

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County

R. Knox McMahon, Circuit Court Judge

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S.C. COURT

DARRIN HOLSTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-000666

APPENDIX

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

APPLICANT’S EXHIBIT #1 (Photos).

Darrin Holston - Direct Examination by Mr. Boozer

1 A Yes.

2 Q What are you -- explain to the Court what you're
3 talking about.

4 A Okay. The witnesses that were called for the
5 defense -- well, for the prosecution, at the time she
6 questioned them, she questioned them as to, well what did
7 the victim tell you? Well, those statements were made out
8 of court, and they were not necessarily admissible because
9 the victim had testified. So they didn't need to be
10 consistently reminded of what the victim said. And that
11 was her line of questioning concerning the prosecution
12 witnesses as well as the defense witnesses.

13 All those individuals was consistently reminding
14 the jury as to what the victim said again. Yes, this was a
15 case depending on credibility. Who was telling the truth.
16 And that testimony, in essence, bolstered the State's case.
17 Was this error harmless? This couldn't have been harmless
18 because it was the cumulative prejudice that enhanced it --
19 enhanced that credibility.

20 Q Okay. We'll get to that. Okay?

21 MR. GOURLEY: Your Honor, just for the record, I
22 would like to object any kind of cumulative prejudice
23 analysis. It's not recognized in the State of South
24 Carolina in the context that this regards.

25 THE COURT: All right.

Darrin Holston - Direct Examination by Mr. Boozer

1 MR. BOOZER: Was there a Court's ruling on that,
2 Your Honor? I'm sorry.

3 THE COURT: You can continue.

4 MR. BOOZER: Thank you, Your Honor.

5 BY MR. BOOZER:

6 Q Mr. Holston, so you're of the opinion that her line
7 of questioning -- she wasn't questioning, cross-examining,
8 the witnesses. She would say what the victim said and ask
9 whether it was true or repeat what the victim said; is that
10 your opinion?

11 A Yes. In context, the -- the testimony was
12 basically just that, what the victim said. They would go
13 into a colloquy as to what the victim said, and basically
14 that was the extent of the cross-examination.

15 Q Okay. This segues into your next allegation.

16 A Yes.

17 Q You've got, Counsel failed to interview defense
18 witnesses to ascertain whether they would support your
19 defense of the case.

20 A Yes.

21 Q Okay. Let me get into it a little bit. You had --
22 your defense was -- you took the stand and testified.

23 A Yes.

24 Q Okay. And then after that, a woman by the name of
25 Renee Tyler testified.

Darrin Holston - Direct Examination by Mr. Boozer

1 A Yes.

2 Q And then Mary Sharp.

3 A Yes.

4 Q Now, who were Renee Tyler and Mary Sharp?

5 A They were the alleged victim's supervisors at that
6 time.

7 Q Okay. And when they were called -- did you know
8 that they were going to testify in your case?

9 A No. I did not.

10 Q Had they been called by the prosecution?

11 A Not to my knowledge.

12 Q Did you have any discussion with your attorney
13 about these two coworkers of the victim testifying in your
14 case?

15 A No, we did not.

16 Q And this was the -- was this the first time that
17 you learned that those witnesses were going to testify in
18 your case?

19 A This was the first time that I specifically learned
20 of the individuals testifying when they got on the stand.
21 Me and Ms. Alves did have a conversation concerning
22 witnesses, but she didn't indicate who those witnesses
23 were. Now, had she consulted with me about that, I
24 would've told her no because the only information that they
25 had was from the victim. Their testimony could not support

Darrin Holston - Direct Examination by Mr. Boozer

1 me in any manner.

2 Q Okay. Do you recall, on the State's
3 cross-examination of Ms. Tyler, that Ms. Tyler stated that
4 the victim was a very good employee?

5 A Yes, sir. I do.

6 Q Okay. And do you also recall her testifying that
7 she couldn't remember a time he ever was called out?

8 A Yes. Yes.

9 Q And he was a very responsible individual.

10 A Yes. I do remember that.

11 Q Do you feel that -- because this was a credibility
12 case -- do you feel that that prejudiced you in the trial?

13 A Yes, because it was unfair.

14 Q Okay. And also, going back to Ms. Sharp, are you
15 familiar with the testimony that's on page 277 --

16 A Yes.

17 Q -- during the cross-examination, Ms. Sharp also
18 said that the victim was a wonderful employee and that he
19 was welcome back anytime at that place of work?

20 A Exactly.

21 Q Okay. And she also stated that she didn't know
22 what the victim was doing at the time of the kidnapping?

23 A At the time of the kidnapping.

24 Q Okay. Do you feel that that also bolstered the
25 victim's credibility?

Darrin Holston - Direct Examination by Mr. Boozer

1 A Yes.

2 Q Do you feel that that prejudiced your case?

3 A Yes, sir. It did.

4 Q Okay. Were you ever shown any notes from Ms. Alves
5 about whether she went over this with you? With their
6 testimony?

7 A Could you specify that a little bit more.

8 Q Let me -- that was probably a poor question.

9 Were you ever shown any notes that Ms. Alves had
10 taken based on an interview that she had conducted with
11 these folks prior to your trial?

12 A No, sir. I never received, or never did she go
13 over with me, any type of notes of her prior conversations
14 with these individuals.

15 Q Okay. Now, you also have in here that Counsel
16 failed to motion the Court for a 403 analysis on evidence
17 that the prosecution and trial counsel submitted that you
18 feel had the propensity to mislead and confuse the jury.

19 A Yes.

20 Q All right. Tell the Court what you're referring to
21 here.

22 A Okay. Your Honor, that night of the incident, when
23 me and the alleged victim left the home, he locked that
24 door back. There was -- this wasn't a kidnapping. When we
25 left the home, driving down the street, yes we did wreck.

Darrin Holston - Direct Examination by Mr. Boozer

1 He wrecked -- he jumped out the car. Now, upon going back
2 to that incident location, the lead investigator, James D.
3 Sanders, and another deputy that got to the home, that door
4 was locked. Investigator Sanders noted that in his report,
5 that that door was locked and that the victim, alleged
6 victim, told Lieutenant Abdula where the keys were. Upon
7 conversating with the investigator, like I said, he told
8 him he locked the door.

9 Lieutenant Abdula got down there after the lead
10 investigator left -- after the lead investigator left the
11 house. Lieutenant Abdula goes down there, and he testifies
12 that the door was open from the damage, from the damage
13 that the door was kicked in. Now, they submitted pictures
14 of a door frame. The paneling is busted out. There's no
15 way possible that this door can lock. There's no way
16 possible because there is no -- the frame is gone. There
17 is no frame. And this was attributed to me. I didn't do
18 that.

19 Not only did she not object to that. She submitted
20 those pictures, and allowed Investigator Chris Williams to
21 testify to the truthfulness of those pictures. Her exact
22 line of questioning is, is this accurate? Is this
23 accurate? Is this accurate? These pictures? He said,
24 yes. She didn't try to refute.

25 I never -- and I had a conversation with her about

Darrin Holston - Direct Examination by Mr. Boozer

1 that prior to trial. And I said, Well did you read the
2 incident report, James D. Sanders? That door was not like
3 that when he got down there. In fact, he indicates in his
4 report that the victim told him he locked the door behind
5 him. She said, well that's what he says. That's hearsay.
6 I said, he's the lead investigator. I said, that's not
7 hearsay. That's what he saw with his eyes.

8 She admitted those pictures, and she allowed the
9 prosecution to admit those pictures. Those pictures were
10 admitted, Your Honor, to prove the burglary first. And
11 that was not, that was not like that.

12 How did those pictures get there? I can't
13 speculate as to that. I can't speculate as to who done it.
14 But what I can say is that the first officer on the
15 scene -- the first officer on the scene did not see that.
16 That was not done like that.

17 Q Let me -- let me stop you right there, Mr. Holston.
18 Because --

19 MR. BOOZER: Your Honor, I know that there's a
20 record on appeal that's -- I assume that's part of the
21 record.

22 THE COURT: Yes, sir.

23 MR. BOOZER: And I'm not sure -- I think these are
24 on a CD, so I'm not sure if they're a part of the record
25 that is in the record on appeal. But out of an abundance

Darrin Holston - Direct Examination by Mr. Boozer

1 of caution, may I just show these to the witness and then
2 have these marked as an exhibit.

3 THE COURT: Any objections?

4 MR. GOURLEY: No, Your Honor.

5 THE COURT: All right. Yes, sir.

6 MR. BOOZER: May I approach, Your Honor?

7 BY MR. BOOZER:

8 Q Mr. Holston, I'm handing you what is, it looks like
9 nine photographs.

10 A Yes.

11 Q What you just got done testifying to, are those the
12 photographs you're referring to showing damage to the door
13 frame?

14 A Yes, sir. These -- yes, sir.

15 Q Are those the photographs that were marked as
16 exhibits as part of your trial that showed that there was
17 damage to the door frame of the home?

18 A Yes, sir.

19 Q Okay.

20 MR. BOOZER: Your Honor, at this --

21 BY MR. BOOZER:

22 Q Is that a fair and accurate representation of those
23 photos as they appeared at your trial?

24 A Yes, sir. This is.

25 MR. BOOZER: Your Honor, I move to mark these

Darrin Holston - Direct Examination by Mr. Boozer

1 Applicant's Exhibit 1.

2 MR. GOURLEY: Your Honor, I would just state that I
3 think it would be more proper to introduce them through Ms.
4 Alves at this point.

5 THE COURT: Well, he's laid the foundation.

6 MR. GOURLEY: Okay. All right.

7 (Applicant's Exhibit No. 1 was entered into
8 evidence.)

9 BY MR. BOOZER:

10 Q Okay. So basically, your position is that the
11 first Investigator Sanders on page 174 of the transcript,
12 he testified that he went to the group home, and the door
13 at the home was locked. And his testimony, and I'm quoting
14 from the record, is that there wasn't any apparent damage
15 to the home. Is that correct?

16 A That's correct. Well - -

17 Q Or to the door. Excuse me.

18 A That was also indicated in his report. Yes, sir.

19 Q And then on further cross-examination, on page 192,
20 that he testified too that the door was shut, and the only
21 thing he saw wrong with the door was a screw missing and a
22 7 hanging upside-down.

23 A Yes, sir. That is correct.

24 Q Okay. And it's your position that another officer,
25 or someone, took these photographs showing the exact

Darrin Holston - Direct Examination by Mr. Boozer

1 opposite of what this investigator testified to.

2 A Exactly.

3 Q Okay. And do you feel that your attorney
4 effectively cross-examined the officers on those issues?

5 A No.

6 Q Do you feel that your attorney made the mistake of
7 going ahead and allowing these photographs into evidence?

8 A Not only allowing them into evidence, but placing
9 them into evidence herself.

10 Q What -- did you have any discussion with Ms. Alves
11 with regard to Investigator Sanders saying that door was
12 locked and shut and not damaged, versus Abdula's testimony
13 that it was damaged and open?

14 A No, actually, because I didn't know that Lieutenant
15 Abdula was going to testify to that because there was no
16 report on that. The only report that I had was
17 Investigator Sanders' testimony, and I had no idea that
18 Lieutenant Abdula was going to come testify to that or how
19 those pictures got like that or how the door got like that.

20 Q Moving on, you've got an allegation, Counsel failed
21 to motion the Court for a 609 balancing analysis.

22 A Yes.

23 Q Okay. What are you referring to here? A prior
24 conviction?

25 A Yes, a prior conviction.

Darrin Holston - Direct Examination by Mr. Boozer

1 Q Okay. And what was -- what was the prior
2 conviction that ultimately ended up coming in?

3 A That was a CSC.

4 Q Okay. Tell the Court what your allegation is with
5 regard to that allegation.

6 A Okay. Because there was no record, you know, the
7 facts were not supported. I had a right to tell my side of
8 the story without being -- without being -- excuse me, Your
9 Honor, I'm a little nervous.

10 Q Let -- Mr. Holston --

11 MR. BOOZER: Your Honor, if I may now question Mr.
12 Holston a little bit further, which may develop his
13 testimony.

14 THE COURT: Okay.

15 BY MR. BOOZER:

16 Q Mr. Holston, I understand you're nervous. Just
17 relax a little bit.

18 A Yes, yes, yes.

19 Q All right. You had a prior criminal sexual conduct
20 conviction?

21 A Yes.

22 Q Okay. And at trial, was there a discussion prior
23 to you testifying about that prior conviction being
24 admitted to impeach you?

25 A Yes. That -- that prior -- yes. It was. It was.

Darrin Holston - Direct Examination by Mr. Boozer

1 Q Okay. Now, when that was done, was there an
2 analysis regarding that conviction and if it should be
3 admitted? Was that ever done on the record?

4 A No. There was no facts to support that, and she
5 never requested any.

6 Q Okay. Who -- who actually brought up the CSC
7 conviction?

8 A Okay. She brought it up.

9 Q She is?

10 A Ms. Alves. To -- I guess to suppress the sting of
11 it? But yes, and because I suppose that the judge had
12 already made his ruling as to allowing it in, and she
13 could've made a contemporaneous objection. Now, her
14 objection was that it was unfairly prejudicial. Now, she
15 did object. But nevertheless, she didn't receive a ruling.

16 Q Was it an objection, or was it like a motion that
17 she had made just regarding the CSC?

18 A Well, no. That was -- she objected. She actually
19 objected. She said, Your Honor, I object because I think
20 the probative value, you know, the prejudice will outweigh
21 the probative value in this.

22 Q Now, the solicitor also made a comment on your CSC
23 in cross-examination?

24 A Yes.

25 Q And the jury heard this?

Darrin Holston - Direct Examination by Mr. Boozer

1 A Yes.

2 Q All right. You had an appeal in this case; is that
3 correct?

4 A Yes, sir. I did.

5 Q Okay. What was your issue that was brought up on
6 appeal before the appellate courts?

7 A That was the actual issue, the 609 issue, and it
8 went to the -- it did go to the objection. So they ruled
9 on a 609 issue instead of a 403, which was her objection.
10 Her objection was based on 403, and they made the ruling
11 based on 609.

12 Q Okay. So they made -- the Court, in their opinion,
13 they said that your lawyer didn't make a contemporaneous
14 objection to preserve it --

15 A For appellate.

16 Q -- for appellate review?

17 A Yes.

18 Q So you're saying your lawyer should've made a
19 timely objection to it when it was coming in?

20 A Yes, sir.

21 Q Okay. And your appeal was dismissed?

22 A Yes. It was dismissed.

23 Q All right. Now, you also got, Counsel denied you
24 the opportunity to confront witnesses by stipulating to
25 reports of Investigator Clay Adams and Forensic Examiner

Darrin Holston - Direct Examination by Mr. Boozer

1 Cathy Leecy, or Lacy, instead of calling on those
2 witnesses?

3 A Yes.

4 Q Based on your recollection, what was the nature of
5 those reports?

6 A Those were forensic reports. One dealt with blood,
7 and the other dealt with fingerprint.

8 Q Okay. Now, when you're saying blood, was this like
9 a DNA?

10 A Yes. Yes.

11 Q Where was that DNA taken from?

12 A The car.

13 Q The car?

14 A Yes.

15 Q And then the fingerprint, taken from --

16 A Was taken from the home.

17 Q All right. Now, why did you not want these reports
18 in as evidence?

19 A It's not that I didn't want them in as evidence; I
20 didn't have the opportunity to effectively cross-examine
21 these individuals. Had I had the opportunity to effective
22 cross-examine these individuals, I may have substantiated
23 the fact that the blood was a mixture of my blood and his
24 blood, or -- because as far as the fingerprint, I had -- I
25 had -- I did have gloves on, but the analysis had that it

Darrin Holston - Direct Examination by Mr. Boozer

1 was a partial print, but it also excluded me as a
2 contributor.

3 Q Okay.

4 A So I would've had the opportunity to effectively
5 cross-examine these individuals based on their reports, and
6 I didn't have that opportunity.

7 Q All right. Now, we're -- your next allegation
8 regarding Counsel failing to object to a CD that came in
9 that contained photos, which was marked as an exhibit, and
10 was that CD containing photos of the door frame?

11 A Yes, sir. And much more.

12 Q Okay. Just based on your recollection, what was
13 the CD?

14 A I can't quite recall what the CD was, but I
15 understand that the pictures that were shown to the jury
16 that was on that cd was pictures I didn't have, I didn't --
17 there was pictures of the door actually in the locked
18 position. The door was actually in a locked position, and
19 these photos -- these are the photos that were shown to the
20 jury without a proper foundation being laid. The
21 pictures -- there was pictures, and there was a CD. Again,
22 the proper foundation for the CD wasn't laid for
23 introduction to that CD.

24 Q Okay. Now, you also talked about, your lawyer
25 failed to object to some misstatements that you -- you

Darrin Holston - Direct Examination by Mr. Boozer

1 categorized them as misstatements --

2 A Yes.

3 Q -- by the victim, Mr. Walker. What statements are
4 you referring to?

5 A Because he emphatically denied having locked the
6 door that night, Your Honor. He emphatically denied having
7 locked the door and indicated that he didn't, and this gave
8 the jury a false impression of a material fact. The
9 fact -- the fact was how was entry made. This individual
10 opened up the door and allowed me in. He couldn't tell the
11 jury that, oh well, I opened up the door. And he
12 emphatically denied that three times on three separate
13 occasions, and she failed to correct that, or she failed to
14 object to that because the prosecution had a duty to
15 correct that misstatement because they had the officer's
16 report.

17 Q So, it's your position that, the way you're
18 categorizing this is that, you feel that based on the
19 investigator's report that the door was locked versus the
20 victim's statements that the door was busted in or open,
21 that that became an untruth. And you feel that your lawyer
22 should've made an objection to that. Is that what you're
23 saying?

24 A Yes. What Lead Investigator Sanders knew must be
25 imputed to the prosecution, and they failed to correct

Darrin Holston - Direct Examination by Mr. Boozer

1 that, and she failed to object to that.

2 Q Did she ever object to it or bring that to the
3 Court's attention?

4 A No. She never brung it to the Court's attention.
5 She never brung it to the jury's attention.

6 Q All right. You have the allegation of cumulative
7 prejudice.

8 A Yes.

9 Q What is that?

10 A That -- the cumulative effect of Ms. Alves'
11 deficient performance prejudiced the case to the extent
12 that this trial cannot be relied upon as producing a just
13 result. It was unfair. The law allows me the opportunity
14 for a fair trial. And what I'm saying is, it wasn't fair.
15 It wasn't fair. These allegations in their totality wasn't
16 fair.

17 Q Okay. And you also have an allegation of
18 conspiracy. Explain your allegation.

19 A Yes. Her actions hindered, prevented, and
20 obstructed me and the right to a fair trail.

21 Q All right. You also have an allegation of police
22 misconduct. What is that about?

23 A Yes. And that -- we go back to issue three with
24 the -- with the -- with the door.

25 Q With the photos and --

Darrin Holston - Direct Examination by Mr. Boozer

1 A Yes.

2 Q -- with the testimony.

3 A Yes. With the photos and the testimony, Your
4 Honor, because there was only one -- there was only three
5 sets of people there. There was the officer -- there was
6 the deputy, there was the lead investigator, and there was
7 the lieutenant on duty that night. The lead investigator
8 indicated that that's not how it was. And the lieutenant
9 comes back and says, well that's how it was, and he
10 testifies to that. And he tells the jury that.

11 Q What are you alleging -- what are you alleging Ms.
12 Alves should've done with regards to that?

13 A With regard to that?

14 Q Correct.

15 A She should've objected. She should've objected to
16 the -- she should've objected to the testimony.

17 Q Did -- was this ever discussed with you prior to
18 your trial? The inconsistencies between the photos and the
19 statements?

20 A I tried to talk to Ms. Alves about that, concerning
21 that, and again, she indicated that's what he says. She
22 said, that's what Mr. Sanders says, which would indicate
23 hearsay. That's what he said.

24 Q Okay. Going back to your trial, did you have a
25 prelim -- a preliminary hearing?

Darrin Holston - Direct Examination by Mr. Boozer

1 A Yes, sir. I did.

2 Q Okay. And who represented you at the preliminary
3 hearing?

4 A Ms. Wallis Alves.

5 Q All right. What did your attorney do at that
6 preliminary hearing?

7 A At that preliminary hearing, concerning the armed
8 robbery, because again, this was no armed robbery on my
9 part, she requested that the charge of armed robbery be
10 dismissed but requested that the charge be amended to
11 attempt armed robbery. And those were not the facts. So
12 in the transcript, the preliminary hearing transcript
13 indicated what she believed to be the correct charge. If
14 she believed that I attempted to rob this man, then yes, we
15 had a conflict of interest because she couldn't have fairly
16 represented me if she believed -- after I told her that I
17 did not rob this man, if she believed that, then there was
18 definitely a conflict of interest.

19 MR. BOOZER: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes, sir.

22 MR. BOOZER: Thank you. Your Honor, and again,
23 this is similar to the situation of exhibits. I am not
24 sure if the preliminary hearing transcript is a part of the
25 appellate record. I will almost venture to guess that it's

Darrin Holston - Direct Examination by Mr. Boozer

1 not. If I may, I can certainly question the witness on
2 this to make this a part of the record. We already do have
3 his testimony regarding the hearing. But if I may have a
4 little bit of leeway in questioning with regard to it and
5 have this admitted as an exhibit?

6 MR. GOURLEY: And Your Honor, it's not part of the
7 record, but I don't have an objection to it.

8 THE COURT: All right.

9 MR. BOOZER: And Your Honor --

10 THE COURT: You may mark it.

11 MR. BOOZER: -- I'll show it to Mr. Gourley.

12 BY MR. BOOZER:

13 Q Mr. Holston?

14 A Yes.

15 Q Okay. This is -- can you identify this for me?

16 A Yes. This is the preliminary hearing transcript.

17 Q Okay. And this is a transcript of the hearing you
18 had with regard to these charges?

19 A Yes, sir.

20 Q And you just testified that Ms. Alves asked the
21 Court to either dismiss the armed robbery charge or reduce
22 it or change it to an attempted armed robbery charge?

23 A Yes. She said, if you would.

24 Q And you believe that created a conflict of interest
25 by doing that?

Darrin Holston - Direct Examination by Mr. Boozer

1 A Actually, that did create a conflict of interest,
2 Mr. Boozer. The facts were, I didn't -- I didn't rob him.
3 I didn't attempt to rob him. And if she believed that,
4 which is indicated in the transcript, I believe, Your
5 Honor, the appropriate charge is attempt armed robbery.
6 Then yes, we had a conflict.

7 Q Okay.

8 MR. BOOZER: Your Honor, at this time, I would,
9 without objection, I'd make a -- move to put this in an
10 exhibit or Applicant's Exhibit No. 2.

11 THE COURT: All right. Applicant's 2 is in
12 evidence without objection?

13 MR. GOURLEY: Yes, Your Honor.

14 (Applicant's Exhibit No. 2 was entered into
15 evidence.)

16 BY MR. BOOZER:

17 Q Prior to trial, did the State make you any offers?

18 A Yes. They offered twenty years.

19 Q Okay. They offered what?

20 A Twenty years.

21 Q Are you sure it was twenty years?

22 A That's my understanding.

23 Q Okay. Why didn't you take that?

24 A I didn't do it. I didn't kidnap. I didn't armed
25 rob. I didn't break into anyone's home.

Darrin Holston - Cross-Examination by Mr. Gourley

1 Q All in the nude?

2 A Sir.

3 Q All naked?

4 A Yes, sir.

5 Q Or some -- almost naked?

6 A Yes.

7 Q Okay. Now, is there anything else that you would
8 like to add that we haven't covered through your
9 application and your allegations? Anything that we've
10 failed to cover that you've filed and alleged in your PCR
11 application?

12 THE WITNESS: Your Honor, could I take a minute.

13 THE COURT: Certainly. Sure. Go on.

14 THE WITNESS: No.

15 BY MR. BOOZER:

16 Q That's it?

17 A Yes.

18 MR. BOOZER: No further questions, Your Honor.

19 THE COURT: Mr. Gourley?

20 MR. GOURLEY: Thank you, Your Honor.

21 **CROSS EXAMINATION**

22 BY MR. GOURLEY:

23 Q You ready, Mr. Holston?

24 A Yes, sir.

25 Q All right. How many times did you meet with Ms.

Darrin Holston - Cross-Examination by Mr. Gourley

1 Alves prior to your trial?

2 A Numerous.

3 Q Okay. Did y'all go over the discovery material?

4 A What she showed me.

5 Q Okay. So you did see some of it at the very least?

6 A Yes, sir.

7 Q Okay. Did y'all talk about some possible defenses
8 to the charges you were facing?

9 A No.

10 Q No defenses?

11 A No.

12 Q Did you ever give her any leads or witnesses to
13 investigate on your behalf?

14 A Excuse me?

15 Q Did you ever give her any leads or witnesses to
16 investigate on your behalf?

17 A No, sir.

18 Q Okay. And you testified during your trial. Right?

19 A Yes, I did.

20 Q Okay. And I think as you stated before; you were
21 there to sell the victim marijuana?

22 A Yes.

23 Q Okay. And then, while there you had to bag up some
24 cocaine? And that's why you had the gloves on?

25 THE COURT: Say that again.

Darrin Holston - Cross-Examination by Mr. Gourley

1 BY MR. GOURLEY:

2 Q During the trial, Mr. Holston testified that the
3 reason he had gloves on was because he was bagging up
4 cocaine. I believe it sweats, and it gets in your pores?

5 A Yes.

6 Q That's your testimony. Correct?

7 A Yes.

8 Q And you don't dispute the fact that you were in the
9 car with the victim. Right?

10 A No, sir. I do not.

11 Q And there was a car crash, and I think you had
12 significant injuries from the crash. Right?

13 A Yes, I did.

14 Q Okay. And as a result of that crash, there was
15 blood in the car. Your blood in the car?

16 A Yes. There was.

17 Q And during the course of your testimony, your side
18 of the story was that you went there to sell the victim
19 some drugs. He didn't have the money, so y'all were going
20 to the ATM. Right?

21 A (Witness nodded head.)

22 THE COURT: Is that a yes?

23 THE WITNESS: Yes, Yes, sir.

24 BY MR. GOURLEY:

25 Q And then, while on the way to the ATM, he pulls out

Darrin Holston - Cross-Examination by Mr. Gourley

1 a gun from underneath the driver's side seat and proceeds
2 to rob you, make you strip down. Right?

3 A Yes, sir.

4 Q Okay. And then he bails out the car with the
5 marijuana, the cocaine, and your clothes?

6 A Yes, sir.

7 Q Okay. And the car ends up crashing while you're in
8 it? So essentially this case boiled down to your version
9 of what occurred and what the victim's version of events
10 were. Right?

11 A Yes, sir.

12 Q Okay. And you would agree with me that any
13 inconsistencies in the victim's statement as compared to
14 the witnesses presented at trial would benefit you? Right?

15 A Could you repeat that?

16 Q Any inconsistencies with the victim's statement, as
17 compared to what witnesses testified to, would essentially
18 benefit you. Right?

19 A I can't say one way or the other, sir.

20 Q Okay. But you would agree that if, for example,
21 the victim says the front door was not locked, it was
22 busted in, but you have the lead investigator saying no, it
23 was locked, that's kind of a bonus in your side. Right?
24 Because that's making the victim look like he's lying.

25 A Sir, I'll say this. Ms. Alves --

Darrin Holston - Cross-Examination by Mr. Gourley

1 Q Uh-huh.

2 A -- that should've never been admitted.

3 Q Okay.

4 A That evidence should've been suppressed because of
5 that. And because it wasn't, the jury had to hear that I
6 kicked in the door.

7 Q Right?

8 A And the jury had to see and be reminded on six
9 different occasions --

10 Q Uh-huh.

11 A -- based on her cross-examination and her direct
12 examination, that Mr. Holston kicked in that door. Mr.
13 Holston kicked in that door.

14 Q Uh-huh.

15 A And everybody testified to that while seeing those
16 pictures.

17 Q Right.

18 A So minimally what he testified to was suppressed by
19 the other six individuals who testified that I did do it.

20 Q But those six other individuals had inconsistent
21 statements, right?

22 A No.

23 Q None of their statements added up?

24 A No.

25 Q No?

Darrin Holston - Cross-Examination by Mr. Gourley

- 1 A No. I beg to differ, sir.
- 2 Q Okay. Well, the transcript will reflect the
3 inconsistencies.
- 4 A The transcript reflects that she questioned them as
5 to what the victim told you.
- 6 Q Right.
- 7 A What did the victim tell you.
- 8 Q Right.
- 9 A And everyone indicated what the victim told them.
- 10 Q Right.
- 11 A He indicated the same thing as well. All seven
12 people, six people including the victim, indicated that I
13 kicked in that door.
- 14 Q Okay.
- 15 A All six individuals indicated that I robbed him,
16 and all six individuals indicated that I kidnapped that
17 individual.
- 18 Q But there were some other inconsistencies between
19 their stories though, right? And what the victim told
20 them. Right?
- 21 A Minimal.
- 22 Q But they were inconsistencies, nonetheless.
- 23 A Sir, we're here today based on those allegations
24 that I --
- 25 Q Right.

Darrin Holston - Cross-Examination by Mr. Gourley

1 A -- I presented to the jury. I mean, that I
2 presented before the Court, sir.

3 Q I understand that.

4 A The facts have already been established. And --

5 Q We're here on your counsel's representation.

6 A Yes, sir.

7 Q And you're alleging that she should not have
8 questioned or cross-examined these witnesses on the
9 victim's statements, right?

10 A She should have not consistently reminded the jury
11 what the victim told them.

12 Q And again, it was your story versus his story?

13 A Yes.

14 Q And the idea being, the less credible his story is
15 and the more credible your story, the more in favor for
16 you?

17 A They bolstered the credibility of the victim.

18 Q Okay.

19 A Yes, sir.

20 Q All right. But you would agree with me that there
21 was inconsistent statements by the victim that would lessen
22 his credibility?

23 MR. BOOZER: Objection, Your Honor. Asked and
24 answered.

25 THE COURT: I don't think he -- I don't think he

Darrin Holston - Cross-Examination by Mr. Gourley

1 gave a proper response.

2 MR. GOURLEY: Yes or no.

3 THE COURT: Re ask the question, Mr. Gourley.

4 BY MR. GOURLEY:

5 Q Would you agree with me that the inconsistent
6 statements of the victim to these various witnesses
7 lessened his credibility.

8 A No.

9 Q No. Okay.

10 MR. GOURLEY: I beg the Court's indulgence, Your
11 honor.

12 BY MR. GOURLEY:

13 Q Would you agree with me that -- the victim said
14 that he -- the door was busted in, right? He alleged that
15 you kicked the door in, correct?

16 A Yes.

17 Q Okay. And the lead investigator said that when he
18 got there, the door was locked, and the only thing that was
19 wrong with the door was there was a screw missing and the
20 seven was upside-down, right?

21 A Yes.

22 Q Okay. And that's contradictory, right?

23 A Yes.

24 Q Okay.

25 MR. GOURLEY: Your Honor, I don't have any other

Darrin Holston - Cross-Examination by Mr. Gourley

1 questions.

2 Thank you, Mr. Holston.

3 THE COURT: Redirect, Mr. Boozer?

4 MR. BOOZER: No redirect, Your Honor.

5 THE COURT: Thank you. That you, very much, Mr.

6 Austin.

7 THE WITNESS: Thank you, sir.

8 THE COURT: I apologize. Mr. Holston.

9 THE WITNESS: Thank you, sir. Have a nice day.

10 THE COURT: Yes, sir. You too.

11 All right. You may call your next witness, Mr.

12 Boozer.

13 MR. BOOZER: Your Honor, there are no other

14 witnesses on behalf of the applicant.

15 THE COURT: Thank you very much.

16 Mr. Gourley.

17 MR. GOURLEY: Yes, sir. We call Ms. Alves to the

18 stand, please.

19 THE COURT: All right. If you would, come around

20 for us and be sworn, please.

21 WALLIS ALVES,

22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat, and state your name for
24 the record, please.

25 THE WITNESS: Wallis Alves.

Wallis Alves - Direct Examination by Mr. Gourley

1 DIRECT EXAMINATION

2 BY MR. GOURLEY:

3 Q Ms. Alves, how long have you been practicing law?

4 A Twenty-two years.

5 Q Okay. And were you appointed or retained?

6 A I was appointed on this case.

7 Q And how many times did you meet with Mr. Holston
8 prior to this trial?

9 A A lot.

10 Q Did you file Rule 5 and Brady motions?

11 A I did.

12 Q Did you review that with Mr. Holston?

13 A I did.

14 Q Did y'all discuss his version of the facts?

15 A Yes.

16 Q Do you recall what those were?

17 A He said that he was over there to sell drugs to
18 the -- Mr. Walker --

19 Q Okay.

20 A -- and that Mr. Walker wanted, needed to get some
21 money; asked Mr. Holston to give him a ride to the ATM.
22 Mr. Holston gave him a ride, and as they were going down
23 the road, Mr. Walker pulled a gun on Mr. Holston and forced
24 Mr. Holston to take his clothes off and tried to rob Mr.
25 Holston.

Wallis Alves - Direct Examination by Mr. Gourley

- 1 Q Okay.
- 2 A And then the car crashed.
- 3 Q Okay. And Mr. Holston testified during trial?
- 4 A He did.
- 5 Q Did y'all discuss any possible defenses to the
6 charges he was facing?
- 7 A Yes.
- 8 Q And do you recall what those were?
- 9 A What I just told you.
- 10 Q Okay. Can you briefly describe the State's
11 evidence against Mr. Holston?
- 12 A They had Mr. Walker's testimony, the testimony of
13 the people who were at the house that was located at the
14 crash scene --
- 15 Q Okay.
- 16 A -- and the physical evidence at the house.
- 17 Q Okay.
- 18 A And also, Mr. -- I mean, the people at the crash
19 scene testified about what, you know, Mr. Holston being in
20 the car and about the other person stopping and taking a
21 gun out of the car.
- 22 Q Okay. I believe one of the people at the crash
23 scene saw Mr. Holston with a gun in his lap?
- 24 A Yes.
- 25 Q Did you feel you had ample time to prepare for

Wallis Alves - Direct Examination by Mr. Gourley

1 trial?

2 A Yes.

3 Q And what was your trial strategy in this case?

4 A To try to discredit the statements of Mr. Walker
5 and to show that Mr. Holston's statements were the truth
6 about what happened, that this was just a drug deal that
7 wasn't a kidnapping or an armed robbery of Mr. Walker.

8 Q Okay. And how did you attempt to do that?

9 A To discredit Mr. Walker.

10 Q Yes, ma'am.

11 A By going over the inconsistencies in what he told
12 other people about what happened. Also, Mr. Walker had --
13 There was a -- there was a log where Mr. Walker was
14 supposed to check on the patients that were living in the
15 home, and every hour he was supposed to check on them. And
16 Mr. Walker, rather than doing his job and checking on the
17 clients at the home, had just filled it in, had filled it
18 in all the way. His shift -- I don't remember exactly what
19 time his shift was supposed to end, but his shift ended
20 some time that morning well after the time that Mr. Walker
21 and Mr. Holston were found in the car, and Mr. Walker had
22 filled-out the log sheet indicating that he had checked all
23 of these clients and that they were fine and asleep and
24 doing well for the entire night, so I attempted to
25 discredit him by showing that he was a liar, that he had

Wallis Alves - Direct Examination by Mr. Gourley

1 lied to his job, that he was inconsistent with what he told
2 his supervisors about what had happened with Mr. Holston.

3 Q And would that be why you called Renee Taylor --
4 Tyler, and Rachel Sharp?

5 A That's correct.

6 Q Okay. And regarding the DNA evidence and
7 fingerprint evidence, Mr. Holston's fingerprints were never
8 found at the scene, right?

9 A I don't remember.

10 Q Okay. And it was never contested that Mr. Holston
11 was in the car at the time of the crash?

12 A No. Mr. Holston was in the -- I mean, the
13 witnesses all say they saw him.

14 Q Right.

15 A And that was never denied by us.

16 Q Do you recall why you did not have an objection to
17 the CD with the various pictures taken on it?

18 A I don't remember why.

19 Q Okay. If you felt that there needed to be an
20 objection, would you have made it?

21 A I would.

22 Q Regarding the prior offense of CSC, you argued a
23 403 analysis, correct?

24 A I don't, I don't remember what I argued. So --

25 Q Okay. If the record reflects that you attempted to

Wallis Alves - Direct Examination by Mr. Gourley

1 argue that it would be more prejudicial than probative,
2 would you disagree with that?

3 A I would not.

4 MR. GOURLEY: And Your Honor, that's on page 196.

5 BY MR. GOURLEY:

6 Q Regarding a conflict of interest, Mr. Holston has
7 alleged that during the preliminary hearing you asked for
8 attempted armed robbery, in essence, because you believed
9 that he was guilty of attempted armed robbery; is that the
10 case?

11 A No.

12 Q Why did you ask for attempted armed robbery at the
13 prelim?

14 A If you read the entire paragraph about what I said
15 was, I asked the judge to dismiss the charge. I said there
16 was no evidence regarding -- there was no evidence of an
17 armed robbery, and the facts that were presented at prelim
18 did not support armed robbery. I then went on to say,
19 however, Your Honor, if you don't feel as if -- I believe,
20 I don't know exactly what I said, but told the judge if he
21 didn't feel an outright dismissal was appropriate, then the
22 facts presented at prelim only supported an attempted armed
23 robbery, not armed robbery. That doesn't mean that I
24 believe that Mr. Holston was guilty of anything. It just
25 means I was arguing for whatever crumb I could get at

Wallis Alves - Cross-Examination by Mr. Boozer

1 A Think so.

2 Q Do you recall what that may have been?

3 A I'll look it up.

4 My notes reflect on May 9th that the solicitor
5 offered twenty years and that I spoke with Mr. Holston
6 regarding a plea offer of twenty years. He said he was not
7 interested in taking that. The best he would consider
8 taking is five.

9 Q Okay. Thank you.

10 A I thought there was other times that the solicitor
11 made offers, but I got to do a little more looking.

12 Yes. On April 15th, the solicitor offered me a cap
13 of thirty. Mr. Holston had authorized me to go and ask for
14 five years. He said he will not agree to five years. The
15 case was the second up on the trial list for the week of
16 April the 18th, which it didn't wind up going that week; it
17 would up going -- we were the second one, and I think the
18 first trial might've gone because that's what my notes
19 reflect. But the initial offer was a cap of thirty. The
20 final offer was twenty. Mr. Holston was not interested in
21 taking it.

22 Q Okay. Thank you. And you are testifying that
23 this, I believe, this was a credibility contest between
24 victim and the accused.

25 A Yes.

Wallis Alves - Cross-Examination by Mr. Boozer

1 Q And basically because of that, the credibility of
2 your client was extremely important during this trial, as
3 well as the incredulous nature of the victim's testimony.

4 A I would say so.

5 Q And was that your trial strategy throughout this
6 case, to discredit the victim?

7 A It was.

8 Q Okay. And you've heard some testimony today on
9 cross-examining the victim, and you've also heard some
10 testimony that that was alleged that you continued to bring
11 out what the victim said in your cross examination of other
12 witnesses.

13 A I wasn't in here when he was -- during all his
14 testimony.

15 Q Okay. Well, that is what --

16 A I was --

17 Q Let the record reflect that that was what his
18 allegation was.. His allegation was -- I'm certainly not
19 testifying for the applicant; the record will reflect what
20 it will, but he's alleged that, what -- when you were
21 cross-examining other witnesses, you were cross-examining
22 them based on what the victim's statements were, leading
23 you to lend credibility to the victim; do you recall that?

24 A I recall -- I was here for part of his testimony,
25 and that is not correct. I questioned the witnesses

Wallis Alves - Cross-Examination by Mr. Boozer

1 regarding statements that the victim made to them. The
2 jury already heard more than once from Mr. Walker that --
3 about what happened. That was already firmly in their
4 mind, Mr. Walker's story and this crash and all that, from
5 the -- from what the other witnesses said about gun and
6 everything else. I attempted to bring out different
7 stories that Mr. Walker had told to other people to try to
8 show that Mr. Walker was inconsistent, even the night that
9 this happened when he talked to his supervisors, to try to
10 show that he was lying because he wasn't even -- I mean,
11 six months later, your story might be different, but the
12 day after? I mean, that's a little hard to believe if the
13 facts are true.

14 And that was what I attempted to show to the jury.
15 I also put in the pictures, I believe there was some
16 testimony about why I put the pictures in, to show that the
17 scene was inconsistent with what Mr. Walker said. I
18 believe his bookbag was on the chair. I don't remember why
19 or what my thinking was about this, but there were some
20 pictures put in to try to show that the scene was
21 inconsistent with what Mr. Walker had said occurred. And
22 that's why I put those witnesses up. I didn't think that
23 that was bolstering Mr. Walker's testimony because the jury
24 already heard it. I wanted them to hear the different
25 stories that Mr. Walker had told.

Wallis Alves - Cross-Examination by Mr. Boozer

1 Q Okay. Another issue that the applicant has. Do
2 you recall calling the witnesses Ms. Tyler and Ms. Sharp to
3 the stand?

4 A The transcript says I did. I really -- I couldn't
5 actually remember who called them until I -- and that's
6 what the transcript said.

7 Q Okay. Well, in his case, he took the stand as the
8 defendant testified on his own behalf, and then two
9 witnesses who worked with Mr. Walker then took the stand,
10 which were called by the defense.

11 A Yes.

12 Q Do you recall Ms. Tyler, on page 268, testifying
13 that Mr. Walker was, in fact, a very good employee? She
14 couldn't remember a time he had ever been called out and
15 was a very responsible individual?

16 A I'm taking your word that that's what it says.

17 Q It's dangerous to take my word. No, I'm just
18 kidding.

19 It's in -- if it's in the record, is that what the
20 record would accurately reflect?

21 A Yes. Yes.

22 Q Okay. Do you think that those statements bolstered
23 the victim's credibility?

24 A No. I think that those -- and I don't really
25 remember what I argued, but I think that those statements

Wallis Alves - Cross-Examination by Mr. Boozer

1 were statements that those people had to say about him.
2 They knew that he had falsified documents. I put them up
3 to show that he falsified documents. That was my main
4 reason to put them up. Without putting up his supervisors,
5 I had no way to show that this man lied on official
6 documents where he was responsible for the care of mentally
7 handicapped people. So if I didn't use the supervisors, I
8 wouldn't have had his inconsistent statements, and I
9 wouldn't have been able to put in that document. That's an
10 official form that's required by DHEC to make sure that
11 these people are taking care of these people. They can't
12 take care of themselves. And he lied on that. If I don't
13 put them up, then how do I get his lie in? And of course,
14 on cross-examination, they get to say all these wonderful
15 things about him because they wanted to say that because if
16 they don't say wonderful things about Mr. Walker, then
17 they're liable because they don't properly supervise Mr.
18 Walker, or the other employees, to make sure they're taking
19 care of the patients.

20 Q Did you consider, or was there any way for you to
21 get those documents in through Mr. Walker on cross?

22 A I guess I could've.

23 Q Did you consider that?

24 A I wanted to show that he was lying to the employees
25 and they didn't know that, but I don't remember what I

Wallis Alves - Cross-Examination by Mr. Boozer

1 considered. I mean, hindsight's 20/20. I mean, I could
2 sit here and go back over every single case I did and every
3 mistake or decision that I've made, but at the time I
4 thought those were good decisions.

5 Q And likewise, if the record reflects that Ms. Sharp
6 also stated that the victim was a, quote, wonderful
7 employee. And that he was, quote, welcome back anytime,
8 would you disagree that that's what the record says?

9 A I don't disagree with that.

10 Q And also quote that she didn't know what he,
11 referring to the victim, was doing at the time he was
12 kidnapped? Do you recall that?

13 A I recall that.

14 Q Okay.

15 A I mean, I don't recall it, but I don't dispute that
16 that's what it says.

17 Q All right. Did you interview these witnesses
18 before --

19 A I did.

20 Q -- you called them? Do you know when you
21 interviewed them?

22 A It would've been sometime the week before maybe.

23 Q Did you ask them in their interviews if they had an
24 opinion of Mr. Walker?

25 A I don't remember. Well, I think I did because -- I

Wallis Alves - Cross-Examination by Mr. Boozer

1 did. They told me about them giving him -- I think,
2 actually, Mr. Holston had told me about Mr. Walker getting
3 some money from them that they gave him -- that they gave
4 him some money to buy a new car or something like that. I
5 think Mr. Holston had told me about that. I questioned
6 them about that.

7 Q Were you aware that they would talk about what a
8 good employee he was prior to you calling them to the
9 stand?

10 A No.

11 Q Had you known that, would you have called them?

12 A I don't know.

13 Q Reflecting back, of course with hindsight here,
14 what would you have done differently now?

15 A I guess I could have asked Mr. Walker whether or
16 not he told his employees -- employers, whatever he told
17 them. And just put the -- and just put Mr. Walker -- And
18 then just cross-examine Mr. Walker and not put any
19 witnesses up for Mr. Holston. Because I'll point out this
20 too, Mr. Holston was insisting that these -- I mean,
21 anything that he said about him not knowing about these
22 witnesses is a lie. He knew about these witnesses. He
23 went all through those records? He had copies of every
24 single record that I have, and he insisted that -- I mean,
25 I don't usually listen to my clients insisting on

Wallis Alves - Cross-Examination by Mr. Boozer

1 witnesses. I make the decisions during trial, and I make
2 the best decisions, and I stand responsible for putting the
3 witnesses up. But he wanted those witnesses up as well for
4 the same reasons that I wanted them up. We thought they
5 would be helpful to his case. Now, whether the jury took
6 their testimony and weighed their testimony heavily against
7 Mr. Holston? I hope not. But, I mean, if they did, that's
8 what happened, but that was the best decision I could make
9 at the time, and I stand by it.

10 Q Okay. Moving forward, and I'm not sure if you were
11 here for his testimony for this aspect of it. Do you
12 recall testimony from Investigator Sanders that indicated
13 he went to the group home, and there was no damage to the
14 door other than a screw missing and a 7 turned upside-down?

15 A Yes.

16 Q Okay. Do you recall that police took some photos
17 that actually did show damage to the door and the frame
18 being kicked in?

19 A Yes.

20 Q Okay. Did you have a strategy or -- of trying to
21 put those two against each other or bring that
22 inconsistency out?

23 A I thought I did.

24 Q Okay. Did you do that looking back?

25 A I thought I did. I don't remember what the -- I

Wallis Alves - Cross-Examination by Mr. Boozer

1 don't remember exactly what the testimony was about all
2 that, but I thought I did.

3 Q Did you consider trying to keep those photos out
4 that showed the door being kicked in based on the testimony
5 of Sanders?

6 A I don't know of any objection that I could've made
7 that could've kept those pictures out based on a different
8 witness's testimony; but, I mean, if there was one, and I
9 didn't make it, I guess I didn't make it.

10 Q Did you and Mr. Holston discuss those
11 inconsistencies before trial?

12 A We discussed it, yes.

13 Q Now, did you ever consider that this was -- This
14 was a group home, right?

15 A Yes.

16 Q Okay. Were these mentally challenged folks or
17 elderly folks or --

18 A Mentally -- mentally challenged people.

19 Q Mentally challenged. Did y'all ever have a
20 discussion that maybe the home was entered into to check on
21 those folks while they were in there?

22 A The home was --

23 Q Was that ever a theory of -- in the defense of Mr.
24 Holston, was there ever a theory that the reason that one
25 investigator saw that the door was fine and then another

Wallis Alves - Cross-Examination by Mr. Boozer

1 one saw it wasn't fine is that maybe someone else kicked in
2 the door to check on these --

3 A I remember discussing that. I thought that came up
4 during the trial. I thought that was mentioned during the
5 trial as well. But I do remember discussing that with Mr.
6 Holston.

7 Q Was that a theory that you think y'all brought
8 forth at trial?

9 A I thought I did. Perhaps I didn't, but I thought
10 that was something that we were going to argue, that the
11 reason that the officers would have gone into the house is
12 because they were check -- I mean, I thought they said that
13 they were checking on the people and that they were
14 concerned about the people in the house. They would have
15 had to -- I mean, I don't remember what the transcript
16 says, but I thought that was brought out at trial.

17 Q Okay. And if the transcript doesn't have it in
18 there --

19 A Then it wasn't.

20 Q Okay.

21 THE COURT: It's in there.

22 MR. BOOZER: It's in there? Thank you, Your Honor.

23 THE COURT: In the text of Sanders's testimony.

24 MR. BOOZER: Thank you, Your Honor.

25 ///

Wallis Alves - Cross-Examination by Mr. Boozer

1 BY MR. BOOZER:

2 Q There was also an allegation or reports of an
3 officer Investigator Adams and Leecey or Lacey with
4 fingerprints. Do you recall stipulating to those reports?

5 A If the record says I stipulated, then I stipulated.

6 Q Okay. Did you see an advantage or disadvantage to
7 not stipulating and crossing on this?

8 A The fingerprint report says that Mr. Holston was
9 excluded as a contributor to any of the fingerprints, so
10 there wouldn't have been any reason to -- There's no reason
11 to belabor the point. I mean, this didn't hurt Mr.
12 Holston.

13 Q Okay. Going back and -- we're maybe heading back
14 to something we've already discussed, but I just wanted
15 these allegations -- There's a CD that contains some
16 photographs. Do you recall a CD being admitted with
17 photographs?

18 A I don't. But if the record says one was admitted,
19 then --

20 Q Right. Did you -- was there a reason for you to
21 object to that disc coming in?

22 A Apparently I didn't see one at the time. Look, I'm
23 going to -- I've got -- I can look in my notes. Do you
24 remember who it came in on?

25 Q Let's see.

Wallis Alves - Cross-Examination by Mr. Boozer

1 MR. BOOZER: The Court's indulgence.

2 BY MR. BOOZER:

3 Q I believe that was on Investigator Sanders
4 possibly. Yes.

5 MR. BOOZER: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes, sir.

8 MR. BOOZER: Okay.

9 BY MR. BOOZER:

10 Q Ms. Alves, I'll just point you to your transcript.
11 My transcript is falling apart a little bit.

12 A Yeah. I have it in my notes where I didn't -- they
13 put it in as State's No. 30, and there was no objection to
14 the CD of the pictures.

15 Q Do you recall what was on that CD?

16 A I don't.

17 Q Did you review the CD with Mr. Holston before the
18 trial?

19 A We would've reviewed every single piece of evidence
20 that I was provided by the State, everything that I got on
21 my own through my own investigation, and every picture.

22 Q Okay. Mr. Holston has further alleged in his
23 application that based on the statements of the victim
24 versus the statement of Investigator Sanders that when he
25 arrived the door was not busted in that there was some sort

Wallis Alves - Cross-Examination by Mr. Boozer

1 of motion or objection you should've made to either
2 discredit Mr. Walker or to have his testimony thrown out?
3 Do you know of anything you could've done based on his
4 inconsistent statements at that time?

5 A Based on Mr. Walker's inconsistent statements.

6 Q Mr. Walker's coupled with the investigator and the
7 investigator's report that he did not see any damage to the
8 door.

9 A The only thing you can do is bring that up. I
10 mean, I can't object and exclude one witness just because
11 they're saying something different from another witness.
12 It's all up to the jury to make a decision about who's
13 being truthful.

14 Q All right. Do you recall a discussion about Mr.
15 Holston's prior criminal sexual conduct conviction?

16 A Do I remember discussing it with Mr. Holston?

17 Q Well, sure. Do you remember discussion it with Mr.
18 Holston?

19 A Specifically, no. But I know I would've.

20 Q Okay. Do you recall it becoming an issue at trial
21 prior to Mr. Holston testifying?

22 A I don't remember.

23 Q Okay. Do you recall a discussion about it
24 whereby -- it's on page 196 of the transcript. That
25 there's a discussion with the Court that you agree it's an

Wallis Alves - Cross-Examination by Mr. Boozer

1 impeachable offense but you ask that it not be allowed
2 because the prejudice outweighs the probative value and
3 that this was not a credibility defense?

4 A I would have to see -- wait a minute. I've got
5 part of it.

6 MR. BOOZER: Your Honor, may I approach?

7 THE WITNESS: I've got page 196.

8 BY MR. BOOZER:

9 Q Okay.

10 A I did argue that. I argued against it coming in.

11 Q Okay. And was there ever a formal 403 analysis
12 done on the record?

13 A On the record, no. The judge just said that if he
14 decides -- that he would decide whether or not the
15 probative value outweighed the prejudice, and I don't
16 have -- I don't have the part of the -- I don't remember if
17 he made a decision on the record or not.

18 Q I'll segue into that. I may need you -- my
19 transcript has this in here. Do you recall that during the
20 sentencing after the actual trial, you brought to the
21 Court's attention that an earlier sidebar was taken at
22 which, regarding clarification on the prior CSC coming in,
23 and the judge then indicated he made an analysis under 403.
24 Do you recall that?

25 A May I see the transcript?

Wallis Alves - Cross-Examination by Mr. Boozer

1 Q Absolutely. Let me turn to that for you.

2 A If that's what it says, then that's what happened.

3 Q And this is on page 340 beginning on line 12.

4 A Okay. That's correct.

5 Q Okay. So this was -- the Court was considering,
6 apparently, a sidebar that had been taken to be where he
7 made -- where he made his analysis, under 403, of the CSC?

8 A Yes. A lot of times -- I've tried a lot of cases
9 with Judge Early, and a lot of times during the trial, he
10 doesn't -- If we make objections, he does not always like
11 to send the jury out. I can't say what other judges do,
12 but I have tried a lot of cases here in this courtroom in
13 front of Judge Early. He has us bring over to the side,
14 and then he says to make sure we put it on the record
15 later. Sometimes he remembers himself and does it. Often,
16 I stand up and say, Your Honor, I'd like to put what
17 happened as sidebar on the record.

18 And that is clearly what happened there because I
19 believe the first thing I did was apologize for not
20 remembering to do it at the time. I mean, after -- and he
21 always says, when the jury goes out, make sure you put it
22 on the record. And that's what I normally do, but
23 apparently in that situation, I forgot.

24 Q Okay. And also, are you aware that he appealed --
25 that Mr. Holston appealed his trial verdict?

Wallis Alves - Cross-Examination by Mr. Boozer

1 A I filed the appeal.

2 Q You filed it, so you are aware?

3 A Yes.

4 Q Did you -- you didn't handle the appeal. Did you?

5 A No.

6 Q Okay. Were you aware that the issue on appeal was
7 whether trial Court erred in failing to conduct a 403
8 analysis?

9 A I wasn't aware of any of the issues on appeal.

10 Q Okay. So you wouldn't be aware that the Court
11 dismissed his appeal because no objection was made at
12 that -- the appropriate time, contemporaneous time?

13 A I am not aware.

14 Q Okay. Did you actually bring up the CSC when y'all
15 were -- when you were examining on direct with Mr. Holston?

16 A I don't know, but I do know that -- I can't say. I
17 don't know. Because I mean, you'd have to tell me, because
18 I don't remember what the transcript says. But often when
19 I am -- when my client's on the witness stand, I like to
20 bring it out to get it out there and get it done so that it
21 kind of takes the wind out of the sails of the prosecutor.
22 Because quite often when they want to bring it up, number
23 one they want to bring it up as the last thing that the
24 jury hears, and they want to bring it up like it's some big
25 secret that we tried to hide, so I often try to get out the

Wallis Alves - Cross-Examination by Mr. Boozer

1 bad stuff. But I mean, I can't say I did that in every
2 single case.

3 Q Okay. And going back to the door and the
4 statements of Investigator Sanders as well as Abdula,
5 you're aware that Investigator Abdula testified that the
6 door was, in fact, damaged, and the frame was broken?

7 A Yes.

8 Q Okay. Did -- Mr. Holston has made an allegation of
9 police misconduct based on these two investigator's
10 versions of what they saw and testified to. Did you see
11 any basis to make a motion or to raise some sort of
12 argument for police misconduct?

13 A I don't know of any valid argument that I could've
14 made saying there was police misconduct that would have
15 affected the admissibility of evidence in the trial. I
16 mean, in that regard. I mean, there's plenty of motions to
17 make regarding police misconduct, but not as a -- not in
18 regard to the pictures coming in.

19 Q And I think you touched on this with Mr. Gourley's
20 earlier questioning. You did represent Mr. Holston in his
21 preliminary hearing?

22 A Yes.

23 Q Okay. And you did ask that either the armed
24 robbery charge be dismissed or an attempted armed robbery
25 charge be given?

1 A Yes. That's right.

2 Q Okay. Do you think that that was a -- created any
3 sort of conflict between you and Mr. Holston?

4 A No. No.

5 MR. BOOZER: The Court's indulgence, Your Honor.

6 THE COURT: Okay.

7 (There was a brief pause in the proceeding.)

8 MR. BOOZER: Your Honor, no further questions.

9 THE COURT: All right. Any redirect?

10 MR. GOURLEY: No, Your Honor.

11 THE COURT: All right. Thank you very much, Ms.

12 Alves.

13 THE WITNESS: Thank you.

14 THE COURT: My theory, though is hindsight is not
15 20/20. It's 50/50. At least, my hindsight.

16 What I was referring to, I -- Mr. Boozer.

17 MR. BOOZER: Yes, sir.

18 THE COURT: I was looking at page 174 of the
19 transcript, and it was a direct testimony, direct
20 examination of James E. Sanders. He indicates that the
21 door that y'all are referring to, I believe, is the door
22 that held ■■■, Was it closed? Respondent, yes, sir. Did
23 you try to open it? Did you try to push it in any fashion.
24 I know I went to. I particularly went to the side door
25 where the vehicles are parked. I turned the doorknob. It

1 didn't shove the door in. I simply grabbed the doorknob.
2 The doorknob was locked, and at the front door, we checked
3 the front door, and the door was shut. Other than the 7
4 being down on the outside, there wasn't really any apparent
5 of any other damage there. The doorknob was locked. I
6 didn't attempt to push in the door to try to open it. The
7 door was locked.

8 What did you do from there, J.D.? I left there,
9 and I went back up and spoke with Abdula, Lieutenant Abdula
10 briefly. My understanding from the briefing and the
11 information I had there that there were people inside the
12 house there. We knocked on the door. I think Deputy
13 Williams had been knocking on the door. No responses. So
14 I went back up to Abdula, and I needed to go to the
15 hospital to try to talk with the witnesses. I understood
16 that both of them were injured and were transported to the
17 hospital, so I told Lieutenant Abdula when I was there that
18 he needed to send somebody down with Deputy Williams.

19 Entry needed to be made in that house to check on
20 the residents inside there. Question, were you aware that
21 entry was made through the front door? Response, yes, sir.

22 And that's what I was referring to. If I wasn't
23 tracking right, you can correct me.

24 MR. BOOZER: No. Thank you, Your Honor.

25 THE COURT: And I see where Abdula's testimony is

1 inconsistent.

2 MR. BOOZER: And Your Honor, I certainly wasn't
3 trying to mislead.

4 THE COURT: Oh, no, no. I know you aren't. I
5 didn't mean that at all. I just wanted to make sure I was
6 tracking it -- tracking the right facts and the right door.

7 All right anything further? Anything in reply?

8 MR. BOOZER: No, Your Honor.

9 THE COURT: Anything further, Mr. Attorney General?

10 MR. GOURLEY: No, Your Honor. If I could just
11 place on the record again, I renew my objection to the
12 cumulative prejudice. I can just renew my objection to the
13 cumulative prejudice analysis as under Washington.

14 THE COURT: All right. Yes, sir. All right. Yes,
15 sir. Thank you.

16 MR. GOURLEY: Thank you.

17 THE COURT: All right. In thirty days?

18 MR. GOURLEY: Yes, sir.

19 MR. BOOZER: Yes, sir.

20 THE COURT: Good luck to you, Mr. Holston.

21 THE APPLICANT: Thank you, sir.

22 * * * * * END OF TRANSCRIPT * * * * *

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State of South Carolina)
County of Aiken) **Certificate of Reporter**

I, THE UNDERSIGNED, Brenda J. Sigwald,
Official Court Reporter for the Eleventh Judicial Circuit
of the State of South Carolina, do hereby certify that I
reported the proceedings in the captioned case in the Court
of Common Pleas in and for the State of South Carolina on
the 1st day of August, 2014.

I FURTHER CERTIFY that the foregoing pages,
constitute a true, accurate and complete transcript of said
hearing.

I FURTHER CERTIFY that I am neither kin, counsel,
nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal at Aiken County, this 5th day of June, 2015.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Darrin Darrell Holston, #288828,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2013-CP-02-00856

ORDER OF DISMISSAL

FILED 10-9-14

 Anita Knoepfel
 Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 15, 2013 and amended on July 24, 2013. Respondent made its return on September 5, 2013. An evidentiary hearing into the matter was convened on August 1, 2014, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted during the December 2010 term of the Aiken County Grand Jury for Burglary in the First Degree (2010-GS-02-1899), Kidnapping (2010-GS-02-1903), and Attempted Armed Robbery (2010-GS-02-1905). Wallis Alves, Esquire, represented Applicant. On May 9-12, 2011, a jury trial was held before the Honorable Doyet A. Early, III. The jury convicted Applicant as indicted. On May 12, 2011, Judge Early sentenced Applicant to life imprisonment for each offense, with all three sentences to run concurrently.

A Notice of Appeal was filed with the South Carolina Court of Appeals and Robert M. Pachak, Esquire, perfected an appeal on Applicant's behalf. The Court of Appeals affirmed Applicant's sentences and convictions on December 28, 2012. State v. Holston, No. 2012-UP-678 (Ct. App. December 28, 2012). The Remittitur was issued on January 23, 2013.

ALLEGATIONS

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

1. Trial counsel denied Applicant effective assistance in violation of the South Carolina Constitution Article One Section Three and Fourteen and the United States Constitution Sixth and Fourteenth Amendments.
 - a. Counsel elicited corroborative hearsay testimony from prosecution witnesses and defense witnesses as to what the victim said that bolstered alleged victim's credibility.
 - b. Counsel failed to interview defense witnesses to ascertain whether they would support defendant's theory of the case.
 - c. Counsel failed to motion the courts for a Rule 403 analysis on evidence that prosecution and trial counsel submitted that had the propensity to mislead and confuse the jury.
 - d. Counsel denied the Applicant the opportunity to confront witnesses against him by stipulated forensic Inv. Clay Adams and forensic examiner Cathey Leisy reports instead of calling them as witnesses.
 - e. Counsel failed to object to the trial courts admitting a CD into evidence without a proper foundation for that evidence being laid.
 - f. Counsel failed to motion the courts for Rule 609 balancing analysis.
 - g. Counsel failed to object to misstatements made by alleged victim Willie Walker.
2. Cumulative prejudice.
3. Conspiracy.
4. Police misconduct.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Wallis Alves, Esquire (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, appellate records and return.

During the evidentiary hearing Applicant testified on his own behalf. Applicant stated he met with Trial Counsel numerous times prior to his trial. Applicant recalled meeting with Trial Counsel prior to his preliminary hearing and on August 18, 2010. Applicant stated that he reviewed some of the discovery material prior to trial. Applicant stated that he did not discuss any possible defenses with Trial Counsel. Applicant stated that he did not give Trial Counsel any leads or witnesses to investigate.

Applicant stated that he testified at his trial. Applicant stated that he went to the Victim's place of work to sell him marijuana. Applicant stated Victim offered to drive them to the ATM to withdraw the necessary money to purchase the marijuana. Applicant stated while he was waiting on Victim to get his wallet, he put on gloves and began to divide out some cocaine. Applicant stated while on the way to the ATM the Victim pulled a gun from underneath the driver seat and robbed Applicant. Specifically, Applicant stated that Victim first made him strip off his clothes, then jumped out of the moving vehicle, and fled to a third party house. Applicant stated the car ended up crashing and he suffered some serious injuries as a result. Applicant stated that there was no disputing that he was in the Victim's vehicle. Applicant stated it was his version of events versus the Victim's version of events.

Applicant stated Trial Counsel was ineffective for eliciting corroborating hearsay testimony from multiple witnesses. Specifically, Applicant stated Victim had already testified

during trial and Trial Counsel continued to elicit the Victim's version of events from various witnesses. Applicant referenced the fact that Trial Counsel called witnesses Renee Tyler and Mary Sharp to discuss the Victim's statement and work history.

Applicant further argued that Trial Counsel failed to request a 403 analysis on certain pieces of evidence including pictures of the front door that was allegedly locked. Applicant explained that the pictures supported the Victim's version of events that the front door was broken into. Applicant stated that Investigator James Sanders (hereinafter "Investigator Sanders") testified that the front door was locked when he arrived at the scene. Applicant further pointed out that Investigator Sanders stated "other than the seven being down from the outside there wasn't really any apparent of any other damage there." (Tr. p. 174 lines 16-18). Applicant concluded Trial Counsel should have objected and requested a 403 analysis in an effort to keep the photos depicting damage to the front door out of evidence because it supported the Victim's version of events.

Applicant stated Trial Counsel should have challenged the DNA and Fingerprint reports during trial. Applicant stated the blood found at the scene was a mixture of both his and Victim's DNA. However, Applicant did not dispute that he was in the car when it crashed and suffered serious injuries. Applicant further stated Trial Counsel should have objected to a CD containing photos being introduced into evidence. Applicant argued that the proper foundation was not laid. Applicant stated Trial Counsel should have motioned the court to conduct a 609 SCRE balancing analysis after she objected to Applicant being impeached with his prior Criminal Sexual Conduct charge. Applicant further stated Trial Counsel should have objected to Victim's inconsistent statements and challenged the Victim with the various photos introduced into trial.



Applicant stated there was misconduct by the police due to their inconsistent versions of events. Specifically, Applicant stated there were three separate officers at the Tri County house and their descriptions of the scene varied. Applicant stated Trial Counsel was ineffective for arguing during the preliminary hearing that Applicant did not meet the threshold elements for armed robbery, but instead argued for a charge of attempted armed robbery. Applicant stated that Trial Counsel arguing that the charge should be attempted armed robbery was a sign that Trial Counsel believed he was guilty. Applicant argued that Trial Counsel's actions created a conflict of interest because she believed he was guilty of attempted armed robbery. Applicant stated he was offered twenty years but did not accept the offer because he was innocent.

Following Applicant's testimony, Trial Counsel was called to testify. Trial Counsel testified that she has been practicing law for twenty two years. Trial Counsel stated she was appointed in this case. Trial Counsel stated she met with Applicant "a lot." Trial Counsel stated she filed for and reviewed all Rule 5 and Brady material with Applicant. Trial Counsel stated she discussed Applicant's version of facts. Specifically, Trial Counsel stated Applicant alleged that he went to the Tri County home to sell Victim some marijuana. While Applicant was waiting on Victim to get money, he began to bag cocaine. According to Applicant, Victim did not have any money and offered to drive them to the ATM. While on the way to the ATM, Victim pulled out a gun from underneath the front seat and robbed Applicant. According to Applicant, Victim first required Applicant to strip off his clothes, then bailed out of the moving vehicle, and took Applicant's clothes, cocaine, and marijuana. Trial Counsel stated the car crashed and Applicant received serious injuries.

However, Trial Counsel stated Victim's version of events contradicted Applicant's version of events. Specifically, Trial Counsel stated Victim testified Applicant broke down the



front door wearing nothing but boxers, socks, and gloves. Victim testified that Applicant demanded four hundred dollars, but he did not have any money on his person. As a result, Applicant demanded Victim drive him to the ATM. While on the way to the ATM Victim jumped out of the car, ran up to a third party's house, and called police. Trial Counsel stated two additional witnesses testified that they saw Victim jump out the moving car, saw the vehicle crash, and saw Applicant in the car with a gun in his lap after the crash. One of the witness testified that a white SUV pulled up behind the crashed car, an unknown person got out the SUV, took the gun from the Applicant and fled the scene. Trial Counsel stated the case boiled down to the credibility of the stories by both Applicant and Victim. Trial Counsel stated it was her trial strategy to discredit the statements of the Victim and argue that this was a drug deal gone bad and not a kidnapping. Trial Counsel stated she attempted to point out the various inconsistencies within the Victim's statement as compared to the statements of the various witnesses and officers.

Trial Counsel stated that she stipulated to the DNA and fingerprint evidence because it was never in dispute that the Applicant was at the Victim's place of work or in the Victim's car. Trial Counsel further stated Applicant's finger prints were not found and the report did not hurt Applicant. Trial Counsel stated she did not have any objection to the introduction of the CD and did not feel the need to object to the CD's introduction.

Trial Counsel stated Applicant wanted to testify during trial and the court informed him that he would be impeached with his prior offenses. Trial Counsel stated Applicant had a prior 2006 criminal sexual conduct conviction. Trial Counsel stated she explained to Applicant that he was going to be impeached with his prior conviction if he chose to testify. Trial Counsel stated she objected to the use of conviction and argued that it would be more prejudicial than probative.

However, Trial Counsel stated that charge was within the ten year time period necessary for impeachment purposes. Trial Counsel further stated the court had a side bar where he explained that he was going to allow the Applicant to be impeached with the prior conviction, but to remind him to place on the record his 403 analysis. Trial Counsel stated the court does not like to send the jury out unnecessarily and requested counsels to remind the court to place his findings on the record. Trial Counsel stated she forgot to remind the court to place his findings on the record until the end of the trial. Trial Counsel stated she brought up the criminal sexual conduct conviction on direct to "take the wind out of the prosecutor's sails."

Trial Counsel stated her notes reflect that Applicant was offered a thirty year plea offer on April 15, 2011. However, Trial Counsel stated that Applicant was only interested in a five year plea offer. Trial Counsel stated Applicant received another offer of twenty years on May 7, 2011. However, Applicant rejected that offer and reiterated that he would only accept a five year plea offer.

Trial Counsel stated Victim was the first person to testify. Trial Counsel stated there were other witnesses who spoke with Victim about his version of events. Trial Counsel stated it was her trial strategy to bring out the inconsistency of Victim's version of events through the testimony of the various witnesses. Trial Counsel stated she was trying to show that Victim was lying about what actually took place that night. Trial Counsel stated she did not feel the witnesses' testimonies bolstered Victim's credibility, but instead made the Victim look less credible because of the inconsistencies. Trial Counsel stated she called Renee Tyler and Mary Sharp to show Victim had falsified documents for mentally handicap people. Trial Counsel explained that Victim was responsible for filling out a log book at various points during the night after he checked on the tenants. However, Victim filled out the log book in advance and



received a disciplinary action.

Trial Counsel stated she introduced defense exhibits ten, eleven, and twelve in an effort to show that the front door was not busted open as alleged by the Victim. Trial Counsel stated the pictures showed helped point out the inconsistencies in the description of the scene at the Tri-County house. Trial Counsel stated she could have gotten this information out during cross-examination of the Victim, but felt it would carry more weight with the jury when it came from Victim's employers.

Trial Counsel stated she was aware that Victim received a monetary reward for his bravery from his employer and was aware that his employers were going to testify that he was a good employee. Trial Counsel reasoned that no employer is going to testify that they employ a poor employee. Trial Counsel further stated Applicant was consulted on the trial strategy and knew which witnesses were going to be called to testify. Trial Counsel stated Applicant wanted the witnesses to testify as well.

Trial Counsel testified that Investigator Sanders stated there was no damage to the front door. However, Trial Counsel stated the police took pictures of damage to the front door. Trial Counsel stated it was her trial strategy to bring out these types of inconsistencies. Trial Counsel further stated she did not know of any objection that would keep the photographs out of evidence. Trial Counsel stated there was no evidence of police misconduct. Trial Counsel stated she requested the lesser charge of attempted armed robbery during the preliminary hearing. Trial Counsel stated her request for a lesser charge did not mean that she felt Applicant was guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to



observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

Counsel elicited corroborative hearsay testimony from prosecution witnesses and defense witnesses as to what the victim said that bolstered alleged victim's credibility.

This Court finds Applicant's allegation that Trial Counsel was ineffective for eliciting corroborative hearsay testimony from prosecution witnesses and defense witnesses as to what the victim said thereby bolstering Victim's credibility is without merit. Trial Counsel stated Victim

was the first person to testify followed by various witnesses who spoke with Victim about his version of events. Trial Counsel stated it was her trial strategy to bring out the inconsistency of Victim's version of events through the testimony of the various witnesses. Trial Counsel stated she was trying to show that Victim was lying about what actually took place that night. Trial Counsel stated she did not feel the witnesses' testimonies bolstered Victim's credibility, but instead the witnesses' testimonies made the Victim look less credible because of their inconsistencies. Trial Counsel stated she called Renee Tyler and Mary Sharp to show Victim had falsified documents for mentally handicap people. Trial Counsel explained that Victim was responsible for filling out a log book at various points during the night after he checked on the tenants. However, Victim filled out the log book in advance and received a disciplinary action. Trial Counsel further stated Applicant was consulted on the trial strategy and knew which witnesses were going to be called to testify. Trial Counsel stated Applicant wanted the witnesses to testify as well. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Trial Counsel articulated valid strategic reasons for eliciting the testimony from both prosecution and defense witnesses as to what the Victim said. This Court finds Applicant failed to meet his burden of proving Trial Counsel was ineffective.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence



that Trial Counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. The Court concludes the Applicant has not met his burden of proving Trial Counsel failed to render reasonably effective assistance.

Counsel failed to interview defense witnesses to ascertain whether they would support defendant's theory of the case.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to interview defense witnesses to ascertain whether they would support defendant's theory of the case is without merit. Applicant stated that he did not provide any witnesses or leads for Trial Counsel to investigate on his behalf. Trial Counsel confirmed Applicant's testimony, stating that Applicant did not provide any witnesses or leads to investigate. This Court would note that Applicant provided no testimony from any additional witnesses. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). The Applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness's failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). This Court finds Applicant failed to meet his burden proving Trial Counsel was ineffective for failing to interview defense witnesses.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence



that Trial Counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance. The Court concludes the Applicant has not met his burden of proving Trial Counsel failed to render reasonably effective assistance.

Counsel failed to motion the courts for a Rule 403 analysis on evidence that prosecution and trial counsel submitted that had the propensity to mislead and confuse the jury.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to motion the courts for a Rule 403 analysis on evidence that prosecution and trial counsel submitted to be without merit. This Court notes Applicant was specifically referring to various pictures depicting the condition of the front door that was busted in by Applicant. Trial Counsel stated that she was unaware of any proper objection that would keep the pictures out of evidence. Trial Counsel further stated she did not object to the pictures because they depicted the front door as being broken, yet Investigator Sanders testified the front door was locked. Trial Counsel stated that she was able to cross examine the investigating officers on these inconsistencies. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds Trial Counsel articulated valid strategic reasons not objecting to the introduction of the pictures.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance. The Court concludes the Applicant has not met his burden of proving Trial Counsel failed to render reasonably effective assistance.

Counsel denied the Applicant the opportunity to confront witnesses against him by stipulated forensic Inv. Clay Adams and forensic examiner Cathey Leisy reports instead of calling them as witnesses.

This Court finds Applicant's allegation that Trial Counsel was ineffective for stipulating the DNA and Fingerprint reports to be without merit. Trial Counsel stated that Applicant's involvement in the incident was not in contention. Applicant freely admitted to being present at the Victim's place of work and riding in Victim's car. Therefore, the fact that Applicant's DNA was found at the scene of the car wreck was inconsequential. Additionally, Trial Counsel stated that Applicant's fingerprints were not found. Trial Counsel stated that she did not object to either the DNA report or fingerprint report because Applicant's presence was not in dispute. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Trial Counsel articulated valid strategic reasons not objecting to the DNA report and fingerprint report. Additionally, this Court finds Applicant failed to provide any basis that would prevent both the DNA report and Fingerprint analysis from being introduced into evidence.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence



that Trial Counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance. The Court concludes the Applicant has not met his burden of proving Trial Counsel failed to render reasonably effective assistance.

Counsel failed to object to the trial courts admitting a CD into evidence without a proper foundation for that evidence being laid.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the introduction of a CD to be without merit. This Court notes and the record reflects that the CD contained pictures of the various photos already introduced into evidence. (Tr. t. p. 194 lines 1-5). Trial Counsel stated she did not object to the pictures because they depicted the front door as being broken into, yet Investigator Sanders testified the front door was locked. (Tr. t. p. 174 lines 12-20). Trial Counsel stated it was her strategy to point out to the jury the inconsistency in between the photographs and Investigator Sanders statement. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Trial Counsel's strategy is clear from her closing arguments.

During closing arguments, Trial Counsel argued to the jury that "Now going to the lock. Why is it so important? Because first according to [Victim's] statement this door was kicked in...Investigator Sanders testified that when they went to the house they were not able to open the door. Now he didn't remember trying the door, but Deputy Williams testified that he did try the door and he was unable to open the door." (tr. t. p. 298 line 16—p. 299 line 4). Trial Counsel continued her argument pointing out that "We know we have two different stories about



how they (police) got in the house, though. Excuse me. One different story and one person who says he doesn't know. He is the lieutenant. He is in charge. He coordinates. Yet, he doesn't know how they got into the house." (Tr 1, page 301 lines 6-11). This Court finds Trial Counsel articulated valid strategic reasons not objecting to the introduction of the pictures. Additionally, this Court finds Applicant failed to provide any objectionable basis that would prevent the CD from being introduced into evidence.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance. The Court concludes the Applicant has not met his burden of proving Trial Counsel failed to render reasonably effective assistance.

Counsel failed to motion the courts for Rule 609 balancing analysis.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to motion the court for a Rule 609 balancing analysis to be without merit. Counsel stated Applicant wanted to testify during trial and the court informed him that he would be impeached with his prior offenses. Trial Counsel stated Applicant had a prior 2006 criminal sexual conduct conviction. Trial Counsel stated she explained to Applicant that he was going to be impeached with his prior conviction if he chose to testify. Trial Counsel stated she objected to the use of conviction and argued that it would be more prejudicial than probative. However, Trial Counsel stated that charge was within the ten year time period necessary for impeachment purposes. Trial Counsel further stated the court had a side bar where he explained that he was going to



allow the Applicant to be impeached with the prior conviction, but to remind him to place on the record his 403 analysis. Trial Counsel stated the court does not like to send to the jury out unnecessarily and requested counsels to remind the court to place his findings on the record. Trial Counsel stated she forgot to remind the court to place his findings on the record until the end of the trial. Trial Counsel stated she brought up the criminal sexual conduct conviction on direct to "take the wind out of the prosecutor's sails." This Court finds Trial Counsel's representation of Applicant well within the bounds of "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds Trial Counsel properly objected to the State impeaching Applicant with his prior 2006 criminal sexual conduct conviction.

Furthermore, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency. This Court finds that Applicant could be impeached with his 2006 conviction for first degree criminal sexual conduct ("CSC") because the Colf factors support that the probative value of the prior conviction outweighed the prejudicial effect. See State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000); See Rule 609(a)(1), SCRE. Clearly, the offense was punishable by more than one year in prison and it occurred within the last ten years. See id. Although the crime was not a crime of dishonesty, the rule itself recognizes that impeachment value exists simply because of the fact that Applicant was convicted of a felony offense. See id. Here, since Applicant's other prior convictions were too remote to be used for impeachment, the jury would have been misled into believing Applicant had a totally clean record - and was therefore more credible than he actually was - absent evidence of the CSC conviction. (Tr. t. p. 195-96). The CSC conviction's impeachment value was enhanced for this reason. In addition, the CSC conviction took place fairly close to the time of the crime and the time of trial, since it occurred in 2006.



Importantly, the prior conviction for criminal sexual conduct in the first degree had absolutely no similarity to attempted armed robbery, kidnapping, and burglary in the first degree, the offenses for which Appellant was on trial. Therefore, it was not at all likely that the jury would believe that, because Appellant had a previous conviction for CSC, he was more likely to have committed the crimes for which he was on trial. See Green v. State, 338 S.C. 428, 433, 527 S.E.2d 98, 100-101 (2000) (pointing out that federal courts have held that prior convictions for the same or similar offenses are highly prejudicial and should be admitted sparingly); State v. Howard, 396 S.C. 173, 181, 720 S.E.2d 511, 515-16 (Cl. App. 2011) (“[G]iven the similarity between Howard’s prior convictions and the offense charged, we cannot conclude Howard was not prejudiced by the admission of his prior convictions.”). In sum, this Court finds that the Coff factors supported admission of Applicant’s CSC conviction for impeachment and that the Trial Counsel was not ineffective for failing to motion the court for a Rule 609 balancing test.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Trial Counsel’s performance. The Court concludes the Applicant has not met his burden of proving Trial Counsel failed to render reasonably effective assistance.

Counsel failed to object to misstatements made by alleged victim Willie Walker.

This Court finds Applicant’s allegation that Trial Counsel was ineffective for failing to object to Victim’s misstatements to be without merit. Applicant stated that Trial Counsel should have objected to Victim’s statement that he did not lock the door when they exited the tri-county



home. This Court notes that an objection to a misstatement by a witness is not proper. The proper procedure would have been to cross-examine the Victim on the statement. A review of the trial transcript reveals Trial Counsel thoroughly cross examined Victim regarding his statement about not locking the door. (Tr. t. p. 101 line 18—p. 102 line 25). However, Trial Counsel elicited testimony from James D. Sanders (Investigator Sanders) and Michael Williams (Deputy Williams) who both stated that the door was locked when they arrived at the tri-county homes (Tr. t. p. 190 lines 15-19; p. 204 line 23-25). As evidence by the trial transcript, Trial Counsel was able to elicit contradictory statements regarding whether the door was locked at the tri-county home, thereby bringing into question the veracity of the Victim's testimony. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."). Trial Counsel further argued the issues of the door lock during closing arguments. (Tr. t. p. 298 line 16—p. 301 line 11). Based on the foregoing, this Court finds Trial Counsel's representation of Applicant well within the bounds of "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance. The Court concludes the Applicant has not met his burden of proving Trial Counsel failed to render reasonably effective assistance.



CONCLUSION

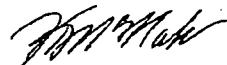
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of Oct, 2014.



 R. KNOX MCMAHON
 Presiding Judge
 Second Judicial Circuit

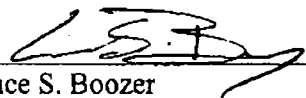
Lexington, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2013-CP-02-0856
)	
Darrin Darrell Holston, #288828,)	
)	
Applicant,)	
	)	NOTICE OF MOTION AND MOTION
v.	)	TO ALTER OR AMEND JUDGMENT
	)	PURSUSANT TO RULE 59(e)
State of South Carolina,)	
)	
<u>Respondent.</u>)	

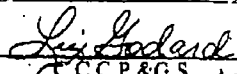
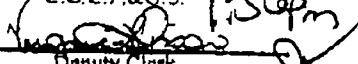
The Applicant, through appointed counsel below, respectfully moves for the Court to alter or amend its Order of Dismissal signed filed October 9, 2014, and received by counsel for the Applicant on October 9, 2014. Specifically, Applicant alleges the Court failed to make findings regarding the Applicant's following allegations raised at the PCR hearing on August 1, 2014:

- (a) Cumulative prejudice;
- (b) Laboring under conflict of interest;
- (c) Failing to object to police misconduct; and
- (d) Prosecutorial misconduct.

Respectfully submitted on behalf of Applicant,


 Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 October 17, 2014

FILED 10.20 2014

 LISA ANDERSON
 C.C.P.&G.S.

 Deputy Clerk

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Darrin Darrell Holston, #288828,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

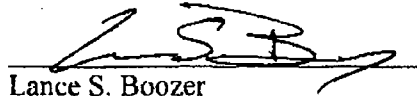
IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 C/A NO: 2013-CP-02-0856

AFFIDAVIT OF SERVICE BY MAIL

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:


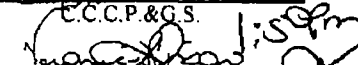
Daniel Gourley
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



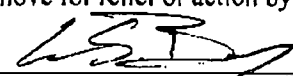
Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 October 17, 2014

FILED 10.20 2014

 L.C.C.P.&G.S.

 Deputy Clerk

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
Darrin Darrell Holston, #288828)
 Plaintiff,)
 vs.)
State of South Carolina)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 CASE NO.: 2013-CP-02-856
**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Lance S. Boozer, Bar No. _____ Address: 807 Gervais Street, Suite 203 Columbia, SC 29201 Phone: 803-608-5543 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: P.O. Box 11549 Columbia, SC 29211 Phone: 803-734-3737 Fax _____ E-mail: _____ Other: _____																
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information																	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO																	
SECTION II: Motion/Order Type																	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <div style="text-align: center; margin-top: 10px;">  Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant </div> <div style="text-align: right; margin-top: 5px;"> 10/17/14 Date submitted </div>																	
SECTION III: Motion Fee																	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason) <table style="width:100%; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input checked="" type="checkbox"/> Sexually Violent Predator Act</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input checked="" type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input checked="" type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Indigent Status	<input checked="" type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy		<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party																
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<input type="checkbox"/> Indigent Status	<input checked="" type="checkbox"/> Post-Conviction Relief																
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<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)																
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Name of Court Reporter: _____																	
<input type="checkbox"/> Other: _____																	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____																
CLERK'S VERIFICATION																	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____																	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2013-CP-02-0856
)	
Darrin Darrell Holston, #288828,)	
)	
Applicant,)	
	)	NOTICE OF AMENDED MOTION
v.	)	AND AMENDED MOTION TO ALTER
	)	OR AMEND JUDGMENT PURSUANT
State of South Carolina,	)	TO RULE 59(e)
)	
<u>Respondent.</u>)	

The Applicant, through appointed counsel below, respectfully makes his Amended Motion for the Court to alter or amend its Order of Dismissal signed filed October 9, 2014, and received by counsel for the Applicant on October 9, 2014. Applicant previously filed a Notice of Motion and Motion to Alter or Amend Judgment on October 20, 2014. Specifically, Applicant Amends his previous Motion and additionally alleges the Court failed to make findings regarding the Applicant's following allegation raised at the PCR hearing on August 1, 2014:

- (a) Counsel failed to make a contemporaneous objection in order to preserve Applicant's 403 objection for direct review.

Respectfully submitted on behalf of Applicant,



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
November 17, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2013-CP-02-0856
)	
Darrin Darrell Holston, #288828,)	
)	
Applicant,)	
	)	AFFIDAVIT OF SERVICE BY MAIL
v.)	
)	
State of South Carolina,)	
)	
<u>Respondent.</u>)	

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Notice of Amended Motion and Motion to Alter or Amend Judgment Pursuant to Rule 59(e) upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
November 17, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Darrin Darrell Holston, #288828,)
 Applicant,)
)
 V.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2013-CP-02-00856

**RETURN TO APPLICANT'S "AMENDED
 MOTION TO ALTER OR AMEND
 JUDGMENT PURSUANT TO RULE 59(e)"**

Respondent, by and through undersigned counsel, making its the Return to Applicant's "Amended Motion to Alter or Amend Judgment Pursuant to Rule 59(e)" would respectfully show unto this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted during the December 2010 term of the Aiken County Grand Jury for Burglary in the First Degree (2010-GS-02-1899), Kidnapping (2010-GS-02-1903), and Attempted Armed Robbery (2010-GS-02-1905). Wallis Alves, Esquire, represented Applicant. On May 9-12, 2011, a jury trial was held before the Honorable Doyet A. Early, III. The jury convicted Applicant as indicted. On May 12, 2011, Judge Early sentenced Applicant to life imprisonment for each offense, with all three sentences to run concurrently.

A Notice of Appeal was filed with the South Carolina Court of Appeals and Robert M. Pachak, Esquire, perfected an appeal on Applicant's behalf. The Court of Appeals affirmed Applicant's sentences and convictions on December 28, 2012. State v. Holston, No. 2012-UP-678 (Ct. App. December 28, 2012). The Remittitur was issued on January 23, 2013.

II.

Applicant filed an application for post-conviction relief on April 15, 2013 and amended on July 24, 2013. An evidentiary hearing into the matter was convened August 1, 2014, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by counsel, Lance Boozer, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. By written Order signed October 3, 2014 and filed October 9, 2014, this Court denied and dismissed Applicant's post-conviction relief action with prejudice. A copy of this Order was served on Applicant by the Aiken Clerk of Court.

On October 17, 2014 and amended on November 17, 2014, Applicant filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e). This Return follows.

III.

In his motion, Applicant asserts that several of his allegations are not addressed sufficiently and asks this Court to reconsider its ruling. Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Applicant's motion should be denied.

[Signature block on following page]

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

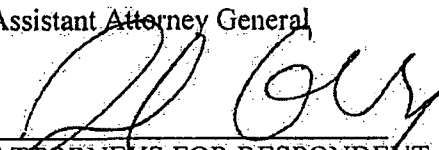
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

November 25, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
)
)
 DARRIN DARRELL HOLSTON, #288828.)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

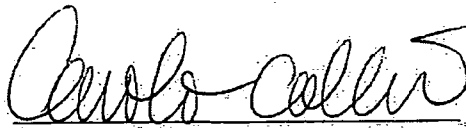
2013-CP-02-0856

AFFIDAVIT OF SERVICE BY MAIL

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 to Applicant's "Amended Motion to Alter or Amend Judgment Pursuant to Rule 59(e)" in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 The Boozer Law Firm, LLC
 807 Gervais Street, Suite 203
 Columbia, SC 29201

DATED this the 25th day of November, 2014.



Caroline Collins, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)

Darrin Darrell Holston, #288828,)
 Applicant,)

v.)

State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS)
 FOR THE SECOND JUDICIAL CIRCUIT)

Case No. 2013-CP-02-00856)

**ORDER DENYING APPLICANT'S)
 MOTION TO RECONSIDER AND)
 MOTION TO ALTER OR AMEND)
 JUDGMENT PURSUANT TO RULE 59(E)**)

Applicant, by and through counsel, moved this Court to Alter or Amend Judgment Pursuant to Rule 59(e) and to Reconsider its denial of the Applicant's request for post-conviction relief.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted during the December 2010 term of the Aiken County Grand Jury for Burglary in the First Degree (2010-GS-02-1899), Kidnapping (2010-GS-02-1903), and Attempted Armed Robbery (2010-GS-02-1905). Wallis Alves, Esquire, represented Applicant. On May 9-12, 2011, a jury trial was held before the Honorable Doyet A. Early, III. The jury convicted Applicant as indicted. On May 12, 2011, Judge Early sentenced Applicant to life imprisonment for each offense, with all three sentences to run concurrently.

A Notice of Appeal was filed with the South Carolina Court of Appeals and Robert M. Pachak, Esquire, perfected an appeal on Applicant's behalf. The Court of Appeals affirmed Applicant's sentences and convictions on December 28, 2012. State v. Holston, No. 2012-UP-678 (Ct. App. December 28, 2012). The Remittitur was issued on January 23, 2013.

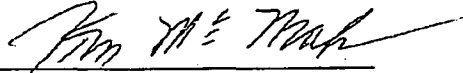
Applicant filed an application for post-conviction relief on April 15, 2013 and amended on July 24, 2013. An evidentiary hearing into the matter was convened August 1, 2014, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by counsel, Lance

Boozer, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. By written Order signed October 3, 2014 and filed October 9, 2014, this Court denied and dismissed Applicant's post-conviction relief action with prejudice. A copy of this Order was served on Applicant by the Aiken Clerk of Court.

On October 17, 2014 and amended on November 17, 2014, Applicant filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e) and Motion to Reconsider.

In these motions, Applicant asserts that several of his allegations are not addressed sufficiently and asks this Court to reconsider its ruling. After reviewing the Applicant's Motion, testimony, facts, and circumstances presented to the Court, the Court finds its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). The Court properly ruled on all issues presented at the post-conviction relief. Therefore, it is **ORDERED** that the Applicant's Motion to Reconsider and Motion to Alter or Amend Judgment pursuant to Rule 59(e) are DENIED, and the prior ruling is reaffirmed in toto.

BY:


The Honorable R. Knox McMahon
Presiding Judge
Eleventh Judicial Circuit

March 20th 2015

1 STATE OF SOUTH CAROLINA) IN THE COURT OF THE MAGISTRATE
 2)
 3 COUNTY OF AIKEN)
 4)
 5 THE STATE OF SOUTH CAROLINA)
 6 PLAINTIFF(S))
 7) PRELIMINARY HEARING TRANSCRIPT
 8 VS.) WARRANT NO.: M025799; M035239;
 9) M007164; M007166; & M007167
 10 DARRIN D. HOLSTON)
 11 DEFENDANT(S))

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Magistrate Court is back in session for the

purpose of conducting a preliminary hearing on this 27th day of October,
 2010. Let the record show we're now going into the case of the
State v. Darrin Holston, who is charged under warrant M025799 with
 kidnapping. He's also charged under warrant M035239 with armed
 robbery. He's charged under warrant M007164 with burglary 1st degree.
 Charged under warrant M007166 with possession of a weapon during
 the commission of a violent crime. Also, charged under warrant
 M007167 with possession of a firearm by a convicted felon. Let the
 record show the defendant is present in court and represented by attorney
 Wallis Alves, with the public defender's office. Representing the State
 is assistant solicitor Sam Grimes. Let the record further reflect that the
 preamble to this preliminary hearing will be the same as all prior
 preambles with regards to any waivers and any stipulations. Is this
 satisfactory with the defense?

COUNSEL FOR DEFENSE: Yes, Your Honor

Handwritten notes and stamps: "8-14", "14", "400", "2", "PRELIMINARY HEARING TRANSCRIPT", "EXHIBIT", "8-14", "10:00 AM", "SUBSTITUTION".

1 THE COURT With the State?
2
3 THE STATE Yes, Your Honor.
4
5 THE COURT Let me ask the Victim Services folks, has the
6
7 victim been notified?
8
9 VICTIM SERVICES Yes, Judge.
10
11 THE COURT All right. Please call your witness.
12
13 THE STATE The State calls Investigator Sanders.
14
15 THE COURT Det. Sanders, if you'd raise your right hand
16
17 please, sir. Do you swear or affirm the
18
19 testimony you're about to give is the truth,
20
21 the whole truth, and nothing but the truth so help you God?
22
23 INV. SANDERS I do.
24
25 THE COURT Please answer any questions.
26
27 THE STATE QUESTIONING WITNESS
28
29 Q: Inv. Sanders, can you please present us with the facts and circumstances
30
31 that led to the arrest of the defendant on this charge?
32
33 A: Yes, sir. The investigation disclosed that on 07-17-2010 at approximately
34
35 0230 hours Mr. Holston kicked open the front door of a residence located
36
37 at [REDACTED] in Aiken, which is in Aiken County. That residence
38
39 belonged to Tri-Development Center. The residence was housing four
40
41 handicapped and disabled people. Three of them were in the residence
42
43 at the time of the incident. The victim, Willie Walker, was on staff in
44
45 the residence at the time of the burglary. Mr. Walker states that Mr
46

1 Holston held him at gunpoint and demanded money. He stated a few
2
3 minutes after the first suspect kicked the front door in a second
4
5 unidentified black male entered the residence and also demanded money
6
7 from him. Holston then forced Walker into Walker's vehicle with the
8
9 intention of Walker to go to the bank and use his ATM card to withdraw
10
11 money from his account. Holston continually in the trip there, with Mr.
12
13 Holston in the car in the passenger side, and Mr. Walker was in the
14
15 driver's side driving his vehicle, who stated Mr. Holston held a gun to his
16
17 head and continually threatened to shoot or kill him. While on Wheat
18
19 Road in route to the bank Walker sped up his vehicle. Mr. Walker stated
20
21 he felt like that even if he gave the money they were still going to kill him
22
23 so he said he sped his vehicle up. Mr. Walker stated his vehicle was
24
25 being followed by the second suspect. Walker fearing for his life jumped
26
27 from his moving vehicle. The vehicle crashed into a tree causing injury to
28
29 Holston. The victim was also injured as a result of jumping from the
30
31 vehicle. Witnesses Salley and Vaughn observed Walker jumping from the
32
33 vehicle and the vehicle crashing and Walker requested they call 911 for
34
35 help that he was being robbed. Both witnesses provided statements.
36
37 Holston was arrested and transported by ambulance to MCG for treatment.
38
39 I then obtained warrant number M-025799 for kidnapping, M-007164 for
40
41 burglary 1st, M-035239 for attempted armed robbery, M-007166 for
42
43 possession of a firearm during the commission of a violent crime, and
44
45 M-007167 for possession of a firearm by a violent felon. Mr. Holston's
46

1 records indicate that he was convicted on 06-26-2006 for criminal
2 sexual conduct 1st degree, which is classified as a violent crime.

3
4
5 Q: Do you have a copy of the defendant's NCIC?

6
7 A: Yes, sir, I do.

8
9 Q: On the page containing charges related to 1993. It should be toward the
10 beginning. There was an arrest on...

11
12
13 COUNSEL FOR DEFENSE Judge, I would object to any line of questioning
14 concerning his record. There's been testimony
15 that Mr. Holston has been charged or convicted
16 of a violent crime, which I think satisfies. Well, actually the statute
17 requires crime of violence, which I think criminal sexual conduct still
18 satisfies...

19
20
21
22
23
24 THE COURT Okay.

25
26
27 THE STATE Your Honor, criminal sexual conduct is not
28 listed as a crime of violence; however, the
29 State is trying to elicit testimony as to another
30 prior conviction that would be considered a crime of violence. It may
31 come down to interpretation of the statute, but the statute says assault
32 with intent to commit assault with intent to kill, commit rape, rob,
33 assault, a dangerous weapon. If the defense is conceding that CSC
34 would be an assault with the intent to commit rape then potentially the
35 statute would be satisfied. But other than that it also includes burglary,
36 which the State's trying to elicit testimony as to

1 THE COURT Do you have that history?
2
3 INV. SANDERS Yes, sir.
4
5 THE COURT Go ahead and testify to it.
6
7 THE STATE CONTINUING QUESTIONING
8
9 A: On 06-18-1993 Mr. Holston's record indicates he was arrested for
10 burglary 2nd and it shows that he was convicted a court date of
11 08-09-1993.
12
13
14
15 Q: Thank you. Is [REDACTED] in Aiken County?
16
17 A: Yes, sir.
18
19 Q: Did you indicate that there was some people that live at that residence or
20 what type of building is that?
21
22 A: It's a Tri-Development. They provide residential care for some handicap
23 disabled people that are there.
24
25
26
27 Q: So there are people living in that building?
28
29 A: Yes, sir.
30
31 Q: Did the defendant indicate what type of weapon was presented?
32
33 A: A handgun.
34
35 Q: Did the victim indicate ... beg the Court's indulgence for just a moment.
36
37 Please answer any questions defense counsel may have for you.
38
39 COUNSEL FOR DEFENSE ON CROSS EXAMINATION
40
41 Q: Were there any witnesses, other than Mr. Walker, to the door being kicked
42 in and Mr. Holston coming into the house?
43
44
45 A: No, ma'am. According to Mr. Walker the residents that were there who
16

1 were handicapped or disabled were in their rooms at the time and when
2
3 Mr. Holston and the other male came in it was basically all confined to the
4
5 basically to one room there where Mr. Walker, the victim, was at. We did
6
7 take pictures of the door, which was consistent with the damage that he
8
9 said was to the door. We did observe damage and take pictures of the
10
11 damage to the front door.
12

13 Q: None of the other residents heard anything?

14
15 A: I haven't spoken with the other residents due to the way it was described
16
17 to me with the where they were at they were asleep at the time and the
18
19 various problems they have as a result of their disabilities and handicaps.
20
21 I have not spoken with them.
22

23 Q: And did Mr. Walker get a look at the second person he says came in the
24
25 house?

26
27 A: Yes, ma'am.

28
29 Q: Was he able to give a description of that person?

30
31 A: I don't recall specifically what he told me other than it was a black male.
32
33 I believe what he said was the second guy came in a few minutes after
34
35 Mr. Holston was in there. Was only in there for just a second and almost
36
37 immediately left back out.
38

39 Q: Did you get a written statement or a taped statement from Mr. Walker?

40
41 A: I don't recall. I'll have to go back and check.

42
43 Q: And the car that they were in when it crashed was Mr. Walker's car?

44
45 A: Yes, ma'am
46

1 Q: And does Mr. Walker – according to the according to the statements Mr.
2
3 Holston was wearing boxer shorts and socks only?
4
5 A: Yes, ma'am, and gloves.
6
7 Q: And gloves?
8
9 A: Yes, ma'am.
10
11 Q: Were the gloves obtained from the scene?
12
13 A: There was one latex glove obtained from one of his hands and a white
14
15 cotton glove, I believe white cotton glove, it was a cotton glove from his
16
17 other hand.
18
19 Q: You got a latex glove off of one of his hands and a cotton glove off the
20
21 other hand?
22
23 A: Yes, ma'am. Deputy Hahn collected the latex glove and a cotton type
24
25 glove from Holston at the accident scene. She stated Holston had the
26
27 latex glove on his left hand and the cotton one on his right hand. States
28
29 she photographed both the victim and the suspect and documented
30
31 their injuries and collected what clothing was there.
32
33 Q: The gloves were put into evidence as well?
34
35 A: Yes, ma'am.
36
37 Q: Okay. Do you have the evidence sheet with those?
38
39 A: I don't have it in the case file, but I'll be glad to make a copy.
40
41 Q: All right. So from what the witnesses have said that when the car
42
43 crashed Mr. Holston was not wearing any clothes other than the boxers
44
45 and I believe a pair of socks and these gloves
46

1 A: He had a gun in his lap.
2
3 Q: When the police came or do you know if it was EMS first to the scene or
4
5 were the police first to the scene?
6
7 A: I'm not sure. I know talking to Lt. Abdullah and the deputies there I'm
8
9 not sure who arrived there. I don't recall off the top of my head who
10
11 arrived there first. I know Mr. Holston was still in the car while the
12
13 Sheriff's Office was there, prior to his being transported by them, and
14
15 that's when Deputy Hahn obtained the gloves from Mr. Holston.
16
17 Q: So he Mr. Holston remained in the car?
18
19 A: Yes, ma'am.
20
21 Q: And he was injured?
22
23 A: Yes, ma'am. I think at some particular point I think at some particular
24
25 point he got out of the car but I know according to the witnesses there
26
27 right after the accident he remained in the car for some period of time.
28
29 But he was still on the scene when the deputies were there.
30
31 Q: All right. I'm looking at the CAD incident report and it says do you
32
33 have that?
34
35 A: Yes, ma'am.
36
37 Q: It says, I'm looking down at the time 2:42.
38
39 A: Yes, ma'am.
40
41 Q: It says, man sitting on his porch is the guy that was doing the robbing and
42
43 has the gun.
44
45 A: Yes, ma'am. That's what it says.
46

1 Q: Do you know who they were referring to?
2
3 A: No, ma'am. Probably, I mean, it's possible it could have been Mr.
4
5 Holston. I know from what the witnesses said after the wreck they
6
7 walked over there. One of the witnesses actually walked over and
8
9 saw Mr. Holston sitting on the passenger side. He appeared to be
10
11 out of it. Saw the gun on his lap. He said a few minutes, a few seconds
12
13 go by. He hears another vehicle coming at a high rate of speed. The
14
15 second guy in the white Explorer jumped out. Started asking where his
16
17 'M.F.' partner was at. He said Mr. Walker saw the second guy pull
18
19 up there and jump out. The victim actually ran into the woods and one of
20
21 them had to go get him. They said he appeared to be scared and ran from
22
23 there. At some point I believe I recall him saying Mr. Holston got out of
24
25 the car, and was kinda dazed and out of it. As a matter of fact I recall now
26
27 he said Mr. Holston was asking to use his cell phone. He kept asking
28
29 Mr. Holston kept asking one of the guys there to use his cell phone. I
30
31 believe one of them, I'll have to go back and look, I think one of them
32
33 was concerned about him using it because of the amount of blood he had
34
35 on him. But they said he appeared to have tried to call somebody and it
36
37 didn't appear that he actually talked to anybody and just a few seconds
38
39 later is when the Explorer pulled up.
40
41 Q: After Mr. Holston...
42
43 A: Had tried to use ...
44
45 Q: Tried to use the phone.
46

1 A: Yes, ma'am.
2
3 Q: Did they have any conversation with the person in the Explorer?
4
5 A: Other than he jumped out said he kept he kept asking where's my 'M..F..'
6
7 partner, where's my 'M..F..' partner and the victim, Mr. Holston, was
8
9 apparently in the front yard at that time and they didn't know which one
10
11 he was talking about. But he said kinda pointed to which one he was
12
13 talking about. That's when the victim took off. At some point they said
14
15 that one of the suspects, I mean, I'm sorry, one of the witnesses said the
16
17 second suspect took the gun off his lap while he was still sitting in the car
18
19 and told him to keep his mouth shut he was out of there.
20
21 Q: Wait a minute. The second person took the gun off of whose lap?
22
23 A: Mr. Holston's lap while he was still in the vehicle.
24
25 Q: And told Mr. Holston to keep his mouth shut?
26
27 A: Yes, ma'am, that he was out of there and he jumped in the Explorer and
28
29 took off. It would have been after that point that Mr. Holston actually got
30
31 out of the vehicle.
32
33 Q: Okay. So you think he used the phone?
34
35 A: Yes, ma'am. I do.
36
37 Q: After the other person.
38
39 A: Yes, ma'am. If I'm correct they said, if I recall correctly now. He was in
40
41 the car. The second car pulled - the first witness said he walked over
42
43 there, looked in the car, saw Mr. Holston was out of it. Saw the gun on his
44
45 lap then he backed off. He said a short time after that he heard the second
46

1 car speeding up. The guy in the Explorer came out there asked those
2 questions, walked over to the car, reached in through the driver's side
3 of the window took the gun out. Stuck the gun in his waistband. Told
4 Mr. Holston to keep his mouth shut he was out of there and then it would
5 have been after that time that Mr. Holston was asking to use the guy's
6 cell phone. But they said it didn't appear that he actually spoke with
7 anyone when he was using the phone.
8
9
10
11
12
13
14
15 Q: Okay. And it was during the time when the first one the second man
16 drove up that Mr. Walker ran into the woods?
17
18
19 A: Yes, ma'am. If I recall correctly what they told me was once the second
20 suspect came up here and jumped out of the car Mr. Walker was up there
21 at the front yard, you know, requesting they call 911, they're trying to rob
22 him and then he actually took off toward the wood line and said the guy
23 appeared to be scared and ran toward the wood line. [inaudible] had to
24 said they physically went over and got him and brought him back to the
25 porch.
26
27
28
29
30
31
32
33 Q: What injuries did Mr. Walker have?
34
35 A: Road rash.
36
37 Q: Beg the Court's indulgence one moment. Was anything actually taken
38 from Mr. Walker?
39
40
41 A: Not that I recall.
42
43 Q: Was there any contraband or any illegal items found inside the vehicle?
44
45 A: Not that I recall.
46

1 Q: Did ya'll search the vehicle?
2
3 A: The deputy on the scene did an inventory of the vehicle.
4
5 Q: Mr. Walker's vehicle?
6
7 A: Yes, ma'am, and photographs. I think forensics responded and
8
9 Inv. Johnson processed and photographed the vehicle.
10
11 Q: Okay. Do did either one of the two witnesses, were there only two
12
13 witnesses to this accident?
14
15 A: Two that I spoke to. What the witnesses told me that there were
16
17 numerous people there. All of them saw the same thing but most of
18
19 those people had left prior to my arrival there. They said if there was
20
21 any problem with their story the way these two witnesses explained to me
22
23 would be repetition what they were saying. They weren't there at the
24
25 scene so I took the statements from those two because they said they
26
27 could provide the names if needed.
28
29 Q: All right. Did either one of the two witnesses say that they saw Mr.
30
31 Walker go back to the vehicle prior to the police coming?
32
33 A: Here's what Mr. Salley said. Mr. Salley and Mr. Vaughn had stated
34
35 they, along with several other people, were sitting on the front porch
36
37 and heard a vehicle coming down the road at a high rate of speed. Both
38
39 the witnesses stated when the vehicle got in front of the house the
40
41 victim jumped out of the vehicle and the vehicle crashed in the tree.
42
43 They both stated the victim got up and walked in the yard yelling that
44
45 they were trying to rob him call 911. Witness Salley stated he walked
46

1 across the road and observed a black male in the passenger side of the
2 vehicle. Salley stated the black male was bleeding badly and appeared
3 out of it. He stated he observed a pistol in the black male's lap. He
4 stated he backed off and walked back across the street. Salley and
5 Vaughn stated they then heard another vehicle and the white vehicle,
6 believed to be a 90's model Explorer, possibly an Expedition, pulled
7 up rapidly. They stated that black male got out repeatedly saying,
8 "Where's my M.F. partner?" They stated they asked the black male
9 who was talking who they were talking about and they pointed at the
10 victim standing in the yard and pointed that someone was still in the
11 car. They stated the black male stated he was talking about his partner,
12 that M.F. that was in the passenger seat. They stated they told him the
13 guy was still in the passenger seat injured and out of it. Salley stated
14 the black male walked over to the car and Mr. Salley also walked over
15 to the car with him. Salley stated the black male reached in and got
16 the gun and put the gun in his waistband. Salley stated that black male
17 told the injured guy that he was getting out of there and for him, talking
18 about Mr. Holston, to keep his mouth shut and not tell anybody anything.
19 They stated the black male then sped off in the Explorer. They stated the
20 injured guy got out of the vehicle and walked into the yard asking to use
21 the telephone. They stated when the injured guy started walking in the
22 yard that the victim ran off away from the guy. They stated the victim
23 was obviously scared of the guy and would run away any time he started
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1 getting near the victim. They stated the injured subject kept asking to use
2 his phone stating he needed to call his partner. They stated the subject
3 kept telling him not to call the ambulance or the police. Salley stated the
4 subject used his phone and called the same number twice. Salley stated it
5 did not appear anyone answered as the subject never said anything and
6 each call was just a couple of seconds. He then provided the phone
7 number that Mr. Holston used and they stated the subject in the car,
8 talking about Mr. Holston, only had boxer shorts on. He stated the only
9 thing they saw the second they physically saw the second suspect take
10 from the vehicle was the gun.
11
12
13
14
15
16
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19
20

21 Q: Okay. And they never saw Mr. Walker take anything out of the car?
22

23 A: No, ma'am.
24

25 Q: Okay. May I ask what were you reading from?
26

27 A: Pardon me?
28

29 Q: What were you reading from?
30

31 A: The supplemental report that I prepared.
32

33 Q: There's a supplemental report to this?
34

35 A: Yes, ma'am. It's the final, this has been turned in or forwarded to the,
36 it's a four page supplemental, which is the last report done in this case
37 and it's awaiting to be sent with the GSC packet over to the Solicitor's
38 Office.
39
40
41

42 Q: So ya'll have that?
43
44

45 THE STATE I don't know which specific...
46

1 COUNSEL FOR DEFENSE CONTINUING CROSS EXAMINATION

2
3 Q: It hasn't been sent to the Solicitor's Office yet?4
5 A: Not that I'm aware of.6
7 Q: Can I take a moment to look at that please? Were any clothes of
8 Mr. Holston ever found?9
10 A: Other than what he was wearing at the time of his arrest?11
12 Q: Yes.13
14 A: Not that I'm aware of.15
16 Q: Are there any cameras at this Tri-Development home?17
18 A: Not that I'm aware of.19
20 Q: Thank you. Did you ever talk to Latasha Corley?21
22 A: I don't recall whether I've talked to her or not. Tri-Development, I
23 recall, talked to her, but I don't recall if I spoke with her or not.24
25 Q: They were investigating her to see whether or not she had any
26 connection to this incident with Mr. Holston?27
28 A: At some particular point I received a call from Mr. Walker. Mr.
29 Walker has passed along to his supervisors at Tri-County that he had
30 found out somewhere that supposedly Ms. Corley was the girlfriend of
31 Mr. Holston and that Ms. Corley had worked at the home on [REDACTED]
32 [REDACTED] at some time in the past and he was just wondering if there's any
33 connection. I know he made those concerns to Tri-County Development
34 and I know they said they interviewed her and to the best of my
35 recollection, based on that interview, if I recall correctly, I believe they
36
37
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46

1 said they don't believe she was dating Mr. Holston anymore. They didn't
2
3 feel like she had any connection or anything to do with what happened to
4
5 Mr. Walker that night. It was simply a matter that Mr. Holston would
6
7 have known about the house because his ex-girlfriend worked there.
8
9 Q: Okay. Do they normally keep money or anything of value in that house?
10
11 A: Not that I'm aware of.
12
13 Q: Do you know if Tri-Development investigated Mr. Walker for anything
14
15 to do with this?
16
17 A: Not that I'm aware of.
18
19 Q: Okay. I don't have any further questions. I only have one motion.
20
21 THE COURT Go ahead, Ms. Alves.
22
23 COUNSEL FOR DEFENSE Your Honor, I'd move to dismiss the charge of
24
25 armed robbery. Your Honor, there does not
26
27 appear to have been anything actually taken and
28
29 armed robbery requires the taking and carrying away of someone else's
30
31 property by use of with threat of a deadly with a deadly weapon and there
32
33 does not appear to have been any robbery here. I think the more
34
35 appropriate charge would be attempted armed robbery if Your Honor
36
37 chooses to amend the charge rather than to dismiss the charge of armed
38
39 robbery. But there does not appear to have been an actual armed robbery
40
41 completed here.
42
43 THE COURT All right. I'll agree with your motion. I'm
44
45 going to change it to criminal intent armed
46

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robbery on warrant M035239. I'll reflect it as

criminal intent armed robbery rather than armed robbery.

COUNSEL FOR DEFENSE Well, would it just be attempted armed robbery?

THE COURT Attempted.

COUNSEL FOR DEFENSE Okay.

THE STATE Thank you, Your Honor.

THE COURT Thank you.

S. L. LYNN, JR., MAGISTRATE