. And who was present for that?

19 A. Detective Roper and myself.

20 Q. What, if anything, did Detective Roper tell you before  
21 you viewed the photographs?

22 A. Just generally that he had some photos for me to look  
23 at and see if I could identify--possibly identify the sus-  
24 pect if he was in that lineup.

25 Q. Do you remember how many photographs you saw?

- 1 A. Approximately six photographs.
- 2 Q. Can you describe what those photos were of?
- 3 A. Black males. Black males' photos.
- 4 Q. What, if any, physical characteristics did they
- 5 share?
- 6 A. Hair, facial hair, hair on their head. There's not
- 7 much to a head shot.
- 8 Q. Okay, how did he place them before you or show them
- 9 to you? Did he show them one at a time?
- 10 A. No. He set them out. Put all of them out in front
- 11 of me.
- 12 He gave me time to look at them and review them and
- 13 make my choice.
- 14 Q. Okay. Did you make a choice out of those photographs?
- 15 A. Yes, I did.
- 16 Q. How did you make that choice?
- 17 A. Very quickly. Process of elimination. I looked at
- 18 each photo and I said, no, no, no, no, no, yes.
- 19 Q. What did you do after you selected the photograph?
- 20 A. Gave it to Detective Roper and said this is the man
- 21 right here.
- 22 Q. On the night of the 28th at the Budget Check Cashing,
- 23 what opportunity did you have to view the Defendant? The
- 24 suspect that evening?
- 25 A. When he walked in the door he looked right at me but

1 I had seen him in there before.

2 Q. Okay.

3 A. And the reason that I guess I remember him is because  
4 my very first time viewing him or seeing him prior to  
5 the incident date I said he kind of resembled another guy  
6 that comes in there and plays from time to time.

7 Of course, I know it's not him--not the guy I was  
8 comparing him to, but just that first glance I said, oh,  
9 that looks like someone else I knew by name, and that is  
10 what made me kind of take a double-take and look at him a  
11 second time prior to the incident.

12 Then when I saw him come in on the incident date, it  
13 didn't surprise me at all because I had seen him in there  
14 before.

15 Q. Okay. The night of the armed robbery you said you  
16 saw him when he came in the door?

17 A. Yes. He looked right at me.

18 Q. Did you see him at any other time?

19 A. That night?

20 Q. Yes.

21 A. He came to the door twice so I did--I saw him the first  
22 time he came through and I saw him when he left out, and  
23 when he came back in I kind of glimpsed him again.

24 Q. Did he have anything covering his head?

25 A. No, he did not.



1 A. No, he did not.

2 Q. Is the person you picked out in the photograph re-  
3 sponsible for the crime?

4 A. Yes. He was the only other person in that building  
5 at the time this happened.

6 Q. At this time, Ms. Benton, I'm going to ask that you  
7 answer the Defense questions.

8 THE COURT: Cross examination, please.

9 CROSS EXAMINATION BY MR. VITETTA, out of the presence of the  
10 jury:

11 Q. Ms. Benton, Detective Roper presented these to you?

12 A. Yes.

13 Q. And where was he sitting while you were looking at  
14 the photographs?

15 A. To my left.

16 Q. And how close was he to you?

17 A. Right next to me.

18 Q. And were the photos in front of you or were they be-  
19 tween you and Detective Roper?

20 A. In front of me.

21 Q. And do you remember in the series of photos you  
22 looked at which photograph is Mr. Linen?

23 A. . .

24 Q. Where he was in the lineup, whether he was the first,  
25 third, the sixth?

- 1 A. I believe he was the fifth.
- 2 Q. And what did Detective Roper tell you while you were
- 3 looking at the photographs?
- 4 A. Nothing. We didn't talk. I was studying the pic-
- 5 tures.
- 6 Q. What did he tell you before you looked at them?
- 7 A. . .
- 8 Q. Did he tell you the suspect was in the photograph?
- 9 A. No, he did not.
- 10 Q. Did he say he may or may not be in the photograph?
- 11 A. I don't remember him saying that, no. I know that
- 12 he was not suggestive in any way.
- 13 Q. Okay. About how long did you look at the photographs?
- 14 A. Probably thirty seconds.
- 15 Q. Thirty seconds?
- 16 A. Yes.
- 17 Q. Once you picked out Mr. Linen's photograph, what did
- 18 Detective Roper tell you?
- 19 A. He asked me if I was sure.
- 20 Q. What did you do?
- 21 A. I looked at the photographs again--I did look at it
- 22 a couple of times, and I said, yes, that's him.
- 23 Q. And you said Mr. Linen resembled somebody else that
- 24 you know by name who also frequents the video poker place?
- 25 A. Yes.

- 1 Q. What is that person's name?
- 2 A. I only know his first name, Nate.
- 3 Q. Nate--did you see any other series of photographs?
- 4 A. Yes, I did.
- 5 Q. How many series did you see?
- 6 A. One other series that consisted of six other photos.
- 7 None of those . . .
- 8 Q. I'm sorry.
- 9 A. None of those were him.
- 10 Q. Did you see that before the series in which you iden-
- 11 tified Mr. Linen?
- 12 A. After.
- 13 Q. After--nothing further.
- 14 THE COURT: Redirect?
- 15 MR. BECK: Nothing, Your Honor. Thank you.
- 16 THE COURT: You may step down. Thank you.
- 17 (Witness excused from stand)
- 18 MR. BECK: Cheryl Wood.
- 19 CHERYL WOOD, being
- 20 duly sworn, testified as follows, out of the presence of the
- 21 jury:
- 22 DIRECT EXAMINATION BY MR. BECK:
- 23 Q. Good morning , Ms. Wood.
- 24 A. Morning.
- 25 Q. Were you the victim of an armed robbery on October

- 1 28, 1996?
- 2 A. Yes, I was.
- 3 Q. And after that occurred, did you help the North  
4 Charleston Police Department find out who had done this?
- 5 A. Yes, I did.
- 6 Q. And you were working with Detective Roper?
- 7 A. Yes, I was.
- 8 Q. Did you have an occasion to look at any photographs?
- 9 A. Yes, I did.
- 10 Q. And where did you review those photographs?
- 11 A. At my place of work, Budget Check Cashing.
- 12 Q. Do you remember when that was?
- 13 A. I believe it was November 18.
- 14 Q. And who showed you the pictures?
- 15 A. Detective Roper did.
- 16 Q. Anyone else present?
- 17 A. No, sir.
- 18 Q. Where were you in the business?
- 19 A. Inside of my office.
- 20 Q. Do you recall what he told you?
- 21 A. Yes, I do.
- 22 Q. What did he tell you?
- 23 A. He told me to take my time and he told me to be posi-  
24 tive, and that he may not be in there. Just to take my time.
- 25 Q. Okay, how many pictures did he show you?

- 1 A. The first time I believe six--six pictures all to-  
2 gether.
- 3 Q. Can you describe what the pictures reflected?
- 4 A. Black men. They were about that big. (Gesturing)
- 5 Q. What did they show?
- 6 A. Men.
- 7 Q. Did these men look similar or did they look differ-  
8 ent?
- 9 A. Different.
- 10 Q. Did you pick one of those pictures out?
- 11 A. Yes, I did.
- 12 Q. Why did you choose one of the pictures?
- 13 A. That's who it was.
- 14 Q. Did Detective Roper make any suggestion?
- 15 A. No, he didn't.
- 16 Q. In any way?
- 17 A. No.
- 18 Q. About how long did it take you to pick out the photo-  
19 graph?
- 20 A. Um, less than a minute.
- 21 Q. Do you recall how Detective Roper displayed the  
22 photos for you?
- 23 A. Yes. Three on the top and three on the bottom.
- 24 Q. Do you recall which the Defendant's photo was?
- 25 A. Bottom left hand corner.

- 1 Q. On the night of the 28th of October, when the per-  
2 son who robbed you came in, what opportunity did you have  
3 to see him?
- 4 A. I had a very good opportunity.
- 5 Q. Had you ever seen him before?
- 6 A. Yes, I did.
- 7 Q. When had you seen him before?
- 8 A. The week before when he came into my business.
- 9 Q. Did you ever have a conversation with him?
- 10 A. He asked me one question.
- 11 Q. Did you have a conversation with him on the 28th?
- 12 A. Yes.
- 13 Q. About how long were you face to face?
- 14 A. Three to four minutes.
- 15 Q. Okay. Was he wearing anything over his face?
- 16 A. No, sir.
- 17 Q. Did he have a hat on?
- 18 A. No.
- 19 Q. Is there any question in your mind that the person you  
20 picked out in the photograph was the person who committed  
21 the crime?
- 22 A. No, sir.
- 23 Q. I have no further questions. Answer any questions  
24 Mr. Vitetta may have.
- 25 THE COURT: Cross examination.

1           MR. VITETTA: Yes, sir, Your Honor. May it please  
2 the Court?

3 CROSS EXAMINATION BY MR. VITETTA, out of the presence of the  
4 jury:

5 Q.     Ms. Wood, did Detective Roper present these photographs  
6 to you while you were in your office?

7 A.     Yes, sir.

8 Q.     And can you tell me exactly where you were sitting  
9 or where he was sitting when you looked at these photographs,  
10 please?

11 A.     Yes, sir. There was a desk and he was in front of  
12 me, and I was right here. (Gesturing)

13 Q.     And what did he tell you before you looked at the  
14 photographs?

15 A.     He told me to take my time. He said he may not be in  
16 there, to be sure and that sort of thing, and to take my  
17 time.

18 Q.     How many series of photographs did he show you?  
19 In sets of six . .

20 A.     Uh hm.

21 Q.     . . how many sets of six did you look at?

22 A.     He was in the first one.

23 Q.     Did you see any other series of photographs?

24 A.     No, he was in the first set.

25 Q.     Okay. What did he tell you after you identified Mr.

1 Linen?

2 A. He just asked me if I was positive, and I said yes.

3 Q. That took about a minute, you said?

4 A. About that, yes.

5 Q. And what did you do after he said are you positive?

6 Did you review the photographs again?

7 A. No, I had looked at them and picked him out.

8 Q. And you said you got a chance on the night of the  
9 robbery to see the robber?

10 A. Yes.

11 Q. What were you discussing with the robber while you were  
12 face to face? The three or four minutes?

13 A. That was during the time he was robbing us that I saw  
14 him. After he robbed me, he was telling me and acting like  
15 he was my friend because someone else who was in the busi-  
16 ness had said something to him.

17 So he . . .

18 Q. I'm sorry?

19 A. He was discussing--acting like he was my friend and  
20 saying I will tell her you said hi.

21 Q. Before the robbery?

22 A. After the robbery.

23 Q. Afterward?

24 A. Uh hm.

25 Q. I'm sorry. What was it he said?



1 A. Which part?

2 Q. What did the Defendant say to you?

3 A. When he was leaving, he said I will tell her you said  
4 hi.

5 Q. What were you discussing with him?

6 A. When he came in, he said he was looking for a woman.

7 Q. Yes, ma'am.

8 A. After he robbed me--because the other man who was in  
9 the building was coming out to see what was going on, he  
10 acted like he was just being my friend; that he was somebody  
11 I knew.

12 Q. And where were you as he was leaving?

13 A. On the other side of the barrier behind a chair.

14 Q. And outside of your office?

15 A. Yes.

16 Q. You have a little barrier in the back?

17 A. Yes.

18 Q. What else is back there?

19 A. Some desks.

20 Q. And that whole incident took place in three or four  
21 minutes?

22 A. Uh hm.

23 Q. Did you have any other conversation with him?

24 A. Just except for when he was robbing me.

25 Q. What did he say?

1 A. He asked me for the money. He told me if I said any-  
2 thing he would kill me, and just to give him all the money.

3 He asked me if I . . .

4 Q. He was face to face with you?

5 A. He was on my side. Before that he was to my face and  
6 after that he was to my face.

7 Q. Thank you.

8 THE COURT: Redirect?

9 MR. BECK: Yes, sir, just briefly.

10 REDIRECT BY MR. BECK, out of the presence of the jury:

11 Q. Ms. Wood, when he came in the first time, was he rob-  
12 bing you the first time?

13 A. The first time that he came in?

14 Q. Right. When he first came in to Budget Check Cashing  
15 on the 28th, what did he do?

16 A. He asked--he said he was looking for a woman, and  
17 I said she's not here, and then he walked back out--I said,  
18 unless she's in the other room she's not here, and then  
19 he walked back out the door or I thought he had walked out  
20 the door, but he didn't.

21 He came back in and he asked me for change for a  
22 Twenty Dollar bill, and I said he had to play the games in  
23 order to get change.

24 He said if that's what he had to do to get it that he  
25 would.

1 Q. Have you seen this man since that night?

2 A. No, I haven't.

3 Q. Have you been in Court for this case?

4 A. The bond hearing.

5 Q. Did you see him at that time?

6 A. Yes, I did.

7 Q. Are any of your identifications based upon seeing him  
8 in Court?

9 A. No.

10 Q. I have no other questions.

11 THE COURT: Recross?

12 MR. VITETTA: Nothing, Your Honor.

13 THE COURT: You may step down.

14 (Witness excused from stand)

15 MR. BECK: State calls Detective Harry Roper to the  
16 stand.

17 HARRY ROPER, being duly  
18 sworn, testified as follows, out of the presence of the  
19 jury:

20 DIRECT EXAMINATION BY MR. BECK:

21 Q. Detective Roper, by whom are you employed?

22 A. North Charleston Police Department.

23 Q. And as part of your responsibilities, do you investi-  
24 gate armed robberies such as occurred at the Budget Check  
25 Cashing on October 28th?

1 A. Yes, I do.

2 Q. And during that investigation, did you have an oppor-  
3 tunity to conduct a photo lineup?

4 A. Yes, I did.

5 Q. And to whom did you show the photographs?

6 A. I show the photo lineup to Ms. Wood and also to Ms.  
7 Benton.

8 Q. Anyone else?

9 A. No, sir.

10 Q. Do you recall when you showed the lineup to Ms. Benton?

11 A. On 11 13 of 96.

12 Q. How about Ms. Wood?

13 A. On 11 18 of 96.

14 Q. Was anyone else present when you showed these two in-  
15 dividuals the lineups?

16 A. No.

17 Q. Okay, but both of them were alone?

18 A. . .

19 Q. With Ms. Wood was anyone else present?

20 A. No, sir.

21 Q. With Ms. Benton was anyone else present?

22 A. No, sir.

23 Q. Please tell the Court what you told them?

24 A. Yes, sir. I have developed a practice to let the wit-  
25 nesses know before I show the lineup to you that this may

1 not be the person that's in question; these are a group of  
2 individuals that I am presenting to you that may or may not  
3 be involved in this criminal case.

4 To please take your time and look at the photo line-  
5 ups, and if you see the person please let me know with  
6 positivism, and if you do not, of course, let me know.

7 Q. Okay, where did you show Ms. Benton the photographs?

8 A. I showed her at the North Charleston Police Department.

9 Q. Where in the department?

10 A. Detective division which is on the third floor and  
11 one of our rooms that we use, an interview room.

12 Q. And what about Ms. Wood?

13 A. Ms. Wood was at work and she was unable to get off,  
14 so I had to go down to her employment.

15 Q. Could you tell us how the photographs were shown?

16 A. Sure. Ms. Wood--basically I presented the six photo-  
17 graphs in rows of three, six photos all together--three  
18 and then three below it.

19 Ms. Benton was--I believe she was shown the same way.

20 Q. Okay, and the photographs that you showed Ms. Wood,  
21 how were they selected?

22 A. Sorry?

23 Q. How did you select the photographs that you decided  
24 to show them?

25 A. I had--during the investigation, Mr. Linen was

1 brought forward and with that I called the Charleston  
2 County Jail--correction, the ID technician there, and they  
3 --with Mr. Linen they gave a selection of other individ-  
4 uals and put them together in a photo lineup.

5 They put his photo with some other photos that I  
6 showed them.

7 Q. Do these photos display similar characteristics?

8 A. Yes, sir.

9 Q. Can you tell the Court what they were?

10 A. Based on the description that the witnesses gave in  
11 the case, we had Charleston County present the same indi-  
12 viduals with similar features in the photographs.

13 Q. At any time did you suggest that Mr. Linen's photo-  
14 graph should be selected over the others?

15 A. No, I did not, sir.

16 Q. Did you to any person?

17 A. No, sir.

18 Q. And can you tell the Court whose photograph was se-  
19 lected?

20 A. Mr. Quinton Linen right there.

21 Q. In both cases?

22 A. Yes, sir.

23 Q. Thank you. I have no further questions.

24 THE COURT: Cross examination, please.

25 CROSS EXAMINATION BY MR. VITETTA, out of the presence of

1 the jury:

2 Q. Do you have the lineup with you?

3 A. Yes, I do.

4 Q. May I see it?

5 A. Sure.

6 Q. How were these photographs presented?

7 A. Basically I took those individual's photographs and  
8 placed them in front of the witness.

9 Q. Show me how you did that?

10 A. Placed them in front of the witness. (Gesturing)

11 Q. In any specific order or did you lay them all down  
12 together?

13 A. Just three on top and three on the bottom.

14 Q. And did you--how many sets of photographs did you  
15 present to Ms. Benton?

16 A. Initially there was six, but that particular photograph  
17 was the one that had Mr. Quinton in it and she requested  
18 to see other photos I had, and I showed her that after she  
19 had selected Mr. Quinton--Mr. Linen.

20 Q. And how about Ms. Wood?

21 A. It was just the six.

22 Q. Just these same six?

23 A. Yes, sir.

24 Q. Can you tell me what order Mr. Linen's photograph was  
25 selected when presented to Mr. Benton?

1 A. I can't recall.

2 Q. Or Ms. Wood?

3 A. I can't recall. I had them do a statement after that  
4 and the statement would show the one they selected.

5 Q. Nothing further.

6 THE COURT: Any redirect?

7 MR. BECK: No further questions.

8 THE COURT: You may step down.

9 (Witness excused from stand)

10 MR. BECK: Your Honor, we have no more witnesses with  
11 regard to the matter.

12 THE COURT: Any witnesses, Mr. Vitetta, that you  
13 would like to call?

14 MR. VITETTA: No, Your Honor.

15 THE COURT: I'd be glad to hear anything you want to  
16 present by way of argument then.

17 MR. VITETTA: I have nothing further in regard to  
18 this issue, Your Honor, but I do have one further motion to  
19 make.

20 THE COURT: All right. I find after hearing the  
21 testimony that the motion to suppress the identification  
22 is denied; that is, no suggestion in the way the photo-  
23 graphic lineup was presented.

24 It was done according to procedure that was not sug-  
25 gestive and the Detective did not in any way influence the



1 witnesses in their selection of the Defendant.

2 The identification is approved by the Court as a  
3 valid and appropriate identification in a photographic line-  
4 up.

5 That motion is denied. Anything further?

6 MR. VITETTA: Yes, sir. My final motion would be  
7 in viewing the photographs, the six photographs, that it  
8 does indicate all six individuals, including Mr. Linen,  
9 were under arrest at the time they had the booking done.

10 They have the numbers and everything on the chest,  
11 and I would ask that these photographs, if they are shown  
12 to the jury in the State's case, that somehow that be  
13 stricken--that part of the photograph not be presented to  
14 the jury.

15 I know in the City they have a book that you just  
16 slide the photographs in and it just shows the face. I  
17 think it is unduly prejudicial to show my client as being  
18 arrested . . .

19 THE COURT: What say, Solicitor?

20 MR. BECK: That's not a problem, Your Honor.

21 THE COURT: Okay, that can be corrected then and that  
22 will be taken care of.

23 Anything further?

24 MR. VITETTA: No, sir.

25 THE COURT: Any other motions?

1 MR. VITETTA: No, that would be it for this time.

2 Thank you.

3 THE COURT: Motions from the State?

4 MR. BECK: No motions from the State.

5 THE COURT: All right

6 (Court stood in recess until 3:10 P.M.)

7 THE COURT: Is the State ready?

8 MR. BECK: Yes, sir.

9 THE COURT: Is the Defendant ready?

10 MR. VITETTA: Yes, sir.

11 THE COURT: Bring the jury, please.

12 (Jury returned to the Courtroom)

13 THE COURT: Mr. Blincow, I want to appoint you as  
14 the Foreman of the jury, please, sir, so that will always  
15 be your chair.

16 Mr. Petty, you know where you will sit also, and no-  
17 one else has a reserved seat. When you come back in, do  
18 what you just did. File all the way to the end of the row  
19 and sit in those seats other than the reserved seats,  
20 please.

21 Swear the jury, please.

22 (Jury sworn by the Clerk)

23 THE COURT: Ladies and gentlemen, you are the tryers  
24 of the facts in this case. As tryers of the facts, you  
25 need to pay very close attention to all of the witnesses

1 who testify.

2 Don't listen to the first witness and quit listening  
3 after that. Listen to all of the witnesses with an open  
4 mind.

5 Normally I will not let you sit for more than an  
6 hour to hour and a half at a time without a break, but if  
7 you need a break before I give you one don't be bashful  
8 about raising your hand and telling me you need a break.

9 It is vitally important that you be alert and pay  
10 attention to everything that goes on in here because you  
11 cannot take notes and you cannot ask questions.

12 So you have to listen very intently to all of these  
13 witnesses and pay close attention.

14 Although this is not an endurance contest, and we're not  
15 trying to make you sit here two and three hours at a time,  
16 so do not be bashful about raising your hand and letting me  
17 know when you need a break if you need one.

18 Also, if you cannot hear or see something that is being  
19 demonstrated, or you cannot hear the witness, again raise  
20 your hand and let us know that and we will have them speak  
21 up.

22 The witness will be seated over here in this chair  
23 facing you, and we have a microphone system that will am-  
24 plify the sound, but sometimes some witnesses speak rather  
25 softly and are difficult to hear.

1           Let us know if you cannot hear or see.

2           This is a very important day for both the State of  
3           South Carolina and the Defendant. They deserve your un-  
4           divided attention.

5           We'll start the case by having opening statements  
6           from both attorneys. Solicitor?

7           MR. BECK: Thank you, Your Honor. May it please  
8           the Court?

9           Ladies and gentlemen, we are going to prove to you  
10          that this man is an armed robber.

11          On October 28, 1996, at nine o'clock in the evening,  
12          at 5521 Rivers Avenue, a business called Budget Check Cash-  
13          ing where you cash checks and there is also a bank of video  
14          power machines.

15          A woman named Cheryl Ann Wood was working there. She  
16          is an employee there, and she was the only employee there.  
17          There were two other customers.

18          They were in the front room playing games, and Ms.  
19          Wood was in the back. About nine o'clock that man walked  
20          in.

21          Ms. Wood will tell you that the week before he had  
22          come in at least two times, and the two customers who were  
23          playing vodo poker that night will tell you that they had  
24          seen him in there before.

25          He walked in and looked directly at the woman who

1 will be testifying, Bonita Benton. She said that she made  
2 eye contact with him, and she will tell you he went directly  
3 to the back.

4 There he got in a conversation with the victim, Ms.  
5 Wood, a conversation very similar, she will tell you, to  
6 one she had before with the Defendant.

7 He made small talk with her, and he said, have you  
8 seen her, and she will tell you she said who--that girl,  
9 she has tight curls--he didn't give her name.

10 Ms. Wood said, no, I don't know who you're talking  
11 about. He left.

12 He came back in directly after that and asked Ms. Wood  
13 for change for a Twenty Dollar bill, and she said she told  
14 him, oh, are you going to play some games; you have to play  
15 some games if you want to get change here.

16 He said, okay, and he went to get change for a  
17 Twenty. As she reached into her money belt, she will tell  
18 you that he grabbed her by the arm and he took out a  
19 knife. He pointed it at her face, he pointed it at her  
20 throat.

21 He said, give me the money, and she will tell you she  
22 pleaded with him to take it, take everything, and then he  
23 asked her is that all there is.

24 The other two witnesses who were there that evening  
25 will tell you they heard some muffled sounds which drew their

1 attention and made them worry.

2 Benita Benton will tell you that she ran out of  
3 that building and went to her car phone and called the po-  
4 lice.

5 Her husband, Freemon Brown, will tell you that he  
6 came from the front room and stopped because he wasn't cer-  
7 tain what was going on, and called Cheryl's name.

8 He'll tell you he didn't get a response until the  
9 Defendant came toward him and appeared to be making chit-  
10 chat with the victim.

11 Something to the effect of, I'll tell her you said hi,  
12 and Mr. Brown will tell you that he stopped the Defendant  
13 with his hand and he called, Cheryl, and the Defendant  
14 slipped by him. He came around the corner of the back room  
15 and he will tell you he saw Ms. Wood shaking in the corner  
16 of the room.

17 At that point, he spun around and chased the Defendant.  
18 Ms. Brown was out on the car phone and saw the Defendant  
19 come out the door, followed by her husband, Freemon Brown,  
20 and they chased the Defendant across Rivers Avenue, through  
21 the parking lot of McDonald's at nine o'clock in the evening,  
22 through bushes and trees, and they lost his track.

23 However, thanks to the investigative work of the  
24 North Charleston Police Department, they found that man,  
25 and you will hear testimony that these witnesses have

1 identified this man by photographs, and they're going to  
2 come in here and tell you that this is the person who did  
3 that.

4 This is the person who violently held a knife to  
5 Ms. Wood's throat and that they had seen in there before.

6 Ladies and gentlemen, each crime has certain elements  
7 broken down into parts.

8 The crime of armed robbery, the law says, is broken  
9 down into the unlawful taking and carrying away of the  
10 personal property of another, with intent to permanently  
11 deprive that person of that possession, by use of force,  
12 threat, intimidation, while armed with a deadly weapon.

13 We're confident that at the conclusion of the testi-  
14 mony in this trial that you will retire to your jury room  
15 and come out with a true and just verdict in this case.

16 Thank you.

17 THE COURT: Mr. Vitetta?

18 MR. VITETTA: Thank you. May it please the Court?  
19 Solicitor?

20 The case is not as simple as they would have you be-  
21 lieve. Quenton said he didn't do it, and the Judge told  
22 you he pled not guilty.

23 The State does not have evidence that is sufficient  
24 to convict him, and what we are saying is that this is a case  
25 of mistaken identity.

1           The witnesses picked out someone they had seen but  
2       he wasn't the robber.

3           See, just because they point to somebody in the  
4       photograph and just because they come into Court and point  
5       to somebody sitting here at the defense table doesn't  
6       mean that person actually was guilty of the robbery.

7           The State has prove all of the elements of the rob-  
8       bery beyond a reasonable doubt.

9           Now, what we're going to be doing, the Defense is  
10       going to be offering an alibi, and probably most of you  
11       know what that is.

12          What we're going to be saying is that Quinton was  
13       somewhere else at the time the robbery happened. Okay, we  
14       are going to say that he was at his mother's house and  
15       that his sister was there; that she picked him up about  
16       twenty after nine and he had been there since about five  
17       thirty.

18          Now, sure, that's his mother and that's his sister.  
19       You can see there might be a possibility of bias there,  
20       and I really wish I could tell you that we have Mayor  
21       Riley coming in to say he was having dinner at his house  
22       that night.

23          The thing about it--but think about your common  
24       experience and your daily lives. Where are people on a  
25       Monday Night? Where are folks on a Monday Night?



1       Where are they on Monday at nine o'clock--with their fami-  
2       lies?

3               If we ever need somebody to vouch for us, that is  
4       who it is going to be.

5               That is where Quinton was and that is who is going to  
6       come in here and tell you where he was on the night this  
7       robbery occurred. He was at his mom's house and he had  
8       dinner, and his sister came to pick him up about nine twenty  
9       or nine thirty.

10              So when the case is over, what you're going to have  
11      is you're going to have two conflicting theories. You are  
12      going to have one theory, the State's theory, that is  
13      going to say, yeah, he did it; we have a couple of witnes-  
14      ses that--a victim and a witness who ran across the street  
15      and chased the person--they're going to say, yeah, that's  
16      the guy who did it.

17              But you are going to have another theory that is just  
18      as compelling and just as believable, just as reasonable.  
19      That is, he wasn't there; that they picked out somebody who  
20      either looked like him or they may have seen at an earlier  
21      time.

22              But he was at his mother's house on the night of the  
23      robbery, so you are going to have two reasonable theories,  
24      both of which make sense. One is not going to outweigh the  
25      other.

1           The State's burden is much higher than that. The  
2       Judge is going to instruct you that the State has to prove  
3       his guilt beyond a reasonable doubt.

4 I think when you deliberate on this case and when you  
5 look at the facts and consider all the testimony, you are  
6 going to feel like I do, that the State hasn't met that  
7 burden and that my client, Quinton Linen, is not guilty.

8                      Thank you.

9 THE COURT: Okay, Solicitor, you may call your first  
10 witness.

11 MR. BECK: Thank you, Your Honor. The State would  
12 call Benita Benton.

13 BENITA BENTON, being  
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BECK:

16 Q. Ms. Benton, I'm going to ask you to speak up loudly  
17 and clearly so the jury can hear you.

18           A.       Okay.

19 Q. Thank you. Ms. Benton, do you recall October 28,  
20 1996?

21       A.       Yes, I do.

22 Q. Can you tell our jury what you were doing on that  
23 evening?

24 A. I was in the Budget Check Cashing playing the penny  
25 poker machine, the video poker machine.

- 1 Q. And where is that located?
- 2 A. At 5521 Rivers Avenue.
- 3 Q. Have you been there before that date?
- 4 A. Yes, I had.
- 5 Q. Would you say you are a regular there?
- 6 A. Yes, I do frequent the place.
- 7 Q. And you know the other patrons who go there?
- 8 A. Yes, there are quite a few that always come. Every
- 9 now and then you will have someone else, not a regular,
- 10 but most of the time the people you see coming there are
- 11 regulars.
- 12 Q. And how about the staff there? Are you on friendly
- 13 terms with them?
- 14 A. Yes, I am.
- 15 Q. You know their names?
- 16 A. Yes.
- 17 Q. You talk with them?
- 18 A. Yes.
- 19 Q. Who else was at Budget Check Cashing that evening?
- 20 A. Cheryl Woods and Freemon, my husband, and myself.
- 21 Q. Anyone else?
- 22 A. No.
- 23 Q. And what were you doing?
- 24 A. I was playing the poker machine.
- 25 Q. And your husband, what was he doing?

1       A.     Playing--he was playing the machine about three  
2       machines over.

3       Q.     And how about Ms. Woods, as far as you know?

4       A.     I think she was watching television, as far as I know.  
5       They have a little TV up front and she was there sitting  
6       up there on the couch.

7       Q.     Okay, where were you and your husband?

8       A.     It's a second room within a room. That's where we  
9       were.

10      Q.     A self-contained room?

11      A.     Yes, it is.

12      Q.     Does it have its own door?

13      A.     Yes.

14      Q.     And how long had you been there?

15      A.     Approximately an hour before the incident took place.

16      Q.     Okay. The room you were in, how many machines are  
17      in there approximately? How many games?

18      A.     Five.

19      Q.     Where was your husband? Where was he sitting?

20      A.     He was sitting right behind the door. The first  
21      machine, second, third, fourth, fifth. I was closest to  
22      the window and he was closest to the door.

23      Q.     Why was he playing the first machine?

24      A.     That's his favorite one.

25      Q.     When you said the incident, tell the jury what happened.

1 A. I'm sorry?

2 Q. You said until the incident, . .

3 A. Right.

4 Q. . . you had been there about an hour. What incident  
5 happened?

6 A. . .

7 Q. What happened while you were there?

8 A. Well, I was sitting at the machine, playing the  
9 machine, and I saw a shadow come by the window. There is  
10 a big large window right by where the machine was I was  
11 sitting at.

12 Every now and then you could see a shadow if a per-  
13 son walks close enough to the window coming by, and I  
14 heard the door open because you can hear the door open.  
15 There are bells on the back of the door and there is also  
16 a little small window where you can see out into the lobby  
17 area.

18 And I heard the door come in and when the person come  
19 in I just looked around to see who it was, and I'm facing  
20 the machine this way and the door is over here. (Gesturing)

21 So as I heard the door open, I just kind of looked to  
22 see who it was. I did like this, and at that time I saw  
23 Mr. Linen come through the door, and . .

24 MR. VITETTA: Objection, Your Honor. There hasn't  
25 been any identification of my client at this point.

1 THE COURT: That's sustained.

2 MR. VITETTA: I would ask that the jury be excused,  
3 Your Honor.

4 THE COURT: Ladies and gentlemen, would you please  
5 step in the jury room and don't talk about the case yet.  
6 I have a matter that I need to take up with the attorneys.

7 (Jury excused from Courtroom)

8 MR. VITETTA: Your Honor, there is no foundation at  
9 this point that my client was at the video poker place, and  
10 I would ask that her identification of him at this point  
11 be--that the jury be admonished to disregard that statement  
12 since no foundation was laid.

13 THE COURT: What say, Solicitor?

14 MR. BECK: Your Honor, she's saying this was the per-  
15 son she saw. I wasn't going to actually get into it just  
16 yet until we laid some background.

17 But she said that is who she saw when she looked up.  
18 She saw his face, and she can tell the jury that.

19 THE COURT: Mr. Vitetta?

20 MR. VITETTA: Your Honor, I think that her identifica-  
21 tion is based on photographs presented to her by the police  
22 officer, and I think that is the proper foundation that has  
23 to be laid.

24 She can say she saw someone come in and do all this  
25 stuff and then she talked to a police officer who showed her

1       photographs; that she saw the person who did the robbery.

2               I think this is premature at this point.

3               THE COURT: That objection is sustained. You must lay  
4       the foundation for that identification, please.

5               MR. BECK: Thank you, Your Honor.

6               MR. VITETTA: Would you admonish the jury that they  
7       are to disregard that statement?

8               THE COURT: I will. Bring the jury in, please.

9               (Jury returned to Courtroom)

10              THE COURT: Okay, ladies and gentlemen, you are to  
11       disregard the last statement made by this witness with re-  
12       gard to identifying someone as the perpetrator of the  
13       crime at this point.

14              Go ahead, Mr. Beck.

15       DIRECT EXAMINATION CONTINUED:

16       Q.       Ms. Benton, before our brief interruption, you said  
17       that someone came into the business?

18       A.       Yes.

19       Q.       And you saw their face?

20       A.       Correct.

21       Q.       What did that person do next?

22       A.       Well, as he passed by the door he looked at me and  
23       he kept on going to, I believe, where Cheryl was sitting.

24       Q.       Had you seen that face before?

25       A.       Yes, I had.

1 Q. Where had you seen that person?

2 A. In that same establishment.

3 Q. How recently before that day?

4 A. I can't recall. Random--he had been in there before,  
5 at least twice before.

6 Q. Had you ever seen him play games in there?

7 A. No. Never.

8 Q. Okay. When he passed by you toward the back of the  
9 business, what did you hear or see after that?

10 A. Well, he passed by the first time and he went to  
11 where Cheryl was and I could vaguely hear them talking to  
12 one another.

13 And then he came--he left out and passed by the door  
14 again and went on out the building, and just as he left  
15 again a shadow passed by the window where I was sitting,  
16 and at that point I heard someone make a loud grunting or  
17 rumbling noise outside the window.

18 Q. Can you recreate for our jury what you heard?

19 A. Demonstrate that noise? It was like--(Witness making  
20 sound)--something to that effect.

21 Q. Okay.

22 A. And that caught my attention, and when the door  
23 opened again that is when I stopped doing what I was doing  
24 to look again and to listen this time and again he passed  
25 --he went by a lot quicker this time, straight to Cheryl.



1           He did not look at me at that point.

2       Q.     How do you know it was the same person?

3       A.     Because I looked back again and I saw that that was  
4       him again, and I still just sat there at my machine. I  
5       didn't do anything but I was just listening because it--I  
6       felt like something wasn't right.

7           I don't know if it was outside that I felt something  
8       wasn't right because of that noise, or whether it was on the  
9       inside.

10          I don't know, but as I sat there I just listened and  
11       I heard Cheryl say, okay, okay, and it was at that point I  
12       knew something wasn't right because it didn't sound right  
13       to me.

14          So I left my machine--I jumped up and I ran outside  
15       to make a phone call to the police.

16       Q.     You called the police then?

17       A.     Yes.

18       Q.     Did you ever go back inside the business?

19       A.     I went back after--I went back much later, probably  
20       ten or fifteen minutes later.

21       Q.     Okay. When you were on the phone, how long did that  
22       take?

23       A.     Seconds.

24       Q.     And what did you tell the police?

25       A.     I told them I believed there was a robbery taking

1 place at Budget Check Cashing and I gave them the address.

2 Cheryl wears an alarm around her--the attendants wear  
3 alarms around their necks, and the phone call went in much  
4 quicker than her ability to push the button.

5 Because by the time I made the phone call he was  
6 already running outside the door.

7 Q. Let's talk about that. You were by your--when you  
8 were by your car, where were you?

9 A. I was on the driver's side.

10 Q. And what did you see after that when you were making  
11 the call?

12 A. I got my phone out of the car and I dialed the number  
13 and just as it was going through and the dispatcher picked  
14 up, he--the subject ran out the door, very quickly, hold-  
15 ing a bag in his hand, just like this. (Gesturing)

16 He was running away from the building.

17 Q. What did the bag look like?

18 A. It was just a black bag--black cloth-looking something  
19 in his hand.

20 Q. Was this the same person you had seen enter the build-  
21 ing?

22 A. Yes, because, again, there was only still the same  
23 people in the building that--when that person came in.

24 Q. Did you see his face when he came out?

25 A. I saw him from a side view but it was the same person

1 I had seen and I had seen his clothing too.

2 Q. How was he dressed?

3 A. Light colored--it looked like a light colored knit  
4 shirt, dark pants, and it was the same build.

5 Q. Was he ragged?

6 A. The clothing?

7 Q. Yes.

8 A. No, I would say he was fairly neatly dressed.

9 Q. All right, what did you see after he came running out  
10 of the business?

11 A. He ran across the street--the two lane highway,  
12 Rivers Avenue, and he kind of ducked down into a small  
13 grassy area of Rivers Avenue which is in the median, and  
14 then he crossed another two lane highway and ran behind  
15 McDonald's, and kept on going.

16 Q. Did you see--what was your husband doing at this  
17 time?

18 A. He ran out the door after him. He did. He ran out  
19 after him and that's when I said something to him and he  
20 saw me to his left because I was still over there close to  
21 the car.

22 And he said, Cheryl just got robbed or something to  
23 that effect, and he kept running, and I jumped in my car  
24 to kind of go over there to, or chase the guy down.

25 Q. Where did you drive your car?

1       A.     I drove my car to the McDonald's, and I went as far  
2       as I could go because there were two pillars in the road  
3       that wouldn't let me go any further.

4       Q.     Did you see your husband over there?

5       A.     Yes. He was already over there looking around but  
6       it was dark, so when he saw me coming and saw the headlights  
7       of the car he came back and asked me for a flashlight and  
8       I gave it back to him.

9             At that point is when I went back around to the Budget  
10       to check on Cheryl.

11       Q.     I'm going to ask you if you can identify State's  
12       Exhibit 1 for identification.

13       A.     That's the Budget Check Cashing.

14       Q.     Is that a fair and accurate representation of what it  
15       looked like that evening?

16       A.     Yes.

17       Q.     Other than it's daylight here?

18       A.     Yes.

19       Q.     How about State's Exhibit 2 for identification?

20       A.     Okay, this is the room where I was. Over in this  
21       direction. There's a window right here, and there were  
22       several machines on this side.

23             This is the door that he passed by to continue in  
24       the . .

25       Q.     This is the interior of the business?

1       A.     Yes.

2       Q.     And is that a fair and reasonably accurate representa-  
3       tion of the way the door appeared that evening?

4       A.     Yes.

5       Q.     State's Exhibit Number 3 for identification?

6       A.     Okay, that's the room where I was playing.

7       Q.     Okay.

8       A.     It's been changed around, and this window is no longer  
9       a window. It's been boarded up on this picture, but it was  
10      open during that time and the machine I was playing was  
11      right next to the window.

12      Q.     That's how it looked that evening?

13      A.     No.

14      Q.     Except for the window . .

15      A.     This was not boarded and the machine that I was play-  
16      ing was over here by that window.

17      Q.     Was there anything else different about the way it  
18      appeared that evening?

19      A.     Well, in this picture the machines have been changed  
20      around. You cannot see shadows by the window any more.

21      Q.     Everything else is the same?

22      A.     Everything else is the same.

23      Q.     How about State's Exhibit Number 4 for identification?

24      A.     Okay, that is the McDonald's across the street where  
25      he ran.

1 Q. That's what it looked like on October 28th?

2 A. Yes.

3 Q. All right, and how about State's Exhibit Number 5  
4 for identification?

5 A. That looks like the barrier. Again, it was at  
6 night so that looks like the area that you are no longer  
7 able to go any further because of the pillars in the road  
8 there.

9 Q. And these are all reasonably fair and accurate  
10 representations with the exceptions of some of the minor  
11 changes on State's Exhibit Number 3?

12 A. That's correct.

13 Q. All right.

14 MR. BECK: Any objection?

15 MR. VITETTA: No objection.

16 MR. BECK: Your Honor, at this time we'd like to admit  
17 State's Exhibits 1 through 5.

18 THE COURT: Any objection?

19 MR. VITETTA: No, sir.

20 THE COURT: Without objection they're in evidence.

21 (Photographs entered in evidence without objection as  
22 State's Exhibits 1 through 5)

23 MR. BECK: Your Honor, we have overhead projections  
24 of the same exhibits. May we offer them as well?

25 THE COURT: Any objection?

1 MR. VITETTA: Are they the same as the . .

2 MR. BECK: Yes.

3 MR. VITETTA: No objection.

4 THE COURT: Without objection they are in evidence  
5 as well.

6 (Transparencies of photographs entered in evidence  
7 without objection as State's Exhibits 1A, 2A, 3A, 4A, and  
8 5A.)

9 BY MR. BECK:

10 Q. Ms. Benton, what I'd like to do for the jury since  
11 they have heard you talking about this, just show them these  
12 with a brief recap, please?

13 Can you tell them what this is?

14 A. This is the Budget Check Cashing.

15 Q. And this?

16 A. This white door right there is another room, and in-  
17 side that room are five other machines and right behind  
18 that door . .

19 Q. This door?

20 A. Yes. That is the door and there are several machines  
21 in that room, five of them.

22 And the subject came in and passed by the first door  
23 and again I said I stopped and I looked at him, and he  
24 kept--he looked back at me and he kept on through that  
25 door right there, the second door.

1 Q. I show you State's Exhibit 3 A now.

2 A. It's been changed around in that room according to  
3 that picture, but . .

4 Q. And what's different, for our jury?

5 A. The machines are now blocking the window, and that  
6 little area to the right there is a window that has been  
7 boarded up.

8 Q. Okay.

9 A. It used to be open. During this time the incident  
10 took place, it was open.

11 Q. For our jury, where was your husband sitting?

12 A. He was--you can't see where he was sitting.

13 Q. Why not?

14 A. Because he was sitting behind the door.

15 Q. Okay, and where are you sitting?

16 A. By the window. Right to the left there--that's a  
17 window right there, a ceiling to floor window.

18 Q. We can't see where your husband was sitting right  
19 now?

20 A. No.

21 Q. When the man walked in, would he have been able to  
22 see your husband?

23 A. No.

24 Q. I'm now showing you State's Exhibit 4 A.

25 A. That's the McDonald's.



1 Q. This is where you chased him?

2 A. Yes. He ran out and crossed the highway there and  
3 ran toward McDonald's.

4 Q. All right.

5 A. And that's the direction that I went in until I  
6 couldn't go any further because of the posts.

7 Q. You said the police were called?

8 A. Yes.

9 Q. Did they respond to your call?

10 A. Yes, they did.

11 Q. And what happened after the police arrived?

12 A. When the police arrived--by that time I was back  
13 where Cheryl was, and trying to comfort her, and they came  
14 and took statements.

15 Q. So you gave them a statement that evening?

16 A. Yes, I did.

17 Q. Did you give a description of the man that you saw?

18 A. Yes, I did.

19 Q. Okay, and what was that description?

20 A. Black male, slim build, approximately five six to  
21 five eight, maybe.

22 Very thin hair cut on the sides. I believe they re-  
23 fer to it as a fade with a little bit of afro on the top and  
24 a little on the side and back.

25 Dark complexion.

1 Q. Okay, did you assist the police in the investigation  
2 after the event?

3 A. I gave a composite drawing.

4 Q. How long after that?

5 A. That was the next day, the composite drawing.

6 Q. Who was present at the composite drawing?

7 A. It was another North Charleston police officer, a  
8 detective, who did the composite. I don't remember the name.

9 Q. Just that detective?

10 A. Yes. During the composite drawing he was just--it  
11 was just that detective.

12 Q. Was there anyone else who might have seen it?

13 A. Cheryl.

14 Q. Where did this happen? Where did the composite take  
15 place?

16 A. North Charleston Police Department.

17 Q. So you and Cheryl were over there?

18 A. Yes.

19 Q. And can you explain what the composite--what that in-  
20 volves?

21 A. That involved looking at computer printouts of differ-  
22 ent parts of a person's makeup. For example, they had  
23 sketches of hair and sketches of a nose, sketches of a  
24 mouth, ears, face shape.

25 You put those features together to try to come up with

1 a drawing.

2 Q. On a computer screen?

3 A. Yes.

4 Q. And how did the result turn out?

5 A. I didn't care for the results because I told the  
6 officer that the information that was there was not an  
7 accurate description of the man that I knew had been in  
8 the place that night.

9 But what the officer told me was that this was  
10 pretty much standard features; that they have them in the  
11 system, and that's all we could go by.

12 Q. Were you ever shown any photographs?

13 A. Yes.

14 Q. Do you recall when that was?

15 A. I'm sorry?

16 Q. Do you recall when you were shown the photographs?

17 A. I can recall approximately a week or two weeks after.

18 Q. Who asked you to look at photographs?

19 A. Detective Roper with North Charleston Police.

20 Q. This is Detective Roper?

21 A. Yes, it is.

22 Q. And what did he say to you?

23 A. He said he had some photographs he'd like me to take  
24 a look at and could I come in . .

25 MR. VITETTA: Objection to hearsay, Your Honor.

1           THE COURT: That is sustained. You cannot testify  
2 to what he told you. Based on what he told you what did  
3 you do?

4       A.     I went to North Charleston Police Department and  
5 took a look at some pictures that he had.

6       Q.     What did the pictures look like?

7       A.     They were of black males, head shots.

8       Q.     How many photographs?

9       A.     I look at six initially.

10      Q.     All right, and did you pick out someone in those  
11 photographs?

12      A.     Yes, I did.

13      Q.     And what did you do with the photograph that you  
14 picked out?

15      A.     I picked it out and gave it to Detective Roper, and  
16 I said this looks like--this is him.

17      Q.     Did anyone ever make a suggestion to you that that's  
18 the picture you should pick out?

19      A.     No, sir.

20      Q.     Let me ask you a question about that. On the night  
21 that Cheryl Wood was robbed, do you recognize anyone in the  
22 Courtroom?

23      A.     I recognize this gentleman right here. (Indicating  
24 the Defendant)

25      Q.     How do you recognize him?

1 A. From coming in Budget Check Cashing.

2 Q. This is very important, Ms. Benton. You recognize  
3 him because he's sitting at the Defense table?

4 A. No, I recognize him because he's the one that came  
5 in to that business that night and he had been in there  
6 before.

7 Q. Would you possibly have recognized him from the photo-  
8 graph you looked at?

9 A. Yes.

10 Q. Based upon what you saw the night of the 28th, can  
11 you tell me if that is the man?

12 A. He looks--he's got a beard right now.

13 Q. He has more beard than he had?

14 A. Yes, to my recollection he has more beard right now.  
15 But the hair cut is the same.

16 Q. How about the face?

17 A. The face is still the same.

18 Q. The face doesn't change, but you can grow hair, is  
19 that right?

20 A. Right.

21 Q. You have to be fairly observant to suspect an armed  
22 robbery going on when in fact there was one.

23 A. . .

24 MR. VITETTA: Object to leading.

25 THE COURT: Sustained. Ask the witness a question,

1 Solicitor.

2 MR. BECK: Yes, sir.

3 Q. Can you tell the jury your background, as far as  
4 where you work?

5 A. . .

6 MR. VITETTA: Objection as to relevance.

7 THE COURT: Overruled. She can answer that question.  
8 Go ahead.

9 A. I'm a 1984 graduate of the Police Academy. I have  
10 been in law enforcement since 1984. I currently work as a  
11 corporate investigator with S. C. E. and G.

12 I worked with the Medical University Public Safety  
13 Department for eight years as a lieutenant of investigation.  
14 I worked up through the ranks from street officer to cor-  
15 poral to sergeant and up to lieutenant.

16 Q. Ms. Benton, I'm going to ask you to please answer any  
17 questions Mr. Vitetta has.

18 THE COURT: Cross examination, please.

19 CROSS EXAMINATION BY MR. VITETTA:

20 Q. Ms. Benton, you described a robbery that happened  
21 rather quickly?

22 A. I would say it did.

23 Q. I'm sorry?

24 A. I would say it did, yes.

25 Q. From the time the robber went in and you heard something

1 right?

2 A. Yes.

3 Q. You went to the phone in your car?

4 A. Right.

5 Q. And you didn't say as the dispatcher--didn't you say  
6 as the dispatcher answered the robber ran out past you?

7 A. Yes, he did.

8 Q. You testified on direct that you went to the police  
9 station and gave information regarding the description of  
10 the suspect, and I believe that was the very next day?

11 A. It was also that night too.

12 Q. Okay.

13 A. The night that it happened, I gave a description and  
14 a statement.

15 Q. But on the next day you went in to develop a compos-  
16 ite sketch?

17 A. Yes.

18 Q. And that is--you were trying to give more detail about  
19 what this person's face looked like?

20 A. Yes.

21 Q. And develop a sketch?

22 A. Yes, right.

23 Q. I'd like to show you Defendant's Exhibit 1. Can you  
24 identify that?

25 A. That's a composite drawing there, and that I might have

1 given to North Charleston Police.

2 Q. Is that the one that was the result of your--can you  
3 tell us if that is the composite that is the result of  
4 your information, or can you not tell by looking at it?

5 A. It's kind of--not really, because I told the officer  
6 that the drawing I gave him is not accurate.

7 Q. Right, but what I'm saying though is that after you  
8 gave the information to the police that's the composite  
9 that came out of the computer?

10 A. It looks like some features have been added that I  
11 didn't add.

12 Q. So this is a different composite sketch?

13 A. . .

14 Q. Is that what you're saying?

15 A. No, I'm just saying that it looks like someone has  
16 drawn a chin and possibly a mustache of some sort.

17 Q. And then you were shown the six photographs?

18 A. Yes.

19 Q. That was like two weeks later?

20 A. Approximately, yes.

21 Q. And you picked out my client?

22 A. Yes.

23 Q. Mr. Linen?

24 A. Yes.

25 Q. And then you asked Detective Roper to see some more



1 photographs, is that correct?

2       A:     No, I didn't ask to see any more, but he showed me  
3       some more.

4 Q. That's all I have. Thank you.

5 THE COURT: Redirect?

6 MR. BECK: Thank you, Your Honor.

7 REDIRECT EXAMINATION BY MR. BECK:

8 Q. Ms. Benton, when you were shown those photographs  
9 after you selected this man's photograph, . .

10 A. Yes.

11 Q. . . did you see the man who did it in those photo-  
12 graphs?

13      A.      No.

14 Q. Is this the man who did it? (Pointing to Defendant)

15 A. Yes, sir.

16 Q. Thank you.

17 THE COURT: Recross?

18 MR. VITETTA: I have nothing further.

19 THE COURT: You may step down. Thank you, maam.

20 (Witness excused from the stand)

21 THE COURT: Next witness, please.

22 MR. BECK: State calls Cheryl Wood.

23 CHERYL ANN WOOD, being

24      duly sworn, testified as follows:

25 DIRECT EXAMINATION BY MR. BECK:

- 1 Q. Good afternoon, Ms. Wood.
- 2 A. Hi.
- 3 Q. The jurors are anxious to hear what you have to say,
- 4 and I would ask if you could speak loudly.
- 5 Can you tell us where you work?
- 6 A. Budget Check Cashing on Rivers Avenue.
- 7 Q. What's the address there?
- 8 A. It's 5521 Rivers Avenue, North Charleston.
- 9 Q. And that is in Charleston County?
- 10 A. Yes.
- 11 Q. How long have you worked there?
- 12 A. Somewhat over a year.
- 13 Q. And what are your responsibilities?
- 14 A. Game room attendant and cashier, cashing checks.
- 15 Q. Is that the extent of the business there?
- 16 A. Yes.
- 17 Q. Who else works with you?
- 18 A. Sheila Mitchell, Harry Saunders, Linda Osborne, but
- 19 not the same shift.
- 20 Q. Not on the same shift?
- 21 A. No.
- 22 Q. What are your hours?
- 23 A. Four to ten P.M., Monday through Friday, and then
- 24 eight A.M. to six P.M. on Saturday.
- 25 Q. And those other people that you named, do they normally

1 work with you?

