

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

RECEIVED

SEP 21 2018

S.C. SUPREME COURT

KEIRON K. COLEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000088

APPENDIX

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The Court at trial: All right, Now the bond of one is the bond of all. Tip 346 p[#] 1-2

The Court at trial: All right Mr Long Tip 346 p[#] 8

The Court at trial: Now about that Tip 346 p[#] 11

Mr Long at trial: your Honor, I really have no opposition to it, from the start, this case has been all about two defendants having committed the offense Tip 346 p[#] 12-14

The Court at trial: To the house, I think that it's an appropriate charge. Mr Long at trial: No opposition really to that judge Tip 347 p[#] 5-7.

Counsel failed to object to trial judge
Abuse of Discretion and prejudice statements
Denied defendant of a Direct verdict and
fair trial.

Abuse of discretion takes place during
Codefendants plea when the judge suggests
to Mr Jordan Dudley a second answer
that incriminates and shifts the burden
of guilt on the defendant as to suggest me
as the guilty party while trial is still proceeding
Suggest that the judge believes that I entered
and removed things from that home without
alleging but stating as a mere fact.

prejudice statements are during the miranda
issue when the judge didn't conduct a
in camera review or a Jackson v Denno but
waived off the argument stating there was
no notice of miranda but judge neithered
asked why or reason why video was muted.
by jury not to hear or defense counsel saying
these statements were made pre-miranda weren't
a indication that those statements on the video
were not in question either the judge mind
was some where else or he chose a deaf ear.

These are the statements at trial as follows.

Tip 99 p 24-25: The Court at trial: Mr Dudley, is that what occurred? you entered this lady's house and took things? Mr Dudley at trial: NO response. The Court at trial: When the house was entered? you were there when your codefendant removed things from the house? Is that your position? Mr Dudley

Tip 85 p 1, 2, 3, 4, 5
6, at trial: Yes sir. An abuse of discretion occurs when trial courts ruling is based on an error of law, when grounded in factual conclusions, is without evidentiary support. There was no testimony by any witness or any evidence that placed me in the house. States only evidence came from defendant had a few pieces of jewelry in his pocket.

Now the prejudice statements

The court at trial: I understand he has several burglary firsts. Mr Long at trial: NO these are pending. The court at trial: That are pending! Mr Long at trial: Yes sir. Tip 14 p 25
Tip 15 p 2-4. prejudiced

U.S. v. Rheault 561 F.3d 55, 61-62 (7th Cir. 2009)
prior felony convictions need not be charged in
indictment or proven beyond a reasonable doubt
for sentence enhancement purposes

Liggins v Burger 422 F.3d 642 650 (8th Cir. 2005)
Due process prohibits using evidentiary
presumptions in jury charge that have effect
of relieving state of burden of proof beyond
reasonable doubt of every essential element
of crime

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
)
)
 Keiron Kyle Coleman,)
 S.C.D.C. No. 359333,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-26-7569

RETURN

In response to the post-conviction relief application filed October 20, 2015 the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court’s orders of commitment. The Horry County Grand Jury indicted the Applicant at the May 2013 term of General Sessions for first-degree burglary (2013-GS-26-02238). J.M. Buddy Long III, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On March 13, 2014, the Honorable Larry B. Hyman Jr. sentenced the Applicant to twenty-five (25) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders¹-brief. The Court of Appeals dismissed the Applicant’s appeal on July 29, 2015. State v. Keiron Coleman, Op. No. 2014-000604 (S.C. Ct. App. filed July 29, 2015). The Remittitur was sent on August 14, 2015.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to object to prosecutions misconduct-vouching and bolstering of witnesses."
 - b. "Counsel statements prejudiced defendant's defense."
 - c. "Counsel failure to request suppression and pretrial hearing."
 - d. "Counsel failed to object to State's witnesses."
 - e. "Counsel failed to object to trial prejudice statements and abuse of discretion."
2. Prosecutorial Misconduct
 - a. "Appellate counsel failed to argue or assert prosecutorial misconduct."
 - b. "Evidence of such misconduct during trial and closing arguments."
 - c. "Abuse of trial court discretion."
3. Ineffective assistance of appellate counsel.
 - a. "Failed to find any issues with merit on trial."

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "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 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The allegation that appellate counsel was ineffective is also without merit. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 526; Strickland, 466 U.S. at 687. When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of appellate counsel will be

overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant's allegations regarding prosecutorial misconduct should be dismissed. PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b). See also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for [PCR] is not a substitute for an appeal."). Applicant could have raised this issue at trial or on appeal. The failure to do so waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Therefore, Respondent requests this allegation be dismissed pursuant to Rule 12(b)(6), SCRPC.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

Remainder of page intentionally left blank.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By:


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Feb 26, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 KEIRON KYLE COLEMAN, #359333)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP-26-7569

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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 26TH day of February, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Keirnon Kyle Coleman)
)
 v.)
)
 State of South Carolina.)
)
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IN THE COURT OF COMMON PLEAS
 OF THE FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-7569

SUPPLEMENT TO APPLICATION FOR
 POST-CONVICTION RELIEF

FILED
 Horry County
 MAY 22 2015
 REBECCA ELVA
 CLERK OF COURT
 HORRY COUNTY, SC

Petitioner Keirnon Kyle Coleman, by and through his counsel, respectfully requests that the court grant his petition for post-conviction relief, on the following grounds:

- 1) Trial counsel failed to request a jury instruction for mere presence. The evidence and testimony at trial supported a charge of mere presence. The jurors could have acquitted Coleman based on a mere presence instruction from the judge and based on Coleman’s testimony.

“The law to be charged is determined by the evidence presented at trial. Mere presence instructions are required when evidence supports the conclusion that the defendant was merely present at the scene where drugs were found and it was questionable whether the defendant had a right to exercise dominion and control over them.” Brunson v. State, 324 S.C. 117, 477 S.E.2d 711 (1996), citing State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989).

Coleman’s testimony at trial was that he remained in the car upon arrival at the Marotte house which is the subject of the charged burglary. Coleman believed that he, Dudley, and Cowan were at the Marotte residence to collect on a debt from an associate of Cowan’s. Coleman was unaware that Dudley had committed a burglary until they were apprehended and arrested by police. The jury was free to believe Coleman’s testimony which supported a jury instruction of mere presence.

- 2) Trial counsel failed to request the appropriate jury instruction on circumstantial evidence pursuant to State v. Logan, 405 SC. 83, 747 S.E.2d 444 (2013).

“Thus, we hold that trial courts should provide the following language as a circumstantial evidence charge, in addition to a proper reasonable doubt instruction, when so requested by a defendant:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. **The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.**

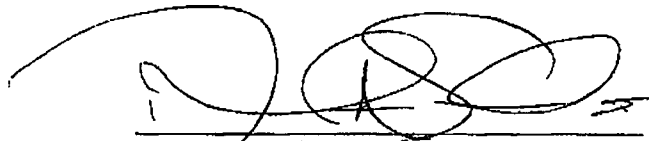
The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two." State v. Logan, 405 SC. 83, 747 S.E.2d 444 (2013) (emphasis added).

- 3) Trial counsel failed to request the lesser included offense of burglary in the second degree.

"A trial judge is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater." Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004), Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999), State v. Drafts, 340 S.E.2d 784, 288 S.C. 30 (1986), State v. Gandy, 283 S.C. 571, 324 S.E.2d 65 (1984), State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984).

Coleman's conviction for burglary first degree was based solely on prior convictions for burglary charges which the jurors were free to disregard. The only evidence presented to the jury to establish the prior convictions were records from a court in NJ which were redacted and photocopied. The jurors could have found that these records were not reliable and opted to convict Coleman for burglary second degree, but they were not given this option.

Petitioner requests that this Court vacate his conviction for burglary first degree and grant a new trial on the above grounds.



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May22, 2017.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	2015-CP-26-07569
KEIRON K. COLEMAN,)	
Applicant,)	Transcript of Record
vs.)	(Post-Conviction Relief)
)	September 18, 2017
STATE OF SOUTH CAROLINA,)	
Respondent.)	

B E F O R E :

Honorable William H. Seals
Horry County Courthouse
Conway, South Carolina

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

Daniel A. Selwa, II, Esquire
Attorney for Applicant

Johnny Ellis James, Jr, Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

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SEPTEMBER 18, 2017

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<u>No.</u>	<u>ID</u>	<u>EV</u>
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(No exhibits were marked or admitted.)

Coleman v. State - 2015-CP-26-07569
BY THE COURT

3

1 **(SEPTEMBER 18, 2017 - 11:48 A.M.)**

2 BY THE COURT:

3 THE COURT: All right. The state is recognized, call the
4 next case.

5 MR. JAMES: Your Honor, the state would call the matter
6 of Keiron Coleman versus State of South Carolina. That is
7 docket number 2015-CP-26-7569. Mr. Coleman is here and
8 present in the courtroom today and is represented by Mr.
9 Daniel Selwa. Mr. Coleman was convicted of burglary on March
10 13th, 2014 and was sentenced by The Honorable Larry B. Hyman
11 to 25 years incarceration. And I'll give the floor to Mr.
12 Selwa.

13 THE COURT: All right. Mr. Selwa, I'm ready when you
14 are.

15 MR. SELWA: May it please the Court, thank you.

16 Your Honor, I would first call Mr. Long to the stand.

17 THE COURT: All right.

18 MR. SELWA: Your Honor, I have three arguments that I'm
19 gonna be going over that are the same under the supplemental
20 petition that we made and what I'm handing up here is ---

21 J.M. LONG, III, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: State your name?

24 MR. LONG: My name is J.M. Long, III, L-O-N-G. I go by
25 Buddy.

Coleman v. State - 2015-CP-26-07569
J.M. LONG, III - DIRECT BY SELWA

4

1 MR. SELWA: I'm sorry, Your Honor. I would like to hand
2 up here, I have parts of the transcript which I'll be using,
3 which is big and I didn't want to have to back and forth
4 because as well as the case law ---

5 THE COURT: Okay.

6 DIRECT EXAMINATION OF J.M. LONG, III BY MR. SELWA:

7 Q: Good morning, Mr. Long.

8 A: Good morning.

9 Q: Mr. Long, you recall Keiron Coleman, correct?

10 A: Yes.

11 Q: And as stated by Mr. James, you represented Mr. Coleman
12 in trial?

13 A: Yes.

14 Q: And that trial was for burglary first, correct?

15 A: Correct.

16 Q: And that was in March of 2014?

17 A: Correct.

18 Q: Did the jury find Mr. Coleman guilty of that charge?

19 A: Yes.

20 Q: Okay. And do you recall what his sentence was?

21 A: Twenty-five, as I recall.

22 Q: Now, Mr. Coleman submitted a supplemental petition and in
23 that petition, one of the issues that he raises is the mere
24 presence or the failure to request a mere presence jury charge
25 in regards to his trial. Do you recall the jury charge

1 conference?

2 A: I recall the one on the record and, if I'm not mistaken,
3 we may have had a jury trial conference in chambers as well.

4 Q: Okay. And on the -- in regards to the one on the record,
5 he -- the Judge charged the jury with the hand of one is the
6 hand of all; is that correct?

7 A: That's correct.

8 Q: Okay. And to your knowledge, did the Judge request a
9 mere presence charge

10 A: I didn't request one on the record but, in fact, the
11 Judge gave a mere presence charge in his charge to the jury.

12 Q: Okay. If you had a copy of the transcript, would you be
13 able to find that?

14 A: Yeah, I believe I read it either last night or this
15 morning in the transcript.

16 MR. SELWA: May I approach, Your Honor?

17 THE COURT: Sure.

18 BY MR. SELWA:

19 Q: Mr. Long, what I'm handing up is a butchered version of
20 the transcript.

21 A: Okay. I may be able to find it.

22 Q: It's the whole ---

23 MR. JAMES: I might be able to speed up the process by
24 providing some direction if you should like, Your Honor?

25 A: Thank you.

Coleman v. State - 2015-CP-26-07569
J.M. LONG, III, - DIRECT BY SELWA

6

1 THE COURT: I don't have any problem with that.

2 MR. JAMES: Let's look at Page 428, Lines 14 through 17.

3 A: Yeah, that's correct.

4 BY MR. SELWA:

5 Q: Court's indulgence one second? Okay, Your Honor, I'm so
6 sorry.

7 Mr. Long, do you -- and you said you did not request a
8 mere presence, but there was a partial mere presence in the
9 transcript?

10 A: Correct.

11 Q: And the Judge said, However, mere presence at the scene
12 of a crime is not sufficient to convict one as a principle, on
13 the theory of aiding and abetting. Is that correct?

14 A: That's correct.

15 Q: But you, but you didn't request the formal mere presence
16 jury instruction, correct?

17 A: That's correct.

18 Q: All right. And that was done under *Brunson v. State*, are
19 you familiar with that case citing *State v. Lee*?

20 A: I don't know what you're asking.

21 Q: Okay. The, the case law, there was a case, *Brunson v.*
22 *State*, which was a PCR that was overturned because they failed
23 to ask for a mere presence charge. And, you are testifying
24 that you did not ask for that jury charge; is that correct?

25 A: That's correct.

1 Q: And Mr. Coleman testified at trial; is that right?

2 A: Yes.

3 Q: And do you recall what his testimony was regarding his
4 presence at the scene?

5 A: He testified he was there as an enforcer or presence of
6 two of the co-defendants, who were owed money by someone else,
7 whose home they were going to.

8 Q: Okay. And did he testify that he was aware of that the
9 burglary was going on?

10 A: No, he said there was no burglary to have taken place;
11 burglary did not occur.

12 Q: Okay. But he testified that he was in the house?

13 A: No, he never testified he went in the house.

14 Q: Okay. In fact, he stated he stayed in the car; is that
15 correct?

16 A: No, I think he testified that he went to the one house
17 and tried to peer in the window to see if there was any
18 activity in the house. In other words, if the person who owed
19 one of the co-defendants money was there and there was some
20 dispute about whether or not he jiggled the door handle, the
21 back door handle and he denied doing that. He just said he
22 was there peering in the window.

23 Q: Okay. But in regards to the Marotte house, M-A-R-O-T-T-
24 E, that was the house?

25 A: That was the house that was occupied.

Coleman v. State - 2015-CP-26-07569
J.M. LONG, III - DIRECT BY SELWA

8

1 MR. COLEMAN: That was burglarized.

2 BY MR. SELWA:

3 Q: That was burglarized.

4 A: Oh, okay. All right.

5 Q: In regards to that, did he stay in the car or did he get
6 out of the car?

7 A: I don't recall his testimony to that.

8 Q: Okay. If you could refresh your memory, on, I believe
9 it's the transcript Page 366?

10 A: 366. The transcript is as it is. If he's testified that
11 he did not go into that house, then that -- he didn't testify
12 to that. Yeah, he said he -- well, he said Dudley got out and
13 went to the house and handed him the stuff in the car. I don't
14 think he said he never got out of the car.

15 Q: Okay. And, excuse me, he further testified that he
16 wasn't even aware of the burglary in that section of the
17 transcript; is that correct?

18 A: Yeah, he said he never heard anything said about breaking
19 in and stealing stuff from somebody's home, but he did say
20 that Dudley came back from the house with items and handed the
21 items to him, which he put in the front seat and in the glove
22 compartment.

23 Q: Okay.

24 A: So, evidently there was stuff taken from the home;
25 whether or not it was stolen or not, is debatable whether he

1 knew they were stolen or not.

2 Q: In regards to his knowledge of that burglary, was Mr.
3 Coleman's testimony evidence of his mere presence as opposed
4 to his involvement?

5 A: It could be, yes.

6 Q: Could the jury had believed Coleman's testimony regarding
7 that?

8 A: I mean, they could have, but I don't think they did.

9 Q: Okay. And would it have been a better scenario for Mr.
10 Coleman's situation to formally request a mere presence jury
11 charge?

12 A: I don't know how much further Judge Hyman would expound
13 on the mere presence charge that he gave, had we formally
14 requested it. I, I -- other than Mr. Coleman's testimony, I
15 didn't feel it was a mere presence case.

16 Q: Okay. Up until -- up until the state rested, there was
17 no testimony regarding that, right, the evidence of that
18 charge was based on his prior two convictions; is that
19 correct?

20 A: That's correct, yes, sir.

21 Q: And ultimately, Mr. Coleman was convicted of the
22 burglary, correct?

23 A: That's correct.

24 Q: All right. Now moving onto the second issue, Mr.
25 Coleman, in his supplemental petition, stated that you failed

Coleman v. State - 2015-CP-26-07569
J.M. LONG, III - DIRECT BY SELWA

10

1 to request the appropriate jury instruction on circumstantial
2 evidence pursuant to *State v. Logan* case; are you familiar
3 with that?

4 A: I am now, yes.

5 Q: Okay. During the jury conference on that issue, did you
6 request the *Logan* jury instruction regarding the
7 circumstantial evidence?

8 A: I did not.

9 Q: Is there a reason?

10 A: It could've been oversight on my part. My opinion of the
11 case was there was not a lot of circumstantial evidence
12 offered. There was an eye witness, I think it was at the
13 occupied home that he attempted to try to get into the back
14 door and she was the one that called police. Then there was
15 the burglary that occurred in that subdivision shortly after
16 that, where items taken from that home were found in Mr.
17 Coleman's possession in the front passenger seat of the car
18 when the police arrived like five minutes after. That's not
19 really a circumstantial evidence type of case. That's more
20 direct evidence in my opinion.

21 Q: How the burglary occurred though, that would've been
22 circumstantial evidence of that burglary, correct?

23 A: Well, whether it was hand of one hand of all and he was
24 found in possession of the items. I mean, in my opinion, I
25 didn't think it was a whole lot of circumstantial evidence. I

1 thought it was mainly direct evidence, but I did not request
2 it.

3 Q: And when the Judge actually instructed the jury on the
4 circumstantial evidence jury charge, that was not from *State*
5 *v. Logan*, was it?

6 A: You would have to compare the case versus the transcript
7 and tell me; I could not.

8 Q: And you -- at that point, you were aware that *State v.*
9 *Logan* had been decided the year prior; is that correct?

10 A: That's correct.

11 Q: And the Judge had even mentioned that in the transcript;
12 isn't that right?

13 A: That's correct. And I was of the opinion, that he would
14 be charging the new circumstantial evidence charge because he
15 did in fact -- I think he talked about *Logan* or changes in the
16 charges, but I didn't pick it up.

17 Q: And of course, when he did charge the jury, you did not
18 object to that; is that correct?

19 A: That's correct.

20 Q: Do you feel that jury charge would have made a difference
21 in Mr. Coleman's case?

22 A: No.

23 Q: And ultimately, Mr. Coleman was convicted of that crime,
24 correct?

25 A: That's correct.

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1 Q: Moving on to the third issue, the -- Mr. Coleman states
2 or alleges that you failed to request the lessor included
3 offense of burglary in the second degree. Do you recall the
4 jury charge regarding that issue?

5 A: I recall, yeah, I recall the conference on the record
6 with the Judge about that, about requesting the lessor
7 included offense.

8 Q: Okay. And you had brought that up, you had initially
9 requested that charge, correct?

10 A: Correct, the only basis that he was being charged for
11 burglary first, was the fact that he had two prior burglary
12 convictions from other jurisdictions, that elevating it to a
13 burglary first. Those type of cases, I dislike because I
14 think it's prejudicial in the case in chief for that evidence
15 to be brought out to the jury. Nonetheless, that's where we
16 were, but however, I always request, every time I can, lessor
17 included based on that because of the fact that he's being
18 punished, in my opinion, by the jury once the jury hears he
19 has two prior burglary convictions. That's why I normally
20 make the request for lessor included.

21 Q: Okay. And through that conference, the Judge had gone
22 back and forth with you questioning whether or not you wanted
23 the second, the burglary second charge issued and you were
24 aware that the prosecutor wanted it to be all or nothing,
25 correct?

1 A: Correct, that's correct.

2 Q: And up until the Court decided or ruled on it, you wanted
3 that jury to hear the lessor included offense charge; is that
4 correct?

5 A: Until I spoke with Mr. Coleman in the courtroom and then
6 informed the Court that we wished to go all or nothing as
7 well.

8 Q: And then at that point, basically you allowed your client
9 and the Judge with that back and forth to change your mind so
10 to say?

11 A: It's a calculated gamble to go all or nothing if it's an
12 iffy case and there is some real doubt that the jury may have
13 to then include another charge for them to consider, which is
14 a compromise. So, if it's an all-or-nothing, yes-or-no case
15 on an iffy case and there is a lessor included or compromise,
16 many times the juries will take that compromise when they
17 otherwise would have said not guilty. And so there's no real
18 pattern; it's a gamble.

19 Q: And obviously, with this gamble, that -- that did not pay
20 off; is that correct?

21 A: That's correct.

22 Q: And had they had that jury charge of the lessor included
23 offense, do you believe there were grounds for them to find
24 that he was guilty of the lessor included offense?

25 A: I can't tell you what the jury thought, but based on the

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1 verdict, they had to have found the two prior convictions
2 beyond a reasonable doubt and a burglary in this situation --
3 in this case, beyond a reasonable doubt, therefore, they found
4 him guilty of burglary first. Whether there was a second, a
5 lesser included charge, if that would've affected their
6 findings, I doubt, but I don't know.

7 Q: And as you went back and forth with the Judge as well,
8 the jury could have rejected the proof of the two prior
9 convictions; is that correct?

10 A: Yeah, it's possible.

11 Q: And they certainly could have rejected the credibility of
12 it, being that it was a copy ---

13 A: Sure.

14 Q: --- and redacted from another state; is that right?

15 A: Sure.

16 Q: Okay. And with that in mind, wouldn't it have been a
17 good idea to ask and stay the course with that lesser included
18 offense jury charge request?

19 A: Fifty/fifty, but Mr. Coleman's decision was -- and it's
20 not my decision. Mr. Coleman's decision was, at that point in
21 time, to go all or nothing because if they rejected the out-
22 of-state transcript of convictions, then he would've been
23 found not guilty or the credibility on, you know, from the co-
24 defendant's testimony.

25 Q: And again, as we know, that didn't turn out, Mr. Coleman

1 was convicted?

2 A: That's correct.

3 Q: No further questions, Your Honor.

4 THE COURT: All right. State?

5 CROSS EXAMINATION OF J.M. LONG, III, BY MR. JAMES:

6 Q: Good afternoon, Mr. Long?

7 A: Good afternoon.

8 Q: How long have you been practicing criminal law?

9 A: Thirty years.

10 Q: And at the time of this trial, what was your position?

11 A: Senior Assistant Public Defender, Horry County Public
12 Defender's office.

13 Q: How long have you been in that position?

14 A: Four or five years.

15 Q: How did you come to represent Mr. Coleman on his first
16 degree burglary charge?

17 A: I was appointed to represent him.

18 Q: Did you meet with Mr. Coleman shortly after you began
19 representing him?

20 A: Yes.

21 Q: And where did you meet him?

22 A: I'm trying to remember if we met at the jail first. I
23 believe we did, and then he bonded out and met at the office.

24 Q: And what did you discuss in that meeting?

25 A: His charges, the evidence, the procedures, how long, you

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1 know, it all takes start to finish, things of that nature.

2 Q: How many times did you meet with him?

3 A: I don't recall exactly, but it would've been four, five
4 or six or so leading up until court and then there would've
5 been one or two more lengthy meetings before court, and there
6 would be telephone calls and things of that nature as well.

7 Q: Did you tell him about all of his constitutional rights?

8 A: Oh, yes, he was very aware of them.

9 Q: Jury trial, right to testify,, right to remain silent?

10 A: Yes.

11 Q: Call in witnesses?

12 A: Pardon me?

13 Q: The right to call his own witnesses?

14 A: Yes.

15 Q: Did you file motions pursuant to Rule 5 and *Brady*?

16 A: Yes.

17 Q: And did you get everything from those motions?

18 A: Yes. Well, I say I'm reasonably assured that we received
19 everything.

20 Q: Did you have anything -- any reason to believe that there
21 was anything left out?

22 A: No.

23 Q: Do you recall what all you got in discovery?

24 A: No.

25 Q: Did Mr. Coleman give you any leads or witnesses?

1 A: I don't specifically recall defenses. His primary
2 defense from the beginning was, I just caught a ride. I
3 didn't know anything about any burglaries. I'm not guilty. I
4 want a trial.

5 Q: So, he told you that he wasn't guilty?

6 A: Yes.

7 Q: Did you go over all the discovery materials, with your
8 client?

9 A: I think his was one that we had to do because of time, I
10 gave him copies of the materials and asked him to mark it up,
11 make notes on it, return it to me, and then we would schedule
12 a meeting to go through those items, and I believe we did it
13 that way.

14 Q: Let's skip ahead to the main thrust of Applicant's
15 allegations, which all revolve around the jury instructions
16 that the Honorable Judge Hyman gave to the jury. Have you had
17 cases in front of Judge Hyman before?

18 A: Yes, many.

19 Q: Can you give me a ballpark figure about how many cases
20 you've tried in front of Judge Hyman?

21 A: With the Public Defender's office, four or five, six,
22 maybe.

23 Q: Okay. Has he, in your experience and practicing in front
24 of Judge Hyman, does -- how does he typically charge the jury;
25 does he utilize a charge book or ---

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1 A: Yes, a charge book.

2 Q: Okay. So, he typically gives standard charges?

3 A: Correct. And he's pretty astute in picking up issues and
4 including those charges as well because he's requested many
5 things that I have not requested or that the state has not
6 requested that were appropriate.

7 Q: And as previously indicated, Judge Hyman did in fact
8 charge the jury on mere presence, correct?

9 A: Yes.

10 Q: All right. Can you, at this time, conceive of any
11 additional mere presence language that you would've wanted to
12 have added?

13 A: As with any charge, Judges can expound on it and say it a
14 couple of different ways, so that I feel juries sometimes, you
15 know, we're sure that they understand it. He didn't expound
16 on it or, you know, repeat it in any length, but basically the
17 charge is there.

18 Q: Mr. Coleman also alleges you were ineffective for not
19 asking for a *Logan* charge; are you familiar with the *Griffin*
20 charge?

21 A: You would have to refresh my memory as to what the charge
22 is and I can tell you yes or no.

23 Q: If I may have just one moment.

24 A: Okay. About the circumstantial evidence, all must be
25 consistent with each other and ---

1 Q: Yes, about circumstantial evidence?

2 A: Yes.

3 MR. JAMES: Your Honor, if I may approach the witness?

4 THE COURT: You may.

5 MR. JAMES: And if Your Honor would like, I also printed
6 a copy of *State v. Logan*.

7 THE COURT: Thank you.

8 BY MR. JAMES:

9 Q: Mr. Long, if you'll flip over to Page 7, that second
10 column, there's a big old block quote in there?

11 A: Uh-huh, (affirmative response).

12 Q: Now, if you would kind of glance at that, do you recall
13 if that is roughly the charge for circumstantial evidence that
14 was given in this case?

15 A: I believe that's the same as what was charged in this
16 case.

17 Q: All right. And that is the *Griffin* charge if you follow
18 up that ---

19 A: Yeah.

20 Q: --- chain of citations above it?

21 A: Yes.

22 Q: Do you know if the *Griffin* charge is still good law in
23 this state?

24 A: I imagine it still is.

25 Q: All right. You want to flip over to Page 9 for me?

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1 A: Okay.

2 Q: The first column and towards the bottom of that first
3 paragraph; would you say it's still good law?

4 A: Yes.

5 Q: Do you think that the outcome of this case would've
6 changed if you had requested the *Logan* charge?

7 A: Do I think it probably would have affected the outcome?

8 Q: Sure?

9 A: No.

10 Q: And as you previously testified, you felt there was
11 substantial direct evidence, correct?

12 A: Correct.

13 Q: Okay. And you already testified at length that,
14 ultimately, the decision to not charge burglary second was
15 your client's decision, correct?

16 A: Yes, I would not have made that decision on my own.

17 Q: Did you counsel him in favor or against that course of
18 action or did you leave it open?

19 A: I don't recall how much time we had to discuss this in
20 court off the record. I don't know if I recommended one way
21 or the other.

22 Q: During this trial, were you aware of any incidents of
23 prosecutorial misconduct or abuse of discretion by the Trial
24 Court?

25 A: No.

1 Q: Or I suppose, break it down to one question and then the
2 other?

3 A: No, I, I, I didn't see anything that I thought was
4 improper as far as Prosecution or Court. It was a pretty fair
5 fight.

6 Q: And did you notice anything after reviewing the
7 transcript in preparation for today?

8 A: Mr. DeBusk was referring to lying from the witness stand
9 in his closing argument. In an abundance of precaution, I
10 could have objected during that closing argument. One problem
11 doing that is it just simply draws more attention to it, but
12 then when I was reviewing the cross examination of Mr. Coleman
13 by the prosecutor, he admitted to lying many times. So, the
14 prosecutor was using Mr. Coleman's words, his testimony in
15 closing argument, and I didn't feel that was improper.

16 Q: If I may beg the Court's indulgence just a moment.
17 During trial, you brought attention to the fact that Mr.
18 Coleman's Codefendant pled guilty to burglary, correct?

19 A: That's correct.

20 Q: All right. Do you recall how he put that in front of the
21 jury?

22 A: Through Mr. Coleman's testimony.

23 Q: Okay. And did you make an argument based on that fact
24 during closing?

25 A: I don't specifically recall. If I did, it would be in

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1 the transcript.

2 Q: Okay. For what purpose did you bring out the fact that
3 his Codefendant had pled?

4 A: It was our position and Mr. Coleman testified that Mr.
5 Dudley Johnson or Johnson Dudley, whichever his name was,
6 committed the actual offenses. And, the tactical decision was
7 that if the jury was aware that he pled guilty to actually
8 going in and breaking into the houses and stealing the stuff,
9 then it might shine or shed more credibility on Mr. Coleman's
10 testimony that he was not there or was in the car or did not
11 break into the house.

12 Q: In your professional opinion, what was -- how did you
13 gauge the strength of the case against Mr. Coleman?

14 A: They had a very good case against him.

15 Q: Would you describe it as substantial or overwhelming?

16 A: Overwhelming I think would be on videotape. That would
17 be overwhelming evidence. This was substantial.

18 Q: Just to be safe, I'm gonna go back into some of the
19 details of trial very briefly. Do you recall if the state
20 called the getaway driver as a witness in their case in chief?

21 A: Yes.

22 Q: All right. And do you recall if she gave a voluntary
23 statement to law enforcement at the time of arrest?

24 A: Yes.

25 Q: And was her testimony in trial consistent with that prior

1 statement?

2 A: Yes.

3 Q: Mr. Coleman made some statements to law enforcement at
4 the time of arrest, correct?

5 A: Correct.

6 Q: And those statements were recorded on a dashcam video?

7 A: Yeah and/or a shoulder mic from the officer.

8 Q: Okay. And did you request a pretrial suppression hearing
9 of those statements?

10 A: I think we met in chambers about that and the state
11 agreed, and the Judge cautioned them that those statements
12 would be inadmissible. They were custodial and pre-Miranda.

13 Q: Okay. And did the state use his statements in their case
14 in chief?

15 A: Not in their case in chief. Those were redacted from the
16 videos and that portion of the audio was not heard by the
17 jury.

18 Q: Did the state use the statements to impeach him during
19 cross examination?

20 A: Yes.

21 Q: And was the applicant's trial testimony inconsistent with
22 his prior statements to law enforcement?

23 A: Yes.

24 Q: And was it in contradiction to Shakerra Cowan's testimony
25 given at trial?

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1 A: Yes.

2 Q: Was credibility a big issue in this case?

3 A: Yes.

4 Q: Do you believe that the state overstepped the bounds in
5 arguing for Shakerra Cowan's credibility in its closing
6 argument?

7 A: That, that boundary is a very wide gray area. We're all
8 entitled to comment on the credibility of witnesses during
9 closing argument and he may've approached the boundary; I
10 don't think he crossed it. Credibility was the issue in the
11 case.

12 MR. JAMES: I beg the Court's indulgence one moment
13 longer.

14 No further questions.

15 THE COURT: All right.

16 COURT REPORTER: I'm very sorry. Can I have just a
17 minute?

18 THE COURT: Sure. Why don't we take a 10-minute break
19 and we'll come back and resume. You can't talk to anybody
20 while you're on the witness stand.

21 MR. LONG: Understood, Your Honor.

22 **(RECESS - 12:26 P.M.)**

23 *******OFF THE RECORD*******

24 **(On the Record - 12:41 P.M.)**

25 THE COURT: Who was questioning?

1 MR. JAMES: I have no further questions, Your Honor.

2 THE COURT: Mr. Selwa?

3 MR. SELWA: Thank you, Your Honor.

4 REDIRECT EXAMINATION OF J.M. LONG, III, BY MR. SELWA:

5 Q: Mr. Long, back to the issue of the circumstantial
6 evidence or the direct evidence charge, you had testified that
7 it looked like the jury charge was the *Griffin* charge; is that
8 correct?

9 A: I believe so, yes.

10 Q: And in *State v. Long -- Logan*, I'm sorry, excuse me,
11 *State v. Logan*, wasn't the Court's opinion basically that the
12 pertinent issue was the proper means for evaluating the
13 circumstantial evidence and how the Trial Court may instruct
14 the jury on how to do that?

15 A: Yeah, that's what the case was about, yes.

16 Q: Okay. And under the *Griffin* charge, there's no
17 indication on how the jury should analyze direct versus
18 circumstantial; isn't that correct?

19 A: You'd have to argue with the Supreme Court about that. I
20 don't know how I can answer that, that question.

21 Q: But the *Griffin* charge doesn't specify how circumstantial
22 evidence is to be analyzed, correct?

23 A: To the same extent, yes.

24 Q: And again, this was a case that had circumstantial
25 evidence in it, correct?

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1 A: It had some, yes.

2 Q: No further questions.

3 THE COURT: All right. Anything else?

4 MR. JAMES: I have no further questions for this witness,
5 Your Honor.

6 THE COURT: Call your next witness.

7 MR. SELWA: I call Keiron Coleman to the stand.

8 CLERK: Raise your right hand and place your left hand on
9 the Bible.

10 KEIRON COLEMAN, HAVING BEEN DULY

11 SWORN TESTIFIES AS FOLLOWS:

12 CLERK: You may have a seat. Just state your name for
13 the Court. Okay?

14 MR. COLEMAN: Keiron Coleman.

15 MR. SELWA: May it please the Court?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION OF KEIRON COLEMAN BY MR. SELWA:

18 Q: Mr. Coleman, you have made allegations against your trial
19 attorney, Mr. Long, correct?

20 A: Yes.

21 Q: Claiming that he was ineffective; is that right?

22 A: Yes.

23 Q: And those cover the allegations in your original
24 application or petition for post-conviction relief, but also
25 in your supplemental application for post-conviction relief,

1 correct?

2 A: Yes.

3 Q: And what issues do you wish to bring before the Court
4 regarding his ineffectiveness?

5 A: To object to testimony in violation of Rule 403.

6 Q: Okay. And can you explain that?

7 A: Well, during examination, the Court -- well, he raised
8 the issue under *State v. Lyle* under prior bad acts concerning
9 pending charges that I had, and the trial judge went into *Lyle*
10 exceptions as far as how if any prior bad acts was to come up
11 how we would have to meet the *Lyle* exception rules.

12 Prosecution then testified that, that there was testimony
13 or there was actions that occurred prior to the burglary,
14 immediately before the burglary, that were res gestae under
15 the res gestae that they would be offering. There was no
16 objection by Mr. Long as far as there being any further
17 explanation of what prosecution meant or what it was
18 pertaining to or what the actions or what the testimony was.
19 This was allowed to go on without any objection.

20 The testimony would wind up being Mrs. Ross' testimony
21 that would come in under the res gestae theory, which once
22 prosecution acknowledged the fact that they was going to
23 introduce testimony through res gestae, Rule 403 says that
24 there is supposed to be an analyst conducted to weigh its
25 probative value. There was none done. This same judge had

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1 his case reversed in Ryan v. -- I mean, *State v. Spears*, where
2 he committed the same offense. He failed to conduct the acid
3 test and the necessary tests concerning prior bad acts and
4 being able to weigh out the probative value of the testimony.
5 This testimony was allowed to come in without any challenge.
6 Her testimony was heard and if you read the testimony, the
7 probative value of it is extremely overwhelming from
8 throughout her testimony. And this went unchallenged by the
9 defense, which the prejudice came from her testimony as far as
10 her being afraid, how she was very frightened at the fact that
11 we were at her household and at her home, but Prosecution --
12 but Defense failed to find out what was her probable cause for
13 her calling the police outside of the fact that there were
14 black people in her neighborhood, which it came down to. Her
15 testimony came down to was some people -- when she -- when she
16 came and this was verbatim, when she looked out of her window
17 that morning, that she saw a car parked in between her house
18 and the residence next door and she saw people come out of it
19 that she felt like did not belong in her neighborhood and that
20 when we went to her -- by the time we went from her neighbor's
21 house to her neighbor's house, she was actually cross examined
22 by my counsel as far as whether or not if our actions raised
23 any suspicion or anything of that nature, and she testified to
24 no, there was no reason for alarm. But she testified that
25 when we went to her house and we rung her doorbell, she was

1 already on the phone with 911. So, outside of the fact that
2 it was two black males in her neighborhood at that time, she
3 was already on the phone with 911 making a complaint about
4 some people being in her neighborhood, but she couldn't
5 address to what exactly we, we, we were guilty of until she
6 said that when we went to the back of her house and that we
7 attempted to try her door, that there was the -- there was the
8 complaint also made that the police came. Now, my thing is,
9 he could have addressed the fact that through her own
10 suspicion and through her own fears and through her own
11 prejudice, that that had heightened her, her, her opinion as
12 far as us opening the door. When she testified that she never
13 saw us open the door, she was hiding. She said she heard us
14 opening the door. This went unchallenged also by Prosecution.
15 And like I -- I mean by the defense. And, and like I said,
16 the prejudice that occurred from that is like I said, the
17 testimony was allowed to be heard by the jury, which planted
18 us in the most, most criminal -- yes, that's -- most criminal
19 -- in the most criminal position that could be viewed by the
20 jury, and that's where I feel like the prejudice came from
21 concerning ---

22 Q: Now, Mr. Coleman, you had outlined a number of issues in
23 your PCR application ---

24 A: Uh-huh, (affirmative response).

25 Q: --- your original one. One of which prosecutorial

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1 misconduct; is that correct?

2 A: Yes.

3 Q: All right. Can you -- what are you alleging regarding
4 the prosecution's misconduct?

5 A: It goes into, I got, I got -- let me just find it real
6 quick. I'll find it for you real quick. It goes into the
7 closing arguments that went unchallenged, which none of the
8 closing arguments that he made was objected to, when he stated
9 -- he stated facts that were -- that were not true during his
10 closing argument. He testified for the -- the prosecution
11 testified for a fact that when Ms. Marotte came home, she
12 noticed that the door was open and in fact, her testimony was
13 nothing of that. Counsel failed to object to that and correct
14 that error that the state had made. He said that the door was
15 open and that she realized that the door was open when she
16 came home and that it shouldn't have been. She never stated
17 that. When he asked her whether or not if the door was open,
18 she said no, the window was ajar and then he testified that
19 they found a screen in the yard and that the screen was taken
20 off of the window. That wasn't true. And this, this was
21 stated also, let me just grab my -- my transcript real quick.

22 In opening statements with Ms. Livesay, prosecutor, this
23 is what she said, now, I'm going to tell you right now off the
24 bat, we have a burglary. The victim, Susan Marotte is going
25 to tell you, she came home that day, opened the door. She

1 said usually because the door was unlocked -- this was unusual
2 because the door was unlocked. She never testified to that at
3 trial. Nothing in her testimony supports any of that. Also,
4 she said, she said, she said, I -- I then go to the window and
5 the window was cracked and the screen has been removed from
6 the window. She never testified to that at trial. She said
7 -- she never said the screen was removed from the window.
8 This went unchallenged by Mr. Long. This was something that
9 he didn't feel that -- that should've been addressed.

10 Now, when I go back, like I said, to closing arguments,
11 just give me one quick second, okay. Now, this is what --
12 what, once again, I'm gonna repeat what the prosecutor said
13 during closing argument. Something else, and this is on Page
14 415 and this is through Paragraphs 4 through 8. It says,
15 something else, if you listen closely that Ms. Marotte told
16 you, she said when she came home, the front door was open and
17 it shouldn't have been and then she found the window that was
18 open and through the window out the door.

19 MR. JAMES: Your Honor, respectfully, I must object at
20 some point. It's been a while since we've asked a question
21 and most of what Applicant is testifying to is plainly set
22 forth in his written application.

23 THE COURT: All right. Why don't you ask a specific
24 question and see if we can't get a specific answer.

25 MR. SELWA: Yes, sir, Your Honor.

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1 BY MR. SELWA:

2 Q: Back to the prosecutorial misconduct, what specifically
3 did the prosecutor do that was, that you would consider
4 misconduct?

5 A: Is the testimony that he stated as a fact that was not
6 true. These was stated as fact as with he testified to what
7 the witness said and it's not in her testimony. None of that
8 what he said is in the testimony. So, this was lead to the
9 belief to the jury that she came home, her door was open,
10 things of that nature, and he can't misrepresent the facts of
11 the case. That's not the facts of the case. That did not ---

12 Q: You're saying that he did not object to that?

13 A: He didn't. He didn't object to nothing that was said in
14 his closing argument that was inflammatory.

15 Q: And the next, you also made claim that statements by your
16 trial counsel prejudiced your defense; is that correct?

17 A: Yes, I'm gonna go to his closing argument. I'm just
18 gonna start with that first and foremost. I'm gonna go to
19 closing arguments.

20 Q: You took issue with him stating that he respected and
21 admired both prosecution -- prosecutors, correct?

22 A: Yes, he was praising prosecution, the adversary, in his
23 closing arguments as far as what type of good job that they
24 did and how they know how to trial cases as to say what for
25 yourself then. If they know how to do all these things and

1 they're, they're perfect in their representation, what does
2 that go to say about your representation. If you're
3 glorifying them during your closing arguments, when you're
4 supposed to be defending me, that's betrayal of counsel. He's
5 betraying counsel at that -- at that moment. He's not
6 supposed to side or compliment the adversary at any time.

7 Q: And you also took issue with the entry of ---

8 A: Oh, excuse me, I don't want to cut you off. Also during
9 his closing arguments, he speaks about his performance and
10 about his responsibilities as defense counsel and I have -- I
11 have to quote him for what he said during closing arguments.
12 Where you have on Page 396 from Paragraph 19 to 25, he said
13 I'm not taking notes while some witnesses are testifying or
14 while I'm asking those witnesses questions. So, the pages of
15 notes I have, incomplete. I could spend all last night if I
16 wanted to going through and trying to recount every witness
17 and every statement and every contradiction and things of that
18 nature. That's not for me to do. No, he said that's for you
19 to do, not me, and that part of the investigation, that part
20 of counsel responsibility is to do these same things that he
21 say he's not supposed to do, and he said this during closing.
22 It's on the record.

23 Q: So, you also took issue with the entry of some redacted
24 information; is that correct?

25 A: What do you mean, if you just go into that?

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KEIRON COLEMAN - DIRECT BY SELWA

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1 Q: In your application, you allege that there was testimony
2 and a video that was not supposed to be heard by the jury?
3 A: Exactly and they brought that up earlier. Now, I'm
4 trying to memorize that. I know that very well. It's
5 concerning -- it was concerning a motion put in by my
6 codefendant, Mr. Mureddu, a motion to severance. Where in the
7 motion to severance, they undermine the motion by also
8 conducting a suppression hearing. Prosecution requested that
9 the statements between Defendants and law enforcement would
10 not be coming in. We would not be bringing any of those
11 statements in. We won't be bringing any statements, any
12 custodial or pre-custodial statements made to law enforcement
13 by the defendants. That was one time that it was addressed.
14 The second was where counsel spoke of earlier. It was
15 addressing an agreement that those -- those same statements,
16 those statements that was made during the custodial
17 interrogation, would not be coming in. Prosecution, I mean
18 defense, went on to say and he was -- and he was absolute when
19 he said this -- I'm gonna find the page for you real quick.
20 I'm starting from Page 164 from Paragraph 12 to 19. Following
21 that, there is some audio interrogation that occurs and this
22 of course is pre-Miranda. So, the solicitor and I have agreed
23 that basically once the officer gets them out of the car and
24 determines their identity, we're going to turn the speakers
25 off on the video, continue to watch the video, but we will not

1 have any possibility of interrogation or interview. We will
2 not have any possibility of interrogation or interview. The
3 Court response is on Paragraph 20. All right. How long are
4 we going to watch this? The prosecution reply is on Page, I
5 mean Chapter 22, I mean, Paragraph 22 on the same page. Mr.
6 DeBusk: Your Honor, it's going to be 30 minutes long starting
7 from where the officer turns onto McCormick Road until they
8 get Mr. Coleman out of the car. The Court: Okay. Once
9 again, Prosecution, turning off the audio after he secures the
10 man.

11 Then you have the instruction by the ---

12 Q: Did they turn the video or the audio off?

13 A: They hadn't played the video yet, but they wind up
14 turning the video -- yeah, they wind up -- they eventually
15 turn the video and it showed the video; you didn't hear the
16 audio. The video was played and it showed the events from
17 where they said what would take place and what would -- and
18 that would transpire.

19 Q: And how are you claiming that Mr. Long was ineffective?

20 A: Because they played the audio over the instruction of the
21 Judge and the agreement that was made that that audio would
22 not be in evidence. The audio was removed, those statements
23 was removed from evidence when prosecution requested that
24 during pre-trial matters. So, that audio, those same
25 statements that I was cross examined on, should have never

Coleman v. State - 2015-CP-26-07569
KEIRON COLEMAN - DIRECT BY SELWA

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1 been heard, should have never been at trial. They weren't in
2 evidence, to first to be even cross examined or introduced at
3 trial. And through the agreement, I didn't do anything or say
4 anything on the witness stand that would have allowed or
5 breached the agreement that was made of those statements not
6 coming into trial. I didn't mention anything concerning what
7 I said with law enforcement. In fact, prosecution tried to
8 lead me in by asking me, so, you don't want to hear the
9 statements that you said; you sure don't want to hear it; you
10 sure you ain't say that. And when I said I didn't know, then
11 he asked the Judge and over his own instruction, he overruled
12 his own instruction and allowed them to play the audio to the
13 jury. Not once, but several times with no regard to the -- to
14 the stipulations that it would only be 30 minutes and that it
15 would only show. There was stipulations to the video that and
16 one of the stipulations to the video, and through the
17 agreement, was that the audio would not be played and the
18 other one that was -- it would only be 30 ---

19 MR. JAMES: Your Honor, I object. He's been over this
20 multiple times.

21 THE COURT: Sustained.

22 BY MR. SELWA:

23 Q: Moving on, Mr. Coleman, you also indicated that counsel
24 was ineffective for not objecting to testimony of Shakerra
25 Cowan; is that correct?

1 A: Yes, her testimony was in violation of Miranda. Her
2 testimony was in violation of Miranda and they never
3 Mirandized any of us. That's why they didn't want the
4 testimony or the statements that was made during the
5 interrogation -- during the custodial interrogation to come
6 in. That was the purpose that prosecution asked that or
7 requested that they would not bring in any of those statements
8 made to Defendants and law enforcement because they was in
9 violation of Miranda, and my lawyer knew that and he didn't
10 bring up the Miranda violation or put up a motion in
11 suppression when the video shows clear that we were never
12 Mirandized from the time of arrest. He failed to do that as
13 well.

14 Q: All right. Mr. Coleman, what other issues do you wish to
15 bring before the Court in regards to your PCR application?

16 A: Another argument that I would like to raise, is
17 concerning a statement made by law enforcement officer Natalie
18 Boyd, where during her interrogation, or during her testimony,
19 I apologize, during her testimony, she was asked if anything
20 was removed from the car that we were arrested in that was
21 basically placed into evidence and she went on further to say
22 that there was a pack of cigarettes and an item inside of the
23 pack of cigarettes that belonged to the driver. There was no
24 challenge by prosecution, I mean, excuse me, by the defense
25 inquiring what that item was which could've been impeachable.

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KEIRON COLEMAN - DIRECT BY SELWA

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1 And we didn't know that there was a -- that they confiscated a
2 pack of cigarettes and a item from Ms. Shakerra Ross until Ms.
3 Boyd, Officer Boyd testified at trial. It was never in my
4 discovery. It's not in any report. It's in none of the chain
5 of events that they had in evidence, a pack of cigarettes with
6 an item belonging to ---

7 Q: How was that ineffective of Mr. Long to not address that?

8 A: Because it could've been impeached. If he would have
9 inquired -- he failed to inquire what this item was and for my
10 defense, which could've been impeachable evidence that
11 could've showed that if it was a drug, that she might have
12 been under the influence at the time of when this incident
13 took place and then it would go to the credibility of her
14 testimony.

15 Q: All right. Any other issues you wish to bring before the
16 Court?

17 A: No, I am satisfied with what I've -- I've offered, yes.

18 MR. SELWA: No further questions for this witness.

19 THE COURT: All right. Cross examination?

20 MR. JAMES: I have no questions of this witness.

21 THE COURT: All right. You may step down. Thank you.
22 Call your next witness?

23 MR. SELWA: No further witnesses, Your Honor.

24 THE COURT: All right. State will call your first
25 witness then.

1 MR. JAMES: Before the state proceeds to call the first
2 witness, the state would respectfully motion for a directed
3 verdict as to the issue of ineffectiveness of appellant
4 counsel. There's been no testimony introduced to show any
5 appellant counsel, Wanda Carter. Issue was submitted -- found
6 no issues.

7 MR. SELWA: I have no response ---

8 THE COURT: Your motion is granted.

9 MR. JAMES: Thank you, Your Honor. If I may have a very
10 brief two or three minute recess to inform Ms. Carter that she
11 will not be testifying in this matter?

12 THE COURT: Sure.

13 MR. JAMES: Thank you. And after that, I do intend to
14 recall Mr. Long.

15 Thank you, Your Honor, the state calls back to the
16 witness stand, Buddy Long.

17 J.M. LONG, III, HAVING BEEN DULY
18 SWORN TESTIFIES AS FOLLOWS:

19 CLERK: Please have a seat.

20 REPLY DIRECT EXAMINATION OF J.M. LONG, III BY MR. JAMES:

21 Q: Mr. Long, we have already become well acquainted with one
22 another earlier, so I only have a few brief questions. Did
23 you object to the video being used for impeachment purposes?

24 A: Yes, I believe so, and the objection was overruled
25 because the audio portion of the video that was redacted, was

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J.M. LONG, III - REPLY DIRECT BY JAMES

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1 allowed to be used by the state for impeachment purposes while
2 Mr. Coleman was on the stand -- after he had testified.

3 Q: You argued that point?

4 A: Yes.

5 Q: And the Judge let it in?

6 A: He overruled my objection and allowed them to use it for
7 impeachment.

8 Q: Mr. Coleman alleges, complains that the Judge made a
9 decision to the contrary to his earlier decision. In your
10 experience, do Judges sometimes change their mind about a
11 prior ruling?

12 A: They do. Sometimes they reconsider their decision.
13 However, I don't think he had to do that in this situation.
14 Once he testified and his testimony was contradictory to what
15 was -- what was redacted, the state was permitted to bring
16 that in for the purposes of impeachment. It was not -- it was
17 not -- it was suppressed, the jury would not -- the jury would
18 not hear it during the state's case in chief. That was the
19 agreement.

20 Q: When the state, in its opening statement, set some
21 expectation that that certain evidence or testimony will be
22 introduced, and that evidence or testimony does not come in,
23 in your professional opinion, does that hurt your case or does
24 it inure to your benefit?

25 A: It helps the case, and I think Mr. Coleman had the wrong

1 impression of my self-deprecating statements. I typically ---
2 Q: We can get to that in just a moment.
3 A: Okay. I was just gone bring that up.
4 Q: We'll just play along in order.
5 A: Okay. Go ahead.
6 Q: So, in your opinion, any inconsistency between the
7 state's opening and the evidence that was introduced at trial,
8 helped your case?
9 A: Correct. /
10 Q: And why does it do so?
11 A: It just shows inconsistencies in the state's case.
12 Q: Okay. Mr. Coleman also alleges and complains that you
13 were unduly complimentary of the state. Why -- what point
14 were you trying to make there?
15 A: That's -- the point of my self-deprecating remarks, I
16 tell the jury that they're at least 12 times more competent
17 than I am about remembering who said what about when and, you
18 know, how it fits in with the evidence. And for me to try to
19 tell them what a witness said from the witness stand is just
20 counter-productive; it doesn't work. And so, I caution them
21 that if I tell them anything different, please disregard what
22 I tell them and, in the same breath I say, and that counts --
23 that goes for the state as well. If they tell you anything
24 different from your recollection of what came from the witness
25 stand, disregard that as well.

Coleman v. State - 2015-CP-26-07569
J.M. LONG, III - REPLY DIRECT BY JAMES

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1 Q: So, all of that is part of your standard practice of
2 empowering the jury?

3 A: Correct.

4 Q: Have you ever successfully jotted down a complete
5 transcript of a trial that you were -- of a case that you were
6 trying?

7 A: Never, not even close.

8 Q: Do you know any attorney who has?

9 A: Never, not even close.

10 Q: If you ever meet them, please introduce me to them.

11 A: Well, they'd have to bring their own court reporter into
12 the proceedings and have instant transcript.

13 Q: When we are admitted to the bar, we have to take a
14 certain oath; is that correct?

15 A: Correct.

16 Q: And part of that oath is an oath of civility, correct?

17 A: Correct.

18 Q: And would you say that your compliments and regard for
19 the state and the state's attorney is consistent with that
20 oath of civility?

21 A: Yes, I'm not complimenting them on the job they did in
22 this case. I'm complimenting them on the job they do in
23 general, but I do -- I would put a but with it and say that
24 they are human also and they have other tasks they're doing in
25 the courtroom and they don't have a transcript in the end

1 effect of what took place.

2 Q: And your obligations to your client and your obligations
3 pursuant to that oath in your statements thereto are all
4 consistent?

5 A: I believe so, yes.

6 Q: Okay. Do you have any idea what was in the cigarette
7 package that Mr. Coleman ---

8 A: I want to think it was marijuana because she was charged
9 with possession of marijuana, but I'm thinking the discovery
10 materials, this has been a long time ago, but I think the
11 marijuana was found in her purse. So, I don't know if it
12 would have been paraphernalia found in her cigarette pack; I
13 don't know. I just don't think it was relevant.

14 MR. JAMES: I have no further questions, Your Honor.

15 THE COURT: All right. Any cross?

16 MR. SELWA: Court's indulgence one moment, Your Honor.

17 REPLY CROSS EXAMINATION OF J.M. LONG, III, BY MR. SELWA:

18 Q: Mr. Long, the presence of a marijuana cigarette, would
19 that have affected the issues of credibility to Ms. Cowan's
20 testimony?

21 A: Not in my opinion, no.

22 Q: Did you have any indication that she was under the
23 influence of any intoxicants through the record or evidence or
24 investigations that you conducted?

25 A: No, I mean, they may have smoken -- smoked, you know,

Coleman v. State - 2015-CP-26-07569
J.M. LONG, III - REPLY CROSS BY SELWA

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1 marijuana earlier. That's not anything that's in the record
2 or anything I was aware of, but she was the driver of the
3 vehicle. So, I assume her facilities were all intact.

4 Q: Mr. Long, in that video that was redacted, was the audio
5 portion of the redaction, was that Mr. Coleman or was that his
6 codefendant on there?

7 A: We wouldn't have grounds to redact the codefendants'
8 statements unless they were directed toward Mr. Coleman. It
9 was his, my understanding, Mr. Coleman's statements to police
10 officers about where they were, what they were doing, and I
11 think the redacted portion was, was Mr. Coleman saying some
12 people owed him some money and that he was there to try to
13 collect the money owed to him by some people in the
14 neighborhood. When he testified, it was different that the
15 money was owed to the codefendants and he was just there, you
16 know, as backup for them. And so, that's the reason it was
17 allowed in on credibility for -- it was contradictory.

18 Q: Thank you. No further questions.

19 THE COURT: All right.

20 MR. JAMES: I have no further questions.

21 THE COURT: You may step down.

22 MR. LONG: Thank you, Your Honor.

23 THE COURT: Anything else?

24 MR. JAMES: No more witnesses for the state, Your Honor.

25 BY THE COURT:

Coleman v. State - 2015-CP-26-07569
BY THE COURT

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1 THE COURT: All right. I'll take it under advisement and
2 let you know something by the end of the week.

3 MR. SELWA: Thank you, Your Honor.

4 MR. JAMES: Thank you, Your Honor.

5 THE COURT: Thank you.

6 (ADJOURNED - 1:19 P.M.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Keiron K. Coleman vs. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on September 18, 2017.

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



Kay H. Richardson
Official Court Reporter

April 22, 2018.



Renee N. Elvis
CLERK OF COURT
1301 2ND AVENUE
CONWAY, SC 29526
(843) 915-5080 • Fax: (843) 915-6081

November 8, 2017

Re: 2015-CP-26-07569

**Keiron Coleman, #359333
McCormick Correctional Institution, F4-0141-A
386 Redemption Way
McCormick, Sc 29899**

Mr. Coleman,

We received your letter requesting information on your PCR Hearing held on August 18th, 2017; and your attorney's contact information.

Please see the enclosed copy of your Form 4, signed by Judge Hyman that your application is under advisement.

Also, I have included your attorney, Daniel A. Selwa, his contact information.

If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

Renee N. Elvis

**Renee N. Elvis
Horry County Clerk of Court**

RNE/jph

MAIL ROOM

NOV 06 2017

NOV 06 2017

RECEIVED

THE DEPARTMENT OF CORRECTIONS
INSPECTED OR RE-INSPECTED THE MAIL
THE DEPARTMENT OF CORRECTIONS ACCEPTS RESPONSIBILITY
FOR ITS CONTENTS.

McCORMICK CORRECTIONAL INST.
S.C. DEPARTMENT OF CORRECTIONS

NOV 31 2017

576-20

843-492-5449

Dear Mrs Ward

15-7569

Do you have record of the courts decision from
Aug 18th 2017 PCR hearing from judge seats i was
told at the end of the hearing i would get his decision
the following week i've yet heard anything from the court
or my lawyer Daniel A Selwa II i dont have his new address
Do i have to put a motion in or can some one tell me
what the decision is thank you

Keiron Coleman 359333

RE
CLE

2017 NOV -0 PM 3:41

FILED
HARRY PORTER

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF Horry
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP2607569

Keiron Kyle Coleman		South Carolina State of	
---------------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk of Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

The application for Post Conviction Relief is Under Advisement.

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



 Circuit Court Judge

2157
~~354~~

 Judge Code

9/18/17

 Date

For Clerk of Court Office Use Only

This judgment was entered on . and a copy mailed first class or placed in the appropriate attorney's box on . to attorneys of record or to parties (when appearing pro se) as follows:

Keiron Kyle Coleman McCormick Correctional Inst. 386
Redemption Way McCormick, SC 29899
Daniel A. Selwa II 516 29Th Avenue North Myrtle Beach,
SC 29577

Alan McCrory Wilson PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Kay Richardson

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED
HORRY COUNTY
2017 SEP 17 2M 4: 58
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Daniel A. Selwa, II

Address:

516 29th Ave N, Myrtle Beach, SC 29577

Phone:

(843) 492-5449

Website:

<http://www.sclawyers.net/>

Hours

Monday - Friday 9:00 AM - 5:00 PM

Rearms Elvis Re: Copy of finding of facts and conclusion of law
and 59(e) to be included in courts decision in
Case 15-7569

Case 15-7569

While my case is under advisement can the Court be reminded
to conduct a finding of the facts and conclusion of law on my case
by judge seats 2157 judge code as well as a 59(e) for my records
in case my case has been denied. I've been told that these procedures
should automatically be included in my order but some times there
not and you have to motion for them so to prevent any errors in obtaining
the Court to address the following request while my case is still being
considered. Thank you

Keiron Coleman #359333

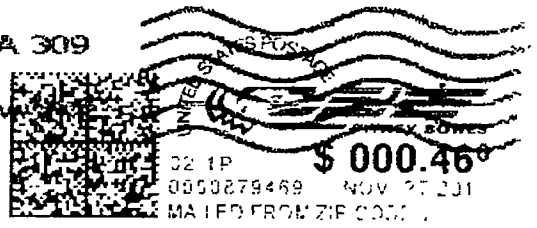
FILED
Horry County
2017 NOV 29 PM 1:21
RENEE N. ELVIS
CLERK OF COURT
Horry County

Keiron Coleman # 359333
MC E 04-041-A
386 Redemption way
McCormick, SC 29829

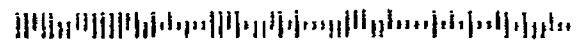
MS Renee N. Elvis
Clerk of Court
1301 2nd Avenue
Conway, SC 29526

AUGUSTA GA 309

27 NOV 2017 PM



2952635209



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Keiron Kyle Coleman,)	Case No.:2015-CP-26-07569
S.C.D.C. No. 359333,)	
)	
Applicant,)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

FILED
 Horry County
 Clerk of Court
 2017 DEC - 6 PM 4:50
 Horry County, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Keiron Kyle Coleman (“Applicant”) on October 20, 2015. Respondent made its return on or about February 26, 2016. The Court convened an evidentiary hearing into the matter on September 18, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Daniel A. Selwa, II, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, J.M. Long, III, Esquire (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2013 term of the Horry County Grand Jury for burglary, first-degree (2013-GS-26-02238). J.M. Long,

III, Esq. represented Applicant. George DeBusk, Jr., and Nancy R. Livesay, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Larry B. Hyman, Jr. and a jury. The jury found Applicant guilty as indicted on March 13, 2014. Judge Hyman sentenced Applicant to imprisonment for a term of 25 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Wanda II. Carter, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion and granted Counsel's motion to be relieved. State v. Coleman, Op. No. 2015-UP-386 (S.C. Ct. App. filed July 29, 2015). The Remittitur was issued on August 14, 2015.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. "Counsel failed to object to prosecutions misconduct-vouching and bolstering of witnesses."
 - b. "Counsel's statements prejudiced defendant's defense."
 - c. "Counsel failure to request suppression and pretrial hearing."
 - d. "Counsel failed to object to" the testimony of State witness Ms. Shakerra Cowan "to see if statements were valid under the Miranda rule."
 - e. "Counsel failed to object to trial prejudice statements and abuse of discretion."
2. Ineffective assistance of appellate counsel, in that:
 - a. "Appellate counsel failed to argue or assert prosecutorial misconduct."
 - i. "Evidence of such misconduct during trial and closing arguments."
 - b. "failed to find any issues with merit on trial"
3. Trial court error
4. Prosecutorial misconduct

Applicant, by and through PCR counsel, amended his application on May 22, 2017, to allege he is being held unlawfully for the following reasons:

1. "Trial counsel failed to request a jury instruction for mere presence."
 - a. "The evidence and testimony at trial supported a charge of mere presence. The jurors could have acquitted [Applicant] based on a mere presence instruction from the judge and based on [Applicant's] testimony."
 - b. "The law to be charged is determined by the evidence presented at trial. Mere presence instructions are required when evidence supports the conclusion that the defendant was merely present at the scene where drugs were found and it was questionable whether the defendant had a right to exercise dominion and control over them." Brunson v. State, 324 S.C. 117, 477 S.E.2d 711 (1996), citing State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989)."
 - c. "Coleman's testimony at trial was that he remained in the car upon arrival at the Marotte house which is the subject of the charged burglary. Coleman believed that he, Dudley, and Cowan were at the Marotte residence to collect on a debt from an associate of Cowan's. Coleman was unaware that Dudley had committed a burglary until they were apprehended and arrested by police. The jury was free to believe Coleman's testimony which supported a jury instruction of mere presence."
2. "Trial counsel failed to request the appropriate jury instruction on circumstantial evidence pursuant to State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013)."
3. "Trial counsel failed to request the lesser included offense of burglary in the second degree."
 - a. "'A trial judge is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater.' Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004), Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999), State v. Drafts, 340 S.E.2d 784, 288 S.C. 30 (1986), State v. Gandy, 283 S.C. 571, 324 S.E.2d 65 (1984), State v. Tyson, 283 S.C. 3875, 323 S.E.2d 770 (1984)."
 - b. "Coleman's conviction for burglary first degree was based solely on prior convictions for burglary charges which the jurors were free to disregard. The only evidence presented to the jury to establish the prior convictions were records from a court in NJ which were redacted and photocopied. The jurors could have found that these records were not reliable and opted to convict Coleman for burglary second degree, but they were not given this option."

At the evidentiary hearing, Applicant proceeded forward primarily on the amended grounds.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed

ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

IAC Allegation #1 – Failure to Request Mere Presence Instruction

Applicant alleges counsel was ineffective for failing to request an instruction on mere presence. Mere presence is generally applicable in two circumstances:

First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Secondly, mere presence is generally an issue where the state attempts to establish the defendant’s possession of contraband because the defendant is present where the contraband is found. In such cases, the trial court may be required to charge the jury that the defendant’s mere presence mere the contraband does not establish possession.

State v. James, 386 S.C. 650, 653-54, 689 S.E.2d 643, 645 (Ct. App. 2010) (quoting State v. Dennis, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996)).

At trial, Judge Hyman charged the jury that:

... mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element but there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act.

Intent means intending the result which actually occurs, not accidentally or involuntary. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

Tr. 428-29. At the evidentiary hearing, Counsel expressed ambivalence about seeking an expanded instruction on mere presence and testified he did not feel Applicant's case hinged on mere presence.

The Court finds that the record clearly indicates that the Court did so instruct the jury. Applicant consequently cannot show any prejudice and, accordingly, his request for relief as to this allegation is **DENIED**.

LAC Allegation #2 – Failure to Request Logan Charge on Circumstantial Evidence

Applicant also alleges that Counsel failed to request a charge on circumstantial evidence pursuant to State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). In State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997), the Supreme Court of South Carolina adopted the reasoning that “if a proper reasonable doubt instruction is given, a jury need not be instructed that circumstantial evidence must be so strong as to exclude every reasonable hypothesis other than guilt.” Id., 327 S.C. at 83, 489 S.E.2d at 464 (citing Holland v. U.S., 348 U.S. 121 (1954)). Pursuant to that reasoning, the Court recommended a specific jury instruction for circumstantial evidence:

There are two types of evidence which are general presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Id., 327 S.C. at 83-84, 429 S.E.2d at 464 (citation omitted). Subsequently, the Supreme Court, in order to eliminate any confusion in circumstantial evidence instructions, affirmed the above language as “the sole and exclusive charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction.” State v. Cherry, 361 S.C. 588, 601, 606 S.E.2d 475, 482 (2004).

The Supreme Court substantially modified its restrictive ruling in Cherry in State v. Logan. Logan provides that defendants should not be restricted from requesting a jury charge that reflects the requisite connection of collateral facts necessary for conviction and, thus, Courts must provide the following alternative language in its jury instructions when so requested by a defendant:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant’s behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id., 405 S.C. at 99, 747 S.E.2d at 452. Though the Court must give the above charge if requested by a defendant, the Grippon instruction remains valid. Id., 405 S.C. at 100, 747 S.E.2d at 452-53.

At trial, Counsel did not request a Logan charge prior to instructions, nor did Counsel object after the instructions. Tr. 342-47, 431. During the charge conference, Judge Hyman indicated he would charge on direct and circumstantial evidence and, further, noted "[t]hat charge has been modified, as you all know, in the last year or so." Tr. 343. Judge Hyman did not further indicate precisely to which modification he was referring. Judge Hyman thereafter instructed the jury on circumstantial evidence with a slightly modified Grippon charge:

Now, there are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proven. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Tr. 423-24.

At the evidentiary hearing, Counsel testified that he did not ask for a Logan charge either because he simply overlooked it, or because he did not believe the case against Applicant to be a

circumstantial one. Counsel noted that there was direct witness testimony against Applicant. Counsel could not say whether or not a Logan charge would have changed the outcome of the case.

The Court finds that Counsel's failure to request a Logan charge does not amount to deficient performance, nor can this Court discern any prejudice that would result if it did. First, as a matter of law, the Court cannot reconcile Applicant's proposition that failure to seek a Logan charge constitutes deficient performance with the Supreme Court's preservation of the Grippon charge as valid—if satisfaction with and reliance upon the Grippon charge by trial counsel were a deficiency, then Grippon would, as a practical matter, no longer constitute valid charge. Second, the Court cannot determine what, if any, prejudice Applicant suffered from the lack of the Logan language, given the substantial case against him—after a witness specifically identified his vehicle as suspicious to a law enforcement officer *in person*, Applicant was found in the vehicle with property stolen from a house located on the cul-de-sac in which the vehicle was identified. The driver of the vehicle, a co-conspirator, testified to dropping Applicant off near houses only for him to return with assorted property. Simply put, all of the circumstances were consistent with each other, and pointed conclusively to Applicant's guilt beyond a reasonable doubt. Applicant cannot show any deficiency of counsel or prejudice therefrom by way of this allegation and, accordingly, his request for relief is DENIED.

IAC Allegation #3 – Failure to Request Lesser-Included Offense of Burglary, Second Degree

Applicant alleges that Counsel was deficient by failing to request the jury be charged on the lesser-included offense of burglary, second degree. "A trial judge's determination of what law should be charged is made from the evidence presented. A request to charge on a lesser included offense is properly refused when there is no evidence that the defendant committed the

lesser rather than the greater offense." State v. Goldenbaum, 294 S.C. 455, 457, 365 S.E.2d 731, 732 (1988) (citations omitted).

At trial, Counsel specifically requested a charge on burglary, second degree as a lesser-included offense, arguing the jury could choose to reject evidence that Applicant had two prior burglary convictions. Tr. 343-44. After some argument before the Court, Counsel and Applicant conferred:

MR. LONG: Your Honor, after speaking with my client, he says he agrees that possibly if there's convictions been introduced into evidence, there is no reason to request second degree. So we prefer the all or nothing on first.

Tr. 346, ll. 21-25. Judge Hyman charged the jury only on burglary, first degree. Tr. 424-27.

At the evidentiary hearing, Counsel testified that he initially asked for the lesser-included charge but, after speaking with Applicant in the courtroom, Applicant decided to go all-or-nothing. Counsel testified the decision was a calculated gamble against the possibility of conviction-by-compromise. Counsel testified the choice to go all-or-nothing on burglary, first degree was Applicant's decision.

The Court finds no deficiency on the part of counsel nor prejudice therefrom. The trial transcript and Counsel's testimony show the choice to proceed without further demand for an instruction as to burglary, second degree was clearly Applicant's decision. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

IAC Allegation #4 – Failure to Object to Testimony of Nancy Sue Ross

Applicant testified at the evidentiary hearing that Counsel was ineffective by failing to object to the testimony of witness Nancy Sue Ross on grounds that her report to law enforcement was racially motivated. There is no evidence in the record before this Court to show any racial prejudice on the part of the witness, nor would it be relevant to her competence to testify. See

Rule 601, SCRE ("Every person is competent to be a witness except as otherwise provided by statute or these rules."). Accordingly, the Court finds no deficiency of counsel or prejudice therefrom, and Applicant's request for relief by way of this allegation is **DENIED**.

IAC Allegation #5 – Praise of Law Enforcement, Prosecution in Closing

Applicant testified at the evidentiary hearing that Counsel was ineffective due to his compliments offered in closing argument regarding law enforcement and the prosecution. To wit:

And police officers, God bless them, I respect and admire the job they do. I don't expect them to do anything beyond what any of us could do, because we're all human, we all make mistakes, we all have opinions, perceptions, things of that nature. And I understand all that. But police officers, and as I'm afraid I would be, become a little calloused, become a little prejudiced.

...

I don't have an opportunity to speak to you again, because we have put testimony up in the defense case. That means we lose the last argument. The State is permitted to make the last argument. And I respect and admire both of these prosecutors. They do a good job. They are effective in the courtroom. They know how to handle cases. They know how to try cases. They know how to make closing arguments. So a lot of things I have dealt with in my closing argument, they have the last word on that. I simply ask you to keep an open mind throughout this entire process until the case is yours for your deliberation.

Tr. 399, 406. At the evidentiary hearing, Counsel testified to the oath of civility to which attorneys in South Carolina are bound. Counsel further testified that his instances of self-deprecation and due regard to the State were intended to empower the jury

The Court finds no deficiency or prejudice therefrom by Counsel's statements. The record shows that Counsel's kind regards for law enforcement served as preface for his subsequent argument that they were "calloused" in their investigation. Counsel's civility with respect to opposing counsel similarly prefaced an admonition to the jury to "keep an open mind"

throughout the State's closing, in recognition that the prosecution would receive the final say. Counsel conceded no facts. The trial transcript and Counsel's testimony show that these remarks were made with regard to affirmative, valid trial strategy, which this Court will not second-guess. See Smith, 386 S.C. at 567, 689 S.E.2d at 632. Applicant has cannot to meet his burden of proving either prong of Strickland and, accordingly, his request for relief as to this allegation is **DENIED**.

IAC Allegation #6 – Failure to Object to Testimony of Shakerra Cowan

Applicant testified at the evidentiary hearing that Counsel was ineffective by failing to object to the testimony of witness and co-conspirator Shakerra Cowan on grounds that her testimony was the result of a violation of her rights under Miranda v. Arizona, 384 U.S. 436 (1966). This allegation is patently without merit as a matter of law. Applicant has no standing to invoke any of Ms. Cowan's own rights against her decision to testify. Accordingly, the Court finds no deficiency of counsel or prejudice therefrom, and Applicant's request for relief by way of this allegation is **DENIED**.

IAC Allegation #7 – Failure to Impeach Shakerra Cowan on Drug Possession

Applicant testified at the evidentiary hearing that Counsel was ineffective by failing to impeach witness Shakerra Cowan with the discovery of drugs during the search of the vehicle. At trial, Horry County Police Department Officer Natalie Boyd testified to the discovery of certain items during the search of the vehicle in which Applicant and his associates were apprehended:

Q. Okay. And if you don't mind, tell the jury what you found from searching the car.

A. I found on the passenger – on the front passenger floorboard, I found two jewelry boxes. One was a black box with a white skull on it, and the other was a white jewelry box with flowers on it, and they both contained miscellaneous

jewelry in them. *I also found two plastic baggies with a green, leafy substance in them.* And in the – in the glove box, I found more jewelry items and a blue Sony camera.

...

Q. What other items did you remove from the car?

A. A blue Sony camera and *two plastic baggies with green leafy type substance in them.*

...

Q. Okay. And at any point, did you remove anything that did belong to the driver from the car?

A. Yes, I did. It was a pack of Newport – it was Newport cigarette box, which was empty (and – other than, as far as cigarettes go, and it had an item in it.

Tr. 251-53 (emphasis added). Boyd did not further elaborate on what "item" was discovered in the otherwise empty Newport packaging. On cross-examination, Counsel elicited testimony from Cowan to indicate she smoked marijuana earlier on the day in question. Tr. 307-08.

At the evidentiary hearing, Applicant argued the above testimony suggested drug possession on the part of the driver, Ms. Cowan, and that Counsel should have impeached her on her drug possession. Counsel testified that Ms. Cowan was maybe caught with some marijuana, but that he did not feel it was relevant.

The Court finds that Counsel achieved whatever limited impeachment value may have existed by virtue of Cowan's marijuana possession and use through his cross-examination of the witness. Accordingly, the Court finds no deficiency of counsel nor prejudice therefrom and Applicant's request for relief as to this allegation is **DENIED**.

IAC Allegation #8 – Failure to Suppress Video Statement

Applicant testified at the evidentiary hearing that Counsel was deficient by his failure to object to and suppress the introduction of video-recorded statements he made during his arrest.

At trial, when the State initially moved the dash-cam video into evidence, Counsel objected "on general principle." Tr. 148. When the State sought to publish the video, the jury was excused to take a break and Counsel engaged in a more thorough explanation of matters outside their presence:

MR. LONG: As Mr. DeBusk told you, it's five CDs long. I think we're going to start at the point where the officer's car was parked in front of the Ross residence and the suspect vehicle drives by, the low-speed chase or following, the stop, and the identity when he pulls the occupants out of the vehicle and gets their identity.

Following that, there is some audio interrogation that occurs. And this, of course, is pre-Miranda so the solicitor and I have agreed that basically once the officer gets them out of the car and determines their identity, we're going to turn the speakers off on the video, continue to watch the video, but we will not have any possibility of interrogation or interview.

Tr. 164. The audio was muted during the agreed upon portion of the tape during which Applicant made his statements. Tr. 167-68.

Applicant later took the stand in his own defense and testified that he went to the neighborhood in order to collect money for Shakerra Cowan and/or Dudley Jordan. Tr. 377. Applicant denied collecting money for himself. *Id.* The State thereafter confronted Applicant with his prior inconsistent statement from the video, where Applicant told law enforcement he was in the neighborhood to collect money for himself. *Id.* Counsel objected. Tr. 377-78. The State then published, over Counsel's objection, the previously silenced portion of the video containing Applicant's statement. Tr. 378-79. Confronted with the inconsistent statement, Applicant testified that his statement to law enforcement was a lie "to protect all of us." Tr. 380. The State continued to grill Applicant on his statements to law enforcement, prompting additional objection from Counsel that the statements were made in a pre-Miranda, custodial interrogation. Tr. 381-82. The Court permitted the questioning on the basis that even a pre-

Miranda statement could be used for impeachment purposes, and cited to Oregon v. Elstad, 470 U.S. 298 (1985). Tr. 382. The prosecution followed up and offered two additional cases in support: State v. Brown, 296 S.C. 191, 371 S.E.2d 523 (1988); and Oregon v. House, 420 U.S. 714 (1975). Tr. 383.

The Court finds no deficiency on the part of Counsel or prejudice therefrom. Counsel promptly raised to the Court the issues about which Applicant complains and the Court properly dispensed with those objections in light of clear case law on point. Given Applicant's testimony, the statements were admissible for impeachment purposes. Applicant cannot meet his burden of proving either prong of Strickland by way of this allegation and, accordingly, his request for relief is **DENIED**.

B. Ineffective Assistance of Appellate Counsel

Applicant originally alleged that appellate counsel was ineffective. This allegation was not included in the amendment filed May 22, 2017, and no evidence of was introduced at the evidentiary hearing to support it. Upon motion by Respondent, this Court granted a directed verdict to Respondent at the close of Applicant's case at the hearing. Accordingly, any request for relief by way of this allegation was, and is, **DENIED**.

C. Prosecutorial Misconduct

Applicant originally alleged prosecutorial misconduct. At the evidentiary hearing, Applicant testified to his belief that the State misrepresented in its opening statement what testimony would be forthcoming, and then misrepresented in its closing argument the testimony that was presented. Upon review of the trial transcript, the Court finds no merit to these allegations; the opening and closing statements by the prosecution were well within the bounds of accuracy and fairness in light of the evidence introduced at trial. Furthermore, both the trial

judge and Counsel instructed the jury that the opening and closing statements did not constitute evidence, and that the jury was only to consider the testimony presented from the witness stand, any exhibits presented during the trial of the case and made part of the record, and any stipulations or agreements of counsel. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

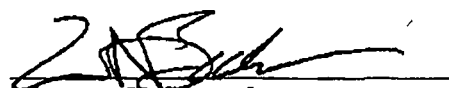
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

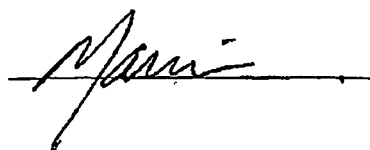
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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 South Carolina Department of Corrections.

AND IT IS SO ORDERED this 13 day of Nov., 2017.


 WILLIAM H. SEALS JR.
 Presiding Judge
 Fifteenth Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Keiron Coleman, #359333)

Plaintiff)

v.)

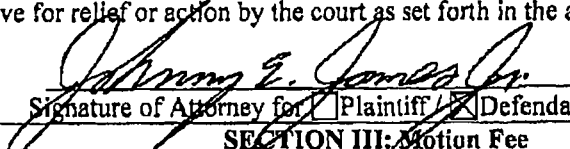
State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2015-CP-26-7569

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Daniel A. Solwa, II, Bar No. 71976 Address: 516 29 th Ave N. Myrtle Beach, SC 29577 phone: fax: c-mail: other:	Defendant's Attorney: Johnny E. James Jr, Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 c-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" 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 type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	November 9, 2017 Date submitted:
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <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:	
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: _____	

FILED
 DEC - 6 PM 1:00
 CLERK OF COURT
 HORRY COUNTY, SC

Dear Ms Elvis 15-7569

There is an issue that was not ruled on or mentioned in my PCR dismissal i would like a copy of the hearing or the testimony from my direct examination which one of my issues address state v spears in my opening i need to know if its on the record concerning rule 404(b) and 403 and how counsel failed to request a analysis on the balancing test and how judge Larry B blyman committed the offense in state v Brian k spears and then again in my trial this would have helped me in my PCR and the court failed to rule on it i believe deliberately.

I know what i testified to at
JCIR and they know but once
more misconduct by the court
please help me.

Deiron Coleman 584333

Also can you send me
MS Kay Richardson
the court reporter

Thank you

Keiron & Emon 359333
M.C.F.
386 Redemption way
McCormick, SC 29589

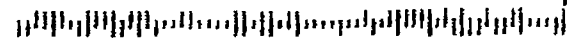
MS Renee N. Elvis
Clerk of Court Horry County
P.O. Box 677
Conway, SC 29528-0677



15-7589

SCDC
Christmas
Part

255280677



WITNESSES

Rick Tibbott Horry County Police Department

**The State of South Carolina
County of Horry**

George H. Debusk

13H01636

COURT OF GENERAL SESSIONS

MAY, 2013 TERM

ARREST WARRANT NUMBER

2013GS2602238

CDR: 0079 16-11-0311

DOA: 3/26/2013

THE STATE

vs.

ACTION OF GRAND JURY

**Keiron Coleman
B/M**



Foreperson of Grand Jury

Date:

MAY 30 2013

ATTORNEY: Long, III, J. M. "Buddy"

VERDICT

Indictment for

BURGLARY 1ST DEGREE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury

Date:

