

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

R. Ferrell Cothran, Circuit Court Judge

VOLUME II OF II

RECEIVED

APR 05 2017

S.C. SUPREME COURT

ANDREW BRENT SCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001569

APPENDIX

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1 State?

2 SOLICITOR ELLIS: Not from the State, Your Honor.

3 THE COURT: Any from the defense?

4 MS. JONES: No, sir, Your Honor.

5 THE COURT: I'll ask you to step forward and let's go
6 over the exhibits. Let's separate them so that we have the
7 ones that are going back to the jury separated.

8 (Pause.)

9 THE COURT: I'm going to ask the attorneys to approach
10 the bench once you get finished with that.

11 MS. JONES: Did Your Honor want us to approach?

12 THE COURT: Yes, I want to ask you a question.

13 (WHEREUPON, a bench conference was held at this time.)

14 THE COURT: And on the form I'm just gonna leave it, if
15 they find him guilty of armed robbery, then they would have
16 to decide Count Two. If they find him -- I'm not gonna put
17 a verdict. If they find him not guilty of armed robbery,
18 then there would be no possibility of the charge.

19 SOLICITOR ELLIS: Yes, sir.

20 THE COURT: You agree?

21 MS. JONES: Yes, sir, Your Honor.

22 THE COURT: All right.

23 (Pause.)

24 THE COURT: All right. Like to take a look at it just
25 to be sure?

1 (Pause.)

2 THE COURT: Any objection from the State?

3 SOLICITOR ELLIS: No, sir.

4 THE COURT: Defense?

5 MR. JONES: No, sir.

6 THE COURT: All right. Bring the jury back.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: All right. The record will reflect the
10 jury has returned.

11 Mr. Bailiff, if you'll pass this form over to Mr. Reid
12 for me.

13 (Foreman complies.)

14 THE COURT: Thank you.

15 Mr. Reid, I'm handing you the verdict form at this
16 time. Let me go over it with you briefly.

17 At the top of the page you'll see it states the county
18 and state and the Court that we're in. Right below that it
19 has the caption, what we call the caption, the State of
20 South Carolina versus Mr. Scott. Over the right indicates
21 it is a verdict form.

22 Now, there are four questions on this verdict form.
23 The first two questions have to do with the offenses of
24 assault and battery in the first degree and the offense of
25 kidnapping. The third question has to do with the offense

1 of armed robbery, and the fourth question has to do with use
2 of a, of a weapon in the commission of a violent crime.

3 Each of those questions has a choice, has two choices,
4 either guilty or not guilty, and let me caution the jury.
5 Please don't take from the order that I've placed those
6 choices on the form to somehow indicate that I might have a
7 preference.

8 I can assure you I've been doing this for about eight
9 years now and every verdict form I've ever done has the same
10 order of the verdict choices. So, it doesn't indicate any
11 preference on my part. That's the way it is on the computer
12 that we use and we always have those same choices.

13 But you would put either a check or an X on the line
14 beside the appropriate verdict once a unanimous verdict's
15 been reached on each question presented. I will point out
16 to you, the fourth question you will not answer that
17 question should the jury find the defendant not guilty of
18 the offense of armed robbery. Because if you find the
19 defendant not guilty of the offense of armed robbery, then
20 the State would not have shown that he was guilty of a
21 violent crime. So, therefore, there would be no verdict as
22 to the use of a weapon during the commission of a violent
23 crime.

24 So, you'll answer the first three questions. Should
25 you find the defendant guilty of armed robbery, you would

1 then answer the fourth question as to whether or not there
2 was a possession of a deadly weapon or in the commission of
3 a violent crime, possession of a weapon during the
4 commission of a violent crime.

5 Now, I'm going to send the indictment back with those,
6 that form. You have the right to review the indictments as
7 to each charge. Also we're sending all the evidence back
8 with you to the jury. You have the right to review that
9 evidence also during your deliberations.

10 Now, at this point in time I am going to inform you, I
11 know it's about 15 minutes after 12:00. I will tell you
12 that during your deliberations, the county does provide a
13 meal if that's necessary.

14 So, Mr. Foreman, if jury feels like you'd like to order
15 lunch if you think your deliberations are gonna take that
16 long, then let the bailiff know. I will send a clerk's
17 representative into the jury room to take your order for
18 lunch.

19 Please, while that person is in the jury room if that
20 becomes necessary, stop your deliberations. Don't discuss
21 the case until that person has taken your order and left the
22 room. Then you can resume your deliberations once they
23 leave. I do not want you to discuss the case in any manner
24 whatsoever while the clerk's representative is in the jury
25 room.

1 So, again, stop the deliberations if that becomes
2 necessary, and resume them when that person is left.

3 It takes about an hour to an hour and 15 minutes for us
4 to put in an order for lunch, have a sheriff's deputy pick
5 it up, and bring it here to the courthouse. So, if you
6 decide you want to order the lunch, let us know in that and
7 I'll just make you aware it's gonna take that long for us to
8 get it here. But certainly, if you're in your
9 deliberations, you're entitled to receive a meal during
10 those times. We're not gonna starve you while you're in
11 deliberations.

12 All right. At this time I'm going to ask that the jury
13 retire to the jury room to begin your deliberations.

14 Sir, you're the alternate. If you would, please remain
15 seated.

16 You may step back to the jury room and begin your
17 deliberations.

18 Thank you.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Here's the indictments, and, if you would,
22 get the exhibits.

23 (WHEREUPON, the alternate juror was dismissed at this
24 time.)

25 THE COURT: Is there any objections to my final

1 instructions to the jury from the state?

2 SOLICITOR ELLIS: No, sir, Your Honor.

3 THE COURT: Any from the defense?

4 MS. JONES: No, sir, Your Honor.

5 THE COURT: All right. We'll be in recess until such
6 time as a verdict is reached.

7 Defendant remains in custody.

8 Thank you.

9 SOLICITOR ELLIS: Thank you, Your Honor.

10 (WHEREUPON, the jury began deliberations at 12:16 and
11 returned with a question at 1:45.)

12 THE COURT: All right. I have received an inquiry from
13 the jury, and they're asking what is the definition of
14 beyond a reasonable doubt. I intend to recharge the jury
15 concerning the presumption of innocence, innocence as well
16 as the definition of reasonable doubt.

17 Any objection to my proceeding in that fashion, Mr.
18 Ellis?

19 SOLICITOR ELLIS: No, sir, Your Honor.

20 MS. JONES: No, sir, Your Honor.

21 THE COURT: All right. Let's bring the jury in.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. The jury has returned to the
25 courtroom.

1 I've received a question from the jury and the question
2 is what is the definition, definition of beyond a reasonable
3 doubt.

4 Ladies and gentlemen, I explained to you that the
5 defendant, in this case, has pled not guilty to the
6 indictments that are before the Court. That plea places the
7 burden of proof upon the State. The burden of proof, in
8 this case, is that the state prove the defendant's guilt
9 beyond a reasonable doubt.

10 Now, a person charged with the commission of a crime,
11 no matter what the seriousness of that crime might be, is
12 never required to prove himself innocent of that charge.
13 It's an important rule of law that a defendant, in a
14 criminal trial, no matter what the seriousness of the crime
15 is, is always presumed to be innocent of the crime for which
16 the indictment has been issued unless guilt has been shown
17 or proven by evidence that satisfies you of that guilt
18 beyond a reasonable doubt.

19 The presumption of innocence doesn't end when you begin
20 your deliberations. It accompanies the defendant throughout
21 the proceedings and into your deliberations. The
22 presumption of innocence is been described like the robe
23 that I wear into the courtroom. It remains about the
24 defendant's shoulders throughout the proceedings and into
25 your deliberations. It remains about the defendant's

1 shoulders until such time as it has been stripped or taken
2 from him by proof that satisfies you of the defendant's
3 guilt beyond a reasonable doubt.

4 The presumption of innocence is not a legal theory and
5 it's not just a legal phrase. Its a substantial right that
6 all defendants are entitled to unless you, the jury, are
7 satisfied, from the evidence, of the defendant's guilt
8 beyond a reasonable doubt.

9 Now, the legal definition of reasonable doubt is that
10 kind of doubt that would cause a reasonable person to
11 hesitate to act, and the State has the burden of proving the
12 defendant guilty beyond a reasonable doubt.

13 Now, some of you may have been involved in civil cases
14 before, and I explained that civil cases, the standard of
15 proof is by the greater weight or the preponderance of the
16 evidence. That's the scales of justice tilting ever so
17 slightly either in, either in favor of or against a
18 defendant or a plaintiff in a civil case.

19 Now, in a criminal case, the State's proof must be more
20 powerful than that. It must be proof beyond a reasonable
21 doubt. I will tell you that proof beyond a reasonable doubt
22 is that kind of proof that would leave you firmly convinced
23 of the defendant's guilt.

24 Now, I'll tell you, there's very few things that go on
25 in this world, in human discourse, that can be proven beyond

1 any doubt whatsoever. That's not the burden to which the
2 State is placed. The State does not have to prove its case
3 beyond any doubt whatsoever.

4 Now, I will tell you that if you are based -- if, based
5 upon your consideration of the evidence, if you are firmly
6 convinced that the defendant is guilty of the crime charged,
7 then you must find the defendant guilty, and, again, that
8 proof must be beyond a reasonable doubt. However, on the
9 other hand, if you think there is a real possibility that
10 the defendant is not guilty, then you must give the
11 defendant the benefit of this doubt and find the defendant
12 not guilty.

13 Now, that's the charge that I've given and I always
14 give on reasonable doubt.

15 Mr. Foreman, do you think that responds to the
16 question?

17 FOREMAN: Yes, sir.

18 THE COURT: All right. Then I'll ask the jury to
19 return to the jury room. Continue your deliberations.

20 Thank you very much.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Any objection to the charge from the State?

24 SOLICITOR ELLIS: No, sir, Your Honor.

25 THE COURT: Any from the defense?

1 MS. JONES: No, sir, Your Honor.

2 THE COURT: All right. Then I will have the question
3 marked as an exhibit for the Court.

4 (WHEREUPON, the note from the jury was marked as
5 Court's Exhibit No. 1 for identification purposes only at
6 this time.)

7 THE COURT: We'll remain in recess until a verdict is
8 reached.

9 SOLICITOR ELLIS: Thank you, judge.

10 (WHEREUPON, the jury began deliberations again at 1:49
11 and returned with a verdict at 2:21.)

12 THE COURT: All right. I'm informed we have a verdict.
13 Is the State ready to receive the verdict?

14 SOLICITOR ELLIS: Yes, sir, Your Honor.

15 THE COURT: Defense ready to receive the verdict?

16 MS. JONES: Yes, sir.

17 THE COURT: Bring the jury in.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The record will reflect the
21 jury has returned to the courtroom.

22 I understand a verdict has been reached.

23 Is that correct, sir?

24 FOREMAN: Yes.

25 THE COURT: Pass the form to the bailiff for me.

1 (Foreman complies.)

2 THE COURT: Thank you.

3 Madam Clerk, I'll ask that you please publish the
4 verdict.

5 CLERK: Yes, sir.

6 In the Court of General Sessions, State of South
7 Carolina versus Andrew Brent Scott, as to Indictment Number
8 2010-GS-42-6835 for the offense of assault and battery in
9 the first degree, we, the jury, unanimously find the
10 defendant, Andrew Brent Scott, guilty.

11 As to Indictment Number 2010-GS-42-6836, for the
12 offense of kidnapping, we, the jury, unanimously find the
13 defendant, Andrew Brent Scott, guilty.

14 As to Count One of Indictment Number 2010-GS-42-6837,
15 for the offense of armed robbery, we, the jury, unanimously
16 find the defendant, Andrew Brent Scott, guilty.

17 If you find the defendant guilty of armed robbery, how
18 do you find the defendant with regards to Count Two of
19 Indictment Number 2010-GS-42-6837, for the offense of a
20 possession of a weapon during the commission of a violent
21 crime, guilty.

22 This is signed by the foreperson and dated today's
23 date.

24 Ladies and gentlemen of the jury, if this is your
25 verdict and still your verdict, please raise your

1 right-hand.

2 (WHEREUPON, all jurors raise their right-hands at this
3 time.)

4 THE COURT: Thank you.

5 CLERK: So say you-all.

6 THE COURT: Anything further from the State before I
7 release the jury?

8 SOLICITOR ELLIS: No, sir, Your Honor.

9 THE COURT: Anything further from the defense before I
10 release the jury?

11 MS. JONES: Your Honor, on behalf of Mr. Scott we would
12 request polling, polling.

13 THE COURT: All right. Madam Clerk, please proceed
14 with the polling.

15 (WHEREUPON, the jury panel was polled and all jurors
16 responded affirmatively that this was and is still their
17 verdict.)

18 CLERK: Your Honor, the jury has been polled.

19 THE COURT: Thank you, Madam Clerk.

20 Anything further from the defense before I release the
21 jury?

22 MS. JONES: No, sir, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, the jury was dismissed at this time.)

25 THE COURT: Pass the sentencing sheets up please.

1 All right. Mr. Andrew Brent Scott, having been found
2 guilty by a jury of your peers for the offense of assault
3 and battery in the first degree, kidnapping, possession of a
4 weapon during a violent crime, and armed robbery, at this
5 time I'll be happy to hear from you and your attorney
6 concerning sentencing in this matter.

7 Ms. Jones.

8 MS. JONES: Your Honor, as you know from the trial of
9 this case, Mr. Scott is 51 years of age. He, he is
10 originally a resident of the Columbia area. He is got
11 extended family there including five brothers. One of his
12 brothers, Mr. Melvin Scott, is present in the courtroom. I
13 believe, at the appropriate time, he'd like to make a brief
14 statement.

15 Mr. Scott is in the auto industry having retired from
16 the Department of Corrections. His wife is also present,
17 the sister-in-law of Mr. Scott obviously, and Ms. Copeland,
18 who you heard from in the trial, is, continues to be
19 present.

20 On behalf of Ms. Copeland, I asked her if she wanted to
21 speak. She didn't think emotionally she could speak. She
22 was, would merely ask for mercy.

23 But by way of background, Your Honor, I was appointed
24 by the Court, by Your Honor, in November to represent
25 Mr. Scott. He had been in jail since the night of this

1 event at the time of his arrest that we heard about at some
2 detail during the trial. There have been a couple of other
3 attorneys ahead of me in representation.

4 But as Your Honor knows, I got him in early November.
5 I've had a cordial relationship with Mr. Scott, and we were
6 able to freely share information at, adequately in order for
7 me to prepare for this trial. I, I experienced -- I don't
8 know the nature of what the problems were that he
9 experienced with other attorneys. But we have had no, no
10 problems whatsoever in our dealings.

11 Your Honor, he has a grown child that has two children
12 making him a grandfather of two. I believe the children are
13 four and five. He also has a young child that is five years
14 of age that lives here in Spartanburg.

15 He has been in jail, as I say, continuously since this
16 occurred. My approximation or my quick calculation was 578
17 days cause it is 20 months. It's over a year.

18 THE COURT: Any objection to him receiving that credit
19 thus far?

20 SOLICITOR ELLIS: No, sir.

21 THE COURT: 578 you said?

22 MS. JONES: Yes, sir, and---

23 THE COURT: Thank you.

24 MS. JONES: ---Your Honor, he is aware, as I am aware,
25 that the statute for the possession of a weapon during the

1 commission of a violent crime does allow for consecutive
2 time, but I think that is discretionary with the Court. I
3 would ask Your Honor to be as merciful as Your Honor can be
4 in light of his age of 51. We -- and, Your Honor, he, he
5 does indicate to me he'd like to make a comment to the
6 Court. I think, at this point, I'd ask Your Honor to hear
7 from his brother briefly.

8 THE COURT: All right. Come forward, sir.

9 MR. SCOTT: Good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 Your name is?

12 MR. SCOTT: My name is Melvin Scott. I'm the older
13 brother of the defendant, Andrew Scott.

14 THE COURT: Yes, sir, be happy to hear from you.

15 MR. SCOTT: Yes, sir, first and foremost, like to take
16 a second and offer the plaintiff and her family my deepest
17 apology on behalf of my family.

18 THE COURT: You need, you need to address the Court.
19 You can say it, but you have to say it to me.

20 MR. SCOTT: Okay. Like to offer her our deepest
21 apology from myself and my family, members that wasn't able
22 to make it today, and also would like the Court, to ask the
23 Court to please have mercy on him in the sentencing phase of
24 this, and hopefully we can get it resolved and move on, Your
25 Honor.

1 THE COURT: Thank you, sir.

2 MR. SCOTT: Thank you.

3 THE COURT: Appreciate you being here today.

4 MR. SCOTT: Thank you.

5 THE COURT: Any other members of the family wish to
6 speak?

7 MS. JONES: No, sir, Your Honor.

8 THE COURT: All right. Sir, Mr. Scott, your
9 opportunity to speak to the Court.

10 Is there anything you'd like to say to me?

11 DEFENDANT: Yes, sir. Thank you very much, sir.

12 THE COURT: Yes, sir.

13 DEFENDANT: First and foremost, I would just like to
14 thank Ms. Jones for her unwavering call of duty in
15 representing me as such a late of time. Of course, I think
16 her scope of previously, you know, that I didn't have
17 private attorney, and, of course, it didn't go as well, but
18 it was unfortunate for me.

19 I, I have been in the community for a very long time,
20 sir. I haven't had, been fortunate enough to meet a lot of
21 people. But I was fortunate enough to meet my co-workers,
22 you know, at all stores here and even in Mr. Johnson's
23 second business. And it was some, some of those that I've
24 heard about that I never met, sir.

25 And for those of those employees that I've never met

1 who said they have had an encounter with me, and I just want
2 to be apologetic to them, you know, and, and as having been
3 too many people that I've met that I've been employed with
4 over the years, and I've retired off a job in 2001 with
5 Sears as an analyst, and having been too many people that
6 I've worked that I haven't had a recall.

7 So, if there's someone that I've offended in my way of
8 life which as far as employment or just in, in my path of
9 living I want to apologize to them, sir.

10 THE COURT: Okay.

11 DEFENDANT: Yes, sir, and I also want the Court also.
12 And in light of that, I ask of you, the State to, you know,
13 to have mercy on me. You know, I -- matter of fact, I have
14 a birthday Monday, and have a son that was born on my
15 birthday. He'll be five Monday also. I don't know. May
16 see him again and I may not. But just have mercy on me,
17 sir.

18 THE COURT: Thank you.

19 DEFENDANT: Thank you.

20 THE COURT: I'll hear from the State.

21 Prior record for this individual?

22 SOLICITOR ELLIS: Yes, sir, Your Honor.

23 1979, privily stealing, forgery.

24 1980, purse snatching.

25 1983, possession of marijuana.

1 1990, eight counts fraudulent check.

2 1991, five counts fraudulent check.

3 1992, fraudulent check.

4 1993, receiving stolen goods.

5 1994, burglary third degree, criminal domestic
6 violence.

7 1995, two counts employment security fraud.

8 1998, receiving stolen goods, fraudulent check.

9 In 2000, harassment.

10 2003, credit card theft, credit card fraud.

11 2004, receiving stolen goods, five counts fraudulent
12 check.

13 2009, five counts fraudulent check, shoplifting, third
14 or subsequent property offense.

15 THE COURT: All right. The victim, Ms. Jackson, do you
16 wish to be heard at this time?

17 MS. JACKSON: Yes.

18 THE COURT: Be happy to hear from you, ma'am.

19 MS. JACKSON: Can you hear me?

20 THE COURT: Yes, ma'am.

21 MS. JACKSON: Okay. Well, Your Honor, first I would
22 like to tell Mr. Scott and his family that I have forgiven
23 Mr. Scott for what he done to me in September of 2010. But
24 I have not forgot what he done to me. It changed my life a
25 lot.

1 I -- after that incident, I didn't sleep at night. I
2 had to sleep in the daytime. I was scared to sleep at
3 night. I'm scared for people to approach me after -- I'm
4 from a very small community and I never thought anything
5 like that would happen to me. So, it -- I wonder why, on
6 that day that he come in there, and just not leave and had
7 the intent of harming me when I had done nothing to him, and
8 I didn't intend to do nothing to him.

9 So, why did he want to do something to me?

10 But I have forgiven him for what he's done, and just --
11 now I just hope I can put this all behind me, and I let his
12 family know that I'm not mad, that I have, like I say, I
13 have forgiven him, but I can't, I can't forget what he done
14 to me.

15 THE COURT: Thank you, ma'am.

16 Anything further from the State?

17 SOLICITOR ELLIS: No, sir, Your Honor.

18 (Pause.)

19 THE COURT: Mr. Scott?

20 DEFENDANT: Yes, sir.

21 THE COURT: The evidence that was presented during your
22 trial would indicate to me that this was not an act of
23 desperation. You had a home that you were living in. You
24 had a place to put your head. You had food on your table.
25 Perhaps it was an act of revenge for a firing. I'm not sure

1 why, but obviously some preparation went into it.

2 The testimony, uncontroverted testimony, was that you
3 had, in fact, sought the assistance of someone else in
4 carrying out this adventure.

5 To go into a business such as that, armed with weapons,
6 we could of very easily been here on a murder case as well.

7 When people -- when guns are introduced into those
8 situations, knives are introduced into those situations,
9 quite often it ends in tragic events. Thank goodness that
10 didn't happen in this case. But it wasn't because of your
11 actions it didn't happen.

12 There was a lady there who resisted, who fought, took
13 her opportunity to escape, and was able to get away from
14 that situation. Not everyone is so successful in those
15 situations as she was.

16 The evidence was overwhelming, in the Court's opinion,
17 of your guilt, and in listening to the record that I've
18 listened to, this is been a -- I guess criminal activity has
19 been something that you've been engaged in for decades.
20 This didn't start with this event.

21 So, taking those factors into consideration, the
22 seriousness of the crime, the effect it would have on the
23 victim is also been taken into consideration, as to the
24 kidnapping and armed robbery, the Sentences are
25 concurrently, and the Sentences are 30 years with time

1 served.

2 The use of a weapon in the commission of a violent
3 crime is five years running consecutively.

4 The assault and battery is ten years run concurrently.

5 I've given you credit for the time that your lawyer has
6 requested.

7 Good luck to you, sir.

8 DEFENDANT: Thank you, sir.

9 THE COURT: Thank you.

10 SOLICITOR ELLIS: Thank you, Your Honor.

11

12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 General Sessions for Spartanburg County, South Carolina, on the 24th, 25th and 26th day of April, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 16th, 2012



PAMELA E. GREEN, Court Reporter

2014-CP-42-0304

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF)

Andrew Brent Scott 192735
Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 BROAD RIVER CORRECTIONAL INST.
2. Name and location of Court which imposed sentence Spartanburg County General Sessions
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 10-GS-42-6835
 - (b) 10-GS-42-6836
 - (c) 10-GS-42-6837 Direct Indictment #2
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 26, 2012 10 yrs. Concurrent
 - (b) April 26, 2012 30 yrs. Concurrent

Revised 3/2003

- (c) 30 YRS. CONCURRENT (A) 5 YRS. CONSECUTIVE
6. 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 _____
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. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. DECEMBER 11, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION # 2013-UP-456
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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SPARTANBURG COUNTY
2014 JAN 24 AM 9:48
TAMMIE BLAWLEY

- (a) ILLEGAL SEARCH AND SEIZURE
 (b) IDENTIFICATION
 (c) INEFFECTIVE ASSISTANCE OF COUNSEL

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

- (a) SEE ATTACHED PAGE (1)
 (b) SEE ATTACHED PAGE (2)
 (c) SEE ATTACHED PAGE (3)

12. 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 petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

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. _____
 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. _____

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 SPARTANBURG COUNTY
 2014 JAN 24 AM 9:48
 T. MONT CLAWLEY

- 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. _____

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?

YES

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

- (a) which grounds have been presented:
- i. IDENTIFICATION
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. COURT OF APPEALS
- ii. _____
- iii. _____

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SPARTANBURG COUNTY
2014 JAN 24 AM 9:48
THOMAS E. BLANKLEY

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) UNLAWFUL SEARCH AND SEIZURE
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) SEE ATTACHED PAGE (4)

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

- (a) your arraignment and plea? NO
- (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? NO
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. BEVERLY D. JONES 366 N. CHURCH ST. SUITE 3000
- ii. SPARTANBURG, S.C. 29303 / PUBLIC DEFENDER'S OFFICE
- iii. DAVID ALEXANDER / Appellate Defense PO Box 11589
COLUMBIA, S.C. 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL AND SENTENCING
- ii. _____
- iii. COURT OF APPEALS
19. State clearly the relief you seek in filing this application:
SENTENCE AND CONVICTION OVERTURNED
20. Are you now under sentence from any other court that you have not challenged?
NO

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CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN 24 AM 9:48
F. H. B. BAUCKLEY

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, _____, 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.

Chukwu B. Adu

SWORN to and subscribed before me this 21
day of Jan, 2014.

Eugene A. Adu (L.S.)
Notary Public

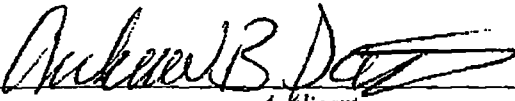
My Commission Expires: _____
My Commission Expires August 1, 2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN 24 AM 9:48
T. MURPHY CLACKLEY

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

I, _____, 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 thereof.


