

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Abbeville County

Brian M. Gibbons, Circuit Court Judge

RECEIVED

MAY 20 2019

S.C. SUPREME COURT

—————
SHAQUEAN NEWJEAN LEWIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000139

—————
APPENDIX
—————

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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Attorney General

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Assistant Attorney General
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Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
)
-VS-)
SHAQUEAN NEWJEAN LEWIS,)
DEFENDANT.)
_____)

2016-GS-01-0078

TRANSCRIPT OF RECORD

OCTOBER 3, 2016
ABBEVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE DONALD HOCKER, JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

- YATES BROWN, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

KAMI GRANADE, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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(NO EXHIBITS INTRODUCED DURING THIS HEARING)

1 THE COURT: All right, Solicitor.

2 MR. BROWN: May it please the Court? Your Honor, stands
3 before you on indictment 16-GS-01-0078, Shaquean Newjean
4 Lewis, on armed robbery. He was arrested by a joint effort
5 among the Calhoun Falls Police Department, SLED, Greenwood
6 County Sheriff's Office, and also the Abbeville County
7 Sheriff's Office. He is represented by Kami Granade of the
8 Public Defender's Office. Your Honor, this is a negotiated
9 15-year-sentence.

10 THE COURT: Madam Clerk, would you swear Mr. Lewis in,
11 please?

12 CLERK OF COURT: Raise your right hand.

13 SHAQUEAN NEWJEAN LEWIS, having first
14 been duly sworn, testified as follows:

15 THE COURT: Ms. Granade, do you represent Shaquean
16 Newjean Lewis? I probably butchered that name pretty good.

17 MS. GRANADE: Yes, Your Honor.

18 THE COURT: Have you had an opportunity to explain his
19 charge to him, his constitutional rights he's giving up as a
20 result of the plea, and the maximum punishment he could
21 receive?

22 MS. GRANADE: I have.

23 THE COURT: And you believe he has understood your
24 explanation?

25 MS. GRANADE: Yes.

1 THE COURT: How does he wish to plead to armed robbery?

2 MS. GRANADE: Guilty.

3 THE COURT: As his attorney do you agree with that
4 decision?

5 MS. GRANADE: I do.

6 THE COURT: Do you believe that if he were to go to
7 trial there is a good possibility he would be found guilty?

8 MS. GRANADE: Yes, Your Honor.

9 THE COURT: Thank you very much.

10 EXAMINATION

11 BY THE COURT:

12 Q Mr. Lewis, I am going to ask you some questions. Pay
13 close attention to the questions I ask you and when
14 you respond speak up loud enough --

15 A Yes, sir.

16 Q -- so we can hear you; Okay?

17 A Yes, sir.

18 Q You are Shaquean Lewis?

19 A Shaquean Lewis.

20 Q Shaquean Lewis. All right. How old are you?

21 A I just turned 30 two months ago.

22 Q How far did you go in school?

23 A I graduated high school.

24 Q What kind of work do you normally do?

25 A I was working at the Packing Plant.

1 Q A packaging plant?

2 A In Greenwood.

3 Q Okay. You just heard your lawyer tell me you're
4 pleading guilty to one offense, that being armed robbery; is
5 that correct?

6 A Yes, sir.

7 Q Are you pleading guilty because, in fact, you are
8 guilty?

9 A Yes, sir.

10 Q Anyone force you to plead guilty, or promise you to
11 plead guilty, or done anything to get you to plead guilty
12 against your will?

13 A No, sir.

14 Q Are you pleading guilty today freely, voluntarily, and
15 intelligently?

16 A Yes, sir.

17 Q Within the last 24 hours have you consumed any
18 substance, alcohol, drugs, medication, that would have an
19 effect on your ability to understand these proceedings and
20 also affect your ability to make decisions?

21 A No, sir.

22 Q Do you suffer from any problem or condition, physical,
23 mental, or emotional, that would have an effect not only on
24 your ability to understand these proceedings but affect your
25 ability to make decisions?

1 A No, sir.

2 Q All right. Solicitor, do you want to give me some
3 facts, please?

4 MR. BROWN: Thank you, Your Honor. On or about
5 September 10, 2015 at 253 East Savannah Street in Calhoun
6 Falls here in Abbeville County officers were dispatched to
7 that location to the bank there. Ms. Bernice Burden and
8 another Park Sterling associate were working. They had just
9 come in, arriving first thing in the morning to that branch.
10 Ms. Sammons, who is one of the other employees, drove up the
11 same time as Ms. Burden did.

12 Ms. Sammons goes into the bank first to make sure that
13 everything is okay. She checks and makes a search, cuts the
14 lights on, and then gives a motion to Ms. Burden to enter
15 the bank. Ms. Burden then walks from her car into the side
16 door of the bank and as she's getting to that side door a
17 man in a blue hoodie with his face masked and sunglasses on
18 approaches her from behind, has a pistol in his hand, and
19 follows her behind -- follows her into the bank with the gun
20 in her back. Demands money from the bank.

21 Ms. Burden and Ms. Sammons are ordered to open up the
22 vault and give the money that is in their two drawers that
23 they've put away in those two drawers. They do give that to
24 the armed robber. The armed robber then tells them they
25 have to go into the vault and shuts the door behind them,

1 and then leaves the bank. That scene is captured on video
2 in the bank. Later on, Ms. Byrd and Ms. Sammons gave
3 statements to law enforcement.

4 Mr. Lewis was a customer at the bank. He had been in
5 as recently as a week before where we have him on video
6 being in the bank. They could recognize his voice. They
7 immediately thought it was him. However, before that -- two
8 hours after the incident, Greenwood County Sheriff's Office
9 were called in with their dog team, the Bloodhound Tracking
10 Team. They were able to get a swab from the vault door to
11 get a scent. Did use their dog, Blue, to track from the
12 bank up Savannah Street, and then to the location -- to [REDACTED]
13 [REDACTED] there in Calhoun Falls, which is not too far
14 away from the bank where the dog alerted on the door. The
15 handler actually pulled back the dog thinking that the house
16 was abandoned. The dog came back to the door and at that
17 time Mr. Lewis opened the door. He was then cuffed at that
18 time. A search warrant was executed on that house. They
19 did find the blue hoodie there and a black BB gun which the
20 clerks at the bank said it was not the gun that he had that
21 day.

22 Your Honor, this is on the trial docket for this week.
23 He was first up. He did inform on Friday that it was going
24 to be a plea. He was going to accept the 15-year negotiated
25 offer. Mr. Lewis does not have much on his record. He has

1 a PWID cocaine from 2009 which is his only conviction.
2 Based on the severity of this armed robbery, the State
3 believes that it is a fair resolution of 15 years
4 negotiated. The State will dismiss the gun charges and
5 actually a kidnaping charge as well.

6 THE COURT: Okay. All right.

7 EXAMINATION

8 BY THE COURT:

9 Q Mr. Lewis, is that a correct statement of the facts,
10 sir?

11 A (Non-verbal response.)

12 Q While you may not agree with every single detail --

13 A Yes, sir. Yes, sir.

14 Q -- has the Solicitor substantially stated the facts?

15 A Yes, sir.

16 Q Now, you understand, Mr. Lewis, when you plead guilty
17 you give up certain constitutional rights? I will go
18 through those with you. The first constitutional right you
19 are giving up is the right to a jury trial. You just heard
20 the Solicitor tell me that your case was first up for trial.
21 Do you want a jury trial now?

22 A No, sir.

23 Q You have the constitutional right to remain silent. No
24 one, including myself, can force you to say anything at any
25 time. Do you want to give up that right?

1 A No, sir.

2 Q Let me ask that again to you, okay? You have the
3 constitutional right to remain silent. No one, including
4 myself can force you to say anything at any time. Do you
5 want to give up that right?

6 A No, sir.

7 Q All right. Step back and talk to your lawyer, please.

8 (Whereupon there was a pause in the proceeding.)

9 Q Let me ask you in a different way. Do you want to give
10 up your constitutional right to remain silent?

11 A Yes. Yes.

12 Q You have the constitutional right for your attorney on
13 your behalf to make legal arguments, put up legal
14 challenges, legal defenses, to any and all evidence the
15 State may have against you along with confronting and cross-
16 examining State's witnesses. Do you want to give up those
17 rights?

18 A Yes, sir.

19 Q Now, you understand, Mr. Lewis, that when you were
20 arrested on these charges you were automatically presumed to
21 be innocent and that presumption of innocence has been with
22 you all the way up until now, but when you stand before the
23 Court and plead guilty you are no longer entitled to that
24 presumption of innocence. Do you understand that?

25 A Yes, sir.

1 Q When the State elected to bring these charges against
2 you they automatically took on what we call a burden of
3 proof to prove each and every element of these offenses, or
4 the one offense that you are pleading guilty to, beyond a
5 reasonable doubt standard. However, when you plead guilty
6 as you are doing so now they no longer have any burden of
7 proof whatsoever. All they have to do is present sufficient
8 facts to base your guilty plea on. Do you understand that,
9 sir?