2 A. No.

3 Q. You work by yourself?

4 A. Yes, sir.

5 Q. Are there any other employees in there?

6 A. While I'm working?

7 Q. Right.

8 A. No, sir.

9 Q. Ms. Wood, were you working on October 28th?

10 A. Yes, sir.

11 Q. In the same place?

12 A. Yes.

13 Q. I would ask if you recognize anyone at this table  
14 here? (Pointing to Defense table)

15 A. Yes, sir.

16 Q. Who do you recognize?

17 A. Quinton Linen.

18 Q. How do you know him?

19 A. He's the man who robbed me.

20 Q. When was the first time you saw him?

21 A. It would be the week before the robbery happened.

22 Q. Okay, and where was he?

23 A. In my place of employment.

24 Q. How many times did you see him the week before?

25 A. Two times.

- 1 Q. And tell us what happened when he came in?
- 2 A. You mean the night . . .
- 3 Q. The first week.
- 4 A. The first time that he came in was the same as the
- 5 second time. He came in and said he was looking for a
- 6 woman, and there were people in both rooms, so I just said
- 7 if she's not in there then she's not here.
- 8 So then he went back outside.
- 9 Q. Did he describe her?
- 10 A. He did. He said that she was a little bit taller
- 11 than me and she had tight curly hair.
- 12 Q. Did he tell you what her name was?
- 13 A. No, he did not.
- 14 Q. How many people were present the first time he came
- 15 in?
- 16 A. There would be, I'd say, about five.
- 17 Q. The next week when you saw him, how many people were
- 18 in the building?
- 19 A. The night he robbed me?
- 20 Q. Right.
- 21 A. Two other people besides me.
- 22 Q. Who are they?
- 23 A. Benita Benton and Freemon Brown.
- 24 Q. You say you know them?
- 25 A. As customers in the business.

1 Q. Would you characterize them as regulars?

2 A. Yes.

3 Q. You knew their names?

4 A. Yes.

5 Q. When you talked to them?

6 A. Yes.

7 Q. I'm going to take you now to that evening. Tell us  
8 what happened?

9 A. Okay. At about nine P.M. he walked in and he said  
10 the same thing to me he had said before, that he was looking  
11 for somebody.

12 Q. How did you know when he walked in?

13 A. The door when you open it up, it has chimes really  
14 loud to let us know someone had come in.

15 I told him unless she's in the front room she is not  
16 here, and he said okay.

17 He went back to the front door and I thought he went  
18 back out because of the chimes, but he didn't and he came  
19 back in.

20 He came back to where I was and asked for change--  
21 asked me to give him change for Twenty Dollars, and I told  
22 him unless he was playing the games I wasn't allowed to do  
23 that.

24 He said that was fine. If that's what I had to do,  
25 to do it.

1           At that point he came around the barrier, and he  
2       grabbed me by my right arm and he pulled out a knife. He  
3       got a hold of my neck.

4           I went forward and hit my head on the file cabinet.  
5       That's when Freemon had said, what's going on, and he had  
6       told me if I told him anything that he would kill me.

7           So I just yelled nothing, nothing, and at that point  
8       he had the knife up to my throat and he was tugging down at  
9       the money belt, and I asked him what he wanted, and he said,  
10      give me the money.

11          So he was trying to jerk it off, so I helped him and  
12      give into him, and he said, is this all of it, and I said,  
13      yes, it is.

14          So he came around the barrier at that time and Freemon  
15      Brown came down the hall, and he held the money belt and  
16      the knife over the barrier so Freemon wouldn't see it, and  
17      he told me, I'll tell her you said hi.

18          He was acting like he . . .

19      Q.     What did that mean?

20      A.     I guess just so Freemon wouldn't know anything.

21      Q.     Could Freemon see you at this point?

22      A.     No. I got behind the office and he was going out the  
23      door, and I heard him and Freemon yelling about something,  
24      and as soon as I heard the door open I came around and  
25      I told Freemon he robbed me.

1           Then Freemon ran out after him.

2       Q.     Can you tell us what the knife looked like?

3       A.     Yes. It was about six or seven inches and it had a  
4       black handle. The top and bottom were both circular and  
5       bigger than the handle itself.

6           It was dirty--tarnished-like.

7       Q.     When the police came, did you tell them what this per-  
8       son looked like?

9       A.     Yes, I did.

10      Q.     How did you describe him?

11      A.     About five six and a half, dark skinned black male.  
12      He wasn't clean shaven. His hair was close to his head and  
13      he had acne dents in his face and he was nicely dressed.

14      Q.     What are acne dents?

15      A.     Right here by the cheek bones, right in this area.  
16      (Witness gesturing)

17      Q.     Okay. Were they a little lower than his beard?

18      A.     A little bit and in the beard also.

19      Q.     Okay, do you see acne dents?

20      A.     On his right side.

21      Q.     Are those the dents you described to the police?

22      A.     Yes.

23      Q.     These aren't similar dents?

24      A.     No.

25      Q.     This is where you saw them?

1 A. Yes.

2 Q. And the one you described that evening was that man?  
3 (Indicating the Defendant)

4 A. Yes.

5 Q. Would you take a moment and look at this and tell the  
6 jury if you can identify it?

7 A. Uh hm. That's one of our money belts.

8 Q. Okay. How did that get here today?

9 A. I brought it with me.

10 Q. Was that basically the same as what you were wearing?

11 A. Yes, it is.

12 MR. BECK: Your Honor, may she step down?

13 THE COURT: Yes, she may.

14 (Witness leaving stand and approaching jury box)

15 Q. Would you just put it on and show the jury?

16 A. (Putting belt on)

17 Q. Let me ask you to speak up so the Court Reporter can  
18 hear you and she needs to recover everything that we say.

19 A. Yes.

20 Q. Showing you State's Exhibit 7 for identification.  
21 What's that?

22 A. That's our office area.

23 Q. And where were you that evening?

24 A. Right there. In this area.

25 Q. And State's Exhibit 8 for identification?



1 A. This is the office also or where the office is right  
2 there.

3 Q. How about State's Exhibit 9?

4 A. This is the game area.

5 Q. Would you say these are fair and accurate representa-  
6 tions?

7 A. Yes.

8 Q. Of the way it looked that night?

9 A. Yes.

10 MR. BECK: Your Honor, at this time I would like to  
11 admit State's Exhibits 7, 8 and 9.

12 THE COURT: Any objection?

13 MR. VITETTA: No, sir.

14 THE COURT: Without objection they are in evidence.

15 MR. BECK: And the overheads as well?

16 THE COURT: Without objection the overheads are in evi-  
17 dence also.

18 (State's Exhibits 7, 8 and 9, as well as 7A, 8A and  
19 9A admitted in evidence without objection, being photographs  
20 and transparencies.)

21 BY MR. BECK:

22 Q. Now for the jury I would ask you to show them where you  
23 were and where he was?

24 A. . .

25 THE COURT: Get closer to the screen and please speak

1 up, maam.

2 Q. If you can just tell them what this is?

3 A. This is the back office and this is where I was robbed  
4 at.

5 Q. Is this the barrier?

6 A. Yes.

7 Q. This is Exhibit 8 A, and what is this?

8 A. Where the office area is.

9 Q. Where was he?

10 A. When he first talked to me he was right here and I  
11 was here. (Gesturing on transparency)

12 Q. Is that where you normally are with customers?

13 A. Right.

14 Q. All right, and do customers come back into your space?

15 A. Normally they don't, no.

16 Q. Speak up.

17 A. I said normally they don't.

18 Q. When you are getting change--when you were getting  
19 change for him, where was he standing?

20 A. Right here.

21 Q. And then what happened?

22 A. I was faced this way and he came around the barrier  
23 and grabbed my arm.

24 Q. And this is 9 A. Just describe for them . . .

25 A. This is where he ran from when he left. He ran from

1 back here.

2 Q. Let me just jump back to 7 A. When you were testify-  
3 ing you said when he was struggling with you that you hit  
4 your head on the filing cabinet?

5 A. Right there.

6 Q. You were struggling back there?

7 A. Yes.

8 Q. When Freemon came around, where were you?

9 A. Still back over here.

10 Q. Is that--I'd like you to indulge me for a moment.  
11 I have this plastic knife. Does this look like the knife  
12 that he had?

13 A. Yes.

14 Q. I'd like you to show our jury the struggle that took  
15 place, telling me what he did?

16 A. Um, . . .

17 Q. Speak up for our Court Reporter.

18 A. Well, he came past the barrier right there.

19 Q. Okay.

20 A. And he was standing on this side and I was standing  
21 right there making the change, and I turned this way to  
22 get the money out.

23 He came around and grabbed my right arm.

24 Q. Here? (Gesturing)

25 A. Uh hm.

1 Q. Like this?

2 A. Yes, and I asked what he was doing and I jerked back  
3 like this.

4 He came around and brought his arm around like this,  
5 and I jerked forward and hit my head on the filing cabinet.

6 And he jerked me back, and that is when Freemon said,  
7 what's going on, and he told me, if you say anything I'm  
8 going to kill you. So I yelled, nothing, nothing.

9 And he brought the knife up to--almost . .

10 Q. Show the jury.

11 A. He had brought the knife up and almost poked me in my  
12 eye and I jerked back and he brought it back down right here.  
13 (Gesturing) He held it here.

14 He brought his arm down twice trying to jerk off the  
15 money belt and I asked what he wanted, and he told me to  
16 give him the money.

17 So I told him I would give him anything he wanted, and  
18 so I untied it for him and he jerked it that way, and he  
19 started--he proceeded to go around the barrier and that's  
20 when Freemon came out again.

21 And he held the money belt and the knife over the bar-  
22 rier and he said, I'll tell her you said hi, and I said,  
23 like, okay, and he went up the hallway and when he got up  
24 to the front door I came around the barrier and told Freemon  
25 he had robbed me.

1           And that is when Freemon chased him.

2       Q.     Take your seat.

3       A.     (Witness resuming witness stand)

4       Q.     That evening you gave a description, you said, of  
5     this man?

6       A.     Yes.

7       Q.     But to your knowledge he wasn't caught that evening?

8       A.     No, sir.

9       Q.     Did you assist the police in trying to find him?

10      A.     The best I could.

11      Q.     What did you do?

12      A.     I went in the next morning and did the composite draw-  
13     ing, as well as the night he robbed me I also gave my descrip-  
14     tion of him.

15           And then Detective Roper had brought me some pictures  
16     to look at.

17      Q.     Let's talk about the composite drawing. Who else was  
18     there?

19      A.     It was me and Detective Hernandez.

20      Q.     Anyone else there?

21      A.     No, sir.

22      Q.     Did you describe to Detective Hernandez the man you  
23     saw that night?

24      A.     Yes, sir.

25      Q.     What did he do?

1 A. I'm sorry?

2 Q. What did he do when you told him what the guy looked  
3 like?

4 A. He did the best that he could with the computer-  
5 graphics, and he told me to add and tell him what I thought  
6 should be there and what shouldn't be there.

7 Q. How did you feel about the results?

8 A. I wasn't all that happy with it.

9 Q. Did it look like the person that you saw?

10 A. Not very much.

11 Q. Did it look like this person? (Indicating the  
12 Defendant)

13 A. No, sir.

14 Q. And you said that Detective Roper showed you some  
15 photographs?

16 A. Yes, sir.

17 Q. Where did he show you the photographs?

18 A. At Budget Check Cashing.

19 Q. And how much longer after it happened?

20 A. Two and a half to three weeks.

21 Q. Let me ask you a question. Do you take breaks when  
22 you're at work?

23 A. No, sir.

24 Q. There's a McDonald's across the street. Do you ever  
25 stop in there to eat?

1 A. No, sir.

2 Q. Now, how many pictures did Detective Roper show to  
3 you?

4 A. Six.

5 Q. And what happened when you saw the photographs?

6 A. I picked him right out.

7 Q. Did you have any hesitation?

8 A. No, sir.

9 Q. Did it look similar to the person who robbed you that  
10 evening?

11 A. No, sir. That was him.

12 Q. Did you come to Court with this case before?

13 A. Yes, sir.

14 MR. VITETTA: Objection, as to relevancy.

15 THE COURT: That is sustained.

16 BY MR. BECK:

17 Q. Let me ask you this way. Are you saying this is the  
18 man who robbed you because he's sitting here at this table?

19 A. No, sir.

20 Q. Are you saying this is the man who robbed you because  
21 you saw a photograph of him?

22 A. No, sir.

23 Q. Why are you saying this is the man who robbed you?

24 A. Because he is the man who robbed me.

25 Q. Any doubt in your mind?

- 1 A. No, sir. No doubt at all.
- 2 Q. Thank you. Please answer Mr. Vitetta's questions.
- 3 THE COURT: Cross examination, please.
- 4 CROSS EXAMINATION BY MR. VITETTA:
- 5 Q. Ms. Wood, this robbery happened fairly quickly?
- 6 A. Uh hm.
- 7 Q. You gave a statement to the police that evening?
- 8 A. Yes, sir.
- 9 Q. A written statement?
- 10 A. Yes, sir.
- 11 Q. And that was about an hour when this happened?
- 12 A. Yes, sir.
- 13 Q. And what you described is a black male with some
- 14 acne dents; hair was shaved close to his head; was not
- 15 clean shaven; that he had a mustache?
- 16 A. Yes.
- 17 Q. You also described a weapon, correct?
- 18 A. Yes, sir.
- 19 Q. And you said it was a six inch blade?
- 20 A. Six to seven inch.
- 21 Q. Six to seven inch blade. Tarnished silver blade?
- 22 A. Yes, some sort of--it was dirty.
- 23 Q. Dirty?
- 24 A. Yes.
- 25 Q. And it had a black handle?



1 A. Yes, sir.

2 Q. And you said the handle was a black circular handle?

3 A. Yes, sir.

4 Q. And you said the bottom of the knife was larger than  
5 the circular handle?

6 A. Yes.

7 Q. You said the top of the knife just under the blade was  
8 larger than the circular handle?

9 A. Yes.

10 Q. And you said it looked to you kind of like an old  
11 hunting knife?

12 A. Yes, sir.

13 Q. And you also said in your statement that the robber  
14 held this in his left hand under your eye?

15 A. His right hand.

16 Q. In your statement you said it was in his left hand?

17 A. I'm not sure in the statement, but it was the right  
18 hand.

19 Q. And he held it at your throat as well?

20 A. Yes.

21 Q. This was a very frightening experience for you?

22 A. Yes.

23 Q. And it was the very next day that you went and talked  
24 to Detective Hernandez?

25 A. Yes.

1 Q. And that was when you gave him information--more in-  
2 formation on the physical description?

3 A. Yes.

4 Q. Okay, and you developed that composite?

5 A. Yes, sir.

6 Q. And he developed it on his computer?

7 A. Yes.

8 Q. Did you see a copy of that?

9 A. When it was finished, yes.

10 Q. What I'm showing you is Defendant's Exhibit Number 1,  
11 and is this the composite that was made as a result of  
12 your . .

13 A. Yes.

14 Q. All right.

15 MR.VITETTA: We'd move this into evidence.

16 THE COURT: Any objection?

17 MR. BECK: No, Your Honor.

18 THE COURT: Without objection in evidence.

19 (Composite drawing entered in evidence without objec-  
20 tion as Defense Exhibit 1)

21 BY MR. VITETTA:

22 Q. And you also made a statement--made another written  
23 statement that same day, right?

24 A. Yes, sir.

25 Q. And you said that you came in and provided information

1 for the composite?

2 A. Yes, sir.

3 Q. And that was the extent of that statement?

4 A. Yes.

5 Q. I have nothing further at this time. Thank you.

6 THE COURT: Redirect?

7 MR. BECK: Thank you.

8 REDIRECT EXAMINATION BY MR. BECK:

9 Q. Ms. Wood, you said being robbed with a knife was a  
10 frightening experience?

11 A. Yes.

12 Q. When you saw this man the week before, were you  
13 frightened?

14 A. No, sir.

15 Q. Were you working?

16 A. Yes, sir.

17 Q. Then you saw him a second time?

18 A. Yes.

19 Q. Were you frightened then?

20 A. No, sir.

21 Q. How about the third time you saw him, when he came  
22 in the first time on October 28th, were you frightened  
23 then?

24 A. No, sir.

25 Q. You thought he was a customer at that point?

1 A. Someone that came in that could be a customer.

2 Q. And you had a conversation with him?

3 A. Yes, sir.

4 Q. With the composite sketch, you told Mr. Vitetta you  
5 gave a statement when you came in to assist the police  
6 and provided information to put the composite sketch to-  
7 gether?

8 A. Yes, sir.

9 Q. In that statement did you say that this looks like  
10 the guy who robbed me?

11 A. No, I didn't.

12 Q. Would you say the composite is an accurate portrayal  
13 of the man who robbed you?

14 A. No, sir.

15 Q. Would you say this is the man who robbed you? (Indi-  
16 cating the Defendant)

17 A. Yes, sir.

18 Q. Thank you.

19 THE COURT: Recross?

20 RECROSS EXAMINATION BY MR. VITETTA:

21 Q. You also in your statement when you gave the composite  
22 didn't say that it didn't look like him, correct?

23 A. Correct.

24 Q. You could have written in there this was not the per-  
25 son who robbed you, correct?

1 A. Correct.

2 Q. You didn't do that?

3 A. No, but I did tell him when he was doing it that it  
4 didn't look like him.

5 Q. You didn't put it in your written statement though?

6 A. No.

7 Q. That's all I have.

8 THE COURT: You may step down.

9 (Witness excused from stand)

10 THE COURT: Next witness, please.

11 MR. BECK: State calls Freemon Brown.

12 FREEMON BROWN, being

13 duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BECK:

15 Q. Hello, Mr. Brown.

16 A. How you doing?

17 Q. Very well, thanks. Can you tell our jury where you  
18 work right now?

19 A. Right now I'm in school as a pilot.

20 Q. And what are some of the things you have done in the  
21 course of your career?

22 A. In the course of my career, I was in the United States  
23 Navy, a Navy Seal, and worked with the Department of Cor-  
24 rections as a corrections officer.

25 I was a police officer with North Charleston and with

1 the Shore Patrol back in 1981 and 1982.

2 Q. Who is your wife?

3 A. My common-law wife, Bonita Benton.

4 Q. And how long have you been together?

5 A. Back since '82.

6 Q. Were you together on the night of October 28, 1996?

7 A. Yes, sir.

8 Q. What were the two of you doing that evening?

9 A. Well, we had dinner earlier and had come from dinner  
10 and she mentioned she wanted to go by the game room, so we  
11 went by there.

12 Q. Do you go there frequently?

13 A. Yes, we do.

14 Q. Who was in the game room?

15 A. At the time Cheryl was working there, and just Bonita  
16 and I.

17 Q. And where were you in the game room?

18 A. We were in the very first room. As you come into the  
19 game room, the very first room--as you walk in the door, on  
20 the right hand side.

21 Q. All right.

22 A. And there is like maybe four machines--four or five  
23 machines there in that particular area. There's one  
24 directly behind the door and that's the one I like to play  
25 mostly.

1           So basically no one will know I'm sitting there actually  
2   until they swing the door open and hit the chair.

3   Q.     Where was Cheryl at?

4   A.     Cheryl at the time we first come in or . .

5   Q.     When you first came in, where was she?

6   A.     She was in the front, I believe. I think she was up  
7   front. We spoke to her as we came in.

8   Q.     You went in to play your game?

9   A.     Yes.

10   Q.    And are you aware of where she was after that?

11   A.    She was in front, and she went to the back.

12   Q.    I'm having a little trouble hearing you.

13   A.    She went to the back.

14   Q.    As you were playing games that evening, what hap-  
15   pened?

16   A.    We was playing the game and there was a noise. Be  
17   heard the noise first and I sort of brushed it off because  
18   I thought maybe Cheryl was cleaning up or something. They  
19   do clean up sometimes.

20           So I thought maybe she was moving something around,  
21   cleaning up at the time.

22           Then there was a thud--a loud bump sound, like (gestur-  
23   ing), so at the time she made the sound and Be said, did you  
24   hear that, and I said yeah, maybe we should check it out.

25           So we looked at each other at the exact same time,

1       when it happened.

2       Q.       So then what did you do?

3       A.       Well, at the time I stopped playing and Be said she  
4       wanted to go check it out, so everything got quiet for a  
5       few seconds.

6       Then we heard another noise, and then Be said something  
7       like he's doing something to Cheryl or something like that  
8       nature and she went out the door.

9       Q.       What did you do?

10      A.       Well, I went back there to see what was going on at  
11      that time because when she went by she latched on to me--  
12      she latched on to me and said like something has happened  
13      and I know something was going on at that time.

14      So I walked to the back to see what was going on.

15      Q.       Did you walk to the back and see Cheryl?

16      A.       No, I went--I called first. When I went in the back  
17      I didn't see anyone but I could hear like a small moan  
18      sound, so I called to her.

19      I called her and said, Cheryl, and she didn't say any-  
20      thing so I called her like three or four times, and about  
21      the third time I called her this gentleman come around the  
22      corner and he acted like--acted nonchalant like he was  
23      talking to her.

24      Well, I'll tell my wife--you know--she'll give you'a  
25      call and I'll tell her I stopped by to talk to you and that



1       --da da da da--that kind of thing.

2               So I kept calling for Cheryl, and so he said, I'll  
3       talk to you later, okay, and I said, wait a minute, and I  
4       put my hand up like that--where is Cheryl at--just like  
5       that.

6       Q.     How close were you to this guy?

7       A.     He passed within three or four feet from me.

8       Q.     All right.

9       A.     Within a half a foot from my hand.

10      Q.     Did you actually put your hand on his chest?

11      A.     Not on his chest, but about a foot and a half from his  
12      hand.

13      Q.     Did you look at him?

14      A.     Yes.

15      Q.     Were you talking with him?

16      A.     Yeah, I was speaking to him like I'm speaking to  
17      you. We had a conversation. She's my friend, you know,  
18      and my wife and I come there all the time and that kind  
19      of thing.

20             I wanted to know where Cheryl was, and he said,  
21      well, she's somewhere.

22      Q.     Had you ever seen him before?

23      A.     Um, I can't say or no, because some people come and  
24      go out of the game room. So I could say that I've seen  
25      him in the game room before.

1 Q. If you saw him again, would you recognize him?

2 A. Well, like I say, I'm an ex-Navy seal and I have what  
3 they call a phototonic memory, so I can point him out in a  
4 heartbeat.

5 Q. Do you see him in this Courtroom today?

6 A. Yes.

7 Q. All right.

8 A. That brother sitting right there.

9 Q. That's the man that you saw in the game room that  
10 night?

11 A. That's exactly the man I saw in the game room and  
12 chased across the highway, in McDonald's parking lot, onto  
13 Gail Street, and where he disappeared behind bushes.

14 Q. When you sent to Gail Street, where did you turn?

15 A. When I first got to Gail Street, there are hedges  
16 right behind McDonald's and the car wash sits on the right  
17 hand side, and when I first got through there I turned to  
18 the right and I didn't see any thing.

19 But I looked to the left and there was a gentleman  
20 walking down the road like he had stopped running and start  
21 walking real fast.

22 So I got ready to go behind him and De pulled up  
23 behind me in the car and she couldn't pull through to Gail  
24 Street ~~beca~~use of steel railings there.

25 So she stopped and I went back and got a flashlight,

1 and I ran behind this gentleman but it wasn't that gentle-  
2 man. It wasn't him.

3 I stopped the gentleman and talked to him. He was a  
4 white guy but he had on a cap and from a distance you  
5 really couldn't tell.

6 Q. Mr. Brown, this is very important today.

7 A. Uh hm.

8 Q. Does this gentleman, Quinton Linen, look similar to  
9 the man that you saw that evening?

10 A. Look similar to the man I saw that evening? That's  
11 the man. No similarity about it.

12 Q. Are you saying that because he's sitting at defense  
13 table?

14 A. No, I'm not saying it because he's sitting at the de-  
15 fense table, no. I came within three or four feet of this  
16 guy, looking right at him, looking him in the eye. Closer  
17 than the Judge.

18 Q. Thank you, Mr. Brown.

19 THE COURT: Cross examination, please.

20 CROSS EXAMINATION BY MR. VITETTA:

21 Q. Mr. Brown, you remember talking to a guy named Art--  
22 Art Dechivinie, an investigator from the Public Defender's  
23 Office?

24 A. I spoke to Mr. Dechivinie? I don't recall speaking  
25 with him.

1 Q. Do you remember he came by your house and talked to  
2 you a little bit about this case?

3 A. He came by the house. I was told by one of my neigh-  
4 bors that a gentleman came by the house looking for me and  
5 left his car there.

6 But I never talked to him about the case.

7 Q. You never talked to him about the case?

8 A. Uh uh. Art Dechivinie, no.

9 Q. An investigator?

10 A. An investigator with . .

11 Q. The Public Defender's Office?

12 A. No, sir. I never spoke to him.

13 Q. You know for a fact this is the man that was in there,  
14 correct?

15 A. Yes.

16 Q. And you talked to numerous police officers about this  
17 incident?

18 A. No.

19 Q. You didn't talk to anybody?

20 A. I talked to the one detective that night.

21 Q. You didn't make any signed or written statements or  
22 anything like that?

23 A. . .

24 Q. Saying this is the person who committed the robbery?

25 A. Just that one from that night.

1 Q. Officer Pennell?

2 A. I believe so.

3 Q. You told him you could identify the person?

4 A. Yes. As I see the gentleman there, I can identify  
5 him. No problem at all.

6 Q. Okay, and no one ever talked to you about putting  
7 this in writing?

8 A. Other than that night that it actually happened, I  
9 have no--well, there's no reason to go back and re-write  
10 something. I wrote exactly what happened that night.

11 Q. You write it down?

12 A. The officer was there. He took it down. He wrote  
13 it down word for word what I said.

14 Q. Okay, and that was Officer Pennell? Right?

15 A. I believe it was.

16 Q. And did you ever look at any photographic lineups or  
17 anything like that?

18 A. I didn't have to. Like I said, I've got a photographic  
19 memory.

20 Q. You've got a photographic memory?

21 A. Yes.

22 Q. And that means that--what is a photographic memory?  
23 Why don't you tell us about that?

24 A. Well, it works with special oxygenation inside of  
25 special training and different things like that when you

1 are in Seal training.

2 Sometimes you are given a photograph of who a per-  
3 son is that you are to go pick up, and that is just it.  
4 You don't actually carry a photograph with you.

5 You just are actually shown a picture of them on a  
6 slide and then you go get the guy and that's it.

7 Q. Okay. So you don't forget things. Right?

8 A. Basically.

9 Q. So you don't forget the fact that sometimes you write  
10 checks that aren't yours, right?

11 A. I don't see where that has anything to do with this.  
12 I don't write checks that isn't mine. Any checks that I  
13 have written I take care and that has nothing to do with  
14 this particular ..

15 Q. Your name is Freemon Brown, right?

16 A. Yes. It has nothing to do with this particular case.  
17 Yes, that's my name.

18 Q. That's your name?

19 A. Yes.

20 Q. Do you also go by Faisal Alsaud?

21 A. Like I said, I'm Muslim and that is the name they give  
22 us. I don't see how that has any bearing on what is happening  
23 in this case.

24 Q. Well, that is not for you to determine. You're the  
25 one with the photographic memcry. You're the one who writes

1       that are fraudulent, isn't that true?

2       A.     The checks that were written I have paid for.

3       Q.     But you have been convicted for writing fraudulent  
4       checks, haven't you?

5       A.     No. I was in Court and then I paid for the checks.  
6       I wasn't convicted of anything.

7       Q.     You were convicted of writing fraudulent checks  
8       and I have your record right here.

9       A.     You can have my record, sir, but I was given jail  
10      time for anything. I paid for those particular charges  
11      right there on the spot.

12            As a matter of fact, those particular checks right  
13      there, if you want to get personal about it, were there for  
14      different things like car loans and different things like  
15      that.

16            And they didn't work on the car properly so I put a  
17      flag on it, and later on the gentleman took me to Court  
18      for those particular things.

19            Okay, it doesn't matter because I paid for them or  
20      made good on them.

21      Q.     And you also, with your photographic memory, are the  
22      kind of person that forgets that you have personal property  
23      that belongs to somebody else. Right?

24      A.     No, I don't have personal property that belongs to  
25      someone else.

1 Q. You have a pending criminal charge right now for  
2 breach of trust, don't you?

3 A. The bottom line of it is that any pending charges for  
4 breach of trust or anything like that or personal property  
5 or anything like that, it has nothing to do . . .

6 Q. But you. .

7 THE COURT: Mr. Vitetta, let him finish his answer.  
8 The Reporter can't take down both of you all talking at the  
9 same time.

10 One at a time, please.

11 Finish your response, please.

12 A. That has nothing to do with this particular trial.  
13 Matter of fact, I have an attorney for that particular mat-  
14 ter, and that is for an automobile that I sold a gentleman  
15 at a car dealership I was working for, and as you can see  
16 I obtained an attorney for the simple reason that I did no  
17 wrong.

18 So that . .

19 Q. You had a pending . .

20 A. So that has nothing to do with memory whatsoever. It  
21 has to do with facts, sir.

22 Q. You have a pending criminal charge in this Courthouse  
23 for breach of trust, yes, or no?

24 A. I have a pending criminal charge in this particular  
25 Courthouse but it haven't come to trial yet for the simple



1 reason, like I said, it happened to do with an automobile  
2 that was sold at a car dealership which I was the salesman  
3 on.

4 I don't own the car dealership, sir.

5 Q. And at the same time you talked to Officer Fennell,  
6 the night of this robbery--right?

7 A. Yes.

8 Q. And you told Officer Fennell that you could identify  
9 this person?

10 A. Yes.

11 Q. I don't have anything further. Thank you.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION BY MR. BECK:

14 Q. Mr. Brown, you wrote a bad check?

15 A. Yes, I told you I did. Yes, sir.

16 Q. Did you come to this Courthouse for that?

17 A. No, sir.

18 Q. Where did you go?

19 A. Judge Koontz's Court, West Ashley.

20 Q. All right.

21 A. I paid for it. No problem.

22 Q. Is that a Magistrate's Court?

23 A. Yes, sir.

24 Q. And how much was that check for?

25 A. I think it was Seventy-five Dollars--something like

1       that.

2       Q.     What was the check for?

3       A.     Like I said, at the time I had some work on the car  
4       and it wasn't to my satisfaction. I told the gentleman I  
5       wasn't going to let the check go through and he put it  
6       through and I turned around and got charged for it.

7             Judge Koontz told me at that time the next time in-  
8       stead of flagging the check and not paying for it, to go  
9       ahead so let it go through and take it to Small Claims  
10      Court.

11      Q.     And what . .

12      A.     That's the experience I learned from that.

13      Q.     And what happened with the payment of the check?

14      A.     I paid for it. It's not outstanding or anything. I  
15      paid for the check and the Court costs. I paid for that  
16      too.

17      Q.     On the night of October 28th, . .

18      A.     Yes.

19      Q.     . . did you tell the police you could identify the  
20      guy you saw that night?

21      A.     Exactly.

22      Q.     Did the fraudulent check have anything to do with  
23      that?

24      A.     The fraudulent check had nothing to do with it. .

25             MR. VITETTA: Objection, and I would ask that that be

1 stricken. It has nothing to do with this case and it  
2 calls for the legal opinion of a lay witness.

3 A. May I speak to that, Your Honor?

4 THE COURT: No, sir, you may not. Please answer any  
5 question that is asked of you.

6 Rephrase your question.

7 BY MR. BECK:

8 Q. Mr. Brown, you told Officer Fennell you could recog-  
9 nize the guy you saw in the game room?

10 A. Yes.

11 Q. The guy who robbed Cheryl Wood?

12 A. Exactly.

13 Q. Where is it?

14 A. Sitting right there. (Indicating the Defendant)

15 THE COURT: Recross?

16 MR. VITETTA: No questions.

17 THE COURT: You may step down. Thank you.

18 (Witness excused from stand)

19 THE COURT: Ladies and gentlemen, we'll take an after-  
20 noon break at this time. Please step into the jury room and  
21 don't talk about the case.

22 (Jury excused from Courtroom at 4:12 P.M.)

23 THE COURT: How many more witnesses for the State?

24 MR. BECK: Three witnesses. The Defendant's former  
25 landlord where he rented a house right in the area of the

1 robbery and he would testify that they made an initial pay-  
2 ment and then never paid him again.

3 I would like for the landlord to testify to that,  
4 and that he was eventually evicted.

5 THE COURT: What does that have to do with the offense  
6 for which the Defendant is charged?

7 MR. BECK: Motive. It was Sixteen Hundred Dollars  
8 that he owed. The crime happened on the 28th of October,  
9 and the landlord filed eviction papers on the 30th.

10 THE COURT: That certainly would have given him  
11 enough time to pay it.

12 MR. BECK: I think that would go to weight.

13 THE COURT: What say, Mr. Vitetta?

14 MR. VITETTA: I think it is character evidence clearly,  
15 Your Honor. It is clearly inadmissible.

16 If the landlord suddenly got a Eight Hundred Dollar  
17 payment on the 29th, sure. But he didn't.

18 THE COURT: I think the prejudicial value far outweighs  
19 any probative value that kind of evidence is going to have,  
20 Solicitor.

21 I'm not going to allow you to do that unless you have  
22 got that landlord receiving some cash payment that is in  
23 close perspective time-wise to this event. I don't see  
24 how it is relevant otherwise.

25 The prejudice at least outweighs the relevance of it.

1 MR. BECK: He won't mention then--we'll instruct him  
2 not to mention that he wasn't paid or to mention the evic-  
3 tion.

4 Fair enough?

5 THE COURT: Yes, sir.

6 (Court stood in recess until 4:30 P.M.)

7 THE COURT: Bring the jury in, please.

8 (Jury returned to the Courtroom)

9 THE COURT: Call your next witness, please.

10 MR. BECK: Thank you, Your Honor. The State calls  
11 Detective Paul Hernandez.

12 PAUL HERNANDEZ, being  
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BECK:

15 Q. Good afternoon, Detective. Please tell our jury where  
16 you are employed?

17 A. I work for the City of North Charleston Police Depart-  
18 ment in the investigations division.

19 Q. And how long have you worked there?

20 A. I worked there approximately seven years.

21 Q. And what are your responsibilities with the investi-  
22 gative unit?

23 A. Generally we are assigned cases to follow up on and  
24 to complete. One of my responsibilities at this time is deal-  
25 ing with pawn shops or other walk-in type complaints--whatever

1       else my supervisor assigns to me.

2       Q.     Would it be safe to say that you are out in the com-  
3       munity of North Charleston?

4       A.     Yes. As part of it I'm usually out on the road a  
5       significant amount of time, each day.

6       Q.     And do you get to know some people in the neighbor-  
7       hoods?

8       A.     Correct, sir.

9       Q.     Were you involved at all in the investigation of this  
10      case?

11      A.     Yes, sir. I gave Detective Roper some assistance  
12      with the case.

13      Q.     And would you tell our jury what that involved?

14      A.     It involved helping determine who the suspect or the  
15      Defendant is in this case, and gathering some information  
16      to help complete a case on that person.

17      Q.     So you heard the facts of the robbery?

18      A.     That's correct. Detective Roper had gone over what had  
19      happened . . .

20      Q.     Without saying what he told you.

21      A.     Well, he was going over what had happened in reference  
22      to the robbery and where the suspect had fled to and all of  
23      that, and being familiar with Mr. Linen in the community and  
24      where the person ran to, we did a computer check and Mr..  
25      Linen's name kind of popped up in all of that.

1           And the investigation went further, and Detective  
2   Roper followed up on photographic lineups and other things  
3   like that to present to some of the witnesses.

4 Q. Detective, I have no further questions. Thank you.  
5 Please answer Mr. Vitetta's questions.

6 THE COURT: Cross examination, please.

7 MR. VITETTA: We have no questions of the witness.

8 THE COURT: You may step down.

9 (Witness excused from stand)

10 THE COURT: Call your next witness.

11 MR. BECK: State calls Harry Chaffin.

12 HARRY CHAFFIN, being

13      duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BECK:

15 Q. Good afternoon, Mr. Chaffin.

16       A.     Hello, sir.

17 Q. Mr. Chaffin, do you know this man seated at the table,  
18 Mr. Linen?

19 A. Yes, I know him.

20 Q. How do you know him?

21 A. He rented a house at 5503 Gail Street in North  
22 Charleston from me.

23 Q. Where's Gail Street?

24 A. It's in Singing Pines behind the In and Out Car Wash.

25 Q. On October 28, 1996, did he have access to that house?

1 A. Oh, yes. He was in it then.

2 Q. Mr. Chaffin, I have no further questions. The Defend-  
3 ant may have some questions for you.

4 THE COURT: Cross examination?

5 MR. VITETTA: No questions. Thank you.

6 THE COURT: You may step down.

7 (Witness excused from stand)

8 MR. BECK: The State calls Keith Brown.

9 KEITH BROWN, being

10 duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. BECK:

12 Q. Good afternoon, Mr. Brown.

13 A. Good afternoon.

14 Q. Would you tell our jury where you work?

15 A. Right now I work for Circuit City.

16 Q. On October 28th where did you work? First, what is  
17 your job there?

18 A. Right now, I'm customer service manager.

19 Q. How long have you been working there?

20 A. Since January 6, 1997.

21 Q. Where did you work before that?

22 A. McDonald's.

23 Q. What's the address of that?

24 A. It's 5510 Rivers Avenue.

25 Q. And what did you do for McDonald's?



1 A. Store manager.

2 Q. I'm sorry. I couldn't hear you.

3 A. I was a store manager or unit manager.

4 Q. As the manager, what were your responsibilities?

5 A. Hire, fire, train, make money basically.

6 Q. Okay, and do you recognize anyone at the Defense  
7 table?

8 A. Yes, sir.

9 Q. Who do you recognize?

10 A. Quinton Linen.

11 Q. How do you know him?

12 A. Quinton was a maintenance manager that worked for  
13 me.

14 Q. Who hired Mr. Linen?

15 A. I did.

16 Q. What were some of his tasks as maintenance manager?

17 A. To start from the outside freezers and outside shed,  
18 keep up with the outside of the building, and do certain  
19 things on the inside such as changing light bulbs, mopping up  
20 floors, cutting the grass.

21 Basically it was--oh, yes, unloading delivery trucks.  
22 Those were the primary tasks.

23 Q. Did he wear glasses when he worked for you?

24 A. ..

25 MR. VITETTA: Objection. That's irrelevant.

1 THE COURT: Overruled. Answer the question, please,  
2 sir.

3 A. At some point in time he did. When he first came in,  
4 he did.

5 Q. Would you have hired someone who couldn't see to per-  
6 form those tasks?

7 A. No, sir.

8 Q. Is it possible?

9 A. Would it have been possible?

10 Q. To do the tasks without seeing? Cut grass?

11 A. Yes, sir.

12 Q. That would be a simple job at McDonald's?

13 A. Yes, sir. All you have to do is get the lawn mower  
14 and just cut the grass.

15 Q. Let me ask you a question. Looking at State's Exhibit  
16 4--could you take a look at that photograph, . .

17 A. Uh hm.

18 Q. . . what do you see there?

19 A. I see the restaurant where I worked and the check cash-  
20 ing place.

21 Q. Is that the McDonald's where you worked?

22 A. Yes, sir.

23 Q. And where you hired Quinton Lewis to work for you?

24 A. Yes, sir.

25 Q. From McDonald's can you see the Budget Check Cashing

1 place?

2 A. Uh hm. Yes, sir.

3 Q. Every day you could look across the street and see  
4 that?

5 A. Yes, sir.

6 Q. Thank you. Do you recall the date that the Defendant  
7 stopped working for you at McDonald's?

8 A. I'm pretty sure it was the 30th of September.

9 Q. Thanks. I have no further questions.

10 THE COURT: Cross examination?

11 MR. VITETTA: No cross.

12 THE COURT: You may step down.

13 (Witness excused from stand)

14 THE COURT: Call your next witness, please.

15 MR. BECK: Your Honor, at this point, our next witness  
16 may be rather lengthy.

17 THE COURT: Call your witness.

18 MR. BECK: State calls Detective Harry Roper.

19 HARRY ROPER, being

20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BECK:

22 Q. Detective Roper, the jury has seen you in here and  
23 heard you referred to.

24 Would you tell them where you are employed?

25 A. I'm employed with the North Charleston Police Department.

1 Q. How long have you worked with the North Charleston  
2 Police?

3 A. Going on eight years.

4 Q. And what training have you had?

5 A. I did two years of narcotics and received numerous  
6 --basically all kinds of training including those for illicit  
7 drugs. Also working with general investigations, I have  
8 received investigative training in reference to homicide in-  
9 vestigations, general investigation.

10 Also arson investigation training--countless kinds of  
11 investigations.

12 Q. What are your responsibilities in your job as an in-  
13 vestigator?

14 A. Well, right now it is criminal investigation and it  
15 is working in a particular area, zone four, in North  
16 Charleston, and anything that is assigned in that particular  
17 area.

18 Q. How do you become involved in a case?

19 A. Basically if the situation occurs in my area, if I am  
20 not working at that particular time and it is brought before  
21 me I will investigate it.

22 If I am working at that particular time, what we call  
23 an on-call goes out and I am responsible for responding to  
24 that particular area.

25 Also, if another investigator is working at that time,

1 I am responsible to assist any way I can, and also if we are  
2 on call and something happens then I am expected to go to  
3 the location.

4 Q. Were you working on the evening of October 28th?

5 A. Yes, sir.

6 Q. Where were you?

7 A. I was at the third floor investigative office, in my  
8 office.

9 Q. And did you get a call about the armed robbery that we  
10 are talking about?

11 A. Yes, I did, sir.

12 Q. And did you respond to that call?

13 A. Yes, I did.

14 Q. So what did you find when you got there?

15 A. When I got there, I saw Ms. Bonita Benton and I saw  
16 Ms. Cheryl Wood, and she was very upset.

17 Q. Do you know what time you arrived?

18 A. I arrived at approximately--the call went out, I be-  
19 lieve, at 7:08 and I got there at 7:10 or 7:11.

20 Q. Seven in the evening?

21 A. I'm sorry. Nine.

22 Q. So ten minutes past nine?

23 A. That's when I got there, ten after.

24 Q. There were other officers there?

25 A. Yes.

1 Q. Did they arrive before you?

2 A. There were some officer there who arrived before me,  
3 yes.

4 Q. About how long after the crime occurred did you  
5 arrive?

6 A. About two minutes.

7 Q. Where is the North Charleston Police Department in  
8 relation to Budget Check Cashing?

9 A. Right down the street. Not very far at all.

10 Q. How did Ms. Wood appear?

11 A. She was pretty upset.

12 Q. Was she able to communicate with you?

13 A. After she got her nerves together, she was, yes.

14 Q. Did she give you a description of the man who had  
15 robbed her?

16 A. Yes.

17 Q. Did any other witnesses give you a description of  
18 the man?

19 A. I believe that I spoke with Cheryl Woods at that time  
20 because the other witnesses were talking with other offi-  
21 cers there.

22 Q. Is that normal procedure?

23 A. Yes.

24 Q. Did your department look for the suspect?

25 A. Yes, we did.

1 Q. Did you find anyone?

2 A. Not at that time. We found a person but it wasn't  
3 the person we were looking for.

4 Q. What does that mean, you found a person?

5 A. Based on the description given, we what we call a  
6 BOLO--be on the lookout--we was in the area where the suspect  
7 was last seen, and one of the officers had spotted an indi-  
8 vidual some distance away.

9 I asked this person to come along with me to see if  
10 that was the person that had just robbed her, and she . .

11 Q. Did she go and look at this person?

12 A. I took her to the location.

13 Q. She saw someone in police custody?

14 A. She saw someone being detained by the police, yes,  
15 sir.

16 Q. And what happened when she saw him?

17 A. She said that that wasn't the person.

18 Q. When you were on the scene minutes after it happened,  
19 did you process the crime scene?

20 A. We can, but we had a crime scene officer come over to  
21 process the scene.

22 Q. And what did he do?

23 A. He did what we call investigation or processing a  
24 scene. He checked to see if there was any fingerprints or  
25 anything left behind by the perpetrator.

1 Q. And did he find any fingerprints?

2 A. I think he found a lot of prints, but I believe it  
3 wasn't the prints that we were thinking we might get.

4 Q. The following day, did you meet with witnesses?

5 A. Yes.

6 Q. And where did that occur?

7 A. Based on the situation that had occurred the night  
8 before, I wanted to meet with them while it was still fresh.  
9 or what I thought was fresh, and I asked the witnesses  
10 to come by the police department so we could do a composite.

11 Q. And what happened?

12 A. Both the witnesses--when I say both witnesses, I mean  
13 Ms. Benton and Ms. Wood--did a composite with Detective  
14 Hernandez that you just saw.

15 And they basically--he told them--he asked them ques-  
16 tions and did the composite.

17 Q. Were you present when they saw the result of the com-  
18 posite?

19 A. Yes.

20 Q. How did they appear?

21 A. According to the victim and the witness, they weren't  
22 very happy at all, especially Ms. Wood. She was very upset  
23 with the composite. She didn't think that was--that wasn't  
24 the best description she could give of the person.

25 But I explained to her that at the time it was the best



1 we could do and after understanding that she felt a little  
2 better. She was kind of upset with the results at first.

3 Q. Can you explain to the jury what the purpose of a com-  
4 posite is?

5 A. Yes. Basically when we have a composite done, we--it  
6 can be two things. We either have a suspect as far as a  
7 name and other personal information on a suspect, or we don't  
8 have all the information we need at the time.

9 So we ask them to speak to the investigator that is  
10 qualified to secure a description of the person that they  
11 give the investigator, and using that information that the  
12 victim or the witness gives to the investigator he will sketch  
13 out on the computer what that person will look like accord-  
14 ing to the witness' or victim's description.

15 Q. Was the Defendant developed as a suspect at that time  
16 from the composite?

17 A. That's--no, sir.

18 Q. How was the Defendant developed as a suspect then?

19 A. At the time we had a crime analysis officer or inves-  
20 tigator working with us, and she still is currently working  
21 with us, and when a conversation ensued between myself  
22 and Detective Hernandez and . . .

23 MR. VITETTA: Objection, Your Honor. I would have  
24 to object. I don't see the relevance of how anybody was  
25 developed as a suspect.

1 THE COURT: That is sustained.

2 Move on, please, sir.

3 BY MR. BECK:

4 Q. Continue, please.

5 A. Based on the conversation about the--about somebody  
6 being robbed, our crime analysis investigator did a . .

7 THE COURT: I've already sustained an objection to  
8 that line of questioning.

9 Ask him another question, please.

10 Q. Detective, did you conduct a photograph lineup?

11 A. Yes.

12 Q. They've been hearing about this photographic lineup,  
13 the members of the jury.

14 What does that mean?

15 A. Basically when we get someone who we believe to have  
16 committed the crime, we get that information through the  
17 County hoping that the person has been arrested before.

18 MR. VITETTA: Objection.

19 THE COURT: Okay, ladies and gentlemen. I have a  
20 matter that I need to take up with the attorneys. Would you  
21 please step in the jury room.

22 Don't talk about the case yet.

23 (Jury excused from Courtroom at 4:52 P.M.)

24 THE COURT: All right, Mr. Vitetta.

25 MR. VITETTA: I would object and I would move for a

1       mistrial based on Detective Roper's testimony regarding the  
2       photographs from people that had been--that they hoped had  
3       been arrested.

4               I think the implication being that Mr. Linen has a  
5       prior--had been arrested at a prior time, and this is  
6       character evidence, and I think it is highly prejudicial.

7               I would ask for a mistrial on those grounds, or in  
8       the alternative for a jury instruction.

9               THE COURT: What say, Solicitor?

10              MR. BECK: Your Honor, Detective Roper knows he is not  
11       supposed to talk about a mug shot. He hasn't talked about  
12       the Defendant being arrested, and he hasn't--he said people  
13       who might have been.

14              I think if you want to give a curative instruction, I  
15       won't object, but I don't think it calls for a mistrial at  
16       this point.

17              THE COURT: Your objection--the motion for mistrial  
18       is denied. He didn't specifically say this Defendant had  
19       been arrested.

20              But you need to find some other way to get into how he  
21       comes about finding the photograph. That is, he takes six  
22       photographs of similar characteristics or however you want  
23       to couch it.

24              Do not go into the original of the photographs; that  
25       is, that they are mug shots.

1 MR. BECK: Yes, sir.

2 THE COURT: Do you still request a curative instruc-  
3 tion?

4 MR. VITETTA: Yes, sir.

5 THE COURT: It would further emphasize the situation  
6 but if you wish to . .

7 MR. VITETTA: I think I need to ask for a curative  
8 instruction.

9 THE COURT: All right. What do you want me to tell  
10 the jury then?

11 MR. VITETTA: To disregard the prior comments regard-  
12 ing Detective Roper's statements about the origin for any  
13 photographs.

14 I mean, I know what you're saying but I think with the  
15 Appeals Courts the way they are these days that I have to  
16 ask for a curative instruction.

17 THE COURT: All right, sir.

18 MR. VITETTA: I think if you could just say to please  
19 disregard Detective Roper's earlier statements about the  
20 origin of the photographs.

21 Maybe something along the lines of the detective has  
22 no basis for knowing how these photographs came to be used,  
23 or . .

24 THE COURT: What I'm going to tell them is to disre-  
25 gard Detective Roper's prior statement about the origin of

1 the photographs used in the lineup.

2 MR. VITETTA: Okay.

3 THE COURT: Is that sufficient?

4 MR. VITETTA: Yes, sir.

5 THE COURT: Thank you. Bring in the jury.

6 (Jury returned to Courtroom at 4:56 P.M.)

7 THE COURT: Ladies and gentlemen, I instruct you at  
8 this time that you are to disregard Detective Roper's  
9 prior statement about the original of the photographs that  
10 might be used in lineups. Or photographic lineups.

11 Go ahead, please.

12 BY MR. BECK:

13 Q. Detective Roper, I'm sure the jury has seen movies  
14 or television where . .

15 MR. VITETTA: Objection.

16 THE COURT: Rephrase your question, Solicitor.

17 Q. Have you ever used a show-up lineup?

18 A. No, sir.

19 Q. And when I say show-up lineup how do you mean it?

20 A. Persons walking before individuals in reference to a  
21 lineup.

22 Q. Like you sometimes see on TV?

23 A. . .

24 MR. VITETTA: Objection, Your Honor, to leading. .

25 THE COURT: Move on, please, sir.

1 Q. Detective, do you recall when you have showed Ms.  
2 Benton the photographic lineup?

3 A. Yes. I believe it was on 11 15 of 96.

4 Q. And tell us where you showed her the photos?

5 A. At North Charleston Police Department.

6 Q. And how did you present those photographs to her?

7 A. Basically I took the photos that I have and I showed  
8 them to her by placing them in front of her and having her  
9 look at them.

10 Q. Okay, and what, if any, similarities did those photo-  
11 graphs share?

12 A. They were all black men and they all basically had  
13 the same structure--physical structure. Hair was styled  
14 or haircuts were similar.

15 They had similar facial hair and they all look virtually  
16 similar, per se.

17 Q. What did you tell her when she viewed the photographs?

18 A. Actually before I showed them to her, I told her they  
19 may or may not be the subject in question; that I'm going to  
20 show you a group of individuals, and if you see anyone that  
21 could fit the description in this investigation then I  
22 would hope you would identify them, and present that identi-  
23 fication to me if you positively know this person.

24 Q. Did she make a selection?

25 A. Yes, she did.

1 Q. And whose photograph did she choose?

2 A. She chose the individual over there. (Gesturing)

3 Q. And who is that?

4 A. The Defendant.

5 Q. And did you say anything to her afterwards?

6 A. Basically I asked her again, are you sure this is  
7 the person, and she said yes.

8 Q. Do you recall when you showed Ms. Wood the pictures?

9 A. I believe it was on 11 18 of 96.

10 Q. Where was that?

11 A. That took place at her place of business. Her employ-  
12 ment.

13 Q. Was anyone else there?

14 A. No.

15 Q. Was Ms.--what did you tell her?

16 A. I told her the same thing. That here is a group of  
17 pictures and the individuals--they may or may not be the  
18 person in question. Do not rush at all. Take your time  
19 and you are not pressured in any way to pick out any in-  
20 dividual in the photographs.

21 If you do identify anyone and you are sure this is  
22 the individual, please let me know.

23 Q. Did Ms. Wood pick out a picture?

24 A. Yes, she did.

25 Q. Whose pictures?

1 A. She picked out the individual sitting there. (Point-  
2 ing to Defendant)

3 Q. How long did it take her to pick him out?

4 A. It didn't take her long at all.

5 Q. And what did you tell her after that?

6 A. Actually I was shocked. She's one of the first wit-  
7 nesses that I didn't have no problems with picking out the  
8 individual in . .

9 MR. VITETTA: Objection. That's not relevant to the  
10 case.

11 THE COURT: That is sustained.

12 Move on, please.

13 BY MR. BECK:

14 Q. Detective, through your investigation did you find out  
15 where the Defendant was living at the time?

16 A. Yes.

17 Q. And where did that turn out to be?

18 A. At 5503 Gail Street.

19 Q. And where is Gail Street?

20 A. Pretty much behind the In and Out Car Wash on Rivers  
21 Avenue, and next to the Walmart and McDonald's, which is  
22 across the street from Budget.

23 Q. Have you ever had occasion to run from Budget Check  
24 Cashing to 5503 Gail Street?

25 A. Yes.



- 1 Q. When was that?
- 2 A. That was 4 4 97 I believe.
- 3 Q. Last week?
- 4 A. Yes.
- 5 Q. What time of day were you running?
- 6 A. In lunch hour traffic, pretty much.
- 7 Q. How long did it take you to run from Budget Check
- 8 Cashing to 5503 Gail Street?
- 9 A. Actually I did a moderate--what I call a moderate jog,
- 10 and it took about a minute.
- 11 Q. Through the investigation did you learn where the
- 12 Defendant's mother lives?
- 13 A. Yes.
- 14 Q. What is that location?
- 15 A. I believe it's .
- 16 Q. Where is that?
- 17 A. That's right off of Bonds Avenue which is off of
- 18 Dorchester Road, depending which way you're going.
- 19 Q. Have you had occasion to drive from 5503 Gail Street
- 20 to the address on  ;?
- 21 A. Yes.
- 22 Q. When was that?
- 23 A. That was on the same day.
- 24 Q. And do you recall what route you took?
- 25 A. Yes, I do.