Applicant

SWORN or affirmed to and subscribed before me this
21 day of Jan, 2014.


Notary Public

My Commission Expires: _____ My Commission Expires: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN 24 AM 9:40
H. M. C. CLAWLEY

JANUARY 20, 2014

TO: M. HOPE BLACKLEY
CLERK OF COURT

FROM: ANDREW B. SCOTT 192735
PCR APPLICATION

RE: Clocked, stamped,
FILED COPY OF APPLICATION

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN 24 AM 9:48
M. HOPE BLACKLEY

MS. Blackley, I am RE-
QUESTING a clocked, stamped, FILED
COPY OF MY PCR APPLICATION. I DO
THANK YOU AND MAY GOD BLESS!

WITH KIND REGARDS,

Andrew B. Scott

Page 1) Illegal Search + Seizure

531
(11A)

ON SEPTEMBER 24, 2010, approximately at 9 PM,
I WAS AWAKENED BY ONE OFFICER KIP TEAL, OF CHESNUT
POLICE DEPT., SPARTANBURG COUNTY, ASSAULTING AND
PROFANING ME ABOUT "I TOLD YOU I WAS GOING TO
GET YOU". HE PROCEEDED TO HANDCUFF ME WITHOUT
WARRANT OR BEING TOLD MY MIRANDA RIGHTS, AND
PLACED ME UNDER ARREST. I'VE NEVER SEEN NOR GIVEN
AN ARREST WARRANT NOR SEARCH WARRANT, FOR ENTERING
MY PLACE OF RESIDENCE. NOT ONLY WAS MY 4TH
AMENDMENT VIOLATED, MY DUE PROCESS AS WELL.
IT IS A STATE AND CONSTITUTIONAL LAW —
PROHIBITS ANY POLICE OR LAW ENFORCEMENT OFFICERS, FOR
ENTERING YOUR RESIDENCE AND PLACING YOU UNDER ARREST
WITHOUT A SWORN AFFIDAVIT, SEARCH/ARREST WARRANT,
SIGNED AND ENDORSED BY A MAGISTRATE OR ANY JUDICIAL
OFFICER. SEE: STATE VS. COVERT 628 S.E. 2d. 482,
368 S.C. 188, ALSO, DAVIS VS. SANDERS 40 S.C. 507,
19 S.E. 138 (1894)

IN TRIAL, UNDER OATH, THE VICTIM SAID SHE COULD NOT MAKE A POSITIVE DESCRIPTION OF THE ASSAILANT BECAUSE THE ASSAILANT WORE DARK SUNGLASSES, A STOCKING CAP, AND A HAT THAT STAYED ON ALL DURING THE TIME OF THE INCIDENT. THE VICTIM ALSO TESTIFIED, UNDER OATH THAT A CO-WORKER TOLD HER IN A PREVIOUS CONVERSATION THAT "MR. SCOTT" WAS GOING TO ROB THE STORE. THE CO-WORKER ALSO REMINDED THE VICTIM ABOUT THE PREVIOUS CONVERSATION. ALSO, THE VICTIM TESTIFIED, UNDER OATH, THAT KIP TEAL, THE ARRESTING AND INVESTIGATING OFFICER TOLD HER THAT IT COULD BE A GUY NAMED "SCOTT." BOTH CONVERSATIONS TOOK PLACE BEFORE THE PHOTO LINE-UP WAS PRESENTED. TESTIMONY SHOULD HAVE NEVER BEEN SUBMITTED NOR ALLOWED.

SEE: LEE vs. BIGGERS 409 U.S. 188 (1972)

SEE: State vs. TRAYLOR 360 S.C. 74, 600 S.E. 2d. 523 (2004)

FILED
CLERK OF COURT
SPRINGFIELD, MISSOURI
JAN 24 2009 9:42 AM
JAN 24 2009 9:42 AM

Page (3) Ineffective assistance of Counsel (17C)⁵³³

My trial attorney was ineffective because she refused to subpoena the co-worker who was at the crime scene to remind the victim about the 2 weeks previous conversation about "Mr. Scott" is telling people he's going to rob the store. Also, my attorney was ineffective because she failed to properly interview and investigate crime scene witnesses. Also, my trial attorney failed to make a motion about my illegal search and seizure, knowing that no judge issued a warrant for my arrest. She also confessed that she was present, representing the arresting officer's wife in a criminal matter. I do believe if these issues would have been up on clarified, my trial outcome would have been different.

See, Strickland vs. Washington, 466 U.S. 668, 104 S.Ct. 2052, 50 L. Ed. 2d 674 (1984)

See, Cheney vs. State 300 S.C. 115, 386 S.E. 2d 624 (1989)

PAGE (4) NON-PRESENTATION OF GROUNDS (16A)

AT THE TIME OF MY DIRECT APPEAL, ON MAY 02, 2012, I WAS UNAWARE AND NEVER PRESENTED NOR SERVED A SEARCH WARRANT NOR AN ARREST WARRANT. I DID NOT RECEIVE AN ARREST WARRANT NOR A SEARCH WARRANT UNTIL APRIL OF 2013, A YEAR AFTER MY ARREST, TRIAL, AND CONVICTION. MY TRIAL ATTORNEY FAILED TO SECURE AND INVESTIGATE THIS ISSUE. I SPOKE AND ASK HER REPEATEDLY ABOUT C/FOREREMENTION WARRANTS TO NO AVAIL.

FILED
CLERK OF COURT
SARASOTA COUNTY
2015 JAN 24 AM 9:49
JUDITH BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2014-CP-42-0304
Andrew Brent Scott, #192735,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed January 24, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the November 2010 term of the Spartanburg County Grand Jury for assault and battery – 1st degree (2010-GS-42-6835), kidnapping (2010-GS-42-6836), and armed robbery and possession of a weapon during the commission of a violent crime (2010-GS-42-6837, counts 1 and 2). The Applicant was represented by Beverly D. Jones, Esquire. On April 26, 2012, the Applicant proceeded to trial where he was found guilty of each charge by a jury. The Honorable Roger L. Couch sentenced Applicant to concurrent sentences of ten years for assault and battery – 1st degree, thirty years each for kidnapping, and armed robbery, and a consecutive term of five years for possession of a weapon.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the conviction and sentence. State v. Scott, Op. No. 2013-UP-456 (filed December 11, 2013). The Remittitur was returned on December 30, 2013.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel, in that;
 - a. Counsel refused to subpoena the victim's co-worker to address identification issues,
 - b. Counsel failed to properly interview witnesses and investigate the crime scene,
 - c. Counsel failed to make a motion regarding the illegal search and seizure,
 - d. Counsel may have had a conflict as a result of representing the arresting officer's wife in another criminal matter;
2. Illegal search and seizure, in that;
 - a. Applicant has never seen or received an arrest warrant or search warrant for his home;
3. Identification, in that;
 - a. Victim's testimony regarding identification should not have been allowed.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

The Respondent submits that the second and third allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised

these issues at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss these allegations.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

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

August 20, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

ANDREW BRENT SCOTT, #192735

2014-CP-42-0304

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

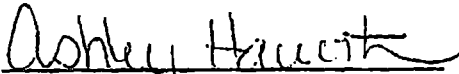
STATE OF SOUTH CAROLINA,

Respondent.

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

Ms. Leah B. Moody
Law Office of Leah B. Moody, LLC
PO Box 1015
Rock Hill, SC 29730

DATED this 20TH day of August, 2014.


Ashley Haworth, Legal Assistant
For Respondent

State of South Carolina)
)
County of Spartanburg)

In the Court of Common Pleas
Seventh Judicial Circuit
2014-CP-42-0304

Andrew Brent Scott,
Applicant,

VS.

Transcript of Record

State of South Carolina,)
)
 Respondent.)

January 13, 2016
Spartanburg, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge

A P P E A R A N C E S:

Leah B. Moody, Esquire
Attorney for the Applicant

Alicia A. Olive, Esquire, Assistant Attorney General
Attorney for the Respondent

Reported By:
Maryann S. Nevers, CVR-M-CM

Transcribed By:
Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Andrew Brent Scott	
Direct Examination by Ms. Moody.	21
Cross-examination by Ms. Olive.. . . .	77
Virdia Copeland	
Direct Examination by Ms. Moody.	86
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E X H I B I T S

No.	Description	ID.	EV.
P-1	Article	42	
P-2	Arrest Warrants		62
P-3	Arrest Warrant		64
P-4	Affidavit for DNA	71	75

1 MS. OLIVE: Your Honor, may it please the court?

2 THE COURT: Yes, ma'am.

3 MS. OLIVE: This is the case of *Andrew Brent Scott vs.*
4 *State*, 2014-CP-42 ---

5 APPLICANT: Excuse me.

6 MS. OLIVE: --- 304.

7 APPLICANT: Sir, we're not ready for this, sir.

8 THE COURT: All right. You hang on a minute. I'll
9 let you -- she's got to call the case. I'll let you talk
10 in just a second.

11 Go ahead.

12 MS. OLIVE: I'm glad to give them a moment, Your
13 Honor, if they need a moment.

14 THE COURT: You need a moment?

15 APPLICANT: Yes, I do.

16 THE COURT: Okay.

17 APPLICANT: Because I haven't spoke with her in, in a
18 couple months now. Matter of fact, I've been trying to get
19 in contact. I called her Friday, you know, to discuss my
20 witnesses with her. She wouldn't come to the phone. Now
21 I'm here today and they're still not here who's, who's
22 imperative to my case, sir.

23 THE COURT: Okay. I'll give you a few minutes to talk
24 to your attorney.

25 APPLICANT: Yes, sir.

1 (OFF THE RECORD.)

2 MS. MOODY: Your Honor.

3 THE COURT: Yes.

4 MS. MOODY: My client wishes to speak with you.

5 THE COURT: Yes, ma'am.

6 Yes, sir.

7 APPLICANT: Your Honor, sir, I've been dealing with
8 Ms. Moody now for about a year and a half now. The
9 witnesses that I've spoken with her -- I've sent her a
10 witness list. This is my third time here on a continuance,
11 and she assured me that these witnesses who is imperative
12 to my case, that, that could have been here. I haven't had
13 a conference with her, teleconference with her. Tried to
14 call Friday. Can't talk with her.

15 I'm willing to go forward on my case but, you know,
16 not without my witnesses. I mean, how can I possibly go
17 forward, sir, and, you know, the people that's imperative
18 to my hearing is not here? Matter of fact, I have even
19 discussed an investigation that I have ongoing now that
20 haven't been completed. That's why they're not here. The
21 investigator and the forensic document examiner that my
22 family's hired haven't been able to discuss that with her
23 because she wouldn't come to the phone. She wouldn't reply
24 back to my letters, sir. I, I just can't go on like that.

25 THE COURT: Okay, tell me, tell me, tell me about your

1 witnesses.

2 APPLICANT: The witnesses, of course, is the police
3 chief itself of Chesnee, South Carolina. He was the one
4 has forced and threatened my fiancée into signing the
5 consent form. When she refused, he threatened her.

6 THE COURT: Okay.

7 APPLICANT: And I think he needs to be here to, to
8 confirm that. And also my wife's nephew, who I'm sure that
9 she could have gotten in contact with. When my wife
10 refused to consent the search warrant, the police officer,
11 the police chief at that time, Paul Scott Smith, he said,
12 well, then give the keys to your nephew. She said no. Why
13 should I. She said you have a reason to arrest my husband
14 if there were probable cause. Why isn't there a warrant?
15 He went on to tell her. Well, listen. Said, well, we're
16 going to tear your house down, and I need them here to, to
17 say that, sir.

18 THE COURT: Well, what does that got to do with
19 your issues? I mean, that was something that should have
20 been ---

21 APPLICANT: That's part of my issues.

22 THE COURT: But that's ---

23 APPLICANT: Illegal search and seizure, sir. The
24 trial would have never happened, sir, if, if, if he hadn't
25 of came in my house without proper authority. There was no

1 authority for him to come in my house. Where was the
2 authority?

3 THE COURT: Well, I mean, I assume during the trial
4 that, that the search was an issue and some ---

5 APPLICANT: Well, she failed to bring it up at trial.
6 Beverly Jones failed to bring that up at trial; she didn't
7 even discuss it at trial. Matter of fact, it didn't even
8 come up.

9 Sir, I haven't seen a warrant in my case until the day
10 of my trial. I never did, and that's what at issue now.
11 This is what I'm getting investigated right now, and she's
12 aware of this. She know this. Matter of fact, it's been
13 through SLED, all of this, sir. I've been dealing with
14 this ever since she's been on my case.

15 Beverly Jones was aware of this also, sir. She never
16 brought the issue up of how that I got arrested. There
17 wasn't a warrant when they came to my house. They broke in
18 my house. It wasn't a consent to search warrant when they
19 came in my house. She never discussed that. She never
20 discussed the validity, what was the probable cause of me
21 getting arrested anyway, okay? If there was probable
22 cause, then there should have been an arrest warrant.
23 There wasn't a warrant when they came in my house and broke
24 into my house and arrested me, sir.

25 THE COURT: Okay, let me -- then your witnesses are

1 the chief of police. Now, what other witnesses do -- you
2 would like here?

3 APPLICANT: I would also like the arresting officer.

4 THE COURT: Okay.

5 WITNESS: Who is Kip Teal, and I also would like to
6 have my wife's nephew here.

7 THE COURT: Now, and I understand ---

8 APPLICANT: They are all my witnesses, sir, that she
9 have had for over the last two years.

10 THE COURT: All right, I understand about the chief of
11 police and arresting officer. Now, I don't -- I'd be
12 surprised if they're going to come in here and testify for
13 you, but, but ---

14 APPLICANT: Testify for me? I want them to testify
15 for the truth. I want them to testify what gave them the
16 authority to come in my house.

17 THE COURT: Okay.

18 APPLICANT: That's what I want them to testify to.

19 THE COURT: We ought to be able to resolve that.

20 MS. MOODY: Sir.

21 THE COURT: Whether they testify or not.

22 Yes, ma'am.

23 MS. MOODY: I did contact the individuals, and I did
24 try to issue subpoenas for them. His girlfriend -- and
25 that's how she identifies herself as Ms. Copeland -- she is

1 here. She indicates that she is not his wife. I asked her
2 about her nephew, and he is at work; he could not come.
3 So, that's why he's not here.

4 As far as the forensics investigator, I have a packet
5 of all the information that Mr. Scott sent to this forensic
6 investigator, and he told me he was not hired because the
7 terms of hiring were not followed through.

8 APPLICANT: Is this still in the investigation? This
9 is what I'm talking about.

10 MS. MOODY: Your Honor ---

11 APPLICANT: Somebody that ---

12 MS. MOODY: --- as to ---

13 APPLICANT: --- my family recent just recently hired.

14 THE COURT: You can't -- my court reporter can't get
15 down two people talking, okay?

16 APPLICANT: Yes, Your Honor. I'm sorry. I apologize.

17 THE COURT: All right.

18 MS. MOODY: I spoke with SLED and I spoke with the
19 agent that he indicated that he talked to, and that SLED
20 agent -- that was back in October the 23rd of 2015. He
21 indicates Agent Cricket of SLED, he indicates to me that
22 his name is Paul Grant, and he is the assistant chief of
23 SLED. He says he does not know Mr. Scott. He says if he
24 received any documents from Mr. Scott, they are certainly
25 not going to test them at SLED because they are agents of

1 the state.

2 So, I'm prepared to go forward with his girlfriend
3 here, who is in the back of the courtroom, and again I
4 talked to her this morning to confirm the nephew's
5 presence. And he indicated -- because I also told him that
6 if he needed any documents to prove that he was coming to
7 court, I would make them available for him. And he
8 indicated to her that he could not come.

9 So, Your Honor, the only thing I can offer is that
10 testimony that is imperative, I take a different opinion.
11 We could ask the court to leave the record open as to his
12 testimony.

13 The chief of police of Chesnee is no longer the chief
14 of police in Chesnee. I called and I have talked to
15 Chesnee and faxed over subpoenas and did all that and ---

16 APPLICANT: You know that man is not there. That man
17 is working at Camden, South Carolina ---

18 MS. MOODY: And I checked with ---

19 APPLICANT: --- Camden Police Department. He was here
20 last week. He was here in November.

21 THE COURT: I understand.

22 MS. MOODY: No, he was not.

23 THE COURT: You ---

24 APPLICANT: Well, that's what you just told me.

25 MS. MOODY: No, I did not.

1 THE COURT: You can't ---

2 APPLICANT: Well, then you lied.

3 THE COURT: You can't talk the same time she's talking
4 now, okay?

5 Yes, ma'am. Go ahead.

6 MS. MOODY: Your Honor, I've done everything I can
7 possibly do in this case in trying to find these witnesses,
8 especially when not provided any addresses for some of
9 them. And then the addresses that were provided, when I
10 send over the documents, I get no response, or they tell me
11 that the person doesn't work there. I can't make him
12 appear. I just give them the name and ask them is that
13 person in that particular agency.

14 THE COURT: Okay.

15 APPLICANT: Sir, that's not true. She just told me
16 that this man was here ---

17 MS. MOODY: I didn't tell you that.

18 APPLICANT: --- in November the 12th ---

19 MS. MOODY: I didn't talk to you.

20 APPLICANT: --- when I came. You just told me that,
21 Leah.

22 MS. MOODY: No, I did not.

23 APPLICANT: Listen, why would I sit in here and lie if
24 you just told me that?

25 She would have known about the new investigation that

12

1 my family just hired if she had answered the phone. She
2 would not answer the phone for my mother; she wouldn't
3 answer for me. Neither would she answer for my wife.
4 She's right there. She can attest to that.

5 THE COURT: Okay.

6 MS. MOODY: Your Honor, if I may just put this on the
7 record to protect myself? I have a answering service.

8 APPLICANT: No, no.

9 MS. MOODY: And they answer my phone calls if I'm not
10 there.

11 APPLICANT: That's not true.

12 MS. MOODY: He thinks I'm not there ---

13 APPLICANT: That's not true.

14 MS. MOODY: --- or if I am there and I'm on the phone,
15 I cannot talk to a person if I'm on the phone with ---

16 APPLICANT: What, I did not ---

17 MS. MOODY: --- another client.

18 APPLICANT: --- call your office last Friday, didn't
19 your secretary tell me, said ---

20 MS. MOODY: I don't know.

21 APPLICANT: --- Mr. Scott, hold on ---

22 MS. MOODY: I was on the phone.

23 APPLICANT: Ruby said hold on, Mr. Scott. She's here,
24 okay?

25 MS. MOODY: That's the answering service, Your Honor.

1 APPLICANT: That's not no answering service.

2 THE COURT: Okay.

3 APPLICANT: How is that an answering service?

4 THE COURT: What ---

5 APPLICANT: The lady said you was -- she was in your
6 office.

7 THE COURT: All right, Mr. ---

8 APPLICANT: What about this Lexis?

9 THE COURT: Mr. Smith.

10 APPLICANT: Is it Lexis ---

11 THE COURT: Arguing ---

12 APPLICANT: --- the answering service?

13 THE COURT: --- about the answering service is not
14 going to gain us anything. You, do you need any time to
15 talk to her right now before we start this hearing?

16 APPLICANT: Do I need any time to talk with who?

17 THE COURT: Your lawyer.

18 APPLICANT: About what, sir?

19 THE COURT: I don't know. What do you -- you wanted
20 to call her last Friday. What did you want to talk to her
21 about then?

22 APPLICANT: Well, then why would she send me a letter
23 saying she's going to do a teleconference? We could have
24 talked about this, sir.

25 THE COURT: Well, I understand that. For ---

1 APPLICANT: We could have talked ---

2 THE COURT: --- whatever reason you didn't ---

3 APPLICANT: --- about this, sir.

4 THE COURT: --- I'm giving you time to talk about it
5 now. Do you need to talk about it now?

6 APPLICANT: Sir, listen. The only thing that I need
7 to do, I need a continuance in this case. My family have,
8 have gotten this company Stillinger Investigations. It's
9 on Park Street in Columbia, South Carolina. Matter of
10 fact, they just came here at courtroom 108 at clerk of
11 court's office, got the proper standards that we need for
12 my case for a forgery document, sir, okay? She would have
13 known that if she had talked to me Friday. She would have
14 known that if she had called, like her letter said, to do a
15 teleconference.

16 THE COURT: Do you have any documentation that you
17 hired them?

18 APPLICANT: Sir?

19 THE COURT: You have anything that you've hired
20 and ---

21 APPLICANT: My parents ---

22 THE COURT: --- they've done ---

23 APPLICANT: --- have the contract, sir. They didn't
24 come.

25 THE COURT: Are your parents here?

1 APPLICANT: I sent -- no, no, they're not. They live
2 in Columbia, South Carolina, sir, and the only reason why
3 Mr. Stillinger could not be here, because he haven't
4 finished the document examination himself, sir.

5 THE COURT: Okay.

6 The state got a position?

7 MS. OLIVE: Your Honor, with respect to the documents,
8 I really don't think that's going to be an issue in this
9 case, and I do plan to object on relevance grounds on that
10 issue.

11 But in terms of a continuance, the state's witness is
12 here. We're ready to proceed. I'll leave it in Your
13 Honor's discretion.

14 THE COURT: Okay, then I ---

15 APPLICANT: Sir, I think this is very imperative to my
16 case because the guy have made an initial determination to
17 my parents about the forgery that was on that arrest
18 warrant.

19 Sir, I was in this county jail for nineteen months,
20 okay? I didn't see a warrant. When they came in my house,
21 they didn't have a warrant to arrest me. The day that I
22 ever saw a warrant was the day I sat at this table with
23 Beverly Jones, okay?

24 THE COURT: Okay.

25 APPLICANT: That warrant was not signed. So, when I

1 finally got a warrant from the Chesnee Police Department
2 after I got sentenced and convicted, it was a bunch of
3 scribble marks, okay?

4 Now, listen, sir. Upon my family investigation, we
5 have applied the original signature of, of the decedent,
6 Eber Gowan, Jr., sir. So, that's what's in question now,
7 okay? That is what their -- what is -- the forensic
8 document examiner is doing now, sir.

9 THE COURT: Okay. Then at the time they arrested you,
10 did they obtain any evidence?

11 APPLICANT: Any what?

12 THE COURT: Evidence.

13 APPLICANT: No, sir. When they searched my house ---

14 THE COURT: Then what difference does it make?

15 APPLICANT: When they searched my house, they -- I
16 mean, what gave them the authority to come in my house,
17 sir? What gave them authority to arrest me?

18 THE COURT: I don't know the answer to that.

19 APPLICANT: Okay.

20 THE COURT: But that's what we'll ---

21 APPLICANT: So, then you don't need ---

22 THE COURT: --- find out in this hearing.

23 APPLICANT: --- a warrant in the state of South
24 Carolina arrest a person? You don't need probable cause?

25 THE COURT: Certainly you need probable cause.

1 APPLICANT: Okay, but then ---

2 THE COURT: But you don't always ---

3 APPLICANT: --- Ms. Jones didn't bring that up ---

4 THE COURT: --- need a warrant.

5 APPLICANT: --- in court. She didn't say it wasn't,
6 it wasn't probable cause.

7 THE COURT: Okay.

8 APPLICANT: She didn't even talk about the validity of
9 the cause in the search form.

10 THE COURT: Okay.

11 APPLICANT: Okay?

12 THE COURT: That's what ---

13 APPLICANT: That's what at issue now; that's part of
14 my PCR, sir.

15 THE COURT: Well.

16 APPLICANT: Illegal search and seizure, sir.

17 THE COURT: Okay. Then we'll put -- then we'll have
18 this hearing. We'll see if that becomes an issue. If it
19 does, I'll leave the record open, open and allow -- if we
20 need to have another ---

21 APPLICANT: So ---

22 THE COURT: --- hearing.

23 APPLICANT: --- sir, you're going to go on with this
24 hearing even with my witnesses is not here?

25 THE COURT: Well, I'll allow -- if, if your witnesses

1 becomes critical, I'll allow you to call them at a later
2 time.

3 APPLICANT: Is it not part of my attorney -- I, I, I
4 can't get them to come here.

5 THE COURT: I understand that.

6 APPLICANT: She said that they was here on November
7 the 12th when I -- when they continued my case. Why
8 couldn't they be here today? I mean, all of a sudden in a
9 month she cannot find them.

10 MS. MOODY: Your Honor, if I may? We continued the
11 case. Ms. Copeland was here. He wrote me a letter here
12 recently in the last month and said his nephew was a person
13 that needed to be here.

14 APPLICANT: Over a month ago, yes.

15 THE COURT: Okay.

16 MS. MOODY: Your Honor.

17 THE COURT: I'm not going to continue the case. We're
18 going to try the case. If I need -- after I hear, in fact,
19 it's an issue that I need to know, then I'll leave the
20 record open, and we can resolve these issues.

21 MS. MOODY: Thank you, Your Honor. I would call Mr.
22 Andrew Scott to the ---

23 THE COURT: All right.

24 MS. MOODY: --- stand.

25 MS. OLIVE: Your Honor, may I first briefly give a

1 procedural history of the case? Apologize.

