

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2018-000849

Chazmonte Brown,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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VOLUME II OF II

PAGES 501-831

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S.C. SUPREME COURT

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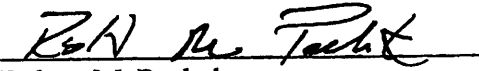
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CONCLUSION

Petitioner's writ shall be granted and his guilty plea should be vacated.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of November, 2012.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO FLORENCE COUNTY
WILLIAM H. SEALS, JR., CIRCUIT COURT JUDGE

CHAZMONTE BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212406

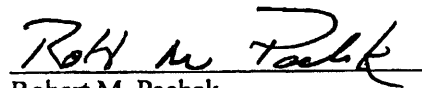
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Chazmonte Brown states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on February 3, 2012. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Chazmonte Brown.

Respectfully submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 14th day of November, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
William H. Seals, Jr., Circuit Court Judge

CHAZMONTE BROWN,

PETITIONER,

V.

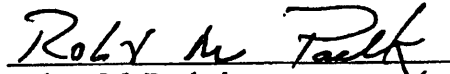
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212406

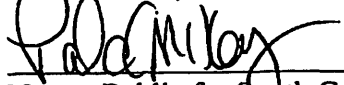
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Tyson Andrew Johnson, Sr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Chazmonte Brown, #334443, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 14th day of November, 2012.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of November, 2012.

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

The Supreme Court of South Carolina

Chazmonte Brown, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-212406

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has not filed a *pro se* petition.

After careful consideration of the entire record as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

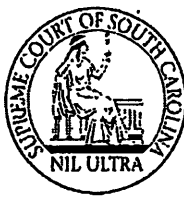
 C.J.
FOR THE COURT

Columbia, South Carolina

February 7, 2013

cc:

David A. Spencer, Esquire
Robert M. Pachak, Esquire
Chazmonte Brown, 334443



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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February 25, 2013

The Honorable Connie Reel-Shearin
180 N Irby St MSC-E Rm B11
Florence SC 29501-3456

REMITTITUR

Re: Chazmonte Brown v. State
Lower Court Case No. 2011CP2101171
Appellate Case No. 2012-212406

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,

CLERK

cc: David A. Spencer, Esquire
Robert M. Pachak, Esquire
Chazmonte Brown, #334443

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

COURT OF COMMON PLEAS

LATISHA L. COCHRAN)
343301
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
12-CP-21-01713

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

March 1, 2013
Florence, South Carolina

BEFORE :

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

APPEARANCES:

TRISTAN M. SHAFFER, ESQ.
Attorney for the Petitioner

T. ANDREW JOHNSON, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS

PETITIONER'S:

No.	Description	I.D./EVD.
1	CD audio statement	118/118
2	CD audio statement	118/118

1 MR. JOHNSON: Latisha Cochran,
2 2012-CP-1713. Ms. Cochran was indicted at the
3 April 2009 term of the Florence County grand jury
4 for armed robbery, possession of a weapon during a
5 violent crime. Mr. Jesse Cartrette, who is seated
6 here behind counsel table represented her.
7 October 19th, 2010, she was tried and convicted,
8 sentenced by Judge Nettles to 13 years imprisonment.
9 She filed a notice of intent to appeal. Court of
10 Appeals affirmed the conviction, and in her
11 post-conviction relief matter she has claimed that
12 she was coerced into making a false confession. And
13 question 11 state concisely the facts that support
14 the grounds. She states that investigator promised
15 me that if I would testify against my co-defendants
16 that I could go home with my children because it was
17 Christmas, and so the State's filed a return denying
18 that she was coerced into making a false confession
19 and asking for a hearing. So at this time I would
20 turn it over to Mr. Tristan Shaffer who represents
21 her.

22 THE COURT: All right, Mr. Shaffer.

23 MR. SHAFFER: Your Honor, approximately --
24 well, just for a little bit of background, I took
25 over this case about three weeks ago from Phoebe

1 Clarke who was originally appointed to the case. I
2 had written, I had previously represented a
3 co-defendant in a PCR. I have a signed waiver from
4 both of them for the conflict. I believe it's in
5 conformity with the rules. That he got granted
6 relief in front of Judge Russo in a order dated, I
7 think November 1st or 8th of something like that. I
8 got notified on the 8th of November. When I took
9 over the case I'd spoke with Mr. Johnson who said
10 that, or who I told I would be orally trying to
11 amend the application to include several other
12 causes, or several other allegations. First, is a
13 due process violation under McHood (ph) v. Illinois.
14 It's a 1959 U.S. Supreme Court Case. The second one
15 is a due process violation under Brady. Third, is
16 ineffective assistance of counsel. That would — I
17 probably let Mr. Johnson know via email about that I
18 was gonna make these changes probably two or three
19 weeks ago, something like that. I mean, it was
20 right around the time I got appointed and read
21 through the transcript.

22 The first thing that I'd like to do, and I
23 apologize to Mr. Johnson because he hasn't had a
24 whole lot of time to prepare for this. I didn't
25 mention that I was going to do it, but I didn't

1 actually file the motion or email y'all the motion
2 until Wednesday of this week so a few days ago. And
3 I filed it this morning with the clerk of court and
4 I've handed up a copy and handed a copy to
5 Mr. Johnson. To his defense he didn't get his email
6 until this morning so I hate to put him in that
7 position, but I've been preparing for another case,
8 and I haven't had the time to actually do it before
9 now. The motion is I'm moving to stop, to stay, or
10 preclude the State from arguing that -- well, to
11 give you some background, first of all, the -- Judge
12 Russo granted PCR for the co-defendant based off of
13 the McHood violation which is basically where the
14 State failed to correct and, failed to correct
15 testimony that they knew was incorrect. It involves
16 a deal with the co-defendant. The testifying
17 co-defendant was a man named Quentin Eppes. Prior
18 to trial he was offered a deal. It was not a
19 specific deal, but they did tell him that he would
20 drop his armed robbery charge. I have Hank Anderson
21 who represented Mr. Eppes who will testify to that
22 here today. When Judge Russo heard this case back
23 in October he ended up making a ruling based off of
24 that granting PCR. The State chose not to appeal
25 that and let the time period lapse. The

1 co-defendant's now in the county looking, facing
2 re-trial.

3 My position is that under the doctrine of
4 collateral estoppel the State should be precluded
5 from re-litigating the issue of whether or not the
6 deal was made. I believe that if you read the order
7 from Judge Russo it was directly — well, first of
8 all, it was the State had full and fair chance to
9 present their case in front of Judge Russo. They
10 did cross-examine him thoroughly. And then whenever
11 the order came out, the order directly found that
12 the deal was present and that's necessary to the
13 holding of the order as well so I believe that it
14 fits all three prongs.

15 THE COURT: What kind of deal was it
16 again?

17 MR. SHAFFER: It was a deal where the
18 prosecution said that they would drop the armed
19 robbery to some other charge, okay. They didn't
20 tell him what it was going to be; but the fact that
21 you're dropping an armed robbery, some other charge.
22 obviously you're dropping a mandatory ten year
23 minimum so that's a pretty substantial deal. He
24 testified in both trials that he was still, he was
25 facing armed robbery and essentially that they had

1 offered him no deal, the co-defendant did.

2 THE COURT: And how does that apply to
3 this defendant?

4 MR. SHAFFER: That applies to this
5 defendant as well. He testified at her trial to
6 that as well. Upon questioning of the State the
7 State never moved to correct it. I spoke with the
8 trial attorney who previously has told me that he
9 had no idea that there was a deal.

10 THE COURT: All right. Let me hear from
11 you, Mr. Johnson.

12 MR. JOHNSON: Your Honor, this is a case
13 about whether or not she gave a coerced confession.
14 That's what she has in her application. Mr. Shaffer
15 has had up until today to give the State a written
16 amendment stating what he wanted to argue. They
17 can't walk in here the morning of court, five
18 minutes before 9:30, and hand me a motion which I
19 honestly have still have not had time to read. It
20 says it's one of five. It's actually eight or nine
21 pages long. Collateral estoppel doesn't apply so
22 we're not taking a different position than we've
23 ever taken. We're taking the same position in this
24 case; but you know, Your Honor, it's a different
25 case. This is a different case than the Montario

1 Graham case. So if they're trying to say that
2 whatever deal was offered there applies here, it
3 doesn't, it's different.

4 This is a case about whether or not she
5 was coerced, and so we have the audio visual ability
6 to play her confession for the Court. There's two
7 tapes that we plan to play, and that's what this
8 case is about. So their motion to amend at the
9 eleventh hour, the morning of, should be denied;
10 we're asking that that be denied. We're asking that
11 the motion to preclude the State from asserting that
12 the applicant's co-defendant Quentin Eppes did not
13 have a deal with the prosecution should be denied.
14 State's got the ability to defend itself; we can
15 make those arguments. So we would ask you deny both
16 those motions so that Ms. Cochran can appropriately
17 go forward on the allegations that she made in her
18 application.

19 MR. SHAFFER: Your Honor, if I may, on
20 February 19th, 2013, I wrote Andrew. I put
21 Andrew — this is via email — "As we previously
22 discussed I will be arguing the same due process
23 violation in Latisha's case as I did in Montario's
24 case. Are you planning on arguing that the Brady
25 violation did not occur? I might make some sort of,

1 some collateral estoppel motion if you are present,
2 if you are present -- I meant presenting. Present
3 evidence that it did not happen. I will also be
4 arguing that the trial counsel was ineffective by
5 several failures, primarily for essentially
6 conceding his client's case during closing argument.
7 Basically he argued that she was an accessory before
8 the fact which of course would make her guilty. In
9 addition to Strickland prejudice I will probably
10 also argue that it was prejudice per se under
11 Kronick. I believe she told me that she advised --
12 he advised her not to testify; if so, I will argue
13 he is ineffective for that advice." And that was on
14 the 19th, Your Honor. I spoke to Mr. Johnson about
15 this case and told him via phone at least a week
16 before that it was basically around the time that I
17 had spoken to her, and she had signed the conflict
18 waiver. At that point I talked to Phoebe. Phoebe
19 sent in a motion on it or a order, a proposed order
20 to a consent order to relieve her and appoint me.
21 At that point I talked to him over the phone about
22 it. It was at least on the 19th via written
23 message, but I know I spoke to him early in February
24 about it.

25 THE COURT: It seems to me that the

1 appropriate thing to do would be to continue the
2 case and that would give you time to formerly and in
3 writing amend your application and properly serve it
4 upon the State so that they can have it and that
5 they have time to prepare it. And then before it
6 becomes in front of another trial judge at another
7 date, I would send the motion to them in advance
8 when they have time to look at it and think about it
9 as well. That way the whole ball of wax is one, and
10 it's set up and will be done properly and ended one
11 way or the another. That's my feeling.

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: How do you feel about that?

14 MR. SHAFFER: I don't — while we would
15 love to get it over with today, Your Honor, I —

16 THE COURT: Because, you know, it's not
17 fair to the State to walk in here and just say, you
18 know, I'm gonna change my answer and add all this
19 stuff to it and they don't have and notice of it and
20 —

21 MR. SHAFFER: I understand.

22 THE COURT: And it sounds like it's a
23 little bit more complex than your typical PCR.

24 MR. SHAFFER: Yes, Your Honor. And if I
25 may confer with my client just a moment.

1 (Attorney Shaffer confers with Petitioner Cochran.)

2 MR. JOHNSON: Your Honor, in discussing
3 this with Ms. Parr, Mr. Cartrette, we're not gonna
4 ask for a continuance. I think we can address
5 everything that they're gonna claim today. I just
6 think that — you know, relying on emails, I'm not
7 going to preach to counsel, but there's a proper way
8 for amendments to be handled; emails are not it. In
9 our phone discussion, our phone discussion was
10 primarily on the Montario Graham case and that he
11 was going to be taking over the Latisha Cochran case
12 and I told him then that I thought they were very
13 different cases, and that's what I remember about
14 the telephone discussion.

15 THE COURT: So in other words, you're okay
16 with going forward with these amendments that you
17 have placed on the record to the application; is
18 that right, Mr. Johnson?

19 MR. JOHNSON: Yes, Your Honor.

20 THE COURT: All right. Why don't we take
21 about five minutes and let me at least review this
22 motion and get familiar with it, and then we'll come
23 back and try the case if that's what y'all want to
24 do.

25 MR. SHAFFER: Thank you, Your Honor.

PW - H. ANDERSON - DIRECT

1 THE COURT: Let's take a short break.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 MR. SHAFFER: Thank you, Your Honor. And
5 just for the record, I understand your ruling in
6 chambers to the collateral estoppel motion is that
7 she can't assert that a deal was never offered,
8 period. That's the only thing she can't assert; is
9 that correct?

10 THE COURT: In reference to the
11 co-defendant.

12 MR. SHAFFER: In reference to the
13 co-defendant, yes, Your Honor.

14 THE COURT: Right.

15 MR. SHAFFER: Thank you.

16 THE COURT: All right. I'm ready whenever
17 you are.

18 MR. SHAFFER: Thank you, Your Honor. The
19 Applicant calls Henry Anderson.

20 THE CLERK: Please place your left hand on
21 the Bible, raise your right hand.

22 WHEREUPON,

23 **HENRY MORRIS ANDERSON, JR.,**
24 having been duly sworn by the Clerk, testified as
25 follows:

PW - H. ANDERSON - DIRECT

1 THE CLERK: Please be seated. State your
2 name for the record.

3 THE WITNESS: My name is Henry Morris
4 Anderson, Jr.

5 **DIRECT EXAMINATION**

6 BY MR. SHAFFER:

7 Q Good morning, Mr. Anderson.

8 A Good morning.

9 Q Would you please tell us in relation to this, did
10 you represent Quentin Eppes?

11 A Yes, sir, I did.

12 Q And you — what did you represent him on?

13 A He and I think three other people were charged
14 with an armed robbery that happened over in Lake
15 City which is here in Florence County.

16 Q Okay.

17 A I represented him on that charge, and I think
18 there may have been a conspiracy charge and also
19 the, maybe a weapons charge in the same indictment.

20 Q Okay. Now were you appointed or retained?

21 A Yes, sir, I was appointed.

22 Q Okay. And Mr. Eppes — at some point you spoke
23 to the prosecution about possible deals, correct?

24 A That's correct.

25 Q All right. And what were the results of that

PW - H. ANDERSON - DIRECT

1 conversation?

2 A Mr. Eppes testified, I think, against the
3 applicant in this case, and he also testified I
4 think against one other co-defendant that went to
5 trial. As a result of that he was allowed to plead
6 to a lesser charge, and I think he received an 18
7 month sentence.

8 Q And prior to him testifying had you discussed his
9 possible sentence or his possible exposure?

10 A Yes, sir.

11 Q And did you discuss it with the Solicitor?

12 A Yes, sir.

13 Q What was the result of that conversation?

14 A Before any, I guess, cooperation was talked
15 about, I mean, he was just facing I think they said
16 he could plead to the minimum which was ten years.

17 Q Okay. And whenever you offered to cooperate what
18 changed about that?

19 A Based upon his agreeing to testify, the armed
20 robbery would be reduced to a lesser charge and he
21 would be allowed to plead to that.

22 Q Okay. Was that deal made before he testified
23 against the applicant in this case?

24 A Yes, sir.

25 Q And it was made before he testified against Mr.

PW - H. ANDERSON - DIRECT

1 Graham, the other co-defendant, the other —

2 A Yes, sir. It was just — after he testified
3 against the applicant in this case it was just, you
4 know, as part of your agreement you got to continue
5 to cooperate with us, continue to testify if anyone
6 else goes to trial.

7 Q And he had -- with that discussion that you had
8 before the applicant's case, the Solicitor did offer
9 to drop the charge if he testified?

10 A Yes, sir.

11 Q Okay. And —

12 A I mean, it was, he couldn't just get up there and
13 say anything. I mean, it had to be what he had —
14 we met and they went over what his testimony would
15 be. It was Ms. Parr and Mr. David Richardson who is
16 no longer a solicitor here, but he was at the time.
17 And we probably met for an hour or more and they
18 talked about what happened that night and where they
19 went, what they did. You know, you have to continue
20 to tell the truth. You have to — you can't get up
21 there and mislead us; if you do, all bets are off.

22 Q And that conversation occurred before the — he
23 testified in any trial?

24 A Yes, sir.

25 Q Regarding this matter?

PW - H. ANDERSON - DIRECT

1 A Yes, sir.

2 Q Okay. What did he end up pleading guilty to?

3 A I really can't remember. I think it was
4 accessory, or it might have been conspiracy but I
5 don't think it was — I know it wasn't armed
6 robbery. I don't think it was strong armed robbery.
7 I think it was accessory or conspiracy count.

8 Q What sentence did he get?

9 A 18 months.

10 Q Okay. And was that after he had testified in the
11 co-defendant's cases or —

12 A Yes, sir.

13 Q Okay. And just one last time, well, was he aware
14 before he had testified in the applicant's case, was
15 he aware that his charge will be reduced in exchange
16 for his testimony?

17 MR. JOHNSON: Your Honor, I think —
18 objection. I think he can ask him if he tried to
19 make him aware. We really wouldn't know what Mr.
20 Eppes was aware of 'cause he's not here to say.

21 MR. SHAFFER: I apologize.

22 BY MR. SHAFFER:

23 Q You informed him that his armed robbery would be
24 reduced prior to him testifying?

25 A I told him that the only way to get it reduced

PW - H. ANDERSON - DIRECT

1 was to cooperate with the State, and that's what I
2 anticipate would happen.

3 Q Okay. And did you tell him about your discussion
4 with the Solicitor's Office?

5 A Yes, sir, he was present when we had those
6 discussions.

7 Q Okay. So the Solicitor actually, he was present
8 when the Solicitor told him that the armed robbery
9 would be dropped in exchange for his testimony?

10 A Yes, sir.

11 Q Okay.

12 A And when I say drop it, I think it was -- it
13 would be reduced.

14 Q It would be reduced, I apologize. And that means
15 reduced to a lesser charge, right?

16 A Yes, sir.

17 Q Okay. And this occurred before this conversation
18 that we just, in my last question, occurred before
19 the Applicant's trial?

20 A Yes, sir.

21 Q No further questions.

22 THE COURT: All right.

23 Mr. Johnson.

24 **CROSS-EXAMINATION**

25 BY MR. JOHNSON:

PW - H. ANDERSON - CROSS

1 Q Mr. Anderson, I wanted to get into a little bit
2 more detail about your discussions with Ms. Parr, if
3 you recall, when they occurred and what was said.
4 In discussions in particular that I'm interested in
5 asking you about, are those that dealt with what's
6 been alleged to be a deal or, you know, the
7 negotiations that would have been in exchange for
8 his truthful testimony. Can you tell the Court
9 about those discussions with Ms. Parr?

10 A We -- my client, Mr. Eppes and I, met with in the
11 conference room in the Solicitor's office.

12 Q Anybody else there with you?

13 A Yeah, David Richardson. It was myself, David,
14 Pat, Mr. Eppes, and my, you know, just the four of
15 us I guess were in there talking. They asked him,
16 you know, what did you do that night, where did you
17 go, who was with you, what guns were used. I mean,
18 they went over what his testimony would be at trial.
19 He told them everything that happened that night,
20 where they went, what they did. You know, sometimes
21 they would interrupt him and say, all right, let me
22 clear this matter up. After that was done, then we
23 talked about, you know, I said: "Quentin, you know,
24 you just helped yourself. In exchange for this, I
25 think the State's gonna allow this charge to be

PW - H. ANDERSON - CROSS

1 reduced."

2 Q Now was Ms. Parr in the room when you said that?

3 A I think so, yes, sir. It was myself, her, and
4 Mr. Richardson, and of course my client.

5 Q Did you say that for — I know you were talking
6 to Mr. Eppes, but in your mind were you saying that
7 really for the benefit of Ms. Parr so she could hear
8 it and maybe —

9 A I didn't want there to be any confusion.

10 Q Right.

11 A I mean, we weren't, I didn't want to — I mean,
12 if my client was going to testify I wanted him to
13 get the benefit of a bargain.

14 Q All right. This was prior to the Latisha Cochran
15 trial, right?

16 A Yes, sir.

17 Q Okay. What else?

18 A I think that's really about it.

19 Q Was that the only discussion where this came up?

20 A I mean, I don't know, but I'm sure it came up
21 again when the next individual went to trial.

22 Q But with regard to Latisha Cochran?

23 A Yes, sir.

24 Q That was the only time. Now if you don't mind
25 and I hate to ask this, let's backtrack just a

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1 little bit and I want to hone in on the specific
2 language that you used with Mr. Eppes while you say
3 Ms. Parr was in the room. Let's do that. I'm gonna
4 ask you to repeat yourself, I'm sorry.

5 A If you want me to hone in I'm probably gonna say
6 something different than I just did.

7 Q I understand. It's hard to say the same thing
8 twice.

9 A Well, no, but also it happened 18 months ago,
10 maybe longer.

11 Q Yes, sir, I do understand. We won't hold you to
12 that, but just the best you can.

13 A They went over his testimony, what he would say,
14 what he would testify to.

15 Q Right.

16 A I don't know if David was going to direct
17 Mr. Eppes or if Ms. Parr was going to direct
18 Mr. Eppes. Both of them were in there.

19 Q Just with regard to the part where you said
20 there'll be an exchange of your testimony for a
21 deal. What language was used by you?

22 A Quentin, and by doing this today you've helped
23 yourself. It's my understanding that these charges
24 are going to be reduced. It's my understanding
25 you'll be allowed to plead to something else so

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1 you're no longer facing 10 to 30.

2 Q Now at that moment do you know if Ms. Parr was
3 part of that conversation listening, looking at you?

4 A I don't know. I mean, I think she was in the
5 room, but I don't know if she was talking to David,
6 I don't know if she was making notes.

7 Q I know it's been 18 months; but I mean, honestly,
8 you can't say that you said that to her or that she
9 confirmed it?

10 A No, sir.

11 Q You were talking —

12 A We were closer than you and I are, but I can't
13 say that she was paying attention to me.

14 Q You were talking to Mr. Eppes, not to Ms. Parr?

15 A Yes, sir.

16 Q And Ms. Parr never said — basically she never
17 echoed what you said to Mr. Eppes?

18 A No, sir.

19 Q She never repeated it?

20 A Not to my knowledge.

21 Q She never confirmed, yes, that's what we're
22 gonna, that's what the State's gonna do?

23 A Well, I'd have to disagree with you there.

24 Q Well, tell me, if she confirmed it tell me. Did
25 she —

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1 A No, no, no, I mean, if there was — no, that's
2 not the deal, then I would have expected that to be
3 said at that time.

4 Q If she heard what you said?

5 A Well, let's just say that if my client had gone
6 and testified in those two trials and nothing would
7 have happened, we'd be having another hearing right
8 now.

9 Q So there was some expectation that he would get a
10 better deal?

11 A Yes, sir.

12 Q He would hope to get a better deal?

13 A It wasn't my — my understanding was not a
14 expectation. It was my understanding that that's
15 what was going to happen.

16 Q He was going to get a better deal?

17 A Yes, sir.

18 Q And he had every right to be hopeful that in
19 exchange for his truthful testimony he would get a
20 better deal. Wouldn't you agree?

21 A I would not use the word hopeful, I mean.

22 THE COURT: Tell it like it is, Mr.
23 Anderson. You've been doing this for a long time.
24 Stop beating around and just tell it like it is.

25 THE WITNESS: I expected it. That was my

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1 understanding. He expected it; that was his
2 understanding. It wasn't hopeful.

3 BY MR. JOHNSON:

4 Q Now were you with him in court during the trial
5 of Ms. Latisha Cochran?

6 A Yes, sir, I was.

7 Q And so you were in the courtroom when he was
8 asked on cross-examination whether, isn't it true
9 you hope to get a better deal? Were you there?

10 A Yes, sir, I think so.

11 Q And do you remember his answer?

12 A No, sir, I don't.

13 Q Just referring to page 119 of the transcript.
14 And you do not have the transcript, I know that, but
15 what was your recollection — he said, yes, sir,
16 that he hoped to get a better deal?

17 A Okay.

18 Q Would that comport with your recollection? If
19 you don't remember, you don't remember.

20 A I don't remember what he said but ---

21 Q Sir?

22 A I said I do not remember what he said.

23 Q Okay, I understand. Now if he had said, if he
24 had said in this trial, oh, no, I'm not going to
25 get a better deal, I'm just testifying because I

PW - H. ANDERSON - REDIRECT

1 feel like it's the right thing to do, would you
2 have, would you have made -- done something, stopped
3 the proceedings and, well, you can't say that, that
4 was a lie. What would you have done?

5 A I probably would have said something to either
6 Mr. Richardson and Ms. Parr.

7 Q You would have taken action of some sort, I'm
8 sure, right?

9 A Yes, sir.

10 Q I mean, that would be the ethical thing to do.
11 But he never said that in this case, did he?

12 A I don't know. I guess not, no, sir.

13 Q Because if he did, you would have taken some
14 action in response; wouldn't you?

15 A Yes, sir.

16 MR. JOHNSON: No further questions, Your
17 Honor.

18 THE COURT: All right.

19 **REDIRECT EXAMINATION**

20 BY MR. SHAFFER:

21 Q Mr. Anderson, have you read the transcript of
22 Latisha Cochran's case?

23 A No, sir.

24 Q Okay. And you stated you were present during his
25 testimony in Latisha's case?

PW - H. ANDERSON - REDIRECT

- 1 A Yes, sir.
- 2 Q Okay. Were you actively involved in the trial of
- 3 Latisha Cochran's case?
- 4 A No, sir.
- 5 Q Where were you sitting?
- 6 A I think we were — I think the trial was in this
- 7 courtroom, and I was sitting behind, about two rows
- 8 behind Mr. Cartrette.
- 9 Q Okay. Did you ever speak anything in this case?
- 10 A No, sir.
- 11 Q Did you — were you paying perfect attention to
- 12 what was going on?
- 13 A No, sir.
- 14 Q Okay. And you were the defense attorney, right?
- 15 A Yes, sir.
- 16 Q You're not the prosecutor, right?
- 17 A Right.
- 18 Q You're not bound to do exactly what a prosecutor
- 19 does, right?
- 20 A No, sir, that'd be an easy job.
- 21 Q Okay. Now getting back to this conversation that
- 22 occurred before Latisha Cochran's trial, did you
- 23 just make up this deal that they were gonna drop it
- 24 off the top of your head?
- 25 A No, sir.

PW - H. ANDERSON - REDIRECT

1 Q How did you come to inform him of this deal? Did
2 the State put it in your mind, or what happened?
3 Did the State say it or —

4 A That was a conversation that I had with the two
5 prosecutors in the case.

6 Q Okay. So you had a conversation with the two
7 prosecutors prior to this?

8 A Yes, sir.

9 Q And they said that they were gonna drop the armed
10 robbery?

11 A Reduce it.

12 Q Reduce the armed robbery, I'm sorry.

13 A Right.

14 Q And you know that you have the conversation with
15 the prosecutors?

16 A Yes, sir.

17 Q Representatives of the State?

18 A Yes, sir.

19 Q Okay. And when you were in the room and they
20 were going through his testimony there were two
21 solicitors in the room?

22 A Yes, sir.

23 Q Okay. And both of them were in the room the
24 entire time, right?

25 A Yes, sir.

PW - H. ANDERSON - REDIRECT

1 Q And during that time you would expect that at
2 least one of them was paying attention to what was
3 going on, right?

4 A Yes, sir. The investigator may have been there
5 also. I think one of the investigators, Roger
6 Tilton, he may have been there; but I know the two
7 solicitors were.

8 Q But he's a representative of the State as well?

9 A Yes, sir.

10 MR. SHAFFER: That's all the questions I
11 have.

12 THE COURT: All right.

13 MR. JOHNSON: Nothing further, Your Honor.

14 THE COURT: Have a good day.

15 Call your next witness.

16 MR. SHAFFER: Your Honor, the Applicant
17 calls Jesse Cartrette.

18 THE CLERK: Place your left hand on the
19 Bible, raise your right hand.

20 WHEREUPON,

21 **JESSE STANLEY CARTRETTE,**
22 having been duly sworn by the Clerk, testified as
23 follows:

24 THE CLERK: Please be seated, state your
25 name for the record.

PW - J. CARTRETTE - DIRECT

1 THE WITNESS: My name is Jesse Stanley
2 Cartrette, Jr.

3 DIRECT EXAMINATION

4 BY MR. SHAFFER:

5 Q Mr. Cartrette, I apologize, I mispronounced your
6 name

7 A That's quite all right; it happens a lot.

8 Q Regarding Quentin Eppes — well, first of all I
9 guess I need to lay a little bit of foundation. Did
10 you represent the applicant?

11 A I did.

12 Q Were you appointed or retained?

13 A I was appointed.

14 Q Okay. And you represented her for this charge?

15 A I did.

16 Q The armed robbery?

17 A Yes, sir.

18 Q You ended up going to trial for the armed
19 robbery?

20 A We did.

21 Q Okay. Do you recall one of our co-defendants
22 Quentin Eppes testifying?

23 A I do recall him testifying.

24 Q Okay. Were you aware of any plea negotiations or
25 deals made with the State regarding his testimony?

PW - J. CARTRETTE - DIRECT

1 A I was not aware of any deal. I presumed it
2 because he was represented by a fine defense
3 attorney who I'm aware of and have at other times
4 dealt with in other matters, was negotiating
5 something like I was trying to negotiate for my
6 client.

7 Q Okay. But that was based off of knowledge. The
8 State never told you that, right?

9 A The State never told me that.

10 Q Okay. Beg the Court's indulgence. Do you
11 remember Mr. -- do you recall that Mr. Eppes
12 testified that he had no deal with the State?

13 A Without the transcript in front of me I can't
14 tell you exactly what I recall. It's been about
15 two-and-a-half years to the best of my recollection,
16 but I do recall -- well, now that you mention it I
17 do recall he said he did not have a deal with the
18 State at the time.

19 Q Okay.

20 MR. SHAFFER: Your Honor, if I may
21 approach.

22 BY MR. SHAFFER:

23 Q I'm handing you a copy or electronic copy of the
24 transcript. Could you read that and see if it will
25 refresh your recollection?

PW - J. CARTRETTE - DIRECT

1 MR. JOHNSON: Your Honor, I think -- I
2 don't even know what page he's on, but I think he
3 would ask him if he does remember. And if he
4 doesn't remember, then he can refresh his
5 recollection and ask him a question. But the
6 transcript is in the record, but at a minimum he
7 should advise counsel exactly what section you're
8 looking at.

9 MR. SHAFFER: Okay, I apologize. I didn't
10 provide the State of the section. It is page number
11 117 in the transcript, and I'm just asking him to
12 read. I think he testified.

13 THE COURT: Go ahead.

14 MR. SHAFFER: Thank you.

15 (Pause while witness reads.)

16 THE WITNESS: Yes, sir.

17 BY MR. SHAFFER:

18 Q After reading that do you recall whether Mr.
19 Eppes testified that he didn't have any sort of
20 special plea deal to testify that day?

21 A I do.

22 Q Okay. Do you have anything directly to -- do you
23 have anything that would -- did the State ever tell
24 you anything that would allow you to impeach that?

25 A To my recollection, no, the State never told me

PW - J. CARTRETTE - DIRECT

1 of any deal. I was going on a hunch. I assumed
2 that because Mr. Hank Anderson is his attorney and a
3 very capable and experienced defense attorney that
4 he was doing the same negotiations that I was, and
5 common sense tells us in this type practice that we
6 try to get the best deal we can and we get our
7 clients if they're willing to testify to testify,
8 that the gold nugget out there is that they're gonna
9 get a better deal, we hope. I mean, it's never
10 promised ethically speaking, but certainly we
11 wouldn't make those type statements against in -- or
12 get our clients against their own interest, but for
13 the hope that there's a better deal for them.

14 Q But you weren't aware that a deal had actually
15 been made, were you?

16 A I was not.

17 Q Were you aware that, or -- I apologize, Your
18 Honor, Court's indulgence.

19 A If I may, I will say the testimony was pretty
20 clear in the transcript. He told us there in his
21 testimony that at one point he was there not knowing
22 for sure if it was going to do him any good or not.
23 And then when I crossed him about, you know, why
24 else would he be here making a statement against his
25 own interest, didn't he expect a deal, he said that

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1 he expected a deal and that's why he was here.

2 Q Did you ever get called up to, or did you ever
3 discuss in chambers whether or not that testimony
4 was truthful with the State?

5 A I honestly cannot recall what we discussed in
6 chambers. I'm sure we had some moments in chambers
7 at some point; but you know, that's been a long ago
8 and there's been a lot of stuff come across my desk
9 and through my office from that time.

10 Q And do you recall whether or not the State ever
11 brought it to your attention as to whether or not
12 that was correct or not?

13 MR. JOHNSON: Your Honor, if I can object.
14 It's not clear whether the question goes to the
15 first answer or the second. The first answer he
16 gave was that he didn't think there was a deal, but
17 then he came back and just said that he was -- he
18 said he did hope for a deal so I'm not sure which
19 --

20 MR. SHAFFER: Oh, I can rephrase it.

21 BY MR. SHAFFER:

22 Q Related to Quentin Eppes testifying or responding
23 to the question, you hadn't been offered any sort of
24 special deal in order for you to testify here today;
25 is that right? And Quentin Eppes responded, right.

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1 Do you recall ever having the prosecutor come up to
2 you and tell you whether or not that was accurate or
3 not?

4 A I do not recall the prosecutor telling me one way
5 or the other the deal had been made.

6 Q Okay. Do you recall anywhere in the transcript
7 where the prosecutor said that that was correct or
8 not?

9 A I do not.

10 Q Okay. Now getting to some of the facts of the
11 actual case, you said you were appointed.

12 A I was, yes, sir.

13 Q Can you briefly go through some of the
14 allegations that were against her?

15 A Well, she was alleged to have been essentially
16 the get-away driver and to have used a credit card
17 gleaned from the armed robbery to purchase various
18 things; I think fast food was one of them. I don't
19 recall what the other purchases were at this point;
20 but her involvement it seemed, if any, at that time
21 was very minimal compared to her co-defendants.

22 Q And do you recall that there was a call made to
23 the alleged victim prior to the robbery, unknown
24 female?

25 A I do.

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1 Q Okay. And it's correct to say that the State
2 alleged that she had made that call?

3 A I think it's pretty clear to believe that that's
4 what they were going for.

5 Q So the allegation basically she made the call and
6 then was the get-away driver, right, then used the
7 credit card obviously.

8 A That's my understanding of what happened.

9 Q And your -- are you aware if she gave a statement
10 or not?

11 A I am aware that she gave a statement.

12 Q Okay.

13 A She actually gave two.

14 Q Okay. And the first statement, do you recall
15 what the first statement involved?

16 A Best I can recall from recollection the first
17 statement involved how she came into getting the
18 card and using the card. It was not hers. I don't
19 recall exactly what she shared about how she got the
20 card. I think perhaps that she found the card
21 somewhere and then just used it just to see if it
22 would work.

23 Q And on the second statement do you recall the
24 content of that statement?

25 A The second statement had more to do with -- well,

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1 it had to do with the alleged armed robbery and
2 involvement with the co-defendants, who were all
3 charged with this crime as well, along with the
4 possession of a weapon. As I understand it I think
5 it occurred on Christmas eve day. When I was
6 representing Ms. Cochran I firmly believe that she
7 felt that the testimony that -- or the statement
8 that she gave them was basically, if you go ahead
9 and give us a statement she could go home, and we'll
10 leave you alone. She had children. She wanted to
11 go home and be with her family; it's Christmas time.
12 That's essentially what I recall with that.

13 Q The second statement was a lot more damaging,
14 correct?

15 A It was.

16 Q When the decision was made to go to trial and not
17 plead, I guess your initial strategy is keep out
18 damaging evidence?

19 A We certainly will try to.

20 Q So you wanted to keep out the second statement,
21 right?

22 A Yes, sir.

23 Q And that was part of your strategy is keep out
24 the second statement and hopefully everything works
25 out after that?

PW - J. CARTRETTE - DIRECT

1 A We hoped to keep both out. We were unsuccessful
2 in both attempts.

3 Q And y'all filed a Jackson — you did a Jackson v.
4 Denno hearing, right?

5 A We did, yes, sir.

6 Q And she actually denied the statement — she
7 denied the statements, said basically that wasn't
8 true?

9 A Basically the statements that were recorded that
10 prosecution intended to use as their evidence to
11 submit to the court would — was not properly
12 mirandized and that her signature was on those
13 documents was not her own, that had been forged.

14 Q Okay. So she argued that there was, there was
15 a — I guess she argued that basically it was a
16 coerced statement, right?

17 A Yes, sir.

18 Q Now, and she argued that her signature was
19 forged?

20 A She argued that the signature given on the
21 Miranda warning that was admitted into evidence that
22 went along with the recordings was not her own
23 signature, And she offered at that time as I
24 recall, to display for the court or to demonstrate
25 to the court what her actual signature looked like

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1 at that time.

2 Q Okay. Did she actually do that? Did she
3 demonstrate it? It's unclear from the transcript; I
4 honestly don't know.

5 A I don't recall that she was allowed to do that.
6 I think they offered another item of evidence just
7 based on recollection, perhaps exhibit number 5, 4
8 or 5, that was a totally separate sheet that she had
9 signed before in the presence of witnesses, and they
10 tried to authenticate her signature that way.

11 Q Okay. Once the Jackson v. Denno motion was
12 denied and once the judge found that it was, that
13 the statement was coming in, did you want to further
14 argue in front of the jury that it was incorrect or
15 that it was, sorry, that it was coerced?

16 A Well, we certainly hoped to as the case
17 developed. I think what you're getting at is
18 whether or not we actually offered testimony. It
19 appeared to us that it wasn't -- and I went over it
20 with my client, and she made a conscious decision
21 not to testify that day. She was under a lot of
22 pressure. She had her brother here with her and --
23 and she just was under a lot of pressure from
24 external sources, not from within this chamber here
25 that I'm aware of.

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1 Q Was — I'll get back to my original question, but
2 since you brought up whether or not she had
3 testified or not, you said that she was — that she
4 made a choice not to testify. Did she have a bad
5 record, you recall?

6 A Best of my recollection she didn't have a very
7 bad one, no. I mean, not from what you normally
8 see. We're talking, again, I say two-and-a-half
9 years ago and I'd have to be — my memory would have
10 to be refreshed on that.

11 Q Did you — do you recall any advice you gave her
12 on whether or not she should testify?

13 A I do recall talking with her about the pluses and
14 minuses of both, and I let her make the decision
15 herself as to whether or not she would testify.
16 Personally, if you're asking did I tell her, oh
17 Latisha, don't testify, you know, I did not do that.

18 Q Okay. Did you tell her to testify and —

19 A I didn't tell her to testify either. I gave her
20 her options, and I told her what both could possibly
21 do for her and I let her know that was mere
22 speculation on my part based on what we've seen
23 through experience and practice. And she made a
24 conscious decision she did not want to testify.

25 Q Do you recall the drawbacks for her testifying?

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1 A Well, as I said, it was a while back; but
2 essentially they had already poked holes in and the
3 tape was coming in into evidence. The judge had
4 already ruled and told us that it would come into
5 evidence despite our best of objections, and so it
6 was — it had already been played in the State's
7 presentation of its case despite objection.

8 And we believed at that time the plan was,
9 as I understood it, that her testimony was going to
10 be in contravention to what was on the record, a
11 recorded statement with her own voice and was kind
12 of pitting herself against herself. We discussed
13 that. She decided that she didn't need to testify.

14 Q Okay. Didn't you tell her anything about whether
15 or not she should — whether or not she could — if
16 she were to testify that she could argue that her
17 original statement was incorrect and coerced?

18 A I don't recall. When we discussed the case in
19 consultation in my office on several occasions, you
20 know, as this case was going on we had several
21 interactions in my office where she'd sit down with
22 me and we would talk. And I did let her know there
23 were two recordings that they planned to use. It
24 was — she had pointed out to me that the first
25 recording was not correct. And she testified to

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1 that fact as well later, that she did, in fact, give
2 a false statement in the first statement.

3 Q All right. And that was in the second statement
4 when she said that, right?

5 A Yes.

6 Q Okay. And did you tell her that, did you advise
7 her that — in regard to whether or not she was
8 gonna testify, did you advise her that she could,
9 that she could actually say to the jury that it was
10 coerced and that that was not correct, the second
11 statement?

12 A I told her that she would have every opportunity
13 to tell the court her side of the story for the jury
14 to hear her side and she chose against it.

15 Q Okay. Do you tell her that whether or not you
16 believed that she would — or do you recall whether
17 or not you believed that at the time that they would
18 believe her testimony or the second statement?

19 A I didn't tell her one way or the other what I
20 thought the jury would do with the two statements
21 that I recall. I did tell her that there being two
22 statements I thought it might confuse the jury, and
23 that it might create more questions for them that
24 might not be helpful to her case overall, than not.

25 Q So basically it was, in your opinion it was

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1 probably better to just to go with one version of
2 the facts versus having her contradict herself,
3 right?

4 A Well, I didn't want the jury to think that my
5 client was a liar, that my client was here in her
6 own defense and going to tell the court yet another
7 wrinkle to the story that wasn't previously heard by
8 them that might make it worse for her in the long
9 run. And so when we spoke I told her what had
10 already gone — she was here for the whole thing and
11 she had heard what they got to hear, and she made a
12 conscious decision that she would not testify in her
13 own defense after that because she didn't want
14 prosecution to rebut her and to ask her questions
15 like, were you lying then or are you lying now.

16 Q Okay.

17 A Which they're, you know, ask any prosecutor,
18 they've tried that trick at one point or another so
19 it was reasonable to expect.

20 Q Okay. So essentially your strategy at that point
21 if she's not testifying was to argue the withdrawal
22 theory?

23 A Are you —

24 Q Withdrawal basically?

25 A The withdrawal of any desire to participate in

PW - J. CARTRETTE - DIRECT

1 the defense, yes.

2 Q So essentially that was the trial strategy you
3 used throughout the case, right?

4 A It was.

5 Q Okay.

6 A The big concern at that time was that they wanted
7 to charge her, they did charge her, and prosecute
8 her under the theory of the hand of one is the hand
9 of all; and her, the primary crux of her case was
10 she never touched that gun.

11 Q Okay.

12 A Or a gun, period, during the alleged commission
13 of this crime.

14 Q Do you recall discussing in your closing argument
15 aiding and abetting?

16 A I'll be perfectly honest with you, I don't recall
17 the entire exact closing argument that I gave.

18 Q I'm gonna show you transcript page 185 to refresh
19 your recollection. If you could, just briefly —
20 and feel free to look over anything else, but at
21 least look over the last real paragraph on that page
22 and then the next couple of pages.

23 (Pause while witness reads.)

24 BY MR. SHAFFER:

25 Q Does that refresh your recollection as to at

PW - J. CARTRETTE - DIRECT

1 least part of your closing argument?

2 A It does, yes, sir.

3 Q And I apologize, I actually told you I was
4 planning on asking you about that, but I'm gonna ask
5 you about another section as well and I'll give you
6 a chance to refresh your recollection on that as
7 well. Okay. Well, actually I was incorrect. That
8 is the section at 185. I was looking at the wrong
9 page. Now in that section you mentioned aiding and
10 abetting, right?

11 A I did.

12 Q And you're saying essentially you argued to the
13 jury that they could have charged her with aiding
14 and abetting?

15 A Yes, sir.

16 Q And that's a different crime, right?

17 A That is a different crime.

18 MR. JOHNSON: Your Honor, we're gonna
19 object to relevance.

20 MR. SHAFFER: Your Honor, it goes to my
21 ineffective assistance of counsel claim.

22 THE COURT: Overruled.

23 MR. SHAFFER: Thank you, Your Honor.

24 BY MR. SHAFFER:

25 Q And when you made that objection or -- I

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1 apologize. When you made that argument to the jury
2 about aiding and abetting being a separate crime and
3 that you essentially were saying that at the worst
4 she's guilty of aiding and abetting, correct?

5 A If guilty at all.

6 Q Okay.

7 A The reason for offering that was that there was
8 something much less severe with regard to the facts
9 they were alleging they could have charged her with;
10 and instead, they charged her for the full monte. I
11 mean, they basically stretched to put a gun in the
12 hand of a woman who never touched it and to create
13 for her this charge that she's culpable of having,
14 you know, conspired and essentially hatched this
15 plan from start to finish and cooperated with it to
16 rob June Bug. I can't remember his real last name,
17 but June Bug is what they called him.

18 Q Now since I didn't give you a chance to refresh
19 your recollection on the entire section, there's
20 page 178. I'm gonna hand you that. If you could
21 refresh your recollection based off the second
22 paragraph of that page.

23 (Pause while the witness reads.)

24 BY MR. SHAFFER:

25 Q Thank you. Now that you have refreshed your

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1 recollection do you recall arguing to the jury that
2 she could have been charged with aiding and
3 abetting?

4 A I do recall arguing to the jury that if they
5 really wanted to convict her of something, given the
6 evidence they were trying to present against her
7 they should have charged something different than
8 that, logically speaking, that would have followed.
9 I felt it was a stretch what they were trying to
10 accomplish with an armed robbery hearing with the
11 exception of the only way they could do it was with
12 the hand of one hand of all.

13 Q And you believed that was a stretch that armed
14 robbery under hand of one hand of all?

15 A I did, and the reason that I made the argument I
16 did was that what she was charged for and what they
17 were going to issue a guilty or innocent verdict on
18 was a charge of armed robbery, not something less or
19 not something that there may actually have been some
20 negative evidence to give them beyond a reasonable
21 doubt conclusion for based on my opinion at the
22 time. It wasn't in any way suggesting that she had
23 done those things if that's what you're getting at.

24 Q Okay. But you're saying certainly making a plan
25 called driving to a location, if it's aiding and

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1 abetting I would argue that's all it is here today?

2 A I said if.

3 Q Okay. But you would agree that you made that
4 statement obviously?

5 A I did say it; it's on the record.

6 Q Okay. But armed robbery under hand of one hand
7 of all is a stretch?

8 A I do believe it's a stretch. I said that there,
9 yes.

10 Q The evidence showed that she -- or the evidence
11 would tend to show that she might have called, made
12 the call. That was the allegation at least, right?

13 A That was the allegation.

14 Q That was in her statement, right?

15 A That was.

16 Q And that's what Quentin Eppes testified to,
17 right?

18 A Say that again.

19 Q And that's what Quentin Eppes testified to, that
20 she had made the call to him prior to it?

21 A That is what he testified to.

22 Q Okay. And in her statement she testified that
23 she drove him to the -- he drove the people to the
24 cite where the armed robbery occurred, right?

25 A Yes.

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1 Q Okay. And that's what Quentin Eppes testified
2 to, correct?

3 A That she gave them a ride.

4 Q Okay. And the — Quentin Eppes testified that
5 she drove all the co-defendants away from the armed
6 robbery, right?

7 A That's what he testified, yes, sir.

8 Q Okay. And that's what her statement said too,
9 right?

10 A Yes.

11 Q That she was the driver of the car?

12 A Yes.

13 Q At what point did she withdraw?

14 A When she realized one of them had a gun as I
15 understood it. She told them this — I don't know
16 what you guys are planning to do here, but if you're
17 gonna rob him I'm not gonna be any part of that,
18 period.

19 Q Okay. She said she wasn't going to be any part
20 of it?

21 A That's what she said.

22 Q Okay. But she stuck around afterwards, right?
23 After she knew that they had guns, according to what
24 the State's evidence was and uncontradicted in the
25 record — well, first of all, is there anything in

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1 the record, any evidence in the record, that says
2 that she didn't have a, she didn't have — that she
3 wasn't the driver of the car? Can you present any
4 evidence that said that?

5 A That said that she wasn't the driver of the car?

6 Q Yeah.

7 A I don't recall that, no.

8 Q Okay. Did you present any evidence, or did the
9 State present any evidence that she didn't make that
10 phone call?

11 A I don't recall that either.

12 Q Did you or the State present any evidence that
13 she drove away from the scene with the co-defendants
14 in back?

15 A Rephrase your question please.

16 Q I apologize, I get confusing sometimes. Do you
17 recall anywhere or any evidence that was presented
18 by either side that would say that she wasn't the
19 driver both to and from the incident location?

20 A I honestly don't recall at this point, no, sir.

21 Q Okay. And you're —

22 A And perhaps I should have read the entirety of
23 the script before I came back in here but...

24 Q Well, we're all busy so I don't blame you for
25 that at all. I don't think I've ever done one where

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1 the attorney read the actual transcript before
2 coming in so. Well tell me this, your theory that
3 she had withdrawn was based off of her saying I
4 don't want to rob you?

5 A Yes, her admitted statement that she did not want
6 any part of it.

7 Q Okay.

8 A Apparently she had a friendship or bond with
9 Mr. Hayes that she certainly didn't want to do him
10 any harm. She apparently thought pretty highly of
11 him as an elder gentleman in the community and that
12 based on her rapport with him, she -- if anybody
13 were going to be the victim of a crime she certainly
14 wouldn't want it to be someone that she cared for or
15 that she thought as highly of as she did.

16 Q Now regarding the -- regarding when she made that
17 statement, that she doesn't want any part of it, was
18 it before or after she dropped him off at the scene
19 of the location?

20 A I don't recall honestly.

21 Q Okay. In your -- do you recall if it was before
22 or after she drove them away from the location?

23 A Certainly before she drove them away from the
24 location where the offense was alleged to have taken
25 place.

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1 Q Okay.

2 A Upon learning that that's what had occurred.

3 Q What did you tell her regarding — or what did
4 you advise your client regarding the withdrawal
5 theory?

6 A That based on her withdrawal of any — not
7 necessarily her withdrawal, but her statement to
8 those who are her alleged co-conspirators and
9 co-defendants that not want any part of it fit as
10 closely with the withdrawal theory as I knew as far
11 as what was being alleged against her and that in
12 essentially it would knock a hole in or we hoped
13 knock a hole in the hand of one hand is the hand of
14 all 'cause clearly she's not acting in concert with
15 her co-defendants at that point if she's told them I
16 don't want any part of this.

17 Q And you told her that that was — I mean, clearly
18 before you went to trial did y'all have discussions
19 about that at trial?

20 A Of course.

21 Q And you told her that that was possibly a
22 defense?

23 A I did.

24 Q Okay. And you also told her that you might be
25 able to get the statement suppressed with a Jackson

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1 v. Denno, right?

2 A We hoped, yes.

3 Q And but if not, you might be able to argue even
4 in conformity with the statement, that there was a
5 withdrawal theory?

6 A Yes.

7 Q Okay.

8 A I don't know if you've ever defended anyone
9 charged with a crime of that nature; but you try
10 everything you can to help the matters, especially
11 when you believe what they're telling you that they
12 had nothing to do with.

13 Q Okay. Well, what were the plea negotiations
14 prior to trial? What sort of offer did they have?

15 A There was no offer made with the exception of we
16 were told that if she wanted to plead straight up we
17 could get a minimum sentence of ten years.

18 Q Okay. And she declined that?

19 A She did.

20 Q Okay. And that was available all up until she
21 went to trial?

22 A Up until she went to trial.

23 Q Okay. Court's indulgence. One other thing, you
24 also argued at some point during your closing
25 argument that there were four full grown men or

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1 three full grown men and she had no ability to
2 control their actions, right?

3 A True, yes, sir.

4 Q And she wouldn't be able to stop, right?

5 A Yes, sir.

6 Q Did you discuss with her that possible defense
7 prior to trial?

8 A We had spoken about it, that she -- the
9 impression that I got in speaking with Latisha was
10 that she felt defenseless against these guys and
11 that they could harm her in some way.

12 Q Okay. So that's --

13 A Shared --

14 Q So basically she was under duress, right?

15 A Essentially, yes.

16 Q But did you discuss that as a possible defense
17 with her prior to trial, the duress defense
18 basically?

19 A We didn't, we didn't use that as our defense. It
20 didn't really jive with a lot of what was said on
21 the tapes.

22 Q With what was said, okay. And that's --

23 A I had to go with what evidence the State was
24 going to present and --

25 Q Okay.

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1 A ---Latisha's decisions during that time were made
2 during the time of trial were made based on what we
3 knew the State had presented to the jury, or were
4 going to present to the jury, and what it would look
5 like one way or the other or could look like with
6 the jury if they were presented with something
7 worlds different from what she'd already said. I
8 did not want the State to have -- and I told her
9 that it's absolutely her call whether or not she
10 testifies, but that it was possible when she gets on
11 the stand that if her statement now versus both of
12 the statements but essentially the second statement
13 being the primary where they were hanging their hat
14 on, that the State could try the trick they do
15 frequently in most of these cases, which is were you
16 lieing then, are you lieing now. And she didn't
17 want to further muddy the water or create any other
18 potential problems for herself and chose not to
19 testify.

20 Q Okay. And based off of what the State was
21 planning on presenting you went with the withdrawal
22 defense, right?

23 A We did, yes, sir.

24 Q Okay. Did at some point the State had a
25 co-defendant who didn't actually testify who was

PW - J. CARTRETTE - CROSS

1 supposed to testify on the witness list, right? Do
2 you recall that?

3 A If you can call out the name for me.

4 Q Jerry Bush?

5 A Yes.

6 Q Okay. Do you know why he didn't testify, why he
7 decided not to testify?

8 A It's not — I don't recall.

9 Q Okay. No further questions.

10 THE COURT: All right, Mr. Johnson.

11 **CROSS-EXAMINATION**

12 BY MR. JOHNSON:

13 Q Mr. Cartrette, I want to ask you about three
14 general areas. Two of the areas are the claims that
15 have been made by the applicant in this case, and
16 then the third is basically the difficulty of
17 representing her in a case of overwhelming evidence
18 of guilt. The first two deal with whether or not
19 her confession was coerced; and then second, Quinton
20 Epps' testimony in this case. So let's start with
21 her confession, whether or not that was coerced.

22 What can you tell the court about the circumstances
23 of her confession and how did it affect your case?

24 A The circumstances of her confession, and I'm just
25 going to ask which confession you're talking about.

PW - J. CARTRETTE - CROSS

- 1 Q Well, she gave more than one; didn't she?
- 2 A She did.
- 3 Q Let's talk about the first one.
- 4 A Okay. The first one, as I understand it, I think
- 5 perhaps a probation officer or someone she was
- 6 familiar with, picked her up, asked her some
- 7 questions about how she got the card. As I
- 8 understand it she admittedly told them several lies
- 9 about how she came to get the card, and she admitted
- 10 as much in her second statement that she wasn't
- 11 entirely truthful about how she came to get the
- 12 cards in the first place.
- 13 Q So in the first statement she lied about how she
- 14 acquired the card, but she did admit to what?
- 15 A To spending money on the card.
- 16 Q Spending money at maybe a fast food place —
- 17 A I think it was a fast food restaurant.
- 18 Q And what else did she say in the first statement?
- 19 How did she get rid of the card or the wallet?
- 20 A That she threw it out.
- 21 Q Did she say she threw it out, or somebody else
- 22 threw it out?
- 23 A I, honestly I don't recall.
- 24 Q All right.
- 25 A I haven't listened to that tape since the trial.

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1 Q So we're still talking about the first statement,
2 right?

3 A Yes.

4 Q All right.

5 MR. JOHNSON: Is there any objection?

6 MR. SHAFFER: Oh, no. Actually I was
7 going to say we consent to allow the tape to be
8 played. I know he's planning on playing it anyway.
9 If he wanted to play it sort of out of turn so that
10 he can ask about it, I'm happy for him to do that.

11 BY MR. JOHNSON:

12 Q So let's talk about the second statement, the
13 difficulty that that second statement made your
14 representation. What were the aspects of the second
15 statement that gave you trouble?

16 A Well, in the second statement essentially — and
17 again, if you want to play it you can. My
18 recollection was not one hundred percent on that,
19 but the second statement was much more damning than
20 the first. She had been brought in on Christmas eve
21 day. She had children to get back home to and
22 wanted to and was told that she could go back home
23 if she would just talk to them. They locked her in
24 a room with some investigators; and basically the
25 way she felt, was that she was kind of brow beaten

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1 to give them a statement even though she testified
2 and the judge ruled that she voluntarily signed it,
3 that it was her signature on the Miranda warnings.

4 Q So in your discussions with her did you talk with
5 her about how hard it's gonna be to win this thing
6 when you got -- not only do you have two
7 confessions, am I right, here?

8 A Absolutely. I told her that ---

9 Q But you have one ---

10 A ---doing things, cahoots with these two
11 confessions.

12 Q But you have one confessions where she admits to
13 lieing in the other?

14 A Yes.

15 Q Right?

16 A Yes.

17 Q So now you have on top of two confessions you
18 have a credibility issue?

19 A Uh-huh.

20 Q Right?

21 A We did.

22 Q And so how do you deal with these things?

23 A Well, I advised my client what it looks like,
24 what 12 members of the community in a jury pool are
25 being exposed to and hearing and that they're

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1 hearing all these things secondhand; they're hearing
2 her own voice. I explained to her that the
3 prosecution's job was to get her on the stand and to
4 make sure and to poke holes in what she said in the
5 statement or what she would say after the statement,
6 and it didn't jive with the statement and the
7 portions they wanted to be used to get a conviction.

8 Q Did you talk with her about the nature of what
9 she was accused of doing, essentially that she was
10 accused of making a call to Mr. Hayes who they call
11 June Bug?

12 A Yes.

13 Q Enticing him out as a female that maybe he would
14 have had some familiarity with, enticing him out —

15 A As an older man with a younger women soliciting
16 him to come hang out, yeah.

17 Q In furtherance of her plan to conjoin and act in
18 concert with how many other adults?

19 A I think it was three or four other adults.

20 Q To do what?

21 A Essentially to commit an armed robbery.

22 Q And essentially she was the bait to get this
23 older gentleman out into a vulnerable place?

24 A That was my understanding at that time, yes.

25 Q And what did you tell her with regard to what the

PW - J. CARTRETTE - CROSS

1 jury is going to think about that?

2 A That it wouldn't look very good.

3 Q Now did the State ever approach you about her
4 cooperation?

5 A The State did. Well, actually the State didn't
6 really approach me. When they handed over their
7 Rule 5s they told me what their offer would be at
8 that time if I — if my client would plead. And the
9 plea never — the offer never changed. It was a
10 straight up plea for armed robbery as charged with a
11 minimum sentence of ten years.

12 Q So just before I move on to the next area
13 regarding the confession being coerced, did you
14 listen to the statement yourself?

15 A I did, yes.

16 Q Okay. Miranda warnings were given?

17 A They were.

18 Q They apparently had been given prior to that
19 according to the person taking the statement?

20 A Yes, sir. As I recall that was Ski McAllister —
21 on the street they call him Ski — who took those
22 statements.

23 Q And you saw that the Miranda forms were signed
24 apparently by her?

25 A They were signed. We argued that they were not

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1 her signatures. My client told me it wasn't her
2 signature and that she believed it had been forged.

3 Q Al right. So you took a position later at trial
4 that that was not her signature, but they appeared
5 to be the regular Miranda forms and then appeared to
6 have a signature which you contended was not her
7 signature?

8 A Yes, sir, it did.

9 Q Now I want to ask you about Quentin Eppes'
10 testimony. You were asked by Mr. Shaffer about
11 that, and I'm just gonna followup with that
12 somewhat. During the cross-examination some
13 questions were asked to Mr. Eppes about his
14 cooperation. And I'm just referring the Court to
15 page 119, line 1. The question — I think you may
16 have asked this question: "Isn't it true that you
17 hope to get a better deal because of your
18 cooperation today." Answer: "Yes, sir." So how
19 did you — when Mr. Eppes said that he helped to get
20 a better deal because of the cooperation you moved
21 on at that point; didn't you?

22 A Yes, sir.

23 Q You asked about who drove the car and some other
24 things. But now, did he deny — I mean, let me
25 rephrase the question. He didn't deny that there

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1 was any kind of a hope, didn't say, didn't have a
2 hope to have a better deal because of his
3 cooperation, did he?

4 A I don't recall him saying, no, I was not offered
5 a deal.

6 Q Okay, well, I mean, it's right there in the
7 transcript and it speaks for itself. But you don't
8 have anything that you recall that's any different
9 than what the Court has on page 119, do you?

10 A No, sir.

11 Q All right. Beg the Court's indulgence a moment.
12 Now another question was asked regarding the
13 decision whether or not she would testify.

14 A Yes.

15 Q And as I understand it, part of her rationale was
16 that one of the co-defendants was the father of her
17 child, her unborn child?

18 A I think that was speculation on the part of the
19 prosecution at that time.

20 Q Okay. Do we know, do we know whether that was
21 true or not?

22 A That was never confirmed for me one way or the
23 other.

24 Q Did it play a role in her decision whether or not
25 to testify?

PW - J. CARTRETTE - CROSS

1 A I can't say one way or the other on that. I
2 don't know what she was thinking at the time in
3 regard to her unborn child. I know she certainly
4 didn't hope it would be born while she was
5 incarcerated. And I guess what you're asking is,
6 did I know for sure and did it factor in our defense
7 plans that she was pregnant with the co-defendant's
8 child; I did not know for sure. She had never
9 confirmed that for me.

10 Q And really getting to the heart of whose decision
11 was it for her to testify or not to testify?

12 A It was her decision.

13 Q I mean, you didn't tell her you're not going to
14 let her testify?

15 A I absolutely unequivocally would know better than
16 to tell a client I'm not going to let them testify.

17 Q And I know you wouldn't do that. I didn't mean to
18 insinuate that you would; but you would never, the
19 point is, you'd never do anything like that, to say
20 to your client?

21 A No, I wouldn't.

22 Q But tell the Court what discussions you had with
23 her that would allow her to make a full, informed
24 decision as to whether or not to testify?

25 A Well, I told her — we went over all the facts

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1 that we had that we knew that the prosecution had
2 provided us and that the investigation had yielded.
3 She knew what the jury was going to be exposed to,
4 or not exposed to. Giving weight to everything we
5 dissed, the conflicting statements, that it was
6 possible that one or more of her co-defendants might
7 testify against her, and that it was reasonable to
8 believe that they might get a deal if they did. In
9 criminal defense practice, you know that where there
10 are multiple co-defendants one of the strategies
11 usually of the prosecution is to see who is going to
12 cave first; and whoever caves first, oftentimes does
13 in the end after the trial is over with, for their
14 participation get a better deal.

15 Q Well, do you remember what her rationale was in
16 her decision not to testify? What'd she tell you?
17 A Her — when she decided not to testify she told
18 me that she didn't want — she agreed with my
19 assessment of what a jury could do if the
20 prosecution via the phone calls and what she said
21 then versus what she was going, or what she had said
22 on the recording. And her story had changed and in
23 our conferences together since that time in various
24 shades over the course of my defense occurred in
25 several different meetings in my office.

PW - J. CARTRETTE - CROSS

1 Q Okay. There's just two more issues I think I
2 need to address before wrapping it up, hand of one
3 hand of all and then the withdrawal from conspiracy,
4 the withdrawal issue. Let's do withdrawal first.
5 Did you think that, in your mind, aiding and
6 abetting would have been a much better option than
7 what she was charged with?

8 A If they were going to charge her with anything, I
9 did because I thought that it more closely fit the
10 facts they were alleging than anything else they
11 were using, and that wasn't something that they
12 chose to do. They wanted all or nothing.

13 Q So fair to say this was part of your trial
14 strategy in the hopes that you could get a
15 conviction, something other than what she was
16 charged with, something in a lesser offense?

17 A Either a lesser offense or a not guilty all
18 together based on the fact that that's not what they
19 were trying. They were trying an armed robbery case
20 and not something that fit more closely to the facts
21 of what was alleged.

22 Q All right. And then on the hand of one hand of
23 all issue I'm trying to understand exactly what the
24 claim is there but, did the State not argue that?

25 A Can you rephrase your question.

PW - J. CARTRETTE - CROSS

1 Q The State argued hand of one hand of all; —

2 A They did.

3 Q —did they not? Okay. And you did your best to
4 oppose that; didn't you?

5 A We tried to poke holes the best we could with the
6 withdrawal theory. That was not in and of itself
7 intended as an admission or a statement against my
8 client if that's what's being alleged here today or
9 insinuated. It's simply to show the jury that there
10 were other potentially, if any of them were viable,
11 other potentially viable options they could have
12 done if the State really wanted a conviction that
13 bad. They came in with facts that my client had, or
14 alleging that my client had done more than she had
15 admittedly done by way of her statement.

16 Q And so looking at your overall trial strategy,
17 the withdrawal part played into proving that she
18 attempted to withdraw, would have hopefully defeated
19 the hand of one hand of all?

20 A That was our hope.

21 Q Now didn't she go and apologize at some —

22 A She did.

23 Q Did this make it difficult for you to —

24 A When the victim is your star witness in a case
25 for the opposing side and when your client reaches

PW - J. CARTRETTE - CROSS

1 out to them well before you're appointed to
2 represent them and that's known by the prosecution
3 and they're going to present that to you, oh, hey,
4 by the way she we went over near June Bug and talked
5 to him and Mr. Hayes decided he was going to do X,
6 Y, or Z, you know. But you know, he told us that
7 she came to see him and that she apologized for what
8 happened, that she was sorry for any part she may
9 have had in it. You know, I don't know what any
10 other attorney could have done better with those
11 type facts than the way I handled it.

12 Q Was there anyone else that she apologized to
13 besides Mr. Hayes?

14 A My recollection is not very clear on that.

15 Q How about the employee that worked with him?

16 A I don't recall if she apologized to the employee
17 that worked with him or not. I know that there's
18 some type of family relationship there and that that
19 employee and her weren't seeing eye to eye on some
20 things.

21 Q So but regardless, an apology to a victim,
22 genuine though it may have been, has got to make a
23 defense of this case before trial very difficult?

24 A Absolutely.

25 Q And you did the best you could with what you had?

PW - J. CARTRETTE - REDIRECT

1 A Yes, sir.

2 Q Please answer any questions Mr. Shaffer may have
3 for you.

4 **REDIRECT EXAMINATION**

5 BY MR. SHAFFER:

6 Q Mr. Cartreet?

7 A Cartrette. It's Cartrette.

8 Q I'm sorry, I did that earlier. The State just
9 asked you if basically that regarding whether or not
10 there was a deal, okay. They asked you if you had
11 asked him about his hope of getting a deal, right?

12 A They did.

13 Q Okay. And you said that he admitted that he
14 hoped he would get a deal, right?

15 A He did on the stand right here where I'm sitting.

16 Q If he had lied on direct examination and you had
17 been told that, would that have been helpful in
18 impeaching his credibility?

19 A It would have, yes.

20 Q Okay.

21 A If we could have proved it.

22 Q But you can't prove that, right?

23 A No, sir.

24 Q Okay. They never gave you any evidence that
25 would allow you to prove that, right?

PW - J. CARTRETTE - REDIRECT

1 A Can you ask me that again.

2 Q They never gave you any evidence that would allow
3 you to prove that he was lieing, right, or that he
4 would say he was lieing, right?

5 A To my knowledge, no. I mean, if there's
6 something you have there that would refresh my
7 memory better, then I welcome it; but based on my
8 recollections, no.

9 Q Okay. And I'm not gonna have you read like the
10 last half of the transcript. That's the reason I'm
11 not going to do that.

12 A I understand.

13 Q But if they had told you that would you have
14 brought it up to the jury that you lied?

15 MR. JOHNSON: Wait, Your Honor —

16 THE WITNESS: Yes, I did.

17 MR. JOHNSON: That calls for speculation
18 and it's not been proven that he lied.

19 THE COURT: Sustained.

20 MR. SHAFFER: Your Honor, it's probably
21 not that — well, Your Honor, actually it might go
22 to prejudice of the second one and not the first.
23 My second due process claim is a Brady claim which
24 involves a different level of prejudice, and Your
25 Honor, the reason I would like to ask that is simply

1 that if it was proven that he lied, or at least let
2 me re-call him later if I can establish that — what
3 I want to do is basically show if he would have had
4 the information, if Brady had been complied with and
5 he would have had the information that he had lied,
6 he would have used it. That's all I want to show
7 which is —

8 MR. JOHNSON: Your Honor. I'm sorry.

9 MR. SHAFFER: I'm sorry, I think it's
10 pretty clear that he would have, but I just want to
11 ask that.

12 MR. JOHNSON: Just in reply, it's not been
13 proven that Brady had not been complied with for the
14 fact that there wasn't a lie, and Mr. Shaffer was
15 very well capable of bringing Mr. Eppes today and
16 didn't do it so he's asking Mr. Cartrette to give an
17 answer based on what he wishes he could prove but
18 can't. 'Cause it's not fair to Mr. Cartrette; it's
19 not fair to the process.

20 MR. SHAFFER: Your Honor, I did bring Mr.
21 Eppes' attorney up here who said that basically part
22 of the transcript is not correct or that part of his
23 client's testimony at trial was not correct. Part
24 of his testimony at trial which is in the record —
25 I didn't directly ask him this question — but part

1 of his testimony at trial was that he didn't have a
2 deal. My allegation is obviously that he did have a
3 deal; that's exactly what Mr. Eppes' attorney
4 testified to, that he did have a deal. I think that
5 there's a substantial factual basis for me to at
6 least ask the question.

7 THE COURT: Well, on page 119 it says:
8 "Isn't it true you hope to get a better deal because
9 of your cooperation today?" And he said yes, sir.

10 MR. SHAFFER: Yes, Your Honor, hoped to
11 get a better deal I would argue is a different, is a
12 different, it's different than actually saying he
13 did deal. Essentially he had previously said during
14 direct examination my — this is, I guess, part of
15 my argument the State's prejudiced, but I'll go
16 ahead and bring it up. He said during direct
17 examination I had no deal. If that was incorrect it
18 would have been very, very good impeachment evidence
19 to say didn't you just lie to the jury. Regardless
20 of whether he admitted that he hoped to do it is
21 sort of a separate question, and I can get to that
22 more on my argument. But regarding the Brady claim
23 I think it goes to my actual prejudice, at least of
24 the Brady claim, not for the McHood claim but I
25 think it goes to the Brady claim.

PW - J. CARTRETTE - REDIRECT

1 THE COURT: All right, I'll let you ask
2 it. Let's move on.

3 MR. SHAFFER: Thank you, Your Honor.

4 BY MR. SHAFFER:

5 Q If you would have known he lied or -- say he did
6 lie, assuming that he had lied, if you had known
7 that would you have brought it up in front of the
8 jury?

9 A If I had known he lied, we could have proven that
10 he lied, yes, I would have done my best to do it in
11 front of the jury.

12 Q Okay, thank you. Now you mention the apology at
13 one point, correct?

14 A I did.

15 Q She didn't actually admit or -- based of your
16 recollection of the apology, did she actually admit
17 that she was part of the planning of the armed
18 robbery?

19 A I don't recall that conversation. I wasn't there
20 for the so-called apology. This was what Mr. Hayes
21 told the Court.

22 Q I apologize. Regarding the testimony do you
23 recall if he said that she apologized for making the
24 call that night?

25 A You'd have to go back to the transcript on that

PW - J. CARTRETTE - REDIRECT

1 one, but I really don't recall what he said.

2 Q I got you. Do you recall asking him, it could
3 have been anyone on the phone, and him saying yes?

4 A Yes, I do recall asking. Certainly we're not
5 going to admit that my client is the one who made
6 that phone call. If that hadn't gotten out there
7 and if it hadn't been admitted to, then certainly
8 we're if not going to add that to the jury, give
9 that to the jury to hear.

10 Q Okay. And regarding the apology, did he ever say
11 that she apologized for robbing him? Do you recall
12 that?

13 A For robbing, not specifically, no, but for what
14 had happened to him, yes.

15 Q She apologized for what happened to him?

16 A Yes.

17 Q Okay. Now at trial you took the position that
18 her first statement was correct, right?

19 A Her first statement about?

20 Q The finding the credit card?

21 A No.

22 Q Okay. So you did not take that position at trial
23 that her first statement regarding finding the
24 credit card —

25 A How she got the card, no, but for the fact that

PW - J. CARTRETTE - REDIRECT

1 she used the card. She at the Jackson v. Denno
2 hearing explained to the Court that the first
3 statement concerned with the second and that second
4 statement she was telling the truth.

5 Q Okay. She admitted that in the Jackson v. Denno
6 that she was telling the truth in the second
7 statement?

8 A In the second statement about the card itself,
9 not about the other things.

10 Q Okay. So she admitted that she in the second
11 statement, in the Jackson v. Denno, that her first
12 statement was incorrect?

13 A Based on my recollection in the Jackson v. Denno
14 hearing she told the Court that her first statement
15 with regard to how she came into getting the card
16 was different than in the second statement with
17 regard to how she got the card. In the first
18 statement she, I think, found the card if I'm not
19 mistaken. In the second statement she was given the
20 card by one of her co-defendants.

21 Q Okay. But you never argued at trial that she
22 found the card, right?

23 A We did not.

24 Q Okay.

25 A Based on her admission that that was an

PW - J. CARTRETTE - REDIRECT

1 incorrect.

2 Q Did you ever argue that she did make the second
3 statement?

4 A It was clear that she made the second statement.

5 Q Okay.

6 A Admitted, she admitted it was her on the
7 recording.

8 Q Did you ever argue that the second statement was
9 wrong?

10 A We did not.

11 Q Okay.

12 A To my recollection we did not.

13 Q But basically you — instead of arguing the
14 second statement was wrong, you made a tactical
15 decision to go with a, or a strategic decision I
16 guess, to go with a withdrawal theory?

17 A We did.

18 Q Okay.

19 A And again, not — I think I see where you're
20 going with this. Not as an admission to any
21 capability but that it was the closest thing we had
22 to poking holes in the hand of one is the hand of
23 all. That's what she was being prosecuted on the
24 basis of was that theory of its a conspiracy
25 theory, that no matter how great or small your

PW - J. CARTRETTE - REDIRECT

1 involvement is in a case, the fact that you are
2 argued to be involved with at all means that you're
3 guilty of the worst part of it too.

4 Q I'm not — I actually wasn't going to go there.
5 I was asking if you, if you made a decision to go
6 with —

7 A The withdrawal theory.

8 Q —the withdrawal theory over arguing that, you
9 know, —

10 A That the statements were incorrect.

11 Q Or that the State presented a wrong — basically
12 that their case was wrong or their evidence is
13 wrong.

14 A When we — when I cross-examined Mr. Eppes here
15 on the stand I asked him about whether or not he was
16 given a deal with regard to the facts that he
17 alleged, and he told us then that he hoped to get a
18 deal. Any defense attorney whose got someone else's
19 interest at heart through their defending is going
20 to ask a co-defendant who is essentially, I guess,
21 on the street, they say rat him out and others on
22 the stand, whether or not he was offered a deal. It
23 goes to his credibility.

24 Q I was just, I'm asking about your general trial
25 strategy was, was what? To go with withdrawal,

PW - J. CARTRETTE - REDIRECT

1 right?

2 A With withdrawal, yes, sir.

3 Q Your trial strategy was not, hey, we're going to
4 claim that they're just lieing, right?

5 A Well, I don't know so much that we call that a
6 strategy, period. I mean, we went with what we had.
7 We had facts. We had a statement that was coming in
8 no matter what.

9 Q So y'all went with basically everything that the
10 State had you're saying, we're just gonna put the
11 withdrawal theory up because it's our best option.
12 That's what I'm wondering.

13 A Your trial strategy, based on what happens during
14 trial your defense angle will change somewhat. You
15 may come in with one whole idea of what you intend
16 to do; and then for whatever reason, what develops
17 on the stand doesn't lend itself to what you plan to
18 do and you've taken other avenue that's more
19 beneficial your client. I gave the best defense
20 given what we were given at that time that I could
21 give.

22 Q Okay.

23 A You work with the best that you're given, not
24 with the best you hoped or expected you would be
25 given.

PW - J. CARTRETTE - REDIRECT

1 Q I understand. I'm not trying to say that you
2 made the facts or anything like that. I'm just
3 saying —

4 A I understand.

5 Q I'm just, I think you've answered my question
6 which is your trial strategy was withdrawal
7 basically?

8 A It was evolving as —

9 Q Okay. That's ultimately what you went to?

10 A —the case went forward here on the stand
11 through the development of testimony and the
12 presentation of evidence our — we adapted to what
13 was unfolding before us. That's what we had to deal
14 with.

15 Q But you told her about withdrawal beforehand.
16 You just testified to that, right?

17 A Yes, we spoke about all that.

18 Q Okay. And that was prior to even going to trial,
19 right?

20 A There were numerous, numerous meetings before
21 trial in my office with Latisha. I think certainly
22 she knows I gave my very best of efforts in her
23 defense, and I think until now she would have agreed
24 with that. Certainly she knew that with what we
25 were working with I was giving her my all.

PW - J. CARTRETTE - RECROSS

1 Q And you advised her that she could either plead
2 or go to trial, right?

3 A I did.

4 Q Okay. And you advised her that she could take
5 the stand or not take the stand, right?

6 A I did.

7 MR. JOHNSON: Your Honor, I object.

8 THE COURT: I think we talked about all
9 that in great, great detail. If you got something
10 new go with it. If you don't, let's move on.

11 MR. SHAFFER: I think I'm done, Your
12 Honor. Thank you.

13 THE COURT: All right.

14 MR. JOHNSON: Your Honor, I just have one
15 area that I'd like to cover briefly.

16 THE COURT: One area.

17 **RECROSS-EXAMINATION**

18 BY MR. JOHNSON:

19 Q I asked you about the store clerk that the
20 apology was given to. Mr. Shaffer asked you
21 questions which tended to, tended to maybe portray
22 that those, the apology as a general, nonspecific
23 apology, but I want to ask you about
24 Ms. Montgomery's direct testimony. I refer the
25 Court's attention to page 101 of the transcript,

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1 line 1, where Ms. Montgomery testified that
2 Ms. Cochran wanted to apologize to me because they
3 started to rob the store during the time I was
4 there, but decided to wait until the store closed
5 and then do it. Do you remember that?

6 A Might I see the transcript?

7 Q Yes, sir.

8 MR. JOHNSON: May I approach the witness,
9 Your Honor.

10 THE COURT: Sure.

11 BY MR. JOHNSON:

12 Q It's got a clip at the top which will fall apart
13 so I'm gonna hand it to you kind of like that. And
14 we're looking here. Your opportunity to
15 cross-examine is here; but the direct by Ms. Parr,
16 which I ask you if you recall, is here dealing with
17 Ms. Montgomery's testimony. And a very specific
18 apology by Latisha here. "Because they started to
19 rob the store." Back up at line 1, "During the time
20 I was there but decided to wait till the store
21 closed and then do it." And then the question was,
22 "Did she say, did she specifically say regards to
23 that." The answer at line 6: "That was about as
24 specific as I could remember, recall, 'cause it was
25 a good while back, like in 2009. I do know she

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1 just — she told me that they had planned to rob the
2 store while I was there, and they decided not to do
3 it because of the fact that I was in there and they
4 was — they would do it later after the store
5 closed." How much trouble did that give you when
6 you heard that?

7 A Well, certainly a lot of trouble. This is a
8 relative of hers giving a statement against her as I
9 recall. There's, I believe there's some kinship
10 between Ms. Montgomery and Ms. Cochran if I'm not
11 mistaken.

12 Q Thank you. Please answer any questions
13 Mr. Shaffer or the Court may have.

14 MR. SHAFFER: I have none, Your Honor.

15 THE COURT: You can step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Call your next witness.

18 MR. SHAFFER: The Applicant calls Latisha
19 Cochran.

20 THE CLERK: Please place your left hand on
21 the Bible, raise your right hand.

22 WHEREUPON,

23 **LATISHA COCHRAN,**
24 having been duly sworn by the Clerk of Court,
25 testified as follows:

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1 THE CLERK: Please be seated and state
2 your name for the record.

3 THE WITNESS: Latisha Cochran.

4 **DIRECT EXAMINATION**

5 BY MR. SHAFFER:

6 Q Ms. Cochran, you're currently serving how many
7 years?

8 A Thirteen.

9 Q And that sentence was imposed by what judge?

10 A I think it was Michael Nettles.

11 Q Okay. Was that after trial? You went through
12 trial, you didn't plead guilty, right?

13 A No, it was after trial.

14 Q And I've informed you that if you are successful
15 here today that you possibly could get more time?

16 A Yes, sir.

17 Q Okay. Do you still want to proceed?

18 A Yes, sir.

19 Q Okay. Now you were represented by Mr. Cartrette?

20 A Yes, sir.

21 Q When did you first meet Mr. Cartrette?

22 A I think it was like 2, 3 months before I went to
23 trial.

24 Q Okay, two or three months before you went to
25 trial? Approximately how many times do you recall

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1 meeting with him?

2 A Like twice.

3 Q Okay. Did he tell you about — well, did he
4 advise you of how much time you were looking at?

5 A He said the charge carried 10 the minimum, 30 the
6 max.

7 Q And he told you that, or did he tell you what the
8 charge was?

9 A Yes.

10 Q Did he tell you the elements of the charge?

11 A Or did he tell you what the State had to prove in
12 order to convict you? I can't remember.

13 Q Okay. Did he tell you that there was a possible
14 plea offer?

15 A Yes.

16 Q Okay. And what was that offer to?

17 A 10.

18 Q Okay. And do you know if they wanted your
19 cooperation against the co-defendants for that?

20 A Yes.

21 Q Okay. And did he tell you about some possible
22 defenses if you went to trial?

23 A Yes.

24 Q Okay. And did he tell you about the defense of
25 duress?

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- 1 A Yes.
- 2 Q Basically they forced you into it?
- 3 A What you mean?
- 4 Q Well, did they — did he tell you that you could
- 5 possibly claim that they forced you into it?
- 6 A Yes.
- 7 Q Okay. And did he tell you that you could also
- 8 claim that you sort of withdrew from the entire
- 9 thing, right?
- 10 A Yes.
- 11 Q And he told you he'd argue that if you went to
- 12 trial, right?
- 13 A Yes.
- 14 Q Did you decide to take a plea or did you decide
- 15 to go to trial?
- 16 A Go to trial.
- 17 Q Okay. And when you went to trial did you decide
- 18 to plead guilty or did you decide to — I mean, no,
- 19 I'm sorry, did you decide to testify or not testify?
- 20 A Before it wouldn't — you asked me before —
- 21 Q I'm saying when you were at trial, did you decide
- 22 to testify or not?
- 23 A It wasn't a decision during trial.
- 24 Q Okay.
- 25 A It was made right before I think I was supposed

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1 to be called.

2 Q Okay. So you made it right before you were
3 supposed to be called?

4 A Yes, I, me and my public defender.

5 Q Okay. What did they — what did he tell you
6 about testifying?

7 A He was, he was basically saying that, I guess,
8 the statement that was made with the investigator,
9 they would cross, try to cross-examine me on that or
10 whatever that mean. I don't know what all that
11 mean. He was like, his best idea of it is I
12 wouldn't testify so I went on that and I didn't.

13 Q Okay. So he said in his opinion he thought that
14 you probably shouldn't testify?

15 A Yes.

16 Q And you didn't testify?

17 A No.

18 Q Okay. Now do you recall the second statement you
19 made —

20 A Yes.

21 Q —to police?

22 A Yes.

23 Q Tell us about that statement. When he was that
24 statement made?

25 A It was on Christmas eve.

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1 Q Okay. Tell us about that Christmas eve, what
2 happened?

3 A I was picked up by officer, Officer McAllister,
4 and I was placed in the front car with him. And he
5 was basically badgering me about where have I been,
6 I mean, he had a warrant for my arrest and he got me
7 now and whatever, whatever. So he took me in to the
8 police department Lake City and walked me to the
9 back and set me in front of him, and he was telling
10 me that he know everything from Quentin Eppes and he
11 got everything he need and I need to cooperate and
12 if I go with what he had that I can go home, be home
13 with my kids for Christmas.

14 Q Okay. So he told you you could go home if you
15 went with what he had, is that what you just said?

16 A Yeah.

17 Q Okay. What did you end up doing?

18 A I end up listening to what he had and made a
19 statement.

20 Q Okay. And the statement you gave, was that what
21 happened or not?

22 A I don't know 'cause I didn't see it.

23 Q Okay. But ---

24 A But ---

25 Q Why did you give that statement?

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1 A He -- I was afraid. And then I really wanted to
2 go home with my kids. I don't know.

3 Q So you gave the statement so you could go home to
4 your kids?

5 A Yeah.

6 Q Now when you went to -- when your trial started
7 y'all had a hearing where you testified, right?

8 A Yes.

9 Q And you told them that you didn't voluntarily
10 give the statement, right?

11 A Yes.

12 Q Okay. And you told them -- well, why did you
13 tell them that you didn't voluntarily give the
14 statement?

15 A Because I was -- it was just an act of being
16 Christian, and it's just, I just felt like that I
17 needed to go ahead and tell the truth in order to
18 move on from this.

19 Q Okay. Now if you would -- you decide -- I'm
20 going back to where you decided not to testify,
21 right?

22 A (Nods head.)

23 Q Now when you decided not to testify did you -- if
24 you would have testified, would you have testified
25 that your statement was correct?

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1 A I was so scared I don't know. I don't know.

2 Q Okay. You don't know what you would have
3 testified to?

4 A No.

5 Q Okay. Do you ever hear that Quentin Eppes had a
6 deal? When was the first time you — well, tell me
7 this, when was the first time that anyone told you
8 that Quentin Eppes had a deal in exchange for his
9 testimony?

10 A I had just found out everything about him, his
11 time, about a couple of months ago when I got some
12 mail. I think it was like a Rule 5 or something.

13 Q Okay. So but regarding his time who let you know
14 that?

15 A Providing his time my —

16 Q I'm sorry, regarding that there — that he had a
17 deal. Well, I tell you what, when was the first
18 time you learned of anything about Quentin Eppes
19 having a possible deal to testify? Was it — who
20 told you? Who informed you of that? I did?

21 A You sent me some paperwork.

22 Q Okay. And I sent you a letter, right?

23 A Yes.

24 Q And basically that letter said what?

25 A It was saying that my co-defendant Montario

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1 Graham was going for a PCR, and he won, and I think
2 the status of that was saying that he won because of
3 something that occurred or a witness was found to
4 lie about him having a plea deal before our trial.

5 Q And that letter told you to contact your -- if
6 you had an attorney contact your attorney with that
7 information, right?

8 A Yes.

9 Q Okay. Before that you didn't know that he
10 possibly had a plea deal, right?

11 A No.

12 Q Okay. And you had read your Rule 5 prior to
13 that, right?

14 A No.

15 MR. JOHNSON: We've not objected to any
16 leading questions in the preliminary stages. Now
17 that we're getting into the heart of the matter I'm
18 going to object to all leading questions.

19 MR. SHAFFER: Okay.

20 THE COURT: Sustained.

21 BY MR. SHAFFER:

22 Q Did your Rule 5 say that he had a deal?

23 A It was like before the trial, afterwards, what
24 you mean?

25 Q No, I'm not talking about afterwards. The stuff

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1 that you had relating to your discovery, did that
2 say anywhere in it that he had a deal with the
3 prosecution?

4 MR. JOHNSON: Your Honor, I think he's
5 still leading the witness.

6 THE COURT: Sustained.

7 BY MR. SHAFFER:

8 Q What did your Rule 5 say regarding a deal?

9 A It said that he was found during somebody trial
10 that he lied about not having a plea deal.

11 Q Okay. Was that in your Rule 5 or was that in the
12 letter that I sent you?

13 A That was in the letter that you sent me.

14 Q Do you know — do you know the actual definition
15 of a Rule 5?

16 A No.

17 Q Okay. Do you know anything prior to trial about
18 a deal?

19 A No.

20 Q Okay. You're saying you didn't know anything
21 until —

22 MR. JOHNSON: Leading, Your Honor.

23 THE COURT: Sustained.

24 BY MR. SHAFFER:

25 Q To recap, when was the first — when was the last

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1 time or -- when was the first time you learned about
2 a deal with Quentin Eppes?

3 A When I received letter from you.

4 Q Okay. Did the prosecution ever tell you about a
5 deal with Quentin Eppes?

6 A No.

7 Q Did your attorney ever tell you about a deal?

8 A No.

9 MR. SHAFFER: Court's indulgence. No
10 further questions.

11 THE COURT: All right.

12 **CROSS-EXAMINATION**

13 BY MR. JOHNSON:

14 Q Ms. Cochran, in your criminal case did there come
15 a time where you gave a statement?

16 A Yes.

17 Q All right. In fact, you gave two statements;
18 didn't you?

19 A Yes.

20 Q And these were recorded?

21 A Not the first one.

22 Q All right.

23 MR. JOHNSON: Your Honor, I'd like to move
24 two statements into evidence. I think it'd be
25 helpful for the Court and for Ms. Cochran to be able

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1 to refer to these statements, and we're able to play
2 them at this time.

3 THE COURT: Any objections?

4 MR. SHAFFER: No objection, Your Honor.

5 THE COURT: All right. Go ahead.

6 MR. JOHNSON: We can play them in just
7 chronological order.

8 (Two statements were played for the Court.)

9 BY MR. JOHNSON:

10 Q So Ms. Cochran, this second statement was a true,
11 accurate statement of the facts; wasn't it?

12 (There was no response.)

13 MR. SHAFFER: Your Honor, objection,
14 relevance. It goes to sort of the underlying crime.
15 I apologize, it goes to the crime, not necessarily
16 the allegations here today.

17 MR. JOHNSON: It's a fair question, Your
18 Honor. She's alleging errors of counsel, that her
19 statement was coerced. Her statement was obviously
20 not coerced, and the prejudice prong depends upon
21 proving that the outcome would have been different.
22 But in cases of overwhelming evidence of guilt our
23 case law is clear, prejudice can't be proven. So
24 the question goes in overwhelming evidence of guilt.
25 And asking, Your Honor, if these facts occurred as

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1 she gave in her second statement is a fair question.

2 THE COURT: I'm gonna sustain the
3 objection.

4 MR. SHAFFER: Thank you.

5 BY MR. JOHNSON:

6 Q Did you participate in the robbery of Mr. Hayes?

7 A No.

8 Q You didn't? So the statement that you gave, the
9 second statement that we just listened to, is
10 incorrect?

11 MR. SHAFFER: Objection, same basis.

12 THE COURT: Sustained.

13 BY MR. JOHNSON:

14 Q You did not participate in the robbery of
15 Mr. Hayes?

16 MR. SHAFFER: Objection, same basis.

17 MR. JOHNSON: No, no, I'm not asking about
18 the statement. I'm asking about the facts, the
19 truth.

20 MR. SHAFFER: Your Honor, it goes to the
21 same thing, Your Honor.

22 MR. JOHNSON: No, Your Honor, very
23 different. I'm not asking about -- you've sustained
24 his objection regarding to the statement. Now I'm
25 asking about the actual participation of

1 Ms. Cochran, did she participate in the robbery,
2 Your Honor.

3 THE WITNESS: What do you mean by
4 participate?

5 MR. SHAFFER: Your Honor, I think that
6 that's sort of the heart of why the objection was
7 sustained is whether or not it's true because really
8 what we're doing is looking at — he's saying it
9 goes to overwhelming evidence of guilt. Well, she
10 never testified at trial so we can't say that.

11 THE COURT: I think it goes toward
12 ineffective assistance of counsel. That's what I'm
13 concerned about.

14 MR. JOHNSON: We have a case State v.
15 Stroka that is 230 Southeast Second 816, and this is
16 a case that established where there's evidence of,
17 overwhelming evidence of guilt. Further review is
18 not necessary because the applicant can't prove the
19 prejudice prong.

20 MR. SHAFFER: Your Honor, evidence implies
21 and it was presented at trial and wasn't presented
22 at trial, therefore —

23 THE COURT: I'm gonna sustain the
24 objection.

25 MR. JOHNSON: So Your Honor, just to be

1 clear, I cannot ask Ms. Cochran any questions about
2 her participation in this robbery?

3 THE COURT: How does that go toward
4 ineffective assistance of counsel?

5 MR. JOHNSON: It's the overwhelming
6 evidence of guilt, Your Honor, and it also goes to
7 the conditions that counsel found himself in when he
8 had to defend her because this is a statement that
9 was part of the case.

10 THE COURT: We've already talked to him.
11 We've got all that covered in great detail so we
12 don't need to rehash it with her necessarily. But
13 if you want to get into how many times they met, did
14 they discuss it, go over trial strategy, did he talk
15 about whether or not she'd testify, you were going
16 to testify at trial or not, you know, whether or not
17 you're guilty or not so we're passed that stage.
18 I'll give you a little leeway, go ahead. And of
19 course, anything pertaining to whether or not the
20 statements were coerced, that seems to be the issue.

21 MR. JOHNSON: Well, Your Honor, I'd have
22 to get into the — I'd have to get into the
23 substance of the tape 'cause on the tape she said
24 the statement was not coerced.

25 THE COURT: You can get into the substance

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1 as long as it's pertaining to whether or not it's
2 coerced or not.

3 BY MR. JOHNSON:

4 Q All right. So one of your allegations is that
5 your statement was coerced or involuntarily given.
6 How is it that you allege it was involuntary?

7 A Like I said, he picked me up. We was in the room
8 by ourself and he just was basically telling me that
9 I got what I need, just go with this and you can go
10 home. He picked me up on Christmas eve.

11 Q This is the first statement or second statement?

12 A This is the statement you just heard.

13 Q The second statement?

14 A The statement you just heard.

15 Q Well, there were two, right? I'm trying to be
16 clear for the record. There were two statements,
17 correct?

18 A (There was no response.)

19 Q Were there two statements?

20 A The statement we just heard? This is what he did
21 to me.

22 Q All right, ma'am. Well, it's also important that
23 if there were two statements that they were made on
24 different days. There were two opportunities for
25 you to say, no, I'm not gonna talk to you. But on

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1 both occasions you agreed to make a statement so,
2 therefore, it's important that there were, in fact
3 two statements; isn't that true?

4 A Seem like it don't matter what I say it's not
5 going to be right regardless of what he did. It was
6 in the statement.

7 MR. JOHNSON: Well, Your Honor, I'm trying
8 to —

9 THE COURT: I've heard the two statements.
10 I think I can figure that out whether she answers it
11 or not.

12 MR. JOHNSON: Yes, Your Honor. No further
13 questions for this witness, Your Honor.

14 THE COURT: Anything further, Mr. Shaffer?

15 **REDIRECT EXAMINATION**

16 BY MR. SHAFFER:

17 Q The only question I have is, the statement that
18 was made on Christmas eve is the one that you said
19 you were essentially driving, right, and that you —
20 is that the statement you made on Christmas eve?

21 A Yes.

22 Q Okay, thank you.

23 THE COURT: You may step down. Call your
24 next witness.

25 MR. SHAFFER: Your Honor, the Applicant

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1 has no further witnesses.

2 THE COURT: All right, thank you.

3 Mr. Johnson, you wish to call any witnesses?

4 MR. JOHNSON: We'll call Patricia Parr,
5 Your Honor.

6 THE CLERK: Please place your left hand on
7 the Bible and raise your right hands.

8 WHEREUPON,

9 **Patricia S. Parr,**
10 having been duly sworn by the Clerk of Court,
11 testified as follows:

12 THE CLERK: Please be seated and state
13 your name for the record.

14 THE WITNESS: My name is Patricia
15 Singleton Parr.

16 **DIRECT EXAMINATION**

17 BY MR. JOHNSON:

18 Q Ma'am, would you tell the Court how you came to
19 be involved in the Latisha Cochran case?

20 A I was assigned that case as an assistant
21 solicitor for the Twelfth Judicial Circuit.

22 Q And in any time frame since you can remember or
23 refer to your notes from would be helpful, although
24 not necessary. If you get reference to dates that
25 would help. And so what was your first contact with

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1 either an investigator or counsel in this case?

2 A May it please the Court, Your Honor, I would have
3 to refer to my file.

4 THE COURT: All right.

5 THE WITNESS: May I?

6 MR. JOHNSON: I can bring it to you if you
7 like.

8 THE WITNESS: It's the green file.

9 (File tendered to the witness.)

10 BY MR. JOHNSON:

11 Q So the question was your first contact with
12 either investigator or defense counsel on the case?

13 A Okay. This incident occurred on November 15th,
14 2008. We had an initial appearance on
15 February 17th, 2009. Our office actually received
16 the arrest warrant January 13th, 2009, so I would
17 have, I would have reviewed this file between
18 January 13th, 2009, and February 17th, 2009.

19 Q All right. And at some point this case was
20 prepared for trial?

21 A It was.

22 Q All right. I want to ask you some general
23 questions about the evidence that you dealt with.
24 What evidence of guilt did you have that was in the
25 State's favor?

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1 A What we — what I did, you know, I reviewed the
2 file. There was another prosecutor in our office,
3 David Richardson, who indicated that he was
4 interested in trying this case with me. And in
5 terms of the reviewing of the case, I reviewed the
6 case as well as Mr. Richardson. I actually kind of
7 jot out in terms of a chart as to what evidence we
8 had in the case. I also went down and spoke with
9 witnesses in the case. I went to Lake City to view
10 the scene of the crime. I met with Mr. William
11 Hayes. I also met with Mr. Rodriguez Russell whose
12 house is immediately, is right behind Mr. Hayes
13 where Mr. Hayes' store, house which are connected.
14 I also met with Ms. Mildred Montgomery. I received
15 statements from all of these persons. I also
16 reviewed all of the photographs and that were taken
17 at the crime. I reviewed the broken gun that was
18 used to hit Mr. Hayes in the head with. I also
19 listened to both statements that this defendant
20 gave; and also, I believe it may have been a
21 statement given by Mr. Eppes as well. I also
22 reviewed the video of at Wal-Mart showing I believe
23 it was Mr. Eppes' vehicle, the sound that was the
24 same vehicle that had been driven to Mr. Hayes'
25 house.

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1 Q What was your analysis of, in your opinion, of
2 how difficult a case this would be to prove at
3 trial?

4 A Of course, as a prosecutor there are no slam dunk
5 cases at least I believe although, you know, there
6 are cases that have more evidence than others. I
7 thought this was one that had sufficient amount of
8 evidence in which to prove the defendant guilty of
9 the charge of armed robbery.

10 Q What evidence in particular was, did you find
11 particularly compelling that would have helped the
12 State's case?

13 A Mainly the defendant's own admission, the fact
14 that the first time she lied as to how she got
15 Mr. Hayes' wallet. Then the second statement, which
16 detailed the events of the night. It was also
17 consistent with what Mr. Quentin Eppes had stated as
18 well.

19 Q What value did you place on the statements being
20 in opposition to each other?

21 A In terms of?

22 Q Being different?

23 A The defendant's statements?

24 Q Yes, ma'am.

25 A There was a big difference in the two statements.

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1 One, she just admitted having the cards and using
2 the cards and she indicated that she just found it.
3 And so that was a crime of only financial
4 transaction card theft, financial transaction card
5 fraud as opposed to armed robbery where she actually
6 called Mr. Hayes up and lured him out of his house
7 in order for them to commit the armed robbery. Also
8 the fact that she went to Ms. Mildred Montgomery who
9 is an employee of Mr. Hayes and in which I believe
10 she may be related to her as well, and told her,
11 apologized to her and told her that initially the
12 plan was to commit the robbery while she was working
13 but it was changed to wait for Mr. Hayes and I found
14 that to be strong evidence. She also apologized to
15 Mr. Hayes.

16 Q Based on your experience as a prosecutor for how
17 many years?

18 A You mean I have to tell my age?

19 Q No, ma'am. I withdraw the question. Based on
20 your experience as a prosecutor did you find this
21 was a case of overwhelming evidence of guilt?

22 MR. SHAFFER: Objection, Your Honor,
23 that's a legal determination. She hasn't been
24 qualified as an expert. I don't think she even
25 could be qualified as an expert in this. This is a

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1 determination for the Court to make as finder of the
2 law.

3 THE COURT: I'm gonna overrule it. Go
4 ahead.

5 THE WITNESS: I have been prosecuting,
6 combination of city court as well as general
7 sessions in excess of 20— I think it's like 22
8 years, and 18-and-a-half of them have been up here
9 in general sessions. Okay, Judge, I'm retired.

10 BY MR. JOHNSON:

11 Q And then the question was about comparing this
12 case to all the other cases, whether you felt it was
13 an overwhelming evidence of guilt case?

14 A I thought it was an extremely strong case.

15 Q All right. So the other allegation dealt with
16 Quentin Eppes, one of the witnesses, and I'm just --
17 I want to refer to part of the transcript in a
18 minute; but I want to ask you about your discussions
19 with Mr. Eppes' lawyer, Hank, Henry Anderson. If
20 you will, tell the Court what those discussions
21 were.

22 MR. SHAFFER: Objection, Your Honor. I
23 think he's asking to go into something that could go
24 into your previous ruling. I mean, if he wants to
25 ask regarding this specific case, yeah.

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1 THE COURT: I think that's what he's
2 doing, this specific case.

3 MR. JOHNSON: Right, this specific case,
4 yes.

5 THE WITNESS: In regards to this
6 particular case — and first let me say, you know,
7 in cases where there are multiple defendants charged
8 for crime and their statements, you know, usually
9 defendants try to sort of beat each other out and
10 will say they're going to cooperate and for them to
11 get help and on their charge. In this particular
12 case Ms. Cochran as well as Mr. Eppes both gave
13 statements, and we asked if they, both of them
14 wanted warned to cooperate. I discussed that with
15 both attorneys, Mr. Richardson and then I did. And
16 Mr. -- you know, Ms. Cochran indicated my
17 understanding was that she didn't want to testify or
18 she didn't want to cooperate with the State because,
19 you know, Mr. Chazmonte Brown, she didn't want to
20 testify against him. In any event, I believe it
21 was, it was told to me that he was the father of her
22 unborn child at the time. Mr. Eppes indicated that
23 he, through Mr. Anderson, that he wanted to
24 cooperate and so Mr. Anderson and I did not have any
25 specific agreement as to what the defendant would

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1 plead guilty to. He did want to get him under
2 the -- not under the armed robbery charge.

3 Q Okay. So you're saying that he did not have any
4 specific agreement as to what he would plead to?

5 A Right, but that he would get some help or some
6 consideration for his cooperation.

7 Q He would get some help and consideration for his
8 cooperation?

9 A That is correct.

10 Q Was this discussion in the room that Mr. Anderson
11 was talking about where it was you, Richardson,
12 Anderson, and his client, or was this some other
13 discussion?

14 A I don't recall where it was.

15 Q Do you -- you were in the courtroom when Mr.
16 Anderson testified?

17 A Yes.

18 Q Assuming you heard what he said, he referenced a
19 discussion where it was himself, his client, you and
20 Mr. Richardson; and he was indicating to Mr. Eppes
21 that there may have been, it may be good for him --
22 I won't try to quote him 'cause I can't. Did you
23 hear that discussion?

24 A I do recall, but I don't remember whether at what
25 point he said that. I don't know whether it was in

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1 reference to Ms. Cochran's case or the other case,
2 but I do remember him telling him that it would be
3 to your benefit to testify truthfully.

4 Q I was thinking you don't remember hearing a
5 reference to any of the cases in particular where
6 Mr. Eppes would have testified about this robbery?

7 A Please repeat the question, I'm sorry.

8 Q Well, let me just withdraw the question 'cause I
9 need to make sure I am asking only about the Cochran
10 case.

11 A Okay.

12 Q All right? Now I want to ask you specific
13 questions about Mr. Eppes' testimony. And
14 referencing the Court to page 118, this is a section
15 where Mr. Cartrette was asking Mr. Eppes questions
16 about the shotgun. And then on line 16 he asked
17 him: "Isn't it true though that you anticipate the
18 possibility of a better deal or you wouldn't be here
19 today?" Answer, no, sir. Question: "So you're
20 willing to make a statement against interest knowing
21 it can be used against you in a court of law later?"
22 Answer, right. Question: "You've been offered no
23 deal?" Answer, no, sir. Question on, continuing on
24 119, line 1: "Isn't it true that you hope to get a
25 better deal because of your cooperation today?" And

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1 then he says: "Yes, sir." I want to ask you about
2 that. When — and you were in the courtroom during
3 that exchange?

4 A Yes, I believe I was in the courtroom.
5 Mr. Richardson actually did the direct examination.

6 Q Do you remember this particular section of
7 question and answer?

8 A Just I read it in the transcript.

9 Q All right.

10 A I have had many cases since then but I'm —

11 Q Well, here's my question. Having heard my
12 recitation reading from the record, what Mr. Eppes
13 said, was that true at that time, isn't it true that
14 you hope to get a better deal because of your
15 cooperation today? Answer, yes, sir.

16 A Yes.

17 Q Was that true?

18 A That was true.

19 Q All right. So if you had been in a courtroom
20 having heard that, would you have had a reason to
21 correct it if it was a true statement?

22 A That was a true statement.

23 Q It would have been no reason to —

24 A Yeah, because that was true. He hoped to get a
25 better deal.

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1 Q Please answer any questions that Mr. Shaffer may
2 have for you.

3 **CROSS-EXAMINATION**

4 BY MR. SHAFFER:

5 Q Ms. Parr, tell us a little bit about your note
6 taking procedure. Do you generally note every time
7 that you've met with a witness in your file? I'm
8 not gonna ask to see your file by the way. I'm not
9 gonna do that, I'm just asking.

10 A Normally I do. It depends on the case. If it's
11 a case that, you know, is likely to go to trial I do
12 try to make notes. I usually have handwritten notes
13 in the file.

14 Q Okay. And do you — is this — was this
15 Mr. Richardson's case? Was he primary attorney or
16 were you?

17 A No, this was my case.

18 Q But he did help you out on a case?

19 A That is correct.

20 Q Okay. Would you — would he have met with you --
21 I mean, the general office procedure at your office,
22 would the second chair generally have the first
23 chair present whenever they met with witnesses or
24 defendants, or would he meet with them by
25 themselves? That's what I'm wondering.

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1 A You know, I mean, I guess there — in some cases,
2 you know, he would meet with them without the other
3 present. I cannot, I do not recall in this
4 particular case.

5 Q Okay. But you don't recall if he met with them
6 privately or not?

7 A I do not know.

8 Q Okay. Now at some point prior to the trial of
9 this case — well first of all, do your notes say
10 anything — well, when was Montario Graham's trial
11 tried, do you recall the day?

12 THE COURT: I'll let you lead her in that
13 regard.

14 THE WITNESS: I have no —

15 BY MR. SHAFFER:

16 Q Would it be back in December?

17 A Yeah, I think December.

18 Q And this trial was tried —

19 A In October.

20 Q October? Yeah, I was going to say September but.

21 A The same year.

22 Q All right. If you could, look through your file
23 and let us know if there's any place in your file
24 that indicates that you met with Hank Anderson to
25 discuss Quentin Eppes' testimony between October and

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1 December?

2 A It's not in this particular file, but I think it
3 may be in Montario Graham's file 'cause the file was
4 split up after.

5 Q Do you recall it? Do you recall meeting with him
6 before Montario Graham's trial?

7 A I do recall.

8 Q Okay. So you basically met with him two times,
9 Quentin Eppes personally?

10 A I remember, I remember before the Montario Graham
11 case. I can't, I don't have an independent
12 recollection of before Ms. Cochran's case, but I'm
13 assuming I did; or if I didn't, Mr. Anderson did.
14 But I'm, I mean, I'm assuming I did because I would
15 usually, I don't try any case without meeting with
16 potential witnesses, or at least talking to the
17 attorney. But I don't remember. But I do remember
18 meeting with him prior to Montario Graham case.

19 Q You mentioned that Hank Anderson wanted, wanted
20 the armed robbery dropped. I think you testified to
21 that in your ---

22 A I didn't say not dropped, but he didn't want that
23 charge or ---

24 Q He wanted something less?

25 A Something less.

RW - P. PARR - CROSS

1 Q He didn't want a ten year minimum, right?

2 A He wanted less, yes.

3 Q Now prior to this trial is it your testimony that
4 prior to this trial that you never indicated that it
5 would go less; is that your testimony?

6 A No, my testimony is not that I didn't indicate
7 that it wouldn't go less. I told -- I know I would
8 have told them that I couldn't promise him what
9 would happen. I'm sure he would get some help.

10 Q Okay. So you promised him some help?

11 A I didn't promise him some help, but I did say
12 that I --

13 Q You told him that he would get some help?

14 A Yes, he would get some help if he cooperated or
15 he would get him some consideration with
16 cooperation.

17 Q So you did tell him he would get consideration
18 for his cooperation?

19 A Yes.

20 Q And your testimony is that -- well, I guess I'll
21 just outright ask it. Did you ever tell him that
22 the -- or did you ever indicate in any way prior to
23 this trial that the armed robbery would be dropped
24 if he testified?

25 A I don't know that I told him that.

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1 Q Could Richardson have told him that?

2 A David could have told him that.

3 Q David could have told him that. Could he have
4 told him that at a meeting where y'all were going
5 over the testimony?

6 MR. JOHNSON: Your Honor, this is —

7 THE WITNESS: I don't recall.

8 MR. JOHNSON: He's asking Ms. Parr about
9 what Mr. Richardson could have potentially told Hank
10 Anderson. That's not fair to Ms. Parr. We don't
11 know what he told him.

12 THE COURT: Sure. Sustained.

13 BY MR. SHAFFER:

14 Q Were you present whenever any, whenever any
15 discussion like that was made?

16 A I'm sorry, I do not remember.

17 Q You don't remember, okay. I imagine you've dealt
18 with Hank Anderson for quite a while; haven't you?

19 A Yes.

20 Q Okay. Has he ever, outside of this case has he
21 ever represented codefendants in testifying?

22 A I can't remember if I've had one with him.

23 Q Okay.

24 A One case that I remember that he and I ended up
25 trying a codefendant testified against his person.

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1 Q Okay.

2 A His defendant.

3 Q Now generally in some degree there --
4 the testifying witness you testified was basically
5 doing it to help themselves out?

6 A That is correct.

7 Q In your opinion would it make a whole lot of
8 sense for him to guarantee one of his, guarantee one
9 of his, a deal for one of his testimony against one
10 codefendant but not against the other? Would it
11 have made sense to guarantee a deal against Quentin
12 Eppes but not guarantee the first deal against the
13 applicant here today? I mean, it just doesn't seem
14 like it makes a whole lot of sense to me that he
15 would want to guarantee a second deal but not
16 guarantee the first deal. But I mean, first
17 testimony in a deal and --

18 A I can't answer that.

19 Q Okay, that's fair enough. That's fair enough.
20 Did you ever ask Hank why he threw you under the bus
21 with this regarding this situation?

22 MR. JOHNSON: Your Honor, that's not a
23 proper question.

24 THE COURT: Sustained.

25 MR. SHAFFER: Okay. No further questions.

1 THE COURT: All right, you can step down.

2 Call your next witness if you have one.

3 MR. JOHNSON: We'll rest, Your Honor.

4 THE COURT: Thank you very much. I'll
5 take the matter under advisement. I'll study it.
6 You did a good job. I'll let the two of you know as
7 soon as.

8 MR. SHAFFER: Your Honor, may I briefly
9 clarify some stuff because —

10 THE COURT: Briefly.

11 MR. SHAFFER: The way I work, I generally
12 am not very clear whenever I'm asking questions.
13 There's two issues here, but there are several
14 issues but two primary ones I want to talk about.
15 The first of course is the McNood violation. I'll
16 essentially let the Court make a determination. I
17 think there will be — I mean, Mr. Anderson
18 testified that he had the deal prior to this trial.
19 I think that it would be highly, highly unlikely
20 that he would get the deal later and not on this
21 one. It just doesn't make a whole lot of sense to
22 me that he would say, well, I'm gonna make sure I
23 guarantee one for Montario but I'm not gonna
24 guarantee it whenever he first goes up there to
25 testify. I believe he's credible. He's a very

1 credible witness.

2 And ultimately, I know that the State has
3 presented Ms. Parr to testify in the case; but
4 ultimately, it essentially doesn't matter whether
5 Ms. Parr -- and I'm not saying that Ms. Parr didn't
6 do it, didn't make that statement. I'm just saying
7 ultimately it doesn't matter which one of them made
8 it. If they were both present whenever it occurred
9 like Hank Anderson testified to, that they were both
10 present. They both had a duty to get up there and
11 do something. The State hasn't called
12 Mr. Richardson here to testify whether or not he
13 did. The record is clear that there was no
14 indication that there was any effort to correct.
15 And I know the State keeps resting its hat on
16 overwhelming evidence of guilt; that's not the
17 actual standard for this type of violation.

18 I guess my first contention that under
19 Riddle v. Ozment 2006 Supreme Court case that I had
20 emailed you on -- I'm not sure if y'all got it. But
21 under that case essentially there was no prejudice
22 and now it's applied. I think that at very least
23 outside of that case so I think the current
24 controlling law is that there's no prejudice, at
25 least in South Carolina no prejudice prong should be

1 applied to this sort of prosecutorial misconduct.
2 But I think that the, at least on the federal level
3 at the very least, the federal level says prejudice
4 beyond a reasonable doubt essentially, which is a
5 different standard than overwhelming evidence of
6 guilt or anything else that they said. Basically
7 the court would have to find that there's absolutely
8 no reasonable way that that could have been impacted
9 the outcome of this case. So I want to point that
10 out first of all.

11 The second thing I want to point out is
12 that while I am arguing and I want to maintain that,
13 I argue that there was prejudice to the ineffective
14 assistance of counsel claim, my primary argument on
15 that is that this was a Kronick violation. I mean,
16 under Kronick v. U.S., it's a 1984 U.S. supreme
17 court case. Essentially in three situations you
18 don't even have to prove prejudice whenever,
19 whenever trial counsel act, whenever it's so bad
20 essentially. And I think this fits into it because
21 essentially Mr. Cartrette has decided that he would
22 go forward with and set whenever -- at least when at
23 the point when the Jackson v. Denno hearing failed
24 he went forward with a defense which was withdrawal.
25 He basically failed to challenge that under the

1 wrong assumption that the evidence actually fit with
2 withdrawal. I mean, the evidence as presented by
3 the State does not fit withdrawal in any way, shape,
4 or form. I mean, he's saying that it matches
5 withdrawal because she didn't want to do it; but she
6 was according to the State's evidence basically, he
7 acted just as a, I mean, she was basically the
8 driver to and from under the State's evidence.

9 So my belief is that at this point, you
10 know, that sort of goes out the window and more or
11 less he's just basically accepted the State's case
12 and argue that hand of one hand of all is wrong,
13 which my argument is that that's not a defense and
14 it's a breakdown of the system where you don't even
15 have to prove prejudice under Kronick, Your Honor.

16 THE COURT: All right, I'll hear you.
17 Would you like to reply briefly?

18 MR. JOHNSON: Just briefly, Your Honor. I
19 hadn't planned on a kind of closing; but you know,
20 if they're gonna try to argue that they don't have
21 to prove prejudice under some exception because it
22 was with Mr. Schaeffer's language prosecutorial
23 misconduct which is the first I've heard that in
24 this case, then they have to prove misconduct. They
25 haven't done that. They haven't done that. They

1 haven't met that burden of proof. There's a
2 presumption that there was effective assistance of
3 counsel in this case and every case, and they're
4 gonna overcome that presumption by a certain degree
5 of proof. They have failed to do it. And he
6 referenced Kronick which is a case, as you know Your
7 Honor, where defense counsel was just so horribly
8 bad, it was an obvious case that they were gonna
9 win. You can see for yourself defense counsel in
10 this case had a very difficult matter to contend
11 with. He had the statements that Your Honor heard,
12 the admissions, the candid and open admissions of
13 guilt, and I cannot imagine being in his shoes and
14 having to defend. I don't have any cases
15 Mr. Shaffer has defended. I've handled quite a few
16 and I cannot imagine myself being in Mr. Cartrette's
17 shoes. And I thought that the defense he came up
18 with was pretty smart, pretty crafty, and it might
19 have worked. The jury didn't agree. He had a trial
20 strategy and he followed it. That doesn't mean it's
21 ineffective assistance of counsel. They failed to
22 prove prosecutorial misconduct so we would ask the
23 matter be dismissed.

24 THE COURT: All right, thank you very
25 much. I'll take a look at it and let you both know.

1 MR. SHAFFER: May I add one thing though.

2 THE COURT: It will be the last word of
3 the day. I'm gonna give you 60 seconds starting
4 now.

5 MR. SHAFFER: Your Honor, the whole point
6 of Kronick is that you're not actually having look
7 at —

8 THE COURT: I'm familiar with it.

9 MR. SHAFFER: —whether or not there's a
10 chance of winning. Thank you.

11 THE COURT: Thank you both.

12 (WHEREUPON, Petitioner Exhibits Nos. 1 and
13 2 were marked for identification and
14 received into evidence.)

15

16 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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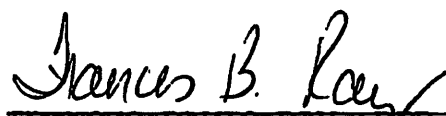
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 20th day of November, 2013.


FRANCES BAKIS-RAY, RPR

FORM 5

STATE OF SOUTH CAROLINA)

County of Florence)

IN THE COURT OF COMMON PLEAS

Chazmonte Lewis Brown # 234443)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2013-CP-21-925

2013 APR - 8 PM 2:46
FLORENCE COUNTY, S.C.
JONNIE REEL-SHEARER
CCCP & GS

FILED

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED A TRUE COPY
Clerk of Court
CLERK OF COURT OF P & C.S.
FLORENCE COUNTY, S.C.INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Lee Correction / 990 Winacky Highway, Bishopville
S.C. 29010
2. Name and location of Court which imposed sentence Florence County Court of
General Session / 180 N. Try Street, Florence, S.C. 29501
3. Name(s) of co-defendant(s) (if any) Montarrie Graham / Jerry Bush / Latisha
Cochran / Quentin Epps
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-21-00664 / Armed Robbery

- (b) _____
 (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) December 16, 2010 / I received fifteen (15) years.
 (b) _____
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓
 (b) after a plea of not guilty N/A
 (c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

- i. N/A
 ii. |
 iii. _____

(b) the result in each such Court to which you appealed:

- i. N/A
 ii. |
 iii. _____

(c) the date of each such result:

- i. N/A
 ii. |
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. |
 iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) my Attorney did not file an Appeal.

- (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Newly Discovered Evidence
 (b) Prosecutorial Misconduct
 (c) _____

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

- (a) I discovered in November 2012 that Brady information
 (b) was not disclosed to me.
 (c) Prosecutor did not disclose my co-defendant's deal.

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

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

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

(a) the specific nature thereof:

- i. N/A
 ii. _____
 iii. ↓
 iv. _____

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

- i. N/A
 ii. ↓
 iii. _____

iv. _____
 (c) the disposition thereof:

i. N/A
 ii. ↓
 iii. _____
 iv. _____

(d) the date of each such disposition:

i. N/A
 ii. _____
 iii. ↓
 iv. _____

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

i. N/A
 ii. _____
 iii. ↓
 iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A
 ii. ↓
 iii. _____

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

i. N/A
 ii. ↓
 iii. _____

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

- (a) I just discovered Brady information relating to my
 (b) co-defendant's deal, was not disclosed to me.
 (c) _____

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

- (a) your arraignment and plea? Yes
 (b) your trial, if any? N/A
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

(a) the name and address of each attorney who represented you:

- i. ms. Karen E. Parrot Esq.
Asst. Public Defender
 ii. 18b N. Irby Street
Florence, S.C. 29501
 iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Plea and Sentencing
 ii. _____
 iii. _____

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

I request to be granted a new trial pursuant to Newly
Discovered Evidence

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Bishopville)

VERIFICATION

I, Chazmona Lewis Brown, 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.

Chazmona Lewis Brown

SWORN to and subscribed before me this 5
day of April, 2013.

Delma Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
2013 APR - 8 PM 2:46
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

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

Chazmonte L. Brown, #334443,

C.A. No. 2013-CP-21-925

Applicant,

v.

**RETURN AND
MOTION TO DISMISS**

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed April 8, 2013, the Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2009 term of the Florence County Grand Jury in indictment 2009-GS-21-00994 for Armed Robbery (Count One) and Possession of a Weapon During the Commission of a Violent Crime (Count Two). Applicant was represented on these charges by Karren Parrott, Esquire. While out on bond for the armed robbery charge, Applicant was arrested on warrants M280283 and M272743 for Distribution of Marijuana. On December 15, 2010, Applicant pled guilty to Armed Robbery and two counts of Distribution of Marijuana, First Offense. The Honorable Michael G. Nettles imposed a negotiated sentence of confinement for a period of fifteen (15) years for the armed robbery charge, with a concurrent five (5) years for each of the marijuana charges. Applicant did not appeal his plea or sentence.

III.

The State submits that this Application for Post-Conviction Relief should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. The applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant could have raised the "new" grounds for relief in his prior post-conviction relief application. Applicant has failed to present any reasons why he could not have raised the current

allegations in his previous post-conviction relief applications. Accordingly, the State moves for a summary dismissal of the Application because it is successive.

IV.

The State submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) reads as follows:

“An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.”

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

Applicant plead to the offenses he challenges in this Application on December 15, 2010. Applicant was therefore required to file his application before December 15, 2011. This Application was filed on April 8, 2013, which was well beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Therefore, the State requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

The State submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim of newly discovered evidence. To obtain a new trial based on newly discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). The State submits that Applicant cannot satisfy these requirements. Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)).

Applicant alleges he "just discovered Brady information, relating to my co-defendant's deal, was not disclosed" to him. However, Applicant has failed to identify this "newly discovered evidence" with specificity. Thus, he has not provided any evidence he can satisfy each of the elements of a newly discovered evidence claim. Even taking his allegations at face value, information relating to a co-defendant's plea offer would merely be impeachment evidence at trial. See State v. Moore, 337 S.C. 104, 108-09, 522 S.E.2d 354, 357 (Ct. App. 1999) (holding that "a co-defendant's guilty plea may, in some cases, be admissible to impeach the credibility of a testifying defendant [but] are not relevant to or admissible as substantive evidence of a defendant's guilt or

innocence.”). Accordingly, the State moves for a summary dismissal of the application for a failure to properly allege a claim of “newly discovered evidence.”

VI.

The State denies each allegation that is not expressly admitted, qualified, or explained.

VII.

WHEREFORE, the Respondent moves to summarily dismiss the application because it is successive, untimely, and fails to state a claim upon which relief can be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

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

Aug 14, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2013-CP-21-925

CHAZMONTE L. BROWN, #334443)

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

Chazmonte L. Brown, #334443
Lee Corr. Inst.
990 Wisacky Highway
Bishopville, SC 29010

DATED this 14th day of August, 2013


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Chazmonte L. Brown, #334443,

C.A. No. 2013-CP-21-925

Applicant,

**CONDITIONAL ORDER
OF DISMISSAL**

v.

State of South Carolina,

Respondent.

FILED
2013 AUG 22 PM 3:42
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before the court by way of an Application for Post-Conviction Relief filed

April 8, 2013. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2009 term of the Florence County Grand Jury in indictment 2009-GS-21-00994 for Armed Robbery (Count One) and Possession of a Weapon During the Commission of a Violent Crime (Count Two). Applicant was represented on these charges by Karren Parrott, Esquire. While out on bond for the armed robbery charge, Applicant was arrested on warrants M280283 and M272743 for Distribution of Marijuana. On December 15, 2010, Applicant pled guilty to Armed Robbery and two counts of Distribution of Marijuana, First Offense. The Honorable Michael G. Nettles imposed a negotiated sentence of confinement for a period of fifteen (15) years for the armed robbery charge, with a concurrent five (5) years for each of the marijuana charges. Applicant did not appeal his plea or sentence.

Page 1 of 6

CERTIFIED: A TRUE COPY

Connie Reel-Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Applicant filed his first post-conviction relief Application on May 6, 2010. In his application, he alleged he was being held unlawfully because of "Fraudulent/Illegal Warrants & indictments[.]" Charles T. Brooks, III, Esquire, represented Applicant on the first PCR. The Honorable William H. Seals, Jr., convened a hearing on the matter on February 3, 2013. At the hearing, Applicant also raised allegations of ineffective assistance of counsel and that his plea was involuntary. Judge Seals denied post-conviction relief and dismissed Applicant's first PCR by written order dated June 18, 2012, and filed June 19, 2012.

Applicant appealed the denial of his first PCR. Robert M. Pachak, Esquire, of the Commission on Indigent Defense perfected Applicant's appeal with the filing of a Johnson¹ petition on November 14, 2012. On February 7, 2013, the South Carolina Supreme Court denied Applicant's petition for a writ of certiorari. The remittitur was returned to the circuit court on February 25, 2013.

II. CURRENT APPLICATION

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

1. Newly Discovered Evidence

A. I discovered in November 2012 that Brady information was not disclosed to me

2. Prosecutorial Misconduct

B. Prosecutor did not disclose my co-defendant's deal

Respondent made a Return and Motion to Dismiss the Application on Aug. 14, 2013 2013. Respondent asked this Court to dismiss the Application as successive, untimely, and failing to state a claim upon which relief can be granted.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988)

III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent’s motion to dismiss:

A. Successive Application

This Court finds that this Application for Post-Conviction Relief should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. If the applicant could have raised these allegations in a

previous application, then the applicant may not raise those grounds in successive applications. Id. The applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant could have raised the “new” grounds for relief in his prior post-conviction relief application. The record clearly indicates Applicant was aware of his co-defendant’s plea. Any claim related to that plea should have been raised as a failure to investigate claim in the prior PCR. Applicant has failed to present any reasons why he failed to the current allegation in his previous application. Therefore, the Court finds that summary dismissal is appropriate.

B. Failure to Timely File

The Court further finds that this Application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides that:

“An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.”

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant plead to the offenses he challenges in this Application on December 15, 2010. Applicant was therefore required to file his application before December 15, 2011. This Application was filed on April 8, 2013, which was well beyond the time that the statutory filing period had expired. Therefore, the Court finds that summary dismissal is appropriate.

C. Failure to State a Claim Of Newly Discovered Evidence

The Court further finds that this Application should be dismissed for failing to state a claim of newly discovered evidence. To obtain a new trial based on newly discovered evidence, the party must show that the evidence: (1) would probably change the result of a new trial; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Applicant alleges he “just discovered Brady information, relating to my co-defendant’s deal, was not disclosed[.]” However, Applicant has failed to identify this “newly discovered evidence” with specificity. Thus, he has not shown he can satisfy each of the elements of a newly discovered evidence claim. Even taking his allegations at face value, information relating to a co-defendant’s plea offer would merely be impeachment evidence at trial. See State v. Moore, 337 S.C. 104, 108-09, 522 S.E.2d 354, 357 (Ct. App. 1999) (holding that “a co-defendant’s guilty plea may, in some cases, be admissible to impeach the credibility of a testifying defendant [but] are not relevant to or admissible as substantive evidence of a defendant’s guilt or innocence.”). Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). Thus, Applicant has not shown this “newly discovered evidence” warrants a new trial. Therefore, the Court finds that summary dismissal is appropriate.

IV. CONCLUSION

The Court finds that the record before the Court creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Joshua L. Thomas, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

FILED
2013 AUG 22 PM 3:42
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

IT IS SO ORDERED.



THE HONORABLE D. CRAIG BROWN
Circuit Court Judge

8-19, 2013
Florence, South Carolina

CERTIFIED: A TRUE COPY

*Connie Reel Shearin*CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Chazmonte L. Brown, [#]334443 v. state of.
South Carolina 2013 - CP - 21 - 925

Sept. 18 2013

Clerk of Court of Florence,

I am writing this letter to ask you to
please file and send me a copy back of
this notice to the Attorney General.

This PCR concerns After discovered evidence
that I didn't learn about until Nov. 1, 2012.
I didn't know about this prior to Nov. 1, 2012
therefore this is not successive or barred by the
statue of limitations. I am respectfully submitting
this letter with the issues I feel this application
should not be dismissed. I was hindered due to
institutional lockdowns from sending this letter
within 20 days of recieving your notice. We was on
a disruptive schedule from Sept. 5 until Sept. 13.
I ask that you take all this into consideration
when you review my application.

Thank you for your time and assistance!

Chazmonte Brown
Chazmonte Brown

2013 SEP 20 PM 1:05
CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, S.C.

FILED

Tristan M. Shaffer

Attorney at Law
Post Office Box 176
Chapin, South Carolina 29036
Telephone: (803) 575-0364
Facsimile: (803) 403-9965

November 1, 2012

Chazmote Brown #334443
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Chazmote Brown:

I represent your co-defendant Montarrio Graham in his PCR case.

While representing Mr. Graham, I discovered Quentin Epps testified in exchange for a plea deal that was not disclosed to Mr. Graham. According to Mr. Epps's attorney, the State offered to reduce the Armed Robbery charge against Mr. Epps in exchange for his testimony. I know that the State never disclosed this to my client. Additionally, I have learned this evidence was not disclosed to Lakisha Cochran. If you were not aware of Epps's deal until now, it **might** be grounds for a new trial.

For Mr. Graham's case I have argued that he is entitled to a new trial under the following cases: *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963); *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555 (1995); *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972); and *Napue v. Illinos*, 360 U.S. 264, 79 S.Ct. 1173, (1959).

I have informed Rob Pachak of this information. I am not certain if he is in a position to use this information, or if it would be better for you to file another PCR or a motion pursuant to Rule 29 (b), SCRCrimP. However, if this you are just now learning that Epps had a deal, you only have a year to attempt to use this information to get a new trial.

It is important for you to understand that I am merely providing you with some general information. I am not your attorney and I am not giving you legal advice. If you have any questions about your case or need any legal advice please consult with Mr. Pachak. Or you may contact me if you have any general questions concerning this letter.

Sincerely,


Tristan M. Shaffer

CC: Rob Pachak

Clerk of Court
180 N. 2nd Street
Florence, S.C. 29501

FILED
2014 JUL 11 PM 2:54
CORINNE BEECHER
CLERK OF COURT
FLORENCE COUNTY, S.C.

Chaz Monte Brown #334443
Applicant

2013-Cp-21-925

V.

State of South Carolina
Respondent

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Because I'm laboring under a hardship
London V. Cannon, and due to scheduling beyond the scope
of my control, i.e., holidays, this is the first opportunity
I have had to mail this document to the court, Please
Apply Houston V. Lock to my case

Thank you for your most needed
Time!
Chaz Monte Brown #334443

This 7 July @ date ~ 7-9-14

Mailed 7/18/14

cc: Brown Thomas

CERTIFIED TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2014 JUL 11 PM 2:54
CLERK OF COURT
FLORENCE COUNTY, SC

The State Of South Carolina
Florence County Courthouse

Chazmonte Brown #334443

Applicant

vs
Against

State Of South Carolina,

Respondent.

Court Of Common Pleas
Twelfth Judicial Circuit

Motion For Judgment

On The Pleadings

#13-CP-21-925

Hearing Requested

Honorable D. Craig Brown, Circuit Judge

Please Take Notice, the applicant seeks court to Grant a hearing Pursuant to South Carolina Code Ann. Sec. 17-27-45(c) (Cum. Supp. 13)

Accordingly, the respondent has argued that this application is untimely Pursuant to South Carolina Code Ann. Sec. 17-27-45(A) (Cum. Supp. 13) Pelouin v. State, 469 S.E.2d 606 (1996) Such view is misplaced, because the court is asked to consider Sec. 17-27-45(c) discovery Provision which allows me one year to file this application once the

Once information is discovered See, *Ward v. State*, 2011 WL 11743286. The information came to my attention 11/1/2012 and application was filed before time expired, what court is being called upon to do is Grant a new hearing on my newly discovered evidence in accordance with decision of *McCoy v. State*, 737 S.E.2d 623 (2013). As such, since the was filed same year McCoy was decided entitles me to its equitable ruling (see Attached). Therefore, my application is not untimely nor is it successive when it is shown none of this information was available to me at initial hearing. Moreover, under *Giglio v. United States*, 405 U.S. 150 (1972) once Prosecution failed to inform my trial counsel about witness who was given a deal not only violated my rights to a fair trial, but also induced and forced me to Plead Guilty when exercising right to a trial. The state had an obligation to submit this information to defense before trial, not during trial as state will not deny it did in this instance. My request for a hearing is not a fishing expedition, but to determine and show how Prosecution actions violated my rights when they failed to disclose such information. Under *Giglio*, the court ruled Prosecution is required before trial to disclose evidence of this nature. Counsel for state attempts to either forget or downplay their obligation under *Giglio*, and in so doing argues this does

reality the Proper standard to Judge this evidence is (1) Whether state violated Gideon; (2) Whether failing to disclose information forced me to Plead Guilty; when during trial state then revealed witness who they gave a deal for any testimony he could give. We can not get bogged down with such frivolous ideas, and when doing so the critical facts of state withholding this information does not get address which is foundation of claim.

Wherefore, Applicant Prays court will Grant relief.

Dated: 7 day of 9, 2014,

Respectfully Submitted:

SL Chazmonte Brown

Chazmonte Brown #334443

Life Connection Institution

490 Wilsack Highway

Bishopville, S.C. 29010

Tristan M. Shaffer

Attorney at Law
 Post Office Box 176
 Chapin, South Carolina 29036
 Telephone: (803) 575-0384
 Facsimile: (803) 403-9965

November 1, 2012

Chazmote Brown #334443
 Lee Correctional Institution
 990 Wsacky Hwy.
 Bishopville, SC 29010

Chazmote Brown:

I represent your co-defendant Montarrio Graham in his PCR case.

While representing Mr. Graham, I discovered Quentin Epps testified in exchange for a plea deal that was not disclosed to Mr. Graham. According to Mr. Epps's attorney, the State offered to reduce the Armed Robbery charge against Mr. Epps in exchange for his testimony. I know that the State never disclosed this to my client. Additionally, I have learned this evidence was not disclosed to Lakisha Cochran. If you were **not** aware of Epps's deal until now, it **might** be grounds for a new trial.

For Mr. Graham's case I have argued that he is entitled to a new trial under the following cases: *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963); *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555 (1995); *Giglio v. United States*, 405 U.S.150, 92 S.Ct. 763 (1972); and *Napue v. Illinios*, 360 U.S. 264, 79 S.Ct. 1173, (1959).

I have informed Rob Pachak of this information. I am not certain if he is in a position to use this information, or if it would be better for you to file another PCR or a motion pursuant to Rule 29 (b), SCRCrimP. However, if this you are just now learning that Epps had a deal, you only have a year to attempt to use this information to get a new trial.

It is important for you to understand that I am merely providing you with some general information. I am not your attorney and I am not giving you legal advice. If you have any questions about your case or need any legal advice please consult with Mr. Pachak. Or you may contact me if you have any general questions concerning this letter.

Sincerely,



Tristan M. Shaffer

CC: Rob Pachak

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

CHAZMONTE L. BROWN,

Applicant,

VS.

THE STATE OF SOUTH CAROLINA,

Respondent.

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

) Case No.: 2013-CP-21-0925

**MOTION TO LIMIT THE STATE'S
ARGUMENT BASED ON COLLATERAL
ESTOPPEL**

Pursuant to the doctrine of collateral estoppel, Applicant moves to preclude the State from arguing that a Quentin Epps did not have a plea deal with the prosecution prior to testifying.

BACKGROUND

The underlying facts and Applicant's trial.

On November 15, 2008, William Hayes received a call from an unknown female on a blocked line. The unknown female asked if he was going out to the club that night. Later that evening Hayes was attacked and robbed by three masked men as he was leaving his home. Two of the men were armed with real firearms, and the other was armed with a toy pistol. The robbers ordered Hayes on to the ground, and one of the masked men hit him with a toy pistol. The robbers stole five hundred dollars in cash and several credit cards from Hayes. While leaving, one of the robbers fired a real pistol into the air. Around the same time that the shots were fired, neighbors saw a group of men jumping into a dark colored Toyota Camry.

After the robbery, Quentin Epps was seen using one of the stolen credit cards at Wal-Mart. Police questioned Epps who gave a statement. Epps was the owner of a dark purple Toyota Camry.

Epps admitted knowing about the robbery, but he tried to deny any involvement in the robbery claiming he was merely present. Epps even denied driving the car from the scene. Epps gave the names of several people that he claimed were also involved in the robbery including Applicant. No physical evidence was ever collected linking Applicant to the crime. Epps, Applicant, and three other co-defendants were charged with armed robbery.

Prior to Applicant's trial the State offered Epps a plea deal in exchange for his testimony against the others. The State promised Epps that they would reduce his armed robbery charge to some other charge if Epps testified against Applicant and the other co-defendants. The State did not inform Epps of what his armed robbery would be reduced to. Nevertheless, Epps agreed to testify in order to avoid a mandatory minimum ten-year sentence. The State did not disclose this deal to Applicant's Trial Counsel.

On December 15, 2010, Applicant's codefendant, Montarrio Graham, was called to trial before Judge Nettles and a jury. Applicant had not given a statement to police and his case rested solely upon the Epps' testimony. Immediately after Mr. Epps testified in a pre-trial hearing Applicant plead guilty.

Montarrio Graham's PCR

Graham proceeded to trial. During Graham's trial the following exchange took place:

Richardson: Mr. Epps, you are a codefendant in this case to Montarrio Graham and three other people; is that right?

Epps: Right.

Richardson: Okay. And you are charged with armed robbery and possession of a weapon during a violent crime.

Epps: Right.

Richardson: Same as Mr. Graham?

Epps: Yes, sir.

Richardson: Have you been offered any sort to special deal or promise ---

Epps: No, sir.

Richardson: ---In order to get you to testify here today?

Epps: No, sir.

Tr. 99, ll. 4-16. The State never informed the Court, Graham's Counsel, or Applicant's Counsel that Epps had testified untruthfully.

During cross-examination Epps testified to the following:

Floyd: Okay. And then, of course, you're charged here for this event, right?

Epps: Yes, sir.

Floyd: Now you said earlier you had no offer for special treatment, is that right, ---

Epps: Right.

Floyd: ---from the prosecutor's office?

Epps: Right.

Floyd: But you haven't been tried yet, have you?

Epps: No, sir.

Floyd: Now what kind of time are you facing for this charge that you're charged with?

Epps: Ten years.

Floyd: To what?

Epps: The lowest is ten, max is 30.

Floyd: Thirty years; is that right?

Epps: Yes, sir.

Floyd: And that's no parole time; is that right?

Epps: Right.

Ms. Parr: Your Honor, I would object.

The Witness: Right.

Ms. Parr: Sentencing is not any privy of the jury.

The Court: I'm gonna allow him some latitude. Of course, sentencing is, Mr. Foreman, ladies and gentlemen of the jury, sentencing is something for this Court to handle. But the extent it goes to interest of bias I'm going to allow the Defense to get into that. That's not your concern other than in your evaluation of interest and bias.

Mr. Floyd.

Floyd: So as of today you haven't been tried for this, have you?

Epps: No, sir.

Floyd: You haven't pled guilty to it?

Epps: No, sir.

Floyd: Okay. So there's certainly nothing to prevent you from receiving a better deal after this is over, is there?

Epps: Repeat that one more time.

Floyd: Nothing to prevent you from receiving a deal after this over, is there?

Epps: No, sir.

Floyd: A specific deal?

Epps: No, sir.

Floyd: There's nothing to prevent that.

Epps: No.

Tr. 116, l. 9 – Tr. 118, l. 5. Once again the State never informed Applicant, Graham, or the jury of Epps' plea deal.

Several weeks after Graham's trial, the State reduced Epps' armed robbery charge to accessory after the fact. On January 24, 2010, Epps pled guilty to accessory after the fact and received an eighteen month sentence concurrent with a probation revocation.

Graham appealed his conviction. During the course of his appeal, Graham discovered that he Epps had falsely testified concerning his deal. Graham withdrew his appeal and filed an application for PCR. An evidentiary hearing was convened before the Honorable Thomas Russo. Epps' trial attorney, Henry Anderson, testified that the State had offered to drop Epps' Armed Robbery to some other charge in exchange for his testimony against Applicant and the other co-defendants.

In an order dated November 2, 2012, Judge Russo granted Graham's PCR pursuant to *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959) and *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006). In this order, Judge Russo specifically found that "Mr. Anderson credibly testified that the State had offered to reduce Epps's armed robbery charge in exchange for his testimony." See Attachment A. On December 6, 2012, Graham was informed that the State would not appeal Judge Russo's decision.

ARGUMENT

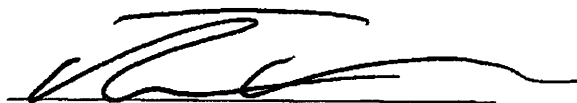
The doctrine of issue preclusion or collateral estoppel prevents a party from re-litigating an issue in a subsequent actions. *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009). The party asserting collateral estoppel must show that the issue they wish to preclude was: (1) actually litigated previously; (2) directly determined; and (3) was necessary to support the prior judgment. See *Carolina Renewal v. S.C. Dept. of Transportation*, 385 S.C. 550, 684 S.E.2d 779, 782 (Ct. App. 2009). "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel there the party against whom estoppel is asserted had a full

and fair opportunity to previously litigate the issues.” *Snavelly v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665, S.E.2d 222, 228 (Ct. App. 2008).

Applicant seeks to preclude the state from re-litigating whether Epps’ made a deal with the State in order to testify. This is the same issue that was previously raised and ruled upon by the Court in Graham’s PCR. In Graham’s PCR, the State had a full and fair opportunity to litigate this issue. The State was on notice of this issue more than a year before Graham’s PCR hearing¹. Graham called Hank Anderson to testify at the hearing and the State had a full opportunity to cross-examine him. The State had an opportunity to call witnesses but elected not to do so. Additionally, the State also had an opportunity to appeal Judge Russo’s decision but elected not to do so. Moreover, Since Judge Russo granted Graham’s PCR solely based on the prosecutorial misconduct, his finding that Epps had a deal was necessary to the prior judgment.

Therefore, this Court should preclude the State from arguing that Epps did not have a plea deal prior to testifying.

RESPECTFULLY SUBMITTED,



Tristan Michael Shaffer (SC Bar # 77565)
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May 20, 2016

¹ Graham initially sought to suspend his direct appeal and remand for a hearing pursuant to Rule 29(b), SCRCrimP. Assistant Attorney General David Spencer filed a response to Graham’s motion with the Court of Appeals on August 19, 2011.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2013-CP-21-0925
	)	
	)	
Chazmonte L. Brown	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	)
<u>DEFENDANT</u>	)	Florence, South Carolina
		June 2, 2016

B E F O R E:

THE HONORABLE JOCELYN NEWMAN, JUDGE.

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

TRISTAN M. SHAFFER, ESQ.
Attorney for the Applicant

CROOM HUNTER, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

1 THE COURT: Yes, sir.

2 MR. HUNTER: May it please the Court..

3 THE COURT: Yes, sir.

4 MR. HUNTER: This is a motion hearing in the
5 case of Chazmonte Brown SCDC Number 334443 vs. The State
6 of South Carolina, that case number is 2013-CP-21-925.
7 Mr. Brown is present. He is confine with SCDC pursuant to
8 the Florence County clerk of courts orders. He was
9 indicted at the June 2009 term of the Florence County
10 grand jury in indictment 2009-GS-21-0994 for armed robbery
11 that was count one and possession of a weapon during the
12 commission of a violent crime that was count two. He was
13 represented by Karen Parrott. While on bond for the armed
14 robbery charge, he was arrested for distribution of
15 marijuana. On December 15th 2010, Mr. Brown pled guilty
16 to armed robbery and two counts of distribution of
17 marijuana first offense. Judge Nettles pursuant to a
18 negotiated sentence sentenced Mr. Brown to 15 years for
19 the armed robbery charge with five years for the marijuana
20 charges. He did not appeal.

21 Mr. Brown filed his first post-conviction relief
22 application on May 6th of 2010 and that application he
23 alleged he was being held unlawfully because of fraudulent
24 illegal warrants and indictments. He was represented by
25 Charles C. Brook, III. A hearing was held before Judge

1 Seals on February 3rd 2013. At the hearing, Mr. Brown
2 also raised allegations of ineffective assistance of
3 counsel and that his plea was involuntary. Judge Seals
4 denied the PCR and dismissed it by a written order dated
5 June 18th of 2012 and filed June 19th 2012. Mr. Brown
6 filed an appeal from the denial of his first PCR. He was
7 represented in that by Robert M. Pachak of the Commission
8 on Indigent defense, that was through a Johnson petition.

9 On February 7th 2013, South Carolina Supreme
10 Court denied applicant's petition for writ of certiorari.
11 The remittitur was returned on February 25th 2013.
12 Mr. Brown then filed this second PCR application on
13 April 8th 2013. The State filed a return and motion to
14 dismiss and a conditional order of dismissal was signed by
15 Judge Brown on August 19th 2013 and filed August 22nd 2013
16 dismissing -- conditionally dismissing I should say this
17 application for being filed past the statute of
18 limitations as well as being successive and for failing to
19 state a claim with new and discovered evidence. And then
20 after that, Mr. Burgess filed a response. And I believe
21 at some point Mr. Shaffer came on board to represent him
22 opposing the conditional order of dismissal. And so the
23 State today would move to -- for a final order of
24 dismissal in this case for being successive and past the
25 statute of limitations.

1 THE COURT: Okay. Mr. Shaffer, let me hear from
2 you about your opposition to that.

3 MR. SHAFFER: Thank you, Your Honor. And I want
4 to give the Court a little bit of background because this
5 is an unusual case. Essentially, there was a armed
6 robbery where four -- well, I guess, five co-defendants
7 were charged as a result of this armed robbery. One of
8 them decided to testify. At that point I know that one
9 pled, but did not cooperate with the police. And there
10 were three other people who or three other co-defendants
11 including my client who look like they were going to go to
12 trial, okay. One was tried, I want to say in October.
13 And then the other two was -- one of them was tried before
14 the other two. The female was, tried before the other
15 two, Ms. Cochran. And Mr. Graham and Mr. Brown here
16 today.

17 Chazmonte Brown and Monterio Brown were supposed
18 to be tried together. They were co-defendants. That was
19 going to be the second trial with the same facts because
20 the other defendant Ms. Cochran had been tried previously
21 and convicted.

22 During Ms. Cochran's trial, Mr. Epps, who was
23 the co-defendant who decided to cooperate, he testified
24 that he didn't have a deal, okay. During up until that
25 point, he had testified that he didn't have a deal and the

1 trial attorney thought that Mr. Epps did not have a deal.
2 Mr. Brown's and Mr. Graham's trial attorneys both thought
3 that he did not have a deal. He testified again at that
4 trial that he did not have a deal. Well, turns out that
5 the trial counsel for Mr. Epps later testified in
6 Mr. Brown's PCR that there was a deal at that time, okay.
7 That issue has been decided by Judge Russo approximately,
8 I guess, it was back in 2013, that it was decided,
9 possibly was end of 2012. And I can't recall exactly when
10 the order came down. But essentially Mr. Graham got
11 relief based off of this non-disclosure of the plea offer
12 that was offered to Mr. Epps. At that time of his first
13 PCR, he was unaware of the fact that Mr. Epps had given
14 that deal. He did not become aware of that until after
15 Mr. Graham won his PCR, okay. At that point Mr. Brown
16 whenever I say, he, that's who I'm referring to. Mr.
17 Brown discovered that there was this Brady violation. And
18 as a result, he filed a subsequent PCR. He has argued
19 ineffective assistance of counsel -- I mean not
20 ineffective assistance of counsel. He argued the newly
21 discovered evidence and prosecutorial misconduct in that
22 claim. Essentially, both of those claims boil down to
23 there was a Brady violation that I just found out about
24 because he's referring to the exact same violation that
25 Mr. Brown won his PCR on, okay, that was later discovered.

1 My belief for why it's not successive and not
2 barred by the statute of limitations, I guess, a lot of it
3 depends on McCoy case, which is a 2013 Supreme Court case.
4 I can hand you one up.

5 THE COURT: Yes, please.

6 MR. SHAFFER: And I'll also hand you the two
7 statutes that are applicable. In McCoy, the applicant
8 discovered that a juror had not told the truth during voir
9 dire. He discovered that later. Essentially, they
10 allowed him to bring that claim despite the fact that it
11 was -- it was not truly after discovered evidence under
12 the five factors that they normally judge after discovered
13 evidence. After discovered evidence, generally has to do
14 with a trial and that's where most of the actual -- it
15 actually has to do with material evidence at the trial.
16 However, I think that you can still bring the claim under
17 the PCR Act under 17-27-45(c) because he did not know
18 about the material facts afterwards. He did not know
19 about the facts about what happened. It's the same thing
20 with the, I guess, the discovery rule with the statute of
21 limitations the normal civil cases. If you didn't know
22 about the underlying facts, you didn't know you had a
23 claim. You're not held responsible under the statute of
24 limitations. If it takes you, you know, two years to
25 discover that someone had or did something negligent, that

1 impacted you, your statute of limitations runs when you
2 start learning about it and when you learn about it. And
3 then you get three years on that. It's not from the date
4 that the negligence actually occurred if you don't know
5 about it on that day. The same thing is true for a PCR.
6 We're raising a claim of a Brady violation. Under the PCR
7 peg, you can raise not just ineffective assistance of
8 counsel, but obviously the other constitutional
9 infirmities under the PCR Act. We're alleging a Brady
10 violation. He didn't know about that until Mr. Graham's
11 -- Mr. Graham won his PCR. He actually learned about it
12 -- I represented Mr. Graham on his PCR and I do have a
13 waiver and everything, Your Honor, but I did represent him
14 on that. And, you know, basically Mr. Graham wanted me to
15 write him a letter and let him know what had happened and
16 that's when he learned about this. It wasn't until a
17 couple years later that he hired me to do it.

18 THE COURT: Okay. Mr. Hunter, let me hear from
19 you.

20 MR. HUNTER: Judge, the State opposes this
21 because McCoy vs. State was explicitly overruled in
22 Jamison vs. State. And you do have a copy of that in your
23 packet with regards to PCR's from guilty pleas. And if
24 you turn to page 129 of the case, at the bottom of the
25 right column, the Court says although we find that a

1 guilty plea does not precluded PCR following a guilty plea
2 in all circumstances, we nonetheless conclude that the
3 traditional five factor newly discovered evidence test
4 which is the McCoy test is not the proper test for
5 analyzing whether a PCR applicant is entitled to relief on
6 the basis of newly discovered evidence following a guilty
7 plea. And then onto page 130 almost the entire left
8 column starting at the number ten, the Court outlines the
9 new test to be used in PCR's from guilty pleas rather than
10 the five factor McCoy test. And if you want, I can go
11 through all that and put it on the record rather lengthy.

12 THE COURT: Yes, sir.

13 MR. HUNTER: The Court says guided by the
14 language of section 17-27-20(a)(4) of the PCR Act, We hold
15 that when a PCR applicant seeks relief on the basis of
16 newly discovered evidence following a guilty plea, relief
17 is appropriate only where the applicant present evidence
18 showing that one the newly discovered evidence was
19 discovered after the entry of the plea and then the
20 exercise of reasonable diligence could not have been
21 discovered prior to the entry of the plea. And two the
22 newly discovered evidence is of such a weight and quality
23 that under the facts and circumstances of that particular
24 case, the interest of justice requires the applicant's
25 guilty plea to be vacated. In other words, a PCR

1 applicant successfully disavow his or her guilty plea only
2 where the interests of justice outweigh the weaver and
3 solemnly admission of guilt encompassed in a plea of guilt
4 and the compelling interest of maintaining the finality of
5 the guilty plea convictions. In so holding, we caution
6 that it will be a rare case indeed where the interest of
7 justice will require that a knowing and voluntary guilty
8 plea be vacated through post-conviction relief on the
9 basis of newly discovered evidence for an unconditional
10 guilty plea admission of guilt and a waiver of trial and
11 all defenses will generally preclude any subsequent
12 challenge to factual guilt. And here the State's problem
13 with Mr. Brown's subsequent application based on newly
14 discovered evidence, is that unlike his co-defendants Mr.
15 Brown pled guilty. And he pled guilty prior to the
16 testimony that Mr. Epps gave in the other trials. And as
17 such, that testimony had no bearing, had no relevance to
18 Mr. Brown's plea because it came after. So now he's
19 trying to go back and get another PCR because of testimony
20 that one of his co-defendants gave in a trial after he had
21 already pled guilty. And so the State would -- well,
22 that's the State's position is it's irrelevant.

23 THE COURT: Yes, sir. Would you like to
24 respond, Mr. Shaffer?

25 MR. SHAFFER: Yes, Your Honor. Ms. Cochran's

1 trial was actually beforehand where he gave essentially
2 the same testimony I was never offered any deal, which was
3 false -- turned out to be false. That was several months
4 before his trial -- actually, I think it was about a month
5 and a half before his trial.

6 THE COURT: Well, give me some dates on these
7 pleas and trials that we're talking about?

8 MR. SHAFFER: Your Honor, I can do that. It
9 might require me to actually pull something up on my
10 computer.

11 THE COURT: Go for it.

12 (WHEREUPON, a pause in the proceedings.)

13 MR. SHAFFER: I had filed a motion, Your Honor,
14 that outlines that. There's another motion pending in
15 this case and I'm not sure if the Court has that in his
16 file. It ask direct quotes from the testimony of both
17 transcripts. There should be a motion, a collateral
18 estoppel motion that's in there. Your Honor ---

19 MR. HUNTER: I'm sure that there's a copy of
20 that in judge's packet.

21 THE COURT: I have it in the clerk's file.

22 MR. HUNTER: Judge, I don't see it in the
23 collateral estoppel motion. All I see is Monterio
24 Graham's testimony and Monterio Graham's trial. I see
25 anything in here about Latisha Cochran's trial.

1 THE COURT: That's correct, Mr. Shaffer. Do you
2 have any information on the Cochran trial?

3 MR. SHAFFER: Yes, Your Honor. I do have it. I
4 have a transcript on it that is -- Ms. Cochran went to
5 trial March 1st 2013. I apologize, that's the PCR
6 transcript, Your Honor. October 19th 2010 is when Ms.
7 Cochran went to trial. And I think this would have been
8 November 2010, that this trial -- and to give the Court a
9 little bit more background. Essentially, opening
10 arguments -- he pled after opening arguments and at that
11 point Mr. Graham went forward with the trial. Mr. Brown
12 pled at that point. So it was during the same -- I say
13 that there was a trial. It wasn't a full trial obviously,
14 Your Honor. It was just opening statements. And, Your
15 Honor, if I may go into the legal argument as well?

16 THE COURT: Yes, sir.

17 MR. SHAFFER: The State's characterized this as
18 a newly discovered evidence claim. There's actually two
19 claims and he does specifically state newly discovered
20 evidence claim. There's actually two claims. And he does
21 specially state newly discovered evidence in the
22 application, Your Honor, his pro se application. There's
23 a second claim of prosecutorial misconduct claim.
24 Prosecutorial misconduct claim clearly he did not know
25 about the prosecutorial misconduct or at least that

1 there's clearly at least an arguable issue of fact as to
2 whether he knew about that. You know, prior to him --
3 Mr. Graham winning his PCR, he's asserted that in his pro
4 se filing, Your Honor, that he did not know about it until
5 he got the letter essentially from me about Mr. Graham's
6 trial. The -- so I think that's judged under a separate
7 ground other than a newly discovered evidence claim.

8 Also related to Jamison, Mr. Hunter had
9 mentioned that McCoy is the five factor test -- the five
10 factor test is a more traditional test of newly discovered
11 evidence has to do with trial evidence and whether or not
12 it's material to the outcome of the trial, okay. McCoy
13 didn't deal with that. McCoy dealt with something
14 different. Jamison actually is a traditional test because
15 what the issue was at Jamison that was newly discovered
16 was essentially a trial issue and that it was not a
17 prosecutorial misconduct or Brady issue for example. This
18 is a Brady issue. This is saying, you know, the
19 prosecutor didn't provide me my full discovery under a
20 Giglio and Napoo. They didn't provide me full discovery
21 on whether or not there was a deal. Therefore, it was a
22 -- therefore, the prosecutor essentially denied me my
23 constitutional right to my Brady information before the
24 plea. That's different than saying, you know, oh, I found
25 out new information about the case because I think that

1 Jamison had to do with a potential witness who could have
2 corroborated his story about self defense, that's a trial
3 issue. That would have been interpreted under the
4 traditional five factor test. The five factor test is not
5 for a Brady issue. I think that even if you struck any
6 cause of action related to newly discovered evidence,
7 trial evidence you would still have an issue with a Brady
8 violation being that they didn't disclose the deal and he
9 didn't learn about that Brady violation until after his
10 first PCR.

11 MR. HUNTER: Judge, if I could respond to that?

12 THE COURT: Sure.

13 MR. HUNTER: My position would be that whether
14 it's a Brady violation or an allegation of prosecutorial
15 misconduct, I think, both of those fall under the category
16 of newly discovered evidence. You know, I'm not aware of
17 a specific case that, you know, has a different test for
18 Brady violations or prosecutorial misconduct with regards
19 to, you know, a PCR or a guilty plea. I think, the court
20 was very clear in Jamison that in a PCR from a guilty plea
21 alleging newly discovered evidence that this new test with
22 these two prongs is the law now. And I think the second
23 prong is particularly important in that it says the newly
24 discovered evidence is of such a weight and quality that
25 under the facts and circumstances of that particular case

1 the interest of justice requires the applicant's guilty
2 plea to be vacated. In other words, a PCR applicant may
3 successfully disavow his or her guilty plea only where the
4 interest of justice outweigh the waiver and solemn
5 admission of guilty encompassed in a plea of guilty in the
6 compelling interest in maintaining the finality of guilty
7 plea convictions.

8 Now, I don't think that, you know, with regard
9 to the disclosure or non-disclosure of this plea deal, the
10 State's position is that it doesn't reach the threshold
11 required under this second prong of the Jamison test.
12 That being that that is something, you know, the court
13 says we caution it will be the rare case indeed where the
14 interest of justice will require that a knowing and
15 voluntary guilty plea be vacated through post-conviction
16 relief on the basis of newly discovered evidence. And the
17 State's position is that whether or not this plea deal --
18 the State does not argue that this plea deal did not
19 exist. I think, there's been testimony in prior PCR
20 hearings that there was some sort of plea deal, but the
21 fact that Mr. Brown pled guilty prior to Mr. Epps'
22 testimony in the Monterio Graham case renders that plea
23 deal irrelevant to Mr. Brown's plea and it certainly
24 doesn't raise this alleged misconduct to the level of
25 required in Jamison.

1 To be perfect frank, I don't have the testimony
2 from the Latisha Cochran trial in front me because I
3 didn't -- you know, it's not part of this motion. And so
4 I don't know what the testimony in that case was and so I
5 don't feel comfortable arguing that. But with regard to
6 Monterio Graham, the fact Mr. Brown pled guilty prior to
7 that testimony is just completely -- it's two separate
8 proceedings and guilty plea. Now, if he had gone to trial
9 and, you know, and this time type of testimony come out at
10 Mr. Brown's trial let's say, then it would be a different
11 matter, but the fact that he pled guilty is a different
12 thing.

13 MR. SHAFFER: Your Honor, the case that would
14 distinguish a Brady violation for newly discovered
15 evidence, I think -- well, I think, I would point the
16 Court's direction to Riddle vs. Ozment 369 S.C. 39 631
17 Southeastern Second 70 2006 Supreme Court case. It dealt
18 with a very similar issue and false testimony during a
19 trial. And, Your Honor, if you look at the five factors,
20 the additional five factor test and it says in Jamison
21 what the traditional five factor test is. I mean, in my
22 opinion, it's not what's related to McCoy. I'm not
23 exactly sure how McCoy will be based off of this. And I'm
24 reading headnote four or not headnote four. I'm reading
25 where headnote four would read it would be 467 under the

1 S.C. on Jamison. It will be about the third paragraph
2 from the beginning of 467. It says traditionally in South
3 Carolina to obtain a new trial based off of after
4 discovered evidence the party must show that the evidence
5 will probably change the result if a new trial is had, has
6 been discovered since the trial, could have been
7 discovered before trial as material the guilt -- is
8 material to the issue of guilt or innocence and is not
9 merely cumulative or impeaching, okay. And it cites the
10 McCoy and McCoy does cite that that's traditional test,
11 okay. The main issue I have is to say why McCoy is not a
12 traditional case. And I don't think by reading McCoy that
13 you would say that it was a traditional after discovered
14 case is that it's material to the issue of guilt or
15 innocence. McCoy dealt with a juror misconduct and did
16 not deal with guilt or innocence and newly discovered
17 information, I think, is probably a better term is. It
18 dealt with juror misconduct. It didn't deal with guilt or
19 innocence.

20 McCoy wasn't nowhere in Jamison does it say
21 we're specifically overruling the opinion in McCoy. What
22 it's saying is that under the traditional test which
23 Jamison the newly discovered information was actual
24 evidence at the trial, that wasn't enough in a guilty
25 plea. This case is more similar to McCoy because it

1 doesn't deal with evidence at the trial. It deals with
2 the fact that information wasn't disclosed. I mean, he
3 can't knowingly and intelligently plead guilty if he
4 doesn't have it discovered or the full discovery in front
5 of him, you know. And this is a very, I mean, obviously
6 he took this all the way through opening statement before
7 he pled guilty. Clearly, he wasn't sitting there going,
8 oh, I want to plead guilty to this case. You know, he
9 really wanted to go forward with a trial. He ended up
10 backing out obviously. And I think that the testimony
11 will show if my client got on the stand essentially once
12 they brought Quinton Epps, he was going to testify against
13 him, that's a determining factor. And if they don't have
14 anything really to impeach him with, then his chances
15 winning at the trial are greatly diminish then if they had
16 something to impeach him with. And I think that that
17 would have changed my client's decision on whether or not
18 to go to trial if he would have known that because at
19 least they would have had something to argue as to why he
20 would be lying about it.

21 I think that we're dealing with a different
22 issue then newly discovered evidence, okay. I think we're
23 dealing with a Brady violation which will be different.
24 And I think that it would come in separate and a part.
25 And if you look at the PCR statute deals with newly --

1 with what you can raise during PCR, it deals -- they're
2 subsections for newly discovered evidence or newly
3 discovered information. And then there's a different
4 issue for constitutional violations. And this is a
5 constitutional violation that he didn't discover until
6 later. It's not really truly newly discovered evidence
7 based off of South Carolina's definition of it. I
8 discovered new information which gave me grounds to raise
9 a Brady violation.

10 MR. HUNTER: Judge, just briefly follow up?

11 THE COURT: Sure.

12 MR. HUNTER: Page 129 of Jamison, the Court
13 clearly overturns the five factor, the traditional five
14 factor test with regard to PCR's from a guilty plea. They
15 say we nonetheless conclude the traditional five factor
16 evidence is not the proper test for analyzing whether a
17 PCR applicant is entitled to relief on the basis of newly
18 discovered evidence following a guilty plea. The State's
19 position is still that this type of evidence would
20 constitute a newly discovered evidence claim of whether
21 it's a Brady violation or prosecutorial misconduct what
22 have you. And the fact is Mr. Epps pled guilty prior or
23 excuse me -- Mr. Brown pled guilty prior to Mr. Epps'
24 testimony by pleading guilty, he waived his right to
25 challenge the evidence. He waived all of his

1 constitutional rights with regard to going to trial. And
2 in doing so, he's waived the right to come back now and
3 say, well, if I've known this that this testimony might
4 have occurred and this trial that happened after I pled
5 guilty, then I wouldn't have pled guilty. There's just --
6 it's continuous.

7 THE COURT: Okay. I think I understand your
8 arguments. What I'm going to do is take it under
9 advisement. Mr. Shaffer, what I like for you to do is
10 submit to me within the next ten days that portion of the
11 Cochran transcript that you believe to be relevant
12 regarding Mr. Epps' testimony and any other case law that
13 you think is relevant arguments that you might find, but
14 specifically that portion of the transcript.

15 And, of course, Mr. Hunter, if you find some
16 additional case law that you think is pertinent on point
17 as to this issue, I'd be interested in that. I'll give
18 you the same ten days. And I will review it and make a
19 decision after that point.

20 MR. HUNTER: Thank you, Judge.

21 MR. SHAFFER: Thank you.

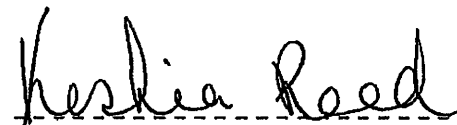
22 END OF REQUESTED TRANSCRIPT
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed pages, numbered 1 through 21, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Florence County, South Carolina, on the 2nd day of June, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 18th day of July 2018.



Keshia Reed, Court Reporter

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

CASE NO. 2013 CP-21-0925

CHAZMONTE BROWN

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant

FILED
2016 SEP 19 PM 4:23
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motion to Limit the State's Argument Based on Collateral Estoppel is GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

CERTIFIED: A TRUE COPY
Clerk of Court
C.P. & G.S.
FLORENCE COUNTY, S.C.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Goulby Hennen
Circuit Court Judge

RECEIVED
Code

9/14/16

Date

SEP 23 2016

This judgment was entered on the 19 day of Sept, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of Sept., 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Tristan M. Shaller
225 Columbia Ave.
Chapin, S.C. 29036
ATTORNEY(S) FOR THE PLAINTIFF(S)

Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211-1549
ATTORNEY(S) FOR THE DEFENDANT(S)
Connie Reel-Shearin
CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

CHAZMONTE L. BROWN,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

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

) Case No.: 2013-CP-21-0925

) **[PROPOSED] ORDER DENYING**
) **RESPONDENT'S MOTION TO DISMISS**
) **AND ORDERING A HEARING ON THE**
) **MERITS**

Applicant,

Respondent.

This matter comes to me on Respondent's Motion to Dismiss and Motion for Judgment on the Pleadings. On June 2, 2016, a hearing was convened on the State's Motion. The State is asking for summary judgment. The Court has had the opportunity to examine the following documents: the PCR Application; the State's Return and Motion to Dismiss; Applicant's response to the Conditional Order of Dismissal dated September 18, 2013; Applicant's Motion to Limit the State's Argument Based on Collateral Estoppel; Judge Russo's Order Granting PCR in the Montarrio Graham case; Montarrio Graham's trial transcript; and Latisha Cochran's trial transcript.

Based on the following, the Court denies the State's Motion for Summary Dismissal and orders an evidentiary hearing to determine the merits of Applicant's Post-Conviction Relief Application.

Standard of Review

"The [PCR] court may grant a motion by either party for summary disposition of the [PCR] application when . . . there is no genuine issue of material fact and the moving party is

entitled to judgment as a matter of law." S.C. Code Ann. § 17-27-70(c). "When considering the State's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant." McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (S.C. 2013).

Facts in the Light Most Favorable to Applicant

On November 15, 2008, William Hayes received a call from an unknown female on a blocked line. The unknown female asked if he was going out to the club that night. Later that evening Hayes was attacked and robbed by three masked men as he was leaving his home. Two of the men were armed with real firearms, and the other was armed with a toy pistol. The robbers ordered Hayes on to the ground, and one of the masked men hit him with a toy pistol. The robbers stole five hundred dollars in cash and several credit cards from Hayes. While leaving, one of the robbers fired a real pistol into the air. Around the same time that the shots were fired, neighbors saw a group of men jumping into a dark colored Toyota Camry.

After the robbery, Quentin Epps was seen using one of the stolen credit cards at Wal-Mart. Police questioned Epps who gave a statement. Epps was the owner of a dark purple Toyota Camry. Epps admitted knowing about the robbery, but he tried to deny any involvement in the robbery claiming he was merely present. Epps even denied driving the car from the scene. Epps gave the names of several people that he claimed were also involved in the robbery including Applicant. No physical evidence was ever collected linking Applicant to the crime. Epps, Applicant, and three other co-defendants were charged with armed robbery.

Prior to Applicant's trial the State offered Epps a plea deal in exchange for his testimony against the others. The State promised Epps that they would reduce his armed robbery charge to some other charge if Epps testified against Applicant and the other co-defendants. The State did not inform Epps of what his armed robbery would be reduced to. Nevertheless, Epps agreed to testify in

order to avoid a mandatory minimum ten-year sentence. The State did not disclose this deal to Applicant's Trial Counsel.

On October 18, 2010, Latisha Cochran, one of the co-defendants, proceeded to trial. Epps testified against Cochran. Epps testimony included the following:

Richardson: Mr. Epps, have you been offered anything special to testify here today?

Epps: No, Sir.

Richardson: You hadn't been offered any sort of special plea deal in order for you to testify here today; is that right?

Epps: Right.

Cochran Tr. 116, l. 23 —Tr. 117, l. 3. Cochran was convicted and sentenced to fifteen years.

On December 15, 2010, Applicant's codefendant, Montarrio Graham, was called to trial before Judge Nettles and a jury. Applicant had not been informed that Epps had a deal. Applicant had not given a statement to police and his case rested solely upon the Epps' testimony. Immediately after Mr. Epps testified in a pre-trial hearing Applicant plead guilty.

Even though Applicant pled guilty, Graham proceeded to trial. As expected, Epps testified against Graham. During Graham's trial the following exchange took place:

Richardson: Mr. Epps, you are a codefendant in this case to Montarrio Graham and three other people; is that right?

Epps: Right.

Richardson: Okay. And you are charged with armed robbery and possession of a weapon during a violent crime.

Epps: Right.

Richardson: Same as Mr. Graham?

Epps: Yes, sir.

Richardson: Have you been offered any sort to special deal or promise ---

Epps: No, sir.

Richardson: ---In order to get you to testify here today?

Epps: No, sir.

Graham Tr. 99, ll. 4-16.

During cross-examination Epps testified to the following:

Floyd: Okay. And then, of course, you're charged here for this event, right?

Epps: Yes, sir.

Floyd: Now you said earlier you had no offer for special treatment, is that right, ---

Epps: Right.

Floyd: ---from the prosecutor's office?

Epps: Right.

Floyd: But you haven't been tried yet, have you?

Epps: No, sir.

Floyd: Now what kind of time are you facing for this charge that you're charged with?

Epps: Ten years.

Floyd: To what?

Epps: The lowest is ten, max is 30.

Floyd: Thirty years; is that right?

Epps: Yes, sir.

Floyd: And that's no parole time; is that right?

Epps: Right.

Ms. Parr: Your Honor, I would object.

The Witness: Right.

Ms. Parr: Sentencing is not any privy of the jury.

The Court: I'm gonna allow him some latitude. Of course, sentencing is, Mr. Foreman, ladies and gentlemen of the jury, sentencing is something for this Court to handle. But the extent it goes to interest of bias I'm going to allow the Defense to get into that. That's not your concern other than in your evaluation of interest and bias.

Floyd: So as of today you haven't been tried for this, have you?

Epps: No, sir.

Floyd: You haven't pled guilty to it?

Epps: No, sir.

Floyd: Okay. So there's certainly nothing to prevent you from receiving a better deal after this is over, is there?

Epps: Repeat that one more time.

Floyd: Nothing to prevent you from receiving a deal after this over, is there?

Epps: No, sir.

Floyd: A specific deal?

Epps: No, sir.

Floyd: There's nothing to prevent that.

Epps: No.

Graham Tr. 116, l. 9 – Tr. 118, l. 5. Graham was convicted and sentenced to twenty-two years.

Several weeks after Graham's trial, the State reduced Epps' armed robbery charge to accessory after the fact. On January 24, 2010, Epps pled guilty to accessory after the fact and received an eighteen month sentence concurrent with a probation revocation.

Graham appealed his conviction. During the course of his appeal, Graham discovered that he Epps had falsely testified concerning his deal. Graham withdrew his appeal and filed an

application for PCR. An evidentiary hearing was convened before the Honorable Thomas Russo. Epps' trial attorney, Henry Anderson, testified that the State had offered to drop Epps' Armed Robbery to some other charge in exchange for his testimony against Applicant and the other co-defendants.

In an order dated November 2, 2012, Judge Russo granted Graham's PCR pursuant to Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959) and Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). In this order, Judge Russo specifically found that "Mr. Anderson credibly testified that the State had offered to reduce Epps's armed robbery charge in exchange for his testimony." On December 6, 2012, Graham was informed that the State would not appeal Judge Russo's decision.

Based on Applicant's response to the Conditional Order of Dismissal dated September 18, 2013, Applicant first learned of Epps's deal on November 1, 2012. It appears this was after Applicant's first PCR was already on appeal.

Applicant's PCR

Applicant filed the present action on April 8, 2013. In the present application Applicant has alleging "newly discovered evidence" and "prosecutorial misconduct." Applicant gave the following factual basis for the allegations:

- (a) I discovered in November 2012 that Brady information was not disclosed to me.
- (b) Prosecutor did not disclose my co-defendant's deal.

The State has moved for summary judgment arguing that the PCR application is successive and did not comply with the PCR statute of limitations. See S.C. Code § 17-27-45.

Prior to the hearing, Applicant moved to limit the State from arguing that Epps did not have a deal based on collateral estoppel. At the hearing counsel for Respondent informed the Court that the State would not argue that Epps did not have a deal. However, Respondent argued for summary

dismissal of Applicant's claims because PCR application is successive and did not comply with the PCR statute of limitations.

Discussion

S.C. Code 17-27-45(c) states:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

In McCoy, the Supreme Court has held the following:

A PCR application ordinarily must be filed within one year after a conviction or, if a direct appeal is taken, one year after the remittitur is sent to the trial court. S.C. Code Ann. § 17-27-45(A) (2003). However, section 17-27-45(C) provides that if a PCR applicant discovers "material facts not previously presented and heard that require[] vacation of [his] conviction or sentence," he may file a PCR application "within one year after the date of actual discovery . . . or after the date when the facts could have been ascertained by the exercise of reasonable diligence."

A PCR applicant must allege all available grounds for relief in his original application; any ground not raised in the original application may not be the basis for subsequent applications unless the court finds a ground for relief asserted which, for sufficient reason, was not raised in the original application.

McCoy, 401 S.C. at 368-369, 737 S.E.2d at 626 (S.C. 2013). Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. See Id., 401 S.C. at 369, 737 S.E.2d at 626.

Here Applicant has alleged that he was unaware of the purported Brady violation until November 2012. This was after his first PCR, case number 2011-CP-21-1171, was dismissed on June 19, 2012. Reviewing the facts in the light most favorable to Applicant, he would have not

been aware of the prosecutor withholding evidence until after his first PCR was already dismissed. This is a sufficient reason for why Applicant did not raise the Brady violation in his original PCR application. See McCoy, 401 S.C. at 370, 737 S.E.2d at 627 (S.C. 2013) (“Because Petitioner’s claim that he is entitled to the benefit of the discovery rule is not conclusively refuted by the record, the PCR judge erred by summarily dismissing Petitioner’s claim.”); see also Coates v. State, 352 S.C. 500, 574 S.E.2d 557 (S.C. 2003) (“Holding that the statute of limitations did not bar post-conviction relief when a prisoner filed within one year of learning that he was not parole eligible.”).

At the hearing on Respondent’s motion, Respondent argued that Jamison should control. This court finds Jamison does not support summary dismissal of Applicant’s Brady issue. In Jamison, the Jamison pled guilty and alleged that he later discovered an eyewitness that would support his self-defense claim; however, there is no indication that the State was aware of Jamison’s purported eyewitness. Jamison merely requested a new trial based on new information he discovered. Although the Court found “a guilty plea does not preclude post-conviction relief following a guilty plea in all circumstances, we nonetheless conclude that the traditional, five-factor newly discovered evidence test is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea.” Jamison v. State, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (S.C. 2014).

In the present case, Applicant does not ask that the Court use a traditional five-factor newly discovered evidence test. Instead, Applicant has clearly alleged that he is entitled to PCR because the prosecutor failed to disclose Brady material. Therefore, this Court finds that an evidentiary hearing is proper. See Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (S.C. 1999) (Affirming the PCR judge’s decision to set aside Gibson’s guilty plea and grant him a new trial based on the Brady violation.).

Conclusion

Based on the foregoing, the Court denies Respondent's Motion for Summary Dismissal and orders that Applicant be granted an evidentiary hearing.

AND IT IS SO ORDERED.

The Honorable Jocelyn Newman
Circuit Court Judge

Date: _____

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Chazmonte L. Brown,

Applicant,

v.

The State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2013-CP-21-0925

**ORDER GRANTING
RESPONDENT'S MOTION TO DISMISS**

FILED 28 AM 10:56
CLERK OF COURT
FLORENCE COUNTY, SC

This matter comes before the Court on Respondent's Motion to Dismiss (filed August 15, 2013) and Respondent's Motion for Judgment on the Pleadings (filed on July 11, 2014). A hearing was convened on these matters on June 2, 2016 at the Florence County Courthouse. Applicant was present and represented by Tristan Shaffer, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter, Esquire.

The Court has had the opportunity to examine the following documents: the Application for Post-Conviction Relief (PCR); the State's Return and Motion to Dismiss; Applicant's response to the Conditional Order of Dismissal (dated September 18, 2013); Applicant's Motion to Limit the State's Argument Based on Collateral Estoppel¹ (filed May 23, 2016); the Order Granting PCR in the Montarrio Graham case²; the transcript of the trial of *State of South Carolina v. Montarrio Graham*; and the transcript of the trial of *State of South Carolina v. Latisha Cochran*.³

For the reasons set forth below, Respondent's Motion to Dismiss is GRANTED.

¹ This motion was granted by Order filed September 19, 2016.

² Montarrio Graham was one of Applicant's co-defendants in the underlying criminal action. Graham filed the PCR action of *Montarrio Graham v. The State of South Carolina*, Civil Action No. 2012-CP-21-0673. His Application for PCR was granted by Order filed November 6, 2012.

³ Latisha Cochran was also one of Applicant's co-defendants in the underlying criminal action.

CERTIFIED: A TRUE COPY

Cruise Kal-Spearia
CLERK OF COURT C.P. & 688
FLORENCE COUNTY, S.C.

PRODECURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. He was indicted at the June 2009 term of the Florence County Grand Jury in indictment 2009-GS-21-00994 for Armed Robbery (Count One) and Possession of a Weapon During the Commission of a Violent Crime (Count Two). Applicant was represented on these charges by Karen Parrott, Esquire.

While out on bond for the armed robbery charge, Applicant was arrested on warrants M280283 and M272743 for Distribution of Marijuana. On December 15, 2010, Applicant pleaded guilty to Armed Robbery and two counts of Distribution of Marijuana, First Offense. The Honorable Michael G. Nettles imposed a negotiated sentence of confinement for a period of fifteen years for the armed robbery charge, with a concurrent five years for each of the marijuana charges. Applicant did not appeal his plea or sentence.

Applicant filed his first Application for PCR on May 6, 2011.⁴ In that application, he alleged he was being held unlawfully because of "Fraudulant/Illegal Warrants & indictments[.]" Charles T. Brooks, III, Esquire, represented Applicant in that action. At the hearing on this matter, Applicant also raised allegations of ineffective assistance of counsel and that his plea was involuntary. The Court denied PCR and dismissed the action by written order dated June 18, 2012, and filed June 19, 2012.

Applicant appealed the denial of his first Application for PCR. Robert M. Pachak, Esquire, of the Commission on Indigent Defense perfected Applicant's appeal with the filing of a *Johnson*⁵ petition on November 14, 2012. On February 7, 2013, the South Carolina Supreme

⁴ Civil Action No. 2011-CP-21-1171

⁵ *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988)



Court denied Applicant's petition for a writ of certiorari. The remittitur was returned to the Circuit Court on February 25, 2013 and filed on March 1, 2013.

FACTUAL BACKGROUND

On December 15, 2010, Applicant pleaded guilty to Armed Robbery and two counts of Distribution of Marijuana, First Offense. Even though Applicant pleaded guilty, one of his co-defendants, Montarrio Graham, proceeded to trial. Another co-defendant, Quentin Epps, testified at a pre-trial hearing before Applicant's plea and during Graham's trial.

When Epps testified during Graham's trial, he denied that the State of South Carolina had extended a plea offer to him. However, several weeks after Graham's trial, the State reduced Quentin Epps' armed robbery charge to the charge of accessory after the fact of an armed robbery. On January 24, 2011, Epps pleaded guilty to the reduced charge and received an eighteen month sentence, which was concurrent with a probation revocation sentence that he was to serve.

Graham was convicted at trial and subsequently appealed his conviction. During the course of his appeal, Graham discovered that Epps had falsely testified concerning his plea deal. Graham then withdrew his appeal and filed an Application for PCR on March 9, 2012.

On October 16, 2012, an evidentiary hearing was convened regarding Graham's Application for PCR. In an order dated November 2, 2012, the Court granted Graham's PCR pursuant to *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959), and *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006). In this order, the Court stated, "Mr. Anderson credibly testified that the State had offered to reduce Epps's armed robbery charge in exchange for his testimony." On December 6, 2012, Graham was informed that the State would not appeal that decision.

On April 8, 2013, Applicant filed the present action – his second Application for PCR. In this case, Applicant alleges that he is entitled to relief because of "newly discovered evidence" and "prosecutorial misconduct." Specifically, he alleges, "(a) I discovered in November 2012 that



Brady information was not disclosed to me [and] (b) Prosecutor did not disclose my co-defendant's deal." Applicant also contends that he first learned of Epps's plea deal in November 2012, after Applicant's appealed the denial of his first Application for PCR.

Respondent moved to dismiss the application, arguing that the current Application for PCR is successive and is barred by the applicable statute of limitations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of an Application for PCR, "The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." S.C. CODE ANN. § 17-27-70(c).

A. Successive Application

Successive applications for post-conviction relief are disfavored. *Land v. State*, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). Additionally,

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. CODE ANN. § 17-27-90. Accordingly, successive Applications for PCR are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). New allegations raised in a subsequent application are limited to those grounds that



“could not have been raised ... in the previous application.” *Id.* If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in a successive application. *Id.* The applicant bears the burden of showing that the allegations could not have been raised previously. *Id.*

In this case, Applicant contends that the discovery of Epps's perjured testimony regarding his plea deal constitutes "new" grounds for relief. However, that allegation could have and should have been raised in his first Application for PCR. Epps entered his guilty plea to the reduced charge – commensurate with the plea offer made by the State of South Carolina – on January 24, 2011, more than three months before Applicant requested PCR. Applicant has not met the burden of demonstrating why he did not know or, through the exercise of diligence, could not have known of these facts at the time of his first Application for PCR. Therefore, this action is barred, as it is successive, and must be dismissed.

II. Statute of Limitations

Pursuant to the Uniform Post-Conviction Procedure Act,

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. CODE ANN. § 17-27-45(a). This statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant pleaded to the relevant offenses on December 15, 2010. He was, therefore, required to file any Application for PCR no later than December 15, 2011. In the alternative, Applicant could have raised any new grounds for relief within a year of Epps's January 24, 2011 guilty plea – no later than January 24, 2012. Additionally, Applicant's other co-defendant, Graham, filed an Application for PCR application on this same issue in March 2012 – over a year



before Applicant filed his current application. Because the instant action was not filed until April 8, 2013, it was not timely filed. This action is barred by the statute of limitations and must, therefore, be dismissed.

III. Failure to State a Claim Of Newly Discovered Evidence

To obtain a new trial based on newly discovered evidence, a party must show that the evidence: (1) would probably change the result of a new trial; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. *Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)). In *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014), the Court held that while “a guilty plea does not preclude [PCR] relief following a guilty plea in all circumstances, we nonetheless conclude ... the traditional, five-factor newly discovered evidence test⁶ is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea.” *Id.* at 469, 765 S.E.2d at 129.

[W]hen a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) **the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and** (2) **the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant's guilty plea to be vacated.**

Id. at 470, 765 S.E.2d at 130 (emphasis added).

And, in the context of analyzing newly-discovered evidence for a PCR hearing, “[a]n element of ‘newly-discovered evidence’ is that the evidence could not have been discovered

⁶ As cited in *Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983).

before trial.” *Ramirez v. State*, 413 S.C. 351, 373, 776 S.E.2d 101, 113 (Ct. App. 2015). In *Ramirez*, the Court held that where PCR counsel stated at the PCR hearing that he could have secured a mental evaluation prior to the PCR hearing but did not because it was too expensive, PCR counsel was barred from asserting the mental evaluation that was done post-PCR-hearing was “newly discovered evidence.” *Id.*

At the hearing on Respondent’s Motion to Dismiss, Respondent argued that *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (S.C. 2014) should control. Here, Applicant alleges he “just discovered Brady information, relating to my co-defendant’s deal, was not disclosed[.]” As an initial matter, like the applicant in *Ramirez*, this Applicant could have discovered this information prior to his first PCR: Epps’s January 2011 plea to a lesser included charge and the sentence he received are listed on the public index, and Applicant’s other co-defendant, Graham, was able to file his own timely PCR by March 2012. Epps’s plea and Graham’s filing of his own PCR on this same issue both occurred over one year prior to Applicant having his first PCR hearing in February 2013.

Furthermore, information relating to a co-defendant’s plea offer would merely be impeachment evidence at trial. See *State v. Moore*, 337 S.C. 104, 108-09, 522 S.E.2d 354, 357 (Ct. App. 1999) (holding that “a co-defendant’s guilty plea may, in some cases, be admissible to impeach the credibility of a testifying defendant [but] are not relevant to or admissible as substantive evidence of a defendant’s guilt or innocence.”). Therefore, under the facts and circumstances of this particular case, the “interest of justice” does not require Applicant’s guilty plea to be vacated. Because Applicant has not shown this “newly discovered evidence” warrants a new PCR hearing or trial, the Court finds that summary dismissal is appropriate.

CONCLUSION

IT IS THEREFORE ORDERED that Respondent’s Motion to Dismiss is GRANTED.

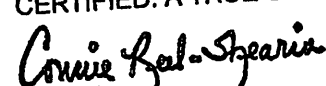
AND IT IS SO ORDERED.



The Honorable Jocelyn Newman
Circuit Court Judge

December 20, 2016
Columbia, South Carolina.

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CLERK OF COURT
C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Ghazmonte L. Brown

The State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$.
		\$
		\$

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

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

Circuit Court Judge

Judge Code

Date

CERTIFIED: A TRUE COPY

Cristie Hal-Spearin

CLERK OF COURT C.P. & G.S. Page 1
FLORENCE COUNTY, S.C.

697

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

CHAZMONTE BROWN)

Plaintiff,)

vs.)

THE STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-21-0925

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET****Plaintiff's Attorney:**

Tristan M. Shaffer, Bar No. 77565

Address:

225 Columbia Ave. Chapin, SC 29036

Phone: 803-941-7514 Fax _____

E-mail: tristan@shafferlawsc.com Other: _____

Defendant's Attorney:

Lindsey McCallister, Bar No. 79054

Address:

PO Box 11549

Columbia, SC 29211-1549

Phone: 803-794-3737 Fax _____

E-mail: lmccallister@scag.gov Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend

Estimated Time Needed: 0:30

Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**☐ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
	)	Case No.: 2013-CP-21-0925
	)	
CHAZMONTE L. BROWN,	)	MOTION TO ALTER OR AMEND
	)	
	)	
	)	
Applicant,	)	
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

On December 29, 2016, this Court dismissed the above referenced case. Applicant's Counsel received notice of this order on January 4, 2017. Pursuant to Rule 59(e), SCRCP, Applicant respectfully request that this Court alter or amend its Order of Dismissal. To Support this Motion Applicant would show the following:

1. The Court failed to adequately rule on Applicant's *Brady* claim contained in 10(b) and 11 of the Application for PCR. Applicant has alleged a *Brady* violation; therefore, summary dismissal is inappropriate. *See McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013) ("When considering the State's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant.").
2. The Court summarily found that the present case was successive, because Applicant did not raise the *Brady* violation in his first PCR. However, Applicant submits that he was unaware this fact until after his first PCR. This is a sufficient reason for why Applicant did not raise this claim in his first PCR. *See S.C. Code § 17-27-90*.

3. The Court also found that the current case was not timely filed. However, Applicant submits that he was unaware this fact until after his first PCR. S.C. Code § 17-27-45(c) ("If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence."). Therefore, the application is timely. Moreover, the State's own actions in failing to disclose the plea offer caused the delay; so, it would be inappropriate for the State to use the statute of limitations as a defense. *See Kelly v. Logan, Jolley, & Smith, L.L.P.*, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009) ("The defendant is estopped from benefitting from the statute of limitations as a defense because the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action.").
4. Applicant respectfully submits that the Court's analysis of newly discovered evidence under *Hayden v. State* is inapposite to his *Brady* claims. *See Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006) ("If a Brady violation is found to have occurred, PCR must be granted.").

Based on the foregoing, Applicant respectfully request that the Court alter or amend its order dismissing the above referenced case.



Tristan M. Shaffer (S.C. Bar #77565)
225 Columbia Ave.
Chapin, SC 29036
(803) 941-7514
tristan@shafferlawsc.com

Date: 1/10/17

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
CHAZMONTE L. BROWN,)
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2013-CP-21-0925

**RETURN TO MOTION TO ALTER OR
AMEND PURSUANT TO RULE 59(e), SCRCP**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 8, 2013. Respondent made its return and motion to dismiss on August 15, 2013.

The Order Granting Respondent's Motion to Dismiss was filed on December 28, 2016. Applicant mailed his motion to reconsider on or about January 17, 2017, and Respondent received it on or about January 19, 2017. Counsel insists the Motion was mailed to the clerk for filing on the same day; however, as of February 6, 2017, the public index still does not show this Motion as being filed. This Return follows.

I. ARGUMENT

Procedural

Applicant's counsel has informed Respondent he mailed the Motion to Reconsider to the Clerk of Court at the same time that he mailed it to Respondent. However, the public index does not reflect the Motion has been filed. Pursuant to Rule 59, a motion pursuant to this rule must be served on the opposing party ten days after receipt of written notice of the entry of the order. SCRCP 59(e). Subsection (g) also requires the "party filing a written motion under this rule shall

provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” Rule 5(d) states that all papers required to be served upon a party **shall be filed** with the court **within five days after the service** thereof. If there is a “failure of a party to file . . . motions . . . the court may permit filing or proceed as though the same had not been served.” SCRCP 5(d). As of February 6, 2017, the public index does not reflect the Motion has been filed with the Clerk of Court. Respondent moves the Court to require filing of the Motion or deny the Motion for failure to comply with the Rules of Civil Procedure.

Merits

Applicant argues the Court did not properly address his Brady violation argument and says it is an allegation that cannot be dismissed without a hearing. Further, Applicant argues that because he did not know about the Brady violation at the time of his first PCR hearing, there is a sufficient reason why his second application should not be considered successive or untimely. Finally, Applicant argues the Court’s analysis of newly discovered evidence is “inapposite” to his Brady claim.

Applicant has failed to set forth any sufficient reasons to persuade this Court to alter or amend the final order. Applicant is merely asking the Court to reverse its decision and deny Respondent’s motion to dismiss. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). The Court considered and addressed Applicant’s claim that he did not know about the Brady violation until after his first PCR hearing. See Order dated Dec. 28, 2016, pp. 5, 7. Applicant cites no case law for the proposition that Brady violation allegations are exempt from

the statute of limitations and the bar that prevents successive applications on issues Applicant knew **or should have known about** prior to his first PCR hearing.

Applicant has not set forth any sufficient grounds to persuade this Court to alter or amend the judgment.

Respondent submits oral argument would not aid in the reconsideration of the original judgment as the Order of Dismissal in this case fully comports with the requirements of Rule 52(a), SCRCP.

CONCLUSION

WHEREFORE, having made its Return to Applicant's Rule 59(e) Motion to Reconsider, Respondent requests that the motion be denied and dismissed.

Respectfully submitted,

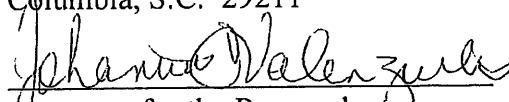
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

Columbia, South Carolina
6 Feb., 2017

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

CHAZMONTE L. BROWN, #334443)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2013-CP-21-925

AFFIDAVIT OF SERVICE BY MAIL

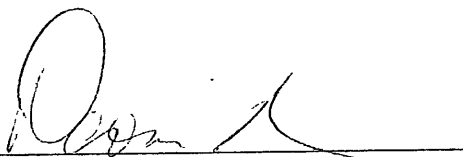
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2017 FEB -8 PM 1:29
DOCKING CLERK'S OFFICE
FLORENCE COUNTY, SC

CERTIFIED TRUE COPY
J. M. M. M.
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan Michael Shaffer, Esquire
Shaffer Law Firm
PO Box 1161
Irmo, SC 29063

DATED this the 6th day of February, 2017.


Deonna Rogers, Legal Assistant
For Respondent

CASE NO. 2013- CP-21-0925

CHAZMONTE BROWN

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Applicant's Motion to Alter or Amend is GRANTED. Respondent shall schedule an evidentiary hearing, which is limited in scope to Applicant's allegations of a Brady violation, at the next available term of court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

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

Circuit Court Judge

2757

Judge Code

April 20, 2017

Date

CERTIFIED A TRUE COPY
Clerk of Court C.P. & G.S.
Florence County, S.C.
2013 APR 24

This judgment was entered on April 24, 2017, and a copy mailed first class or placed in the appropriate attorney's box on April 23, 2017, to attorneys of record or to parties (when appearing pro se) as follows: **706**

Tristan Michael Shaffer 225 Columbia Ave. Chapin, SC
29036

Lindsey Ann McCallister PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	2013-CP-21-925
	)	
	)	
Chazmonte Brown	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	)
<u>DEFENDANT</u>	)	August 30, 2017

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

TRISTAN M. SHAFFER, ESQ.
Attorney for the Applicant

LINDSEY A. MCCALLISTER, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Karen Parrott				
4	Mr. Shaffter	8		24	
5	Mrs. McCallister		18		28
6					
7	Chazmonte Brown				
8	Mr. Shaffer	31			
9					
10	David Richardson				
11	Mrs. McCallister	36			
12	Mr. Shaffer		40		
13					
14	Hank Anderson				
15	Mr. Shaffer	51		55	
16	Mr. McCallister		53		
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18	Certificate of Reporter	92			
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	Court Papers		10
S-1	Transcript of Latisha Cochran		57

1 THE COURT: All right.

2 MRS. MCCALLISTER: May it please the Court, Your
3 Honor.

4 THE COURT: Yes, ma'am.

5 MRS. MCCALLISTER: This is Chazmonte Brown vs.
6 The State of South Carolina 2013-CP-21-0925. Your Honor,
7 Mr. Brown was indicted in June of 2009 by the Florence
8 County grand jury for armed robbery and possession of a
9 weapon during the commission of a violent crime. He was
10 represented on those charges by Karen Parrott. While he
11 was out on bond for those charge, he was also arrested for
12 two counts of distribution of marijuana. Ms. Parrott
13 represented him on those charges as well. On December
14 15th 2010, he pled guilty to the armed robbery and the two
15 marijuana offenses. Judge Nettles imposed a negotiated
16 sentence of 15 years for the armed robbery charge. I
17 think a concurrent five years for each marijuana charge.
18 He did not appeal his plea or the sentences.

19 Your Honor, Mr. Brown filed a first application
20 for post-conviction relief on May 6, 2010 (sic). He was
21 represented at that PCR hearing by Charles Brooks. An
22 evidentiary hearing was held in front of Judge Seals on
23 February 3rd 2013. Judge Seals ultimately denied and
24 dismissed his application by written order -- I'm sorry I
25 said that wrong February 3rd, the hearing was held

1 February 3rd 2012. And then Judge Seals denied and
2 dismissed that first PCR application by written order
3 filed on June 19th 2012. He did appeal the denial of that
4 first PCR and he was represented by indigent defense on
5 that appeal. The Supreme Court denied his petition for
6 writ of certiorari and a remitter was returned on
7 February 25th 2013. This is his second application for
8 post-conviction relief which he filed on April 8th 2013.
9 He is alleging newly discovered evidence, that information
10 about a co-defendant -- the prosecutor did not disclose my
11 co-defendant's deal is his allegation in this case.

12 Your Honor, we have had several motions filed.
13 The State filed a motion to dismiss, which was originally
14 granted. Mr. Shaffer filed a 59(e). And as a result of
15 that 59(e), Judge Newman I believe ordered -- Jocelyn
16 Newman ordered us to have a hearing on that one issue here
17 today, so that's why it was set on the docket. And if
18 I've missed anything about the procedural history, I'm
19 sure Mr. Shaffer will correct me. He represents Mr. Brown
20 and they're both here in the courtroom today.

21 THE COURT: All right, Mr. Shaffer.

22 MR. SHAFFER: Thank you, Your Honor.

23 Essentially, this is a companion case to the Montarrio
24 Graham case. Mr. Brown and Mr. Graham were co-defendants
25 in a case. They actually started the trial together.

1 Mr. Brown decided to plead guilty during the trial and
2 Mr. Graham proceeded through to a verdict. Mr. Graham
3 filed an appeal. During the pendency of his appeal ---

4 THE COURT: Graham was convicted I assume and
5 then he appealed the conviction?

6 MR. SHAFFER: Yes, Your Honor, he did. And
7 during the pendency of the appeal, facts came to light to
8 Mr. Brown that there was a deal with a co-defendant Epps,
9 which was the basically sole purpose of placing my client
10 and Mr. Graham at the scene. Mr. Graham actually
11 dismissed his appeal and proceeded forward with a PCR
12 application that was actually heard by you, Your Honor.
13 This is merely coincidence. We didn't try to bring it
14 back in front of you. We were trying not to bring it back
15 to you, but it's coincidence it happened. But in 2012 you
16 granted the application for PCR based off of the failure
17 to disclose the information and the failure to correct
18 testimony. I provided the Court with a copy of
19 Mr. Graham's PCR order, which is the order the Court
20 signed in that case. I would ask that that be a made
21 court's exhibit in this case as well or perhaps an exhibit
22 from the applicant.

23 Your Honor, we had a -- as a result of
24 Mr. Graham getting his PCR granted, Mr. Brown discovered
25 that the -- this had happened, so it came to light. And

1 at that point Mr. Brown had already filed a PCR and had
2 already been denied. So he filed a second PCR application
3 at that point, which is the application we're hearing
4 today.

5 This case was originally -- the State moved to
6 dismiss siding among other things the statute of
7 limitations and move for summary judgment on it. That
8 motion, the argument of that motion was heard by Judge
9 Jocelyn Newman I think June of last year. Along with
10 that, I also filed a motion for -- to stop the State from
11 alleging basically that there wasn't a deal in place and
12 essentially that -- well, basically that there wasn't a
13 deal in place with Quinton Epps.

14 The attorney general at the time the assistant
15 attorney general handling it was, I think, Mr. Hunter and
16 he actually said that he wasn't opposing that motion.
17 Judge Newman subsequent to that filed a Form 4 order,
18 which would have been around August of last year granting
19 my motion for collateral estoppel to say essentially that
20 they're not going to argue that this deal was not in place
21 at the time of the trial.

22 Judge Newman then as the attorney general
23 mentioned granted their motion for summary judgment. Then
24 I filed a 59(e) basically arguing essentially
25 reconsideration of it citing a bunch of case law to

1 reconsider it. And Judge Newman then granted this
2 hearing. I guess we are here today on the issue of
3 whether or not -- not necessarily whether or not this deal
4 occurred, but whether or not it was disclosed and whether
5 or not it would have been material and a Brady violation.
6 Assuming that, I'll go ahead and call Karen Parrott.

7 THE COURT: All right. Ms. Parrott if you come
8 around to be sworn, ma'am.

9 THE CLERK: Do you swear to tell the truth, the
10 whole truth, and nothing but the truth so help you God?

11 THE WITNESS: I do.

12 WHEREUPON,

13 Karen Parrott,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHAFFER:

17 Q Ms. Parrott, I apologize for mispronouncing your
18 name. I know we met probably a dozen times or more. I
19 originally got to know you from the transcript. So
20 obviously I was mispronouncing based off of that, so I
21 apologize.

22 A No problem.

23 Q You represented Montarrio Graham -- I mean Chazmonte
24 Brown in this case, correct?

25 A Yes.

1 Q And he was co-defendants with Montarrio Graham,
2 Quinton Epps, a man name Mr. Bush and a female name Ms.
3 Cochran, correct?

4 A Yes.

5 Q Okay. Tell us generally about the allegations of the
6 case?

7 A It's actually been a long time. It was an arm
8 robbery down in Lake City of a gentleman at a little
9 corner store as I recall.

10 Q Okay. And the evidence against Mr. Brown in this
11 case was essentially Mr. Epps' testimony; is that correct?

12 A Quite honestly, I haven't reviewed that to go back
13 over those -- over the status of all that, but as I
14 recall, yes. I mean, it was more than that. Law
15 enforcement also was going to testify at the trial as well
16 as Mr. Epps.

17 Q Did law enforcement have any statement directly from
18 Mr. Brown in this case?

19 A I don't recall. I'm sorry.

20 Q It's okay. What I'm going to do is actually hand you
21 what's -- I believe it's marked as a court's exhibit, is
22 that correct, the order from the Montarrio Graham case?

23 THE COURT: You send that to me in this e-mail?

24 MR. SHAFFER: Yes, Your Honor.

25 THE COURT: I got a testimony of Ms. Epps. I

1 got a transcript and I got a motion and an order.

2 MR. SHAFFER: I might not have attached it.

3 THE COURT: This is an order granting the
4 post-conviction relief to Mr. Graham.

5 MR. SHAFFER: Yes, Your Honor. That's what I
6 would like marked as a court's exhibit in this case.

7 THE COURT: That order?

8 MR. SHAFFER: Yes, Your Honor. It's already in
9 the record at some point. I know that it was probably
10 attached to the motion for collateral estoppel.

11 THE COURT: You wouldn't have a hard copy of
12 that, would you?

13 MR. SHAFFER: Yes, sir, I do.

14 THE COURT: Okay, cause I got it on my iPad, I
15 don't have a hard copy.

16 MR. SHAFFER: I understand.

17 THE COURT: If you let her mark that, that would
18 be great. That's the order granting the PCR for Mr.
19 Graham, right?

20 MR. SHAFFER: That's correct, Your Honor.

21 (WHEREUPON, Court's Exhibit No. 1 was marked for
22 the record.)

23 BY MR. SHAFFER:

24 Q Ms. Parrott.

25 A Yes, sir.

1 Q If you wouldn't mind and I'm turning to page two of
2 Court's Exhibit 1. This is not a document that you
3 probably seen before, but what I would like you to do is
4 read under the finding of facts the first couple of
5 paragraphs and see if that might refresh your recollection
6 to some degree about the facts of the case?

7 A And in the interim I was actually reviewing the
8 incident report on this matter, so I can amend the answers
9 that I've given previously as well.

10 Q Okay.

11 A There were actually further witnesses that were
12 available that would have been testifying including
13 Quinton Epps girlfriend as well as a Rodriguez Russell, a
14 Marshanette Graham. So there were further witnesses that
15 were possibly available and that would have possibly been
16 called to trial besides Mr. Epps against Mr. Graham,
17 Mr. Brown and anyone -- and Ms. Cochran actually went to
18 trial and was convicted as well. But regarding this
19 finding of fact... Right, yeah, that's what I was just
20 reading. Okay, what can I help you with?

21 Q Okay. You said that there were other witnesses that
22 possibly that could have been called to trial. Do you
23 recall whether any of those witnesses would have
24 identified Mr. Brown as being involved in the robbery?

25 A In the incident report, it says a Rodriguez Russell

1 of 523 Lassi Street this witness observed the listed
2 individuals jump into a dark purple Toyota Camry.

3 Q You recall whether or not that individual was present
4 to testify at trial?

5 A No, I don't recall because Mr. Brown as soon as the
6 trial started pled.

7 Q Do you recall whether that individual identified any
8 of these -- or do you recall whether that individual knew
9 Mr. Brown?

10 A No, I don't recall.

11 Q Just suspects?

12 A No, I don't recall.

13 Q Okay. Do you recall whether -- well, I guess,
14 Ms. Cochran is a co-defendant you mentioned, right?

15 A Right.

16 Q Ms. Cochran went to trial before these individuals,
17 correct?

18 A Yes.

19 Q Okay. Did -- do you recall whether or not Ms.
20 Cochran actually testified -- whether any of those
21 individuals identified my client during the --
22 Ms. Cochran's testimony at trial.

23 A I don't recall.

24 Q Okay.

25 A I wasn't part of her trial.

1 Q Okay. So if I was to say that none of those
2 individuals could actually place Mr. Brown at the scene,
3 would you be able ---

4 MRS. MCCALLISTER: Your Honor, I would object --

5 THE COURT: Hold on.

6 MRS. MCCALLISTER: --- to Mr. Shaffer is
7 testifying at this point.

8 THE COURT: I mean ---

9 MRS. MCCALLISTER: I think, he's got to ask a
10 question and he's got to rephrase it in a way that's
11 not...

12 MR. SHAFFER: I'm fine with rephrasing.

13 THE COURT: Sustained.

14 BY MR. SHAFFER:

15 Q Ms. Parrott, can you point to anything in your
16 discovery that indicates that an individual other than
17 Quinton Epps would have identified Mr. Brown as being a
18 participant in the robbery?

19 A Mr. Epps did testify against Mr. Graham and was going
20 to testify. Law enforcement was going to testify about what
21 they found as part of their investigation. They were
22 going to have the witnesses that were there. They were
23 going to have the car that was involved that was linked to
24 Mr. Epps. Mr. Cochran had already been convicted. I do
25 not know whether or not she would come back and testify.

1 Of course, now the State has that ability to call somebody
2 back and give them some sort of credit against whatever
3 sentence they have. So regarding all of that, it's at
4 least all of that information.

5 Q But did any of that information you just listed link
6 back to Mr. Brown.

7 A Yes, Mr. Epps was putting Mr. Brown there. I mean,
8 they were five individuals. These are the people that
9 were named.

10 Q Okay. Can you show me a statement where any of these
11 individuals identified that Mr. Brown had said Mr. Brown
12 was part of that robbery other than Mr. Epps.

13 A Perhaps I'm misunderstanding, but is this related to
14 whether or not he had something against Mr. Epps because
15 that's what I understood we were here for because all of
16 this has already been litigated.

17 Q Well, what I'm asking is basically this, I'm trying
18 to establish that the State had absolutely nothing to
19 identify Mr. Brown as part of the robbery other than
20 Mr. Epps because Epps there was no physical evidence, am I
21 correct in saying that?

22 A No, not that I know of.

23 Q And there was no witness saying Mr. Brown ---

24 A But Mr. Epps didn't disclose this deal and it wasn't
25 disclosed during the trial either. Well, I understand

1 because I'm getting all of this as third hand and hearsay.

2 Q Okay. But for you you never knew about the deal
3 before trial, right?

4 A No. Didn't know about it before the trial. Did not
5 know it as the trial began. Did not find out about it
6 once the trial was concluded and Mr. Graham had been found
7 guilty. Did not find out about it until much later.

8 Q Okay. Well, do you recall why Mr. Brown decided to
9 plead guilty?

10 A Because of the decision that he did not want to go to
11 trial and he had this arm robbery charge as well as the
12 two drug charges that were against him and actually they
13 dropped a proximity charge in exchange for his plea as
14 well. And it was a negotiated sentence on all of it.

15 Q Now, initially -- and, I think, I know the answer to
16 this because the trial got started, but ---

17 MRS. MCCALLISTER: Objection, Your Honor, he's
18 testifying.

19 THE COURT: Sustain. Go ahead with your
20 question.

21 BY MR. SHAFFER:

22 Q Did Mr. Brown on the day that the trial start wanted
23 to go to trial?

24 A As it started, yes.

25 Q At what point did he change his mind, do you recall?

1 A I think during the jury selection. I can't remember
2 if the jury had actually been picked or if it was during
3 selection.

4 Q Okay. Do you recall giving an opening statement in
5 this case?

6 A No, I did not.

7 Q It's been a long time since this case has happened,
8 correct?

9 A Yes.

10 Q You don't you recall everything that happened,
11 correct?

12 A Correct.

13 Q Are you certain that there was no -- that they didn't
14 disclose that deal to you?

15 A No, I know that.

16 MR. SHAFFER: Court's indulgence.

17 THE COURT: Yes, sir.

18 BY MR. SHAFFER:

19 Q Now, I'm going to show you page 54 of the transcript
20 from the -- 54 of the transcript from a Monterio Graham
21 and Quinton Epps trial.

22 A Okay.

23 Q Does that appear to be an opening statement by you?

24 A Oh, okay.

25 Q I understand it's been a long time?

1 A It was December of 2010, so my apology.

2 Q Okay. So it's safe to say that sometime after that
3 opening statement, Mr. Brown decided to plead guilty soon
4 after that, right?

5 A As I said I recall him deciding or at least talking
6 about it and discussing it with me as we were during the
7 jury selection. I can't remember if it was during jury
8 selection. I obviously said I wasn't sure whether or not
9 it happened after the jury, but if I gave an opening
10 statement then, you know, I was either told we needed to
11 go forward to at least that point or whatever. But it is
12 at that point he is discussing it with me.

13 Q Okay. But he didn't actually accept the plea after
14 opening statement, correct?

15 A I'm sorry. I don't understand your question.

16 Q Mr. Graham didn't actually plead guilty until after
17 the opening statement?

18 THE COURT: You talking about Mr. Brown.

19 MR. SHAFFER: I apologize Mr. Brown correct,
20 Your Honor.

21 BY MR. SHAFFER:

22 Q Mr. Brown did not plead guilty until after opening
23 statement?

24 A Right.

25 Q Okay.

1 MR. SHAFFER: No further questions.

2 THE COURT: Cross.

3 MRS. MCCALLISTER: Yes, Your Honor. Thank you.

4 CROSS-EXAMINATION

5 BY MRS. MCCALLISTER:

6 Q Is it common in your experiences as a public defender
7 to have co-defendants who decide to testify against
8 another co-defendant?

9 A Yes.

10 Q Have you encountered that situation in your cases
11 before?

12 A Yes.

13 Q How many times would you say?

14 A I have absolutely no idea.

15 Q Dozens, hundreds?

16 A Yes, I mean, I been doing this for 14 years now.

17 Q Okay. How long have you practiced in Florence County
18 in criminal court?

19 A Fourteen years.

20 Q Okay. So when you have a co-defendant who testifies
21 against another co-defendant, what is your usual feeling
22 about that or thoughts about that?

23 A Well, I mean, they're usually offered a deal in order
24 to testify, but the question becomes for everyone involved
25 what kind of a deal is being made for their testimony.

1 And so the way that they usually go about this here in
2 this circuit, that's the only thing I can testify to, is
3 that they will tell them because I've had people testify
4 against others as well, they will tell them that I will
5 help you on the other end of this, but they don't make
6 them a specific deal because they don't want to have
7 specific numbers available for cross-examination and used
8 for impeachment or bias that sort of thing. So it is a
9 promise basically to help them because -- for the State to
10 help them because they are helping the State, but it is
11 not something so specific as if you get me this
12 conviction, I will get you ten years off of your sentence.
13 They're not going to give me that.

14 Q And your understanding of the agreement that was made
15 with Mr. Epps was it a specific agreement or is it like
16 you're talking about like you just described?

17 A And, again, I have this from third-hand knowledge. I
18 don't have that from direct knowledge.

19 Q Okay.

20 A But with that said as I understand it, I think it was
21 the normal thing.

22 Q Okay. So going into this trial with Mr. Brown, you
23 get there and you see that Mr. Epps is prepared to testify
24 against him correct or did you know that he was going to
25 testify ahead of time or did you find out that day?

1 A We knew that he was going to be testifying and I
2 believe he would have been disclosed as part of the
3 witness list.

4 Q Okay. So you at least knew that you had a
5 co-defendant who was going to testify against him ahead of
6 time?

7 A Yes.

8 Q And did you discuss that with Mr. Brown the fact that
9 Mr. Epps would be testifying against him?

10 A I would have, yes.

11 Q Before the morning of the trial?

12 A Yes.

13 Q Okay. And you would know then in that situation
14 based on your testimony that Mr. Epps likely had some kind
15 of I'll help you out at the end of this agreement; is that
16 correct? You would have known that?

17 A That would have -- yes, that would have ---

18 Q Or you would have assumed that based on your previous
19 experience?

20 A Right.

21 Q Okay. And would have cross-examined Mr. Epps on that
22 issue?

23 A Yes.

24 Q Okay. Did you discuss with Mr. Brown the fact that
25 if a co-defendant was testifying against him that they

1 possibly were doing so because they thought they could get
2 some help?

3 A I can't recall specifically, but I'm sure -- I mean,
4 that's part of the normal conversation when you have this
5 situation. So, I mean, by that I would assume that I did.
6 I'm almost positive I did, but I can't remember a specific
7 conversation.

8 Q Okay. So you and Mr. Brown then get to trial that
9 morning. You're going through jury selection and he's
10 talking to you about maybe I want to take a deal; is that
11 right?

12 A Yes.

13 Q Okay. And at some point you must have taken a break
14 I assume from the trial; is that correct?

15 A Yes.

16 Q And you went and talk to the Solicitor about him
17 taking a plea and what that might look like; is that
18 correct?

19 A I actually have a memory of like trying to talk to
20 them from my table to their table, so while we were
21 getting the case started. I mean, that's what I'm saying
22 there's some sort of general memory of me trying to do
23 that while the case was getting started, that's why I
24 can't remember if it happened -- if he was talking to me
25 specifically when we were talking about jury qualification

1 or picking the jury, but I know -- I mean, I've got that
2 memory of it was happening across the courtroom.

3 Q Okay. And so at -- somehow you must have been able
4 to come up with an agreement for him to plead guilty?

5 A Right.

6 Q Okay. And did you talk to him about that decision?

7 A I would have had to.

8 Q Do you recall what kind of advice you gave him about
9 that?

10 A I mean, it was a negotiated deal, so, I mean, at that
11 point when it's a negotiated like this, I've gotten the
12 best deal that I'm going to get and it's his decision to
13 decide whether or not he wants to take it and he took it.

14 Q Okay. If you had known for sure that Mr. Epps had an
15 agreement about, you know, getting some help on his
16 charges or whatever after his testimony, would that have
17 changed your advice to Mr. Brown in any way?

18 A No, because I would have been assuming that he had a
19 deal to begin with.

20 Q Okay. And the plea that Mr. Brown ultimately
21 accepted was, I think, you said negotiated for 15 years;
22 is that correct?

23 A That's correct.

24 Q On the armed robbery and two of his drug charges; is
25 that correct?

1 A Yes.

2 Q Concurrent sentences on the drug charges?

3 A Yes.

4 Q And there was one -- at least one drug charge that
5 was dismissed?

6 A Yes.

7 Q Okay. Do you recall what the charge was that was
8 dismissed?

9 A Proximity or possession with intent to distribute or
10 distribution within proximity.

11 Q Distribution within proximity?

12 A Of a park, yes, or school or -- it's that whole
13 statute.

14 Q Okay.

15 A And actually I believe there were two of those.

16 Q There were two?

17 A Yes.

18 Q You believe they were dismissed?

19 A Yes.

20 Q Okay. So he pled on armed robbery, two possessions
21 charges, but the distribution with proximities were
22 dismissed?

23 A Right.

24 Q Okay.

25 MRS. MCCALLISTER: That's all I have, Your

1 Honor.

2 THE COURT: Redirect.

3 MR. SHAFFER: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. SHAFFER:

6 Q So you're saying you thought he had a deal -- he
7 being Mr. Epps had beforehand, before this trial, before
8 the plea?

9 A I would have thought that he would have had a promise
10 to get some help.

11 Q Okay. So but that promise wasn't disclosed to you,
12 correct?

13 A I don't recall, but, I mean, it's whenever somebody
14 -- a person is not going to testify against a co-defendant
15 without getting some help.

16 Q Okay. That was disclosed to you much later, right?

17 A The actual deal that was made?

18 Q Yeah.

19 A Yeah, that wasn't until years later as far as I know.

20 Q Okay. Is that what you meant by -- well, I'll ask
21 you this what do you mean by it would have been like the
22 normal deal?

23 A Exactly what I've said. It would have been the
24 normal deal that that person is going to get some help if
25 you help me, but I'm not going to give you a specific

1 number and I'm not going to give you a specific charge
2 that I'm going to take it to. I'm not going to give you
3 any specific thing because they don't want to give the
4 other attorney on the defense side the ability to go for
5 that specific amount of questioning or that specific bias.

6 Q Okay. Normally, when that's made in your experience,
7 how does the cooperating co-defendant testify about
8 whether or not he had a deal?

9 A I mean, that kind of depends on the person, but, I
10 mean, it's just that they've offered to help me or that,
11 you know...

12 Q So normally they would say they offered to help me?

13 MRS. MCCALLISTER: Your Honor, I object. I
14 don't think she can answer that question how someone else
15 would testify.

16 MR. SHAFFER: Well, Your Honor, may I rephrase
17 that?

18 THE COURT: Yes, rephrase please.

19 BY MR. SHAFFER:

20 Q Okay. In your experience, you said that this has
21 happened a lot in your experience and this is normal
22 course of when co-defendant's testify. In your experience
23 whenever they testify at trial -- well, let me ask you
24 this first, have you ever been on the -- have you ever
25 represented the testifying co-defendant?

1 A Yes.

2 Q Okay. Is the testifying co-defendant told to testify
3 a certain way regarding whether or not they had a deal?

4 A No.

5 Q Okay. So it will be up to the co-defendant, right?

6 A Again, I'm sorry. What exactly is your question?

7 Q Basically be up to the co-defendant to disclose it as
8 to whether or not they had a deal or not? What the
9 promise was? So the Solicitor's office says we promise to
10 help you out in some way, right?

11 A Yes.

12 Q Okay. And then they say we're not going be specific
13 about how we're going to help you out, but we're going to
14 help you out, correct?

15 A Right.

16 Q Okay. And then at that point they -- the testifying
17 co-defendant gets up on the stand, correct?

18 A Yes.

19 Q Okay. And in your experience is it a common practice
20 for the attorney to ask whether or not you had been made
21 any promises?

22 A Yes.

23 Q Okay. And in your experience is it a common practice
24 for the co-defendant to get up there and say I haven't
25 been made any promises?

1 A No.

2 Q That doesn't happen very often?

3 A No, they would say, you know, they've offered to help
4 me or whatever and then the next question is usually,
5 well, why are you doing this and it's because this is the
6 truth. This is honest. This is what happened.

7 Q Okay. Were you present for the trial of the
8 co-defendant Ms. Cochran? Did you sit for any of it?

9 A No.

10 Q Do you have a copy of the transcript from that trial?

11 MRS. MCCALLISTER: Your Honor, I don't think I
12 asked anything about the Ms. Cochran trial in my cross. I
13 think he's getting beyond the scope of what I've asked
14 her.

15 THE COURT: I think you are.

16 MR. SHAFFER: Okay.

17 THE COURT: Sustained.

18 BY MR. SHAFFER:

19 Q Do you have any idea how Mr. Epps was planning on
20 responding to a question whether he had a deal?

21 MRS. MCCALLISTER: Your Honor, objection. I
22 don't think she can answer what ---

23 THE COURT: She can if she knows, but she can
24 say, no, I don't know. She can't guess.

25 A No, I do not know.

1 MR. SHAFFER: No further questions.

2 THE COURT: Anything further of this witness?

3 MRS. MCCALLISTER: Your Honor, just very
4 briefly.

5 THE COURT: Okay.

6 RECROSS-EXAMINATION

7 BY MRS. MCCALLISTER:

8 Q I just want to clarify. Your understanding you
9 testified what the normal agreement is we'll help you out
10 if you help us out. And your understanding was Mr. Epps
11 probably most likely had that deal because that's why
12 co-defendant's testify?

13 A Yes.

14 Q Okay. And your understanding of what you said years
15 later you found out that there definitely was an
16 agreement. I want to clarify your understanding of that
17 agreement was I'll help you out if you help me out; is
18 that correct?

19 A I'm not sure about that. I really -- because
20 unfortunately again everything I have on that is third
21 hand, so I'm not sure exactly what the deal was at that
22 point.

23 Q Okay. I think you said earlier that your advice to
24 Mr. Brown about the plea agreement would have not changed
25 even if you knew 100 percent sure that Mr. Epps had an

1 agreement?

2 A No, because as his attorney, I would still have had
3 the opportunity to go after Mr. Epps again just as
4 apparently was done by talking about whatever bias you may
5 have by testifying to what kind of deal he may have been
6 made.

7 MRS. MCCALLISTER: Thank you.

8 MR. SHAFFER: Your Honor, is there anyway I can
9 ask one follow up question?

10 THE COURT: There is many ways. Go ahead.

11 MR. SHAFFER: Thank you.

12 FURTHER EXAMINATION

13 BY MR. SHAFFER:

14 Q Is it the standard practice for them to not disclose
15 for the Solicitor's office to not tell you that they're
16 going to help them out in some way? You said you
17 understood that they were going to help him out in some
18 way, but is it -- do they generally tell you that or not?

19 A Honestly, they don't have to tell me that at this
20 point.

21 Q Okay. You just know?

22 A Yeah. I mean, a person is not going to get on the
23 stand and testify against their co-defendants without
24 there being some sort of offer of help. It just doesn't
25 happen.

1 Q Okay. But do you recall any case where you ever got
2 a letter saying we're going to help them out, but we're
3 not going to be specific about what it is?

4 A Got a letter, no.

5 Q Okay. Have you ever had a Solicitor come up to you
6 say, hey, we're going to help this co-defendant against --
7 testify against -- we're going to help them out in
8 exchange for their testimony, but we're not going to tell
9 you how?

10 A No, they just basically say this person's going to
11 testify against your co-defendant. And, you know, because
12 they're saying they're going to testify against your
13 person -- not co-defendant, but they're going to testify
14 against your person you know that person is getting some
15 sort of help.

16 MR. SHAFFER: Okay. No further questions.

17 THE COURT: All right. Anything further of this
18 witness?

19 MRS. MCCALLISTER: No, Your Honor, not from the
20 State.

21 THE COURT: All right. Thank you, ma'am. You
22 may step down.

23 (WHEREUPON, the witness leaves the witness
24 stand.)

25 THE COURT: Any objection to Ms. Parrott being

1 excused? I'm sure she got business upstairs.

2 MR. SHAFFER: No, objection.

3 MRS. MCCALLISTER: No, Your Honor.

4 MR. SHAFFER: We call Mr. Brown.

5 THE COURT: Mr. Brown, sir, if you would please
6 come around to be sworn. And as you come around, if you
7 would stop here at the corner and be placed under oath,
8 sir.

9 THE CLERK: Place your left hand on the Bible
10 and raise your right hand best you can. Do you swear to
11 tell the truth, the whole truth, and nothing but the truth
12 so help you God?

13 THE WITNESS: Yes, ma'am.

14 WHEREUPON,

15 Chazmonte Brown,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SHAFFER:

19 Q Okay. Mr. Brown, where are you currently house?

20 A At Evans facility.

21 Q Okay. You're at Evans?

22 A Yes, sir.

23 Q And what kind of sentence are you doing?

24 A 15, 85 violent.

25 Q And what is your projected release date at this

1 point?

2 A September the 22nd 2022.

3 Q Okay. And it's fair to say that I've informed you
4 that if we win your PCR, it doesn't mean the charges go
5 away, right?

6 A Yes, sir.

7 Q You could actually face trial again, correct?

8 A Yes, sir.

9 Q Okay. Do you still want to proceed forward on your
10 PCR?

11 A Yes, sir.

12 Q Okay. The day of trial were you planning on going to
13 trial?

14 A Yes, sir.

15 Q At what point did you change your mind about going to
16 trial?

17 A When she advise me that Quinton Epps was going to
18 take the stand against me and another federal inmate that
19 was currently in the county.

20 Q Okay. What was the other federal inmate?

21 A He had nothing to do with the case either just was an
22 inmate in the county that, I guess, they coerced to bring
23 up there to testify against me.

24 Q Okay. Do you know what he would have testified to?

25 A No, sir.

1 Q Okay. Do you have any idea whether he would have
2 identified you as being somebody involved in the robbery?

3 A No, sir, he wasn't anybody that I know period.

4 Q Okay. So when you found out that Mr. Epps was going
5 to testify against you, you decided to plead guilty,
6 correct?

7 A Yes, sir.

8 Q Why did you decide to plead guilty based off of
9 Mr. Epps' testimony?

10 A Because I know he was going to get up there and
11 fabricate about the case and they already had -- he had
12 already went up there and fabricate on the other case
13 before mine, which was Latisha Cochran.

14 Q Okay. Why did that change your mind whenever he
15 actually showed up, did you think he wasn't going to show
16 up? Is that yes?

17 A Yes, sir.

18 Q So prior to trial, you didn't think he was going to
19 be there?

20 A Yes, sir.

21 Q Okay. Had you known that he had been offered a deal
22 -- well, first of all this, did you ever find out prior to
23 I think 2012 that Mr. Epps had a deal prior to showing up
24 that day?

25 A I didn't find out until that I think 2012 that he had

1 negotiation plea to testify against me.

2 Q Okay. And when you found out that he had a deal --
3 well, is that the reason you filed the second application?

4 A Yes, sir.

5 Q Okay. Before finding out that he had -- the day of
6 trial if you would have known that the day of trial, would
7 you have gone to trial or would you have pled guilty?

8 A I would continue to go to trial.

9 Q Okay. Why is that?

10 A Because I know he was going to get up there and
11 fabricate and they had another person that was going to
12 testify against me that I knew that wasn't -- that had
13 nothing to do with our case, but I know they was gone hold
14 that against me and I never been in trouble before, so I
15 didn't really know too much about it.

16 Q Other than this deal, were you aware of any other
17 motive that Quinton Epps would have had to testify against
18 you?

19 A No, sir.

20 Q Okay. If you had known about this deal would you
21 wanted the -- your attorney to get up there and question
22 him about the promise?

23 A Yes, sir.

24 Q Okay. Do you think that might -- if you had known
25 about that, do you think that might have made a

1 difference?

2 A Yes, sir.

3 Q Okay. Is there any other physical evidence or any
4 other evidence out there saying that you were personally
5 involved in that trial that you know about?

6 A No, sir.

7 MR. SHAFFER: No further questions.

8 MRS. MCCALLISTER: Your Honor, I don't have any
9 questions.

10 THE COURT: Thank you, Mr. Brown. You may step
11 down, sir.

12 (WHEREUPON, the witness leaves the witness
13 stand.)

14 MR. SHAFFER: That's all, Your Honor.

15 THE COURT: All right.

16 MRS. MCCALLISTER: Your Honor, can we take just
17 a five minute break?

18 THE COURT: Folks, court is going to be in
19 recess for about five minutes anybody like to stretch or
20 take it easy.

21 (WHEREUPON, a break was taken.)

22 THE COURT: Mrs. McCallister.

23 MRS. MCCALLISTER: Thank you. May it please the
24 Court, Your Honor. The State would call David Richardson.

25 THE COURT: Mr. Richardson, please come around

1 to be sworn, sir.

2 THE CLERK: Do you swear or affirm that the
3 testimony you give will be the truth, the whole truth, and
4 nothing but the truth so help you God?

5 THE WITNESS: Yes, ma'am.

6 WHEREUPON,

7 David Richardson,
8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MRS. MCCALLISTER:

11 Q Mr. Richardson, we're here today on a case of
12 Chazmonte Brown. Do you recall being involved in this
13 case as the Solicitor?

14 A I do. I was not the assigned Solicitor. Pat Parr
15 was, but I assisted her in trying multiple co-defendants
16 in that case.

17 Q Okay. Do you recall a witness in the case name
18 Quinton Epps?

19 A I do.

20 Q Okay. Was Quinton Epps on your witness list for
21 trial?

22 A He was and he testified in at least one case that I
23 remember.

24 Q And do you disclose your witness list to defense
25 counsel before trial?

1 A We do.

2 Q Okay. Do you recall if you disclosed your witness
3 list with Quinton Epps on it before Mr. Brown came to
4 trial?

5 A Not specifically because I recall him pleading
6 guilty. If it came to the day of trial at jury selection,
7 then the defense would have had a witness list because our
8 practice is to provide a witness list to the Court, the
9 clerk's office, to the court reporter, to each defense
10 counsel involved. Prior to jury selection because the
11 Court has to call out the names of the witnesses to the
12 jury panel to see if the jury knows anybody, so they would
13 have had it if we reach that point.

14 Q And I believe you just said that Mr. Epps did testify
15 in at least one proceeding, one trial; is that correct?

16 A That I recall, yes.

17 Q Did you have -- did you discuss with Mr. Epps in
18 agreement before he testified on behalf of the State?

19 A There was no specific agreement to my recollection.
20 Myself, Pat Parr, Hank Anderson and Mr. Epps met in the
21 11th floor conference room of the Solicitor's office prior
22 to a trial taking place. In that meeting, we -- Mrs. Parr
23 and I questioned Mr. Epps about his knowledge as to the
24 armed robbery that had taken place. He agreed to testify
25 and the standard practice in my office, my own personal

1 practice when talking with cooperating co-defendants is to
2 not offer them some specific deal or even really give them
3 an idea of what maybe offered prior to testimony because
4 it damages credibility for one. I mean, their credibility
5 is an issue any way in that they're charged with a crime
6 and testifying in hopes that they may get some favorable
7 outcome that they wouldn't have received otherwise, but my
8 practice and I think the office's standard practice
9 always been that if you work out something specific,
10 obviously you have to disclose that. And, you know, the
11 jury knows what the person is testifying for at that
12 point, which I think is detrimental to a State's case. So
13 when he testified I vaguely recall him being asked if he
14 been offered a deal in exchange for his testimony. I
15 recall him saying that he had not and I recall firmly
16 believing that was a true answer.

17 MR. SHAFFER: Objection, Your Honor.

18 THE COURT: What's the objection?

19 MR. SHAFFER: To the extent that the State's
20 trying to present this witness to prove that there wasn't
21 a deal in place. I would object just because this has
22 basically already been covered, consented to by the State
23 in a collateral estoppel motion. I don't think that they
24 can get into whether or not there was a deal. Now,
25 whether or not that deal was conveyed, I think they can

1 get into with this witness, but I don't think they can get
2 into anything about there not actually being a deal at the
3 time.

4 MRS. MCCALLISTER: Your Honor, I don't think my
5 question specifically ask that. I think I asked what the
6 details of any agreement, I think I can still get into. I
7 don't think that that goes against Tristan's motion. And
8 I was trying to ask him about this witness list, on the
9 witness list and when that was given to ---

10 THE COURT: Defense counsel.

11 MRS. MCCALLISTER: --- defense counsel.

12 THE COURT: Right. I think that's appropriate.

13 BY MRS. MCCALLISTER:

14 Q Did you ever in addition to the witness list did you
15 ever orally convey to Karen Parrott, Mr. Brown's defense
16 counsel, that Mr. Epps would be testifying, do you recall?

17 A I don't recall that. I mean, if he were on the
18 witness list, we would have met with him in advance of
19 that trial date. So reasonably she would have known by
20 that point. I just don't recall a discussion. Mrs. Parr
21 may have had that discussion or I may have, I just don't
22 recall it because it's been awhile.

23 Q There's no specific recollection, but you may have
24 told her ahead of giving her an actual printed witness
25 list?

1 A It's very much possible because we would have been
2 speaking about the case leading up to the trial.

3 MRS. MCCALLISTER: Thank you. That's all I
4 have.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. SHAFFER:

8 Q It's my understanding -- well, let me ask this is it
9 fair to say that the office policy is that as long as you
10 don't promise a specific number, you don't have to convey
11 that to defense counsel?

12 A Well, it's not, you know, a written office policy,
13 but if I'm involved in talking with a cooperating
14 co-defendant and I -- my standard practice is this I tell
15 them I can't offer you anything at this point, but if you
16 testify, it's obviously not going to hurt you, that's
17 language that I use. So there is no discussion of you
18 testifying I'm going to give you plea to X for a
19 recommendation of Y. So there is nothing really to
20 disclose to defense counsel because there is no deal in
21 place.

22 Q Okay. So that's your standard practice is to say
23 those words, correct?

24 A Yes.

25 Q Now, is it the standard practice of the office from

1 your experience there that you would explain to him you're
2 not going to promise him anything so that they don't
3 testify on the stand that you promise him anything?

4 A Well, that's the idea. I mean, I don't tell them --
5 I don't necessarily tell the cooperating defendant that
6 that's why I'm doing that, but that's the idea behind it.
7 So that they go into their testimony having no idea really
8 what's going to happen to them or their case. You know,
9 they're just up there to testify and really hope for the
10 best after the fact and that's a strategy that was -- that
11 I picked up from my wise mentors in the Solicitor's
12 office.

13 Q Okay. So Mrs. Parr -- you weren't present during all
14 of the preparation for this trial, were you?

15 A Correct. I was present for a good deal of it, but
16 she was the lead prosecutor on the case. She had the case
17 for a long time before she asked me to become involved. I
18 became involved quite late when it became apparent that
19 trials was going to take place and that's when she asked
20 me for assistance.

21 Q Okay. So going back to the general culture of the
22 Solicitor's office or the general practice of the
23 Solicitor's office here in Florence County the Twelfth
24 Circuit is generally you don't promise any testifying
25 co-defendant a specific deal; is that correct?

1 A That is my practice and the practice of those I
2 learned from. I can't speak for everybody in the office
3 because we're all given a great deal of autonomy in how we
4 deal with our cases, but that has always been my practice.

5 Q Okay. Is that the practice that you generally seem
6 to practice throughout the Solicitor's office if no one
7 promises a specific number?

8 A Yes.

9 Q Okay. And any understanding of your testimony is
10 that the reason that you make that practice is because if
11 you promise them a specific number it could damage their
12 credibility, correct?

13 A That's correct. I mean, at that point you have to
14 disclose a specific deal to opposing counsel, which is
15 fine. The jury hear's it, but to me it plants in the
16 jury's mind, well, this guy is doing it because he knows
17 what he's going to get if he does what the State wants him
18 to do which is I don't think a good way to approach
19 things.

20 Q So as a hypothetical, okay, say someone's charged
21 with burglary first degree which carries a minimum
22 sentence, right?

23 A Yes.

24 Q And they're going to testify against their
25 co-defendant, if you said we're not going to promise you

1 anything specific, but the -- we're going to help you out
2 on the sentence to get you pass that minimum, do you think
3 that that would have to be disclosed under the practices
4 of the Solicitor's office here?

5 A If I told them that...

6 Q We're not going to promise you anything right now,
7 but we're going to give you some consideration on the back
8 end on this. Do you think that that type of language
9 would need to be disclosed?

10 A Not necessarily because there's no negotiation,
11 there's no specific deal. Basically, you're just saying,
12 you know, you're charged with this. If you are willing to
13 cooperate and testify for the State, we are open to trying
14 to help you, you know, something to that extent. I don't
15 know that I have to -- if I have a cooperating
16 co-defendant testifying for me, I think it's pretty clear
17 to opposing counsel what motivation that cooperating
18 co-defendant would have, but I think unless there's
19 something more than just general talk of, you know, we may
20 be able to help you or it's not going to hurt you so to
21 speak if you testify for us that sort of thing, then that
22 I don't see why that language would have to be disclosed.

23 Q Do you think if someone said we can't promise you
24 anything now, but we're going to help you out do you think
25 that that would have to be disclosed?

1 MRS. MCCALLISTER: Your Honor, I think that
2 question has been asked or answered.

3 MR. SHAFFER: It's slightly different, Your
4 Honor.

5 THE COURT: I'll allow it.

6 A Well, not really because it kind of -- it goes
7 without saying I would think if I told a person that I'm
8 going to reduce your charge to a lesser included offense
9 or I'm going to offer you a specific sentence, I think
10 that would absolutely have to be disclosed. But if I were
11 to say, you know, we'll see what we can do for you
12 afterwards, but right now I can't offer you anything.
13 There's nothing really to disclose.

14 Q I guess the second part of your answer I'm going to
15 ask the question again because I think the first part of
16 your answer address the question I'm just asking the
17 second part. If someone from the Solicitor's office said
18 we can't promise you anything now, but we'll help you out
19 later, do you think that that would have to be disclosed
20 based off of your understanding of the culture of the
21 Twelfth Circuit Solicitor's office?

22 A If there was a specific verbiage that we will help
23 you, it's arguable, but there's nothing there. Like what
24 would I go up to the defense attorney and say, you know,
25 he's gone testify for me. I told him if he did we'd help

1 him out. I don't know there's just not a whole lot of
2 substance there to convey.

3 Q Will you err on that side of disclosing it or not
4 disclosing it based off of your experience with the
5 Solicitor's office here in Twelfth Circuit?

6 A That language if I were to tell somebody -- I just
7 feel like if I would have to tell somebody something
8 specifically if there was a deal in place.

9 Q Referring to responsibility to disclose?

10 A Right, I would disclose if there was some ---

11 THE COURT: Hold on, Mr. Shaffer, I apologize
12 for interrupting. Sir, you're welcome to be in the
13 courtroom, but you're not welcome to come in here and go
14 to sleep. If you're tired, you need to rest, you can go
15 outside there's chairs out there, but if you going to be
16 in here, you need to stay awake.

17 All right, Mr. Shaffer.

18 BY MR. SHAFFER:

19 Q And it's safe to say you weren't privy to all the
20 conversations between Mrs. Parr and either Mr. Anderson
21 who represented Mr. Epps or Mr. Epps, is that safe to say?

22 A I don't know the answer. I know I was present for
23 the substitutive meeting with Mr. Epps and Mr. Anderson.
24 I was there for that, but I don't know if they had any
25 other interactions without me.

1 Q Okay.

2 MR. SHAFFER: No further questions.

3 MRS. MCCALLISTER: Nothing further, Your Honor.

4 THE COURT: Thank you, Mr. Richardson. You may
5 step down, sir.

6 (WHEREUPON, the witness leaves the witness
7 stand.)

8 THE COURT: Any objection to Mr. Richardson
9 being excused?

10 MR. SHAFFER: None, Your Honor.

11 THE COURT: Thank you, sir. You free to go.

12 MRS. MCCALLISTER: Your Honor, that's the
13 State's case. I think we would just ask to do a little
14 bit of argument on this issue.

15 THE COURT: Sure. I'll hear from Mr. Shaffer
16 and then I will hear from the State.

17 MR. SHAFFER: Your Honor, I think it's clearly
18 established and can't be refuted at this point that a deal
19 was offered. I think Ms. Parrott testified that she
20 was -- did not become aware of that until much much later,
21 years later. And I think Mr. Brown testified that he --
22 had he known that, had he had something challenged the one
23 witness that would have placed him there, then he would
24 have gone to trial. In this situation, I think that the
25 -- basically that a Brady violation did occur in the case.

1 The only real question for the Court to decide I think
2 based on this evidentiary hearing would be whether or not
3 that Brady violation is material or whether or not it
4 would have changed the -- Mr. Brown's mind about going to
5 trial.

6 THE COURT: Well, help me out because -- and I
7 could have missed it and you help me out too if you
8 recall. There's been no testimony showing that a witness
9 -- that a deal was made to Mr. Epps. There's suspicion.
10 There's rumor and innuendo. Oh, there's I heard at some
11 point, but there's no evidence that Mr. Epps was offered a
12 deal.

13 MR. SHAFFER: Your Honor, I believe that based
14 off the fact this is a PCR hearing we have Ms. Parrott who
15 got up here and testified that she learned that there was
16 a deal offered much later, years later.

17 THE COURT: She said she can't specifically say.
18 She's heard by third or fourth sources that there was.

19 MR. SHAFFER: And at no point did the State ever
20 try to limit the admissibility of that which would have
21 been their duty had they wanted to assert that she could
22 not testify to that. I did not object to that testimony,
23 it came into the record. There's also obviously the fact
24 that the State can't refute, can't sit up here and argue
25 based off the prior rulings in this matter that they can't

1 sit up there and argue that there is -- that a deal was
2 not in place. There's also a substantial amount of
3 evidence in the clerk's record that was submitted that is
4 part of this case because of the fact that we're at a PCR
5 hearing generally matters other than testimony or
6 considered as part of that. I think there's even a
7 statute saying the court can consider affidavits and other
8 filings -- other documents outside of this mere testimony
9 in deciding a PCR. I think that clearly from the clerk's
10 record there has been a substantial amount of evidence
11 placed into the record that there is -- was in fact a deal
12 in place.

13 THE COURT: Are you talking about the order that
14 you submitted?

15 MR. SHAFFER: Your Honor, I think that the order
16 was submitted as well, but there's also a ---

17 THE COURT: Because here's the thing and I
18 assume you all know this, but the only thing I have on
19 this case is the packet that was passed up to me today.

20 MR. SHAFFER: Your Honor ---

21 THE COURT: And then whatever you submitted on
22 the record.

23 MR. SHAFFER: Your Honor, I believe that
24 Ms. Parrott would have initially established the fact that
25 there was a deal that was not objected to. If the Court

1 would like more information, I'm happy to move for a -- to
2 reopen the record and have Hank Anderson testify here
3 again. The only reason I really filed that motion for
4 collateral estoppel is that Hank Anderson's testified
5 twice in this very case basically the exact same thing
6 every time. I didn't want to take up his time ---

7 THE COURT: Okay. But then let me ask this and,
8 Madam Attorney General, if you object to my question, put
9 it on the record. Not having that in front of me at this
10 point, you obviously know what it was Mr. Anderson
11 testified to. Was it different then what Ms. Parrott
12 indicated that he was promised they would help him, but
13 they promised him nothing specific. Is that what
14 Mr. Anderson is going to testify to?

15 MR. SHAFFER: I believe it actually would have
16 been slightly more detailed about how they would help him.
17 They did not offer him -- you know, I'm happy to bring
18 Mr. Anderson down to put it on the record if the Court
19 would like. Mr. Anderson my understanding he's
20 testifying here today, that's the only reason I didn't
21 subpoena him because he was on the roster to testify
22 today.

23 THE COURT: It's my not application. You can
24 either call Mr. Anderson or don't call him, but right now
25 as far as my position is I've not heard anything in this

1 record that establishes that there was any deal outside of
2 what Ms. Parrott testified to.

3 MR. SHAFFER: Then, Your Honor, I respectfully
4 request that I be allowed to submit Mr. Anderson since he
5 is testifying here today in another case, that I be
6 allowed to recall him once he arrives. Essentially I did
7 this for convenience for Mr. Anderson. I'm happy to put
8 him up. I told Mrs. McCallister last week if he's going
9 to -- I mean, if they're going to put the Solicitor up, I
10 was planning on putting up Mr. Anderson to testify about
11 what happened. The only reason I had not done that
12 basically ---

13 THE COURT: Well, here's the thing though, Mr.
14 Shaffer, I'm very big about allowing everybody to fill out
15 the record and especially for a PCR applicant to be fully
16 heard. So I'm happy to do that, but I'm not very big
17 about wasting court time. So before -- I mean, if
18 Mr. Anderson is going to testify contrary to what was
19 already testified to -- in other words, here's what I've
20 heard today. Here he is right here. If you want to put
21 him up, I'll let you do it. I don't know if he's prepared
22 because I don't know if he has his file with him. I'm
23 sure he doesn't.

24 MR. SHAFFER: I'm relatively certain he
25 remembers this file.

1 THE COURT: You're on the spot, Mr. Anderson.
2 You walked in at the wrong time. All right. We're going
3 to take a short break. We're going to take a short break.
4 Talk to Mr. Anderson and kind of bring him up to speed on
5 what he just walked into. And then we'll resume in just a
6 little bit.

7 (WHEREUPON, a break was taken.)

8 THE COURT: We're back on the record. You need
9 a few more minutes?

10 MR. SHAFFER: Just one minute.

11 THE COURT: All right.

12 MR. SHAFFER: Your Honor, the applicant will
13 call Hank Anderson.

14 THE COURT: Mr. Anderson, if you please come
15 around to be sworn, sir.

16 THE CLERK: Do you swear or affirm that the
17 testimony you give will be truth, the whole truth, and
18 nothing but the truth so help you God?

19 THE WITNESS: I do.

20 WHEREUPON,

21 Hank Anderson,
22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SHAFFER:

25 Q Mr. Anderson, you represented Mr. Epps, correct?

1 A I did, yes, sir.

2 Q And tell us you were party to a conversation between
3 you, Mrs. Parr and Mr. Epps, correct?

4 A Yes, sir.

5 Q Okay. And that took place prior to Mr. Brown and
6 Mr. Graham testifying or going to trial, correct?

7 A Correct, yes, sir.

8 Q And could you tell us whether any deal or promise for
9 leniency was offered at that -- during that conversation?

10 A Yes, sir, Mr. Epps -- Quinton he and I met with Pat
11 Parr and I think we met with the investigator. I do not
12 know if Mr. Richardson, David Richardson was there or not,
13 but Quinton and I met upstairs on the 11th floor in their
14 conference room. We were on one side of the table and Pat
15 and the investigator were on the other side of the table.
16 They went over what his testimony would be. They asked
17 him if he was willing to testify to that if anybody went
18 to trial. He said he was. I ask Mrs. Parr and the
19 investigator I said based on his cooperation, based on his
20 testimony, what are we looking at as far as a
21 recommendation, a sentence anything like that and the
22 standard policy the Solicitor said, you know, well, we
23 can't guarantee anything, not going to put anything in
24 writing. But you have our understanding you have our word
25 that we will reduce these charges and we'll tell the judge

1 that you cooperated, that you helped us out and that's
2 where we left it.

3 Q Okay. Now, to the best of your recollection, you
4 reduce these charges you think that meant reducing minimum
5 armed robbery?

6 A Yes, it was my understanding that the armed robbery
7 trial excuse me -- the armed robbery charge was going to
8 be dismissed and he was either going to plead to strong
9 armed robbery or accessory after the fact or conspiracy
10 something that was nonviolent, that didn't carry a
11 mandatory minimum.

12 Q And after this trial, Mr. Epps did testify -- I mean,
13 did plead guilty, correct?

14 A Yes, sir.

15 Q And he got a relatively short sentence maybe 18
16 months?

17 A That sounds correct, yes, sir.

18 MR. SHAFFER: No further questions.

19 THE COURT: Cross.

20 MRS. MCCALLISTER: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MRS. MCCALLISTER:

23 Q So your recollection of the conversation was that
24 nothing specific was promised; is that correct?

25 A Nothing specific was promised as far as what he could

1 plead to. However, it was my understanding that the armed
2 robbery charge was going to go away and he could plead to
3 something else.

4 Q Okay. But they didn't tell you what the charge would
5 be?

6 A No.

7 Q And they didn't tell you what sentence they would
8 recommend or he would receive?

9 A No.

10 MRS. MCCALLISTER: Nothing further, Your Honor.

11 THE COURT: I have a question. If you recall
12 was the conversation that he would not have to plead to
13 arm robbery or that they would just look at it and look at
14 reducing his exposure?

15 MR. ANDERSON: Judge, my recollection is the
16 offer was always he could plead to ten, you know, just
17 minimum ten, that was before anybody went to trial.

18 THE COURT: That was just an offer that was
19 made.

20 MR. ANDERSON: Yes, sir.

21 THE COURT: Not in exchange for testimony.

22 MR. ANDERSON: Right. When somebody was
23 actually going to trial and they wanted him to testify,
24 it's my understanding that they -- the armed robbery
25 charge will go away and he could plead to a lesser

1 included or something.

2 THE COURT: Well, that was your understanding,
3 but was that -- but is that what the State told you? The
4 only thing I'm trying to determine is what the State
5 promised him and I hate to be terribly technical, but when
6 we start talking about, well, my understanding was it
7 meant this. And then I'm going to get somebody else to
8 come in say, well, that was not my understanding when I
9 promised it.

10 MR. ANDERSON: Judge, I would not have let him
11 testify if the indication had not been the armed robbery
12 charge is going to go away because we had the minimum
13 offer. I mean, he had no benefit at that point in time.
14 I mean, I don't know if she specifically said we're
15 dismissing the armed robbery based on his testimony, but I
16 would not have let him testify if that had not been the
17 understanding.

18 THE COURT: Okay.

19 MR. SHAFFER: Your Honor, may I follow up with
20 one or two questions?

21 THE COURT: Yes.

22 REDIRECT EXAMINATION

23 BY MR. SHAFFER:

24 Q Your understanding did that come from the
25 conversation with Mrs. Parr?

1 A Yes, sir.

2 MR. SHAFFER: Okay. Thank you very much.

3 THE COURT: All right. Thank you, sir.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 MRS. MCCALLISTER: Your Honor, may we have a
7 minute, I think we may have an agreement to introduce
8 some testimony -- some previous testimony instead of
9 calling a witness.

10 THE COURT: We'll take a little time to give you
11 that opportunity.

12 MRS. MCCALLISTER: Thank you, Your Honor.

13 (WHEREUPON, a break was taken.)

14 MRS. MCCALLISTER: There was a PCR of a
15 co-defendant in this matter where Patricia Parr who
16 prosecuted the case testified on this issue and I think we
17 have an agreement just to submit the entire transcript to
18 the Court at this time.

19 THE COURT: Is that correct, Mr. Shaffer?

20 MR. SHAFFER: That's correct, Your Honor.

21 MRS. MCCALLISTER: That will be State's 1, Your
22 Honor.

23 THE COURT: We'll mark that as State's 1 and
24 we'll receive that into the record.

25

1 (WHEREUPON, State's Exhibit No. 1 was admitted
2 into evidence.)

3 THE COURT: All right.

4 MRS. MCCALLISTER: Your Honor, I think that's
5 all from the State. I don't know if Mr. Shaffer wants to
6 make more additional argument first before you hear from
7 us or how do you want to do that?

8 THE COURT: We'll hear from you, Mr. Shaffer. I
9 know you were kind of at the middle of your presentation
10 when Mr. Anderson stepped in.

11 MR. SHAFFER: Thank you, Your Honor. I like to
12 refer the Court to page 388 and I'm talking about the
13 large number of State's Exhibit 1.

14 THE COURT: That's just handed to me?

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: All right. Yes, sir.

17 MR. SHAFFER: And I'm going from line 13 and
18 this is Mrs. Parr's testimony. You told him that he would
19 get some help? Answer to that will be, yes, he would get
20 some help if he cooperated or he would get some
21 consideration with cooperation. Seventeen question, so
22 did you tell him he would get consideration for his
23 cooperation? Answer, yes. Your Honor, obviously is as
24 Mr. Anderson has testified there was a promise for
25 consideration given. Although, it's not specific, I

1 believe that he would still have to disclose that evidence
2 to -- the State will be obligated to disclose that
3 evidence to the defense on this case if they're permitting
4 something if they gave him -- if they gave Mr. Anderson
5 the idea that, hey, we're going to drop the armed robbery,
6 that's discoverable information, Your Honor, and that
7 should have been disclosed regardless of whether they said
8 we're going to promise you X instead of the armed robbery.
9 I think that ultimately this is almost a question of law
10 at this point. I mean, it's sort of unrefuted that no
11 indication of that conversation was conveyed to
12 Ms. Parrott. It's undisputed that my client would have
13 gone to trial had he known that information.

14 THE COURT: Well, let's address that issue
15 though because I want you to address it with me because
16 these are questions I'm going go to have as I go over this
17 information and give you the opportunity to address it.
18 And, of course, I'll give Ms. McCallister whatever
19 opportunity she would like as well, but the testimony from
20 Ms. Parrott was that she couldn't recall for sure whether
21 or not the State told her that they would give him help in
22 exchange for his testimony. But that her normal course of
23 conduct over 14 years as a defense attorney would be that
24 when a co-defendant flips, that she informs her client
25 that they been offered some help of some sort and that

1 there's no incentive for them to testify without some
2 offer of help. But that typically the State doesn't offer
3 anything specifically, so she testified she had that
4 conversation with Mr. Brown that the fact that Mr. Epps is
5 flipping and is going to testify indicates that Mr. Epps
6 has been offered some help or some assistance and I would
7 have every opportunity to question him on it. But
8 typically what they say is that it's nothing specific that
9 they would just give them some consideration for their
10 plea and that she had that conversation with him. So
11 whether or not the State did tell her or didn't tell her
12 her testimony is she had that conversation with Mr. Brown.
13 So how is he prejudiced?

14 MR. SHAFFER: Well, Your Honor, I may recall her
15 testimony slightly different, but I believe that she said
16 that she would have known that and she assumes that
17 because that's the standard practice of the Solicitor's
18 office. I recall her saying that she told my client that
19 he would actually -- that Mr. Epps would be appearing at
20 trial. What I don't recall her saying is that she
21 specifically told the client, hey, I'm going to be able to
22 impeach him on this and this is how I plan on impeaching
23 him if it goes to trial.

24 THE COURT: She didn't -- I mean, she honestly
25 said she couldn't remember specifically their

1 conversation, but she did testify that out of habit of 14
2 years of practicing law that if a co-defendant flips, she
3 knows that they been offered something and that she had
4 that conversation with him, that he was likely offered.
5 By the mere fact that he flipped, that they've offered him
6 something and I'll have a chance to ask him about it. I
7 think she testified to that.

8 MR. SHAFFER: Your Honor, I may be mistaken
9 about my recollection of her testimony.

10 THE COURT: Well, I may be as well, so we'll
11 look at it.

12 MR. SHAFFER: I wouldn't say that legally it
13 would make a distinction. I think that in this case,
14 Mr. Brown testified that essentially had he -- was he
15 aware that they made a promise to him that he would have
16 gone to trial. I mean, there's really no evidence I think
17 contrary to that in the record other than, you know, would
18 he have gone to trial or not. I think that obviously it's
19 still a Brady violation regardless of which way you cut
20 it. Whether she assumes makes some assumption, hey,
21 there's a promise out there or not, it's still a Brady
22 violation. You know, I can suspect things all day long
23 that people are lying.

24 THE COURT: Well, you haven't proven a Brady
25 violation. You haven't put anybody from the State on the

1 stand to say we didn't tell them. As a matter of fact,
2 Mr. Richardson indicated contrary to that.

3 MR. SHAFFER: I think that I put up the defense
4 attorney who said that she didn't find out about the
5 promise until years later. She's testified to that. I
6 believe that's in the record, you know, Hank said that
7 there was a promise. I think that in Ms. Cochran's record
8 the State's exhibit that was introduced there is
9 significant testimony concerning the fact that there was
10 actually a deal and moreover I don't think the State can
11 argue here today that there wasn't a deal. I think it's
12 unrefuted because of the fact that they didn't appeal the
13 last decision. They didn't pursue the last decision where
14 this court found that there was a deal in place. So I
15 don't think that necessarily -- first, I think that I've
16 presented sufficient evidence on its face, but even if the
17 Court wasn't to find that was sufficient evidence, you
18 know, because I didn't present someone from the
19 Solicitor's office. We have the testimony from Ms. Parr
20 saying I promise him consideration that was that page ---

21 THE COURT: Well, isn't that essentially what
22 Ms. Parrott testified to. You call it consideration. I
23 use the word help in there, but the same thing.

24 MR. SHAFFER: Yeah. So really, I guess, the
25 Court's question probably ---

1 THE COURT: So here's what I'm getting to is --
2 and I understand what you're saying, you're saying, Judge,
3 regardless technically it's a Brady violation, but does it
4 prejudice Mr. Brown or did it and did it affect his
5 decision when the testimony of the record is is that once
6 Ms. Parrott learned that Epps was going to testify, she
7 assumed he had been offered help slash consideration and
8 she shared that with Mr. Brown and discussed that with
9 him. So how is he prejudiced?

10 MR. SHAFFER: Your Honor, I believe that there
11 is ---

12 THE COURT: Assuming any fact -- giving you the
13 benefit of the doubt and saying that the State did violate
14 Brady.

15 MR. SHAFFER: And, Your Honor, assuming that the
16 nonspecific promise for consideration would be -- would
17 trigger Brady, I think that -- obviously, I think that
18 Mr. Brown testified that he would not have gone to trial
19 had he known that. I also think that Ms. Parrott didn't
20 specifically say that, but regardless of whether she did
21 or not, I also think it's a separate ground to that.
22 There is a significant amount of proof of a Brady
23 violation by not disclosing that deal in the record of Ms.
24 Cochran because the State's introduced the entire
25 transcript of the Cochran record and I can point the Court

1 to -- if I'm given a second, I probably point the Court
2 specifically to several pieces of evidence that would
3 support that.

4 Number one, Ms. Cochran went to trial I want to
5 say a month before this case and that's established
6 through the transcript in the record. In Ms. Cochran's
7 case, Mr. Epps got up there and said I wasn't promise
8 anything and that's establish in this transcript as well,
9 Your Honor. That this transcript will show that Mr. Epps
10 got up previously perjured himself in front of a jury, was
11 not corrected by it. And then got back up and perjured
12 himself again, Your Honor. I think that because -- or
13 then got back up and that was never disclosed. Had they
14 disclosed we promised him something, perhaps then -- then
15 they might have been able to say, well, previously you
16 testified that you weren't promised anything Mr. Epps.
17 And, you know, obviously impeach him based off of the fact
18 he was promised some consideration. I think that you can
19 establish that through the reading of the Cochran record
20 as a second method of proof to show that essentially there
21 would have been prejudice for my client or my client would
22 have been in a better position and it could have made a
23 difference if this would have gone to trial, Your Honor.
24 I mean, if this would have been disclosed, Your Honor.

25 I think that there is a separate method of proof

1 by looking at the Cochran transcript and the fact that Mr.
2 Epps had previously -- basically perjured himself in front
3 of a jury and testify again to the exact same case, but
4 regardless of that I think that it's unrefuted that my
5 client saying, hey, had I known he was promised something,
6 I could have impeached him. There was no evidence to
7 impeach him but for that promise. I mean, the only other
8 evidence to impeach him would have been his previous -- I
9 think receiving stolen goods and maybe a burglary charge,
10 that's it.

11 THE COURT: But does that change things --
12 again, I know what you're saying, but again I'm going back
13 to Ms. Parrott testified that she had that discussion with
14 Mr. Brown just under the belief that, well, if Epps is
15 flipping, they've promised him something. And I can talk
16 about -- I can question him on it, but that's why he's
17 flipping. He's not flipping because he's just a good guy
18 and they had that conversation. So how does it change the
19 decision at that time that Mr. Brown made to -- and then,
20 of course, Mr. Brown's own testimony that there was
21 another guy that was -- they were going to call to testify
22 against him as well and that those were the two reasons he
23 decided to plead because Epps was going to testify and the
24 other guy was going to testify.

25 MR. SHAFFER: And, Your Honor, I would -- I

1 guess looking objectively at the fact that there's no
2 evidence of any -- other than Epps' testimony. There is
3 no evidence linking my client to this. And I understand
4 where the Court's going, but there's no evidence linking
5 my client to it except the only evidence here today that
6 there was anyone saying my client was involved would be
7 the testimony of Quinton Epps.

8 THE COURT: And when he found out that Epps was
9 going to testify and the other guy was going to testify,
10 that was his motivation or his incentive to make a plea
11 offer or to make a plea deal. That's what he testified
12 to.

13 MR. SHAFFER: Yeah, while I also specifically
14 asked him had you known this would you -- had you known
15 that there was a promise out there for consideration ---

16 THE COURT: Of course, and he said he would have
17 changed his mind. And here's my point and this is where
18 it's a question in my mind is what I'm trying to say is,
19 Ms. Parrott testified that she told him if Epps is
20 testifying, he's got an offer.

21 MR. SHAFFER: And I don't recall Ms. Parrott's
22 testimony to that point, Your Honor. I still don't think
23 ---

24 THE COURT: Well, I said she said that. She
25 said that as 14 years experience as a criminal defense

1 lawyer that any time she had has a co-defendant who flips,
2 she knows they been offered something and they have that
3 conversation. So, I guess, she's assuming she followed
4 her normal course of conduct.

5 MR. SHAFFER: And, Your Honor, I do recall her
6 saying that she didn't specifically recall what she had --
7 what conversation she had with my client.

8 THE COURT: Correct.

9 MR. SHAFFER: Okay. Your Honor, I'll also -- I
10 guess, the argument here is that there's a difference
11 between a suspicion that someone had pled or that someone
12 was offered a deal and actual proof of it. The difference
13 is is that what could have happen which is Epps can get on
14 the stand and lie and say I wasn't offered anything. You
15 can't prove it off your suspicion. You can prove it if
16 you have something from the Solicitor's office actually
17 saying that and that's what happened in this very case
18 Your Honor.

19 Obviously, it was after my client pled guilty,
20 but that's exactly what happened in this case. He went up
21 there and said, no, I wasn't offered anything. I didn't
22 have no promise out there. I'm still facing ten to 30 for
23 armed robbery. That was not even correct based off
24 Mrs. Parr's testimony, okay. There's a significant
25 difference in being able to prove something and being

1 suspicious of it, okay. They -- I don't think that the
2 State's obligation to turn over Brady material is ended
3 because of the fact that the common course of business of
4 that office which the PD should know about by now is we're
5 not going to turn that over. I don't think that that's a
6 proper -- that that elevates their duty to actually turn
7 over some piece of evidence saying, hey, or some
8 information saying, hey, we had this conversation, but
9 you're putting a significantly different position whenever
10 you actually have proof versus a suspicion that someone's
11 lying. I think clients are lying -- I mean, witnesses are
12 lying in cases all the time. I can't prove it most of the
13 time, but I'm in a lot better position whenever I actually
14 can prove it because I have documentation from a third
15 party saying that they were lying.

16 THE COURT: Okay.

17 MRS. MCCALLISTER: Thank you, Your Honor. Your
18 Honor, I think the main point that the State wants to
19 convey is that it doesn't matter if there was a deal. If
20 Your Honor wants to call it a deal or not, because it is
21 not material under the Brady standard, Your Honor.
22 This -- the only evidence or the only way the evidence
23 could have been used is to impeach Mr. Epps at trial. He
24 was thoroughly impeached. I think, if, Your Honor, were
25 to look at Court's Exhibit 1 the order that Mr. Shaffer

1 handed up, it kind of copies out the questioning that
2 Mr. Graham's defense attorney did with Mr. Epps. I mean,
3 it's very clear that Mr. Epps said, you know, there's
4 nothing to prevent him -- he didn't have a specific deal,
5 but he hadn't been tried yet. There was nothing to
6 prevent him from getting a better deal. You know, the
7 defense attorney's brought all -- Mr. Graham's defense
8 attorney brought all of that out, Your Honor, and I think
9 that matches up with what Ms. Parrott said that she was
10 aware that you don't testify against a co-defendant unless
11 you got a deal. She would have questioned him on that.
12 She would have used that to impeach him, which is exactly
13 what happened. She said that it wouldn't have changed her
14 advice to Mr. Brown about whether to plead or to go to
15 trial. Your Honor, I think Mr. Shaffer has said the only
16 evidence is Mr. Epps' testimony, but Ms. Parrott said that
17 there was other evidence. Law enforcement was going to
18 testify. There were other witnesses. Mr. Brown himself
19 mentioned another inmate who was coming to testify against
20 him, so there was other evidence. And just Mr. Epps
21 alone, Mr. Brown himself said was not enough. It was
22 because there were two witnesses who were coming to
23 testify against him. And there's been no suggestion that
24 that other witness had some deal that wasn't disclosed
25 only Mr. Epps. So just Mr. Epps alone wasn't enough, you

1 know, Mr. Brown still had this other witness -- these
2 other witnesses out there against him that he knew about.

3 Your Honor, I also think in terms of this being
4 impeachment evidence I think that that is an important
5 issue under Brady and the cases that analyze Brady. Your
6 Honor, I would cite U.S. v. Ruiz which is ---

7 THE COURT: U.S. vs. what ---

8 MRS. MCCALLISTER: Ruiz R-U-I-Z.

9 THE COURT: Okay.

10 MRS. MCCALLISTER: 536, U.S. 622.

11 THE COURT: 632?

12 MRS. MCCALLISTER: 622.

13 THE COURT: 622, I'm sorry.

14 MRS. MCCALLISTER: And I may have a copy of that
15 for you to hand you.

16 THE COURT: Thank you, ma'am.

17 MRS. MCCALLISTER: Your Honor, that case -- the
18 very first line of the opinion says in this case we
19 consider whether the Fifth and Sixth Amendments require
20 federal prosecutors before entering into a binding plea
21 agreement with a criminal defendant to disclose
22 impeachment information relating to any informants or
23 other witnesses. We hold that the Constitution does not
24 require that disclosure. So, Your Honor, we would argue
25 that this case is different because this was a plea. It

1 wasn't a trial. And so in the case -- in the context of a
2 plea, impeachment information is not required to be
3 disclosed. I don't think that there's any suggestion that
4 this information about Mr. Epps could be used for any
5 other purpose than as impeachment information in terms of
6 his testimony.

7 Your Honor, I also think that it's enough
8 that -- I think it's enough Ms. Parrott's testimony alone
9 is enough that she knew -- I mean, she knew that this guy
10 had a deal because they always had a deal and she went and
11 talk to her client about that and told him that he was
12 testifying. And he's testifying against you is because he
13 has a deal. I think Mr. Brown did have all of that
14 information, Your Honor, when he decided to make a
15 decision to accept the plea agreement.

16 He also in exchange for that plea agreement
17 received a considerable bargain to two drug charges were
18 dismissed against him in exchange for that plea agreement.
19 So I think that that -- I think it's reasonable to
20 conclude that the fact that charges were dismissed also
21 weighed in on Mr. Brown's decision and it was not solely
22 based on his issue of Mr. Epps and his testimony.

23 Your Honor, I would also point you -- I don't
24 have a copy of this one, but it's a South Carolina case
25 Hyman v. State. It's 397 S.C. 35 and that case involved a

1 Brady issue, a disclosure of a video. The defendant was
2 not permitted to watch the video, but trial counsel was.
3 And she explained the contents of that video to the
4 defendant and the Court found that that was not a Brady
5 violation in that case, so we think that that's similar
6 here where maybe they didn't tell Mr. Epps specifically
7 but Ms. Parrott's testimony is pretty unequivocal she knew
8 there was a deal. I think I've covered everything I
9 wanted to cover, Your Honor.

10 THE COURT: All right.

11 MR. SHAFFER: Your Honor, brief rebuttal. Your
12 Honor, I obviously asked Ms. Parrott to point me to
13 anything linking -- saying that he was actually present at
14 the armed robbery. She was unable to do that. There's no
15 statement saying that he was actually present or anyone
16 identified him as part of the armed robbery. I asked her,
17 hey, go through your Rule 5, tell me what evidence there
18 was out there, was there any physical evidence, was there
19 anything actually linking him. Yeah, sure there was other
20 people who were going to testify, but the only one who was
21 going to link him there -- the only evidence say, hey, he
22 was the one who was actually responsible for this was
23 Quinton Epps.

24 THE COURT: Mr. Brown's testimony was the -- the
25 impetus that cause him to decide to enter into a plea

1 negotiation was that Epps and this other guy was to going
2 to testify against him, that was his testimony.

3 MR. SHAFFER: And, Your Honor, I also asked him
4 for the substance of what that other guy ---

5 THE COURT: And he couldn't give you any.

6 MR. SHAFFER: He said I don't know. He said I
7 didn't know the guy. I have no idea what he was going to
8 say.

9 THE COURT: Right. But it was a basis for him
10 because of that unknown, he didn't want to take the risk.

11 MR. SHAFFER: But he also ---

12 THE COURT: And he entered a plea.

13 MR. SHAFFER: He also clarified that had he
14 known this he would have -- would have done it. Had he
15 known about the deal, he would have actually gone forward
16 with a trial. Your Honor, I would like to point the
17 State's attention -- I mean, the Court's attention I
18 apologize I probably cited at some point. I don't know
19 exactly where I did, but Gibson vs. State.

20 THE COURT: Gibson v. State?

21 MR. SHAFFER: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. SHAFFER: 334 S.C. 515. It's a Supreme
24 Court case from 1999.

25 THE COURT: Okay.

1 MR. SHAFFER: And it is probably the most on
2 point case for the analysis that the Court suppose to use
3 in this situation. In that case, they actually rule for
4 the State on that case, but essentially what that case was
5 about was whether or not there was -- I think they rule
6 for the State I apologize. It's been a while since I
7 looked at it.

8 THE COURT: Well, that's okay we'll look at it.

9 MR. SHAFFER: But basically what they looked at
10 was whether or not there was a -- whether or not some
11 Brady material would have been -- that wasn't disclosed to
12 a person who pled guilty was actually a Brady violation.
13 In that case, they said it wasn't -- I think they said it
14 wasn't material because of the impeachment that was
15 allowed, okay, in the case or the other impeachment that
16 they would have had because there was some piece of Brady
17 material not disclosed and they said that, well, there was
18 a whole bunch of other impeach material. So we don't
19 think it would have made a difference, okay. Your Honor,
20 in this case, I think it would have made a difference and
21 I think that the State's reference why there was
22 significant impeachment, but all that impeachment was
23 directly or the majority of that impeachment was directly
24 related to were you offered a deal, which, of course, had
25 lied about at trial. But, you know, and they lied about

1 previously, but that was the State and basically said or
2 the position of the State was that, you know, they had
3 thoroughly impeached him on that. Well, if you go back to
4 the order that's a court's exhibit. And I'm referencing
5 the order because of the fact it's a lot easier than going
6 to the actual trial transcript page. I apologize I may
7 not even have the order.

8 THE COURT: You talking about the order we put
9 in ---

10 MR. SHAFFER: Yes, Your Honor.

11 THE COURT: I've got it and if you need to get
12 it to refer to, go ahead and grab it.

13 MR. SHAFFER: Thank you. And I'm referring to
14 State's Exhibit 1 what is marked between the pages three
15 and five.

16 THE COURT: You referring to Court Exhibit 1?

17 MR. SHAFFER: Yes, Your Honor, Court Exhibit 1.

18 THE COURT: All right. And you're on page ---

19 MR. SHAFFER: What's been actually the formal
20 order page three through five.

21 THE COURT: Okay.

22 MR. SHAFFER: And I think that the State
23 references in their argument is to say he was thoroughly
24 impeached on it. And I think that this also -- which I
25 agree that they thoroughly asked him about questions about

1 whether or not he was offered anything. And he kept
2 saying, no, I have no consideration. No, no, no never had
3 anything. I think -- any sorts of special deal or
4 promise? No, sir. In order to get you to testify here
5 today? No, sir. And no offer of special treatment,
6 right? The prosecutors office? Right. And they ask you
7 haven't been tried yet? And he talks about, hey, my
8 minimum right now is ten to 30. Your Honor, had my client
9 gone to trial, had he testified exactly the same way he
10 testified in the trial that my client started and didn't
11 proceed through, clearly this would have been impeachable
12 material. Clearly, it would have been evidence that he
13 could have been impeached on because Ms. Parr said -- and
14 I'm referring specifically to what Mrs. Parr said, yeah,
15 we promise him some consideration for it.

16 THE COURT: But in the transcript in the direct
17 examination on Mr. Epps, Mr. Richardson ask him point
18 blank were you offered anything. He testified he was not.
19 I mean, that was the State's lawyer asking him and this is
20 the State who would have made him the offer.

21 MR. SHAFFER: Yes, Your Honor.

22 THE COURT: And he testified he had not. The
23 State made no correction on that.

24 MR. SHAFFER: No, Your Honor. That's the reason
25 -- well, one of the two issues that the Court granted PCR

1 on. The first was a Brady -- was essentially Brady
2 failure to disclose. The second was that they allowed --
3 it was a due process violation that allowed uncorrected
4 false testimony to go to the jury.

5 THE COURT: Well, I got to review all this.

6 MR. SHAFFER: I understand, Your Honor. Your
7 Honor, and I guess one last thing on whether or not this
8 was a deal, whether or not it would have triggered to
9 offer him some consideration -- unspecific consideration
10 would have triggered Brady. I would actually argue based
11 off of the Napue case which is cited in here. It's a U.S.
12 Supreme Court case that it -- in that case it was that --
13 well, that it would be triggered by that. And Napue in
14 that case what they did was say, hey, we're going to do
15 what we can for you, but they didn't promise anything
16 specific. And he got up there and testified, of course.
17 No, I wasn't promised anything. I didn't do anything and
18 the U.S. Supreme Court said that's a violation. That's
19 false testimony that went to the jury.

20 I think that Napue while it's addressing the
21 issue of false testimony, it's also, I guess, instructive
22 on a Brady violation as well because under Brady -- and I
23 think Napue predates Brady, but under Brady, he would have
24 been given that -- he would have been required to get --
25 receive that information and Napue basically says the same

1 thing. Hey, they should have told him we promised him
2 something. And I think that also illustrates the point
3 that I was trying to make related to why there's a
4 difference between having a suspicion that someone was
5 offered something and being able to prove it. If they
6 would have been able to prove it, obviously they could
7 have called a rebuttal witness to say you just lied to the
8 jury this correct and then had someone to actually prove
9 that he had lied to the jury where you're sort of stuck
10 with the answer that the guy if you're not giving anything
11 actually to prove it.

12 MRS. MCCALLISTER: Your Honor, just very
13 briefly. Mr. Shaffer is correct Napue came out in the
14 50's, 1959, so it's before Brady. And then Ruiz and Hyman
15 two cases that I pointed Your Honor to earlier came out
16 after Brady and after Gibson which Mr. Shaffer cited for
17 you, Your Honor. So we think that those -- the later
18 cases Ruiz and Hyman kind of clarify this issue in the
19 context of impeachment evidence in a guilty plea, which is
20 what we have here.

21 THE COURT: Now, let me ask you this though,
22 Madam Attorney General, we're a little different here are
23 we not. I understand that the State had no obligation to
24 reveal any deals or offers in exchange for his plea, but
25 isn't the issue here is that he would have never gotten to

1 the plea but for the State failing to reveal that there
2 was going to be an offer that he could have addressed at
3 trial?

4 MRS. MCCALLISTER: Well, Your Honor, I don't
5 think that his testimony today supports that conclusion.
6 We talked about that a little earlier. There were two
7 witnesses that he was concerned about not just Mr. Epps
8 and I think Ms. Parrott's testimony again was that she
9 knew, she knew that this guy had a deal because they
10 always have a deal and she talked to Mr. Brown about that
11 so this is not something that just got sprung on him, you
12 know, out of nowhere. He knew this. He had the
13 information that Mr. Epps had a deal before he made the
14 decision to plead guilty.

15 THE COURT: Okay. I'm not going to override
16 your presentation, but, Mr. Shaffer, on that issue then
17 with Ruiz and Hyman both making it fairly clear that there
18 is no duty to disclose any offers made to any witnesses or
19 informants with regards to plea negotiations. Doesn't
20 that logically say that he was going to trial, but when he
21 decided he wanted to talk to them about plea negotiations,
22 they had no obligation at that point to tell him anything.

23 MR. SHAFFER: Your Honor, I think that -- to be
24 honest with you, I haven't read Ruiz or Hyman.

25 THE COURT: And I'll need to read them.

1 MR. SHAFFER: So if I was going to try to
2 distinguish I would be ill equip to do so at this point,
3 but I seriously doubt that either of these deals with a
4 situation where you're actual in trial at the time. You
5 give your opening statement. You have the witness showing
6 up in lock up. There's a witness there to testify and at
7 that point I think that the trial had already started.
8 You have a duty to disclose it before the actual trial.

9 THE COURT: Okay. But don't you give up all of
10 your trial rights, your defenses and everything when you
11 plead guilty?

12 MR. SHAFFER: Your Honor, you do give that up.
13 You give up objections that were made.

14 THE COURT: For example, Mr. Graham he went
15 forward.

16 MR. SHAFFER: And, Your Honor, I think that
17 Gibson is very instructive on this as well because what
18 Gibson has -- Gibson is dealing directly with whether or
19 not someone who pled guilty can claim a Brady violation.
20 And in that case they're saying basically, yeah, you can
21 claim that. South Carolina's adopted -- you can claim a
22 Brady violation even if you plead guilty provided that
23 that would have changed your mind about going to trial or
24 not. That's basically the test that Gibson put forth.

25 In this situation, I think that for -- under the

1 State's holding or the State's thought is they don't
2 actually have to give it to me because, you know, he's
3 going to plead guilty. And I'm assuming that Ruiz and
4 Hyman both deal with normal guilty pleas that aren't in
5 the middle of a trial. I think that the State has a
6 obligation at the time before the trial starts to disclose
7 the information under Brady. Otherwise, the whole is like
8 okay well ---

9 THE COURT: And Brady become meaningless.

10 MR. SHAFFER: Yeah. Basically the day -- right
11 before the witness testifies we're going to give you all
12 the information which is probably incorrect.

13 THE COURT: That is incorrect, yeah.

14 MR. SHAFFER: So I think that they already made
15 -- there was already a violation -- under the Gibson case,
16 the South Carolina law provides that once they've -- if
17 there was a Brady violation, that if it was material, if
18 it would have changed your decision to plead guilty, then
19 you can assert it. And I think that that's -- Your Honor,
20 provided the -- which I believe this is what the evidence
21 has shown. Obviously, this is for the Court to determine,
22 but provided that we've shown that my client would have
23 pled guilty if -- I mean, would have gone to trial if he
24 would have known about this. I think that that is
25 basically under Gibson that would constitute a Brady

1 violation that requires a reversal.

2 MRS. MCCALLISTER: Your Honor, may I be heard
3 just briefly again?

4 THE COURT: Sure.

5 MRS. MCCALLISTER: Your Honor, in Gibson if I'm
6 remembering it correctly and reading it correctly, I
7 believe that the information that was not turned over in
8 Gibson was that a witness could not have possibly have
9 seen what the witness claim to have seen. And so that is
10 a very different issue then evidence which is solely
11 impeaching and I think Ruiz does speak directly to that
12 issue when the evidence is solely impeaching it's
13 different. And we're not contesting that you can't have a
14 Brady violation in a guilty plea. Gibson obviously does
15 say that and that's not what the State's position is. Our
16 position is that it's the type of evidence that matters.
17 This is was impeachment evidence only. And so even if --
18 even if Your Honor finds that this should have been
19 disclosed, it does not rise to the level of a Brady
20 violation because it was not material under the Ruiz
21 standard.

22 THE COURT: All right. Well --

23 MRS. MCCALLISTER: Your Honor, may I also add
24 one more thing?

25 THE COURT: Yeah.

1 MRS. MCCALLISTER: Graham was also a trial and I
2 think -- I keep coming back to Ruiz, but I think Ruiz
3 gets into it that there's a difference in terms of what
4 has to be disclosed so that you can have a fair trial and
5 what has to be disclosed that so you're guilty plea is
6 free and voluntary. And, Your Honor, so whatever happened
7 in Graham's case, he's the one who proceed to trial.
8 Mr. Brown did not proceed to trial. He ultimately pleaded
9 guilty and so we do think that that changes the analysis.

10 THE COURT: Well, and it may be exactly -- I
11 mean, you may be exactly correct when you look at what
12 occurred. Graham went to trial, was convicted,
13 subsequently prevailed on a PCR on that issue. And so
14 that's the question -- and I'm going to read everything
15 that you all have submitted. So the question is -- as I
16 posed it to you earlier was that, you know -- I'm not sure
17 -- you know, you're banking on this technicality -- you're
18 not banking on it, but you're really leaning on this
19 technicality that the State didn't disclose to Ms. Parrott
20 for sure that he had an offer of help or consideration.
21 But Ms. Parrott's testimony was I didn't need that because
22 when a co-defendant flips, that's why they're flipping and
23 I'm going to be able to ask him about it, but they're
24 just going to say that they've got no offer. They got no
25 promise, but that's the reason they're flipping is they're

1 hoping to get help down the road with their thing. And so
2 if after reading the transcript and reading the testimony
3 that -- I mean, where's the prejudice is my point and I
4 think you're saying because technically there's a
5 difference in knowing the State made an offer or guessing
6 that they made an offer, but there really is no difference
7 if Ms. Parrott's conversation was I'm going to talk to him
8 about it. But he's got an offer, he wouldn't flip if he
9 didn't. And so that -- but I need to look at everything
10 and see what the law says. And what the testimony is and
11 I will do that, okay. Now, I've got from, Tristan, from
12 you I got -- you cited Napue and Riddle v. Ozment. I've
13 got copies of those. I got the transcript. And then I
14 got the order that we'll put in the record here.

15 MR. SHAFFER: Thank you.

16 THE COURT: And then from the State -- and also
17 I got the cites that you gave me, you know, just verbal
18 cites here. I think Gibbs v. State. And then from the
19 State I got Ruiz, Hyman, and then the transcript from the
20 Cochran case.

21 MRS. MCCALLISTER: Yes, Your Honor and I think I
22 may have a copy of the Gibson case that we were discussing
23 to hand up to you as well.

24 THE COURT: Okay. Well, if you don't, I can get
25 it that's no problem.

1 MR. SHAFFER: And, Your Honor, related to the
2 transcript, I sent you an e-mail this morning that had an
3 excerpt from the transcript -- that was the incorrect
4 excerpt. I actually sent you the full copy of the full
5 trial before and after the -- my client pled guilty,
6 that's in that e-mail.

7 MRS. MCCALLISTER: But, Your Honor, that's not
8 part of the record.

9 MR. SHAFFER: And that's fine. I mean, I didn't
10 introduce it. I mean, obviously we talked about it a
11 whole lot, but -- and, you know, both sides talked about
12 it, but there is -- if the State objects to the entire
13 transcript which I think -- shouldn't that actually be in
14 the packet?

15 MRS. MCCALLISTER: Who's transcript?

16 THE COURT: The trial transcript of Graham's
17 trial.

18 MRS. MCCALLISTER: Graham's trial I don't
19 believe it's ---

20 THE COURT: That's not in my packet.

21 MRS. MCCALLISTER: --- in the packet because it
22 would be Graham's trial.

23 THE COURT: Because that was Graham's case. All
24 I got is I got Mr. Brown's plea transcript got that.

25 MR. SHAFFER: I would actually ask that the

1 Court consider that because of how much we've talked about
2 it the entire transcript because it's 200 pages, but off
3 the top my head I didn't exactly know what Brown's -- did
4 Brown's transcript get the full thing about jury selection
5 and everything else because obviously we talked about -- a
6 lot about Graham.

7 THE COURT: Well, I'll tell you what -- I'll
8 tell you what I've done while we been up here because you
9 submitted that on an e-mail. I went to Mr. Epps'
10 testimony ---

11 MRS. MCCALLISTER: The part ---

12 THE COURT: The part of Graham's trial where
13 Epps was on direct and then on cross.

14 MRS. MCCALLISTER: Your Honor, I don't think we
15 have an issue with that part of the transcript coming in.
16 It's also already in the order I believe that was
17 submitted.

18 THE COURT: Right, in the order you submitted.

19 MRS. MCCALLISTER: Yeah. I think we would
20 object to the entire transcript coming in because we
21 haven't talked about the entire thing but -- Epps
22 testimony.

23 MR. SHAFFER: I'm fine with that. I sent you
24 the wrong excerpt because originally he talked about
25 something about whether or not he was influenced. And

1 then he actually went through the entire thing. So I will
2 tell you the pages which are probably at some point part
3 of the record any way.

4 THE COURT: In the order.

5 MR. SHAFFER: And, Your Honor, we're talking
6 about specifically looks like 99 through 116 is the -- 99
7 through or 118 is the...

8 MRS. MCCALLISTER: I don't think it's the entire
9 range, Your Honor. I think it's page 99 and the cross
10 comes in on page 116 through 118.

11 MR. SHAFFER: Your Honor, just for sake of the
12 Court having ---

13 THE COURT: I only read part that dealt with the
14 questioning regarding the offer. And then when it got
15 into his testimony, I zip pass that and went to cross and
16 saw how Mr. Floyd handled the cross on it.

17 MRS. MCCALLISTER: I think that's in the order
18 on page 53.

19 THE COURT: I think that's in the order.

20 MR. SHAFFER: It's been made part of the order.
21 For clarity would the Court like to consider the whole 99
22 through 118 just so it's clear?

23 THE COURT: Well, I don't -- well, here's the
24 thing what we're willing to do I don't think I need to
25 hear Mr. Epps' testimony about his -- all his testimony

1 against Mr. Graham, but I am going to look at the direct
2 and the cross and if there's any redirect or anything.
3 I'm going to look at any testimony that deals with plea
4 offers, promises made to the witness and all of that.
5 However, I don't know how relevant all that is when you
6 look at the fact that your position is we decided not to
7 go forward with the trial because we weren't told he had
8 an offer.

9 MR. SHAFFER: Yes, sir.

10 THE COURT: Now, we can't speculate that
11 Ms. Parrott would have done any better or worse job on
12 impeaching him if she had known there was an offer and
13 they had gone forward. In other words, Mr. Floyd had his
14 shot at it. Ms. Parrott would have had her shot at it,
15 but that's all speculation as to how that would have
16 fleshed out, but does all that matter when the issue is
17 what motivated him to either go forward with his trial or
18 to enter into a plea, which I think is the issue; am I
19 correct?

20 MR. SHAFFER: Your Honor ---

21 THE COURT: We've talked about it a lot, but I
22 think that's the issue in the case.

23 MR. SHAFFER: Your Honor, I agree that the one
24 thing I would say is nine -- the parts that are
25 referenced, you know, the 99 and then 116 through 118 is a

1 part you're talking about that we looked at. I would ask
2 that that be submitted just for the completeness basically
3 so that you can determine under Gibson because what
4 they're asking under Gibson is would they have had an
5 opportunity to impeach them better had they known this and
6 had this information gotten there was impeachment
7 sufficient which is basically ---

8 THE COURT: Well, I understand what you're
9 saying because in here if they would have actually -- I'm
10 assuming your position is if the State would have said
11 Mr. Epps is going to testify on behalf of the State, all
12 we've told him is we'll offer him some help or some
13 consideration in exchange for that testimony, but we can't
14 make any specific offers as to what that would be. If
15 they would have told them that, then Mr. Floyd when he
16 said have you made any offers and he said no. Then Mr.
17 Floyd could have said isn't it true that they told you
18 they help you. And if he said no, at that point then
19 you've got another avenue you can go to prove the perjury
20 whereas if they didn't tell you that, you don't have that.

21 MR. SHAFFER: Yes, Your Honor.

22 THE COURT: That's your position I'm assuming.
23 You understand, ma'am?

24 MRS. MCCALLISTER: Yes, I do understand, Your
25 Honor.

1 THE COURT: Because like when you take the
2 position Ms. Parrott took meaning look they don't have to
3 tell me. If he flips, I know what he's been doing. He's
4 been offered help. And I can question him on it. But
5 then I have to accept his answer regardless of what it is
6 because I don't have any proof that they made him that
7 offer, but if I know that they made him that offer, then I
8 got something I can impeach him with and really prove he's
9 lying.

10 MRS. MCCALLISTER: Your Honor, I understand
11 Mr. Shaffer's argument on that. I think the issue still
12 though is if that testimony I think under the analysis in
13 this case first looking at whether or not that is a Brady
14 violation, I think you still have to determine that. I
15 think we have to look at whether that is material and
16 whether that is enough that it would have changed the
17 entire outcome of the case had they had that one piece of
18 information and been able to ask that question.

19 THE COURT: Well, that would be the case if he
20 went the trial, right?

21 MRS. MCCALLISTER: Right. Right.

22 THE COURT: But not on his decision as to
23 whether to go to trial or not.

24 MRS. MCCALLISTER: Well, right, Your Honor.

25 THE COURT: This is an unusual case. You said

1 it at the very beginning this is unusual because it didn't
2 go to trial. So a lot of the arguments you're making do
3 support your position had it gone to trial. In other
4 words, I think the Supreme Court loves to use the term
5 harmless error or whatever, but that's not what we're
6 dealing with. We're trying to deal with if there was
7 something that was done improperly that prevented
8 Mr. Brown from being able to make a complete, knowing,
9 voluntary decision to abandon his trial rights and plead.
10 That's the issue I think. And whether or not -- and then,
11 of course, the concern in this is what I pose to
12 Mr. Shaffer is -- and I'll have to look at the transcript
13 of this testimony, so I don't expect you'll have an answer
14 quickly. It'll be whenever we can get this from Keshia.
15 In looking at Ms. Parrott's testimony to determine whether
16 or not he actually had that information and whether he was
17 prejudiced by it and Mr. Shaffer's position is that,
18 Judge, even if you have that -- even if you have Ms.
19 Parrott saying I discussed it with him and this is the
20 issue that, I guess, I'll have to decide is it's still not
21 the same as if you actually have the solicitor saying,
22 yes, we offered him help, rather than her speculation that
23 they offered him help. Is that not correct, that's your
24 position?

25 MR. SHAFFER: Yes, Your Honor.

1 THE COURT: Their argument is therein lies the
2 difference.

3 MRS. MCCALLISTER: Yes.

4 THE COURT: And your argument may be based on
5 Ruiz and these other things that say it doesn't matter.

6 MRS. MCCALLISTER: Yes, Your Honor, and the
7 nature of the evidence the fact that that is impeachment
8 ---

9 THE COURT: That it's impeachment evidence only.

10 MRS. MCCALLISTER: Yes.

11 THE COURT: Correct. Okay. I think I've got
12 it, but we'll see. So we will need this transcript,
13 Keshia. All right, folks thank you.

14 MR. SHAFFER: Thank you, Your Honor.

15 THE COURT: It's good to see you, Tristan. I'll
16 get this transcript. I'll review the things that you
17 passed in and look at the law and I'll have your decisions
18 as soon as I get all that information.

19 MR. SHAFFER: Thank you, Your Honor.

20 MRS. MCCALLISTER: Thank you, Your Honor.

21 END OF REQUESTED TRANSCRIPT
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and reannexed paged, numbered 1 through 92, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 30th day of August, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 30th day of September 2018.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
	)	Case No.: 2013-CP-21-0925
	)	
CHAZMONTE L. BROWN,#334443	)	ORDER OF DISMISSAL
	)	
Applicant,	)	
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

2017 DEC 18 PM 3:33
 DEBIS POULOS O'HARA
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

This matter comes before this Court by way of Applicant's second application for post-conviction relief filed April 8, 2013. Respondent made its Return on August 14, 2013, asking the Court to dismiss this application as successive, beyond the statute of limitations, and for failure to state a claim of newly discovered evidence such that the procedural bar should be waived. On August 22, 2013, this Court issued a Conditional Order of Dismissal, giving Applicant twenty days to show why the application should not be summarily dismissed. Applicant filed a response to the Conditional Order of Dismissal dated September 18, 2013, alleging he first learned of the existence of his codefendant's agreement with the State in this case in November of 2012, after Applicant's first PCR was already on appeal. Applicant then retained Tristan Shaffer, Esquire, as PCR counsel. Respondent filed a Motion for Judgment on the Pleadings on July 11, 2014. Mr. Shaffer filed a Motion to Limit State's Argument Based on Collateral Estoppel on Applicant's behalf on May 23, 2016, to preclude Respondent from arguing Epps did not have an agreement with the State at the time of his testimony.

CERTIFIED: A TRUE COPY
Dea Paula O'Hara
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

On June 2, 2016, this Court convened a hearing on Applicant's collateral estoppel motion and Respondent's Motion to Dismiss at the Florence County Courthouse before the Honorable Jocelyn Newman. Applicant was represented by Mr. Shaffer, and Respondent was represented by J. Croom Hunter, Esquire. At that time, Respondent did not oppose Applicant's collateral estoppel motion, and the motion was granted by Judge Newman on September 9, 2016. Judge Newman also granted Respondent's Motion to Dismiss and issued an Order to that effect dated December 28, 2016. Applicant subsequently filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCF, on January 20, 2017. Respondent filed a Return on February 8, 2017. Judge Newman granted Applicant's motion on April 24, 2017, and ordered Respondent to set this matter for an evidentiary hearing on Applicant's allegation of a Brady¹ violation during the next available term of Court.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2009 term of the Florence County Grand Jury in indictment 2009-GS-21-00994 for armed robbery (Count One) and possession of a weapon during the commission of a violent crime (Count Two). Applicant was represented on these charges by Karen Parrott, Esquire. While out on bond for the armed robbery charge, Applicant was arrested on warrants M280283 and M272743 for distribution of marijuana. On December 15, 2010, Applicant pleaded guilty to armed robbery and two counts of distribution of marijuana, first offense. The Honorable Michael G. Nettles imposed a negotiated sentence of fifteen years for the armed robbery charge,

¹ Brady v. Maryland, 373 U.S. 83 (1963).

with a concurrent five years for each of the marijuana charges. Applicant did not appeal his plea or sentence.

Applicant filed his first post-conviction relief application on May 6, 2010. In his application, he alleged he was being held unlawfully because of "Fraudulent/Illegal Warrants & indictments[.]" Charles T. Brooks, III, Esquire, represented Applicant on his first PCR. The Honorable William H. Seals, Jr., convened a hearing on the matter on February 3, 2013. At the hearing, Applicant also raised allegations of ineffective assistance of counsel and that his plea was involuntary. Judge Seals denied post-conviction relief and dismissed Applicant's first PCR by written order dated June 18, 2012, and filed June 19, 2012.

Applicant appealed the denial of his first PCR. Robert M. Pachak, Esquire, of the Commission on Indigent Defense perfected Applicant's appeal with the filing of a Johnson² petition on November 14, 2012. On February 7, 2013, the South Carolina Supreme Court denied Applicant's petition for a writ of certiorari. The remittitur was returned to the circuit court on February 25, 2013.

Applicant's Current Application

Applicant filed the present action on April 8, 2013. In the present application, Applicant alleges "newly discovered evidence" and "prosecutorial misconduct." Applicant gave the following bases for the allegations:

- (a) I discovered in November 2012 that Brady information was not disclosed to me.
- (b) Prosecutor did not disclose my co-defendant's deal.

The Court also had before it the following documents: the PCR application; the State's Return and Motion to Dismiss; Applicant's guilty plea transcript; Applicant's Motion to Limit

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

the State's Argument Based on Collateral Estoppel; the Order Granting PCR in the Montarrio Graham case; and the transcript of the PCR evidentiary hearing of Latisha Cochran. Additionally, the Court has considered the testimony of Applicant; his defense counsel, Karen Parrott (Counsel), Esquire; and Hank Anderson, Esquire, who represented Applicant's codefendant, Quentin Epps. The Court also heard and considered the testimony of David Richardson, Esquire, who testified for the State.

SUMMARY OF RELEVANT FACTS

On December 15, 2010, Applicant pleaded guilty. However, one of Applicant's codefendants, Montarrio Graham (Graham), proceeded to trial that same day. Another codefendant, Quentin Epps (Epps), testified at a pre-trial hearing before Applicant's plea and during Graham's trial. When Epps testified during Graham's trial, he stated he did not have an offer from the State to reduce his charges or sentence in exchange for his testimony. Several weeks after Graham's trial, the State reduced Epps's armed robbery charge to accessory after the fact. On January 24, 2011, Epps pleaded guilty to accessory after the fact and received an eighteen month sentence concurrent with a probation revocation.

Graham appealed his conviction. During the course of his appeal, Graham discovered Epps had falsely testified concerning his deal. Graham withdrew his appeal and filed an application for PCR on March 9, 2012. An evidentiary hearing was convened before the undersigned on or about October 16, 2012. In an order dated November 2, 2012, this Court granted Graham's PCR pursuant to Napue v. Illinois, 360 U.S. 264 (1959), and Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). In this order, the Court specifically found Epps's defense counsel "credibly testified that the State had offered to reduce Epps's armed robbery charge in exchange for his testimony." Further, the Court found Graham's "right to due process was clearly violated by the State's failure to correct

known false testimony from Epps.” On December 6, 2012, Graham was informed the State would not appeal this Court’s decision.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Prosecutorial Misconduct/Brady violation

Applicant alleges the State committed a Brady violation by failing to disclose the existence of a deal to reduce Epps’s charge in exchange for his testimony against Applicant and Graham. 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). 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). Under this requirement, “favorable” evidence includes both exculpatory evidence and impeachment evidence. State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998). “Determining whether evidence withheld by the state is ‘material’ under Brady turns on whether the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” State v. Hill, 368 S.C. 649, 661, 630 S.E.2d 274, 280–81 (2006). Put

another way, to establish a Brady violation, the aggrieved party must show "that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles v. Whitley, 514 U.S. 419, 434 (1995).

Applicant testified he is currently being housed in Evans Correctional Facility on a fifteen-year sentence for armed robbery. Applicant testified he expects to serve 85% of his sentence, with a projected release date in September 2022. Applicant testified he had planned to go to trial until the day it began, when he found out Epps and another inmate would testify against him, and he was afraid they would fabricate their testimony. Applicant testified up until that point, he did not believe Epps would be present at trial. Applicant testified he did not find out about Epps's agreement with the State until 2012, at which time he filed this PCR action. Applicant testified if he had known about Epps's deal at the time of trial, he would have proceeded with trial, and he would have wanted his attorney to cross-examine Epps about the agreement.

Counsel testified Applicant was arrested on the armed robbery charge for an incident that occurred at a small corner store in Lake City. Counsel testified in addition to Epps's testimony against Applicant, law enforcement and several additional witnesses would testify. Counsel could not recall whether Applicant gave a statement to police, and Counsel testified there was no physical evidence. Counsel testified Applicant's trial had already started when he changed his mind and decided to plead guilty; she testified Applicant began asking her about a plea during jury selection, and she was able to negotiate with the solicitor during a break in trial. Counsel further testified Applicant agreed to a negotiated sentence of fifteen years on the armed robbery plus five years each on the two marijuana charges, and the State agreed to drop the weapons charge in return.

Counsel testified she was never specifically told Epps had a deal, and she did not confirm he received one until much later. However, Counsel also testified codefendants often testify against one another, and the standard practice in Florence County is for the solicitor to agree to "help" the testifying codefendant, but there is generally no specific deal made as to a sentence. Counsel further testified she knew in advance Epps would testify, and she discussed it with Applicant the morning of trial. Importantly, Counsel testified she assumed Epps had some kind of offer of help from the State, and her standard conversation with Applicant would have included a discussion that Epps was likely receiving help on his charges in exchange for his testimony. Counsel also testified she would have been prepared to cross-examine Epps on the existence of a deal had Applicant's trial continued. Additionally, Counsel testified even if she had known the specifics of the State's agreement with Epps, it would not have changed her advice to Applicant that he should accept the plea offer.

Assistant Solicitor David Richardson, who helped prosecute the cases against Applicant and Graham, also testified. Mr. Richardson testified Patricia Parr was the first-chair, and she asked him to help when it became clear there would be a trial involving multiple codefendants. Mr. Richardson testified he was not present for all of Ms. Parr's pre-trial preparation, but he was involved in the majority of it, including the substantive conversation regarding Epps's cooperation between himself, Ms. Parr, Epps, and Epps's attorney, Hank Anderson. Mr. Richardson testified the meeting took place in a conference room of the courthouse; he and Ms. Parr questioned Epps about his knowledge of the crime, and Epps agreed to testify. Mr. Richardson testified Epps was included on the State's witness list, which was disclosed to the defense in advance, though he was not sure exactly when.

Mr. Richardson testified both his personal standard practice and that of the Solicitor's Office is to make only a general offer of help in exchange for testimony. Mr. Richardson testified he does not make a specific agreement to a certain sentence or a certain charge because it damages the witness's credibility, and the jury might think the witness is just saying whatever the State wants. Mr. Richardson further testified when a non-specific agreement like this is made, he does not think there is anything to disclose to the defense as defense counsel would already be aware the witness is cooperating in order to receive help with his or her charges. Mr. Richardson testified if there ^{had been} ~~as~~ a specific agreement to certain sentence or lesser-included charge, the details would need to be disclosed. Finally, Mr. Richardson testified he remembered Epps being asked about a deal, and he felt Epps's testimony was accurate because nothing specific had been promised.

Mr. Anderson, Epps's defense attorney, testified he recalled the meeting with the Solicitor's Office regarding his client's testimony for the State. Mr. Anderson testified the State had already made an offer of ten years, which was not conditioned on any testimony by Epps. Mr. Anderson further testified it was his belief after the meeting that the State would reduce Epps's charge to something other than armed robbery, so Epps could avoid the ten-year mandatory-minimum sentence. However, Mr. Anderson testified the State did not make any promises as to a specific sentence or what the reduced charge would be.

Applicant argues the State had an obligation to disclose the specifics of its agreement with Epps once Applicant's trial started. As support for his position, Applicant cites to Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999) ("[Applicant] may challenge the voluntary nature of his guilty plea in a PCR action by asserting an alleged Brady violation."), and Napue v. Illinois, 360 U.S. 264 (1959) (finding there is an unconstitutional denial of due process when the State,

although not soliciting false testimony, allows it to go uncorrected). However, this Court finds the State was under no obligation to make a detailed disclosure of the specifics of its agreement with Epps. Counsel was aware of the existence of some type of agreement and had the opportunity to advise Applicant of this prior to the start of his trial and eventual guilty plea. Therefore, this Court finds the nondisclosed information – that the State would reduce Epps’s charge to some unspecified lesser-included offense or a lesser sentence – was not material under Brady.

Applicant’s case is distinguishable from that of his codefendant Graham. Importantly, Graham proceeded to trial, where Epps testified he had no deal *at all* with the State. The constitutional violation in Graham’s case was the State’s failure to correct the false testimony as to the very existence of a deal.³ On the other hand, Applicant and Counsel were aware Epps had made some agreement with the State in exchange for his testimony, and because the State never promised Epps a specific charge or a specific sentence, Applicant was not entitled to a more detailed disclosure. Furthermore, because Applicant knew of the existence of some type of agreement with Epps at the time he pleaded guilty, he did not suffer any constitutional violation.

Additionally, the Court finds the disclosure of any specifics regarding the agreement between Epps and the State would have been of limited impeachment value at Applicant’s trial. See United States v. Ruiz, 536 U.S. 622, 628-29 (2002) (holding the Constitution does not

³ Graham’s PCR was granted pursuant to Napue v. Illinois, 360 U.S. 264 (1959), discussed above. The Court notes Applicant’s case is also distinguishable from Gibson, not only because Applicant pleaded guilty rather than proceeding to trial, but because of the nature of the nondisclosed information in Gibson. There, the prosecutor failed to disclose material exculpatory evidence; he and police officers visited the crime scene with a key witness who claimed to have seen the shooting through a window, and when they confronted her with information that the view from that window was obstructed, the witness then changed her original statement to say she must have seen the shooting from a different vantage point. Gibson, 334 S.C. at 526-27, 514 S.E.2d at 326.

require the government to disclose impeachment information prior to entering a plea agreement with a defendant because impeachment information is related to the right to a fair trial, which a defendant waives upon entering a plea agreement, rather than the voluntariness of the plea). During Graham's trial, Epps was thoroughly cross-examined as to the benefit he could receive from testifying for the State and was impeached on his potential bias. See, e.g., State v. Cheeseboro, 346 S.C. 526, 553-554, 552 S.E.2d 300, 314-315 (2001) (finding the nondisclosure of evidence did not deprive Cheeseboro of a fair trial where the evidence had limited impeachment value and the witness was thoroughly impeached with other evidence); Duncan v. State, 281 S.C. 435, 439, 315 S.E.2d 809, 811 (1984) (finding a failure by the solicitor to disclose impeachment evidence was not a material Brady violation and did not require reversal where the witness had nonetheless been impeached through prior convictions). Finally, the Court finds Applicant's testimony at the evidentiary hearing indicates it was not just the testimony of Epps that influenced Applicant's decision to stop his trial and plead guilty; Applicant testified there was a second witness present to testify against him, which also influenced his decision.

Applicant's allegation is therefore denied and dismissed.

CONCLUSION

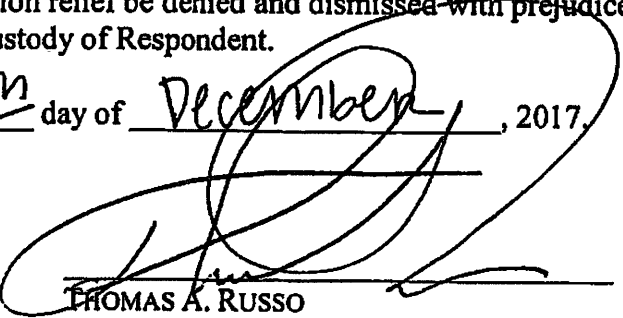
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and guilty plea. This Court finds, as to Applicant's Brady allegation, Applicant failed to present evidence the State committed such a violation, as the State was under no obligation to make a detailed disclosure of a general "deal" to help a codefendant in exchange for testimony, and Applicant and Counsel were aware of the existence of some kind of agreement between Epps and the State at the time

Applicant decided to plead guilty. The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

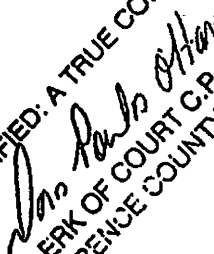
AND IT IS SO ORDERED this 11th day of December, 2017.


 THOMAS A. RUSSO
 Presiding Judge
 Twelfth Judicial Circuit

Florence, South Carolina.

2017 DEC 18 PM 3:33
 DOUG POULOS O'HARA
 CCCP & GS
 FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
	)	Case No.: 2013-CP-21-0925
CHAZMONTE L. BROWN,	)	
	)	MOTION TO ALTER OR AMEND
	)	
	)	
Applicant,	)	
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

2018 JAN -8 AM 10:43
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 FLORENCE, ALABAMA

FILED

On December 18, 2017, this Court dismissed the above referenced case. Applicant's Counsel received this order on December 22, 2017. Pursuant to Rule 59(e), SCRCRCP, Applicant respectfully request that this Court reconsider its Order of Dismissal. *See Elam v. S.C. D.O.T.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments."). In addition to the arguments raised at the hearing Applicant respectfully request that the Court reconsider the following:

1. The Court found that "Applicant knew of the existence of some type of agreement with Epps at the time he pleaded guilty, he did not suffer any constitutional violation." Applicant respectfully submits that at most Trial Counsel testified that she made the assumption that Epps had a deal because the Solicitor's Office routinely offers deals even when they are not disclosed. Applicant submits that there is a significant difference in the impeachment value of suspected deal and a deal that was disclosed. Applicant submits that this was supported by evidence at the hearing.

2. The Court found “the nondisclosed information – that the State would reduce Epps’s charge to some unspecified lesser-included offense or a lesser sentence – was not material under *Brady*.” Applicant respectfully submits that this is not supported by any evidence in the record.
3. As to the Court finding that the deal was not material, Applicant further argues that the failure to disclose the promise of non-specific consideration is material. The Court was provide prior testimony of Solicitor Patricia Parr during the Cochran PCR. In that testimony, Mrs. Parr indicated that Epps had been promised some help and consideration for his testimony. Graham Tr. 104, ll. 1-9. Mr. Anderson testified that Mrs. Parr indicated that the armed robbery would be dropped in exchange for his testimony. Graham Tr. 17, ll. 7-20. Due process requires the disclosure of any promise of leniency even if it was not specific. *See Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763 (1972) Additionally, the case against Applicant was entirely based on Epps’s credibility. *See id.*, 405 U.S. at 154-55, 92 S. Ct. at 766 (1972) (“Here the Government’s case depended almost entirely on Taliento’s testimony; without it there could have been no indictment and no evidence to carry the case to the jury. Taliento’s credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it.”)
4. Applicant respectfully submits that the Court’s finding that Applicant’s co-defendant, Montarrio Graham, was granted a new trial only on the *Napue* violation is in error. Montarrio Graham’s PCR was based on the *Napue* violation and the *Brady* violation.
5. The Court found “Applicant and Counsel were aware Epps had made some agreement with the State in exchange for his testimony...” Applicant submits that this finding is not supported by any evidence in the record. To the contrary, Trial Counsel testified she

assumed Epps had a deal, but had no evidence of it. There is no evidence in the record indicating that Trial Counsel had anything more than suspicion that there was a deal in place.

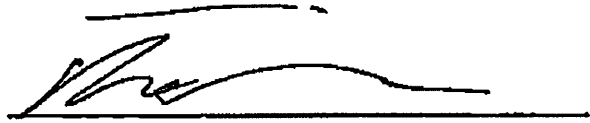
6. This Court found, “the State never promised Epps a specific charge or a specific sentence...” Applicant submits this finding is not supported by the record. While Mr. Epps was unaware of the specific charge he would receive, he was promised that it would not be pleading to Armed Robbery with a mandatory minimum ten year sentence. Mr. Anderson testified that his client was told that the Armed Robbery would be reduced. This matter was litigated by the State in the Montarrio Graham PCR and was the deal described in the collateral estoppel motion. Applicant respectfully submits that this finding is unclear and has been oversimplified to the point that it does not accurately describe the evidence in the record.
7. This Court found, “...because the State never promised Epps a specific charge or a specific sentence, Applicant was not entitled to a more detailed disclosure.” Applicant respectfully submits that this finding is based on a error of law. The state had a duty to disclose the deal with Epps. Epps was told that the state would be dropping the armed robbery and allowing him to plea to something else in exchange for his testimony. This is subject to disclosure.
8. Applicant submits that the record indicates that he would have proceeded with his trial had he known about Epps’s deal, and believes the Court’s finding to the contrary is without support in the record.
9. Applicant submits that the Court’s reliance on *United States v. Ruiz*, 536 U.S. 622, 122 S.Ct. 2450 (2002) is misplaced based on the following:

- a. *Ruiz* is factually distinguishable. Unlike *Ruiz*, Applicant changed his plea after his trial had begun. *Ruiz* plead under a “fast-track” plea agreement. In *Ruiz* the Supreme Court distinguished the trial-related right to impeachment information from the right to such information at a plea. See *Ruiz*, 536 U.S. at 631, 122 S. Ct. at 2456 (“The very considerations that led this Court to find trial-related rights to exculpatory and impeachment information in *Brady* and *Giglio*, argue against the existence of the “right” that the Ninth Circuit found here.”). Applicant’s trial had begun; therefore, *Giglio* should control his case.
- b. The reasoning of the *Ruiz* does not apply to Applicant’s case because Applicant had a greater knowledge of the prosecution’s case at the time he plead; therefore, the duty to disclose impeachment information was a constitutional violation. In *Ruiz*, the Supreme Court held, “[t]he degree of help that impeachment information can provide will depend upon the defendant’s own independent knowledge of the prosecution’s potential case -- a matter that the Constitution does not require prosecutors to disclose.” *Ruiz*, 536 U.S. at 630, 122 S. Ct. at 2455-56. Applicant testified that he plead after realizing that the State had transported Epps to testify. Additionally at the time Applicant pled, the State had already made their opening argument. Applicant’s knowledge of the prosecution’s case was substantial at the time of his plea. Therefore, Applicant would have been in a position to make decisions based on the effect of the impeachment information.
- c. The reasoning in *Ruiz* was based in part on the burden of requiring the prosecution to uncover and disclose impeachment information in advance of trial. See *Ruiz*, 536 U.S. at 633, 122 S. Ct. at 2457 (“[Y]et the added burden imposed upon the Government by requiring its provision well in advance of trial (often before trial

preparation begins) can be serious, thereby significantly interfering with the administration of the plea bargaining process.”). Since the State had already tried one of Applicant’s co-defendants¹ and was preparing in the middle of Applicant’s trial, this would not have been an issue in Applicant’s case.

- d. The Supreme Court reasoning in *Ruiz* is partially dependent on the safeguards provided under Rule 11 of the Federal Rules of Criminal Procedure and under Ruiz’s written plea agreement. Applicant did not have a written plea agreement and additionally. Additionally Applicable to Applicant’s case.

Based on the foregoing and the arguments raised at the evidentiary hearing, Applicant respectfully request that the Court alter or amend its order dismissing the above referenced case.



Tristan M. Shaffer (S.C. Bar #77565)
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January 2, 2018

¹ This Court was presented evidence of Latisha Cochran’s PCR hearing. Latish Cochran was tried prior to Applicant’s case was called to trial. During the Cochran Trial the State presented evidence that Epps did not have a deal. The State made no attempt to correct this by disclosing the deal to Applicant.

STATE OF SOUTH CAROLINA

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

COUNTY OF FLORENCE

)

) Case No.: 2013-CP-21-0925

CHAZMONTE L. BROWN,

)

CERTIFICATE OF SERVICE

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)

)

Applicant,

vs.

THE STATE OF SOUTH CAROLINA,

)

)

Respondent.

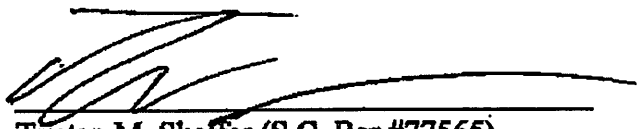
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CCCP & GS
FLORENCE COUNTY, SC

FILED

I certify that on this day, I have served a copy of the Motion to Alter or Amend in the above captioned case on the parties below by depositing it in the United States mail with postage prepaid and addressed to the parties as listed below.



Tristan M. Shaffer (S.C. Bar #77565)
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(803) 941-7514
tristan@shafferlawsc.com

January 2, 2018

Respondent's Attorney:

Lindsey McCallister
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Presiding Judge:

Hon. Thomas Russo
180 North Irby Street, MSC-O
Florence, SC 29501-3456

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

CHAZMONTE BROWN,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

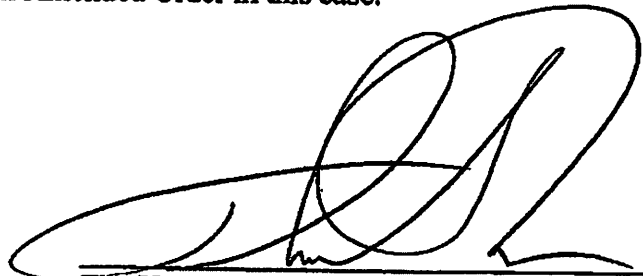
IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-21-0925

**ORDER GRANTING IN PART AND
DENYING IN PART APPLICANT'S
MOTION TO ALTER OR AMEND**

THIS MATTER came before the Court on Applicant's Motion to Alter or Amend, dated January 2, 2018. Having considered its original Order and the submissions of the parties pursuant to SCRCF 59(f), the Court does find it necessary to issue an amended order to clarify findings of fact and conclusions of law. However, the Court's original ruling to deny and dismiss Applicant's post-conviction relief application remains unchanged.

Based on the forgoing, Applicant's Motion to Alter or Amend is GRANTED in part and DENIED in part. The Court will issue an Amended Order in this case.

AND IT IS SO ORDERED.


The Honorable Thomas A. Russo
At-Large Judge for the Twelfth Judicial Circuit

April 4, 2017
Florence, South Carolina

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY

Donna Paula Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C. **816**

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

CHAZMONTE L. BROWN,

Applicant,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

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

Case No.: 2013-CP-21-0925

AMENDED ORDER OF DISMISSAL

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TWELFTH JUDICIAL CIRCUIT
FLORENCE COUNTY, SOUTH CAROLINA

THIS MATTER comes before the Court by way of Applicant's second application for post-conviction relief filed April 8, 2013. Respondent made its Return on August 14, 2013, asking the Court to dismiss this application as successive, beyond the statute of limitations, and for failure to state a claim of newly discovered evidence such that the procedural bar should be waived. On August 22, 2013, this Court issued a Conditional Order of Dismissal, giving Applicant twenty days to show why the application should not be summarily dismissed. Applicant filed a response to the Conditional Order of Dismissal dated September 18, 2013, alleging he first learned of the existence of his codefendant's agreement with the State in this case in November of 2012, after Applicant's first PCR was already on appeal. Applicant then retained Tristan Shaffer, Esquire, as PCR counsel. Respondent filed a Motion for Judgment on the Pleadings on July 11, 2014. Mr. Shaffer filed a Motion to Limit State's Argument Based on Collateral Estoppel on Applicant's behalf on May 23, 2016, to preclude Respondent from arguing Epps did not have an agreement with the State at the time of his testimony.

On June 2, 2016, this Court convened a hearing on Applicant's collateral estoppel motion and Respondent's Motion to Dismiss at the Florence County Courthouse before the Honorable

has considered the testimony of Applicant; his defense counsel, Karen Parrott, Esquire; and Hank Anderson, Esquire, who represented Applicant's co-defendant, Quentin Epps. The Court also heard and considered the testimony of David Richardson, Esquire, who testified for the State.

SUMMARY OF RELEVANT FACTS

On December 15, 2010, Applicant pleaded guilty shortly after jury selection in the trial of his case. However, one of Applicant's co-defendants, Montarrio Graham (Graham), proceeded to trial that same day. Another co-defendant, Quentin Epps (Epps), testified at a pre-trial hearing before Applicant's plea and during Graham's trial. When Epps testified during Graham's trial, he stated he did not have an offer from the State to reduce his charges or sentence in exchange for his testimony. Several weeks after Graham's trial, the State reduced Epps's armed robbery charge to accessory after the fact. On January 24, 2011, Epps pleaded guilty to accessory after the fact and received an eighteen-month sentence concurrent with a probation revocation.

Graham appealed his conviction. During the course of his appeal, Graham discovered Epps had falsely testified concerning his deal. Graham withdrew his appeal and filed an application for PCR on March 9, 2012. An evidentiary hearing was convened before the undersigned on or about October 16, 2012. In an order dated November 2, 2012, this Court granted Graham's PCR pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Napue v. Illinois, 360 U.S. 264 (1959), and Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). In that order, the Court specifically found Epps's defense counsel "credibly testified that the State had offered to reduce Epps's armed robbery charge in exchange for his testimony." Further, the Court found Graham's "right to due process was clearly violated by the State's failure to correct known false testimony from Epps." On December 6, 2012, Graham was informed the State would not appeal this Court's decision.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Prosecutorial Misconduct/Brady Violation

Applicant alleges the State committed a Brady violation by failing to disclose the existence of a deal to reduce the charge of his co-defendant (Epps) in exchange for Epps' testimony against Applicant and Graham.

i. Relevant Testimony from PCR Hearing

Applicant testified he is currently being housed in Evans Correctional Facility on a fifteen-year sentence for armed robbery; he expects to serve 85% of his sentence, with a projected release date in September of 2022. Applicant testified he had planned to go to trial until the day it began, when he found out Epps and another inmate would testify against him, and he was afraid they would fabricate their testimony. Applicant testified that up until that point, he did not believe Epps would be present at trial. Applicant testified he did not find out about Epps's agreement with the State until 2012, at which time he filed this PCR action. Applicant testified that if he had known about Epps's deal at the time of trial, he would have proceeded with trial, and he would have wanted his attorney to cross-examine Epps about the agreement.

Counsel testified Applicant was arrested on the armed robbery charge for an incident that occurred at a small corner store in Lake City. Counsel testified that in addition to Epps's testimony

against Applicant, law enforcement and several additional witnesses were prepared to testify. Counsel could not recall whether Applicant gave a statement to police, but testified there was no physical evidence. Counsel testified Applicant began asking her about a plea during jury selection on the morning of trial, and she was able to negotiate with the solicitor during a break. Counsel further testified Applicant agreed to a negotiated sentence of fifteen years on the armed robbery plus five years each on the two marijuana charges, and the State agreed to drop the weapon charge in return.

Counsel testified she was never specifically told Epps had a deal, and she did not confirm he received one until much later. Counsel testified that, in her experience, co-defendants often testify against one another, and the standard practice in Florence County is for the solicitor to agree to "help" the testifying codefendant; however, there is generally no specific deal made as to a sentence. Counsel further testified that she knew in advance Epps was going to testify, and she discussed it with Applicant the morning of trial. Importantly, Counsel testified she assumed Epps had some kind of offer of help from the State, and her standard conversation with Applicant would have included a discussion that Epps was likely receiving help on his charges in exchange for his testimony. Counsel also testified that she would have been prepared to cross-examine Epps on the existence of a deal had Applicant's trial continued. Additionally, Counsel testified that even if she had known the specifics of the State's agreement with Epps, it would not have changed her advice to Applicant that he should accept the plea offer.

Assistant Solicitor David Richardson, who helped prosecute the cases against Applicant and Graham, also testified. Mr. Richardson testified Patricia Parr was the first-chair, and she asked him to help when it became clear there would be a trial involving multiple codefendants. Mr. Richardson testified he was not present for all of Ms. Parr's pre-trial preparation, but he was

involved in the majority of it, including the substantive conversation regarding Epps's cooperation between himself, Ms. Parr, Epps, and Epps's attorney, Hank Anderson. Mr. Richardson testified the meeting took place in a conference room of the courthouse; he and Ms. Parr questioned Epps about his knowledge of the crime, and Epps agreed to testify. Mr. Richardson testified Epps was included on the State's witness list, which was disclosed to the defense in advance, though he was not sure exactly when.

Mr. Richardson testified that both his personal standard practice and that of the Solicitor's Office is to make only a general offer of help in exchange for testimony. Mr. Richardson testified he does not make a specific agreement to a certain sentence or a certain charge because it damages the witness's credibility, and the jury might think the witness is just saying whatever the State wants. Finally, Mr. Richardson testified he remembered Epps being asked about a deal, and he felt Epps's testimony was accurate because nothing specific had been promised.

Hank Anderson, Epps's defense attorney, testified he recalled the meeting with the Solicitor's Office regarding his client's testimony for the State. Mr. Anderson testified the State had already made an offer of ten years, which was not conditioned on any testimony by Epps. Mr. Anderson further testified it was his belief after the meeting that the State would reduce Epps's charge to something other than armed robbery so Epps could avoid the ten-year mandatory-minimum sentence. However, Mr. Anderson testified the State did not make any promises as to a specific sentence or what the reduced charge would be.

ii. Brady

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Brady v. Maryland, 373 U.S. 83, 87 (1963). 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). Under this requirement, "favorable" evidence includes both exculpatory evidence and impeachment evidence. State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998). "Determining whether evidence withheld by the state is 'material' under Brady turns on whether the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." State v. Hill, 368 S.C. 649, 661, 630 S.E.2d 274, 280-81 (2006). Put another way, to establish a Brady violation, the aggrieved party must show "that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles v. Whitley, 514 U.S. 419, 434 (1995).

Applicant argues the State had an obligation to disclose the specifics of its agreement with Epps once Applicant's trial started. Applicant further argues that his case is no different from that of his co-defendant, Graham, for whom this Court previously granted post-conviction relief. As support for his position, Applicant cites to Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999) ("[Applicant] may challenge the voluntary nature of his guilty plea in a PCR action by asserting an alleged Brady violation") and Napue v. Illinois, 360 U.S. 264 (1959).

Applicant's case is distinguishable from Napue, which, in turn, distinguishes it from Graham's PCR action. In Napue, the State of Illinois presented a murder case, which was tried to verdict. During the course of the trial, the state's principal witness gave perjured testimony that he had received no promise of consideration in return for his testimony when, in fact, the prosecutor had promised him consideration. The Supreme Court held that the State's failure to correct the false testimony of an important witness denied petitioner due process of the law in violation of the

Fourteenth Amendment. Id. Likewise, in Graham's case, Epps's in-court testimony given during Graham's jury trial that he had not been promised a deal of leniency for his testimony went uncorrected by the prosecution, thus providing a solid legal basis for post-conviction relief. The constitutional violation in Graham's case was the State's failure to disclose its deal with Epps *as well as* the State's failure to correct the false testimony at trial as to the very existence of a deal. Here, however, Applicant's case was resolved by a guilty plea shortly after the jury had been struck; no testimony was ever taken.

Applicant's case is also distinguishable from Gibson because of the nature of the nondisclosed information in that case. There, the prosecutor failed to disclose material exculpatory evidence that he and law enforcement had visited the crime scene with a key witness, Anna Ross, who claimed to have seen the shooting through a window, but when they confronted her with information that the view from that window was obstructed, Ross changed her original statement to say she must have seen the shooting from a different vantage point. Gibson, 334 S.C. at 526-27, 514 S.E.2d at 326. At Gibson's PCR hearing, his defense attorney "said he thought he could prove Ross was lying, but no one ever told him that Ross had changed her statement . . . [n]or did anyone ever tell Gibson that the prosecutor and police were convinced she was lying." 334 S.C. 515, 521. This was information that could not possibly have been assumed or presumed; "it is reasonably probable that, had the prosecutor revealed the suppressed information, Gibson would have chosen to stand trial instead of pleading guilty. Instead of merely hoping he could impeach Ross as a liar, Gibson would have known about Ross's inconsistent statements and the revealing on-the-scene confrontation." Id. at 527.

Here, the nature of the nondisclosed information was the existence of a deal between Epps and the State. At the PCR Hearing, Counsel testified that during the representation of her client,

she operated under the assumption that Epps had made some type of agreement with the State in exchange for his testimony:

- Q. [The State]: Okay. So when you have a co-defendant who testifies against another co-defendant, what is your usual feeling about that or thoughts about that?
- A. [Counsel]: [T]hey're usually offered a deal in order to testify, but the question becomes for everyone involved what kind of a deal is being made for their testimony. And so the way that they usually go about this here in this circuit . . . they will tell them that I will help you on the other end of this, but they don't make them a specific deal because they don't want to have specific numbers available for cross-examination and used for impeachment or bias, that sort of thing. . . .
- Q. Okay. So going into this trial with Mr. Brown, you get there and you see that Mr. Epps is prepared to testify against him, correct, or did you know that he was going to testify ahead of time or did you find out that day?
- A. We knew that he was going to be testifying and I believe he would have been disclosed as part of the witness list.
- Q. Okay. So you at least knew that you had a co-defendant who was going to testify against him ahead of time?
- A. Yes.
- Q. And did you discuss that with Mr. Brown, the fact that Mr. Epps would be testifying against him?
- A. I would have, yes.
- Q. Before the morning of the trial?
- A. Yes.
- Q. Did you discuss with Mr. Brown the fact that if a co-defendant was testifying against him that they possibly were doing so because they thought they could get some help?
- A. I can't recall specifically, but I'm sure - - I mean, that's part of the normal conversation when you have this situation. So, I mean, by that I would assume that I did. I'm almost positive I did, but I can't remember a specific conversation.
- Q. If you had known for sure that Mr. Epps had an agreement about, you know, getting some help on his charges or whatever after his testimony, would that have changed your advice to Mr. Brown in any way?
- A. No, because I would have been assuming that he had a deal to begin with.

Transcript of Record 13:12—17:11, Aug. 30, 2017. Counsel, who has been practicing solely in the arena of criminal defense for the past fourteen years, testified that she has had co-defendants

testify against her client (and vice versa) throughout her career, and that she discusses the implications of a "deal" with her client as a matter of course when that situation arises. Tr. of R. 12:23—13:11. Not only is the nature of the non-disclosed information in Applicant's case quite different from that in Gibson, but it could have been—and actually was—presumed to be true.

Additionally, the Court finds the disclosure of any specifics regarding the agreement between Epps and the State would have been of limited impeachment value at Applicant's trial. See United States v. Ruiz, 536 U.S. 622 (2002) (holding the Constitution does not require the government to disclose impeachment information prior to entering a plea agreement with a defendant because impeachment information is related to the right to a fair trial, which a defendant waives upon entering a plea agreement, rather than the voluntariness of the plea). During Graham's trial, Epps was thoroughly cross-examined as to the benefit he could receive from testifying for the State and was impeached on his potential bias. See, e.g., State v. Cheeseboro, 346 S.C. 526, 553-554, 552 S.E.2d 300, 314-315 (2001) (finding the nondisclosure of evidence did not deprive Cheeseboro of a fair trial where the evidence had limited impeachment value and the witness was thoroughly impeached with other evidence); Duncan v. State, 281 S.C. 435, 439, 315 S.E.2d 809, 811 (1984) (finding a failure by the solicitor to disclose impeachment evidence was not a material Brady violation and did not require reversal where the witness had nonetheless been impeached through prior convictions). Finally, the Court finds Applicant's testimony at the evidentiary hearing indicates it was not just the testimony of Epps that influenced Applicant's decision to stop his trial and plead guilty; Applicant testified there was a second witness present to testify against him, which also influenced his decision. Thus, this Court finds that the "Epps deal" is not material under Brady.

CONCLUSION

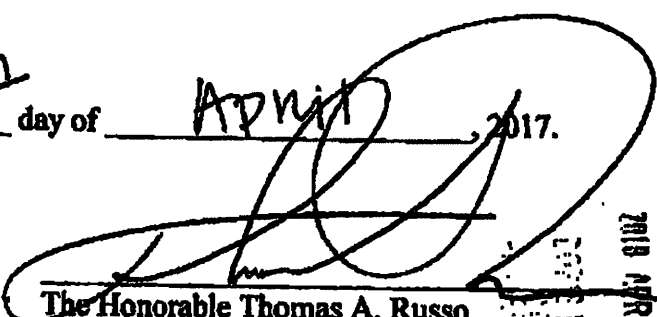
Based on all the forgoing, this Court finds and concludes that Applicant failed to present evidence of a Brady violation during the course of his case; thus, Applicant has not established any constitutional violations or deprivations before or during his trial and guilty plea.

IT IS THEREFORE ORDERED THAT:

1. This application for post-conviction relief be denied and dismissed with prejudice;
and
2. Applicant be remanded to the custody of Respondent.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED this 4th day of April, 2017.


 The Honorable Thomas A. Russo
 Presiding Judge
 Twelfth Judicial Circuit

Florence, South Carolina

2018 APR -5 PM 3:51
 CLERK OF COURT
 12TH JUDICIAL CIRCUIT
 FLORENCE, SC

FILED

ARREST WARRANT

I-332185

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

THE STATE

against

CHAZMONT LEWIS BROWN

dress

LAKE

one: _____ SSN: _____

sc: M Race: B Height: 6-3 Weight: 220.S: SC DL#: _____JB: _____ Agency ORI#: SC0210200Prosecuting Agency: LAKE CITY POLICE DEPARTMENTProsecuting Officer: INV. FRANKLINOffense: ARMED ROBBERYOffense Code: 0139Order/Ordinance Sec. 16-11-0330 (A)

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality ofFlorence The accused

to be arrested and brought before me to be

satisfied with according to law.

Andrew (L.S.)
Signature of JudgeDate: 12/15/2008

RETURN

A copy of this arrest warrant was delivered to
defendant CHAZMONT LEWIS BROWN

n _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

LAKE CITY MUNICIPAL COURT

02 KELLEY STREET

LAKE CITY, SC 29560

827

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

Personally appeared before me the affiant INV. FRANKLIN MCALLISTER whobeing duly sworn deposes and says that defendant CHAZMONT LEWIS BROWNdid within this county and state on 11/15/2008 to 11/15/2008 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAKE CITY)

in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-0330 (A) / ARMED ROBBERYI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:AFFIANT HAS EVIDENCE AND WITNESS TO PROVE THE SAME: ON THAT OR ABOUT NOVEMBER 15, 2008 IN THE CITY LIMITS
OF LAKE CITY THE DEFENDANT AND CO-DEFENDANTS DID COMMIT THE CRIME. THE DEFENDANT AND CO-DEFENDANTS
ARMED WITH HANDGUNS DID HOLD THE VICTIM AT GUN POINT AND DEMANDED MONEY. THE DEFENDANT AND
CO-DEFENDANTS THEN STRUCK THE VICTIM IN THE BACK OF THE HEAD WITH A GUN FORCING HIM TO THE GROUND
WHERE THEY TOOK APPROXIMATELY \$500.00 IN CASH FROM THE VICTIM. THE DEFENDANT AND CO-DEFENDANTS THEN
FLED FROM THE INCIDENT LOCATION. THIS INCIDENT OCCURRED AT HAYES GROCERY AT 314 SPRUCE STREET. THIS
CASE WAS INVESTIGATED BY THE LAKE CITY POLICE DEPARTMENT. CAE#08-1555

Signature of Affiant

St. Louis L. McAllister

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

Affiant's Address 202 KELLEY STREETLAKE CITY SC 29560Affiant's Telephone (843) 374-5421

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 11/15/2008 defendant CHAZMONT LEWIS BROWN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of LAKE CITY) as set forth below:DESCRIPTION OF OFFENSE: ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED OR ALLEGEDLY
ARMED WITH A DEADLY WEAPONHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 12/15/2008)Christopher R. Nowlin (L.S.)
CHRISTOPHER R NOWLINJudge Code: 6812Judge's Address P. O. BOX 1329LAKE CITY SC 29560Judge's Telephone 843-347-5412Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

Case: 08-01555

ORIGINAL

827

BAIL set by

Judge _____

in _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

in _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

in _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

WITNESSES
CHIEF BILLY BROWN LCPD

Mcallister

PROS: PSP

D/O: 11-15-2008

ARREST WARRANT NO.
I332185 (1); I332185 (2).

ACTION OF GRAND JURY

TRUE BILL

David M. Schaffer
Foreman of Grand Jury

VERDICT

829

Foreman of Petit Jury

Date:

DOCKET NO. 2009 - GS - 21 - 00664

The State of South Carolina,

County of FLORENCE

PSP

COURT OF GENERAL SESSIONS

JUNE TERM 2009

THE STATE

vs.

CHAZMONT LEWIS BROWN

Indictment for

ARMED ROBBERY

AND

POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME

FILED

2009 JUN -4 PM 1:25

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

RECEIVED
JUN 4 2009
CLERK OF COURT
FLORENCE COUNTY, SC
CERTIFIED TRUE COPY

829

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

ARMED ROBBERY AND POSSESSION OF WEAPON
DURING COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on JUNE 04, 2009, the Grand Jurors of FLORENCE

County present upon their oath:

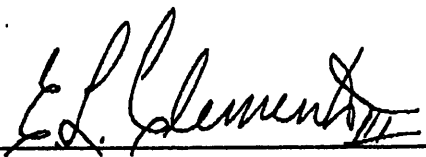
COUNT ONE - ARMED ROBBERY

That CHAZMONT LEWIS BROWN did in FLORENCE County on or about November 15, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, 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, to wit: handgun did feloniously rob William Hayes by means of force or intimidation, goods or monies of the said Williams Hayes to-wit: US currency.

**COUNT TWO - POSSESSION OF WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

That CHAZMONT LEWIS BROWN did in FLORENCE County on or about November 15, 2008, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that he was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun during the commission of a violent crime, to wit: Armed Robbery.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

IN THE COURT OF GENERAL SESSIONS

831

INDICTMENT/CASE#: 09-GS-21-664

VS.
Chazmont Lewis Brown

AW#: 1332185

AKA:

Date of Offense: 1/26/2009

Race: B Sex: M Age: 23

S.C. Code §: 16-11-0330(A)

DOB:

CDR Code #: 0139

Address:

City, State:

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, ROBBERY WHILE ARMED WITH

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charges: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. CH (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 4345 [Signature] 1545 [Signature] 15636
Solidator 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 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: 12-15-10

☒ 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. Refer

☐ The Defendant is to be placed on 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 PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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 \$ _____

§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 \$ 5.00

§44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 105.00

Clerk of Court/Deputy Clerk N. Bell

Court Reporter: E. B. R. P. R.

SCCA/217 (06/2010)

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: _____

☐ Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge [Signature]

Judge Code: _____

Sentence Date December 15, 2010

831