10 A Yes, sir.

11 Q Are you satisfied with Ms. Granade's services and legal
12 representation?

13 A Yes, sir.

14 Q Has she done everything that you've asked her to do or
15 expected that she would do on your behalf?

16 A Yes, sir.

17 Q I think Ms. Bolen was involved in representing you too;
18 is that correct?

19 A Well, I only met her today.

20 Q You only met who today?

21 A Ms. Bolen.

22 Q Okay. All right. But she was involved to some extent.
23 Are you satisfied with whatever she did for you?

24 A Yeah, I'm satisfied.

25 Q Do you have any complaints against the lawyers? Any

1 complaints against the Solicitor's Office? Any complaints
2 against any law enforcement that was involved in this
3 matter?

4 A No, sir.

5 Q Do you understand that if you have a legal basis to
6 challenge this guilty plea that you are making today that
7 you only have ten days to file a notice of intent to appeal
8 with a higher court? Do you understand that, sir?

9 A Yes, sir.

10 Q You understand that armed robbery is considered a
11 violent offense?

12 A Yes, sir.

13 Q And that can cause the service of your sentence up to
14 85 percent of the time?

15 A Yes, sir.

16 Q Okay. And it's also considered a most serious offense,
17 which means that if you were to sometime in the future be
18 convicted of another most serious charge or charges you
19 could be facing a life imprisonment without parole. Do you
20 understand that?

21 A Yes, sir.

22 Q So this conviction is a start of something that could
23 happen in the future. Do you understand that?

24 A Yes, sir.

25 Q Again, you are pleading guilty today because, in fact,

1 you are guilty?

2 A Yes, sir.

3 Q All right. Thank you very much.

4 THE COURT: Let the record reflect there is a factual
5 basis for the plea. The plea has been made freely,
6 voluntarily, and intelligently by Mr. Lewis. He has done so
7 with able assistance of counsel with who's services he
8 expresses satisfaction with:

9 In addition, I find that armed robbery is a violent
10 offense pursuant to section 16-23-500, which prohibits
11 future ownership or possession of firearms.

12 Ms. Granade, I will be glad to hear from you, ma'am.

13 MS. GRANADE: Thank you, Your Honor. We would just ask
14 that you go along with what has been negotiated. In
15 addition, Mr. Lewis has been in the Abbeville County
16 Detention Center since September 14, 2015. That totals 383
17 days, and we would ask Your Honor to give Mr. Lewis credit
18 for the time he has already served.

19 THE COURT: Mr. Lewis, anything you want to tell me,
20 sir?

21 DEFENDANT: Not really. No, sir.

22 THE COURT: I will accept the negotiated plea. The
23 sentence of the Court is, Mr. Lewis, that you be committed
24 to the State Department of Corrections for a period of 15
25 years. I will give you credit for 383 days. Good luck to

1 you..

2 MR. BROWN: Judge, I think it is 385 days.

3 THE COURT: 85? Okay. Good luck to you, sir.

4 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Abbeville County, South Carolina, on the 3rd day of October, 2016.

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

Tara T. Scott

Tara T. Scott, CVR

October 1, 2017

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

FORM 5

STATE OF SOUTH CAROLINA)
)
County of ABBEVILLE)
)
DEYRON LEWIS LEWIS 310249)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)
)

IN THE COURT OF COMMON PLEAS

2017-CP-01-145

APPLICATION FOR
POST-CONVICTION RELIEF

CLERK OF COURT
2017 MAY 24 AM 9:05
STATE OF SOUTH CAROLINA
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MC CORANCK CORRECTIONAL INSTITUTION

2. Name and location of Court which imposed sentence ABBEVILLE COUNTY SUPERIOR COURT, ABBEVILLE SOUTH CAROLINA 29520 Post Office Box 99

3. Name(s) of co-defendant(s) (if any) None

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 16-0501-0078
 - (b) _____

(c) _____

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

(a) OCTOBER 3, 2016 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 _____

(c) after a plea of nolo contendere _____

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

No

8. If you answered "yes" 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. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Ineffective Assistant Counsel

(b) Failure of Commonwealth ~~to~~ Counsel

(c) Conflict of interest between Public defender office and Calhoun Falls Police Department.
 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: ineffective assistant counsel

- (a) ~~Prosecution~~ Counsel failed to investigate and prepare for trial
- (b) Counsel failed to ~~communicate~~ advise me of all possible outcomes prompting me to plead guilty
- (c) failure of communication between counsel and client.

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

- (a) counsel failed to investigate and prepare for trial
- (b) Counsel failed to advise me of possible outcomes of trial prompting me to plead guilty
- (c) failure of communication between counsel and client

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. N/A
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. N/A
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. _____
- ii. NIA
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. NIA
- iii. _____
- iv. _____

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

- i. _____
- ii. NIA
- 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. _____
- ii. NIA
- iii. _____

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

- i. _____
- ii. NIA
- iii. _____

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

NEW TRIAL, and any other relief court
deems proper,

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

No,

STATE OF SOUTH CAROLINA)
County of Abbeville)

VERIFICATION

I, Shaqueem Neilson Lewis, 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.

Shaqueem Neilson Lewis
SNC

SWORN to and subscribed before me this 22nd
day of May 2017.
Michael Camero
(L.S.)
Notary Public

My Commission Expires: July 09, 2026

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

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

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

Shaqueem Alvin Lewis
SNL Applicant

SWORN or affirmed to and subscribed before me this
22nd day of May, 2017.

Michael Carmine
Notary Public

My Commission Expires: July 09, 2026

2. Abbeville County Court. P.O. Box 99 Abbeville, SC 29620

10. Ineffective Assistant Counsel

- A) Counsel failed to investigate and prepare for trial
- B) Counsel failed to advise of all possible outcomes of trial prompting me to plead guilty
- C) Failure to communicate between counsel and client.

11. Ineffective Assistant Counsel

- A) Counsel failed to investigate and prepare for trial
- B) Counsel failed to advise of all possible outcomes of a trial prompting me to plead guilty
- C) Failure to communicate between counsel and client.

18. Yasha Patel

Public Defenders Office

Suite 208 Park Plaza

600 Monument Street Box 133

Greenwood, SC 29646

To Whom It may concern

I would like ~~to~~ a copy of this application after its stamped checked and filed and please have a copy of this PER Application served back to me.

Thank you

Shagocin Newjeon Lewis

SC DC # 376644

McCormick Correctional Institution Fa-B-152

386 Redemption Way

McCormick SC, 29899.

STATE OF SOUTH CAROLINA,)
)
COUNTY OF ABBEVILLE.)

IN THE COURT OF COMMON PLEAS.

Shaquean Newjean Lewis, #370044,)
)
Applicant,)

v.)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,)
)
)
)

17-CP-01-145

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that a copy of Application for Post-Conviction Relief in the above-referenced matter was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 24th day of May, 2017, addressed as follows:

Justin J. Hunter, Esq.
Office of the Attorney General
Post-Conviction Relief Section
Post Office Box 11549
Columbia, SC 29211-1549

Solicitor's Office (hand delivered)
ATTN: Yates Brown/Micah Black
P. O. Box 516
Greenwood, SC 29648

Shaquean Newjean Lewis, #370044
McCormick Correctional Inst. - F2-B-152
386 Redemption Way
McCormick, SC 29899



Peggy A. Payne, Common Pleas Clerk

STATE OF SOUTH CAROLINA)
 COUNTY OF ABBEVILLE)
)
 Shaquean Newjean Lewis,)
 SCDC #370044,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

2017-CP-01-145

RETURN

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on May 24, 2017, would respectfully show this Court:

I.

Procedural History

Applicant is presently in the South Carolina Department of Corrections. Applicant was indicted at the January 2016 term of the Abbeville County Grand Jury for armed robbery (2016-GS-01-0078), possession of a weapon during the commission of a violent crime (2016-GS-01-0079), and unlawful possession of a weapon (2016-GS-01-0080). Kami Granade, Esquire, represented Applicant. Deputy Solicitor Yates Brown, Esquire, prosecuted the case. On October 3, 2016, Applicant appeared with his counsel before the Honorable Donald B. Hocker, and pled guilty as indicted to armed robbery. As part of a negotiated sentence, he was sentenced to imprisonment for fifteen years and both firearms charges were dismissed. Applicant did not appeal his guilty plea or sentence.

Factual History

The following facts were presented at the plea hearing and acknowledged by Applicant as substantially stated:

On or about September 10, 2015 at 253 East Savannah Street in Calhoun Falls here in Abbeville County officers were dispatched to that location to the bank there. Ms. Bernice Burden and another Park Sterling associate were working. They had just come in, arriving first thing in the morning to that branch.

Ms. Sammons, who is one of the other employees, drove up the same time as Ms. Burden did. Ms. Sammons goes into the bank first to make sure that everything is okay. She checks and makes a search, cuts the lights on, and then gives a motion to Ms. Burden to enter the bank. Ms. Burden then walks from her car into the side door of the bank and as she's getting to that side door a man in a blue hoodie with his face masked and sunglasses on approaches her from behind, has a pistol in his hand, and follows her behind – follows her into the bank with the gun in her back. Demands money from the bank.

Ms. Burden and Ms. Sammons are ordered to open up the vault and give the money that is in their two drawers that they've put away in those two drawers. They do give that to the armed robber. The armed robber then tells them they have to go into the vault and shuts the door behind them, and then leaves the bank. That scene is captured on video in the bank. Later on, Ms. Byrd and Ms. Sammons gave statements to law enforcement.

Mr. Lewis was a customer at the bank. He had been in as recently as a week before where we have him on video being in the bank. They could recognize his voice. They immediately thought it was him. However, before that – two hours after the incident, Greenwood County Sheriff's Office were called in with their dog team, the Bloodhound Tracking Team. They were able to get a swab from the vault door to get a scent. Did use their dog, Blue, to track from the bank up Savannah Street, and then to the location – to [REDACTED] there in Calhoun Falls, which is not too far away from the bank where the dog alerted on the door. The handler actually pulled back the dog thinking that the house was abandoned. The dog came back to the door and at that time Mr. Lewis opened the door. He was then cuffed at that time. A search warrant was executed on that house. They did find the blue hoodie there and a black BB gun which the clerks at the bank said it was not the gun that he had that day.

Guilty Plea hearing transcript p. 6-7.

II.

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

1. Ineffective assistance of counsel
 - a. "Counsel failed to investigate and prepare for trial"
 - b. "Counsel failed to advise me of all possible outcomes prompting me to plead guilty."
 - c. "Failure of communication between counsel and client"

Attached herewith and incorporated herein by reference are the records of the Abbeville County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the transcript from Applicant's guilty plea. Respondent reserves the right to amend its return upon the receipt of other relevant records.

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

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

III.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on going to trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

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

IV.

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

V.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEY FOR RESPONDENT

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12/13, 2017

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
 2) COMMON PLEAS
 3 COUNTY OF ABBEVILLE) OF THE EIGHTH
 4) JUDICIAL CIRCUIT
 5)
 6 SHAQUEAN NEWJEAN LEWIS,)
 7 Applicant,) TRANSCRIPT OF RECORD
 8 vs.) 2017-CP-01-00145
 9 THE STATE OF SOUTH CAROLINA,)
 10 Respondent.)

11 October 17, 2018
 12 Greenwood, South Carolina

13 B E F O R E:

14 HONORABLE BRIAN M. GIBBONS, Judge.
 15

16 A P P E A R A N C E S

17 ASHLEY A. MCMAHAN, ESQUIRE
 18 For The Applicant

19 JANELL GREGORY, ASSISTANT ATTORNEY GENERAL
 20 For The Respondent

21
 22
 23 Julie A. Cendroski,
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 SHAQUEAN NEW JEAN LEWIS VS. THE STATE

2 (Ms. Kami Daws Granade appearance by phone.)

3 THE COURT: All right. Madame AG. Ms. Granade,
4 hey, this is Judge Gibbons. I'm gonna go ahead and
5 convene this hearing. If at any time you can't hear
6 what's going on, please let us know, okay.

7 MS. GRANADE: Okay.

8 MS. GREGORY: Okay.

9 THE COURT: Did you hear that?

10 MS. GRANADE: Yes, sir.

11 THE COURT: All right, great. All right. Go
12 ahead and call the case, Madam AG.

13 MS. GREGORY: Before you is Shaquean Lewis.
14 Applicant was indicted at the January 2016 term of the
15 Abbeville County grand jury for armed robbery,
16 possession of a weapon during the commission of a
17 violent crime, and unlawful possession of a weapon.

18 Kami Granade, Esquire, represented applicant. On
19 October 3rd, 2016, applicant appeared with his counsel
20 before the Honorable Donald B. Hocker, and pled guilty
21 as indicted to armed robbery. As part of the negotiated
22 sentence, he was sentenced to imprisonment for 15 years,
23 and both firearms charges and a kidnapping charge were
24 dismissed. Applicant did not appeal his guilty plea or
25 sentence.

1 He filed a timely application for post-conviction
2 relief on May 24th, 2017, alleging ineffective
3 assistance of counsel, indicating counsel failed to
4 investigate and prepare for trial; counsel failed to
5 advise him of all possible outcomes, prompting him to
6 plead guilty; and failure to communicate with him.

7 The State filed its return December 13th, 2017.
8 Applicant is present today and represented by Ashley
9 McMahan.

10 THE COURT: All right. Ms. McMahan, you agree to
11 take this witness out of order then?

12 MS. MCMAHAN: Yes, Your Honor.

13 THE COURT: All right. Anything I need to know
14 before we hear from this witness?

15 MS. MCMAHAN: Your Honor, no. All of our
16 allegations are listed in the application as they were
17 written.

18 THE COURT: Right. And I'll review all that
19 before I make any decision.

20 All right. Madam AG, you may call your witness.

21 MS. GREGORY: Kami Granade.

22 THE COURT: All right. Ms. Granade, you are
23 testifying via phone on a speaker system set up in this
24 courtroom here in Greenwood County and that's being done
25 by consent.

1 Is that correct, Ms. McMahan?

2 MS. MCMAHAN: That is correct, Your Honor.

3 THE COURT: Ma'am?

4 MS. MCMAHAN: That is correct.

5 THE COURT: All right, thank you. And do you
6 swear to tell the court the truth, the whole truth and
7 nothing but the truth so help you God?

8 THE WITNESS: Yes, I do. I do.

9 THE COURT: All right, thank you.

10 KAMI DAWS GRANADE,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. GREGORY:

14 Q. Kami, can you hear me?

15 A. (No response.)

16 Q. Kami, can you hear me?

17 A. (No response.)

18 THE COURT: Grab your phone and talk into the
19 phone.

20 BY MS. GREGORY:

21 Q. Kami, can you hear me?

22 A. (No response.)

23 MS. MCMAHAN: Do you have the mute on?

24 MS. GREGORY: No, I don't have mute on.

25 BY MS. GREGORY:

1 Q. Kami?

2 A. Yes.

3 Q. Okay. Can you hear me alright?

4 A. Not really.

5 Q. Okay. I'm gonna try speaker phone and see if
6 that works better. Can you hear me?

7 A. Yes.

8 MS. GREGORY: Can you hear her?

9 COURT REPORTER: Barely.

10 BY MS. GREGORY:

11 Q. All right. Kami, how long have you been
12 practicing law?

13 A. I have been practicing law since November 2014,
14 so almost four years now.

15 Q. And how much of that has been in criminal law?

16 A. In criminal law I was at the Abbeville County
17 Public Defender's Office for about two years and I spent
18 -- been here in Kentucky practicing criminal law for the
19 past three months, so I suppose a little over two years.

20 Q. Okay. And how long did you represent Mr. Lewis
21 before his guilty plea?

22 A. I joined the public defender's office, I think my
23 first day was July 25th of 2016, and I represented him
24 until his guilty plea. So I suppose that was for -- I
25 mean, it definitely was not long, but for probably two

1 months.

2 Q. Okay. And ---

3 A. Two-and-a-half months.

4 Q. Okay. And there was another attorney that worked
5 with him before you took over the case; is that right?

6 A. That's correct.

7 Q. But you did most of the investigation in this
8 case, if not all of it?

9 A. I did.

10 Q. Okay. What were the facts of the case? How did
11 his charges arise?

12 A. The facts of the case were essentially that a man
13 fitting his description robbed a bank there in Calhoun
14 Falls. The two bank tellers identified Shaquean as the
15 person who was there. They had a K-9 tracking team who
16 tracked the scent, I believe it was from the vault to
17 the door of Shaquean's trailer. When they opened it up,
18 Shaquean answered. And I think in plain sight was the
19 bright blue hoodie that was also seen on video so that
20 eventually led to his arrest.

21 Q. Okay. And did you file Rule 5 and Brady motions
22 in this case?

23 A. I did.

24 Q. Did you do any independent investigation? Did he
25 give you anything to investigate as far as an alibi or

1 any defenses he may have?

2 A. Yeah. We investigated quite a few things. Well,
3 certainly we went to the bank. We went on scene. We
4 were able to view other cameras, I guess, or I guess
5 it's pretty common for banks to have fake cameras, so my
6 investigator was able to tell which ones were fake and
7 which ones were real. And I believe we requested
8 additional video based on what the investigator found.

9 In addition, based on my conversations with
10 Shaquean, there was a phone call that he made. I
11 believe it was -- I don't want to misstate it. I
12 believe it was made approximately 15 minutes after this
13 was alleged to have happened. So we had an expert on
14 standby to do a cellphone dump, but we were never given
15 that cellphone by his family.

16 Q. Okay. And were you satisfied with the discovery
17 response from the state?

18 A. Yes.

19 Q. Okay. Did he provide you a different version of
20 the facts in this case?

21 A. I'm sorry, was your question did Shaquean provide
22 different facts than what the state had provided?

23 Q. Correct. Did he give you a different rundown of
24 what happened?

25 A. Well, I mean, certainly he said it wasn't him who

1 robbed the bank. At least initially he said that.

2 Q. Okay.

3 A. But once we got more into the timeline, yeah, he
4 didn't necessarily dispute any of the main facts that
5 the state alleged.

6 Q. Okay. So the evidence that the state had against
7 him, would you say it was strong?

8 A. Yes.

9 Q. Okay. And did you go over his constitutional
10 rights with him before he pled guilty?

11 A. Yes, I did. I went over his constitutional
12 rights at the jail the Wednesday before the plea. And I
13 also went over his constitutional rights in detail on
14 the day of his plea --

15 Q. Did he ever ---

16 A. -- in my courthouse office in Abbeville.

17 Q. Okay. Did he ever tell you he did not understand
18 something?

19 A. No.

20 Q. Okay. Did you discuss pleading guilty versus
21 going to trial and the possible outcome of trial given
22 the state's case?

23 A. Yes. We discussed that at length.

24 Q. Did he -- did you think he didn't understand
25 anything at that point?

1 A. I don't recall a time when I ever questioned his
2 understanding of what we were talking about and the pros
3 and cons of trial versus a guilty plea.

4 Q. Okay. And you discussed the plea negotiation.
5 How did that come about?

6 A. I don't -- I don't know if he had previously had
7 a plea offer when Yasha Patel was representing him.
8 Throughout our conversation of the case, it seemed to
9 become stronger and stronger and stronger for the state
10 the more that we investigated and the more that my
11 investigator and I spoke to Shaquean.

12 So I had discussed with him whether or not he
13 wanted me to seek a plea deal and he said yes, I think.
14 I approached Yates Brown about that. I believe the
15 initial offer was perhaps 20 years. I asked for 12, he
16 came back at 15. I asked for 12, you know, up until
17 probably the day of the plea, but 15 was what we came to
18 and that's what Shaquean agreed to.

19 Q. Okay. Did he ever tell you he did not want to
20 plead guilty and wanted to go to trial?

21 A. Initially during our earlier conversations, he
22 wanted to go to trial versus a plea. At the same time
23 at that point I'm not sure that a plea offer had been
24 presented to him.

25 Q. Okay. But once a plea offer was presented, it

1 was his decision to plead guilty?

2 A. Yes, 100 percent.

3 Q. If he had wanted to go to trial would you have
4 proceeded to trial?

5 A. Absolutely.

6 Q. How many times did you meet with him during this
7 -- during your representation of him?

8 A. So, again, I started working on July 25th, 2016.
9 I believe he pled in early October. My notes indicate
10 that I met with him in the detention center on six
11 different occasions.

12 Q. Okay. No further questions.

13 THE COURT: All right. Your witness, Ms.
14 McMahan.

15 CROSS-EXAMINATION

16 BY MS. MCMAHAN:

17 Q. Hey, Ms. Granade.

18 A. Hi.

19 Q. What exactly did you investigate? I know you
20 talked about the cameras and everything. Was there
21 anything else that you guys investigated?

22 A. Shaquean had given us a couple of names of people
23 in the neighborhood who he thought may be able to
24 remember him being around during the time that the
25 robbery was alleged to have occurred. Unfortunately he

1 couldn't provide us with much contact information, but
2 my investigator certainly went to the area and tried to
3 find those people to no avail.

4 Like I said, we did go to the scene and do some
5 investigation there. We went to the Calhoun Falls
6 Police Department and reviewed the evidence, of course,
7 and took pictures of that.

8 In terms of the phone, the phone call that he
9 said that he made at 8:30 was something we were looking
10 into. And, as I mentioned, we had someone on standby to
11 do his dump of that call, but even if the call had been
12 made, I'm not sure it would have been helpful, so we
13 didn't pursue that any further once Shaquean told us not
14 to.

15 Q. Why would you not think that would have been
16 helpful?

17 A. He said that the phone call would have been made
18 at 8:30 in the morning. I believe it's alleged from the
19 timeframe of the bank that he left at 8:16. It was
20 roughly a half a mile from the bank back to the trailer,
21 so he could have made that. He could have traveled that
22 distance even before the phone call.

23 In addition, in regard to the phone itself, it
24 did not actually belong to Shaquean. I believe it was
25 registered to his mother and used by several family

1 members. So in regard to proof of who actually made the
2 phone call, we discussed him testifying at trial and he
3 wasn't comfortable with that. So it just ended up, I
4 guess, not panning out. And I'm not sure that it would
5 have been helpful.

6 Q. So the names of the people who might have
7 remembered him and saw him earlier, were those some
8 workers that he was talking about that might have seen
9 him walk by?

10 A. I believe they were neighbors. He mentioned one
11 person who typically took him to work. And the reason
12 he wasn't at work that day was because that person
13 didn't show up or didn't go to work. So just from my
14 memory I don't think they were co-workers. I think the
15 people that we wanted to talk to were his neighbors.

16 Q. I got you. Just to say he was there?

17 A. Correct.

18 Q. How far away was the bank from his house? Do you
19 remember?

20 A. I believe it was roughly a half mile.

21 Q. Do you recall if the victim ever said she knew
22 the color of the robber?

23 A. Knew the what of the robber? I'm sorry.

24 Q. The color. Like the race of the robber.

25 A. Um... sorry, I'm just quickly reviewing the

1 notes that I wrote. As far as the bank tellers
2 themselves, I'm not sure that they ever said that they
3 knew the color. I think there were some independent
4 witnesses who said they saw a black male with a black
5 pack -- with a backpack and a blue hoodie running
6 through Calhoun Falls in the direction that the K-9s
7 tracked.

8 Q. What was the deal with the K-9s? Was there any
9 way to challenge any of that?

10 A. I had done some independent research and had
11 articles prepped and prepared. I had prepared some
12 cross for the K-9 handler, mostly in regard to the
13 reliability of K-9s, so that's the way that I intended
14 to attack that.

15 Q. But could you have attacked that prior to a
16 guilty plea or would that have been done at the time of
17 a trial?

18 A. I think it would have been done at the time of
19 the trial.

20 Q. So that wasn't a motion that you could have made
21 beforehand to, to try to get a better plea offer, that
22 would have been done at the time of the trial?

23 A. That would have been done at the time of the
24 trial. And unfortunately in Abbeville all three trial
25 motions are heard directly before the trial itself, the

1 Monday of trial.

2 Q. So he would have had to have wanted to go to
3 trial and get prepped for it and then have that motion
4 heard, and if it was denied, you would have gone
5 straight into a trial that week?

6 A. Correct.

7 Q. Okay.

8 A. Yes.

9 Q. Hold on one second. I'm just writing all this
10 down. Just give me one second, Ms. Granade.

11 A. Uh-huh.

12 Q. All right, Ms. Granade, just a couple followups.
13 What was the issue with the gun? Was there a gun that
14 was found?

15 A. Yeah. I believe they found -- it ended up being
16 -- sorry, again I'm reviewing my notes. But I believe
17 it ended up being a pellet gun.

18 Q. Okay. Was it found in the house where Mr. Lewis
19 was or was it found in a different house?

20 A. I believe it was found in a different house. It
21 was a bit of an odd situation. The main trailer sat on
22 the property. And the place where I'm told Shaquean
23 primarily stayed was, I guess what would be considered,
24 the curtilage of the main home.

25 Q. Uh-huh.

1 A. They were close, as far as their location to one
2 another, but I do believe the pellet gun was found in
3 the main, the main living area of the house where they
4 stayed.

5 Q. Was that pellet gun used during the robbery or
6 allegedly used?

7 A. It was alleged to have been used during the
8 robbery, correct.

9 Q. And was there some type of video related to like
10 the gun being taken from another house or finding the
11 blue hoodie and all that?

12 A. Not in regard to the hoodie. I do recall there
13 being a separate video that I believe a family member of
14 Shaquean's gave to me of when the cops came and actually
15 seized the gun.

16 Q. Okay. And would that have had any bearing on the
17 case at all or did you guys talk about all that or how
18 that would have been relevant?

19 A. Sure. I mean, in terms of trial, I think it
20 could have certainly boded well for us if I was able to
21 cross law enforcement in regard to where they found the
22 gun and where Shaquean primarily stayed. So that's
23 something that I would have attacked on
24 cross-examination in regard to the cops, you know, in
25 hopes that I would be able to prove that perhaps it

1 wasn't his gun. And that's something that we discussed
2 prior to his decision for a plea versus a trial.

3 Q. And so, again, that would have been something
4 that you would have had to have done in a trial in order
5 to try to attack?

6 A. Correct.

7 Q. And you said you discussed all this with him.
8 And after that was it his decision to decide to plead
9 guilty?

10 A. Yes.

11 Q. I have nothing further.

12 A. We had ---

13 Q. Oh, sorry.

14 A. Sorry. I was just gonna say, we had some
15 detailed conversations wherein I presented our strongest
16 facts and our strongest pieces of evidence versus the
17 state's strongest facts and I told him that it really
18 wouldn't have been a slam dunk for either side and it
19 was more of him deciding whether or not he wanted to
20 risk going to trial or take the 15, and ultimately he
21 decided to plead. And he made that decision, I think,
22 it was September 29th, the Wednesday before trial was
23 scheduled to begin.

24 Q. So you felt like it was a toss-up as to who would
25 have won that trial?

1 A. I think the evidence was most definitely stronger
2 for the state, but I do think we had a few things that
3 we could have worked with, particularly on cross. But
4 by and large, in my opinion it was a very, very strong
5 case for the state.

6 Q. Did you feel like it was in his best interest to
7 take the plea offer?

8 A. Yes.

9 MS. MCMAHAN: Okay. Nothing further, Your Honor.

10 THE COURT: Any redirect?

11 MS. GREGORY: No, sir.

12 THE COURT: All right. Thank you, ma'am, that
13 concludes your testimony.

14 THE WITNESS: Thank you, Judge.

15 THE COURT: All right.

16 MS. GREGORY: All right, thanks Kami.

17 THE WITNESS: All right, thank you. Bye.

18 THE COURT: All right. Ms. McMahan, you may call
19 your witness.

20 MS. MCMAHAN: Yes, Your Honor, the applicant
21 calls Mr. Lewis. Mr. Lewis, sit in that chair over
22 there.

23 THE COURT: Sir, do you swear to tell the court
24 the truth, the whole truth and nothing but the truth so
25 help you God?

1 THE WITNESS: I do.

2 THE COURT: Thank you. Just make sure you speak
3 loud, okay?

4 THE WITNESS: Uh-huh.

5 SHAQUEAN NEWJEAN LEWIS,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MCMAHAN:

9 Q. Mr. Lewis, did you file this application?

10 A. Yes, ma'am.

11 Q. And your allegations in your application are
12 ineffective assistance of counsel of Ms. Granade, right?

13 A. Yes, ma'am.

14 Q. Who represented you before Ms. Granade?

15 A. Yasha Patel.

16 Q. And do you have any allegations against her in
17 particularly (sic)?

18 A. No. I be like -- I was confused because of when
19 I was just dealing with her because of the issues with
20 my bond.

21 Q. Uh-huh.

22 A. Because she took me up for a bond, for a bond
23 hearing and also a bond reduction. And in the bond
24 reduction they had stated that I had a bond that was not
25 surety, so I had to pay all cash on the bond. But on

1 all my paperwork I had received from going to my initial
2 bond, that it was already a surety bond. It was already
3 a 10 percent bond. I could up land or property and all
4 that. But when I went down, she was telling me
5 everything I had on the paperwork was wrong. So when I
6 go back, you know, I was confused from the beginning.

7 Q. So you had tried to get a bond on your case?

8 A. Yeah, she took me to a bond hearing.

9 Q. And was a bond ever set?

10 A. No, ma'am. The first time it was no longer set.
11 She said it was not longer set, but I already had a bond
12 of \$75,000.

13 Q. Okay.

14 A. So...

15 Q. So your first bond hearing was in front of the
16 magistrate?

17 A. Yes, ma'am.

18 Q. And then you had a second bond hearing in general
19 sessions court?

20 A. Yes, ma'am.

21 Q. And was the bond changed at all during that time?

22 A. No. He was guessing for assumptions. But when I
23 first went in, it was conceived that I didn't have a
24 bond at all.

25 Q. Oh, okay.

1 A. But I had the paperwork showing that I already
2 had a bond. So I go back into that day as she just
3 renegotiated the same bond I just had.

4 Q. Oh, okay.

5 A. So it was just like I was saying, like she was --
6 she wasn't pushing for that same deal.

7 Q. So the first bond you got with the magistrate was
8 \$7,500?

9 A. \$75,000.

10 Q. Everybody ---

11 A. 75,000.

12 Q. Oh, 75,000. That's a big difference.

13 A. Yeah.

14 Q. But then you went the second time in general
15 sessions in front of the criminal court there, that's
16 when they thought you had no bond and she just basically
17 got you the 75,000 again?

18 A. Yeah, and that's what we did.

19 Q. And you weren't able to make that bond, were you?

20 A. No, I didn't make it.

21 Q. So you were in the detention center the entire
22 time this was pending?

23 A. Yes, ma'am.

24 Q. Okay. So let's go into your issues with Ms.
25 Granade. So you had ineffective assistance of counsel

1 by investigations, outcomes of trial and failure to
2 communicate. So can you tell us a little bit about what
3 you guys talked about and what she failed to talk to you
4 about?

5 A. Well, when I go up for my second bond, Kami was
6 there and Patel was there. But they had wanted -- well,
7 Kami wanted to represent me for my bond, but they let
8 Ms. Patel do it because she was still there. So they
9 was talking to actually meet about my bond. And I'm
10 telling her no because the paperwork already said that I
11 had a surety bond. I could pay land, cash or attempt to
12 use a bail bondsman with her help. So they took it. We
13 go through the bond and Ms. Granade and Patel told me
14 two different things.

15 So Patel told me to borrow it, so she negotiated
16 where it was no cash, no surety, no nothing. So Granade
17 talked to Patel. So now I'm at the bond hearing, they
18 give me a surety. They make sure I use a bail bondsman
19 or whatever to get out. So they, like they didn't
20 figure out what was my bond from the first day I met Ms.
21 Granade.

22 Q. Okay.

23 A. So the first day I meet Ms. Granade, I don't know
24 what's really going on with the bond. The only
25 paperwork I got is saying one thing, they're telling me

1 something else. Now I'm going through it again and I
2 got about the same thing with the bond.

3 Q. Okay. So then after that you're still in the
4 detention center?

5 A. I'm still in the detention center.

6 Q. So how many times did she come to meet with you
7 in the detention center?

8 A. I talked to Ms. Granade probably three times in
9 the detention center.

10 Q. Okay. What did you guys talk about?

11 A. We talked about going to trial. Well, the first
12 time we talked about my bond, then we talked about going
13 to trial.

14 Q. Okay.

15 A. She asked me a lot of questions and then she told
16 me about her investigator.

17 Q. Okay. Did she ever show you the information that
18 the investigator had gotten?

19 A. No, not the first time. But she came back the
20 second time to show me the video that they supposedly
21 got from the bank.

22 Q. Did she show you anything else?

23 A. No, she didn't show me anything else.

24 Q. And what did you talk to her about, about your
25 possible defenses that you wanted her to look into?

1 A. Primarily the statements that she had got,
2 because they had got two statements from state workers
3 that work for the city. City workers. They work for
4 the city saying they seen me going -- they seen the
5 person down there by the market place, which is over
6 like a mile away from the, from the bank. Going past
7 more than the dog tracking team showed.

8 They got the dog tracking team seen me going one
9 way on Tulu Street and they got me, the statements from
10 the two witnesses going down Savannah Street, so I
11 talked to her about that. I talked to her about the two
12 tellers withholding the statement to the Calhoun Falls
13 Police Department. They only gave their statements to
14 SLED.

15 Q. You mean there were statements that the tellers
16 also gave to the fire department?

17 A. No, they gave a statement to SLED. And then in
18 the incident report, they did a Calhoun Falls Police
19 Department. They didn't know who all to bring. They
20 didn't know the color of the person.

21 Q. Uh-huh.

22 A. The didn't know who it was. But then when a SLED
23 officer get on the scene, they gave him a statement
24 saying they directly know who it was.

25 Q. So the first statement the tellers gave was to

1 the Calhoun Falls --

2 A. Police.

3 Q. -- Police Department, and that was, what, right
4 after the incident happened?

5 A. Yeah, that was -- they put that in the incident
6 report and said they would withhold their statement and
7 they made the statement later.

8 Q. And then they talked to SLED later?

9 A. Yeah.

10 Q. And gave a statement that was inconsistent with
11 what they had given Calhoun Falls?

12 A. Yes, ma'am.

13 Q. And did you and Ms. Granade talk about that?

14 A. Yes, ma'am, I tried to talk to her about it, but
15 she asked me several questions to find the people that I
16 hadn't even talked to, to try to help my side of the
17 case, which I couldn't do because if you go back and
18 look at her records, the name that I gave her she didn't
19 put it down right. I gave her the name Bill Ryan. She
20 put down the name Brian Lewis. So it was like a
21 flipping stuff in her notes that what I was saying and
22 she didn't put down correctly.

23 Q. What was the issue with the phone?

24 A. See the phone issue was it wasn't my phone, it
25 was my grandmother's phone. And my grandmother had just

1 passed away two weeks before the incident happened. So
2 me just showing forms and saying I used the phone to
3 make a call to Calhoun Family Practice about my asthma,
4 give me another asthma pump because I've been on asthma
5 my whole life, she said that wouldn't be, you know,
6 concrete or good evidence because it wasn't my phone, it
7 wasn't in my name.

8 Other people had used the phone. Because I only
9 had the phone for like three weeks. I've got the phone
10 cause my grandma was like, she was going back and forth
11 to the hospital. And I was working at the time, which I
12 didn't have my license, so I had got her phone and I was
13 using it for like until the incident happened.

14 Q. So was the fact that you didn't have your
15 license, was that preventing your from getting your own
16 phone?

17 A. No. That's what she misconflicted (sic) and put
18 my neighbor, not -- we were not working at the same
19 place thinking I was -- he could place me where I needed
20 to be placed at because we worked together, which we
21 did. He worked third shift job. And when he got off,
22 the time of the robbery, he would have seen whoever was
23 going towards the bank. If I was going to the bank,
24 they would have seen me because he would have been
25 coming home at that exact time.

1 Q. So when you were talking earlier about they
2 talked to the city workers and asked them and they said
3 that they saw somebody running down Savannah Street, but
4 the dogs were on which street again?

5 A. I think it was Tulu.

6 Q. And how close are those two streets to each
7 other?

8 A. Savannah -- well, Tulu was across from Savannah
9 down the street.

10 Q. So they cross over each other?

11 A. They cross over each other.

12 Q. So but where the workers were on Savannah Street,
13 was that anywhere near that intersection?

14 A. No, ma'am. They was -- that's probably, like I
15 said, probably like a half mile down the road because
16 they seen in their statement they say they seen the
17 suspect when they was coming out of the coastal gas
18 station, which is like a half mile down the road because
19 you got plenty of stuff in between there. Coastal is,
20 like I said, it's like half a mile.

21 Q. Okay. From Tulu?

22 A. Yeah, from Tulu.

23 Q. And where was the bank located in reference to
24 that intersection?

25 A. Right there in front of it.

1 Q. Okay.

2 A. Tulu Street is right here, and the bank is right
3 there. (Indicating.)

4 Q. And so but the dogs never went down Savannah
5 Street?

6 A. Nah, the dogs never went in that direction.

7 Q. Did you talk to her about the dogs and stuff?

8 A. Yes, ma'am. Because I had another question about
9 how did the dogs track because the video she showed me,
10 the video never went as far enough to show a person
11 going to the bank. It only showed the person at the
12 door holding the gun on the two of them. And then after
13 that, it kind of just cuts. It cuts. And then she
14 shows me another video about me coming to the bank two
15 weeks before this happened. And I bank at the bank.
16 You know, I got an account at the bank, so she shows me
17 that and then she showed me that and then she showed me
18 that video, but she never saw the part of the video
19 where the person goes to the vault.

20 Q. Was there an allegation that the person that had
21 robbed the place was going into the vault?

22 A. It was already the assumption that I was the
23 person who robbed the bank because I had an incident two
24 weeks before at the bank that I had some questions about
25 some charges that was done to my bank card. So I was

1 already perceived, like I already felt like I was
2 already guilty just because she -- I had questions, I
3 had some questions or whatever.

4 Q. So you felt like they were retaliating against
5 you for --

6 A. Yes, ma'am, because --

7 Q. -- questioning them earlier?

8 A. Yes, ma'am. Yes, ma'am.

9 Q. Okay. Did you talk to Ms. Granade about that?

10 A. Yes, ma'am, because I was -- I had talked to her
11 about the issues of me just robbing the bank anyway
12 because I've been working for the last year-and-a-half
13 for sure.

14 Q. Uh-huh.

15 A. And if you -- and I told her if you go back to
16 Carolina Pride and just get my, you know, my time card
17 to see how long I've been working. The time that the
18 bank was robbed, I would have been at work. And if she
19 would have let me get the phone, she would have seen
20 that I had called a loan company I wanted about a car
21 and I called a place that morning about a car. And I
22 made that appointment to go get me some more avenues so
23 I can go get that. And this was all at, she said at
24 8:30, the call took place at 8 o'clock because you gotta
25 make the call 30 minutes before because they open up at

1 eight, but all walk-ins gotta be done, calls gotta be
2 made by 8:30, so I had to call them before 8:30 just to
3 be a walk-in.

4 Q. Who had the phone while you were in the detention
5 center?

6 A. I want to say my mom had it. I want to say my
7 mom had it.

8 Q. Okay. Do you know if Ms. Granade ever tried to
9 communicate with your mom?

10 A. Yeah, She did. She did. My mom tried to
11 communicate with her, but every time she had called, in
12 her notes she said she couldn't get in contact. And
13 then she got in contact with my sister, which is
14 Danielle Lewis. So she, I don't think she was really
15 gonna talk to my momma. She talked to my sister.

16 Q. Okay.

17 A. Which at that time she would have been working.
18 She wouldn't have been able to really have too much
19 dealings with her because she was at work.

20 Q. So what ultimately made you decide to plead
21 guilty?

22 A. Every time -- well, she said every time any
23 information I gave her made their case stronger. I was
24 like it's really no way. I don't see how. So any time
25 I told her any information, she just did well, right

1 now, if you don't take the stand right now, if you don't
2 take the stand right now you're not gonna take the
3 stand. And, you know, like I said, I ain't -- we had
4 but talked to her but three times. And I already got
5 issues with my bond. Because at one time my family had
6 tried to bond me out, so we don't even know what's
7 really going on. See I'm trying to bond out and then
8 trying to find out what was going on with the case and I
9 only talked to her a few times.

10 Q. So did you feel like it was either go to trial or
11 take the lesser plea?

12 A. At that time, yeah. And down to the plea because
13 initially when I went in I could have went to trial.
14 They wanted me to pick a jury and everything. I just
15 backed out at the last minute --

16 Q. Okay.

17 A. -- because I was not feeling too good about, you
18 know, going through it with the two public defenders.

19 Q. What -- so you just didn't feel like they had
20 done what they should have done?

21 A. Yes, ma'am.

22 Q. Did you feel like they could have handled the
23 trial?

24 A. If -- I feel like the only way they could have
25 handled that trial if I would have just -- everything

1 that I said just fell through right then. Like
2 everything I told her, I told her when I talked to her
3 the first time and everything would have checked out,
4 then I probably would have had a chance. But what they
5 did, and she kept saying you got to do this, we need
6 more of this, we need more of that, I felt like, you
7 know, I was like hanging myself.

8 Q. So you felt like you were stuck between a rock
9 and a hard place?

10 A. Yes, ma'am.

11 Q. So your choice would be to go to trial and face a
12 lot of time or possibly get the shorter time and just
13 admit you did it?

14 A. She also say about the 20 years --

15 Q. Uh-huh.

16 A. -- when she -- when I -- when she first told me
17 anything about a plea, it was already 30 years. They
18 was going no less than 30 years. If I lost the trial,
19 if I went to trial with no less than 30 years, they're
20 not even offering me a plea. They didn't even have a
21 plea on the table. They was just if you're going to
22 trial, you lose, they already have dug their heels.
23 They are not working no pleas with you. That's what the
24 assumption I was going to trial.

25 Q. Okay. And so when you were presented with a plea

1 offer ---

2 A. That was pretty much the same thing. That was
3 the same deal.

4 Q. Okay. What else do you want Judge Gibbons to
5 know about your case?

6 A. In her notes it also -- cause I did mention to
7 her about asking about a plea and she did. And they had
8 the solicitor, Yates Brown, say that if we can agree to
9 12, we can get this over with today. I never got the
10 chance. She never offered me that. She never told me
11 anything about that. She never told me anything about
12 that.

13 So I go in on October the 3rd of '16 looking to
14 go to trial with no plea. So I don't even know if the
15 conversation went on or not. So I get in there that day
16 and she tells me that the solicitor's not gonna do a
17 plea with me. She said the judge is gonna do the plea.
18 But in her notes, like I say, they was talking about a
19 plea to 12 years, but I never got any talks or anything
20 about that plea. Like I said, I never had a chance to
21 know anything about a plea until the day I took, I took
22 a 15-year plea.

23 Q. So when Ms. Granade was testifying earlier
24 today --

25 A. Yes, ma'am.

1 Q. -- and she said in her notes that she had a
2 conversation with Yates about 12 years, that was the
3 first time you ever heard about that?

4 A. I didn't know. I never knew about that until I
5 got the notes. I never knew about that.

6 Q. Until you got her case, until you got the file?

7 A. Yes, to when I got the file.

8 Q. When did you get the file?

9 A. I got the file when I was in -- I got the file
10 probably, I think you sent me that file. No, I got that
11 file from her.

12 Q. Yeah.

13 A. So I got that file like on March the 17th.

14 Q. But that was the first time you had ever --

15 A. That's the first time.

16 Q. -- seen anything about a 12-year plea offer?

17 A. Yeah, that was the first time.

18 Q. She had never ---

19 A. She never told me.

20 Q. She never came to see you and said, hey, Yates
21 said he'll do 12 years?

22 A. She never said anything about it. Like I was
23 under the presumption I had no plea. It was just if I
24 go to trial and I lose I know I'm doing 30 years. It
25 was not a plea deal.

1 Q. So the first time you ever heard about a plea
2 offer was the day that you started trial?

3 A. The day I took the 15 on October the 30th.

4 Q. Okay. Anything else you want Judge Gibbons to
5 know?

6 A. That's about it. That's it.

7 Q. Okay. Answer any questions Ms. Gregory has for
8 you.

9 THE COURT: All right, Ms. Gregory.

10 CROSS-EXAMINATION

11 BY MS. GREGORY:

12 Q. How many times did you meet with Kami prior to
13 pleading guilty?

14 A. About three times.

15 Q. Three times. Do you recall waiving your
16 constitutional rights?

17 A. No. No, ma'am.

18 Q. Okay. Do you recall the plea judge asking if you
19 were satisfied with your attorney's services?

20 A. Yes, they asked me that.

21 Q. I'm sorry?

22 A. They asked me that.

23 Q. Okay. Do you recall saying that you were?

24 A. I think I -- at first I didn't say nothing. He
25 asked me to speak up or he asked the question again. I

1 didn't say anything the first time. They had the -- he
2 re-asked me the question. Then I finally said yes, I
3 did.

4 Q. Okay. Do you recall telling them nobody has
5 promised or threatened you or anything?

6 A. Yeah. Yes, ma'am, I do.

7 Q. And do you recall telling them that you wish to
8 plead guilty?

9 A. Yes.

10 Q. That you are, in fact, guilty?

11 A. I think we had a pause in there too because I
12 didn't say nothing that first time either. And then he
13 was like, Mr. Lewis. And then I said yes.

14 Q. And do you recall hearing the facts given by the
15 state at the plea hearing?

16 A. No. He asked me and then I didn't say anything.
17 Then he said something about shaking my head or
18 something, if I ain't mistaken.

19 Q. Okay.

20 A. And then I said yes. Then I said yes eventually.

21 MS. GREGORY: No further questions.

22 THE COURT: All right, thank you. You can step
23 down. Ms. McMahan, you can call your next witness.

24 MS. MCMAHAN: Your Honor, the applicant rests.

25 THE COURT: The applicant rests. All right.

1 Thank you, sir, you can step down.

2 (Witness leaves witness stand.)

3 All right. Let's hear argument, first from Ms.
4 McMahan.

5 MS. MCMAHAN: Your Honor, I believe that based on
6 Mr. Lewis's testimony today, that he was never given
7 that 12-year plea offer and, therefore, based on, I
8 believe it's *JB v. State*, in it's progeny, there's some
9 U.S. Supreme Court like *Missourri v. Frye* and *Lafler v.*
10 *Cooper* that kind of offshoot off of that, that he has
11 the right now to go back and get that 12 years. And
12 that would be the basis of my main argument. I believe
13 that would be our strongest argument. Everything else I
14 would just, you know, rest basically on what was
15 presented on the record.

16 THE COURT: All right, thank you. Yes, ma'am.

17 MS. GREGORY: According to Kami's testimony, she
18 clearly prepared this case for trial. She was ready to
19 take it to trial. She indicated that he pled
20 voluntarily, wanted to plead guilty voluntarily, given
21 the state's evidence against him was very strong. He
22 clearly was not prejudiced by this, and she was clearly
23 effective.

24 THE COURT: All right. I'll take this matter
25 under advisement so I can read through the transcript,

1 as well as the other documents in the file. And, sir,
2 your lawyer will be in touch with you as soon as I've
3 made my decision. I'm hoping I'll be able to do that
4 within the next week or so, but I'll try to get it done
5 as quickly as possible, okay?

6 MR. LEWIS: Yes, sir.

7 THE COURT: That concludes the hearing in this
8 case. Anything further today?

9 MS. GREGORY: Nothing further, Your Honor.

10 THE COURT: All right. Court's adjourned for the
11 day.

12 (Court concluded at 12:24 p.m.)

13

14 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

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I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenwood County, South Carolina, on the 17th day of October, 2018.

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

s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA)
 COUNTY OF ABBEVILLE)
)
 Shaquean Newjean Lewis, #370044,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

2017-CP-01-145

ORDER OF DISMISSAL

TRUE COPY
 BY *[Signature]*
 ABBEVILLE COUNTY CLERK OF COURT

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2019 JAN 22 AM 9:06
 EMILY HORTON
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed on May 24, 2017, by Shaquean Lewis. ("Applicant"). The State ("Respondent") filed a Return on December 15, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 17, 2018, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Plea counsel, Kami Granade, Esquire ("Counsel") also testified via telephone. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Abbeville County Clerk of Court's order of commitment. During the January 2016 term, the Abbeville County Grand Jury indicted Applicant for armed robbery (2016-GS-01-0078), possession of a weapon during the commission of a violent crime (2016-GS-01-0079), and unlawful possession of a weapon (2016-GS-01-0080). Counsel

represented Applicant. Deputy Solicitor Yates Brown of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 3, 2016, Applicant appeared with Counsel before the Honorable Donald B. Hocker and pled guilty as indicted to armed robbery. Pursuant to negotiations between Applicant and the State, Judge Hocker sentenced Applicant to imprisonment for fifteen years and both firearm charges were dismissed. Applicant did not appeal his guilty plea.

II. SUMMARY OF FACTS

On September 10, 2015, officers were dispatched to a bank on East Savannah Street in reference to a bank robbery. (GP Tr. 6.) Two employees had just come to the bank to open it for the day, and one of the employees entered the bank first and the second employee followed shortly thereafter. (GP Tr. 6.) As the second employee comes to the side door of the bank, a man in a blue hoodie with his face masked and sunglasses on approaches her from behind. (GP Tr. 6.) The suspect has a pistol in his hand and follows her inside with the gun in her back. (GP Tr. 6.) The suspect demands money from the bank. (GP Tr. 6.) The employees are ordered to open the vault and give the suspect the money that is in their drawers, and they complied. (GP Tr. 6.) The suspects then puts the employees in the vault and shuts the door. (GP Tr. 6.) The incident is captured on video in the bank. (GP Tr. 7.)

The employees provide statements to law enforcement and indicate they recognized the voice of the suspect. (GP Tr. 7.) Both employees identify Applicant as the suspect. (GP Tr. 7.) Applicant was a customer of the bank and had been in the bank as recently as a week before the robbery. (GP Tr. 7.) The Greenwood County Sheriff's Bloodhound Tracking Team was able to swab the vault door to get a scent. (GP Tr. 7.) Blue, one of the bloodhounds, tracked from the bank up Savannah Street and alerted on a residence on Florence Street, which was not too far from



the bank. (GP Tr. 7.) The handler pulled the dog away believing the house was abandoned, but Blue went back to the door and, at that time, Applicant opened the door of the residence. (GP Tr. 7.) Applicant was cuffed at that time and a search warrant was executed on the residence. (GP Tr. 7.) During the search, officers located the blue hoodie and a black BB gun. (GP Tr. 7.) The employees said the BB gun was not the gun Applicant had during the robbery. (GP Tr. 7.)

III. ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel:
 - a. "Counsel failed to investigate and prepare for trial"
 - b. "Counsel failed to advise me of all possible outcomes prompting me to plead guilty"
 - c. "Failure to communicate between counsel and client"

An evidentiary hearing was held on October 17, 2018, Applicant informed this Court he intended to proceed on the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to investigate and prepare for trial;
 - b. Counsel failed to advise me of all possible outcomes prompting me to plead guilty;
 - c. Counsel failed to communicate with Applicant.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was originally represented by Yasha Patel, Esquire. Applicant testified Patel handled his first bond hearing. Applicant testified Counsel then became his lawyer and he met with her three times at the jail. Applicant testified he had a lot of questions and Counsel never showed him anything. Applicant testified he did not know who robbed the bank and the employees did not know the race

of the suspect or who it was. Applicant testified the tracking dog did not go down Savannah Street and he discussed this with Counsel. Applicant testified the video only showed a person at the door of the bank with a gun, but there was no video of a person going to the vault. Applicant testified he was at the bank two weeks before the incident and questioned bank charges. Applicant testified he believed they are retaliating against him. Applicant testified he discussed that with Counsel. Applicant testified he asked Counsel to get the employee timecards. Applicant testified that SLED provided inconsistent statements. Applicant testified he had his grandmother's phone for three weeks and did not have a license. Applicant testified his mother tried to contact Counsel, but she was unable to reach her. Applicant testified Counsel talked to his sister instead. Applicant testified someone would have seen him at the time of the incident because a neighbor works third shift. Applicant testified Counsel told him all of the information he gave her made the State's case stronger. Applicant testified he could have gone to trial but he backed out at the last minute. Applicant testified he was between a rock and a hard place.

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified she has been practicing law since 2014 and was appointed to represent Applicant. Counsel testified she was his attorney for about two months prior to his plea and met with Applicant six times at the jail. Counsel testified she did most of the investigation on this case even though she was his second attorney. Counsel testified the facts of the case were that a man fitting Applicant's description robbed the bank and the teller's identified Applicant. Counsel testified she did not know if the tellers ever said the suspect's race in their description. Counsel testified witnesses reported seeing a black male with a hoodie on running through Falls. Counsel testified a tracking dog led officers to Applicant's trailer and the hoodie was in plain sight. Counsel testified she filed discovery and was

satisfied with the State's response in this case. Counsel testified she went to the scene of the bank robbery and observed cameras, some were real and some were fake, and requested additional video. Counsel testified Applicant wanted her to talk to neighbors and gave her names of people in the neighborhood that would have been around at the time of the incident. Counsel testified he did not provide a lot of contact information for those people, but she tried to locate them. Counsel testified she went to the sheriff's office and reviewed the evidence against Applicant. Counsel testified Applicant made a call fifteen minutes after the incident and she had an expert standby to do a "phone dump," but she was not given the phone by Applicant's family. Counsel testified she did not think the phone would have been helpful because the phone call was on his mother's cell phone. Counsel testified Applicant claimed he did not do it initially, but as she got more into the timeline, he did not dispute any of the main facts.

Counsel testified she researched and prepared cross-examination for the K-9 officer regarding reliability of K-9 tracks. Counsel testified pre-trial motions are held the morning of trial and not before, so she would have questioned the reliability of the K-9 track at that time. Counsel testified the BB gun was found in the main house on the property, not Applicant's home. Counsel testified Applicant's home is curtilage of the main house. Counsel testified she would have questioned the law enforcement officers on where they found the gun as compared to where Applicant stayed on the property and she discussed this with Applicant.

Counsel testified the evidence against Applicant was strong. Counsel testified she would present the strongest facts and evidence on Applicant's behalf at trial, but told him it was not a slam dunk case for either side. Counsel testified she could have work with a few things at trial, but it was in Applicant's best interest to take the plea offer. Counsel testified she reviewed Applicant's constitutional rights with him before the day of the plea and again on the day of the



plea. Counsel testified she does not know if Applicant had a previous offer before she became involved with the case. Counsel testified Applicant asked her to seek a plea deal and she approached the State about it and was initially offered twenty years. Counsel testified she asked for twelve years and the State countered with fifteen. Counsel testified Applicant agreed to the fifteen year plea deal. Counsel testified she discussed a trial with Applicant at length and it was his decision to plead guilty.

V. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,



but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief based on his allegation of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Moreover, this Court notes the record reflects the knowing and voluntary nature of Applicant's guilty plea. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

Counsel failed to investigate Applicant's case and prepare for trial

Applicant alleges Counsel was ineffective for failing to investigate the leads he provided to Counsel and prepare his case for trial. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and



making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

This Court finds Counsel’s performance did not fall below the standard of professional norms. This Court finds credible Counsel’s testimony that she went to the bank, viewed the video of the incident, reviewed discovery provided by the State, and attempted to locate the potential witnesses provided by Applicant. This Court also finds credible Counsel’s testimony that she researched issues on K-9 tracking reliability in preparation for trial. This Court also finds credible Counsel’s testimony that she prepared cross-examination questions for law enforcement to attack the search of Applicant’s residence and the location of the BB gun officers recovered. This Court finds credible Counsel’s testimony that she discussed with Applicant the strengths and weaknesses of his case and was prepared to go to trial had Applicant requested.

This Court finds Counsel thoroughly investigated the facts and circumstances giving rise to Applicant’s charges, as well as possible defenses, and therefore Applicant has failed to establish deficiency of Counsel. As Applicant has failed to establish what additional investigation counsel should have performed as well as what benefit such investigation would have yielded, he has failed to establish prejudice. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.



Counsel failed to advise Applicant of all possible outcomes prompting him to plead guilty

Applicant alleges Counsel failed to advise him of all possible outcomes of his case, which prompted him to enter his guilty plea. However, this Court finds credible Counsel's testimony that she reviewed the strengths and weaknesses of the case with Applicant and told him the case was not a slam dunk for either side. This Court finds credible Counsel's testimony that she entered into plea negotiations after Applicant asked her to seek a plea offer from the State. This Court finds credible Counsel's testimony that she would have taken Applicant's case to trial and ultimately believed it was in Applicant's best interest to accept the fifteen year plea offer.

This Court finds Counsel adequately conferred with Applicant about his case, the possible outcome of trial, and the consequences of the plea offer. This Court finds Applicant's testimony less credible on this issue and finds this allegation is without merit. Therefore, this allegation is denied and dismissed with prejudice.

Counsel failed to communicate with Applicant

Applicant alleges Counsel failed to communicate with him during her representation. This Court finds this allegation is without merit. This Court finds credible Counsel's testimony that she represented Applicant for approximately two months prior to his plea and met with Applicant six times at the jail. This Court finds credible Counsel's testimony that she obtained discovery and reviewed it with Applicant. This Court finds credible Counsel's testimony that she reviewed Applicant's constitutional rights with him on two occasions. This Court finds credible Counsel's testimony that she discussed the strengths and weaknesses of Applicant's case.

This Court finds Counsel's performance was reasonable, diligent, and in accordance with professional norms. See Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds Applicant has failed to meet his burden of establishing any resulting



prejudice from Counsel's representation. Therefore, this Court finds Applicant's allegation is without merit and must be denied and dismissed with prejudice.

VII. CONCLUSION

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

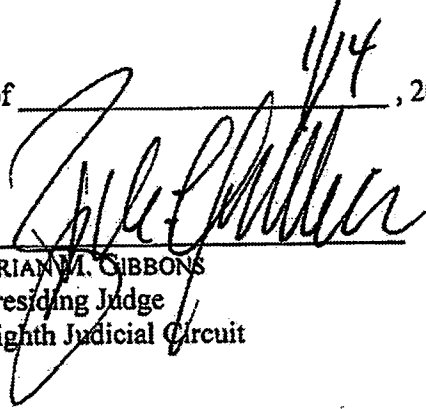
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant 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, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a cursive name.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this _____ day of _____, 2019.


BRIAN M. GIBBONS
Presiding Judge
Eighth Judicial Circuit


_____, South Carolina

WITNESSES

John T. Galloway
Calhoun Falls Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

January, 2016 Term
Indictment # 16GS01-0078

WARRANT NUMBER

2015A1020000058

TRUE BILL

THE STATE

vs.

Shaquan Newjean Lewis

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

Caroline Blackwell

Foreman of the Grand Jury

Date: JAN 19 2016

VERDICT

INDICTMENT FOR

ARMED ROBBERY
§16-11-0330
CDR: 0139

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

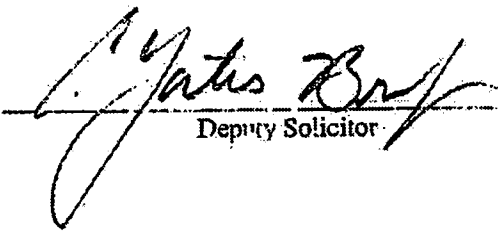
INDICTMENT FOR

ARMED ROBBERY
§16-11-0330

At a Court of General Sessions, convened on the 19th day of January, 2016, the Grand Jurors of Abbeville County present upon their oath:

That Shaquean Newjean Lewis, on or about September 10, 2015, in Abbeville County, willfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, 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, feloniously take from the person or presence of Park Stealing Bank by means of force or intimidation, goods or monies described as follows: United States currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Deputy Solicitor

STATE ~~84~~ SOUTH CAROLINA

COUNTY OF Abbeville
STATE VS.

Shaquan Newjean Lewis

AKA:

Race: AFRICAN-AM Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Calhoun Falls, SC

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we 10-30 years CONVICTED OF or PLEADS

in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Brown, C. Yates 78607 SC Bar# Shaquan Newjean Lewis Defendant [Signature] Attorney for Defendant 101713 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: 30
 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. Credit 385 Days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: \$ _____

Payment Terms: _____

Set by SCDPPTS _____

Recipient: _____

*Fine: <u>Public Def App</u>	\$	<u>40.00</u>
§ 14-1-206 (Assessments 107.3%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	<u>\$ 100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforc. Funding)	\$25	<u>\$ 25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	<u>\$ 3.75</u>

TOTAL: \$ 168.75

Clerk of Court/ Deputy Clerk: Jenny McLaughlin
Court Reporter: Tara Spott
SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 16GS01-0078

A/W#: 2015A1020000058

Date of Offense: 9/10/2015

S.C. Code §: 16-11-0330

CDR Code #: 0139

SENTENCE SHEET

TRUE COPY

Public Defender Office OF COURT

Obtain GED

Attend Voc, Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: [Signature]

Judge Code: 2167

Sentence Date: 10/15/16