

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

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DEC 05 2018

S.C. SUPREME COURT

RICHARD LANARD SPRINKLE MAVINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001059

APPENDIX

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¹ Pages 120, 127, and 282 of the trial transcript could not be located.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-78 (2004). Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). Indeed, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

First Degree Burglary

"A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either . . . the

entering or remaining occurs in the nighttime. S.C. Code Ann. § 16-11-311 (2003).

“‘Enters a building without consent’ means: (a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession.” S.C. Code Ann. § 16-11-310 (2003). Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused’s actions once inside the dwelling. State v. Pinckney, 339 S.C. 346, 349-50, 529 S.E.2d 526, 527-28 (2000).

At trial, the State presented testimony from Wright describing the armed robbery and assault. Wright explained how the two assailants convinced him to let them enter the house before the assault and robbery. He made several in-court identifications of Appellant as one of the intruders and participants in the crimes. (R.p.105, line 22-p.115, line 14). Rumph also described the armed robbery and assault and identified Sean Echols as the second intruder. (R.p.135, line 25-p.143, line 19).

The State then presented testimony from Echols himself. Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols then described the entire incident in great detail, including the lie he told Wright so he and Appellant could gain consent to enter the residence, and Appellant’s active participation in the armed robbery and assault. (R.p.207, line 1-p.212, line 8).

Appellant complains that the only evidence presented to support his conviction for burglary came from Echols, whom he was not able to fully cross-examine. He argues

that without Echols' testimony, there was "no evidence" Appellant was at the scene by pre-arrangement to aid, encourage or abet, in the perpetration of the crime. This argument completely disregards the eyewitness testimony from Wright. Wright's testimony alone would survive a directed verdict motion for first degree burglary, because the jury was free to base its determination of Appellant's intent on evidence of his actions once inside the dwelling. Pinckney, supra. But Wright's testimony did not stand alone. It was substantially corroborated by testimony from Rumph and Echols. Furthermore, any additional cross-examine of Echols would only impact his credibility as a witness. Credibility goes to the weight of evidence, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra.

Armed Robbery

Armed robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010); S.C. Code Ann. § 16-11-330(A) (2003). Robbery is the crime of larceny accomplished with force, and armed robbery occurs when a person commits robbery while armed with a deadly weapon. Id. at 532, 689 S.E.2d at 613-14.

Wright testified one of the intruders pointed a pistol at his chest, and he identified Appellant as that intruder. He described being forced to his room, getting hit in the head with the pistol, and having his money taken before the Appellant and the other intruder left in Rumph's car. (R.p.108, line 23-p.115, line 14). Rumph also described being threatened, repeatedly cut with a knife, and robbed of his money, pants, a hat, and his car. Rumph identified Sean Echols as the second intruder. (R.p.135, line 25-p.143, line 19).

The State then presented testimony from Echols himself. Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols then described the entire incident in great detail, including their use of a pistol and a knife and Appellant's active participation in the armed robbery and assault. He testified he and Appellant took money, a pair of pants, a hat, and a car from the residence. (R.p.207, line 1-p.265, line 8).

Appellant argues there was no evidence he took anything from anyone, or that he participated in taking anything. He contends Wright's testimony identifying him as one of the intruders is unreliable, and that without it there was no evidence he took anything from the victims. This argument completely disregards the testimony from Echols. Echols' testimony alone would survive a directed verdict motion for armed robbery because, under the "hand of one is the hand of all" theory of accomplice liability, each intruder is guilty for everything done by his or her confederate incidental to the execution of their common design or purpose. State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 769 (Ct. App. 2010). But Echols' testimony did not stand alone. It was substantially corroborated by testimony from Rumph and Wright. Furthermore, absent outright exclusion, any attack on the reliability of Wright's identification of Appellant would only impact the weight given to his testimony, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra.

First Degree Assault and Battery

“A person commits the offense of assault and battery in the first degree if the person unlawfully . . . injures another person, and the act . . . occurred during the commission of a robbery, burglary, kidnapping, or theft.” S.C. Code Ann. § 16-3-600(C) (Supp. 2013).

The State elicited testimony from Rumph that he was threatened and repeatedly cut with a knife while he was robbed of his money, pants, a hat, and his car. Rumph identified Sean Echols as the second intruder but was unable to identify the first intruder, except to say he had dreadlocks. Rumph said the man with the dreads first came into his room with a pistol, but later traded weapons with the Echols, and then proceeded to cut him with a knife. (R.p.135, line 25-p.143, line 19). Subsequently, Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols described the entire incident in great detail, including Appellant’s active participation in the armed robbery and assault. He testified that when they entered the house Appellant had a gun and Echols had a knife, but they later traded weapons, and Appellant inflicted the cuts to Rumph before they left with the stolen goods. (R.p.207, line 1-p.212, line 8).

Appellant notes that Rumph never identified Appellant as the person who cut him despite having the best opportunity to view the perpetrator. He then complains, as he did in regard to the first degree burglary, that the only evidence presented to support his conviction for assault and battery came from Echols, whom he was not able to fully cross-examine. As explained above, any additional cross-examine of Echols would only

impact his credibility as a witness. Credibility goes to the weight of evidence, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra. Thus, there was substantial direct and circumstantial evidence that Appellant committed first degree assault and battery against Rumph.

Conclusion

Viewing the evidence in a light most favorable to the State, there was ample evidence for the jury to reasonably conclude Appellant committed first degree burglary, armed robbery of both Wright and Rumph, and first degree assault and battery of Rumph. Therefore, the evidence was sufficient, as a matter of law, to submit the case to the jury. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury."). The trial judge committed no error in denying Appellant's motions for a directed verdict and for a new trial, and Appellant's convictions should be affirmed.

IV.

The trial court properly declined Appellant's request to charge the jury on the lesser included offense of assault and battery in the second degree where no evidence was presented at trial from which it could be inferred the lesser, rather than the greater, offense was committed.

Appellant argues the trial court erred in failing to charge the lesser included offense of assault and battery in the second degree as to Rumph, because Rumph's injury

did not rise to the level of “great bodily injury” as defined in the relevant statute. He maintains there was evidence by which it could be inferred that Rumph only suffered “moderate bodily injury” and therefore the jury could have found Appellant only committed second degree assault and battery. The State disagrees and submits Appellant’s argument is entirely without merit. A person commits assault and battery in the first degree if the person unlawfully “injures another person,” and the act occurred “during the commission of a robbery, burglary, kidnapping, or theft,” regardless of the severity of that injury. S.C. Code Ann. § 16-3-600(C). Thus, whether Rumph’s injury was a “great bodily injury” or a “moderate bodily injury” is of no moment, and no evidence was presented at trial to support a charge on the lesser included offense of assault and battery in the second degree as to Rumph. For the same reason, even if the trial court’s decision was error, it was harmless because the jury’s verdict reflected it could not have convicted Appellant of second degree assault and battery even if the option had been available. The jury specifically determined Appellant was guilty of committing both a burglary and a robbery, either of which mean that any injury to Rumph was necessarily an assault and battery in the first degree. For these reasons, Appellant’s convictions should be affirmed.

Standard of Review

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). “No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence.” State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). “Ordinarily, the trial court has the duty to give requested

instructions which correctly state the law applicable to the issues and which are supported by the evidence.” State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993).

“A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). “The mere contention that the jury might accept the State’s evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty only of the lesser offense.” State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge’s jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge’s decision regarding a jury charge absent an abuse of discretion. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

Analysis / Discussion

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 substantially overhauled the state's criminal law in regard to assault and battery offenses. It codifies attempted murder in section 16-3-29 and four degrees of assault and battery in section 16-3-600. S.C. Code Ann. §§ 16-3-29 & 16-3-600 (Supp. 2013). The new degrees of assault and battery are, in descending order of severity, assault and battery of a high and

aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees. Under the statute, ABHAN is a lesser-included offense of attempted murder. Id. § 16-3-600(B)(3). Assault and battery in the first degree is a lesser-included offense of both attempted murder and ABHAN. Id. § 16-3-600(C)(3). Further, assault and battery in the second and third degree are each lesser-included offenses of every preceding offense. Id. § 16-3-600(D)(3) & (E)(3).

At trial, the judge advised he would be charging attempted murder, as well as the lesser included offenses of ABHAN and assault and battery in the first degree as to both victims, Wright and Rumph. He said he would also charge the lesser included offense of assault and battery in the second degree as to Wright, but not as to Rumph. Appellant objected and asked the court to charge assault and battery in the second degree as to Rumph, arguing he felt “that it fits moderate bodily injury.” The trial judge found Rumph could not have suffered only moderate bodily harm when he was cut five times, denied Appellant’s request, and noted Appellant’s objection. (R.p.249, line 15-p.251, line 1). Appellant now contends this was error.

In relevant part, the statute provides:

(C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:

(a) injures another person, and the act: (i) involves nonconsensual touching of the private parts ... with lewd and lascivious intent; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft, **or**

(b) offers or attempts to injure another person with the present ability to do so, and the act: (i) is accomplished by means likely to produce death or great bodily injury; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

S.C.Code Ann. § 16-3-600(C)(1) (emphasis added). The trial judge misconstrued the statutory definition of assault and battery in the first degree as requiring great bodily injury to the victim. While subsection (b) does require that the act be “accomplished by means likely to produce death or great bodily injury,” this only applies when there is “an offer or attempt to injure” rather than an actual injury. Assault and battery in the first degree also comprises subsection (a) of the statute. See Brewer v. Brewer, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963) (“The word ‘or’ used in a statute, is a disjunctive particle that marks an alternative. The word ‘or’ used in a statute imports choice between two alternatives and as ordinarily used, means one or the other of two, but not both.”) (citations omitted). Under subsection (a), any injury constitutes assault and battery in the first degree if it occurs during the commission of a robbery, burglary, kidnapping, or theft. It is undisputed that the elements of subsection (a) are met in this case.

Here, the trial judge properly declined to instruct the jury on assault and battery in the second degree because the evidence presented during trial only supported a conclusion Rumph was injured during the commission of a burglary and robbery. Based on that evidence, the jury could only find that Appellant committed assault and battery in the first degree, committed a greater offense, or was not guilty. See State v. Mallory, 270 S.C. 519, 523, 242 S.E.2d 693, 695 (1978) (“[I]t is not error to refuse to submit the question of simple assault and battery to the jury under an indictment for assault and battery of a high and aggravated nature, unless there is testimony tending to show that the defendant is only guilty of a simple assault and battery.” (emphasis added)); see also State v. Small, 307 S.C. 92, 94, 413 S.E.2d 870, 871 (Ct. App. 1992) (“The evidence does not warrant the charge of the lesser offense of simple assault. Small was guilty of

assault and battery of a high and aggravated nature or not guilty. Accordingly, there is no merit to his claim that the court erred in refusing to give the requested charge.”).

On appeal, Appellant contends he was entitled to a jury instruction on assault and battery in the second degree because there was evidence by which it could be inferred that he committed only that offense. To the contrary, the evidence established either Appellant injured Rumph during a burglary and robbery, or he did not injure, rob, and burglarize Rumph at all. Accordingly, as no evidence was presented supporting a finding the assault on Rumph constituted an assault and battery in the second degree, the trial judge did not err in declining to instruct the jury on the lesser included offense. Appellant’s convictions should be affirmed.

Harmless Error

Errors are considered to be harmless when they could not reasonably have affected the result of the trial. State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003). “It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him.” State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 285, 288 (1947). When a review of the entire record establishes an error is harmless beyond a reasonable doubt, an appellate court should not reverse a conviction. State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003).

In the case at bar, even assuming the trial judge erred in declining to the instruct the jury on the lesser-included offense of second degree assault and battery, any error was entirely harmless and had no impact on the ultimate outcome of Appellant’s case in light of the verdict returned by the jury. Accordingly, the trial judge’s decision not to instruct

the jury on simple assault and battery resulted in no prejudice to Appellant and had no impact on the outcome of his case even if the trial judge's decision was an erroneous one. See Fletcher, 379 S.C. at 25, 664 S.E.2d at 484 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); see also State v. Hughey, 339 S.C. 439, 450, 529 S.E.2d 721, 727 (2000) ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial."), overruled on other ground by Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009). Appellant's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

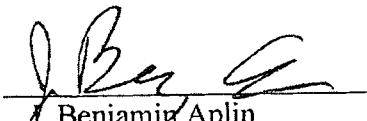
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June 18, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

THE STATE.....RESPONDENT

v.

RICHARD LANARD SPRINKLE,.....APPELLANT.

CERTIFICATE OF COUNSEL

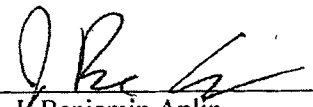
The undersigned hereby certify that the Final Brief of Respondent complies with Rule
211(b), SCACR.

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

THE STATE,.....RESPONDENT

v.

RICHARD LANARD SPRINKLE, ... APPELLANT.

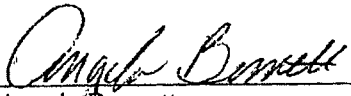
PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated June 18, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 18th, day of June 2014.


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina,.....Respondent,

v.

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ARGUMENT

I. The identification issue is preserved for review.

Contrary to the State's argument, the issue concerning the admissibility of the identification evidence is preserved for review. The trial court ruled on the admissibility of the evidence pre-trial, and the trial court's ruling was final. No new evidence was presented between the time the ruling was made and the evidence was introduced that would have changed the court's ruling. Accordingly, Sprinkle's counsel did not need to renew the objection at trial in order to preserve the issue for review.

A contemporaneous objection is typically required to preserve an issue for appellate review, even where the court has previously ruled on a motion in limine. *State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (citing *State v. Simpson*, 325 S.C. 37, 479 S.E.2d 57 (1996)). But when the trial court has previously indicated that a ruling is final, a renewed, contemporaneous objection is not necessary to preserve the issue for review. *State v. Wiles*, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009). A contemporaneous objection is also unnecessary when the trial court makes a ruling on the admissibility of evidence immediately prior to the introduction of the evidence. *Forrester*, 343 S.C. at 642, 541 S.E.2d at 840 (quoting *State v. Mueller*, 319 S.C. 266, 268-69, 460 S.E.2d 409, 410 (Ct. App. 1995)).

Here, the trial court ruled on the admissibility of the identification evidence before trial, during the *Neil v. Biggers* hearing. The trial court made the ruling after hearing testimony from one of the victims (Wright) and one of the investigators. The trial court considered the objections of Sprinkle's counsel, who argued that the evidence was inadmissible because it was unduly suggestive and unreliable. (R. pp. 41-45.) The

trial court also heard from the State. After considering the testimony presented and the argument of counsel, the trial court ruled that the identification evidence was reliable. There was no indication that any portion of the ruling remained open or that the court planned to revisit the issue at trial. (Rr. pp. 47-48.) The ruling was final.

Additionally, there was no new evidence presented at trial that would have changed the trial court's ruling. Wright was the State's first witness, and it was during his testimony that the identification evidence was admitted into evidence. (R. pp. 154-155.) Because Wright was the same witness who provided the identification evidence pre-trial and he was the first witness to testify at trial, there was no new evidence that would have changed the trial court's ruling. Accordingly, counsel for Sprinkle did not need to renew the objection to preserve the issue for review. *See Forrester*, 343 S.C. at 642-43, 541 S.E.2d at 840 (holding that the issue was properly preserved for review even without contemporaneous objection, where the witness introducing the evidence sought to be suppressed was the trial's first witness).

II. Sprinkle should have been permitted to cross-examine Echols regarding the federal charges.

Sprinkle should have been permitted to cross-examine Echols regarding the federal charges because the charges may have revealed evidence of bias. Had the jury known about the federal charges and the plea deal offered by the State, the jury may not have believed Echols and may not have convicted Sprinkle. Echols was the only witness who provided testimony that Sprinkle helped plan the crime and that Sprinkle assaulted Rumph. The limitation on Sprinkle's ability to cross-examine Echols was reversible error.

The fact that the charges against Echols are federal versus state, or that the State lacks the authority to negotiate deals regarding federal charges, does not mean that the cross examination would have been pointless. Sprinkle should have been given the opportunity to explore the issue of what had been negotiated between Echols and the State. Sprinkle was not, as the State contends, solely trying to elicit the evidence for purposes of showing prior bad acts. The jury already knew that Echols was a criminal and that he participated in the crime. Showing that Echols had committed prior bad acts would have been cumulative evidence that may or may not have helped Sprinkle's case. What Sprinkle needed to show, and the reason Sprinkle needed the ability to fully cross examine Echols, was that Echols had been offered a deal by the State in exchange for his testimony against Sprinkle, and that the deal benefitted Echols.

Echols had good reason to help the State. Doing so could help him obtain leniency on the federal charges. Like state court judges, federal judges are vested with broad discretion to consider mitigating or aggravating evidence when sentencing a defendant. *See, e.g.*, 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."); *U.S. v. Watts*, 519 U.S. 148, 151 (1997) (discussing "the longstanding principle that sentencing courts have broad discretion to consider various kinds of information"); *U.S. v. Bruno*, 879 F.2d 691, 693 (3d Cir. 1990) (discussing provisions of 18 U.S.C. § 3661, which requires consideration of "the pertinent circumstances," including "information tendered by a defendant" and "cooperation by a defendant"); *State v. Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189,

191 (1967) (“We have held that with the view of fixing the sentence to be imposed upon a defendant, it is proper for the trial judge . . . to inquire into any relevant facts in aggravation or mitigation of punishment.”) (citations omitted).

Further, federal courts may consider information about pending state court charges during sentencing. *United States v. Tockes*, 530 F.3d 628, 633 (7th Cir. 2008) (holding that the district court acted within its discretion in allowing testimony about pending state charges during sentencing because “the court is required to consider . . . the history and characteristics of the defendant” and its inquiry is “broad in scope, largely unlimited either as to the kind of information it may consider, or the source from which it might come”) (internal citation omitted). *See also United States v. Ray*, 683 F.2d 1116, 1120-21 (7th Cir. 1982) (holding that it was proper for federal judge to consider information like the defendant’s conduct in a prior state court trial, such as shouting an obscenity at the state court judge).

Moreover, Sprinkle was entitled under South Carolina law to elicit any fact that “tends to show interest, bias, or partiality of the witness.” *State v. Mizell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). *Mizell* does not, as the State contends, limit the testimony that may be elicited to testimony regarding the plea negotiations, i.e., that there was no plea deal. Not only was Sprinkle prevented from eliciting testimony regarding plea negotiations that could be used to demonstrate bias, he was prohibited from confronting Echols’s statement that he (Echols) was providing the testimony “out of the goodness of his heart.” (R. p. 212, lines 14-22.) Sprinkle should have been permitted to cross-examine Echols regarding this statement and Echols’s negotiations with the State.

This limitation on Sprinkle's ability to fully cross examine Echols was not harmless. Echols provided the only evidence that Sprinkle helped plan the crime and that Sprinkle assaulted Rumph. Echols's testimony was in direct conflict with Sprinkle's statement to the police, which was that he was on drugs and that he ran out of the house when he saw Echols assaulting someone. (R. pp. 189-197.) Given the variance in testimony, and the credibility issues of the witnesses who testified, the denial of Sprinkle's right to present the full picture of possible bias to the jury was reversible error. *See State v. Gracely*, 399 S.C. 363, 377, 731 S.E.2d 880, 887 (2012) ("In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless.").

III. There was no evidence from which Sprinkle's guilt could be fairly and logically deduced.

Because the limitation on the cross examination of Echols was an error of law, and because Sprinkle's guilt could not be fairly and logically deduced without Echols's testimony, the trial court erred in denying Sprinkle's motion for directed verdict. Echols was the only witness who testified that Sprinkle entered the home with the intent to commit a crime and was the only witness who testified that Sprinkle assaulted Rumph. Without Echols's testimony, there was no evidence to support the first-degree burglary and assault and battery convictions, and even with Echols's testimony, there was no evidence to support the conviction of armed robbery.

Contrary to what the State argues, evidence concerning what Sprinkle did once inside the home is not evidence that Sprinkle entered the home with the intent to commit a crime, especially when Echols testified that he (Echols) planned the crime with two

other people (who were lifelong friends, not Sprinkle), and that he was the one who knocked on the door and gained entry into the home, knowing the victims and knowing that there was money inside the house. (R. p. 206; p. 208; p. 212; pp. 244-45; p. 247.) There is no evidence that Sprinkle knew any of this or that he went to the house with the intention of committing a crime.

Additionally, there was not, as the State suggests, evidence that two people convinced Wright to open the door. Echols testified that *he* was the one who knocked on the door and asked to use the phone. (R. p. 208, lines 8-12.) Echols asked if “Uncle Rocky,” meaning Rumph, was home. (R. p. 117, line 1.) There is no evidence that another person spoke or helped convince Wright to open the door. Additionally, there was no evidence presented that Sprinkle knew Rumph or would have referred to him as “Uncle Rocky.” Rumph never even identified Sprinkle as being at the scene of the crime. Echols, not Sprinkle, is the one who had the relationship that convinced Wright to open the door.

Finally, Echols’s testimony was not “substantially corroborated by testimony from Rumph and Wright” as argued by the State. Rumph and Wright did not present any evidence that Sprinkle was at the scene by “pre-arrangement to aid, encourage or abet in the perpetration of the crime.” *State v. Mattison*, 388 S.C. 469, 480, 697 S.E.2d 578, 584 (2010). Rumph never even identified Sprinkle as one of the perpetrators despite being shown several lineups. Additionally, no evidence was presented that Sprinkle stole anything from the house, and the jury did not convict Sprinkle of assaulting Wright.

Given these circumstances and the fact that the evidence to support the convictions came from a witness who was a co-perpetrator and whom Sprinkle was not

permitted to fully cross examine, the trial court erred in denying the motions for a directed verdict and for a new trial.

IV. The failure to charge the lesser-included offense of assault and battery in the second degree was reversible error.

The failure to charge the lesser-included offense of assault and battery in the second degree is reversible error. The fact that Sprinkle was ultimately convicted of first-degree burglary does not mean that failure to charge the lesser-included offense was harmless. The determination of whether an error is harmless should not be viewed in hindsight, after the verdicts are rendered, but rather based on the evidence in the record at the time the charge was requested. The trial court “must charge a lesser included offense if there is *any evidence* from which a jury could infer the defendant committed the lesser rather than the greater offense.” *State v White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004) (citing *Brightman v. State*, 336 S.C. 348, 350-51, 520 S.E.2d 614, 615 (1999)) (emphasis added).

Because there was evidence from which the jury could conclude that Sprinkle committed the lesser-included offense of assault and battery in the second degree, and the burglary conviction was error as explained above, the trial judge should have charged the lesser included offense of assault and battery in the second degree.

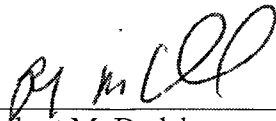
CONCLUSION

Sprinkle’s convictions should be reversed and the case should be remanded for a new trial.

Respectfully submitted,

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Columbia, South Carolina
June 24, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Circuit Court

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina,.....Respondent,

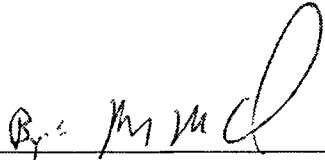
v.

Richard Lanard Sprinkle,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 24, 2014.


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No.: 2013-000784

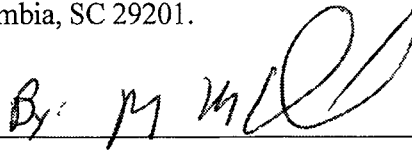
State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant on Respondent State of South Carolina by depositing a copy in the United States Mail, postage prepaid, on June 24, 2014, addressed to the attorney of record, J. Benjamin Aplin, Assistant Attorney General, Office of the South Carolina Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

By: 

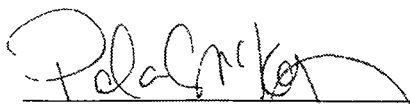
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SUBSCRIBED AND SWORN TO
Before me this 24th day of June, 2014.



Notary Public for South Carolina

My Commission Expires: July 24, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Richard Lanard Sprinkle, Appellant.

Appellate Case No. 2013-000784

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-480
Heard November 5, 2014 – Filed December 23, 2014

AFFIRMED

Tina Marie Cundari and Alexander Erwin Davis, both of
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Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General John Benjamin Aplin, both of
Columbia; and Solicitor David Michael Pascoe, Jr., of
Orangeburg, for Respondent.

PER CURIAM: Richard Sprinkle appeals his convictions for first-degree burglary, first-degree assault and battery, and two counts of armed robbery, arguing the trial court erred in: (1) denying his motion to suppress identification evidence; (2) limiting the cross-examination of a witness; (3) denying his motions for a directed verdict and a new trial; and (4) failing to charge the lesser-included offense of second-degree assault and battery. We affirm.

FACTS

In June 2011, James Wright and Robert Rumph,¹ the two victims, were roommates. Between 2:00 a.m. and 5:00 a.m. on a Sunday morning, two men arrived at Wright's and Rumph's front door while Wright sat in the living room and Rumph slept in his bedroom. Wright explained the men asked for "Rocky" and stated they needed to use the telephone. Wright recalled that once Rumph told him to let the men in, he opened the door. Once inside, the men assaulted and robbed Rumph and Wright and fled in Rumph's car. The jury convicted Sprinkle of first-degree assault and battery of Rumph, as a lesser-included offense of attempted murder, first-degree burglary, and two counts of armed robbery. Sprinkle moved for a new trial, which the trial court denied. This appeal followed.

ISSUES ON APPEAL

1. Did the trial court err in admitting identification testimony?
2. Did the trial court err in limiting the cross-examination of a witness?
3. Did the trial court err in denying motions for a directed verdict and a new trial?
4. Did the trial court err in failing to charge the lesser-included offense of second-degree assault and battery?

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). "This [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Id.*

¹ The parties also refer to Rumph as "Rocky" or "Rock."

LAW/ANALYSIS

I. Identification Evidence

Sprinkle argues the trial court erred in admitting Wright's identification testimony. We disagree.

In *Neil v. Biggers*, the Supreme Court of the United States developed a two-prong inquiry to determine the admissibility of an out-of-court identification. 409 U.S. 188 (1972). First, a court must determine whether the identification process was unduly suggestive. *State v. Moore*, 343 S.C. 282, 287, 540 S.E.2d 445, 447 (2000). Second, a court must determine whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *Id.* However, only if the procedure was unduly suggestive need the court consider the second question. *Id.* at 287, 540 S.E.2d at 447-48.

The State asserts this issue is not preserved for appellate review because Sprinkle failed to object to the identification when it was offered at trial. Sprinkle's motion *in limine* to suppress this evidence occurred immediately prior to Wright's in-court identifications of Sprinkle. Since the trial court ruled on the admission of this evidence immediately prior to the introduction of the evidence in question, Sprinkle did not need to renew his objection to the evidence. *See State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("[M]aking a motion *in limine* to exclude evidence at the beginning of trial does not preserve an issue for review because a motion *in limine* is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced. However, where a [court] makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection." (quotation marks and internal citation omitted)). Therefore, we find the issue is preserved.

On the merits, we find the identification process was not unduly suggestive. All of the men in the lineup have the same length and style of hair. They have similar skin tones and facial features. Further, the photo does not suggest Sprinkle is wearing a jail uniform as Sprinkle contends. Investigator Lori Garrison testified she showed Wright the lineup "the next day after the incident." Garrison indicated Wright did not have difficulty identifying Sprinkle, and she denied suggesting to Wright which picture to pick from the lineup. Garrison denied telling Wright one of the robbers was included in the photo lineup.

Additionally, we find the identification was so reliable that no substantial likelihood of misidentification existed. Wright testified he looked out of the window directly at Sprinkle when the two men arrived at the front door asking to use the telephone. Although Wright admitted he never turned the lights on in the home, he testified "the city streetlight was out there, and [he] could look through the glass and see, see their face." Further, Wright testified he told officers he knew Sprinkle because Sprinkle "used to walk[] the street all the time," and he recently saw Sprinkle on the Saturday evening before the crime occurred early Sunday morning. Moreover, Wright testified that after he saw the photo lineup, he immediately identified Sprinkle from the group. Despite suggesting Sprinkle's appearance had changed, Wright stated he had no doubt that Sprinkle was the person who assaulted and robbed him. Therefore, viewing the totality of the circumstances, we find no substantial likelihood of irreparable misidentification existed. Accordingly, we affirm the trial court's decision to admit Wright's in-court identification of Sprinkle because the identification process was not unduly suggestive and there was no substantial likelihood of irreparable misidentification.

II. Limiting Cross-Examination

Sprinkle argues the trial court erred in limiting the cross-examination of Sean Echols, Sprinkle's co-defendant,² regarding his pending federal investigation and expired plea negotiations.

"The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." *State v. Mizzell*, 349 S.C. 326, 330, 563 S.E.2d 315, 317 (2002) (quoting *State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)). "A defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause." *Id.* at 331, 563 S.E.2d at 317. "On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." *Id.* (quotation marks and citation omitted).

A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias

² Echols and Sprinkle were tried separately.

on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.

State v. Pradubsri, 403 S.C. 270, 276-77, 743 S.E.2d 98, 102 (Ct. App. 2013) (alteration in original) (quoting *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317). "The trial [court] retains discretion to impose reasonable limits on the scope of cross-examination." *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317. "Before a trial [court] may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate." *Id.* "If the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error." *Id.*

"It is desirable the jury not know that a witness has invoked the privilege against self-incrimination since neither party is entitled to draw any inference from such invocation." *State v. Hughes*, 328 S.C. 146, 150, 493 S.E.2d 821, 823 (1997). "[I]t has been recognized that neither the [S]tate nor the defendant should be allowed to call witnesses who either side knows will invoke the Fifth Amendment in front of the jury and then be subject to inferences in a form not subject to cross-examination." *Id.* at 152, 493 S.E.2d at 823. A witness may not be called solely for the sake of invoking his or her Fifth Amendment privilege against self-incrimination. *Id.* at 152-53, 493 S.E.2d at 824.

Rule 410, SCRE, provides:

evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: . . . any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

We find the trial court did not abuse its discretion in limiting Sprinkle's cross-examination of Echols regarding his pending federal investigation. Sprinkle failed to demonstrate a link between Echols' pending federal investigation and his testimony against Sprinkle. Echols had not yet been charged with a federal offense nor has Sprinkle shown that the investigation was related to the crimes at issue. Importantly, the State notes it has no authority to negotiate a deal with a witness in regard to federal charges. Therefore, Sprinkle failed to show bias or how the

investigation may influence Echols' testimony against Sprinkle. Moreover, Echols' counsel was present during trial and indicated he advised Echols to assert his Fifth Amendment rights if questioned regarding the federal investigation. Although, as Sprinkle claims, his reason for calling Echols as a witness may not have been solely for the sake of having Echols assert his privilege against self-incrimination, he knew Echols would assert his Fifth Amendment rights if questioned about the federal investigation. As such, the trial court properly excluded that line of questioning.

However, we find the trial court erred by excluding evidence regarding Echols' plea negotiations. Nevertheless, we hold the error was harmless. Initially, we note the facts of this case are vastly different from the facts in *Mizzell*. Here, unlike *Mizzell*, Echols testified he had not been offered anything in return for testifying; he was doing it out of the goodness of his heart; and he hoped the court would have mercy on him in his own trial. Additionally, under cross-examination, Echols admitted he lied to investigators about the number of persons involved in the robbery. He also claimed he did not know why he was not charged with first-degree burglary or that Sprinkle was indicted for first-degree burglary, but admitted he was not indicted for first-degree burglary and was avoiding a LWOP sentence. Further, the trial court allowed Sprinkle to question Echols regarding Echols' prior convictions for assault and battery with intent to kill and second-degree burglary. Therefore, the trial court allowed a meaningful cross-examination of Echols with adequate opportunity for impeachment, such that the jury had sufficient evidence before it to judge Echols' credibility. Accordingly, we affirm the trial court's limitations on Sprinkle's cross-examination of Echols. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) (finding accused suffered no prejudice from limitation on cross-examination of one co-defendant where other evidence, including the testimony of co-defendants, established his commission of the crime).

III. Directed Verdict and New Trial

Sprinkle argues the trial court erred in failing to grant his motion for a directed verdict on all charges. We disagree.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the

evidence in a light most favorable to the State. *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990).

"A person is guilty of first-degree burglary if he enters a dwelling without consent and with intent to commit a crime in the dwelling and either enters or remains in the dwelling during the nighttime." *State v. Gilliland*, 402 S.C. 389, 397, 741 S.E.2d 521, 526 (Ct. App. 2012) (quotation marks and citation omitted).

"Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling." *Id.*

"Armed robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." *State v. Frazier*, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010). "Robbery is the crime of larceny accomplished with force, and armed robbery occurs when a person commits robbery while armed with a deadly weapon." *Id.*

Section 16-3-600 (C)(1) of the South Carolina Code (Supp. 2013) provides:

A person commits the offense of assault and battery in the *first degree* if the person unlawfully:

(a) injures another person, and the act:

...
(ii) *occurred during the commission of a robbery, burglary, kidnapping, or theft; or*

(b) *offers or attempts to injure another person with the present ability to do so, and the act:*

(i) *is accomplished by means likely to produce death or great bodily injury; or*

(ii) *occurred during the commission of a robbery, burglary, kidnapping, or theft.*

(emphasis added).

Although there is some dispute as to which perpetrator attacked Wright and Rumph individually, the evidence reflects Sprinkle entered the home under false pretenses at some point between 2:00 a.m. and 5:00 a.m. and remained for several minutes. The evidence further reflects that during that time, both Wright and Rumph were robbed and injured and Sprinkle participated in robbing and

assaulting the two victims. Echols testified regarding the plan he and Sprinkle developed to rob Wright and Rumph. Wright testified Sprinkle took money from him and left in Rumph's car. Rumph testified the "one with the dreads"—who Wright and Echols identified as Sprinkle—pointed a gun at him and demanded money. Further, Rumph testified the "one with the dreads" cut him on the side of his stomach, leg, arm, and foot. Rumph stated the men took his car, money, pants, and a hat when they left the home. Any discrepancies in the witnesses' testimony were for the jury to weigh. Therefore, the trial court properly submitted this case to the jury and denied Sprinkle's motions for a directed verdict and new trial.

IV. Lesser-Included Offense

Sprinkle argues the trial court erred in failing to charge the lesser-included offense of second-degree assault and battery as to Rumph. We disagree.

"The law to be charged must be determined from the evidence presented at trial." *State v. Rivera*, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010). "The trial [court] is to charge the jury on a lesser included offense if there is any evidence from which the jury could infer that the lesser, rather than the greater, offense was committed." *State v. Watson*, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002).

"Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree" S.C. Code Ann. § 16-3-600(D)(3) (Supp. 2013).

"A person commits the offense of assault and battery in the *second degree* if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so," and "*moderate bodily injury* to another person results" or could have resulted. § 16-3-600(D)(1) (emphasis added).

The trial court did not err in denying Sprinkle's request to charge the lesser-included offense of second-degree assault and battery. There is no evidence tending to show Sprinkle is guilty solely of the lesser crime. The only reasonable inference to be drawn from the totality of the evidence was that Sprinkle either did or did not injure, offer to injure, or attempt to injure Rumph during the commission of the robbery and burglary. §16-3-600 (C)(1). Moreover, Rumph clearly sustained great bodily injury as he was cut on the side of his stomach, leg, arm, and foot, requiring stitches. *See id.*

CONCLUSION

For the foregoing reasons, the trial court's order is

AFFIRMED.

FEW, C.J., LOCKEMY, J., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

State of South Carolina,

Respondent,

v.

Richard Lanard Sprinkle,

Appellant.

PETITION FOR REHEARING

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ARGUMENT FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the appellant, Richard Lanard Sprinkle, petitions this Court for a rehearing of the Opinion issued on December 23, 2014, affirming the convictions of Richard Sprinkle. Sprinkle submits that the Court misapprehended the law and overlooked the evidence when it held that it was harmless error for the Circuit Court to limit Sprinkle's ability to fully cross-examine the State's star witness, Sean Echols, with regard to plea discussions Echols had with the State. The Court agreed that the limitation was error, but held that the error was harmless. Sprinkle respectfully asks the Court to reconsider its decision.

The Court should reconsider its decision because the error was not harmless beyond a reasonable doubt. Although a violation of the Confrontation Clause of the Sixth Amendment is not *per se* reversible error, where an error has occurred, reversal can only be avoided where "the error is harmless *beyond a reasonable doubt*." State v. Graham, 314 S.C. 383, 386, 444 S.E.2d 525, 527 (1994) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986)) (emphasis added). In Van Arsdall, the United States Supreme Court set forth a list of criteria to be used to determine whether or not error is harmless beyond a reasonable doubt:

Whether such an error is harmless in a particular case depends upon a host of factors.... The factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

475 U.S. at 684. In State v. Graham, the South Carolina Supreme Court cited the Van Arsdall factors approvingly, while stating that "[t]he list of factors . . . is not exhaustive." Graham, 314 S.C. at 386, 444 S.E.2d at 527.

Here, the Court did not consider all these factors and overlooked the importance of Echols's testimony when determining that the limitation on cross examination was harmless error. Echols's testimony was vital to the State's case. Without Echols' testimony, the State had *no evidence* that Sprinkle helped plan the crimes and therefore *no evidence* to show Sprinkle's intent. (R. pp. 206-07; 212.) Additionally, the State had *no evidence* that Sprinkle assaulted Rumph. (R. p. 209, lines 20-21.) Rumph himself was never able to identify Sprinkle. (R. pp. 142; 180; 336.) Moreover, no physical evidence was presented at trial tying Sprinkle to the crimes. The State needed Echols's testimony to make the case against Sprinkle. Given the critical nature of the testimony, any limitation on Echols's testimony—particularly a limitation that would show bias—could not have been harmless beyond a reasonable doubt.

In addition, the Court improperly placed the burden on Sprinkle to show the error was reversible. The State has the burden to demonstrate that the error was harmless beyond a reasonable doubt. See Chapman v. California, 386 U.S. 18, 23-24 (1966) (holding that there was no difference between previous precedent and “requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained,” a standard established in the case). See also, e.g., State v. Alvarez-Lopez, 98 P.3d 699, 708 (N.M. 2004) (“Under federal law, the burden is on the State to establish that the constitutional error in this case was harmless beyond a reasonable doubt.”) (citing Brecht v. Abrahamson, 507 U.S. 619, 630 (1993)); Com v. Vardinski, 780 N.E.2d 1278, 1287 (Mass. 2003) (“Where a defendant's constitutional right to cross-examination has been denied, the prosecution bears the burden of establishing that the error was harmless” and a court must “resolve all ambiguities and doubts in favor of the defendant”); Dionas v. State, 80 A.3d 1058, 1065 (Md. 2013) (“once error [in not allowing certain cross-examination] is established, the

burden falls upon the State, the beneficiary of the error, to exclude this possibility beyond a reasonable doubt”). Here, the Court improperly placed the burden on Sprinkle by stating that “[i]f the defendant establishes he was unfairly prejudiced by the limitation [on cross-examination], it is reversible error.” State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. Filed Dec. 23, 2014) (quoting State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002)).

Moreover, the State failed to meet its burden of showing that the error was harmless beyond a reasonable doubt. In Dionas v. State, the Maryland’s highest court held that “where credibility is an issue and, thus, the jury’s assessment of who is telling the truth is critical, an error affecting the jury’s ability to assess a witness’ credibility is not harmless error because “the right to cross-examine effectively necessarily includes the right to place the testimony of a witness in its proper setting to fairly enable the jury to judge its credibility.” Dionas, 80 at 1066 (citations omitted). Id. The Dionas court noted a previous decision where it had determined that “[a]lthough the jury had ample evidence to convict [the defendant], we cannot say beyond a reasonable doubt that the court’s error [in not allowing effective cross-examination] could not have influenced the jury” because “[t]he proffered cross-examination, if successful, could have cast sufficient doubt on the prosecuting witness’ credibility to render her unworthy of belief in the mind of at least one juror.” Id. Thus, any cross-examination which could *potentially* affect a juror is not harmless, even where there is strong evidence against a defendant.¹ See also State v. Alvarez-Lopez, 98 P.3d 699 (N.M. 2004) (determination of guilt or innocence is for the jury and error cannot be harmless unless the jury’s verdict is “surely unattributable to the error . . . no matter how inescapable the findings to support that verdict might be”) (quoting Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)); Clark v. O’Leary, 852 F.2d 999 (7th Cir. 1988)

¹ As discussed above, the evidence against Sprinkle was not strong. The evidence came almost exclusively from Echols.

(examining the Van Arsdall factors and determining that where the state's case was built on witness testimony to place defendant at the scene of the crime, failure to allow cross-examination of witnesses on gang affiliation that may result in bias was not harmless error).

Courts in other jurisdictions have directly examined the harm to a defendant where a trial court prohibits cross-examination of a witness for the State regarding plea negotiations. In one case, the trial court prohibited the defendant from cross-examining a key witness of the state about unsuccessful plea negotiations with the State, including a revoked proffer of a maximum sentence and discussions about his eligibility for probation.² Cruz v. State, 437 So.2d 692, 695 (Fla. Ct. App. 1983), *disapproved on other grounds by* Edwards v. State, 548 So.2d 656 (Fla. 1989). Although the trial court did not allow the defendant to cross-examine the witness about these plea negotiations, the defendant was able to elicit on cross examination that the witness expected leniency in exchange for his testimony. *Id.* The appellate court held that the exclusion of the evidence of plea negotiations was reversible error.

In holding that the limitation on cross was reversible error, the court noted that “the defense’s right to question a witness as to what representations were made to him is not dependent on whether they were approved by the court; the inquiries are germane to developing the witness’s interest or bias in testifying.” *Id.* at 697 (citing United States v. Benavides, 549 F.2d 392, 394 (5th Cir. 1977)). The court went on to hold that because the witness was a key witness for the State, “[i]t would be problematic to say with certainty whether the state’s conviction of the appellant could have been effected without the key testimony of [the] witness.” Cruz, 548 So.2d at 697. Instead, “[g]iven the crucial nature of [the witness]’s testimony, the defense should have been permitted to make a more thorough examination of two vital areas

² The witness was convicted in a separate trial just prior to the defendant’s trial and was awaiting sentencing. Cruz, 437 So.2d at 694.

bearing on the witness's credibility . . . [including] his interest or bias, if any, in testifying against the appellant." This required the court to allow the defense to conduct "[a] comprehensive exploration of . . . questions relevant to plea negotiations which occurred both before and after [the witness]'s trial."

Other courts examining similar issues have reached the same result. See, e.g., Fannin v. State, 581 So.2d 974 (Fla. Ct. App. 1991) (holding it was reversible error to prevent cross-examination of a witness regarding her knowledge or belief of the possibility of a plea deal for her mother on a separate charge, as such information could suggest interest or bias on the part of witness which could "shade her testimony to protect her mother"); State v. Clark, 364 S.W.3d 540 (Mo. 2012) (holding it was reversible error to prohibit cross-examination of witness regarding his hopes for leniency even where plea deal had not been offered); Keys v. State, 739 So.2d 455 (Miss. Ct. App. 1999) (holding it was reversible error for the trial court to prevent cross-examination of a witness using a statement made by that witness at plea hearing where plea had ultimately been withdrawn).

The same question of bias was present in the case at hand, and the failure to allow Sprinkle to expose Echols's bias was reversible error. Although the original plea deal that the State offered Echols had expired, there is nothing in the record to suggest that the possibility of deal in the future had been foreclosed. In fact, *in camera* discussion with the trial court indicate that Echols had allowed the plea deal to expire because "he could be facing life, he was offered 20 [years] and he's looking for ten [years]." (R. p. 237, ll. 17-20.) The trial court itself indicated in its ruling that "we're not going to get into" discussions "[w]ith regard to Mr. Echols asking, you know, for ten years." (R. p. 240 line 24 – p. 241 line 2.)

Further, Echols testified that he was testifying out of the goodness of his heart and that he had not been offered anything for his testimony. (R. p. 212, lines 18-22.) This testimony is important because it left the jury with the impression that there had been *no plea discussions* between the State and Echols, which was not true. In addition, it allowed the State to portray Echols as a repentant criminal who was hoping simply for “*the Court* to have mercy on [him].” (R. p. 212, lines 23-25) (emphasis added). Had Sprinkle been able to expose the plea discussions with the State, the jury would have seen that Echols was not only not credible, but he actually had reason to testify *against* Sprinkle. Moreover, Echols testified that he was not indicted for burglary, presumably because he was cooperating with the State, and yet the jury was not permitted to hear testimony that would have led them to conclude that Echols was cooperating with the State. Given these facts, it cannot be said with certainty that the testimony would not have affected the jury’s decision.

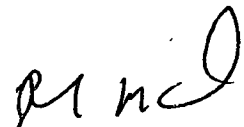
Finally, the Court’s reliance on State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991), is misplaced because the facts in that case were vastly different than the facts in the present case. To begin, the court in Sherard did not find that the limitation on cross was error. The defense was able to elicit testimony that the State’s witness had previously served time and “the last thing in the world he wanted to do was go back”; that the State’s witnesses both knew that they “would be treated much less severely in family Court than in General Sessions Court”; that the State had agreed to reduce numerous penalties against them in exchange for their testimony; and that one witness knew that “in order to remain in Family Court and have the charges against him reduced, he had to testify for the State.” Id. at 174-75, 399 S.E.2d at 596. This testimony is much more extensive and much more indicative of bias than the testimony elicited in the present case.

Further, in Sherard the conviction was supported not only by the State's witnesses but also by the defendant's *own statements to the police*, which "indicate that he shot [the victim] while attempting to rob him." Id. at 175, 399 S.E.2d at 596. Here, there is no other evidence supporting Sprinkle's conviction for burglary, other than Echols's testimony. Sprinkle has maintained through the case that he did not go to the victims' house to rob them or to commit a crime. That was Echols's idea, and Echols was permitted to point the finger at Sprinkle without Sprinkle being able to full cross examine him. Accordingly, the Court erred in relying on Sherard to hold that the trial court's error was harmless beyond a reasonable doubt.

CONCLUSION

Sprinkle respectfully asks the Court to reconsider its decision in this case. The limitation on cross examination was not harmless beyond a reasonable doubt. The jury should have heard about the plea deal and been able to draw its own conclusions as to why Echols testified the way he did and why it was Sprinkle and not Echols who was charged with burglary. It cannot be said with certainty that had the jury known that Echols had been in plea negotiations with the State that it would not have affected the outcome. A defendant should not have to serve 35 years in prison based on such flimsy and limited evidence.

For these reasons, the appellant respectfully requests that the Court grant the Petition for Rehearing and reverse and remand for a new trial.

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January 6, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

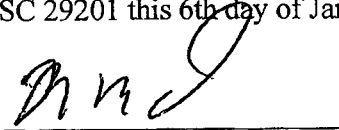
RICHARD LANARD SPRINKLE,

APPELLANT

APPELLATE CASE NO. 2013-000784

CERTIFICATE OF SERVICE

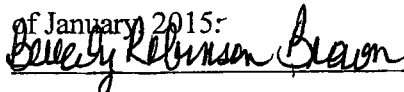
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 6th day of January, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 6th day
of January 2015:

 (L.S.)

Notary Public for South Carolina

My Commission Expires: December 9, 2024.

The South Carolina Court of Appeals

The State, Respondent,

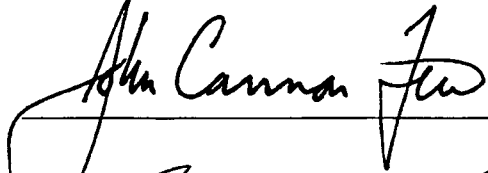
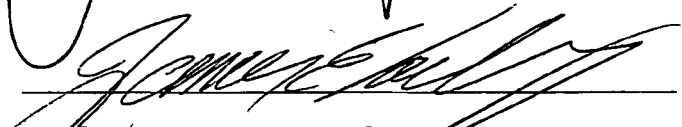
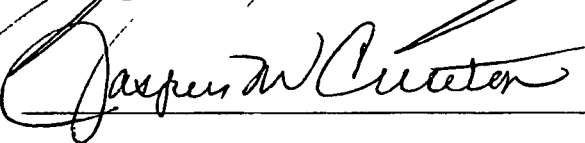
v.

Richard Lanard Sprinkle, Appellant.

Appellate Case No. 2013-000784

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 A.J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Tina Marie Cundari, Esquire
John Benjamin Aplin, Esquire
David Michael Pascoe, Jr., Esquire

FILED
1/8/15 

Alexander Erwin Davis, Esquire
The Honorable Edgar W. Dickson

THE STATE OF SOUTH CAROLINA

In the Supreme Court

 APPEAL FROM ORANGEBURG COUNTY
 Court of General Sessions

 Edgar W. Dickson, Circuit Court Judge
RECEIVED

FEB - 9 2015

S.C. Supreme Court

 Opinion No. 2014-UP-480 (S.C. Ct. App. Filed Dec. 23, 2014)

State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on January 8, 2015. (App. 486-87.)

QUESTION PRESENTED

1. Did the Court of Appeals err in holding that the violation of the defendant's Sixth Amendment right to fully cross-examine the State's star witness and a co-perpetrator of the crime about plea negotiations he had with the State was harmless beyond a reasonable doubt?

STATEMENT OF THE CASE

This is an appeal from a verdict finding Richard Lanard Sprinkle guilty of one count of burglary, two counts of armed robbery, and one count of assault and battery in the first degree. (R. pp. 331-333.) Sprinkle was sentenced to 35 years in prison for burglary, 30 years for the two counts of armed robbery, and 10 years for assault and battery in the first degree. (R. p. 330; pp. 346-349.)

Sprinkle was arrested on June 29, 2011, and indicted on October 1, 2012, for two counts of armed robbery, two counts of attempted murder, and burglary in the first degree. (R. p. 5; pp. 350-360.) On January 30, 2013, Sprinkle was indicted for first degree burglary. (R. p. 359.)

The case was tried before a jury in Orangeburg County on April 9 and 10, 2013, nearly two years after Sprinkle was arrested. The jury found Sprinkle guilty of first degree burglary, two counts of armed robbery, and one count of first degree assault and battery. (R. pp. 331-333.) The jury found Sprinkle not guilty as to attempted murder and not guilty as to assault and battery of James Wright.

Sprinkle appealed, and the Court of Appeals affirmed Sprinkle's conviction in an unpublished opinion. (App. pp. 467-75.) Although the conviction was affirmed, the court of appeals found that the trial court erred in failing to allow Sprinkle to cross-examine Echols about Echols's plea negotiations with the State, but concluded that the error was harmless. (App. pp. 470-72.)

Sprinkle filed a petition for rehearing, arguing that the Court of Appeals erred in holding that the violation of his Sixth Amendment right was harmless beyond a reasonable doubt. (App.

pp. 476-85.) The Court of Appeals denied the petition for rehearing by order dated January 8, 2015. (App. pp. 486-87.) Sprinkle now petitions this Court for a writ of certiorari.

FACTS

This case involves a crime that occurred in a gambling house in Orangeburg on the early morning hours of June 26, 2011. The victims were James Wright and Robert Rumph. Wright and Rumph lived together. (R. p. 106, lines 20-24.) Rumph makes his money playing cards and gambling. (R. p. 153, lines 19-20.) On the night of the crime, there had been a card game at the house. (R. pp. 154-155.) Wright, who is 74 years old, drank a “half of a half a pint” of liquor.¹ (R. p. 115, lines 20-21; p. 130, lines 5-18.)

According to Wright, he and Rumph were sleeping when there was a knock at the door. The person asked if “Uncle Rocky,” meaning Rumph, was home. (R. p. 107, lines 11-12; p. 117; p. 119, lines 12-18.) The person said he wanted to use the phone. (R. p. 107, lines 11-12). Wright testified that he went to the back bedroom to tell Rumph that someone was at the door asking for him. Rumph said to let them in. (R. p. 119, lines 13-14.) Wright opened the door and the men came inside. It was dark inside and Wright did not turn on the lights. (R. p. 16, lines 16-19; p. 22, lines 2-4; p. 130, lines 19-22.) Once inside, one of the men immediately hit Wright on the head with a pistol and demanded money. (R. p. 109, line 25 – p. 110, line 8; p. 119, lines 18-24.)

The other man went to Rumph’s room. Rumph testified that a “black guy with long dreads on his hair” came into his room and demanded money. (R. p. 137; p. 143, line 7.) Rumph testified that his bedroom light and TV were on. (R. p. 148, lines 15-17.) When Rumph did not immediately give the man money, the man cut Rumph with a knife. (R. p. 138.)

¹ In the pre-trial hearing, Wright testified that he drank “about a half a pint.” (R. p. 16, lines 4-7.)

Rumph testified that Wright and the other man eventually came into his bedroom. Rumph recognized the other man as Sean Echols, Vivian's son. Vivian was a woman whom Rumph "socialized" with. (R. p. 139; p. 145.) Vivian knew that Rumph kept a lot of money in the house, and Rumph had loaned money to Echols in the past. (R. p. 139; pp. 145-146.) Vivian had called the house twice that evening. (R. p. 151, lines 17-22.) The second time she called, she asked if she could come over. Rumph said no, that he was in bed. (R. p. 155, lines 19-20.) Rumph testified that a little over \$1000 was stolen. (R. p. 153, lines 11-12.) Rumph also testified that his car, a pair of pants, and a hat were taken. (R. p. 140; p. 143.)

Shortly after the men left, the police arrived. Wright said that the man who hit him was "dark skinned" and had dreadlocks. (R. p. 128.) The police showed Wright three or four different photo lineups on three different days. (R. p. 113, line 24 - p. 114, line 1; p. 133, lines 1-7.) After Wright told the police that he thought the man's name was Ricky, the police created a photo lineup with a photo of Richard Sprinkle, and Wright ultimately identified Sprinkle as one of the perpetrators. (R. pp. 38-40; p. 334.) Wright also identified Echols as the other perpetrator. (R. pp. 113-114; p. 335.)

Rumph, on the other hand, was *never able to identify Sprinkle* in a line-up or in court, despite being in close proximity with his assailant for a considerable period of time in a well-lit room. (R. p. 142, 180, 336.) Rumph was, however, able to identify Echols as one of the perpetrators. (R. p. 142; p. 336.)

Sprinkle was arrested on June 29, 2011, three days after the crime. In January 2013, Sprinkle met with the police and told them that he was present at the scene of the crime, but that when he saw Echols assaulting someone, he got scared and ran out of the house. (R. p. 187; p. 190; p. 193; p. 197.) He said that he was on drugs and that is why he went to the house.

(R. p. 190, lines 21-23.) He never said that he had a weapon and he never said that he hit anyone. (R. p. 194, lines 1-4.) He also testified that Echols's mom, Vivian was there. (R. p. 197, lines 18-21.) He said that he was afraid of Echols. (R. p. 192, lines 23-25.) Echols had been threatening him and he wanted to be moved from Orangeburg Detention Center. (R. p. 197, line 24 – p. 198, line 4.)

ARGUMENT

The Court of Appeals erred in holding that the violation of the defendant's Sixth Amendment right to fully cross-examine witnesses against him was harmless beyond a reasonable doubt.

The Court of Appeals erred in finding that the violation of Sprinkle's Sixth Amendment right to fully cross-examine witnesses against him was harmless beyond a reasonable doubt. The error could not have been harmless beyond a reasonable doubt because the witness whose testimony was limited was a co-perpetrator of the crime and was the only witness who provided evidence to support the conviction of burglary. Had Sprinkle been able to fully cross-examine the witness, Sprinkle would have exposed the plea negotiations that the witness had with the State, exposed the witness's bias to testify favorably for the State, and exposed the fact that the State had no other evidence to support a conviction of burglary against Sprinkle.

This case raises the important question of whether a limitation on cross examination in violation of a defendant's Sixth Amendment's right can be harmless error when the witness who testified against the defendant provided the only evidence to support the conviction carrying the heftiest sentence.

The Sixth Amendment ensure a defendant the right to answer charges "through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527

(1994).² A criminal defendant has the right under the Confrontation Clause to cross-examine a witness against him with regard to bias. State v. Mizell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). A defendant's rights under the Confrontation Clause are violated where the he is "prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors [] could appropriately draw inferences relating to the reliability of the witness.'" Id. at 331, 563 S.E.2d at 317 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986)).

Although a violation of the Confrontation Clause of the Sixth Amendment is not *per se* reversible error, where an error has occurred, reversal can only be avoided where "the error is harmless *beyond a reasonable doubt*." Graham, 314 S.C. at 386, 444 S.E.2d at 527 (quoting Van Arsdall, 475 U.S. at 684 (1986)) (emphasis added). In Van Arsdall, the United States Supreme Court set forth a list of criteria to be used to determine whether or not error is harmless beyond a reasonable doubt:

Whether such an error is harmless in a particular case depends upon a host of factors.... The factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

475 U.S. at 684. In Graham, this Court cited the Van Arsdall factors approvingly, while also noting that "[t]he list of factors . . . is not exhaustive." Graham, 314 S.C. at 386, 444 S.E.2d at 527.

² These Sixth Amendment protections are extended to state defendants through the Due Process Clause of the Fourteenth Amendment. E.g., Duncan v. State of La., 391 U.S. 145, 148 (1968).

In this case, the Court of Appeals did not consider all these factors and overlooked the importance of Echols's testimony when determining that the limitation on cross examination was harmless error. Echols's testimony was vital to the State's case. Without Echols' testimony, the State had *no evidence* that Sprinkle helped plan the crimes and therefore *no evidence* to show Sprinkle's intent to commit a crime. (R. pp. 206-07; 212.) The State needed Echols's testimony to make the case against Sprinkle. Given the critical nature of the testimony, any limitation on Echols's testimony—particularly a limitation that would show bias—could not have been harmless beyond a reasonable doubt.

In addition, the Court of Appeals improperly placed the burden on Sprinkle to show the error was reversible. The Court of Appeals stated that “[i]f *the defendant* establishes he was unfairly prejudiced by the limitation [on cross-examination], it is reversible error.” (App. p. 471) (emphasis added) (quoting State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002)). But it is *the State* that has the burden to demonstrate that the error was harmless beyond a reasonable doubt. See Chapman v. California, 386 U.S. 18, 23-24 (1966) (holding that there was no difference between previous precedent and “requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained,” a standard established in the case). See also, e.g., State v. Alvarez-Lopez, 98 P.3d 699, 708 (N.M. 2004) (“Under federal law, the burden is on the State to establish that the constitutional error in this case was harmless beyond a reasonable doubt.”) (citing Brecht v. Abrahamson, 507 U.S. 619, 630 (1993)); Com v. Vardinski, 780 N.E.2d 1278, 1287 (Mass. 2003) (“Where a defendant’s constitutional right to cross-examination has been denied, the prosecution bears the burden of establishing that the error was harmless” and a court must “resolve all ambiguities and doubts in favor of the defendant”); Dionas v. State, 80 A.3d 1058,

1065 (Md. 2013) (“once error [in not allowing certain cross-examination] is established, the burden falls upon the State, the beneficiary of the error, to exclude this possibility beyond a reasonable doubt”).

Moreover, the State failed to meet its burden of showing that the error was harmless beyond a reasonable doubt. In Dionas v. State, the Maryland’s highest court held that “where credibility is an issue and, thus, the jury’s assessment of who is telling the truth is critical, an error affecting the jury’s ability to assess a witness’ credibility is not harmless error because “the right to cross-examine effectively necessarily includes the right to place the testimony of a witness in its proper setting to fairly enable the jury to judge its credibility.” Dionas, 80 at 1066 (citations omitted). Id. The Dionas court noted a previous decision where it had determined that “[a]lthough the jury had ample evidence to convict [the defendant], we cannot say beyond a reasonable doubt that the court’s error [in not allowing effective cross-examination] could not have influenced the jury” because “[t]he proffered cross-examination, if successful, could have cast sufficient doubt on the prosecuting witness’ credibility to render her unworthy of belief in the mind of at least one juror.” Id. Thus, any cross-examination which could *potentially* affect a juror is not harmless, even where there is strong evidence against a defendant.³ See also State v. Alvarez-Lopez, 98 P.3d 699 (N.M. 2004) (determination of guilt or innocence is for the jury and error cannot be harmless unless the jury’s verdict is “surely unattributable to the error . . . no matter how inescapable the findings to support that verdict might be”) (quoting Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)); Clark v. O’Leary, 852 F.2d 999 (7th Cir. 1988) (examining the Van Arsdall factors and determining that where the state’s case was built on

³ As discussed above, the evidence against Sprinkle was not strong. The evidence came almost exclusively from Echols.

witness testimony to place defendant at the scene of the crime, failure to allow cross-examination of witnesses on gang affiliation that may result in bias was not harmless error).

Courts in other jurisdictions have directly examined the harm to a defendant where a trial court prohibits cross-examination of a witness for the State regarding plea negotiations. In one case, the trial court prohibited the defendant from cross-examining a key witness of the state about unsuccessful plea negotiations with the State, including a revoked proffer of a maximum sentence and discussions about his eligibility for probation.⁴ Cruz v. State, 437 So.2d 692, 695 (Fla. Ct. App. 1983), disapproved on other grounds by Edwards v. State, 548 So.2d 656 (Fla. 1989). Although the trial court did not allow the defendant to cross-examine the witness about these plea negotiations, the defendant was able to elicit on cross examination that the witness expected leniency in exchange for his testimony. Id. The appellate court held that the exclusion of the evidence of plea negotiations was reversible error.

In holding that the limitation on cross was reversible error, the court noted that “the defense’s right to question a witness as to what representations were made to him is not dependent on whether they were approved by the court; the inquiries are germane to developing the witness’s interest or bias in testifying.” Id. at 697 (citing United States v. Benavides, 549 F.2d 392, 394 (5th Cir. 1977)). The court went on to hold that because the witness was a key witness for the State, “[i]t would be problematic to say with certainty whether the state’s conviction of the appellant could have been effected without the key testimony of [the] witness.” Cruz, 548 So.2d at 697. Instead, “[g]iven the crucial nature of [the witness]’s testimony, the defense should have been permitted to make a more thorough examination of two vital areas bearing on the witness’s credibility . . . [including] his interest or bias, if any, in testifying against

⁴ The witness was convicted in a separate trial just prior to the defendant’s trial and was awaiting sentencing. Cruz, 437 So.2d at 694.

the appellant.” This required the court to allow the defense to conduct “[a] comprehensive exploration of . . . questions relevant to plea negotiations which occurred both before and after [the witness]’s trial.”

Other courts examining similar issues have reached the same result. See, e.g., Fannin v. State, 581 So.2d 974 (Fla. Ct. App. 1991) (holding it was reversible error to prevent cross-examination of a witness regarding her knowledge or belief of the possibility of a plea deal for her mother on a separate charge, as such information could suggest interest or bias on the part of witness which could “shade her testimony to protect her mother”); State v. Clark, 364 S.W.3d 540 (Mo. 2012) (holding it was reversible error to prohibit cross-examination of witness regarding his hopes for leniency even where plea deal had not been offered); Keys v. State, 739 So.2d 455 (Miss. Ct. App. 1999) (holding it was reversible error for the trial court to prevent cross-examination of a witness using a statement made by that witness at plea hearing where plea had ultimately been withdrawn).

The same question of bias was present in the case at hand, and the failure to allow Sprinkle to expose Echols’s bias was reversible error. Although the original plea deal the State offered Echols had expired, there is nothing in the record to suggest that the possibility of deal in the future had been foreclosed. In fact, *in camera* discussions with the trial judge indicate that Echols had allowed the plea deal to expire because “he could be facing life, he was offered 20 [years] and he’s looking for ten [years].” (R. p. 237, ll. 17-20.) In ruling, the trial judge stated, “we’re not going to get into” discussions “[w]ith regard to Mr. Echols asking, you know, for ten years.” (R. p. 240 line 24 – p. 241 line 2.)

Further, Echols testified that he was testifying out of the goodness of his heart and that he had not been offered anything for his testimony. (R. p. 212, lines 18-22.) This testimony is

important because it left the jury with the impression that there had been *no plea discussions* between the State and Echols, which was not true. In addition, it allowed the State to portray Echols as a repentant criminal who was hoping simply for “*the Court* to have mercy on [him].” (R. p. 212, lines 23-25) (emphasis added). Had Sprinkle been able to expose the plea discussions with the State, the jury would have seen that Echols was not only not credible, but he actually had reason to testify *against* Sprinkle. Moreover, Echols testified that he was not indicted for burglary, presumably because he was cooperating with the State, and yet the jury was not permitted to hear testimony that would have led them to conclude that Echols was cooperating with the State. Given these facts, it cannot be said with certainty that the testimony would not have affected the jury’s decision.

The Court of Appeals improperly relied on State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991), in the harmless error analysis because the facts in that case were vastly different than the facts in the present case. To begin, the court in Sherard did not find that the limitation on cross was error. The defense was able to elicit testimony that the State’s witness had previously served time and “the last thing in the world he wanted to do was go back”; that the State’s witnesses both knew that they “would be treated much less severely in family Court than in General Sessions Court”; that the State had agreed to reduce numerous penalties against them in exchange for their testimony; and that one witness knew that “in order to remain in Family Court and have the charges against him reduced, he had to testify for the State.” Id. at 174-75, 399 S.E.2d at 596. This testimony is much more extensive and much more indicative of bias than the testimony elicited in the present case.

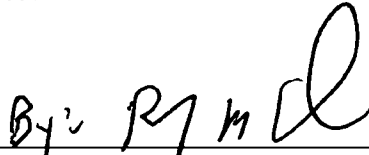
Further, in Sherard the conviction was supported not only by the State’s witnesses but also by the defendant’s *own statements to the police*, which “indicate that he shot [the victim]

while attempting to rob him.” Id. at 175, 399 S.E.2d at 596. Here, there is no other evidence supporting Sprinkle’s conviction for burglary, other than Echols’s testimony. Sprinkle has maintained throughout the case that he did not go to the victims’ house to rob them or to commit a crime. That was Echols’s idea, and Echols was permitted to point the finger at Sprinkle without Sprinkle being able to full cross examine him. Accordingly, the Court erred in relying on Sherard to hold that the trial court’s error was harmless beyond a reasonable doubt.

CONCLUSION

The petition for writ of certiorari should be granted in this case. The limitation on cross examination violated Sprinkle’s constitutional rights and was not harmless beyond a reasonable doubt. The jury should have heard about the plea deal and been able to draw its own conclusions as to why Echols testified the way he did and why it was Sprinkle and not Echols who was charged with burglary. It cannot be said with certainty that had the jury known that Echols had been in plea negotiations with the State that it would not have affected the outcome. A defendant should not have to serve 35 years in prison based on such flimsy and limited evidence.

For these reasons, the appellant respectfully requests that this case be reviewed and that the Court of Appeals’ decision be reversed.



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February 9, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-480 (S.C. Ct. App. filed 12/23/2014)
11-GS-38-1561-1563 & 2013-GS-38-0287

THE STATE,

RESPONDENT,

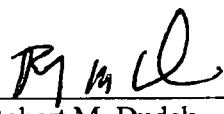
V.

RICHARD LANARD SPRINKLE,

APPELLANT

CERTIFICATE OF SERVICE

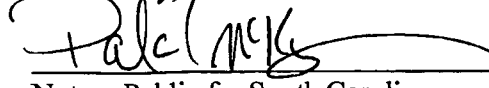
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on J. Benjamin Aplin, Esquire, and the S.C. Court of Appeals this 9th day of February, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9th day
of February, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014)

Appellate Case No: 2015-000227

State of South Carolina, ...Respondent,

v.

Richard Lanard Sprinkle, ...Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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The Court of Appeals properly concluded that any error committed by the trial court in excluding evidence regarding accomplice Sean Echols' expired plea negotiations was harmless because the trial court otherwise allowed meaningful cross-examination of Echols with adequate opportunity for impeachment, particularly where Echols' testimony was only a portion of the strong evidence of Petitioner's guilt.	15
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QUESTION PRESENTED

1. Whether the Court of Appeals properly concluded that any error committed by the trial court in excluding evidence regarding accomplice Sean Echols' expired plea negotiations was harmless because the trial court otherwise allowed meaningful cross-examination of Echols with adequate opportunity for impeachment, particularly where Echols' testimony was only a portion of the strong evidence of Petitioner's guilt.

STATEMENT OF THE CASE

Richard Lanard Sprinkle (Petitioner) was indicted at the October 8, 2012, term of the grand jury for Orangeburg County for two counts of armed robbery (R.p.350-354) and two counts of attempted murder (R.p.356-357). He was subsequently indicted at the February 4, 2013, term of the grand jury for burglary - first degree (R.p.359). Petitioner was represented by Jillian D. Ullman, Esquire, and Mark Wise, Esquire, of the First Circuit Public Defender's Office. The State was represented by Assistant Solicitors Sarah A. Ford and B. Harrison Bell, Jr. (R.p.1). On April 8-10, 2013, Petitioner proceeded to trial by jury before the Honorable Edgar W. Dickson pursuant to which he was found guilty of first degree burglary, two counts of armed robbery, and one count of assault and battery in the first degree as a lesser included offense of attempted murder. He was sentenced to thirty-five (35) years' imprisonment for first degree burglary, thirty (30) years' concurrent imprisonment for each count of armed robbery, and ten (10) years' concurrent imprisonment for first degree assault and battery, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.346-360; p.330, lines 1-13). Petitioner timely filed a notice of intent to appeal and his convictions and sentences were affirmed in an unpublished opinion from the Court of Appeals. State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014) (App.p.467-p.472). Petitioner submitted a timely Petition for Rehearing and by Order filed January 8, 2015, the Petition was denied. (App.p.476-p.487). On February 9, 2015, Petitioner submitted a Petition for a Writ of Certiorari to this Court and now this Return on behalf of Respondent (the State) follows.

STATEMENT OF FACTS

In the early morning hours of June 26, 2011, two men knocked on James Wright (Wright) and Robert Rumph's (Rumph's)¹ front door and asked if they could use the telephone. When Wright opened the door, the men produced a pistol and a knife and asked for money. The intruders struck Wright in the head with the pistol and cut Rumph with the knife while continuing to demand money. After assaulting Wright and Rumph, the men took cash and some clothing and left in Rumph's car. (R.p.93, line 22-p.94, line 15; p.106, line 11-p.111, line 7; p.136, line 8-p.140, line 23; p.145, lines 15-19). Wright testified he knew Petitioner before the incident and had actually talked to Petitioner the day before. (R.p.111, line 17-p.112, line 13). Rumph testified he knew Petitioner's accomplice, Sean Echols, before the incident because Rumph socialized with Echols' mother, Vivian, and had previously loaned money to Echols. (R.p.139, lines 2-13). During the subsequent investigation, Wright and Rumph were able to identify Petitioner and Echols as the assailants based on photo line-ups prepared by the police. (R.p.112, line 14-p.115, line 4; p.142, line 4-p.143, line 2).

Pretrial Motions

On April 8, 2012, the court held a hearing to address several pre-trial motions. First, the State asked the trial court to conduct a Neil v. Biggers² hearing regarding the reliability of the out-of-court identification of Petitioner and the admissibility of eyewitness identification testimony the State was considering offering at trial. After

¹ Rumph was also known by the nickname "Rocky" and was alternatively referred to as Rocky, Mr. Rock or Uncle Rocky by some witnesses.

² 409 U.S. 188 (1972).

hearing testimony and arguments, the trial court denied the motion to exclude the eyewitness identification evidence. (R.p.48, line 22-p.49, line 15).

Following a pre-trial Jackson v. Denno hearing, Petitioner next made a motion to require the State to disclose any deals made for the testimony of his accomplice Echols, either with the State or the federal government. He claimed Echols was charged federally with crimes unrelated to the State charges. The solicitor responded: "Your Honor, everything has been provided to the defense concerning the pending investigation federally against Mr. Echols. The State has also provided an expired plea offer to Mr. Echols. There have been no offers or negotiations or anything of that nature concerning Mr. Echols' testimony in this case, Your Honor." (R.p.50, line 15- p.51, line 20). The State then made a motion in limine to exclude any effort to question Echols about the pending federal investigation, noting there had been no conviction, or even a federal charge. The trial judge took the matter under advisement. (R.p.54, line 23-p.57, line 9).

The following morning the case was called for trial, the jury was selected, and the court gave preliminary instructions before excusing the jury panel and ruling on outstanding pretrial matters. (R.p.58, line 1-p.85, line 8). The trial court granted the State's motion to exclude any testimony regarding Echols' federal investigation for two reasons. First, the trial court found such evidence was inadmissible under the South Carolina Rules of Evidence, specifically Rule 608(b), because it was not probative of Echols character for truthfulness or untruthfulness. Second, relying on State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997), the trial court found any attempt to elicit testimony about the pending investigation would impermissibly allow the jury to draw an adverse inference from Echols' invocation of his right against self-incrimination, which would

run contrary to the purpose of the Fifth Amendment. (R.p.86, line 17-p.88, line 14).

Ultimately, the jury was sworn and the case proceeded to trial. (R.p.90, lines 5-13).

Trial

During opening statements, Petitioner's counsel reminded the jury that it was their job to determine whether any of Wright's trial testimony was true. (R.p.102, line 13-p.103, line 1). The State then called Wright to the stand to describe the armed robbery and assault. He repeated his previous in camera testimony that on the night of the incident two black men, one with long hair and one with short hair, knocked on his door. When Wright went to the door, they asked about Rumph and said they wanted to make a phone call. Rumph told Wright it was okay to let them in, but when Wright opened the door one of the men pointed a pistol at his chest and grabbed him around the neck. (R.p.105, line 22-p.108, line 21). Wright made an in-court identification of Petitioner as the assailant with the pistol, without any objection from Petitioner. Wright testified he knew Petitioner as "Ricky" and recognized Petitioner because Wright saw him "walking the street" all the time. (R.p.108, line 23-p.109, line 12).

Wright testified that one man went down the hall to Rumph's room while the other man forced Wright to his room, demanded money, and made Wright pull up his mattress. Wright was bleeding because he had been hit in the head with the pistol. The man then walked Wright to Rumph's room, where the other man cut Rumph with a knife to get Rumph to open his closet and give up his "pocketbook." The two men then took Rumph's car and left. Wright testified he talked to Petitioner at Bojangles the evening before the Sunday morning robbery, and then he made a second in-court identification of Petitioner. Petitioner again failed to object. (R.p.109, line 13-p.112, line 13). Next,

Wright described the photo lineup procedure and his out-of-court identification of Petitioner, and he made a third in-court identification of Petitioner without objection. He also described a separate photo lineup where he identified Echols as the second robber. (R.p.112, line 14-p.115, line 14; R.p. 334-335). On cross-examination, Wright explained that the intruders had a gun and a knife, but he wasn't sure whether Petitioner or the other man had the knife after they were all in Rumph's room, because Wright was bleeding and wiping blood from his face as a result of having been hit with the pistol. (R.p.121, lines 9-21). He later said Rumph had already been cut when they entered his room, and he did not actually see Rumph getting cut. (R.p.127, lines 1-23).

The State then called Rumph to the stand. On the night of the incident, Rumph was in bed asleep when Wright came to his room to say two men were at the door who wanted to use the phone. One of the men referred to Rumph as "uncle" and Rumph told Wright to let them in. Shortly thereafter, a man entered Rumph's room, pointed a gun at him, and demanded money. Rumph directed the intruder to some cash that was on his dresser, but the man demanded more money and said: "Don't make me kill you over this little bit of money." Wright and a second intruder with short hair then entered Rumph's bedroom. Rumph testified the man with longer hair, or "dreads" was the one who was already in his room. He claimed the man with the dreads then cut him with a knife. Rumph explained that when the man with the dreads first entered the bedroom he had the pistol, but then he and the man with the shorter hair traded weapons, and the man with the dreads cut him with the knife while the man with shorter hair said: "Make him talk." (R.p.135, line 25-p.139, line 2).

Rumph identified the intruder with short hair as "Vivian's son" and testified he already knew him because Rumph and his mother were "socializing together." Rumph testified the man with the dreads started cutting him on his stomach, leg, arm and foot. As the intruders left the house with Rumph's money, pants, and a hat, the man with short hair told Rumph: "don't you never disrespect my mama because I will be back." The two men then left in Rumph's car. (R.p.139, line 2-p.140, line 23). Rumph identified State's Exhibit Numbers Four, Five, Six, Seven, and Eights as photographs of his injuries. He also identified State's Exhibit Number Three as a photo line-up by which he made an out-of-court identification of Echols as the man with short hair. Rumph explained there were two intruders, one with short hair whom he knew, and one with dreadlocks whom he didn't know, but that they both participated in stealing his pants, his car, his money, and his hat. (R.p.141, line 6-p.143, line 19; State's Exhibit #3).

Next, Deputy David McRoy of the Orangeburg County Sheriff's Department testified on behalf of the State. McRoy was working road patrol on June 26, 2011. At approximately two o'clock in the morning he responded to the scene of the robbery. He described one victim as having cuts on his chest, left foot, and forearm, and the other victim having a big gash on top of his head. (R.p.159, line 10-p.161, line 13).

The State then called Investigator Garrison to describe her investigation of the assault and robbery of Wright and Rumph. She described the injuries received by both victims and identified several photos of those injuries, each of which was introduced into evidence without objection. (R.p.167, line 1-p.174, line 5; p.186, lines 8-12; R.p.337-345). Garrison testified she talked to both victims about the incident. Wright stated he knew one of the subjects from a local place called the Corner Pocket and that his name

was "Rick" or "Ricky," and Rumph stated the other subject was Sean Echols, the son of a lady he was seeing. Garrison went on to describe the preparation of the photo line-ups and the out-of-court identifications Wright made of both Petitioner and Echols (R.p. 334-335), and the out-of-court identification Rumph made of Echols (R.p.336). Each of the three photo line-ups was introduced into evidence with "no objection" from Petitioner. (R.p.174, line 7-p.180, line 23).

Next, Investigators Johnny Thrower and John Stokes testified in regard to an oral statement Petitioner made to them after his arrest. Petitioner made several requests to talk to Thrower, so Thrower and Stokes eventually agreed to meet with Petitioner. At the meeting, Petitioner told the investigators about a home invasion he participated in with Echols. Petitioner claimed he went to the residence with Echols and Echols' mother, but after they got inside, Echols started assaulting a guy, at which point Petitioner got scared and ran out of the house. (R.p.186, line 24-p.202, line 9).

Finally, the State called co-defendant Sean Echols to the stand. Echols testified he originally was to planning to commit a quick robbery by himself, but then sought help from his friends Collins Shuler and Jasper Clark, who also brought Petitioner into the picture. He said he and Petitioner specifically planned the robbery of Wright and Rumph because the victims ran a gambling house and would have money. Echols said he and Petitioner talked about how they would commit the robbery, how they would get away, and the specific roles each would play in committing the crime. Echols already knew Rumph because Rumph was "affiliated" with his mother. He repeated his claim that he and Petitioner planned the robbery. (R.p.203, line 17-p.206, line 25).

Echols then described the entire incident in great detail. Shuler and Clark dropped Petitioner and Echols a few streets away from the victims' house. Petitioner and Echols walked through a field and then approached the door of the residence. Echols knocked and when Wright came to the door Echols told Wright he needed to use the phone because he had been in a fight with his wife and needed to call his mother to pick him up. Echols testified this claim was a lie in order to gain entry into the house. Wright walked away but returned with a cordless phone and told Echols and Petitioner to "come in." (R.p.207, line 1-p.209, line 3).

According to Echols, when they entered the house Petitioner had a gun and Echols had a knife. Petitioner pointed the gun to Wright's head and told him not to move and then walked to Rumph's room while Echols escorted Wright to Wright's room. Echols asked Wright for money, took a few bills from his wallet, and flipped up Wright's mattress to look for more money when he heard Petitioner call for him to come to Rumph's room. When Echols and Wright got to Rumph's room, Petitioner handed Echols two handfuls of cash and asked Echols for the knife. They traded weapons and Petitioner began to cut Rumph with the knife while demanding more money. Eventually, Rumph admitted there was more money in the closet. Petitioner opened the closet and retrieved the money while Echols asked for Rumph's car keys. Echols took a pair of pants and a hat from Rumph's room and used the pants to open the back door without leaving fingerprints. Petitioner and Echols then drove Rumph's car to the end of the street, got out, and called Clark to come pick them up. Echols testified he and Petitioner beat, stabbed, and robbed Wright and Rumph, and that they planned the robbery. (R.p.209, line 3-p.212, line 8).

Next, Echols testified he had not been offered or promised anything in exchange for his testimony. He said he was testifying because he did it, got caught, and was hoping the court would have mercy on him. (R.p.212, line 14-p.213, line 4). Echols then testified Petitioner had dreads the night of the robbery and reviewed State's Exhibit #1. He said photo number 2 was an accurate picture of what Petitioner looked like at the time of the robbery. Echols admitted he hit Wright in the head twice with the gun and punched him in the mouth, causing Wright to bleed. (R.p.212, line 13-p.214, line 7).

Before Petitioner began his cross-examination, the solicitor advised the court he had a matter to take up outside of the presence of the jury. The jury was excused, and the State renewed its motion to prohibit any questions about the federal investigation involving Echols. After hearing a proffer of the questions and arguments from the parties, trial court ruled: "Well, it may not be - - and I understand the distinction that you're attempting to make but he has invoked his Fifth Amendment rights. And I'm going to go along with the ruling I made earlier. You're not going to be able to question him on that." (R.p.214, line 17-p.217, line 16).

Next, the State made a motion to prohibit Petitioner from cross-examining Echols in regard to his prior convictions for assault and battery with intent to kill and second-degree burglary. The solicitor argued that under Rule 609(a)(1), SCRE, any probative value was outweighed by undue prejudice. The trial court disagreed and ruled it would allow Petitioner to ask Echols about the prior convictions. (R.p.218, line 2-p.219, line 21). The jury returned to the courtroom and Petitioner began his cross-examination of Echols. Echols testified Petitioner did not do anything to Wright and repeated his claim that he was the one who hit Wright with the pistol. (R.p.220, line 5-p.224, line 10).

Echols then acknowledged that in a statement given to the police during the investigation he said there were three people involved in the robbery but that the other “dude” or “third person” involved: (1) was just standing there, (2) did not engage in any planning of the robbery, (3) did not have a weapon, (4) did not get any of the money stolen, (5) was innocent, (6) was merely present, and (7) didn’t know what was happening until it happened. Echols, however, testified this claim about an innocent third party was a lie and that once he learned Petitioner was trying to place all of the blame on him, he came forward to give the truth. (R.p.226, line 3-p.231, line 22).

Evidence Regarding Plea Negotiations

Petitioner then began questioning Echols about the charges he was facing for his participation in the robbery. He admitted he had not been indicted for first-degree burglary but denied knowing Petitioner had been so indicted, for what Echols acknowledged was a “very serious crime.” The State objected to the questions about first-degree burglary on grounds they were not relevant. The trial court initially sustained the objection and then sent the jury out to hear arguments after Petitioner drew the judge’s attention to State v. Mizzell.³ After hearing Petitioner’s argument in regard to Mizzell, and a brief discussion in chambers, the trial court asked counsel for Petitioner to describe any additional areas of cross-examination he wished to explore and to explain why he believed they were appropriate. Petitioner’s counsel advised he wanted to cross-examine Echols on three points, all of which would assist the jury in making a determination about Echols credibility. First, he wanted to ask Echols if he had sought a ten year sentence during plea negotiations with the State. Second, he wanted to ask Echols if he was in fact given an offer of a cap of twenty years during plea negotiations

³ 349 S.C. 326, 563 S.E.2d 315 (2002).

with the State. Third, he wanted to ask Echols if he is a member of the Folk Nation gang. The solicitor responded that she believed Petitioner's first and second requests were inadmissible pursuant to Rule 410, SCRE, because they were part of Echols' plea negotiations, and the third request was inadmissible pursuant to Rules 404 and 405, SCRE, because it was evidence of other crimes, wrongs, or acts. (R.p.231, line 23-p.240, line 14).

The trial court ruled as follows:

The first thing, right before we took a break I had sustained your objection to his question about whether or not he could ask him about the possible life sentence. And Mr. Wise was kind enough to give me the Mizzell case so I'm going to correct my ruling.

I'm going to overturn the objection. He is allowed to ask him about the maximum sentence he could be facing under that. Okay?

With regards to Mr. Echols asking, you know, for ten years or asking for a cap of 20 years, whether or not that was given or not, all of that is part of plea negotiations and we're not going to get into that at all.

With regard to whether or not he was in a gang or not in a gang however, whether he - - it doesn't matter to me how he's going to ask it, we're not going to get into that. I think it's character. Doesn't have anything to do with his truthfulness or untruthfulness. So whether I think it's a bad act that he's in a gang or not, we're not getting into it in this trial.

Okay? All right.

(R.p.240, line 15-p.241, line 9). Cross-examination resumed, and Petitioner questioned Echols about not having been indicted for first-degree burglary. He acknowledged first-degree burglary would have carried a sentence of life without the possibility of parole. Petitioner also questioned Echols about his prior convictions for burglary and assault and battery with intent to kill. (R.p.243, line 11-p.244, line 20). Upon completion of Echols testimony, the State rested. (R.p.248, lines 20-23).

Closing Arguments, Jury Charge, and Verdict

After the trial court denied Petitioner's motion for a directed verdict, the parties made closing arguments. Petitioner's counsel reminded the jury of the weaknesses of Wright's identification by pointing out the inconsistency between the initial police report of two "unknown" assailants and Wright's subsequent claim that he knew Petitioner prior to the incident. Counsel also noted the discrepancy between Wright's original description of Petitioner as having dark skin and the appearance of Petitioner's skin during trial. Next, counsel attacked the reliability of Wright's identification where he was presented with multiple photo line-ups and he noted the seemingly inconsistent testimony from Wright, Rumph, and Echols about Petitioner's participation in the crimes. (R.p.271, line 21-p.293, line 7).

The trial judge charged the jury on the State's burden of proof, the presumption of innocence, the roles of the judge and jury, direct evidence, circumstantial evidence, credibility of witnesses, criminal intent, accomplice liability, and mere presence. (R.p.294, line 6-p.307, line 15).

At the end of trial, the jury found Petitioner guilty of first degree burglary, two counts of armed robbery, and one count of first degree assault and battery as a lesser included offense of attempted murder in regard to Rumph. Petitioner was acquitted of any assault in regard to Wright. Petitioner made a motion for a new trial, arguing there was no evidence of great bodily injury to Rumph which would support the conviction for assault and battery in the first degree. The trial court denied the motion and sentenced Petitioner to thirty-five (35) years' imprisonment for first degree burglary, thirty (30) years' concurrent imprisonment for each count of armed robbery, and ten (10) years'

concurrent imprisonment for first degree assault and battery, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.346-360; R.p.330, lines 1-13). (R.p.321, line 9-p.326, line 24).

CERTIORARI

Petitioner argues this Court should grant certiorari because the limitation on his cross-examination of Echols violated his constitutional rights and could not have been harmless beyond a reasonable doubt because Echols "was the only witness who provided evidence to support the conviction of burglary." He contends "it cannot be said with certainty that had the jury known that Echols had been in plea negotiations with the State that it would not have affected the outcome." The State disagrees and submits the Court of Appeals conducted a well-reasoned analysis of the trial court's error regarding the cross-examination of Echols in the context of the entire case before correctly concluding that error was harmless. Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of applying existing precedent to the particular facts and circumstances of Petitioner's case. Although the Court of Appeals found the trial court erred by excluding evidence regarding Echols' plea negotiations, it properly held: "the error was harmless" because "the trial court allowed a meaningful cross-examination of Echols with adequate opportunity for impeachment, such that the jury had sufficient evidence before it to judge Echols' credibility." Thus, the State respectfully requests that Petitioner's petition for a writ of certiorari be denied and dismissed.

ARGUMENT

The Court of Appeals properly concluded that any error committed by the trial court in excluding evidence regarding accomplice Sean Echols' expired plea negotiations was harmless because the trial court otherwise allowed meaningful cross-examination of Echols with adequate opportunity for impeachment, particularly where Echols' testimony was only a portion of the strong evidence of Petitioner's guilt.

On appeal to the Court of Appeals, Petitioner argued the trial court erred in limiting his cross-examination of State's witness Sean Echols. Specifically, he argued the trial court improperly prohibited him from asking Echols: (1) whether he was "under investigation" or "charged" in a federal case involving the shooting of a corrections officer, and (2) whether during plea negotiations he sought a ten year sentence and had been offered a "cap" of twenty years. The State responded by arguing the trial court appropriately exercised its discretion to impose reasonable limits on Petitioner's cross-examination of Echols where both the federal investigation and the plea negotiations were not relevant to Echols' testimony at Petitioner's trial, were likely to confuse the issues, and would not demonstrate a prototypical form of bias on the part of Echols. In addition, the State argued that any error in limiting Petitioner's cross-examination of Echols was harmless in light of: (1) the existence of evidence corroborating Echols' testimony on material points, (2) the extent of the cross-examination Petitioner was permitted to conduct, and (3) the overall strength of the State's case. Ultimately, the Court of Appeals found the trial court erred by excluding evidence regarding Echols' plea negotiations, but held the error was harmless because the trial court allowed a meaningful cross-examination of Echols with adequate opportunity for impeachment. This harmless error holding is supported by the record and should be affirmed.

Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to “to be confronted with the witnesses against him” during trial. U.S. Const. amend. VI. Specifically included in a defendant’s Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses. State v. Aleksey, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right guarantees to a criminal defendant the opportunity to cross-examine the witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71 (Ct. App. 2004), aff’d as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE (“Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.”).

A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness. State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679, 680 (1986)). The Mizzell court highlighted the competing concerns with regard to certain witnesses: The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence. However, other constitutional concerns, such as the Confrontation Clause, limit the applicability

of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence. *Id.* at 331-32, 563 S.E.2d at 318. In *State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012), our supreme court revisited limitations on the scope of cross-examination in light of the Confrontation Clause and concluded: "The fact that a cooperating witness avoided a mandatory minimum sentence is critical information that a defendant must be allowed to present to the jury." *Gracely*, 399 S.C. at 374-75, 731 S.E.2d at 886. "It is of no moment that at some point during the proceedings one of the witnesses confirmed the existence of a mandatory minimum sentence. The fact remains that Petitioner was unable to fully develop this information through the cross-examination" *Id.* at 375 n.4, 731 S.E.2d at 886 n.4.

Effectiveness of Cross-Examination

On appeal to the Court of Appeals, Petitioner acknowledged he was allowed to fully cross-examine Echols about both: (1) his prior convictions for burglary and assault and battery with intent to kill; and (2) the maximum sentence he would have faced for his conduct in this case, including the possible life without the possibility of parole (LWOP) sentence he avoided by not being indicted for first degree burglary. Petitioner, however, maintained the limitations imposed by the trial court in regard to the pending federal investigation and the plea negotiations with the State nonetheless violated his Sixth Amendment Rights. Although the Court of Appeals agreed in regard to the plea negotiations, it recognized that: "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." *Gillian*, 360 S.C. at

450, 602 S.E.2d at 71 (emphasis added). Here, the trial court did not interfere with Petitioner's opportunity for effective cross-examination of Echols, therefore, any error in the limitation on that cross-examination was harmless. In Gracely our supreme court acknowledged "[a] violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis." Id. at 375, 731 S.E.2d at 886. Whether such an error is harmless in a particular case depends upon a host of factors The factors include [1] the importance of the witness's testimony in the prosecution's case, [2] whether the testimony was cumulative, [3] the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, [4] the extent of cross[-] examination otherwise permitted, and, of course, [5] the overall strength of the prosecution's case. Id. (quoting Van Arsdall, 475 U.S. at 684 (emphasis added in Gracely)).

The purpose of Rule 608(c), SCRE, is that a defendant be allowed to explore any "bias, prejudice, or other motive to misrepresent" such that the jury gets a clear picture of a witness with which to judge his or her credibility. Cross-examination is the tool used to highlight any biases that may exist. Here, the trial court allowed a meaningful cross-examination with numerous opportunities for impeachment, including specifically allowing Petitioner to inquire into whether Echols believed he would get some sort of leniency in exchange for testifying. Echols admitted he was not indicted for first degree burglary and was avoiding an LWOP sentence, but testified he had not yet been given any deals or plea bargains in exchange for his testimony. Just as the Court pointed out in Mizzell, this particular testimony was highly probative of bias because the jury could have inferred that Echols would be

more likely “to engage in biased testimony in order to obtain a future recommendation for leniency.” Mizzell at 332-33, 563 S.E.2d at 318. The additional cross-examination sought by Petitioner would at best have been marginally relevant and would create no likelihood of changing the outcome of the trial. The Court of Appeals properly recognized that, given the extent to which Echols’ credibility was already challenged, any impact of further cross-examination would have been insignificant.

Overall Strength of Case

In regard to overall strength, Petitioner argues Echols’ testimony was an essential part of the State’s case and that without his testimony the State had no evidence that Petitioner helped plan the crime, and no evidence to show intent to commit a crime. Petitioner contends Echols was the “only witness who provided evidence to support the conviction for burglary” which means he “provided the only evidence to support the conviction carrying the heftiest sentence.” Although Echols accomplice testimony was important, it was only a portion of the strong evidence against Petitioner. Indeed, Petitioner’s argument seems to disregard eyewitness testimony from the Wright and Rumph.

“A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either . . . the entering or remaining occurs in the nighttime. S.C. Code Ann. § 16-11-311 (2003). “‘Enters a building without consent’ means: (a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession.” S.C. Code Ann. § 16-11-310 (2003). Although the intent to

commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling. State v. Pinckney, 339 S.C. 346, 349-50, 529 S.E.2d 526, 527-28 (2000). It is well-established in South Carolina that a conviction can stand upon the uncorroborated testimony of an accomplice. See State v. Taylor, 255 S.C. 147, 149-150, 177 S.E.2d 550, 551 (1970).

Here, Petitioner's conviction did not stand upon the uncorroborated testimony of Echols. Instead, Echols' testimony was largely corroborated by the eyewitness identification testimony from Wright proving Petitioner was an active participant in all of the crimes. At trial, the State presented testimony from Wright describing the armed robbery and assault. Wright explained how the two assailants convinced him to let them enter the house before the assault and robbery. He made several in-court identifications of Petitioner as one of the intruders and participants in the crimes. (R.p.105, line 22-p.115, line 14). Rumph also described the armed robbery and assault and identified Sean Echols as the second intruder. (R.p.135, line 25-p.143, line 19). Wright's testimony alone supports Petitioner's conviction for first degree burglary because the jury was free to base its determination of Petitioner's intent on evidence of his actions once inside the dwelling. Pinckney, *supra*. But Wright's testimony did not stand alone. It was substantially corroborated by testimony from Rumph and Echols. It was also corroborated in part by Petitioner's statement to the police wherein he admitted he was at the scene of the crimes. As noted by this Court, "In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses

cannot be harmless." Gracely, 399 S.C. at 377, 731 S.E.2d at 887. Here, the case was not built on circumstantial evidence and Echols' testimony alone. Petitioner suffered no unfair prejudice as a result of the limitations placed on his cross-examination of Echols concerning the plea negotiations. See State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). Thus, any error committed by the trial court was harmless beyond a reasonable doubt.

Several of the cases referenced by Petitioner in support of his claim to the contrary can be distinguished from Petitioner's case precisely because they lack any other strong evidence of guilt. For example, in Cruz v. State, 437 So.2d 692, 697 (Fla. Ct. App. 1983), disapproved on other grounds by Edwards v. State, 548 So.2d 656 (Fla. 1989), the appellate court found the trial court erred in unduly restricting Cruz's right of cross-examination of the state's key witness Smith and reversed the conviction. However, the court noted: "The other evidence admitted against Cruz and his accomplice Gilley was highly circumstantial. Smith was in fact the only witness who gave testimony against the Petitioner relating to the offense of conspiracy to commit robbery with a firearm." Similarly, in Fannin v. State, 581 So.2d 974, 976 (Fla. Ct. App. 1991), the appellate court held the trial court unduly restricted Fannin's right to cross-examine state's key witness Oliver, requiring reversal. Yet, the court commented: "The arresting officers never observed Petitioner in actual possession of the cocaine and no fingerprints were found on the cocaine located in the sink. Gwen Oliver was in fact the only witness who gave testimony directly connecting Petitioner to the cocaine." In State v. Clark, 364 S.W.3d 540, 545 (Mo. 2012), the appellate court found error in the limited cross-examination of a key State's witness but highlighted

that there was “no physical evidence” linking Clark to the crime and that the State’s case relied upon testimony from a second witness whose testimony suffered from his own serious credibility problems. Finally, in Keys v. State, 739 So.2d 455, 459 (Miss. Ct. App. 1999), the appellate court found the trial court committed reversible error in prohibiting impeachment of a State’s key witness with statements made during plea negotiations; however, the court noted “he was the only eyewitness in this case.”

The facts in these cases are vastly different from the facts regarding Petitioner. Thus, in addition to properly finding harmless error due to the opportunity for meaningful cross-examination, the Court of Appeals decision is supported by the overall strength of the evidence in the State’s case. For all of these reasons, the Court of Appeals properly affirmed Petitioner’s convictions and sentence.

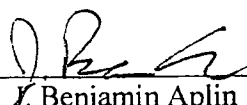
CONCLUSION

Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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Columbia, South Carolina
March 11, 2015

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014)

Appellate Case No: 2015-000227

State of South Carolina, ...Respondent,

v.

Richard Lanard Sprinkle, ...Petitioner.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Return to Petition for a Writ of Certiorari*, dated March 11, 2015, on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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Robert M. Dudek, Chief Appellate Defender
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I further certified that all parties required by Rule to be served have been served.
This 11th, day of March, 2015.



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THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-480 (S.C. Ct. App. filed Dec. 23, 2014)

State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Petitioner.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

The Court of Appeals erred in holding that the violation of the defendant's Sixth Amendment right to fully cross-examine witnesses against him was harmless beyond a reasonable doubt.

The State's return to the petition for writ of certiorari highlights the need for this Court's review of the Court of Appeals's decision. The State is unable to show how the limitation on cross-examination in violation of the defendant's Sixth Amendment right was harmless error. This is the State's burden, and the State has failed to meet it.

The State concedes that the testimony of its star witness, Sean Echols, was important to the State's case against Sprinkle. (Return p. 19.) The State attempts to downplay the importance of this testimony by arguing that the testimony of the two victims, Wright and Rumph, is sufficient to overcome any constitutional error in limiting the cross-examination of Echols. But the testimony of the two victims was contradictory, leaving the testimony of Echols as the tie breaker. One victim, Rumph, was not even able to identify Sprinkle in a line-up or at trial. (R. p. 142, line 24 – p. 143, line 2.) The other victim, Wright, was able to identify Sprinkle, but the jury did not believe Wright's testimony that Sprinkle assaulted him. (R. pp. 108-11; 332-33.) Instead, the jury convicted Sprinkle of assaulting Rumph, a person who was not even able to identify Sprinkle. (R. pp. 331-32.)

The jury reached this conclusion because of the testimony of Sean Echols. (R. pp. 209-12). Without Echols's testimony, the jury could not have reached the conclusion that Sprinkle assaulted Rumph or that he went to the house that night to commit a burglary. Echols was the only person who testified that Sprinkle assaulted Rumph and the only person who testified that Sprinkle went to the house with the intent to commit a burglary. (R. pp. 206-07; 212.) Without

Echols's testimony, the State did not have a case against Sprinkle. There was no physical evidence linking Sprinkle to the crimes and no additional testimony to support his conviction.¹

Given the importance of Echols's testimony to the State's case, Sprinkle should have been able to fully cross-examine him, as acknowledged by the Court of Appeals, and the limitation on cross-examination was not harmless error. Where there is *any possibility* that the failure to allow a defendant to fully cross-examine a witness about potential bias, prejudice, or credibility could affect the decision of even a single juror, the error cannot be harmless beyond a reasonable doubt. See *Dionas v. State*, 80 A.3d 1058, 1066 (Md. 2013); *State v. Alvarez-Lopez*, 98 P.3d 699 (N.M. 2004); *Clark v. O'Leary*, 852 F.2d 999 (7th Cir. 1988). The burden is on the State to demonstrate that the error was harmless beyond a reasonable doubt. See *Chapman v. California*, 386 U.S. 18, 23-24 (1966) (holding that there was no difference between previous precedent and "requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained"). The State needed Echols's testimony to make the case against Sprinkle. Given the critical nature of the testimony, any limitation on Echols's testimony—particularly a limitation that would show bias—could not have been harmless beyond a reasonable doubt.

Courts in other jurisdictions have held that the failure of a trial judge to allow cross-examination on plea negotiations does not constitute harmless error. *Cruz v. State*, 437 So.2d 692, 695 (Fla. Ct. App. 1983), *disapproved on other grounds by Edwards v. State*, 548 So.2d 656

¹ The State asserts that its case is corroborated by a prior out-of-court statement by Sprinkle that he was present at the home at the time the crime was committed. (Return p. 20.) Mere presence at the scene of a crime is not sufficient to convict an individual of that crime. *State v. Mattison*, 388 S.C. 469, 481, 697 S.E.2d 578, 585 (2010) (noting that "mere presence" is insufficient to sustain a conviction). Further, Sprinkle stated that he fled the scene as soon as he realized what was happening. (R. pp. 187, 190, 193, 197.). Thus, Sprinkle's out-of-court statement does not provide evidence for the charges against him.

(Fla. 1989); *Fannin v. State*, 581 So.2d 974 (Fla. Ct. App. 1991); *State v. Clark*, 364 S.W.3d 540 (Mo. 2012); *Keys v. State*, 739 So.2d 455 (Miss. Ct. App. 1999). The State attempts to distinguish these cases by arguing that the evidence of Sprinkle's guilt is stronger than the evidence in the cited cases. As discussed above, however, the evidence against Sprinkle was virtually nonexistent without the testimony of Echols. Without Echols, the State had two witnesses—one of whom the jury chose not to believe, and one of whom was not even able to identify Sprinkle as the assailant. This is hardly sufficient evidence to establish guilt and to land someone in jail for thirty-five years.

The fact that Sprinkle sought to expose and that he was prohibited from doing so was that the State had previously offered Echols a plea deal, and although it had expired at the time of trial, a future deal was possible. In fact, *in camera* discussions with the trial judge suggest that Echols allowed the plea deal to expire because "he could be facing life, he was offered 20 [years] and he's looking for ten [years]." (R. p. 237, ll. 17-20.) In ruling on the admissibility of evidence of Echols' plea negotiations with the State, the trial judge noted that Echols was "asking, you know, for ten years" for his testimony against Sprinkle. (R. p. 240, ll. 24-25.) At trial, however, Echols testified that he was testifying out of the goodness of his heart and that he had not been offered anything for his testimony. (R. p. 212, ll. 18-22.) This testimony is important because it left the jury with the impression that there had been *no plea discussions* between the State and Echols, which was not true. In addition, it allowed the State to portray Echols as a repentant criminal who was hoping simply for "*the Court* to have mercy on [him]." (R. p. 212, ll. 23-25.) (Emphasis added.) Had Sprinkle been able to expose the plea discussions with the State, the jury would have seen that Echols was not only not credible, but that he actually had reason to testify *against* Sprinkle. Moreover, Echols testified that he was not

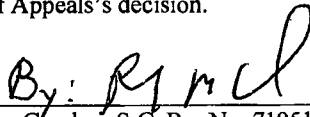
indicted for burglary, presumably because he was cooperating with the State, and yet the jury was not permitted to hear testimony that would have led them to conclude that Echols was cooperating with the State.

Given these facts, the State has failed to prove beyond a reasonable doubt that the testimony of Sean Echols would not have affected the jury's decision.

CONCLUSION

The petition for writ of certiorari should be granted. The trial court's improper limitation on cross-examination violated Sprinkle's constitutional rights and the State has failed to carry its burden of proving the error was harmless beyond a reasonable doubt. The jury should have heard about the plea deal with Sean Echols and should have been able to draw its own conclusions as to why Echols testified the way he did and why it was Sprinkle and not Echols who was charged with burglary. It cannot be said with certainty that evidence of Echols's plea negotiations would not have affected the jury's consideration of the evidence, especially given the importance of Echols's testimony as conceded by the State.

For these reasons, the petitioner respectfully requests that the Court grant the petition for writ of certiorari and review the Court of Appeals's decision.

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Columbia, South Carolina

March 23, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No.: 2013-000784

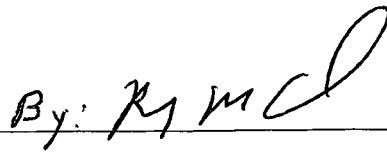
State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Reply to Return to Petition for Writ of Certiorari on Respondent State of South Carolina on March 23, 2015, addressed to the attorney of record, J. Benjamin Aplin, Assistant Attorney General, Office of the South Carolina Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

By: 

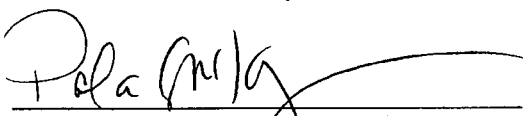
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S.C. COMMISSION ON INDIGENT DEFENSE
1330 Lady Street, Ste. 401
Columbia, South Carolina 29201
(803) 734-1330
rdudek@sccid.sc.gov

Attorneys for Appellant

SUBSCRIBED AND SWORN TO
Before me this 23rd day of March, 2015.



Notary Public for South Carolina
My Commission Expires: July 24, 2022.

The Supreme Court of South Carolina

The State, Respondent,

v.

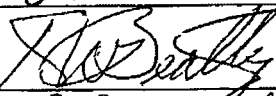
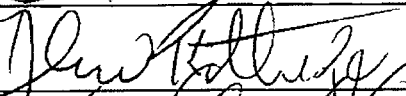
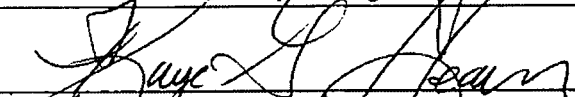
Richard Lanard Sprinkle, Petitioner.

Appellate Case No. 2015-000227

Lower Court Case Nos. 2011-GS-38-01561, -01562,
-01563, -00287

ORDER

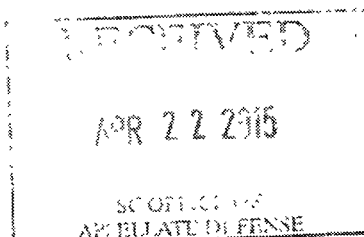
This matter is before the Court on a petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Sprinkle*, Op. No. 2014-UP-480 (S.C. Ct. App. filed Dec. 23, 2014). The petition is denied.

	J.
	J.
	J.
	J.
	C.J.

I would grant the petition for a writ of certiorari.

Columbia, South Carolina

April 22, 2015





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

April 28, 2015

The Honorable Winnifa Brown-Clark
PO Box 9000
Orangeburg SC 29115-9000

REMITTITUR

Re: The State v. Richard Sprinkle
Lower Court Case No. 2011GS3801561, 2011GS3801562,
2011GS3801563, 2013GS3800287
Appellate Case No. 2013-000784

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Tina Marie Cundari, Esquire
John Benjamin Aplin, Esquire
David Michael Pascoe, Jr., Esquire
Alexander Erwin Davis, Esquire

FORM 5

2015-CP-38-1075

STATE OF SOUTH CAROLINA)

COUNTY OF Orangeburg S.C.)

Richard Ianard Sprinkle 172425)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish this answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Orangeburg First Judicial Circuit
3. Name(s) of co-defendant(s) (if any) Sean A. Echols
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 GS 38-1561, 1562
 - (b) 2011 GS 38-1563
 - (c) 2011 GS 38-0287
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 10, 2013 Thirty-Five (35) years

- (b) Thirty - Five (35) years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. The State of South Carolina Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. Denial
- iii. _____
- (c) the date of each such result:
- i. December 23, 2014
- ii. April 22, 2015
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results.
- i. Op. No. 2014-UP-480
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

2015 SEP - 2 P 12:30
FILED FOR RECORD
WANDA B. CLARK
CLERK OF COURT
JULIAN F. JOHNSON

custody unlawfully:

- (a) Prosecutorial Misconduct/Brady Violation
- (b) Confrontation Clause Violation
- (c) Ineffective Assistance of Counsel

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

(a) Please see Supplement Attached

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

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WHITFIELD COUNTY
CLERK OF DISTRICT
COURT
2015 SEP - 2 P 12:30

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

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

(a) which grounds have been presented:

i. Confrontation Clause

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Appealii. Writ of Certiorari

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Prosecutorial Misconduct, Find after trial, prosecutor perjured(b) Brady Violation, Find the material after trial.(c) Ineffective Assistance of Counsel, After trial finding.

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WINIFRED CLARK
CLERK OF COURT
2015 SEP -2 P 12:00

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Jillian D. Ullman } Orangeburg Public Defenders Office
 - ii. Mark Wise } Summerville, S.C.
 - iii. Tina Cundari, / Alexander E. Davis } 1310 Gadsden St.
Columbia, S.C. 29211
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Trial
 - iii. S.C. Court of Appeals / Writ of Certiorari

19. State clearly the relief you seek in filing this application:

Conviction and Sentence Vacated / Remand for New Trial de novo

20. Are you now under sentence from any other court that you have not challenged?

No

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CLERK OF COURT
2015 SEP - P 12:50

STATE OF SOUTH CAROLINA

VERIFICATION

County of Orangeburg
Richard lanard Sprinkle

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Richard lanard Sprinkle ✓

SWORN to and subscribed before me this 13th
day of August, 2015.

Nancy C. Muckel (L.S.)
Notary Public

My Commission Expires: 1-23-2023

2015 AUG 17 P 3:31
FILED
WINNIE A. CLARK
CLERK OF COURT
ORANGEBURG, SC

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

Richard Leonard Sprinkle

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Richard Leonard Sprinkle ✓
Applicant

SWORN or affirmed to and subscribed before me this

13th day of August, 2015.

Nancy C. Muckert
Notary Public

My Commission Expires: 1-23-2023

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2015 SEP -2 P 12:33

2015 AUG 17 P 3:34

FILED
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC



612

STATE OF SOUTH CAROLINA

COUNTY OF OrangeburgSTATE VS.Sean A. Echols

AKA: _____

Race: BLACK Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Orangeburg, SC 29115

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-1557A/W#: M805583Date of Offense: 6/26/2011S.C. Code § : 16-11-330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45

w/minor 1st or 2nd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sarah A. Ford
Ford, Sarah A.77029
SC Bar#Sean A. Echols
Defendant[Signature]
Attorney for Defendant71183
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/11/13☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 6/28/11☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

ATTEST: TRUE COPY

Recipient: Winnifred B. Clark

CLERK OF COURT

*Fine:

§ 14-1-206 (Assessments 107.5 %) ORANGEBURG COUNTY, SC§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge [Signature]Judge Code: 2153Sentence Date: 4/11/13Clerk of Court/ Deputy Clerk J. OlenaCourt Reporter: Cherie L. Young

SCCA/217 (03/2011)

18. PCR APPLICATION SUPPLEMENT ATTACHED

(A) Applicant charges that the state holds him in confinement without due process of law in violation of the Fifth and the Fourteenth Amendment of the Constitution of the United States. The grounds of his charge are, in substance, that the sole basis of his conviction was perjured testimony, which was knowingly used by the prosecuting authorities in order to obtain that conviction.

Victim-Witness, James Wright testified that Applicant had knocked on the door and use trickery to gain entry into the residence, (see Transcript R.p. 165 line 20-23).

The prosecutor knew that their Star-Witness, Sean Echols video statement to Investigator, Shumpert of the Sheriff's Office, that he was the one who had knock on door and use trickery to gain entry into the residence, Mr. Echols also testified to his statement, see (Transcript R.p. 261 line 8-18). Applicant was perjured by Mr. Wright testimony which applicant was convicted of first degree burglary.

The prosecutor opening statement, on the elements: of Burglary in the first degree, consent can be gained or consent is not gained if you use artifice or trickery or misrepresentation such as saying I need to use the park. Applicant was the only one indicted for Burglary first degree. The prosecutor has the responsibility and duty to correct it's own witness what he knows to be false testimony, elicit the truth.

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ORANGEBURG, SC
SEP 12 2025
73



(A-2) Prosecutor had willful withhold Brady material

from applicant and depriving applicant of his liberty. Applicant made a motion to require the state to disclose any plea negotiations for the testimony of their star-witness Sean Echols. The prosecutor responded, there have been no offers, or negotiations or anything of that nature concerning Echols testimony, that they had provided everything to the defense, even a expired plea offer to Echols.

The rule of Brady v. Maryland, arguably applies in three quite different situations, each involves the discovery, after trial, of information which had been known to the prosecutor but unknown to the defense.

The state violated Brady by failing to fully disclose all material evidence regarding Echols plea negotiation, this violated applicant due process under the Fifth and the Fourteenth Amendment. see (Transcript evidentiary pretrial R.p. 82 line 2-20). Exhibit Sean A. Echols, Sentence sheet after applicant conviction April 10, 2013 (Negotiated Sentence Plead of fifteen (15) years).

Sean A. Echols was never indicted for Burglary first degree, which he confess of using misrepresentation or trickery to gaining entry in the residence.

(B) Applicant was unfairly prejudiced by trial court's limitation of applicant's cross-examination about witness plea agreement with the state under which witness was offered of a cap of 20 years. If he had been charged with burglary in the first degree, he would be looking at life. The jury should evaluate his credibility understanding the potential sentence, what the sentence was, what the plea offer was that he was originally offered.

Applicant Sixth Amendment of the Confrontation Clause was violated because applicant was not permitted to cross-examine witness concerning potential bias in testifying for prosecution in light of fact that witness was awaiting sentencing. A witness's credibility may be impeached with evidence of his conviction for a crime of moral turpitude. see S.C. Code Ann. § 19-11-60 (1985).

Echols testimony was not being introduced into evidence at his own trial, and therefore Rule 410 SCRE, did not bar cross-examination regarding this matter.

Any fact may be drawn forth which tends to show interest, bias, or partiality of the witness.

Trial court's failure to instruct the jury not to consider co-defendant's statements in determining applicant's guilt violated the confrontation clause.

Evaluating the content of Echols redacted statement in context about the third person, this violated applicant right to confront and cross-examine.

(c) Applicant sixth Amendment was violated because of flaws in the performance of counsel were material and applicant was prejudice by counsel error.

Counsel failed to object during Wright's testimony when he may three separate in-court identification, failed to object when the photo lineup was introduced into evidence by the state, when Investigator, Garrison and Wright describing the out of court identification procedure, and when the identification evidence draw forth in the jury's presence. Failed to preserve any issue related to the trial's court pretrial rulings on the identification by Wright.

Failed to call investigator Shumpert as a witness, to Echols statement about the third party, counsel failed to put up a third party defense, which applicant statement was, he been the third party that did not participate in the robbery or attempted murder, Echols testify that he was the one who knocked on the door and use trickery to gain entry.

Counsel failed to introduced Echols video statement as a Exhibit for the jury could hear about the third party participation, Counsel also failed to introduced the text messages between Echols and Collins Shuler and Jasper Clark.



ALAN WILSON
ATTORNEY GENERAL

August 14, 2017

The Honorable Winnifa Brown-Clark
Clerk of Court, Orangeburg County
PO Box 9000
Orangeburg, SC 29115-9000

Re: Richard L.R. Mavins, #172425 v. State of South Carolina
2015-CP-38-01075

Dear Ms. Brown-Clark:

Enclosed please find the **Return and Partial Motion to Dismiss** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Ruston W. Neely
Assistant Attorney General

RWN/dgr
Enclosure

cc: Jonathan D. Waller, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	IN THE FIRST JUDICIAL CIRCUIT
	)	
	)	
Richard Lanard Sprinkle Mavins ¹ , #172425,	)	Case No.: 2015-CP-38-1075
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION TO
	)	DISMISS
State of South Carolina,	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on September 2, 2015 and the Motion to Amend filed on October 19, 2015, would respectfully show this Court:

I. FACTS

The pertinent facts surrounding the underlying charges are that in June 2011, the two victims, Wright and Rumph ("Rocky"), were roommates. During the early morning hours, two men arrived at Wright's and Rumph's front door. Wright explained to Rocky that the men asked for Rocky and to use a phone. Rocky told Wright to let the men in. Wright opened the door. Once the men entered the residence, they assaulted and robbed Rocky and Wright and fled in Rocky's car. Applicant's codefendants were identified as Jasper Clark, Collins Shuler, and Sean Echols.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In October 2012, the Orangeburg County Grand Jury indicted Applicant for two counts of armed robbery (2011-GS-

¹ Applicant's trial transcript, indictments, sentencing sheets, and appellate records show Applicant's name as "Richard Lanard Sprinkle." However, the South Carolina Department of Corrections has Applicant listed as "Richard Mavins" and Applicant's name on his PCR application is "Richard Lanard Sprinkle Mavins."

38-1561, -1562) and attempted murder (2011-GS-38-1563). Applicant was subsequently indicted in for burglary, first degree (2013-GS-38-0287). Jillian D. Ullman, Esquire, represented Applicant. Assistant Solicitor Sarah A. Ford, Esquire, prosecuted the case. On April 8-10, 2013, Applicant proceeded to trial before the Honorable Edgar W. Dickson. The jury found Applicant guilty as indicted for both armed robbery counts, burglary, first degree, and the lesser included offense of assault and battery, first degree. Judge Dickson sentenced Applicant to imprisonment for concurrent terms of thirty years for each count of armed robbery, ten years for assault and battery, first degree, and thirty-five years for burglary, first degree.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense, Tina Cudari, Esquire, and Alexander E. Davis, Esquire, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 23, 2014. State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014). The remittitur was returned to the circuit court on April 28, 2015.

Attached to this Return and incorporated by reference are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to object during Wright's testimony when he may three separate in-court identification."
 - b. Counsel "failed to object when the photo lineup was introduced into evidence by

the State, wen Investigator Garrison and Wright describing the out of court identification procedure, and when the identification evidence draw forth in the jury's presence."

- c. "Applicant was denied a fair trial because of defense counsel's failure to object to the introduction of the photo line up and requiring a meaningful 403 analysis be performed outside the presents of the jury."
 - d. Counsel "failed to preserve any issue related to the trial court's pretrial rulings on the identification by Wright."
 - e. Counsel "failed to call Investigator Shumpert as a witness to Echols' statement about the third party."
 - f. "Counsel failed to put up a third party defense, which Applicant statement was, he had been the third party that did not participate in the robbery or attempted murder, Echols testify that he was the one who knocked on the door and used trickery to gain entry."
 - g. "Defense counsel's performance was deficient in not exercising due diligence in using the compulsory process to obtain and investigate all exculpatory evidence that was in the possession of the prosecutor to include but not limited to the following:
 - i. "All video and/or statements involved in concern of this case"
 - ii. "All text messages that was sent between the principle participants, Jasper Clark, Collins Shuler, and Sean Echols in this crime"
 - iii. "Any deals and/or incentives and/or compensation of any type offered to the co-defendant(s) or State's witnesses in exchange for testimony against Applicant"
2. "Brady Violations"
- a. "Prosecutor had willful withhold Brady material from Applicant and depriving Applicant of his liberty. Applicant made a motion to require the State to disclose any plea negotiations for the testimony of their star witness, Sean Echols. The prosecutor responded that there have been no offers or negotiations or anything of that nature concerning Echols testimony, that they had provided everything to the defense, even a expired plea offer to Echols."
 - b. "Applicant was denied a fair trial due to the prosecution's withholding known exculpatory evidence from the defense such as statements (videoed, written, or otherwise), text messages between known co-conspirators in this crime, as well as any negotiations with the co-defendants and/or witnesses for deals such as not prosecuting charges, or pursuing LWOP sentencing and/or any other incentives and/or compensation for testimony against Applicant."
3. "Prosecutorial Misconduct"
- a. "Misconduct by the prosecution in his Qusi-judicial position for failing to correct perjured testimony from both James Wright and Sean Echols, and thus through silence striking foul blows against Applicant..."
 - b. "The prosecutor is guilty of vindictive prosecution when he failed to charge any of the principle participants with burglary when the jury was charged with 'the hands of one is the hand of all.'"
 - c. "The misrepresentation of evidence by the prosecution and the use of the photo line ups multiple times to incite the jury's bias and encourage a finding of guilt on

an improper basis to obtain a conviction which was highly prejudicial to Applicant's defense"

4. Trial Court Error

- a. "Applicant was unfairly prejudiced by trial court's limitation of Applicant's cross-examination about witness plea agreement with the State under which witness was offered a cap of 20 years."
- b. "...Applicant was not permitted to cross examine witness concerning potential bias in testifying for the prosecution in light of fact that witness was awaiting sentencing."
- c. "Echols' testimony was not being introduced into evidence at his own trial, and therefore Rule 410 SCRE, did not bar cross-examination regarding this matter."

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. BRADY CLAIM

Applicant alleges a Brady v. Maryland, 373 U.S. 83 (1963) violation. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999).

Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Respondent submits that this ground for relief is without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively

refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. PROSECUTORIAL MISCONDUCT

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has 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 submits that these allegations must be summarily dismissed.

VII. TRIAL COURT ERROR

Respondent requests the claim allegation that the trial court erred be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss the allegation of trial court error for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VIII. AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any

amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

IX. PARTIAL MOTION TO DISMISS

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and Brady violations. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

[Signature block on following page]

XI. CONCLUSION

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel and Brady violations.

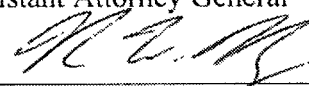
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 14, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	2015-CP-38-01075
	)	
RICHARD L.R. MAVINS, #172425	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

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

Jonathan D. Waller, Esquire
 Giese Law Firm
 1315 Blanding Street
 Columbia, SC 29201

DATED this the 14th day of August, 2017.


 Deonna Rogers, Legal Assistant
 For Respondent

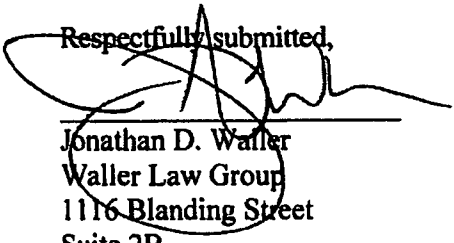
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
Richard Lanard Sprinkle Mavins, #172425,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No. 2015-CP-38-1075
	)	
State of South Carolina	)	
	)	
Respondent.	)	

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on September 2, 2015, and previously amended on October 19, 2015, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Mark Wise, Esquire and Jillian Ullman, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances regarding the non-testifying confidential informant who provided information to law enforcement.
 - b. Counsel was ineffective for failing to properly preserve and argue Applicant's motion to dismiss based upon the insufficiency of the indictments. Counsel Ullman made the motion after the swearing of the jury.
 - c. Counsel was ineffective for failing to object to Applicant being viewed by the full jury pool, shackled, prior to jury selection.

- d. Counsel was ineffective for failing to properly argue against the State's motion in limine to limit the cross examination of Sean Echols to include evidence of plea negotiations.
- e. Counsel was ineffective for failing to request a separate and distinct charge of "mere presence" during the jury charge conference and for failing to object to the Judge's charge to the jury which did not include such a charge.
- f. Counsel was ineffective for failing to object to multiple instances of impermissible comments made during the State's closing arguments.
- g. Counsel was ineffective for failing to object to the incomplete verdict form returned by the jury.

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

February 22, 2018

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

COUNTY OF ORANGEBURG)

Richard Lanard Sprinkle Mavins, #172425,)

CERTIFICATE OF SERVICE

Applicant,)

vs.)

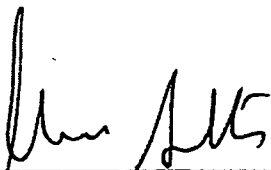
Case No. 2015-CP-38-1075

State of South Carolina,)

Respondent.)

I certify that on this date I served the Respondent, in this case with a copy of Applicant's
Amendment to Application for Post Conviction Relief by delivering a copy of same by the
United States Postal Service, in a sealed envelope clearly bearing a return address with adequate
first class postage affixed thereon, said copy to:

Christian Saville, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211



M. David Scott

Columbia, South Carolina

This 22nd day of February, 2018

I N D E X

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

1 THE COURT: All right. Parties ready to proceed?

2 MS. COLEMAN: Yes, Your Honor.

3 THE COURT: Okay.

4 MS. COLEMAN: Thank you. May it please the Court.

5 THE COURT: Yes, ma'am.

6 MS. COLEMAN: This is *Richard Sprinkle Mavins vs. the*
7 *State of South Carolina*, docket No. 2015-CP-38-1075. The
8 Applicant is presently confined in the South Carolina
9 Department of Corrections pursuant to orders of commitment
10 of the Orangeburg County Clerk of Court.

11 In October, 2012, the Orangeburg County Grand Jury
12 indicted Applicant for two counts of armed robbery and
13 attempted murder. Applicant was subsequently indicted for
14 burglary first degree.

15 Mark Wise, Esquire and Jillian D. Ullman, Esquire
16 represented the Applicant. Assistant Solicitor Sarah A.
17 Ford, Esquire prosecuted the case.

18 On April 8 through the 10th, 2013, Applicant proceeded
19 to trial before the Honorable Edgar W. Dickson. The jury
20 found Applicant guilty as indicted for both charges -- both
21 counts of armed robbery, first degree burglary, and they
22 found him guilty of the lesser included offense of assault
23 and battery first degree.

24 Judge Dickson sentenced Applicant to imprisonment for
25 concurrent terms of 30 years for each count of armed

1 robbery, 10 years for assault and battery first degree, and
2 35 years for first degree burglary.

3 Applicant filed a timely notice of appeal. The South
4 Carolina Court of Appeals affirmed Applicant's conviction
5 on December 23, 2014. The remittitur was issued April 28,
6 2015.

7 Excuse me. And I think I left out that they
8 petitioned for cert of the Supreme Court, and I believe
9 cert was denied. Then the remittitur was issued on April
10 28, 2015.

11 Applicant filed a timely application for post
12 conviction relief on September 2, 2015, alleging that he
13 was being held in custody unlawfully based on the following
14 allegations: Ineffective assistance of counsel,
15 prosecutorial misconduct, Brady violations, and trial court
16 error.

17 The State filed its return and partial motion to
18 dismiss on August 14, 2017. Applicant filed an amendment
19 on February 22, 2018, and he's present today and
20 represented in this matter by Mr. Jonathan Waller.

21 And Your Honor, at this time, the State would renew
22 its motion to dismiss any trial court error allegations in
23 his application. He had three or four allegations that its
24 our position that those are direct appeal allegations which
25 should have been raised in his direct appeal and are

1 improper for post conviction relief.

2 THE COURT: Mr. Waller?

3 MR. WALLER: Your Honor, I -- I don't have any -- I
4 think we're going to touch on some of those issues just
5 factually, but I don't have any -- any opposition to that
6 motion. Those were addressed during the direct appeal.

7 THE COURT: So that motion is granted.

8 MS. COLEMAN: Thank you, Your Honor.

9 THE COURT: All right. Mr. Waller, you may proceed.

10 MR. WALLER: Thank you, Your Honor. We'll call --
11 Your Honor, I'm going -- just for judicial economy, I'm
12 call Jillian Ullman.

13 CLERK OF COURT: Please raise your right hand and
14 state your full name for the record.

15 THE WITNESS: Jillian Denise Ullman.

16 JILLIAN ULLMAN, having been first
17 duly sworn, testifies as follows:

18 THE COURT: Your witness.

19 MR. WALLER: Thank you, Your Honor. May it please the
20 Court.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. WALLER:

24 Q Good morning -- it's still morning. Good morning, Ms.
25 Ullman. How are you today?

1 A I'm well, thank you.

2 Q Ms. Ullman, how did you come to represent Mr.
3 Sprinkle?

4 A I worked at the Orangeburg County Public Defender's
5 Office, and Mark Wise, I believe, was appointed to
6 represent Mr. Sprinkle. And when we went to trial, I
7 believe I second chaired that case with Mark Wise.

8 Q Okay. So you didn't represent him the entire time.
9 You were just brought in to assist with the trial.

10 A Correct.

11 Q Okay. During the trial -- and kind of cut to the
12 chase here. During the trial, you made a motion to dismiss
13 based on two different issues with the indictment. Do you
14 recall that at all?

15 A A little.

16 Q Okay. Do you have a copy of the transcript right
17 there in front of you?

18 A I do.

19 Q If I can get you to turn to page 127 -- excuse me --
20 126 of the transcript.

21 A Yes, sir.

22 Q And that -- that's where you make your motion to
23 dismiss. If you could, I guess, just refresh your memory
24 with it.

25 (Brief pause.)

1 A Okay.

2 Q You made the -- the argument two different ways: You
3 made it on jurisdictional grounds, a kind of overall grand
4 jury process, or two specific grand jurors you thought
5 might have had a conflict. You also made an argument as to
6 the sufficiency of the five indictments in this case. Do
7 you recall that?

8 A Yes, sir.

9 Q Okay. What -- why did you not make your motion based
10 on the sufficiency -- sufficiency of the indictments prior
11 to the jury being sworn?

12 A If the motion had been granted prior to the jury being
13 sworn, then the solicitor would have had the ability --
14 since they control the docket -- to continue the case, take
15 the indictments back before a grand jury, and fix anything
16 that would have been wrong or improper. The case itself,
17 the indictments themselves, would have not been dismissed;
18 and that would have not resulted in Mr. Sprinkle being not
19 guilty.

20 By waiting for the jury to actually be sworn, that
21 caused that indictment to be the indictment that Mr.
22 Sprinkle was being prosecuted on. So if the Court agreed
23 that the indictment itself was insufficient, that would
24 mean that Mr. Sprinkle did not have proper notice and the
25 case would have been dismissed.

CROSS-EXAMINATION BY MS. COLEMAN - JILLIAN ULLMAN

9

1 So waiting for the jury to have been sworn would have
2 actually -- if the motion were granted -- resulted better
3 for Mr. Sprinkle rather than just giving the solicitor the
4 chance to fix it.

5 Q Okay. What research, if you recall, specific to this
6 case or otherwise, into that issue of challenging the
7 sufficiency of indictments had you done at that point?

8 A I honestly do not remember --

9 Q Okay.

10 A -- what research I would have done.

11 Q Okay. You renewed your motion at the end of the close
12 of the case; is that your understanding?

13 A Yes, sir.

14 MR. WALLER: Beg the Court's indulgence, please?

15 THE COURT: Yes, sir.

16 (Brief pause.)

17 MR. WALLER: Nothing further, Ms. Ullman. Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: Cross-examination.

20 MS. COLEMAN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. COLEMAN:

23 Q Good morning, Ms. Ullman. How are you?

24 A Well, thank you.

25 Q How long have you been practicing law?

1 A Since 2004.

2 Q And did you have any meetings with the applicant in
3 this case or was that more Mr. Wise?

4 A Mr. Wise would have met with him much more than I did.
5 As we prepared for trial, I would have met with Mr.
6 Sprinkle to go over trial strategy, discuss whether or not
7 he was going to testify, things of that nature.

8 But from the beginning of the appointment up until we
9 were preparing for trial, Mr. Wise would have been meeting
10 with him.

11 Q Okay. Do you recall reviewing the discovery materials
12 with the applicant?

13 A I'll be honest, I don't remember me specifically going
14 over them. I do know that we went over what evidence would
15 come out at trial. I believe we got an investigator
16 involved. I remember going with Mr. Wise and the
17 investigator to the area where the incidents were alleged
18 to have occurred, and investigated. And certainly after
19 that, meeting with Mr. Sprinkle and discussing all of that.

20 But truly, going through each document and going
21 through the packet, I -- I don't know if I did that.

22 Q Okay. What was the trial strategy in the applicant's
23 case?

24 A Well, first, we, of course, tried to attack the
25 indictments. And then after that, I believe the strategy

1 was that he was not involved. But I'll be honest, I don't
2 remember the exact strategy.

3 Q And you handled -- and if you need to refer to the
4 transcript, you're welcome to as well. But according to
5 the transcript, you handled several of the pre-trial
6 motions; is that correct?

7 A Yes.

8 Q Okay. Did you argue against the photo lineup in this
9 case?

10 A Yes.

11 Q What was your argument based on?

12 A I honestly don't remember.

13 Q And that's fine if you don't, or if you would like to
14 flip through --

15 A And if you want me to flip through I can, but I
16 honestly don't remember. I just -- I know I would have
17 objected to any photo lineup.

18 Q Okay. Was there a *Neil vs. Biggers* hearing before the
19 trial?

20 A Yes.

21 Q Okay. Was there a *Jackson vs. Denno* hearing before
22 the trial?

23 A If Mr. Sprinkle gave a statement, then there
24 definitely would have been a *Jackson vs. Denno* hearing.

25 Q Okay. And do you recall arguing on his behalf in that

1 hearing?

2 A I would have done all the pre-trial motions. I had
3 appellate background from when I was in school. So I was
4 very comfortable kind of legal arguments and research and
5 things of that nature. I'll be honest, this was in 2011,
6 and I don't remember the specifics; but I definitely did
7 all the pre-trial stuff.

8 Q Okay. And would you stand by the transcript as to
9 what you argued against?

10 A Absolutely.

11 Q Okay.

12 A And I would note that by the time I worked on this
13 case with Mr. Wise and Mr. Sprinkle, I'd been a public
14 defender for five or six years and had defended numerous
15 murder-type charges in trial.

16 Q Do you remember any discussion about the confidential
17 informant in this case, Collins Shuler?

18 A I honestly don't.

19 Q Okay. Do you recall the co-defendant, Sean Echols,
20 who testified in this case?

21 A Yes.

22 Q Okay. Do you remember the -- the State's motion in
23 limine to exclude any evidence about his pending Federal
24 investigation.

25 A Yes.

CROSS-EXAMINATION BY MS. COLEMAN - JILLIAN ULLMAN 13

1 Q Okay. What -- what -- if you recall, what was your
2 argument against that, against their motion?

3 A I don't recall specifically, but it would -- I believe
4 I would have argued that it was relevant to show why he
5 would be testifying and what kind of deal he was getting --
6 "he" being Mr. Echols -- which would show bias and reason
7 to fabricate a story because it would be getting him out of
8 the Federal charges. And I believe his Federal charges
9 were significant enough that he was looking at some serious
10 time federally.

11 Q Okay. But did the trial court grant the State's
12 motion to exclude that evidence?

13 A I believe it did.

14 Q Okay. Okay.

15 MS. COLEMAN: Thank you. No further questions.

16 THE COURT: Any re-direct?

17 MR. WALLER: Nothing further.

18 THE COURT: You may step down. Thank you.

19 (The witness complies.)

20 THE COURT: You may call your next witness.

21 MR. WALLER: Thank you, Your Honor. Call Richard
22 Sprinkle.

23 CLERK OF COURT: Please raise your right hand. State
24 your full name for the record.

25 THE WITNESS: Richard Sprinkle.

DIRECT EXAMINATION BY MR. WALLER - RICHARD SPRINKLE

14

1 RICHARD SPRINKLE, having been
2 first duly sworn, testifies as follows:

3 THE COURT: Your witness.

4 MR. WALLER: Thank you, Your Honor. May it please the
5 Court.

DIRECT EXAMINATION

6
7 BY MR. WALLER:

8 Q Good morning, Mr. Sprinkle. How are ---

9 A Good morning.

10 Q --- you?

11 A I'm all right.

12 Q All right. Mr. Sprinkle, I want to clear up one thing
13 so the Court understands. Your name is listed on the
14 caption as Richard Lenard Sprinkle Mavins; is that right?

15 A Yes, sir.

16 Q Okay. Why is it Sprinkle sometimes and Mavins
17 sometimes?

18 A Sprinkles is my father name.

19 Q Okay.

20 A Last name.

21 Q So you -- so all of this is you, though; is that ---

22 A Yes, sir.

23 Q Okay. Richard Sprinkle and Richard Mavins are the
24 same person.

25 A Yes, sir.

DIRECT EXAMINATION BY MR. WALLER - RICHARD SPRINKLE

15

1 Q Okay. All right. Mr. Sprinkle, I want to take you
2 back to when you were first arrested on these charges; do
3 you recall that?

4 A Yes, sir.

5 Q Okay. You were arrested for armed robbery?

6 A Two armed robberies and attempted murder -- two
7 attempted murders.

8 Q Okay. The burglary charge didn't come 'til later; is
9 that right?

10 A Yes, sir.

11 Q Okay. When you were first arrested, did you ever make
12 bond or anything like that?

13 A No, sir. They never gave me a bond.

14 Q Who was your attorney?

15 A Doug Mellard.

16 Q Okay. How long had Mr. Mellard -- how long did Mr.
17 Mellard represent you?

18 A Couple of months. Then I had -- I didn't like what he
19 was doing. So I asked for -- appoint me another -- another
20 lawyer.

21 Q Okay. And did you get a new lawyer?

22 A Mr. Wise.

23 Q Okay. And how long did Mr. Wise represent you before
24 you ultimately went to trial?

25 A Him and Ms. Ullman represented me 'til -- 'til I went

1 to trial.

2 Q Do you remember how long it was?

3 A I don't remember. Probably about eight months or
4 something.

5 Q Okay. How many times you think you and Mr. Wise met
6 and discussed your case?

7 A Well, it's been about -- a few times.

8 Q Okay. Was it enough times where you understood what
9 was going on?

10 A Well, a little bit.

11 Q Okay. What did you not understand?

12 A With the deal situation, with Sean Echols, that --
13 that now I found out that he sent a letter to Ms. Ford and
14 him and Ms. Ford made some kind of agreement. So I was
15 confused about that.

16 And then I was confused also about the witness, Mr.
17 James Wright. He got on the stand and say that I didn't do
18 it, and then he saying Sean did it. But I still get
19 charged with it. I -- it's -- it's a lot of stuff I didn't
20 understand.

21 Q Okay. Let me -- let me back you up and let me ask a
22 couple of questions for ---

23 A Yes, sir.

24 Q Did you and Mr. Wise discuss the charges you were
25 facing, those first four charges?

DIRECT EXAMINATION BY MR. WALLER - RICHARD SPRINKLE 17

1 A Well, Mr. Wise -- talked to Mr. Wise in Bamberg. He
2 was like, "Well, your charges -- Mr. Rumph was really not
3 that serious because we not worrying 'bout him since, like,
4 for Mr. Wright and Sean, those would -- those gonna be the
5 only charges."

6 Q Okay. Let me ask it this way: You were charged with
7 two counts or armed robbery.

8 A Yes, sir.

9 Q Okay. One for each of the -- the two victims in the
10 case.

11 A Yes, sir.

12 Q Two counts of --

13 A Arm robbery.

14 Q -- attempted murder --

15 A Attempted murder. That's right. Yeah.

16 Q -- at first. One for each of the two victims ---

17 A Yes, sir.

18 Q --- in this case. Did you and Mr. Wise talk about the
19 potential penalties that each of those would have carried?

20 A I can't remember like that.

21 Q Did you and Mr. Mellard ever talk about it?

22 A Mr. Mellard was just saying I'm gonna get life. You
23 know, just go ahead and plead out and be done with it.

24 Q Okay. To get back to what you said a second ago, the
25 allegations in your case were that you had assaulted one of

1 these two people; is that right?

2 A (No audible response.)

3 Q But not that ---

4 A I didn't ---

5 Q --- you assaulted both.

6 A Right. I didn't assault nobody.

7 Q Okay. So -- so Mr. -- Mr. Wright was one of the
8 victims in the case.

9 A Yes, sir.

10 Q Was he the gentleman that answered the door?

11 A Yes, sir.

12 Q Okay. He gave a statement to law enforcement; is that
13 right?

14 A Yes, sir.

15 Q And did you and Mr. Wise talk about that statement?

16 A A little bit.

17 Q Okay. He picked you out of a lineup ---

18 A Yes, sir.

19 Q --- is that right? All right. Did you and Mr. Wise
20 talk about the -- the lineup that you were shown?

21 A I -- I'm not for -- not mistaken, yes, sir.

22 Q Okay. Do you remember what y'all talked about?

23 A No, I don't remember.

24 Q Okay. Mr. Rumph was the other victim in the case.

25 A Yes, sir.

DIRECT EXAMINATION BY MR. WALLER - RICHARD SPRINKLE

19

1 Q Mr. Rumph did not identify you; is that right?

2 A Yes, sir.

3 Q Okay. Did you and Mr. Wise talk about the charges
4 related to Mr. Rumph?

5 A A little bit. I --

6 Q Okay.

7 A -- I don't know what we talked about, but it was a
8 little bit.

9 Q Okay. Your co-defendant in the case was Sean -- a
10 gentlemen named Sean Echols.

11 A Yes, sir.

12 Q He also gave a statement to law enforcement.

13 A Yes, sir.

14 Q Okay. His statement was different than some of the
15 other people's statements; is that your ---

16 A Yes, sir.

17 Q --- understanding? Did you and Mr. Wise talk about
18 the differences?

19 A A little bit.

20 Q Okay. Do you remember what y'all talked about?

21 A Not right -- not offhand, Mr. ---

22 Q Okay.

23 A --- Mr. Waller.

24 Q And I know it's been a long time. When you and Mr.
25 Wise met and y'all were discussing your case --

1 A Yes, sir.

2 Q -- what did y'all talk about? Before you started
3 talking about trial, what did y'all talk about?

4 A About -- really 'bout the case saying Sean Echols was
5 -- testimony was gonna hurt me in the case and like Mr.
6 Rumph, who, like you say, we weren't really worried about
7 that one. We was worrying about so far Mr. Wright and Mr.
8 Echols's testimony against me.

9 Q Mr. Rumph had identified Sean Echols assaulting and
10 robbing him; is that right?

11 A Right.

12 Q Did you an Mr. Wise discuss the theory of accomplice
13 liability or the hand of one and hand of all?

14 A I don't understand the hand of one, Mr. -- Mr. Waller
15 like that --

16 Q Okay.

17 A -- because if -- if we like the hands of one, hands of
18 all, shouldn't Mr. Echols been told first he could bring it
19 also?

20 Q Okay. Did you and Mr. Wise discuss what that -- what
21 the hand of one hand of all meant?

22 A Yes, sir. He told me a little bit about it.

23 Q Okay. Did you -- you just testified you didn't
24 understand it. Did you understand it back then?

25 A No, sir.

DIRECT EXAMINATION BY MR. WALLER - RICHARD SPRINKLE 21

1 Q Okay. You asked why -- shouldn't Mr. Echols have been
2 charged with burglary in the first degree.

3 A Yes, sir.

4 Q Did y'all discuss the fact that he had not been
5 charged?

6 A No, we didn't discuss why Mr. Echols --

7 Q Okay. What did you an Mr. Wise talk about as far as
8 any defenses you might have?

9 A I wanted to go to -- I wanted go to trial. Well, they
10 was originally trying to get me to plea, but why would I
11 plea to something I didn't do?

12 Q Okay.

13 A I'm not gonna do that.

14 Q Okay. You -- you gave a statement to law enforcement;
15 is that correct?

16 A Yes, because I feared for my life.

17 Q Okay. Your statement --

18 A My statement was I called Investigator Thrower and I
19 think -- I forgot the other's name -- to the county jail.
20 I seen them -- when I came from court speaking to Mr. Wise,
21 I seen them, and I told them I needed to talk to them. And
22 I talked to them and they got me transferred to Sumter
23 County.

24 I didn't get what the Stateo was saying you did this
25 or you did that. I didn't do that because I always try to

DIRECT EXAMINATION BY MR. WALLER - RICHARD SPRINKLE 22

1 give it to Ms. -- Ms. Ford was like the third person that
2 was they was saying the case -- Sean was saying the case --
3 she was like, she don't want to hear that; you know what I
4 mean? So I feared for my life.

5 It is supposed to have some -- some, like, Sean was
6 sending me, like, little notes. So if I got the guy who
7 was in charge of the jailhouse, and I sent it to him and he
8 gave copies to -- gave them copies. He made copies to them
9 so it should have been in my record.

10 Q Okay. Let me back you up 'cause that was a lot of
11 information right there.

12 A Yes, sir.

13 Q You were originally arrested and housed in Orangeburg.

14 A Yes, sir.

15 Q And at some point you were -- you asked to speak to
16 Investigators Thrower and Stokes ---

17 A Stokes, yes, sir.

18 Q You were transferred from Orangeburg County --

19 A Yes, sir.

20 Q -- to -- where did you go first?

21 A Sumter County.

22 Q Okay. Did you stay in Sumter very long?

23 A Probably about a month.

24 Q Okay. Where did you go after Sumter?

25 A Bamberg.

DIRECT EXAMINATION BY MR. WALLER - RICHARD SPRINKLE

23

1 Q What was the reason for you being transferred?

2 A From where, from Orangeburg?

3 Q Yes, sir.

4 A I feared for my life.

5 Q Okay.

6 A 'Cause Sean sent somebody to knock me off back there
7 once 'cause he said I told on him, but I -- apparently I
8 didn't -- that wasn't true.

9 Q Okay. So that was your -- your co-defendant had
10 threatened you and ---

11 A Right.

12 Q You felt that you were in danger and needed to not be
13 housed in Orangeburg.

14 A Right.

15 Q Okay. Your charges remained pending in Orangeburg; is
16 that right?

17 A Yes, sir.

18 Q Okay. When you and Mr. Wise talked about Mr. Echols's
19 statement, what did y'all talk about?

20 A About Mr. Echols's statement?

21 Q Yes, sir.

22 A It's gonna hurt me.

23 Q Okay. In Mr. Echols's statement, if you remember, how
24 many people did he say went in the house?

25 A Three.

1 Q Okay. In his statement, not his testimony, but his
2 statement --

3 A His statement to -- as far as, like, to the police,
4 right?

5 Q Yes, sir.

6 A He told Mr. Shumpert on the video machine it was three
7 people there. And then he gets in -- he said the third
8 person just stood in the living room. When he was inside
9 the crime scene, he couldn't do nothing. Said he was
10 stuck.

11 Q Okay. He said the third person didn't know what was
12 going to happen.

13 A Didn't participate and didn't -- didn't receive no
14 money, didn't do nothing.

15 Q Okay. The statement you gave to law enforcement, to -
16 - to -- to investigators at some point --

17 A Uh-huh.

18 Q -- did that kind of match up?

19 A Yes, sir.

20 Q Okay. Did you and Mr. Wise talk about that?

21 A A little bit.

22 Q Okay. Did you -- did you tell him that you were the
23 third person?

24 A Yes, sir.

25 Q Okay. What did he say?

DIRECT EXAMINATION BY MR. WALLER - RICHARD SPRINKLE 25

1 A I don't remember what he said exactly, but, I mean, it
2 wasn't good. I'm -- I'm locked up.

3 Q Okay. What was the impression you got -- you don't
4 remember. I know it was six years ago. What was the
5 impression you got ---

6 A My impression back then probably was like he really
7 didn't care. He sound so far like Solicitor Sarah Ford. I
8 was trying to tell her the same thing, and she was like she
9 don't want to hear it. So, I mean, if I'm telling the
10 truth, what am I supposed to do? If I lie, then y'all
11 believe it.

12 Q Okay. When you went to trial, you chose not to
13 testify.

14 A Right.

15 Q Okay.

16 A The reason why I didn't testify because they said if I
17 testify, then the Solicitor's Office would be able to bring
18 my background on my records and all that, you know.

19 Q Okay. Mr. Sprinkle, what -- did you ask Mr. Wise to
20 do any -- any sort of investigation or talk to any
21 witnesses on your behalf before you got to trial?

22 A Well, I don't remember not too much like that because
23 there really wasn't nobody to talk to, not but Mr. Wright,
24 you know.

25 Q Okay.

1 A And then call from the informant, the one who said
2 that -- led the police to our arrest. He say that we did
3 it.

4 Q Okay. The confidential informant -- there were two
5 other people who were -- I don't know if they were ever
6 arrested, but they were named as setting this whole thing
7 up ---

8 A Right.

9 Q --- is that right?

10 A Yes, sir.

11 Q What did you know at the time about those individuals?

12 A One of them was the confidential informant. One --
13 confidential informant brother was there. That's what he
14 told -- Sean was telling Solicitor Office.

15 And then the other one was the confidential informant
16 hisself [sic].

17 Q Okay. Did you have any of that information when you
18 and Mr. Wise were meeting to discuss your case?

19 A Yes, sir.

20 Q Okay. What did you and Mr. Wise talk about about
21 those two individuals?

22 A It -- it was saying to me, to my understanding, like,
23 you have to have -- say, me and you testify or make a
24 statement against the judge. There got to be two of us
25 before she get convicted. That's -- that's my

1 understanding of it.

2 Q Okay. Did you and Mr. Wise ever talk about that --
3 your understanding?

4 A Not really.

5 Q Okay. Did you ever ask him to explain it?

6 A Not really because I didn't -- a lot of stuff -- like
7 now I found out that I should have asked questions then,
8 but I didn't know.

9 Q Okay. There was testimony at the trial that there
10 were text messages between those two individuals and your
11 co-defendant.

12 A Yes, sir.

13 Q Did you and Mr. Wise ever had a chance -- ever have a
14 chance to look at any of those text messages?

15 A Yes, sir.

16 Q Okay. You -- you did see the text messages.

17 A Yes, sir. I know Mr. Mellard was on the case, too.

18 Q Okay. Did y'all talk about them?

19 A Not really. I don't remember all like that, but I
20 know -- I seen the text messages.

21 Q Okay. Mr. Sprinkle, what -- what interaction did you
22 and Ms. Ullman have?

23 A So far as what?

24 Q As far as her representing you. I know she testified
25 she was brought on to assist with the trial. Did you ever

1 meet with her by herself or was it always with -- with Mr.
2 Wise?

3 A Well, I seen her when I was in the -- I mean, we go to
4 the courthouse, speak to her for a brief minute as she come
5 through the hallway.

6 Q Okay.

7 A But not like -- no.

8 Q Not any in-depth discussions about your case.

9 A No, not -- I don't believe so.

10 Q All right. Mr. Sprinkle, what -- when you got to the
11 trial --

12 A Yes, sir.

13 Q -- what did you think your defense was going to be?

14 A Be honest, I thought they was gonna smash them because
15 it was -- it was open and shut case, to be honest.

16 Q Okay. What do you mean by that?

17 A I didn't do it, and there's no fingerprints, no DN --
18 no nothing. Only thing was two statements from my co-
19 defendant who was looking for a deal from the Solicitor
20 Office. And then Mr. Wright who admitted he was drinking
21 and it -- I mean --

22 Q Okay.

23 A -- it didn't make sense.

24 Q Mr. Wright picked you out of a lineup; do you ---

25 A Because ---

1 Q --- recall that.

2 A Yes, sir. He knew me.

3 Q Okay. That was my next question. He -- he also
4 testified that he previously knew you. Did you and Mr.
5 Wise or you and Ms. Ullman ever discuss the lineup
6 procedure or the identification procedure?

7 A Well, the lineup, we discussed it was like because I
8 was in the jail uniform, and we didn't really discuss stuff
9 like that.

10 Q Okay. Did you ever ask them any questions about it?

11 A I didn't -- I didn't -- like, no. I don't know the
12 law, but I still -- I didn't know the law back then. So I
13 don't know what questions to ask or which one not to ask.

14 Q Okay.

15 MR. WALLER: Beg the Court's indulgence, please?

16 (Brief pause.)

17 Q Mr. Sprinkle, when your trial was about to start and
18 y'all were picking the jury --

19 A Yes, sir.

20 Q -- do you remember that?

21 A Yes, sir.

22 Q The -- the judge asked you to stand up and -- and turn
23 around so the jury could have a chance to -- to see if
24 anybody recognized you.

25 A Yes, sir.

1 Q Do you recall that?

2 A Yes, sir.

3 Q Were you wearing shackles at the time?

4 A Yes, sir.

5 Q Okay. Were you in -- in regular clothes or were you
6 in a detention center uniform?

7 A In regular clothes.

8 Q Regular clothes ---

9 A Yes, sir.

10 Q -- but you were shackled?

11 A Yes, sir.

12 Q Okay. Was it as you are today, with the -- the belly
13 chain and everything?

14 A Yes, sir.

15 Q Okay. Did you say anything to your lawyers about
16 that?

17 A I don't -- I didn't know the law. So I don't -- I
18 couldn't say what I don't know.

19 Q Okay.

20 A I thought that was -- that's the way it go.

21 Q Mr. Sprinkle, I've asked you all the questions that I
22 have for you. Is there anything you think I've left out
23 that the judge needs to be aware of Mr. Wise or Ms.
24 Ullman's representation?

25 A Mr. Wise was saying, like, I'm gonna be all right

CROSS-EXAMINATION BY MS. COLEMAN - RICHARD SPRINKLE 31

1 because he's been ineffective. He said, "I know I've been
2 ineffective." And so I'm like -- I didn't -- I didn't know
3 -- I still don't know a -- I'm learning a little bit now.
4 I didn't know what ineffective was. He said, "You can come
5 back on that, and you'll be all right."

6 But I'm trying to figure out, like, Judge Dickson
7 asked Ms. -- Ms. Ford, "Why hasn't Sean Echols been charged
8 with first degree burglary?"

9 And Ms. Ford answered, "Sean's not on trial yet."

10 But he's my co-defendant. You say to -- to the people
11 he's my co-defendant.

12 Q Did you and Mr. Wise ever have a chance to talk about
13 that?

14 A No, sir.

15 Q Okay. Thank you, Mr. Sprinkle. Please answer any
16 questions Ms. Coleman has.

17 A Yes, sir.

18 THE COURT: Cross-examination.

19 MS. COLEMAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. COLEMAN:

22 Q Mr. Sprinkle, I just have a couple of questions ---

23 A Yes, ma'am.

24 Q --- for you this morning. What did you wear to the
25 trial?

1 A A suit by the Defense.

2 Q Okay. So you weren't in your prison jumpsuit?

3 A No, ma'am.

4 Q But you had your shackles on?

5 A Yes, ma'am.

6 Q Okay. Now, you -- and you've already talked about
7 this a little bit, but you gave a statement to law
8 enforcement, right?

9 A The statement was I feared for my life, and I also
10 told them that -- that Sean mother was the second person I
11 was trying to give to Ms. Ford.

12 Q Uh-huh.

13 A Like I said, she said she didn't want to hear that,
14 you know. She really wanted me to testify against Sean for
15 a reason. I didn't participate in the robbery, I didn't
16 did no robbery. I told them I was a drug addict then, you
17 know.

18 Q Are you talking about a conversation with Ms. Ford,
19 with the Solicitor?

20 A Yes, ma'am.

21 Q Okay. What about the statement you gave to
22 Investigator Thrower? You gave him a statement.

23 A Yes. I was afraid for my life and I wanted to get
24 transferred ---

25 Q Right.

CROSS-EXAMINATION BY MS. COLEMAN - RICHARD SPRINKLE

33

1 A --- from Orangeburg. Yes, ma'am.

2 Q And you told him that you were at the scene of the
3 crime and you went into the house that ---

4 A Right.

5 Q --- night, right?

6 A Yes, ma'am.

7 Q Okay. Did you give your statement before or after
8 Sean Echols gave his statement?

9 A I don't know when Sean gave a statement.

10 Q Okay.

11 A I think it was -- it had to been afterwards, but I
12 wasn't even trying to look for no deal or nothing like
13 that. I was fear for my life.

14 Q Okay.

15 A And they asked me what happened, and I told them.
16 Yeah, I been to -- I was a drug addict, you know. And I --
17 I admit, yeah, I been to the house, but I didn't assault
18 noone.

19 Q Okay. But you are the one who -- who initiated the
20 contact with Investigator Thrower, right?

21 A Yes, ma'am.

22 Q Okay. So they didn't come to your cell and demand to
23 know what ---

24 A No.

25 Q --- happened or anything. You wanted to tell them ---

1 A Yeah.

2 Q --- what happened.

3 A No. I wanted to tell I fear for my life. I wanted to
4 get transferred out of the unit -- out of the building or
5 I'll die back there --

6 Q Okay.

7 A -- by Sean -- one of Sean gang buddies. So I fear for
8 my life.

9 Q Okay. Nothing further.

10 A Yes, ma'am.

11 THE COURT: Re-direct?

12 MR. WALLER: Nothing further, Your Honor.

13 THE COURT: You may step down, sir. Thank you.

14 THE WITNESS: All right.

15 (The witness exits the stand.)

16 THE COURT: You may call your next witness.

17 MR. WALLER: Thank you, Your Honor. The applicants
18 call Mark Wise.

19 CLERK OF COURT: Please raise your right hand. State
20 your full name for the record.

21 THE WITNESS: Mark Wise, W-i-s-e.

22 MARK WISE, having been first duly
23 sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. WALLER:

1 Q Good morning, Mr. Wise. How are you today?

2 A Well, I am well. Thank you.

3 Q Mr. Wise, how did you come to represent Mr. Sprinkle?

4 A Mr. Sprinkle was originally appointed Doug Mellard.
5 There came a point when Mr. Mellard was relieved and I was
6 assigned the case.

7 Q Okay. About how long, if you recall, prior to the
8 trial did you represent Mr. Sprinkle?

9 A Probably -- I think Mr. Mellard was relieved in
10 January. I would have been appointed then. The trial was
11 in April.

12 Q Okay. Was there sufficient time for you to feel
13 comfortable being ready?

14 A Yes.

15 Q Okay. What, if you -- if you can, what were the
16 general allegations against Mr. Sprinkle?

17 A The allegations were that he and a gentleman named
18 Sean Echols went into the home of two individuals, Mr.
19 Wright and Mr. Rumph. They attacked them, stole money,
20 took Mr. Rumph's car.

21 Q Okay. Mr. Sprinkle had been picked out of a lineup
22 with -- by one of the individuals; is that right?

23 A That's correct.

24 Q Was there some conflicting testimony about which of
25 the aggressors, I guess, for lack of a better word, did

1 what?

2 A Yes.

3 Q Okay.

4 A Yes.

5 Q When you and Mr. Sprinkle were preparing for trial,
6 did y'all discuss those issues?

7 A Yes.

8 Q Okay. What was your -- what was your theory of
9 defense?

10 A Well, when you looked at the -- you kind of step back
11 and look at the -- the facts and the allegations, there
12 were, I thought, significant inconsistencies in the -- the
13 facts of the case. So my goal was to try to point out that
14 this case wasn't as it was presented by the State, kind of
15 bringing out the different problems that I saw that made --
16 kind of supported what Mr. Sprinkle was saying.

17 Q Okay. There were two other individuals who allegedly
18 were involved in kind of setting the whole thing up. Were
19 you aware of that at the time?

20 A I assume you're talking about Collins Shuler and
21 another person.

22 Q Correct.

23 A I remember those names.

24 Q Do you recall what investigation you did into those
25 individuals?

1 A Not much. I -- I don't think we did anything related
2 to -- once I was assigned the case -- anything related to
3 Mr. Shuler and this other person. I think we may have sent
4 an investigator at one point early on, but I don't think I
5 did anything.

6 Q Okay. Were you provided with any information in
7 discovery about those individuals?

8 A I don't remember.

9 Q About the contents of any text messages or any
10 communications between them and Sean Echols?

11 A There were some text messages in the file.

12 Q Okay. Were you aware that Mr. Shuler was a
13 confidential informant for law enforcement?

14 A He -- he -- I remember the fact that he was
15 consistently referred to that way.

16 Q Okay.

17 A Being a confidential informant. Not -- yes.

18 Q Do you have any -- any knowledge or information
19 whether he was, you know, registered with SLED as a
20 reliable confidential informant or anything like that?

21 A No.

22 Q Okay. Were you provided any of that information?

23 A No.

24 Q Okay. Do you recall the jury selection?

25 A Somewhat.

1 Q When Mr. Echol -- excuse me -- when Mr. Sprinkle was
2 asked by Judge Dickson to stand up and -- and face the jury
3 so they could, you know, have a look at him, do you recall
4 whether he was in shackles or not?

5 A He would not have been in shackles.

6 Q Okay. How was he dressed throughout the trial?

7 A He would have been in some sort of suitably clothes.

8 Q Okay. Were his -- how was he restrained throughout
9 the trial?

10 A I don't remember. I don't -- I -- I understand your
11 question. It would have been consistently my policy not to
12 let a client appear in court in shackles. I don't -- or --
13 or if the jury -- if he would, the jury would come in after
14 he was seated so that he would not see -- see that. But --

15 Q Do you have any specific recollection whether during
16 the jury qualification or selection process that he -- he
17 was restrained in some way?

18 A No. I'm sorry, I don't.

19 Q Mr. Wise, I'm going to move -- you seem to have a
20 little trouble hearing me. I'm going to move up so you can
21 hear me.

22 Mr. Echols had given a statement to law enforcement;
23 is that right?

24 A Yes.

25 Q And he testified, obviously, against Mr. Sprinkle.

1 A He did.

2 Q Do you recall being limited in your cross-examination
3 of Mr. Echols?

4 A Yes.

5 Q Okay. What do you recall?

6 A I wanted to cross-examine Mr. Echols about certain
7 issues in his background, and Judge Dickson indicated that
8 I -- I could go -- I couldn't do everything I wanted to do.

9 Q Okay. You -- you asked to go into his background as
10 far as being a gang member; is that right?

11 A That's correct.

12 Q Judge Dickson would not allow you to do that.

13 A About being a lieutenant in the Folk Nation.

14 Q Okay. You also asked to be able to -- to go into the
15 fact that he had requested a 10-year sentence or a plea for
16 10 years in -- in exchange for his cooperation; do you
17 recall that?

18 A I don't.

19 Q Okay. If I -- you have a copy of the transcript ---

20 A I do.

21 Q --- with you? If I could get you to turn to page 302,
22 beginning on line 3 and going through line 13.

23 A Yeah. Okay. Yeah. I see it.

24 Q Okay. Judge Dickson did not let you go into that; is
25 that your understanding?

1 A Let's see. He did not.

2 Q Okay. If I can get you to turn to page 304 and look
3 at lines 3 through 10 for me.

4 A Yes.

5 Q The State argued that evidence of plea negotiations is
6 not admissible under Rule 410 of the South Carolina Rules
7 of Evidence. What was the trial strategy behind not
8 correcting that?

9 A I -- I assume you're talking about arguing against
10 Rule 410.

11 Q Correct.

12 A At the time this came up, I was not familiar with 410,
13 and --

14 Q Okay.

15 A -- I just wasn't familiar with it.

16 Q Okay. Have you become familiar with it now?

17 A Since you told me.

18 Q Okay. All right. You were able to get into that Mr.
19 Echols had not been charged with burglary first; is that
20 right?

21 A Yes, I think so.

22 Q Okay. When -- at the conclusion of the -- the trial,
23 there was a charge conference held --

24 A Yes.

25 Q -- do you recall that?

1 A I do.

2 Q Okay. Did you specifically request a separate and
3 distinct charge of mere presence?

4 A I requested a mere presence charge.

5 Q Okay. It was charged as part of accomplice liability.

6 A It was.

7 Q Did you request a separate one?

8 A I think -- I don't think I -- if the question is did I
9 ask Judge Dickson not to charge accomplice liability and
10 only charge mere presence, I did not ask that. I just
11 wanted to make sure he charged mere presence.

12 Q Okay. Leads me to my next question: At some point
13 during the jury's deliberations, they came back and asked
14 for the definition of mere presence or to be re-charged on
15 mere presence.

16 A Yes.

17 Q Judge Dickson charged them with accomplice liability
18 which included mere presence again. Did you -- what was
19 the strategy behind not objecting to that?

20 A I think we -- what we did was we discussed it before
21 he did the charge. I think my argument was, "They only
22 asked for mere presence. That's all you should charge them
23 on because that's what they wanted." And then he gave the
24 charge that he gave.

25 Q Okay. All right. Have you had a chance to review the

1 State's closing argument in this case?

2 A Yeah. I've looked at it.

3 Q Okay. If I could get you to turn to page 330 for me
4 at line 23.

5 A Mr. Waller, can you give me one moment?

6 Q Yes, sir.

7 (Brief pause.)

8 A 330.

9 Q Yes. Was there a strategy behind not objecting to the
10 solicitor calling Mr. Sprinkle a coward?

11 A No.

12 Q Okay. Okay. If I can get you to turn to page 337 for
13 me, beginning on line 19 and continuing through line 24.

14 A Yes. Yeah.

15 Q Had there been at that point any testimony about the
16 timing of when Sean Echols gave his statement?

17 A No.

18 Q Had there been any testimony regarding when Mr.
19 Sprinkle requested to be transferred?

20 A No.

21 Q Okay. Was there a strategy behind not objecting to
22 that information being presented to the jury?

23 A No.

24 Q Okay. All right. If I can get you to turn to page
25 338, please. Lines 1 through 4.

1 A Okay. All right.

2 Q Had there been any testimony at that point or evidence
3 at that point that Mr. Sprinkle -- about when Mr. Sprinkle
4 had been noticed for trial?

5 A No.

6 Q Was there a trial strategy for not objecting to that?

7 A No.

8 Q Okay. Do you recall the verdict form in this case?

9 A Yes.

10 Q Okay. All right. If I could get you to turn to page
11 410 and continuing to 411, beginning on line 22.

12 A 410, line 22?

13 Q Yes, sir.

14 A Yes.

15 Q Okay. Was there ever any -- what was the reason
16 behind not objecting to the jury not answering one of the
17 questions on the verdict form?

18 A Well, they found him guilty of the -- they did not
19 indicated a verdict on the more serious ones and found him
20 guilty of the lesser ones.

21 Q Okay.

22 A And that -- I would have been relieved that they
23 didn't find him guilty for the more serious ones, and
24 that's probably why I didn't raise it.

25 Q Okay. All right. Mr. Wise, turning away from the --

1 the more technical aspects of my questions there, Mr.
2 Wright gave a statement to law enforcement and -- and had
3 identified Mr. Sprinkle as the one who originally assaulted
4 him; is that your understanding?

5 A How do -- I'm sorry. How do you mean?

6 Q That Mr. -- Mr. Sprinkle was the one who knocked on
7 the door and who hit him as soon as he came inside.

8 A Yes.

9 Q This is Mr. Wright's ---

10 A Yes.

11 Q Okay. His testimony at trial was different.

12 A Yes.

13 Q Okay. Did you and Mr. Sprinkle talk about the -- the
14 differences or did you have an opportunity to talk to Mr.
15 Sprinkle about differences in testimony in general?

16 A I'm sorry, Mr. Waller.

17 Q Did you and Mr. Sprinkle have a chance to talk about
18 that Mr. Wright had given a statement saying one thing and
19 then he testified to something completely different?

20 A At the trial?

21 Q Yes, sir.

22 A I don't know if at the trial we -- we talked about how
23 things were going as they were going along.

24 Q Okay. Did you have a chance, during breaks or anything
25 like that, to talk to him?

1 A I don't remember.

2 Q Okay.

3 MR. WALLER: Beg the Court's indulgence, please.

4 (Brief pause.)

5 Q Mr. Wise, the allegations that Mr. Echols had asked
6 for a 10-year sentence in exchange for his testimony, how -
7 - were you provided that information in discovery?

8 A I don't know how we came into that. We -- can I have
9 a moment?

10 Q Yes, please.

11 (Brief pause.)

12 A Mr. Waller, I'm not sure how I came into that
13 information.

14 Q If I could get you to turn to page 82 of the
15 transcript, on lines 17 -- starting on 17, continuing
16 through 20.

17 A Yes.

18 Q The State represented to the trial court that there
19 had been no other negotiations -- plea negotiations other
20 than a 20-year offer that had been rejected by Mr. Echols;
- 21 is that your understanding?

22 A Okay. I'm sorry, Mr. Waller. Can you ask your
23 question again, please?

24 Q Sure. Is it your understanding that based on page 82
25 the State represented that their other than expired 20-year

1 offer to Mr. Echols, there had been no other negotiations
2 with Mr. Echols?

3 A That's correct.

4 Q But there -- Mr. Echols asked for a 10-year offer.

5 A Right.

6 Q Mr. Wise, what did you and Mr. -- Mr. Sprinkle discuss
7 about Sean Echols not being charged with burglary?

8 A Mr. Waller, I don't remember our conversation about
9 that.

10 Q Okay. Did y'all discuss accomplice liability?

11 A We have. We -- we talked about -- because it was
12 significant in this case -- two victims, two defendants,
13 and kind of the -- the factual -- the allegations that that
14 was going to be an issue here.

15 Q Okay. Mr. Sprinkles's statement to law enforcement
16 was that he didn't participate. He was sent there to test
17 some drugs, thought that's what he was doing. Once he
18 realized what was going on, he left the house.

19 A That's correct.

20 Q Do you recall -- and I know it's been a long time. Do
21 you recall what conversations you would have had with Mr.
22 Sprinkle about his recitation of facts and how that would
23 play with accomplice liability?

24 A Well, I -- I don't remember exactly. I think -- I
25 would imagine our conversation would go along the lines of

1 if the jury accepted that, he could be in good shape. But
2 if -- you know, with everything else, if the didn't, it
3 would be a problem.

4 Q Okay. Mr. Echols gave a statement that there -- his
5 first statement was that there was three people.

6 A Yes.

7 Q Did you ever have any information regarding who the
8 third person was or the person other than Mr. Sprinkle?

9 A Mr. Sprinkle indicated it was Vivian Johnson.

10 Q Okay. Who was Vivian Johnson.

11 A Sean Echols's mother.

12 Q Okay. Did you do any investigation into Ms. Johnson?

13 A At that time -- I don't remember. I don't think so.
14 At that time Ms. Johnson was also charged. She was
15 represented by another lawyer, and I'm -- I don't think
16 given that that I -- would not try to speak to her about
17 her involvement in this case.

18 Q Okay.

19 A I'm sorry, Mr. Waller, let me be clear. I did not go
20 out to speak to her about her involvement in this case.

21 Q She was the girlfriend of Mr. Rumph; is that ---

22 A That's correct.

23 Q --- your understanding?

24 A That's correct.

25 Q Mr. Wise, I don't have any further questions for you.

1 Thank you.

2 A Certainly.

3 THE COURT: Cross-examination?

4 MS. COLEMAN: Thank you.

5 CROSS-EXAMINATION

6 BY MS. COLEMAN:

7 Q Hi, Mr. Wise.

8 A Hi.

9 Q How long have you been practicing law?

10 A Well, I was admitted in 1983 in New York, but I'm -- I
11 haven't practiced between 1983 steadily 'til now. I'm also
12 admitted in Virginia and South Carolina.

13 Q And is your practice primarily in criminal law?

14 A I don't practice anymore.

15 Q Okay. Your -- you no longer practice. Did you
16 primarily practice criminal law?

17 A Throughout the years I've done different things, but
18 yes. Probably more time was spent in criminal law, yes.

19 Q How many times did you meet with the applicant before
20 the trial?

21 A I don't know exactly. I could probably look it up if
22 you give me a minute.

23 Q That's okay. Just roughly, off the top of your head.

24 A I'd say, just roughly, a dozen.

25 Q Did the applicant cooperated during the course of your

1 representation?

2 A Yes.

3 Q Did you file any Brady or Rule 5 motions?

4 A Yes.

5 Q And did you review that discovery material with the
6 applicant.

7 A We talked about the discovery.

8 Q Was there any information or any *Brady* material that
9 you believe was withheld from you or that you had trouble
10 getting from the Solicitor's Office?

11 A I don't have a recollection of anything that --
12 sitting here now that I think I should have received that I
13 didn't receive.

14 Q Okay. Before the trial, did you discuss with the
15 applicant the elements of the charges and what the State
16 was required to prove?

17 A Yes.

18 Q And you stated you don't really recall the applicant's
19 version of the facts; is that right?

20 A; No. No. He did -- Mr. Sprinkle indicated --

21 Q Okay.

22 A -- that he went to this house on this evening to test
23 drugs, and that at the house, he saw something happening
24 and he left.

25 Q Okay. And does that match up with his statement that

1 he gave to Investigator Thrower?

2 A It's pretty close.

3 Q Well, let's talk about that statement. He -- he gave
4 a statement to law enforcement telling them that he was at
5 the scene of the crime, right?

6 A He gave a statement to law enforcement that he was
7 present at the house.

8 Q Okay.

9 A He didn't -- if your question is did he say he was
10 present when people getting robbed and assaulted, he didn't
11 say that.

12 Q Okay. Was that statement written or -- or video
13 taped?

14 A I don't think it was.

15 Q Okay.

16 A It wasn't video taped. I don't think it was written.

17 Q Okay. Were you present for that statement?

18 A No.

19 Q No. And why not?

20 A Mr. Echols contacted Deputy Thrower. I think he may
21 have known Deputy Thrower.

22 Q Uh-huh.

23 A But he -- he wanted his help.

24 Q Mr. Echols or the applicant.

25 A The applicant.

1 Q Mr. Sprinkle.

2 A Mr. Sprinkle. Did I say "Echols"? Mr. Sprinkle
3 wanted Deputy Thrower's help. He was -- he felt threatened
4 in the jail, and he thought Deputy Thrower could help.

5 Q Uh-huh. But he did not ask for you to be present when
6 he gave his statement?

7 A He did not.

8 Q Okay. Do you believe that statement was hurtful to
9 your case or helpful?

10 A Well, it is what he's already -- always said happened.
11 Typically I'd prefer my clients not talk to the police.

12 Q Uh-huh. And you moved before trial to suppress that
13 statement; is that correct?

14 A Yes.

15 Q Okay. But the judge said that it would be admissible;
16 is that right?

17 A He did.

18 Q Okay. So it did come into evidence, and the jury did
19 hear about the statement.

20 A They did.

21 Q Okay. What other evidence did the State present
22 against the applicant?

23 A The evidence in this case -- the evidence was the
24 testimony of Mr. Wright, Mr. Rumph, Mr. Echols, Deputy
25 Thrower. I think that was the main -- that was the -- the

1 bulk of the State's case.

2 Q Okay. So both of the victims testified; is that
3 right, Mr. Wright and Mr. Rumph, correct?

4 A I'm sorry.

5 Q Both Mr. Wright and Mr. Rumph were the victims in this
6 case and they both testified, right?

7 A Yes.

8 Q Okay. Mr. Wright identified the applicant as the man
9 who -- who entered his home and beat him up; is that
10 correct?

11 A Mr. Wright identified Mr. Sprinkle --

12 Q Yes.

13 A -- as being in the home --

14 Q And he knew him ---

15 A -- coming to the door.

16 Q Excuse me.

17 A Yes, I'm sorry.

18 Q He knew him from before that night; is that right?

19 A He did.

20 Q Okay. And he knew him by -- by a nickname? Do you
21 recall what the nickname was?

22 A It's either Rick or Ricky.

23 Q Okay. And he told the jury, he said, "I saw -- I knew
24 him, I recognized him, I saw him at Bojangles the day
25 before the incident," right?

1 A Words to that effect.

2 Q Okay. And then he identified him in -- in the photo
3 lineup, right?

4 A He did.

5 Q Okay. And he did an in-court identification. He
6 identified him in court as the man who hit him in the face
7 with a gun, right?

8 A I believe so.

9 Q Okay. Did the other victim, Mr. Rumph -- he didn't
10 know Mr. Sprinkle, did he?

11 A He -- he did not.

12 Q Okay. And he didn't identify him --

13 A No.

14 Q -- in the photo lineup or anything. But he knew Sean
15 Echols, right?

16 A He did.

17 Q Okay. Because Sean Echols was the son of the woman
18 that he had been dating or seeing --

19 A I think he described the relationship as an
20 "acquaintance."

21 Q Okay. But he was familiar with Sean Echols and
22 identified him, right?

23 A He was.

24 Q Okay. And then Sean Echols, obviously, is the co-
25 defendant, and he testified at trial, right?

1 A He did.

2 Q Okay. And he placed Mr. Sprinkle there with him,
3 right?

4 A He did.

5 Q And he testified about all the planning they had done
6 to commit this robbery; is that right?

7 A I don't -- I'm just not -- I don't recall his
8 testimony about the planning.

9 Q Okay. But if it's in the transcript, you agree that
10 that was his testimony.

11 A right.

12 Q Okay. Did the applicant ever give you any potential
13 witnesses that he wanted you to investigate?

14 A Did he ever give me any witnesses?

15 Q Right.

16 A I don't think so.

17 Q Okay. So he never named anyone that he told you could
18 be helpful to him.

19 A I don't think so.

20 Q What kind of investigation did you do?

21 A Well, when I got the file, obviously I reviewed the
22 file. I think at that point we started working towards
23 trial. So it was -- I think we were doing more preparation
24 than investigation at that point. I think the -- we --
25 everybody kind of knew what this case was about.

RE-DIRECT EXAMINATION BY MR. WALLER - MARK WISE

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1 Q And what was your defense strategy in general?

2 A In general I think that there -- I still think that
3 the evidence in this case was -- there was significant
4 inconsistencies in this case, and I wanted to do the best I
5 can to bring those out so that the jury could see that.
6 The testimony of Mr. Echols, Mr. Wright, and Mr. Rumph
7 would not -- should not just be accepted.

8 Q And do you believe that you did that in cross-
9 examining those witnesses?

10 A He's sitting in an orange jumpsuit. Obviously not.

11 Q Okay. But you attempted -- at the time, you -- you
12 did what you thought was best to cross-examine them on
13 those inconsistencies?

14 A I tried to the best I could.

15 Q Okay. Did you have enough time to prepare for trial?

16 A Yes.

17 Q Okay.

18 MS. COLEMAN: Beg the Court's indulgence one moment.

19 (Brief pause.)

20 MS. COLEMAN: Nothing further. Thank you.

21 THE COURT: Any re-direct?

22 MR. WALLER: Just very briefly, Your Honor.

23 RE-DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q Mr. Wise, you were asked about Mr. Wright identifying

1 Mr. Sprinkle as the person who knocked on the door and
2 assaulted him.

3 A He -- I remember the question being did he knock on
4 the door. He did knock on the door.

5 Q Okay.

6 A Right.

7 Q Did Mr. Echols, at trial, testify that he was the one
8 that knocked on the door and then ultimately assaulted Mr.
9 Wright?

10 A I don't remember.

11 Q Okay. Mr. Echols testified at trial that he lied to
12 law enforcement when he gave his first statement.

13 A Yes.

14 Q Okay. His -- his statement was video taped; is that
15 right?

16 A Yes.

17 Q Okay. And you -- there was a pause in the proceedings
18 so he could refresh his recollection with -- by watching
19 the video.

20 A Oh, yes. During the trial, yes.

21 Q And -- and his answer was just that (as read): "My
22 recollections were -- is refreshed, but I was lying then."

23 A Words ---

24 Q "I'm telling the truth now."

25 A Yeah.

DIRECT EXAMINATION BY MS. COLEMAN - SARAH FORD

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1 Q Okay.

2 MR. WALLER: Beg the Court's indulgence, please.

3 (Brief pause.)

4 Q Thank you, Mr. Wise. Nothing further.

5 A Thank you.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you, Your Honor.

8 (The witness exits the stand.)

9 THE COURT: You may call your next witness.

10 MR. WALLER: Nothing further from the applicant, Your
11 Honor

12 THE COURT: State?

13 MS. COLEMAN: State calls Sarah Ford.

14 THE COURT: Ms. Ford.

15 CLERK OF COURT: Raise your right hand. State your
16 full name for the record.

17 THE WITNESS: Sarah Ann Ford.

18 SARAH FORD, having been first duly
19 sworn, testifies as follows:

20 THE COURT: Your witness.

21 MS. COLEMAN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. COLEMAN:

24 Q Hi, Ms. Ford.

25 A Good afternoon.

1 Q Where are you currently employed?

2 A I'm legal director at the South Carolina Victim
3 Assistance Network.

4 Q Okay. And where were you employed before that?

5 A At the First Circuit Solicitor's Office.

6 Q Okay. How were you involved in Mr. Spinkle's case?

7 A I was the prosecutor assigned to that case.

8 Q Okay. How long did you have this case before it went
9 to trial?

10 A You'll have to forgive me. I don't have my file with
11 me, but from the incident date, probably less than a month
12 after that, until we went to trial.

13 Q Okay. And you -- you stated you don't have your file
14 with you, so you're probably unaware of specific dates; is
15 that right?

16 A I am. If you'll just bear with me the best I can.

17 Q That's okay. And just based on your general
18 recollection of the case, do you recall any plea
19 negotiations with Mr. Sprinkles -- Sprinkle?

20 A I think we probably would have made an offer. That
21 was generally -- you know, we would have at least discussed
22 that. Whether we did something in writing or not, I don't
23 recall.

24 Q Okay. Did you meet with Mr. Wise about the case to
25 discuss the trial and everything?

1 A Absolutely.

2 Q Okay. How many times would you estimate?

3 A We worked together daily. So I'd imagine we -- you
4 know, whether we set an actual meeting or not, we probably
5 discussed it five/six times at -- at least prior to
6 actually going to trial.

7 Q Okay. Do you recall turning over the discovery in
8 this case, all Rule 5 materials ---

9 A Absolutely.

10 Q --- Brady?

11 A Yes, ma'am.

12 Q Were there any materials that you did not turn over
13 that you believe you were required to?

14 A No, ma'am.

15 Q Okay. Was there any exculpatory evidence in this case
16 that he was -- that Mr. Wise was unaware of?

17 A No, ma'am.

18 Q Okay. Regarding Sean Echols and his plea offer, any -
19 - any plea negotiations with the State, what -- well, I --
20 before the trial -- and we've already looked at that, I
21 believe, in the transcript today -- Mr. Wise made a motion
22 to reveal the deal before the trial to reveal any plea --
23 plea offers to Sean Echols, and you represented that there
24 were no offers; is that correct?

25 A Yes, ma'am. I believe at that point any -- any deals

1 had -- were off the table. So there were no plea
2 negotiations or, quote/unquote, deals for Mr. Echols to
3 testify at the time of -- of the trial --

4 Q Okay.

5 A -- of Mr. Sprinkle.

6 Q What were plea negotiations -- what kind of plea
7 offers were offered before the trial to your recollection?

8 A To my recollection, it was something of 20-plus years,
9 I believe prior to that. And I believe it was expired at
10 the time of --

11 Q Was there ever a 10-year plea offered?

12 A No, ma'am.

13 Q Okay.

14 A Not to my recollection, and in fact, if memory serves
15 me correctly, I believe he was sentenced to well over that.
16 At least 15 years, I believe.

17 Q Okay.

18 A But again, I -- I don't have my file in front of me.

19 Q Okay. And Mr. Echols -- did he testify at trial?

20 A Yes, ma'am.

21 Q Okay. Had you made him any promises before he
22 testified that he would be sentenced to anything
23 specifically?

24 A No, ma'am. Absolutely not. That was never the case.

25 Q Okay. How did you come to have Mr. Echols testify at

1 the trial?

2 A I mean, Mr. Echols was a co-defendant, and up until --
3 again I don't remember the date -- but the State was
4 prepared to try both of these individuals at the same time,
5 both Mr. Sprinkle and Mr. -- Mr. Echols, I want to say
6 probably just a few months before that. So we were
7 prepared to try both of them.

8 Q And did Mr. Echols give a statement?

9 A Yes, ma'am.

10 Q Okay.

11 A I believe he gave several statements, both written and
12 video statement.

13 Q Okay. And let's -- let me backup. Let's go over the
14 facts of this case in a little more detail. What was the
15 State alleging that Mr. Sprinkle had done?

16 A Generally speaking, Mr. Sprinkle, along with Mr.
17 Echols, went over to the home of Mr. Wright and Mr. Rocky
18 Rumph. Both of these individuals, Mr. Sprinkle and Mr.
19 Echols, were known to the victims. Knocked on the door,
20 went into the home while armed, assaulted the victims,
21 robbed them, and left.

22 Q Okay. And what kind of assault -- what kind of
23 injuries did the victims suffer?

24 A I -- there was, I believe, a cut to Mr. Rumph's foot
25 or leg, maybe on his stomach. I believe Mr. Wright had

1 several cuts on his head. There was definitely a gun
2 involved and a believe a knife involved, but exactly the
3 specific injuries, I -- I don't recall at this time.

4 Q Did Mr. Sprinkle give a statement in this case?

5 A Yes.

6 Q Okay. To law enforcement. And what were the contents
7 of that statement?

8 A He admitted to being present at the home. It was a
9 very self-serving statement, but he put himself at the
10 scene of the crime.

11 Q Okay. And was that admitted at trial?

12 A Yes, ma'am, I believe it was.

13 Q Are you aware of any perjured testimony from this
14 trial?

15 A No, ma'am.

16 Q Okay. And I ask that because the applicant has
17 alleged that -- he's alleged prosecutorial misconduct for
18 failing to correct the perjured testimony of Sean Echols
19 and James Wright, the victim. Are you aware of any -- any
20 -- anything incorrect about their testimony to your
21 knowledge?

22 A To my knowledge, no, ma'am.

23 Q Okay. What other -- or what specific evidence did the
24 State present?

25 A Well, Mr. Sprinkle was known to Mr. Wright who

CROSS-EXAMINATION BY MR. WALLER - SARAH FORD

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1 answered the door and indicated that Mr. Sprinkle was one
2 of the individuals who invaded his home. So there -- there
3 was certainly that.

4 There was the testimony of his co-defendant, Mr.
5 Echols, who admitted to his involvement in the home
6 invasion and Mr. Sprinkles.

7 Then there was Mr. Sprinkles own statement that
8 indicated he was -- he was actually at the scene when the
9 crime occurred, although he -- from my recollection -- was
10 very limited in what he admitted, certainly admitted that
11 he was present when the crimes did occur.

12 Q Okay. I have nothing further. Thank you.

13 A Yes, ma'am.

14 THE COURT: Cross-examination.

15 MR. WALLER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. WALLER:

18 Q Ms. Ford, you testified earlier that there was an
19 offer of 20 years that expired to Mr. Echols.

20 A I believe so. Again, I don't have my file, so you'll
21 ---

22 Q Okay.

23 A --- forgive me. It's to the best of my recollection.

24 Q Do you recall Mr. Echols, either himself or through
25 his attorney, ever writing you and asking you for a 10-year

1 offer?

2 A I used to get letters from folks from jail and lawyers
3 all the time asking for less than what I was willing to
4 offer. So that's ---

5 Q Okay.

6 A --- possible, but I don't recall that.

7 Q Okay. If you extend an offer that's not accepted,
8 that's a part of negotiations; is that correct?

9 A Sure.

10 Q And if they ask for something different, that's all
11 part of the negotiations.

12 A Okay.

13 Q Okay. Is that correct? Is that your understanding of
14 what ---

15 A I would say that if I make an offer to -- you know,
16 people can ask for things. You know, folks say, well, I'll
17 take five years for this. Well, that doesn't necessarily
18 mean that's the offer of the State.

19 Q Okay. That -- okay. Ms. Ford, that's not my
20 question. If you make an offer and say we'll allow you to
21 plead to this, and they say, no, we'll plead to this for
22 five years, is that not a negotiation?

23 A It could be.

24 Q Okay. So when you represented to the Court that there
25 were no other negotiations --

1 A They were not accepted. They weren't -- negotiations
2 are fine, but there was no offer from the State.

3 Q Okay. So you're saying only an offer from the State
4 is considered a negotiation at all -- evidence of
5 negotiations?

6 A What the Court had asked, to my recollection, was that
7 what had the State offered. There was no offer from the
8 State.

9 No, I don't consider something what some -- what a
10 defendant tells me that, you know, I'll -- I'll do five
11 years or -- at that point, if I say, no, I'm not gonna do
12 that, the negotiation's over. No. That's not a
13 negotiation.

14 Q Okay. When you argued against Mr. Wise being able to
15 cross-examine Mr. Echols about asking for 10 years, you
16 cited Rule 410 of the Rules of Evidence. Okay. Do you
17 recall that?

18 A I have not had a chance -- I -- I briefly looked over
19 the 500-ish pages. So I -- you know that better than I do.
20 I'm sure if that's what it says I did, then that's what I
21 did.

22 Q Are you aware that Rule 410 only applies to defendants
23 and not witnesses?

24 A That may be correct. I -- again, not familiar with --
25 with what I argued at that point.

1 Q Okay. Are you familiar with Rule 3 of the Rules of
2 Criminal Procedure?

3 A Not off the top of my head.

4 Q Okay. Rule 3 says that a warrant has to be presented
5 to the grand jury within 90 days for indictment. Was that
6 done with respect to Mr. Echols in this case?

7 A I -- I don't know.

8 Q Okay. Mr. Echols testified differently than the
9 original statement he'd given to law enforcement. Do you
10 recall that?

11 A I don't recall specifically, no.

12 Q Okay.

13 MR. WALLER: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Brief pause.)

16 Q Nothing further. Thank you, Ms. Ford.

17 THE COURT: Any re-direct?

18 MS. COLEMAN: No re-direct.

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

20 THE WITNESS: Thank you, Your Honor.

21 (The witness exits the stand.)

22 MS. COLEMAN: And the State has no further witnesses,
23 but would request very brief closing argument.

24 THE COURT: Certainly.

25 MS. COLEMAN: And the applicant can actually go first

1 if he liked to.

2 THE COURT: Mr. Waller, would you like to make a
3 closing argument?

4 MR. WALLER: Sure. Your Honor, briefly, Mr. -- Mr.
5 Wise testified that he did no -- no investigation into the
6 -- into the -- the confidential informant or any other
7 individuals, is the best way to put it. He had not further
8 information about these two individuals who were --
9 testified to have been one of the three people or two of
10 the three people who set the whole thing up. Mr. Echols
11 testified that he, along with those two, kind of initiated
12 the whole plan and they -- they got Mr. Sprinkle involved
13 as the last person involved.

14 Mr. Wise testified that he didn't -- didn't do any --
15 any investigation into the -- into any of those individuals
16 or that they were actual reliable confidential informants.

17 Ms. Ullman made a motion to dismiss based on the
18 sufficiency of the indictments as well as the
19 jurisdictional argument that the grand jury process was
20 tainted as a whole and because of two -- two grand jurors.

21 Obviously jurisdiction can be brought up at any time;
22 however, I would refer Your Honor to *State v Gentry* -- and
23 I apologize, I do not have the cite right in front of me.
24 But it is a -- is the case that essentially says that the --
25 - I believe it's citing the transcript that says that the --

1 - any challenges to the sufficiency of the indictment has
2 to be made prior to the swearing of the jury. So Your
3 Honor, it was not -- it was not done before that obviously.

4 Your Honor, Mr. Wise testified that he has a policy
5 not to let his clients be viewed while shackled in front of
6 the jury, but that he had no specific recollection in this
7 case, and that he knows Mr. Sprinkle was restrained during
8 the trial. Mr. Sprinkle testified that he was shackled
9 when asked to stand up and be viewed by the jury.

10 During the testimony and particularly the cross-
11 examination of Mr. Echols, the co-defendant, Mr. Wise asked
12 to get into several things: He asked to get into the fact
13 that he was never indicted for burglary first, which
14 carried up -- up to a life sentence, which he was allowed
15 to ask him about not being indicted for burglary first.

16 He also asked to be able to get into the fact that he
17 had asked -- requested from the State for a 10-year offer
18 in exchange for his testimony. The State argued South
19 Carolina Rule of Evidence No. 410, which said that rule --
20 evidence of plea negotiations is not admissible. Mr. Wise
21 did not correct or point out to Judge Dickson that the rule
22 only applies to defendants and not witnesses. Your Honor,
23 it was -- testimony by Ms. Ford was that there was an offer
24 from the State for 10 years, so that wasn't a negotiation.

25 I would respectfully disagree with that. I think that

1 if one side offers one thing and the other side offers
2 something else, all of that is evidence of negotiation.
3 That's the definition of negotiation I would submit to the
4 Court. So I think that evidence should have been presented
5 to the jury or allowed to be presented to the jury.

6 Your Honor, if you have a copy in your packet of the
7 Appellate Court decision. In section two of that, the
8 Court of Appeals found that it was error to -- for that
9 evidence to be excluded. And so I think that goes back to
10 Mr. Wise not effectively arguing that position.

11 Your Honor, Mr. Wise testified that he requested that
12 a charge of mere presence be presented to the jury. And
13 while that was done so during the accomplice liability
14 charges, when the jury specifically requested the
15 definition of mere presence when they had a jury question
16 during their deliberations, Mr. Wise did not object to
17 giving more than -- than what they asked for. They were
18 charged with accomplice liability all over again.

19 Your Honor, during the closing arguments of the State,
20 Mr. Wise was ineffective I believe for failing to object to
21 multiple impermissible comments. The first was right at
22 the beginning of the closing arguments. Mr. Sprinkle and
23 Mr. Echols, for that matter, were called cowards or that
24 the act was cowardly. What they did, I think, that's --
25 that's improper.

1 There were two separate incidences where evidence was
2 presented to the jury about the timing of certain things.
3 Both Mr. Sprinkle's request to be moved based on the timing
4 of when Mr. Echols gave his statement, as well as when the
5 -- the -- Mr. Sprinkle was noticed for trial. None of that
6 was presented to the jury either through testimony or
7 evidence. So it's improper for that to be argued to the
8 jury. There should have been an objection for arguing
9 facts not in evidence.

10 Your Honor, the -- the verdict form, I understand Mr.
11 Wise's position that Mr. Sprinkle was found not guilty of
12 the charge that was left blank, which was actually a lesser
13 included of the attempted murder that he'd been charge with
14 and was found guilty of the lesser included. But I would
15 ask the Court to take -- take a look at *Wertz v State* --
16 That's 349 SC 291. It's a 2002 case -- and *Roberts v*
17 *State*, 408 SC 123. It's a 2014 case.

18 Your Honor, in -- in those cases, it's -- the jury --
19 the jury -- excuse me -- the verdict form needs to be clear
20 and needs to be filled out clearly. It's not up to the
21 judge to have to have any sort of guess as to what the jury
22 intended.

23 I don't have any issue with the -- the verdict form
24 itself. I think it was very well laid out for a very
25 complicated -- I believe there was four lesser includeds

1 charged and one of those, I understand -- that confusion.

2 But I do think Mr. Wise was ineffective for failing to

3 object to those -- to that verdict form. Thank you.

4 MS. COLEMAN: And Your Honor, I'll address those in
5 the order that he did just to ---

6 THE COURT: Okay.

7 MS. COLEMAN: --- keep it clean. The applicant's
8 first argument is that trial counsel was ineffective for
9 failing to investigate the confidential informant or any
10 other individuals. My argument is there's no prejudice --
11 he can show no prejudice from those allegations. The
12 confidential -- the confidential informant did not testify
13 today. There were no other witnesses that testified. So
14 we can't speculate as to what the contents of their
15 testimony might have been or -- or the fruits of any
16 investigation that he should have done. We don't know what
17 those would have been or if they would have made a
18 difference on the outcome of the trial.

19 His second allegation that they improperly argued
20 against the sufficiency of the indictments, and I would
21 again argue there's no prejudice there. Although she did -
22 - did not -- Ms. Ullman did not object until after the jury
23 was sworn, she offered a strategic reason for choosing to
24 do that after the jury was sworn. And the Court ruled that
25 a motion should have been made under Gentry before the jury

1 was sworn, but he said even if she had made the motion
2 properly, he would have denied it anyway. And Judge
3 Dickson explained on the record at least twice. He ruled
4 on the merits of the motion and said he believed the grand
5 jury was proper in South Carolina, there was nothing wrong
6 with the indictments. It was a notice document and the
7 applicant was -- was sufficiently on notice of the trial.
8 So there was -- any -- any motion that could have been made
9 or any further argument would have been meritless.

10 The shackles issue, about how the applicant was in
11 shackles. Trial counsel testified that it's his policy not
12 to allow his clients to appear in shackles before the jury.
13 He -- he clearly -- the testimony today showed he was
14 wearing a suit at trial. He was not in a prison jumpsuit.
15 The only thing might be shackles, but I don't believe trial
16 counsel was deficient for that because he doesn't recall
17 there -- him being in shackles that day and -- and believed
18 strongly that he would not have been in shackles.

19 Furthermore, there's no prejudice just based on the
20 evidence of this case, and -- and the -- that applies to
21 all of my arguments. I don't think there's any prejudice
22 for any of these things based on the strong evidence
23 against the applicant which included the testimony of both
24 victims who were present in the house. One of the victims
25 knew him, and knew him by a nickname. And said he had seen

1 him walking on the street. His name was Rick, I believe,
2 and he had seen him the day before the crime at Bojangles
3 and he knew who it was. And he pointed him out in a photo
4 lineup, he identified him in court.

5 Sean Echols, the co-defendant, testified against Mr.
6 Sprinkle and said that, "He did this robbery with me, he
7 was there, we were there together, we planned it together,
8 and he was one of the people who -- who beat up the
9 victims, who assaulted them, who cut them with knives."

10 Sean Echols testified about all of that.

11 And finally, Mr. Sprinkle, the applicant, gave a
12 statement to law enforcement placing himself at the scene
13 of the crime. Although he says he didn't do anything, he
14 didn't beat anybody up, he said he was there, he was with
15 Sean Echols, that he went into the house. And my position
16 is that this is all very strong evidence against him, and
17 the State could show no -- no -- I mean, applicant can show
18 no prejudice from any alleged deficiency based on the
19 strength of this evidence.

20 As far as the issue about Mr. Echols's plea
21 negotiations, even if this were deficient for failure to --
22 to argue this properly, the Court of Appeals ruled on this.
23 This was raised in his direct appeal. The Court of Appeals
24 found that it was error, trial court error, to -- to
25 exclude the plea negotiations. But the Court of Appeals

1 specifically said it was harmless error and didn't make a
2 difference. So ...

3 Trial counsel argued for a mere presence instruction.
4 When the jury came back with a question asking for the
5 definition of mere presence, he specifically told the
6 Court, "I think you just need to tell them the definition
7 of mere presence." But the trial court chose -- within his
8 discretion, chose to give the entire jury instruction on
9 accomplice liability. But trial counsel's not deficient
10 because he did make that argument.

11 Failure to object to the closing arguments -- State's
12 closing argument, again I'd argue there's no prejudice
13 here. I don't think that these facts rise to the level of
14 anything that would have changed the jury's verdict in this
15 case just based on the strength of the evidence against
16 him. They heard the facts that they needed, and they made
17 their decision based on the evidence that was presented in
18 the trial.

19 And finally, the incomplete verdict form, again, no
20 prejudice. They found that he was -- even if one of the
21 lesser included offenses was left blank on the form, he was
22 not found guilty of it. And any objection wouldn't make a
23 difference in the outcome of the trial because the jury
24 would have just filled in "not guilty" or "guilty" and
25 found him guilty of another more serious offense which

1 would not play in his favor.

2 So accordingly, we would ask this Court to find no
3 deficiency or prejudice on any of these grounds, and ask
4 you to deny PCR. Thank you.

5 THE COURT: Thank you, Counsel. I'll take the time to
6 review the transcript along with the memorandum that's been
7 submitted, and notify you of an opinion.

8 MR. WALLER: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MS. COLEMAN: Thank you, Your Honor.

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-- END OF TRANSCRIPT RECORD --

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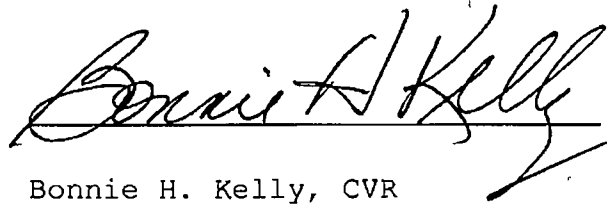
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court for Dorchester County, South Carolina, on the 27th day of February, 2018.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

July 2, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

Richard Lanard Sprinkle Mavins¹, #172425,) 2015-CP-38-01075
))

Applicant,)
))

v.)
))

State of South Carolina,)
))

Respondent.)
))

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 2, 2015. Respondent submitted its Return and Partial Motion to Dismiss on August 14, 2017. An evidentiary hearing was held February 27, 2018, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Jonathan Waller, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from Jillian Ullman, Esquire, and Mark Wise, Esquire ("Trial Counsel"). Respondent presented testimony from former Assistant Solicitor Sarah Ford, Esquire. This Court had before it the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the pleadings. The Court finds as follows:

¹ Applicant's trial transcript, indictments, sentencing sheets, and appellate records show Applicant's name as "Richard Lanard Sprinkle." However, the South Carolina Department of Corrections has Applicant listed as "Richard Mavins" and Applicant's name on his PCR application is "Richard Lanard Sprinkle Mavins."

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In October 2012, the Orangeburg County Grand Jury indicted Applicant for two counts of armed robbery (2011-GS-38-1561, -1562) and attempted murder (2011-GS-38-1563). Applicant was subsequently indicted in for burglary, first degree (2013-GS-38-0287). Jillian D. Ullman, Esquire, represented Applicant. Assistant Solicitor Sarah A. Ford, Esquire, prosecuted the case. On April 8-10, 2013, Applicant proceeded to trial before the Honorable Edgar W. Dickson. The jury found Applicant guilty as indicted for both counts of armed robbery, first-degree burglary, and the lesser included offense of first-degree assault and battery. Judge Dickson sentenced Applicant to imprisonment for concurrent terms of thirty years for each count of armed robbery, ten years for first-degree assault and battery, and thirty-five years for first-degree burglary.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense, Tina Cudari, Esquire, and Alexander E. Davis, Esquire, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 23, 2014. State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014). The remittitur was issued on April 28, 2015.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to object during Wright's testimony when he may three separate in-court identification."
 - b. Counsel "failed to object when the photo lineup was introduced into evidence by the State, wen Investigator Garrison and Wright describing the out of court identification procedure, and when the identification evidence draw forth in the jury's presence."
 - c. "Applicant was denied a fair trial because of defense counsel's failure to object to the introduction of the photo line up and requiring a meaningful 403 analysis be performed outside the presents of the jury."
 - d. Counsel "failed to preserve any issue related to the trial court's pretrial rulings on the identification by Wright."
 - e. Counsel "failed to call Investigator Shumpert as a witness to Echols' statement about the third party."
 - f. "Counsel failed to put up a third party defense, which Applicant statement was, he had been the third party that did not participate in the robbery or attempted murder, Echols testify that he was the one who knocked on the door and used trickery to gain entry."
 - g. "Defense counsel's performance was deficient in not exercising due diligence in using the compulsory process to obtain and investigate all exculpatory evidence that was in the possession of the prosecutor to include but not limited to the following:
 - i. "All video and/or statements involved in concern of this case"
 - ii. "All text messages that was sent between the principle participants, Jasper Clark, Collins Shuler, and Sean Echols in this crime"
 - iii. "Any deals and/or incentives and/or compensation of any type offered to the co-defendant(s) or State's witnesses in exchange for testimony against Applicant"
2. "Brady Violations"
 - a. "Prosecutor had willful withhold Brady material from Applicant and depriving Applicant of his liberty. Applicant made a motion to require the State to disclose any plea negotiations for the testimony of their star witness, Sean Echols. The prosecutor responded that there have been no offers or negotiations or anything of that nature concerning Echols testimony, that they had provided everything to the defense, even a expired plea offer to Echols."
 - b. "Applicant was denied a fair trial due to the prosecution's withholding known exculpatory evidence from the defense such as statements (videoed, written, or otherwise), text messages between known co-conspirators in this crime, as well as any negotiations with the co-defendants and/or witnesses for deals such as not prosecuting charges, or pursuing LWOP sentencing and/or any other incentives

and/or compensation for testimony against Applicant."

3. "Prosecutorial Misconduct"

- a. "Misconduct by the prosecution in his Quasi-judicial position for failing to correct perjured testimony from both James Wright and Sean Echols, and thus through silence striking foul blows against Applicant..."
- b. "The prosecutor is guilty of vindictive prosecution when he failed to charge any of the principle participants with burglary when the jury was charged with 'the hands of one is the hand of all.'"
- c. "The misrepresentation of evidence by the prosecution and the use of the photo line ups multiple times to incite the jury's bias and encourage a finding of guilt on an improper basis to obtain a conviction which was highly prejudicial to Applicant's defense"

4. Trial Court Error

- a. "Applicant was unfairly prejudiced by trial court's limitation of Applicant's cross-examination about witness plea agreement with the State under which witness was offered a cap of 20 years."
- b. "...Applicant was not permitted to cross examine witness concerning potential bias in testifying for the prosecution in light of fact that witness was awaiting sentencing."
- c. "Echols' testimony was not being introduced into evidence at his own trial, and therefore Rule 410 SCRE, did not bar cross-examination regarding this matter."

Applicant filed an amended application on February 22, 2018, adding the following allegations:

1. - As to the representation rendered by Mark Wise, Esquire and Jillian Ullman, Esquire:

- a. Counsel was ineffective for failing to properly investigate the facts and circumstances regarding the non-testifying confidential informant who provided information to law enforcement.
- b. Counsel was ineffective for failing to properly preserve and argue Applicant's motion to dismiss based upon the insufficiency of the indictments. Counsel Ullman made the motion after the swearing of the jury.
- c. Counsel was ineffective for failing to object to Applicant being viewed by the full jury pool, shackled, prior to jury selection.
- d. Counsel was ineffective for failing to properly argue against the State's motion in limine to limit the cross examination of Sean Echols to include evidence of plea negotiations.
- e. Counsel was ineffective for failing to request a separate and distinct charge of "mere presence" during the jury charge conference and for failing to object to the Judge's charge to the jury which did not include such a charge.
- f. Counsel was ineffective for failing to object to multiple instances of impermissible comments made during the State's closing arguments.
- g. Counsel was ineffective for failing to object to the incomplete verdict form returned by the jury.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Jillian Ullman's testimony

At the evidentiary hearing, Ullman testified she sat second chair to Mark Wise in this trial and assisted him with the case through the Orangeburg County Public Defender's Office. She stated she made a motion to dismiss the charges based on the insufficiency of the indictments, which is now on page 126 of the trial transcript. She stated her motion was based on jurisdictional grounds, but she did not make the motion until after the jury was sworn, and the trial court denied her motion based on case law stating such a motion cannot be made after the jury is sworn. Ullman testified she strategically chose to make the motion at that time because if she had made the motion before the jury was sworn, jeopardy would not have attached to the charges, and the solicitor could have re-indicted Applicant with new charges if her motion was granted. She stated she chose to wait until the jury was sworn to make the motion so jeopardy would attach, and if her motion was successful, the charges against Applicant would be dismissed.

Applicants' testimony

At the evidentiary hearing, Applicant testified that he was represented by another lawyer at first, but he requested a new attorney and Trial Counsel took over his case. He stated Trial Counsel represented him for eight months before the trial, and they met a few times. He testified he does not recall discussing potential penalties with Trial Counsel, and he did not understand the letter from Sean Echols to Solicitor Ford trying to make a deal. He stated he and Trial Counsel discussed the photo lineup and the victim's statements to law enforcement, and they discussed the fact that he could be convicted through accomplice liability, but he did not understand it.

Applicant testified he wanted to go to trial, and he did not want to plead guilty to something he did not do. He stated he gave a statement to law enforcement because he feared for his life. He testified that Trial Counsel told him that the statement of his codefendant, Sean Echols, would hurt him, but in his statement he said there were three people present at the scene of the crime. Applicant stated he chose not to testify at trial because he did not want his prior record introduced. Applicant stated he believed the case was "open and shut" because the victim was drinking and he wasn't there. Applicant testified the jury saw him wearing shackles and a belly chain before the jury selection, but he was not wearing his prison jumpsuit.

Trial Counsel's testimony

Trial Counsel testified his trial strategy in this case was to bring out inconsistencies in the State's case and the testimony of the victims. He stated Applicant would not have appeared before the jury in shackles, and he would have been dressed in civilian clothing, because it was consistently his policy not to let his clients appear in shackles before the jury. Trial Counsel testified he was limited in his cross-examination of Sean Echols, because he was not allowed to question him on his involvement as a gang member, nor was he allowed to question him about the ten year plea offer from the State in exchange for his testimony. He stated he did not correct the Solicitor's argument about Rule 410 because he was not familiar with the rule at the time.

Trial Counsel testified he requested a mere presence jury charge during the charge conference. He stated that when the jury returned with a question over the law, he asked the trial judge only to re-charge mere presence, but the judge read the entire instruction on mere presence and accomplice liability because it was the full instruction. Trial Counsel stated he had no specific trial strategy in choosing not to object to the use of the word "coward" in the State's closing argument, in parts of the closing argument about which there was no testimony, and in

the incomplete verdict form. Trial Counsel testified he made a motion to reveal the deal for Sean Echols' plea offer. He stated Echols had mentioned that a third person was present at the crime scene, and Applicant told him the third person was Vivian Johnson, who was charged regarding this crime. He stated Vivian Johnson was represented by an attorney, so he did not speak to her about this case. Trial Counsel testified he did not recall any Brady violations by the solicitor in this case.

Solicitor Sarah Ford's testimony

Former Assistant Solicitor Ford testified she probably made a plea offer to Sean Echols, but she cannot recall any specific offers. She stated she never offered a ten year plea deal to Sean Echols, and he was eventually sentenced to fifteen years. She stated that, although it may be possible Echols asked her for a ten year deal, she never offered a ten year deal, and she does not consider his rejected counter-offer to be a "plea negotiation." Ford testified she was prepared to try both Applicant and Echols at the same time, but Echols decided to work with her and testify against Applicant at trial. She stated she did not withhold any evidence from the defense in this case, and she turned over all discovery against him including the video and written statements and the text messages between him and his codefendant. She testified she was not aware of any perjured testimony in this case from any witness, but particularly from Sean Echols or James Wright.

Ford testified Applicant admitted to being present at the crime. She stated the State's evidence against Applicant included the testimony of the victims, one of whom identified Applicant as one of the people who came into his house, robbed him, and cut him, Applicant's own statement to law enforcement admitting he was there, and the testimony of the codefendant, Sean Echols that Applicant helped him commit this robbery.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Accordingly, post-conviction relief is denied. Each individual allegation is addressed below.

Failure to timely move to dismiss indictments

Applicant alleges counsel Ullman was ineffective for improperly moving to dismiss the indictments before his trial because her motion was made after the jury was sworn in, resulting in the denial of the motion. This allegation is meritless. The South Carolina Supreme Court stated in State v. Gentry, "we now conclusively hold that if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards." 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005); see S.C. Code Ann. § 17-19-90 (2003) ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sword and not afterwards.").

At trial, counsel Ullman made a motion to dismiss the indictments after the jury was sworn. Tr. 126. Her motion was based on two arguments. She first argued that the grand jury process in South Carolina violates the defendant's due process rights, under both the South Carolina and United State constitutions, because they are not conducted as a public hearing. She complained that the grand jury was tainted because one member worked for DSS and another reportedly slept through many of the proceedings. However, no evidence was presented to show that either of these grand jurors were present when Mr. Sprinkle's indictments were presented. She presented no law supporting this argument. Ullman's second argument was that the attempted murder indictment was insufficient and not properly noticed because it made no mention of intent to kill or malice aforethought. In response, the State argued the attempted murder indictment was sufficient because it contained the attempted murder statute, thus noticed the jury, defendant, and his attorney of that charge. They also argued that the motion was untimely, pursuant to State v. Gentry.

At the PCR hearing, Ullman testified that she strategically waited until after the jury was sworn to make the objection so that the solicitor could not fix the indictments once she objected. She explained that if she waited until after the jury was sworn, jeopardy would attach, and if her motion were successful, Applicant would not face the charges again. The State noted that the Judge ruled on the merits of the motion to dismiss the indictments despite the fact that they were not timely made, which is the case. Tr. 135. Although it is clear from South Carolina case law that the timing of Ullman's motion was not proper, this Court finds that, because the trial court addressed the merits of the motion and denied it, there can be no resulting prejudice from this possible error. Even if the motion were properly made to preserve it for appeal, Ullman's argument, while in Applicant's interest, likely would not have prevailed, as no South Carolina

case law supports Ullman's contention that the grand jury system is unconstitutional. Accordingly, there can be no prejudice under Strickland, and this allegation is denied and dismissed with prejudice.

Allowing Applicant to appear shackled before the jury pool

Applicant alleges Trial Counsel was ineffective for allowing him to appear shackled in front of the jury pool before the jury selection, which created a bias against him which prejudiced him at trial. Trial Counsel credibly testified at the evidentiary hearing that he had no recollection of Applicant appearing in shackles or a prison uniform in front of the jury. He stated it is his policy to make sure his clients are not seen in shackles, and he was confident Applicant would have been in civilian clothing without visible shackles. Applicant has failed to present any credible evidence to suggest he was shackled or dressed in a prison uniform before or during the trial around the jury. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to Object to Photo Lineup

Applicant alleges counsel was ineffective for failing to object to the introduction of the photo lineup and make a meaningful argument about its prejudicial effect under Rule 403, SCRE. This allegation is meritless. Counsel Ullman argued against the introduction of the photo lineup in a Neil v. Biggers hearing before the trial, asserting the lineup was unduly suggestive because he was the only person in a jail uniform, and the trial court allowed the lineup to be introduced over her objection. ROA 41-48. The trial court found the lineup was not unduly suggestive, nor was there any "substantial likelihood of misidentification because [the victim] had given a general description of the Defendant, indicated that he knew where he lived and then picked him out of this photo lineup." ROA 48, line 9-14.

Applicant made the same argument on direct appeal. The South Carolina Court of Appeals ruled in their April 22, 2015 Order that "the photo does not suggest Sprinkle is wearing a jail uniform as Sprinkle contends." State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014). The Court further found the identification "was so reliable that no substantial likelihood of misidentification existed." Id. Accordingly, because the lineup did not suggest Applicant was wearing a jail uniform as ruled by the trial court and the Court of Appeals, counsel cannot be deficient for failing to make this argument any further than she already did. Furthermore, there is no prejudice because no further argument made on this basis would have been successful or changed the court's ruling on the lineup's admissibility. Therefore, Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to object to exclusion of plea negotiations under Rule 410, SCRE

Applicant argues Trial Counsel was ineffective for failing to argue that Rule 410, SCRE did not apply to witnesses and that he should be allowed to cross-examine Applicant's co-defendant, who testified at trial, about his plea negotiations with the State in exchange for his testimony. At trial, Trial Counsel was not allowed to question co-defendant Echols about any plea deal he was hoping to get in exchange for his testimony. The trial court ruled that, based on Rule 410 of the South Carolina Rules of Evidence, that evidence of plea negotiations are not admissible at trial. Trial Counsel did not argue the matter further. Applicant now argues that Rule 410 applies only to defendants and not witnesses.

Rule 410 states that evidence of plea discussions is not admissible against the defendant. The rule does not mention witnesses. Applicant argued at the PCR hearing that trial counsel should have objected and argued that Rule 410 does not apply to witnesses and that he should

have been allowed to question Echols on the issue so that the jury could evaluate his credibility. The Court of Appeals ruled on direct appeal that the trial court "erred by excluding evidence regarding Echols' plea negotiations. Nevertheless, we hold the error was harmless [T]he trial court allowed a meaningful cross-examination of Echols with adequate opportunity for impeachment, such that the jury had sufficient evidence before it to judge Echols' credibility." State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014).

Whether this was an issue of trial court error or deficiency by Trial Counsel, this Court now finds that Applicant was not prejudiced by being prevented from this line of questioning, as explained in the Court of Appeals opinion. Because the jury was given sufficient evidence to judge Echols' credibility despite the trial court's ruling, Applicant cannot prove the result of the trial would have been different if Trial Counsel had argued the objection differently. Accordingly, Applicant has not met both prongs of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to object to State's closing argument

Applicant argues that Trial Counsel was ineffective for failing to object when the solicitor stated in her closing argument "[t]here cannot be a more cowardly or depraved act than the burglary, the robbery, and the brutal beating of two old men who were asleep in their own house." ROA 260.

The South Carolina Supreme Court has held that a solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998); State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999) (citations omitted). Improper comments do not automatically require reversal

if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. Simmons, 331 S.C. at 338, 503 S.E.2d at 166. "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. at 373, 570 S.E.2d at 166-67.

Based on the record before the Court and the evidence presented by the State of Applicant's guilt, this Court here finds Applicant was not prejudiced by Trial Counsel's failure to object to the solicitor's statements in closing argument. Accordingly, because Applicant has failed to prove both prongs of the Strickland test, this allegation is denied and dismissed with prejudice.

Failing to object to the trial judge's jury instruction

Applicant alleges Trial Counsel was ineffective for failing to object to the trial court's jury instruction when the jury asked to be reinstructed during deliberations. At trial, the jury returned from deliberations with a question and asked to hear a definition of "mere presence." The State argued that the trial judge should read them both the "mere presence" and "hand of one, hand of all" charge, as they are written and charged together. Trial Counsel argued that only the "mere presence" charge should be read back to the jury. After speaking in chambers, all parties agreed that the jury would be read the "hand of one, hand of all" charge, which includes "mere presence."

Applicant now argues that Trial Counsel was deficient for not objecting to the trial court reading the "hand of one, hand of all" and "mere presence" charges together. However, Judge Dickson had already given the full charge, which included both "hand of one, hand of all" and "mere presence" during the initial jury charge. In State v. Huckabee, the Court of Appeals stated,

"[w]hen reviewing a jury charge for alleged error, the charge must be considered as a whole in light of the evidence and issues presented at trial." State v. Huckabee, 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010) (citing Daves v. Cleary, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct.App.2003)). "If the jury charge is reasonably free from error, isolated portions which may be misleading do not constitute reversible error and the charge is considered correct if it contains the correct definition and adequately charges the law." Id. "The test for the sufficiency of a jury charge is what a reasonable juror would have understood the charge to mean." State v. Benjamin, 345 S.C. 470, 474, 549 S.E.2d 258, 260 (2001).

Because the trial court had already charged the jury with the full instruction of "hand of one, hand of all" and "mere presence," there was no error in repeating the full charge when the jury returned with a question. The jury charge was proper under the law and contained a full instruction that was free from error and proper under the facts and circumstances of Applicant's case. This Court finds Trial Counsel was not deficient in failing to object to the judge's instruction. Moreover, the record indicates Trial Counsel *did* object to the instruction and asked the trial court only to read the "mere presence" charge, so he cannot be deficient on these grounds. This Court further finds Applicant was not prejudiced by Trial Counsel failing to more vigorously object to Judge Dickson re-reading the jury the "mere presence" and "hand of one, hand of all" jury charge. Accordingly, Applicant has not proven either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

BRADY VIOLATION

Applicant alleges the prosecution committed a Brady violation in his case. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady² claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Here, Applicant has failed to present any evidence of any Brady materials that were not disclosed in his case. Trial Counsel credibly testified he could recall no Brady violations in this case, and the prosecution turned over all discovery materials. Solicitor Ford credibly testified she gave the defense all materials required by Rule 5 and Brady, and she did not withhold anything that would have been a violation. This Court finds Applicant has failed to meet his burden of proving this allegation, and the allegation is denied and dismissed with prejudice.

² Brady v. Maryland, 373 U.S. 83 (1963).

VI. CONCLUSION

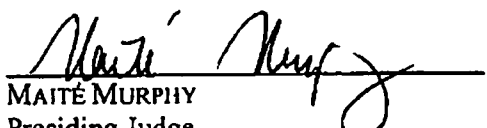
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of May, 2018.


MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

St. George, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

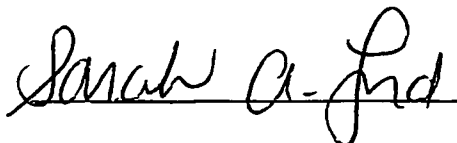
INDICTMENT
2011GS38-1561

At a Court of General Sessions, convened on October 8, 2012 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about June 26, 2011, in Orangeburg County, the defendant, Richard Lanard Sprinkle did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Robert Rump, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon(s) described as a gun and a knife. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Sarah A. Ford, Solicitor

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805587

Arrested: June 29, 2011

ACTION OF GRAND JURY

TRUE BILL

Date OCT 01 2012

Foreperson of Grand Jury

Date: October 10, 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS38-1561

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 8, 2012 TERM

THE STATE
vs.

Richard Lanard Sprinkle

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

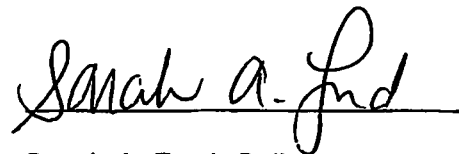
INDICTMENT
2011GS38-1562

At a Court of General Sessions, convened on October 8, 2012 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about June 26, 2011, in Orangeburg County, the defendant, Richard Lanard Sprinkle did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, James Wright, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a gun and a knife. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in black ink, appearing to read "Sarah A. Ford", written over a horizontal line.

Sarah A. Ford, Solicitor

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805588

Arrested: June 29, 2011

ACTION OF GRAND JURY
TRUE BILL

[Signature]

Date **OCT 01 2012**

Foreperson of Grand Jury
Date: October 10, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-1562

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 8, 2012 TERM

THE STATE
vs.

Richard Lanard Sprinkle

Indictment for
ARMED ROBBERY

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

[Circular Stamp: ATTORNEY GENERAL'S OFFICE, SOUTH CAROLINA]

[Vertical Stamp: OCT 10 2012]

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

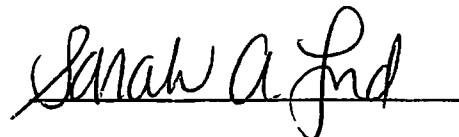
INDICTMENT
2011GS38-1563

At a Court of General Sessions, convened on October 8, 2012 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

That in Orangeburg County, South Carolina, on or about June 26, 2011, the Defendant, Richard Lanard Sprinkle, did enter the residence armed with a gun and a knife, causing multiple injuries to the victim by cutting the victim, Robert Rump, with a knife on the chest, feet, and arm area, and as a result violated Section 16-03-0029 Code of Laws of South Carolina, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in cursive script, reading "Sarah A. Ford", written over a horizontal line.

Sarah A. Ford, Solicitor

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805589

Arrested: June 29, 2011

ACTION OF GRAND JURY

OCT 01 2012

Date

Foreperson of Grand Jury

Date: October 10, 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS38-1563

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 8, 2012 TERM

THE STATE
vs.

Richard Lanard Sprinkle

Indictment for
ATTEMPTED MURDER

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE
C.C.C. PLS. AND G.S.

722 10 11 59

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

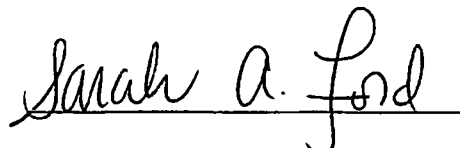
INDICTMENT
2013GS38-0287

At a Court of General Sessions, convened on February 4, 2013 the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about June 26, 2011, the Defendant, Richard Lanard Sprinkle, did willfully and unlawfully enter the dwelling of the victims Robert Rumph and James Wright at 2180 Myers Road, Orangeburg, without consent and with the intent to commit a crime therein and the defendant did while armed with a deadly weapon caused physical injury to the victims. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Sarah A. Ford, Solicitor

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2013ORB7

Arrested: June 29, 2011

TRUE BILL
ACTION OF GRAND JURY

Miguel
Date JAN 30 2013

Foreperson of Grand Jury
Date: January 30, 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS38-0287

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS
February 4, 2013 TERM

THE STATE
vs.

Richard Lanard Sprinkle

Indictment for
BURGLARY - FIRST DEGREE

SC Code: 16-11-311

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2013 JAN 30 AM 9:51
FILED
TRUE COPY
Wingfield B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF 732

Orangeburg

STATE

VS.

Richard Lanard Sprinkle

AKA:

Race: BLACK Sex: M Age: 42DOB: [REDACTED] SSN: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-1561A/W#: M805587Date of Offense: 6/26/2011S.C. Code §: 16-11-330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is. ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sarah A. Ford77029

Ford, Sarah A.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine.

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ec	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☒ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Cheri J. Young

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2153Sentence Date: 4/10/13

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Orangeburg

VS.

Richard Lanard Sprinkle

AKA:

Race: BLACK Sex: M Age: 42

DOB: [REDACTED] SSN: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

733

INDICTMENT/CASE#: 2011GS38-1562

A/W#: M805588

Date of Offense: 6/26/2011

S.C. Code §: 16-11-330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sarah A. Ford, Sarah A.

77029 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 153.90 days/hours Public Service EmploymentObtain GED ☐Attend Voc Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts of \$ beginning \$ paid to Public Defender FundOther: ☒ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2153

Sentence Date: 4/10/13

11

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS.Richard Lanard Sprinkle

AKA:

Race: BLACK Sex: M Age: 42DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Orangeburg, SC 29115DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary - First Degreein violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sarah A Ford 77029
Ford, Sarah A SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of \$ —, provided that upon the service of — days/months/years and/or payment
of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ — plus 20% fee: \$ —

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

IN THE COURT OF GENERAL SESSIONS

735

INDICTMENT/CASE#: 2013GS38-0287A/W#: 2013ORB7Date of Offense: 6/26/2011S.C. Code §: 16-11-311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS4/10/13— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts of \$ — beginning —\$ — paid to Public Defender FundOther: Recommends ATU☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2153
4/10/13