2 THE COURT: Yes.

3 MS. OLIVE: This is *Andrew Brent Scott vs. State*,
4 2014-CP-42-304. Mr. Scott was indicted November 2010 for
5 assault and battery first degree, kidnapping, and armed
6 robbery, and possession of a weapon during the commission
7 of a violent crime. Beverly Jones represented him on those
8 charges. On April 26, 2012, he went to trial and was found
9 guilty of each charge by a jury. Judge Roger Couch
10 sentenced him to concurrent sentences of ten years for
11 assault and battery first degree, thirty years each for
12 kidnapping and armed robbery, and a consecutive term of
13 five years for possession of a weapon.

14 A timely notice of appeal and Anders brief were filed
15 on applicant's behalf, and the state of -- I'm sorry, South
16 Carolina Court of Appeals affirmed his conviction and
17 sentence.

18 Your Honor, he has in his application for
19 post-conviction relief, which was filed January 24, 2014,
20 has alleged several claims of ineffective assistance of
21 counsel. Specifically -- and those claims are that counsel
22 refused to subpoena the victim's coworker to address
23 identification issues; that she failed to properly
24 interview witnesses and investigate crime scene; that she
25 failed to make a motion regarding the illegal search and

1 seizure; and that she may have had a conflict as a result
2 of representing the arresting officer's wife in another
3 criminal matter.

4 He also alleges illegal search and seizure, as well as
5 identification, that victim's testimony regarding
6 identification should not have been allowed. I would think
7 that identification issue would come under the ineffective
8 assistance of counsel umbrella, but as far as illegal
9 search and seizure, we would move to dismiss that claim
10 because it's a direct appeal issue.

11 Leah Moody is representing Mr. Scott. I will turn it
12 over to her.

13 THE COURT: All right.

14 MS. MOODY: Your Honor, at this time I would ask to
15 call Mr. Scott to the stand.

16 THE COURT: Okay. If you'd come around, Mr. Scott?

17 APPLICANT: That's why she was ineffective: because
18 it wasn't brought up at trial and it wasn't in my appeal,
19 sir.

20 THE COURT: I know. You need to testify under oath,
21 okay? Then tell me whatever you think is important.

22 ANDREW BRENT SCOTT, BEING DULY
23 SWORN, TESTIFIES AS FOLLOWS:

24 APPLICANT: Sir, can I go on the record?

25 DEPUTY: Have a seat.

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

21

1 APPLICANT: Even though ---

2 THE COURT: Have a seat right there, and then we
3 can ---

4 APPLICANT: Can I go on the record with something,
5 sir?

6 THE COURT: Yes.

7 APPLICANT: Before we get started? So, I'm going ---

8 THE COURT: Sure.

9 APPLICANT: I want to go on the record now stating
10 that I don't want the service of Leah Moody, but I'm --
11 you're still going to make me go forward. Is that on
12 record, sir?

13 THE COURT: Yes.

14 APPLICANT: Okay.

15 THE COURT: Okay.

16 MS. MOODY: Thank you.

17 DIRECT EXAMINATION BY MS. MOODY:

18 Q. Mr. Scott, could please state your full name for the
19 record?

20 A. Andrew Brent Scott.

21 Q. And where are you currently incarcerated?

22 A. Broad River Institution.

23 Q. And how long have you been there?

24 A. For a little over twenty-six months.

25 Q. Okay, and your sentence that you're serving is for how

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

22

1 long?

2 A. Thirty-five years.

3 Q. Okay, and as to your reason for being here today is
4 you filed a post-conviction relief ---

5 A. Yes, I did.

6 Q. --- application against your attorney?

7 A. Yes.

8 Q. Okay. Your first attorney was Michael Brown?

9 A. What does this have to do with this post-conviction
10 relief hearing, ma'am?

11 Q. Your first attorney was Michael Brown?

12 A. What do you mean? In my PCR or in my trial?

13 Q. In your case, you first hired Michael Brown?

14 A. Yes, but he never represented me. He never did
15 anything for me.

16 Q. Okay, and what date did Beverly Jones become your
17 attorney?

18 A. I think it was in October of 2011.

19 Q. Okay, and do you recall your date of ---

20 A. Approximately ---

21 Q. --- arrest?

22 A. --- four months before my trial.

23 Q. Do you recall the date of your arrest?

24 A. Yes, I do.

25 Q. Okay. Could you please state that for the record?

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

23

1 A. It was April the 28th of 2010.

2 Q. Would you agree with me that it was September 28,
3 2010?

4 A. September the 28th of 2010, yes.

5 Q. Okay, and Beverly Jones became your attorney when
6 again?

7 A. It was in October or November of 2011.

8 Q. Okay. So, before Ms. Jones became your attorney, you
9 had another attorney that either represented you or didn't
10 represent you, but you had another attorney, correct?

11 A. We was in the process -- we paid an attorney to
12 represent us, but he never did. He never came to court.

13 Q. Okay. I understand that point.

14 A. Yes.

15 Q. I'm just trying to give the court some information.

16 A. Yes.

17 Q. Can you please answer these questions?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. So, you were represent -- you were arrested September
22 28, 2010?

23 A. Yes.

24 Q. Okay, and then you had an attorney that was supposedly
25 representing you in September 28th -- from September 28,

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

24

1 2010, through to 2011. Is that correct?

2 A. Well, we was thinking it was for the trial, ma'am. It
3 was for the ---

4 Q. I understand that ---

5 A. --- whole duration.

6 Q. But please help me give the court some background.
7 Could you please answer the questions? It's either yes or
8 no. You were arrested September 28, 2010, and you had an
9 attorney that was hired to represent you, correct?

10 A. Yes.

11 Q. Okay, and that was Michael Brown?

12 A. Yes.

13 Q. Okay, and then subsequent to that, you had another
14 attorney, which was Beverly Jones?

15 A. Who was appointed to me, yes.

16 Q. Okay, and she was appointed to you in November of
17 2011?

18 A. Yes.

19 Q. Okay.

20 A. It was October or November, yes, October or November,
21 one of those, yes.

22 Q. Okay. So, when you made the statement to the court
23 that you were in jail for nineteen months, that explained
24 some of the time that you were in jail?

25 A. Yes.

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

25

1 Q. Okay. So, you had this attorney that you didn't talk
2 with, and then you met Beverly Jones, correct?

3 A. She was appointed to me.

4 Q. Well, you met her?

5 A. I didn't meet her until March of that year.

6 Q. Okay. So, she was appointed to you and you had no
7 communication with any attorney up until March?

8 A. Until February of -- yeah, I met her in February of
9 2012 approximately a month and a half before my trial, yes.

10 Q. Okay, and what, if anything, did you discuss with her?

11 A. Nothing at all. Matter of fact, she brought -- the
12 only thing that she brought to me was part of some Rule 5
13 of discovery of our -- some DNA.

14 Q. Okay.

15 A. That was it and some photos of the building that I
16 work in, that sort of stuff like that.

17 Q. Okay. So, now you're here today on post action --
18 excuse me, a post-conviction relief application, and can
19 you please state for the court what your issues of
20 ineffective assistance was with Ms. -- are with Ms. Jones?

21 A. First of all, she failed to do a proper investigation.
22 Matter of fact, she failed to subpoena the witnesses that,
23 that came into my home. It was the officer Jeffrey DeYoung
24 that saw Officer Kip Teal who broke in my home who didn't
25 have a warrant, who broke into my home and saw this man

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 assaulting me.

2 Q. So now this home that you speak of, what was the
3 address?

4 A. I'm sorry?

5 Q. What was the address of the home that you're speaking
6 of?

7 A. The home that I was living in?

8 Q. Yes.

9 A. Yes. It's at [REDACTED].

10 Q. Okay.

11 A. That's in Chesnee.

12 Q. Okay.

13 A. Yes.

14 Q. So these individuals, you felt that she should have
15 subpoenaed them?

16 A. Yes. He was the -- he was one of the officers.
17 Matter of fact, he was the only one that wasn't subpoenaed
18 to court. And, matter of fact, he was the one who stopped
19 Officer Kip Teal from assaulting me, okay? She failed. I
20 made a -- mentioned that to her. He was never at court,
21 okay?

22 Also this lady -- my supervisor who worked at the
23 store with me, okay, after I had left employment with the
24 store two weeks before the robbery happened, this young
25 lady by the name of Regina Jones tells the victim at that

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 time that the store was going to be robbed, and she heard
2 that -- said that Andrew Scott was going to do it, a guy
3 named Scott.

4 Q. Well, let me ask you this. Did you communicate this
5 information to Ms. Jones ---

6 A. Yes, I did.

7 Q. --- that Regina Jones was one of your witnesses?

8 A. She was never subpoenaed.

9 Q. Did you communicate that Regina Jones was one of your
10 witnesses to Ms. Jones? Did you tell her?

11 A. No, I did not; I did not know that at the time.

12 Q. Okay.

13 A. Because it wasn't in my discovery. It wasn't in my
14 Rule 5, none of that.

15 Q. Okay. When did you learn that Regina ---

16 A. At trial.

17 Q. Okay.

18 A. At trial.

19 Q. And how did you learn that?

20 A. By the victim being on the stand.

21 Q. Okay, and the victim's name is?

22 A. Bridget Jackson.

23 Q. Okay. Now, you and -- and let's go back one step.

24 You indicated that an officer who observed another officer
25 assault you ---

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 A. Yes.

2 Q. --- was not subpoenaed to come to trial?

3 A. Yes.

4 Q. And that officer's name was?

5 A. Jeffrey DeYoung.

6 Q. Jeffrey DeYoung?

7 A. Yes.

8 Q. Okay. Did you tell ---

9 A. Yes, I did.

10 Q. --- Ms. Jones? Okay. Did you have an address for Mr.
11 Jones?

12 A. He was ---

13 Q. I mean, DeYoung?

14 A. --- at the police station at that particular time. He
15 was a reserve officer for the Chesnee Police Department.

16 Q. Okay.

17 A. Yes.

18 Q. And so when you talked to her about this particular
19 reserve, reserve officer, what, if anything, did she
20 communicate to you or tell you?

21 A. Nothing at all.

22 Q. Are there any other witnesses that she did not
23 subpoena?

24 A. Yes. The lady who told the victim two weeks prior,
25 but ---

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 Q. Regina Jones?

2 A. Regina Jones.

3 Q. Okay, you said her. Is there anyone other than the
4 DeYoung and Regina Jones?

5 A. Yes. Well, there was a number of -- that I didn't
6 know of at that particular time that I know of now.

7 Q. Well, who are they? Please state them for the court.
8 Who are they?

9 A. Matter of fact, I got a lady right now, the two
10 ladies, matter of fact, that was next -- had the business
11 next door to me, okay? Beverly Jones never went to those
12 buildings, went to those business. Neither did the police
13 when they did their investigation as far as the camera that
14 was in my store, okay? Now, I ---

15 Q. Well, let me stop you there.

16 A. Okay.

17 Q. So that the court is clear. What are those two
18 ladies' names?

19 A. One of them name is Edith Mossberg; the other one is
20 named is Ruth Holley.

21 Q. And you gave those names to Ms. Jones?

22 A. No, I did not.

23 Q. Okay. So, this leads into what you were about to say,
24 that she ---

25 A. It should have been a part of her investigation. I

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 mean, they went in there and said that there wasn't a tape
2 in my store and I knew that there was, okay? These two
3 ladies have tapes.

4 APPLICANT: Matter of fact, got letters now saying
5 that they're willing to come to court because they do have
6 those tapes, Ms. Jones. They do have ---

7 Q. Mr. ---

8 APPLICANT: --- those tapes.

9 Q. Mr. Scott.

10 A. Yes, ma'am.

11 Q. Make sure that you direct your testimony into the mic
12 to the court.

13 A. Okay. Yes.

14 Q. Now, as to those two ladies and as to any other
15 witnesses -- and I understand you say that you didn't get
16 any representation from Mr. Brown -- did you give any of
17 that information to Mr. Brown?

18 A. Mr. Brown wasn't -- he wasn't my attorney when, when
19 this trial goes -- ma'am, listen. When I hired -- the only
20 time that I saw Mike Brown -- I got through sitting here.
21 My wife went to hire Mike Brown, okay? This was ten days
22 after I was arrested, okay? The only time I saw Mike Brown
23 was the day in October of 2011 when the United States
24 Supreme Court -- I mean, the South Carolina State Supreme
25 Court, Office of Disciplinary Counsel, where I won the case

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 on him, okay, for ineffective, to come here and answer
2 before my trial judge. The same judge who was in my trial,
3 he presided over that hearing, who was Roger Couch, okay?
4 That's the only time that I saw Mike Brown, the only time
5 that I saw Mike Brown. He never came to the jail; he never
6 communicated with my family.

7 Q. Okay, I'm just asking you. Did you give any of that
8 information to Mr. Brown, and that's fine.

9 A. I, I ---

10 Q. I get it.

11 A. --- never could talk with him.

12 Q. So, you didn't ---

13 A. I didn't have any way to get in contact with him.

14 Q. Okay, and the trial judge was Judge Couch?

15 A. Roger Couch, yes.

16 Q. Okay.

17 A. Who presided over that hearing when they ordered him
18 to come to ---

19 Q. Okay.

20 A. --- tell the courts ---

21 Q. We're not here ---

22 A. --- why he wasn't ---

23 Q. --- on that. I was just ---

24 A. --- representing me.

25 Q. --- asking did you give that information and the

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 answer is no?

2 A. Never could. Never talked with him.

3 Q. Okay.

4 A. Never saw him.

5 Q. Now, what other issues do you have for ineffective
6 assistance of counsel?

7 A. I mean, she just failed to, to, to properly
8 investigate my crime. She said that she didn't have an
9 ample enough time to, to investigate the case, okay? Now I
10 got ladies who's ready to come to court because they are
11 free to come.

12 APPLICANT: They do have the tape, Your Honor.
13 They're saying that I'm not on the tape, okay?

14 Q. Okay.

15 A. Now, I could communicate this with her. I communicate
16 the same thing with you. I can't talk with you either.
17 You would never come to the phone, ma'am, and I -- these
18 ladies are ready and willing with the tapes to come.

19 APPLICANT: I have a letter from one of them right
20 here in my stuff right now, sir.

21 THE COURT: Okay.

22 BY MS. MOODY:

23 Q. Sir, these ladies, do they, they work at your old
24 place of business?

25 A. They work at their own business. They're business

1 owners.

2 Q. Okay.

3 A. They was next door between -- I was between the both
4 of those neighbors, yes.

5 Q. Okay. So, they would have a tape of you outside your
6 old ---

7 A. They would have a tape of that day that the store got
8 robbed and the person went in that store.

9 Q. Right, from the outside?

10 A. And they said it wasn't me, right.

11 Q. Okay.

12 A. From the outside, yes.

13 Q. So, they ---

14 A. From the store.

15 Q. --- wouldn't know what happened inside the store?

16 A. Listen, they got tape. They got tapes ---

17 Q. The question ---

18 A. --- from outside and the back of the store. Anyone
19 who went in that store that day, they got in there. How
20 you going to get in the store if you can't get in there
21 from the outside?

22 Q. I understand that.

23 A. Yes.

24 Q. My, my question is ---

25 A. They do have those tapes, yes.

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 Q. So, the question still remains. They would not have
2 copies of the tapes inside the store, correct?

3 A. No. Sergeant Teal got that.

4 Q. Okay. Now ---

5 A. Yeah, he took that one.

6 Q. All right. The next issue that you list in your
7 application is that counsel may have had a conflict as a
8 result of representing the arresting officer's wife in
9 another criminal matter. Could ---

10 A. Yes. The day before my trial when I was on roll call
11 -- matter of fact, it was April the 23rd. I was
12 downstairs. She came to talk with me and told me. Said,
13 well, Andrew, I got two discussions -- two things that I
14 want to discuss with you. I said, well, okay. That's
15 fine. She said the first one was a plea from the state,
16 okay? This is the day before my trial, a plea from the
17 state. I said, well, ma'am, why should I plea to something
18 that I didn't do. She said ---

19 Q. So, you mean Ms. Jones came to ---

20 A. Ms. Jones, yes.

21 Q. --- came to speak with you and presented to you a plea
22 offer from the state?

23 A. Yes.

24 Q. Okay.

25 A. Okay, and I said, well, why should I plea to something

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 that I didn't do, and she said, well, I agree with you
2 because I don't believe you did it anyway. I said, well,
3 thank you.

4 The next issue. She said, well, I think that you
5 ought to know that -- do you know a lady by the name of
6 Lori Teal and I said yes, I've heard of her. I said that's
7 the arresting officer wife. She said yes. She said matter
8 of fact, she is a client of mine. She was a client before
9 you, and I'm more partial to be partial to her. I said,
10 well, why are you telling me this now. This is something
11 that you should have went to the courts for, okay?

12 Q. So, she said that she would be more partial to Ms.
13 Teal?

14 A. Yes.

15 Q. And what did ---

16 A. With my representation.

17 Q. --- that have to do with your case?

18 A. Say what?

19 Q. What did that have to do with your case?

20 A. Because she's -- she was telling me that she was not
21 going to work diligently to seek the truth.

22 Q. In your case?

23 A. Right.

24 Q. Okay, because Ms. Teal was ---

25 A. Yes.

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1 Q. --- her client, but can you help me connect it to your
2 case in terms of any testimony? Was Ms. Teal supposed to
3 be testifying?

4 A. No, she wasn't.

5 Q. Okay. So, then how would Ms. Teal come about in your
6 case?

7 A. Because she's saying that because she had ties with
8 the officer, that was the reason why she would be more
9 partial to me -- to him.

10 Q. Oh, because Ms. Jones had more ties to the officer?

11 A. Yes..

12 Q. Okay, through his wife?

13 A. I don't -- I have no idea.

14 Q. Okay. All right, and so how do you feel that that was
15 ineffective assistance of counsel?

16 A. Because the law saying that she cannot represent two
17 different parties who have parties in action. He was the
18 arresting officer.

19 Q. And so Ms. Teal had a case?

20 A. Yes, a criminal case at that particular time, yes.
21 That's what she said, yes.

22 Q. Okay. All right. Your next issue that you allege is
23 illegal search and seizure?

24 A. Yes.

25 Q. In that the -- you, you have never seen or received an

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1 arrest warrant or a search warrant for the address that you
2 were living at -- you state in here your home -- and that
3 is [REDACTED] ---

4 A. Yes.

5 Q. --- Chesnee, South Carolina?

6 A. Yes.

7 Q. Okay. Can you please state that -- tell the court
8 about that allegation?

9 A. I was home in my bed, and I discussed this with Ms.
10 Beverly Jones.

11 APPLICANT: Matter of fact, I was under the orders of
12 bed rest of three doctors, sir, okay, here in Spartanburg
13 County.

14 A. Matter of fact, my first doctor was my cardiologist.
15 I spoke that with her. His name is Dr. David Eickman from
16 Cardiologist Consultants here on, on Boiling Springs Road,
17 okay? I had a heart condition. I had an irregular
18 heartbeat and I was going with him. He's given me numerous
19 of stress tests and -- to see what the problem was. So, I
20 wasn't in the best of shape, okay?

21 Also, my family, my, my, my care -- my primary care,
22 which is Dr. Ira Parsons from Family Physicians here on
23 Boiling Springs Road, okay, he was the one who ordered the
24 stress tests for me because I had high cholesterol, I had
25 blood pressure, and I had extreme back pain, okay? Matter

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1 of fact, I was recommended to -- the past Dr., Dr. Darryl.

2 APPLICANT: What is Darryl's last name? What's his
3 last name, Grady?

4 Q. Sir, you can't talk to anybody in the galley while ---

5 A. Well, matter of fact ---

6 Q. --- you're testifying.

7 A. His name was Darryl Ehlich from Ehlich Chiropractic
8 here in Spartanburg. I'm sure you guys are familiar with
9 that. Well, the son, he was a chiropractor. He was a
10 friend of the family's, friend of my wife. I got him
11 because my wife got in contact with him because I couldn't
12 get out the bed. I could barely get out the bed to walk,
13 okay? Got in contact to drive to, to Cowpens. This man
14 took x-rays, extended x-rays of my back. He's saying that
15 I had osclerosis [sic] on my spine. That's the reason why
16 my, my pain was coming from.

17 Q. But, but ---

18 A. So, I was under the care of those doctors, especially
19 -- and the emergency room doctor a week before this
20 happened.

21 Q. Now, did you ---

22 A. That's the reason why ---

23 Q. --- give that information ---

24 A. --- I was home in the bed ---

25 Q. --- to Ms. Jones?

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1 A. I'm sorry?

2 Q. Did you give provide ---

3 A. Yes, I did.

4 Q. --- that information to Ms. Jones?

5 A. Yes, I did.

6 Q. Okay, and that goes into the illegal search and
7 seizure, and you discussed that with Ms. Jones?

8 A. Because I wasn't able -- I was bedridden.

9 Q. But you discussed it with Ms. Jones?

10 A. Yes, I did, and she failed to, to subpoena the medical
11 records of -- my medical records from those doctors and
12 from Mary Black Hospital, but she did so for the victim,
13 yes, she did.

14 Q. Okay, and let's stay focused here. You said that
15 there was illegal search and seizure.

16 A. Yes, ma'am.

17 Q. And did you explain your ownership of this home to Ms.
18 Jones?

19 A. Listen. I'm glad you mentioned that, okay? Give me a
20 minute, okay?

21 Q. Well, can you answer the question? Did you explain
22 that to Ms. Jones?

23 A. Ms. Jones should have known that. She should have
24 known. By, by what I got here, she should have, okay?

25 Q. So, the answer is no or ---

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1 A. Matter of fact, you should have known also, okay?

2 APPLICANT: Your Honor, can I give you a copy of this,
3 sir?

4 THE COURT: You got, you got -- it's got to come in
5 the record. Now, if you ---

6 APPLICANT: Okay.

7 THE COURT: If -- you got to show it to the other
8 side.

9 APPLICANT: Oh, I will. I got a copy. I got a copy.
10 I got a copy.

11 THE COURT: Okay.

12 APPLICANT: Yes, sir, I do.

13 MS. MOODY: Is this it?

14 APPLICANT: I got another one for you, for her, and
15 the judge, yes.

16 MS. MOODY: I have got a copy.

17 APPLICANT: I know you do. You should have.

18 (A PAUSE.)

19 APPLICANT: Here we go, ma'am. Yes, the reason why I
20 parted for ---

21 MS. MOODY: Hold on for one second.

22 (A PAUSE.)

23 MS. OLIVE: Your Honor, I would just -- I object to
24 this document. I'm not -- I don't know how it's -- I mean,
25 it's -- just on relevance grounds. It appears to be an

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1 article.

2 APPLICANT: It ---

3 MS. MOODY: Your Honor, if I may hand up to the
4 court ---

5 APPLICANT: Yes, please look at that, sir, yes.

6 THE COURT: I can't look at it until it gets into
7 evidence, okay, but I'm trying -- right now she's
8 objecting, saying that she doesn't know how it's related to
9 the issues. Now, your lawyer's ---

10 APPLICANT: Because it's relevant to ---

11 THE COURT: Let her ---

12 MS. MOODY: Hold on, Mr. ---

13 THE COURT: Hang on a minute. Let your lawyer talk --
14 ask you.

15 MS. MOODY: Your Honor, he's trying to discuss or
16 assert a legal position from the courts from March 23,
17 2006, the Supreme Court rule -- rules warrant's required
18 even if the spouse consents, and I guess he's alleging
19 that ---

20 APPLICANT: You probably need to read it all, ma'am,
21 okay?

22 MS. MOODY: He's alleging that Ms. Copeland is his
23 spouse. Your Honor, I'd ask just have it marked for
24 exhibit.

25 THE COURT: Okay.

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1 MS. MOODY: For identification and then present it
2 through Ms. -- after the court hears testimony from Ms.
3 Copeland whether or not it should be admitted into
4 evidence.

5 THE COURT: Okay, you can mark it and then you can see
6 if you can get it in through ---

7 APPLICANT: Thank you. Put it right there for me.
8 Thank you.

9 (ARTICLE MARKED AS PLAINTIFF'S EXHIBIT NUMBER 1 FOR
10 IDENTIFICATION.)

11 BY MS. MOODY:

12 Q. Mr. Scott, what has been marked and identified as
13 Plaintiff's Exhibit 1 now, you wanted to explain how this
14 is relevant?

15 A. Yes.

16 Q. Can you please state ---

17 A. Yes, I will ---

18 Q. --- to the court?

19 A. Yes, I will.

20 APPLICANT: When -- the day that -- the arrest
21 supposed to have happened on September 28th. There wasn't
22 any probable cause to arrest me, sir.

23 A. And the reason, and the reason why I'm saying that is
24 because if they did, if the cop ---

25 Q. Mr. ---

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1 A. --- had a reason to arrest me -- yes, ma'am?

2 Q. You were going to indicate how this was relevant to
3 your ---

4 A. Yes, ma'am, if you let me talk. Can I talk? When I
5 can talk -- I mean, you're asking me a question and I'm,
6 I'm answering your question. Now if I can talk, you let me
7 talk. I mean, you just let me know when I can answer your
8 question.

9 Q. Okay. So, the question is how is this newspaper
10 article from March 23, 2006, where it indicates the Supreme
11 Court rules warrant's required even if the spouse consents,
12 how is this relevant to your case in 2011?

13 A. Whenever you get through, I'm going to explain it to
14 you. I was about to do that.

15 Q. There was a question mark at the end of that.

16 A. I'm going to -- can I answer your question?

17 MS. OLIVE: Your Honor, I think the question that was
18 asked was regarding the ownership of the home. He, he's
19 free to testify who owned the home. He doesn't need a
20 newspaper article ---

21 THE COURT: Right.

22 MS. OLIVE: --- though for him to do that.

23 BY MS. MOODY:

24 A. Listen. Okay, how this is relevant to my case?
25 Because my wife -- I was home in the bed, okay? My wife

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1 was at the hospital with her mother, who was ninety-six
2 years at the age of time. The police officer and her
3 nephew called her and asked her to come to the, to the
4 scene of the crime, the scene of the crime, okay? My wife
5 is, is in the hospital with her dying mother, god forbid,
6 okay?

7 When she got in Chesnee, her nephew met her at the gas
8 station where she was filling her car at. The police,
9 Chief Scott Smith, who was the chief police at that
10 particular time of Chesnee, the town of Chesnee, was at the
11 crime scene with the victim, who was supposed to be -- had
12 all this blood on her, okay, and these officers at this
13 building, okay?

14 My wife said when she came up and she said, well, then
15 what is going on. She said -- well, he told her. Said
16 listen. Said we believe that your husband robbed the
17 store. Now, from what my wife told me, she told him, said
18 that's impossible because my home -- husband's home in the
19 bed sick. He's bedridden, okay? She said, well, then if
20 you need to -- if you want my husband, do you have an
21 arrest warrant for him. He said, well, Virdia, this is the
22 reason I'm calling you: because we need your keys to get in
23 your house. She said you need my keys. Said now you
24 saying that this person had robbed the store. You don't
25 have a warrant, but you need my keys to go in my house.

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1 For what? I mean, what, what authority to that? She said
2 I'm not going to do that. So, that was refusal right there
3 for consent, okay?

4 Now, he not only left that. He went to her nephew and
5 said, well, listen, Ms. Copeland, give your nephew the
6 keys. She said why am I going to do that. Why I won't
7 give them to you ---

8 MS. OLIVE: Your Honor, I'm going to object just
9 on ---

10 A. --- but I'm going to give them to my nephew?

11 MS. OLIVE: --- hearsay grounds.

12 THE COURT: Right.

13 APPLICANT: Oh, she's here. She can tell you the
14 same.

15 THE COURT: I know, but she's got to do it, okay?

16 APPLICANT: Okay. All right. Well, see, I'm asking
17 the question, okay? Now, this is what this got to do with
18 that: consent, okay? When they asked her to sign that
19 consent for search form that said -- when she refused to
20 give them those keys, okay, when she refused to let them in
21 her house, that's when they should -- anything else other
22 than that was coercion. It was a threat, and then she went
23 on to tell her, said, well, then if you do not give me
24 those keys, we're going to tear your house up. So, that's
25 a threat.

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1 THE COURT: Okay.

2 APPLICANT: That's coercion. So, now you tell me, you
3 and Ms. Jones, you tell me if they have probable cause, why
4 would they need a consent to search form? And even if they
5 did get the consent, which they did, what gave him the
6 authority to arrest me?

7 THE COURT: Okay.

8 APPLICANT: Yes. Thank you.

9 MS. MOODY: You ---

10 THE COURT: So, assuming they didn't have the
11 authority to arrest you at all, what ---

12 APPLICANT: So then why am I here?

13 THE COURT: What difference does that make?

14 APPLICANT: What do you mean what difference does it
15 make? Why I'm in prison.

16 THE COURT: Well, normally when the police do
17 something, if they didn't have probable cause to arrest
18 you ---

19 APPLICANT: Sir, usually when the police have probable
20 cause ---

21 THE COURT: Wait a minute. You got to let me ---

22 APPLICANT: --- what do they do? They get a warrant,
23 don't they?

24 THE COURT: No.

25 APPLICANT: Really?

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1 THE COURT: You let me talk.

2 APPLICANT: Okay.

3 THE COURT: When they, when they go in to arrest you.

4 APPLICANT: Uh-huh.

5 THE COURT: If they did it wrong, any evidence of what
6 they acquired as a result of that in the ---

7 APPLICANT: (I was the evidence.

8 THE COURT: You are not any evidence.

9 APPLICANT: I'm the one that doing the time. I'm the
10 one that they arrested me. I'm, I'm the one ---

11 THE COURT: So, your remedy is to file some civil
12 action. The remedy ---

13 APPLICANT: No, sir.

14 THE COURT: The remedy ---

15 APPLICANT: No, sir. Listen, sir. No, sir. I mean,
16 you, you, you, you're wrong about that, sir.

17 THE COURT: Well, I ---

18 APPLICANT: No, sir.

19 THE COURT: --- may be wrong, but you will have to
20 take that up to a higher court. This is -- the issue in
21 this case is if they, if they arrested you illegally, and
22 any evidence that they obtained as a result of that, the
23 exclusionary rule says that that evidence is excluded at
24 the trial.

25 APPLICANT: Right, and it's been suppressed. Okay,

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1 let me ask you ---

2 THE COURT: So, what ---

3 APPLICANT: --- this right here.

4 THE COURT: So, what ---

5 APPLICANT: --- what gave them the authority to come
6 in my house and search?

7 THE COURT: You're going to get on a whole lot better
8 with me if you hush and let me talk, and then I'll give you
9 a chance to answer, okay?

10 I don't know what authority they came and gave, come
11 in your house, and they may not have had any, and they may
12 have kicked the door down, but it doesn't necessarily
13 matter unless they got evidence.

14 Now, if you're telling me they got evidence as a
15 result of that, then it becomes relevant, and what evidence
16 did they get to prove -- that they used at trial against
17 you? That's -- that is relevant in this hearing. The fact
18 that they illegally arrested you -- because your case
19 didn't go forward on an arrest warrant. It went forward on
20 an indictment, and it only could have gone forward on an
21 indictment if some grand jury found probable cause to send
22 that case to general sessions.

23 Now, the issue comes in -- any evidence they obtained
24 as a result of that illegal arrest would, would be brought
25 up before the court and excluded, and so the jury could

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1 never hear that evidence. Is there any evidence that they
2 obtained when they arrested you that should have been
3 excluded?

4 APPLICANT: It was me, sir. When he assaulted me, and
5 Officer Jeffrey DeYoung saw him with my handcuffs in, in --
6 I was in the bed. He handcuffs me. This man saw him when
7 he hit me. When I woke up, I was in handcuffs in my house.
8 This man had his hand on my nose dripping blood in a bag,
9 okay?

10 THE COURT: Okay.

11 APPLICANT: That's what -- the evidence that he got
12 from my house.

13 THE COURT: And he -- did he use that blood or that
14 DNA to ---

15 APPLICANT: Yes, he did.

16 THE COURT: --- convict you?

17 APPLICANT: Yes, he did.

18 THE COURT: Okay.

19 APPLICANT: He surely did.

20 THE COURT: All right. Then I understand that. Now
21 to the next question your lawyer's got.

22 BY MS. MOODY:

23 Q. You spoke recently as you were giving your information
24 to the court -- who is the lady that you say that is your
25 wife?

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1 A. She is my fiancée.

2 Q. What's her name is ---

3 A. What relevant ---

4 Q. --- is what I'm ---

5 A. I mean ---

6 Q. --- trying to get on the record.

7 A. I mean -- Virdia Copeland right there.

8 Q. Okay.

9 A. You can ask her.

10 Q. I'm, I'm just trying to ---

11 A. Her name is Virdia Copeland, yes. I mean, you're
12 getting off the issue here. I mean, you, you're ferreting
13 out something that doesn't make any -- it, it don't have
14 any importance here. What do my marriage got to do with
15 this, this PCR hearing?

16 MS. MOODY: Your Honor, I merely want to get her name
17 on the record because he spoke in pronouns and said she,
18 she, she. I just want to ---

19 APPLICANT: But I'm saying ---

20 MS. MOODY: --- make it clear.

21 APPLICANT: --- what does that, my marital status,
22 have to do with this hearing?

23 THE COURT: He needed the name of the lady that you
24 claim that gave consent. That's all she's asked for.

25 APPLICANT: But she know that. She in the court right

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1 now.

2 THE COURT: It's not in the record.

3 MS. MOODY: He doesn't know that.

4 THE COURT: I don't know that. It doesn't matter what
5 she knows. It's important what I end up learning.

6 APPLICANT: Her name is Virdia Copeland.

7 THE COURT: All right.

8 APPLICANT: She's right there in the courtroom.

9 THE COURT: Okay.

10 MS. MOODY: Further, Your Honor, I would note that
11 this exhibit is Exhibit Number 1, and he indicates that the
12 supreme -- he wants this moved into evidence. I would
13 attempt to move it into evidence, this document, the
14 Supreme Court rules warrant required even if spouse
15 consents.

16 THE COURT: Okay. I understand that. I understand
17 the law, and the state has objected. Let's go forward, and
18 I'll see whether it becomes relevant at all in this case.

19 MS. MOODY: Thank you, Your Honor.

20 APPLICANT: What becomes relevant? I don't understand
21 what you mean? What ---

22 THE COURT: That document, whether it's relevant or
23 not.

24 APPLICANT: I mean, it, it's got to be relevant, sir,
25 I mean, because the consent to search form was in -- I

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1 mean, it, it was -- that's the only -- how -- reason why
2 they got in my house because of a consent to search form.

3 THE COURT: I ---

4 APPLICANT: Now you saying that it's not relevant?

5 THE COURT: It only becomes relevant if they got
6 evidence.

7 APPLICANT: Me.

8 THE COURT: You aren't evidence.

9 APPLICANT: My blood.

10 THE COURT: Well, then that hasn't come in yet. I
11 need to find out whether they got your blood legally ---

12 APPLICANT: Oh Lord have mercy.

13 THE COURT: --- or whether they punched you in the
14 nose to get it.

15 APPLICANT: Come on.

16 THE COURT: And we'll get to that in a minute.

17 APPLICANT: This is a sham process from the beginning.

18 THE COURT: Well, you're not making it any easier on
19 yourself. The only ---

20 APPLICANT: By telling the truth, sir?

21 MS. MOODY: Your Honor, I ---

22 APPLICANT: I mean, by explaining my case?

23 THE COURT: I understand your case, but it doesn't
24 have anything to do with your guilt or innocence. It has
25 to do -- it, it deals with ---

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1 APPLICANT: The legality of ---

2 THE COURT: --- whether the evidence should be
3 excluded.

4 APPLICANT: --- of my case.

5 THE COURT: I understand that, and all that's
6 important if you were suing some police officer for
7 illegally going in your home and assaulting you, but this
8 is a criminal case where you've been charged with a crime,
9 and if the police do something wrong, the evidence is
10 excluded under our rules. That's what I'm trying to find
11 out, whether any evidence was excluded or should have been
12 excluded.

13 APPLICANT: I'm the evidence.

14 THE COURT: I understand that.

15 APPLICANT: My blood, yes.

16 BY MS. MOODY:

17 Q. Mr. Scott, you also indicate in your application that
18 identification was an issue under ineffective assistance of
19 counsel. You stated that the victim's testimony regarding
20 identification should not have been allowed. Could you
21 please state how this is relevant to your ineffective
22 assistance of counsel?

23 A. Because it was said before I was brought up that was,
24 that was told to the victim two weeks before the crime
25 actually happened. It was hearsay. It was suggestive,

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1 okay, and she should have brought that to the court. She
2 -- it never should have been allowed to go forward in the
3 court, and even the in-court identification. She got up
4 and pointed, said yes. That shouldn't have been allowed,
5 ma'am. It was something that she could have done ---

6 Q. Now.

7 A. --- to prevent that.

8 Q. Is there anything else that you feel that your counsel
9 did not do or should have done, should have done in your
10 trial?

11 A. Yes, numerous of things.

12 Q. Well, can you please state what ---

13 A. Yes, I can.

14 Q. --- occurred?

15 A. Yes, I most certainly can. I most certainly can. I
16 most certainly can.

17 (A PAUSE.)

18 A. I want to start off with, with the witnesses, and I
19 talked about her, the credibility of the witness. I think
20 -- and ---

21 Q. Mr., Mr. Scott, let me stop you here, all right? If
22 these are issues you -- we've already discussed in -- your
23 list of allegations. Can you please state if there are any
24 allegations that we have not mentioned to the court here
25 today?

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1 A. Ma'am, you're asking me -- you asked me the question
2 were there any other type of allegations or questions that
3 I had as far as my attorney failing me at trial, okay? I
4 was about to give you that, okay? If I can proceed, I
5 will, okay?

6 Most importantly, I spoke with Beverly Jones during
7 the time that she came about a month before my trial, okay?
8 It was this young man by the name of Ernest Jackson. The
9 victim was named Bridget Jackson. He was willing to make a
10 statement and willing to come to court that he was the
11 sister of Bridget Jackson, the victim. He was aware of the
12 robbery, okay? He had information concerning that robbery
13 that he shared with me, okay, and he was not only her
14 sister. He was the son-in-law of their prime witness, this
15 Tony Crawford who's testified that said that he'd been in
16 my house where she lied and said that I asked him to help
17 me rob the store, okay? I thought that she should have
18 subpoenaed him but she didn't, okay?

19 Q. Did you tell her?

20 A. Yes, I did. Yes, I did. And another thing about the
21 trial, she said that -- the victim said that whoever the
22 perpetrator was that came into the store had a knife. She
23 said that she fought this guy. Hit him in the nose. Broke
24 his nose. The, the knife fell. She retrieved the knife,
25 okay? Where is the knife? Knife came -- never came up on

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1 trial. When Investigator Lather came from Spartanburg
2 County forensics, when he did his job, no knife was never
3 found. Where is the knife?

4 She said that after she received the knife, said this
5 -- whoever the guy was pulled out a gun, okay? No gun was
6 never found, okay? She said that she had the knife. I
7 mean, all of this they're saying that would've happened but
8 nothing came of this, okay?

9 And even with the Sergeant Kip Teal, who said that he
10 assaulted me, when she asked him, she did ask him. Said
11 did you -- which is on page 269 of my trial transcript.
12 You would have seen that if you had read over that, Ms.
13 Jones -- Ms., Ms. Moody. He actually said do you deny
14 hitting this man. He said no, I do not deny that, okay?
15 She did not close on that. She did not further investigate
16 that when he admit that he assaulted me. That's how they
17 got my blood, okay?

18 Q. So, in the trial when he answered her question, you
19 wanted her to investigate that after she got the question
20 answered?

21 A. I don't understand what you're asking. Ask me that
22 again.

23 Q. You just indicated that she didn't close on that. I
24 don't know what you mean by close on his testimony. What
25 did you mean?

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1 A. She should have made motions. She should have made
2 -- put it on the record that he admitted assaulting me with
3 that weapon, with his service weapon. That's what I meant.

4 Q. Okay.

5 A. Because he did at trial.

6 Q. Now, you're indicating that your attorney was
7 ineffective assistance of counsel, and you feel that
8 somehow you were prejudiced by her representation. How
9 were you prejudiced by her representation?

10 A. We've already discussed that. You, you're going back
11 to the Lori Teal thing. We were talking about how she was
12 ineffective. You're asking me this.

13 Q. I'm asking you how were you prejudiced? Did you get
14 jail time or did you get to leave?

15 A. I got convicted of the crime.

16 Q. Okay, and how many years did you get?

17 A. Thirty-five years, ma'am.

18 Q. Okay, and are you ---

19 A. We already ---

20 Q. --- saying that's how you were prejudiced in this
21 case?

22 A. No, I did not. No, I'm not. I, I was prejudiced
23 because of ineffectiveness of Ms. Beverly Jones, okay?

24 Q. Which resulted in receiving a sentence?

25 A. Ma'am, listen. I mean, what are you asking? It

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1 doesn't make any sense. See what I'm saying? Yes, I was
2 prejudiced but I'm think -- I'm believing that if she had
3 diligently done her job, if she had the proper time to do
4 it, just like that form I just gave you all -- this
5 happened in 2004, 2005. I mean, if she was diligently
6 keeping up with the laws of the, of the land and of South
7 Carolina, she would have known this.

8 She never questioned Sergeant Teal; she never
9 questioned police chief Scott Smith about the consent to
10 search form. She should have known that it was invalid.
11 She should have known that it was coerced; she should have
12 known that Virdia Copeland was threatened. She didn't do
13 those type of things, okay? She should have known that
14 they entered that home illegally. They should have known
15 -- she should have known that they arrested me illegally,
16 ma'am.

17 Q. Okay.

18 A. And she failed to do so.

19 Q. Okay, and what relief are you seeking from the court
20 here today?

21 A. It was illegal search and seizure. It should have
22 never been a trial. I should never been here today.
23 Vacating the sentence because they illegally came into my
24 house. They illegally arrested me. Where was the probable
25 cause?

1 Q. So ---

2 A. Just tell me where was the probable cause of me being
3 arrested. That's all I need to know because it was never
4 in a warrant. It never came up in court, and now we're
5 saying only because -- I'm here because of they broke -- a
6 cop broke in my house. Where was the probable cause? It
7 wasn't exigent. It wasn't any circumstances surrounding
8 that where they had to do this immediately. What was the
9 probable cause? And then this young lady said ---

10 Q. Mr. Scott.

11 A. --- when she ran out the store, she said that ---

12 Q. Mr. Scott.

13 A. --- that when she went down to the store, okay, she
14 went to city hall. Said it wasn't a cop there but it was a
15 judge there she said. She said it was the judge there.

16 Who was this judge? Was he the one that signed the
17 warrant? Why couldn't he sign the warrant that day? My
18 warrant was signed -- the warrants I got wasn't signed
19 until the next day. Who was the judge? Why couldn't they
20 sign a warrant? If that was probable cause, why couldn't
21 they got a warrant? Why did they needed a consent to
22 search form instead of an arrest warrant? That's my
23 question.

24 Q. Okay. I understand your question and I ---

25 A. But there's a but. Okay, but what?

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 Q. My question is what relief are you seeking from the
2 court here today?

3 A. Of vacate of sentence, ma'am.

4 Q. Okay.

5 A. And conviction and trial. It's all a sham. It's
6 illegal. It's illegal search and seizure.

7 MS. MOODY: I beg the court's indulgence.

8 THE COURT: Yes, ma'am.

9 (A PAUSE.)

10 MS. MOODY: Your Honor, may I approach the witness?

11 THE COURT: Yes.

12 BY MS. MOODY:

13 Q. Mr. Scott, you just mentioned some warrants that were
14 not signed. Can you please identify those documents?

15 A. Those are warrants.

16 Q. Okay, and so when you're talking about the warrants
17 that you received at the time, you allege that they were
18 forged?

19 A. I never received warrants until -- the only warrant --
20 listen at me. Let me explain this to you clearly, okay?
21 The only time I saw a warrant was the day of my trial when
22 Beverly Jones gave them to me, okay? They was blank
23 warrants. It wasn't a signature on there.

24 The only time that I saw a warrant with these scribble
25 marks on here was when I wrote back -- when I was already

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 sentenced at Lieber Correctional Institution when I kept
2 writing, writing, writing the clerk of court to get
3 warrants. Well, see your lawyer. Write the lawyer. See
4 the clerk of court. Nobody would never give me the
5 warrant. So, finally after the year had went by, I wrote
6 to Chesnee Police Department, okay? That's when I saw a
7 warrant, but of course I wrote Judge Gowan, Magistrate
8 Gowan, before he passed away in January 2000 -- he not only
9 sent me warrants, the defendant's copy, but he sent a
10 letter to accompany that, okay, saying that he never -- and
11 the warrants that he sent me, I have them right in here.
12 They are the defendant's copy. They are blank warrants.
13 This is not on there.

14 Q. You're saying blank?

15 A. Right. No signatures on there.

16 Q. Okay.

17 A. Right.

18 Q. Now let's point to where you're saying there's not a
19 signature because the court doesn't know that. Where are
20 you saying that there wasn't a signature?

21 A. Right up under the judge's name right there.

22 Q. Right there?

23 A. Right.

24 Q. Okay.

25 A. Those signatures are marked -- those scribble marks

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 was ---

2 Q. Can you pull out yours where ---

3 A. --- not on there.

4 Q. --- the ones you're ---

5 A. Yes, I can. Yes, I can.

6 MS. MOODY: Your Honor, I'd ask to have this marked as
7 -- for exhibit for identification purposes at this time.

8 THE COURT: Okay.

9 MS. OLIVE: Your Honor, I have no objection. They,
10 they are part of Your Honor's records anyway.

11 THE COURT: Okay. Thank you. They are in evidence
12 without objection.

13 MS. OLIVE: Well, I retract that statement. The, the
14 unsigned warrants, I don't believe, are part of your
15 record.

16 THE COURT: Right.

17 MS. OLIVE: I've never seen...

18 MS. MOODY: Yes.

19 THE COURT: I understand that.

20 (ARREST WARRANT MARKED INTO EVIDENCE AS PLAINTIFF'S
21 EXHIBIT NUMBER 2.)

22 APPLICANT: That's the only one I have right there.

23 MS. MOODY: Your Honor, if I may have this warrant,
24 M-750366, marked ---

25 APPLICANT: That's one of ---

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 MS. MOODY: --- for identification?

2 APPLICANT: --- the three warrants that I have.

3 THE COURT: Don't -- you can't talk ---

4 MS. MOODY: You need to let me talk on the record.

5 APPLICANT: I'm sorry.

6 THE COURT: My court -- we're not going to get a
7 complete record if you -- we've got to have one talk at a
8 time. She's good but she's not that good.

9 MS. MOODY: So, I'm trying to have marked for exhibit
10 purposes M-750366.

11 THE COURT: Is that the same number that you've
12 already put into evidence?

13 MS. MOODY: Yes, but this is a copy of the unsigned
14 one. So, I marked the ones that are signed.

15 THE COURT: Okay.

16 MS. MOODY: And then I have one of the unsigned.

17 THE COURT: Okay. Does the state have any objection
18 to the unsigned warrant?

19 APPLICANT: I have numerous copy of...

20 MS. OLIVE: Just general objection to relevance, Your
21 Honor, but...

22 MS. MOODY: At this point in time?

23 MS. OLIVE: But not at this point in time, Your Honor,
24 just for identification purposes.

25 MS. MOODY: I believe she's stating she doesn't have

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 an objection for marking as identification.

2 THE COURT: Okay, but your objection is relevance?

3 MS. OLIVE: For the entry as the unsigned warrant as
4 evidence.

5 THE COURT: Okay.

6 MS. OLIVE: I would object to that, Your Honor.

7 THE COURT: Okay, but is your objection to that
8 relevance?

9 MS. OLIVE: Oh. Yes, Your Honor.

10 THE COURT: Okay, then I'll overrule the objection and
11 let it in, and I don't know how, but it seems to be
12 relevant as far as he's concerned.

13 (ARREST WARRANT MARKED INTO EVIDENCE AS PLAINTIFF'S
14 EXHIBIT NUMBER 3.)

15 THE COURT: Let me ask y'all this. Is there a search
16 warrant involved in this case at all?

17 APPLICANT: I would like to know that, too, sir.

18 THE COURT: So.

19 MS. OLIVE: Your Honor, there was a search warrant in
20 regards to a buccal swab that was taken.

21 THE COURT: Right.

22 MS. OLIVE: But as far as the, the ---

23 APPLICANT: Home.

24 MS. OLIVE: --- arrest itself, I believe that was
25 simply done by consent of the owner of the home.

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 THE COURT: Okay. So, so, the only warrant that we
2 keep talking about is this arrest warrant. There is no
3 search warrant out there. It's an arrest warrant that's an
4 issue in this case, not a search warrant of the home?

5 MS. OLIVE: Correct, Your Honor.

6 MS. MOODY: Yes, sir.

7 APPLICANT: That is a issue.

8 MS. MOODY: Your Honor, put it like this. We're going
9 to present the witness who actually signed the consent.

10 THE COURT: Okay, let me ask you this. Was there any
11 evidence obtained at the home at the time of the arrest?

12 MS. MOODY: No, Your Honor, other than my client
13 saying that it was his blood ---

14 APPLICANT: Yes.

15 MS. MOODY: --- when he was assaulted.

16 APPLICANT: Yes.

17 THE COURT: But, but at least in my looking at the
18 record, buccal swabs were done, so ---

19 MS. MOODY: That was done after his arrest.

20 THE COURT: I understand that, but are you telling me
21 that SLED used the blood from the arrest to do any kind of
22 testing?

23 MS. MOODY: No, Your Honor.

24 THE COURT: So, so, his blood that -- if the officer
25 did punch him in the nose and he did bleed, there was

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 anything at that trial where that blood was collected and
2 any way used against him?

3 MS. MOODY: There was blood on the victim of the ---

4 THE COURT: Right.

5 MS. MOODY: And then they got a buccal swab.

6 THE COURT: Right, so that there's blood on the victim
7 at the crime scene.

8 MS. MOODY: Yes, sir.

9 THE COURT: They go standard procedure and get a
10 buccal swab from him.

11 MS. MOODY: Yes, sir.

12 THE COURT: And that, the buccal swab's blood, was at,
13 was at trial?

14 MS. MOODY: Yes. Yes.

15 THE COURT: And that's not, and that's not an issue in
16 this case. The only issue is what happened at the house,
17 right?

18 MS. MOODY: That's ---

19 APPLICANT: Yes.

20 MS. MOODY: That's his argument that's he's making
21 here.

22 THE COURT: Okay. I just wanted to be sure. I
23 understand that now.

24 MS. MOODY: Okay.

25 THE COURT: Okay. So, you can -- I understand his

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 position.

2 MS. MOODY: I'm just showing it to him for
3 identification.

4 THE COURT: And you can show him. I've let it into
5 evidence. I understand his position, but go ahead.

6 MS. MOODY: Okay. Thank you.

7 BY MS. MOODY:

8 Q. Mr. Scott, I'm going to show you what's been marked as
9 Plaintiff's Exhibit Number 2 and as Plaintiff's Exhibit
10 Number 3. You -- can you see these?

11 A. Yes, I can.

12 Q. Okay. You previously testified that you did not have
13 a signed copy of the warrant, the warrants?

14 A. That's correct.

15 Q. Now -- and you received these copies from the -- well,
16 Plaintiff's Exhibit Number 3 from the magistrate?

17 A. Yes, I did.

18 Q. Okay, and then you're stating that you did not receive
19 Plaintiff's Exhibit Number 2 at any point in time?

20 A. No, I did not.

21 Q. Okay.

22 MS. MOODY: Your Honor, at this time I move them into
23 evidence.

24 THE COURT: Okay.

25 MS. OLIVE: No objection.

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 APPLICANT: And, Your Honor, may, may I make a
2 statement, sir?

3 THE COURT: I mean, it's up to you and your attorney.
4 I don't care.

5 BY MS. MOODY:

6 Q. What, if any, statement do you have, Mr. Scott?

7 A. As far as my, my attorney is concerned, there was a
8 buccal swab done, they said, on the 29th.

9 Q. Which attorney?

10 A. Beverly Jones.

11 Q. Okay.

12 A. Okay? There was a -- they said that there was a
13 buccal swab done on the 29th. I have the paperwork here.
14 They said the night after I was in jail here by the same
15 forensics guy who got on the stand and said that he took
16 evidence from the crime scene, said he was the one that did
17 that, okay? Wasn't a court order, okay? No judge signed
18 nothing I saw or anything. But then they -- I got the
19 paperwork said that they sent it to SLED, okay? That never
20 came up at my trial, okay? I asked her. I said what is
21 the results of that. Nobody don't seem to know, not until
22 this day.

23 APPLICANT: My question, Your Honor, okay, if he did
24 that on September 29, 2010, why did they needed to do
25 another one on March 23rd of 2012 two weeks before my

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 trial? Where's the results of the first one? And, see,
2 these are the things that I've been checking, I've been
3 trying to ask for this past five years, but nobody will
4 give an answer to me, even Beverly Jones.

5 Why did they need to do two buccal swabs? Why did
6 they -- and where is the results of the first one that they
7 sent to SLED?

8 I got it right here, sir, and those same scribble
9 marks, those same scribble marks that's on that warrant is
10 on this, on this affidavit. This is not an affidavit.
11 I've proven that. This is what this investigator is doing
12 as we speak. I'd like to show the court that, if, if I
13 don't mind, okay? I have it here. These handcuffs, can't
14 get it.

15 (A PAUSE.)

16 APPLICANT: This is the letter that I got from the
17 magistrate who's supposed to sign the warrant. I -- you
18 don't need that, ma'am. I, I, I'll get it to you. I've
19 sent you a copy of that. If you could put those back?
20 Thank you. Thank you very much.

21 (A PAUSE.)

22 APPLICANT: Right here, this is what I'm talking
23 about, okay? Now this was done, but that same scribble
24 mark right there is the same scribble mark that's on that
25 warrant right there.

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 MS. MOODY: Mr. Scott.

2 APPLICANT: This is not a legal document. Now, this
3 is from the September 29th. They said that they sent this
4 to SLED, sir. This is supposed to be an affidavit for DNA.
5 Where are the results of this?

6 MS. MOODY: Mr. Scott.

7 APPLICANT: I've asked her that.

8 MS. MOODY: Mr. Scott.

9 APPLICANT: It never came up in the trial.

10 BY MS. MOODY:

11 A. Yes, please.

12 Q. Is that something you want to move into evidence?

13 A. Yes, please.

14 Q. Can I show it to the ---

15 A. Yes. Right there, that same signature that's on that
16 warrant right there.

17 APPLICANT: Please let me know, ma'am, Ms. Attorney
18 General, is that a legal document right there? Would a
19 judge sign something like that?

20 THE COURT: She, she can't give you legal advice,
21 okay?

22 APPLICANT: But I'm asking is that a legal document.

23 THE COURT: Well.

24 MS. MOODY: If I may?

25 APPLICANT: Is it, ma'am?

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 MS. MOODY: If I may? May I have these marked for
2 identification purposes?

3 THE COURT: Okay.

4 (AFFIDAVIT FOR DNA MARKED AS PLAINTIFF'S EXHIBIT
5 NUMBER 4 FOR IDENTIFICATION.)

6 APPLICANT: And, of course, I got that from Barry
7 Barnett. He sent that to me. I got the letter that he
8 sent me, too, and the envelope right here, sir.

9 THE COURT: Okay.

10 APPLICANT: And I've been asking for the results of
11 that. Asked Beverly Jones about it. Never came up in the
12 court.

13 BY MS. MOODY:

14 Q. This has been marked as Plaintiff's Exhibit Number 4
15 for identification purposes.

16 A. Yes.

17 Q. This is what you received from Barry Barnett?

18 A. Yes, I did.

19 Q. Okay, and this document is the affidavit for DNA that
20 you were talking about?

21 A. From September 29th.

22 Q. Okay.

23 A. You can see the dates on the back, and my question was
24 when I saw that, I said it couldn't possibly be a legal
25 document with that same signature. A judge wouldn't sign

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 nothing like that. The same signature's on the, on the
2 warrant.

3 Q. Okay.

4 A. I mean, it's ---

5 Q. So, when you talked to Ms. Jones, did you talk to her
6 about this, Plaintiff's Exhibit Number 4?

7 A. I talked with her about it when it was -- the first
8 time I saw that was in, in my discovery, I believe. I
9 didn't pay ---

10 Q. Okay.

11 A. --- any attention to it.

12 Q. So, you thought -- you received discovery from Ms.
13 Jones?

14 A. Yes.

15 Q. Okay, and so this was in the discovery?

16 A. I'm not sure. I don't think it were.

17 Q. Okay. So -- but subsequent to your trial, you
18 received this from Barry Barnett or you received this ---

19 A. After.

20 Q. --- after? After your ---

21 A. I just ---

22 Q. --- trial?

23 A. --- recently received them this last year sometime,
24 yes.

25 Q. Okay, and so your issue that you take with this

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 document which is signed by Sergeant Kip Teal as the
2 affiant on September 29, 2010 ---

3 A. And Judge Eber C. Gowan.

4 Q. Hold on.

5 A. That's supposed to be his signature.

6 Q. Hold on.

7 A. Okay.

8 Q. Spartanburg County, September 29 ---

9 A. 2010.

10 Q. --- 2010. Mr. Scott, I'm going to ask you to ---

11 A. Okay.

12 Q. --- let me lay the record. She has to be able to ---

13 A. Okay.

14 Q. --- get this down. This document was signed by Skip
15 [sic] Teal on September 29, 2010.

16 A. Uh-huh.

17 Q. And your issue with this document is that it has
18 another signature on it, and it is two different scribble
19 marks on it?

20 A. Uh-huh.

21 Q. Correct?

22 A. Uh-huh.

23 Q. Okay, and you're indicating that this is whose
24 signature?

25 A. It's the same signatures on the warrant that they --

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 that you said was the judge's signature, the magistrate.

2 Q. Now, not that I said. You indicated that the warrants
3 were signed by ---

4 A. I never said ---

5 Q. --- the judge.

6 A. --- they was his because I don't think it is his. I
7 think this was a clerk of his. I think it was somebody in
8 his, in his office that's doing that.

9 Q. Okay. So, that goes to your forensic ---

10 A. Yes, that's ---

11 Q. --- investigation?

12 A. --- what they got now, yes.

13 Q. Okay, and that's why you would want the court to keep
14 it open, so that the forensic examiner could get that
15 information ---

16 A. Yes.

17 Q. --- to the court?

18 A. Please.

19 Q. Okay. So, this is -- this issue deals with the
20 forgery?

21 A. Yes.

22 Q. Okay, and that's the purpose of submitting this
23 information?

24 A. Yes.

25 Q. Okay.

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 MS. MOODY: Your Honor, at this time I'd ask to be
2 able to move Exhibit, Plaintiff's Exhibit Number 4 into
3 evidence.

4 THE COURT: What says defense?

5 APPLICANT: And that also ---

6 MS. OLIVE: No objection.

7 THE COURT: I mean, the state. I'm sorry.

8 APPLICANT: Oh. I'm sorry. I'm sorry.

9 MS. OLIVE: No objection, Your Honor.

10 THE COURT: Okay. It's in without objection.

11 MS. MOODY: Thank you.

12 (AFFIDAVIT FOR DNA MARKED INTO EVIDENCE AS PLAINTIFF'S
13 EXHIBIT NUMBER 4.)

14 BY MS. MOODY:

15 A. She failed to brought that up in trial also as to
16 where are those results.

17 Q. Right. We got that.

18 A. Yes.

19 Q. I just wanted to put the document in.

20 A. Thank you.

21 Q. So, is -- are there any other issues that Ms. Jones
22 failed to present at trial?

23 A. Well, yes, this issue right there with the legal --
24 she didn't bring up the, the, the illegal search and
25 seizure about the consent. She didn't talk about that.

A. SCOTT - DIRECT EXAMINATION BY MS. MOODY

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1 Q. We have that down.

2 A. Okay.

3 Q. I'm just asking was there any other issue related to
4 the forgery of the buccal swab affidavit versus the ---

5 A. No. No, ma'am.

6 Q. Okay.

7 A. No. That's it, yes.

8 Q. All right, and the relief you are seeking here today
9 from the court is vacation of your conviction?

10 A. Yes. Yes, my trial and conviction and sentence, yes.

11 Q. Okay, and are you asking for a new trial?

12 A. No, I'm not. It shouldn't have been -- never been a
13 trial. What was the reason for them arresting me? They
14 didn't have probable cause to arrest me, ma'am.

15 Q. I understand that, but do you understand that if
16 they've arrested you, this judge cannot say that they
17 cannot try you in another trial?

18 A. I didn't understand that. What did you say?

19 Q. The relief, only relief you can receive here today is
20 vacating your conviction, and you start over and the state
21 starts over.

22 A. Okay.

23 Q. And if -- either you plead to the charges or you go
24 through a trial on it.

25 A. Okay.

A. SCOTT - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 Q. Okay.

2 A. Yes.

3 Q. You understand that?

4 A. Yes, I do now.

5 Q. And that's the limitation on the judge?

6 A. Yes.

7 Q. Okay. So, you want whatever relief the judge can give
8 you here today?

9 A. Yes, ma'am.

10 Q. And you understand that that is a reset, that you
11 start all over as if you were arrested from day one on
12 September 28, 2010?

13 A. Yes, ma'am.

14 Q. All right.

15 MS. MOODY: No further questions for this witness.

16 THE COURT: Okay.

17 CROSS-EXAMINATION BY MS. OLIVE:

18 Q. Good morning, Mr. Scott.

19 A. And your name, ma'am, if you don't mind me asking?

20 Q. I'm Alicia Olive, the attorney general with the
21 attorney general's office for the state. And Ms. Jones did
22 actually speak with Regina Jones, did she not?

23 A. But she never came to court.

24 Q. Okay, but ---

25 A. I don't know whether she spoke with her or not.

A. SCOTT - CROSS-EXAMINATION BY MS. OLIVE

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1 Q. Okay.

2 A. But she was supposed to come to court.

3 Q. Okay, and Jeffrey Young is not -- DeYoung is not here
4 today, is he?

5 A. I, I don't, I don't see him, no.

6 Q. Okay.

7 A. He was supposed to be here.

8 Q. Did you tell Ms. Moody about ---

9 A. It's on my witness ---

10 Q. --- to ask her ---

11 A. --- list, yes.

12 Q. --- to subpoena him?

13 A. Yes.

14 Q. But he did not appear today?

15 A. He's not here today.

16 Q. Okay.

17 A. No.

18 Q. So, we don't know what he would have testified to?

19 A. No, we wouldn't.

20 Q. Okay.

21 A. That's why I wanted him here. I'm sure he would have
22 told the truth.

23 Q. Okay, and you testified that you did not give the
24 names of Edith Mossberg and Ruth Holley to your attorney,
25 Ms. Jones?

A. SCOTT - CROSS-EXAMINATION BY MS. OLIVE

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1 A. Say that again?

2 Q. You testified that you did not give the names ---

3 A. No, I did not.

4 Q. Okay. Thank you.

5 A. I thought that probably would have been a part of her
6 investigation since she went out there. I figured she
7 probably ---

8 Q. Well, how did -- okay.

9 A. She would have went there, yes.

10 Q. Well, would she know to investigate witnesses that you
11 don't identify to her?

12 A. Listen, ma'am. This was a part ---

13 Q. I'm sorry. Withdraw. Withdraw that question.

14 And with regard -- you allege that she had a conflict
15 of interest in representing you because she had previously
16 represented ---

17 A. At the present time.

18 Q. --- Lori Teal?

19 A. It wasn't -- she told me at that present time.

20 Q. Okay, but she discussed this conflict with you, did
21 she not?

22 A. No, she didn't. The only thing that she told me the
23 day before my trial was that Monday downstairs here in this
24 courtroom when she brought me that plea. And she said, Mr.
25 Scott, I have something else that I need to discuss with /

A. SCOTT - CROSS-EXAMINATION BY MS. OLIVE

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1 you, and I said what is that, and that's when she told me
2 about Lori Teal. I said, well, ma'am, I said, you know, I
3 don't think that it's, it's appropriate and I said maybe --
4 I said shouldn't -- it was your responsibility to go before
5 the courts with this, and she said yes, and she said this
6 is what I would do. She left me down there, but I never
7 heard anything else from that. Obviously she didn't
8 brought it to the court's attention.

9 Q. Okay. So, your testimony today is that she didn't
10 tell you anything about this conflict until the day before
11 your trial?

12 A. Until the day before my trial, yes.

13 Q. Okay. Are you -- is it your understanding that her
14 representation of Ms. Teal was complete at that time?

15 A. She did not -- she -- only thing she said, at the
16 present. She said she is a client of mine at the present.

17 Q. And this was the day before your trial?

18 A. Yes. That was on March ---

19 Q. April 20 ---

20 A. That was on April, yes, 23rd.

21 Q. Okay.

22 A. 2012, yes..

23 Q. Okay, and you said she conveyed a plea offer to you.
24 Do you recall what that offer was?

25 A. Twenty years, yes.

A. SCOTT - CROSS-EXAMINATION BY MS. OLIVE

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1 Q. Okay, and this woman that you -- that we've been
2 discussing, Ms. Copeland, you, you're not married, correct?

3 A. No. We're not legally married, no, ma'am.

4 Q. Okay, and you were not married at the time of your
5 arrest?

6 A. Not legally, no, ma'am.

7 Q. Okay, and your testimony earlier was that the first
8 time you met with Ms. Jones, she went over your Rule 5 with
9 you, correct?

10 A. She -- some of the stuff that she had in there. She
11 had some supplementary forms from their investigation. She
12 had pictures of the store that they had took, that they
13 took. No warrants, nothing pertinent that -- you know,
14 just stuff, yes.

15 Q. Okay, and she actually did go to the store and
16 investigate, correct?

17 A. I don't know. I wasn't there.

18 Q. Okay. Now, this -- these charges arose out of events
19 that occurred at a Moneytree, correct?

20 A. Yes.

21 Q. Okay, a Moneytree that you worked at before these ---

22 A. Yes.

23 Q. --- events happened, correct?

24 A. Exactly, yes.

25 Q. And you had been terminated from that ---

A. SCOTT - CROSS-EXAMINATION BY MS. OLIVE

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1 A. Yes.

2 Q. --- store, correct? Okay.

3 A. Yes.

4 Q. And ---

5 A. But it wasn't from stealing money, though.

6 Q. In fact, the victim, Ms. Jackson, she identified you.
7 She knew who you were, correct?

8 A. No, she did not. She got on the stand. If you all
9 read the record, she got on the stand, okay? When, when
10 Officer Lowell went to the -- to -- that night five hours
11 when she decided to go to the emergency room, five hours
12 when this lady said that she got knocked out with a gun on
13 the back of her head, took her five hours to get to the
14 emergency room, okay?

15 APPLICANT: She said when Officer Lowell brought her
16 the pictures there to identify it, she got on the stand and
17 said that the picture was already circled, sir.

18 Q. Okay. Let me ask you something. Do you remember your
19 trial?

20 A. Yes, I do.

21 Q. Okay. Do you remember having -- that your attorney
22 held a pretrial hearing regarding these identification
23 issues?

24 A. Yes, I do.

25 Q. What's called a *Biggers* hearing?

1 A. Yes.

2 Q. Okay, and do you recall your appeal?

3 A. Yes.

4 Q. Okay, and do you recall that those issues were also
5 addressed on your direct appeal?

6 A. Right.

7 Q. Okay.

8 A. Yes. Of course I do.

9 Q. Okay.

10 A. That was the only issue brought up on my direct
11 appeal.

12 Q. Okay.

13 A. And that shouldn't have been. That shouldn't have
14 been. She should have ---

15 Q. So, those matters have ---

16 A. --- brought up the illegal search and seizure also.

17 Q. So, those matters have already been fully litigated
18 from the trial phase to the direct appeal phase?

19 A. Say do what?

20 Q. Those matters have already been fully litigated?

21 A. Yes.

22 Q. From your trial?

23 A. Yes.

24 Q. To the direct appeal?

25 A. Yes.

A. SCOTT - CROSS-EXAMINATION BY MS. OLIVE

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1 Q. Okay, and the, the, the court affirmed your
2 conviction?

3 A. Yes.

4 Q. Okay.

5 A. Well, they dismissed it. It wasn't affirm, if that's
6 what you call affirm. It was dismissed by unpublished
7 opinion. That's what you call affirm, yes.

8 Q. Okay, and again, a buccal swab was taken, correct?

9 A. They said, they said there was two, okay?

10 Q. Okay, what was testified to about trial, that was a
11 buccal swab, correct?

12 A. Yes.

13 Q. The DNA from the buccal swab ---

14 A. Yes.

15 Q. --- that was what was used at the trial?

16 A. Yes.

17 Q. Okay, and it was compared to the DNA that was found at
18 the scene, and it connected your DNA with the DNA that was
19 found at the scene?

20 A. It was, it was ---

21 Q. According to the testimony.

22 A. It was found on the victim, okay? They didn't find
23 blood in that store. She said that she traveled from here.
24 She got up on the stand when Beverly Jones asked her, said
25 that, said that the person who robbed her took her through

A. SCOTT - CROSS-EXAMINATION BY MS. OLIVE

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1 the store after this fight that happened from here to those
2 back doors, but they never found any blood in the store.

3 So, how could that possibly be? See what I'm saying?

4 She said the fight happened when the, when the, when
5 the person first came in the store. I mean, she took the
6 knife from this guy and that ---

7 Q. Well, well ---

8 A. Remind me. He had on a hat. They said he had on a
9 hat.

10 Q. Mr. Scott.

11 A. He had on glasses. She hit him in the face and his
12 nose. None of the glasses, no hat, no nothing come off.
13 That's ridiculous.

14 Q. We'll allow the transcript to speak for itself.

15 A. Thank you.

16 Q. Okay.

17 A. Please do.

18 MS. OLIVE: That's all the questions I have. Thank
19 you.

20 MS. MOODY: No further questions, Your Honor.

21 THE COURT: Okay. You can step down.

22 APPLICANT: Thank you, sir.

23 MS. MOODY: Your Honor, at this time, I would call Ms.
24 Copeland to the stand.

25 (THE WITNESS EXITS THE STAND.)

V. COPELAND - DIRECT EXAMINATION BY MS. MOODY

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1 VIRDIA COPELAND, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 THE COURT: You can have a seat and answer the
4 questions counsel has for you.

5 WITNESS: Thank you.

6 MS. MOODY: Thank you, Your Honor. May it please the
7 court?

8 DIRECT EXAMINATION BY MS. MOODY:

9 Q. Ms. Copeland, could you please state your full name
10 for the record?

11 A. My name is Viridia Copeland.

12 MS. MOODY: Beg the court's indulgence.

13 (A PAUSE.)

14 BY MS. MOODY:

15 Q. Could you please state your name again? I'm sorry.

16 A. My name is a Viridia Copeland.

17 Q. And, Ms. Copeland, where do you reside?

18 A. Ma'am?

19 Q. Where do you live?

20 A. I live in Chesnee on [REDACTED].

21 Q. Okay, and do you own your home?

22 A. Yes, ma'am.

23 Q. Okay. Does anyone else own your home with you?

24 A. I have a sister live there, but no one else own it but
25 me.

1 Q. Okay, and you're here today in this PCR matter for Mr.
2 Scott?

3 A. Yes, ma'am.

4 Q. How do you know Mr. Scott?

5 A. I met him when I was working at Turner's Restaurant,
6 and he came in. I met him at Turner's. I guess it's
7 been about eight -- it's been a while. Like, I can't put
8 the ---

9 Q. Okay. That's fine.

10 A. --- time to it, yes.

11 Q. But that's how you met him?

12 A. Yes, uh-huh.

13 Q. Okay, and are you familiar with his trial that has him
14 incarcerated?

15 A. Well, yes, ma'am. I was -- you know, kind of been
16 here when he be tried.

17 Q. Okay, and you testified in the trial?

18 A. Yes, ma'am.

19 Q. Okay, and so when you testified in the trial, do you
20 recall your testimony that you gave on the -- from the
21 stand?

22 A. I kind of can.

23 Q. Okay.

24 A. Yes, ma'am.

25 Q. All right. As we've talked about, there was a search

V. COPELAND - DIRECT EXAMINATION BY MS. MOODY

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1 done at your house at 101 1/2 Lexington?

2 A. Yes, ma'am.

3 Q. Okay, and did you come in contact with officers on
4 that day that there was a search?

5 A. Mr. Scott, the, the, the chief was there and he -- I
6 was at the hospital with my mom.

7 Q. Okay.

8 A. I left that morning and went down and stayed all day
9 because she was in the ICU at that time at Mary Black
10 Hospital.

11 Q. Okay.

12 A. Me and my sister and when I left that morning, I left
13 Mr. Scott in the bed because he was, he was sick. I had
14 about two weeks or maybe a week, I had took him to Mary
15 Black to the emergency room, and they had give him some
16 pills to take, and when I left that morning, I left him in
17 the bed. So, I went, went and picked up my sister and I
18 came back by my house and checked on him because I knew
19 that I wouldn't be back home until that night, maybe not
20 come back home just depending on what -- how my mom was
21 doing. So, my sister came home.

22 So, when I -- that night when I came to Chesnee, my
23 nephew -- stopped at the Lil' Cricket, and I guess it might
24 have been Fast Fare at that time.

25 Q. Okay.

1 A. I stopped there to get me some gas, and my nephew were
2 there. So, Mr. Scott had gotten in touch with him and told
3 him to tell me to come down to the Moneytree that day.

4 APPLICANT: That's the police chief now.

5 Q. So, you are -- your nephew, can you please state for
6 the record your nephew's name?

7 A. Leroy.

8 Q. Okay, and where and where would -- how did Mr. --
9 well, excuse me, Sheriff or Chief Scott, how did he know
10 your nephew?

11 A. Well, Leroy and Mr. Scott, they, they kind of -- Leroy
12 kind of hung around them. A lot of times he'd be with
13 them.

14 Q. So, they knew that you were his aunt?

15 A. Yes, uh-huh. Yes.

16 Q. Okay, and so your nephew called you?

17 A. Yeah. He told me that Mr. Scott wanted to see me, to
18 come down to the Moneytree.

19 Q. Did you personally know Mr. Scott?

20 A. No, I didn't personally know him, no.

21 Q. Okay. You were, you were familiar that he was with
22 law enforcement?

23 A. Yes, uh-huh.

24 Q. Okay.

25 A. Yes.

V. COPELAND - DIRECT EXAMINATION BY MS. MOODY

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1 Q. And so you obliged him?

2 A. Yes, uh-huh.

3 Q. Okay, and when you got down to the Moneytree, what, if
4 anything, occurred?

5 A. He said the, he said the Moneytree had been robbed,
6 and he told me that my friend Andrew had robbed the
7 Moneytree. And I said well, sir, I, I can't say he did and
8 I can't say he didn't, but when I left home that morning,
9 he was in bed, and so I don't know.