1 Q. Will you tell the jury?

2 A. Yes, I took Gail Street to Jedi to Craig; Craig to  
3 Remount Road and left onto Remount Road until I got to the  
4 intersection of Rivers Avenue and Remount Road; and I made  
5 a left onto Rivers Avenue.

6 I went up a little ways and made a right on 526 West-  
7 bound; from 526 Westbound I made a right onto the entrance  
8 ramp onto Leeds Avenue; from Leeds Avenue I made a left.

9 The left I made on Leeds Avenue I made--when I went  
10 up a little ways I made a right onto Azalea Drive; from  
11 Azalea Drive I went up a little ways and made a left onto  
12 Bonds Avenue.

13 I went just a little ways there and made a right onto  
14 Street, and just a few houses down on the right is  
15 where Mr. Linen's parents reside.

16 Q. Okay, and how long did it take you to drive that?

17 A. Approximately ten minutes.

18 Q. Okay. What time of day?

19 A. It was pretty much--just after I made the run at the  
20 other address.

21 Q. Detective, I'm going to ask you to look at State's  
22 Exhibit Number 10 and you can identify that?

23 A. Yes, sir.

24 Q. I'm just asking what it is.

25 A. Rivers Avenue and this is the area where the check

1       cashing place is located.

2       Q.     I would ask you to take this marker--step down here  
3       and take this marker and put a circle around 'Budget Check  
4       Cashing.

5       A.     (Witness leaving witness stand and approaching jury  
6       box. Marking on exhibit)

7       Q.     Now put a circle around the McDonald's across the  
8       street?

9       A.     (Marking on exhibit)

10      Q.     And would you then put a circle around 5503 Gail  
11      Street?

12      A.     (Witness marking on exhibit)

13      Q.     Would you draw the course you took when you ran from  
14      Budget Check Cashing to 5503 Gail?

15      A.     (Marking on diagram)

16      Q.     Thank you.

17           MR. BECK: Your Honor, at this time I would like to  
18      offer State's Exhibit 10 in evidence.

19           MR. VITETTA: Without objection.

20           THE COURT: Without objection it's in evidence.

21           MR. BECK: And the transparency as well.

22           THE COURT: That's in evidence without objection.

23           (Map and transparency entered in evidence as State's  
24      Exhibits 10 and 10 A)

25           MR. BECK: I have no further questions.

1 THE COURT: Cross examination, please.

2 CROSS EXAMINATION BY MR. VITETTA:

3 Q. Detective Roper, you indicated that a photographic  
4 lineup was presented to Ms. Benton I believe on November  
5 15?

6 A. I believe it was.

7 Q. A couple of weeks afterward?

8 A. Yes.

9 Q. And she indicated in the initial lineup that my  
10 client is the one who she saw do the robbery, is that  
11 correct?

12 A. Yes, sir.

13 Q. And she testified earlier today that she then asked  
14 to see more photos, correct?

15 A. Yes.

16 Q. Now, the day after the robbery, these two women came  
17 in and gave composites, right?

18 A. Yes, sir.

19 Q. And you were there, right?

20 A. Yes, sir.

21 Q. And presenting you with Defendant's Exhibit 1, that  
22 is the composite that was produced as a result of the in-  
23 formation?

24 A. Right.

25 Q. Okay, and these women you testified today were not

1 happy with the composite?

2 A. That's correct, sir.

3 Q. And so they presented or signed written statements  
4 that they came in and gave this information, correct?

5 A. Right. They . .

6 Q. They--go ahead. I'm sorry.

7 A. They gave statements to the best of their ability,  
8 what we take, and we produce that.

9 Q. And I believe you witnessed those statements?

10 A. I did.

11 Q. But it doesn't indicate on their statements that they  
12 are not happy with this composite, isn't that correct?

13 A. Yes, and the reason being was they verbally expressed  
14 to me they were not happy about that.

15 Q. So you knew at the time this composite was presented  
16 that these women were not happy with it?

17 A. Yes.

18 Q. And they said it didn't look like the person who had  
19 robbed her?

20 A. Yes.

21 Q. But then this composite ends up on the City of  
22 North Charleston wanted flyer, correct?

23 A. Yes.

24 Q. And this is circulated throughout the department?.

25 A. Yes. ~~F~~

1 Q. Even though it didn't look like the person who had  
2 robbed that place?

3 A. Well, the description was similar, but they said they  
4 didn't really--it wasn't to their satisfaction.

5 Q. So it is similar to the robber?

6 A. It has some likeness to what they wanted to present.

7 Q. Okay.

8 A. Yes.

9 Q. And you eventually--I'm sorry--you eventually had  
10 occasion to make the arrest in this case?

11 A. Yes.

12 Q. And you arrested my client, Mr. Linen?

13 A. Yes.

14 Q. In fact, he came to you, didn't he?

15 A. Yes, sir.

16 Q. So he turned himself in when he knew that he was  
17 wanted?

18 A. Yes, depending on what he was wanted for, sir.

19 Q. But he turned himself in to you?

20 A. Based on other charges . . .

21 THE COURT: Just answer the question.

22 Q. He turned himself in to you?

23 A. Yes, sir.

24 MR. VITETTA: May I have a moment, please?

25 THE COURT: Yes, sir.

1           MR. VITETTA: We have a matter to take up outside of  
2 the jury's presence.

3           THE COURT: Okay, sir. Ladies and gentlemen, please  
4 go to your juryroom and do not talk about the case.

5           (Jury excused from Courtroom at 5:12 P.M.)

6           THE COURT: Go ahead, please.

7           MR. VITETTA: Your Honor, I was not aware--I'm looking  
8 through my client's rap sheet, and I asked that question not  
9 having any idea and not being provided with any information  
10 from the State that he had any other charges other than  
11 this armed robbery.

12           I have a rap sheet right here . .

13           THE COURT: Do you want to specify what the other  
14 charges were that he was turning himself in for, please,  
15 sir?

16           WITNESS: Yes, sir. I believe it was breach of trust  
17 and obtaining goods under false pretenses.

18           MR. VITETTA: I think the State should--I would not  
19 have asked that question if the State had provided me with  
20 that information.

21           They didn't let me know about any charges and my  
22 client never said anything to me about it. I had what I  
23 thought was a current rap sheet on my client that doesn't  
24 indicate anything about anything pending.

25           THE COURT: It doesn't show any pending charges?

1 MR. BECK: A 11 21 96 arrest for armed robbery,  
2 breach of trust and false pretenses.

3 MR. VITETTA: That is not on my rap sheet, Your  
4 Honor. My rap sheet was done--I can't tell what date but  
5 it's not on here.

6 I would not have asked that question had I known about  
7 that.

8 THE COURT: Yes, sir?

9 WITNESS: That's what I was going to explain. He  
10 did not turn himself in for armed robbery. According to  
11 him, he said he was going to turn himself in for--with  
12 reference to the breach of trust and property under false  
13 pretenses.

14 MR. VITETTA: My rap sheets goes up to 1994 and--a  
15 non support arrest, and that's it. I don't know what to  
16 do. I would not have asked the question if I had known  
17 that.

18 THE COURT: Well, . . .

19 MR. VITETTA: I think it was something I should have  
20 been provided.

21 THE COURT: What say, Solicitor?

22 MR. BECK: Your Honor, we provided Defense Counsel  
23 with a rap sheet when we got the case. I knew that the  
24 discovery was continuing and I asked my investigator to get  
25 firm convictions, the prior armed robbery.



1           He ran a new rap sheet and I think this man was ar-  
2       rested at the same time for this, and it was up to him to  
3       inform his defense attorney what he was charged with.

4           We didn't open the door, Your Honor.

5           THE COURT: Do you have any motion at this time, Mr.  
6       Vitetta?

7           MR. VITETTA: We would move, I guess, for a mistrial,  
8       because I was not--the State did not inform us under Rule  
9       Five of pending charges against my client.

10          Now more information has come out about Mr. Linen and  
11       his potential criminal history, after an earlier reference  
12       by Detective Roper about a possible arrest. Now we go  
13       to other pending charges, and I think the cumulative effect  
14       of it is highly prejudicial.

15          THE COURT: Well, who was appointed to represent  
16       him on those other charges?

17          MR. VITETTA: Which other charges? It may have been  
18       in the magistrate's court but I certainly don't have them,  
19       Your Honor.

20          THE COURT: Well, I don't think it's prejudicial to  
21       the point it warrants a mistrial. If anything, it is  
22       harmless because he didn't say what, if any, other charges.

23          He was stopped before he said what other charges he  
24       was turning himself in for, and the implication even if,  
25       other charges weren't mentioned--the implication of him

1 turning himself in voluntarily for armed robbery, once he  
2 realized he was being--that was pending is sufficient to  
3 cover the area.

4 It is not prejudicial the way he responded, so I am  
5 not going to grant a mistrial.

6 MR. VITETTA: Then I would object to the statement  
7 about other charges.

8 THE COURT: That's sustained. Anything further at  
9 this time?

10 MR. VITETTA: No, Your Honor, and I believe I don't  
11 have any further questions.

12 THE COURT: Bring the jury back in, please.

13 (Jury returned to Courtroom at 5:18 P.M.)

14 MR. VITETTA: I'm sorry, Your Honor. I may have one  
15 or two more questions.

16 THE COURT: Sure. You may continue.

17 CROSS EXAMINATION BY MR. VITETTA CONTINUED:

18 MR. VITETTA: May we approach?

19 THE COURT: You certainly may.

20 (Conference at the bench between counsel and the  
21 Court as follows:)

22 MR. VITETTA: I would move to strike the answer he  
23 gave.

24 THE COURT: All right, sir. It's noted for the record  
25 and denied.

1 MR. VITETTA: I don't have any questions.

2 THE COURT: Redirect?

3 MR. BECK: No, thank you, Your Honor.

4 THE COURT: You may step down.

5 (Witness excused from stand)

6 THE COURT: All right, Solicitor.

7 MR. BECK: Your Honor, at this point the State would  
8 rest.

9 THE COURT: Ladies and gentlemen of the jury panel,  
10 the State rests. We will stop here for the day. I will  
11 ask all of you to please be back in the jury room at nine  
12 thirty in the morning.

13 Between now and then, please don't talk to anybody  
14 about this case, and please don't let anybody talk to you  
15 about the case.

16 Don't read the newspaper or listen to any radio or  
17 television reports there might be about the case.

18 All of you need to be able to decide this case based  
19 on the testimony and the evidence you hear in the Courtroom  
20 and not something outside of here.

21 Please be in the jury room at nine thirty. You don't  
22 have to be here early. If you do get to the Courthouse early  
23 please don't hang around in the halls, but once you get  
24 here come to the jury room.

25 If you stand out in the hall you may inadvertently

1 about the case, so you don't need to be here at eight  
2 thirty because you'll just have to sit in the jury room  
3 for an hour.

4 So nine thirty is plenty early enough to get here, and  
5 you are excused for the day.

6 Thank you.

7 (Jury excused from Courtroom at 5:25 P.M.)

8 THE COURT: Okay, are there motions?

9 MR.VITETTA: Thank you, Your Honor. Your Honor, the  
10 Defense would move at this time for a motion for directed  
11 verdict under Rule 19 of the criminal rules.

12 The State has not produced competent evidence to  
13 prove the charge.

14 The testimony has been conflicting, and I feel the  
15 eyewitness identification is not reliable.

16 As well, the motion is made on the grounds of other  
17 motions made during the trial.

18 Thank you.

19 THE COURT: Anything in response?

20 MR. BECK: Yes, Your Honor. In the light most fav-  
21 orable to the State, we've had testimony from the witness  
22 stand by three different people who pointed to this man,  
23 saying he was the armed robber.

24 We oppose the motion and would ask that you deny the  
25 same.

1           THE COURT: Looking at the case in the light most  
2 favorable to the State, which is the standard that I am  
3 required to use at this point in the trial, I find that  
4 there is sufficient evidence to warrant the matter going  
5 to the jury.

6           Motions denied.

7           Anything further?

8           MR. VITETTA: No, thank you, sir.

9           THE COURT: Mr. Linen, would you stand, please?

10          DEFENDANT: Yes, sir.

11          (Defendant standing in Courtroom)

12          THE COURT: Mr. Linen, we've reached the point in  
13 the trial where you have the opportunity to testify if  
14 you choose to.

15          If you have a crime of moral turpitude on your record;  
16 that is, now defined as an offense that carried a punish-  
17 ment of more than a year, the State would be allowed to  
18 use that to impeach you; that means to tell the jury about  
19 that prior offense.

20          If you choose not to testify, I will tell the jury  
21 they cannot hold that against you and they cannot even  
22 talk about that in the jury room.

23          Do you understand your rights in regard to testifying?

24          DEFENDANT: Yes, sir.

25          THE COURT: Do you choose to testify or not testify?

1 If you want to wait until tomorrow morning to tell me that,  
2 you have until tomorrow morning.

3 But it will be your choice.

4 DEFENDANT: I will wait until in the morning.

5 THE COURT: You want to wait to tell me in the morn-  
6 ing?

7 DEFENDANT: Yes, sir.

8 THE COURT: All right, sir. You do understand your  
9 rights in regard to testifying?

10 DEFENDANT: Yes, sir, I think I do.

11 THE COURT: All right, sir. What don't you under-  
12 stand?

13 DEFENDANT: I think if I do testify, this previous  
14 record can be brought up?

15 THE COURT: Yes, sir.

16 DEFENDANT: And if I don't testify, it won't be?

17 THE COURT: It won't be. Yes, sir. And in addition  
18 to that I will tell the jury that they cannot talk about  
19 the fact that you didn't testify in their deliberations.

20 All right, sir? You have any more questions in the  
21 morning, I'll be glad to try to answer them before we pro-  
22 ceed.

23 You need to talk to your lawyer more about that this  
24 evening.

25 Thank you, sir.

1           Okay, we'll start at nine thirty in the morning  
2 then. If you have any requests to charge have them for me  
3 at nine thirty.

4           (Court stood in recess as to this matter until  
5 April 8, 1997, at 9:34 A.M.)

6           THE COURT: Are you ready proceed? Anything before  
7 we start with the jury, from the State?

8           MR. BECK: Your Honor, for the record in regard to  
9 when Defense Counsel was cross examining Detective Roper  
10 about the arrest on the same day for armed robbery and false  
11 pretenses, Defense Counsel early on in the case was sup-  
12 plied with discovery.

13           On the booking report which was put in that discovery  
14 are the arrest charges.

15           I just wanted that to be on the record that he had  
16 it some months ago, right after the arrest.

17           THE COURT: Thank you, sir. Do you have any requests  
18 to charge?

19           MR. BECK: No, Your Honor.

20           THE COURT: Requests to charge from the Defendant?

21           MR. VITETTA: No, sir.

22           THE COURT: Are you requesting a reasonable doubt  
23 charge?

24           MR. VITETTA: Your charges I'm familiar with and  
25 that's fine.

1 THE COURT: All right. Does your client choose to  
2 testify or not testify?

3 MR. VITETTA: He chooses not to testify.

4 DEFENDANT: Not to testify.

5 THE COURT: Mr. Linen, that is your choice, not your  
6 lawyer's choice or your family's choice? Your choice?

7 DEFENDANT: Yes, sir.

8 THE COURT: And you do understand your rights?

9 DEFENDANT: Yes, sir.

10 THE COURT: Thank you, sir. The Defendant chooses  
11 not to testify after being advised of his rights, and having  
12 the time since yesterday afternoon when we stopped which was  
13 about five thirty until nine thirty this morning to make  
14 up his mind.

15 Bring the jury in, please.

16 (Jury returned to the Courtroom)

17 THE COURT: You plan to call witnesses?

18 MR. VITETTA: Yes, sir, we do.

19 THE COURT: Ladies and gentlemen of the jury, since  
20 you left here yesterday has anyone talked to any of you about  
21 this case, or have you talked to anybody about this case?

22 If so, please raise your hand.

23 (No response from jury panel)

24 You may call your first witness, please.

25 MR. VITETTA: The Defense would call Jo Ella Cobb.



JO ELLA COBB, being duly

1

sworn, testified as follows:

2

3

DIRECT EXAMINATION BY MR. VITETTA:

4

Q. Ms. Cobb, good morning. Jo Ella, what is your  
relationship to Quinton Linen?

5

6

A. My son.

7

Q. Would you tell me where you live?

8

A. At  Street.

9

Q. And where is that?

10

A. Off Dorchester Road.

11

Q. And can you remember back to October 28, 1996?

12

A. Yes, I can.

13

Q. Do you know what day of the week that was?

14

A. What day of the week it was?

15

Q. Yes.

16

A. It was that Monday.

17

Q. Okay, and did you happen to see Quinton at any time  
during that day?

18

19

A. Yes, I did.

20

Q. What time did you see him?

21

A. Just about five thirty in the afternoon.

22

Q. And how long--where did you see him?

23

A. At my house.

24

Q. And how long was he at your house?

25

A. He was at my house from five thirty until about nine

1 thirty.

2 Q. And how did he leave your house?

3 A. My daughter works at Rite Aid and she gets off at nine  
4 o'clock, and he asked her would she give him a ride home.  
5 So she gets off at nine and she gets to my house about nine  
6 thirty.

7 She gave him a ride home.

8 Q. And was he there the entire time?

9 A. Yes, he was. From five thirty until then.

10 Q. Was there any time that you left the house and he was  
11 not there?

12 A. No.

13 Q. You left the house and he was there alone?

14 A. No.

15 Q. Okay, were you and Quinton there together from five  
16 thirty to nine thirty?

17 A. Yes.

18 Q. I don't have any further questions.

19 THE COURT: Cross examination.

20 Q. Please answer any questions Mr. Beck may have.

21 MR. BECK: Thank you.

22 CROSS EXAMINATION BY MR. BECK:

23 Q. Ms. Cobb, your son Quinton lives--at some point he  
24 lived at 5503 Gail Street, didn't he?

25 A. Gail Street?

- 1 Q. Yes, maam.
- 2 A. Is that by McDonald's?
- 3 Q. Do you know where Gail Street is?
- 4 A. No.
- 5 Q. Okay, do you know where your son was living in  
6 September of 1996?
- 7 A. Yes.
- 8 Q. Where was that?
- 9 A. Behind McDonald's. He was in a house.
- 10 Q. And . . .
- 11 A. I don't know the name of the street.
- 12 Q. Okay. So in September of 1996 and October of 1996,  
13 he was living behind McDonald's, is that correct?
- 14 A. Yes.
- 15 Q. You have a daughter, right?
- 16 A. Yes.
- 17 Q. Her name is Sonya Linen?
- 18 A. Yes.
- 19 Q. And she lived at , right?
- 20 A. Yes.
- 21 Q. And that is about a mile--less than a mile from  
22 where your son was living behind McDonald's, isn't that  
23 right?
- 24 A. Yes.
- 25 Q. Sonya is three years older than Quinton?

- 1 A. Yes.
- 2 Q. He's her baby brother?
- 3 A. No, he's not the baby. He's next to her.
- 4 Q. And this is your son?
- 5 A. Yes.
- 6 Q. You raised your son?
- 7 A. Yes.
- 8 Q. And when he was a baby and was crying you nursed
- 9 him?
- 10 A. Yes.
- 11 MR. VITETTA: Objection, Your Honor. Relevance.
- 12 THE COURT: Move on, sir.
- 13 MR. BECK: Thank you, Your Honor.
- 14 Q. Ms.Cobb, before yesterday when was the last time you
- 15 saw your son?
- 16 A. Before yesterday?
- 17 Q. Yes.
- 18 A. I saw him yesterday.
- 19 Q. When was the last time you saw your son?
- 20 A. I saw him Sunday.
- 21 Q. That would be the 6th of April?
- 22 A. Yes.
- 23 Q. And you saw him on Saturday, the 5th?
- 24 A. Yes.
- 25 Q. And you saw him on Friday, the 4th, right?

- 1       A.     Yes.
- 2       Q.     And do you see him every day?
- 3       A.     Yes, because he lives with me.
- 4       Q.     How long has he lived with you?
- 5       A.     Ever since he got--well, they came to the house looking  
6       for him, and I got him out on bond. He's been living with  
7       me.
- 8       Q.     Since you got him out on bond, he's been living in  
9       your house?
- 10      A.     Yes.
- 11      Q.     So you were well aware he was arrested?
- 12      A.     Well, he turned himself in.
- 13      Q.     But you know that he was charged with this crime, is  
14      that right?
- 15      A.     Yes.
- 16      Q.     And you knew this trial was coming up, right?
- 17      A.     Yes.
- 18      Q.     He's been in your house since then?
- 19      A.     Yes.
- 20      Q.     Isn't it true you talked about the upcoming trial?
- 21      A.     Yes.
- 22      Q.     And you've talked about what you would testify to,  
23      didn't you?
- 24      A.     No, I didn't. With him I did not.
- 25      Q.     So you haven't discussed with your son since--we're

1       talking months since he lived in your house?

2       A.     Yes.

3       Q.     So he's been in your house for months and you knew  
4       this trial was coming up . .

5       A.     Uh hm.

6       Q.     And you knew that you wanted to come and testify,  
7       right?

8       A.     No, I didn't. I was subpoenaed.

9       Q.     So you're not here because you want to help your son?

10      A.     I didn't say that.

11      Q.     Are you trying to say if you hadn't been subpoenaed,  
12      you wouldn't be here?

13      A.     No, I didn't say that.

14      Q.     Are you saying to our jury here that he's been in your  
15      house and you talked about the trial but not about your tes-  
16      timony?

17      A.     No.

18      Q.     I'm not . .

19      A.     I was not aware I would have to testify.

20      Q.     So you never said, my son, if you need me, I'll be  
21      there for you?

22      A.     He knows that.

23      Q.     Okay. You knew this trial was coming up, right?

24      A.     Yes.

25      Q.     And you knew that on the night he was accused of having

1       robbed this woman, and you say you were watching TV with  
2       him?

3       A.     Yeah, we were at the house.

4       Q.     But you didn't want to come in and testify; you didn't  
5       expect to come in here and tell this jury you were with your  
6       son that night?

7       A.     I didn't expect it because I didn't think he had com-  
8       mitted no crime.

9       Q.     Let's talk about that. Do you remember speaking with  
10      a man named Matt Casey?

11      A.     . . .

12      Q.     Back on April 3rd?

13      A.     Yes.

14      Q.     And you know he works for my office, right?

15      A.     I didn't know it at the time.

16      Q.     But you had a conversation with him?

17      A.     Yeah, I had a conversation with him.

18      Q.     About the trial?

19      A.     Yes.

20      Q.     Okay, and isn't it true that you told him that when  
21      your son was arrested on November 21st that you did not know  
22      the date of the armed robbery?

23      A.     No.

24      Q.     And isn't it true that you told him that you found  
25      out about the date of the armed robbery from his attorney,

1 right?

2 A. I didn't know what the date was, but I knew he was  
3 at the house that Monday.

4 Q. Okay, but you didn't know what date they were talking  
5 about?

6 A. No, I didn't.

7 Q. So when was it that you found out from Mr. Vitetta  
8 that your son was accused of having robbed this place on  
9 October 28th?

10 A. I knew he was at my house that Monday.

11 Q. I understand what you're saying.

12 A. Uh hm.

13 Q. But I'm asking you a different question now. Okay?  
14 I'm asking you what was the date that Mr. Vitetta told you  
15 that your son was accused of having robbed . .

16 A. The 28th of October.

17 Q. So you--let me back up. If I'm not being clear, please  
18 let me know. Okay?

19 Who told you that the date we're talking about was  
20 October 28th?

21 A. I believe the lawyer said it was the 28th but I didn't  
22 think of it at the time but I know it was that Monday that  
23 he was at home.

24 Q. So you had a conversation with Mr. Vitetta?

25 A. Yes.



1 Q. About when the robbery took place?

2 A. Uh hm.

3 Q. And that was after your son had been arrested, is  
4 that right?

5 A. Yes.

6 Q. And--that conversation you had with Mr. Vitetta?

7 A. Yes.

8 Q. And when was that conversation?

9 A. It was after he was arrested.

10 Q. How long after he had been arrested?

11 A. Maybe a week. Probably.

12 Q. And he was arrested the 21st of November, is that  
13 right?

14 A. Yes.

15 Q. So would it be fair to say the 28th of November--is  
16 that about right?

17 A. Probably.

18 Q. You remember what day of the week it was?

19 A. No, but it was one day during the week.

20 Q. You remember where the conversation took place?

21 A. I spoke to him on the telephone.

22 Q. So a week day?

23 A. Yes.

24 Q. And so a month after the incident occurred . . .

25 A. Uhhm.

- 1 Q. . . you found out what date it was, right?
- 2 A. Uh hm.
- 3 Q. Ms.Cobb, do you recall what you were doing on October
- 4 24th?
- 5 A. I was at home.
- 6 Q. What day of the week was that?
- 7 A. That was on a Thursday.
- 8 Q. How do you know? How do you know you were home?
- 9 A. Because I was there.
- 10 Q. Are you always home?
- 11 A. Most of the time.
- 12 Q. And so it is not unusual for you to be at home?
- 13 A. No, it's not.
- 14 Q. And your son is often there, right?
- 15 A. Yes, if he's not working.
- 16 Q. Well, basically, the 28th was no different from any
- 17 other day?
- 18 A. No.
- 19 Q. So it doesn't stand out in your mind for any particular
- 20 reason, does it?
- 21 A. Well, it does because my birthday was that Saturday,
- 22 and he didn't come by that Sunday but he was there that
- 23 Monday.
- 24 Q. Okay, but the ~~28th~~ was your birthday and nothing really
- 25 stands out in your mind about the ~~28th~~, two days before your

1 birthday?

2 A. Yes.

3 Q. Okay. Well, when you found out a month after the in-  
4 cident had occurred that your son was accused of having  
5 robbed this woman with a knife, . .

6 A. Uh hm.

7 Q. . . you thought to yourself I was with him. Is that  
8 right?

9 A. He was at my house that particular day.

10 Q. Okay, and you knew the police were investigating  
11 this crime, right?

12 A. Yes.

13 Q. Ms. Cobb, do you have a telephone?

14 A. Yes.

15 Q. But you never picked up that telephone, did you, to  
16 call North Charleston Police Department and say, you have  
17 the wrong man?

18 A. Well, I couldn't say that.

19 Q. Well, Ms. Cobb, you live in North Charleston, don't  
20 you?

21 A. Yes.

22 Q. And doesn't it concern you that potentially an armed  
23 robber is running around loose in North Charleston?

24 A. No, it . .

25 MR. VITETTA: Objection, Your Honor. This calls for

1 speculation.

2 THE COURT: That's sustained. Move on, please,  
3 Solicitor.

4 BY MR.BECK:

5 Q. Ms.Cobb, you never went to the police station to talk  
6 to anyone about the fact that they had the wrong man?

7 A. Well, I didn't think my son committed a crime so I  
8 had no reason to.

9 Q. So you never felt it was your obligation . .

10 MR. VITETTA: Objection, Your Honor. He's made his  
11 point.I know it's cross examination but . .

12 THE COURT: It's cross examination. Overruled.

13 Q. You didn't feel it was your obligation to free your  
14 son of these charges?

15 A. No, because I didn't think he would be guilty of it.

16 Q. And you never called my office to let us know that you  
17 thought we had the wrong person?

18 A. No.

19 Q. And in fact this is the first time you are telling  
20 us what happened?

21 A. ..

22 Q. Isn't it?

23 A. Yes.

24 Q. Have you ever told anyone under any authority other  
25 than your son's attorney?

1 A. No.

2 Q. Did you discuss it with your daughter?

3 A. No.

4 Q. You never discussed the fact that you were watching  
5 television that night with Sonya?

6 A. No, she was at work.

7 Q. Have you seen Sonya before you came to testify this  
8 morning?

9 A. Yes.

10 Q. In fact, you were with her this morning, right?

11 A. Yes.

12 Q. Before this trial commenced?

13 A. Yes.

14 Q. Did you talk about the fact that you were going to  
15 come to testify today?

16 A. No, we already knew that. We were subpoenaed.

17 Q. So how long ago did you and Sonya, your daughter,  
18 realize that you would be coming here to testify for your  
19 son?

20 A. About a week ago.

21 Q. Pardon?

22 A. A week ago.

23 Q. And you talked about that?

24 A. No.

25 Q. You and Sonya haven't talked about the fact that you

- 1       were going to come and testify because you were subpoenaed  
2       for your son's trial?
- 3       A.     Uh hm.
- 4       Q.     I'm sorry?
- 5       A.     Yes.
- 6       THE COURT: Say yes or no, please.
- 7       A.     Yes.
- 8       Q.     Yes, you had talked about it?
- 9       A.     Yes, we talked about it, . . .
- 10      Q.     And you have talked . . .
- 11      A.     . . . when we were subpoenaed.
- 12      Q.     You have talked about your testimony, isn't that cor-  
13      rect?
- 14      A.     Not what we were going to testify about, no.
- 15      Q.     Did you talk about the evening of October 28?
- 16      A.     No.
- 17      Q.     Okay. Ms. Cobb, Sonya works at Rite Aid, isn't that  
18      correct?
- 19      A.     Yes, she does.
- 20      Q.     And she usually works in the evenings, is that cor-  
21      rect?
- 22      A.     Yes.
- 23      Q.     And when she goes to Rite Aid, she leaves her kids  
24      with you?
- 25      A.     Yes.

1 Q. And on the night of the 28th, she dropped her kids  
2 off and she went to work?

3 A. Yes.

4 Q. So on the night of the 28th, Sonya going to work is  
5 just like any other night she had to go to work, right?

6 A. Yes.

7 Q. Do you recall what you watched on television with your  
8 son?

9 A. No. We look at Sanford and Son, Andy Griffith.

10 Q. How about at eight thirty? You said he was there  
11 from five thirty to nine thirty?

12 A. A movie comes on Channel 29.

13 Q. What was the movie?

14 A. I don't remember what the movie was.

15 Q. Do you remember who was in it?

16 A. No.

17 Q. Do you remember what the plot was?

18 A. No, we just looked at a movie.

19 Q. Do you remember if it was a funny movie?

20 A. No, suspense.

21 Q. Suspenseful movie?

22 A. Uh hm.

23 Q. Was it a murder mystery?

24 A. No, it wasn't a murder. Like a family type . . .

25 Q. What time did the movie come on?

- 1 A. Eight o'clock.
- 2 Q. He was there the whole time you watched that suspense  
3 movie, right?
- 4 A. Yes.
- 5 Q. And where in the house did you watch it?
- 6 A. . .
- 7 Q. Was it upstairs?
- 8 A. No, it was downstairs.
- 9 Q. Do you have a TV upstairs?
- 10 A. Yes.
- 11 Q. A TV downstairs?
- 12 A. Yes.
- 13 Q. Both watching it downstairs?
- 14 A. Yes.
- 15 Q. When your daughter came in to the house, you and  
16 your son were watching TV downstairs?
- 17 A. Yes.
- 18 Q. In your house on  Street, your father lived  
19 there with you?
- 20 A. Yes.
- 21 Q. And he suffers from poor health, is that right?
- 22 A. Yes.
- 23 Q. Do you recall this man? Ever seen him before?
- 24 A. Yes.
- 25 Q. You saw him on November 21st, 1996, right?



1 A. Right.

2 Q. And he came to your house, didn't he?

3 A. Yes.

4 Q. And he told you he was looking for your son, is that  
5 right?

6 A. Yes.

7 Q. And didn't you tell him on that day that you don't  
8 live with your son and you don't like for your son to be  
9 around too much because of your father's poor heart?

10 A. No, I didn't say that.

11 Q. That's not what you told the detective?

12 A. No, I did not.

13 Q. Well, Ms. Cobb, didn't you tell this police officer  
14 when he came looking for your son that you had not seen him  
15 in a year?

16 A. No, I did not tell him that.

17 Q. I have no more questions.

18 A. I said he weren't there.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION BY MR. VITETTA:

21 Q. How can you remember  as being different  
22 from any other day?

23 A. . .

24 Q. How can--let me rephrase that. How can you remember  
25 specifically ?

1 A. Because my birthday was that Saturday.

2 Q. And how can you remember that Quinton was with you  
3 on the ~~th~~th? From five thirty to nine thirty?

4 A. Because he came to talk to me about some of his per-  
5 sonal problems.

6 Q. What time was that?

7 A. It was five thirty in the afternoon.

8 Q. And he was there until when?

9 A. Until nine thirty.

10 Q. Nothing further.

11 THE COURT: Recross?

12 MR. BECK: Nothing further. Thank you.

13 THE COURT: You may step down.

14 (Witness excused from stand)

15 THE COURT: Next witness.

16 MR. VITETTA: Sonya Cobb.

17 SONYA LINEN, being

18 duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. VITETTA:

20 Q. Good morning, Sonya. Sonya, do you know Quinton  
21 Linen?

22 A. Yes, I do.

23 Q. How long have you known him?

24 A. He's my brother.

25 Q. And do you remember back to ~~1996~~, 1996?

- 1 A. Yes.
- 2 Q. Did you see Quinton that day?
- 3 A. Yes, I saw him that night.
- 4 Q. Okay, and where did you see him?
- 5 A. At my mother's house.
- 6 Q. And about what time was that?
- 7 A. About nine thirty or quarter to ten.
- 8 Q. And what did you do after you saw him?
- 9 A. I got off work and ate dinner.
- 10 Q. What did you do after you got to your mother's?
- 11 A. I stayed there about maybe five or ten minutes after
- 12 that and I give him a ride home. I left and took him home
- 13 and I went home.
- 14 Q. What time did you drop him off?
- 15 A. Probably twenty minutes after ten.
- 16 Q. Now, how can you remember that we're talking about
- 17 October 28th?
- 18 A. Because it was like two days after my mother's birth-
- 19 day.
- 20 Q. What day was her birthday?
- 21 A. The ~~—~~th of ~~—~~.
- 22 Q. Do you remember what day of the week?
- 23 A. Saturday.
- 24 Q. What day was the 28th?
- 25 A. Monday.

1 Q. Thank you. I have no further questions.

2 THE COURT: Cross examination.

3 CROSS EXAMINATION BY MR. BECK:

4 Q. Ms. Linen, you got off from Rite Aid at nine o'clock?

5 A. Yeah, they close at nine o'clock. I didn't leave  
6 out until twenty after.

7 Q. That's because you have to clean up, right?

8 A. Exactly.

9 Q. You have nightly chores?

10 A. Yes.

11 Q. And that is a routine which you perform every night  
12 after closing?

13 A. Yes.

14 Q. So you didn't do anything special on the 28th with  
15 your closing at your job?

16 A. No.

17 Q. From any other night?

18 A. No.

19 Q. And when you go to work you leave your kids with your  
20 mom?

21 A. Yes.

22 Q. And you go pick them up?

23 A. Yes.

24 Q. And you maybe sit down and have some dinner and chat  
25 with your mom?

1 A. Yes.

2 Q. And what time did you go to work?

3 A. Five that evening.

4 Q. And at six o'clock you have no idea where your brother  
5 was?

6 A. No.

7 Q. And at seven o'clock you have no idea where he was  
8 either?

9 A. No.

10 Q. So at eight o'clock you did not know where he was, di  
11 you?

12 A. No.

13 Q. And then at nine o'clock, when this woman was robbed,  
14 you were there at work?

15 A. Yes.

16 Q. And you don't know where your brother was?

17 A. No.

18 Q. Your brother wasn't arrested until the 21st of Novem-  
19 ber, right?

20 A. I suppose.

21 Q. You don't remember what day your brother was arrested?

22 A. I ~~was~~ at work so I really don't know.

23 Q. You don't remember the day of the week your brother  
24 was arrested?

25 A. I don't know.

- 1 Q. So if you take my word that he was arrested on the  
2 21st of November and you say you don't know, . .
- 3 A. Uh hm.
- 4 Q. . . is it safe for us to assume that you didn't know  
5 the date of the robbery until after the date he was
- 6 A. It is safe to assume that. I already told you that I  
7 don't know.
- 8 Q. Is it safe for us to assume that you learned that  
9 date from your mother?
- 10 A. Yes.
- 11 Q. She told you the robbery happened on \_\_\_\_\_ th,  
12 right?
- 13 A. She didn't say when it was specifically.
- 14 Q. She didn't? She just said the robbery happened when?  
15 Two days after my birthday?
- 16 A. All she said that he got arrested.
- 17 Q. Who told you the date the robbery happened?
- 18 A. The day I talked to his lawyer.
- 19 Q. You talked to Mr. Vitetta?
- 20 A. Not him.
- 21 Q. Who did you talk to?
- 22 A. I don't remember the Public Defender's name but when  
23 I came--he called me and I came down and this is what they  
24 told me.
- 25 So what happened I couldn't tell you.

1 Q. The Public Defender's Office asked you to come to the  
2 Courthouse and talk with them about your brother's case,  
3 right?

4 A. Uh hm.

5 Q. And you came here to the Courthouse?

6 A. Yes.

7 Q. What date was that?

8 A. I don't know what date it was.

9 Q. You can't remember when that was?

10 A. No.

11 Q. Was it long ago or was it ..

12 A. It was long ago. It wasn't recently.

13 Q. What do you characterize as long ago?

14 A. A few weeks.

15 Q. A few weeks ago?

16 A. Yes.

17 Q. Three weeks ago?

18 A. I really don't know exactly what date.

19 Q. Ms.Linen, if we say you spoke to the Public Defender's  
20 Office twenty-one days ago, would you agree with me on that?

21 A. . .

22 Q. About 21 days ago?

23 A. I guess.

24 Q. The Public Defender's Office informed you about a .  
25 date that--that it happened about sixty days ago?

1 A. ..

2 Q. Is that right?

3 A. Approximately.

4 Q. Okay, and you remember that night although you told  
5 our jury it was no different from any other night as far  
6 as your routine at work and your routine when you came  
7 home?

8 A. Uh hm.

9 Q. Ms. Linen, can you tell our jury what you did on  
10 , 1996?

11 A. September 2nd I was at work.

12 Q. So that would have been no different from any other  
13 day?

14 A. No different.

15 Q. And that is two days after your own birthday, isn't  
16 that correct?

17 A. Yes.

18 Q. Ms. Linen, when you came home from work, you told our  
19 jury that your brother was there with your mother?

20 A. Uh hm.

21 Q. What were they doing?

22 A. My mother was downstairs watching TV. My brother was  
23 upstairs.

24 Q. And what was he doing upstairs?

25 A. Watching tape.



1 Q. Thank you, I don't have any further questions.

2 THE COURT: Redirect?

3 MR. VITETTA: No questions, thank you.

4 THE COURT: You may step down. Thank you.

5 (Witness excused from stand)

6 THE COURT: Call your next witness, please.

7 MR. VITETTA: Defense rests.

8 THE COURT: Ladies and gentlemen, I have a matter  
9 of law I need to take up with the attorneys. Please step  
10 into the jury room and don't talk about the case yet.

11 (Jury excused from Courtroom at 10:03 A.M.)

12 THE COURT: Any motions?

13 MR. VITETTA: Thank you, Your Honor. The Defense  
14 would move for a directed verdict for the failure of compe-  
15 tent evidence tending to prove the charge.

16 When viewed in the light most favorable to the State,  
17 the State's evidence merely raises a suspicion that Mr.  
18 Linen was involved in this crime.

19 The evidence is equally weighted on both sides of  
20 the case. That he was there and that he was not there. So  
21 we would ask that the Court rule in favor of the directed  
22 verdict motion for those reasons, as well all other motions  
23 made during the trial, including the motions for mistrial.

24 Thank you, sir.

25 THE COURT: That is denied on the same basis as denied

1 before.

2 There is a sufficient factual basis to warrant the  
3 matter going to the jury, looking at the case in the light  
4 most favorable to the State.

5 The other motions, particularly the motions for mis-  
6 trial, are denied on the same basis as before.

7 MR. VITETTA: I just would like to make clear my  
8 motions for mistrial are renewed.

9 THE COURT: Yes, sir. That is noted for the record,  
10 and they are denied.

11 Will there be any testimony in reply?

12 MR. BECK: Just one short witness. Detective Roper,  
13 Your Honor. Just concerning the conversation that they had.

14 THE COURT: Bring the jury back in.

15 (Jury returned to the Courtroom at 10:05 A.M.)

16 THE COURT: Is there any reply from the State?

17 MR. BECK: Yes, Your Honor. The State would call De-  
18 tective Harry Roper.

19 HARRY ROPER, being  
20 previously sworn, testified as follows:

21 THE COURT: You are still under oath.

22 DIRECT EXAMINATION BY MR. BECK:

23 Q. Detective Roper, there's one part of the investigation  
24 we will be talking about, and that is when you were looking  
25 for the Defendant.

1           On November 21, 1996, can you tell the jury what you  
2    did?

3    A.    November 21st?

4    Q.    Yes.

5    A.    We were looking for the person who committed the  
6    armed robbery at Budget Check Cashing, and the investigation  
7    as to 2117 Atlas Street.

8    Q.    Who were you looking for?

9    A.    We were looking for Quinton Linen.

10   Q.    Why did you go to  Street?

11   A.    Because we developed information that his parents re-  
12   sided there..

13   Q.    Where did you go?

14   A.    We went to  Street--  Street and  
15   knocked on the door and a family member came to the door.

16   Q.    Who did you primarily deal with at that address?

17   A.    I primarily dealt with the person who said she was his  
18   parent.

19   Q.    Did you recognize her today in Court ?

20   A.    Yes, sir.

21   Q.    Is that the same woman with whom you spoke that day?

22   A.    Yes, sir.

23   Q.    What did she tell you with regard to her son being in  
24   that house?

25   A.    She indicated to me that he didn't reside that.

1 Q. When did she tell you the last time she had seen her  
2 son was?

3 A. She said approximately six months to a year.

4 Q. Did she indicate there had been problems with that?

5 A. Yes, she did.

6 MR. VITETTA: Objection, Your Honor. I think I need  
7 to take this up outside of the jury . .

8 THE COURT: Overruled. Go ahead. Move on, please,  
9 sir.

10 BY MR. BECK:

11 Q. What problems did she indicate in regard to him being  
12 in the house?

13 A. . .

14 MR. VITETTA: Objection, Your Honor.

15 THE COURT: That is sustained.

16 Q. What problems?

17 A. . .

18 THE COURT: That is sustained. Move on to another  
19 question.

20 Q. I have no further questions. Thank you.

21 THE COURT: Cross examination?

22 MR. VITETTA: No questions.

23 THE COURT: You may step down.

24 (Witness excused from stand)

25 MR. BECK: I have no further witnesses, Your Honor.

1           THE COURT: Ladies and gentlemen of the jury, I have  
2           some matters of law to take up with the attorneys. Please  
3           step in the jury room.

4           Do not talk about the case.

5           (Jury excused from Courtroom at 10:09 A.M.)

6           THE COURT: Any further motions?

7           MR. VITETTA: Thank you, Judge. A motion for directed  
8           verdict based on the reasons stated previously.

9           Also, I would make another motion for mistrial based  
10          on Detective Roper's response that the mother indicated she  
11          was having problems with my client.

12          That is the third time . .

13          THE COURT: No, that--he was stopped before he went  
14          any further that and he wasn't allowed to enumerate what  
15          the problems were. That could be anything. Parents always  
16          have problems with their children.

17          So there is no negative inference to be raised from  
18          that comment.

19          MR. VITETTA: I believe the cumulative effect with the  
20          other two instances is greatly prejudicial and could affect  
21          the outcome.

22          THE COURT: Your objection is noted for the record and  
23          denied. Motion for mistrial is denied.

24          MR. VITETTA: Thank you.

25          THE COURT: How long you need to argue, Solicitor?

1 MR. BECK: Thirty minutes.

2 THE COURT: Thirty minute sufficient, Mr. Vitetta?

3 MR. VITETTA: Yes, sir.

4 THE COURT: Would you like a few minutes before we  
5 start closing arguments?

6 MR. VITETTA: We'd appreciate it.

7 (Court stood in recess until 10:21 A.M.)

8 THE COURT: Bring the jury in, please. Please refrain  
9 from references to things as I believe or I think. That is  
10 improper argument.

11 (Jury returned to Courtroom.)

12 THE COURT: Ladies and gentlemen, we will now have the  
13 closing arguments in the case. I will ask all of you to con-  
14 tinue to pay close attention as you have throughout the course  
15 of the trial.

16 Solicitor?

17 MR. BECK: Thank you, Your Honor. Ladies and gentlemen,  
18 I want to thank you for being attentive and giving us the  
19 respect the Courtroom demands.

20 This is my opportunity to address you briefly on the  
21 law, and when I sit down Mr. Vitetta will address you.

22 I will have the last word because we have the burden of  
23 proof here. We are the ones saying that this man committed  
24 this crime.

25 In Defense's opening he said what we have here are two

1 conflicting theories. The night of October 28 is not a  
2 theory to Ms. Wood. It was a knife in her face, by someone  
3 she recognized.

4 The evidence you heard from the witness stand clearly  
5 indicates that this man is guilty.

6 At the beginning of the trial, I talked to you about  
7 the elements of armed robbery. The evidence in this case  
8 has shown you the taking or attempting to carry away the  
9 personal property of another.

10 Three witnesses have told you that they saw this man  
11 grab and take the money belt from Cheryl Wood, with the  
12 intent to deprive that person of that possession, and he  
13 ran.

14 He ran off--he ran. He ran off into the night and  
15 crossed Rivers Avenue, back into the bushes and trees, and  
16 lost Freemon Brown who was chasing him.

17 And he did this by use of force, threats or intimidat-  
18 tion. What did Ms. Wood tell you he told her? Don't  
19 scream. He held a knife to her throat. He put a knife to  
20 her eye.

21 He rammed her head into a filing cabinet and the  
22 last element of armed robbery was that knife. From her  
23 demonstration with the plastic blade--it was not threaten-  
24 ing but you notice how she reacted to that and how she felt  
25 about that dirty, rusty large hunting knife which that

1       guy put in her face.

2               She gave a vivid, detailed description of that knife,  
3       and that's how well she remembered the events of that even-  
4       ing and the people who were there; in particular, the man  
5       who was doing this to her.

6               Now, we have heard of reasonable doubt. We have to  
7       prove our case beyond a reasonable doubt.

8               That doesn't mean that we have a theory and the De-  
9       fendant has a theory; that's not a reasonable doubt.

10              There is only one truth of what happened that night.  
11       I'm certain that after you reach your conclusion you will  
12       know the victim, Ms. Wood, was telling the truth.

13              THE COURT: Mr. Vitetta?

14              MR. VITETTA: Thank you. May it please the Court?

15              THE COURT: Yes, sir.

16              MR. VITETTA: You know, the State's case is quite clear  
17       and they have three women or two women and Freemon Brown  
18       to say they saw somebody that is our client and who robbed  
19       the store, robbed the video poker place.

20              That's really the whole case there, and you can be-  
21       lieve them or not. The State's side.

22              Freemon Brown was not a credible witness. He was the  
23       man who came in wearing the hat and he claimed to be a  
24       former Navy Seal and having a phototonic memory.

25              There are two sides of every case, including very seriou



1       ones like this.

2               I think what Mr. Brown was trying to say was that  
3       he had a photogenic memory and he couldn't pronounce the  
4       word.

5               He also presented himself as a very holy person, but  
6       he admits he hangs out in video poker parlors. Now, a lot  
7       of us have been to Vegas or Atlantic City which have  
8       video poker parlors, and our own experience is that it is  
9       not very common to see a Muslim gamble.

10              He was not credible, was not what he said he was.  
11       His testimony identifying my client is not something that  
12       carries much weight.

13              Now, we move then to Benita Brown, his common-law  
14       wife--Benita Benton--and Cheryl Woods, and their testimony  
15       I would admit was credible, believable, and if you wanted  
16       to, based on their testimony, you could convict my client.

17              No one who is in this Courtroom could have watched  
18       them testify, could come in and say they lied. They didn't.  
19       They testified to what they thought they saw and what they  
20       thought happened.

21              But what I think is that they made a mistake. I  
22       think they identified someone who they may have seen in  
23       there earlier but who didn't do the robbery.

24              Don't forget--it wasn't until about two weeks after  
25       the robbery when they were presented with a photographic

1 lineup.

2 That is when they picked out a person and a name was  
3 assigned, Quentin Linen's name--two weeks later.

4 But, you see, the day after the robbery, they went  
5 in and they made a composite and they came up with a picture  
6 based on computer-generated composite of the robber.

7 Now, you'll have this to look at, and take a good  
8 look at my client here, before you go back into the jury  
9 room.

10 But this doesn't look anything like my client. It is  
11 not even close. There's a widow's peak. He doesn't have  
12 one.

13 The cheek bones--you know, the eyes, the nose--I mean,  
14 it's not even close. It doesn't look like him.

15 That was made the day after--the day after--less than  
16 twenty-four hours after.

17 Now, they said that, yeah, we told the police it  
18 really didn't look like him. I don't know if they did or  
19 not. They both made statements that, yeah, we came in and  
20 we gave the composite, but they didn't say we weren't happy  
21 with how it looked.

22 In fact, the North Charleston Police printed up on  
23 a wanted flyer and circulated it all over North Charleston.  
24 Now, why would they do that if they thought this wasn't the  
25 person?

1           If they thought it didn't look like the person who did  
2 the robbery why would they do that?

3           There is no other description of anybody other than  
4 a black male, thirty to thirty-five, five eight, one sixty.  
5 You know, that could describe a good number of the black  
6 males out there.

7           If this didn't look like the suspect, then why did  
8 they run this flyer and circulate it all over town?  
9 This is the person who did the robbery. This is based on  
10 information that they got the day after the robbery.

11          Well, you listened to Cheryl Wood's testimony, and  
12 she didn't really give any more description of the robber  
13 other than a black male, approximate age, approximate height.  
14 I think she said acne dents, but that's it.

15          She gave a description of the knife that goes into  
16 great detail. Right? Six, seven inch blade; tarnished;  
17 black handle; handle was round; bottom of the handle was  
18 bigger than the handle; kind of looked like a hunting knife.  
19 She's looking at a knife. She doesn't give that descrip-  
20 tion in her statement; doesn't give that description the  
21 next day. She looking at the knife, like any of us would  
22 be, if you think about it.

23          She's confused. So she and Benita go and look at  
24 photographs some two weeks later, and they pick out a guy  
25 that they saw in the video poker place a couple of times

1 before the robbery.

2 That's the robber. I think Detective Roper said,  
3 well, yeah, we did circulate it because it looked similar.  
4 They said it looked similar. This is not similar to my  
5 client. This is not similar.

6 So I think that if you take the State's evidence and  
7 you weigh it against the testimony of my client's mother  
8 and his sister, it is a wash.

9 Well, yeah, they said they can remember he was there.  
10 How do they remember? It was two days after Jo Ella's  
11 birthday.

12 Now, it's not--they both testified my office con-  
13 tacted them a week or so after Quinton was arrested, so  
14 a lot of this--if we have a birthday celebration a month  
15 or six weeks later we can remember that.

16 If we think about it, and if we go back and look at  
17 our calendar and think about what we were doing two days  
18 after our birthday six weeks ago, we could probably remem-  
19 ber.

20 Sure, they didn't run to the police or run to the  
21 prosecutor's office. They have no obligation to do that.  
22 Why would you do that? He had a lawyer.

23 In your common experiences, if you were in their posi-  
24 tion who would you talk to? Would you talk to your son's  
25 lawyer or would you run to the police or the prosecutor?

1           When someone is arrested who is close to us, we talk  
2       with the lawyer.

3           So as I mentioned in my opening, maybe they're biased.  
4       Maybe they are. They seemed credible, seemed believable.  
5       They seemed to be testifying to the best of their recollec-  
6       tions, just like Cheryl Wood and just like Benita Benton.

7           The case is a wash. The State had some evidence, and  
8       you can believe them and convict my client, but you could also  
9       believe his mother and his sister and find him not guilty  
10      of the crime.

11          The State hasn't met their burden of proof, and we do  
12      not have evidence beyond a reasonable doubt.

13          Listen to the Judge's instructions as he defines rea-  
14      sonable doubt. The State doesn't have that kind of evidence.

15          Think about this case and analyze the evidence, and  
16      I think you will agree and find Quinton Linen not guilty.

17          Thank you.

18          THE COURT: Solicitor?

19          MR. BECK: Thank you, Your Honor. Ladies and gentle-  
20      men, when we have a criminal matter like this, two things can or  
21      will be here. First, the Defendant is going to say I didn't  
22      do it.

23          Second, I was there, but it didn't happen that way.

24          In this case, the Defendant is saying I was in the game  
25      room but it was a misunderstanding. I really didn't rob her.

1 I was just getting change.

2 It was never argued or challenged that an armed rob-  
3 bery took place on October 28th in Budget Check Cashing.  
4 That's a fact. Cheryl Wood was robbed, with a knife, and  
5 terrified.

6 That happened, and the question here is identity.  
7 Defense says not there--but I submit to you that the evidence  
8 indicates that this was a well thought out armed robbery--  
9 planned.

10 Take this map back with you when you deliberate and  
11 Detective Roper indicated to you the incident location on  
12 Rivers Avenue, McDonald's across the street where the De-  
13 fendant worked, and where Freeman Brown chased the robber,  
14 and the house the Defendant lived, Gail Street.

15 Freeman Brown said he got to the end of the McDonald's  
16 and turned left. He saw someone walking down there and  
17 when he got to that person he realized it wasn't the right  
18 person.

19 Use your common sense. Where did the robber run? He  
20 ran right. Police were all over that area fairly soon after  
21 that. Where was the robber? Probably not answering his  
22 door.

23 Ladies and gentlemen, think about the opportunity  
24 Cheryl Wood had to observe this man. They were not talking  
25 about an armed robbery in a dark alley. We're talking

1       about where she worked every day.

2               She told you he came into her business the week be-  
3 fore and she remembered him. He came in twice the week  
4 before and they had a conversation.

5               He asked where is the girl with the tight curls and  
6 she said, I don't know who you're talking about; she's not  
7 in here; I don't know who she is.

8               He came in the following week, the night of the 28th,  
9 and said the same thing. That triggers her memory response.  
10 Here's this guy again, asking me the same question.

11              He walked out and came back in and she wasn't fright-  
12 ened at that point. He is a customer. One that she  
13 recognized and had talked with.

14              They had another conversation about change, and then  
15 he jumps on her, wrestles with her, bangs her head into a  
16 filing cabinet.

17              She is going to remember that person. From the out-  
18 set Cheryl Wood was trying to help the police get this person  
19 who traumatized her.

20              She gave a detailed description of that person, and  
21 when you give descriptions of people how detailed can it be?  
22 You say a dark complexioned man, height, weight, his hair  
23 style, facial hair, if any, and most of us don't have any  
24 incredibly distinctive features. We are very general in  
25 our descriptions when we talk about people.

1           Glasses, color of eyes, but what does Ms. Wood tell  
2 the police? He has acne dents in his face, and we are very  
3 fortunate that she can remember that because in fact the  
4 Defendant does have acne dents on his face.

5           Cheryl Wood is not grasping upon this man as some  
6 scape goat. That evening when the police took her down the  
7 street and said we think we've caught the guy. They took her  
8 in a police car and said, here's the guy we're holding, and  
9 what did she say? That's not the guy; the guy who robbed  
10 me is still out there; I would recognize him.

11          So that guy was released. Think about when she  
12 looked at the photographs. She said these people are not  
13 the man who robbed me; this person is.

14          When she came into Court, that's the man who robbed  
15 me. I remember him. Not he looks similar, he looks like  
16 the guy who robbed me. She said to you, that's the guy who  
17 robbed me; I know him.

18          No reasonable doubt. No doubt in her mind.

19          Detective Roper told you from the witness stand that  
20 that was the first ever immediately response he had had when  
21 showing a victim photographs such as these, trying to find  
22 a suspect.

23          She said, that's the guy.

24          The Defense is hanging their hat on this composite  
25 sketch, when you have heard testimony from the victim and



1 from Ms. Benton and from Detective Roper and from Detective  
2 Hernandez that while they were sitting there trying to  
3 get the composite sketch that the people were--the people  
4 who saw the robber were disappointed with the results.

5 This isn't TV, but they were disappointed. They are  
6 harping on the fact that it was broadcast through North  
7 Charleston Police Department. Notice they included the  
8 description which the witnesses had given. They didn't  
9 just put this face up. They said--this is how they described  
10 him, and this is the best we can do with what we've got.

11 Of course, also when Detective Hernandez heard about  
12 the case, the description of the person, where he ran, he  
13 said I know someone from the community that looks like that  
14 and lives over there. That man.

15 Ladies and gentlemen, we are fortunate in this case to  
16 have two witnesses other than Ms. Wood who saw this guy and  
17 had an opportunity to look at him, see his face.

18 Ms. Benton said when he walked in I looked at his eyes.  
19 I recognized him. I had seen him before. When I was worried  
20 about Cheryl I ran outside and called the police because I  
21 felt something was going on. Something wrong with Cheryl.

22 Ms. Benton is a trained police officer, and she saw  
23 a subject running out and she was looking at him. She came  
24 in here to this Courtroom and said, that's the guy that I  
25 saw that night.

1           That's the guy I was afraid was going to hurt Cheryl,  
2           and when Detective Roper showed her the photographs she  
3           wasn't with Cheryl Wood--she was at the police station. She  
4           and Detective Roper, nobody else, and that's the guy I saw  
5           that night.

6           This isn't some conspiracy against this Defendant.  
7           These people have independently come into Court and said it,  
8           and they looked at the photos and said, that's the guy.

9           Freemon Brown--when we're dealing with such a serious  
10          episode as a knife in the face, the knife against the  
11          throat, a moment of levity is appreciated, even if it is at  
12          someone else's expense.

13          But you can point to all of his faults and still ask,  
14          why would he lie?

15          You want to talk about credibility? Who have the most  
16          to lose here? Who would come to the witness stand and tell  
17          you something that wasn't true?

18          The victim and witnesses don't have anything personal  
19          against this man other than the fact that he tried to harm  
20          Cheryl Wood. They didn't cause that.

21          Who does the Defense call? Mother and sister. Big  
22          sister and mom come to this witness stand and tell you that  
23          a month after the incident I recalled that we were watching  
24          TV; I don't know why it stood out in my mind other than it  
25          was two days from my birthday.

1           Other than that, it wasn't different from any other  
2       night in my life. Any other night I'm watching television  
3       and my son may or may not be there; oftentimes my daughter's  
4       children are there because when she goes to work she leaves  
5       them there.

6           The sister came in and said, well, four and a half  
7       months after the incident I spoke with the Public Defender's  
8       Office and they told me the date and I talked with my mother  
9       and that was two days af ter her birthday.

10          I was working and like every night I came there to  
11       pick up my kids and gave him a ride to Gail Street.

12          Of course, they want to help the Defendant. Ms. Cobb  
13       is going to take whatever it takes to help her son. My son  
14       and I didn't leave each other's side all night. He would not  
15       have had an opportunity to go out.

16          He didn't leave my sight and he and I were watching a  
17       movie. I can't remember the movie but we were there and I  
18       can alibi him.

19          She said they were downstairs the entire time. The  
20       sister said when she got home at nine twenty Ms. Cobb was  
21       downstairs and her brother was upstairs. They weren't to-  
22       gether the whole time.

23          They didn't tell the police that their brother was not  
24       involved. They didn't feel any obligation to scream his  
25       innocence from the moment he was accused.

1           Ms.Cobb said she was subpoenaed to come in and tell  
2   you she was watching television with her son. Ms. Cobb  
3   has also told you that on the day Detective Roper came to  
4   talk with her on November 21st that--she said I never told  
5   him I hadn't seen my son; that never happened.

6           Detective Roper took the stand, said when I went to  
7   her house she told me she hadn't seen her son in six months  
8   to a year.

9           Credibility, ladies and gentlemen. Does Detective  
10   Roper have any motivation to get up there and call Ms. Cobb  
11   a liar?

12           There is a question of identification and also of the  
13   truth. Not just one person, but three people have identi-  
14   fied this man as the perpetrator of the crime.

15           I'm going to ask you not to reward him for dragging  
16   his mom . . .

17           MR. VITETTA: Objection.

18           MR. BECK: . . and his sister . .

19           MR. VITETTA: The State has the burden, Your Honor.

20           THE COURT: That is sustained. Move on, please,  
21   Solicitor. The jury is to disregard that last comment.  
22   The burden is on the State.

23           MR. BECK: I'm going to ask you now not to reward  
24   him . .

25           MR. VITETTA: Objection, Your Honor. You just ruled

1       on that.

2               THE COURT: I asked you to move on, Solicitor.

3               MR. BECK: An armed robber should not get away after  
4       being so reckless as to walk into a business at which he  
5       was recognized and where he had been the prior week when  
6       there were other people in there, because he's trying to  
7       take advantage of a situation of two women in the business,  
8       because he couldn't see Mr. Brown behind the door.

9               He shouldn't get away with it, and I'm confident you  
10      won't allow him to.

11              I'm confident that after deliberating, you will come  
12      back with a verdict of guilty.

13              Thank you.

14              THE COURT: Ladies and gentlemen of the jury panel, it  
15      now becomes my duty to charge you as to the law in the case,  
16      which simply means to tell you what the law that is in regard  
17      to this particular case.

18              Yesterday before we started the case, I read to you  
19      the indictment. I'm not going to read it to you again. You  
20      will have it with you in the jury room.

21              It is not evidence but is simply the paper that brings  
22      the case to Court.

23              If you look at it and find a typographic error or  
24      find something on here you don't think looks right, that is  
25      not evidence anyway. It's just the charging paper.

1           Now, to this indictment, the Defendant has said that  
2           he is not guilty, and that places the burden upon the State  
3           to prove him guilty.

4           A person charged with committing a criminal offense  
5           in the State of South Carolina is never required to prove  
6           himself innocent.

7           I charge you that it is a vital and important rule  
8           of law that a Defendant in a criminal trial, no matter how  
9           great or serious may be the offense with which he is charged,  
10          must always be considered and presumed innocent until his  
11          guilt has been proven beyond a reasonable doubt.

12          This presumption of innocence remains with a Defendant  
13          at all times, from the moment of his arraignment throughout  
14          the trial, and is only removed when and if the State has  
15          proven his guilt beyond a reasonable doubt.

16          For it is your solemn duty, ladies and gentlemen, if  
17          not clearly convinced of guilt beyond every reasonable doubt  
18          to the contrary, to find the Defendant not guilty.

19          So the burden of proof then is upon the State to es-  
20          tablish by evidence to your satisfaction the guilt beyond  
21          a reasonable doubt of this Defendant here on trial.

22          Now what is a reasonable doubt in the law? A reason-  
23          able doubt is a doubt that would cause a reasonable person  
24          to hesitate to act.

25          As I told you, the State has the burden of proving

1       the Defendant guilty beyond a reasonable doubt.

2               Some of you may have at one time or another served as  
3       a juror in civil cases where you were told that it is only  
4       necessary to prove that a fact is more likely true than  
5       not true.

6               In criminal cases, the State's burden is more power-  
7       ful than that. The State must prove its case beyond a  
8       reasonable doubt.

9               Proof beyond a reasonable doubt is proof that leaves  
10      you firmly convinced of a Defendant's guilt.

11              As all of you know, there are very few things in this  
12      world that we know with absolute certainty, and in criminal  
13      cases the law does not require proof that overcomes every  
14      possible doubt.

15              If, based upon your consideration of the evidence,  
16      you are firmly convinced that the Defendant is guilty of the  
17      crime charged, you must find him guilty.

18              If, on the other hand, you think there is a real pos-  
19      sibility that he is not guilty, you must give him the benefit  
20      of that doubt and find him not guilty.

21              Under the Constitution and laws of the State of South  
22      Carolina, you are the finders of the facts in the case. I  
23      do not have the right to pass upon the facts or even to ex-  
24      press to you any opinion that I might have about the facts  
25      of the case.

1           Nor may I indicate in any way what I may think about  
2           the guilt or the innocence of the Defendant.

3           You should form no opinion in that regard from any-  
4           thing I might have said or any ruling that I may have made  
5           during the course of the trial.

6           You are also the judges, the sole judges, of the  
7           credibility; that is, the believability, of the witnesses  
8           who testified.

9           In passing upon the credibility of a witness, you can  
10          take into consideration many things, some of which are as  
11          follows:

12          The demeanor or manner of testifying of a witness.  
13          Was the witness forthright or hesitant?

14          Whether the witness had reason to be biased or preju-  
15          diced.

16          Whether a witness' testimony was contradicted on the  
17          one hand or supported and corroborated on the other hand..

18          What was the witness' opportunity for observation  
19          and knowledge of the matters about which the witness testi-  
20          fied?

21          You may believe a small portion of a witness' testi-  
22          mony and disregard the larger, or the other way around.

23          You may believe one witness against many or many  
24          against one.

25          You may believe all, some or none of what a witness



1       said.

2           All of these things you will consider, bearing in  
3       mind that you should give the Defendant the benefit of  
4       every reasonable doubt.

5           The same Constitution that makes you the finders of  
6       the facts, makes me the sole and only instructor of the  
7       law in this case.

8           You must accept as correct the law which I charge  
9       and apply the law to the evidence as you find it in reach-  
10      ing your verdict.

11          Put aside any conceptions you may have had about  
12      the law before coming here for this case and accept the  
13      law as I instruct it to you to be.

14          For purposes of your duty as jurors, it is not your  
15      concern--you should not be concerned about what you think  
16      the law ought to be, but rather what I charge you the law  
17      is at this time in this State.

18          One of the most important issues in this case is the  
19      identification of the Defendant as the perpetrator of the  
20      crime.

21          The State has the burden of proving identity beyond  
22      a reasonable doubt.

23          You, the jury, must be satisfied beyond a reasonable  
24      doubt of the accuracy of the identification of the Defendant  
25      before you may convict him.

1           If you are not convinced beyond a reasonable doubt  
2           that the Defendant was the person who committed the crime,  
3           you must find the Defendant not guilty.

4           Identification testimony is an expression of belief  
5           or impression of a witness. Its value depends on the oppor-  
6           tunity the witness had to observe the offender at the time  
7           of the offense, and to thereafter make a reliable identi-  
8           fication.

9           In appraising the identification testimony of witnesses,  
10          you should consider the following:

11          What was the capacity and opportunity of the witness  
12          or witnesses to observe the offender?

13          How much time was available for the observation?

14          How far away was the witness or witnesses?

15          What was the lighting conditions?

16          Was the identification by the witness or witnesses  
17          after the offense the produce of his or her own recollec-  
18          tion?

19          In this regard, you take into account both the strength  
20          of the identification and the circumstances under which the  
21          identification was made.

22          You may also consider the length of time between the  
23          crime and the time of subsequent identification, as a factor  
24          bearing on the reliability of the identification.

25          Were there occasions in which the witness or witnesses

1 failed to make an identification, or was an identification  
2 made that was inconsistent with the identification made at  
3 trial?

4 Finally, you must consider the credibility of each  
5 identification witness in the same way as you do any other  
6 witness.

7 In other words, you must determine whether that wit-  
8 ness is truthful.

9 The State accuses the Defendant of having committed  
10 the crime of armed robbery. Before the State would be en-  
11 titled to a verdict of guilty, the State must prove all of  
12 the material allegations of the indictment beyond a reason-  
13 able doubt.

14 To define armed robbery, I must first define for you  
15 the crime of robbery.

16 Robbery is the felonious taking and carrying away of  
17 the personal property of someone, from his or her presence,  
18 or in his or her presence, by violence or putting in fear.

19 Robbery includes larceny which would normally be re-  
20 ferred to as stealing, and all of the elements that are neces-  
21 sary to constitute stealing or robbery are necessary to con-  
22 stitute robbery, and in addition, the stealing must be accom-  
23 plished by violence or putting the person having possession  
24 of the property in fear.

25 So then to repeat, robbery in order to be proven must

1 include the following elements--the following elements must  
2 be proven to show robbery:

3 That is, one, that the personal property of  
4 another has been taken.

5 Two, that it was carried away no matter how short  
6 the distance.

7 Number three, that there was an intent to steal;

8 Number four, the property must be taken from the  
9 person of another but if it is taken in the presence  
10 of the owner it is the same as taking it from the  
11 person.

12 Number five, the taking was accomplished with  
13 violence or putting the person in fear.

14 Therefore, if force is used, then fear need not be  
15 proven.

16 Now, there is an additional element that the State must  
17 prove, and that element is that the robbery must have been  
18 committed with a deadly weapon.

19 That is, the person who committed the crime actually  
20 had and used a deadly weapon in some way to obtain the pos-  
21 session of the property or put the person in fear to obtain  
22 it.

23 A deadly weapon is any weapon, instrument or object  
24 that is capable of being used to inflict great bodily harm.

25 I charge you now and emphasize to you that the choice

1 of a Defendant in the trial of a criminal case not to tes-  
2 tify in his own behalf is not a factor to be considered  
3 by you in any way in your deliberation and in your con-  
4 sideration on the question of guilt or the innocence of  
5 the Defendant.

6 It must not be considered by you in any manner whatso-  
7 ever against the Defendant or mitigate against him in any  
8 respect whatsoever.

9 A Defendant has the constitutional right to remain  
10 silent and the assertion of such constitutional right can-  
11 not and must not be considered by you in your deliberations.

12 Under your oath then, you are to reach no inference  
13 and draw no conclusion whatsoever from the fact that a De-  
14 fendant in this case did not himself testify.

15 The choice of this Defendant not to testify should not  
16 even be discussed by you in the jury room.

17 The burden of proof, as I stated to you, is upon the  
18 State. It is not incumbent upon the accused to prove his  
19 innocence.

20 The burden of proof remains upon the State to prove  
21 guilt beyond a reasonable doubt, and the choice of a Defendant  
22 not to testify is not a factor to be considered by you in  
23 determining the guilt or the innocence of a Defendant.

24 Now, ladies and gentlemen, you have been selected in  
25 this case as fair and impartial jurors, sworn to impartially

1 try and determine the facts in this case.

2 When you comply with your oath to do so, noone will  
3 have a right to criticize your verdict, and you will have  
4 fully discharged your duty as jurors.

5 If you have a reasonable doubt as to whether the De-  
6 fendant is guilty or not guilty, then find the Defendant  
7 not guilty.

8 If, however, the State has proven guilt to your satis-  
9 faction beyond a reasonable doubt, then find the Defendant  
10 guilty.

11 Now, there are two possible forms of verdict in this  
12 case, and you have to know what they are. I have to tell  
13 them to you in some fashion, but there is no significance  
14 to the order of presentation.

15 The choices of verdict are simply guilty or not guilty.  
16 Whatever one of those you choose, your verdict has to be  
17 unanimous. All twelve of you have to agree on either a  
18 verdict of guilty or not guilty.

19 Mr. Blincow, as the Foreman, you preside in the jury  
20 room and be sure everyone has the opportunity to be heard.  
21 It is also your duty to write the verdict when all twelve  
22 of you agree.

23 You will notice on the back of the indictment there  
24 is a block that says Verdict, and that is where you write  
25 the unanimous verdict of the jury. If it's not guilty,

1       sign your name and date it, or if it is guilty then write  
2       guilty and sign your name and date it.

3               Ladies and gentlemen, jury deliberations means just  
4       that. Now is your opportunity to go back in the jury room,  
5       share your thoughts and ideas about the case, and I urge  
6       you to do that.

7               Mr. Blincow, you will moderate the discussion and be  
8       sure everyone has the opportunity to be heard.

9               If you should need to hear this charge again, or any  
10      portion of it, I can read this to you any time you want to  
11      hear it.

12              If you have questions, Mr. Blincow, you write those  
13      down and send them out. I cannot answer questions of fact  
14      for you since you are the fact-finders, but still don't  
15      be bashful about sending out questions if you have any  
16      question. Write them out and send them out and if it is  
17      something I can answer, I will answer it. If I cannot an-  
18      swer it, I will tell you that and tell you to resume your  
19      deliberations.

20              All questions come through Mr. Blincow as your Foreman.

21              Now, the law requires at this time that I talk to the  
22      attorneys to see if they have any additions or corrections  
23      to what I've told you. If they do not, you may begin your  
24      deliberations when we send in the indictment and the exhibits.

25              Don't talk about the case until I send those in to you.

1           Once they are sent in, you begin your deliberations,  
2           and knock on the door when you have reached a verdict.

3           Since we have some smokers on the jury, if you want  
4           to take a smoke break that's permissible, but the delibera-  
5           tions have to stop until all twelve of you are back together.

6           So the three smokers cannot go out and talk about the  
7           case and nine non-smokers stay in and talk about it too.  
8           Hold up the deliberations until everyone is back together.

9           Please step in the jury room and do not talk about the  
10          case.

11          (Jury excused from Courtroom at 11:11 A.M.)

12          THE COURT: Any exceptions from the State?

13          MR.BECK: Nothing, Your Honor.

14          THE COURT: From the Defendant?

15          MR. VITETTA: There was no charge for alibi witnesses.

16          THE COURT: You didn't request one.

17          MR. VITETTA: Would you instruct that? Do you have a  
18          charge book that you can . . .

19          THE COURT: Yes, sir, and I looked at that, but it  
20          says the charge in regard to alibi implies that the Defend-  
21          ant took the stand and testified and said he wasn't there.  
22          That's why I chose not to give it.

23          MR. VITETTA: Yes, sir.

24          THE COURT: I'll read it to you. I've got it right  
25          here.



1 MR. VITETTA: Yes, sir.

2 THE COURT: The Defendant has raised in this case  
3 what we call the defense of alibi. That means he was not  
4 at the scene of the crime at the time the crime was com-  
5 mitted, but that he was elsewhere and had nothing to do  
6 with it.

7 There is no burden upon the Defendant to prove his  
8 alibi. The burden is upon the State to prove he was act-  
9 ually present at the scene and that he actually participated  
10 in it, and that he was not elsewhere.

11 The State must prove this allegation, as all other  
12 allegations are required to be proved, by evidence beyond  
13 a reasonable doubt.

14 MR. VITETTA: Yes, I think I would like that charged  
15 to the jury. I don't believe it implies he has to testify,  
16 of that he should testify.

17 THE COURT: What say, Solicitor?

18 MR. BECK: I agree with the Court that it is an infer-  
19 ence he did testify, so I would object to it.

20 MR. VITETTA: Since we have raised an alibi defense,  
21 I would ask that you charge it.

22 MR. BECK: I would object. We didn't have an opportun-  
23 ity to cross examine him, and he is testifying.

24 MR. VITETTA: No, Your Honor. We raised an alibi  
25 defense and he cross examined the alibi witnesses.

1           THE COURT: I'll give the charge. Bring the jury  
2 back in.

3           MR. BECK: I would object since that was not re-  
4 quested prior to the charge.

5           THE COURT: Objection noted for the record and den-  
6 ied.

7           (Jury returned to Courtroom at 11:13 A.M.)

8           THE COURT: Ladies and gentlemen, I would charge  
9 you further that a Defendant has raised in this case what  
10 is called a defense of alibi.

11           That means that he was not at the scene of the crime  
12 at the time that it was committed, but that he was else-  
13 where and he had nothing to do with it.

14           There is no burden upon the Defendant to prove his  
15 alibi. The burden is upon the State to prove that he was  
16 actually present at the scene of the crime and that he actu-  
17 ally participated in the crime and was not elsewhere.

18           The State must prove this allegation as all other alle-  
19 gations are required to be proven, by evidence beyond a  
20 reasonable doubt.

21           Please step back in the jury room and don't talk  
22 about the case.

23           (Jury excused from Courtroom)

24           THE COURT: Objection from the State is noted. Any  
25 further objections or exceptions from the Defendant?

1 MR. VITETTA: No, Your Honor.

2 THE COURT: Here's the indictment if you'd like to  
3 look at it.

4 Please review the exhibits also.

5 (Jury instructed to commence deliberations.)

6 (Court stood in recess as to this matter until  
7 11:47 A.M.)

8 THE COURT: I want to be sure that everybody under-  
9 stands that we have word the jury has reached a verdict,  
10 and also that there will be no reaction to the verdict.

11 Whatever it might be, if you cannot control your-  
12 self, you need to leave. Anybody who misbehaves or has any  
13 reaction to the verdict whatsoever will be dealt with by  
14 me, and I assure you that you will not be going home for  
15 the evening. Bring the jury in.

16 (Jury returned to Courtroom)

17 CLERK: Mister Foreman, has the jury reached a ver-  
18 dict?

19 JUROR: Yes, sir.

20 CLERK: May I have it, please?

21 (Verdict exhibited to the Court by the Clerk)

22 THE COURT: Publish the verdict.

23 CLERK: Case Number 97 GS 10 0926, State of South  
24 Carolina versus Quinton Linen, indictment for armed robbery.  
25 Verdict of the jury, guilty. Signed John Blincow, Jr.,

1 Foreman of the Jury, April 8, 1997.

2 Mr. Foreman and ladies and gentlemen of the jury, if  
3 this is your verdict, please raise your right hand.

4 (All jurors raising their right hands.)

5 THE COURT: Request to poll the jury?

6 MR. VITETTA: No, sir.

7 (Whereupon, the jury was excused by the Court)

8 THE COURT: Any motions?

9 MR. VITETTA: I would request a motion for new trial  
10 based on motions previously stated in my motions for di-  
11 rected verdict, as well as my motions for mistrial and  
12 all other motions. I would renew all of those, Your  
13 Honor.

14 THE COURT: That is denied. I find there was a sub-  
15 stantial factual basis from which they could decide as  
16 they did. There is ample evidence in the record for them  
17 to have reached the verdict they reached.

18 Your objections are noted and your motions are noted  
19 for the record but they are all denied on the same basis  
20 as before.

21 I specifically find that this verdict was not the  
22 result of passion or prejudice, but rather was based on the  
23 facts as presented in the case.

24 MR. VITETTA: Your Honor, my next motion I have handed  
25 to the Court, three of them. The first one is challenging

1 the constitutionality of Section 17 25 45 which is the pro-  
2 vision requiring a mandatory penalty of life without  
3 parole.

4 There are basically three grounds outlined in my  
5 motion and I will briefly state them.

6 First one is violation of separation of powers. I  
7 believe the Court is familiar with that argument as I have  
8 outlined it. It has been raised before.

9 The difference in this case, of course, versus other  
10 cases is that in prior cases such as the drug cases with  
11 a mandatory minimum penalty, the penalty is a set number.  
12 Ten years, twenty years, twenty-five years.

13 What is different about this case is the mandatory  
14 life without parole. There is no set amount of time but  
15 just a mandatory penalty with no discretion on anybody in-  
16 volved but that Mr. Linen be confined for the remainder  
17 of his life.

18 The second is an ex post facto prohibition as I have  
19 outlined in my motion. I'm sure you're familiar with that  
20 as well.

21 He is disadvantaged because what has happened in  
22 this prior guilty plea is now enhanced, and he is being  
23 penalized for something he did earlier as a result of the  
24 new law going into effect.

25 Finally, I would say it is cruel and unusual punishment

1 under this statute, where his only option to be released is  
2 if the parole board releases him under the old age provis-  
3 ion. In other words, theoretically he could be eligible to  
4 be released after he serves thirty years and he's sixty-  
5 five years.

6 Now, he's thirty-one I believe. If he is released at  
7 that time which will be the first time he is eligible, he  
8 will have been held thirty-five years out of his sixty-five  
9 year life, for a conviction for armed robbery, over half  
10 of his life for a conviction of armed robbery.

11 I would argue that that is cruel and unusual, and for  
12 those reasons I would ask that you find this statute is  
13 unconstitutional.

14 THE COURT: Anything in response, Solicitor?

15 MR. BECK: Your Honor, while I can appreciate some  
16 of the Defense's points, what we have is a repeat offender  
17 who committed an armed robbery while the statute was in  
18 effect.

19 The statute is explicit for a life sentence without  
20 parole. It's mandatory, and I don't see any discretion at  
21 this point. It's certainly better argued on appeal.

22 THE COURT: Thank you, sir. Motion is denied, Mr.  
23 Vitetta. I find that the law was in effect which enhanced  
24 this provision at the time this crime was committed; that  
25 he is subject to the provisions of it.

It is no difference in a life sentence for this offense

1       than it is when there is a life sentence for murder.

2               Life means life. The statute is applicable and con-  
3       stitutional. It is not an ex post facto law; rather it is  
4       within the discretion of the Legislature to enact such a  
5       provision.

6               Further, it is not cruel and unusual punishment but  
7       is an appropriate punishment for a repeat offender who chooses  
8       to commit multiple armed robberies.

9               MR. VITETTA: Yes, sir, Your Honor.

10              THE COURT: The Defendant must be responsible for his  
11       own acts. He created the situation for himself.

12              MR. VITETTA: Yes, thank you, Your Honor.

13              My next motion--this is a new area of law in South  
14       Carolina. The State has to prove the fact that he was con-  
15       victed a prior time, but my motion is--I'm asking the Court  
16       to hold the State to the standard to prove the conviction  
17       beyond a reasonable doubt.

18              There are some states which do that. I don't have  
19       the cases but I think California, New York, Indiana and  
20       maybe Colorado have that standard. I think it should be  
21       the standard in South Carolina.

22              If someone is facing mandatory life without parole, I  
23       think the State should have to prove beyond a reasonable  
24       doubt that they were in fact convicted a prior time of a  
25       most serious offense.

1 THE COURT: What say, Solicitor?

2 MR. BECK: Your Honor, that is not the law in South  
3 Carolina. We don't have any guidance on this yet.

4 However, the State is prepared to go forward with  
5 sentencing today with a certified copy of Mr. Linen's 1988  
6 conviction for armed robbery as well as a certified copy  
7 from SLED Agent, Director of Central Records, who has  
8 compared the fingerprints from Mr. Linen in the 1988 con-  
9 viction to the most recent arrest on November 21st, and in  
10 his expert opinion the two fingerprint cards were taken  
11 from the same individual.

12 THE COURT: What say, Mr. Vitetta?

13 MR. VITETTA: Thank you, Your Honor. I would argue  
14 that the State would have to on this kind of case--I would  
15 argue that a certified copy is not sufficient.

16 The fingerprint expert needs to be present. This  
17 would not be admissible in a trial, and I don't think it  
18 should be admissible now.

19 I don't think it rises to the level of reasonable  
20 doubt, and I think you should sentence Mr. Linen as if this  
21 were a first offense.

22 THE COURT: Do you have a copy of the statute, sir?  
23 Either of you have a copy of the statute?

24 MR. BECK: Yes, sir.

25 THE COURT: I find that the only element necessary for



1 the State to prove is that there was a prior conviction.  
2 If the State has a certified copy of the record, which can  
3 be accepted as a Court's Exhibit and which is a public  
4 record, that is sufficient.

5 That complies with Section G of the--excuse me, Sec-  
6 tion F of the statute. It says,

7 For the purpose of determining a prior conviction  
8 of this section only, a prior conviction shall  
9 mean the Defendant has been convicted of a most  
10 serious or serious offense as may be applicable  
11 on a separate occasion prior to the instant adjudi-  
12 cation.

13 Submitting that record is sufficient, and that consti-  
14 tutes the prior offense. That's all that is necessary to  
15 comply with this statute.

16 I specifically find that his prior offense is armed  
17 robbery, and that is a most serious offense under the terms  
18 of the statute as provided in Section A One and under Section  
19 C of the statute armed robbery is listed as a most serious  
20 offense.

21 This is his second offense which makes him subject to  
22 the terms of this particular statute; that is, he be sentenced  
23 to a mandatory life sentence. I'm prepared to accept that  
24 record as sufficient proof of his prior conviction.

25 MR. VITETTA: Your Honor, I guess my question is--I

1 think we are in agreement this is an area that has not been  
2 litigated and I think there should be some standard that  
3 needs to be applied.

4 The statute says proof of a conviction, but I think  
5 that proof has to be a standard, and I think that standard  
6 should be beyond a reasonable doubt.

7 That would be my argument. I would think a certified  
8 copy is not sufficient or proof beyond a reasonable doubt.

9 THE COURT Your objection is noted for the record,  
10 because I find that it is. It is clearly beyond a reason-  
11 able doubt. It's a public record and would be accepted in  
12 any Court of this State.

13 It is sufficient proof and is proof beyond any doubt  
14 because it is a certified record. It's way beyond proof be-  
15 yond a reasonable doubt.

16 I'm prepared to accept it. It is an appropriate stand-  
17 ard. The statute is clear on its face and we aren't to read  
18 anything into it that is not there.

19 It is clear, it's understandable, it's thorough. It  
20 deals with every aspect you have raised, and it is clear on  
21 its face.

22 I am not prepared to create any more law that is not  
23 there. It's just not there. It says he can prove a prior  
24 conviction by submitting a record of it, and that is suffi-  
25 cient for the Court.

1           MR. VITETTA: Thank you. Your Honor, my final motion  
2     in this area--this is also an area that has not been ad-  
3     dressed at this level. It has been addressed at some point  
4     in South Carolina, but what we are now alleging in this  
5     case is the constitutional validity of the prior conviction  
6     is in question.

7           In other words, my client was denied effective assist-  
8     ance of counsel; that his guilty plea was not knowingly  
9     and intelligently made.

10          We have alleged that the attorney at that time did  
11     not investigate, and what we would like the Court to do is  
12     have a hearing and inquire to determine whether or not that  
13     conviction does meet constitutional muster.

14          Now, we wouldn't ask the Court to set aside the pre-  
15     vious conviction as that is a matter for PCR, but what we  
16     would be asking the Court, if the Court finds he was denied  
17     effective assistance of counsel, to disregard that convic-  
18     tion for the purpose of sentences in this case, and sentence  
19     him as if he is a first offender.

20          Now, this issue has been raised directly when the  
21     Defendants have been denied any counsel, and most recently  
22     the Supreme Court--I can't remember the name of the case--  
23     Judge ~~Phen~~quist issued an Opinion, I believe, a year or so  
24     ago--regarding enhancement on an uncounselled conviction  
25     that didn't result in jail time.

1           We are not saying he was uncounselled. We're saying  
2 he was denied effective assistance of counsel.

3           The Supreme Court in United States versus Custus or  
4 Custus versus United States did deal directly with that issue  
5 on a federal case for sentencing under the Career Criminal  
6 Act.

7           On the federal level they refused to go into it. They  
8 refused to open up the prior conviction. They did not fore-  
9 close collateral recidivist proceedings, however, and I  
10 think in South Carolina it is something that is needing to  
11 be looked into.

12           We do have PCR but I am not asking that this Court  
13 set aside that conviction, but just to disregard it for  
14 purposes of sentencing.

15           We would ask for a hearing to determine his sentence  
16 where testimony and evidence would be taken by this Court  
17 to determine the constitutional validity of the prior  
18 conviction.

19           THE COURT: That's noted for the record and denied.  
20 It is a matter for a PCR hearing judge to make all the  
21 determinations in regard to that case. PCRs are a civil  
22 matter. It would be improper for this Court to inquire into  
23 that area.

24           It will be litigated, and fully litigated, on a PCR.  
25 The applicant has filed appropriate papers and that will

1 be heard when the case comes up.

2 I am not inclined at this point to pull a portion  
3 of the case out and hear it for the purpose of sentenc-  
4 ing in this case.

5 What we have in this case is a clear prior conviction,  
6 a prior record for armed robbery, that is valid at this  
7 time.

8 The proper way for this Court to handle this is to  
9 treat it as a prior conviction and to sentence the Defendant  
10 as if he had a prior conviction, which he does.

11 This is clearly a second most serious offense, and  
12 that is the way he'll be sentenced.

13 Thank you, sir.

14 I'll hear from you, Solicitor.

15 MR. BECK: Thank you, Your Honor. As we discussed  
16 previously in the trial, Mr. Linen has a 1987 false pre-  
17 tenses and in 1988 an armed robbery conviction.

18 In that armed robbery, he pled guilty to a twelve  
19 year sentence. The manner in which that robbery was con-  
20 ducted was very similar to the one in which he robbed Ms.  
21 Wood.

22 He went into the Majik Market with a knife and robbed  
23 the clerk there, a female.

24 Your Honor has heard the testimony from the victim,  
25 and I don't know if she necessarily wants to address the

1 Court any more, but I did ask her to stand up here with me  
2 along with Detective Roper.

3 At this time the State would offer the prior conviction  
4 as a Court's Exhibit.

5 THE COURT : I will accept this as a Court's Exhibit,  
6 certified by the Deputy Clerk of Court with the appropriate  
7 seal on it, and it is a conviction from 1 29 of 88--The  
8 Honorable John Hamilton Smith.

9 Quinton Linen pled guilty to armed robbery and was  
10 sentenced to twelve years.

11 Ms. Wood, is there anything you'd like to say?

12 MS. WOOD: No, sir.

13 THE COURT: Detective Roper?

14 MR. ROPER: No, sir.

15 THE COURT: Mr. Vitetta, I'll be glad to hear from  
16 you, sir.

17 MR. VITETTA: Nothing further.

18 THE COURT: Mr. Linen, anything you'd like to say  
19 to me?

20 DEFENDANT: No, sir.

21 THE COURT: The sentence of the Court, Mr. Linen,  
22 is that you be sentenced to a life imprisonment. That is  
23 pursuant to Section 17 25 45.

24 I specifically find that there is a prior conviction  
25 for armed robbery in 1988, and that pursuant to the statute

1       you should be sentenced to life imprisonment.

2               Thank you.

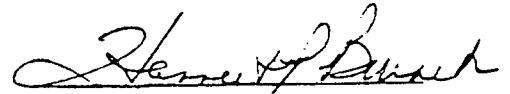
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## CERTIFICATE

I, Harriet P. Bennett, Official Court Reporter for the Ninth Judicial Circuit of South Carolina, do hereby certify that the foregoing is a true, complete and accurate transcript of record in the captioned matter, heard in the Court of General Sessions for Charleston County on April 7 and 8, 1997, prepared to the best of my ability.

Further, I certify that I am neither of kin, counsel, nor of interest to any party to this action.



August 26, 1997



**FORM 5**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

**IN THE COURT OF COMMON PLEAS**

97-CF-10-2086

QUINTEN A. LINEN

Full name and prison number  
(if any) of Applicant,

-vi-

**APPLICATION FOR  
POST-CONVICTION RELIEF**

State of South Carolina

Name of Respondent.

### Instructions - Read Carefully

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or type-written), 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. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application 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 OUT OF JAIL
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS, CHARLESTON COUNTY
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
- (a) 87-65-10-3362
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

SCRCP APP-25

4. The date upon which sentence was imposed and the terms of the sentence

(a) 1/27/88 - 12 YRS

(b) \_\_\_\_\_

(c) \_\_\_\_\_

5. Check whether a finding of guilty was made

(a) after a plea of guilty ☒

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

- I. \_\_\_\_\_  
 II. \_\_\_\_\_  
 III. \_\_\_\_\_

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

- (a) DID NOT KNOW I COULD  
 (b) WAS NOT INFORMED BY JUDGE  
 (c) WAS NOT INFORMED BY ATTORNEY

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) GUILTY PLEA - WAIVER OF RIGHTS WAS NOT KNOWINGLY  
 (c) AND VOLUNTARILY MADE.

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

- FAILURE TO INVESTIGATE THE OFFENSE: ATTORNEY ONLY MET WITH ME  
 (a) 1 TIME 5-7 DAYS BEFORE COURT. I TOLD HIM WHERE I WAS  
 WHEN CRIME HAPPENED, BUT HE NEVER INVESTIGATED.  
 (b) I HAD ONLY MET WITH MY LAWYER ONE TIME BEFORE COURT  
 FOR NO MORE THAN 20 MINUTES. MR. BROWN NEVER ASKED FOR  
 NAMES OF WITNESSES.

B - ON BACK 3

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

- (a) any petition in a State Court under South Carolina Law? NO  
 (b) any petitions in State or Federal Courts for habeas corpus or post-convictions 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:

10(B) - MR. BROWN TOLD ME IF DID NOT  
PLEAD GUILTY I WOULD GET THE  
MAXIMUM SENTENCE OF 25 YRS. I FELT  
INTIMIDATED AND LIKE I DID NOT HAVE  
A CHOICE. I DID WHAT MR. BROWN TOLD  
ME TO DO, NOT WHAT I FELT WAS  
RIGHT.

**(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. \_\_\_\_\_

**(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) WAS NOT AWARE THAT I COULD

(b) NOT TOLD BY JUDGE

(c) NOT TOLD BY ATTORNEY

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

(a) your arraignment and plea? YES

(b) your trial, if any? \_\_\_\_\_

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO APPEAL

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? DONE FILED

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. RUSSELL BROWN  
41-A MORRIS ST, CHARLESTON, SC  
723-1658
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. GUILTY PLEA
- ii. SENTENCING
- iii. \_\_\_\_\_

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

VACATE CONVICTION AND SENTENCE

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

NO

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

VERIFICATION

I, QUINTIN LINEN, 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.

Quintin Linen

SWORN to and subscribed  
before me this 2

day of April, 1997.

Aranda J. Riedel (L.S.)  
Notary Public

My Commission Expires: April 15, 2000

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

I, QUINTIN LINEN, 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 of 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 said proceeding or give security therefor.

Quintin Linen  
Applicant

SWORN or affirmed to and subscribed before me this

2 Day of April, 1997

Chanda J. Riedel  
NOTARY PUBLIC

My Commission Expires: April 15, 2006



STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Charleston County

Charles W. Whetstone, Jr., Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

QUINTON LINEN,

APPELLANT.

---

FINAL BRIEF OF APPELLANT

---

ROBERT M. PACHAK  
Assistant Appellate Defender

South Carolina Office  
of Appellate Defense  
1122 Lady Street, Suite 940  
Columbia, S. C. 29201  
(803) 734-1330

ATTORNEY FOR APPELLANT.

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| <i>State v. Tate</i> , 288 S.C. 104, 341 S.E.2d 380 (1986) .....           | 6 |

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant mistrial after Detective Roper put appellant's character in issue several times during the trial?

STATEMENT OF THE CASE

Appellant was indicted for armed robbery at the February 1997 term of the Charleston County Grand Jury. He proceeded to trial April 7-8, 1997, before the Honorable Charles W. Whetstone, Jr., and a jury. Appellant was found guilty as charged. He was sentenced to life imprisonment.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a mistrial after Detective Roper put appellant's character in issue several times during the trial.

Detective Roper testified that he investigated the armed robbery that occurred in Charleston in the early evening of October 28, 1996. The solicitor asked Detective Roper if he conducted a photographic lineup. Roper replied that he did. The solicitor then asked him to explain what it was. Detective Roper testified that when they get a suspect they get information from the county hoping that the person had been arrested previously. (ROA p. 73, lines 10-17).

Defense counsel objected. The jury was sent out. Defense counsel then moved for a mistrial because appellant's character had been put in issue by the inference of a prior arrest. The trial court denied the motion. (ROA p. 73, line 18 - p. 74, line 19).

After the jury returned, the trial court told the jury to disregard Detective Roper's testimony about the origin of the photographs. (ROA p. 76, lines 6-10). On cross-examination, defense counsel asked Detective Roper if appellant turned himself in. Detective Roper replied that appellant did but on other charges. Outside the presence of the jury, defense counsel again moved for a mistrial because appellant's character was again put in issue with reference to other charges. The cumulative effect with the prior arrest reference made the comment highly prejudicial. The trial court denied defense counsel's motion for a mistrial. Defense counsel then objected to the statement about the other charges. The trial court sustained the objection. Defense counsel moved to strike the answer Detective Roper gave on cross-examination. The trial court denied the motion to

strike. (ROA p. 85, line 12 - p. 89, line 25).

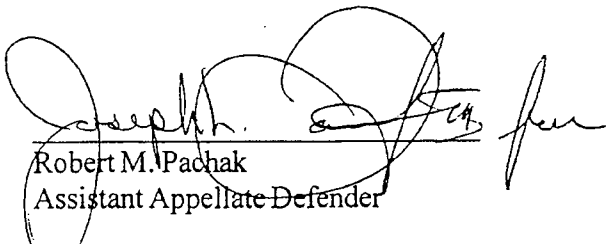
The trial court's refusal to grant a mistrial was error. In a criminal case, the state cannot attack the character of the defendant unless he first places his character in issue. *Mitchell v. State*, 298 S.C. 186, 379 S.E.2d 123 (1989). Character "evidence is so highly prejudicial that it is usually excluded under hard and fast rules." *State v. Ross*, 272 S.C. 56, 249 S.E.2d 159, 161 (1978). The inclusion of evidence which is "irrelevant, incompetent, and raised spurious inferences of prior bad acts" requires reversal. *State v. McConnell*, 290 S.C. 278, 350 S.E.2d 179, 180 (1986).

Any juror could reasonably infer that appellant had a prior record because the photographic lineups were made with previously arrested persons. It is like showing a mug shot to the jury. *State v. Tate*, 288 S.C. 104, 341 S.E.2d 380 (1986). That inference was only made clearer when Detective Roper informed the jury that appellant turned himself in on other charges.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak  
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

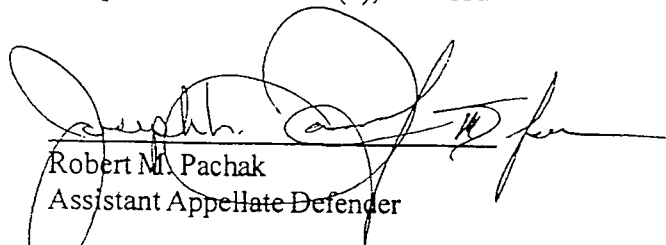
This 24th day of March, 1998.



## CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

March 24, 1998

A handwritten signature in black ink, appearing to read "Robert M. Pachak", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Robert M. Pachak  
Assistant Appellate Defender

1122 Lady Street, Suite 940  
Columbia, SC 29201  
(803) 734-1330

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Charleston County

Charles W. Whetstone, Jr., Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

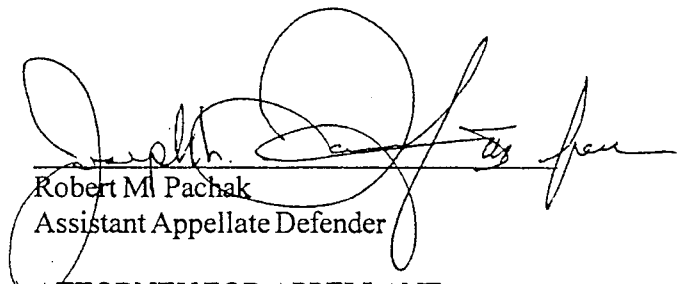
V.

QUINTON LINEN,

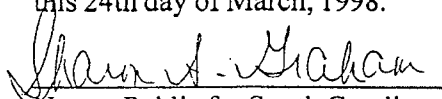
APPELLANT.

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, this 24th day of March, 1998.

  
Robert M. Pachak  
Assistant Appellate Defender  
ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 24th day of March, 1998.

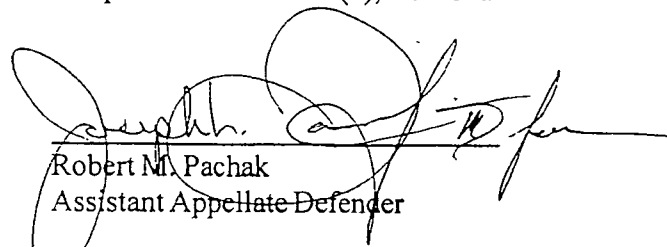
 (L.S.)  
Notary Public for South Carolina

My Commission Expires: April 6, 2002 .

## CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

March 24, 1998



Robert M. Pachak  
Assistant Appellate Defender  
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Columbia, SC 29201  
(803) 734-1330

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Charleston County  
Charles W. Whetstone, Jr., Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

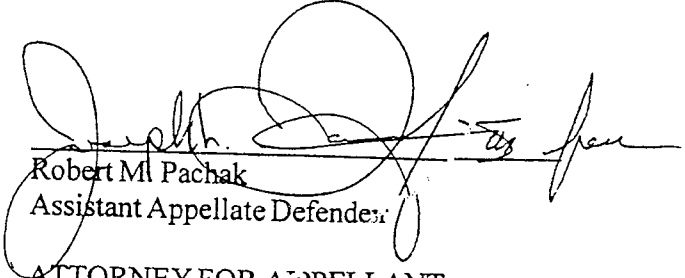
V.

QUINTON LINEN,

APPELLANT.

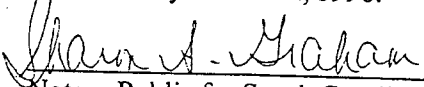
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, this 24th day of March, 1998.

  
Robert M. Pachak  
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 24th day of March, 1998.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: April 6, 2002.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Charleston County  
Honorable Charles W. Whetstone, Jr., Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

QUINTON LINEN,

APPELLANT

---

FINAL BRIEF OF RESPONDENT

---

CHARLES MOLONY CONDON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

I.

The trial court exercised sound judicial discretion in denying Appellant's motions for mistrial.



## ARGUMENT

## I.

The trial court exercised sound judicial discretion in denying Appellant's motions for mistrial.

Benita Benton and her husband were the only customers playing video poker at Budget Check Cashing. Benita Benton saw Appellant enter the business and knew that he had been there at least twice before. She heard suspicious activity and called the police. (R. pp. 1-24).

Cheryl Ann Wood was the cashier and game room attendant at Budget Check Cashing. She saw Appellant in the business two times the week before the robbery. On the night of the robbery, Appellant walked into the business about 9:00 PM, held a knife to her throat, and threatened to kill her. Appellant fled after taking her money belt. (R. pp. 25-39). Freemon Brown talked to Appellant and chased him. (R. pp. 45-50).

Appellant offered alibi testimony from his mother and sister. (R. pp. 93-94; pp. 110-113).

After three witnesses had identified Appellant, including the in court identification by Freemon Brown without objection, Officer Roper testified about his investigation. (R. pp. 66-72). The assistant solicitor first asked Officer Roper if he had done a "photograph lineup" and then asked him the meaning of "photographic lineup." Officer Roper responded, in substance, that once they have a suspect, they hope the person has been "arresed [sic] before." (R. p. 73, lines 10-17).

Appellant's counsel objected and moved for a mistrial on the ground this implied an earlier arrest. The assistant solicitor disagreed but declined to object to a curative instruction. The court noted the witness did not specifically state Appellant had been arrested. Further, the court directed the assistant solicitor not to inquire about how the photographs -- mug shots -- are obtained. In an abundance of caution to avoid any conceivable prejudice, the court asked Appellant's counsel for his preferred curative instruction. The court instructed the jury to disregard the witness' challenged comment. (R. p. 73, line 18 - p. 76, line 11). Next, Appellant complains about testimony his own counsel elicited. On cross examination Appellant's counsel asked Officer Roper if he "eventually had occasion to make the arrest in this case." Officer Roper replied, "Yes." Appellant's counsel asked if he had arrested Appellant. Officer Roper replied, "Yes." Appellant's counsel then asked Officer Roper if Appellant had -- in fact -- come to him. Officer Roper responded, "Yes, [S]ir." (R. p. 85, lines 9-15). Appellant's counsel repeated the inquiry.

Q. So he turned himself in when he knew that he was wanted?

A. Yes, depending on what he was wanted for, [S]ir.

(R. p. 85, lines 16-18). After having the officer twice affirm that Appellant had come to the police, Appellant's counsel again repeated the same inquiry. Officer Roper responded, "Based on other charges...." The court directed

the witness to "[j]ust answer the question" and Roper dutifully responded and affirmed for the third time that Appellant had come to the police. (R. p. 85, lines 19-23). Appellant's trial counsel moved for a mistrial and complained that he had not been provided information about other charges.<sup>1</sup> (R. pp. 86-88, line 19).

The court sustained Appellant's objection to the mention of other charges but denied the motion for mistrial on the ground that other charges had not been specified. (R. p. 88, line 20 - p. 89).

The trial court exercised sound discretion in the denial of the motions for mistrial. In the context of the record, the complaints demonstrate no prejudice to Appellant sufficient to have deprived him of a fair trial. In the first instance the court's curative instruction prevented any possible prejudice. In the second portion of testimony, Appellant should not be heard to complain about a brief response his own counsel elicited. Further, the court's directive obtained the witness' affirmation for a third time. The court did not err in declining to strike "the answer he gave" (R. p. 89, lines 22-25) because Appellant did not specify any particular answer or specific portion of testimony. The record affirms the court's determination that the brief elicited response did not require a mistrial. State v. Washington, 315 S.C. 108, 432 S.E.2d 448 (1992) (a defendant

---

<sup>1</sup> Subsequently, the assistant solicitor noted that the information had been provided "months ago, right after the arrest." (R. p. 91, lines 8-16).

may not complain, on appeal, about the admission of evidence elicited by his own counsel). No abuse of discretion in the denial of a mistrial is demonstrated where the court finds defendant was not questioned about prior bad acts he had personally committed. State v. McFadden, 318 S.C. 404, 458 S.E.2d 61 (Ct. App. 1995), citing State v. Washington ("The granting of a mistrial is a matter within the sound discretion of the trial judge, and his decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law.").

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

CHARLES M. CONDON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.  
Senior Assistant Attorney General

DAVID PRICE SCHWACKE  
Solicitor, Ninth Judicial Circuit

BY: Harold M. Coombs, Jr.  
Harold M. Coombs, Jr.

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 5, 1998

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From Charleston County  
Honorable Charles W. Whetstone, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

QUINTON LINEN,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., Counsel for the Respondent, certify that I have today served the within Final Brief of Respondent upon Appellant by depositing two copies of same in the United States mail, postage prepaid, addressed to his attorney of record, Robert M. Pachak, Assistant Appellate Defender, S.C. Office of Appellate Defense, 1122 Lady Street, Suite 940, Columbia, South Carolina 29201-3243.

I further certify that all parties required by Rule to be served have been served.

Harold M. Coombs, Jr.  
HAROLD M. COOMBS, JR.  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

March 5, 1998

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal From Charleston County  
Honorable Charles W. Whetstone, Jr., Circuit Court Judge  
\_\_\_\_\_

THE STATE,

Respondent,

vs.

QUINTON LINEN,

Appellant.

\_\_\_\_\_  
**CERTIFICATE OF COUNSEL**

The undersigned certifies that this Final Brief of Respondent complies with Rule 210(b), SCACR.

CHARLES M. CONDON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.  
Senior Assistant Attorney General

DAVID PRICE SCHWACKE  
Solicitor, Ninth Judicial Circuit

By: Harold M. Coombs, Jr.  
HAROLD M. COOMBS, JR.

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 5, 1998

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

The State,

Respondent,

v.

Quinton Linen,

Appellant.

---

Appeal From Charleston County  
Charles W. Whetstone, Jr., Circuit Court Judge

---

Unpublished Opinion No. 98-UP-426  
Submitted September 1, 1998 - Filed October 6, 1998

---

**AFFIRMED**

---

Assistant Appellate Defender Robert M. Pachak, of SC  
Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Deputy Attorney  
General John W. McIntosh, Assistant Deputy Attorney  
General Salley W. Elliott and Senior Assistant Attorney  
General Harold M. Coombs, Jr., all of Columbia; and  
Solicitor David P. Schwacke, of North Charleston, for  
respondent.

---

**PER CURIAM:** Quinton Linen appeals from his conviction for armed robbery. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Washington, 315 S.C. 108, 110, 432 S.E.2d 448, 449 (1993) (The trial court grants or denies motions for mistrial in its discretion. These discretionary decisions "will not be disturbed on appeal absent an abuse of discretion amounting to an error of law."); State v. Copeland, 321 S.C. 318, 325, 468 S.E.2d 620, 624-625 (1996) ("[T]he appellate court will view the alleged impropriety . . . in the context of the entire record."); State v. Moyd, 321 S.C. 256, 263, 468 S.E.2d 7, 11 (Ct. App. 1996)



## STATE v. LINEN

("[I]f the objecting party accepts the ruling of the trial judge and does not contemporaneously object to the sufficiency of the curative instruction or move for a mistrial, the error is deemed cured, and the issue is not preserved for appeal."); Washington, 315 S.C. at 110, 432 S.E.2d at 449 (where witness reasonably answered counsel's question, counsel may not object to evidence counsel elicited); State v. Kornahrens, 290 S.C. 281, 290, 350 S.E.2d 180, 186 (1986) and State v. Anderson, 253 S.C. 168, 184, 169 S.E.2d 706, 713 (1969) (both holding that if there are no individual errors, there is no prejudicial cumulative effect).

AFFIRMED.

HOWELL, C.J., HEARN and ANDERSON, JJ., concur.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

QUINTON LINEN #238553 )

vs. )

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

98-CP-10-5031

APPLICATION FOR  
POST-CONVICTION RELIEF

98 DEC 31 PM 2:28  
JUDGE J. M. HARRIS  
CLERK OF COURT

1. PLACE OF DETENTION:

LIEBER CORRECTIONAL INSTITUTION, EDISTO, B- 36, P.O. BOX - 205, RIDGEVILLE, SOUTH CAROLINA 29472

2. NAME AND LOCATION OF COURT WHICH IMPOSED SENTENCE:

GENERAL SESSIONS COURT, CHARLESTON COUNTY, 2144 MELBOURNE, AVE. ... NORTH CHARLESTON, S.C. 29405

3. THE INDICTMENT NUMBERS (IF KNOWN) UPON WHICH THE OFFENSE OR OFFENSES FOR WHICH SENTENCE WAS IMPOSED:

- (a) ARMED ROBBERY
- (b)
- (c)

4. THE DATE UPON WHICH THE SENTENCE WAS IMPOSED AND THE TERMS OF THE SENTENCE:

- (a) APRIL 8TH, 1997, LIFE
- (b)
- (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 JUDGEMENT 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. SOUTH CAROLINA COURT OF APPEALS

ii.

iii.

(b) THE RESULT IN SUCH COURT TO WHICH YOU APPEALED:

i. AFFIRMED

ii.

iii.

(c) DATE OF EACH SUCH RESULT:

i. OCTOBER 6, 1998

ii.

iii.

(d) IF KNOWN, CITATIONS OF ANY WRITTEN OPINION OR ORDERS ENTERED PURSUANT TO SUCH RESULTS:

i. NO. 98-UP-426

ii.

iii.

8. IF YOU ANSWERED "NO", STATE YOUR REASONS FOR NOT SO APPEALING:

(a) N/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) AFTER DISCOVERED EVIDENCE, CONSTITUTIONAL ISSUES-NOVEL ISSUES

(c)

10. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (9);

(a) SEE PAGES 2a THROUGH 2b OF SECTION (10-a, ATTACHED )

(b) SEE PAGES 2d through 2l of section (10-b ATTACHED )

(c)

11. PRIOR TO THIS APPLICATION HAVE YOU FILED WITH REPECT TO THIS CONVICTION

(a) ANY PETITION, IN A STATE COURT UNDER SOUTH CAROLINA LAW? N/A

(b) ANY PETITIONS IN STATE OR FEDERAL COURTS FOR HABEAS CORPUS OR POST-CONVICTION RELIEF? N/A

(c) ANY PETITIONS IN THE UNITED STATES SUPREME COURT FOR CERTIORARI OTHER THAN PETITIONS, IF ANY ALREADY SPECIFIED IN (7)? N/A

12. IF YOU HAVE ANSWERED "YES" TO ANY PART OF (11), LIST WITH REPECT TO EACH PETITION, MOTION OR APPLICATION:

(a) SPECIFIC NATURE THEREOF:

i. N/A

ii.

iii.

iv.

(b) THE NAME AND LOCATION OF THE COURT IN WHICH EACH WAS FILED:

i. N/A

ii.

iii.

iv.

(c) THE DISPOSITION THEREOF:

i. N/A

ii.

iii.

iv.

(d) THE DATE OF EACH SUCH DISPOSITION:

i. N/A

ii.

iii.

iv.

(c) IF KNOWN, CITATIONS OF ANY WRITTEN OPINIONS OR ORDERS ENTERED PURSUANT TO EACH DISPOSITION:

i. N/A

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. N/A

ii.

iii.

(b) THE PROCEEDINGS IN WHICH EACH GROUND WAS RAISED:

i. N/A

ii.

iii.

15. IF ANY GROUND SET FORTH IN (9) HAS NOT BEEN 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) PROPER JURISDICTION

(b) AFTER DISCOVERED EVIDENCE- NOVEL CLAIMS-CONSTITUTIONAL ISSUES

(c)

16. WERE YOU REPRESENTED BY AN ATTORNEY AT ANY TIME DURING THE COURSE OF:

(a) YOUR ARRAIGNMENT AND PLEA? YES

(b) YOUR TRIAL, IF ANY? YES

(c) YOUR SENTENCING? YES

(d) YOUR APPEAL, IF ANY, FROM THE JUDGEMENT OF CONVICTION OR THE IMPOSITION OF SENTENCE? YES

(e) PREPARATION, PRESENTATION OR CONSIDERATION OF ANY PETITIONS, MOTIONS OR APPLICATIONS WITH RESPECT TO THIS CONVICTION, WHICH YOU FILED? N/A

17. IF YOU ANSWERED "YES" to one or more parts of (16), LIST:

i. GUY VITETTA CHAS, CO. PUBLIC DEFENDER

ii. CARMEN TEVIS CHAS, CO. PUBLIC DEFENDER

iii. ROBERT PACHACK, APPELLATE DEFENSE

17. CONTINUED:

(b) THE PROCEEDINGS AT WHICH EACH SUCH ATTORNEY REPRESENTED YOU:

i. ARRAIGNMENT, TRIAL, AND SENTENCING

ii. TRIAL AND SENTENCING

iii. DIRECT APPEAL

18. STATE CLEARLY THE RELIEF YOU SEEK IN FILING THIS APPLICATION:

THAT THE SENTENCE AND CONVICTION BE VACATED, SET ASIDE, OR CORRECTED;  
THAT A REMEDY BE FASHIONED TO CORRECT MY CONDITIONS OF CONFINEMENT;  
AND MY RIGHTS UNDER S.C. CONSTITUTION XII, § 2; DECLARED.

19. ARE YOU NOW UNDER SENTENCE FROM ANY OTHER COURT THAT YOU HAVE  
NOT CHALLENGED?

NO

\*\*\*\*\*

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

VERIFICATION

I QUINTON LINEN, BEING DULY SWORN UPON MY OATH, DEPOSE AND SAY THAT I  
HAVE SUBSCRIBED TO THE FORGOING APPLICATION; THAT I KNOW THE CONTENTS THEREOF;  
THAT 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.

*Quinton Linen*

QUINTON LINEN #238553

SWORN TO AND SUBSCRIBED BEFORE

ME THIS 12 Nov, 1998

NOTARY PUBLIC OF S.C.,

MY COMMISSION EXPIRES

*Yvette R. Blane*  
8-20-2006

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

I QUINTON LINEN, 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 OF 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 SAID PROCEEDING OR GIVR SECURITY THEREFOR.

Quinton Linen  
QUINTON LINEN #238553

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 12<sup>th</sup> DAY OF Nov, 1998

NOTARY PUBLIC OF S.C.

Yvette R. Blane

MY COMMISSION

EXPIRES 8-20-2006

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

98-CP-10-5031

Quinton Linen, 238553 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RETURN

The Respondent, making its Return to the Application for Post-Conviction Relief dated November 12, 1998, would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Charleston County. The Applicant was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery ( 97-GS-10-0926). He was represented by Guy Vitetta, Esquire. On April 8, 1997, the Applicant proceeded to trial and was convicted as charged. He was sentenced by the Honorable Charles W. Whetstone, Jr., to confinement for life.

Applicant timely filed notice of intent to appeal and an appeal was perfected on his behalf by the South Carolina Office of Appellate Defense. Following the filing of briefs by both sides, the South Carolina Court of Appeals affirmed Applicant's. State v. Linen , 98-UP-426 (S.C. Ct. App. filed October 6, 1998).



Attached herewith and incorporated herein by reference are the Charleston County Clerk of Court's records regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections; the trial transcript; the appellate records; and the application for post-conviction relief.

## II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. The manner in which the State has proscribed that my sentence be carried out is unconstitutional

## III.

In his application, the Applicant claims he was denied effective assistance of trial counsel. The Respondent submits this allegation has no merit. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). To prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v.

State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). The Respondent submits the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

CHARLES M. CONDON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

TERESA A. KNOX  
Assistant Deputy Attorney General

MATTHEW M. McGUIRE  
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

By:   
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

May 6, 1999

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF CHARLESTON ) COURT OF COMMON PLEAS  
3 ) 98 CP 10 5031

4 QUINTON LINEN, )  
5 Petitioner, )  
6 versus ) TRANSCRIPT OF RECORD  
7 )  
8 )

8 STATE OF SOUTH CAROLINA. )  
9 )  
10 )

Charleston, South Carolina  
May 22, 2000

12 B E F O R E :

13 HONORABLE DEAN HALL, Judge  
14

15 A P P E A R A N C E S :

16 For the State: MATTHEW MCGUIRE, Esq.  
17 Assistant Attorney General

18 For the Defendant: JUAN TOLLEY, Esq.

19 Reporter: SUZETTE WEIS  
20

21 HARRIET P. BENNETT  
22 Reporter, Ninth Judicial Circuit  
23 P. O. Box 1575  
24 Mt. Pleasant, S. C. 29465  
25

## I N D E X

Direct-Redirect Cross-Recross

QUINTON LINEN

By Ms. Tolley 3-22

By Mr. McGuire 17

GUY VITETTA

By Mr. McGuire 13

By Ms. Tolley 17

CLOSING STATEMENTS:

By Ms. Tolley 34, 39

By Mr. McGuire 37

RULING 39

13

14

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16

NO EXHIBITS PRESENTED.

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1 (The within matter came before the Court on May 22, 2000,  
2 at approximately 9:30 A.M.)

3 THE COURT: All right, this is 98 5031, Quinton Linen ver-  
4 sus State of South Carolina.

5 Let me ask the attorneys that are present if they would  
6 state their names for the record, please.

7 MR. MCGUIRE: For the State, Matthew McGuire.

8 MS. TOLLEY: For Defendant, Juan Tolley.

9 THE COURT: And let the record also reflect that the  
10 Petitioner, Quinton Linen, is present.

11 Is the State ready?

12 MR. MCGUIRE: Yes, Your Honor.

13 THE COURT: Mr. Linen ready?

14 MS. TOLLEY: Yes, he is.

15 THE COURT: You may call your witness.

16 MS. TOLLEY: May it please the Court, we'd call Mr.  
17 Quinton Linen to the stand.

18 QUINTON LINEN, being duly  
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. TOLLEY:

22 Q. Good morning, Mr. Linen. Would you state your name for  
23 the record, please?

24 A. Quinton Linen.

25 Q. How old are you, Mr. Linen?

1 A. Thirty-four.

2 Q. Okay. And are you currently in jail at Lieber Correc-  
3 tional Institution?

4 A. Yes, maam.

5 Q. And you've been there since when?

6 A. April 1997.

7 Q. And you are there as a result of what kind of conviction?

8 A. Armed robbery.

9 Q. And that would have been April 8, 1997?

10 A. Yes, maam.

11 Q. And you brought this post-conviction relief hearing today  
12 based on two reasons, am I right?

13 A. Yes, maam.

14 Q. And is that first reason ineffective assistance of coun-  
15 sel?

16 A. Yes, maam, it is.

17 Q. And is the second based on unconstitutional way -- the  
18 unconstitutional way the sentence was imposed?

19 A. Yes, maam.

20 Q. Tell me about the ineffective assistance of counsel.

21 Why do you think your attorney was ineffective?

22 A. First of all, counsel did not effectively cross examine  
23 the witnesses for the prosecution, one Mrs. Beckman.

24 She stated in her testimony that the perpetrator looked  
25 like someone she had known. He didn't elaborate on his

1 questioning of that.

2 MR. MCGUIRE: Your Honor, would you have Mr. Linen  
3 speak up a little bit.

4 THE COURT: Yes. Can you raise your voice? We've got  
5 this loud fan in here.

6 A. Secondly, Mr. Brown, one of the witnesses . .

7 BY MS. TOLLEY:

8 Q. Let me go back for just a second so everybody understands.  
9 You were talking about on cross examination of the first per-  
10 son, and that would be Ms. Beckman. Is that correct?

11 A. Yes, maam.

12 Q. She had said the person looked like somebody she knew.  
13 Is that correct?

14 A. Yes, maam.

15 Q. And did she just give a name?

16 A. No, she said that person was named -- she only knew his  
17 first name.

18 Q. Did Mr. Vitetta cross examine her with regard to that?

19 A. No, maam.

20 Q. Did -- was there any evidence that Ms. Beckman had told  
21 that to the officers?

22 A. There was no evidence. She never told it to the detec-  
23 tive during the investigation. She only mentioned it to the  
24 Court.

25 Q. Okay, and did Mr. Vitetta cross examine the Detective

1 with regard to that?

2 A. No, he didn't.

3 Q. Now, as to the second witness. That would be Ms. Woods, is  
4 that correct?

5 A. No, Mr. Brown.

6 Q. Mr. Brown?

7 A. Mr. Brown. In his statement, he stated in his testimony  
8 that he had a photographic memory, and that he would recognize  
9 the person's face at any time.

10 However, he never helped with the photographic lineup.  
11 Mr. Vitetta never pursue a line of questions as far as that  
12 was concerned, I think.

13 Q. So his only identification of you was in the Courtroom?

14 A. Yes, maam.

15 Q. Okay. There was no questioning by Mr. Vitetta with re-  
16 gard to that?

17 A. No, maam.

18 Q. Okay.

19 A. And the third was Ms. Williams, and she stated in her  
20 testimony that the alleged perpetrator had acne scars on his  
21 face. However, the Defendant in this case did not have scars.  
22 Does not have scars, and Vitetta never used that.

23 He never put the Defendant before the jury box to say,  
24 look, my client doesn't have these scars that the victim  
25 accused him of having.



1 Q. When you say the Defendant, you're talking about your-  
2 self?

3 A. I'm talking about myself, yes.

4 Q. All right, and so you think that would have been help-  
5 ful . . .

6 A. Yes, I think . . .

7 Q. . . for them to have seen you and . . .

8 A. . . that would have helped as far as identification  
9 part, that I was not the perpetrator of this crime.

10 Q. Okay, and the Courtroom where you were sentenced was a  
11 little bit bigger than this. Am I right?

12 A. Yes, maam.

13 Q. Okay.

14 A. My . . .

15 Q. Go ahead.

16 A. My counsel did not effectively investigate my case.  
17 The counsel stated that he had -- he didn't have knowledge  
18 of certain information pertaining to my case of prior  
19 charges. It was later found out on the next day in Court  
20 that prosecution stated for the record that they had in fact  
21 given him that information, but he said he never received it.

22 I felt like the proper -- excuse me -- that Mr. Vitetta  
23 should have and was not effective because he said he didn't  
24 have that information, but he did have that information.

25 Q. And that was critical information regarding your prior

1 record?

2 A. Yes.

3 Q. Correct?

4 A. Yes.

5 Q. Which goes toward his not being prepared for the case?

6 A. Not being prepared for the case.

7 Q. Was there anything else?

8 A. Yes. Counsel did not effectively question the witnes-  
9 ses for the Defense. Counsel had -- he did not -- he could  
10 have elaborated more in his questioning with Ms. Durelle Cobb  
11 and Sonia Bennett, and, you know, in detail as to how, you  
12 know, I live and as far as my whereabouts of being with them,  
13 and he didn't elaborate on those questions at all.

14 He was basically general, and I felt like if he had  
15 questioned them more, he would know that we are family-  
16 oriented people and the time I spent, you know, was time of  
17 value, not just on that particular night.

18 Q. So you felt like he could have more effectively rehabili-  
19 tated those witnesses on redirect?

20 A. Yes, maam. Yes, maam. A couple of (inaudible) a  
21 couple of planned character witnesses that him and I had dis-  
22 cussed, friends, my minister, people to vouch for my char-  
23 acter.

24 We had discussed that issue but he never had subpoenaed  
25 those witnesses for my trial.

1 Q. Okay.

2 A. Counsel failed to object to the fact that the Foreman of  
3 the jury knew the prosecution.

4 Q. Okay. That would have been John Blinco, is that correct?

5 A. John -- yes, maam.

6 Q. Was there anything else with regard to evidence that  
7 was presented at the trial or should have been presented?

8 A. Yes. Also, counsel filed a PCR on my prior conviction  
9 in 1988 with hopes of having my Court -- my trial delayed.

10 Q. Uhhm.

11 A. And that conviction was in 1988. I already had served  
12 that time in prison and that was over with, but he filed a  
13 PCR, hoping to hold my trial.

14 Q. Okay. So you're saying he was trying to get your 1997  
15 trial continued?

16 A. Yes.

17 Q. And you think that was because he wasn't prepared . .

18 A. He probably wasn't prepared so he try to delay the  
19 time.

20 Q. Was there any other evidence -- was there some evidence  
21 with regard to your vision?

22 A. Okay, yes. Counsel had information pertaining to my  
23 vision. He had a letter from my doctor pertaining to that,  
24 but he did not use that.

25 He did not even mention that in the Courtroom, and I

1 think that -- I feel that was pertinent also to the outcome  
2 of my trial.

3 Q. Okay. What about the new law? You were sentenced un-  
4 der a 1995 law, is that correct?

5 A. Yes, maam.

6 Q. And this was the three strike law?

7 A. Yes, maam.

8 Q. Tell me about what you think about that?

9 A. Okay. Under this new law, according to that when my  
10 first conviction was (inaudible) that upon a third convic-  
11 tion in the State for such a crime I would be sentenced to  
12 life in prison without parole.

13 When my second conviction was made applicable to the  
14 1995 amendment, 17 25 45, which made the second conviction  
15 in this State for such a crime a sentence of life in  
16 prison without parole.

17 By alleged provision of the ex post facto law, by en-  
18 hancing -- by adding -- excuse me, by aggravating the second  
19 offense, the enhancement of the punishment of this crime.

20 However, the original three strike law which was in 1985,  
21 my -- I became -- I was applicable to that law because in  
22 1988 is when I had my first conviction. So I became appli-  
23 cable to that law.

24 They change that law in 1995 and limit it from after  
25 January 1, 1996. They aggravate the second offense, and

1 therefore violate the ex post facto law.

2 Q. So your main part being that you think the 1988 convic-  
3 tion shouldn't have been used against you for an enhancement  
4 purpose?

5 A. Yes, because the 1988 conviction should -- I was never  
6 made -- excuse me -- the law they mandated never made provis-  
7 ions to delete me from that the 1985 statute.

8 Therefore, the Petitioner, which being myself, am still  
9 applicable to that law, the 1985 law.

10 Q. Now, did Mr. Vitetta raise this by pre-trial motion?

11 A. No, maam.

12 Q. The fact that this was a new law, do you know if you  
13 were the first person to be tried under this law?

14 A. Yes, from my understanding by Mr. Vitetta, I was the  
15 first person in Charleston County to be sentenced under this  
16 three strike law.

17 Q. Okay, and so there was some question about how this law  
18 would start being effective and what -- how it was going to be  
19 applied?

20 A. Yes. Well, at that time they was still trying to inter-  
21 pret how this law was written, and interpret it and understand  
22 how it should be applied.

23 However, they found a way to apply it to me because  
24 they wanted to use me -- well, from my understanding and  
25 what I was told by Mr. Vitetta, that I was being used as a  
11

1 example, you know, of this new law, because, first of all,  
2 I had a prior record, and that I would fit the criteria for  
3 using me as an example. —

4 And I don't know the exact legal language, but I know  
5 it's (inaudible) -- from the way he stated that to me I  
6 know it was in violation of the law.

7 Q. Now, you also -- that's with regard to ineffective assist-  
8 ance of counsel. Is there anything else with regard to  
9 that?

10 A. Okay, I also found what they call Article 12 2, and under  
11 that the health and welfare and the way prisoners are being  
12 treated within the State.

13 And underneath that Article 12 violations in our treat-  
14 ment, our well being, our health, our welfare, and that's my  
15 understanding of what is pending here.

16 Q. You understand it's pending -- you mean, the South  
17 Carolina Supreme Court is going to hear testimony on that  
18 case?

19 A. They will hear testimony on the case of Wright versus  
20 State, under the Article 12, and right now that case is still  
21 pending in Court, yes.

22 Q. You were arrested in November of 1996, is that cor-  
23 rect?

24 A. Yes, maam.

25 Q. Okay, and your case was tried in April of 1997, is that  
12

1 correct?

2 A. Yes, maam.

3 Q. Based on your knowledge, do you think that is pretty quick  
4 to have your case come up?

5 A. Yes, maam. According to Mr. Vitetta. Now, when I went  
6 to my preliminary hearing, they told me it would be anywhere  
7 from nine months to two years because the Court was so backed  
8 up.

9 Mr. Vitetta called me on several occasions, throughout the  
10 months of February and March, the next two months, matter of  
11 fact, and he told me three different times that they kept  
12 changing my court date and they kept moving it up, moving it  
13 up.

14 And the last month of March, he told me you're going to  
15 Court Monday, which was April 12th, and the reason for being  
16 that was that they had found out that if they (inaudible)  
17 because I was going to be the first person charged under the  
18 new law.

19 It also was stated to me that the prosecutor had made a  
20 statement that . . .

21 MR. McGUIRE: Objection to hearsay.

22 THE COURT: Were these statements made on the record in  
23 the trial or just . . .

24 MS. TOLLEY: They were not made on the record in the  
25 trial.

1 THE COURT: Then I would sustain the objection on hear-  
2 say.

3 BY MS. TOLLEY:

4 Q. The witness is present in Court and he can testify . .

5 THE COURT: He said the Solicitor said but he also said  
6 his attorney told him.

7 MS. TOLLEY: I'm sorry. His attorney said what the Soli-  
8 citor had told him.

9 THE COURT: I'll allow him to testify to what his  
10 attorney said.

11 MS. TOLLEY: Okay, what did . .

12 THE COURT: I'll note your objection, and I overrule  
13 your objection.

14 Go ahead.

15 BY MS. TOLLEY:

16 Q. What did your attorney say?

17 A. My attorney said that after they -- after I was being  
18 used (inaudible) that they may have -- they were going to  
19 essentially prosecute my case and I may come back to Court  
20 at a later time and win the case, but they were going to  
21 prosecute me.

22 Q. So just to recap briefly, you have raised several is-  
23 sues today. One is that he ineffectively cross examined the  
24 witnesses at trial. Correct? {

25 A. Correct.



1 Q. The second is that he didn't effectively rehabilitate  
2 the defense witnesses. Is that correct?

3 A. Yes.

4 Q. The third is he didn't call the character witnesses  
5 that you had discussed, is that correct?

6 A. Yes.

7 Q. And the fourth is that he didn't present evidence regard-  
8 ing your vision and which you had a lot of that. What was that  
9 evidence, by the way?

10 A. That evidence was information from the Medical University  
11 Storm Eye Institute.

12 Q. In addition to that, you raised an issue about his effec-  
13 tiveness in that he was not prepared for trial, is that cor-  
14 rect?

15 A. Correct.

16 Q. Because the case had been moved up so many times, is that  
17 correct?

18 A. Correct.

19 Q. Because he didn't have information on your prior con-  
20 viction, is that correct?

21 A. Yes.

22 Q. According to him -- when in fact the Solicitor said  
23 that he had already had that information?

24 A. Yes.

25 Q. That he filed a post conviction relief hearing against

1 your 1988 attorney in an attempt to try to get a continuance,  
2 is that correct?

3 A. Yes.

4 Q. And that this was a new law that was being applied, and  
5 that he didn't have sufficient time to become familiar with  
6 the law and how it was going to be applied, is that correct?

7 A. Correct.

8 Q. You also raised ineffective assistance of counsel be-  
9 cause you state that he didn't object to John Blinco being  
10 appointed as Foreman of the jury, is that correct?

11 A. Yes.

12 Q. Is it true that John Blinco had said in Court that he  
13 knew some people in the Solicitor's Office?

14 A. Yes.

15 Q. And that in fact he's an attorney here in town, correct?

16 A. Yes, maam.

17 Q. And with regard to your sentencing, you raised the issue  
18 that you think you should have been applied under the 1985  
19 law -- the three strikes 1985 law should have been applied  
20 to you, as opposed to the 1995 law?

21 A. Yes, maam.

22 Q. And that your attorney didn't raise that in pre-trial  
23 motions?

24 A. Yes, maam.

25 Q. You also raised an issue about Article 12, Section 2,

1 where you say there was a case pending before the Supreme  
2 Court with regard to that issue?

3 A. Yes.

4 Q. Is there anything else you think we need to discuss?

5 A. No, I think that is it.

6 Q. Nothing further.

7 THE COURT: Mr. McGuire?

8 CROSS EXAMINATION

9 BY MR. MCGUIRE:

10 Q. Let me go through these allegations with you.

11 A. All right.

12 Q. The first was, I think, that Ms. Beckman during the  
13 in camera hearing to suppress your identification testified  
14 that you look like someone else she knew, is that correct?

15 A. Yes, sir.

16 Q. And you're referring, I think, to page 34 of the tran-  
17 script?

18 A. I don't have the transcript.

19 Q. Let me ask you this. Have you had a chance to look at  
20 the transcript of your trial?

21 A. Yes.

22 Q. Do you recall Ms. Beckman testified during the examina-  
23 tion that she also said you dropped into the same video poker  
24 parlor twice that same day prior to the robbery?

25 A. From what I did understand, she said that the person

1 that looked like the person frequent the video store but she  
2 didn't say me. She said that person frequented the video store.

3 Q. I'm not asking you that. Do you recall during the trial  
4 she said that you, the person she identified, dropped into the  
5 video poker parlor twice that day prior to the robbery?

6 A. No.

7 Q. You also testified that Mr. Brown said he had a photo-  
8 graphic memory?

9 A. Yes.

10 Q. What's your problem with that testimony?

11 A. Okay, the reason why I said that is because in the tes-  
12 timony the only two people that gave a composite sketch were  
13 Ms. Beckman and Ms. Woods, and they said they didn't agree  
14 with that composite sketch -- at least that's what they said.

15 They weren't sure with it and didn't like it, but if he  
16 had a photographic memory then why hadn't he looked at the  
17 composite sketch and why hadn't -- I said that was in effec-  
18 tive assistance of counsel because my attorney, Mr. Vitetta, at  
19 that time -- I felt that he could have questioned him and  
20 asked him that.

21 That if he was so sure, why didn't he help with the  
22 composite sketch?

23 Q. Do you have Mr. Brown here today to testify or to ask  
24 that question to?

25 A. . .

1 MS. TOLLEY: Objection. He has no reason to have Mr.  
2 Brown here. The whole idea is whether or not Mr. Vitetta cross  
3 examined him effectively in the trial.

4 MR. MCGUIRE: Your Honor, the burden is upon Mr. Linen  
5 . . .

6 THE COURT: That's correct. You can repeat your ques-  
7 tion.

8 BY MR. MCGUIRE:

9 Q. Mr. Linen, do you have Mr. Brown here today to ask  
10 that question to?

11 A. No, I'm not -- I brought the issue up because that was my  
12 represented attorney -- that was his job.

13 Q. So in other words, you're speculating as to . . .

14 A. No, I'm not speculating.

15 Q. . . what he . . .

16 A. He was my attorney.

17 (Witness and counsel speaking at the same time)

18 Q. I understand he was your attorney, and you are speculat-  
19 ing as to what Mr. Brown would have testified, aren't you?

20 A. . .

21 Q. You don't know him and haven't spoken to him, have you?

22 A. If I was a lawyer I would have questioned him and asked  
23 him that.

24 Q. Okay. Now, Mr. Brown also identified you in Court,  
25 didn't he?

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1 A. . .

2 Q. Mr. Brown identified you in Court, didn't he?

3 A. . .

4 Q. As well as Ms. Beckman and Ms. Woods?

5 A. Yes.

6 Q. Now, you talked about the fact that you believe Mr.  
7 Vitetta did not prepare to go forward with your trial be-  
8 cause he filed a PCR application against your '93 conviction,  
9 is that correct?

10 A. Yes.

11 Q. Now, isn't it true that Mr. Vitetta was trying to get  
12 you a retrial on the '93 conviction so it couldn't be used  
13 against you as a third strike?

14 A. No. No, his reason for that because I was with him  
15 when he filed it, and his reason for that was to get a delay  
16 so we wouldn't go to trial.

17 Q. Isn't it true that if you did not have a conviction for  
18 that '93 trial, you wouldn't have been under the three strike  
19 law?

20 A. That -- '93? I wasn't convicted in '93. I was not on  
21 trial in '93.

22 Q. Well, your '93 application -- the PCR you're referring  
23 to.

24 A. That's about it.

25 Q. And the PCR application, isn't it true if that PCR

20

1 overturned that conviction, you would not have been subject  
2 to the three strike law?

3 A. True.

4 Q. So in fact had that PCR gone forward, and if you would  
5 have won, you wouldn't be in jail for life?

6 A. Yes, but that wasn't -- I was with him and you  
7 weren't.

8 Q. You also said he didn't effectively cross examine your  
9 witnesses, your defense witnesses. Is that correct?

10 A. Correct.

11 Q. How so?

12 A. Because he could have elaborated more on questioning  
13 them.

14 Q. You say he could have elaborated more on what?

15 A. On his questioning.

16 Q. How so?

17 A. More detail as to my family life, you know; the way my  
18 family does the things we did; our whereabouts and things we  
19 did as a family.

20 Q. Testimony to show what a good person you are?

21 A. Sure.

22 (Difficult to hear, due to static on the tape and noise  
23 in the Courtroom)

24 Q. A person with two prior convictions?

25 A. Well, my -- there weren't two.

21

1 MS. TOLLEY: Your Honor, there weren't two.

2 BY MR. MCGUIRE:

3 Q. In any case, Mr. Linen, you have witnesses here today?

4 A. Yes, one of them.

5 Q. Who is that?

6 A. My mother.

7 Q. And was your mother a witness to the armed robbery?

8 A. No.

9 Q. You also testified that there is a medical documenta-  
10 tion showing you are legally blind, is that correct?

11 A. Yes.

12 Q. Have you got that documentation with you today?

13 A. No, I do not have it with me today. Mr. Vitetta has  
14 that letter. Mr. Vitetta was given that letter, and we never  
15 received it back at the end of my trial.

16 My mother went to get that letter and Mr. Vitetta never  
17 gave it to her, so I don't have that letter.

18 MR. MCGUIRE: Nothing further, Your Honor.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MS. TOLLEY:

22 Q. It's still your testimony that Mr. Vitetta did not  
23 properly examine your witnesses, is that right?

24 A. Yes, maam.

25 Q. Is it still your testimony that Mr. Vitetta was ineffective



1 in that he was not prepared for trial, is that correct?

2 A. Yes, maam.

3 Q. Thank you.

4 THE COURT: You can step down.

5 (Witness excused from stand)

6 MS. TOLLEY: Beg the Court's indulgence. (Counsel having  
7 discussion with Mr. Linen)

8 Judge, may I recall Mr. Linen for just a minute?

9 THE COURT: All right. He's still under oath.

10 (Mr. Linen retaking the witness stand)

11 REDIRECT EXAMINATION CONTINUED

12 BY MS. TOLLEY:

13 Q. Mr. Linen, was there a second attorney who was involved  
14 in this case?

15 A. . .

16 Q. Was there a second attorney involved in this case?

17 A. Yes, maam. At the start of my trial, a lady by the  
18 name of -- I don't know her first name, but her last name is  
19 Tevis.

20 Q. Would that be Carmen Tevis?

21 A. Carmen Tevis. I never met this lady until five minutes  
22 before my trial was to begin, and Mr. Vitetta introduced her  
23 and say that she was helping out with my case.

24 And she was in and out of the Courtroom. She never really  
25 was there during the course of my trial, and from that day to

1 this day I still don't know her. I never really talked to  
2 her. I don't know what she knows about the case, but he did  
3 introduce her to me at the time.

4 Q. Okay, you didn't meet with Mr. Vitetta very often prior  
5 to your trial?

6 A. Right.

7 Q. For short periods of time?

8 A. Correct.

9 Q. Not more than 15 minutes at a time?

10 A. Right.

11 Q. Thank you.

12 MS. TOLLEY: Nothing further.

13 MR. McGUIRE: Nothing further.

14 THE COURT: You may step down.

15 (Witness excused from stand)

16 MS. TOLLEY: Nothing further, Your Honor.

17 THE COURT: Mr. McGuire?

18 MR. McGUIRE: State would call Guy Vitetta.

19 GUY VITETTA, being duly  
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. McGUIRE:

23 Q. Mr. Vitetta, you were Mr. Linen's Court-appointed  
24 attorney?

25 A. Yes, sir, I was.

24.

1 Q. Have you had a chance to look at your file in this case?

2 A. Yes.

3 Q. Just generally, do you recall or using your file in the  
4 case do you recall how many times you met with Mr. Linen  
5 prior to trial?

6 A. I think it was probably about three times. Once when he  
7 was arrested and once -- maybe four times. Once when I was  
8 appointed and once in the interim, and then the Monday -- the  
9 Friday before the Monday trial.

10 Q. Okay. So three times probably?

11 A. Yeah, three or four times.

12 Q. Do you recall or does your file indicate that Mr. Linen  
13 provided you with any sort of alibi or any sort of defense  
14 or witnesses?

15 A. Yes, he did.

16 Q. All right. Did you explore that alibi?

17 A. Yes. We presented the evidence.

18 Q. Okay. Did you in fact present it at the trial?

19 A. Yes.

20 Q. Were there any witnesses he asked you to call in his be-  
21 half that you didn't present at trial?

22 A. I don't remember.

23 Q. Do you recall either by reviewing the transcript or  
24 your memory whether there were any questions he wanted you  
25 to ask or areas of defense you didn't explore at trial?

1 A. I don't remember. I actually don't. A lot of times my  
2 clients during trial want me to ask questions and sometimes  
3 I do and sometimes I don't.

4 Q. Let me go back to the allegations that were raised that  
5 -- during the in-camera suppression hearing, the witness notes  
6 on page 34 of the transcript of the trial of the case that  
7 she saw someone that looked like Mr. Linen who also frequented  
8 the Poker Palace by the name of Nate.

9 Have you had a chance to look at your transcript to see  
10 that?

11 A. Right.

12 Q. Do you recall any reason why you didn't raise that issue  
13 at all during the actual cross examination at trial?

14 A. No.

15 Q. Did Ms. Benton in fact identify him from having been in  
16 the video poker parlor twice that same day, or do you re-  
17 call that?

18 A. Did she identify Mr. Linen?

19 Q. Yes.

20 A. Where are you referring to?

21 Q. Well, looking at her testimony at the in-camera hearing,  
22 (rest of question not audible)

23 Strike that question. Let's move on to something else.  
24 Would you agree in fact that Ms. Brown did identify him in  
25 the photographic lineup?

1 A. Ms. Brown?

2 Q. Ms. Benton -- I'm sorry.

3 A. Yes.

4 Q. And then Ms. Brown also identified him in the photographic  
5 lineup?

6 A. Ms. Brown?

7 Q. The second of two people in the video poker parlor to  
8 identify him?

9 A. Cheryl Wood -- you said Ms. Brown. I don't remember.

10 Q. I apologize. Ms. Benton and Ms. Woods.

11 A. Yes.

12 Q. Okay.

13 A. He was identified by two people in a photographic line-  
14 up, yes.

15 Q. Do you recall why you tried to get a continuance in  
16 the case and have a PCR on one of his prior convictions?

17 A. Yeah, I didn't want -- I was trying to preclude the prior  
18 armed robbery conviction from being used against him as a  
19 strike, should he be convicted in the current case.

20 Q. Did you explain that to him?

21 A. Yes.

22 Q. Did Mr. Linen give you information showing he was leg-  
23 ally blind?

24 A. No.

25 Q. Mr. Linen referred to John Blinko, who was the Foreman

27

1 of the jury, as being a local attorney. Were you aware of  
2 that at the trial?

3 A. Yes, I was.

4 Q. Any particular reason why you didn't object to him being  
5 on the jury that you recall?

6 A. I don't recall. I do remember being aware that he was  
7 an attorney and thinking that -- do you know what juror num-  
8 ber he was?

9 Q. If you look at page 21, and the jury list is right  
10 here.

11 A. He was number 20?

12 Q. Number 10 on page 21.

13 MR. MCGUIRE: If I could approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. MCGUIRE:

16 Q. (Giving document to counsel)

17 A. I don't know why.

18 Q. Let me ask you this way. Beside the fact that he's an  
19 attorney, do you know of any reason why you could have stricken him?

20 A. Not that I would recall offhand. I really don't have a  
21 problem with attorneys in most instances. I'm not sure in  
22 this instance, but it usually works out in my favor.

23 Q. Nothing further.

24 THE COURT: Ms. Tolley.

25 CROSS EXAMINATION

1 BY MS. TOLLEY:

2 Q. Mr. Vitetta, you've been a Public Defender for how long  
3 now?

4 A. Since December of 1993.

5 Q. About seven years?

6 A. Yes, maam.

7 Q. And in your experience in a case such as Mr. Linen's, is  
8 it unusual for a case such as this to try to set a PCR  
9 hearing?

10 A. Yes.

11 Q. What is the normal time frame for a case such as  
12 this to be called?

13 A. When Quinton went to trial, it was about a year, and now  
14 it's more like 18 to 20 months, if they're in jail, and if  
15 they are out of jail 18 months -- probably two years right  
16 now.

17 Q. Do you recall the circumstances as to why Mr. Linen's  
18 case was presented so quickly?

19 A. I can only assume. I don't know specifically why. I  
20 can assume why, but it was unusual. I think the Solicitor  
21 was trying . .

22 MR. McGUIRE: Object to speculation as to this.

23 MS. TOLLEY: Could you speak up a little?

24 THE COURT: You object to what now?

25 MR. McGUIRE: He said he didn't know why the case had

1 been called so quickly, and he'd have to assume...

2 THE COURT: Okay, I sustain the objection as far as  
3 speculation.

4 BY MS. TOLLEY:

5 Q. Mr. Linen was arrested in November of 1996, is that  
6 correct?

7 A. Yes.

8 Q. And he was out on bond for a period of time awaiting  
9 his trial?

10 A. Yes, he was.

11 Q. Okay, and it would be highly unusual in a case where  
12 the Defendant was out of jail on bond for a case to come  
13 up so quickly?

14 A. Yes, it was.

15 Q. When were you provided with notice of the fact that  
16 this was going to be tried under the three strike law?

17 A. When I -- I knew it when -- I knew when I got the  
18 case that it was a potential for a life sentence. When  
19 I specifically got notice, I don't know.

20 Q. If I told you it was February 7, 1997, would that  
21 sound right?

22 A. Yes.

23 Q. And when did you file for the post conviction relief  
24 hearing against the 1988 attorney, Russell Brown?

25 A. It was -- I think it was the week before we went to



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1 trial that I filed the application.

2 Q. Would that have been April 3rd or 4th?

3 A. Yes.

4 Q. So Mr. Linen was arrested in November; he got the  
5 notice, written notice, that he was going to be tried  
6 under the law in February, and you didn't file for post-  
7 conviction relief hearing against the prior attorney until  
8 the week before trial?

9 A. Right. If that is what's shown on the return.

10 Q. Now, as to the trial, did you cross examine witnesses  
11 about knowing this person, Nate, and how Mr. Brown might  
12 have thought this person, Nate, this person that came in,  
13 looked like Nate?

14 A. I don't remember, but since that's an issue it  
15 looks like I didn't. I just don't remember.

16 Q. Did you cross examine the Detective about that issue?

17 A. I'm sorry. I don't remember. (Balance of answer  
18 not audible)

19 Q. Did you object to the composite sketch being introduced  
20 into evidence?

21 A. It was introduced through the Detective?

22 Q. That's right.

23 A. I'm not sure, but I can tell you from looking at the  
24 testimony.

25 Q. Just based on what you're able to recall.

1 A. I don't remember.

2 Q. As to the description of the Defendant given in the  
3 case, was it Ms. Woods who testified he had acne scars on  
4 his face?

5 A. It may have been. I know there is some discrepancy in  
6 the description given.

7 Q. Did you present evidence to the contrary with regard to  
8 that?

9 A. . .

10 Q. Did you bring the Defendant forward and say, look at  
11 him; he doesn't have acne ducts on his face, or anything  
12 such as that?

13 A. I don't think I did, no.

14 Q. With regard to Mr. Brown, did you cross examine him  
15 with regard to the fact that he didn't identify the Defen-  
16 dant in the photographic lineup or participate in the ef-  
17 fort of the composite sketch?

18 A. I don't think I did, no.

19 Q. As far as you know, was Mr. Linen the first person to  
20 be tried in Charleston County under this  
21 new three strikes law?

22 A. Yes, he was.

23 Q. Do you think because he was the first person who was  
24 brought to Court in Charleston County that there was --  
25 that the Prosecutor's Office was trying to establish some

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1 sort of precedent with regard to this case?

2 A. . .

3 MR. McGUIRE: Objection, Your Honor. Calls for specu-  
4 lation.

5 THE COURT: Sustain the objection.

6 BY MS. TOLLEY:

7 Q. This was a novel issue, is that correct?

8 A. Yes, it is.

9 Q. And it was an important case for the Solicitor's  
10 Office, is that correct?

11 A. Yes, it was.

12 Q. And Mr. Linen was the first person to be tried under  
13 this law?

14 A. Yes, he was.

15 Q. With regard to the evidence regarding the Defendant's  
16 vision, you went to the doctor with him, is that correct?

17 A. Yes, I did.

18 Q. You had information regarding his vision, is that  
19 correct?

20 A. Yes, I did.

21 Q. And with regard to the foreman, John Blinco, of the  
22 jury, if you had information that he was friends with some  
23 of the Solicitors, would that have influenced your decis-  
24 ion one way or the other?

25 A. Yes, it would have.

1 Q. If I show you in the transcript where he said some-  
2 thing about that, would that help you out at all? On  
3 page 16?

4 A. . .

5 Q. I'll let you look at mine.

6 A. Yes, I might have missed that. Yeah, I would have  
7 definitely had some concern about that, yes.

8 Q. We don't have any further questions.

9 MR. MCGUIRE: Nothing further.

10 THE COURT: You may step down.

11 (Witness excused from stand)

12 MR. MCGUIRE: No further witnesses from the State.

13 THE COURT: Anything in reply?

14 MS. TOLLEY: No, sir.

15 THE COURT: All right, I'll hear brief arguments.  
16 Petitioner first.

17 MS. TOLLEY: Your Honor, we would ask the Court to  
18 find in favor of the Defendant in this case based on the  
19 fact that, one, there was ineffective cross examination  
20 of the witnesses by Mr. Vitetta, inasmuch as he examined  
21 the witnesses with regard to description of the Defendant,  
22 and inasmuch as he didn't cross examine with regard to  
23 the fact that she had said this person looked like someone  
24 she knew by the name of Nate, and inasmuch as he didn't  
25 examine the detective with regard to that information

1 either.

2 We would point out that with regard to the examination  
3 of Ms. Woods, he could have done a better job of cross  
4 examining that witness in possibly attacking the descrip-  
5 tion that was given, inasmuch as he could have presented  
6 the Defendant to the jury to show that he didn't have  
7 acne dents on his face.

8 With regard to Mr. Brown, inasmuch as he didn't  
9 examine him with regard to the fact that he didn't partici-  
10 pate in the photographic lineup, nor did he participate  
11 in the composite sketch.

12 We also raised the issue that he did not object to  
13 the introduction of the composite sketch into evidence.

14 We submit that he was ineffective in his redirect of  
15 the defense witnesses, and that he did not properly reha-  
16 bilitate the two defense witnesses.

17 We submit that he was ineffective in that he did not  
18 present other character witnesses on behalf of the Defen-  
19 dant that they had talked about.

20 We submit that he was ineffective in that he was unpre-  
21 pared for trial, in that he had -- there was evidence from  
22 the transcript that he had no information on some of the  
23 prior convictions, when it was stated by the Solicitor that  
24 he had already been provided with that information.

25 Further evidence of the fact that he was unprepared

1 for trial was that he asked for a post conviction relief  
2 action in the 1988 case in an attempt to get a continuance,  
3 and he didn't file that action until April 3rd of 1997,  
4 when the trial was being held on April 7, 1997.

5 We submit he was ineffective inasmuch as he didn't  
6 present evidence with regard to the Defendant's vision; that  
7 he testified he had gone to the doctor with him, and he had  
8 that evidence, but yet none of that evidence was presented  
9 to the jury.

10 We submit that he was ineffective because he did not  
11 object to the foreman of the jury, John Blinco, an attorney,  
12 who testified that he knew some of the people in the  
13 Solicitor's Office.

14 With regard to sentencing, we would also present that  
15 it was unconstitutional, in that the prior convictions  
16 should not have been used for enhancement, inasmuch as  
17 the Defendant alleges that the 1988 act would have been the  
18 one that should have been applicable to him, and that Mr.  
19 Vitetta did not raise that issue in pretrial.

20 He also raised the issue of Article 12, Section 2,  
21 regarding rehabilitation, and Mr. Linen submits that there  
22 is a case pending before the Supreme Court which would  
23 affect the issue and this case as well.

24 Based on all of that, we would ask the Court to find  
25 in the Defendant's favor.

1 MR. MCGUIRE: Your Honor, as to the cross examination  
2 of Ms. Benton and Ms. Woods, and the -- and the Detective, Mr.  
3 Vitetta didn't cross examine on those issues, but so what?  
4 They haven't shown anything that he could have impeached  
5 by cross examination.

6 It was their burden, and they didn't bring these people  
7 in to show somehow they could have been more effectively  
8 examined. That is pure speculation.

9 We would point out that Ms. Benton and Ms. Woods did  
10 in fact ID him in a photo lineup, and the photo lineup was  
11 found to be properly done by the Court.

12 As to Mr. Brown not participating in the photo lineup  
13 or composite sketch, well, he didn't, but, again, so what?  
14 How does that show the outcome of the trial would have been  
15 different if he had been examined on those issues?

16 As to objecting to introduction of the composite  
17 sketch, the Applicant hasn't shown any grounds why that  
18 sketch should have been suppressed.

19 As to the -- to Mr. Vitetta's examination of defense wit-  
20 nesses, the Applicant has alleged he did not do it prop-  
21 erly, but again he hasn't shown how it would have affected  
22 the trial, nor what these witnesses would have testified  
23 to.

24 The Applicant simply hasn't carried his burden.

25 As to the -- Mr. Vitetta's knowledge of the prior

1 convictions, Mr. Vitetta states on the record that he was  
2 not of these things and the Solicitor disputed him, and  
3 in any case I don't see how it affected the outcome of his  
4 trial.

5 Mr. Vitetta was aware they were going for three strikes,  
6 and in fact had filed a PCR application to try to vacate one  
7 of those convictions so he would not be subjected to the  
8 life sentence under the three strikes.

9 Again, there is no indication that Mr. Vitetta was  
10 not prepared because of those grounds.

11 As to Mr. Linen's vision, there has been some testimony  
12 that Mr. Vitetta was aware Mr. Linen may have had to use  
13 corrective lenses or something to that effect, but I again  
14 don't see how that would affect the outcome of the trial.

15 As to Mr. Blinco, he did testify that he had a casual  
16 relationship or casual -- he casually knew some of the  
17 Solicitors, but, again, no particular grounds have been  
18 shown as to why he should have stricken him or that the out-  
19 come of the trial would have been different if he had been  
20 kept off the jury.

21 As to the unconstitutionality of the sentences, the  
22 ex post facto allegations, the State submits that under  
23 the cases the enhancement of convictions can be done and  
24 is not an ex post facto violation.

25 State v. Smith and the Chavaz case point out that this



1 cannot be raised in PCR, the Article 12, Section 2, alle-  
 2 gations, in any manner. That case is still pending, and  
 3 assuming Mr. Wright gets relief on the ground that he has  
 4 not been rehabilitated, that would be, as I said, a question  
 5 for another time as to whether there would be any relief coming  
 6 under those grounds.

7 THE COURT: Any reply?

8 MS. TOLLEY: Your Honor, we would just submit that  
 9 the accumulation of all of those things have resulted in  
 10 Mr. Linen (balance of sentence not audible).

11 Based on all of that, we would ask the Court to find  
 12 in Mr. Linen's favor.

13 THE COURT: All right. In cases of this type, the  
 14 burden is on the Petitioner that this is ineffective  
 15 assistance of counsel.

16 Therefore, he would have to show two things. One,  
 17 that his counsel failed to render reasonably effective  
 18 assistance under the prevailing norms, and, then, number  
 19 two, that he was prejudiced by his counsel's ineffective  
 20 performance.

21 To show prejudice, he would have to show that but for  
 22 counsel's errors there is a reasonable probability that  
 23 the result at trial would have been different.

24 Therefore, we find as a fact that he failed to carry  
 25 the burden required under the U. S. Supreme Court cases,

1 and the South Carolina cases, and the Court would further  
2 find that the Applicant's attorney did demonstrate normal  
3 degree of skill, knowledge, professional judgment and rep-  
4 resentation that is expected of an attorney who practices  
5 criminal law in South Carolina.

6 Therefore, the Petition would be denied.

7 -----END OF REQUESTED TRANSCRIPT OF RECORD-----  
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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for the Ninth Judicial Circuit of South Carolina, do hereby certify that the foregoing transcript was prepared from the records of Suzette Weis to the best of my ability, having been heard on May 22, 2000, in the Court of Common Pleas for Charleston County.

FURTHER, I certify that I am neither of kin or counsel to any party to this action, nor do I have any interest in the outcome of the same.



DATED:

February 27, 2002

10-12-00  
STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Quinton Linen, 238553 )

98-CP-10-5031

97-CP-10-2086

Applicant, )

v. )

State of South Carolina, )

Respondent. )

ORDER OF DISMISSAL

2000 OCT 12 PM 3:58  
JULIE A. HARRIS  
CLERK OF COURT

A. PROCEDURAL HISTORY

This matter is before the Court by way of applications for post-conviction relief (PCR) filed April 2, 1997, and December 31, 1998. A hearing into the matters was convened on May 22, 2000, in the Charleston County Courthouse. The Applicant was present in court and represented by Juan Tolley, Esquire, of the Charleston County Bar. The State was represented by Matthew M. McGuire, from the Office of South Carolina Attorney General.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of Respondent Guy Vitetta, Esquire. This Court also had before it a copy of the Applicant's trial transcript; the appellate records; the records of the Charleston County Clerk of Court regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections; the application for PCR; and the State's Returns.

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Charleston County. The Applicant was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery (97-GS-10-0926). He was represented by

NDH  
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Guy Vitetta, Esquire. On April 8, 1997, the Applicant proceeded to trial and was convicted as charged. He was sentenced by the Honorable Charles W. Whetstone, Jr., to confinement for life.

Applicant timely filed notice of intent to appeal and an appeal was perfected on his behalf by the South Carolina Office of Appellate Defense. Following the filing of briefs by both sides, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. Linen, 98-UP-426 (S.C. Ct. App. filed October 6, 1998).

### B. ALLEGATIONS

In his applications, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. The manner in which the State has proscribed that my sentence be carried out is unconstitutional

### C. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and considered the arguments presented at the PCR hearing. Further, this Court observed the witnesses presented at the hearing, passed upon their credibility, and weighed their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976).

#### 1. Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel prior to and during his trial. This Court finds the allegations without merit.

In PCR proceedings, it is the Applicant's burden to prove the allegations in his application.

Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). For an Applicant to prove prejudice, he must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

A.

Applicant alleges counsel ineffectively cross-examined State's witness Benita Benton during a suppression hearing concerning Ms. Benton's out-of-court identification of Applicant. Applicant claims counsel should have examined Ms. Benton more extensively when she testified the Applicant resembled another individual with whom she was familiar. Tr. p. 31, lines 3 - 14; p. 33, line 23 to p. 34, line 2. The allegation is without merit.

Applicant failed to demonstrate how counsel's examination was deficient in any manner. Accordingly, the allegation is denied.

B.

Applicant alleges counsel ineffectively cross-examined State's witness Freemon Brown

concerning his in-court identification of Applicant. The allegation is without merit.

Applicant again failed to demonstrate how counsel's examination was deficient. During cross-examination, counsel elicited testimony wherein Brown admitted he had not identified Applicant prior to the in-court identification. Counsel also impeached Brown concerning prior convictions for fraudulent checks. Finally, counsel effectively questioned Brown concerning his alleged "photographic" memory. The allegation is denied.

#### C.

Applicant alleges counsel was ineffective in his cross-examination of State's witness Cheryl Woods. Specifically, Applicant claims counsel should have noted that Ms. Woods identified the armed robber as having acne scars, whereas Applicant does not. The allegation is without merit.

During his cross-examination, counsel confirmed that Ms. Woods had identified the armed robber as having acne scars. Tr. p. 95. During closing argument, counsel also noted the composite created from of Ms. Woods' description bore no resemblance to Applicant. Tr. p. 188. Although counsel did not specifically argue about the lack acne scars, Applicant was not prejudiced. There is not a reasonable probability the outcome of the trial would have changed, had such an argument been made. Despite Applicant's belief to the contrary, the evidence against him was overwhelming (Applicant was identified by three separate witnesses). Accordingly, the allegation is denied.

#### D.

Applicant alleges he received ineffective assistance because counsel did not move to strike a juror (John Blincow) who knew some of the employees within the solicitor's office. The

*[Handwritten signature]*  
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allegation is without merit. Any claim claim of prejudice to the case because of the juror's familiarity with some employees within the solicitor's office is pure speculation.

E.

At the conclusion of his armed robbery trial, pursuant to his conviction for a second "most serious" offense, Applicant was sentenced to life in prison . Applicant alleges this sentence is in violation of the ex post facto clause because the conviction for his first "most serious" offense occurred in 1988, prior to the current law. The allegation is without merit.

It is not a violation of the ex post facto clause for the legislature to enhance punishment for a later offense based on a prior conviction, even though the enhancement provision was not in effect at the time of the prior offense. Sullivan v. State, 331 S.C. 479, 504 S.E.2d 110 (1998); Phillips v. State, 331 S.C. 482, 504 S.E.2d 111 (1998).

F.

This Court finds Applicant's 1997 PCR application (97-CP-10-2086), collaterally attacking his 1988 armed robbery conviction (87-GS-10-3362) is barred by the statute of limitations. S.C. Code Ann. § 17-27-45(a). Applicant was convicted on January 28, 1988; however, he filed his application on April 2, 1997, well after the July 1, 1996, statute of limitations passed. See, Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Accordingly, the application is denied.

G.

Applicant alleges counsel was ineffective for failing to introduce evidence of Applicant's legal blindness. The allegation is without merit. First, Applicant provided no proof of his claim. Second, there is not a reasonable probability the outcome of the trial would have changed, had the

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evidence been presented.

H.

Applicant claims the South Carolina Department of Corrections is in violation Article XII, § 2 of the South Carolina Constitution, because it is not rehabilitating Applicant. This Court finds the allegation is not cognizable at PCR. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000)(Credits-related issues and other conditions of imprisonment are administrative matters and, thus, cannot be raised in a postconviction relief (PCR) proceeding).

this is  
the  
challenged  
issue

## 2. All Other Allegations

As to any and all allegations which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any evidence regarding such allegations. Therefore, they are hereby denied and dismissed.

## D. CONCLUSION

This Court finds the Applicant's allegations are unsubstantiated by the record or the testimony presented. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that if he chooses to appeal, he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for appropriate procedures to follow after notice of intent to appeal has been timely filed.

16-17

THEREFORE, IT IS ORDERED:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. The Applicant is remanded to the custody of the Respondent.

IT IS SO ORDERED this 10<sup>th</sup> day of October, 2000.

  
H. DEAN HALL  
Presiding Judge  
Ninth Judicial Circuit

Anderson, South Carolina.

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Quintin Linen #238553  
Lieber Correctional Inst.  
P.O. Box 205 (A-B27)  
Ridgeville, S.C. 29472

November 02, 2000

Honorable Julie Armstrong  
Clerk of Court (GS & CP)  
2144 Melbourne Avenue  
North Charleston, 29405

FILED  
2000 NOV -7 PM 4:45  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

RE: Pro-Se Motion to Alter, or Amend Judgement [Rule 59(e)  
S.CR. CP]

Dear Ms. Armstrong,

Enclosed, please find for filing, the original plus two (2) copies of the Applicant's Motion to Alter, or Amend Judgement [Rule 59(e), S.CR.CP.], and Certificate of Service, showing service upon Respondents.

By copy of this letter, the Applicant requests that his counsel of records, Ms. Juan Tolley, be relieved of her duties as Applicant's Counsel, and that the Applicant be allowed to move his case along Pro-Se.

Additionally, the Applicant reuests that you please send the extra copy of this letter, and Motion, stamped-clocked in to me for my record keeping in the self-addressed stamped envelope.

Thank you in advance for your diligence and consideration in this matter.

Respectfully Submitted,

*Quintin Linen #238553*  
Quintin Linen #238553

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
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IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

318

Quintin Linen #238553 )  
Applicant )

98-CP-10-5031

-VS-

State of South Carolina )  
Respondent )

MOTION TO ALTER OR AMEND  
JUDGEMENT [Rule 59(e), S.C.R.]

BY

JULIE J. HARRIS  
CLERK OF COURT

2000 NOV - 7 PM 4:45

FILED

Applicant moves for an order pro-se, pursuant to Rule 59(e) South-Carolina-Rules-of-Civil-Procedures, that the Court reconsiders, alter and amend its Order of Dismissal filed here in on May 22, 2000. ( A certified copy of which was transmitted to the undersigned by the Clerk of Court on October 26, 2000 and recieved October 30, 2000), in the following particulars, and upon the following grounds:

1.) That the Court misapprehended, and misapplied the decision in Al-Shabazz -v- State, Op. No. 24995 (S.C.S.Ct. filed August 23, 1999). This is not a "Condition of Confinement" case; Applicant's, petition articulates a constitutional challenge.

(A). Al-Shabazz -v- State, supra, purports to clarify, and bring finality "to this confused area of the law", by holding that inmate claims involving issues of sentence duration, quality of prison life, imposition of inmate disciplinary sanctions, erroneous sentence calculations, sentence related credits, custody status, and other administrative matters, are not cognizable under the South Carolina Uniform Post-Conviction Procedures Act (Sect. 17-27-20, et seq.), but are reviewable under the South Carolina Administrative Procedures Act. (Sect. 17-23-310 et seq.)

(B). However, Applicant claim here is in no way "Administrative". It is constitutional, and thereby it is cognizable under Code & Section 17-27-20(A). (1): "Any person who has been convicted of, or sentenced for, a crime, and who claims.... that the conviction, or the sentence was in violation of the constitution of the United States; or the constitution or laws of this state....

may institute.... a proceeding under this chapter to secure relief". 319

(C) Applicant's constitutional attack is alledged, and he attempted to argue it before the P.C.R. Judge, as follows:

(1). The Constitution of South Carolina provides in Article 12 Section 2; "The General assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates. This constitutional provision mandate that the General Assembly "shall" provide for rehabilitation of inmates.

(2). Because South Carolina statutes deny to certain prisoners, including Applicant, the opportunity for rehabilitation, and to participate in rehabilitative programs, Applicant was unconstitutionally sentenced, and he is presently unconstitutionally confined.

These are a listing of several various statutes denying the Applicant of rehabilitative opportunities: Sect. 24-13-125 (Additional restrictions on access to work release by violent offenders); 16-1-60 (the consequences is to deny access to rehabilitation programs, that are not permitted to "violent offenders"); 24-1-140 (permits the Director of the S.C.D.C. to classify, and re-classify inmates, without regard to their individual rehabilitative needs); 24-3-20 (allows the Director of the S.C.D.C. unbridled discretion to deny Work release, and community-based programs to certain inmates without legislatively set criteria, invites arbitrary application); 24-13-610 (provides for extended work release; repealed by the General Assembly); Section 24-21-610 through 640 (Parole provisions, effectively denies "violent offenders" the opportunity for parole because of the unbridled discretion given to parole board members, who have no qualification to serve); Section 24-13-710, and 720 (provides for Supervised Furlough. Violent Offenders are not eligible.) All of the cited statutes are "rehabilitative" in nature.

(3). Because the condition of confinement in the Department of Corrections violated the State and Federal Constitutions, at the time of the Applicant's sentencing, the resulting sentence was unconstitutional. In other words, the trial court sentenced Applicant to serve at institutions where contrary to constitutional mandate, there was no rehabilitation of inmates available.

(4). Because the Applicant was unconstitutionally sentenced, and is unconstitutionally confined, his claim is cognizable under Sect. 17-27-20 (A) (1). It is certainly not an "Administrative" matter, such as is discussed in the Al-Shabazz case (Supra).

(2). The Court's dismissal of Applicant's constitutional claim, on oral motion of the State was improper.

At the hearing on May 22, 2000, this Court did not hear the Applicant's testimony, or that of witnesses, nor would the Court proffer the expected evidence relating to his constitutional claims, supporting the argumnts that the statutory complex discussed in item #2, cast chilling effects upon the abilities of the S.C.D.C. to rehabilitate Applicant, or persons in Applicant's position, similarly situated.

Summary dismissal without a hearing is appropriate only when (1) It is apparent on the face of the Application that there is no nee for a hearing to develop any facts, and (2) the Applicant is not entitled to relief. South Carolina Code Section 17-27-70 (b), and (c). When considering the State's Motion for Dismissal of Applicant are true and view those facts in the light most favorable to the Applicant. CF. Stiles -v- Onorto, 318 S.C. 297, 457 S.E. 2d 601 (1995).

That the Court misapplied the legislative intent of statute 17-25-45 (C) (1). By retroactively classifying a 1988 Armed Robbery Conviction as a "most serious" offense, which encroached upon State and Federal Constitutional protection by aggravating the offense making it worse than at the time the offense was committed.

Accordingly, this Court should set aside its Order, and grant to the Applicant a full hearing on the merits.

Conclusion

For the reasons argued, Applicant requests, and prays ;  
that this Court will set aside its Order filed here in on  
October 12, 2009 and provide the Applicant with a full evidentiary  
hearing, because his allegations are clearly "constitutional",  
and not "administrative", and because the dismissal of the  
constitutional allegations was improvidently granted.

Respectfully Submitted,

*Quintin Linen* #238553

Quintin Linen #238553  
Lieber Correctional Inst.  
P.O. Box 205 (Edisto B-13)  
Ridgeville S.C. 29472

Charleston, South Carolina  
November 02, 2000

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Quinton Linen, #238553, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS

Case No.: 98-CP-10-5031

ORDER

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2002 JUL 30 PM 2:46

FILED

Quinton Linen has filed a motion to alter or amend the Order of Dismissal issued by Judge Dean Hall on October 10, 2000. In his motion, Linen challenges the validity of his conviction for Armed Robbery (97-GS-10-0926) as well as his sentence of life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 (2000).

Applicant contends that his motion should be granted because (1) the South Carolina Department of Corrections is not rehabilitating him; (2) he received ineffective assistance of counsel; (3) he was never served with notice that the State was seeking life without the possibility of parole; and (4) the indictment was never properly filed with the Clerk of Court. For the following reasons, this court denies the motion.

#### Background and Findings of Fact

This matter comes before this Court by the Applicant's pro se Rule 59(e) motion to reconsider, alter or amend the Order of Dismissal issued by

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the Honorable H. Dean Hall dated October 10, 2000 and filed October 12, 2000. The matter had been heard on May 22, 2000, at which time the Applicant was present and represented by Juan Tolley of the Charleston County Bar. Matthew McGuire of the Attorney General's Office represented the Respondents.<sup>1</sup> At that time, the court heard testimony from Mr. Linen and Guy Vitetta.

After the judgment was entered on October 12, 2000, Linen made a pro se motion to alter or amend filed November 7, 2000 and a motion to have counsel relieved. In the November 7, 2000 motion, Linen asserted that Judge Hall misapplied the decision of *Al-Shabazz v. State*, 338 S.C. 364, 527 S.E.2d 742 (2000) because the matters at issue in the post-conviction relief action do not relate to "conditions of confinement" or "administrative" matters, but instead relate to constitutional matters. He re-asserts that he has been denied rehabilitation opportunities in the South Carolina Department of Corrections, which is a violation of Article 12, § 2 of the South Carolina Constitution. The Applicant contends numerous statutes passed by the General Assembly deny him rehabilitative opportunities, citing §§ 24-13-125, 16-1-60, 24-1-140, 24-3-20, 24-13-610, 24-21-610, 24-13-710, and 24-13-720. He also re-asserts that because the conditions of confinement violate both the State and Federal Constitutions, his sentence was unconstitutional. As a result, Linen asserts that he is unconstitutionally

<sup>1</sup> The Respondents provided this Court with a copy of the transcript of the May 22, 2000 post-conviction relief hearing.

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confined and that his claim is therefore cognizable under § 17-27-20(A)(1) and should not have been dismissed under *Al-Shabazz*, supra.

Applicant stated that the court's dismissal was improper because the court would not hear testimony or allow a proffer of these claims. He further asserted that Judge Hall misapplied § 17-25-45(C)(1) by classifying a 1988 armed robbery as a "most serious" offense. He asserted that this made the crime worse than it was at the time the crime was committed.

After the motion was filed, Judge Hall retired from the circuit court, and the Applicant was appointed new counsel, Ellen Howard. Howard determined that the Rule 59 motion was still pending and brought the matter to the attention of this court and current counsel for the Respondent. Apparently, the parties attempted to bring it up during PCR proceedings before Judge R. Markley Dennis, but were advised that it needed to be presented to the Chief Administrative Judge due the retirement of Judge Hall. Pursuant to Rule 63, SCRPC, this court now has authority to resolve this issue because this court is in the same jurisdiction where the action was tried and because Judge Hall "is unable to perform the duties to be performed by the court." See also, *Ness v. Eckard Corp.*, 2002 WL 1396739 (S.C.App. 2002).

On February 15, 2002, at the Ninth Circuit Post-Conviction Relief Status Conferences, this matter was presented to the court. Applicant was present and represented by Ms. Howard. Also, Juan Tolley was present. The

3/19/02

Respondent was represented by Donald J. Zelenka of the Attorney General's Office.

At the outset of the proceeding, Howard requested that the Court enter an Order granting relief pursuant to Rule 59 and to reconsider the findings of Judge Hall in the following matters:

1. Order of Dismissal § H, p. 6: A claim that the South Carolina Department of Corrections is in violation of Article XII, § 2 of the South Carolina Constitution because it is not rehabilitating Applicant [raised in the written motion].
2. Order of Dismissal § G, p. 5-6: A claim that counsel was ineffective for failing to introduce evidence of Applicant's legal blindness. [newly raised on February 15, 2002].

Also, for the first time at the hearing on February 15, 2002, applicant asserted that there was a lack of subject-matter jurisdiction to sentence him to life without parole. He asserted the following:

3. The State never served notice that it seeking life without parole as required by S.C. Code § 17-25-45(H); and
4. The indictment was never properly filed with the court as required by S.C. Rule of Criminal Procedure, Rule 3(c).

This Court heard arguments at the time of the hearing from counsel and allowed submission of proposed orders. This court now denies the relief requested pursuant to S.C. Rule of Civil Procedure, Rule 59.

A review of the records, including the transcript of the trial of April 7-8, 1997 and the transcript of the state post-conviction relief hearing reveal the following pertinent information.

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Applicant, Quinton Linen, #238553, was indicted by the Court of General Sessions for Charleston County, and the court entered a "TRUE BILL" on February 4, 1997 for armed robbery on 97-GS-10-0926. Guy Vitetta testified that he received notice of state's intent to seek a life sentence on February 7, 1997. PCR Hearing Tr. p. 30, ll. 15-22. See also, PCR Tr. p. 31, ll. 4-9.<sup>2</sup> Prior to the trial, applicant filed an application for Post-Conviction Relief (Linen v. State, 97-CP-10-2086), challenging his 1988 conviction for armed robbery. At trial, before the Honorable Charles W. Whetstone, Jr., Vitetta advised the court that the PCR was filed to challenge the prior conviction that would enhance the penalty in this case to life imprisonment. Applicant asked to continue the matter until the pending PCR was resolved. Trial Tr. p. 26.

After applicant was convicted, he made a motion challenging the constitutionality of § 17-25-45, which provided a mandatory penalty of life without parole. He first asserted that the statute violated separation of powers because it does not permit judicial discretion. Trial Tr. p. 212. Secondly, applicant asserted an ex post facto prohibition because he is disadvantaged from his 1988 guilty plea, which is now enhanced due to the new law. Thirdly, he contended the statute constituted cruel and unusual punishment because his only option for release was under the geriatric

<sup>2</sup> Subsequent to the Rule 59 Hearing, the Respondent's counsel provided this Court and counsel Howard with a written "Notice of Intention To Seek A Sentence Of Life Without Parole" filed with the Clerk of Court and dated March 14, 1997 to Quinton Linen and Guy Vitetta. It included an acknowledgment of service and copies retained by Guy Vitetta on March 14, 1997.

5/19/97

provision. Under that provision, applicant could theoretically be released after he serves over thirty (30) years and is 65 years old, since he is 31 now. He asserted that serving over half his life would be cruel and unusual punishment. Trial Tr. p. 213. Judge Whetstone denied the motion to quash the mandatory life sentence, finding (1) applicant was subject to the enhancement provisions since they were in effect when this crime was committed, (2) there is no ex post facto violation, and (3) it was not cruel and unusual, but an appropriate punishment. Trial Tr. p. 213-14.

Next, applicant moved to require the prosecution to prove that he was convicted a prior time beyond a reasonable doubt. Trial Tr. p. 214. The trial court, upon reviewing Section F of the statute, held that proof of the prior conviction record by a certified copy complied with the statute. The trial court found that applicant's prior offense was "armed robbery," that it was a "most serious offense," and that his current conviction of armed robbery is his second offense, which makes him subject to a mandatory life sentence. Trial Tr. p. 216-17.

Applicant next argued that his prior 1988 conviction was unconstitutional, claiming that he was denied effective assistance of counsel and that his guilty plea was not knowingly entered. He requested that if the court finds he was denied effective assistance of counsel to disregard the conviction and sentence him as a first offender. Trial Tr. p. 218-19. The court denied the request, noting that it would be litigated in the PCR action. App. p. 219-220. The prosecution proffered the certified record of the

*To argue that the legal proceedings were not for assistance, after*

*for denial*

5/19/02

January 29, 1988 conviction to armed robbery as well as the twelve (12) year sentence. The trial judge, after providing allocution to the Applicant, sentenced him to life imprisonment pursuant to § 17-25-45. The trial judge specifically found that applicant had a prior armed robbery conviction in 1988 and that he should be sentenced to life imprisonment. Trial Tr. p. 221-22.

### Analysis

#### 1. Article XII, Section 2, State Constitution Claim

In his original post-conviction relief application, applicant argued that the manner in which the state proscribed his sentence be carried out is unconstitutional. However, he did not make this objection at trial. Applicant testified, in the May 22, 2000 PCR hearing, that the South Carolina Department of Correction's treatment of prisoners violated Article 12 because it was not rehabilitating him. He asserted that it was his understanding that this issue was pending before the Supreme Court in *Wright v. State* under Article 12. PCR Tr. p. 12, ll. 7-21. Judge Hall, in denying relief, addressed this issue as follows:

Applicant claims the South Carolina Department of Corrections is in violation of Article XII, § 2 of the South Carolina Constitution, because it is not rehabilitating Applicant. This Court finds the allegation is not cognizable at PCR. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (credits-related issues and other conditions of imprisonment are administrative matters and, thus, cannot be raised in a post-conviction relief (PCR) proceeding).

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Order of October 12, 2000, p. 6.

The Applicant asserts that the PCR Court misapplied *Al-Shabazz* because the issue of rehabilitation is not a condition of confinement nor an administrative matter, but a state constitutional requirement. He contends that the failure to provide services for the rehabilitation of an inmate falls squarely within issues subject to review under S.C. Code, § 17-27-20(a)(5); "he is otherwise unlawfully held in custody or other restraint."

This matter comes before this Court by a Rule 59(e) motion. In *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992), the Court stated that the purpose of a Rule 59(e) motion is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." *Budinich v. Becton Dickinson*, 486 U.S. 198, 200 (1988). The Court in *Arnold* concluded that after a full hearing and decision on the merits, the court was correct to deny a Rule 59 motion that sought to add new grounds and claims for post-conviction relief. However, where an issue was raised before the trial court, but not ruled upon, the court has held that a plaintiff should have moved to amend the judgment to preserve the issue for an appeal. *Talley v. South Carolina Department of Higher Education*, 289 S.C. 483, 347 S.E.2d 99 (1986). Further, it has been held that the proper procedure for correcting factual errors in an order is a Rule 59 motion. *Doe v. Doe*, 478 S.E.2d 864 (S.C. App. 1996). A party cannot use Rule 59(e) to present an issue to the trial court that the party could have raised prior to judgment but did not. *Crary v. Djebelli*, 467 S.E.2d 128 (S.C. App. 1995).

8/14/02

The Court in *Al-Shabazz* held that an inmate may raise credit issues or conditions of imprisonment under the Administrative Procedures Act and not through the Uniform Post-Conviction Relief Act. Stated a different way, the Court held that "aside from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence as authorized by § 17-27-20(a). See *Kerr v. State*, 345 S.C. 183, 185, 547 S.E.2d 494, 495 (2001). As stated in *Al-Shabazz*, a claim regarding sentence-related credits or other condition of imprisonment does not fall into the category for permissible PCR claims. "A successful claim, while it may affect the duration of the sentence or the quality of life in prison, will not affect the validity of the underlying conviction or sentence." *Al-Shabazz*, 338 S.C. at 367-68. (Emphasis added).

Article XII, § 2 provides that "[t]he General Assembly shall establish institutions for the confinement of all persons convicted of crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education and rehabilitation of the inmates."

The Supreme Court, however, in *McLamore v. State*, 257 S.C. 413, 186 S.E.2d 250 (1972) held that there was no state constitutional duty imposed on any governmental entity to educate or rehabilitate prisoners.

At the hearing, applicant noted that the issue that he sought to pursue was being raised in the South Carolina Supreme Court in the appeal matter in *Darryl L. Wright v. State*, [1994-CP-10-3434]. This Court takes judicial

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notice of the records of the Clerk of Court that on August 29, 2001, the Supreme Court entered an Order in Wright v. State which stated the following:

The petition for a writ of certiorari is denied. However, we hereby vacate the PCR court's finding of subject matter jurisdiction to address the conditions of Petitioner's confinement and the portions of the PCR court's order involving the merits of those issues. *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999).

Darryl L. Wright v. State of South Carolina, Order (S.C.S.Ct. August 29, 2001)(filed October 15, 2001 in Wright v. State, 94-CP-10-3434).

This Court denies the request to alter or amend the Order of Judge Hall related to this issue. There is no jurisdiction in a PCR proceeding to address the issue of whether the Department of Corrections has a specific duty under Article XII, § 2 to rehabilitate applicant during the service of his life without parole sentence. *Al-Shabazz*, supra. This issue does not fall within the PCR act since the claim may affect the quality of life in prison, but not affect the validity of the underlying conviction or sentence.

## 2. Applicant's Legal Blindness

In this claim, raised for the first time at the argument on the general motion, applicant contends that Judge Hall erred in his findings because there was evidence available to support applicant's blindness claim that was not presented at his PCR hearing with a claim that he was "legally blind."

Judge Hall made the following findings and conclusions:

Applicant alleges counsel was ineffective for failing to introduce evidence of Applicant's legal blindness. The

10/19/02

allegation is without merit. First, Applicant provided no proof of his claim. Second, there is not a reasonable probability the outcome of the trial would have changed, had the evidence been presented.

Order, p. 6-7.

Applicant testified at the PCR hearing that his trial counsel had a letter from his doctor relating to his vision, but did not use it at trial. Tr. p. 10-11. He also testified that he did not have the documentation that he was legally blind with him at the hearing, asserting that his trial counsel, Guy Vitetta, had the letter and never gave it back to them. PCR Hearing Tr. p. 22.

Vitetta specifically denied at the PCR hearing that he had been given information that Linen was legally blind. PCR Tr. p. 27, ll. 22-24. However, counsel admitted that he had gone to the doctor with applicant and had information about his vision. PCR Tr. p. 33, ll. 18-20.

Applicant asserts in his Rule 59 motion that he assumed trial counsel would have presented the document at the hearing, but counsel was unable to find it. He now asserts that had Vitetta independently secured proof of his vision problems through MUSC, the results of the proceedings at trial would have been different.

At trial, Keith Brown testified that he had been the manager at McDonald's and that applicant had been his maintenance manager. Trial Tr. p. 120. He described the primary tasks applicant did including upkeep of the freezers, changing light bulbs, mopping floors, and cutting grass. When Brown was asked whether applicant wore glasses when he worked for him,

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Vitetta objected claiming the answer was "irrelevant." Tr. p. 120, ll. 23-25. Brown stated when Linen first came in to work he wore glasses. He said he would not have hired someone who could not see to do these particular tasks, but it was possible someone could mow grass without seeing. Tr. p. 121.

The Applicant now presents a document that he asserts reveals his vision problems. However, he has failed to show that this is the document that trial counsel had or how this information would have created Sixth Amendment prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). That case requires a showing that but for counsel's deficient performance, there is a reasonable probability that the result of the trial would have been different. The record revealed that applicant had been employed up to September 30 at the McDonald's across the street from Budget Check Cashing where the robbery occurred on October 28, 1996. Brown testified that applicant was able to see to complete numerous clean up chores at the restaurant.

The PCR court correctly held, based upon available evidence or lack of it, that there was no proof that trial counsel possessed the information that applicant was legally blind. In fact, counsel specifically denied it. Further, applicant has failed to show error in the finding that there was not a reasonable probability that the result would have changed. The record reveals that applicant was identified as a previous customer at Budget Check Cashing because he played video poker. On the night of the incident, three

12/19/96

people at the scene identified him as the perpetrator by photographs and then in court. (Cheryl Wood, Benita Brown, Freeman Brown). The Applicant, by the belated presentation of evidence after entry of the original judgment, has failed to show any entitlement to present this matter as "after discovered evidence." See *Arnold v. State*, supra. Assuming arguendo that new, but admittedly previously available evidence can be presented in a Rule 59(a) proceeding, this document does not, standing alone, prove prejudice under *Strickland*. For these alternative reasons, this portion of the motion must be denied.

### 3. Subject-matter jurisdiction - Life without parole sentence

In applicant's new claim, raised for the first time at the Rule 59(a) hearing, he argues that the trial court lacked jurisdiction to sentence him to life without parole under § 17-27-45(H) because he was not personally served with notice. Applicant claims that this is a matter of subject-matter jurisdiction that can be raised at any time.

The Applicant now contends for the first time he was never served with the required notice pursuant to § 17-25-45(h) and, since he was not served, the court never acquired subject-matter jurisdiction.

Section 17-25-45(H) states:

Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and the defendant's counsel not less than ten days before trial.

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Vitetta testified at the original PCR hearing that he received notice on February 7, 1997 of the state's intent to seek life without parole. PCR Hearing Tr. p. 30, ll. 15-22. He also agreed that Liren got written notice that he was going to be tried under the law in February. PCR Hearing Tr. p. 31, ll. 4-9. This information was developed at the PCR hearing by the Applicant's PCR counsel, Juan Tolley.<sup>3</sup>

Contrary to the assertions, the record is uncontradicted that the Applicant received notice as required under § 17-25-45(H) in February 1997, well before his April 7, 1997 trial. Therefore, on the basis of the record before this Court he has failed to show that he did not receive notice.

Applicant's reliance upon *State v. Rackley*, 275 S.C. 402, 272 S.E.2d 33 (1980) is misplaced. In *Rackley*, the issue was whether a murder defendant was entitled to an extra day prior to trial because the indictment had not been delivered. The Court therein held that she was not entitled to the extra day because the case was not a capital offense because the state had already lost its capital case identity.

Here, however, it is undisputed in the PCR record that since February 1997 (or at least March 14, 1997) the state had expressed to the defense in writing its intent to seek the life without parole punishment and there was no

<sup>3</sup> As stated above, the Court was provided records from the Clerk of Court that a Notice of Intention to Seek Life Without Parole was served and filed in the Clerk's office on March 14, 1997. Counsel Guy Vitetta acknowledged receipt of the written notice on March 14, 1997. However, since this matter was not an issue in the original PCR application or hearing, the record does not reflect a reason for these discrepancies in the dates.

14/19 Y

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issue raised at trial for at least ten more days to prepare for the possible punishment due to any lack of notice, written or otherwise.

In *State v. Johnston*, 333 S.C. 459, 510 S.E.2d 423 (1999), the Supreme Court held that a challenge to a sentence exceeding a statutory maximum did not involve a question of the trial court's subject-matter jurisdiction. The applicant seeks to assert for the first time in a Rule 59(e) proceeding that the LWOP sentence exceeded the statutory maximum for armed robbery. Since the claim does not assert a claim of subject-matter jurisdiction it had to be raised, if at all, at trial, as a free-standing claim. In the alternative, applicant could have raised the issue in the pre-judgment PCR action as a claim of ineffective assistance of counsel for failing to object to the sentencing on this particular ground. Applicant failed to raise this claim timely in either circumstance. Under *Arnold*, he cannot use a Rule 59 motion to amend his original action and raise claims that could or should have been raised in the original action. The motion must be denied.

The court further notes that the Rule 59 proceeding was inappropriate to receive new evidence on new claims not previously raised before judgment. The purpose of Rule 59(e) is for the court to reconsider matters properly encompassed in the pleadings, *Arnold*, supra, and to begin the litigation anew. Applicant's request, for the numerous reasons set forth above must be denied.

In *State v. Washington*, 338 S.C. 392, 526 S.E.2d 709 (2000), the Court held that the notice provisions of § 17-25-45(H) were satisfied when the defendant had been given written notice of the state's intent to seek life without parole sentencing on an earlier indictment. However, the defendant was re-indicted, and new notice was not sent upon the new indictment. The Court found that the state was not precluded from applying § 17-25-45 because even without the second notice, defendant had actual notice that the state would be seeking life without parole. "This Court has found that under such notice statutes, the law only requires actual notice." *Id.* In *State v. Johnson*, 347 S.C. 67, 552 S.E.2d 339 (S.C. Ct.App. 2001), the court held that the plea judge properly denied life without parole sentencing where the state had not provided written notice to the defense counsel.

This court recognizes that this new claim has not been presented to the state post-conviction relief court. It is beyond the purview of a Rule 59(e) motion to allow for a new claim, create an amendment, and resolve a factual dispute. As stated, since it is not a matter of subject matter jurisdiction, it could have been raised before Judge Hall. The failure to do so prevents this Court from re-opening the matter to litigate matters not at issue in the original proceedings.

#### 4. Compliance with S.C. Rule Crim. Proc. 3(c)

At the Rule 59(e) hearing, applicant argued that respondent did not comply with South Carolina Rule of Criminal Procedure, Rule 3(c) and that

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the alleged failure to comply divests the court of jurisdiction. In its pertinent part, Rule 3 states:

(c) Action on Warrant. Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court.

It is undisputed that Lihen was indicted on February 4, 1997 on Indictment 97-GS-10-0926. Subject-matter jurisdiction of the court is created by the actual indictment. See, *State v. Beachum*, 288 S.C. 325, 342 S.E.2d 597 (1986), S.C. Code § 17-19-10 (1976). Therefore, the trial court had subject-matter jurisdiction on the armed robbery conviction.

The Applicant's reliance upon Rule 3(c) to assert that subject-matter jurisdiction did not exist is in error. In *State v. Culbreath*, 282 S.C. 38, 316 S.E.2d 681 (1984), the court held that compliance with then Rule 95 (now Rule 3) is an administrative rule for the purpose of insuring an orderly and prompt disposition of cases, and the rule is not jurisdictional. The court stated that a failure to comply with Rule 95 did not invalidate or prevent a subsequent prosecution. *Id.*

This court finds that this issue is inappropriate for two reasons. First, applicant did not raise this issue in the application for post-conviction relief or during the hearing. Since Rule 59(e) is solely for the purpose of

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reconsidering properly presented issues, and not starting new litigation and issues, the request must be denied. *See Arnold v. State*, supra.

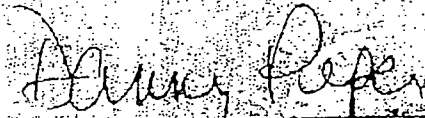
Second, applicant's allegation that respondent failed to comply with Rule 3(c) does not state a cognizable claim of a lack of subject-matter jurisdiction because there was an indictment and a true bill on February 4, 1997, prior to trial. The allegation is that the indictment had not been "filed" prior to its presentment to the Grand Jury, which does not relate to subject-matter jurisdiction.

A presumption of regularity attaches to proceedings in the Court of General Sessions. *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). Absent evidence to the contrary, the courts will presume that a properly returned indictment is valid. "Thus, if the record does not reveal any irregularity in the proceedings affecting the indictment, this Court must presume the trial court had subject-matter jurisdiction." *State v. James*, 321 S.C. 75, 79, 472 S.E.2d 38, 40 (Cl. App. 1996). Since there was no irregularity alleged affecting the indictment, this issue is not appropriate for a Rule 59 motion. It is also denied.

#### Conclusion

For each of the foregoing reasons, the Applicant's request to alter or amend judgment must be denied.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Danny Pieper, Presiding Judge

18/1/98  
ATTORNEY AT LAW  
JULIE A. ROSTON (REAL)  
CLERK, C.P. & C.T.  
By   
DEPUTY CLERK

Charleston, South Carolina

July 20, 2002

Attorney for Applicant - Ellen Howard  
Attorney for Respondent - Donald J. Zelenka  
Court Reporter - Holly Blott

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO CHARLESTON COUNTY  
DANIEL F. PIEPER, CIRCUIT COURT JUDGE

---

QUINTON LINEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

JOHNSON PETITION FOR WRIT OF CERTIORARI

---

ELEANOR DUFFY CLEARY  
Assistant Appellate Defender

South Carolina Office  
of Appellate Defense  
1122 Lady Street, Suite 940  
Columbia, S. C. 29201  
(803) 734-1330

ATTORNEY FOR PETITIONER.

## INDEX

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QUESTION PRESENTED

Whether the post-conviction relief court erred in finding that trial counsel was not ineffective for failing to effectively cross-examine the state's identification witnesses?

STATEMENT OF CASE

Petitioner Quinton Linen was indicted by the Charleston County grand jury in February 1997 for armed robbery. App. pp. 395-396. The Honorable Charles W. Whetstone, Jr. presided over a jury trial on April 7 and 8, 1997. Peter Beck represented the state and Guy Vitetta represented petitioner. App. p. 1. Petitioner was found guilty and sentenced to life without parole, based on a prior armed robbery conviction. App. p. 394, 413-414.

The Court of Appeals affirmed his conviction and sentence by unpublished opinion filed October 6, 1998. App. pp. 246-247. Petitioner filed an application for post-conviction relief on December 31, 1998 in which he alleged ineffective assistance of counsel and after discovered evidence. App. pp. 248-264. The state filed its return on May 6, 1999. App. pp. 265-267.

The Honorable Dean Hall convened an evidentiary hearing on May 22, 2000. Matthew McGuire represented the state and Juan Tolley represented petitioner. App. p. 268. Judge Hall denied and dismissed the application by written order filed October 12, 2000. App. pp. 310-316. Petitioner filed a *pro se* motion to amend or alter judgment on November 7, 2000. App. pp. 318-321. Petitioner filed another application for PCR on March 16, 2001. The state filed a return and motion to dismiss as successive on June 14, 2001. App. pp. 322-344. Petitioner withdrew the second application and the parties agreed to conduct a hearing on the *pro se* motion that had not been ruled upon. App. p. 345.

The Honorable Daniel F. Pieper convened a hearing on February 15, 2002. Ellen Howard represented petitioner and Donald J. Zelenka represented the state. App. p. 346. By written order, Judge Pieper denied the motion to alter or amend Judge Hall's order on July 30, 2002. App. pp. 374-392.

This petition follows.

ARGUMENT

Trial counsel was ineffective for failing to effectively cross-examine the state's identification witnesses.

To establish a claim of ineffective assistance of trial counsel the defendant must first show that counsel's performance was deficient, and second, the deficient performance prejudiced the defense. This "requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). To show deficiency, a post conviction relief applicant must prove trial counsel failed to render reasonably effective assistance "under prevailing professional norms." Strickland, 466 U.S. at 688, 104 S.Ct at 2065.

Here, petitioner was convicted of armed robbery on the testimony of three identification witnesses. Their testimony was crucial to the state's case. Trial counsel failed to sufficiently cross-examine these witnesses to show inconsistencies in their testimony. Since their testimony was the only basis of his conviction, petitioner has shown he was prejudiced by the inadequate cross-examination of these witnesses.

CONCLUSION

Based on the foregoing, petitioner is entitled to a new trial.

Respectfully submitted,

Eleanor Duffy Cleary

Eleanor Duffy Cleary  
Assistant Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of August, 2003.



STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO CHARLESTON COUNTY  
DANIEL F. PIEPER, CIRCUIT COURT JUDGE

---

QUINTON LINEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

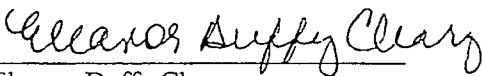
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Counsel for Quinton Linen states:

1. She is Assistant Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on Feb. 15, 2002. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Quinton Linen.

Respectfully submitted,

  
Eleanor Duffy Cleary  
Assistant Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of August, 2003

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO CHARLESTON COUNTY  
DANIEL F. PIEPER, CIRCUIT COURT JUDGE

---

QUINTON LINEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

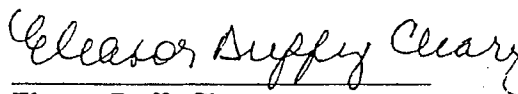
RESPONDENT

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CERTIFICATE OF SERVICE

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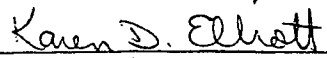
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Donald J. Zelenka, Esquire, and Quinton Linen, #238553, Lieber Correctional Institution, this 20th day of August, 2003.



Eleanor Duffy Cleary  
Assistant Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day  
of August, 2003.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

# The Supreme Court of South Carolina

Quinton Linen,

Petitioner,

v.

State of South Carolina,

Respondent.

---

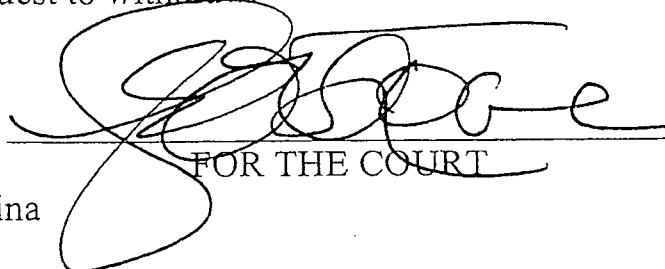
## ORDER

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This matter is before the Court on a petition for a writ of certiorari following the denial of petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw

 C. J.  
FOR THE COURT

Columbia, South Carolina

May 13, 2004



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

ATTORNEY

RECEIVED

ADM

PEN PENSION

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 1, 2004

## REMITTITUR

The Honorable Julie J. Armstrong  
100 Broad Street, Suite 106  
Charleston, SC 29401-2258

Re: Linen, Quinton v. State  
1998-CP-10-5031

Dear Ms. Armstrong:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Very truly yours,

CLERK

DES/klb

Enclosure

cc: (without enclosure)  
Assistant Appellate Defender Eleanor Duffy Cleary  
Mr. Quinton Linen, #238553  
Assistant Deputy Attorney General Donald J. Zelenka ✓

Application (9) nine pages long  
Evidence (6) pages long

322

Total 16 pages long Affidavits of over 100 victims

STATE OF SOUTH CAROLINA

County of Charleston

In the Court of Common Pleas

01-CP-10-999

Quintin L. Linn # 238553

Full name and prison number (if any) of Applicant.

State of S.C. ETAL vs. State of S.C.; SC  
Attorney General, SC Dept of Cor Director  
SC Bar Board and members in SC.

Name of Respondent  
Charleston County Bar Board and mem-  
bers, Charleston County Public Defenders  
Corp and Board, Charleston County Clerk  
of Court

APPLICATION FOR

POST-CONVICTION RELIEF

and or

59 E / 60 B motion and/or

Writ of Habeas Corpus

on Newly Discovered Evidence

### 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. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application 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.

- Place of detention Lieber Correctional Institution P.O. Box 205 Ashley B  
Ridgeville SC
- Name and location of Court which imposed sentence Charleston County General Sessions
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - 97-65-10-0926 Armed Robbery Life
  - 87-65-10-3362 Armed Robbery 12 yrs (76324)
  -
- The date upon which sentence was imposed and the terms of the sentence:
  - April 8<sup>th</sup>, 1997
  - Jan 28, 1988
  -

5. Check whether a finding of guilty was made
- (a) after a plea of guilty ☒ In 1988
- (b) after a plea of not guilty ☒ In 1997
- (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. SC Circuit Court Common Pleas 2 Times 98-CP-10-5031  
97-CP-10-2086
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Denied relief (Case was not lawfully litigated)
- ii. Denied relief (Case was not lawfully litigated)
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Oct 6<sup>th</sup> 1998
- ii. ?
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ?
- ii. ?
- iii. \_\_\_\_\_
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) Have no legal knowledge or abilities expected Counsel to do it
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See next Pages
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) See next Pages
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

This petitioner was illegally Tried by a S.C. Bar Court on April 8<sup>th</sup> 1998 not SC Circuit Court. This vigilante Court on a alleged Indictment 97-GS-10-0926 did impose illegally a null/Void life sentence. This is a illegal Fraud racketeering scheme of S.C. Solicitors and S.C. Bar members whom Jointly Conspired and Confederated to do it.

Alleged Indictment 97-GS-10-0926 was never Filed in any manner to legally lawfully conceive a case by its Formal Filing. My Counsel Guy Vitella Esq did deny me counsel and did aid the Solicitor illegally manufacture and use a Fraudulent, Forged, or Counterfeited document to Trial me on.

The Petitioner had a Direct Appeal State vs Linen 98-up-426 Filed Oct 6 1998 Affirming Conviction because S.C. Appellate Defense Office in its normal mode to harm litigants and aid the state, particular refusing to Address all available issues Failed to raise Subject matter Jurisdiction. "My Case never being Formally Filed and legally conceived.

The Petitioner Filed P.C.R. 98-CP-10-5031 dated Nov 12<sup>th</sup> 1998. The Counsel Afforded here again criminally concealed the issue. A habitual/repeated practice to aid State of S.C. maintain illegal convictions particular on Afro Americans as I. Rule 71.1(D) required any and all available issues be raised.

A hearing was held which amounted to a Farse/Sham just to Fulfill the states required by right hearing. Providing actually legal assistance amounting to Zero(0). The state Filed a Order to Dismiss Dated May 6<sup>th</sup> 1999 which concealed/Failed to Address matters Important to the Petitioner. Counsel was contacted to File a 59 E Motion. Juan Tolley Esq stated she would not aid the Petitioner therefore she aids the State by not Contesting its improper Order to Dismiss. I then Filed Pro Se a Motion 59 E on Nov 7<sup>th</sup> 2000 at 4:45 PM. Now the Court has refused to process it and Rule there fore denying me access to the Courts to remedy the States improper Motion to Dismiss which was granted by Order of Hon Dean Hall Oct 10<sup>th</sup> 2000. Mrs. Tolley did not respond to any letters I wrote or calls made by my family to her to aid therefore refusing me legal assistance and obstructing my use of the Courts. Since this P.C.R. it has been determined she also concealed my most viable ground for relief as this Application will now Address. For it was done also in 87-GS-10-3362 back when I was prosecuted then illegally by S.C. ETAL in a similar Fashion.

## Issue

9-A Denied lawful P.C.R. Procedures and Direct Appeal

Pursuit to rules, laws and State Constitutions after enduring a illegal Prosecution a repeated/Habitual S.C. ETAL practice

## Facts

10-A on the prior page (#3) I discussed my denial of a Direct Appeal and P.C.R. by State Afforded Counsels concealing my most important issue that the State Court lacked Jurisdiction to Trial me on the Fraudulent Solicitor Office Indictment which was never Filed in any manner to legally/Formally charge me. Two alleged hearings were held which amount to sham's because Facts were being concealed by S.C. Bar members seeking to aid the state not their client. Even to the Filing of a 59 E Motion to correct a improper state Filed document I was refused legal assistance as I endured prior to the hearing. State Bar member's repeatedly refuse to raise issue to protect one another from harm by their malpracticed means of practicing law in S.C. my next issue will cover fully how they don't even File their case and operated outside of S.C. Circuit Court Jurisdiction. Refuse to obey the law themselves. Intentionally causing illegally legal harm on unwary U.S. Citizens in S.C. which constitutes obstructing access to Federal rights and Courts by concealment of issues for relief. This is a targeting/Discriminatory Practice in S.C. Bar litigating and S.C. Courts.

## Issues

9-B Both my Convictions 97-GS-10-0926 and 87-GS-10-3362 were illegally imposed by a unlawful Form of S.C. Bar Court out of legal lawful Jurisdiction of S.C. Circuit Court.

9-C Denied Counsel by Criminally disfunctional Counsel aiding Solicitor to illegally Fraud Client with a Frauded Indictment  
at no time has any Counsel been honest and lawfully working for my best interest

9-D Racially Targeted and Discriminated against in illegal prosecution and denial of legal Counsel in a lawful manner in the initial prosecutions, Direct Appeal, P.C.R.'s and etc.



Newly Discovered evidence has surfaced which renders convictions in Case 87-GS-10-3362 and 97-GS-10-0926. Came to my knowledge February 2001. Its easily determined by persons knowing law but not a layman as I, Hugh Turbeville a victim of this repeated Habitual illegal Practice of S.C. and S.C. Bar began compiling conviction records and Statements of Fraudulent Indictments and I am a victim myself as the Cops of (3) Sworn Affidavits state I attach. The matter is a simple but serious Fraud being perpetrated on the Public by Solicitors and S.C. Bar members to Fraud/Extort rights and money from the Public because Case's were not legally conceived nor Formally Filed NO Jurisdiction of S.C. Circuit Court existed and actions by them are null/void. S.C. Bar Vigilante type courts do not have Jurisdiction/Authority to Prosecute/Trial/Plea/nor Impose Fines, sentences, or sanctions as has illegally occurred.

May the Court Acquire both my Indictments which were never Formally Filed by neither Clerk of Court nor a S.C. Circuit Judge who's to note on the Face having done so. Solicitors under Rule 6-C prior to Sept 1st 1988 and Rule 3-C after that of the rules of Criminal procedures was mandated to File these. By not Filing them the Clerk of Courts a designed safety mechanism to keep things honest, We the Public were Frauded of legal Grand Jury Proceedings, The Clerk of Court didn't have it to take to the Grand Jury. Now its expected the Solicitor will want to Claim "I took it. Well They still didn't File it but we the Public know thats Fraud too! See There are no records of those alleged Hearings, no Transcripts, Tapes, or minutes of these so called hearings, which under discovery have to be turned over Quite a Farse/Sham has been played on the Public I am a victim. In Fact Court records and S.C. PC records State wide show Afro Americans were by the Hundreds of Thousands. Ratio's to Whites as much as a 1000% Thousand Percent difference depending on the age groups analyzed.

rather than the ~~man~~ deciding who is to face charges and what charges. Solicitors illegally influenced our Grand Juries by not letting them be conducted by Clerk of Court as mandated, and his/her only being a legal advisor and to have his/her witness appear because they solely cannot be the only one. This illegal rubber stamp process prevented proper case evaluations by the Public who is to decide. He/She became "God" of the Courts indicting anyone and everyone at what offense they wanted. Turning out astronomical amounts of frauded indictments to satisfy the financial hungry/greedy legal community. All at the Public's expense. No Counsel represent me to my best interest.

On Direct Appeals and PCRs SC; Charleston Bar members concealed the States Solicitor's illegal circumventing mandated rules so they could cheat our legal system. Being so stupid they forgot to file formally the charges to legally conclude the case and Court Jurisdiction. This has repeatedly prevented relief for victims and concealed from the Public this fraud and illegal cheat/trickery by the legal community. Who's to say what did occur in the alleged hearings? There's no records at all. Reality is none legally occurred. The State now bears that burden of proof and they have no records. Certainly, the Public is not going to trust their anticipated lies. Criminal withholding evidence is a crime also which was to be turned over to aid preparing a defense. I was intended I have none.

#### Conclusion

Well over one half million persons in S.C. have endured illegal out of SC Circuit Court prosecutions. I am one of the most victimized group whom was racially targeted and discriminated against by State of SC SC Bar, Charleston Bar, Charleston Public Defenders Corp, and its Clerk of Court whom combined and concerted perpetrated this fraud upon me and the Public. 100 Indictments before and after mine are requested to be analyzed to determine racial ratios in Charleston County and a equal state wide. All persons in SC DC's records are asked to be reviewed because for the last 20-25 yrs Afro Americans endure 10 to 1 white ratios in most age groups. Basically every conviction is null/void because no cases were ever legally filed! Therefore Sentences are null/void.

(a) which grounds have been presented:

- i. \_\_\_\_\_ 328  
 ii. n/a  
 iii. \_\_\_\_\_

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

- i. \_\_\_\_\_  
 ii. n/a  
 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) n/a  
 (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes  
 (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 applications with respect to this conviction, which you filed? \_\_\_\_\_

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

- (a) the name and address of each attorney who represented you IF you can call them  
 i. \_\_\_\_\_ attorney's  
 ii. As the records show  
 iii. \_\_\_\_\_

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

- i. As the records show  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

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

vacating null/Void sentences by Bar Fraudulent Document use  
Criminal Investigation Prosecution for Civil/Constitutional rights violation.  
Barring reprosecution Pursuit Principles of Berger vs US. 55 set 629

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

no

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

- (a) any petition in a State Court under South Carolina Law? as already stated  
 (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? yes  
 (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. See above  
 iv. \_\_\_\_\_

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

- i. \_\_\_\_\_  
 ii. \_\_\_\_\_  
 iii. See above  
 iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_  
 ii. See above  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_  
 ii. \_\_\_\_\_  
 iii. See above  
 iv. \_\_\_\_\_

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

- i. \_\_\_\_\_  
 ii. \_\_\_\_\_  
 iii. See above  
 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 Newly Discovered Evidence

STATE OF SOUTH CAROLINA

County of Dorchester

VERIFICATION

I, Quentin Linn # 238553, 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.

x Quentin Linn

SWORN to and subscribed before me this 12

day of March 1961

Yvette B. Blane (L.S.)  
Notary Public

Please  
use  
seal

My Commission Expires: 8/20/66

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

I, Quentin Linn # 238553, 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 of 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 said proceeding or give security therefor.

x Quentin Linn  
Applicant

SWORN or affirmed to and subscribed before me this

12 day of March 1961

Yvette B. Blane  
Notary Public

Please  
use  
seal

My Commission Expires 8/20/66

County of Mc Cormick  
for State and Federal  
Court use by Hugh Turbeville

SWORN AFFIDAVIT by  
Victims of SC Bar Members 331 Exhibit  
for Criminal Racketeering  
by use of Fraudulent Indictments

I by my name/signature being duly Sworn deposes  
and says I am a Victim/Witness to Criminal Un-  
law racketeering by SC Bar members by their use  
of Fraudulent Indictments to initiate and proceed with  
Unlawful Prosecutions of Alleged Criminal Charges. My  
Indictments have never been Filed with the Clerk of  
Courts Office or Clock Stamped therefore no Case was ever  
Filed as required SC Rule of Criminal Procedure rule 3-C.  
The Court lacked Jurisdiction to Trial, Plea, or Sentence  
Guilty. Pleas made by us are in Violation of SC Law 17-23-430  
because they were illegally Coerced with Fraudulent Documents.  
This Criminal Racketeering has been determined to be a Joint  
Criminal Conspiracy by SC Bar and its members and State of  
SC under illegal protection of SC Attorney General to Illegally  
build a Prison business Warehousing Thousands of US Citizens  
by and through Fraud and extortion of their Victims rights and  
money and Taxpayers Funds State and Federal. We are being  
Criminally denied Effective Assistance of Counsel and Access to  
Court to get relief from the Nullity and Void Sentences we  
are illegally and Falsely Imprisoned on. We seek relief and Justice

| name            | SCDC#  | Date   | Name             | SCDC#   | Date   |
|-----------------|--------|--------|------------------|---------|--------|
| Hugh Turbeville | 170369 | 8/8/99 | John Arnold      | 25411   | 8-8-99 |
| Villie Suekey   | 146039 | 8/8/99 | Loyal Bowers     | 218473  | 8-7-99 |
| Will Lebevon    | 251457 | 8/8/99 | Elk Ullt         | 184387  | 8-8-99 |
| Remaine Jones   | 246798 | 8/8/99 | Jerome Cochran   | 80634   | 8-8-99 |
| Baker III COLE  | 8/8/99 | 8/8/99 | WILLIAM F. SMITH | #124570 | 8-8-99 |
| Corey Lewis     | 175535 | 8/8/99 | Brian Burkett    | #135284 | 8-8-99 |
| 12/1/99         | 189994 | 8/8/99 | Lowell Hino      | 253129  | 8-8-99 |

Copy of original is in process of being furnished 2/4/2001

I, by my name/signature I place on this document mail of US Attorneys Office in SC to pursue to 28 usca 1987 to bring Federal Prosecution we demand with our Personal records along with records submitted already by Hugh Turbeville a indi this and Forwarding already to the SC. US Attorneys Office others which Robert Gendron, Esq. His assistant refuses to do. We c Law enforcement in SC. Against State of SC. SC. Attorney Gen Condon and all Criminal Prosecution SC. Bar members whom v Pated in use of Fraudulent: Forged: Counter-Fictel Indictment eterying scheme to Criminally by Fraud Imprison against SC. laws US Citizens For Purposes of Illegal Fraud of State and Fe dose: Illegal Fraud/Extortion of Rights and money from victims. Payers: By Fraudulent un Filed /unmarked stamped indictment no legal value; deprive Courts of legal Jurisdiction For Cases gally Concealed there For Jurisdiction to sentence to prison n And are null/void as Supreme Court rulings repeatedly up Racketeering has Criminally Targeted African Americans as I Form of Capitalization by Fraud obtaining State and Feder a Form of Illegal Social Control; also to Criminally deprive tl vote in State and Federal elections. This racketeering was State of SC; Attorney General's Office and SC. Bar and me Technical Paperwork Fraud/Extortion by Actions and lack o Parties part. By Criminal Concealment this issue has be Concealed by a Code of Silence" so that this matter Cou edly; habitually; and patterned continued. I as a Afric a victim of this vicinally Targeted Practice by Criminal of equal Protection of Law as State and Federal Consti I was Criminally denied Counsel by being so defectiv Insubabellings Participating and acquiescing /condoning th ing. Which was Committed by Statewide Collusion of SC. Clerk of Courts in each County, SC. Bar members, an Civil Court Judges whom out of legal Court Jurisdi ed/extorted Guilty Pleas and or Subjected illegally out diction Trials upon us. Our records are requested US Justice Dept Officials of our Complete Consultations For prosecution purposes in all state Clerk of Court Offi Offices; and Public/Private Aird attorneys in Ovig Cadures: Direct Appeals: Writ of Certioraries and Post lief proceedings. Along with SC. D.C. records which s through false imprisonment; slave labor and Patterned Antiligation tactic to Fraud; Extort; Conceal has occ is illegally used as Forms of Obstruction of Justice and criminally in violation of U.S.C.A 14th Amendment the st have criminally violate as stated by Creation and enj its laws/practices this Criminal scheme "Racketeering" tibly violates rights and privileges of Naturalize and Citizens as victims and Taxpayers illegally Forced to pay it are equally Criminally deprived of Functional Forms of Relic Illegally manufactured Solicitor office Indictments used We are not to be violated and then made to sue the st ev our state nor Federal Constitutional rights or Laws which to be violated as stated to Create illegally Jobs For SC. a True Sworn is the Truth knowing alternatives For our survival Pursuit to bring us US. 55 set 62: Representation is denied and dei

| Name/signature      | SCDC #            | County     | Year |
|---------------------|-------------------|------------|------|
| Jeffrey Murphy      | 111561            | CHARLESTON | 1/16 |
| Gregory Lewis       | 219605 and 351927 | CLARKE     | 2/16 |
| Albert Wright       | 251423            | CHARLESTON | 10/5 |
| Mark Joseph Pascher | 232140            | CHARLESTON | 5/13 |
| Malcolm Byrd        | 2558838           | FLORENCE   | 6/07 |
| Michael Jackson     | 215864            | HARTSFORD  | 4/05 |

Continued Victim Affidants (2) Two Pages

LAWYER

S.W. VICTIMS/AFFAIRS

SIGNED WITHIN  
THIRTY DAYS OF FILING

333

I by my signature/name states as this complaint Filed by:  
I am a Victim of State of S.C. S.C. Attorney General's Office and I  
have illegal racketeering in fraudulent unclock stamped/unfiled and  
as the cover page and Complaint says Attached I demand S.C. a  
enforce ment by S.W. VICTIMS/AFFAIRS of S.C. and U.S. is by law require  
by racial targeting, its damage to us than whites County sentenced. y

| name/signature       | SCDC#  |                  |    |
|----------------------|--------|------------------|----|
| MARCO O. LIVER       | 264379 | Clarendon        |    |
| JAMES REYNOLDS       | 219186 | Horry            |    |
| Robert A. Marshall   | 164466 | Newberry S.C.    | 6  |
| JAMES M. BRACKINGTON | 231900 | Flamenco S.C.    | 9  |
| HARLES MAYERS        | 232109 | Charleston S.C.  | 9  |
| Larry Smith          | 211344 | Williamsburg     |    |
| James H. McGray      | 265193 | Williamsburg     |    |
| Kimberly Kumble      | 255600 | Dorchester       |    |
| con. Billups         | 199186 | Williamsburg     |    |
| John Samuel          | 260859 | Richland Co      | 9  |
| Johnathan Coakley    | 211799 | Charleston S.C.  | 9  |
| Michael Patterson    | 269118 | Sumter, S.C.     | 2  |
| Johnny Cammell Lee   | 234118 | Kershaw S.C.     | 19 |
| Robert M. Lee        | 255860 | Sumter, S.C.     | 11 |
| Edward Cox           | 254322 | Greenville, S.C. | 1  |
| Alfonso Brown        | 265861 | Colleton S.C.    | 2  |
| Anthony Brown        | 266012 | Horry Co.        | 6  |
| Broderick McHenry    | 248473 | Sumter, S.C.     | 9  |
| JAMES ALICKER        | 180786 | Summerton S.C.   |    |
| Jeff Franklin        | 228011 | Darlington       |    |
| Amie Lawrence        | 24662  | Abbeville        | 1  |
| Nancy L. Wilkin      | 266200 | Flamenco S.C.    | 2  |
| Malta Williams       | 231674 | Flamenco S.C.    | 15 |
| Terone Gudwin        | 260786 | Wentworth S.C.   | 2  |
| Keitha Brown         | 240267 | Sumter, S.C.     | 9  |
| TERRY McRAE          | 187415 | Dillon, S.C.     | 15 |
| Michael V. Green     | 191192 | Horry Co.        | 11 |
| Philip Spivey        | 200280 | Sumter, S.C.     | 2  |
| Tony Lindsey         | 257628 | Sumter S.C.      | 15 |
| John H. H. H. H.     | 187415 | Horry Co.        | 11 |
| Ray Barker           | 257141 | Richland Co.     | 2  |
| George B. B.         | 257357 | Richland Co.     | 11 |
| Thomas Brown         | 252086 | Darlington S.C.  | 1  |
| Dwight Ingram        | 234341 | Kershaw Co.      |    |



I by my signature/name state as this Complaint Filed by I am  
I am a victim of State of SC. SC. Attorney Generals and SC. B  
bers illegal racketeering in Fraudulent undocketed/unfiled  
use as the cover page and Complaint says attached. I demand  
law enforcement by sworn officials of SC. and U.S. is by law re  
by racial targeting its done to us more than whites

| name/signature     | SCOTT         | County sentenced | ye<br>se |
|--------------------|---------------|------------------|----------|
| Tony La Carter     | 130600        | Wick             | 19       |
| Bill Turner        | 249169        | Florence         | 199      |
| Genou B. Johnson   | 146995        | RICHMOND         | 19       |
| LEVERN PEOPLES     | 237994        | Florence         | 199      |
| DARRELL Krawlin    | 211690        | Georgetown       | 198      |
| Tony Bonaparte     | 23655         | Orangeburg       | 199      |
| Terry Scott        | 231186        | Florence         | 199      |
| Jasper Pickett     | 259947        | GREENVILLE       | 1999     |
| David McFadden     | 244183        | FLORENCE         | 199      |
| Michael Epps       | 267457        | FLORENCE         | 199      |
| Robert Jones       | 255919        | Horry            | 199      |
| James Blum         | 243226        | Florence         | 199      |
| Julian Nero        | 251963        | Link City        | 199      |
| Billie Johnson     | 111500        | Chesterfield     | 198      |
| Henry Jones        | 217259        | Columbia         | 97       |
| Dominic R. McBride | 235008        | Marion Co.       | 96       |
| Harvey A. Spain    | 258169#155319 | Sumter SC        | 1992     |
| Jefferson          | 231197        | York Co.         | 198      |
| Robert Bigby       | 258020        | Sumter Co.       | 98       |
| Emmett Whitfield   | 187467        | CLARK County Co. | 95       |

Mr Rene Josey you now have (60) Sixty Afro American  
Fore you demanding US. law enforcement which you are req  
I myself on behalf of Leroy Joseph Drayton of Charleston is  
jected to this Paperwork Fraud Racketeering scheme by Ch  
Solicitor and S.C. Attorney Generals office Charles malo.  
request as a fellow US. Citizen/victim that the racial  
"murder" he suffered not "Execution" be prosecuted as  
Condon whom knowing committed this to the fullest ext  
law. I do so because of his murder Mr Drayton can  
for himself and its clear that no Attorney involved a  
regulved upheld his rights so I do so now, Mr Josey  
arrest is requested to prevent further harm to US. Citiz  
bief is sought by emergency injunctive procedures availab

Copies of originals I possess through the courts 3-9-2001

I by placing my name/signature on this Document under I am a individual Criminally harmed/violated and make the U.S. Attorney's Office to prosecute perpetrator's For use want unfiled in any manner Forged, Frauded, Counterfeit State Indictments alleged to have been True Billed by Court Grand Jurys, This Horrendous/Horrific Criminally Criminally promoted, practiced, and Protected by S.C. a Office which aids, Acquiesced, and condoned S.C. Solicitly manufacture Indictments and For S.C. Bar mally Fraud and extort rights and money from un Citizens as I. My records in Clerk of Courts Office ty I was prosecuted in, The Criminal Charge I u Frauded to endure my Direct Appeal and P.C.R. a Certiorari if applicable proves not only that I wa but that by Tacit Agreement it is Criminally C S.C. Attorney Generals Office, and S.C. Bar members to raise this issue and provide relief to victims. f Combined and Confederated. Actions and lack of and Attorney Generals Office have committed this. f For years to illegally impose out of S.C. Circuit Cou tion its own Form of Illegal Social Control and t Capitalize off its being done. State and Federal Fu illegally Frauded to build by a paperwork Fraud largest Prison warehousing business's in the U.S. il a Fraud of Over-Crowded prisons. This is a Ra Practice and racially discriminates on Afro Amer victimized group by our being Criminally by Tacit are denied Counsel by S.C. Bar to protect our rig Prevent illegal prosecutions attempts. We are Crimi Incarcerated and subjected to slave labor and lawfully required pay. We are also subjected to 11 of anti-litigation tactics by State of S.C. and S.C. B. Fuse to address the issue at State level proceedi ate at our attempts so we can exhaust State level haustion so we can seek Federal level relief. We inally targeted because one illegally convicted of we are Stripped of our right to vote. Violating the 1 act. We demand a Criminal prosecution by the 1 Office on all perpetrators/Aiders/Abettors/. We s State Court proceeding records seized For use of cution on the State of S.C. its Attorney General, Bar members whom did criminally violate us. Thi and That I am being Criminally denied relief From

| name/Signature                   | SCRC #  | County Sentenced | Year and Sentence |
|----------------------------------|---------|------------------|-------------------|
| <del>Rugby</del> <del>Adon</del> | #187527 | CHARLESTON       | LIFE 16           |
| TOBACCO J NEAT                   | #235847 | Charleston       | LIFE 9            |
| JAMES MACKEY                     | 177328  | Charleston       | LIFE              |
| Elijah Whitlock                  | #211230 | Charleston       | 2 YEARS - 21      |
| DONALD LEE JR.                   | 243177  | Allendale        | 10-YR. 91         |
| Sinclair S. Mozzyk               | 238390  | Dorchester       | LIFE - 9          |
| Michael E. EAVZD                 | 231375  | Richland         | 25-15 94          |

10. Charleston County  
Clerk of Court and  
Chief Administrative Judge  
P.O. Box 70219  
Charleston, S.C. 29415

336

Lieber Correctional Inst  
P.O. Box 205 Ashley-B  
Ridgeville S.C. 29472

362

mailed 3/12/2001

Re: Filing P.C.R. and request/motion For Special legal assistance  
to litigate Racial Discrimination/Targeting issue.

Clerk of Court and  
Chief Administrative Judge:

Provide me back the extra Clock Stamped

I File this 2<sup>nd</sup> second P.C.R. After being Criminally de-  
nied a lawfully Conducted First one. Reason Being:

- ① After the Attorney General's office submitted a Order to Dismiss which  
was improper. My Counsel failed to File one even after requested to  
so. I filed a 5<sup>th</sup> Motion Pro Se and the Court refuses to acknowledge  
it and rule, Denying me use of S.C. Courts.
- ② newly discovered evidence has been Found. My First P.C.R.  
Counsel concealed the issue I raise in this P.C.R. concerning my Trial  
Court lacked Jurisdiction by Fraudulent Indictment use which  
illegally manufactured by Solicitors office. That this is a S.C. Bar  
racketeering practice to Fraud rights and money from the Public
- ③ This is a illegal racial Targeting/Discrimination practice of S.C.  
Bar members constituting Denial of Counsel.

I seek to proceed on these irrefutable Issues and Facts:  
Attached to my P.C.R. Application is Supporting evidence.  
Since S.C. Bar and Charleston County Bar and Public Defender  
Office perpetrated this Fraud and racial Discrimination and Target  
They not be allowed to represent me. I seek the Court to Order  
State / SC Bar to provide Funds to hire a Expert Racial Discrim  
nation Firm being: Colon, Frantz, Phelan, and Pires. L.L.P. Specialist  
Alexander Pires Esq.; Suite 700 1818 North St N.W. Washington DC. 20036.  
A Comparable none S.C. Bar Firm to litigate my claim without a conflict  
of interest and to prevent further S.C. Bar Abuse.

notice  
⑧ Mrs Armstrong please provide me my Case number upon Filing and if  
you would a Clock Stamped Copy. Also ensure the Chief Administrative  
Judges act on my Special Counsel request immediately to prevent lit  
igation delays. I he wants to have a hearing please do. Supena Nu  
Turberville #170369 and the Compiled records has collected. Kindly  
also we can use the ones in your office before and after mine.  
witnessed

1 Hugh Turberville 3/12/2001

*Quentin L. L...*  
Date 3-12-01

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

01-CP-10-0999

Quinton Linen, #238553 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**RETURN  
 AND MOTION TO DISMISS**

The Respondent, hereby makes a Return and motion to dismiss to the Application for Post-Conviction Relief filed March 16, 2001. This matter is successive to the applications denied by the Court on October 10, 2000 in Linen v. State, 1998-CP-10-5031 and 1997- CP-10-2086 by the Honorable H. Dean Hall. The Respondents would show this Court the following:

I.

The Applicant, Quinton Linen, # 238553, is presently confined in Lieber Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Charleston County. The Applicant was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery ( 97-GS-10-0926). He was represented by Guy Vitetta, Esquire. On April 8, 1997, the Applicant proceeded to trial and was convicted as charged. He was sentenced by the Honorable Charles W. Whetstone, Jr., to confinement for life.

Applicant timely filed notice of intent to appeal and an appeal was perfected on his behalf by the South Carolina Office of Appellate Defense. In the appeal, Linen, represented by Robert M. Pachak of the South Carolina Office of Appellate Defense raised the following claim: "Whether the trial court erred in refusing to grant mistrial after Detective Roper put appellant's character in issue several times during the trial?" Following the filing of briefs by both sides, the South Carolina Court of Appeals affirmed Applicant's. State v. Linen , 98-UP-426 (S.C. Ct. App. filed October 6, 1998).

The Applicant next made applications for post-conviction relief (PCR) filed April 2, 1997, ( Linen v. State 1997- CP-10-2086) and December 31, 1998, (Linen v. State, 1998-CP-10-5031). A joint hearing into the matters was convened on May 22, 2000, in the Charleston County Courthouse before the Honorable H. Dean Hall, Presiding Judge.. The Applicant was present in court and represented by Juan Tolley, Esquire, of the Charleston County Bar. The State was represented by Matthew M. McGuire, from the Office of South Carolina Attorney General.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of Respondent Guy Vitetta, Esquire. This Court also had before it a copy of the Applicant's trial transcript; the appellate records; the records of the Charleston County Clerk of Court regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections; the application for PCR; and the State's Returns.

In his earlier applications, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

2. The manner in which the State has proscribed that my sentence be carried out is unconstitutional

On October 10, 2000, Judge Hall entered an order denying the application in its entirety for each civil action. The Order was filed on October 12, 2000. According to the records of the Clerk of Court, Linen made a motion to alter or amend judgement on November 7, 2000 in Linen v. State, 98-CP-10-5031.<sup>1</sup>

Attached herewith and incorporated herein by reference are the Charleston County Clerk of Court's records relating to Linen v. State 1997- CP-10-2086) and Linen v. State, 1998-CP-10-5031, including the applications and orders and motion.

II.

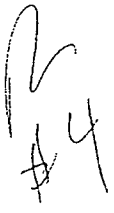
In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

A. Denied Lawful PCR Procedurals and Direct Appeal:

1. He was illegally tried by a South Carolina court and given an illegal life sentence;
2. His indictment was never filed in any manner and the Solicitor manufactured and forged the indictment and was aided by his court-appointed counsel, Guy Vitetta;

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<sup>1</sup> In this pro se Rule 59(e) motion, Linen asserts that a copy of the order was transmitted by the Clerk to him on October 26, 2000 and received by him on October 26, 2000. He asserts that he sent the motion on November 2, 2000.

- 
3. South Carolina Appellate  
Defense failed to raise on appeal  
the issue of subject matter  
jurisdiction based upon the  
indictment issues;
  4. In his 1998 PCR action, 98-CP-  
10-5031, his appointed counsel  
aided the State to maintain the  
illegal conviction.
    - a) After the hearing  
and order, Linen  
contends that he  
filed a Rule 59(e)  
Motion that was  
never heard on  
November 7,  
2000;
    - b) This motion has  
not been  
processed.

B. Both my convictions (97-GS-10-0926 and 87-GS-10-3362), were illegally imposed by an unlawful form of S.C. Bar Court out of legal lawful jurisdiction of the S.C. Circuit Court.

C. Denied counsel by criminally dysfunctional counsel aiding Solicitor to illegally defraud client with a fraudulent indictment and at no time has any counsel been honest and lawfully working for my best interest.

D. Racially targeted and discriminated in illegal prosecution and denial of legal counsel in a lawful manner in the initial prosecution, direct appeal, PCR's and etc.

E. Newly discovered evidence.

- a) Indictments were not filed.

## III.

First, the State submits that the current Application for PCR must be summarily dismissed because it is successive to the Applicant's prior application for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

2  
#5  
S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra; Arnold v. State/Plath v. State, supra. Therefore, the State requests that this Court summarily dismiss the Application for PCR as successive.

In fact, Respondents submit that it appears that Applicant is correct that a motion to alter or amend remains pending in his earlier petition, Linen v. State, 1998-CP-10-5031. Although



Respondents will submit in that action <sup>2</sup> that the motion lacks merit because the Order of Dismissal of the Honorable H. Dean Hall contained the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Respondents further submit that his claim that there was no subject matter jurisdiction on the indictment is frivolous. The indictment reveals that it was true-billed by the Charleston County Court of General Sessions Grand Jury on February 4, 1997 on the face of the indictment. This claim is without merit under any circumstance.

#### IV.

2  
146  
Second, the State submits that the current application for PCR should be summarily dismissed for failure to comply with the filing procedures of the Act. S.C. Code Ann. § 17-27-10 to -160 (1976 & Supp. 1997). The Act reads as follows:

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in

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<sup>2</sup> Respondents records do not include a copy of the motion to alter being received. On June 12, 2001, Respondents counsel copied a copy of the motion off of the Charleston Clerk of Court website. The motion indicates that it was served by mail on the Attorney General on November 2, 2000. Respondents will respond to the motion. nClerl o

existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

*h*  
*7.*  
The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on April 8, 1997. The remittitur was sent down by the Court of Appeal, after the Applicant's unsuccessful appeal, on October 22, 1998. This Application was filed on March 16, 2001, well after the one year statutory filing period had expired.

A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, the State requests that this Court summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

The State hereby places the Applicant on notice that, should the Applicant make any false claims, commit perjury, or abuse the legal process during the course of these proceedings, the State reserves the right to seek punitive and remedial sanctions. These include but are not limited to the forfeiture of all earned work, education and good time credits earned by the Applicant through the date of the hearing or final disposition of this matter. See S.C. Code 24-27-200 (Supp. 1999); Al-Shabazz v. State, Op. No. 24995 (S.C. Sup. Ct. filed August 23, 1999, re-filed February 14, 2000).

V.

Thus, the State requests that the Court summarily dismissed this Application for PCR both as successive and as barred by the statute of limitations.

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

VI.

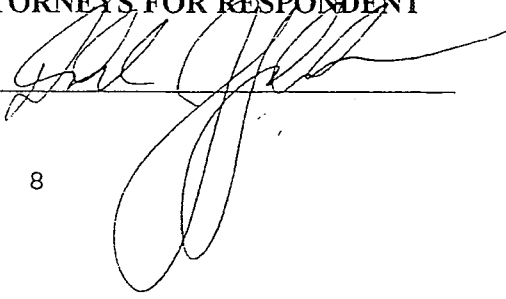
WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

CHARLES M. CONDON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General

**ATTORNEYS FOR RESPONDENT**

By: 

June 14, 2001

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Quinton Linen, #238553, )  
Applicant, )  
vs. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 01-CP-10-0999

OPPOSITION TO STATES RETURN  
AND MOTION TO DISMISS

ATTORNEY GENERAL'S OFFICE

Applicant, Quinton Linen, pro se, RECEIVED 7-12-01  
objects to the States  
ADMINISTRATIVE INSTRUCTIONS  
Return and Motion to Dismiss dated June 14, 2001. FILE OPEN END

STATEMENT OF THE CASE HAVE COPIES MADE

Quinton Linen filed his pro se Application for Poser  
Conviction Relief on March 16, 2001. The Office of the Attorney  
General filed a Return and Motion to Dismiss dated June 14, 2001.  
Applicant has never been appointed counsel in this matter.

#### DISCUSSION

Applicant objects to the States return and Motion to Dismiss based on grounds that there are genuine issues of material fact and therefore based on S.C. Code §17-27-40(b) (c) the application should not be dismissed.

In his first allegation, applicant states that he was denied lawful PCR procedural protections and direct appeal rights. This assertion is a basic claim that he he did not receive a full fair hearing at his previous PCR hearing, and that do to the delay by the Court in processing his pending rule 59(e) motion he is being denied the right to appeal his previous PCR application. The Applicant cannot appeal his previous application simply because this court and the state have delayed, for no reason, a ruling on his pending Rule 59(e) motion. The State has stated in its return

proceedings otherwise continue. Further, dismissal of the pleadings at this stage, and in this case, is not proper because there exists material issues of fact.

Therefore, Applicant requests that he be appointed counsel and allowed to amend his petition and/or that a hearing be scheduled on all matters herein, that the States Motion to Dismiss not be made a final order.

s/ Quinton Linen  
Quinton Linen, Applicant

Dated this 5 day of July 2001.

97-926, 87-3362

STATE OF SOUTH CAROLINA

County of ☒ Charleston ☐ Berkeley

COURT OF COMMON PLEAS

Case # 01 -CP- 10 - 999Quinton Linen

Applicant / Petitioner

-vs-

State of South Carolina,

Respondent.

ORDER

BY CLERK OF COURT  
 2002 JAN 17 AM 11:05  
 10

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders enter an order as indicated herein.

1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No. 6)

2. Motion(s) was/were heard in this case and the court orders:

       The motion to dismiss and/or for summary judgment is hereby granted denied under advisement based upon the statute of limitations; and/or the successive nature of the application or other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

       Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

       The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

☒ 4. The application was freely, voluntarily, and intelligently withdrawn with prejudice as indicated on the record; therefore, this case is dismissed with prejudice.

5. Other:       

☒ 6. The court further orders:

       The Attorney General Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within        days.

       Both sides are directed to submit proposed orders to the court and to serve the orders on each other within        days.

☒ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 1/16/02Court reporter Deb Garrison

R. M. [Signature]  
 Presiding Judge

Rev 07/20/01

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
2001-CP-10-000999

LINEN, QUINTIN

VS. SOUTH CAROLINA STATE OF

PLAINTIFF(S)

DEFENDANT(S)

- ( ) JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND A VERDICT RENDERED.
- ( ) DECISION BY THE COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION RENDERED.
- ( ) ACTION DISMISSED: ( ) RULE 12(B), SCRCP; ( ) RULE 41(A), SCRCP (VOL. NONSUIT); ( ) RULE 43(K), SCRCP (SETTLED); ( ) OTHER-
- ( ) ACTION STRICKEN: ( ) RULE 40(J) SCRCP; ( ) BANKRUPTCY; ( ) BINDING ARBITRATION, SUBJECT TO RIGHT TO RESTORE TO CONFIRM, VACATE OR MODIFY ARBITRATION AWARD; ( ) OTHER

IT IS ORDERED AND ADJUDGED: ( ) SEE ATTACHED; ( ) JUDGMENT BY COURT

ORDER THAT THE APPLICATION WAS WITHDRAWN WITH PREJUDICE

DATED AT CHARLESTON, SOUTH CAROLINA, THIS 16TH DAY OF JANUARY, 2002

*S/L. Markley Dennis Jr.*  
PRESIDING JUDGE

THIS JUDGMENT WAS ENTERED ON THE 17TH DAY OF JANUARY, 2002 AND A COPY  
MAILED FIRST CLASS THIS 24TH DAY OF JANUARY, 2002 TO ATTORNEYS OF

RECORD OR TO PARTIES (WHEN APPEARING PRO SE) AS FOLLOWS:  
HOWARD, E ELLEN ZELENKA, DONALD J  
SOLICITOR

GENERAL SESSIONS  
97-GS-10-926, 87-3362

ATTORNEY(S) OR PRO SE(S)

ATTORNEY(S) OR PRO SE(S)

*Julia A. Strong*  
CLERK OF COURT

SCRCP FORM 4

FFB 10

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
QUINTIN LINEN, 238553

v.

State of South Carolina

FORM 5

2014-CP-10-2117

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
JUL 31 2014  
CLERK OF COURT  
JAMES ARMSTRONG

### 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 clear to which question any such continued answer refers.

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

If the application 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 the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions, 100 Broad Street, Charleston, South Carolina 29401.
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 1987-GS-10-3362 Armed Robbery
5. The date upon which sentence was imposed and the terms of the sentence:  
(a) January 29, 1988
6. Check whether a finding of guilty was made:

Revised 3/2003



- (a) after a plea of guilty yes
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes

8. If you answered yes to (7), list:

- (a) the name of each Court to which you appealed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

9. If you answered no to (7), state your reasons for not so appealing:

- (a) Direct appeal from guilty plea would not have been useful.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. The Applicant's first PCR action, Docketed at 97-CP-10-2086 addressed his 1988 judgment and sentence entered pursuant to guilty plea to armed robbery. The Applicant has requested a clocked copy of that Application and will file a copy as a Supplemental Attachment as soon as it is received by Counsel. That PCR application was filed shortly after the State announced its intention to use the Applicant's prior judgment as the predicate most serious offense for a life without parole sentence pursuant to §17-25-45 (2000) on Indictment No. 97-GS-10-0926 for armed robbery.

Revised 3/2003

According to the records of the Charleston County Clerk of Court, this Application for PCR was denied by Order of Dismissal filed October 12, 2000. *See, discussion infra.* There is no clear record of any Order of Dismissal on 97-CP-10-2086 having been appealed to the Supreme Court nor is it apparent from the public index whether the Applicant had a lawyer appointed to him in that PCR action.

The Applicant's second PCR action, docketed at 98-CP-10-5031, was filed on December 31, 1998 and addressed the Applicant's jury trial at which he was convicted of armed robbery and was sentenced to Life without Parole based upon his previous plea addressed in his first PCR action. *Attachment A.* The PCR judge in the Applicant's second PCR case, the Honorable H. Dean Hall, issued an Order of Dismissal in that case which was dated October 10, 2000 and was filed on October 12, 2000. In that Order of Dismissal, Judge Hall dismissed as untimely the Applicant's first PCR application on the separate PCR action docketed at 97-CP-10-2086. The Applicant filed a *pro se* Motion to Alter or Amend pursuant to Rule 59(e) SCRPC on November 7, 2000. The available records do not reflect the date that document was post-marked for filing from the South Carolina Department of Corrections nor do they reflect the date the Applicant was actually served with the Order of Dismissal. After the Applicant's 59(e) Motion was filed, the circuit court appointed him a new PCR lawyer; Ellen Howard.

The Applicant filed a third PCR action which was docketed at 01-CP-10-999. That application was filed on March 16, 2001. *See Attachment B.* That application was apparently withdrawn on Wednesday, January 16, 2002. It would appear that Attorney Howard was appointed in connection with that application, and that a subsequent hearing held before the Honorable R. Markley Dennis, was likewise on that application. During that hearing, Judge Dennis, the parties attempted to address the Applicant's *pro se* Rule 59(e) motion on his previous PCR docketed at 98-CP-10-5031, and were told that the matter had to be addressed to the attention of the current Chief Administrative Judge pursuant to Rule 63, SCRPC, inasmuch as Judge Hall, who had issued the Order of Dismissal on that Application, had retired. *See also, correspondence dated January 25, 2002, Attachment C.*

A hearing was subsequently held before the Honorable Danny Pieper, then Chief Administrative Judge for the Ninth Judicial Circuit, on the Applicant's Rule 59 (e) Motion on 98-CP-10-5031. Judge Pieper subsequently issued an Order denying the Applicant's Rule 59(e) motion on 98-CP-10-503. That order was filed on July 30, 2002. Neither the *pro se* 59 (e) Motion, nor the Order of Judge Pieper, address the propriety of Judge Hall's dismissal of the PCR action docketed at 97-CP-10-2086. *See, Attachment D.*

The Applicant filed an appeal from the Order of Dismissal issued on the PCR action docketed at 98-CP-10-5031. Certiorari was denied followed the submission of a Johnson Petition by Eleanor Duffy Cleary, counsel with the Office of Appellate Defense. *See, Attachment E, Johnson Petition.* Certiorari was denied and appellate counsel was relieved by orders of the Supreme Court of South Carolina dated May 13, 2004. *See, Attachment F, Order denying Certiorari and Relieving Counsel.* It is apparent that the propriety of the ruling of Judge Hall, dismissing the PCR on the guilty plea case in the Order of Dismissal on the separate PCR addressing the judgments and sentences received by the Applicant at his jury trial, was not addressed in the appeal to the Supreme Court

Petition. The *Johnson* Petition filed by Appellate Defense did not raise this issue and **NONE** of the documents pertaining to the action docketed at 97-CP-10-2086 were included in the Appendix to the PCR appeal on 98-CP-10-5031. The sole exception being that the Order of Dismissal on 98-CP-10-5031, which was in the Appendix, has BOTH 97-CP-10-2086 and 98-CP-10-5031 listed in the caption to the order and what purports to be a ruling on this unrelated PCR action appears on page 5, Section G, of that Order. *See, Attachment G, Judge Hall's Order of Dismissal.* Thus, it is clear that the Applicant never received an appeal from the denial of his first PCR action docketed at 97-CP-10-2086 by Judge Hall. Although the Applicant, acting *pro se*, did not address the propriety of Judge Hall's actions in his *pro se* 59(e) Motion, the ruling in question was included in the Order of Dismissal.

The Applicant's fourth PCR action was filed on October 26, 2009 and was docketed at 08-CP-10-4339. This Application, like the second and third applications, addressed the Applicant's judgment and sentence for armed robbery following his jury trial and sentencing April 8, 1997. A Conditional Order of Dismissal was filed on that application on February 15, 2006 and the Final Order was entered on April 18, 2006. *See, Attachments H, I and J respectively.*

Therefore, the Applicant now alleges that he was denied the opportunity for his one full collateral review of the judgments and sentences addressed in his first PCR which addressed the judgment and plea for armed robbery used to enhance his sentence at his subsequent jury trial to Life without parole. He has not had his "one full bite at the apple" for collateral review of his first PCR.

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

The wording of the strike law, § 17-25-45, when it was first enacted was very confusing. Many great legal minds disagreed as to when, or even if, an old judgment could be considered a strike. For example, on a different issue, in *Gordan v. State*, 356 S.C. 143, 588 S.E.2d 105 (November, 2003) our Supreme Court suggested that in order for a prior conviction to count as a prior strike, you would have to be convicted, serve your sentence, and then commit another crime which qualified as a strike *after* serving the sentence for the first. *Id.* 356 at 154. After the *Gordan* decision came out, many lawyers, and even some judges, disagreed on where the strike law stood on this issue. Before our Supreme Court ever clarified its position on this issue, the legislature changed the law and made it clear that an accused *does not* have to have been punished for the first crime before the second crime is committed in order for the Court to give them life under the strike law. *See, 17-25-45 (2006).* The Supreme Court of South Carolina's subsequent decision in *Bryant v. State*, 384 S.C. 525, 683 S.E.2d 280 (September, 2009) clearly indicates the Court's view that this amendment was made in response to the Court's interpretation of §17-25-45 (f) as found in *Gordan, supra*, 384 at 531. Thus, the crucial issue in the Applicant's case concerning whether his 1988 judgment for armed

Revised 3/2003

robbery could be used as a predicate strike was not finally laid to rest until much later than the Applicant filed his PCR on his guilty pleas. Although the question of whether that offense could be used as a valid strike for purposes of §17-25-45 has now been laid to rest, the fact remains that the Applicant has never had his day in court with regard to his claims that he received ineffective assistance of counsel prior to and during that plea and his plea position that his plea was not knowingly and intelligently entered.

When the State filed its Notice of Intent to seek a life sentence against the Applicant it was the first time he had notice of whether the State was going to say his old conviction qualified as a strike. The Applicant's trial record indicates that his PCR on the 1988 judgments was pending at the time of his sentencing. *See, Attachment K, excerpt from trial record, Cover of Trial Record and pages 218 - 220.*

While under normal circumstances, "*ignorance of the law is no excuse*", there are sound reasons why that adage should not have applied to this case. Where some of the best trained lawyers and judges in the State argued over this issue concerning the strike statute for years, it would be manifestly unfair to apply that rule as a justification for dismissing the Applicant's first PCR action as untimely. The record does not indicate that he had legal counsel in his first PCR and it is apparent that he never had a hearing at which he had the benefit of counsel to argue the reasons why his first PCR application should not be deemed untimely. As noted above, the records of the Supreme Court of South Carolina do not reflect that the portion of the Order of Dismissal on the PCR action docketed at 98-CP-10-5031 which purports to rule on the Applicant's separate PCR action docketed at 97-CP-10-2086 was appealed to that Court either separately, or, as part of the PCR appeal perfected on 98-CP-10-5031. The *Johnson* Petition filed by Appellate Defense clearly did not address this crucial issue.

The Applicant was without the benefit of Counsel to assist him in raising the appropriate defenses to the Summary Dismissal of his first PCR action docketed at 97-CP-10-2086. The Applicant now respectfully argues that the Applicant's first PCR action was dismissed without him ever being fully heard on the reasons that action should have been found to be timely. The Applicant was without fault in this matter inasmuch as he never got the chance to develop this argument and have it heard in the context of his first PCR action. For that reason, he should now have his first PCR action reopened and that he be afforded the opportunity, this time with adequate legal counsel, to demonstrate why his initial PCR was timely. In the alternative, *at minimum*, he should be granted a belated PCR appeal from the Order of Dismissal issued in this matter on October 12, 2000.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? n/a
- (c) any petition in the United States Supreme Court for certiorari other than petitions,

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if any, already specified in (8)? n/a

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

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

(a) the specific nature thereof:

i. First Post-Conviction Relief Application 97-CP-10-2086.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. Charleston County Court of Common Pleas

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. Denied

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. October 12, 2000, Order of Dismissal on PCR docketed at

denied BOTH PCR Applications.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. Order of Dismissal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No
- \_\_\_\_\_
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
16. If any ground set forth in (10) 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) Issues addressed herein are appropriate for collateral review and present issues not previously addressed by the Court. Original PCR was not properly ruled upon.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? n/a
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? It is currently unclear whether the Applicant ever had counsel on his first PCR application docketed at 97-CP-10-2086.
18. If you answered yes to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Plea Unknown at this time

ii. Sentencing Unknown at this time

iii.

19. State clearly the relief you seek in filing this application:

To have the Applicant's original PCR reopened and to have the opportunity to argue why he should be heard on the merits and not have that PCR action dismissed as untimely. Alternatively, at minimum, the Applicant would seek a belated appeal from the order denying his PCR action addressing his guilty plea. The Applicant is now represented by counsel.

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

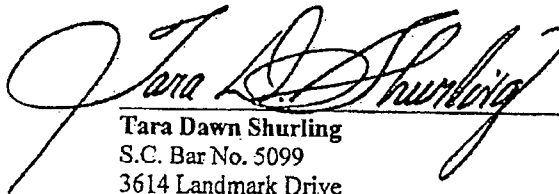
The Applicant is currently serving a life without parole sentence pursuant to §17-25-45 for his subsequent conviction and sentence for armed robbery at his jury trial in Charleston County on April 8, 1997. The Applicant has exhausted his state remedies for challenging that judgment. His second PCR action addressed that conviction and sentence however, it appears that no one ever questioned the fact that the Applicant's right to a full and fair review of the guilty plea which resulted in the predicate offense for the LWOP sentence had been denied. The denial of the second PCR was appealed to the Supreme Court of South Carolina however, that appeal did not address the question of whether the Applicant's first PCR had been improperly ruled upon. If the Applicant were to be granted to opportunity to attack the predicate plea, and won that action, his subsequent sentence to life without parole pursuant to §17-25-45 would be vacated. The State's ability to impose another LWOP term against the Applicant would then hinge upon the outcome of the remand on the old charges.

STATE OF SOUTH CAROLINA

County of Charleston

VERIFICATION

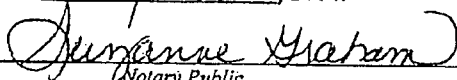
I, Tara Dawn Shurling, retained counsel for the Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence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



Tara Dawn Shurling  
S.C. Bar No. 5099  
3614 Landmark Drive  
Suite A  
Columbia, SC 29204  
(803) 738-8622  
Fax (803) 738-1600  
[tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

ATTORNEY FOR THE APPLICANT

SWORN to and subscribed before me this 26<sup>th</sup>  
day of March, 2014.

 (L.S.)  
Notary Public

My Commission Expires: 2/28/2024





|                          |   |                                |
|--------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS   |
| COUNTY OF CHARLESTON     | ) | FOR THE NINTH JUDICIAL CIRCUIT |
|                          | ) |                                |
|                          | ) |                                |
| Quintin Linen,           | ) | 2014-CP-10-2117                |
| S.C.D.C. No. 238553,     | ) |                                |
| Applicant,               | ) |                                |
|                          | ) |                                |
| v.                       | ) | RETURN AND MOTION TO DISMISS   |
|                          | ) |                                |
| State of South Carolina, | ) |                                |
|                          | ) |                                |
| Respondent.              | ) |                                |
|                          | ) |                                |

In response to the post-conviction relief (PCR) application that Quintin Linen (Applicant) filed March 31, 2014, the State (Respondent) would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Charleston County Clerk of Court. He was indicted at the January 1988 term of General Sessions for the Charleston County Grand Jury for armed robbery (1987-GS-10-3362). Russell Brown, Esquire, represented Applicant. Applicant pled guilty as indicted. On January 29, 1988, the Honorable John Hamilton Smith sentenced him to a term of imprisonment for twelve years. Applicant did not appeal his 1988 conviction or sentence, and he was released from SCDC custody.

**1997-CP-10-2086 & 1998-CP-10-5031**

Applicant did not file his first PCR application (1997-CP-10-2086) until April 2, 1997, more than nine years after his 1988 conviction. Applicant filed this application after he was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery (1997-GS-10-0926). On April 8, 1997, Applicant proceeded to trial and was found guilty as indicted. The

Honorable Charles W. Whetstone, Jr. sentenced Applicant to life imprisonment without parole (LWOP) pursuant to the "two strikes" law. *See* S.C. Code Ann. § 17-25-45 (2014).

In this first PCR application, Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel:
  - a. Failure to investigate the offense: attorney only met with me 1 time 5-7 days before court. I told him where I was when crime happened, but he never investigated. I had only met with my lawyer one time before court for no more than 20 minutes. Mr. Brown never asked for name or witnesses.
2. Guilty plea – waiver of rights was not knowingly and voluntarily made.
  - a. Mr. Brown told me if I did not plead guilty I would get the maximum sentence of 25 years. I felt intimidated and like I did not have a choice. I did what Mr. Brown told me to do, not what I felt was right.

This application was subsequently merged with Applicant's second PCR application (1998-CP-10-5031), which was filed on December 31, 1998, and addressed his 1997 conviction. He alleged the following grounds for relief:

1. Ineffective assistance of counsel;
2. The manner in which the State has proscribed that my sentence be carried out is unconstitutional; and
3. After discovered evidence, constitutional issues – novel issues.

An evidentiary hearing was held at the Charleston County Courthouse on May 22, 2000. Juan Tolley, Esquire, represented Applicant. By order filed October 12, 2000, the Honorable H. Dean Hall denied and dismissed both applications with prejudice. The order stated:

This Court finds Applicant's 1997 PCR application (97-CP-10-2086), collaterally attacking his 1988 armed robbery conviction (87-GS-10-3362) is barred by the statute of limitations. S.C. Code Ann. § 17-27-45(a). Applicant was convicted on January 28, 1988; however, he filed his application on April 2, 1997, well after the July 1, 1996 statute of limitations passed. *See Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Accordingly, the application is denied.

Applicant filed a pro se motion to alter or amend judgment under Rule 59(e) on November 7, 2000. Upon information and belief, a hearing was held on February 15, 2001 at the Charleston County Courthouse.<sup>1</sup> Ellen Howard, Esquire, represented Applicant. By order filed July 30, 2003, the Honorable Daniel F. Pieper denied the motion.

Applicant appealed, and the South Carolina Supreme Court denied his *Johnson*<sup>2</sup> petition for a writ of certiorari on May 13, 2004. The remittitur was issued on June 1, 2004.

#### 2001-CP-10-1999

Applicant subsequently filed another PCR application on March 16, 2001, challenging both his 1988 and 1997 convictions and alleging the following grounds for relief verbatim:

1. Denied unlawful PCR procedures and direct appeal.
2. Both my convictions 97-GS-10-0926 and 87-GS-10-3362 were illegally imposed by an unlawful form of S.C. Bar Court out of legal lawful jurisdiction of S.C. Circuit Court.
3. Denied counsel by criminal dysfunctional counsel aiding solicitor to illegally fraud client with a frauded indictment at no time has any counsel been honest and lawfully working for my best interest.
4. Racially targeted and discriminated against in illegal prosecution and denial of legal counsel in a lawful manner in the initial prosecutions, direct appeal, PCRs and etc.

Respondent made its return and motion to dismiss on June 14, 2001. On July 5, 2001, Applicant submitted a pro se memorandum in opposition to Respondent's motion to dismiss. E. Ellen Howard, Esquire, represented Applicant. Upon information and belief, Applicant withdrew his application at a hearing on January 16, 2002. By order filed January 17, 2002, the Honorable R. Markley Dennis, Jr. dismissed his application with prejudice after finding Applicant freely, voluntarily, and intelligently withdrew his application.<sup>3</sup>

<sup>1</sup> Judge Hall retired prior to the Rule 59(e) hearing, and Chief Administrative Judge Pieper presided over the hearing.

<sup>2</sup> *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

<sup>3</sup> Applicant subsequently filed two more PCR applications (2005-CP-10-4339, 2007-CP-10-2431) and a pro se federal petition for a writ of habeas corpus (04-2382) challenging his 1997 conviction, which were all dismissed.

## II.

Applicant filed his current PCR application on March 31, 2014, solely challenging his 1988 conviction and alleging he is being held in custody unlawfully for the following reasons:

1. Applicant was denied the opportunity for his one full collateral review of the judgments and sentences addressed in his first PCR which addressed the judgment and plea for armed robbery used to enhance his sentence at his subsequent jury trial to Life without parole. He has not had his "one full bite at the apple" for collateral review of his first PCR.
2. Applicant was without the benefit of Counsel to assist him in raising the appropriate defenses to the Summary Dismissal of his first PCR action docketed at 97-CP-10-2086. The Applicant now respectfully argues that the Applicant's first PCR action was dismissed without him ever being fully heard on the reasons that action should have been found to be timely. The Applicant was without fault in this matter inasmuch as he never got the chance to develop this argument and have it heard in the context of his first PCR action. For that reason, he should now have his first PCR action reopened and that he be afforded the opportunity, this time with adequate legal counsel, to demonstrate why his initial PCR was timely. In the alternative, at minimum, he should be granted a belated PCR appeal from the Order of Dismissal issued in this matter on October 12, 2000.

For the purpose of this return, Respondent incorporates the Charleston County Clerk of Court records regarding the subject conviction and Applicant's 1997 conviction, South Carolina Department of Corrections records, Applicant's previous and current PCR records, and appellate records. Respondent reserves the right to amend this return upon receipt of any relevant materials.

## III.

Applicant claims he was "denied the opportunity for his one full collateral review of the judgments and sentences addressed in his first PCR." Applicant's first application, merged with his second application, was dismissed as barred by the statute of limitations. Applicant appealed

the dismissal of those applications, and the South Carolina Supreme Court denied the *Johnson* petition for a writ of certiorari on May 13, 2004. This claim lacks merit because Applicant received appellate review.

An applicant has the right to assistance of appellate counsel in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must file a notice of appeal, continue representation until relieved, and assist an indigent applicant in obtaining representation by the Office of Appellate Defense. See Rule 71.1(g), SCRCP. Respondent submits Applicant received appellate review and was assisted by counsel.

Even viewing the facts in the light most favorable to Applicant, his *Austin* claim is barred by the doctrine of laches. Laches is “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party.” *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002) (quoting *Hallums v. Hallums*, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988)).

Applicant filed this current application **more than twenty-six years** after his conviction, **more than thirteen years** since the denial of his first PCR application, and **more than nine years** since the South Carolina Supreme Court denied his petition for a writ of certiorari. Applicant offered no explanation or justification for the delay in filing this application asserting the right to appellate review. See *McElrath v. State*, 276 S.C. 282, 277 S.E.2d 890 (1981) (stating that absent an acceptable allegation of reasonable diligence or justification by an applicant to explain a lengthy delay in seeking post-conviction relief, the trial court may dismiss

an application as barred by laches). To ensure finality of litigation, our courts require reasonable diligence in pursuing relief. *See Bray v. State*, 366 S.C. 137, 139, 620 S.E.2d 743, 745 (stating that even though the court found petitioner did not knowingly and intelligently waive his right to appellate review of the denial of his first PCR application, his subsequent action, filed seven years after the denial of his first PCR application, was barred by laches). This requirement “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” *McElrath*, 276 S.C. at 283, 277 S.E.2d at 890-891.

Applicant’s delay has greatly prejudiced Respondent. Due to Applicant’s neglect in filing the current application and *Austin* claim more than thirteen years after the order of dismissal from his first application, a full transcript of Applicant’s first post-conviction hearing may no longer be available. Not only would it be nearly impossible for the State to produce witnesses and evidence to respond to Applicant’s allegations, PCR counsel’s memory of his representation of Applicant, and the memory of any other necessary witnesses, is no longer fresh. As a result, Applicant’s delay has seriously impaired Respondent’s ability to respond to his allegations. Respondent requests this Court summarily dismiss Applicant’s application and *Austin* claim as barred by laches.

#### IV.

This Court should summarily dismiss Applicant’s current PCR application because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of

the South Carolina Code (2014) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing that he could not have previously raised the allegations. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Even viewed in the light most favorable to Applicant, his *Austin* claim is successive. Respondent also submits that although Applicant did not raise the *Austin* claim in his 2001 PCR application, he could have raised it in that application; thus, his *Austin* claim is successive. See *Bray*, 366 S.C. at 141, 620 S.E.2d at 745 (2005) (stating that “although petitioner did not raise an allegation that he was denied the right to review his first PCR application in his second PCR action, he could have raised this allegation”). A defendant has the procedural right to one fair bite at the apple, a right that includes the right to file a direct appeal and one PCR application. *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 583 (2002). Applicant’s *Austin* claim is



successive and must be summarily dismissed.

Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in his previous application, which he voluntarily withdrew *with prejudice*. Respondent moves to summarily dismiss Applicant's current application because it is successive to his previous application.

# V.

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The one-year statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense he challenges on January 29, 1988. He did not appeal his conviction or sentence. Therefore, he was required to file his PCR application on or before July 1, 1996.<sup>4</sup> Applicant filed this application on March 31, 2014, **more than seventeen years** after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period ends. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes the Court to "grant a motion by either party for summary

<sup>4</sup> Section 17-27-45(A) of the South Carolina Code was enacted on July 1, 1995. *Peloquin* held "all those convicted prior to the effective date of the statute should be allowed one year after its effective date to file an application." *Peloquin*, 321 S.C. at 470, 469 S.E.2d at 606. Therefore, under *Peloquin*, Applicant was required to file his PCR application by July 1, 1996.

disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* Therefore, Respondent moves to summarily dismiss this application for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

VI.

Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss this application because it is successive, untimely, and barred by the doctrine of laches.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN RATIGAN  
Senior Assistant Deputy Attorney General

ELIZABETH HEDGE COE NEYLE  
Staff Attorney

P.O. Box 11549  
Columbia, S.C. 29211

By: EH Neyle  
Attorneys for the Respondent

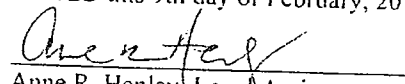
Columbia, South Carolina  
February 5, 2015

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
| COUNTY OF CHARLESTON     | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) |                              |
|                          | ) | 2014-CP-10-2117              |
| Quintin                  | ) |                              |
| Applicant,               | ) |                              |
| vs                       | ) |                              |
| STATE OF SOUTH CAROLINA, | ) | AFFIDAVIT OF SERVICE BY MAIL |
| 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 and Motion to Dismiss of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara D. Shurling  
 Law Office of Tara D. Shurling  
 3614 Landmark Drive, Suite A  
 Columbia, SC 29204

DATED this 9th day of February, 2015

  
 Anne R. Henley, Legal Assistant  
 For Respondent

|                         |   |                            |
|-------------------------|---|----------------------------|
| STATE OF SOUTH CAROLINA | ) | THE COURT OF COMMON PLEAS  |
|                         | ) |                            |
| COUNTY OF CHARLESTON    | ) | DOCKET NO. 2014-CP-10-2117 |
|                         | ) |                            |
|                         | ) |                            |
| QUINTIN LINEN           | ) |                            |
|                         | ) |                            |
| Applicant               | ) |                            |
|                         | ) |                            |
| vs.                     | ) |                            |
|                         | ) |                            |
| STATE OF SOUTH CAROLINA | ) |                            |
|                         | ) |                            |
| Respondent              | ) |                            |
|                         | ) |                            |
|                         | ) |                            |
|                         | ) |                            |
|                         | ) | TRANSCRIPT OF RECORD       |
| <hr/>                   |   |                            |
|                         |   | April 23, 2015             |
|                         |   | Charleston, South Carolina |

B E F O R E:

THE HONORABLE W. JEFFREY YOUNG, JUDGE

A P P E A R A N C E S:

TARA DAWN SHURLING, ESQ.  
Attorney for the Applicant

ELIZABETH H. NEYLE, ESQ.  
Attorney for the State

JOYCE C. RUEGER, CVR-M  
Circuit Court Reporter

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No exhibits were introduced

Quintin Linen v State  
Proceedings  
April 23, 2015

PROCEEDINGS

THE COURT: This is the case of Quintin Linen  
versus the State of South Carolina under docket number  
2014-CP-10-2117. Present and appearing is the petitioner  
with his attorney, Tara Dawn Shurling of the Richland  
County Bar and the State is represented by Ms. Elizabeth  
Neyle. Ms. Neyle, this is your motion I believe?

MS. NEYLE: Yes, Your Honor, it is.

THE COURT: You may proceed.

MS. NEYLE: Thank you.

Quintin Linen v State  
Motion to Dismiss-Remarks by Ms. Neyle  
April 23, 2015

1 MS. NEYLE: Your Honor, this is the State's motion  
2 to dismiss the PCR application of Quintin Linen as you  
3 just mentioned. Mr. Linen filed his PCR application on  
4 March 31st, 2014 and we're moving to dismiss it because  
5 it's untimely and barred by Laches.

6 To give you a procedural history of Mr. Linen he was  
7 indicted in a January 1988 term of the Charleston County  
8 Grand Jury for armed robbery and that's 1987-GS-10-3362.  
9 He was represented by Russell Brown. And on January  
10 29th, 1988 he pled guilty and was indicted. And Judge  
11 Smith sentenced him to twelve years of imprisonment. He  
12 did not appeal his conviction and after he served his  
13 sentence ---

14 THE COURT: --- it was in what? 1990?

15 MS. NEYLE: Pardon?

16 THE COURT: What was the date of his sentence to  
17 his plea?

18 MS. NEYLE: He pled guilty on January 29th, 1988.

19 THE COURT: Okay.

20 MS. NEYLE: He didn't appeal and after he served  
21 his sentence he was released from SCDC custody. He  
22 didn't file his first PCR application until April 2, 1997  
23 more than nine years after his conviction. And it's  
24 1997-CP-10-2086. He filed his PCR application after he  
25 was indicted on his second armed robbery and given LWOP

Quintin Linen v State  
Motion to Dismiss-Remarks by Ms. Neyle  
April 23, 2015

1 notice. He went to trial on the second armed robbery and  
2 he was found guilty and he was sentenced to life without  
3 the possibility of parole. His first application  
4 challenging his first armed robbery was merged with his  
5 second PCR application that he filed in December of 1998  
6 challenging his second armed robbery conviction. Please  
7 stop me if it's confusing to you.

8 THE COURT: Actually I had an opportunity to read  
9 this one ahead of time. The other one I had not had time  
10 to read.

11 MS. NEYLE: There was an evidentiary hearing held  
12 in May of 2000 addressing his first and second PCR  
13 application and he was represented by Juan Tolley. On  
14 October 22nd, 2000 Judge Hall issued an order denying and  
15 dismissing both applications with prejudice and he  
16 specifically addressed the applicant's first PCR  
17 application. And he stated in the order this court finds  
18 applicant's 1997 PCR application that collaterally  
19 attacked his 1988 armed robbery conviction, so his first  
20 armed robbery, is barred by the statute of limitations.

21 He was convicted in 1988 however he filed his  
22 application on April 2nd, 1997 well after the July 1st  
23 1996 statute of limitations passed. Accordingly the  
24 application is denied. Mr. Linen then filed a Rule 59(e)  
25 motion in 2000 and a hearing was held where the applicant



Quintin Linen v State  
Motion to Dismiss-Remarks by Ms. Neyle  
April 23, 2015

1 was represented by Ellen Howard. There may have been --  
2 the 59(e) motion may have been lost in the mix a little  
3 bit because Judge Hall retired between the PCR denial and  
4 the 59(e) hearing and so Judge Pieper heard that 59(e)  
5 motion and denied the motion in July of 2003.

6 Mr. Linen appealed and he was represented on appeal  
7 by Eleanor Cleary [phonetic] of the South Carolina  
8 Appellate Defense. The South Carolina Supreme Court  
9 denied his Johnson petition for a writ of cert on May  
10 13th, 2004; the remittitur being issued in June of 2004.  
11 He filed -- between his denial of the -- I'm sorry,  
12 between Judge Hall denying his first and second  
13 application and between his appeal of that in 2004 he  
14 filed another PCR application in 2001 where he challenged  
15 both armed robbery convictions.

16 He was represented by Ellen Howard again. He  
17 withdrew that PCR application in 2002 and Judge Dennis  
18 dismissed by order after finding he voluntarily withdrew  
19 his PCR. We're now here on an application filed on March  
20 31st, 2014 and he's solely challenging his 1988 armed  
21 robbery, the first one ---

22 THE COURT: --- so this is in essence his fourth  
23 PCR on that -- or third?

24 MS. NEYLE: In essence it would be his third PCR  
25 challenging his first armed robbery. And he's asking for

Quintin Linen v State  
Motion to Dismiss-Remarks by Ms. Neyle  
April 23, 2015

1 a belated PCR appeal from the order of dismissal issued  
2 on October 12th, 2000. He says in his application he was  
3 without the benefit of counsel to assist him in raising  
4 the appropriate defenses to the summary dismissal of his  
5 first PCR application docketed in '97-10-2086.

6 Your Honor, we're making a motion to dismiss his  
7 claim because it lacks merit. He did receive appellate  
8 review. His PCR was summarily -- it was denied because  
9 it barred by the statute of limitations and that order  
10 wasn't appealed and he was represented by counsel who  
11 filed a Johnson petition addressing the merits of the  
12 case.

13 Further, Your Honor, we're asking you to dismiss  
14 this case because it's barred by Laches. He's filing his  
15 current application more than 26 years after his  
16 conviction and more than 13 years since Judge Hall issued  
17 an order dismissing his first PCR as barred by the  
18 statute of limitations and more than nine years since the  
19 Supreme Court issued dismissed the petition for a writ of  
20 cert. And along with barred by Laches, Your Honor, we  
21 also move to dismiss because it's untimely. Thank you.

22 THE COURT: Yes, Ms. Shurling?  
23  
24  
25

Quintin Linen v State  
Motion to Dismiss-Remarks by Ms. Shurling  
April 23, 2015

1 MS. SHURLING: If Your Honor thought the last case  
2 was complicated it was a cake walk compared to this one.  
3 The procedural history is not quite as clear cut as the  
4 respondent's summary unfortunately. I'll try to clarify  
5 a few points. The applicant's first PCR action was in  
6 fact filed on his 1988 guilty plea. His second PCR was  
7 filed addressing an entirely different set of charges on  
8 which he had a jury trial.

9 THE COURT: Was that a second armed robbery or just  
10 another one?

11 MS. SHURLING: It was, Your Honor.

12 THE COURT: Okay.

13 MS. SHURLING: But prior to that according to the  
14 records of the Charleston County Clerk of Court his first  
15 application for post conviction relief addressing his  
16 guilty plea in 1988 was denied by an order of dismissal  
17 filed on October 12th, 2000. Then he filed his second  
18 one but it's not on the same case, it's on the jury case.

19 THE COURT: Right. But on this particular charge  
20 how many PCR's does he have?

21 MS. SHURLING: It depends on whether ---

22 THE COURT: --- is this his third or at least his  
23 second?

24 MS. SHURLING: Two by my count and I'll explain why  
25 ---

Quintin Linen v State  
Motion to Dismiss-Remarks by Ms. Shurling  
April 23, 2015

1 THE COURT: --- granted it was at least two?

2 MS. SHURLING: Well, I have to explain, Your Honor.  
3 There is no way to answer that as directly as I would  
4 like to. What happened is according to the Clerk of  
5 Court's records his application was just summarily  
6 dismissed October 12th. He files a second one on his  
7 jury trial. After an order of dismissal is issued he  
8 files a pro se motion to alter or amend on that one.

9 He filed his third application for post conviction  
10 relief that was withdrawn in January of 2002 and it  
11 appears to have been referencing the jury trial as well.  
12 But during the hearing on that case Judge Dennis  
13 attempted to dispose of the Rule 59(e) motion that had  
14 been pending in the PCR from the jury trial and was  
15 informed by the State that ---

16 THE COURT: --- but he's not doing anything today  
17 on the jury trial. This is strictly ---

18 MS. SHURLING: --- no sir, Your Honor ---

19 THE COURT: --- on the 1988 plea.

20 MS. SHURLING: That's true.

21 THE COURT: Okay.

22 MS. SHURLING: But there's a reason why that's  
23 relevant. Where Judge Dennis attempted to dispose of a  
24 59(e) on a previous PCR ruled on by a previous judge the  
25 Attorney General's office reminded Judge Dennis that he

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1 could not entertain that; that he would not be the  
2 appropriate judge to do that and that 59(e) was in fact  
3 ultimately heard by Judge Pieper.

4 THE COURT: Okay.

5 MS. SHURLING: Now I can tell Your Honor I do more  
6 private post conviction relief work than any lawyer I  
7 know in the State. The statute case law and more  
8 importantly at the insistence of the Attorney General's  
9 office they never allow currently in the last dozen or so  
10 years you can't file a PCR and cover this trial, that  
11 trial, this plea; it's -- each application deals with a  
12 set of sentences and judgments that were entered in a  
13 particular ---

14 THE COURT: --- well, because it's for a particular  
15 case.

16 MS. SHURLING: Correct. What happened in this case  
17 is apparently there was a PCR on the guilty plea that was  
18 according to the records of Charleston County Clerk of  
19 Court summarily dismissed. He files the second PCR,  
20 which is on the jury trial. And at some point Judge Hall  
21 -- the State is referring as those cases as having been  
22 merged. But essentially Judge Hall rules on the PCR  
23 before him on the jury trial but he also makes rulings  
24 with regard to the PCR from the guilty plea. And yes,  
25 there was an appeal from that PCR. But when the appeal

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1 was done by Appellate Defense Appellate Defense filed a  
2 Johnson brief; Johnson being the PCR cousin of Anders v  
3 California. And as Your Honor knows under the procedures  
4 set for both of those cases, direct appeal and PCR, the  
5 entire record below is supposed to be put in the record  
6 before the court. There is a reason for that. The  
7 reason is when a no merit pleading is filed by the  
8 appellate lawyer it, of course, shifts the burden to the  
9 Appellate Court to review the record for themselves and  
10 see if there is anything that the lawyer has not taken  
11 note of that should be given treatment other than a no  
12 merit treatment under Anders or Johnson.

13 Well the records from the Johnson appeal filed by  
14 Eleanor Duffy Cleary [phonetic] who was then with the  
15 Office of Appellate Defense and her Johnson petition was  
16 attachment E to my application indicate that she did not  
17 address the propriety of Judge Hall making a ruling on  
18 the two separate PCR's. She didn't address the fact that  
19 there had apparently been a ruling prior to Judge Hall  
20 entertaining the case and more importantly from my  
21 judgment since there was a Johnson proceeding none of the  
22 pleadings concerning the prior PCR were contained in the  
23 appendices in the appeal from the second PCR.

24 THE COURT: Okay. But let me -- I don't mean to  
25 cut your short but what does that have to do with the

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1 fact that he's waited almost 16 years; at the least 11  
2 years since the last time. I mean he's still got a one  
3 year statute of limitations and he's exceeded that under  
4 every conceivable angle you attack this from.

5 MS. SHURLING: And every one of those every  
6 conceivable angles demonstrate the fact that he's been  
7 trying to get someone to listen to the fact ---

8 THE COURT: --- yes, but I mean why didn't he file  
9 this PCR back in 2001, 2002, 2003, 2004, 2005, 2006,  
10 2007? He waited to 2014. It's not like he missed it by  
11 a couple of months.

12 MS. SHURLING: I understand, Your Honor. What  
13 happened in this case is that he filed his application,  
14 it got dismissed, he does another one on the second case  
15 and the case is getting properly merged but all these  
16 things ---

17 THE COURT: --- let's go with everything -- let's  
18 assume all that was really messed up. Why did he wait  
19 this long? Has he at least waited more than a year?

20 MS. SHURLING: At that point -- yes sir, Your  
21 Honor.

22 THE COURT: Okay.

23 MS. SHURLING: At that point what happens is you  
24 look at the fact that in his first PCR it was dismissed  
25 without him every having an opportunity to make his

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1 argument with regard to the fact that it was timely under  
2 17-27-45(b) and that he never got an appeal from that.  
3 But he's done everything with a very limited education.

4 THE COURT: You know the law doesn't say ---

5 MS. SHURLING: --- and limited financial ---

6 THE COURT: --- that though. The law doesn't say  
7 ---

8 MS. SHURLING: --- he doesn't know what's wrong and  
9 finally serving what he believes to be a wrongful life  
10 without parole sentence a sister who has no obligation  
11 financially for him finally starts doing her research and  
12 trying to find a lawyer that can sift out the mess that  
13 this case was procedurally and was able to save up the  
14 money to hire me. I mean that's the straight answer.

15 THE COURT: Okay, thank you.

16 MS. SHURLING: But the reality is just like going  
17 back to the earlier argument that I need to make for this  
18 record as well this was an area of law at the time of his  
19 plea and at the time of his PCR and in subsequent years  
20 this has been a very evolving changing area of the law.  
21 The bottom line is our Supreme Court has never heard the  
22 question of whether or not an application for post  
23 conviction relief that was timely filed as soon as he  
24 found out that under this new law his prior offense was  
25 going to be an enhancement ---



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1           THE COURT:   --- so now you're proposing that there  
2 be discovery rule for a PCR? I mean that's in essence  
3 that he now finds out 26 years later, which my law clerk  
4 was not even born then, that he had a possibility for  
5 that?

6           MS. SHURLING:   No sir, Your Honor. I'm saying that  
7 it isn't as though he did nothing for all these years.  
8 He's been filing things to the best of his ability. He  
9 files a 59(e). He doesn't get it heard by the right  
10 judge. The wrong judge tries to hear it. It finally  
11 gets heard by Judge Pieper. There is an appeal; it's a  
12 mess. And it's a mess that I as a lawyer spent a week  
13 trying to figure out what happened.

14           Again, I know ignorance of the law is no excuse but  
15 there has to in good conscience to have an effective  
16 judicial system be a limit to which we're going to hide  
17 behind that mantra. When you're dealing with procedural  
18 issues that are this complex and clear procedural errors  
19 have occurred that were beyond his control and matters  
20 were handled in a way that was not consistent with proper  
21 procedure and beyond his control and he has neither the  
22 intellectual where with all or the education to even  
23 figure out what was wrong must less how to fix it. And I  
24 would ask the court to seriously -- the arguments were  
25 difficult to format and I put a lot of time into it and

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1 they are far more articulately couched in the application  
2 than I can in a brief time today. But I do believe that  
3 there is justification in this record for at minimum  
4 giving him an opportunity to have an appellate review on  
5 the question of whether or not his original PCR should  
6 have been afforded a hearing or whether it was properly  
7 summarily dismissed.

8 THE COURT: Yes, ma'am. Ms. Neyle?

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Motion to Dismiss-Reply by Ms. Neyle  
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1 MS. NEYLE: Yes, Your Honor. Ms. Shurling  
2 addressed the new case law and whatnot his sole claim  
3 that he has set forth is the Alston appeal. And Your  
4 Honor he has waited this long to take this civil action  
5 and we submit it's barred by Laches. He's challenging  
6 his 1988 conviction. You know he's waited all this time  
7 to serve his Alston claim so for that reason we ask you  
8 to dismiss this claim.

9 THE COURT: Okay.

10 MS. SHURLING: May I respond?

11 THE COURT: Very briefly.  
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1 MS. SHURLING: What has happened in this case is  
2 typical of why he could not handle this appropriately  
3 himself. Two cases unrelated that should have never been  
4 heard together or ruled on by a judge that should have  
5 ruled on both of them. He's not a lawyer. He doesn't  
6 have a way to know that and that doesn't ---

7 THE COURT: --- but that argument could be made for  
8 every PCR that is presented because most of them  
9 initially are done by the inmate on their own. That's  
10 always the case or 95 percent. Very few people come in  
11 here on a PCR represented by counsel of your status in  
12 the South Carolina bar.

13 MS. SHURLING: But then they at least get a court  
14 appointed lawyer that has an obligation under Rule 71.1  
15 to independently review the record and to include any  
16 meritorious claims that should have been in the pro se  
17 pleading. And that's what was lacking here. And I was  
18 just going to say Your Honor that just as if you think  
19 about the difference of opinion the State says the two  
20 PCR's were merged. I don't blame her for that view ---

21 THE COURT: --- again, I go back to assuming all of  
22 that is correct you've still got nine years since the  
23 last time the Supreme Court has heard this thing. And  
24 granted they had to have time to come up with the money.  
25 But the law doesn't say when you get the money you get to

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1 hire an attorney and go from there.

2 MS. SHURLING: I -- and please let me hasten to  
3 correct that. That may have been a factor but the  
4 important thing here is this. Judge Hall takes both  
5 cases under consideration and rules, then he has an  
6 appeal; an appeal which purports to address both PCR  
7 applications; it at least has both CP numbers on the  
8 cover. It doesn't address any of the issues that had  
9 anything to do with the first one but it's got both CP  
10 numbers on it.

11 So as far as this man is concerned with his limited  
12 knowledge of the law he thinks he's gotten the only  
13 appeal he's going to get and he's gotten an appeal that  
14 says it was on both of them. It's years later admittedly  
15 when his sister finally gets me for him that he for the  
16 first time becomes aware that number one they weren't  
17 supposed to be heard together and number two he didn't  
18 get an appeal on both of them. That just because you  
19 stuck both CP numbers on the cover doesn't mean that the  
20 appeal in fact covered both of them.

21 The appeal didn't say a word about the arguments for  
22 the first one and it didn't include the documents in the  
23 appendix. But as far as his limited knowledge for any  
24 reason he had to believe everything that he could do had  
25 been done. He had a PCR appeal and lost. He didn't have

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1 any reason to think there was something else he could try  
2 to do.

3 THE COURT: All right. I'm going to take this  
4 matter under advisement as the other one. Do you need  
5 more time for this one since I already got you under ---

6 MS. SHURLING: --- I would appreciate that, Your  
7 Honor.

8 THE COURT: How about I give you 60 days? Does  
9 that work?

10 MS. SHURLING: And I will try my very best to get  
11 it sooner but...

12 THE COURT: I'm not in a hurry.

13 MS. SHURLING: Thank you.

14 MS. NEYLE: Thank you.

15 THE COURT: Thank you.

16 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
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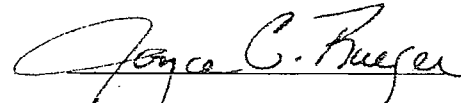
Quintin Linen v State  
Certificate of the Court Reporter  
April 23, 2015

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official  
Circuit Court Reporter for the Ninth Judicial Circuit of  
the State of South Carolina, do hereby certify that the  
foregoing is a true, accurate, and complete Transcript of  
Record of the proceedings had and evidence introduced in  
the trial of the captioned case, relative to appeal, in  
the Court of Common Pleas for Charleston County, South  
Carolina on the 23rd day of April, 2015.

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

December 20, 2015



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

QUINTIN LINEN, 238553 )  
Applicant, )

2014-CP-10-2117

v. )

MEMORANDUM IN THE FORM OF A  
PROPOSED ORDER

THE STATE OF SOUTH CAROLINA, )  
Respondent. )  
\_\_\_\_\_ )

FILED  
2015 JUL 24 PM 2:17  
JULIE A. AUSTIN  
CLERK OF COURT  
BY \_\_\_\_\_

### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. He was indicted at the January, 1988 term of the Charleston County Grand Jury for armed robbery (1987-GS-10-3362). Russell Brown, Esquire represented Applicant in the Court of General Sessions. On January 29, 1988, Applicant appeared before the Honorable John Hamilton Smith and entered a plea of guilty as indicted. He was sentenced by Judge Smith to a twelve (12) year term of imprisonment. Applicant did not pursue a direct appeal from this judgment and sentence. After completing his sentence, he was released from SCDC custody.

Applicant filed his initial PCR Application, docketed at 1997-CP-10-2086, on April 2, 1997, after he was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery (1997-GS-10-0926) and was served with Notice of the State's Intent to Seek Life without Parole pursuant to S. C. Code Ann. § 17-25-45 (2014). Days later, on April 8, 1997, Applicant proceeded to trial and was found guilty as indicted. The Honorable Charles W. Whetstone, Jr., sentenced Applicant to life imprisonment without parole (LWOP) based upon his receipt of a



second "strike" for a most serious offense. In his first PCR Application, Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel:
  - i. "Failure to investigate the offense: attorney only met with me 1 time 5-7 days before court. I told him where I was when crime happened, but he never investigated. I had only met with my lawyer one time before court for no more than 20 minutes. Mr. Brown never asked for name or witnesses."
2. Guilty plea – waiver of rights not knowingly and voluntarily made:
  - i. "Mr. Brown told me if I did not plead guilty I would get the maximum sentence of 25 years. I felt intimidated and like I did not have a choice. I did what Mr. Brown told me to do, not what I felt was right."

Applicant's second PCR Application, docketed at 1998-CP-10-5031, was filed on December 31, 1998, and was his *first* PCR addressing his 1997 conviction. At the time of this filing, there had been no action taken on his previously filed application docketed at 1997-CP-10-2086. In his PCR Application addressing his April, 1997 jury trial, Applicant alleged the following grounds for relief: Ineffective assistance of counsel;

1. "The manner in which the State has proscribed that my sentence be carried out is unconstitutional; "and
2. After discovered evidence, constitutional issues-novel issues.

An evidentiary hearing was held on that application on May 22, 2000, at the Charleston County Courthouse. Juan Tolley, Esquire, represented Applicant. By Order filed October 12, 2000, the Honorable H. Dean Hall, presiding circuit judge, issued a ruling denying and dismissing *both* applications with prejudice. That order stated:

This Court finds Applicant's 1997 PCR Application (97-CP-10-2086), collaterally attacking his 1988 armed robbery conviction (87-GS-10-3362) is barred by the statute of limitations. S.C. Code Ann. § 17-27-45(a). Applicant was convicted on January 28, 1988; however he filed his application on April 2, 1997,

well after the July 1, 1996 statute of limitations passed. *See, Peloquin v. State*, 321 S.C 468 469 S.E.2d 606 (1996). Accordingly, the application is denied.

Applicant filed a *pro se* Motion to Alter or Amend Judgment, pursuant to Rule 59(e), SCRCP, on November 7, 2000. Applicant appealed the denial of his PCR Application docketed at 1998-CP-10-5031. He was represented by the Appellate Division of the South Carolina Office of Indigent Defense, in the person of Eleanor Duffy Cleary, then an Assistant Appellate Defender with that agency. Appellate Defender Cleary filed a *Johnson*<sup>1</sup>, no merit, certiorari petition on behalf of Applicant. By Order filed July 30, 2003, the Honorable Daniel F. Pieper denied the Rule 59(e) Motion filed by Applicant on November 7, 2000. The Supreme Court of South Carolina denied Applicant's Petition for Writ of Certiorari on his PCR appeal on the action docketed 1998-CP-10-5031 on May 13, 2004. The Remittitur was issued on June 1, 2004.

Applicant filed a third PCR Application (2001-CP-10-1999) on March 6, 2001, challenging both his 1988 and 1997 convictions and alleging the following ground for relief:

1. "Denied unlawful PCR procedures and direct appeal."
2. "Both my convictions 97-GS-10-0926 and 87-GS-10-3362 were illegally imposed by an unlawful form of S. C. Bar Court out of legal lawful jurisdiction of S. C. Circuit Court."
3. "Denied counsel by criminal dysfunctional counsel aiding solicitor to illegally fraud client with a frauded [sic] indictment at no time has any counsel been honest and lawfully working for my best interest."
4. "Racially targeted and discriminated against in illegal prosecution and denial of legal counsel in a lawful manner in the initial prosecutions, direct appeal, PCR's and etc."

Respondent made its Return and Motion to Dismiss on June 14, 2001. On July 5, 2001, Applicant submitted a *pro se* Memorandum in Opposition to Respondent's Motion to Dismiss. Ellen Howard, Esquire represented Applicant. By Order filed January 17, 2002, the Honorable R.

<sup>1</sup> *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

Markley Dennis, Jr., dismissed this application *with prejudice* after finding Applicant freely, voluntarily, and intelligently withdrew his application.

Applicant filed his current application on March 31, 2014, solely challenging his 1988 conviction and alleging the following grounds for relief:

1. Applicant was denied the opportunity for his one full collateral review of the judgments and sentences addressed in his first PCR which addressed the judgment and plea for armed robbery used to enhance his sentence at his subsequent jury trial to Life Without Parole. He has not had his "one full bite at the apple" for collateral review of his first PCR.
2. Applicant was without the benefit of Counsel to assist him in raising the appropriate defenses to the Summary Dismissal of his first PCR action docketed at 97-CP-10-2086. The Applicant now respectfully argues that the Applicant's first PCR action was dismissed without him ever being fully heard on the reasons that action should have been found to be timely. The Applicant was without fault in this matter inasmuch as he never got the chance to develop this argument and have it heard in the context of his first PCR action. For that reason, he should have his first PCR action reopened and should be afforded the opportunity, this time with adequate legal counsel, to demonstrate why his initial PCR was timely. In the alternative, at minimum, he should be granted a belated PCR appeal from the Order of Dismissal issued in this matter on October 12, 2000.

Respondent filed its Return and Motion to Dismiss on February 17, 2015. An evidentiary hearing was convened before this Court on Respondent's Motion to Dismiss on April 23, 2015, at the Charleston County Courthouse. Applicant was present at that proceeding and was represented by Tara Dawn Shurling, of the Richland County Bar. Respondent was represented by then Assistant Attorney General, Elizabeth H. Neyle. This Court has before it copies of the Records of the Charleston County Clerk of Court regarding the subject conviction and sentence, Applicant's records from the South Carolina Department of Corrections, copies of the pleadings in this PCR

action and copies of the pleadings, orders and available transcripts from the previous PCR actions discussed herein.<sup>2</sup>

### DISCUSSION

S.C. Code Ann. §17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of an application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." In this case, Applicant was afforded the opportunity to be heard on Respondent's Motion for Dismissal on this application. What is now clear to this Court is that Applicant's original PCR action on the judgment addressed here was dismissed without a hearing and without any opportunity to be heard on the question of whether there existed facts, unique to his case, which justified the hearing of his application on its merits pursuant to S.C. Code §17-27-45 (B) and/or (C). For the reasons discussed below, this Court finds that this application brings to light grounds which have escaped fair review by the Court through no fault of Applicant and therefore, should be heard. This Application raises "a ground for relief for which sufficient reason was not asserted or was inadequately raised in the original....application" filed by Applicant and which was dismissed without Applicant having been given the opportunity to more fully develop and explain potential justification for his failure to file within the one year statute of limitations set forth in §17-27-45 (A). *See also*, S.C. Code Ann. §17-27-90.

As noted above, Applicant's **first PCR action**, Docketed at **97-CP-10-2086** addressed his 1988 judgment and sentence entered pursuant to a guilty plea to armed robbery. That PCR Application was filed shortly after the State announced its intention to use the Applicant's prior judgment as the predicate most serious offense for a life without parole sentence pursuant to §17-

<sup>2</sup> Many of the records addressed in this order were submitted as Attachments to this Application for PCR. All of the records addressed herein are public records incorporated, to the extent relevant to this action, by reference.

25-45 (2000) on Indictment No. 97-GS-10-0926 for armed robbery. According to the records of the Charleston County Clerk of Court, this Application for PCR was denied by Order of Dismissal filed October 12, 2000. *See, discussion infra*. At the evidentiary hearing held in this matter, Applicant asserts that there is no clear record of any Order of Dismissal on 97-CP-10-2086 having been appealed to the Supreme Court nor is it apparent from the public index whether the Applicant had a lawyer appointed to him in that PCR action.

The records before this Court establish that Applicant's *second* PCR action, docketed at 98-CP-10-5031, was filed on December 31, 1998 and addressed the Applicant's jury trial at which he was convicted of a second armed robbery and was sentenced to Life without Parole based upon his previous plea addressed in his first PCR action. There is no record before this Court of any action taken on Applicant's first PCR action docketed at 97-CP-10-2086 prior to the filing of Applicant's second PCR filed on a separate charge which was disposed of at a separate judicial proceeding; a jury trial held on April 8, 1997. The records before this Court verify that the judge who presided over Applicant's second PCR, the Honorable H. Dean Hall, issued an Order of Dismissal in that case which was filed on October 12, 2000. For reasons not clear from the Order, Judge Hall dismissed the Applicant's first PCR Application as untimely in his order ruling on the PCR action docketed at 1998-CP-10-5031.

The Applicant filed a *pro se* Motion to Alter or Amend pursuant to Rule 59(e) SCRPC on November 7, 2000. That motion was very clearly captioned as a Motion to Alter or Amend Judgment on **1998-CP-10-5031**. While Applicant apparently had a hearing on his *pro se* 59(e) motion filed on his second PCR after it was denied, no transcript of that hearing was included in the Appendix to the PCR appeal from the Order of Dismissal issued following the evidentiary hearing

on the application docketed at **98-CP-10-5031**. Neither did that Appendix contain a copy of Judge Pieper's Order denying that 59(e) motion.

During the evidentiary hearing held on Applicant's most recent PCR filing, Applicant's current PCR Counsel proffered that her research of all available records did not reveal any documentation of the date that document was date stamped for mailing from the South Carolina Department of Corrections nor do they reflect the date the Applicant was actually served with the Order of Dismissal.

The Applicant filed a **third PCR action** on March 16, 2001 which was docketed at 01-CP-10-999. The records before this Court reveal that this *third* PCR Application was apparently withdrawn on Wednesday, January 16, 2002. It appears from the records of the Clerk of Court that Attorney Howard was appointed in connection with Applicant's *third* PCR filing, and that a subsequent hearing held before the Honorable R. Markley Dennis, was likewise on that application. The records before this Court demonstrate that during that hearing before Judge Dennis, the parties *attempted* to address the Applicant's *pro se* Rule 59(e) motion on his previous PCR docketed at 98-CP-10-5031, and were instructed that the matter had to be addressed to the attention of the current Chief Administrative Judge pursuant to Rule 63, SCRCP, inasmuch as Judge Hall, who had issued the Order of Dismissal on that Application, had retired.

A hearing was subsequently held before the Honorable Danny Pieper, then Chief Administrative Judge for the Ninth Judicial Circuit, on the Applicant's Rule 59 (e) Motion on 98-CP-10-5031. Judge Pieper issued an Order denying the Applicant's Rule 59(e) motion on 98-CP-10-5031. That order was filed on July 30, 2003. Neither the *pro se* 59 (e) Motion, nor the Order of Judge Pieper, address the propriety of Judge Hall's dismissal of the PCR action docketed at **97-CP-10-2086** in his order ruling on a separate civil action. To be clear, the PCR docketed at **98-CP-10-**

5031 addressed allegations arising from a jury trial on a *completely different charge* than that addressed in Applicant's earlier PCR docketed at 97-CP-10-2086. The judgment at issue in 97-CP-10-2086 was entered pursuant to a plea of guilty. The judgment addressed in Applicant's second PCR docketed at 98-CP-10-5031, was entered at a jury trial before a different judge at which Applicant was represented by a different Defense Attorney.

The Applicant filed an appeal from the Order of Dismissal issued on the PCR action docketed at 98-CP-10-5031. Certiorari was denied following the submission of a *Johnson* Petition by Eleanor Duffy Cleary, counsel with the Office of Appellate Defense. Certiorari was denied and appellate counsel was relieved by orders of the Supreme Court of South Carolina dated May 13, 2004. The propriety of the ruling of Judge Hall, dismissing the PCR on the guilty plea case in the Order of Dismissal on the separate PCR addressing Applicant's jury trial, was not addressed in the appeal to the Supreme Court of South Carolina. The *Johnson* Petition filed by Appellate Defense did not raise this issue and none of the documents pertaining to the action docketed at 97-CP-10-2086 were included in the Appendix to the PCR appeal on 98-CP-10-5031. The only document in that Appendix pertaining to 97-CP-10-2086 was the Order of Dismissal on 98-CP-10-5031, which was in the Appendix, and has *both* 97-CP-10-2086 and 98-CP-10-5031, listed in the caption to the order and contains what purports to be a ruling on this unrelated PCR action on page 5, Section G, of that Order. Applicant argues he never received an appeal from the denial of his first PCR action docketed at 97-CP-10-2086 by Judge Hall. Although the Applicant, acting *pro se*, did not address the propriety of Judge Hall's actions in his *pro se* 59(e) Motion, the ruling in question was included in the Order of Dismissal and therefore was preserved for appeal. Applicant asserts that had all the necessary documents from his first PCR, docketed at 97-CP-10-2086, been in the Appendix to the

appeal from Judge Hall's ruling on 98-CP-10-5031, the Supreme Court may very well have addressed this issue in its review pursuant to the *Johnson* filing in that case. This Court agrees.

Applicant now alleges that he was denied the opportunity for his one full collateral review of the judgment addressed in his first PCR which was ultimately used to enhance his sentence at his subsequent jury trial to life without parole. He has not had his "one full bite at the apple" for collateral review of his 1988 judgment. It is Applicant's position that the ruling on his *first* PCR action, addressing his 1988 guilty plea, is not valid inasmuch as it was issued in the context of an order ruling on a completely different civil action; his *second* PCR addressing a different judgment on an unrelated crime which was imposed at a separate judicial proceeding at which he was represented by a different lawyer. He further alleges he was denied the opportunity to have that ruling subjected to appellate review where the Appendix submitted in connection with the *Johnson* PCR appeal perfected from the Order issued on his *second* PCR Application did not include the documents relevant to that earlier PCR. Once again, this Court is inclined to agree.

There is no evidence Applicant had an attorney appointed to represent him in connection with his *first* PCR application. As argued by Applicant, not only was the ruling by Judge Hall procedurally flawed, it was issued without Applicant having had the opportunity to respond, with the benefit of counsel, to assertions that the filing was not timely pursuant to S.C. Code Ann. §17-27-45 (A). Ordinarily, when the State asserts an Application for PCR is not timely filed, it will seek a Conditional Order of Dismissal from the Court. Such orders typically give the filing party twenty (20) days to explain why his application should not be dismissed as untimely. There is no evidence before this Court that a Conditional Order of Dismissal was ever filed in this case. There is, in fact, no evidence before this Court that Applicant was ever put on notice of the State's position that his first application was not timely. There is no record confirming the State ever filed a Return



and Motion to Dismiss on the Application docketed at 97-CP-10-2086. Therefore, not only did Applicant not receive the benefit of counsel to assist him in that PCR action, he was not put on notice of State's position that his filing was untimely by proper service of a Return and Motion to Dismiss. Neither was Applicant given the opportunity to respond to a Conditional Order of Dismissal issued by the Court of Common Pleas. The Appendix filed in connection with the appeal from the Order of Dismissal on Applicant's *second* PCR filed following his jury trial, contains a transcript of the evidentiary hearing held on that application. *See, App. pp. 268 – 309.* The cover of that transcript contains the docket number for this second PCR only; 98-CP-10-5031. That transcript documents that although the fact that Applicant had filed a PCR on his earlier guilty plea is mentioned during that proceeding, there was no discussion or testimony concerning the status of that filing at the time of this hearing. Likewise, that transcript does not reflect any testimony or argument concerning whether that application was timely filed due to some factor that might have qualified Applicant's 1998 plea for review at the time of the filing of his first PCR pursuant to S.C. Code §17-27-45 (B) or (C).

At the hearing on Applicant's PCR on his 1997 jury trial, arguments were heard concerning Applicant's Sixth Amendment claims against his lawyer *at that trial*. Judge Hall denied that application from the bench. *App. pp. 306-307.* Following that hearing held on May 22, 2000, Judge Hall filed an Order of Dismissal, signed on October 12, 2000, which without explanation ruled not only on the case properly before him, but on Applicant's previous PCR filing in an unrelated case as well. *App. p. 314, Section F.* Respondent asserts that Applicant's two PCR actions were "merged" and thus, were both properly ruled upon by Judge Hall. There is nothing in the records before this Court to support that assertion, nor is there any basis for an argument that S.C. Code §17-27-10, et seq.

The record below establishes that when the State filed its Notice of Intent to Seek a Life Sentence Without Parole against the Applicant it was the first time he had notice the State was going to argue his 1988 judgment qualified as a strike. The Applicant's trial record indicates that his PCR on the 1988 judgment the State sought to use as his first strike was pending at the time of his sentencing. The record from Applicant's jury trial reveals that his was the first case in Charleston County where the State was seeking a life without parole sentence based upon §17-25-45; the South Carolina Strike Law. As argued by Applicant, the question concerning what could qualify as a "strike" was far less resolved in 1997 than it is today.

During the hearing presided over by Judge Hall; there was no opportunity for Applicant to be heard concerning the timeliness of his first application. **App.pp. 268 – 309.** As noted above, the records of the Supreme Court of South Carolina do not reflect that the portion of the Order of Dismissal on the PCR action docketed at **98-CP-10-5031** which purports to rule on the Applicant's separate PCR action docketed at **97-CP-10-2086** was appealed to that Court either separately, or, as part of the PCR appeal perfected on **98-CP-10-5031**. The *Johnson* Petition filed by Appellate Defense clearly did not address this crucial issue.

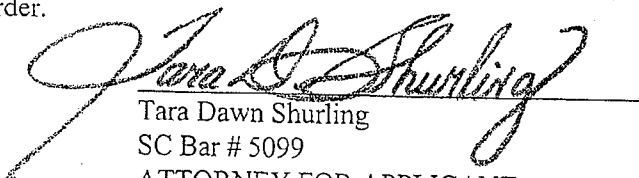
To say the procedural history of this Applicant's case is a mess would be an understatement. Applicant argues that his first PCR action was dismissed without him having been put on notice of the State's position that it was not timely and without him being given the opportunity to be heard, with the benefit of counsel, concerning the reasons that action should have been allowed to go forward. Applicant submits he was without fault in this matter inasmuch as he never got the chance to develop his arguments against Summary Dismissal and have them heard in the context of his first PCR action. For that reason, he has asked the Respondent's Motion for Summary Dismissal be denied and his first PCR action reopened. He seeks the opportunity, this time with adequate legal

counsel, to demonstrate why his initial PCR on his 1988 judgment was timely. In the alternative, he asks that he be granted a belated PCR appeal from the Order of Dismissal issued in this matter on October 12, 2000.

On the very narrow and most unusual facts of this case, taking into account the life without parole sentence the Applicant is serving, this Court finds the relief requested is necessary and appropriate. Wherefore, this Court finds the Respondent's Motion for Summary Dismissal should be denied. It is the finding of this Court that the ruling previously issued on Applicant's original PCR Application docketed at **97-CP-10-2086** in the Order of Dismissal on the Application docketed at **98-CP-10-5031**, is not valid. Applicant's request for this Court's Order reopening his PCR action docketed at **97-CP-10-2086** is hereby granted. This Court further finds that Applicant never had the opportunity for a proper PCR appeal from the portion of the Order in the PCR docketed at **98-CP-10-5031** which purported to rule on the action docketed at **97-CP-10-2086** as well. For that reason, this Court finds he is now entitled to a belated appeal from that portion of that Order. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Inasmuch as this Court finds that the appropriate remedy in this matter is a *de novo* hearing on the timeliness of the PCR action docketed at **97-CP-10-2086**, Applicant's alternative request for a belated PCR appeal from the ruling issued by Judge Hall on that issue is moot. In the event this Order is appealed by Respondent, however, Applicant may exercise his right to his belated PCR appeal on **97-CP-10-2086** by filing a cross-appeal pursuant to Rule 203 (c), SCACR. Respondent is hereby directed to schedule a hearing on the timeliness of the application docketed at **97-CP-10-2086** at the earliest practical date.

IT IS SO ORDERED.

Document above submitted as a Memorandum in Support of the PCR Application, addressed herein, was previously submitted to the Court, and served on opposing counsel by email, on July 21, 2015 in the form of a Proposed Order.

  
Tara Dawn Shurling  
SC Bar # 5099  
ATTORNEY FOR APPLICANT

This 22<sup>nd</sup> day of July, 2015.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

QUINTIN LINEN, 238553 )

Applicant, )

2014-CP-10-2117

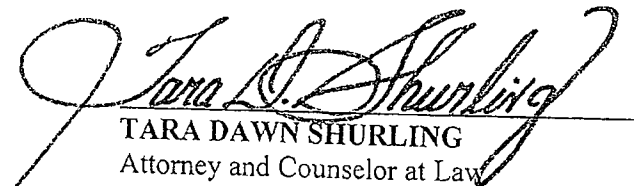
v. )

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA, )  
Respondent. )

The undersigned attorney hereby certifies that one copy of the Memorandum in the Form of a Proposed Order in the above-entitled cause has been served upon, Assistant Attorney General, Rutledge Johnson, by depositing in the U.S. Mail, postage prepaid, on this the 22nd day of July, 2015 to:

Rutledge Johnson  
Assistant Attorney General  
Office of the Attorney General  
P. O. Box 11549  
Columbia, SC 29211

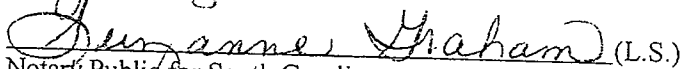
  
TARA DAWN SHURLING  
Attorney and Counselor at Law

3614 Landmark Drive, Suite A  
Columbia, S.C. 29204  
(803) 738-8622  
(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 22nd day of

July, 2015.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

QUINTIN LINEN, 238553 )

Applicant, )

v. )

THE STATE OF SOUTH CAROLINA, )  
Respondent. )

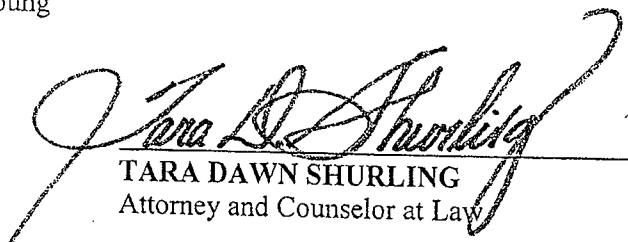
2014-CP-10-2117

**CERTIFICATE OF SERVICE**

FILED  
2015 JUL 24 PM 2:57  
JULIE A. HARRINGTON  
CLERK OF COURT

The undersigned attorney hereby certifies that one copy of the Memorandum in the Form of a Proposed Order in the above-entitled cause has been served upon, the Honorable W. Jeffery Young, presiding Circuit Court, by depositing in the U.S. Mail, postage prepaid, on this the 22nd day of July, 2015 to:

The Honorable William Jeffrey Young  
Circuit Court Judge  
215 N. Harvin Street  
Sumter, SC 29150

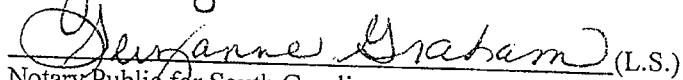
  
TARA DAWN SHURLING  
Attorney and Counselor at Law

3614 Landmark Drive, Suite A  
Columbia, S.C. 29204  
(803) 738-8622  
(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 22nd day of

July, 2015.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: 2/28/24

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

2014-CP-10-2117

Quintin Linen,  
S.C.D.C. No. 238553,

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED  
2015 SEP 22 AM 11:52  
JULIE C. BROWN  
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Quintin Linen (Applicant) on March 31, 2014. The State (Respondent) made its return on February 17, 2015, requesting the application be summarily dismissed.

This Court convened a hearing on the State's motion to dismiss on April 23, 2015, at the Charleston County Courthouse. Applicant and his counsel, Tara Dawn Shurling, Esquire, were present at the hearing. Elizabeth H. Neyle, of the South Carolina Attorney General's Office, represented Respondent. This Court had before it the Charleston County Clerk of Court's records regarding the subject conviction, South Carolina Department of Corrections records, and the pleadings in this case.

This Court grants Respondent's motion to dismiss this PCR application and issues the following findings:

#### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the

January 1988 term of the Charleston County Grand Jury for armed robbery (1987-GS-10-3362). Russell Brown, Esquire, represented Applicant. On January 29, 1988, Applicant pled guilty as indicted. The Honorable John Hamilton Smith sentenced him to a term of imprisonment of twelve years. Applicant did not appeal his conviction or sentence, and he was released from SCDC custody.

Applicant did not file his first PCR application (1997-CP-10-2086) until April 2, 1997, more than nine years after his 1988 conviction. Applicant filed this application after he was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery (1997-GS-10-0926). On April 8, 1997, Applicant proceeded to trial and was found guilty as indicted. The Honorable Charles W. Whetstone, Jr., sentenced Applicant to life imprisonment without parole (LWOP) pursuant to the "two strikes" law. *See* S.C. Code Ann. § 17-25-45 (2014).

In his first PCR application, Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel:
  - i. "Failure to investigate the offense: attorney only met with me 1 time 5-7 days before court. I told him where I was when crime happened, but he never investigated. I had only met with my lawyer one time before court for no more than 20 minutes. Mr. Brown never asked for name or witnesses."
2. Guilty plea – waiver of rights not knowingly and voluntarily made:
  - i. "Mr. Brown told me if I did not plead guilty I would get the maximum sentence of 25 years. I felt intimidated and like I did not have a choice. I did what Mr. Brown told me to do, not what I felt was right."

This application was subsequently merged with Applicant's second PCR application (1998-CP-10-5031), which was filed on December 31, 1998, and addressed his 1997 conviction. He alleged the following grounds for relief:



1. Ineffective assistance of counsel;
2. "The manner in which the State has proscribed that my sentence be carried out is unconstitutional;" and
3. After discovered evidence, constitutional issues – novel issues.

An evidentiary hearing was held at the Charleston County Courthouse on May 22, 2000.

Juan Tolley, Esquire, represented Applicant. By order filed October 12, 2000, the Honorable H.

Dean Hall denied and dismissed both applications with prejudice. The order stated:

This Court finds Applicant's 1997 PCR application (97-CP-10-2086), collaterally attacking his 1988 armed robbery conviction (87-GS-10-3362) is barred by the statute of limitations. S.C. Code Ann. § 17-27-45(a). Applicant was convicted on January 28, 1988; however, he filed his application on April 2, 1997, well after the July 1, 1996 statute of limitations passed. *See Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Accordingly, the application is denied.

Applicant filed a pro se motion to alter or amend judgment pursuant to Rule 59(e), SCRCP, on November 7, 2000. Upon information and belief, a hearing was held on February 15, 2001, at the Charleston County Courthouse.<sup>1</sup> Ellen Howard, Esquire, represented Applicant. By order filed July 30, 2003, the Honorable Daniel F. Pieper denied the motion.

Applicant appealed, and Eleanor Duffy Cleary, Esquire, represented him. The South Carolina Supreme Court denied his *Johnson*<sup>2</sup> petition for a writ of certiorari on May 13, 2004. The remittitur was issued on June 1, 2004.

Applicant subsequently filed another PCR application (2001-CP-10-1999) on March 16, 2001, challenging both his 1988 and 1997 convictions, and alleging the following ground for relief:

1. "Denied unlawful PCR procedures and direct appeal."

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<sup>1</sup> Judge Hall retired prior to the Rule 59(e) hearing, and Chief Administrative Judge Pieper presided over the hearing.

<sup>2</sup> *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

2. "Both my convictions 97-GS-10-0926 and 87-GS-10-3362 were illegally imposed by an unlawful form of S.C. Bar Court out of legal lawful jurisdiction of S.C. Circuit Court."
3. "Denied counsel by criminal dysfunctional counsel aiding solicitor to illegally fraud client with a frauded indictment at no time has any counsel been honest and lawfully working for my best interest."
4. "Racially targeted and discriminated against in illegal prosecution and denial of legal counsel in a lawful manner in the initial prosecutions, direct appeal, PCRs and etc."

Respondent made its return and motion to dismiss on June 14, 2001. On July 5, 2001, Applicant submitted a pro se memorandum in opposition to Respondent's motion to dismiss. Ellen Howard, Esquire, represented Applicant. Upon information and belief, Applicant withdrew his application at a hearing on January 16, 2002. By order filed January 17, 2002, the Honorable R. Markley Dennis, Jr., dismissed his application with prejudice after finding Applicant freely, voluntarily, and intelligently withdrew his application.<sup>3</sup>

Applicant filed his current application on March 31, 2014, solely challenging his 1988 conviction and alleging the following grounds for relief:

1. Applicant was denied the opportunity for his one full collateral review of the judgments and sentences addressed in his first PCR which addressed the judgment and plea for armed robbery used to enhance his sentence at his subsequent jury trial to Life without parole. He has not had his "one full bite at the apple" for collateral review of his first PCR.
2. Applicant was without the benefit of Counsel to assist him in raising the appropriate defenses to the Summary Dismissal of his first PCR action docketed at 97-CP-10-2086. The Applicant now respectfully argues that the Applicant's first PCR action was dismissed without him ever being fully heard on the reasons that action should have been found to be timely. The Applicant was without fault in this matter inasmuch as he never got the chance to develop this argument and have it heard in the context of his first PCR action. For that reason, he should now have his first PCR action reopened and that he be afforded the opportunity, this time with adequate legal counsel,

---

<sup>3</sup> Applicant subsequently filed two more PCR applications (2005-CP-10-4339, 2007-CP-10-2431) and a pro se federal petition for a writ of habeas corpus (04-2382) challenging his 1997 conviction, which were all dismissed.

to demonstrate why his initial PCR was timely. In the alternative, at minimum, he should be granted a belated PCR appeal from the Order of Dismissal issued in this matter on October 12, 2000.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and heard arguments presented at the hearing. Set forth below are the relevant findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

### A.

This Court finds Applicant's claim that he was "denied the opportunity for his one full collateral review of the judgments and sentences addressed in his first PCR" is without merit and must be dismissed. An applicant has the right to assistance of appellate counsel in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must file a notice of appeal, continue representation until relieved, and assist an indigent applicant in obtaining representation by the Office of Appellate Defense. See Rule 71.1(g), SCRCP. Applicant's first application, merged with his second application, was dismissed as barred by the statute of limitations. Judge Hall specifically addressed the denial of that first application in his order, finding it untimely. Applicant appealed the dismissal of his two applications, and was represented by counsel. The South Carolina Supreme Court denied his *Johnson* petition for a writ of certiorari on May 13, 2004. This Court finds this claim lacks merit because Applicant received appellate review and was assisted by counsel.

Even viewing the facts in the light most favorable to Applicant, his *Austin* claim is barred by the doctrine of laches. Laches is "neglect for an unreasonable and unexplained length of

time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party.” *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002) (quoting *Hallums v. Hallums*, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988)).

Applicant filed this current application **more than twenty-six years** after his conviction, **more than thirteen years** since Judge Hall’s order denying his first PCR application, and **more than nine years** since the South Carolina Supreme Court denied his petition for a writ of certiorari. At the hearing, Applicant explained his delay in filing this application was to allow his sister to save money to retain counsel. This Court finds Applicant’s explanation is not a reasonable justification for his delay in seeking PCR. *See McElrath v. State*, 276 S.C. 282, 284, 277 S.E.2d 890, 891 (1981) (stating that absent an acceptable allegation of reasonable diligence or justification by an applicant to explain a lengthy delay in seeking PCR, the trial court may dismiss an application as barred by laches). To ensure finality of litigation, our courts require reasonable diligence in pursuing relief. *See Bray v. State*, 366 S.C. 137, 139, 620 S.E.2d 743, 745 (stating that even though the court found petitioner did not knowingly and intelligently waive his right to appellate review of the denial of his first PCR application, his subsequent action, filed seven years after the denial of his first PCR application, was barred by laches). This requirement “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” *McElrath*, 276 S.C. at 283, 277 S.E.2d at 890-891.

Applicant’s delay in filing this application and *Austin* claim more than thirteen years after the order of dismissal from his first application has greatly prejudiced Respondent. Not only

would it be nearly impossible for the State to produce witnesses and evidence to respond to Applicant's allegations, PCR counsel's memory of his representation of Applicant, and the memory of any other necessary witnesses, is no longer fresh. As a result, Applicant's delay has seriously impaired Respondent's ability to respond to his allegations. This Court finds this application must be summarily dismissed as barred by laches.

### III. CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations or deprivations requiring this Court to further entertain this application. Therefore, this Court grants Respondent's motion to dismiss this PCR application with prejudice.

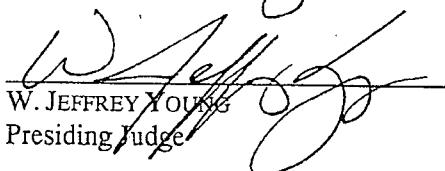
This Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203(b)(1), SCACR. Pursuant to *Austin v. State*, Applicant has a right to the assistance of appellate counsel if he seeks review of the denial of this order denying PCR. If Applicant wishes to seek appellate review, counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71.1(g), SCRCP. Applicant is directed to South Carolina Appellate Court Rule 243 for appellate procedures.



## IT IS THEREFORE ORDERED THAT:

1. Respondent's motion to dismiss Mr. Linen's PCR application is granted;
2. Applicant's PCR application is denied and dismissed with prejudice; and
3. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 10 day of August, 2015.

  
W. JEFFREY YOUNG  
Presiding Judge

Sumter, South Carolina

STATE OF SOUTH CAROLINA  
In The Supreme Court

438

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
W. Jeffery Young, Presiding Judge

**RECEIVED**

OCT 23 2015

2014-CP-10-2117

S.C. Supreme Court

QUINTIN LINEN, #238553

Applicant,

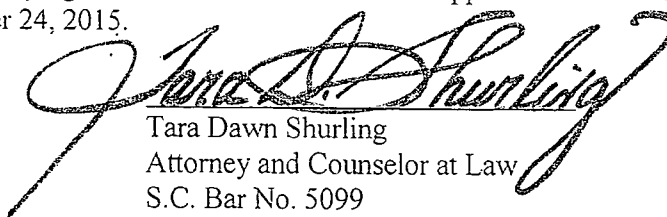
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

**NOW COMES** the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal filed on September 22, 2015, denying his Post-Conviction Relief Application. Said Order was received by Counsel on September 24, 2015.



Tara Dawn Shurling  
Attorney and Counselor at Law  
S.C. Bar No. 5099

3614 Landmark Drive, Suite A  
Columbia, South Carolina 29204  
(803)738-8622  
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 21<sup>st</sup> day of October, 2015.

Other Counsel of Record:

Rutledge Johnson, Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent  
(803) 734-3737

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
W. Jeffery Young, Presiding Judge

2014-CP-10-2117

**RECEIVED**

OCT 23 2015

S.C. Supreme Court

QUINTIN LINEN, #238553

Applicant,

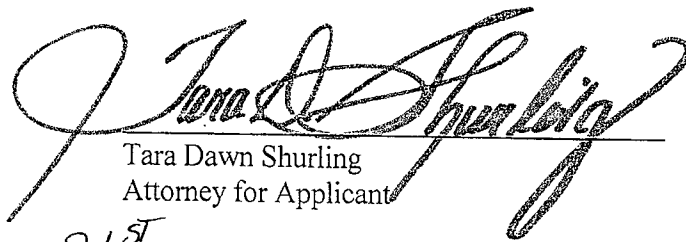
v.

THE STATE OF SOUTH CAROLINA,

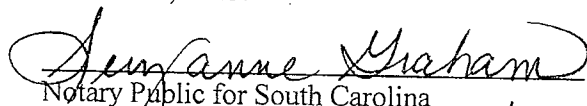
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Rutledge Johnson, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 21<sup>st</sup> day of October, 2015.

  
Tara Dawn Shurling  
Attorney for Applicant

SWORN TO BEFORE me this 21<sup>st</sup> day  
of October, 2015.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 2/28/24