10 Q. Now, earlier you said that you had taken him to the
11 emergency room?

12 A. Yes.

13 Q. About two weeks or a week ---

14 A. Yeah.

15 Q. --- prior?

16 A. Uh-huh.

17 Q. Okay, and what was the actual reason? You said he was
18 having ---

19 A. He was having some pains in his side.

20 Q. In his side?

21 A. Yes. Uh-huh.

22 Q. All right, and was he admitted into the hospital?

23 A. No. They didn't admit them. They give him some
24 medication.

25 Q. Okay.

1 A. Some pain pills.

2 Q. Okay. So, then on the particular day that you were
3 contacted by law enforcement, Mr. Scott, when you left your
4 house, Andrew Scott was in the bed?

5 A. Yes, ma'am.

6 Q. Okay, and when you told this to law enforcement, what,
7 if anything, happened at that point?

8 A. They said -- he -- Mr. -- the chief, Mr. Scott, asked
9 me to give him -- they, they were looking for Andrew, and
10 he said he's -- that's your friend. I said yes, sir,
11 that's my friend. I said he was at my house when I left.
12 So, he said, well, can I have your keys to go and -- to
13 your house. I said no, sir. I cannot give you my keys
14 because I'm going back to the hospital because my mother is
15 in ICU. He said, well, give your keys to -- can your
16 nephew, Leroy? I said no, sir, because I'm going back to
17 the hospital. I need my keys. So, I left it like that.

18 Q. Okay.

19 A. Uh-huh.

20 Q. And did you receive anything from Chief Scott at that
21 time?

22 A. He put a paper -- I was sitting in my car. So, he put
23 a paper into -- on a board at the window. He said -- and
24 had a flashlight. He said can you sign this paper for us
25 to go to your house. He said and this paper is for us not

V. COPELAND - DIRECT EXAMINATION BY MS. MOODY

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1 to tear your house up. So, I signed the paper. I didn't
2 know what it, I didn't know what it was because I don't
3 know nothing about no law stuff.

4 Q. Well, basically did you have a problem with Chief
5 Scott going into your house?

6 A. No, ma'am, I, I didn't have because if, if Andrew had
7 did something, I wanted them to go and see, you know --
8 because I didn't -- I don't want -- I didn't want nothing
9 going on at my house that I -- not no robbery stuff going
10 on at my house, and I wanted them to check it out to make
11 sure that it wasn't him.

12 Q. So, when -- okay, so your understanding when you
13 signed that document and Chief Scott went to your house, he
14 was going in your house. You understood he was going in
15 your house?

16 A. I didn't know how he was going to get in there, but he
17 said...

18 Q. Right, but you understood he was going to ---

19 A. Yeah, yes.

20 Q. --- your house ---

21 A. He was going to my house.

22 Q. --- looking for Andrew Scott?

23 A. Uh-huh. Uh-huh. Yes, ma'am.

24 Q. Okay. Looking for Andrew Scott related to the
25 Moneytree robbery?

1 A. Yes, ma'am.

2 Q. Okay, and so you signed off on that document?

3 A. Yes, ma'am.

4 Q. And you proceeded on your way?

5 A. Yes, ma'am.

6 Q. Okay. What, if anything, did you observe when you
7 returned to your house?

8 A. Well, when I went home that morning -- I didn't go
9 back until that morning. I -- yeah.

10 Q. All right. So, let's be clear on this. So, the night
11 before, you gave permission to sign?

12 A. Yeah.

13 Q. I mean, to go to your house?

14 A. Yes, ma'am.

15 Q. You signed that?

16 A. Uh-huh.

17 Q. Then the next morning -- so, you spent the night at
18 the hospital?

19 A. I went, spent with my sister. See, I have a sister
20 that's handicapped, currently in the Charles Lea Center
21 program.

22 Q. Oh.

23 A. So, my sister had brought her home. So, I went over
24 there to my sister ---

25 Q. So, you ---

V. COPELAND - DIRECT EXAMINATION BY MS. MOODY

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- 1 A. --- to be with her.
- 2 Q. --- went to your other sister's house?
- 3 A. Yeah. I went to my sister's because Mother had an
- 4 apartment at that time.
- 5 Q. Okay.
- 6 A. So, I went to my mother's apartment where my sister
- 7 was, and I stayed with her that night.
- 8 Q. Okay.
- 9 A. She's, she's a nervous child and she, as I said, she's
- 10 in the Charles Lea Center program.
- 11 Q. Okay.
- 12 A. And now I have her living with me.
- 13 Q. Okay. So, then you went back to your house ---
- 14 A. I went.
- 15 Q. --- at 101 1/2 Lexington?
- 16 A. Uh-huh.
- 17 Q. And that would have been the next morning?
- 18 A. Yes, ma'am.
- 19 Q. The following morning?
- 20 A. Yes, ma'am.
- 21 Q. Okay. What, if anything, did you observe?
- 22 A. I observed that my backdoor have been prized open.
- 23 Q. Okay. Was it open or was it closed?
- 24 A. It, it was closed up.
- 25 Q. Okay.

1 A. But it had been prized open.

2 Q. Okay.

3 A. Yes, ma'am.

4 Q. Now, was there anyone in your home at that time?

5 A. No, ma'am, weren't nobody there.

6 Q. Okay. So as far as you know, they either went to your
7 house or did not go to your house, and you gave them
8 consent to go into your house?

9 A. Yes, ma'am.

10 Q. Okay.

11 A. Like I said, yes.

12 Q. Now, are you married to Mr. Scott?

13 A. No, ma'am.

14 Q. Okay. Have you ever been married to Mr. Scott?

15 A. No, ma'am.

16 Q. Does Mr. Scott have ownership in your home?

17 A. No, ma'am.

18 APPLICANT: Did she -- did he explain the rights to
19 her that she had the right to refuse?

20 Q. Was Mr. Scott living at your home at that time?

21 A. We were living together at that time.

22 Q. Okay.

23 A. Yes.

24 Q. And then did you take issue with anything that Chief
25 Scott asked you with regard to going into your home?

V. COPELAND - DIRECT EXAMINATION BY MS. MOODY

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1 A. No. I didn't, I didn't take no issue with just
2 the chief when -- you know, about him going in there
3 because ---

4 Q. So ---

5 A. --- as I said, nothing happened. Just my back door
6 was prized open.

7 Q. And you were at the Moneytree when you talked to him?

8 A. Yes, ma'am.

9 Q. So, did you understand what Chief Scott's document
10 was?

11 A. No, ma'am.

12 Q. But you understood he was going through the house?

13 A. Yes, ma'am.

14 Q. Okay, and did Chief Scott explain to you exactly how
15 they were going to go in your house or what they were going
16 to do once they got to your house? Did he state he was
17 going to stand outside or anything that was different from
18 what you understood?

19 A. No, ma'am. He didn't explain any. He just said this,
20 this document is for us not to tear up your house now.

21 APPLICANT: That's a threat.

22 A. So I didn't, I didn't know how, how they were going,
23 how they were going to do that. I didn't, I didn't know.

24 APPLICANT: They threatened her.

25 (COUNSEL CONFERS WITH APPLICANT.)

1 THE COURT: You can't talk now. You had your chance
2 to talk.

3 BY MS. MOODY:

4 Q. Ms. Copeland.

5 A. Yes, ma'am.

6 Q. Did you feel threatened or coerced to give consent?

7 A. No, ma'am.

8 Q. Okay.

9 A. I didn't.

10 Q. Okay. Did you take the possibility that he was going
11 -- that he wanted you to sign the document so that they
12 wouldn't turn your -- tear your house up, did you perceive
13 that as a threat?

14 A. No, ma'am, I didn't.

15 Q. Okay.

16 MS. MOODY: No further questions for this witness,
17 Your Honor.

18 THE COURT: Okay.

19 APPLICANT: When she not refuse ---

20 MS. OLIVE: I ---

21 APPLICANT: --- to give her keys to him, after that
22 wasn't that a threat?

23 MS. OLIVE: I have no questions.

24 APPLICANT: When she said no to giving him those keys

25 ---

1 THE COURT: Right.

2 APPLICANT: --- and he told her, said ---

3 MS. MOODY: No further questions.

4 APPLICANT: --- he's going to tear her house up ---

5 THE COURT: I understand that. You've already
6 testified.

7 APPLICANT: --- was that not a threat?

8 THE COURT: No, it wasn't a threat.

9 APPLICANT: Hell if it wasn't. Why it wasn't a
10 threat? When she said no ---

11 THE COURT: You need to sit down.

12 APPLICANT: --- and he told her ---

13 THE COURT: She has testified.

14 APPLICANT: --- that she -- was going to tear that
15 house up ---

16 DEPUTY: You need to sit down.

17 APPLICANT: --- what do you call a threat, man?

18 DEPUTY: Sit down.

19 THE COURT: Well, you need ---

20 APPLICANT: What do you call her ---

21 THE COURT: --- to sit down.

22 APPLICANT: Who you talking to, man?

23 DEPUTY: You're going to be taken out of here.

24 THE COURT: You need to sit down and quit talking.

25 APPLICANT: I don't give a fuck. Take me out of here.

1 DEPUTY: Come on.

2 THE COURT: Well, I'm going to send you out of here.

3 DEPUTY: Come on.

4 APPLICANT: Come on, man, you know that was a threat.
5 You know he coerced her. You know it. When she said no,
6 you knew that.

7 THE COURT: Okay.

8 APPLICANT: Come on, man, you know the law.

9 (WHEREUPON, THE APPLICANT IS TAKEN FROM THE
10 COURTROOM.)

11 THE COURT: Okay.

12 MS. MOODY: I have no further questions for Ms.
13 Copeland.

14 THE COURT: Yes, ma'am.

15 MS. OLIVE: I have no questions for Ms. Copeland.

16 THE COURT: You can step down.

17 WITNESS: All right. Thank you.

18 (THE WITNESS EXITS THE STAND.)

19 MS. MOODY: Your Honor, I would ask that Ms. Copeland
20 be excused as she ---

21 THE COURT: Okay.

22 MS. MOODY: --- would like to...

23 THE COURT: Any objection?

24 MS. OLIVE: No objection, Your Honor.

25 THE COURT: Thank you, ma'am. You're excused.

1 MS. MOODY: Your Honor, I have no further witnesses.

2 THE COURT: Okay, we'll take a brief recess.

3 MS. OLIVE: Thank you, Your Honor.

4 MS. MOODY: Thank you, Your Honor.

5 (OFF THE RECORD.)

6 THE COURT: Thank you. You can be seated.

7 Your issue now, we can proceed without him the whole
8 trial? All right, if you want to go talk to him and see if
9 he can be quiet, he can come back, or if you're comfortable
10 without him in the hearing, we can go.

11 MS. MOODY: He can come in here, but I think law
12 enforcement would be better to tell him because he doesn't
13 listen to what I say.

14 THE COURT: Well, you know, I can bring him back and
15 ask him that question. If he acts out again, he's gone.
16 And the only reason, because of all this claiming that you
17 didn't subpoena his witness, and it's an issue. At least
18 if I can keep him here and keep his mouth shut hopefully.

19 MS. MOODY: Well, Your Honor, he is wanting -- and I
20 guess with the testimony from Ms. Jones, you'll hear
21 whether or not any of these witnesses that he wanted to
22 testify are even relevant.

23 THE COURT: And at least from what I heard so far,
24 none of them are.

25 MS. MOODY: That, that's my take on it, too.

1 THE COURT: But, but after she testifies, if there are
2 any that appear to be relevant, then I can keep the record
3 open, but I need to at least tell him that. That's the
4 only advantage of having him in here. He needs to hear it
5 from me and not from y'all.

6 MS. MOODY: And, and the only other thing I would say,
7 Your Honor, is that I tried to locate these people. I even
8 talked to the clerk at Chesnee to try and find some of
9 these people that were in law enforcement, but there's been
10 a change over there.

11 THE COURT: Well, he wants the nephew to -- you know,
12 if he comes, if he says -- if everything he says is
13 absolutely true, it doesn't matter unless there's something
14 that I don't know about. If everything he's claiming is
15 true, from a legal standpoint it doesn't matter but ---

16 MS. OLIVE: We can make a summary judgment motion at
17 this time, Your Honor.

18 THE COURT: I understand that, but I need -- I
19 assume ---

20 MS. MOODY: If that's the case, Your Honor, I would
21 ask to put up Beverly Jones because I want her testimony in
22 the record. I've reviewed her file.

23 THE COURT: I know. I'm not going to grant it simply
24 because I, you know, I assume that there was no such issue,
25 that there was no evidence obtained at his arrest, and the

1 things that he thinks is hugely important just aren't but
2 -- and I don't know that he's going to believe me. I just
3 need to put it all on the record where at least those who
4 grade my papers will at least have a full record to make
5 that determination.

6 Okay, bring him back in a minute. Let me talk to him.
7 Is that not good?

8 DEPUTY: I took him downstairs.

9 THE COURT: Can you -- how long does it take to get
10 him back?

11 DEPUTY: About five minutes.

12 THE COURT: All right. Go get him and let me see if
13 he'll behave. At least I need to have it on the record
14 simply because if he's not here, I'm sure ---

15 MS. MOODY: Well, I've already written Disciplinary
16 Counsel.

17 THE COURT: I know, and I don't, I don't want to have
18 to send them a transcript because I may get it, too, but
19 I'd as soon not have to.

20 (OFF THE RECORD.)

21 (WHEREUPON, THE APPLICANT REENTERS THE COURTROOM.)

22 THE COURT: All right, Mr. Scott, I'll let you back in
23 with the understanding you've got to behave and if you
24 speak out of turn, I'm going to send you back out. You
25 understand that?

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 APPLICANT: Yes, sir, and I apologize for that, too,
2 sir.

3 THE COURT: Okay. All right.

4 You may call your first witness.

5 MS. OLIVE: Your Honor, at this point we would call
6 Beverly Jones to the stand.

7 BEVERLY JONES, BEING DULY SWORN,
8 TESTIFIES AS FOLLOWS:

9 DIRECT EXAMINATION BY MS. OLIVE:

10 Q. Ms. Jones, you represented Andrew Scott at his trial?

11 A. Yes, I did.

12 Q. Do you recall if you were appointed or retained?

13 A. I was appointed.

14 Q. And do you recall at what point in the proceedings you
15 were appointed?

16 A. Well, I recollect that I was -- the order appointing
17 me specifically and our office was in November of 2011. By
18 that point, he had already been represented by Mr. Brown
19 for well over a year. I think also reviewing my file it
20 appears that Mr. James Cheek with our office, who handles
21 primarily jail cases for the public defender's office, had
22 also gotten involved in an attempt to see if there was any
23 way any type of a plea disposition could be worked out for
24 Mr. Scott, and that had failed. So, I was, in fact, his
25 third attorney.

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 Q. Are you familiar with what that plea offer would have
2 been?

3 A. I'm not familiar with the terms of what he and -- what
4 he and Mr. Cheek and Mr. Scott may have discussed as far as
5 a plea offer. I do know that in the course of my
6 representation, offer was twenty years. It was even
7 extended as late as within the hour of beginning jury
8 selection in April of, of 2012.

9 Q. And did Mr. Scott reject the plea offer?

10 A. Yes.

11 Q. Do you recall how many times you met with Mr. Scott
12 prior to his trial?

13 A. In reviewing my notes, it appears I met with him
14 somewhere between probably eight and ten or twelve times.

15 Q. Did Mr. Scott cooperate during the course of your
16 representation of him?

17 A. He did. He, he was very cooperative in discussing any
18 issue I brought to him. He, he tended to be a little, at
19 times a little too focused on issues he thought were
20 important that in my assessment as an attorney didn't
21 really have the merit he thought they did, but we never had
22 -- encountered any difficulties of communication in our
23 dealings.

24 Q. And are some of these issues that he thought were
25 important issues that he's raised today?

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 A. They are, yes.

2 Q. Has he raised anything today that you hadn't already
3 discussed with him or that you haven't already considered?

4 A. Well, specifically when he was talking about
5 instructing me to have certain witnesses there, I have to
6 dispute that because that didn't happen. He never
7 requested that I subpoena DeYoung with Chesnee. He never
8 suggested that Leroy, Ms. Copeland's nephew, should be a
9 witness. I don't remember the others, but ---

10 Q. Do you -- I apologize. I didn't mean to interrupt.

11 A. Go ahead.

12 Q. Do you recall him giving you the names of Edith
13 Mossberg or Ruth Holley?

14 A. Absolutely not. That was the first thing I'd heard
15 about them was when he testified to that today.

16 Q. Did he discuss with you Regina Jones?

17 A. He only -- any discussion we had which I, I -- my
18 notes don't reflect we had any, but the issue of Regina
19 Jones would have only come to light once the solicitor,
20 Zach Ellis, informed me that he did, in fact, intend to use
21 Tony Crawford at the trial to make the allegation of the
22 conversation that he alleged, that he alleged that he had
23 with Mr. Scott about the plot to rob the store.

24 Q. And so you were aware of Ms. Jones, of, of Regina
25 Jones?

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 A. I, I'm not sure that I ever knew her last name was
2 Jones until today. I, I, I always knew her as Regina. Any
3 reference was made as Regina.

4 Q. Did you speak with Ms. -- I'm sorry, did you speak
5 with Regina?

6 A. I did not.

7 Q. Okay. Do you recall what her position was?

8 A. She was some employee at the store. I think the
9 testimony from the trial, someone referred to her as the
10 manager.

11 Q. Okay.

12 A. But prior to that, I don't think I knew what her
13 position was.

14 Q. And the store that you mentioned, what was that store?

15 A. It was -- the Moneytree was on what I would refer to
16 as Main Street, even though I'm not sure that's the name of
17 it, though. I think it's Alabama Street in Chesnee on the
18 main-street type road of Chesnee downtown.

19 Q. And do you recall if Mr. Scott had a connection to
20 that store?

21 A. Yes. It was -- I learned when I started representing
22 him that he'd previously worked there. He had been
23 terminated. He explained the reason for his termination a
24 little bit differently, I think, than the store believed
25 it, but he actually in the course of one of our meetings

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 gave me an original document with regard -- it was a paper
2 about his termination. I still actually have it in my
3 file. We discussed the procedure for termination, the
4 surrendering of the keys and so forth which later came up
5 in the trial.

6 Q. In what capacity did that come up at trial?

7 A. Well, the issue -- the victim claimed that the
8 assailant was able to come in through the -- not only the
9 public front door of the building. The business is
10 subdivided in a front, what I would call the lobby area
11 that opened straight off the street that's open during work
12 hours, and off of that there was a single door that was
13 supposed to stay locked that went to the back employee
14 area, which is a much larger part of the store. That's
15 where the money obviously was, the safe, and it is a more
16 -- supposed to be a more protected area of the store. All
17 right, and so the issue came up as to whether that inner
18 employee door lock was actually replaced after Mr. Scott's
19 termination from the business.

20 Q. And in your investigation of the store's policy, did
21 they typically change the inner door lock when they
22 terminated an employee?

23 A. That was what they had indicated to me and what was
24 testified to. However, at the trial in the testimony
25 itself, the owner of the store could not actually

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 affirmatively attest that at this -- after his termination
2 that the lock was actually changed. I think some
3 combinations were supposed to be and passwords were
4 supposed to be changed, too, some of the systems inside the
5 employee area.

6 Q. And did you bring that up in cross-examination in the
7 trial?

8 A. Oh, yes.

9 Q. I'm going to back up for just a moment. Regarding
10 discovery, do you feel that you received complete discovery
11 in this case?

12 A. Yes, ma'am, I do. I never, never believed there was
13 anything I was missing.

14 Q. Did you discuss all of the discovery with Mr. Scott?

15 A. I did and he actually sent me a letter. The very
16 first letter he wrote me was in February, and in that
17 letter he references the fact that I have sent him the
18 discovery, and he thanked me for it. So, I forwarded on
19 everything I had. I also have a note later on in April, I
20 believe it was. I had a list of things that I had headed
21 New for Client. About six items or, or multipage documents
22 that I had received since his evidence -- since I had
23 disclosed the discovery to him earlier, and so I
24 supplemented later and made a list of things he needed to
25 have to make sure he had a complete set.

1 Q. And you did, you did discuss those supplemental items
2 with him?

3 A. I did.

4 Q. Okay. Did Mr. Scott -- did you and Mr. Scott discuss
5 his version of the facts of this case?

6 A. Oh, yes.

7 Q. Did you discuss with him all of the elements as well
8 as any defenses he might have to these charges?

9 A. I did.

10 Q. And did you have -- in preparing for trial, did a
11 particular issue come up that you thought could be a viable
12 defense?

13 A. Well, the -- of course the DNA was troublesome but I,
14 I tried -- and I think it was reflected by the *Neil vs.*
15 *Biggers* hearing. I tried to portray perhaps a rush to
16 judgment in the identification by the chief of Mr. Scott
17 from just the mere glance because the employee of the store
18 who was the victim didn't know him prior to then. And Kip
19 Teal, the officer with Chesnee, testified to having seen
20 him riding the bike. So, when she said the person was on a
21 bike, all of a sudden it's him and that, that was the
22 conclusion that was drawn very quickly. So, I tried to
23 focus on that.

24 Q. Okay, and you, you would have impeached him on that in
25 cross-examination, correct?

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1 A. I did.

2 Q. And you said the employee didn't know him, but she did
3 identify him in the photo lineup, correct?

4 A. Correct. She didn't know him ahead of time.

5 Q. Okay.

6 A. Although they had both worked for the same company,
7 she did not know who he was on sight.

8 Q. But she -- did she give a description of him at
9 the ---

10 A. She did.

11 Q. --- to officers on the day of the event? Did you have
12 a *Biggers* hearing at the trial?

13 A. I did.

14 Q. And ultimately the, the identification was allowed in?

15 A. That's correct.

16 Q. Okay. Do you recall if there was a jury instruction
17 regarding identification?

18 A. I'm sorry. I can't say that without referring to the
19 transcript. There should have been.

20 MS. OLIVE: Beg the court's indulgence a moment, Your
21 Honor.

22 THE COURT: Yes, ma'am.

23 (A PAUSE.)

24 MS. OLIVE: Your Honor, may I approach the witness?

25 THE COURT: Yes, ma'am.

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 MS. OLIVE: And this is to refresh her memory, and
2 this is found on page 492, line 13, of the trial
3 transcript.

4 BY MS. OLIVE:

5 Q. Does that appear to you to be a jury instruction given
6 by the judge regarding identification?

7 A. Yes, it does.

8 Q. Having refreshed your memory, do you recall the
9 instruction on identification being read at the trial?

10 A. Yes, I do.

11 Q. And are you familiar with Mr. Scott's appeal?

12 A. I am.

13 Q. Okay, and is it your understanding that that was --
14 was that raised in an issue -- as an issue in the brief on
15 appeal?

16 A. I'm sorry?

17 Q. The, I'm sorry, was the, was the issue of
18 identification ---

19 A. I believe it was.

20 Q. Okay. Thank you.

21 MS. OLIVE: And that, that is part of the, the court's
22 record as well.

23 BY MS. OLIVE:

24 Q. Ms. Jones, regarding -- you've been present in the
25 courtroom during Mr. Scott's testimony, and he testified

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1 regarding the issue of, of his arrest, and specifically
2 it's my understanding that he takes an issue with, with a
3 swab of his, with the officer cutting his face and taking a
4 swab of that blood and, and doing an analysis. Eventually
5 it was sent to SLED for an analysis. Do you recall that?

6 A. I understand that's the position he took.

7 Q. Did you receive the results of that examination?

8 A. Well, first, first of all let me clarify. It's my
9 recollection that the -- what I will refer to as the first
10 DNA sample and analysis was not obtained after his face was
11 cut and bled in the home. It was obtained on an ordinary
12 buccal swab the next day by law enforcement.

13 Q. Okay. Was there -- is it your -- was there a search
14 warrant done for that buccal swab?

15 A. Yes. There is a document that purports to be a search
16 warrant. It's two pages long. I think it -- I don't know
17 if it was marked earlier. It is a rather unusual looking
18 search warrant and it is -- it does appear to bear the same
19 signature of the judge that the signed copies of the arrest
20 warrants do, the very -- that -- he calls it scribble but
21 it's a series of loops. That is the signature of -- those
22 of us, those of us that have been involved in the system
23 for a while recognize that as Eber Gowan's signature. That
24 is just how he signs his name, but there is a two-page
25 search warrant from the day after his arrest for the

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1 collection of a buccal swab.

2 Q. Was that the only search warrant to obtain a buccal
3 swab?

4 A. It's the only search warrant. Later on in March, the
5 year of the trial, which I think was 2012, Zach Ellis, the
6 assistant solicitor, filed a motion for the collection of
7 noncustodial evidence, and that was heard in this courtroom
8 by Judge Couch after an evidentiary hearing. And he
9 ordered the collection of a buccal swab, which was done by
10 the sheriff's office and the nurse at the county jail.

11 Q. Did you -- were the results of that second DNA
12 analysis entered into evidence in the trial?

13 A. Yes, they were.

14 Q. Were the results of the first DNA analysis entered
15 into the trial?

16 A. They were not.

17 Q. Okay. Did you feel there was any reason to object to
18 the introduction of the buccal swab based on -- did you
19 feel there was anything objectionable about?

20 A. The use of the -- and, and I'm not sure the report
21 itself came in. I think just that analyst testified. As
22 to the results of the second test or the test, the analysis
23 of the second buccal swab, I didn't think it was
24 objectionable. And from a strategic standpoint, I didn't
25 bring up the first test because it was also the same result

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1 and it just makes it twice as damning when you've got two
2 separate tests coming back with the same huge result. I
3 think it was, like, 540 quadrillion was the top number.

4 Q. Sounds about right. I'm not sure precisely, but just
5 to clarify, you did receive the results of the first DNA
6 analysis?

7 A. Yes.

8 Q. And those were consistent, consistent with being Mr.
9 Scott's DNA?

10 A. Yes. That's correct.

11 Q. Regarding -- Mr. Scott also alleged that, that you had
12 a conflict of interest with Ms. Lori Teal, who we've
13 learned was Kip Teal's wife. Did you disclose that
14 potential conflict with Mr. Scott?

15 A. I did, and if I can give you a little bit of
16 background without going into much detail about her case
17 because that wouldn't be appropriate.

18 She had come up in the -- in discussion that Mr. Scott
19 and I had because he was dogged in his -- and appears to
20 remain that way -- in his belief that Kip Teal set this
21 whole thing up in some way or was after him. And, and with
22 him, as with other clients, when you encounter that
23 conspiracy idea, I always -- it's, like, ask the client,
24 okay, but what does he have against you.

25 At that point he told me that Lori Teal was a frequent

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 customer of his at the store and that they had carried on a
2 flirtation of sorts, and he thought that the chief knew
3 about it -- I mean, sorry, Teal knew about it. He was not
4 the chief at that point. And that that might have been a
5 motivator in all of his nefarious deeds that he attributed
6 to him. At that point I think I -- is when I brought up
7 the fact that I did represent her in a case that, without
8 going into the detail, she was in an actual contrary
9 position of her husband, the law enforcement officer in
10 that case.

11 But I did tell him about that and explained the legal
12 significance of that and told him to -- I remember he
13 initially said, well, I think don't that's going to be a
14 problem. Well, given his history before and difficulties
15 he'd had with other attorneys, I was going to make sure
16 that was not the only time we addressed that issue because
17 I knew what -- how important that could be in the future.
18 So, at the very next meeting I brought it up again, and he
19 said, well, I understand what you're talking about, but I
20 want you to remain as my attorney. I don't have a problem
21 with this issue.

22 Following that second conversation, it appears from my
23 records that her case was actually concluded by plea about
24 ten days later, which would have been an entire month
25 before the trial of the case.

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1 Q. So, you had this discussion with him in March?

2 A. I did.

3 Q. Okay, and so it was the day before trial?

4 A. It was not, no.

5 Q. Did you feel that your representation of her limited
6 your representation of him in any way?

7 A. Oh, no, not at all.

8 Q. And to be clear, she had no involvement in, in the
9 charges that he was facing, correct?

10 A. Absolutely no involvement.

11 Q. And I'm going to jump back to Regina, the person that
12 was supposedly a -- was a coworker of the victim that, that
13 Mr. Scott alleged he would have wanted you to call as a
14 witness. Generally in your investigation, did you find
15 that the, the store workers at the Moneytree were
16 particularly helpful?

17 A. No, not at all.

18 Q. And...

19 A. Let me clarify that. I will say that the afternoon
20 that one of our -- well, my investigator and I went to
21 Chesnee and spent probably at least a couple of hours in
22 and around the store. Whoever the -- I don't even remember
23 the name of the person there that were not -- that person
24 was not familiar at all with the case other than just by
25 hearsay. Had no involvement in it. That person was quite

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 pleasant. Had no objection to letting us roam around and,
2 and look at things, but any other information we tried to
3 get -- we even served a subpoena on the store trying to get
4 their maintenance logs to, to find out about when this
5 camera system that, that everybody told us was working and
6 they expected to work, had been working, find out when it
7 had last been working and when it stopped working to try
8 to, you know, find out something about why the recording
9 wasn't there.

10 Q. So, there was no video recording of the incident at
11 trial?

12 A. Oh, that's correct, yes.

13 Q. Because the video recording device was not working or
14 something?

15 A. Right.

16 Q. So, you -- so, you did some investigation in the
17 store?

18 A. Correct.

19 Q. Going back to these allegations regarding Mr. Scott's
20 health at the time, did he tell you about any specific
21 doctors that he wanted you to speak with or subpoena
22 records from?

23 A. He did not. He -- and just as Ms. Copeland did today,
24 he repeatedly told me that the week before he had been to
25 the ER at Mary Black. He was very -- they were both very

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 specific that it was the ER at Mary Black.

2 Well, I issued a subpoena for Mary Black for any
3 medical records, and the only records they had on him were
4 for an ER visit that was a month, maybe five weeks before
5 this event, for generalized abdominal pain. They did some
6 scans, some x-rays, and whatever. He wasn't ever even
7 admitted.

8 Q. So, that was five weeks before he was alleged to have
9 committed this, these crimes?

10 A. Right, and I was never told about any cardiologist or
11 a chiropractor or any of that other stuff that he said
12 today, just the Mary Black information.

13 Q. Did he ever give you any records, medical records?

14 A. Medical? No.

15 Q. And regarding -- I believe he raised an issue -- well,
16 he, he mentioned someone by the name of Ernest Jackson whom
17 he alleged was the brother of Bridget Jackson, the victim.

18 A. Right.

19 Q. Did -- do you recall asking Ms. Jackson at trial if
20 she knew this person?

21 A. Yeah. After reviewing the transcript, I do recollect
22 that.

23 Q. Okay.

24 A. That, that person was supposed to be not only her -- a
25 relative of hers but also, like, the father-in-law of Toby

B. JONES - DIRECT EXAMINATION BY MS. OLIVE

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1 Crawford, the guy who -- to whom the threat was made -- I
2 mean, the plot was discussed for the robbery, but Ms.
3 Jackson denied even knowing him or being related to him in
4 the transcript.

5 Q. And, Ms. Jones, jumping back for a second, can you
6 briefly describe the sort of investigation that you did in
7 this case? I think we've already covered some of it. You
8 went to the store.

9 A. Right. We, we did go to the store. We tried, as I
10 stated, through the Moneytree to figure out, get some
11 policies, if there were any, which there aren't, regarding
12 the video. I also later on by phone and then through
13 calling a Tammy Landry, who was a regional manager,
14 explored the whole policy issuing the guidelines with
15 regard to changing the locks and changing the passwords
16 after a termination.

17 We also after -- at, at some point I think in March,
18 early April, Zach Ellis, the solicitor, informed me by
19 email that they had located another potential
20 identification witness, an Ian Stowell or Sowell. I don't
21 remember exactly what his last name is. He summarized the
22 essence of what he intended to elicit as testimony from
23 him, and I don't know if it was through that email
24 communication or some other information we got.

25 My investigator and also -- and I also located where

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1 he was currently employed. It was another tire automotive
2 concern in Chesnee, and we went back up there on a separate
3 day just to talk to him, and he's a really nice guy. They
4 had projected him as being a pretty definite ID witness who
5 had been working at a gas station next door to the
6 Moneytree and he had seen, allegedly seen Mr. Scott go by.
7 He attempted to wave. He waved at him but Mr. Scott
8 didn't, and that was unusual, and they indicated he was
9 going to definitely identify him.

10 Well, we went up and chatted with him a while, and I,
11 I -- by the time I left him, Mr. Sowell's or Stowell's
12 willingness to be a definite ID witness had been watered
13 down. He, he was very reluctant to, you know, to commit
14 with any definition to the fact that he was certain it was
15 Mr. Scott, and I think that came out in testimony. By
16 virtue of having gone and visited with him, I think my
17 investigator -- they talked about cars. I think they were
18 talking about a car that Mr. Stowell -- was on the lot of
19 the business. I mean, we just basically spent a little
20 time up there with him, and I felt like it was very
21 productive time.

22 Q. Did you follow -- would it be fair to say that you
23 completed a -- do you consider your investigation in this
24 case to have been complete?

25 A. I do. I had a number of telephone -- excuse me --

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1 conversations with Ms. Copeland. Right after talking to
2 Mr. Scott the first time, I wanted to make sure I clarified
3 with him that there was not going to be an alibi. That
4 there was this gap of time that he alleged he was at home
5 alone and her story corroborated that, that she left her
6 home at, like, 6:30 in the morning. May have spoken to him
7 during the day, but that doesn't really -- you know, when
8 you're talking to people on cell phones, that doesn't
9 really prove anything, and she spoke to him later on that
10 evening on the way back to see if he wanted anything. So,
11 you know, I followed up on what he asked me to follow up,
12 looked at things independently, and so I thought I
13 investigated what I needed to for him.

14 Q. Do you feel you had ample time to prepare for trial?

15 A. I did. It was an unusual case because the time from
16 getting him to the time of trial was compressed greatly,
17 but in reviewing the file, I looked back and saw that, you
18 know, by the time I got the case, it already had a year of
19 age on it. Well, fourteen months, and it was starting to
20 be -- under our dockets, we have the -- that -- the
21 differentiated docket system or whatever the one out of
22 Court Administration is called now, and it was started to
23 actually be docketed on the trial docket. And it was
24 actually published on a February docket, but it obviously
25 was continued.

B. JONES - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 I wasn't ready. I don't -- I'm not sure with the
2 switch in attorney -- well, I, I know that Zach Ellis was
3 forgiving and so was the court. In March at the same time
4 we had a hearing about the buccal swab with Judge Couch,
5 the state also made a motion to continue it because it had
6 been published again for a March docket. I opposed that on
7 behalf of Mr. Scott, who'd been sitting in jail then at
8 that point by about eighteen months. Of course, the, the
9 -- obviously the court granted the continuance and rolled
10 it over to April, and that's when we, we tried it and I
11 felt prepared.

12 MS. OLIVE: Thank you, Ms. Jones. That's all the
13 questions I have.

14 WITNESS: Thank you.

15 MS. MOODY: Thank you, Your Honor. May it please the
16 court?

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION BY MS. MOODY:

19 Q. Ms. Jones, you indicated that you had an opportunity
20 to meet with Mr. Scott about eight to twelve times. How
21 are you certain that you were able to meet with him that
22 many times?

23 A. Because my notes are dated.

24 Q. Okay.

25 A. And I can also tell even if there's -- like, the notes

1 of meeting with him in the jail. Then there were meetings,
2 like, when we came to court for the buccal swab. Then I
3 went over again later that afternoon and met with him
4 briefly because he refused to give the swab, and I had --
5 my investigator and I had to go convince him to comply with
6 the court order. I mean, I could just -- I just remember
7 from my notes and various court hearings times that I
8 encountered him.

9 Q. Okay, and so do you recall us going over your file?

10 A. Brief -- yeah, we went over it very briefly one day.

11 Q. Okay.

12 A. You may have gone ---

13 Q. Okay.

14 A. Yes, we did.

15 Q. So, I just want to make sure. I'm asking these
16 question so that I'm clear on ---

17 A. Got it.

18 Q. --- the notes. So, you met with him and in the time
19 that you met with him, did you ever refuse to subpoena the
20 victims, coworkers to address the identification issues?

21 A. No. I didn't

22 Q. So, I recognize you said that there was one that you
23 and your investigator spoke with, and they helped you?

24 A. I did not speak with -- well, the woman who was at the
25 store the day we went and visited, I don't -- she might

B. JONES - CROSS-EXAMINATION BY MS. MOODY

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1 have been a -- if you want to call a coworker as a person
2 who also works in the same store. I don't think she even
3 knew the victim. She had only heard of the case.

4 Q. Okay. So, I just want to be clear.

5 A. Yeah. Let's ---

6 Q. When you talked about the case with Mr. Scott, you
7 talked about any witnesses that would probably or
8 potentially would be able to help him in his defense of his
9 case?

10 A. Correct.

11 Q. Okay, and so of those witnesses that you talked with,
12 were any of those witnesses the coworkers of the victims?

13 A. No.

14 Q. Okay. Did you ever refuse to bring in any witness
15 that he mentioned to you?

16 A. No.

17 MS. OLIVE: I'm going to object. Asked and answered.

18 MS. MOODY: I'm just trying to be clear on the record.

19 THE COURT: Okay. Go ahead. I'll overrule.

20 BY MS. MOODY:

21 Q. Isn't that a true -- is that a true -- I just want to
22 make sure I'm clear on that. And so when you all were
23 getting ready to go to trial in April before, you know, you
24 went and struck the jury, did you all discuss the witnesses
25 that would be coming forth to testify for Mr. Scott?

B. JONES - CROSS-EXAMINATION BY MS. MOODY

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1 A. At some point, yeah. I don't know if it was right
2 before the trial, yeah. He knew that, that Ms. Copeland
3 would be coming and that I had people from the store
4 subpoenaed if I needed them for whatever reason I needed
5 them for.

6 Q. Okay. So, you sent out subpoenas?

7 A. I did.

8 Q. Okay.

9 A. Uh-huh.

10 Q. As to -- and when, when you sent out, sent out the
11 subpoenas, you had a -- did you have an opportunity to
12 speak with the individuals that you sent the subpoenas to?

13 A. I did.

14 Q. And was that the date that you and your investigator
15 went out that you had an opportunity to speak with those
16 witnesses, or was -- were there other occasions?

17 A. The people that we subpoenaed for trial were not
18 people that my investigator and I went to see.

19 Q. Okay, but you had an opportunity to talk to them?

20 A. Oh, yes.

21 Q. Okay. Now, as to the, the overall trial, going into
22 the trial, did you have a theory or the -- I think you
23 earlier testified that it was rush to judgment?

24 A. In the identification of him.

25 Q. Okay.

B. JONES - CROSS-EXAMINATION BY MS. MOODY

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1 A. Right.

2 Q. So, these were your theories?

3 A. Yes.

4 Q. Did you discuss those theories with Mr. Scott?

5 A. We did talk about the identification and the
6 suggestion by Kip Teal potentially to the victim that Mr.
7 Scott was her assailant, yes.

8 Q. Okay, and did it appear that Mr. Scott, Andrew Scott
9 understood the direction or the defense that you were
10 moving?

11 A. Oh, I think he did, yes.

12 Q. Did he ever appear not to understand anything that you
13 all discussed?

14 A. No. That was not an issue with him. More likely the
15 issue with Mr. Scott was him not wanting, wanting to listen
16 to what you were telling him. He had a mindset about
17 certain issues, and no matter how you tried to explain
18 either the facts of the law or combination of both, he was
19 not going to change his mindset about how he interpreted
20 things.

21 Q. And when you're dealing with clients that are like
22 that, what is your normal -- I mean, what do you think you
23 should do in those kind of instances?

24 A. Well, you just try to reinforce your position as much
25 as possible, and if you feel and believe that the position

1 they're taking is not a sound legal position or factual,
2 given of the case, don't think you can allow the client to
3 let you chase rabbits. You have a higher duty than that.

4 Q. Okay. So ---

5 A. We have to operate independently of -- at times of
6 what they think we're supposed to be doing.

7 Q. Okay. So, you took the position you were going to
8 follow your duty?

9 A. Well, and I listened to what he had to say, especially
10 with regard to the facts or his perception of the facts,
11 and I got a lot of background from him, but I did listen to
12 him.

13 Q. Now, as to the arrest warrants that were earlier
14 discussed, present to you Plaintiff's Exhibit 2 and
15 Plaintiff's Exhibit 3. Do you recognize these warrants?

16 A. I do.

17 Q. And based on your experience and your understanding of
18 how arrest warrants are served -- I think you talked, you
19 talked about the signature of Judge Gowan. What, if
20 anything, did you discuss with Mr. Scott about these arrest
21 warrants?

22 A. First of all, I want to be clear. By the time I
23 became his attorney, he was already indicted and -- by the
24 grand jury for, what, four indictments, and I did with him,
25 as I do with other clients who will bring up this issue.

B. JONES - CROSS-EXAMINATION BY MS. MOODY

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1 Anomalies or errors in the arrest warrants are, to a
2 certain extent, meaningless once someone has been indicted
3 because the formal charging paper no longer is the warrant.
4 The indictment controls.

5 Now, I would have explained to him just as the error
6 in a date was unimportant, the fact that he had in his
7 possession an unsigned copy did not necessarily mean that a
8 warrant had never been signed by a judge on him. There are
9 what are called audit copies of arrest warrants that
10 sometimes get out. There are -- there will be unsigned
11 copies that are produced in the magistrate's court or city
12 court or wherever they are produced, and some of them don't
13 bear the signature, but as long as the original bears the
14 signature of the arrest warrant, that's what's important --
15 I mean, of the judge, that's what's important.

16 Q. So, you know, I don't normally practice over here in
17 Spartanburg County. Is it the experience that the person
18 who is -- the arrest warrant is on, they receive a copy of
19 the arrest warrant, or do they never receive a copy of the
20 arrest warrant?

21 A. They should receive a copy. Now ---

22 Q. When they are arrested, I mean.

23 A. At some point, yes.

24 Q. Okay.

25 A. After it's issued. They're served.

1 Q. Okay, and on any of those documents, on any of
2 Plaintiff's Exhibit 2, is there any indication that Mr.
3 Scott was served?

4 A. Yes. It says somebody's signature that I can't read
5 served him on the 29th of September of 2010.

6 Q. Now, would -- if he had an attorney, another attorney
7 -- you already testified that he had two other attorneys
8 prior. Would his attorney have those documents, or who --
9 when you're in custody, do they give -- would they have
10 given Mr. Scott a copy of those documents?

11 A. I, I don't know that there's a hard and fast rule for
12 that. Sometimes the clients end up with their documents;
13 sometimes that paperwork ends up in their property bins.

14 Q. So, it's possible that he didn't have any documents?
15 It's just he didn't have the warrants until he met with you
16 if he had other attorneys?

17 A. I can't answer that. I don't know if he would have
18 been provided a copy of the warrants by Mr. Brown or Mr.
19 Cheek. I, I -- you'd have to ask them that. All I can
20 tell you is that when I gave him the discovery, there were
21 five copies of the warrants in there.

22 Q. Oh. So, that's what I'm trying to get to. I'm -- so,
23 you know that you provided him with copies of the warrant?

24 A. Right.

25 Q. And it's possible that he would not have had copies of

B. JONES - CROSS-EXAMINATION BY MS. MOODY

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1 warrants up until you gave them to him?

2 A. I, I guess it's possible.

3 Q. Okay, and as far as going forward on the trial and the
4 buccal swab that you didn't bring up at trial, you all
5 discussed the buccal swabs apparently before going to
6 trial?

7 A. Oh, yes.

8 Q. Okay, and what, if any, discussion did you have? Do
9 you recall?

10 A. Well, in recollection, I recollected that the search
11 warrant for the first buccal swab was the affidavit that he
12 was so vehement had been forged, that the judge's signature
13 had been forged, not the warrant.

14 Q. So, I want to hand you Plaintiff's Exhibit Number 4.
15 Can you identify ---

16 A. Yes, that's ---

17 Q. --- that document?

18 A. That's the document I'm referring to.

19 Q. Okay.

20 A. The search warrant.

21 Q. So ---

22 A. He's added additional comments on it, but yeah, that
23 is the docket -- document. He wrote that right there.

24 Q. Yeah. So these documents, did you all discuss this
25 document you just ---

1 A. Oh, we definitely discussed that document.

2 Q. And so what did y'all...

3 A. Well, we discussed the fact that it was unusual
4 looking and it appeared -- if you're, which I'm sure you
5 are, your -- the -- a search warrant is a standardized form
6 that's been adopted by the court, and it's a four-page
7 document. This looks like a cut and paste and it always
8 looked unusual. I, I don't know that that made it invalid,
9 but it, it was a definite looking -- a definitely
10 different-looking search warrant.

11 Q. Okay. So, now, when ---

12 A. And it may have been conclusory, too. I don't how
13 much we talked about that, but from a legal standpoint I
14 think the, you know, the -- it may have been conclusory.

15 Q. So, when you all discussed this document, you, you
16 discussed how unusual it was?

17 A. Uh-huh.

18 Q. But was this something that you had to deal with in
19 the trial? You didn't mention the results, but did you
20 have to deal with this search warrant in the trial?

21 A. No. It didn't -- I don't think it was ever mentioned
22 in the trial, and if I can say? He -- Mr. Scott throughout
23 my representation denied ever providing the buccal swab for
24 that search warrant. Even though DNA analysis was already
25 back by the time I started representing him, he adamantly

B. JONES - CROSS-EXAMINATION BY MS. MOODY

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1 denied having given a buccal swab to, to anybody pursuant
2 to that search warrant.

3 Q. Okay. So, you didn't talk about it, you didn't talk
4 about the buccal swab in the trial from -- that resulted
5 from this ---

6 A. Correct.

7 Q. --- affidavit, and so as to the buccal swab that was
8 taken in March, what, if anything, did you and Mr. Scott
9 discuss about that?

10 A. Well, practically speaking we discussed the fact that
11 there was going to be a hearing. He was present for the
12 hearing. At the conclusion of -- well, I, I'll say this.
13 Judge Couch ordered the buccal swab be taken based on the
14 probable cause shown at the hearing from the testimony of
15 Officer Teal. I don't know what -- I, I don't think I had
16 a written copy of the order, but I think the judge had
17 communicated that the swab could go ahead and be taken.

18 Later on that afternoon, I had to go, as I stated
19 before, I had to go to the jail. I took the same
20 investigator who'd been working this case with me over
21 there because I had received a call either from the
22 solicitor, solicitor, I think it was Zach Ellis, telling
23 me Mr. Scott -- that the sheriff's deputies and the nurse
24 were standing by at the jail to swab him, and he was
25 refusing to cooperate, and I remember we had to go up

1 there.

2 I had already told him this here in this courtroom:
3 there is a court order that enables them to do what they
4 need to do and use whatever force necessary to take a
5 buccal swab. Please cooperate. You're not helping
6 yourself by not cooperating, and so I had to go up there
7 and repeat that.

8 Q. Did you discuss with him what the results could
9 indicate from that buccal swab?

10 A. Yes, because he knew what the results from the other
11 buccal swab was.

12 Q. Right, but I'm saying, like, how they tied it to the
13 case. Did you all discuss that?

14 A. Yes.

15 Q. Okay. So, he was clear that if the buccal swab
16 results matched the blood on the victim's clothing?

17 A. And at least one other item from -- that was found in
18 the store, yes.

19 Q. And, and was he -- did he maintain his innocence at
20 that time when you discussed it? I mean, how did y'all
21 proceed in terms of -- I guess what I'm saying is if it
22 tied him to the store and tied him to that victim, and
23 there was video ---

24 A. There was not video.

25 Q. Well, I'm saying not knowing whether the video was ---

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1 A. Well, by then we knew there was no video.

2 Q. Oh. Okay. So, you knew ---

3 A. So, remember this case had taken place fourteen months
4 before I got involved.

5 Q. Right. Okay. So, did he understand the consequences
6 of if you went to trial and what that buccal swab and the
7 evidence that the state had, what the impact of it was
8 going to be?

9 A. I explained it to him. To say he understood it -- I
10 think maybe the proper question would be -- he never
11 accepted what the conclusion was.

12 Q. Okay. Now as to Edith Mosteller [sic], the -- with
13 the store next door.

14 A. Oh. Okay.

15 Q. Did you have an opportunity to try and obtain that
16 -- did -- well, were you aware that there was video
17 cameras ---

18 A. No, I ---

19 Q. --- on the ---

20 A. --- was not.

21 Q. --- outside?

22 A. I was not.

23 Q. So, he didn't tell you that?

24 A. He did not.

25 Q. And when you went with your investigator, did you talk

1 to any other persons? You know, talk to anybody near the
2 Moneytree that might be helpful?

3 A. Not any other businesses, no.

4 Q. Did you think about possibly that there might be some
5 video, or did you notice anything on the street that would
6 -- or on the telephone poles or anything like that ---

7 A. No.

8 Q. --- might give ---

9 A. I didn't.

10 Q. --- you video information to find out whether he was
11 on the outside of the store at all?

12 A. No, I, I didn't and Ches -- this Main Street of
13 Chesnee is a sleepy little town. It's not a town that when
14 you travel there, then you automatically think about
15 traffic cams and surveillance everywhere. It, it, it's --
16 just doesn't bring that to mind.

17 Q. All right. Now, the -- you talked about earlier that
18 you got some medical records from the hospital, and the
19 earliest date that you have of medical records is from
20 August records of 2010?

21 A. Correct.

22 Q. Did Ms. Copeland have any records in her possession
23 that might have -- did she -- did you discuss those medical
24 records with her?

25 A. I remember we -- she also talked about him being in

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1 the bed, that he had been to the emergency room the week
2 before, but I don't remember discussing records with her.
3 She never affirmatively told me I've got -- you know, here
4 are the names of his doctors. Here are his records.

5 Q. Did he affirmatively tell you anything ---

6 A. No.

7 Q. --- about his doctors?

8 A. Uh-huh, other than the ER.

9 Q. Okay. So, did -- was there a known condition he had
10 when you talked about the ER, or it was just that was one
11 incident where he had to go to the ER?

12 A. It's -- the way it appears to me in examining the
13 records was he went complaining of generalized abdominal
14 pain, and in some places it refers to -- they don't know if
15 it's indigestion. They didn't know if it was kidneys.
16 They checked his heart. They didn't really know what it
17 was. It was just a generalized abdominal pain.

18 Q. And when you discussed with ---

19 A. A discomfort.

20 Q. --- with him about his being at 101 1/2 Lexington,
21 being at home in the bed, what, if anything, did he tell
22 you about that day that law enforcement came to the house?

23 A. Just that they busted in and basically that he was
24 assaulted by Teal, who grabbed him up, hit him in the face,
25 and then did the thing with the Kleenex, squeezed his nose

1 to get blood. I don't think he ever told me anything about
2 a Ziploc. I just remember him saying he squeezed his nose
3 with a Kleenex, and that's where he believed the blood came
4 from.

5 Q. Okay. Did he tell you any other information about
6 that day, that, that event where Teal came in?

7 A. Well, I think he characterized the event as lasting,
8 like, two and a half hours. They searched everywhere and
9 they didn't find anything, and he was left -- they put him
10 on the sofa in the living room to wait while they were
11 doing all that.

12 Q. Did he ever indicate that he was -- he had never been
13 anywhere, that -- well, he hadn't been anywhere that day?

14 A. That's how he projected it to me, yes, or ---

15 Q. But did he specifically say he had not been anywhere
16 that day?

17 A. Yes.

18 Q. Okay, and so that's where you came up with there's no
19 alibi other than talking to Ms. Copeland? I understand
20 what you were saying about ---

21 A. Right.

22 Q. --- Ms. Copeland.

23 A. Yeah. He could not provide anyone who -- that had
24 been there or had seen him that day except for Ms.
25 Copeland, and she left at 6:30 and so -- I mean, that

B. JONES - CROSS-EXAMINATION BY MS. MOODY

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1 wasn't an alibi.

2 Q. So, as to the search and seizure in the house, you all
3 discussed what they -- you were discussing his case. That
4 they came in the house looking for some items?

5 A. Well, as part of being in the house, that's what they
6 did, right. They were looking for him.

7 Q. Is a search warrant ---

8 A. It was apparent.

9 Q. --- for a person?

10 A. There was no search warrant for the house.

11 Q. Okay.

12 A. They came into the house pursuant to her consent or,
13 as he put it, busted in the house, yanked him out of the
14 bed. He got, you know, popped around, popped in the face
15 by Teal. He bled. They cuffed him, put him on the sofa,
16 and then they started looking around the house and, you
17 know, he was quick to say, like -- and consistent like he
18 was here. They never found anything. They never found the
19 money. They never found ---

20 APPLICANT: A gun.

21 A. --- a gun. They didn't find any soiled garments, any
22 -- no black garments at all, and that was something I also
23 talked to Ms. Copeland about, but they seized nothing.
24 They didn't even take -- they took a photograph, a couple
25 of photographs of him but never took photographs of the

B. JONES - CROSS-EXAMINATION / REDIRECT EXAMINATION

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1 bike they said they saw ---

2 APPLICANT: Right.

3 A. --- leaned up against the front of the house.

4 Q. Okay.

5 A. Because I think that's in the testimony.

6 Q. So going into this trial, did you think you had a
7 pretty good chance of winning this case?

8 A. No, not. Because of the, because of the DNA.

9 Q. Okay, and you again -- this is the last question. You
10 discussed DNA with Mr. ---

11 A. Yes.

12 Q. Okay.

13 MS. MOODY: No further questions for this witness,
14 Your Honor.

15 THE COURT: Okay. Anything further?

16 MS. OLIVE: Just a point of clarification, Your Honor,
17 briefly.

18 REDIRECT EXAMINATION BY MS. OLIVE:

19 Q. The, the witness I believe you testified to going to
20 speak with, with your investigator was Ian Stowell, right?

21 A. Uh-huh.

22 Q. He did testify at trial, correct?

23 A. He did.

24 Q. For ---

25 A. Yes.

B. JONES - REDIRECT EXAMINATION BY MS. OLIVE

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1 Q. --- the state? Okay. I just wanted to -- so, you
2 didn't need to subpoena him because he was already
3 testifying?

4 A. Right.

5 Q. Okay.

6 A. That's correct.

7 MS. OLIVE: Thank you. That's all the questions I
8 have.

9 THE COURT: Okay. You can step down.

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: Anything else from the state?

12 MS. OLIVE: That's all from the state, Your Honor.

13 THE COURT: Anything else from the ---

14 MS. MOODY: No, sir, Your Honor.

15 THE COURT: Okay. I will read the record and let
16 y'all know.

17 MS. OLIVE: Thank you, Your Honor.

18 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE PROVIDED TO ME BY MARYANN
S. NEVERS AND INTRODUCED IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SPARTANBURG COUNTY, SOUTH CAROLINA, ON THE
13TH DAY OF JANUARY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

OCTOBER 2ND, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Andrew Brent Scott, #192735,)

Case No. 2014-CP-42-0304

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

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SC SUPREME COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 24, 2014. Respondent made a Return on or about August 20, 2014. The Court convened an evidentiary hearing into the matter on January 13, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Leah B. Moody, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Beverly Jones, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In November 2010, the Spartanburg County Grand Jury indicted Applicant for assault and battery – 1st degree (2010-GS-

42-6835), kidnapping (2010-GS-42-6836), and armed robbery and possession of a weapon during the commission of a violent crime (2010-GS-42-6837, counts 1 and 2) Beverly Jones, Esquire, ("Counsel") represented Applicant. On April 26, 2012, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to concurrent sentences of thirty years each for kidnapping, and armed robbery, ten years for assault and battery – 1st degree, and a consecutive term of five years for possession of a weapon.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Scott, Op. No. 2013-UP-456 (Ct. App. filed Dec. 11, 2013). The Remittitur was returned on December 30, 2013.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel refused to subpoena the victim's co-worker to address identification issues,
 - b. Counsel failed to properly interview witnesses and investigate the crime scene,
 - c. Counsel failed to make a motion regarding the illegal search and seizure,
 - d. Counsel may have had a conflict as a result of representing the arresting officer's wife in another criminal matter;
2. Illegal search and seizure, in that;
 - a. Applicant has never seen or received an arrest warrant or search warrant for his home;
3. Identification, in that;
 - a. Victim's testimony regarding identification should not have been allowed.

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III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the 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.

A. Summary of Testimony

At the outset of the hearing, Applicant asked this Court to relieve Leah Moody as PCR counsel. This Court denied the motion. Applicant's convictions arose out of the robbery of a Money Tree. Applicant testified Beverly Jones was appointed to represent him in October 2011. Applicant testified he was initially represented by Michael Brown. Applicant stated Counsel failed to do a proper investigation, and that she told him she did not have enough time to prepare.

Applicant testified Kip Teal did not have a warrant to enter the house when he arrested Applicant. He stated Teal assaulted him, resulting in a cut on Applicant's face, and that is how Teal obtained Applicant's DNA. Applicant stated the warrant was for the address where he was living. Applicant stated there was no probable cause to arrest him and that he had been at home in his bed all day. Applicant stated he could barely get out of bed to walk and said that Counsel should have gotten his medical records to prove that. Regarding the search, Applicant stated that the authorities did not find anything in the house except for him. He also said that Counsel should have called Regina Jones, who was the supervisor of the store, to testify. Applicant testified that someone had told the victim two weeks prior to the robbery that the store would be robbed and that he was going to do it. Applicant testified he did not communicate to Counsel that

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he wanted Jones to testify on his behalf because that information was not in his discovery, and that he only learned about it because the victim testified about it at trial. Applicant stated that Counsel had a conflict of interest because she represented Kip Teal's wife in a criminal matter.

Applicant stated he also wanted Counsel to call three other witnesses. He admitted he did not give two of those witnesses' names to Counsel. He alleged those two individuals were in the store next door and would have had a video from outside of the store, since there was no video from inside. Applicant also stated that Counsel should have investigated an individual named Earnest Jackson who was alleged the brother of Bridgett Jackson.

Applicant alleged that Counsel should have challenged the "search and seizure" with respect to Verdiana Copeland's home. Applicant testified the police chief "forced and threatened" Copeland into signing a consent form for the authorities to enter her home. He stated that she refused to give them the keys and they told her that if she did not give them the keys, they would have to tear her house up. Applicant presented Verdiana Copeland, who also testified at trial, as a witness at the PCR hearing. Applicant referred to Copeland as both his wife and his girlfriend, but later admitted that they were not married. Copeland also testified they were never married, and stated that at the time of his arrest, he had been staying with her. Copeland testified that on the day Applicant was arrested, she was gone all day attending to her mother in the hospital. She stated she left Scott at her home, in the bed that morning. She stated that about a week before she had taken him to the emergency room with pains in his side. However, Applicant was not admitted, but was given some pain pills. Copeland said the police chief asked for her keys but that she said no because she would be going back home later and would need her keys to get in. She stated that she did not have a problem with the authorities going into her home. She stated

that she understood they were going in her home to look for Applicant. She said that she spent the night with her sister, who is disabled, and that when she returned to her home, she observed that her back door had been prised open. She stated that she gave consent to the authorities to go in her home in search of Applicant and that she did not feel threatened or coerced to give consent.

Applicant stated he had worked at the store previously. Applicant introduced a copy of an unsigned arrest warrant as an exhibit at the hearing and alleged the warrant was defective because it was unsigned. When questioned by PCR counsel, Applicant stated he was not seeking a new trial.

Counsel testified she has been practicing criminal law for nearly thirty years. Counsel began representing Applicant in November of 2011. She testified Michael Brown had been representing him for a year prior to her appointment. Counsel testified she met with Applicant approximately eight to twelve times prior to his trial. Counsel testified that Applicant was cooperative in helping her with his defense, but that he was focused on certain issues that he thought should be raised. She stated that she discussed these issues with him. Counsel testified she filed the appropriate motions for discovery and that she received complete discovery. She testified she reviewed all discovery material with Applicant. Counsel stated that prior to trial she discussed with Applicant the elements of the charges and what the State was required to prove. She testified that she felt Applicant understood.

Counsel stated that she and Applicant discussed his version of the facts several times. Counsel stated that the State's evidence against Applicant included DNA evidence, the victim's identification of Applicant, Kip Teal's identification of Applicant riding his bicycle, and the

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discovery of the bicycle in front of Copeland's house. Counsel testified that Applicant assisted with her investigation by providing Copeland as a potential witness, by providing information concerning the store including his termination and the policy or lack of policy regarding store keys, and information concerning his medical issue.

Counsel testified the store was a Money Tree that Applicant had previously worked for. She stated that Applicant was terminated from the store and that she looked into his termination. Counsel stated that the victim claimed the assailant came in through the public front. The assailant then was able to go through an inner door that was supposed to stay locked. Counsel stated that during her investigation, the owner could not affirmatively say whether the inner door was locked. She stated she cross-examined the witnesses about this issue at trial.

Counsel testified that she conducted an independent investigation that consisted of going to the store, speaking to potential witnesses, obtaining Applicant's medical records, and pursuing any additional leads that arose from her investigation. Counsel visited the store, went in and around the store, tried to get the maintenance log, and spoke to individuals about the lock policy and the video surveillance system. She testified she spoke with Ian Stowell at length about his willingness to be an identification witness, but that he ultimately testified for the State. Counsel testified Applicant never told her about seeing any specialists regarding his alleged medical condition. She stated he only told her about going to the emergency room at Mary Black. She stated she subpoenaed records but the only thing they had was that he had been there five weeks before the incident for generalized abdominal pain. She also stated that she had a number of conversations with Copeland.

Counsel testified that she had ample time to prepare for trial and felt her investigation

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rush to judgment in the identification of Applicant and that she discussed this with Applicant. She stated that it never appeared to her that Applicant did not understand. She stated that the bigger issue was that he "was not wanting to listen" and had his mind set about things. She stated that when those situations arise in her representation of her clients, she tries to reinforce what her position is. She stated that she listened to what he had to say, especially the facts.

Regarding Applicant's challenge to his arrest warrant, Counsel testified that anomalies or errors in arrest warrants are meaningless and that the indictment controls. Counsel testified that by the time she was appointed, he had already been indicted. Counsel testified that the fact that he had an unsigned copy does not mean it was not signed. She stated that those are copies and that as long as the original bears the signature that is all that matters.

Regarding the DNA issue, Counsel testified that she and Applicant discussed the buccal swab before trial. Counsel testified the assistant solicitor filed a motion for collection of a buccal swab the month before trial, and that a hearing was held on the motion pursuant to Schmerber v. California, 384 U.S. 757, 770-72 (1996). Counsel testified she did not think there was anything objectionable about the motion. As a result of the hearing, the State obtained a court order to take Applicant's buccal swab. Counsel stated that she received a call to go to the jail where Applicant was held because he was refusing to cooperate despite the order. Ultimately the buccal swab was obtained. Counsel testified that she and Applicant discussed what the DNA would be used for. She stated he explained and that he did not accept it but that she explained it.

Counsel stated that she talked to Applicant about his claim that he had been in bed all day. She stated she could not use Copeland as a true alibi witness because she was not at the house all day. Counsel testified that Applicant told her that when the police came to Copeland's

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Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Identification

Applicant alleged the victim's testimony regarding identification should not have been allowed. Applicant presented this claim as an allegation of ineffective assistance of Counsel at the PCR hearing. Applicant has failed to produce any evidence in support of this allegation. Counsel testified and the record reflects that Counsel challenged the pre-trial identification of Applicant by requesting a pretrial hearing pursuant to Neil v. Biggers, 409 U.S. 188. In that hearing, Counsel argued that the suggestion by the victim's co-worker prior to the line-up that Applicant was the assailant could have impacted the victim's identification of Applicant. The trial judge allowed the identification to go forward and stated he did not find that the fact a name might have been mentioned to the victim, without any description of that individual or

photograph, would have in anyway affected her identification of someone who was unnamed and not identified by name at the time of her identification. Applicant again challenged the identification in his direct appeal. The Court of Appeals dismissed his appeal. This Court finds that Counsel adequately raised and challenged the issue of victim's identification of Applicant. This Court further finds Applicant has failed to demonstrate prejudice. The clothing that the victim wore at the time of the robbery, as well as a tablecloth taken from a window display in the store, was collected and tested for DNA evidence. A buccal swab was obtained from Applicant for comparison. The State presented a DNA analyst at trial who testified that Applicant's DNA matched several items of the victim's clothing. Therefore, this Court finds Applicant failed to show that there was a reasonable probability that but for Counsel's alleged error, the result of the trial would have been different.

Accordingly, this Court finds Applicant has failed to demonstrate either deficiency or prejudice with respect to this allegation. Therefore, this allegation is denied and dismissed.

Failure to investigate

Applicant alleges Counsel failed to properly interview witnesses and investigate the crime scene and refused to subpoena the victim's co-worker to address identification issues. This Court finds Applicant has failed to satisfy his burden of proving that Counsel was ineffective in this regard. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of

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counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Here, Counsel testified that she felt her investigation was complete. She stated that she went to the store, observed the layout, talked to the store employees and other potential witnesses, questioned the appropriate people about the store's policies as to the turning over of keys after termination of employment, and attempted to flesh out the issue regarding the lack of a surveillance video. Counsel also stated that she looked into Applicant's medical history, requested his medical records from the hospital where he said he had been treated, and that all she found was that he had been treated five weeks before the robbery for generalized abdominal pain. Though Applicant claimed at the PCR hearing that he had been treated by a specialist, Counsel testified he never mentioned anything to her about a specialist. Counsel also testified that she did not call the victim's co-worker, Regina Jones, to testify because the store employees in general were not helpful and because Regina's testimony in particular would have been harmful. Counsel testified she reviewed all discovery with Applicant. The Court finds trial counsel conducted a proper investigation, fully explored all possible defenses, adequately conferred with Applicant, and was thoroughly competent in her representation. Accordingly, Applicant has failed to demonstrate that Counsel's performance was deficient in this regard.

Further, this Court finds Applicant has failed to demonstrate that any alleged error prejudiced him. Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence." (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)

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("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.").

Here, Applicant produced no witnesses at the PCR hearing. Applicant's PCR counsel informed the Court that she diligently attempted to contact the witnesses Applicant named, but that she either could not locate those individuals or they did not respond. Because Applicant did not produce these witnesses at the PCR hearing, this Court can only speculate as to what their testimony would have been and whether it would have been helpful or harmful. Likewise, Applicant failed to present any evidence of what information Counsel would have uncovered had she conducted any further investigation. Though Applicant claimed there were medical records that Counsel failed to uncover, he failed to produce any medical records as part of this action. In addition, given the DNA evidence that linked Applicant to the crime, Applicant has failed to show that there is a reasonable probability that but for the alleged deficiency of Counsel, the outcome of Applicant's trial would have been different.

Accordingly, this Court finds Applicant has failed to satisfy his burden of proving either deficiency or prejudice with respect to this allegation. Therefore, this allegation is denied and dismissed.

Failure to make a motion regarding illegal search and seizure

Applicant alleged Counsel was ineffective for failing to make a motion regarding the illegal search and seizure. This Court finds Applicant has failed to satisfy his burden of proving that Counsel was deficient for failing to challenge the search of Copeland's home. Applicant argues that Counsel should have challenged both his arrest and the collection of his DNA.

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Here, Applicant was staying as a guest at Copeland's home. On the day of the robbery, Copeland was away visiting her mother in the hospital. After the robbery occurred, officers asked for Copeland's consent to search for Applicant in her home. Copeland testified that she was not threatened or coerced to consent to the search. Thus, Officers obtained lawful consent to search Copeland's home for Applicant. Applicant testified that no evidence was found or obtained other than himself and blood from his nose. Counsel testified that anomalies or errors in arrest warrants are meaningless and that the indictment controls. Counsel testified that when her representation began, Applicant had already been indicted. Counsel stated the arrest warrants introduced at the hearing were copies and that as long as the original bears the signature that is all that matters. The arrest warrants are part of the record before this Court. This Court finds that the arrest warrants are signed and the warrants bear no facial defects. In addition, this Court finds Applicant has failed to show that the search of Copeland's home was not accomplished pursuant to her lawful consent. Accordingly, Applicant has failed to show Counsel was deficient for failing to challenge his arrest, or that she had any basis for doing so. Furthermore, Applicant has failed to present any evidence that the alleged deficiency had any impact on the outcome of his trial.

In support of his allegation that Counsel should have challenged the collection of his DNA, Applicant contended (contrary to the officer's testimony at trial) that the officer assaulted him and was able to illegally obtain a sample of his blood as a result of the assault. However, the DNA evidence that was presented at trial was obtained through a court-ordered buccal swab. Counsel testified that prior to trial, a hearing was held pursuant to Schmerber v. California, 384 U.S. 757, 770-72 (1996), in which the State moved for and obtained a court order to perform a

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buccal swab to collect Applicant's DNA. Applicant's DNA profile was compared to samples obtained from the clothing that victim wore at the time of the robbery and a tablecloth that was hanging in a window at the store. Counsel testified that she had no basis upon which she could have challenged the collection of Applicant's DNA through the court-ordered buccal swab. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments").

This Court finds Applicant failed to show that the collection of his DNA in this manner violated the Fourth Amendment or Schmerber, 384 U.S. 757. See State v. Baccus, 367 S.C. 41, 54-55, 625 S.E.2d 216, 223 (2006) (setting forth requirements for obtaining an order permitting involuntary submission of nontestimonial identification evidence). As a result, Applicant has failed to show any deficiency in Counsel's performance with respect to this allegation. This Court also finds that Applicant has failed to show that any alleged deficient performance prejudiced him. In his Application, Applicant states that the relief he desires is to have his sentence and conviction overturned. At the hearing, when Applicant's PCR counsel asked him if he was seeking a new trial in this case, he stated "no." See Leon v. State, 379 S.C. 448, 451, 666 S.E.2d 260, 262 (Ct. App. 2008) ("[W]hen asked during direct-examination if he would have gone to trial instead of pleading guilty . . . , [his] response was, 'No.' Thus, [petitioner] fails to prove the deficient performance by his attorney prejudiced his case.").

Accordingly, this Court finds Applicant has failed to show either deficiency or prejudice as to this claim. Therefore, this allegation is denied and dismissed.

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Conflict of interest

Applicant alleges that Counsel engaged in a conflict of interest because she represented the arresting officer's wife in another criminal matter. This Court finds Applicant has failed to satisfy his burden as to this claim. "[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S. Ct. 1708, 1719, 64 L. Ed. 2d 333 (1980). The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). Counsel testified that she represented Mrs. Teal in a completely unrelated criminal matter that was resolved by a plea a month before Applicant's trial. She stated that she did not feel this in any way limited her representation of Applicant and that Mrs. Teal was actually in a position that was adverse to that of her husband's in that criminal matter. This Court finds that Applicant has failed to demonstrate that Counsel actively represented conflicting interests. Accordingly, this Court finds Applicant has failed to satisfy his burden of proving either deficiency or prejudice as to this claim. Therefore, this allegation is denied and dismissed.

Illegal Search and Seizure and Identification

In his Application, Applicant also alleges "illegal search and seizure" and "identification." This Court finds Applicant also raised these allegations as claims of ineffective assistance of counsel, which are addressed above as such. To the extent Applicant attempts to raise these allegations under a different theory, this Court finds these direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985), and cannot be raised in an application for post-conviction relief. See Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520.

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(1993) ("A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal."). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. In fact, the identification issue was raised at trial, and was the only issue that was addressed in his direct appeal. Applicant did not challenge the search and seizure at trial and his failure to do so has waived this allegation as a ground for relief. Regardless, this Court finds Applicant has failed to produce any evidence in support of these claims. Accordingly, these allegations are without merit and are therefore denied and dismissed.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

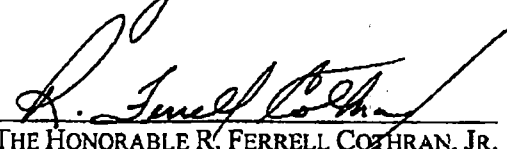
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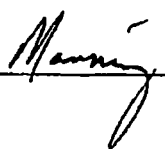
appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17 day of June, 2016.


 THE HONORABLE R. FERRELL COTHAN, JR.
 Presiding Judge

 _____, South Carolina

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WITNESSES

Chesnee Police Dept

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CHECKED SIGNATURE

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M750366

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: NOV 24 2010

VERDICT

S. Kelly

Erin Reed

4-26-12

Foreperson of Petit Jury

Date:

DOCKET NO.

10-GS-42-6835

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 24 2010

TERM

THE STATE

VS.

Andrew Brent Scott

Indictment for
ASSAULT AND BATTERY
FIRST DEGREE

SC Code: 16-3-600

CDR Code: 3412

Class FEL-E

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 DEC -2 PM 1:55

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF SPARTANBURG

NOV 24 2010

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY FIRST DEGREE

That Andrew Brent Scott did in Spartanburg County on or about September 28, 2010 commit an act causing an unlawful injury to Bridgette Jackson, and the act:

- (1) involved nonconsensual touching of the private parts of an adult with lewd and lascivious intent, or
- (2) occurred during the commission of a robbery, burglary, kidnapping, or theft, or
- (3) involves an offer or attempt to injure another person with the present ability to do so, and the act is accomplished by means likely to produce death or great bodily injury, or occurred during the commission of a robbery, burglary, kidnapping, or theft,

all in violation of § 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Chesnee Police Department

D.R. Tappett

REFERENCE MADE

REPORT INDEXED

CARD PULLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ASSIGNMENT WARRANT NUMBER

FILE CARD MADE

SALES VOUCHER MADE

M750367

Complete

Complete

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: NOV 24 2010

VERDICT

Guilty

Erwin Reid

Foreperson of Petit Jury

Date: 12-6-2012

DOCKET NO.

10-GS-42-6836

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 24 2010

TERM

THE STATE
vs.

Andrew Brent Scott

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 DEC -2 PM 1:55

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 24 2010

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

The Defendant, Andrew Brent Scott, did in Spartanburg County, on or about September 28, 2010, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Bridgette Jackson, without authority of law, all in violation of Section 16-3-910, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Chesnee Police Department

REPORT MADE

CARD FILED

INDEXED

CHECKED WARRANTS

CHECKED COMPLAINTS

ARREST WARRANT NUMBER

M750368 - Count One
Direct Indictment - Count Two

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: NOV 24 2010

VERDICT

4-26-12
Foreperson of Petit Jury
Date:

DOCKET NO. -

10-GS-42-6837

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 24 2010

TERM

THE STATE
vs.

Andrew Brent Scott

Indictment for

ARMED ROBBERY AND POSSESSION
OF WEAPON DURING COMMISSION
OF A VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490
CDR Code: 139; 549
Class: FEL/A; FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF SPARTANBURG)

At a Court of General Sessions, convened on NOV 24 2010 the Grand

Jurors of Spartanburg County present upon their oath:

COUNT ONE - ARMED ROBBERY

That Andrew Brent Scott did in Spartanburg County on or about September 28, 2010, while armed with one or more deadly weapons, to wit: a knife and/or a firearm, feloniously take property and/or currency from the person or presence of Bridgette Jackson, to wit: U.S. Currency from The Money Tree, by means of force, violence, and/or intimidation with the intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT CRIME**

That Andrew Brent Scott did in Spartanburg County on or about September 28, 2010 possess or visibly display a firearm and/or visibly display a knife and/or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: ARMED ROBBERY, in violation of Code § 16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR