STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable J. Derham Cole, Circuit Court Judge

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S.C. SUPREME COURT

RYAIS RYCHE RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000346

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
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	)	2013-GS-40-01522
	)	2013-GS-40-01524
	)	2013-GS-40-01526
State Of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Ryais Ryche Rivers	)	)
DEFENDANT	)	September 5, 2013
		Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

LUCK CAMPBELL, ASSISTANT SOLICITOR
MEGHAN WALKER, ASSISTANT SOLICITOR
Attorneys for the State

KRIS HINES, ASSISTANT PUBLIC DEFENDER
Attorney for Defendant Ryias Rivers

TARA SHURLING, ESQUIRE
Attorney for Carroll Phillips, III

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

THE CLERK: Would you raise you raise your right hand please. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

DEFENDANT RIVERS: Yes, ma'am.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Yes, ma'am.

MS. WALKER: Yes, ma'am, Your Honor, standing before you are defendants Ryias Rivers and Carroll Phillips. Mr. Rivers is here with his attorney Kris Hines of the public defender's officer. And Mr. Phillips is here with Tara Shurling of the private bar. Your Honor, both are here today to plead guilty to five counts each three counts of kidnapping and three counts of arm robbery.

THE COURT: Ms. Hines, you represent Ryais Rivers?

MS. HINES: Yes, Your Honor.

THE COURT: All right. And have you explained to your client the charges contained in the indictment, the possible punishment and his Constitutional Rights?

MS. HINES: I have.

THE COURT: And how does he wish to plea?

MS. HINES: Guilty.

THE COURT: And do you agree with his decision to plead guilty?

MS. HINES: Yes, I do.

THE COURT: And that's three counts of kidnapping and two counts of arm robbery?

MS. HINES: Yes, Your Honor.

THE COURT: All right. And, Ms. Shurling, you represent Mr. Carroll Lee Phillips, III?

MS. SHURLING: I do, Your Honor.

THE COURT: And have you explain to your client the charges contained in the indictments, the possible punishment and his Constitutional Rights?

MS. SHURLING: I have.

THE COURT: And how does he wish to plea?

MS. SHURLING: Guilty, Your Honor.

THE COURT: And that's to three counts of kidnapping and two counts of arm robbery; is that correct?

MS. SHURLING: That's correct.

THE COURT: All right. And we'll start with Mr. Rivers. How old are you, sir?

DEFENDANT RIVERS: Twenty.

THE COURT: How far did you go in school?

DEFENDANT RIVERS: Got a GED.

THE COURT: And are you married?

DEFENDANT RIVERS: No, ma'am.

THE COURT: Do you have minor children?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: And their ages?

DEFENDANT RIVERS: Nine months and eight months.

THE COURT: Are you on probation or parole?

DEFENDANT RIVERS: No, ma'am.

THE COURT: Have you ever been treated for the abuse of alcohol, drugs or for mental illness?

DEFENDANT RIVERS: Yes, ma'am, ADHD.

THE COURT: When did you begin that treatment?

DEFENDANT RIVERS: Throughout my childhood.

THE COURT: All right. And, sir, within the last 24 hours have you taken any medication, drugs or alcohol?

DEFENDANT RIVERS: No, ma'am.

THE COURT: All right. Well, hold on one second let me ask, Mr. Phillips, how old are you?

DEFENDANT PHILLIPS: Twenty-one.

THE COURT: How old?

DEFENDANT PHILLIPS: Twenty-one.

THE COURT: How far did you go in school?

DEFENDANT PHILLIPS: GED.

THE COURT: Are you married?

DEFENDANT PHILLIPS: No, ma'am.

THE COURT: Do you have children?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Their ages?

DEFENDANT PHILLIPS: One. She's two years old.

THE COURT: Who do you live with?

DEFENDANT PHILLIPS: Well, I was staying with my girlfriend.

THE COURT: Are you on probation or parole?

DEFENDANT PHILLIPS: No, ma'am.

THE COURT: And, sir, have you ever been treated for the abuse of alcohol, drugs or mental illness?

DEFENDANT PHILLIPS: Mental illness PTSD when I was younger.

THE COURT: And within the last 24 hours have you taken any medication, drugs or alcohol?

DEFENDANT PHILLIPS: No, ma'am.

THE COURT: All right. Listen closely to the Solicitor as she states the facts.

MS. WALKER: Thank you. For the record, Meghan Walker for the State here with Luck Campbell and Investigator Carwell with the Richland County Sheriff's Department. The victim as well are present in the courtroom. They're in the back of the courtroom and they do wish to address the Court at the appropriate time.

Your Honor, this incident occurred on December 4th of 2012. Richland County Sheriff's deputy Sheila All was dispatched to Nancy's Nook, Your Honor, which is a retail store located 3311 Broad River Road. This was

approximately 9:51 pm. As she approached, Deputy All -- as she responded to the incident location, she was flagged down by a concerned citizen who reported seeing two black males exit the incident location with guns and a black bag. K-9 units also responded to the incident location and they were unable to track the suspects.

According to the victims Your Honor in this case, and it will be shown on video that I will play shortly, the two males were in masks and gloves walked in. One had a handgun, Your Honor, and the other had this one. And for the record, Your Honor, it is unloaded this sawed-off shotgun. As they walked into Nancy's Nook, Your Honor, the guns are pointed at the victims in this case. Two of the kidnapping victim's are present. They were the clerks in the store at the time. The other was a patron of the store, Your Honor. It was Mr. Phillips that had this gun. Mr. Rivers had the other gun. Mr. Phillips then told Mr. Kelly, the patron of the store, to drop your fucking pocket book and back the fuck up. At which point, Your Honor, excuse my language, but those were Mr. Phillips words that night. At that point, Your Honor, she complied and he stole her purse and everything that was in her purse.

At that point, Your Honor, the co-defendant tossed a black bag over the counter at which point the

female clerk, Ms. Anechelle Harvey (sic), beginning to fill up the black bag. The other clerk in the store was Avery Balottee(sic), Your Honor, you will see on the video. This right here, Your Honor, is the male clerk. The female clerk and the patron of the store is right here. At that point, Your Honor, she -- they take the money from the store and the belongings of the patron of the store. And at the exit at that point, Your Honor, that's where they seen by the citizen who flagged down Deputy All as they leaving.

The case at that point, Your Honor, is turned over to the investigative unit of the sheriff's department. Investigator Carwell then Your Honor receives a tip that the people who robbed Nancy's Nook one of them had a sawed-off shotgun, that their names are Carroll Phillips and Ryias. At that time the tipster did not know Mr. Rivers last name. He said that they lived at Cross Roads apartment and that's where they could be found. Your Honor, Investigator Carwell then went to the apartment complex and made contact with the apartment manager who confirmed that Mr. Rivers and Mr. Phillips lived in an apartment, apartment number [redacted] at that apartment complex.

At that point in time, the investigator attempted to make contact with suspects by knocking on

their door. He was unsuccessful. No one answered the door. He then ran rap sheets on them and saw that they had prior convictions, Your Honor, as juveniles. I will approach with that at the appropriate time. And then he did a Facebook search for both of these defendants. And with that Facebook search, Your Honor, he saw pictures of these defendants with the weapons in question that were described by the victims of this case posted on Facebook. He then, Your Honor, obtained a search warrant for the apartment. And during the execution of that search warrant, it located items belonging to patron Kelly. Clothes matching those worn during the robbery and inside the camouflage jacket is a shotgun shell casing that was used during the armed robbery.

Your Honor, at that point warrants were taken out for the defendants arrest. And it was discovered that Mr. Phillips had been arrested in North Charleston on December 8th 2012. During that arrest, Your Honor, they were pulled over for a traffic violation. There four people in the car. People fled from the car went into a local motel. North Charleston executed a search warrant on that motel and recovered more items belonging to the victim in this case.

At that point, Your Honor, SLED then arrested both Mr. Rivers and Mr. Phillips and they were transported

to the Richland County Sheriff's Department on Two Notch Road. At that point Investigator Merenda (sic) spoke with them and attempted to talk to them about the case. Mr. Carroll, Your Honor, Mr. Phillips I'm sorry gave a full and complete confession implicating himself, his co-defendant. He advised the investigator the two had met when they were roommates at DJJ and had become close. And they were riding around town that night with a female who was driving the car. At that point in time, he didn't know her name, but she would later be identified as Courtney Chapelle. Chapelle's lawyer is present in the courtroom, Your Honor, it's Mr. Rutherford. And another female by the name of Angel. She was also arrested and charged, both of those young ladies arrested and charged with arm robbery. He implicated those two females as well as his co-defendant.

According to law enforcement, Your Honor, when they attempted to talk to Mr. Rivers about this incident, he told them that they already had cake and he was not to be giving them their icing and refused to talk about the incident at that point in time. Your Honor, I'm going to play the video at which point you'll see.

(WHEREUPON, surveillance video played for the Court.)

MS. WALKER: And, Your Honor, you just saw the

shell casing that he ejected and landed on the floor. It's those cloths, gloves and masks that were found in the hotel room and as well as the apartment that the two shared here in Richland County. Your Honor, those are the facts of the case, Your Honor. At the appropriate time, I think both victims that are present would like to address Your Honor.

THE COURT: All right. Mr. Rivers, do you agree with the facts as stated by the solicitor?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: And is that what you pleading guilty to?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Arm robbery -- two counts of arm robbery, three counts of kidnapping?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: What you just saw there on the video?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: All right, that's you. One of those guys are you?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: And, Mr. Phillips, do you agree with the facts as stated by the Solicitor?

DEFENDANT PHILLIPS: Not entirely. The roles

were swapped. I didn't say what she said I said. I was the one that gave the bag, but everything else is.

THE COURT: But that's you on the video?

DEFENDANT PHILLIPS: Yes.

THE COURT: All right. You all understand that the arm robberies carry -- is it ten years?

MS. SHURLING: Ten to 30, Your Honor.

THE COURT: On arm robbery is ten to 30, right?

MS. SHURLING: Yes, ma'am.

THE COURT: A minimum of ten a max of 30. The kidnappings carry 30 years each. You understand that, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: You understand that, Mr. Phillips?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: I could run those consecutive and you would be looking at 150 years each. You understand that?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Knowing that, you still wish to plead guilty? Mr. Rivers.

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: All right. You understand that the

arm robberies and the kidnapping are classified as violent most serious offenses. Do you understand that, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: You understand that means, sir, if you were to get another strike under our two strike law because it's most serious if you were to get another strike the State or another offense classifies is classified as most serious under our two strike law, sir, the State could move before the Court for life without parole. You understand that, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Also under the three-strike law is a strike under that law if you had something that was classified as serious and you were to get two more strikes that could move before the courts for life without parole. You understand that?

DEFENDANT RIVERS: Yes, ma'am.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: All right. Knowing that you all still wish to plead guilty?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Yes, ma'am.

MS. SHURLING: I apologize, Your Honor, but one point of clarification. It was my understanding that the only aspect of this plea that is negotiated was the agreement that the charges would be run concurrent. And as I understood Your Honor's admonitions to them you were saying that if they were run consecutively as a result of the plea, they faced up to 150. I just want to make before ---

THE COURT: I understand the negotiations, but I have to tell them exactly how much time each of the sentences carry so if I decide not to follow the negotiations ---

MS. SHURLING: I certainly understand that.

THE COURT: They'll be on notice of that, but I'm going to give her an opportunity to let me know what the negotiations are. And then I will listen to them at that point.

MS. SHURLING: My only concern was I saw my client flinch and I didn't want to disrupt the plea by that not being clear to him why we were doing that at this stage. Thank you.

THE COURT: All right. You all understand that I've not considered the negotiations. I'll hear from her

in a second regarding what your lawyers have worked out. And then I'll give you all a decision as to whether or not I'll accept the negotiations all right.

DEFENDANT PHILLIPS: Yes, ma'am.

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: But the underlying offenses carry up to 150 years. You understand that?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Mr. Rivers, you understand that?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes.

THE COURT: All right. And as to these sentences and the classifications, you all understand that you have to serve at least 85 percent of these sentences. Do you understand that, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: And you understand that you have the right to a jury trial. At a jury trial the State would have to prove you guilty beyond a reasonable doubt. You and your attorneys would have the opportunity to cross-examine any witnesses that they would present. You yourself would not have to testify. You'd have the right

to remain silent. The burden is solely upon the State to prove you guilty beyond a reasonable doubt. If you gave any incriminating statements, you'd have the opportunity to challenge the admission of those statements. If you had any defenses that you might have to present, you'd be given an opportunity to present those offenses if you chose to present those offenses, but once again you would have the right to remain silent. The burden is upon the State to prove you guilty beyond a reasonable doubt. But by pleading guilty, you give up your right to a jury trial and those other important Constitutional Rights. Is that what you wish to do, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Is that what you wish to do, Mr. Phillips?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: All right. And the negotiations are?

MS. CAMPBELL: Your Honor, the extent of the negotiations is that the charges shall run concurrently. I understand that we however are asking for a sentence in the 30 year range.

THE COURT: Is that a recommendation or is that negotiated? Because these aren't checked. Nothing is checked on these.

MS. SHURLING: Your Honor, I brought that to the attention of Ms. Walker before we started these proceedings. She had indicated to me that since we only ask that it was negotiated was concurrency and not a number sentence, that it would not be appropriate to check that box. Another reason I just wanted to make it very clear to the Court that while we have not negotiated a numerical sentence, it is negotiated with regard to the fact that the sentences whatever they are will be run concurrent.

MS. WALKER: We could check the box if, Your Honor, wants to, but the box has negotiated sentence as oppose to -- the sentence is up to, Your Honor, the negotiation to that it is concurrent.

THE COURT: Usually, I just write in there what it is.

MS. WALKER: All right. We can do that.

THE COURT: All right. So the negotiations are a concurrent sentence; is that correct?

MS. CAMPBELL: Yes, Your Honor, that's asking for an amount of 30 year range.

THE COURT: Is that correct, Ms. Shuler?

MS. SHURLING: Yes, ma'am.

THE COURT: Is that correct, Ms. Hines?

MR. HINES: Yes, ma'am.

THE COURT: Mr. Rivers, is that your understanding of the negotiations?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: A recommendation of concurrent sentence?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: And, Mr. Phillips, is that your understanding of the negotiations?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: All right. And, Mr. Rivers, you have been represented by Ms. Kris Hines. Are you satisfied with her representation?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: You need any more time to speak with her?

DEFENDANT RIVERS: No, ma'am.

THE COURT: Have you talked with your lawyer as often and for as long as you feel is necessary for her to properly represent you?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: All right. Do you need any more time to speak with her?

DEFENDANT RIVERS: No, ma'am.

THE COURT: Have you understood your talks with her?

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DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Has she done everything for you that you feel she could have done or should have done?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Are you completely satisfied with her services?

MS. SHURLING: Yes, ma'am.

THE COURT: All right. And, Mr. Phillips, you're represented by Ms. Shurling. Are you satisfied with her representation?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Do you -- have you talked with your lawyer for as often and for as long as you feel is necessary for her to properly represent you?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Do you need any more time to talk with her?

DEFENDANT PHILLIPS: No, ma'am.

THE COURT: And have you understood your talks with her?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: And has she done everything for you that you feel she could have done or should have done?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Are you completely satisfied with

her services?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: All right. Has anyone promised you anything or held out any hope of reward to get you to plead guilty, Mr. Rivers?

DEFENDANT RIVERS: No, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: No, ma'am.

THE COURT: Has anyone threatened you or used force to get you to plead guilty, Mr. Rivers?

DEFENDANT RIVERS: No, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: No, ma'am.

THE COURT: Has anyone used any pressure or intimidation to get you to plead guilty, Mr. Rivers?

DEFENDANT RIVERS: No, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: No, ma'am.

THE COURT: Have you had enough time to make up your mind as to whether or not you wanted to plead guilty or not, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: And are you pleading guilty of your

own free will, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Have you understood my questions, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: Have you answered them truthfully?

DEFENDANT RIVERS: Yes, ma'am.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: All right. Has anyone suggested to you how to answer my questions?

DEFENDANT RIVERS: No, ma'am.

THE COURT: Answers you've give me been your answers; is that correct, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: Mr. Phillips.

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: You understand you have the right to appeal the guilty plea and sentence of this court within ten days of today's date. If you cannot afford an attorney for an appeal, you will be appointed an attorney at no cost to you. You understand that, Mr. Rivers?

DEFENDANT RIVERS: Yes, ma'am.

THE COURT: And, Mr. Phillips?

DEFENDANT PHILLIPS: Yes, ma'am.

THE COURT: All right. I find that there's a substantial factual basis for this plea. I also find that the defendants' decision to plead guilty is freely, voluntarily, knowingly and intelligently made. That they are represented by counsel to whom they've indicated to me they are completely satisfied with. I will accept your pleas. How long they both been in jail?

MR. HINES: Since December 19th 2012.

THE COURT: All right. And, Ms. Walker, you said the victims would like to speak?

MS. WALKER: Yes, Your Honor.

THE COURT: I'll be glad to hear from them.

MS. SHURLING: Your Honor, with regard Mr. Rivers -- pardon me Mr. Phillips my count he was booked on December 19th and by my calculation, that's 260 days.

MR. HINES: That would be the same for Mr. Rivers as well.

THE COURT: All right, thank you.

ANDREW BLIGHT: My name is Andrew Blight (sic) and everything happened the way it showed on the video. And I had to pay back the money that was stolen at least the part stolen out of the register and stuff like that.

And it affected me because I wasn't able to buy Christmas presents for my family. And we have to lock the doors every night just to make sure we don't get robbed again, so that's always fun. Any time I see customers coming up that don't have a vehicle or anything like that, I'm always wondering do they have a gun, are they coming in here to rob us. So that's what I think about every day.

THE COURT: All right. Thank you for being here today, sir.

Yes, ma'am.

THE CLERK: I'm Alisya Harvey (sic) and I was there too. And I actually quit after this happened because I was pretty scared. My family's pretty scared. I do want them to go to prison. I basically cannot trust my customers now. And I usually do have a really good relationship them, but now I really don't know what they're thinking when they're walking into the store.

THE COURT: All right. Thank you, ma'am, for being here today.

WILLIAM BYRD: Your Honor, on behalf of the store Nancy's Nook, my name is William Byrd (sic). The defendants as a condition of any release, parole or probation should reimburse the store which in turn reimburse the employees $1,450 from the store.

THE COURT: All right. Thank you. Thank you

all for being here. You said $1,450? That's what you said, Mr. Byrd, 1415?

WILLIAM BYRD: $1,450, yes, ma'am.

MS. WALKER: Your Honor, if I may, it may be more appropriate since the employees is my understanding the employees actually reimbursed the store for the money?

WILLIAM BYRD: Yes, it's part of the store's policy. There was an additional check underneath our cash register that we weren't responsible for it's $800 under the register that we weren't responsible for, but any money over 300 I think or something like that that's left in drawer we're responsible for because we're technically supposed to drop it or whatever happens how we make money. And the -- we both had to pay $200 back. It was $400 that got stolen out the register, so we had to split that, that's what we paid back.

MS. WALKER: Your Honor, the State's position would be that the defendants would reimburse the employees who actually took the loss as oppose to reimbursing the store that's the State's position.

THE COURT: I don't have a restitution order. He's saying they're owed $400. So there's another $1,000 I guess is owed to the store.

MS. WALKER: Your Honor, that's from a check that he said.

THE COURT: Correct.

WILLIAM BYRD: That's correct, Your Honor. The store was holding on behalf of the individuals some money. Store had to pay individual consequences. The store is out that money. The store is out $1,450 part of which would be recovered by employees.

MS. WALKER: I can fill out a restitution form right now should, Your Honor, choose to order restitution.

MS. CAMPBELL: Your Honor, as far as a prior record, these young men did plead -- meet when they were in the department of juvenile justice. They had each separately been convicted for arm robberies which occurred in 2007. They did serve an active sentence at DJJ on those charges, that's how they met. And they both I believe was transferred over to it looks like department of corrections when they turned 17 I believe to serve the balance of that sentence. And they were released I believe sometime it looks like in 2008 or nine.

Your Honor, I would just note for the record that because these are juvenile convictions they are not elidible for life without parole. However, both of them were convicted for the same or similar charges as well. I would also note that the car that they found in Charleston or North Charleston one of the reason they ran from police, Your Honor, we believe because that car was

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actually stolen in another arm robbery out of the Orangeburg area.

THE COURT: All right. But only one of them was found in the car.

MS. CAMPBELL: There were multiple individuals found in the car, buy they only caught Mr. Phillips is my understanding.

THE COURT: Okay.

MS. SHURLING: Your Honor, Mr. Phillips has not been charged in connection with the Orangeburg arm robbery of the vehicle.

MS. CAMPBELL: I'm aware he been charged. I know Mr. Rivers has been charged in that just to get the record straight.

THE COURT: All right. Who's going to go first?

MR. HINES: Thank you, Your Honor. May it please the Court, as Mr. Rivers told you, he is 20 years old. He does have a history with DJJ. He was in DJJ custody. He was in a group home. While he was at DJJ, he actually spoke to -- he was part of the program there. He also was on the governs counsel. He was -- and I have some letters that were given to me that I like to pass up to Your Honor from the Awesome Wilks Society (sic). This is the group home that he was in. And the facility director and the social worker have provided letters, if I

could pass these up. I'll show them to the State.

(WHEREUPON, a pause in the proceedings.)

THE COURT: Thank you.

MR. HINES: I think those letters made clear that Mr. Rivers is a very intelligent young man. He's got his CNA license. He was actually working at C.M. Tucker as a certified nursing assistant. He was a model citizen while he was in the group home in DJJ custody. He was -- he did everything with the structure that he had. He was very helpful to him. As he told you, he had a history of ADHD so severe that he has been hospitalized for it, that makes him compulsive. And when has the structure and has the medication when he was in the group home, he did very well. He -- prior to this incident happening, he had slipped back into drinking and taking a lot of pills. There were -- it was a lot of pills that he was taking and does have a drug problem with the pills and with the alcohol. And I think -- while that doesn't excuse what happened here, explain why he wasn't doing what he was suppose to be doing as far as working and taking care of his family. He does as he told you have two newborns. Son was born the day before he was arrested. He has a daughter that was born right after he was arrested and he's never seen. He wants to get out and take care of his family, his children. He wants to have an opportunity to

turn everything around. He made very poor decisions.

I spoke with his mother and his girlfriend yesterday. They wanted to be here. They're from Charleston and were not able to make it on such short notice, but he does have strong support of his mother and girlfriend. And, you know, they wanted me to ask Your Honor for mercy. I'm asking for as close to the ten year. I understand and explain to him that there is a ten year mandatory minimum sentence on this. And I'm asking for Your Honor to give a sentence as close to the ten years as possible, that -- not to minimize what happened, but he is a very young man. I think that that will be sufficient in this case. And I think that he would like to address Your Honor.

THE COURT: All right. I'll be glad to hear from him.

DEFENDANT RIVERS: I really don't know what to say, but, I mean, really like sorry for what happened. And I didn't mean -- like I didn't know that she had to quit job, but I didn't know that it traumatize him in what I was doing. I been robbed before. It's not a nice feeling to be robbed. So I don't know what made me go out there and want to rob people whatever. Like she said, I was using alcohol and taking pills, but still that doesn't excuse what I did. And I just want to apologize to the

Court and apologize to the victim for what happened.

THE COURT: All right. Anything else?

MR. HINES: Judge, I would just ask Your Honor for mercy and ask you to consider that he is only 20 years old and doesn't have an adult record. And that he does have, you know, the skills the CNA license to be able to -- an ability to be able to become a productive citizen upon his release and ask for the lowest possible sentence that, Your Honor, think is appropriate.

THE COURT: All right, yes, ma'am, Ms. Shurling.

MS. SHURLING: Thank you, Your Honor. Your Honor, Mr. Phillips is 21 years old. He was 20 at the time of the sentence. The Court has already heard the State about the fact that my client had a DJJ record. He had an arm robbery at age 13 and sadly his stay at DJJ is when he developed his friendship with Mr. Rivers. A friendship that obviously persisted after they were released. He was not to my understanding transferred to the department correction following serving the DJJ portion of his sentence. It's my understanding that he serve 24 months in the custody of DJJ and was released from DJJ.

Your Honor, I'm court appointed counsel in this case, but I would want to affirmatively say that it's been a genuine pleasure to represent Mr. Phillips. I can't

dispute what, Your Honor, sees on that video. Obviously, what they did was terrible and I'm absolutely certain that the victims were traumatized by it. However, I can tell you that the actions I see on that video I have a very difficult time reconciling with the young man that I've gotten to know since I been representing him. He is very mild mannered and polite and has been as cooperative and appreciative of my efforts as any client that I've had in quite sometime.

He has a two-year-old daughter. The daughter is, of course, with her mother. My client no longer has a romantic relationship with the mother, Shaneca Graham, but he was voluntarily supporting the child without order of the Court prior to his arrest.

Your Honor, my client had done the right things. When he got out of DJJ, he got a job at the AutoZone in Kingstree, South Carolina. And he was not only working there, but he was two jobs. He was working at the AutoZone as a cashier and also working at the Kentucky Fried Chicken there in Kingstree as well. When he moved from Kingstree to Columbia, he got a job at Wal-Mart where he was working as a stocking clerk and left that job for an opportunity to work for Amazon left purely because Amazon offered better pay and better promotion opportunities. And he was sadly employed there at the

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time of this incident.

Your Honor, the record clearly indicates that my client was involved in this case. There's no point in debating the crime and what he did. I would note that he was only 13 years old at the time of the incident that landed him in DJJ. He has been treated for post traumatic shock apparently as a result of some severe abuse issues in early childhood. I realize that society cannot tolerate crime regardless of the background of the individuals perpetrating the crime, but I think it's important to take into account apparently somewhat rough start that this young man had that has helped shape him.

Unlike many of my clients, I have found him to be humble. There's no arrogance or disrespect there. There never has been. He has been remorseful. I would note that one of the very first things he said to me was that there was a purse stolen during the course of the robbery. And there were some rings in the purse. And he wanted me to contact the Solicitor's office and see if he could cooperate and help them locate the pawnshop. He did not know the name of the pawnshop, but he gave me a specific location and wanted me to assist in any way that I could to help recover those rings on behalf of the victim. Unfortunately, I have not been able to pursue that lead with anyone from the sheriff's department or the

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Solicitor's office to date, but he did from my very first meeting was very considered and remorseful. He said he knew those rings probably meant a lot to that lady and it bothered him. It was apparent that it bothered him greatly, that he had sold them at a pawnshop. Your Honor, I think one -- I know this is just a plea, but it's always important I think to ask the Court to please be mindful of the dual purposes of punishment and rehabilitation.

My client is only 21 years old. He was on the right track and he was getting jobs and keeping them and doing well. Unfortunately, his maintaining a close friendship with a person he had met at DJJ was probably not good for neither one of them in the final analysis, but until he stumbled and made this very bad judgment call, he was on the road to getting his life back in shape. And I believe Your Honor that while he deserves to be punished and the laws certainly says ten year minimum for arm robbery. So at the very best case scenario if Your Honor gives him ten years, he would serve a minimum of eight and a half years before being eligible for supervised community release. I would urge the Court beg the Court to consider the eight and a half years in a penitentiary would certainly give any young person an opportunity to not only be well punished for their

actions, but an opportunity to learn from their mistakes and hopefully chart the rest of their course with both more productive purpose. And would urge the Court to consider the minimum sentence or somewhere near that range for this young man. I think he is not hopeless. I think he's not one of the ones that's a lost cause. I believe from my interaction with him that if he was given an opportunity to serve a minimal sentence relatively speaking to the mandatory minimums, of course, that he has an opportunity to be a productive citizen in the future. And I would urge the Court to consider that such sentence would seriously punish him for his actions. Eight and a half years in the penitentiary would certainly by no means a slap on the wrist but would also allow him to get out at an age where he could still have a family and have an opportunity to make his life take a far different course than it has thus far.

His mother is here with us today, Your Honor. Her name is Shalene Ward. Ms. Ward when the Court allows would like to say something on his behalf as would his sister Shalana Givens, who is also here in the courtroom whenever the Court's ready. They would both like to briefly speak on behalf of Mr. Phillips.

THE COURT: I'll be glad to hear from them. You can come to that front row and speak up and state your

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name for the record.

SHALENE WARD: My name is Shalene Ward. I'm Carroll Phillips' mother and I just ask the Court to have mercy on my son. And as for the victims, I ask my -- for you to forgive what happened with my son have done to you because how I know how it feel to be robbed, but I mean -- I just ask y'all to forgive him for what he have done to y'all. And I just wanted to say because he's a good guy. I don't know what went wrong. I don't know because I lost my job almost my home or whatever that took affect on him or not, but I'm just asking to just forgive him for what he have done and have mercy on him on his time because, I mean, like a say he's a good guy.

I mean, he has a two-year-old daughter, a lovely little girl. He did do for her. He has a little brother, a little sister. And he always helped her with her homework and whatnot stuff that I could not help her with it. He helped her with it, but it's just things just went wrong in the year of 2012 everything was just going bad for us. And he had to leave me and go stay with his brother and somehow him and Mr. Ryais got together. I kept calling and seeing what was going on. And he kept saying momma I'm fine. I'm fine, I'm fine. So I wouldn't have to worry about him. But I'm not going to hold your time up in court, but I just ask y'all just to have mercy

for my son because he is not a bad guy and I know he's not. I mean, he do try to work and whatnot. And he do try to help out with the family. I just don't know what went wrong at that moment that they did this because I'm very surprised at him doing this.

SHALANA GIVENS: I basically just want to apologize to the victims whatever for my brother's fault. I know how y'all feel when you be traumatized by something. When I go to sleep at night, I think about my brother not being around and it bothers me. I'm sorry, but a lot of things that go on through our head not having my brother around. I'm sorry. I'm done.

MS. SHURLING: Your Honor, one final point that I would be remissed if I did not make. This morning when we met in chambers I understood from our discussions for the first time that we have -- the negotiation with regard to Mr. Phillips is, of course, that his sentences on these five charges would be run concurrent. I understood this morning for the first time that the negotiations with regard to Mr. Rivers would include that his sentences for his Orangeburg charges would also be run concurrent with his Richland County charges.

MR. HINES: We're not dealing with Orangeburg today.

MS. CAMPBELL: He's not dealing with Orangeburg

today.

MR. HINES: Orangeburg will be taken care of in Orangeburg on another day, that's not before, Your Honor, today.

MS. SHURLING: That specifically was not my understanding from what the discussion was with the Court this morning, but nevertheless what I would ask the Court to consider is that clearly -- and I'm certainly not trying to come down on Mr. Rivers, but the evidence is that Mr. Rivers committed another arm robbery in Orangeburg very shortly before this arm robbery or after.

MR. HINES: I would ask, Your Honor, not to consider the Orangeburg, that's going to be in front of a different judge on a different day with a different public defender, a different Solicitor who have the discovery and have the facts accurately.

MS. SHURLING: And I'm not trying to pit one defendant against the other, but I think I would be remiss in my obligation as an advocate if I did not point out that my client had been involved in one incident versus his co-defendant having clearly been involved in two within a very short period of time.

THE COURT: Well, he hadn't been convicted of that one, Ms. Shurling, so I'm not considering that. I don't know anything about it. He hasn't been convicted of

any armed robbery in Orangeburg has he?

MS. CAMPBELL: He has a pending charge in Orangeburg. We aren't dealing with that today, Your Honor. We aren't involved in that in any way. And the only -- he has been convicted of arm robbery of course before.

THE COURT: Adjudicated.

MS. CAMPBELL: Adjudicated I'm sorry.

THE COURT: All right. Anything else from the State? I'm sorry I didn't ask the officer if he wish to speak. I'm sorry.

OFFICER: She testified to everything.

MS. CAMPBELL: I think he's good.

THE COURT: All right. Anything else?

MS. WALKER: Nothing, Your Honor.

MR. HINES: Judge, I would just like to -- one thing I did say Mr. Rivers was also not transferred to the department of corrections from DJJ. He was put into a group home, which was the ---

THE COURT: How much time did they spend at DJJ?

DEFENDANT RIVERS: Thirty-six months.

DEFENDANT PHILLIPS: Twenty-four months.

MS. SHURLING: And, Your Honor, at the appropriate my client would like to address the Court.

THE COURT: I'll be glad to hear from to him.

DEFENDANT PHILLIPS: First off, I want to apologize to the victims. I did not know that it would affect them in such way that it did.

THE COURT: Both of you all said, what did you all think?

DEFENDANT PHILLIPS: I did not -- I didn't think at all.

THE COURT: And this isn't the first time around, so what did you think holding a gun that looks like that up on -- what do mean you don't know it would have affected them?

DEFENDANT PHILLIPS: I'm not gone say ---

THE COURT: The reason you take a gun to a robbery is to scare people to give you what you want.

DEFENDANT PHILLIPS: I'm not saying that I didn't know that it would affect them, I mean, period. I didn't know that it would cause that much trauma, that much problem. I honestly didn't think to consider it at all. I'm not trying to belittle anything that I did. I take full responsibility for what I did. I just ask that you just have mercy. I did not.

THE COURT: All right. Anything else? And I'm guessing this is -- kidnapping is no sex offender registry; is that correct?

MS. CAMPBELL: Correct.

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MS. WALKER: Yes, Your Honor.

MS. SHURLING: Thank you, that's correct.

THE COURT: Did you all figure out the restitution?

MS. CAMPBELL: Yes, Your Honor, basically we split the restitution down the middle between the two of them. It's a $100 to each victim from each defendant and then the balance $525 to the store.

THE COURT: You have an order?

MS. SHURLING: Your Honor, I had not discussed and I apologize for that restitution with my client. At this time I like just a quick second.

THE COURT: Yes, ma'am.

(WHEREUPON, a pause in the proceedings.)

MS. SHURLING: Your Honor, my client he has been advised of his right to have a hearing, an evidentiary hearing on the appropriate amount of restitution. However, he has indicated that he believes the amounts reflected on this form are fair and appropriate on the facts of this case. And that he is willing to waive his right to an evidentiary hearing.

THE COURT: All right.

MR. HINES: I have discuss that with Mr. Rivers also and he would waive his right to an evidentiary hearing also.

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THE COURT: All right.

MR. HINES: Your Honor, in light of restitution, I would ask you to that consider that in sentence -- I know that it will be due until they get out and they will have community supervision in this case. These victims would have an opportunity sooner rather than later to have that money paid back to them.

THE COURT: I thought that if they have -- if they do any work or have any they can get from the department of corrections. I think they can. They might be able to pay considering it's divided by two.

All right. On Mr. Rivers on indictment 2013-GS-40-1521, 1522 and 1520, 1524 and 1526, would be sentence to the state department of corrections for a period of 20 years. You'll be given credit for the 260 days that you have served. The sentences will run concurrent. And the restitution is ordered according to the restitution order.

On indictments 2013-GS-40-1577 on Mr. Phillips 78,79, and 76 and 1580, you will be sentence to the state department of corrections for a period of 20 years. The sentences run concurrent. You'll be given credit for the 260 days that you served. Restitution is ordered and according to the attached restitution order. And sentencing you all I've taken into consideration this

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isn't the first time around for you all on an arm robbery. I don't understand how you would come in here and say you don't understand the affects that pulling a gun that looks like that on someone how it's not going to affect them. I don't understand how you all come in here and say that you spent 36 months, 32 months, 36 months in the department of juvenile justice apparently that has not helped. I'm hoping the department of corrections will. You all will still be young men when you come out and that you would come out this time and do the right thing. If you do not, you'll just spend the rest of your life in jail. All right. Thank you.

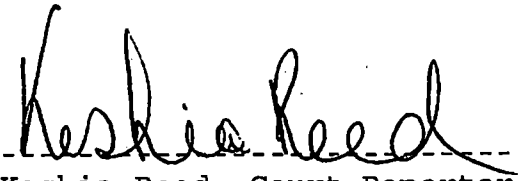
END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 42, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Richland County, South Carolina, on the 5th day of September, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 17th day of April 2015.



Keshia Reed, Court Reporter

2014CP400 7536

STATE OF SOUTH CAROLINA

In the Court of Common Pleas

County of Richland

Ryan Ryche Rivers et al,

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

vs.

State of South Carolina et al.

Name of Respondent

APPLICATION FOR

POST-CONVICTION RELIEF

Affidavit of facts seeking to Amend, consolidate and waive Rule

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Lieber CI PO Box 205 Ridgeville SC 29472 Wando A-110

2. Name and location of Court which imposed sentence Richland County Court of General Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

   (a) 13-1520; 13-1521; 13-1522 and 13-1526

   (b) Kidnapping 3 counts; Armed Robbery

   (c) One Count

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

   (a) September 5, 2013

   (b) "

   (c) "

JEANETTE W. McBRIDE
CLERK OF COURT & C.C.P. & G.S.
RICHLAND COUNTY
FILED
2014 DEC -8 PM 1:38

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5. 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

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

NO

7. If you answered "yes" to (6), list

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) Counsel was ineffective. Did not fully

(b) Consider stand my Rights And did not

(c) discover Issues Until Now.

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

(a) 4th, 5th, 6th, 13th, 14th, 15th Amendment violations;

(b) Due Process violations; Ineffective Assistance of

(c) Counsel; Subject matter Jurisdiction; Fraud on the court

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Issues Attached

(b) "

(c) "

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?

YES

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. SEEKING consolidation with Crawford

ii. And other parties cases pending together

iii. under cases 2013-CP-400-0084 And 2014

iv. I am added as a party

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

i. Richland County Common Pleas Court

ii. Bergen County Superior Court New Jersey

iii. New Jersey District Court being removed

iv. by John Sutcliffe Undercase 4:13-CV-06266

(c) the disposition thereof:

i. pending

ii. "

iii. "

iv. "

(d) the date of each such disposition:

i. N/A

ii. "

iii. "

iv. "

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

i. SEE CASE 0084 And 2014

ii. "

iii. "

iv. "

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

(a) which grounds have been presented:

i. By Crawford and other plaintiffs. These
ii. cases are filed seeking class action
iii. certification and removal to federal court

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

i. State case 0084 and 2094
ii. u
iii. u

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) u
(b) u
(c) u

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

i. King Hayes
ii. N/A
u
iii. u
u

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

i. Plea hearing
ii. N/A
u
iii.

18. State clearly the relief you seek in filing this application.

Sentence and conviction vacated, order issued expunging record, all restitution paid returned, name and DNA removed from any derogatory files

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

No

IN THE CASE BER-L-001708-14 ET AL,

ARGUMENT #1

Did the trial court err, and was the appellant's 5th, 6th, 13th, 14th, 15th. Amendment rights of the U.S. Constitution, as well as Article IV § 2, and his Due Process Rights violated, by the language and charge contained therein, which did create and or form conclusive presumption(s), that took away the applicants presumption of innocence, and automatically shift the burden of persuasion to the defendant, in regard to the crucial

elements of dispute?

The appellant humbly contends, it is well established by the U.S Constitution, the 5th, 6th, 14th amendment(s), and the Bill of Rights, that when an individual is brought before a court of jurisprudence upon accusation, that the individual alleged thereupon, is innocent, until proven by a jury of his peers, guilty of aforesaid accusation being brought before the court. This is the defendant's most basic, and most fundamental right by federal and state laws pertaining to DUE PROCESS.

Bierqusie they passess a structural constitutional ierror and or defiect, in that thie language and or charge contained therein, is constructed to produce conclusive presumption(s), that immediately shift thie burden of persuasion to thie defiendant in regard to thie crucial elements of thie offiense(s), thie indictments and or complaint documents violathe Due Process as well as thie 13th and 15th. amiendments.

Thie appellant did not objiect to this defiect and or ierror at thie time

hie gave his guilty plea, and or before trial, but the defect and or error serve to render the indictments and complaints around the nation wholly invalid. Defects in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am Jurs 2d Indictments and Information § 299 (1986); State v Murph, 357 SE 2d 461 (SC 1987).

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider

without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co., 228 S.E.2d 108; State v Broad River Power Co., 177 SC 240, 180 S.E 41; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals

52 even if the appellant did not object at the proceedings (Black Law Dictionary 8th Edition).

By that which is cited in Sandstrom v Montana, 442 U.S. 510 at 520, 99 SCt 2450 at 2457 (61 LEd2d 39)(1979), Under (4) Criminal Law [West Key] 324. The Supreme Court was unequivocal and unambiguous when it stated verbatim:

"Conclusive presumptions conflict with the overriding presumption of innocence which the law endows the accused and which extend to every element of the crime charged, and they invade the fact-finding function

which in a criminal case the law assigns the jury, Morissette supra, at 275, 72 Sct at 255 and United States Gypsum Co supra, at 446, 98 Sct at 2878. The indictments and complaint documents around the nation require the jury, if satisfied as to the facts that trigger the presumption to find intent unless the defendant offers evidence to the contrary. The indictments and complaints around the nation, by their structural constitutional error and or defect, language and or charge, misled the jury, and we can add, the defendant, to believe the presumption

was not limited to requiring the defendant to satisfy the burden of production, when the burden of production is to be consistently borne by the state. A presumption although not conclusive, that has the effect of shifting the burden of persuasion would suffer the same similar infirmities", Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct 1881, 44 L.Ed.2d 508 (1975), even if its embodied within the charge of an indictment or criminal complaint

To state by use of an indictment or criminal complaint within the 50 states that an individual "did" with intent,

Knowingly, malice, aforethought, and other such elements imply conclusive first hand knowledge of the events pertaining to the accusation being brought before the court. To such knowledge the grand jury who swore to such indictments, "cannot" by all scientific reason and jurisprudence ascertain as being true under such circumstances, especially without a trial. It is universally recognized that every oath [o]ught and [m]ust be founded upon [c]ertain [k]nowledge", meaning knowledge that is certain beyond a reasonable doubt as being true (OMNE SACRAMENTUM DEBET ESSE DE CERTA SCIENTIA). Inasmuch, the

Reality of this matter is that the issues in question, embodied in said indictments are allegations, they are accusations, not proven facts. So how could they be sworn by indictment as being true? It is the command of the U.S Constitution that Anything, to include any and all legislation, whether it be by statute, indictment, or otherwise, that is contrary to its inherent intrinsic, and explicit presuppositions shall [not] stand, and therefore should be abolished and or remedied void (Article IV § 2 U.S Const.).

"The state must prove", I repeat, "The state must prove", not the defendant,

EVERY single element that is charged, and that is crucial to the offense. It is not to be given to them in any way. They must first prove it before it can ever be declared. Every single time an indictment is sworn where it states clearly without ambiguity a defendant "did", etc., it immediately with destructive results tears down the commons wealths constitutional DUE PROCESS of being innocent until proven guilty, and automatically shift the burden of persuasion to the individual or commonwealth charged. It gives the false unconstitutional premise and or presumption that such has already been

proven by a jury of one's peers, or even more specific, without a trial by a jury of one's peers in violation of Due Process law. To have such unconstitutional presumptions embodied in indictments and criminal complaints that rely on such language is constitutionally infirm.

The appellant avers, in Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct 1881, 44 L.Ed.2d 508, the court found as a violation of Due Process and Winship, 397 U.S. 358, 90 S.Ct 1068, 25 L.Ed.2d 323 (1970), an indictment that presumed that a defendant acted with "malice and [a] forethought", if it were

found that the homicide was intentional and unlawful, the defendant then bore the burden of disproving the elements. Similar in Sandstrom, the jury was instructed in determining whether or not the defendant had the prerequisite intent to commit murder [T]he law presumes that the person intended the ordinary consequences of his voluntary actions, thereby relieving the state of its burden on that element. The language and charge in the indictment(s) do the same thing, taking away the presumption of innocence, and by what's written predetermine

In determine the outcome of the proceedings and presumes that a person intends the ordinary consequences of his voluntary actions, thereby relieving the state of its burden on the elements crucial to the offense. What if a person was forced to commit the crime at gun point? Or was the victim of brain washing by the induction of some chemically based mind controlling drug, and under such control he committed the crime? Or it simply was an accident depending upon the crime charged? These are just a few reasons why such wording is impermissible,

Moore v Dempsey, 43 Sct 265, 67 Led 542 (1923).

Once the courts of South Carolina, New Jersey and the Remaining 50 states constructed an indictment or criminal complaint contrary to the laws of DUE Process, the attorney for the Appellant telling the Appellant he is innocent until proven guilty, or the judge giving an instruction to the Appellant and or jury of being innocent until proven guilty, or stating that the state or federal government has the ultimate burden and must prove every element, to the Appellant or jury, or stating the

62 indictment or criminal complaint is not evidence to the appellant or jury, does "not" cure the Due Process problem created and presented by the structural constitutional error, defect, and or charge in the indictment(s) and complaint(s).

Constitutional Law [West Key] 266(7), in situations where elements of offense and "so-called" "affirmative defense", pose same ultimate issue of shifting the burden of persuasion, the Due Process problem is "not" eliminated by including an instruction in a charge that the state has the ultimate burden of proving every element beyond the reasonable doubt

And we can add to this, stating that indictments or criminal complaints are not evidence by this court. The teaching of these cases is that "any" presumption, even if its not conclusive, even if its embodied within the charge of an indictment or criminal complaint, that has the effect of shifting the burden of persuasion to the defendant and any element of the crime charged violates Due Process, (U.S.C.A. Const. Amend 14) Humanik v Beyers, 871 F2d 432 (3rd Cir 1989).

Such is a substantive disadvantage and not merely procedural disadvantage to the defendant related to his rights

of Due Process. If the indictments and or criminal complaints around the nation, by their direct contained therein, require that the defendant prove he did not possess the "mens rea" or any element pertaining to the alleged crime at trial and or before a guilty plea, 421 U.S. at 684, 95 S.Ct at 1888, it becomes obvious that the burden of proof is shifted.

The court recognized by requiring the defendant to prove the critical elements of said dispute, ID at 710, 95 SCt at 1890, the major Rule, as do

the motions indictments and criminal complaints, affirmatively shift the burden of proof to the defendants, thus creating a further likelihood of appellees convictions and or guilty pleas, due to the shifting of the burden of persuasion to prove ones innocence, as implied by the language and or charge in the indictments and criminal complaints 433 at 421 U.S. at 701, 95 Sct at 1890. Such serve to negate certain facts of the crime which the government is to prove to the jury in order to convict the defendant of a crime charged, 432 U.S. at 201; 97 Sct at 2325. The Winship

66 Rule is clear in which the defendant creates a reasonable doubt on any element of the offense(s) charged is entitled to an acquittal.

In such a situation the relevance of the subsidiary facts in this case are the same and the sole significance of the defendants evidence and or testimony concerning the "so-called" "affirmative defense", is to create a reasonable doubt on the existence of an element of the offense, by the preponderance of evidence to counteract an unconstitutional presumption.

As stated in United States v Clemens,

843 F2d 744, 752 (3rd Cir 1988):

"Justly put, merely labelling something as "affirmative defense", "statutory procedure", and we can add to this, "an indictment or criminal complaint", does not mean that such constructed to the laws of due process are constitutional. Contrary, It must appear that the aforementioned, as related thereto, do not negate any element of the crime, and we can add to this, shift the burden of persuasion, as the indictments and or criminal complaints of this nation do", ID W Laffave & Scott substantive Criminal Law 3 L.8 at 75 (1986) see generally Sandstrom v. Montana supra. A defendant may be

required to bear the burden of persuasion with respect to defenses such as showing justification or excuse, but not with respect to those that negate guilt by cancelling out the existence of some required element of the crime, nor should his presumption of innocence be deprived, w/ Laffave & Scott supra at 71, 75.

Accordingly, accessing the constitutionality of an "affirmative defense", "a statutory procedure", and we can add to this "an indictment or criminal complaint", etc, of any kind related thereto, even by terms of that which the statute requires, is defined in terms of fact so central

to the nature of the offense that in effect, the prosecution has been freed of the burden of establishing each constituent element of the crime charge If the indictments and criminal complaint around the nation already predetermine in advance of any proceeding that you "did" with malice, aforethought, intentionally, willfully, etc., the state has been relieved of proving it, see ID at 2.13 at 233 also see Mooney Dempsey 43 Sct 265, 67 LEd 542 (1923). By the structural constitutional error and or defect, its already given and no longer by the charge and or defect, have to

BE ESTABLISHED. IN ORDER TO CONTRIBUTE SOME SIGNIFICANT BURDEN, A RATIONAL TRIAL JUROR'S ONLY OPTION, AND WE CAN ADD, THE DEFENDANTS ONLY OPTION, IS TO CONCLUDE THAT THE INDICTMENTS OR CRIMINAL COMPLAINT ARE TRUE, OR ARE TO BE CONSIDERED AS TRUE, BECAUSE THE LANGUAGE AND OR CHARGE REFLECTS SUCH IN DEPRIVING ONE OF THE PRESUMPTION OF INNOCENCE. It is clear from MARTIN V OHIO, 480 U.S. 228, 107 S.Ct 1098, 94 L.Ed.2d 267 (1987) AND MOORE V DEMPSEY, 43 S.Ct 265, 67 L.Ed 542 (1923), that this is CONSTITUTIONALLY IMPERMISSIBLE.

PERHAPS THE 50 STATES OF THIS NATION WOULD CONTEND, THAT SUCH IS MERELY THE

conveying of information from witness 1, 2, 3 or more possibly, and upon this testimony such an oath is based. Even if one would adopt this premise still the indictments and criminal complaints of this nation "cannot" be deemed as that which is founded upon "certain knowledge" (omne sacramentum debet esse de certa scientia), but it is founded upon the basis of hearsay and or second hand knowledge. Notwithstanding, it has been recorded throughout history since the earliest stages of civilization that people do bear false witness in groups and in numbers depending upon their motivation.

For example, you have an unjust king and Queen, Ahab and Jezebel, coercing several people to live in a covert plot to steal the land of a righteous man in I Kings chapter 21. In micah, a mans closest members of his household bear false witness against a prophet of God. In Christianity you have officials who were in power, Sadducees, Scribes and pharisees, incite and pay groups of people in the Gospel(s) of matthew, Mark, Luke and John to bear false witness against the messiah. In Islamic Prophesy the Prophet muhammad (PBUH), in Sahih al Bakhari Vol no.9 Hadith No. 7086,

prophesized how in these times there will hardly be a trustworthy person left in the world. The Spanish Inquisition of 1478 and the English Inquisition of 1518 found people unjustly burned at the stake and or hanged, due to unjust accusation by people in numbers for false claims of heresy. Adolph Hitler, and a group of people called "Nazis", brought numerous unjust claims against the Jews, falsely rooted in lies, in the holocaust of the 1930's. The Salem Witch Trials in the 17th Century, in Massachussett, found numerous men, women and children, burnt at the stake for false claims of

practicing witchcraft, brought by groups of people in plumbers ("the witch bitches" as they were called). The Ku Klux Klan, throughout the south, brought unjust accusations against the innocent Post Civil War era, and in the 1930's through 1960's. Judaism, Christianity, Islam, American History, European History, World History, all are filled with unspeakable atrocities originating in lies, perpetrated by people in plumbers and in groups against the innocent. Our Constitutional forefathers in their wisdom and jurisprudence saw the repeated pattern that like a poisonous, venomous snake, rose its head from

the soils of society to fatally bite the commonwealth. And in their wisdom they set up "bulwarks", "barriers" of protection for the American citizenry, all who are held by us, all who enter our borders or territories, that under no circumstance, outside of an individual committing an Act of Treason, were to be torn down, because people in groups and in numbers do bring false accusation against the innocent.

Referring back to the third situation here as illustrated by State v Brunk, 108 N.J. 591, 532 A2d 199 (1987) and State v Zola, 112 N.J. 384, 548 A2d 1022 (1988),

16 in inferring the state of mind element, whether the prerequisite intent and or purpose was present at the time of the crime. The Grand Jury, in the form of the indictments or criminal complaints around the entire nation, "cannot" say what was in a persons mind, nor do they have firsthand knowledge of the facts related to the incident charged. They do "not" possess "certain knowledge" (Omne sacramentum debet esse de certa scientia). Thus, again the very language and or structural constitutional error and or defect, and or charge of the indictment(s) and

criminal complaints around the nation predetermine in advance before trial or plea an individual is guilty of the state of mind element and forces a defendant, due to the shifting of the burden of persuasion, to prove his innocence by the preponderance of evidence and or testimony in violation of Due Process Law. This creates an instant double jeopardy issue showing this is not a harmless error, Moore v. Dempsey supra; State v. Gordon, 588 S.E.2d 105, 356 S.C. 143 (S.C. 2003); State v. Perry, 595 S.E.2d 883, 358 S.C. 633 (S.C. 2004).

In regards to a charge, and we can

Add to this, a charge in an indictment or criminal complaint, that constitutes a constitutionally impermissable charge/instruction, or contradicts the presumption of being innocent until proven guilty, even with a later instruction "boilerplate" of being innocent until proven guilty by the courts or stating that the indictments or criminal complaints are not evidence by the courts, the problem is not cured where there exist a reasonable likelihood that the jurors, and we can add in this case, the defendants, may have considered the charge, and we can add to this, the

charge in the indictments or criminal complaints around the nation as conveying an unconstitutional message in both state and federal prosecutions, Francis v Franklin, 471 U.S. 307, 105 SCt 1965, 85 LEd 2d 344 (1985).

Such presumptions intrinsically and explicitly established snatch the blindfold off of "Lady Justice" herself, and now, not only is she no longer impartial, unbias or fair; but now she says because its you, because its this particular crime or alleged action as opposed to another, because you are charged in

this particular state as opposed to another, because you fall under this particular statute as opposed to another, you are no longer innocent until proven guilty and your constitutional rights are hereby revoked. Such presuppositions destroy the very metal of the shield of protection placed around the American citizenry, those who are held by us, and those who enter our borders or territories, and abolishes the very core integrity of the Due Process Clause our Constitutional forefathers have died and shedded their best blood to

establish and preserve. The greater aspect of evil related to such actions by the criminal complaints and or indictments around the entire nation, far and extremely outweigh the greater aspect of good that it sought to establish related thereto. If we as responsible citizens of the common wealth allow individuals who are placed in positions of legislative authority, whether it be at town, city, state or federal level, whether it be intentional or unintentional to initiate or place into effect legislation by statute or any other

means, that deteriorate the very pillars of that which our Constitution was founded upon, then we no longer establish ourselves as a true Democracy, where the good of the many outweigh the good of the few. We step more into the realm of monarchy, and set ourselves on a path of constitutional destruction detrimental to the commonwealth that can only lead to anarchy creating the similarities that manifested themselves in the aforementioned Nazi Occupation, Salem Witch Trials, the Spanish

Inquisition and the like. Where trials and criminal proceedings become an arbitrary action, an abusive and deceitful process, fraudulently designed to Rob the commonwealth of their God given liberty. This we cannot do!!! It is OUR courts, OUR Supreme Courts, and OUR Federal District Courts' inherent responsibility as guardians of the faith and integrity of our system of jurisprudence to protect the commonwealth from such a dark demise. The presuppositions set forth by our constitutional forefathers

"E Pluribus Unum", where one nation, under God, indivisible, with liberty and justice "for all", "for all" and was not to be taken away simply because an individual fell victim to accusation, or fell under a particular statute of law as compared to another, or was charged in one particular state as opposed to another. The only exception to this sacred standard and trust was to be if an individual committed Acts of High Treason against our government itself, which in some particularity is what the indictments and criminal complaint documents around the entire nation reflect, because they ultimately

swear allegiance to that which sets itself at war, enmity and disloyalty to the constitutional rights of all citizens of the commonwealth and all others who are subject to them. Therefore, they are a form of treason. The indictments and criminal complaint documents around the entire nation betray our constitution. Heretofore they "must" be abolished and or reformed. They are intensive espionage and diabolical sabotage and stand at war with the rights of this nation's commonwealth in violation of Due Process. They covertly with corrosive results steal away stealthily the fundamental truths by which the Constitution was founded upon and threw

A monkey wrench into the mechanical works of justice and fairness by detonating explosive results that detrimentally tear down the bulwarks that were forthrightly established to protect the commonwealth against unjust prosecution. By the definer, language and or charges contained within the indictments and criminal complaints around the entire nation you have already surmised and ascertained without the total weight of evidence set forth before a jury an individual's guilt in violation of state and federal laws also pertaining to the U.S. Constitution, inferring the state of mind element,

pleading the burden of proof that by law was to be consistently borne by the prosecution, Franklin v Franklin supra; Moore v Dempsey supra

The court holds that a charge, and we can add to this, a charge in an indictment or criminal complaint, which impart to the jury, and we can add to this case, the defendant, an unconstitutional understanding of the allegations, relief more specific, the burden of persuasion, and the presumption of innocence, create a reasonable likelihood that the jurors understood the charge, and we can add,

that the defendant understood the charge in the criminal complaints and indictments in an unconstitutional manner unless other language in the complaints or indictments explain the infirm language sufficiently to eliminate this possibility. If such a reasonable possibility exist, "we have no way of knowing that the defendant was not acquitted, and we can add, gave his guilty plea, on the basis of the unconstitutional charge, specifically the charge embodied within the indictments and complaints", Sandstrom 442 U.S. at 526 (99 SCt at 2460). For this reason it has been well settled since Stromberg v California 283 US 359, 51 SCt 532, 75 LEd 1117 (1931)

that where there exist a reasonable likelihood and/or possibility that the jury, and we can add, the defendant, relied on an unconstitutional understanding of the law in reaching a verdict, and we can add in giving his guilty plea, that verdict and/or guilty plea must be set aside, Id at 323 n. 7, 105 Sct at 1976 n. 7. We conclude that there is more than a reasonable likelihood that the jurors, and we can add, defendant(s), received an unconstitutional understanding of the situation pertaining to their tasks.

This is no way a mischaracterization of the law pertaining to the cases cited here. Even though some of the cases

90 cited dealt with conclusive presumptions given by judges in charges that have the effect of shifting the burden of persuasion to the defendant regarding the crucial elements, in this case we are dealing with a similar charge except this time its given by the Grand Jury in the form of an indictment or criminal complaint, that has the effect of shifting the burden of persuasion to the defendant regarding the crucial elements. The subsidiary facts related to the shifting of the burden of persuasion to the defendant regarding the crucial elements and the inferring the state of mind element(s) to the

offenses are the same in these matters. Due to the defect in the construction of the indictments and criminal complaints nationally, the defendants' presumption of innocence is clearly taken away, also guilt of the offense(s) is illegally predetermined in advance by the Grand Jury who do not have the power by state and or federal law or constitution to convict due to the language and or charge contained therein, and the indictments and or criminal complaints nationally serve to negate the burden of

proof.

This creates a structural constitutional error and or defect. Structural Constitutional errors and or defects compromise the entire trial and or plea hearing proceedings. It requires reversal and or vacating as it involves deprivation of constitutional protection so basic, and so fundamental, that in its absence criminal trials and or plea proceedings "cannot" reliably serve its function as a vehicle for determination of guilt or innocence, and "also" criminal punishment may be deemed or regarded as

fundamentally fair, Robinson v Arvonio, 27 F3d 877 rehearing denied, cert. granted vacated 115 SCt 1247, 513 U.S. 1186, 131 LEed2d 129. Such a structural Constitution error and or defect of this magnitude is "not" subject to the harmless error analysis. Structural Constitutional errors and or defects not subject to the harmless error analysis are defects and or errors affecting framework in which trial and or plea proceedings "cannot" reliably serve its function as a vehicle for determining guilt or innocence, involving deprivation of constitutional protection so basic, and so

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fundamental, that in its absence no trial or plea can be deemed reliable, nor any punishment fundamentally fair, Lipues v United States, 28 F3d 1123 Crim. Law 1163(1), 1165(1). This perspicuous that such a defect and or error does affect the framework of the proceedings, because the court(s) must constructively amend the indictments and criminal complaints around the nation on the "mens rea" crucial elements of the offense(s) to correct, rather, in an attempt to correct the structural constitutional error and or defect by giving a Judges' charge. The boundaries

cited by law are clear and certain relief as cited by Winship Rule and Humphrik v Beebers supra. Any conclusive presumption, of any kind, that is placed before a jury to obtain a conviction, or we can add, placed before a defendant to manipulate, mentally and or psychologically coerce, and or force the defendant into an unfreely, unknowingly, involuntarily or unintelligently given guilty plea, that determines in advance a persons guilt, that has the effect of shifting the burden of persuasion to the defendant, violates DUE process and is grounds for

An acquittal, either if its embodied within an indictment or criminal complaint, Moore v Dempsey supra. Clearly there is nothing cited by law that would mandate that these strict Rules of Court, and requirements of Due Process law, be solely limited to a judges charge. They apply to any charge that's played before a jury to obtain a conviction, or a defendant in order to manipulate, mentally and or psychologically coerce, and or force him into a guilty plea. Such a heavy weight of shifting the burden of persuasion, and the taking away of ones presumption of innocence,

by the indictments and criminal complaints of this entire nation, have been unjustly and unconstitutionally used against defendants in this nation, in this new Jim Crow and racial caste system, to mentally and or psychologically coerce, and or force them into plea bargains, and at their trials for far too long.

To elaborate on or bolster this proposition, if the honorable court would please take notice of the warrant(s) pertaining to the offense(s), as it is for every warrant in the nation. In the body of the warrant in the state

98.

It reads:

"I further state that there is probable cause to believe that the defendant named above did etc ***".

This is the language that explains the constitutionally infirm language and or charge. This is the language that aids in the maintaining of the presumption of innocence, and also which confirms the specific job of the GRAND JURY. The job of the Grand jury is two prong. One is to determine and ENSURE that some state and or federal official is not acting arbitrarily in bringing accusation against a citizen.

of this country. The second is to determine whether or not there is sufficient probable cause to bring a defendant to trial, Stirone v United States, 361 U.S. 212 (1960); Ex Parte Bain, 121 U.S. 1 (1887); Gaither v United States, 413 F2d 1061 (D.C. Cir. 1969); The 50 states constitutions; United States v Abrams, 539 F. Supp. 378, 384 (S.D. N.Y. 1982); United States v Calandra, 414 U.S. 338, 342-343, 94 S.Ct. 613, 617, 38 L.Ed.2d 561, 568 (1974); Branzburg v Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972). To determine guilt of the offense(s), to include the "MENS REA" on the crucial

elements of dispute, is a violation of its shielding function. A Grand Jury merely investigates and reports. They are not authorized by federal or state constitution, nor federal or state laws, to conduct, Jenkins v McKeithen, 395 U.S. at 430, 89 Sct at 1853, 23 L.Ed.2d at 422 (1969). The powers of the Grand Jury are not unlimited, and are subject to supervisory of a judge. Grand Juries may individually or collectively enjoy protections assertable in suits for deformation, but the privilege is applicable to bar the petition of an appellant to remove language from

The indictments and criminal complaints around the entire nation, Compare Pierson v Ray, 386 U.S. 547, 87 SCt 1213, 18 Led2d 288, 294-95 (1967). When the Grand Jury goes beyond the scope of the power and authority given to them, it is indicted a violation of Due Process, United States v Chadwick CA 9 (Utah) 1977, 556 F2d 450; United States v Briggs, 514 F2d 794 (5th Cir 1975). Yet, by the structural constitutional error, defect, language and or charge of the indictments and criminal complaints, both state and federal around the nation, the Grand Jury adjudicated not only guilt of the offenses)

charged, but also the "mens rea" related thereto. If such or similar language as aforementioned, is not embodied within the body of the charging instrument(s), then the indictments and criminal complaints are not constitutionally sound and they violate DUE PROCESS. The evil that has developed from this, far and extremely out weigh the original good it intended.

Any indictment or criminal complaint, whether it be in the smallest of detail, whether it be in the smallest of towns, or the largest of cities, whether

it be within the boundaries of any county or state, whether it be intentional or unintentional, that's constructed in a fashion where it automatically shift the burden of persuasion from the state or federal government to the defendant, takes away one's presumption of innocence, and by the language predetermines in advance the outcome of the proceedings, giving off an unconstitutional impression and understanding of his or her rights by the laws of DUE PROCESS, contrary to the U.S Constitution "shall not stand". They violate the appellates rights under the

4th, 5th, 6th, 13th, 14th, 15th. Amendments and seek to unjustly deprive one of life, liberty, and property. It is for this reason that the New Jersey and Maine Supreme Courts overthrew such similar actions in those states, and on this same premise the same should be done for every state within this nation now. And yes, under these circumstances, it may be far more difficult for the prosecution to obtain said conviction or guilty plea. But it is far better that they endure the difficulty than the greater degree and or likelihood, for innocent men and women to be subject

to an erroneous conviction and/or guilty plea, that is not freely, knowingly, voluntarily or intelligently given, because it prejudice the individuals subjected to these criminal indictments and complaints within this nation. Prosecutors must be made to know and understand, that such is "the nature of the beast". The burden is theirs and we are to be presumed innocent in every detail until fairly and justly convicted. This goes with the professional territory at hand.

The following statement in relevant part was made by the court in Brady v. Maryland, 373 U.S. 83, 83 S.Ct 1194 (1963).

It pertained to the suppression of evidence favorable to the defense, but the subsidiary facts related to due process violation have a bearing on these matters here. It has been slightly modified to paint a more true picture of this issue:

"We hold, that such presumptions violate due process irrespective of the good faith or bad faith of the prosecution. The principle here is not to punish society for such due process violations, or the misdeeds of the prosecuting body, but the avoidance of an unfair trial and/or plea hearing to the accused. Society

Not only wins when the guilty are convicted, but when criminal trials and or plea hearings are fair; our system of administration of justice suffers when its citizens are treated unfairly in the courts. An inscription on the wall of the Department of Justice state the proposition candidly for the federal Domain: The United States wins its point whenever justice is done its citizens in the courts", Brady v Maryland supra; citing Mooney v Holohan, 294 U.S. 103.

The appellant humbly quotes that which is stated in United States v Walsh,

194 F3d 37 (2nd Cir. 1999) and United States v. Pirro, 212 F3d 89 (2nd Cir. 2000):

"The indictment(s) do more than simply track the language of 18 U.S.C. § 242, which provides penalties for any person, who under color of any state or federal law, statute, ordinance, regulation, custom, and we can add to this, "an indictment or criminal complaint", willfully subjects any person, ... to the deprivation of "any", "any", Rights, privileges, or immunities secured and protected by the U.S. Constitution and Laws of the United States ###", and this was done in violation of the appellant's rights to equal protection

of the laws, Screws v United States, 325 U.S. 91, 65 SCt 1031 (1945); State v Middleton, 207 SC 473, 36 SE2d 742 (1946); Eslinger v Thompson, 340 FSupp. 886 (D SC 1972) aff'd 476 F2d 225 (4th Cir. 1973); McLaughlin v. Florida, 379 U.S. 184, 85 SCt 283, 13 LEd2d 222 (1964); Dubinka v Judges of Superior Court of the State of California, for the County of Los Angeles, 23 F3d 218; Jones v State of Arkansas, 929 F2d 275; Hicks v Oklahoma, 447 U.S. 343, 346, 100 SCt 2227, 2229, 65 LEd2d 175 (1980); Dozier v Loop College, City of Chicago, 776 F2d 752; Ugar v Edmondson Oil Co., 457 U.S. 922, 928-30, 102 SCt 2744, 2749-50, 73 LEd2d 482 (1982).

By the structural constitutional

ERROR, defect, language, and or charge contained within the indictments and criminal complaints around the entire nation, the defendant(s) most basic and most fundamental right to be viewed as innocent until proven guilty, and to have the state bear the burden of production on the critical elements of dispute has been cleanly taken away. This is a serious price to pay for the sake of obtaining a conviction.

"The teaching of these cases is that "any", "any", presumption, even if its not conclusive, even if its embodied within the charge of an indictment or

criminal complaint, that is placed before a jury to obtain a conviction, and or a defendant to coerce him or her into a guilty plea, that has the effect of shifting the burden of persuasion to the defendant on any element of the crime charged, or deprives him of his presumption of innocence, predetermining in advance the outcome of the proceedings, violates DUE PROCESS and is grounds for an acquittal", In Re Winship supra; Humanik v Beyers supra; Moore v Dempsey supra.. It involves deprivation of constitutional protection so basic and so fundamental that in its absence criminal trials and

or plea proceedings "[c]amplot" reliably serve its function as a vehicle for the determination of guilt or innocence and no criminal punishment may be deemed or regarded as fundamentally fair because the structural constitutional error and or defect affect the frame-work and [c]amplot be viewed as harmless, Robinson v Arvonio supra.; Vilines v United States supra.

The actions of the conspiring agents both state and federal produce fraud on the court also in violation of 18 U.S.C §§ 241 and 242. Fraud will vitiate any legal transaction which include

"criminal trials and or plea hearings; and any asserted title to property in the form of this modern day slavery by this broke judicial system, this so-called "debt to society" founded on it is void. The U.S Constitution does not confer power or jurisdiction upon any state or federal government or court within this nation to establish or legalize modern day slavery which is essentially what the government has done here, both state and federal. Although public documents such as ever indictments or criminal complaints, which embellish this modern day

slavery and property of the states or federal governments by criminal convictions are deemed prima facie evidence of facts which they purport to state, they are open to be impugned for fraud and a clear challenge to the courts nationally "[p]ower" to establish or legalize modern day slavery, The Conception, Brunn, Coll. c. 4a7, 2 Wheeler CC 597, 6 F Cas. 359 No. 3137 (CCD SC 1819); The La Conception, 19 U.S. 235, 1821 WL 2188, 5 L Ed 249, 6 Wheat 235 U.S.SC (MAR 8, 1821); The Amistad, 40 U.S. 518, 15 Pet. 518, 1841 WL 5024, 2016 A.M.C 2955, 10 L Ed 826, U.S.

Corp, January 1841; Chizwick v Ford motor Company, 354 SC 72, 579 SE2d 605 (2003); Appling v State Farm Mut Auto Ins Co, 340 F3d 769, 780 (9th Cir 2003); King v First American Investigators Inc, 287 F3d 91, 95 (2nd Cir 2002) cert. denied 537 U.S. 960, 123 SCt 393, 154 LEd 2d 314 (2002); Brailsford, 669 SE2d 342, 380 SC 448; Callon Petroleum Co. v Frontier Ins Co, 351 F3d 204, 208 (5th Cir 2003). Thus the statutes and convictions around the nation must be vacated. I seek class action certification under Article III section 2 of the US Constitution and Fed Rule 23.

(2) Did the trial court err, and was the applicants 5th, 6th, 14th Amendment Rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process Rights violated, as well as Rules of Court, to include Rules of criminal procedure, as well as the court lacking subject matter jurisdiction, and or was prohibited from enacting and or invoking and or continuing its subject matter jurisdictionary "powers" due to the "[p]rocedural [d]efect" in that there was no "[w]ritten" (emphasis added) order of continuance obtained

pursuant to Article 1 § 4 of the South Carolina Constitution?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v Aetna Life Ins Co, 228 S.E.2d 108; State v Broad River Power Co., 177 SC 240, 181 S.E. 41, 31 C.J.S. Evidence §§ 6 and 9; Federal Rules of Evidence, Rule 201(b).

This is also a manifest constitutional error. An error on the

part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be rectified by a court of appeals even if the appellant did not object at the proceedings (Black Law Dictionary 8th Edition).

The applicant humbly contends, in pursuant to article 1 § 4 of the South Carolina Constitution:

IT IS ORDERED, that all

criminal cases in the state of South Carolina "shall" be disposed of within (180) days from the date of the defendant's arrest. Provided, however, the Circuit Court may continue a criminal case beyond the (180) days by "written" order (emphasis added), if the court determines that exceptional circumstances exist in the case. This order does not create or define a right to a speedy trial, (see SC Rules of Court 2003 edition) on page 652 and SC Rules of Court

2004 Edition on page 659).

Article V privileges, Rule 501 General Rule Provides:

" Except as required by the South Carolina Constitution, by the Constitution of the United States, or by South Carolina statutes, the privileges of a witness, person, or the government (emphasis added) shall be governed by the principles of the common law as they may be interpreted by the courts in light of reason and experience. This Rule modifies the federal Rule to refer

to the South Carolina Constitution".

Article V provisions in this case make it mandatory, draconian, requiring any interpretation of this provision to be referred to the South Carolina Constitution as a primary Rule and [redacted] OR first choice, and not to common law or state law as it pertains to normal administrative matters, especially in light of the fact that we are dealing with a judicial order issued by the SC Supreme Court under Article V. Not only by judicial order, but also, the provisions of the South Carolina

Constitution are to be deemed and construed as mandatory unless there is some language contained therein that would dictate otherwise. This Article V order has never been re-scinded. Therefore it applies today. This order was issued by the South Carolina Supreme Court in 1980, re-newed in 1999 making it decisional, mandatory, being applicable to every criminal court within the state, and every PCR court in the state regarding the (365) day provision.

The S.C Supreme Court's intent,

legislative or otherwise should be ascertained from the plain language of the provision of law. The language must read also in a sense which harmonizes with its subject matter and accords with its general purpose. Once the SC Supreme Court has made a choice, there is no room for the court to impose a different judgment based upon their own notions. If the provision of law's language is unambiguous and clear, there is no need to employ the Rules of statutory and or common law construction, even

pursuant to the courts action, it has no right to look for or impose another meaning. Where the language of this provision of law is clear and explicit, the court "cannot" rewrite the provision of law and interject matters into it which are not in the SC Supreme Courts language. Under the plain meaning Rule, it is not the courts place to change the meaning of a clear and unambiguous provision of law, Bass v. Isochem, 617 SE 2d 369 (SC App 2005); State v Brannon, 666 SE 2d 272 (SC App 2008); State v Pittman, 647 SE 2d 144 (SC 2007); Liberty mut

Ins v. Second Injury Fund, 611 SE2d 297 (SC App 2005).

To further bolster the proposition that this Rule, order, or provision is mandatory, dispositive by nature, the applicant brings the courts attention to South Carolina Rules of Court 2005 Edition, pages 296, 297, 303 and 304. They state:

Pursuant to Article V § 4 of the South Carolina Constitution;

"It is ordered, that upon the filing of a post trial motion under

RULES 50, 52, 59 OR 60(a) S.C R.C.P., by A PARTY in A JURY OR non JURY action, the party "[s]hall" within (10) days provide A copy of the motion to the trial judge.

IT IS FURTHER ORDERED, *** the Chief Judge for Administrative purposes in each Circuit shall ensure compliance with this ORDER, also SEE S.C RULES of COURT 2013 Edition".

It is perspicuous that if the lower COURT is not in compliance to RULE 50, 52, 59 OR 60(a) by these judicial ORDERS issued from the South CAROLINA SUPREME

court, the higher court(s) cannot entertain jurisdiction, and must remand for further adjudication by the lower court in question, making this article's provision and or order declaration, mandatory. On this same premise, the criminal court under the (180) day provision, and or the court of common pleas court under the (365) day provision, "[c]annot" continue to invoke and or exert their "powers" of subject matter jurisdiction if they fail to be in compliance to this order even though they do indeed possess such

power.

Additional proof that this provision of law is discretionary, mandatory. Attached the court and parties will find is a copy of a similar Article V § 4 order from the South Carolina Supreme Court. Please note the words that are specifically circled by me related to this order. It is perspicuous that by the language of this particular order the actions of the court are made discretionary by the language contained therein. Note that the language of the Article V order

Relied upon for this particular issue is significantly, materially, distinctly different demonstrating that this particular provision of law is draconian, mandatory.

Pursuant to the government blatantly disobeying this order issued by the SC Supreme Court, in the appropriate case, "trial court and or other relevant court, shall not hesitate to grant relief or a mistrial where its rulings and or orders were violated to the prejudice of those they were intended to protect", Toyota

of Florence Ipe v. Lynch, 314 SC 257, 442 SE2d 611, 615 (1994); (SC Rules of Court Annotated 2006 Edition, pg 270).

To make use of the holdings made in State v Gentry related to subject matter jurisdiction would be misplaced. That case dealt with indictment defects. This issue has absolutely nothing to do with indictment defects. To make use of the holdings made in State v Culbreth regarding Rule 3(c) would be misplaced. Rule 3(c) is totally administrative. If the honorable court would take notice of the bottom of the page of 652 and

659 as it relates to this mandate, you will see that the administrative factors related to this provision of law have been rescinded. Further, there are two material and distinct differences between Rule 3(c) and this requirement of Due Process Law. Rule 3(c) is not tied to the provisions of the South Carolina Constitution. This requirement of criminal and or civil procedure is. Secondly, Rule 3(c) is not a judicial order issued by the SC Supreme Court. This requirement of criminal and or civil procedure for the Court of Common Pleas is. This has absolutely nothing

to do with a speedy trial issue. This is not what the applicant(s) is arguing. This is simply a matter of judicial order, "Stare Decisis Et Non Quieta Movere", South Carolina Rules of Court, South Carolina Rules of Criminal And/or Civil (PCRs) Procedure And Due Process Law.

Once this provision was issued as a judicial order and then tied to the provisions of the South Carolina Constitution pursuant to Article V § 4 its observance became mandatory by the provisions contained therein making it draconian in nature.

SC Code Ann § 1-7-730 And S.C.

Code Ann § 17-13-150 require that the prosecution and or prosecuting body "[s]hall" fulfill and see that all duties, requirements, and Rules of Criminal Procedure related to Due Process and the Constitution are adhered to and completed within the court.

In order to understand the meaning of any statute or phrase of law, it is necessary to determine the meaning of the language as it is used in the particular context, Robinson v. Shell Oil Company, 117 SCt 843 (1997). Article 12 § 2 utilizes the words "[s]hall

provide, ... ". In this context "[s]hall" is mandatory, see United States v Meyers, 106 F3d 936, 941 (CA 10 1997). In order to understand the meaning of any word, sentence or phrase, "[t]he cardinal rule is that the words should be given their plain and ordinary meaning and or interpretation without the court interjecting into them matters or a construing that's not in the language", Sierkinger v The Vessel Excalibur, 483 S.R. 2d 775 (SC App 1997); United States v Ron Pair Enterprises Inc, 109 SCt 1026, 1030 (1989); Bass v Isochem, 617 SE 2d 369

(SC App 2005); State v Brannon, 666 SE2d 212 (SC App 2008); State v Pittman, 647 SE2d 144 (SC 2007); Liberty Mut. Ins. v. SC Second Injury Fund, 611 SE2d 297 (SC App. 2005).

Article 1 § 23 of the South Carolina Constitution dictates:

"The provisions of the South Carolina Constitution shall be taken, deemed and construed to be mandatory and/or prohibitory and not merely directory, except where made directory or permissory by its own terms".

Article 12 § 2 of the South Carolina Constitution is clear and unambiguous,

"[S]hall" is mandatory, State v Carson, 317 SC 430, 431, 454 SE2d 888, 889 (1995).

Therefore, it can be factually stated that not only by the provisions of Article 1 § 4 of the South Carolina Constitution, also by judicial order issued by the South Carolina Supreme Court, it is mandatory that the applicants Due Process matters be disposed of before the criminal court within (180) days of his arrest. If the court would please take notice of the arrest warrant(s) related to these matters, You will see that the

ARREST WARRANT(S) WERE SERVED ON THE APPLICANT AND OR HE WAS ARRESTED ON DECEMBER 19, 2012. IF THE COURT WOULD TAKE NOTICE OF THE SEPTEMBER SHEET, THE COURT WILL SEE THAT THE APPLICANT WAS CONVICTED ON SEPTEMBER 5, 2013. BY THE ARREST WARRANT(S), THE DATE PURSUANT TO SERVICE AND OR ARREST RELATED TO SAID ACCUSATION(S), THIS MEANS THAT THE APPLICANT'S DUE PROCESS MATTERS SHOULD HAVE BEEN DISPOSED OF AND CONCLUDED BY JUNE 19, 2013. YET THEY WERE NOT DISPOSED OF UNTIL SEPT 5, 2013, OVER (80) DAYS PAST THE (180) DAYS PRESCRIBED BY JUDICIAL

ORDER AND THE PROVISIONS OF THE South Carolina Constitution. There is no "written" order (emphasis added) of continuance filed with the Clerk of Court before the (180) day time period expired, or which was served on the applicant. Such an order of continuance by the applicant's Rights of Due Process and pursuant to judicial order issued by the SC Supreme Court, "cannot" be obtained after the fact. It must be obtained before the (180) day time period expires. To go beyond the prescribed time period and or

deadline without a "[w]ritten" (emphasis added) order of continuance creates a "[p]rocedural [d]efect" which deprives the trial court of subject matter jurisdiction, and or the "[p]ower" and or "[a]bility" to exact, and or invoke, and or continue its "[p]owers" of subject matter jurisdiction in compliance to judicial order from the SC Supreme Court, Rules of Court and Due Process law to adjudicate the applicant's trial and or to accept any guilty plea.

The applicant places forth this issue in a straightforward fashion

and want to make certain that there is no misunderstanding as to the specific claims and or question that is placed before the court. The applicant is not arguing whether or not the criminal court has subject matter jurisdiction to hear and determine cases of "[t]his" general class to which the proceedings in question belong. The applicant concedes this fact. The Applicant in this context agrees with all (3), Guernsey, Cotton and Parkhurst court(s) when they determined that the

criminal courts does have subject matter jurisdiction to hear cases of this nature and class, this is not the issue. What the applicant is indisputably arguing is a question which clearly was not answered by either the Gwenitzy, Cotton or Parkhurst court(s) is this. Despite the fact that the criminal court does have subject matter jurisdiction to hear cases of this general class to which the proceedings in question belong. Do their egregious, blatant failure to be in compliance to said

certain, essential, crucial "[j]urisdic-
tional [p]rerequisites" and or "[j]uris-
dictional [r]equisites" at various
phases of, and or at the commence-
ment of the subject matter jurisdic-
tionary action and or process; Do
their blatant, egregious failure to
be in compliance to said certain,
essential, crucial "[j]urisdictional
[p]rerequisites" and or "[j]urisdictional
[r]equisites" at various phases of,
and or at the commencement of
the subject matter jurisdictionary
action and or process, ... halt,

check, constrain, restrain, limit, arrest, or stop the continuance of the subject matter jurisdictionary "powers" before the court, even though that court without a doubt do indeed possess such "power". This is a crucially, materially, distinctly different question related to subject matter jurisdiction that was never answered by any of the (3) three courts involved pursuant to Guentry. This is a new question of law and fact. Thus, using the holdings made in the

Enquiry Court would be misplaced. Such a new question of law and fact is not barred in seeking relief for, does relate to subject matter jurisdiction, "[c]annot" be waived by the applicant, can be raised at "[a]ny" time, and the court "[s]hall [n]ot" fail to take notice.

The trial court, and or prosecuting body, acting arbitrarily, conspiring under color of state law, in blatant defiance to Rules of Court, SC Supreme Court judicial orders, and the provisions of the South Carolina Constitution,

has again failed to be in compliance to their own state laws in violation of the applicant's substantial Federal Constitutional Rights of DUE PROCESS. Thus such action serves to violate the applicant's Rights Under the Equal Protection of the laws clause, subjecting him to unjust prosecution, Screws v. United States supra ; Dubinka v. Judges of Superior Court of the State of California, for the County of Los Angeles supra ; Jones v. State of Arkansas supra ; Hicks v. Oklahoma supra ; Dozier v. Loop College, City of Chicago supra ; Lugar v. Edmondson

146.

Oil Co. supra

Subject matter jurisdiction is the "power" to hear and determine cases of a general class to which the proceedings in question belong. Belli v. Monsanto Corp., 579 SE 2d 325 SC 553 (SC 2003). Inasmuch, subject matter jurisdiction does not only cover and or involve whether or not the matter resides in a proper court of jurisdiction to hear and determine it. The court's "power" to hear and determine a case, is also defined as the courts "ability" to hear and determine a

case. Thus, subject matter jurisdiction also involves any issue that may "[a]ffect" and or "[h]inder" that "[p]ower" and or "[a]bility" to act in accordance to Rules of Court, Rules of criminal procedure and due process law. Such matters can be raised at "[a]ny" time, "[c]annot" be waived by the defendant, and the court "[s]hall not" fail to take notice, Mathis v State, 355 SC 87, 584 SE2d 366 (SC App 2003); Brown v State, 343 SC 342, 540 SE2d 846 (2001); State v Brown, 320 SC at 360, 46 SE2d at 359; State v Muhl,

357 SE2d 461 (SC 1987). Without a "[W]RITTEN" (emphasis added) order of continuance filed with the Clerk of Court issued, the parties were prohibited from continuing the cause. Such deprives the Court of subject matter jurisdiction and/or prohibits them from continuing and/or invoking and/or expecting their subject matter jurisdictionary "powers" given to them, to adjudicate the Applicant's trial and/or to accept his guilty plea. Therefore, the sentence and conviction must be vacated. They

procedurally defaulted on the cause.

(3) Did the trial court err, and was the applicant's 5th, 6th, 14th Amendment Rights of the U.S. Constitution violated, as well as Article I § 2 and his DUE PROCESS Rights violated, due to the "[p]rocedural [d]efect", in that the prosecuting agents acted as sole witnesses on the Warrant(s) and or indictment(s)?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and

consider, without proof of facts, matters of common and general knowledge, Moss v Aetna Life Ins Co supra; State v Broad River Power Co. supra. | 31 C.J.S. Evidence § 6 and 9; Federal Rules of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even

if the Applicant did not object at the proceedings, (Black Law Dictionary 8th Edition).

The Applicant humbly avers, it is the applicant's 6th Amendment Right to be "[f]ully" Apprised as to the "[C]ause and [N]ature" of the accusation, as well as is his constitutional Right to be "[f]ully" Apprised as to the circumstances and or particular allegments related to the charge, State v. Jabory, 260 SC 136, 141, 202 SE2d 853 (1974). It is also his 5th Amendment Right not to be tried on evidence and or allegations that were not alleged in the in-

dictment(s) passed upon by the Grand Jury, whose basis is given solely on hearsay testimony. Thus, in order that the applicant's rights under the 6th Amendment to a fair and impartial trial and Rights of Due Process not be forgotten, Keeping this portion of the process non adversarial. The Name of the witness(es) who have first hand knowledge and or who bring the accusation against the defendant, and or testimony before the Grand Jury must be known, listed, and passed upon or acknowledged by the Grand

JURY to ENSURE COMPLIANCE to RULES of COURT AND DUE PROCESS LAW, STATE V. JONES, 439 SE2d 282.

SC CODE ANN § 1-7-730 AND SC CODE ANN § 17-13-150, REQUIRE that the PROSECUTION AND OR PROSECUTING body "[S]HALL" fulfill AND SEE that all duties, REQUIREMENTS, AND RULES of COURT, AS WELL AS RULES of CRIMINAL PROCEDURE RELATED to the STATE AND FEDERAL CONSTITUTION AND DUE PROCESS LAW ARE ADHERED to AND COMPLETED in the COURT.

IN STATE V ANDERSON, 312 SC 105, 439 SE2d 855 (1993), ANDERSON'S ISSUE

of concern, placed before the court as it pertained to this issue, was whether the court of appeals erred in affirming his conviction, when the only witness before the Grand Jury was the assistant solicitor. In Anderson supra, the Supreme Court stated in haec [v]erba:

"Because of the uncertainty and confusion that is taking place at all levels of the judiciary, Regarding this issue, We take this opportunity to explicitly prohibit the practice of using prosecutors appearing as sole witnesses

before the Grand Jury", State v. Capps, 275 SE2d 875 (1981); State v. Dawkins, 377 SE2d 298 (SC 1989).

This is not an issue of a preliminary hearing. Nor is this an issue of parties or witnesses showing up at a preliminary hearing for which no testimony by any supposed victim was ever given. This specifically deals with the requirement of having the witnesses appear and the warrants and or indictments to also ensure that the Grand Jury did a proper job of investigating the facts. Not one alleged

Victim Appeared on any warrant or indictment to ensure they were present during this process and appeared before the Grand Jury. None of them were dead. They were alive and well then as they are today. None were mentally ill; nor were they physically incapacitated to the point where they could not have only signed the warrant(s) or be a witness on the warrants. There was also nothing that would have prevented them from being present at the Grand Jury proceedings as a matter of "Stare Decisis". The only

possible reason why they did not want these witnesses present as is required at these proceedings is to possibly cover up some aspects of prosecutional misconduct. This deprived the Grand Jury and opportunity to do its job and investigate the facts in fullness, to give the applicant knowledge of such witnesses, and to have these witnesses passed upon by the Grand Jury or made a part of the court record.

The witnesses were not deployed to Iraq, Afghanistan or Syria. This shows that this was an arbitrary

action done on the part of the prosecuting Agents and police, conspiring and acting unjustly under color of state law. They failed to adhere to their own prescribed state laws in violation of the applicants Federal Constitutional Rights of Due Process also in violation of 18 USC §§ 241 and 242. Such action by the investigators and or prosecuting body seeks to deny the Applicant the Equal protection of the laws against Unjust prosecution. If this had not been done the Grand jury investigation would have Not only likely uncovered misconduct,

but they also could have verified if copy of the statements were given the time they were made stating that the receipt signed by the witnesses were indeed valid. This demonstrates the prejudice and damage that was caused by this egregious injustice. The investigating officers and or prosecuting agents, can produce no justifiable reason as to why anything should have prevented the proper and required witness(es) from not only signing and or confirming the warrant(s), but also being present acting as witnesses at the Grand Jury proceeding except

to conceal the fraud and deception they were initiating before the court in they establishing this modern day slavery, Screws v United States supra; State v middleton supra; Eslinger v Thompson supra; McLaughlin v Florida supra; Toles v State of Arkansas supra; Dubinka v Judges of Superior Court of the State of California, for the County of Los Angeles supra; Dozier v Loop College, City of Chicago supra; Hicks v Oklahoma supra; Lugar v Edmondson Oil Co supra; Williams v United States, CA 5 (Fla) 1950, 179 F2d 656 cert granted 71 SCt 70, 340 U.S. 850, 95 L Ed 622 aff'd 71 SCt 341 U.S.

97, 95 L Ed 774; Brown v United States, CA 6 (Tenn) 1953, 204 F2d 247; United States v Ramsey CA 4 (W. Va) 1964, 336 F2d 512 (cert. denied 85 S Ct 649, 379 U.S. 972, 13 L Ed 2d 564; United States v Kozminski, (1988) 487 U.S. 931, 101 L Ed 2d 788, 108 S Ct 2751, 46 CCH EPD ¶ 38067 on remand (1988 CA 6 Mich) 852 F2d 1288; 18 U.S.C §§ 241, 242; Grizzly Wood v Peacock supra

Furthermore, the conflict between that of a witness, and of an advocate, should cause courts great concern, because the "authoritative nature" of such a relationship, the testimony of a police officer who is in his official

capacity a representative of the state, would be too potent to allow as a general rule. You see the damage of such which clearly occurred in this case, see United States v Birdman, 602 F2d 547 (3rd Cir 1979) cert. denied 444 U.S. 1032, 100 S Ct 703, 62 L Ed 2d 668.

In Ex Parte McLeod In Re: Investigation in Charleston Magistrate Court, 272 SC 373, 252 SE 2d 126 (1979), the court, in adhering to the rule that the Grand Jury proceedings should remain non adversarial. The practice of using a solicitor or other officer of

the state, as a sole witness before the Grand Jury, to provide only a summary of evidence can be severely abused and we strongly state that it be abandoned unless no other alternative is available. This is what has occurred here. The Grand jury was deprived in acts of fraud to initiate their shielding function where their full investigation of the witnesses would have revealed the fraud related to the statements, and they may have caught their own error related to the structural constitutional error

where they themselves unjustly adjudicated guilt by the language of the indictments presented.

Ethical Consideration 5-9 of the Code of Professional Responsibility provide:

"The Role of an advocate and of a witness are inconsistent: the function of an advocate is to advance the cause of another, while that of a witness is to state the facts objectively. As is indicative of attorney-witness, the environment of one-sided proceedings before the Grand Jury

increases the potential for abuse of the relationship, which did occur along with fraud on the court - members holding prosecutorial function may not additionally appear before the Grand Jury as a witness. The routine acquisition of an indictment based solely on hearsay evidence requires that the warrant(s) and or indictment(s) be dismissed. This includes making and or rendering any evidence impermissible that has been passed upon by the Grand Jury. Unnecessarily using these prosecuting agents in establishing said evidence and

OR indictment(s) before these proceedings. The entire record sub-judice is polluted with violations of the applicants DUE PROCESS Rights. This one-sided Grand JURY DUE PROCESS violation, arbitrarily done, must deem the evidence passed upon by the Grand JURY, used at the Applicants trial and or in an effort to obtain a guilty plea, "fruit of a poisonous tree", Mapp v Ohio -- SC -- 81 S Ct 1684 (1961); Rochin v People of the State of California, 342 U.S. 165, 173, 72 S Ct 205, 210, 96 L Ed 183 (1952); Weeks v United States, 232 U.S. 383, 34 S Ct 341, 58 L Ed 652; United

States v Gramolini, 301 F. Supp. 39.

Due to this blatant disregard for the applicants Due Process rights, the sentence and conviction must be vacated.

(4) Did the trial court err, and was the applicants 5th, 6th, 14th Amendment rights of the U.S Constitution violated, as well as Article IV § 2, and his Due Process Rights violated, by the indictments for kidnapping's failure to descend to particulars, making use of the generic terms of the statute, and the body of the charging

instrument?

Judicial Notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v Aetna Life Ins. Co. supra; State v Broad River Power Co. supra. ; 31 Cts. Evidence §§ 6 and 9; Federal Rules of Evidence, Rule 201(g).

This is a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings

to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings (Black Law Dictionary 8th Edition).

The applicant did not object to these defects and or errors at the time of his trial and or before he gave his guilty plea, but the defect(s) and or errors serve to render the indictments wholly invalid. Defects and or errors in an indictment that

are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am Jur 2d Indictments and Information § 299 (1968); State v Munn supra.

It is universally recognized that an indictment must contain certain specifications of facts and circumstances as well as on its face fix and determine the identity of the offense with such particularity, that it will enable the defendant to know with sufficient certainty what he has to face at trial to give him or herself a fair opportu-

ability to prepare his defense to avail him or herself of conviction, or acquittal as a bar to further prosecution arising out of the same facts, State v Rallo, 403 SE2d 653 (1991); State v Hardee, 279 SC 409, 308 SE2d 521 (1983); Locke v State, 341 SC 54, 533 SE2d 324 (2000); In re Jason J, 340 SC 455, 531 SE2d 544 (SC App 2000); State v Parker, 344 SC 250, 543 SE2d 255 (SC App. 2001).

SC Code Ann § 17-19-10 Provides:

"All offenses shall be prosecuted by Grand Jury indictments. Thus no person shall be held to answer in any court

for any alleged crime or offense Unless upon indictment by a Grand Jury".

SC Code Ann § 17-19-20 Provides:

"Every indictment shall be deemed and judge as good and sufficient in law, which in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute, prohibiting the crime and so plainly that the nature of the offense charged may be easily understood ***".

Inasmuch, it is the body of the indictment which is the central part of the charging instrument, State v. Jane, 345 SC 577, 549 SE2d 601 (SC 2001), and it "cannot be so cryptic or the wording so loose and ambiguous as to fail to comply with the basic right of the accused to be fully informed as to the "cause and nature" of the accusation being levied against them, which is one of the most basic, fundamental, and Universally Recognized Rights of Due Process, Smith v O'Grady, 312 U.S. 329, 61

SCt 572 (1941); State v Inabory, 262 SC 136, 141, 202 SE 2d 852 (1974) (holding that the State may not support a conviction #334 for an offense initialized to be charged by relying upon the caption to the exclusion of the language contained within the body of an indictment).

Subject to certain minor exceptions not presently the trial court is prohibited from enacting and or invoking and or continuing its subject matter jurisdictionary "powers" to convict a defendant for an offense, when there is no indictment charging him with that offense

when the jury is sworn, and or before he gives his guilty plea even though the court does possess such "power", State v Bergehum, 288 SC 325, 342 SE2d 597 (1986).

Federal Rules of Procedure, Rule 7(c) requires that an indictment contain a "plain", "concise" and "definite" written statement of essential elements and or allegations constituting the offense charged. The Indictment Clause of the 5th Amendment require that the indictments contain some amount of factual particularity to ensure that the prosecution will not fill in elements

of its case with facts other than those considered by the Grand Jury, United States v Abrams, 539 FSupp. 378, 384 (SD NY 1982).

If the court would take notice of the indictment(s) for kidnapping, they read:

"That Ryan Richie Rivers and/or another co-defendant and/or other co-defendants did in Richland County on or about December 4, 2012, unlawfully seize and/or confine and/or inveigle and/or decoy and/or kidnap and/or abduct and/or carry away one Anthony

Bellotti, without authority of law, in violation of section 16-03-0910, SC Code of Laws, 1976, as amended".

The indictments for kidnapping regarding Gayle O'Kelly and Aprileia Harvey were framed in the exact same manner. How was the kidnapping allegedly done? Were the victims locked in a closet?, a walk in freezer?, the trunk of a car?, Were they duct tapped, tied with ropes, held at gunpoint, burried in the sand? The indictments also uses the term "and/or". Which one is it? Did the applicant do one of these

a unlawfully seize, confine, investigate etc or did he do all of them? The indictment doesn't say. Adding or deleting or committing any one of these collectively or independently would significantly alter the "nature" in which the crime supposedly occurred. Who are these co-defendant or defendants the Applicant is supposed to have committed this crime with. As far as the Applicant can tell the co-defendants might be Barack Obama and Nancy Pelosi. Did the Applicant actually do the crime or did he assist in the crime? By the indictments it is impossible for

the applicant to know if he is principle first or principle second. The indictments do not even allege the crucial element of conspiracy where by this loose, cryptic and ambiguous language, the applicant can be possibly charged with the hand of one is the hand of all by the accomplice liability doctrine. The indictments do not say. No one can determine what was in the mind of the Grand Jury. This cannot be deemed as reasonable notice. The indictments cannot be deemed sufficient if the prosecution is allowed to prove all these materially different sets of facts, state

v Keith, 283 SC 597, 598, 325 SE 2d 325, 326 (1985); State v Bullock; United States v Masotto, 73 F3d 1233 (cert denied 117 SCt 54, 136 LEd2d 18; United States v Bruno, 873 F2d 555 (cert denied 110 SCt 125, 493 U.S. 840, 107 LEd 2d 86; State v Chavis, 277 SC 521, 290 SE 2d 412 (1982).

The requirement of the indictment(s) limit and constrain the subject matter jurisdictionary "powers" of both the prosecution and court by limiting what can be presented at trial, conviction and sentencing, United States v Promise, 255 F3d 150 (4th Cir 2001); State v Guthrie, 352 SC 103, 572

Stead 309. It is the command of the U.S Constitution, that anything to the contrary is not with standing. (Article IV § 2).

The prosecution and or state by this egregious miscarriage of justice, extremely prejudiced the applicant during his DUE PROCESS proceedings, setting the applicant up for "indictment ambush" at the onset of his trial and or plea hearing. The indictment makes use of the generic terms of the statute for the kidnapping charges and alleges all sorts of additional loose, equivocal and ambiguous language not even

properly determining whether the applicant is principle first, second, third or otherwise in violation of Due Process Law depriving the applicant of his substantial constitutional right of notice. The state and or prosecuting body, acting unjustly, conspiring under color of law, has egregiously failed to adhere to their own state laws, serving to deny the applicant the Equal Protection of the laws against unjust prosecution, Screws v United States supra; State v middleton supra; Eslinger v Thompson supra; mcloughlin v Florida supra; Dubinka v Judges

of Superior Court of The State of California, For The County of Los Angeles supra; Hicks v Oklahoma supra; Jones v State of Arkansas supra; Logar v Edmondson Oil Co. supra; Williams v United States supra; Brown v United States supra; Ramey v United States supra; United States v Kozminski supra; Greenwood v Peacock, (1966) 384 U.S. 808, 16 Led 2d 944, 86 Sct 1800; United States v Otherson (1980 CA 9 Cal.) 637 F2d 1276 (Cert denied (1981) 454 U.S. 840, 70 Led 2d 123, 102 Sct 149.

In United States v Hooker, 841 F2d 1225, 1227 (4th Cir 1988) (en banc) Appd in Russell v United States, 82

Sct 1047 (1962), the courts held:

"It is an elementary principle where the definition of the offense(s) charged, whether it be at common law or statute, includes generic terms, it is "not" sufficient that the charging should be in the same generic terms of the statute; but it "must" state the specifics, it "must" descend to "particulars". WE HOLD, A mere citation of the statute of which the defendant is charged with violating is insufficient to cure the failure of the indictment(s) to charge each essential element and or allegation

of the offense because a mere citation alone does not ensure that the Grand Jury considered and found the crucial elements and or facts of the offense".

Hence, by the "Doctrine of Stare Decisis et Non Quieta movere", an indictment "unjust" property set forth all the essential elements of the offense. By Hamling v United States, 418 U.S. 87, 94 S.Ct 2887 (1974), it is well established and recognized under American Jurisprudence: That if an indictment fails to charge all the

necessary elements, it fails to charge the offense. If it fails to charge the offense, such violates the applicant's 5th, 6th, 14th amendment rights of the U.S Constitution, as well as Article III §2, and his rights of DUE PROCESS. Thus, the sentence and conviction must be vacated, especially in light of the fact that the court constructively amended the indictments before it, United States v. Cabrera-Teron, 168 F3d 141 (5th Cir 1999); United States v Pupo, 841 F2d at 1239 (4th Cir 1988)(en banc); United States v Hooker, 841 F2d 1225 (4th Cir 1988).

(5 and 6) Did the trial court err, and was the applicants 5th, 6th, 14th. Amendment Rights of the U.S Constitution violated, as well as Article III § 2, and his Due Process Rights violated, by the indictments for Armed Robbery's failure to allege money amounts, items stolen, making use of the generic terms of the statute, not alleging what the applicant was armed with, and making use of other loose, cryptic and ambiguous language in the body of the charging instruments

There is no need to be redundant by repeating the citings of law listed in issue number (4). The citings of law in total applied in issue number (4) applies in total to both issues numbers (5 and 6). The indictment for Armed Robbery of Gayle O'Kelly is not clear whether the applicant is charged as principle 1st, 2nd or 3rd. There is no element of conspiracy alleged or who these supposed defendants are. It dont allege the element "willfully" to demonstrate the applicant was not forced to commit

the crime against his will. It does not allege what items were stolen from the purse and is not clear as to whether and empty purse was taken or the contents of the purse. It makes use of the term "and/or" which make it ambiguous as to which is alleged. It does not alleged what the applicant was supposedly armed with and alleges two materially sets of facts in stating the applicant was actually physically armed and alleged he was physically armed. The indictment of Robbery for Mapley's Nook is constructed in a similar fashion

All this information was clearly known as indicated by the warrants and or police reports but no where do this information appear in the indictments all these facts must be alleged in the indictments and passed upon by the Grand Jury in accordance to the substantial constitutional rights of the accused. The indictments cannot be deemed sufficient if the prosecution is permitted to prove all these materially different sets of facts. The language is so loose, cryptic and ambiguous it creates an enigma as to exactly what the applicant is

called upon to meet and defend, setting the applicant up for further acts of "indictment ambush". This cannot be deemed as reasonable notice. No one can say what was in the mind of the Grand Jury. Thus the sentence and conviction must be vacated, State v Chavis supra; United States v Pupo supra; United States v Hooker supra.; State v Hill, 268 SC 390, 234 SE2d 219 (1977) cert denied 434 U.S. 870, 98 S.Ct 211, 54 L.Ed2d 147 (1977); State v Nicholson, 221 SC 399, 70 SE2d 632 (1952); State v Stevens, 515 SE2d 107 (SC App. 1999); United States v Arboleda, 929 F2d 859.

(1) Did the trial court err, and was the applicants 5th, 6th, 14th amendment Rights of the U.S Constitution violated, as well as Article IV § 2, and his DUE PROCESS Rights violated, by the prosecution making reference to various statements at the applicants plea hearing, being entered into Verbal evidence as they relate to this plea hearing, where there was no evidence adduced at the plea hearing that demonstrates that the alleged victims (or co-defendants) were given a copy of those statements at the time they were made, nor was there

signed by them a copy of a receipt for the taking therefor?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v Aetna Life Ins Co. supra; State v Broad River Power Co. supra; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably

negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings (Black Law Dictionary 8th Edition).

SC Code Ann § 1-7-730 and SC Code Ann § 17-13-150, require that the prosecuting body "[s]hall" fulfill, and see that all duties, requirements and Rules of procedure related to criminal due Process and or the State and federal constitution and or state and federal laws are adhered to and completed within

the court(s).

So the law is written "ITA LEX SCRIPTA EST", S.C. Code Ann § 19-1-80 states in the verba:

"Conditions and examinations of witnesses in criminal proceedings concerning written statement(s) made to public employee(s) - no witness in any preliminary hearing or in any criminal judicial proceeding of any kind or nature, shall be examined or cross examined by any examiner, solicitor, lawyer or prosecuting officer concerning a written statement formerly made or

given to any person employed by this state, or any county, city, or municipality thereof, or any part of any such government body, unless it first be shown that at the time of making of the statement the witness was given an exact copy. And that before any examination or cross-examination the witness was given a copy of the statement and allowed a reasonable time in which to read it, and the witness signed a receipt taken therefor"; State v Mokes, (SC 1975) 215 SE2d 19; State v Steadman, 257 SC 528, 186 SE2d 712 (1972).

SC Code Ann § 19-1-90 states in

have [u]herein:

"Admissability in criminal proceedings of written statements made to public employees -- Unless the provisions of SC Code Ann §§ 8-15-50 and SC Code Ann § 19-1-80 have been complied with, no statement such as referred to in those sections shall be admissable into evidence in any case, nor shall any reference be made to it in any trial of any case".

The South Carolina Supreme Court in subsequent cases gave greater clarity to this issue. That court determined that the prosecuting agent(s)

And or law enforcement officer(s) who took the statements, do not have to give a copy of the statement at the exact time that it was made. But it "must" (emphasis added) be given to the persons making the statements a reasonable time shortly after the statements were taken. So in order to be fair to the prosecution we will say (60) days after such statements were given. In fundamental fairness to the applicant it cannot be construed to mean over (9) months to which this present date over (2) years after conviction such an essential require-

ment was neither fulfilled. There is no room for the court to impose a different judgment based upon its own notion once the S.C. Supreme Court has made its determination on this issue. The plain meaning rule applies in this instance, Bass v Isochem, 617 SE2d 369 (SC App. 2005); State v Brandon, 666 SE2d 212 (SC App. 2008); State v Pittman, 641 SE2d 144 (SC 2007); Liberty Mut Ins v. SC Second Injury Fund, 614 SE2d 297 (SC App. 2005).

At this juncture, it becomes perspicuous that all statements submitted by way of discovery and referred to at the

applicant's plea hearing, with the exception of the applicant's co-defendant, Carrol Phillips III, stated in clear violation of the applicable statutes. If the applicant would have known the prosecutor would have made reference to these statements that existed in blatant defiance to the relevant statutes. He would have never pled guilty and would have insisted upon going to trial. The inadmissability of these statements could have clearly changed the outcome of the proceedings demonstrating the prejudiced produced by this egregious

miscarriage of justice. This produces a REVERSABLE ERROR.

18 U.S.C § 1001 (1988 Ed):

"Whoever, in any manner, within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes use of any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false fictitious or fraudulent statement or entry (ei

concealing the fact that no copy was given nor was a receipt signed, entering such statements or referring to them at the plea hearing without producing receipt, is fraudulent representation), shall be fined not more than $10,000 or imprisoned not more than 5 years or both".

This being an Article III section 2 case arguing preemption, federal law applies. This covers false statements or documents of any kind to include those falsehoods that pervert governmental functions, United States v Gonzales, 520 U.S. 1, 5 (1997); Brogan v United

States, 522 U.S. 398 (1998); United States v Gilliland, 312 U.S. 96 (1941).

Fraud will vitiate any legal transaction which include the taking and admissibility of these statements, and any asserted title to them as evidence, or pursuing property in the form of this "so-called" [debt to society.] this modern day slavery in the form of this conviction sought behind racial hatred by this broke judicial system, founded on them is void. Although public documents in the form of these illegally obtained statements,

which are part of this modern day slavery are deemed prima facie evidence of facts which they purport to state, they are open to be impugned for fraud since they are now connected to the structural constitutional error, issue #1, of this document. Congress confers no power upon any judge, state or federal, the authority to establish modern day slavery, The Conception, Bruyn, Coll. C. 497, 2) Wheeler, CC 597, 6 F. Cas. 359 no. 3137 (CCD SC 1819); The La Conception, 19 U.S. 335, 1821 WL 2188, 5 Led 249,

6 | Wheat, 235 U.S.S.C (MAR. 8, 1821), The Amistad, 40 U.S. 518, 15 Pet. 518, 1841 WL 5024, 2006 A.M.C. 2955, 10 L.Ed 826, U.S. COMM; JANUARY 1841.

By these egregious acts of fraud on the court. The prosecution, with the court entered themselves, also via the Gentry Ruling, into a secret and deliberate scheme to defraud the applicant and any future court that would possibly give review, and planned as well as executed to tamper with the administration of justice in a manner showing harm to the

Applicant, subverting the integrity of the court itself, so that the judicial machinery cannot perform in its usual manner its impartial tasks of adjudicating matters requiring that the statements must be rendered void and stricken from the record being also deemed fruit of a poisonous tree, Callon Petroleum Co. v. Frontier Ins Co. supra; Digital Equip Corp. v. Desktop Direct Inc supra; Chewing v Ford Motor Company supra; Appling v State Farm mut. Auto Ins Co supra; United States v Beggerly supra; King v First American

Investigators Inc supra ; Brailsford supra ; Mapp v Ohio supra

When an officer of the court uses the instrument of arrest and incarcerate an accused for the purpose of engaging in malicious and fraudulent criminal activity, willfully subjecting the applicant to deprivation of any rights, immunities or privileges secured by the constitution and laws of the United States within any state, District or territory, they shall be subject to state and or federal penalty. By what the state has done here re-

related to the Applicants legal issues in total. Such actions are indeed deprivation of the rights of the accused to liberty and a violation of 18 USC §§ 241 and 242, Neither threat, nor violence is a necessary ingredient of the offense under these circumstances where these individuals were clearly acting arbitrarily under color of law acting for an ulterior purpose, Williams v United States CA 5 (Fla) 1950, 179 F2d 656 cert. granted 71 SCt 70, 340 U.S. 850, 95 Led 622 affd 71 SCt 341 U.S. 97, 95 Led 774; Brown v United States CA 6 (Tenn) 1953, 204 F2d 247; United States v

Ramsey, CA 4 (W Va) 1964, 336 F2d 512 Cert. denied 85 SCt 649, 379 U.S. 972, 13 LEd 2d 564; United States v Kozminski, (1988) 487 U.S. 931, 101 LEd 2d 788, 108 SCt 2751, 46 CrL EPD ¶ 38067 on remand (1988 CA 6 Mich) 852 F2d 1288; 18 USC §§ 241, 242; Griswold v Peacock, (1966) 384 U.S. 808, 16 LEd 2d 944, 86 SCt 1800; United States v Otherson (1980 CA 9 (Cal.) 637 F2d 1276 Cert. den. (1981) 454 U.S. 840, 70 LEd 2d 123, 102 SCt 149. If there were no ill intent this issue would merely be a reversible error. But since it is clear that we have fraud on the court and prosecutorial misconduct

upon the agents of the court itself in their efforts to establish modern day slavery. Also due to the extreme prejudice the applicant was subject to, the conviction and sentence must be set aside. The applicant seeks such.

(8) Did the trial court err, and was the applicants 5th, 6th, 14th amendment rights of the U.S. Constitution violated, as well as Article IV §2, and his DUE PROCESS Rights violated, by the trial and or plea court allowing constructive amendment of the indictments at the applicants trial

and or plea bargaining?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v Aetna Life Ins Co. supra; State v Broad River Power Co supra; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on

the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of Appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th Edition).

It is the body of the indictment which is the vital part of the charging instrument, state v. State supra, and it "[c]annot be so cryptic or the wording so loose and ambiguous as to fail to comply with

the basic right of the accused to be fully informed as to the "cause and nature" of the accusation being levied against him, which is one of his most basic, fundamental, and universally recognized rights of due process, Smith v O'Grady supra; State v Jabory supra.. Reliance upon a caption to bolster a fatally defective indictment is therefore contrary to the constitutional mandate that for most offenses, a defendant may only be required to answer an indictment of a Grand Jury that is

deemed good, SC Const. Article I § 11; cf State v Raboby supra (holding that the state may not support a conviction for an offense interpolated to be charged by relying upon the caption to the exclusion of the language contained within the body of the indictment.

Inasmuch, the indictments for kidnapping do not sufficiently and/or properly apprise the applicant of the nature of the offense, or of what he is called upon to meet and defend because they do not allege how the kidnapping occurred. They make

use of the term "and or" which stating the applicant supposedly did one aggravating circumstance or both would change the very nature of what is being alleged. They make use of the generic terms of the statute and do not descend to particulars. They don't state who the supposed co-defendant(s) were. They do not specifically state was the applicant armed or alleged by action or words he was armed which are two materially different sets of facts. They do not sufficiently allege whether applicant was principle

1st, 2nd or 3rd, nor do they allege the essential element of conspiracy setting the applicant up for "indictment ambush" at the onset of his proceedings. The wording is so loose, cryptic and ambiguous it creates an enigma as to what exactly the applicant is called upon to meet and defend. They cannot be deemed sufficient if the prosecution is permitted to prove all these materially different sets of facts. The indictments do not descend to particulars. No one can say what was in the mind of the Grand Jury. These crucial elements

and or aggravating circumstances must be passed upon by the Grand Jury in accordance to the constitutional rights of the accused. To not allege these crucial elements and or allegations in the body of the charging instrument returned against the accused, having them passed upon by the Grand Jury, then, thereafter the plea court and or prosecuting body add these material averments in one form or the other within the proceedings, and allow a trial and or plea hearing to go forward, where

such was not passed upon by the Grand Jury, is constructive amendment of the indictments. No one can say what was in the mind of the Grand Jury, State v Mullins supra; State v. Rallo supra; SC Code Ann § 17-19-10; SC Code Ann § 17-19-20; State v Hardee supra; State v Tate supra; State v Beachum supra; United States v Abrams supra; State v Keith supra; United States v Hooker supra; Russell v United States supra; Hamling v United States supra; United States v Calderera-Jerop supra; United States v Pupo supra.

In regard to the indictments for Armed Robbery. The indictments fail to allege money amounts. They do not allege what items were supposedly stolen. They make use of the generic terms of the statute. They do not allege what the applicants were allegedly armed with. The make use of the term "and/or" as did the kidnapping indictments. The are not clear as to names of defendants, conspiracy element or whether the applicant is principle 1st, 2nd or third. All of this loose, cryptic and ambiguous

language in the body of the charging instrument set the applicant up for further acts of "indictment ambush" at the outset of his proceedings. The wording is so loose, cryptic and ambiguous it creates an enigma as to what exactly the applicant is called upon to meet and defend. They cannot be deemed sufficient if the prosecution is permitted to prove all these materially different sets of facts. The indictments do not descend to particulars. No one can say what was in the mind of the Grand Jury. These crucial elements and or aggravating circumstances must be passed upon by

the Grand Jury in accordance to the constitutional rights of the accused. To not allege these crucial elements and or allegations in the body of the charging instrument returned against the accused, having them passed upon by the Grand Jury, then, thereafter the plea court and or prosecuting body add these material averments in one form or the other within the proceedings, and allow a trial and or plea hearing to go forward, where such was not passed upon by the Grand Jury, is constructive amendment of the indictments. No one can say

what was in the mind of the Grand Jury, State v Mundy supra; State v Rallo supra; SC Code Ann § 17-19-10; SC Code Ann § 17-19-20; State v Hardee supra; State v Jaffe supra; State v Brayboy supra; United States v Abrams supra; State v Keith supra; United States v Hooker supra; Russell v United States supra; Hamling v United States supra; United States v Cabrera-Teron supra; United States v Pupo supra

In regard to the constitutional structural error and or defect in the indictments, as constructed in all (33) states that make use of an indictment, also the remaining (17) states that

make use of a criminal complaint, and all (50) states that make use of an indictment under federal captivity, taking away the presumption of innocence and automatically shifting the burden of persuasion, predetermining in advance the outcome of the proceedings by the language contained therein. According to the findings and language of the Grand Jury under the plain language Rule, the applicant is already found guilty and convicted. The Grand Jury does not have the power and or authority by state or federal law, or by state or federal constitution to convict a defendant. This is an

EGREGIOUS violation of their shielding function and services to aid in establishing modern day slavery which this too, they do not have the power or authority to do. For the Grand Jury to produce indictments that state, adjudicate and or allege that the defendant is not only guilty of the crimes charged, to include the "mens rea" elements related to the offenses; then, therefore after, the court alters the allegations of the indictment(s), to include the "mens rea" elements, and charges that the defendant is innocent until proven guilty, and the state, court, federal government or prose-

cutting agents aids them turning the blind eye and deaf ear in doing so, is constructive amendment of the indictments, and changes the very nature of the allegations returned by the Grand Jury. This creates an instant double jeopardy issue. To accept a guilty plea, and or to take a defendant to trial on charges in an indictment for which he has already been found guilty of, violates Due Process and is double jeopardy. No one can say what was in the mind of the Grand Jury as to whether or not they intended to illegally take upon themselves the role

of the trial jury and adjudicate guilt of the offenses not allowing any subsequent adjudication to occur rendering any subsequent proceeding void. This means this is an error which can only be corrected by the Grand Jury and not the trial court. This further serves to validate that the structural constitutional error and or defect affect the framework of the proceedings and cannot be viewed as harmless, because the court must constructively amend the indictment(s) on the "mens rea" element(s) of the offense(s) to correct, or in an effort to correct

the structural constitutional error in acts of fraud on the court and modern day slavery. The Amistad supra; State v Epsler (SC 1997) 327 SC 124, 489 SE2d 617; State v Lewis (SC App. 1996) 321 SC 146, 147 SE2d 265; Spudstrom v Montana supra; Morissette supra.; United States Gypsum Co. supra; Humanik v Bieyers supra; United States v Clemens supra.; Martin v Ottio supra; Robinson v Arlonio supra; United States v Briggs supra; United States v Chadwick supra; Comprare Pierson v Ray supra; Jenkins v McKeithen supra; Brandzburg v Hayes supra; Moore v Dempsey, 43 SCt 265, 67 Led 543 (1923).

Constructive Amendment of an indictment is a per se violation of the provisions of the 5th Amendment, when such Amendment affects an essential element of the offense. Such a violation requires reversal of the conviction, even without a showing of prejudice, but once prejudice is clearly shown, the sentence and conviction must be vacated, State v Guthrie, 352 SC 103, 572 SE 2d 309; Article IV § 2 U.S. Const.; United States Coyne, 4 F3d 100 (2nd Cir 1993); United States v Morgenstein, 933 F2d 1108, 1115

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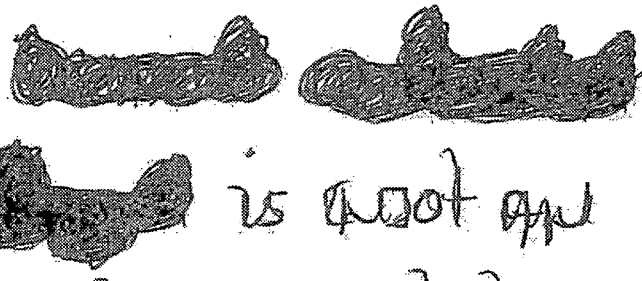
(2nd Cir 1991); Wilson v Lindler, 995 F2d 1256; Stirone v United States, 361 U.S. 212 (1960); Gaither v United States, 413 F2d 1061 (DC Cir 1969); Douglas v State of Alabama, 380 U.S. 415, 85 SCt 1074 (1965).

Inasmuch, constructive amendment of the indictment(s) did occur and the unconstitutional amendment prejudiced the applicant at his proceedings leading to an unfair and impartial trial and or guilty plea that was not freely, knowingly, voluntarily or intelligently given, depriving

the Applicant of reasonable notice and of his right to have material allegements properly passed upon by the Grand Jury in egregious violation of the Applicant's substantial rights of Due Process. This occurred when the charging terms of the indictment were altered literally and/or constructively in the manner afore mentioned. S.C. Code Ann § 17-19-100 (1985) permits amendment to an indictment provided the nature of the offense charged is not changed. If (A) there is

A defect in form in any indictment, or (B) on the trial of any case there shall appear to be any variance between the allegations of the indictments and evidence offered in proof thereof, the court before which the trial may be had may amend the indictment(s) according to the proof, if the amendment be because of variance, if such amendment does not change the "nature" of the offense charged. After such amendment the trial and or plea hearing should proceed

in all respects and with the same consequences as if the indictments had originally been returned as so amended, unless such amendment shall operate as to surprise the defendant, in which case the defendant shall be entitled upon demand to a continuance of the cause.

A variance between pleadings and proof is not material where matter alleged  is not an element of the offense, State v. Hiott, 276 SE 2d 163.

On the other side of the spectrum of this language, a variance between pleadings and proof "[is]" material where matter alleged "[is]" an element of the offense; and furthermore such an amendment to correct this variance "[cannot]" be allowed if such an amendment changes the nature of the offense, Hope v State, 328 SC 78, 492 SE2d 76; State v Grainger, 507 SE2d 322 (SC 1998).

Once the nature of the elements became altered in the manner aforementioned, the indictments were

no longer to be considered the indictments returned against the applicant. A defendant is entitled to be tried and or give his guilty plea on charges that are properly set forth in an indictment and such properly set forth charges must be passed upon by the Grand Jury, SC Code Ann § 17-19-10 (1976). The true test of the sufficiency of an indictment is whether or not it contains the necessary elements of the offense intended to be charged and sufficiently apprise the defendant of what he is called upon

to meet. The essential elements and or allegations are not alleged, the indictments do not descend to particulars in some of the offenses making use of the general terms of the statutes. By the language and or charge of the indictments as constructed, it informs the applicant that he is called upon to meet the burden of production on the critical elements of dispute related to the offenses. By the mandates of DUE PROCESS LAW, the applicant is not, by State of Federal Constitution, nor by State of Federal Law, called upon

to meet the burdens of production on the critical elements of dispute related to the offenses. The indictment informs the applicant that his guilt is illegally predetermined in advance under oath and the applicant is being subjected to another proceeding on the same charges, which produces fraud on the court, misrepresentation and modern day slavery due to the fraud, Brown v State supra; Mathis v State supra; Francis v Franklin supra; United States v Abrams supra; Martin v Ohio supra; In Re: Winship supra; Mullaney

v Wilbur supra.; Humanik v Beyers supra.; Moore v Dempsey supra; Callop Petroleum Co. v. Frontier Ins Co. supra; Chewing v Ford motor Co. supra.; Appling v State Farm mut Auto Ins Co. supra; King v First American Investigators Ins supra.

What's worse than this the indictments not only by their very nature already prematurely impugn the applicant of all charges made and or laid before the court, denying the applicant the presumption of innocence, but it also creates this egregious, blatant, outrageous violation of Due Process,

Where the indictments by the structural constitutional error and or defect, has denied the applicant the right to a trial by a jury of others peers; denied the applicant the right to confront his accusers or to cross examine witnesses; denied the applicant the right to call witnesses in his defense or to present expert testimony; denied the applicant the right to take the stand and testify at his proceedings; denied the applicant the right to place forth evidence that would vindicate him at trial;

deprived the applicant the right to counsel of choice, way before a true trial jury was sworn, not this illegal trial jury in the form of the Grand Jury who swore upon their oath the applicants guilt, way before a trial commenced satisfying these essential constitutional requirements of Due Process Law; or way before he voluntarily, freely, intelligently or knowingly gave them up if we are dealing with a guilty plea, also way before he hired counsel or way before the court appointed legal counsel

to assist the defendant. With the existence of the structural constitutional error and or defect the court has attempted to close the barn door far after the time the horses have already been released and or escaped. The Grand Jury being duly sworn, in clear violation of their shielding function has taken upon themselves the role of the trial jury, and has already convicted the applicant of the crimes charged under oath (emphasis added). To permit the applicant to obtain counsel of choice after this egregious injustice,

OR to appoint counsel after the applicant has already been illegally convicted by the Grand Jury and deny the applicant the previous mentioned constitutional rights involve deprivations of constitutional protection so basic and so fundamental that in their absence no criminal trial and or proceeding can be deemed reliable as a vehicle for the determination of guilt or innocence, and no criminal punishment can be Regarded as fundamentally fair, because such action has prematurely, criminally, stripped the applicant of his inalienable Rights of Due Process, also in violation

of the taking clause of the 5th amendment. The state acting unjustly, conspiring under color of state law, in violation of 18 USC §§ 241, 242, has blatantly failed to adhere to their own state laws, causing extreme prejudice to the applicants proceedings has denied the applicant the equal protection of the laws. Since the applicants guilt was already unjustly adjudicated by the structural constitutional error and or defect under oath in acts of fraud on the court; this serves to make any other subsequent proceeding initiated "[V]oid", "[N]ullified", "[A]rrested" and A

violation of the 5th and 6th amendment also the applicants rights of DUE PROCESS, to include his right to double jeopardy protection. How could the court be allowed and or permitted to have a trial and or accept a guilty plea for an offense the GRAND JURY who swore upon their oath, have already found the applicant guilty of? By their actions and fraud on the court they have essentially established modern day slavery. Congress confers no power or authority upon any court, state or federal the right to establish modern day slavery depriving them of jurisdiction from the cases onset, demonstrating they in APPROPRIATELY entertained

jurisdictional rendering all action done void, stripping all judges and courts of immunity. The structural constitutional error and or defect does affect the framework of the proceedings and cannot be deemed as harmless, The Amistad supra.; Chewing v Ford Motor Company supra.; Appling v State Farm Mut. Auto Ins. Co. supra; State v Easler (SC 1997) 327 SC 121, 489 SE2d 617; State v Lewis (SC App 1996), 321 SC 146, 147 SE2d 265; State v Guthrie, 352 SC 103, 572 SE2d 309; Vines v United States, 28 F3d 1123 Crim. Law 1116 (1), 1156 (1); States v Riddick, 348 SC 631, 635, 560 SE2d 441, 443 (Ct App 2002); State v Padgett, 354 SC

268, 271, 580 SE2d 159, 161 (Ct App. 2003); State v Hanley, 344 SC 85, 97, 544 SE2d 30, 36 (2001); Griswold v State of Connecticut, 381 U.S 481, 85 S Ct 1678 (1965); Carter v State, 329 SC 355, 362, 495 SE2d 773, 777 (1998); 28 U.S.C.A. § 1654; Jupiter v American Bar Ass'n, DC Tex 1975, 407 F.Supp. 451 affd 539 F2d 715 affd 542 F2d 56; Texeira v California, 422 U.S. at 835n. 46, 95 S Ct at 2541, 45 L Ed 2d 562, 592 (1975); Wiggins v. Estelle, 681 F2d 266 (1982); United States v Gonzales-Lopez, 548 U.S. - 2006; Chapin & Drysdale Chartered v. United States, 491 U.S. 617, 624-625 (1989); Rodriguez v Chandler, 382 F3d 670, 675

(CA 7 2004) CERT denied 543 U.S. 1156 (2005); Stirone v United States SUPRA; United States v Silverman, 30 Fed 106, 110 (2nd Cir) listing these functions modified 439 Fed 198 (2nd Cir 1970), 91 Sct 1619 (1971); Martin v Ohio SUPRA; Francis v Franklin SUPRA; Mathis v State SUPRA; Brown v State SUPRA; United States v Abrams SUPRA; Moore v Dempsey SUPRA.

The requirement of the indictments limit and constrain the subject matter jurisdictionary "powers" of both the prosecution and the court, by limiting what can be presented at trial, conviction and sentencing, United States v

Promise, 255 F3d 150 (4th Cir 2001) | State v Guthrie supra.. It is the command of the United States Constitution, that anything to the contrary is notwithstanding, (Article IV § 2 U.S. Const).

Again, the state and or prosecuting body, acting unjustly, conspiring under color of state law, has failed to adhere to their own state laws, in egregious violation of the applicants substantial Federal Constitutional Rights of Due Process, serving to deny the applicant the Equal Protection of the laws against unjust prosecution, also in violation of

18 U.S.C §§ 241, 242, Screws v United States supra; State v Middleton supra; Eslinger v Thompson supra; McLaughlin v Florida supra; Jones v State of Arkansas supra; Dubinka v Judges of Superior Court of the State of California, For the County of Los Angeles supra; Dozier v Loop College, City of Chicago supra; Hicks v Oklahoma supra; Lugar v Edmondson Oil Co supra; Williams v United States supra; Brown v United States supra; United States v Ramey supra; United States v Kozminski supra; Gravely v Peacock supra; United States v Otherson supra supra...

In Wilson v Lindler, 995 Fed at 1256,

it was held that constructive amendment of an indictment, sometimes referred to as fatal variance, denies the criminal defendant the fundamental guarantee of notice of the charges pending against him. This right is safely guarded and embodied within the 6th amendment, the 5th amendment Indictment Clause, and the applicant's 14th amendment rights of Due Process, as well as pursuant to the applicant's right to Equal Protection of the laws against unjust prosecution. And these requirements must be adhered to and not denied. Therefore, due to the enormous amount of prejudice experienced

by the applicant, the sentence and conviction must be vacated.

(9) Was counsel appointed by the state inept and constitutionally ineffective in violation of the applicants 5th, 6th, 14th Amendment Rights of the U.S. Constitution, as well as Article I§2, and his DUE PROCESS Rights which led to an unreasonable guilty plea that was not freely, knowingly, voluntarily or intelligently given; creating an egregious miscarriage of justice?

Judicial notice takes place of proof. It simply means that the court will admit

into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v Aetna Life Ins Co supra.; State v Broad River Power Co. supra; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even

if the appellant did not object at the proceedings, (Black Law Dictionary 8th Edition).

A defendant has a constitutional right to the effective assistance of counsel. To demonstrate ineffective assistance of counsel, a petitioner must show, pursuant to the two prong test enunciated in Strickland v Washington, 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed 2d 674, (1984), that (1) his counsel was deficient in his representation and (2) he was prejudiced as a result, Id at 687; also see Williams v Taylor, 529 U.S. 362, 391,

120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) (stating that the Strickland test provides sufficient guidance for resolving virtually all ineffective assistance of counsel claims.

To satisfy the first prong of Strickland, a petitioner must show that trial counsel's errors were serious enough that his performance fell well below the objective standard of reasonableness guaranteed by the 6th Amendment to the U.S. Constitution. With regard to the second prong of Strickland, the applicant must show that there is a reasonable probability that, but for

Counsel's performance and unprofessional errors, the result of the proceedings would have been different, Strickland, 466 U.S at 694.

Inasmuch, counsel appointed by the state was inept and constitutionally ineffective for the following reasons:

(A) Counsel was inept and constitutionally ineffective because counsel failed to protect the applicant's DUE Process Rights, in that where the indictments possessed a structural constitutional error and or defect, by the language and or charge con-

[illegible] thereby, took away the appli-
cant's presumption of innocence and
automatically shift the burden of persua-
tion to the defendant, counsel said no-
thing, nor did counsel do anything. Counsel
should have objected and motioned to
quash the indictments. Counsel should
have neither conspired under color of
state law in acts of prosecutorial mis-
conduct and in violation of the Code of
professional ethics to commence with
and or bring the applicant to trial on
offenses the Grand Jury being duly
sworn, illegally taking upon themselves
the role of the trial jury, going

beyond the scope of the power and authority given to them by either state or federal law, and or state and federal constitution, already prematurely upon their oath adjudicated and determined in advance the outcome of the proceedings and the applicants guilt in clear violation of their shielding function, also the applicants right to double jeopardy protection, the Equal Protection of the Laws and Due Process. This produces sham legal process, fraud on the court and the establishing of modern day slavery. Congress confers upon no court

State or federal, the power or authority to establish modern day slavery. This cannot be deemed as reasonable notice. No one can say what was in the mind of the Grand Jury in that the reality clearly exist by the language of the indictments presented, that they never intended any subsequent proceedings to occur. The burden of persuasion is clearly shifted in violation of Due Process Law. The Applicant did not have factual knowledge related to this egregious violation of his substantial Due Process Rights. A cura-

the instruction "Boilerplate" do not cure the Due Process problem. This prejudiced the Applicant leading to a guilty plea that was not freely, knowingly, voluntarily and intelligently given and appropriate, unfair plea proceeding. To bring the Applicant to court and conduct a plea hearing and or trial on charges the Grand Jury illegally predetermined in advance the outcome of the proceedings in an act of prosecutional misconduct, fraud on the court and modern day slavery compromising the entire proceedings, The Amistad supra; Moore v Dempsey supra;

Ind Rle Wipshp supra; Chewing v Ford motor Co. supra; Appling v State Farm mut Auto Ins Co. supra; Sandstrom v. Montana supra; Morissette supra; United States Gypsum Co. supra; McNabney v Wilbur supra; Humanik v Beyers supra.; United States v Ramsey supra.) Martin v Ohio supra; State v Brearley supra.; State v Zola supra; Francis v Franklin supra.; Strombergv California supra.; Robinson v Arkansas supra; Viles v. United States supra.; Stirone v United States supra.; Gaither v United States supra; State v Calandra supra.; Brantzburg v Hayes supra; Jenkins v McKeithen

SUPRA ; COMPARE PIERSON V RAY SUPRA ; UNITED STATES V CHADWICK SUPRA ; UNITED STATES V BRIGGS SUPRA

(B) COUNSEL WAS INEPT AND CONSTITUTIONALLY INEFFECTIVE BECAUSE COUNSEL FAILED TO PROTECT THE APPLICANT'S DUE PROCESS RIGHTS IN THAT WHEN THE TRIAL COURT WENT BEYOND THE (180) DAY DEADLINE MANDATED AND PRESCRIBED BY JUDICIAL ORDER ISSUED BY THE SOUTH CAROLINA SUPREME COURT PURSUANT TO THE PROVISIONS OF ARTICLE V § 4 OF THE SOUTH CAROLINA CONSTITUTION, COUNSEL SAID NOTHING, NOR DID COUNSEL DO

Anything. The court was prohibited from continuing their subject matter jurisdictionary powers. The Applicant should be home by now. Counsel should have objected and motioned for default and judgment. Counsel should have neither conspired with the prosecutor creating and initiating this illegal plea proceeding in acts of prosecutional misconduct and fraud on the court which stand in blatant defiance of judicial order issued by the SC Supreme Court. This extremely prejudiced the Applicant's DUE PROCESS matters producing a guilty plea

proceeding that should not exist. It is the applicant who is truly the victim of a kidnapping by way of this false imprisonment. The trial court's jurisdiction is in question, at least their "power" and or "ability" to continue the cause due to the deficiency in the jurisdictional requisite. The trial court cannot be permitted to commence with a plea proceeding, in fundamental fairness to the applicant, that stands in defiance to DUE PROCESS LAW. Without a "written" (emphasis added) order of continuance filed with the trial court prior to the

Expiration of the (180) day deadline, the trial court is prohibited from enacting and or invoking and or continuing their "powers" of subject matter jurisdiction even though they do indeed have jurisdiction to hear this particular class of case. This is an egregious miscarriage of justice and overwhelming prosecutorial misconduct. The state unjustly conspiring under color of state law with counsel for the defense, has failed to adhere to their own state laws, in conspicuous violation of the applicants substantial Federal Rights of Due Process. The

provisions of the SC Constitution under Article V, especially in light of judicial order are mandatory, draconian in nature, see SC Constitution Article V; State v Murphy supra; State v Brakhum supra; Robinson v Shell Oil Co. supra; Article 12 § 2 SC Const.; United States v Meyers supra; Siebringer v. The Vessel Excalibur supra; United States v Roy Parr Enterprise Inc supra; Article 1 § 23 SC Const; State v Carson supra; Screws v United States supra; Mathis v State supra; Browning v State supra; Lugar v Edmonson Oil Co supra; Hicks v Oklahoma supra; Toyota of Florence

Ipe v Lynch supra; Bass v Isochem supra; State v Brandon supra; State v Pittman supra; Liberty Mut Ins v. SC Second Injury Fund supra.

(C) Counsel was inept and constitutionally ineffective, because he failed to protect the Applicants DUE PROCESS Rights in that where there was a "[p]rocedural [d]efect" in the establishing of the warrants and or indictments due to the prosecuting agents acting as sole witnesses on the warrants and or indictments, counsel said nothing, nor did counsel do anything. Counsel should have objected

to at least preserve this issue for appellate review. Counsel should have motioned to quash the indictments. The applicants Due Process matters at this segment of the action were suppose to be held remain non-adversarial. This means only evidence passed upon by the Grand Jury in these one-sided proceedings, unnecessarily using the prosecuting agents as sole witnesses on the warrants and or indictments must be rendered inadmissable. It becomes "fruit of a poisonous tree". Counsel should have neither conspired

Under color of state law with the prosecutor in acts of prosecutional misconduct, fraud on the court and modern day slavery to bring forth this case when they were fully aware of these numerous violations of DUE PROCESS law compromising the applicants guilty plea proceedings producing overwhelming prejudice denying the applicant the Equal Protection of the laws, State v. Jaborly supra; State v. Jones supra; State v. Anderson supra; State v. Capp supra; State v. Dawkins supra; United States v. Birdman supra; In Re: Ex Parte Halsted In Re: Investigation in Charleston Magis-

Trapp Court supra.; Mapp v Ohio supra.; Rochin v People of the State of California supra.; Weeks v United States supra.; United States v Gramolini supra.

(D, E & F) Counsel was inept and constitutionally ineffective, because he failed to protect the applicants Due Process Rights in that when the indictments for kidnapping and the indictments for Armed Robbery either failed to describe to particulars, failed to allege how the kidnapping occurred, makes use of the generic terms of the statute, makes the use of the terms

"and/or", do not allege who the supposed co-defendants were, do not sufficiently allege the elements, or conspiracy or whether the applicant is principle 1st, 2nd or 3rd, the Armed Robbery fails to allege monies amounts or items stolen, alleges I was armed or pretended to be armed two materially different sets of facts. These crucial averments must be alleged in the indictments and passed upon by the Grand Jury in accordance to the constitutional Rights of the Accused. The indictments can-not be deemed sufficient if the prose-cution is permitted to prove all these

materially different sets of facts. The language is so loose, cryptic and ambiguous it creates an enigma as to exactly what the applicant is called upon to meet or defend. This cannot be deemed as responsible notice. None of these essential requirements were properly alleged in the body of the charging instrument. Yet counsel said nothing, nor did counsel do anything. Counsel should have objected and motioned to quash the indictments instead of conspiring under color of state law in acts of prosecutional misconduct,

fraud on the court and modern day slavery with the state in this fiasco and mockery of judicial proceedings denying the applicant the equal protection of the laws. The applicant felt like General Custer at Little Bighorn. He was forced to grab his arm rest of his chair, clinching it, holding his breath, bracing himself as to what could possibly be coming at him next as he was subject to this "Indictment Ambush" at the onset of his plea hearing. The indictments must descend to particulars and the particular, essential elements and or allegments

must be passed upon by the Grand Jury. This extremely prejudiced the Applicants proceedings leading to a guilty plea that was not freely, voluntarily, knowingly or intelligently given creating a miscarriage of justice, State v Mohn supra; State v Rallo supra; State v Hardee supra; Locke v State supra; In Re Jason T. supra; State v Parker supra; State v Jahe supra; State v Jabory supra; United States v Abrams supra; State v Keith supra; State v Wilkes supra; United States v Daniels supra; United States v Silverman supra; United States v Hooker supra; Russell v. United States supra; Hamling v United

States supra; United States v Cabrera-Jeron supra; United States v Pupo supra.

(G) Counsel was inept and constitutionally ineffective, because he failed to protect the Applicant's Due Process rights, in that he allowed the prosecution to make reference to various statements at the Applicant's plea hearing, being entered into verbal evidence also pursuant to establishing the Court Record as it relates to the Applicant's plea hearing where there was no evidence adduced at the plea hearing that demonstrates the alleged victims and or co-defendants

were given a copy of those statements at the time they were made, nor was there a receipt signed by them for the taking therefor which stands in clear defiance to the applicable statutes SC Code Ann §§ 19-1-80 and 19-1-90. Counsel said nothing nor did counsel do anything. This matter should have been addressed before the court and placed on the court record to preserve it for appeal. Instead counsel conspired with the state acting unjustly under color of state law in acts of prosecutorial misconduct, fraud on the court and modern day slavery to manipulate the applicant into a

guilty plea. This substantially prejudiced the applicant and may have affected the judges reasoning in determining sentencing. No one can say how it affected that determination producing otherwhelming prejudice. This unjust act was utilized to coerce the applicant into a guilty plea creating one that was not freely, knowingly, voluntarily or intelligently given in violation of 18 USC §§ 241, 242, producing fraud on the court and modern day slavery. Counsel fell below the standard of counsel appointed in such matters, Strieu motes

SUPRA; State v Steadman SUPRA; SC Code Ann § 16-1-80; SC Code Ann § 16-1-90; Bass v Isochem SUPRA; State v Pittman SUPRA; The Amistad SUPRA; Callas Petroleum Co. v Frontier Ins Co. SUPRA

(A) Counsel was inept and constitutionally ineffective, because counsel failed to protect the applicants DUE PROCESS Rights, in that when constructive amendment of the indictments occurred before the court, counsel said nothing, nor did counsel do anything. Counsel should have at least objected to preserve this issue

in the court record. He should have motioned for a direct verdict based upon this issue and the impossibility to prove all the various allegations alleged within the indictments. Counsel should have motioned to quash the indictments or for a [redacted] trial based upon the inability to prove all the various allegations instead of conspiring under color of state law to manipulate him into a guilty plea. No plea should have been given on these fatally defective indictments. Constructive amendment of an indictment is a per se violation

of the provisions of the 5th amendment, when such amendment affects an essential element of the offenses. Such a violation requires reversal of the conviction, even without a showing of prejudice, but once prejudice is shown, clearly as it is in this case, the sentence and conviction must be vacated, State v Guthrie supra; United States v Coyle supra; Wilson v Lindler supra; Strowe v United States supra; Gaither v United States supra; Douglas v State of Alabama supra; SC Code Ann § 17-19-100 (1985); State v Hoitt supra;

Hope v State supra ; State v Grainger supra ; State v Hawley supra ; State v Pardgette supra ; Carter v State supra

(I) Counsel was inept and constitutionally ineffective, because he failed to protect the applicants DUE PROCESS Rights, when any competent attorney could see that the SC Supreme Court engaged in acts of fraud on the court, modern day slavery and abused its discretion in their holdings. They held the Gentry case to push him past the statute of limitation because they knew he lacked the education to litigate pass

it. They then ruled on Ex parte Baird without review United States v Russell, Gaither or Strope, because Baird was vague where the other cases gave the issue clarity and addressing Baird alone would give the fraudulent impression they were not changing law standing unchallenged for over 100 years. This was done behind a class based invidiously discriminatory animus for the purpose of establishing modern day slavery. Thus, the trial court was prohibited from enacting and or invoking and or continuing their "powers"

of Subject matter Jurisdiction to accept the applicants guilty plea, even though they do indeed possess such "power". Counsel should have done a better job researching and or studying his or her profession instead of conspiring under color of state law in acts of prosecutorial misconduct, fraud on the court and modern day slavery denying the applicant the Equal Protection of the laws. The two concepts of Subject matter Jurisdiction and the Sufficiency of an indictment have not been mistakingly combined. One is a

"[J]URISDICTIONAL [P]REREQUISITE" of the other, Sharpes v Sharpes SUPRA; The Amistad SUPRA; Mathis v State SUPRA; Brown v State SUPRA; Browning v State SUPRA; United States v Abrams SUPRA; Stirone v United States SUPRA; Gaither v United States SUPRA; Sharp v Johnson SUPRA; Santos v State SUPRA; United States v Silverman SUPRA; United States v Promise SUPRA; State v Guthrie SUPRA.

By all the aforementioned in this case, counsel was inept and constitutionally ineffective which egregiously violated the applicant's 4th, 5th, 6th,

13th, 14th and 15th Amendment Rights of the U.S Constitution, as well as Article IV § 2 and his Rights of Due Process subjecting the Applicant to extreme prejudice. Counsel unjustly conspired under color of State law engaging in overwhelming acts of prosecutional misconduct, fraud on the court and the establishing of modern day slavery rendering void my right to vote in state and or federal elections, with the prosecutor in bringing forth this case. By this conspiracy which

stands in violation of 42 USC §§ 1983, 1985(2), 1985(3), 1986; 18 USC §§ 241, 242 they failed to adhere to their own state laws in violation of the applicants substantial federal constitutional Rights of DUE PROCESS, serving to deny the applicant the EQUAL PROTECTION of the laws against unjust prosecution. The U.S SUPREME COURT has held that all acts of the STATE are automatically "UNDER COLOR of STATE LAW" no matter what the SOURCE of the substantive RULE, SCREWS v United States SUPRA; State v Middleton SUPRA; McLaughlin v Florida SUPRA;

Eslinger v Thompson supra; Dubinka v Judges of Superior Court of the State of California, for the County of Los Angeles supra; Jones v State of Arkansas supra; Hicks v Oklahoma supra; Dozier v Loop College, City of Chicago supra; Lugar v Edmondson Oil Co supra

Inasmuch, by points "A" through "I" pertaining to this issue, counsel fell well below the standard of counsel appointed in such matters. It is perspicuous that the outcome of the proceedings would have more than likely been different had these injustices not

occurred and they were properly challenged by state appointed counsel. The applicant would not have pled guilty but would have insisted upon going to trial. It is a requirement that cannot be deemed to be satisfied by mere notice and a plea hearing if a state has contrived a conviction through the pretense of a plea or trial which in truth defies fundamental fairness and is used as a means of depriving a defendant of liberty through the deliberate deception of the court and applicant produced by fraud on the

court, modern day slavery, or is inconsistent with the true facts, violating clear statutory provisions and the U.S Constitution. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is inconsistent with the rudimentary demands of justice as is obtaining of a like result by intimidation, The Amistad supra; The La Conception supra; Chewing v Ford motor Co. supra; Callon Petroleum Co. v. Desktop Direct Inc supra; Williams v United States, CA 5 (Fla) 1950, 179 F2d 656 cert granted 71 SCt 70, 340 U.S. 850, 95 Led

622 Affld 71 SCt 341 U.S 971, 95 LEd 774; Brown v United States CA 6 (Tenn) 1953, 204 F2d 247; United States v Ramsey CA 4 (W Va) 1964, 336 F2d 512 Cert denied 85 SCt 649, 379 U.S. 972, 13 LEd 2d 564; United States v Kozminski (1988) 487 U.S 931, 101 LEd 2d 788, 108 SCt 2751, 46 CCH EPD 38067 on remand (1988 CA 6 Mich) 852 F2d 1288; Brady v Maryland supra; United States Ex Rel Almeida v Baldi supra; United States Ex Rel Thompson v Dye supra; Mooney v Holohan supra; Alcorta v Texas supra; United States v Lanier supra; Strickland v Washington supra; McShane

U Moldowan, CA mich 1949, 172 Fed 1016; Jurner U State, 335 SC 362, 517 SE2d 442 (SC 1999); United States U Jones, 143 F3d 1417, 1418 (11th Cir 1988); United States U Simmons, 763 F2d 529, 533 (2nd Cir 1985).

The government "must always" be held accountable to judiciary for A mans imprisonment, And the restraints on liberty if the imprisonment does not conform to the basic requirements of Due Process Law. For counsel to conspire Under color of State law in egregious Acts of prosecutional misconduct,

fraud on the court and modern day slavery with the various parties, breaking just about every Due Process and or state and or Federal Rule of law under the sun to crash and burn the applicants plea hearing producing extreme prejudice and a guilty plea that was not freely, knowingly, voluntarily or intelligently given, reveals the outcome would have been different if this did not occur and the applicant would not have pled guilty but would have insisted upon going to trial. This is an outrage and an egregious

miscarriage of justice that must be brought into account. By the injustices asserted in this case it is as if the applicant went into this plea hearing without any counsel at all. Therefore, the sentence and conviction must be vacated, Shelton v Ciccone CA 8 (Mo) 1978, 578 F2d 1241; Wells v Lucy, 469 U.S. at 387, 105 S.Ct 830, 83 Led 2d 831 (1985); Gray, 800 F2d at 646; Powell v Alabama, 287 U.S. 45, 53 S.Ct 55, 77 Led 158 (1932); United States v Promise, 255 F3d 150 (4th Cir 2001); Strickland v Washington, 466 U.S. 668, 104 S.Ct 2052, 80 Led 2d 674 (1984); Williams v. Taylor, 529 U.S 362, 391, 120 S.Ct 1495, 146

Led 2d 389 (2000).

(10) Did the SC Supreme Court in Stathem v Gentry supra err, engaged in acts of fraud on the court to essentially establish modern day slavery, and abused their discretionary "powers", which often took away our Right to vote, and in such, the trial court did err, and lacked subject matter jurisdiction, and/or was prohibited from exercising and/or invoking and/or continuing its subject matter jurisdictionary "powers", even though they possess

such "power", due to the indictment defects and or errors contained and argued within this document, in violation of the applicants 4th, 5th, 6th, 13th, 14th, 15th amendment rights of the U.S Constitution, as well as Article IV § 2 and the laws of DUE PROCESS?

The applicant did not object to these defects and or ERRORS at the time of his trial and or guilty plea, but the defects and or ERRORS serve to render the indictments wholly invalid. Defects and or ERRORS in an indictment

that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am Jurs 2d Indictments and Informations § 299 (1968); State v Mundy supra.

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Mossu Aetna Life Ins Co. supra; State v Broad River Power Co. supra; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error and fraud on the part of the South Carolina Supreme Court that has an identifiably negative impact on all criminal proceedings to such a degree, that the constitutional rights of all defendants within this state, including the applicants are compromised. A manifest constitutional error and fraud on the court of this magnitude cannot be waived, is not subject to any time limit and can be reviewed by a court of Appeals even if the applicant did not object at the proceed-

injs, especially in light of the fact that the courts decision effects all inmates in the state and possibly around the nation, (Black Law Dictionary 8th Edition), Gallop Petroleum Co. v. Trautiver Injs. Co supra. | Digital Equip Corp v. Desktop Direct Injs, 511 U.S 863, 868, 114 S.Ct 1992, 1996, 128 L.Ed.2d 842 (1994); Chewing v. Ford motor Company supra; Appling v State Farm mut. Auto Injs Co supra; King v First American Investigators Inj, 287 F.3d 91, 95 (2nd Cir 2002) cert denied 537 U.S. 960, 123 S.Ct 393, 154 L.Ed.2d 314 (2002).

The petitioner contends, that

The indictments for Kidnapping and Armed Robbery do "not" properly and or sufficiently apprise the applicant of the "[c]ause and [n]ature" of the accusation(s), or properly and or sufficiently apprise the applicant of what he must prepare himself to meet and defend, because the indictments for Kidnapping and Armed Robbery do [n]ot properly or sufficiently apprise the applicant of the elements, makes use of the generic terms of the statute, make use of the term "and/or" making it cryptic as to whether one or both allegation is

alleged, leaves out the element "willfully" do not say how the kidnapping occurred, do not allege money amounts or what items were taken, do not allege what the applicant was armed with, do not allege the conspiracy element, do not properly allege whether applicant is indicted as principle 1st, 2nd, or 3rd, and do not allege the name of the parties he conspired with etc listed in the previous arguments, to include alleging applicant was both physically armed and alleged he was armed. The indictments "can not" be deemed

sufficient if the State is permitted to prove all these materially different sets of facts. They do not descend to particulars. All the aforementioned "unjust" be alleged in the body of the charging instrument and passed upon by the Grand Jury in the indictments returned against the accused in accordance to the constitutional due process rights of the defendant. This cannot be deemed as reasonable notice. No one can say what was in the mind of the Grand Jury, State v Mumin supra; State v Rollo supra;

State v Jaffe supra; State v Jaborg supra; State v Keith supra; State v Hardeveld supra; Locke v State supra; State v Williams supra; United States v Daniels supra; United States v Abrams supra; United States v Hooker supra; Russell v United States supra; Hamling v United States supra; United States v Pupo supra

The petitioner further contends, that the indictment(s) do not properly and or sufficiently apprise the applicant of the "cause and nature" of the accusation, or of what he is called upon to meet and defend,

because the structural constitutional error, defect, language and or charge embodied within the indictments indicate and or imply to the applicant, that the burden of production belong to the applicant and not the state. By such they also violate SC Code Ann § 17-19-10 and SC Code Ann § 17-19-20. The language and or charge in the indictments indicate to the applicant that he is called upon to meet the burden of production on the critical elements of dispute, in violation of

the applicant's 6th amendment rights, the relevant statutes, and due process law. They also violate the applicant's 4th amendment rights to illegal seizure, his 5th amendment right to double jeopardy protection, because they predetermine in advance the outcome of the proceedings, taking away the presumption of innocence, and they inform the applicant that for a second time he is made to plea or go to trial on a prior convic-tion for the same offense which produces fraud on the court, modern

day slavery, takes away the right to vote being convicted in violation of the 13th and 15th Amendments and infringe upon the applicants with Amendment Right to Equal protection of the laws against Unjust prosecution behind a class based invidiously discriminatory animus in the form of racial hatred because the act disproportionately affects African Americans. Due to the structural constitutional error and or defect in the construction of the indictments they do "not" properly, sufficiently, or fully apprise

the applicant of the "cause and nature" of the accusation being brought against him, or of what he is called upon to meet or defend, State v Lewis supra; State v Easler supra.; Mathis v State supra; Brown v State supra; State v Brown supra; State v Munn supra; Moore v Dempsy supra; The Amistad supra; Callon Petroleum Co. v Frontier Ins Co supra; Digital Equip Corp v Desktop Direct Ins supra

This is how this thing went. The inmates in South Carolina were basically getting out of prison arguing the defects

in their indictments. The inmates convicted for murder discovered that there was a fatal flaw in the murder indictments related to "time and place". The South Carolina Supreme Court in efforts to stop this exodus from prison engaged in acts of fraud on the court in efforts to establish modern day slavery behind racial hatred, even with the black overseer type judges, came up with a plot, plan and scheme to defraud the inmates of this State. They knew beforehand that in order to make a fair determination related to the issue of subject matter jurisdiction. It was required that

The court review. Ex Parte Bain, Russell Stirone and Gaither together. If you do not review them together, you can't make a fraudulent determination and would no one be the wiser. They knew that Ex Parte Bain and U.S v Cotton were ambiguous in that those cases neither addressed the "prerequisite" element of the indictment. Cotton use word play to evade the essential question related specifically to the prerequisite aspect of the indictment. So they only review Bain because it was vague by itself, then added Cotton because they knew the U.S Supreme Court did

Not address the prerequite aspect in that case, then came up with Gurney to halt the pending exodus. They then held the Gurney and all other related cases until they were time barred from seeking review in the SC US District Court. The US District Court Judges were privy to this and aided them knowing fully well most of the inmates whose cases were pending lacked the intelligence to argue past the statute of limitations. This produces the fraud on the court, the establishing of modern day slavery by that fraud, the taking away of

our voting right by conspiring to keep us labelled as felons, the illegal seizures by this fraud, as well as violations of 1983, 1985(2), 1985(3), 1986; 18 USC §§ 241, 242; the 4th, 5th, 6th, 13th, 14th and 15th amendments, Moore v Dempsey supra; The Amistad supra; Digital Equip Corp v Desktop Direct Inc supra; King v. First American Investigators Etc supra; Means v Wilson CA 8 (SD) 1975, 522 F2d 833 cert denied 96 SCt 1436, 424 U.S. 958, 47 Led 2d 364; Berg v OBAMA, Ed Pa. 2008, 574 FSupp2d 509; United States v Figueroa, CA 3 (NJ) 2013, 729 F3d 267.

Perhaps the court(s) of South

Carolina would further contend that subject matter jurisdiction, and the sufficiency of an indictment are, and have been combined in the various cited cases, that the indictment is merely a "notice document" and that subject matter jurisdiction is the courts "power" to hear and determine a matter, and each should be viewed as seperate and distinct from one another and the insufficiency of an indictment does "not" take away from or "affect" and or "hinder" a "criminal" courts "power" and or "ability" to hear this

general class of case, to which the proceedings in question belong, State v Gentry, 363 SC 93, 610 SE2d 494, 495 (SC 2005) citing United States v Cotton, 535 U.S. 625, 122 SCt 1781, 152 LEd2d 860 (2002); State v Parkhurst, 845 SW.2d 31 (MO 1992). The court(s) has misinterpreted its citings and are in error, and they have abused their discretionary "powers" in their determination of this matter. An abuse of discretion occurs when the court(s) are controlled by some error of law, or when the order based upon

findings of fact is without evidentiary support or fact, Sharpes v Sharpes, 535 S.E.2d 913, 342 SC 71 (2000).

The State of South Carolina, by this ludicrous piece of legislation or law, in an egregious abuse of discretionary "power", acting unjustly, arbitrarily, under color of "state law", in defiance to fundamental fairness and judicial integrity, in violation of the applicants Federal Constitutional Rights of DUE PROCESS, also in violation of 18 USC §§ 241, 242, has either altered, amended, modified, and or deleted,

and or diminished and or eradicated, just about every single right and privilege secured and protected by the 4th, 5th, 6th, 13th, 14th, 15th Amendments of the U.S. Constitution, as well as the South Carolina Constitution, as it pertains to the requirement and use of an indictment in criminal proceedings, in blatant defiance to the applicant's rights to Equal Protection of the laws, producing fraud on the court, establishing modern day slavery and a conspiracy to brand African Americans as felons to

deny them the right to vote, Screws v United States supra; State v Middleton supra; Eslinger v Thompson supra; McLaughlin v Florida supra; Dubinka v Judges of Superior Court of the State of California, for the County of Los Angeles supra; Jones v State of Arkansas supra; Dozier v Loop College, City of Chicago supra; Hicks v Oklahoma supra; Lugar v Edmondson Oil Co supra; Williams v United States supra; Brawn v United States supra; United States v Ramsey supra; United States v Kozminski supra; Gurley v Wood v Peacock (1966) 384

U.S. 808, 46 L.Ed.2d 944, 86 S.Ct. 1800; United States v. Otherson, (1980 CA 9 Cal) 637 F.2d 1276 (cert. denied (1981) 454 U.S. 840, 70 L.Ed.2d 123, 102 S.Ct. 149.

Inasmuch, the 5th Amendment Indictment clause has not been held applicable to the states, or the federal concept of a Grand Jury binding on the Federal Courts under the 5th Amendment are obligatory to the states. Nevertheless, by their own state(s) Constitution(s), the State of South Carolina, New Jersey, Kentucky and (30) other states adopted the Federal provisions,

requirements, standards, and mandates pertaining to the use of an indictment, and the remaining (17) states that make use of a complaint document possess the structural error argued as well. In further resolving the conflict, the federal courts have held by the "Bill of Rights", many rights guaranteed by the first (8) amendments of the United States Constitution, have been made applicable to the several states through the Due Process Clause of the 14th Amendment and the Supremacy Clause of Art. 6 Cl. 2 of the U.S. Constitution, State v Watts, 465 Se2d 359; Henry v. City of Rock Hill, 376 of 333

376 U.S. 776, 84 S.Ct 1042, 12 L.Ed.2d 79 (1964); also see South Carolina Constitutional Art. 1 §11; Ex Parte Bain, 121 U.S. 1 (1887); Costello v United States, 350 U.S. 359; Russell v United States, 369 U.S. 749, 82 S.Ct 1038 (1962); Wood v Georgia, 370 U.S. 375, 82 S.Ct 1364, 8 L.Ed.2d 569 (1962); Frisbie v United State, 157 U.S 160, 15 S.Ct 586, 39 L.Ed 652 (1895); Hale v Henkel, 201 U.S. 43, 26 S.Ct 370, 50 L.Ed 652 (1906); Duncan v Louisiana, 391 U.S. 145, 88 S.Ct 1444, 20 L.Ed.2d 491 (1968); Hurtado v California, 110 U.S 516, 538, 4 S.Ct 111, 122, 28 L.Ed 232 (1884); Powell v State of Alabama, 287 U.S. 45, 67, 53 S.Ct 55, 63, 77 L.Ed 682 (1948); Gideon v Wainwright,

372 U.S. 335, 342-344, 83 S.Ct. 792, 796, 4 L.Ed.2d 799 (1963).

Yes, the indictment is a "notice document", but being a "notice document", is only one of the many purposes and functions the indictment was created for. The Honorable Judge Pleconnes in the Gentry Court, was the only one with enough judicial integrity and insight to see clear to the truth of this matter in part.

Yes, Subject matter jurisdiction is the "power" to hear and determine cases of a general class to which the proceedings in question belong, Bell v.

Monsanto Corp, 579 SE2d 325 SC 553 (SC 2003) - Inasmuch, the court's "[p]ower" to hear and determine a case, is also defined as the court's "[a]bility" to hear and determine a case. Inasmuch, subject matter jurisdiction does not only cover and or involve whether or not the matter resides in a proper court of jurisdiction to hear and determine it. It also involves any issue that may "[a]ffect" and or "[h]inder" that "[p]ower" and or "[a]bility" to act in accordance to Rules of Court, Rules of Procedure and Due Process Law. Such matters can be raised at "[a]ny" time, "[c]annot"

be waived by the defendant, and the court "shall not" fail to take notice, Mathis v State supra; Brown v State supra; State v Mull supra; Browning v State supra.

Subject to certain minor exceptions not present, the trial court(s) lack subject matter jurisdiction, and or is prohibited from exercising, and or invoking and or continuing its subject matter jurisdictionary "powers" to convict a defendant, even though they may have jurisdiction, where there is no indictment charging him with that offense when the jury is sworn, or

when he gives his guilty plea, and we can add, or when he has already been unjustly convicted by the Grand Jury, illegally acting as the trial jury, being duly sworn and upon their oath, predetermining in advance the outcome of the proceedings, in violation of their shielding function, also in violation of the applicant's right to double jeopardy protection and DUE PROCESS law, establishing fraud on the court and modern day slavery. State v Lewis supra; State v Eagler supra; Moore v Dempsey supra; The

Amistad supra; State v Beachum, 288 SC 325, 324 SE2d 597 (1986).

The Gentry Court misinterpreting its citings are in error in their determination of this matter in acts of fraud on the court. What gives the court in "[c]riminal" cases and or proceedings the "[a]bility" to hear and determine cases of "[t]his" general class to which the proceedings in question belong, and allow it to exert and or invoke and or continue its subject matter jurisdictionary "[p]owers" in these type of cases, placing these "[p]owers" in operation is "an indictment";

S.C.R.C.P. Rule 3c Provides:

"Disposition on arrest warrant(s): The solicitor shall take action on the warrant(s) within (90) days by preparing "an indictment" for presentment to the Grand Jury". In turn said indictment is to be passed on to the trial court to allow it to accept and or invoke and or continue its "powers" of subject matter jurisdiction, Sharpe v Johnson, 107 F3d 282 (foot notes) (5th Cir 1997); Santos v State, 843 SW2d 953, 956 (Texas App 1992); Studer v. State, 799 SW2d 263 (Texas App 1990); Williams v Morris, 320 SC 196, 464 SE2d 97 (1995).

The indictment is also the legal

document that confirms the "criminal" courts "power" and or "capability" to hear the particular case, by stating and documenting the class of case, or alleged offense, and the statute of the offense charged, stating the offense in the language of the statute, further validating that the matter(s) reside in the proper court of jurisdiction to hear and determine the matter. These undisputable facts make the indictment more than merely a "notice document". It is the vehicle in "criminal" cases and or proceedings which invest the "criminal"

court the right to act, and or confirms that right to act, thereby making them inter-linked, inter-locked, and inter-dependent upon the viability of each other. To determine that without the indictment(s), it does "not" "[a]ffect" and or "[h]inder" a "[c]riminal" court's "[p]ower" and or "[a]bility" to hear and determine cases of "[t]his" general class to which the proceedings in question belong, is an error of law, and is like stating that not having a soul, consciousness, or lifeforce, do "not" "[a]ffect" and or "[h]inder" a man's "[p]ower" or "[a]bility" to be a man.

Without a soul or a life-force, by the laws of reason you will still have a "man," but the total truth of the matter is that you will have a "[d]eadman", whose worth to society is useless; the same way the "[c]riminal" court's "[p]ower" and or "[a]bility" to hear and determine "[t]his" particular class of case is useless without the essentially needed vehicle in the form of the indictment(s). The sufficiency of an indictment is a "[j]urisdictional [p]rerequisite" in cases of "[t]his" general class, to which the proceedings in question belong, and for which an indictment is needed and

OR REQUIRED EVEN Though the COURT does indeed have JURISDICTION, SEE Indictment Sufficiency, 70 Columb L Rev. 876, 888 (1970); United States v Abrams, 539 FSupp 378, 384 (SD NY 1982); Stirone v United States, 361 U.S. 212 (1960); Gaither v United States, 413 F2d 1061 (DC Cir 1969); also see South Carolina Constitution Art. I § 14.

The Country Court, by its misinterpreting its findings changed Federal Law maybe applicable to the state(s) by they adopting such via their own state(s) constitution(s) standing unchallenged for well over 100 years. For

The Gwentry Court by its misinterpretation of its citings, in acts of fraud on the court, to view the two concepts of subject matter jurisdiction and the sufficiency of an indictment as being combined, when federal law adopted by their own state(s) constitution(s), dictate that the sufficiency of an indictment is a "jurisdictional prerequisite" to subject matter jurisdiction in a "criminal" court is an error of law. The Abrams, Striplie, Russell and Gaither court(s) intent should be ascertained from the plain language of these citings of law as is

in Ex Parte Bain. The language must
read in a sense which harmonizes
with its subject matter and accords
with its general purpose. Once these
precedent setting courts have made
a choice, there was no room for the
Gentry court to impose a different
judgment based upon their own mis-
guided notions. If the provisions
of law language is unambiguous and
clear, there was no need to employ
the Rules of statutory and or common
law construction, and the Gentry
court had no right to look for or
impose another meaning. Where

The language of the afore mentioned citings of law are clear and explicit, the Gentry Court "[c]annot" rewrite the provisions of law and interject matters into it which are not in the language found in Russell, Strople, Abrams and Gauthier cases, under the plain meaning Rule, it is not the Gentry Courts place to change the meaning of a clear and unambiguous provision of law. The law clearly states that the two concepts are not combined, but are "prerequisites" of one another. If both are to be viable and operate in the fullness and

purpose for which they were established and created they are not to be viewed and or separated in the manner reasoned by the Gentry Court misinterpreting the holdings made in the Cotton, Parkhurst Court(s), Bass v Isochem, 617 SE2d 369 (SC App 2005); State v Brayton, 666 SE2d 272 (SC App. 2008); State v Pittman, 647 SE2d 144 (SC 2007); Liberty Mut. Ins. v SC Second Injury Fund, 611 SE2d 297 (SC App 2005).

Further, the indictment(s) serve as a "[S]afeguard" to protect the American citizenry, all those who are held by us, and those who enter our

borders or territories, from violations of their inalienable constitutional rights. Rule 7(c) requires that the indictment(s) contain a "plain", "concise" and "definite" written statement of essential elements and/or allegations constituting the offense charged. This requirement performs three constitutionally required functions; it fulfills the 6th amendment right to be informed as to the "cause and nature" of the accusation (notice document); yet, more than this, it prevents a person from being subject to double jeopardy as required by the 5th amendment.

It also serves the 5th Amendment protection against crimes based upon evidence not presented to the Grand Jury, State v Lewis supra; State v Easler supra; United States v Silverman, 30 F2d 106, 110 (2nd Cir) listing these functions modified 439 F2d 198 (2nd Cir 1970) Cert. denied 402 U.S. 953, 91 S.Ct 1619, 29 L.Ed.2d 123 (1971). The Indictment clause of the 5th Amendment requires that the indictment(s) contain some amount of factual particularity, to ensure that the prosecution will not fill in element(s) of its case with facts other than those considered

by the Grand Jury, United States v. Abrams supra.

The judges in State v Gentry supra, United States v Cotton supra, and State v. Parkhurst supra, in their determinations appear to have "[n]ot" given "[f]ull" weight to the total requirements and purpose of SC Code Ann § 17-19-10, SC Code Ann § 19-19-20, and SC Code Ann § 17-19-30. It is for the reasons aforementioned, in relevant part, and Federal Rules of Criminal Procedure, Rule 7(c), that the requirements of the mentioned statutes are in effect,

to ensure that the indictment(s) comply with Federal and State Rules of Criminal Procedure, the US Constitution, the SC Constitution, and the laws of Due Process, which make them more than merely a "notice document".

In addition to this, the indictment(s) aid in instructing the jury of the circumstances of the crime, and the incidentals, as well as the elements of the offense, that they are to confirm, or reject the confirmation of, by the preponderance of evidence presented before them by the prosecution and

or defense in reaching a verdict. This too, makes them more than merely a "notice document" United States v. Abrams supra.; United States v. Silverman supra.. This requirement that the offense be stated *** specifying in detail each element of the crime was seen as providing assurance that both the Grand Jury understood what was necessary to establish the offense and that the jury did not engage in unanticipated extensions of the substance of the offense.

Lastly, the requirement of the indictment to limit and constrain the

"[p]owers" of subject matter jurisdiction of both the prosecution and the court, by limiting what can be presented at trial, conviction and sentencing, United States v Promise, 255 F3d 150 (4th Cir 2001); State v Guthrie, 352 SC 603, 572 SE2d 309. It is the command of the U.S. Constitution that anything to the contrary is not withstanding, (Article VI § 2 U.S. Const.).

The Applicant places forth this issue in a straight forward fashion and want to make certain that there is no misunderstanding as to the specific claim(s) and or question that is

placed before the court. The applicant is not arguing whether the criminal court has subject matter jurisdiction to hear and determine cases of "[t]his" general class to which the proceedings in question belong. The applicant concedes this fact. The applicant in this context agrees with all [3] Gentry, Cotton and Parkhurst court[s] when they determined that the criminal court does have subject matter jurisdiction to hear cases of this general class and or nature, this is not the issue. What the applicant is indisputably arguing is a

question which clearly was not answered by either the Gentry, Cotton or Parkhurst courts is this. Despite the fact that the criminal court does have subject matter jurisdiction to hear cases of "[t]his" general class to which the proceedings in question belong. Do their egregious, blatant, failure to be in compliance to said certain, essential, crucial "[j]urisdictional [p]rerequisites" and/or "[j]urisdictional [r]equisites" at various phases of, and or at the commencement of the subject matter jurisdictionary action and or process before the court?

Do the state and or courts egregious, blatant failure to be in compliance to these said certain, essential, crucial "[j]urisdictional [p]rerequisites" and or "[j]urisdictional [r]equisites" at various phases of, and or at the commencement of the subject matter jurisdictionary action and or process; do that failure halt, check, constrain, restrain, limit, arrest, or stop the continuance of the courts' subject matter jurisdictionary "[p]owers" before the court, even though the court without a doubt do indeed possess such

"[P]owers?"

This is a crucially, materially, distinctly different question related to subject matter jurisdiction that was never answered by any of the courts involved pursuant to the Guentry case. This is why judge Pieropies in the South Carolina Supreme Court refuses to be a part of the unjust acts of the SC Supreme Courts and conspiring parties handling of the Ezekiel Haynes case. Thus using the holdings made in the Guentry court would be misplaced, especially in light of the fact that it has been adjudicated under

A cloud of fraud on the court. Such a new question of law and fact is not barred from seeking relief for, does relate to subject matter jurisdiction, "[C]annot" be waived by the appellant, and the court "[S]hall [N]ot" fail to take notice.

Inasmuch, Rules of Criminal Procedure, the sufficiency of an Indictment, subject matter jurisdiction, and Due Process Law are inter-linked and or inter-locked in these matters. Yes, subject matter jurisdiction and the sufficiency of an Indictment are two distinct concepts,

but the indictment(s) in "[C]riminal" cases and/or pleadings is the vehicle upon which subject matter jurisdiction is conferred upon the "[C]riminal" court, and/or is that which enables the "[C]riminal" court the "[A]bility" and/or "[P]ower", and/or right to enact, and/or invoke, and/or continue its subject matter jurisdictionary "[P]owers". It is not so much that they are combined, the sufficiency of an Indictment is a "[J]urisdictional [P]rerequisite" in cases of "[T]his" general class to which the proceedings in question belong, and for which an indictment

is prerequisite and or required. English 101 and English 102 are two seperate and distinct English courses, but "both" make up one English program towards one single college degree. English 101 is a "prerequisite" to English 102. You "must" have and or take English 101, before you can have and or take English 102. Its a simple concept. Its not hard. You "must" have and or take a sufficient indictment, passed upon by the Grand Jury, before you can enact and or invoke and or continue the courts subject matter jurisdictionary "powers" given to a

"[C]riminal" court, even though that court do indeed possess such "powers." To view the two concepts of subject matter jurisdiction and the sufficiency of an indictment as combined, when federal law made applicable to the states through the Due Process Clause and or South Carolina, New Jersey Kentucky or other relevant (50) states constitutions, dictate that one is a "prerequisite" of the other, is an error of law and fraud on the court. Even if you seperate the two concepts aforementioned from one another, the "effect" and or "[o]utcome"

on the trial court's "[p]ower" of subject matter jurisdiction are the same. Due to the deficiency in the "[j]urisdictional [p]rerequisite" pursuant to the presentment of the fatally defective indictments, it "[n]ullifies" the subject matter jurisdictionary action even though the "[c]riminal" court do indeed possess such "[p]ower". They are distinct from one another the same way the inner-makings are distinct from the bread of a "sandwich", but "[b]oth" make the "sandwich". They are distinct from one another the same way a man's soul is distinct from his

body, but "both" make the appe-
The "criminal" court [redacted] can have
subject matter jurisdiction all day long,
but without the indictment(s), when
indictments are needed and/or re-
quired in this instance, that "power"
is useless. The lack thereof do
"affect" and/or "the order" that "power"
and/or "ability" to hear and deter-
mine cases of "this" general class
to which the proceedings in question
belong. To determine otherwise is
an egregious error of law and an
act of fraud on the court and con-

spirally to reestablish modern day slavery in violation of 18 USC §§ 241, 242. In comparison, you can have two pieces of bread all day long, but without the inner-makings you will never have a "sandwich". Being a "notice document" is only one of the numerous purposes and functions that the indictment serves. These numerous purposes and functions cannot be viewed and or work seperately and independently of each other without affecting the "TRUE" nature and purpose for which the indictment

was created. To do so is an error of law, see Herman Wilkins v. State, memo no. 2000 MO-078 Daniel J. Piper Judge.

Inasmuch, what the Honorable Courts in Gentry, Cotton and Parkhurst failed to see, is that the "confusion" that the Gentry court spoke of is "not" coming from the mixing of the two concepts of subject matter Jurisdiction and the sufficiency of an Indictment together. The "confusion" that the Gentry court spoke of, is coming from our modern day courts

And system of jurisprudence losing vision and insight of that which is laid and set before us by our constitutional forefathers in the establishing of our judicial system, that by all jurisprudence was not meant to be tampered with. That being a system of checks and balances, within a system of checks and balances. You have issues of subject matter jurisdiction, Rules of Criminal Procedure, sufficiency of an Indictment issues, and issues of Due Process Law pertaining to the Us Constitution, [redacted]

as well as the South Carolina, New Jersey, Kentucky Constitutions, and other relevant (50) states constitutions, overlapping each other and checking each other, balancing each other, as a "safeguard" to ensure that the U.S. citizen, those who are held by us, and those who enter our borders or territories, inalienable rights to a fair and impartial trial and are preserved. Our Constitutional forefathers purposely meant and designed for them to be viewed as a whole unit, intertwined

and inseperable though independent to themselves as an integral part of the overall judicial machine, so that if one part fails, the other parts pick up and kick in. Thus, remaining true to the very nature of [l]egal "system". A system is comprised of various components, nevertheless, it is still to be considered as one. As the applicant mentioned in one of the previous issues. Our constitutional forefathers in their wisdom and jurisprudence set up "[b]ulwarks", "[b]arriers" of protection forth rightly established to protect the American Citizenry, those

who are held by us, and those who enter our borders or territories, from unjust prosecution, that outside of an individual committing acts of treason were "not" meant to be torn down. These are those sacred "[b]ul warks", "b]arriers" of protection. To view them as seperate and independent in the manner viewed by the Guentay court(s), as they relate to each other, goes against the rightly established patterns and design of our judicial system, is fraud on the court, an act of establishing modern day slavery, and is an error

of law. It is a form of treason. It is the very epitome of betrayal to our Constitution, and sets itself at war and enmity to the substantial rights of the Commonwealth, and seeks to eradicate the very core integrity of the rights, immunities, and privileges of all citizens, those who are held by us, and those who enter our borders or territories, our constitutional forefathers have died and sacrificed their best blood to establish and preserve. These sacred "bulwarks" aid to ensure that "Lady Justice" remains blind-

folated, and the defendants inali-
enable rights to a fair and impartial
trial and or plea hearing remain secure
and are neither taken away. Such action
produces fraud on the court, modern
day slavery vitiating all convictions,
The Amistad supra; Ex Parte Virginia,
100 U.S. 339, 348-349, 25 L.Ed 676 (1880);
Pulliam v Allen, 466 U.S. 522, 536-543,
104 S.Ct 1970, 1977-1982, 80 L.Ed 2d 565
(1984); Mireles v Waco, 502 U.S. 9, 112
S.Ct 286 (U.S Cal 1991); Schmidt v Degise,
Ed Pa 1974, 376 F Supp. 664; 18 U.S.C §§ 241,
242.

Inasmuch, these very issues were at the heart of the matters that existed, in relevant part, during the time of Ex Parte Bain in 1887, and still vividly, with all certainty, exist now within our modern day courts and system of jurisprudence, and by the constitutional rights of every citizen, of those who are held by us, and those who enter our borders or territories these issues "cannot" be ignored. These issues secured and protected by the rulings made in Ex Parte Bain in 1887, as well

As mmply other such holdings in other similar cases, still apply today and are protected by the U.S Constitution and the laws of the United States. These concepts are designed to overlap in these matters to ensure a more true court of jurispru-dence to its citizens, those who are held by us, and those who enter our borders or territories, for the sake of justice and fairness.

In Regard to State v Gentry supra, we are dealing with a "State law", in such a way designed, crafted, drafted, initiated, and set into place, that is

egregiously contrary to the U.S. Constitution's inherent, intrinsic, and explicit presuppositions that by its very nature is intense espionage and diabolical sabotage, and stands in defiance to the rights of the commonwealth, in violation of DUE PROCESS law, establishing fraud on the court, modern day slavery behind a class based discriminatory animus in the form of racial hatred because it disproportionately affects the African Americans of this state and nation. It creates the similarities seen in trials and/or plea hearings that manifested them-

seizures during the Nazi occupation, the English Inquisition of 1518, the Spanish Inquisition of 1478, the Salem witch Trials of the 17th Century, the trials and or hearings prior and during the Civil Rights Era, and the like; where trials and or plea hearings became an arbitrary action, a mere hollow and deceptive formality and or mechanism, utilized to snatch from the commonwealth their inalienable rights, and Rob them of their God given liberty.

Inasmuch, the issues here go

far beyond that of dealing with indictment defects, which are to be quashed by motion before a jury is sworn, or acknowledged, and or objected to before a guilty plea is given. The matters here in crucial part, do not have to necessarily be preserved for appellate review by a timely objection, but only plead to be considered as a matter brought, conducted and presented before the court in some fashion. The government "must" "always" be held accountable to judiciary for a mans imprisonment, and the re-

strainits on liberty if the imprisonment does not conform to the basic requirements of due process law. For the sake of justice and judicial fairness, the Applicant should not be penalized and made to suffer an onerous conviction, because hired counsel, and/or counsel that the state appointed to represent him, was so inept and constitutionally ineffective, and/or conspired under color of state law with the prosecution to cause irreparable harm to his proceedings, that he or she could not even see, or refused to see the overwhelmingly obvious due-

facts in an indictment presented before the court. Thereupon, the applicant, who later after conviction, previously having no knowledge of law, and little to no access to legal Books or materials before his trial and or plea hearing, later discovers these "[p]lain", "[c]lear", "[e]gregious", subject matter jurisdiction and Due Process issues should not in all fairness be barred from calling these matters to the attention of the courts in order to seek relief, Shelton v. Cicchone supra.; Ewitts v Lucy supra; Gray supra; Powell v Alabama supra;

United States v Promise supra..

Conclusion:

Insomuch, there were no holdings made in the Country court(s) that would justify and or serve to detach from the indictment(s) the 4th, 5th, 6th, 13th, 14th and 15th Amendment issues aforementioned in this document made applicable to the states by they adopting such via their states Constitutions and or the Supremacy Clause of the U.S Constitution. Likewise, there were no holdings made in the Country Court that would justify and or

serve to detach from the indictment(s) the due process issues aforementioned in this document. Even if you would view the two concepts of subject matter jurisdiction and the sufficiency of an indictment as being seperate and distinct. With the sufficiency of an indictment being a "[j]urisdictional [p]rerequisite" to subject matter jurisdiction, not combined, in cases of "[a]his" general class, to which the proceedings in question belong, and for which an indictment is pleaded and or required; the "[a]ffect" and or "[o]utcome" on the trial courts subject

matter jurisdictionary "powers" is the same. The result is, due to the presentment of the "fatally variant" indictment(s), it "prohibits" the trial court and or "criminal" court from enacting and or invoking and or continuing its subject matter jurisdictionary "powers" in accordance to Rules of Court, Rules of Procedure, and Due Process Law, even though they do indeed possess such "power". Therefore, such action enacted subsequent to the presentment of the "fatally variant" indictment(s) is "nullified", and or is to be rendered "void". Since

the applicant did not waive his right to double jeopardy protection, by these unjust arbitrary actions, to include the overwhelming amount of prejudice and DUE PROCESS Rights violations the applicant was subject to, with the Grand Jury being duly sworn, illegally taking upon themselves the Role of the trial jury upon their oath adjudicating guilt of the offense(s), to include the "mens rea" elements etc, the sentence and conviction must be vacated.

Insofar, the Gwinnett County Court reasoned, if a defendant does not object to an issue, he, by his failure to

object, forfeit that right of law. First we have fraud on the court which cannot be waived. There is no statute of limitations on fraud. Also by their acts they intended to establish modern day slavery. Congress confers upon no state or court the power to establish slavery of any kind. This voids the courts of all jurisdiction from the proceedings' onset. These issues can be raised at any time. Also Indictment defects that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant. We are also dealing with manifest constitutional errors

which can be reviewed by a court of appeals even if the applicant did not object at the proceedings. The applicant is also seeking and or motioning for judicial notice and is also arguing a materially, distinctly, different question of law and fact related to subject matter jurisdiction that was never addressed and or answered by the County court and its rulings, which can be raised at "any" time, "cannot" be waived by the defendant, and the court "shall not" fail to take notice.

Nevertheless, no procedural Rule is more familiar to the court,

than that a constitutional right may be forfeited in criminal as well as in civil proceedings, by failure to make a timely assertion of that right before a tribunal having jurisdiction to hear and determine it. Nonetheless, the court's ability and or authority to correct forfeited errors is guaranteed by Rules of Criminal Procedure, Rule 52 (b) applicable in Habeas Corpus and these proceedings, which provide that "plain" errors affecting substantial rights may be noticed although they were not brought to the attention of the court, especially since these

errors affect the "[f]airness", "[i]n-tegrity" and "public reputation" of judicial proceedings producing an egre-gious miscarriage of justice which "[m]ust [n]ot" be allowed. Pursuant to Rule 52(b) correcting these errors do not depend on guilt or innocence, and the Rule tempers the blow of the rigid application of the contempo-raneous-objection requirement. The issues of coverup here involve the deprivation of constitutional rights so basic and so fundamental that in its absence no criminal proceeding can be deemed reliable as a vehicle for

The determination of guilt or innocence and no criminal punishment can be regarded as fundamentally fair, because they affect the framework of the proceedings and cannot be deemed as harmless, United States v Wheeler, 322 F3d 823 (5th Cir 2003); United States v Promise supra; United States v Olano, 507 U.S. 725, 731-732, 113 S Ct 1770, 123 L Ed 2d 508 (1993) interpreting Rule 52(b); United States v Young, 470 U.S. 1, 15, 105 S Ct 1038, 84 L Ed 2d 1 (1985); Johnson v United States, 520 U.S. 461, 466-67, 117 S Ct 1544, 137 L Ed 2d 718 (1997); United States v Cedeville, 89 F3d 184, 185 (4th Cir 1996); Robinson v

Arrington supra; Virgines v United States supra;

Wherefore, due to the numerous constitutional and DUE PROCESS violations of the applicants substantial rights, fraud on the court, conspiracy to establish modern day slavery, the blatant disregard for clearly established state and federal Law, and the overwhelming amount of prejudice the applicant experienced related thereto, the applicants motions and seeks to quash the indictments and OR REVERSE and OR ARREST the judgment, and OR VACATE the sen-

Fernice and conviction due to fraud and other issues argued pursuant to Federal Rules of Procedure Rule 52(b) or any other relevant provisions of law cited within this document. The Applicant moves for an order to be issued to expunge his record, return all fees paid out, to remove his name and DNA from any derogatory files, Baker v United States, CA Ill 1969, 401 F2d 618; Baughman v United States, DC Minn 1969, 301 FSupp. 509; Screws v United States, 325 U.S. 94, 65 SCt 1031 (1945); The Amistad supra; Moore

V DEMPSEY SUPRA.

The petitioners Crawford, Sutcliffe, And Cook petition to have this case Removed to the New Jersey District Court Under case 3:14-cv-03266-MAS-DEA And to the Kentucky District Court as A back up to case 3:14-cv-445-CRS. We give all parties notice that Ryan Rivers is now A plaintiff in case 2013-cv-400-2294 by sanctions sought. This must be permitted because is name is already before the New Jersey District Court

And New Jersey Superior Court as a party.

Respectfully,

Dominic Gallman

Ryan Rivers

Anthony Cook

Frederick Howell

August 6, 2014

John E Sutcliffe

Jahjah al Mahdi

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Ryan's Ryche Rivers, 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.

Ryan's Rivers

SWORN to and subscribed before me this 1st

day of August, 2014

Lucrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

RICHLAND COUNTY FILED
2014 DEC -8 PM 1:38
JEANETTE W. McBRIDE C.C.P. & G.S.

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

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

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Ryan's Rivers
Applicant

SWORN or affirmed to and subscribed before me this

1st day of August, 2014

Lucrean Bryant
Notary Public

My Commission Expires May 26, 2020

Ryan Rivers
#356951 WA-110
Lieber CI PO Box 205
Ridgeville, SC 29472

RE: filing and initiating a PCR action.

Dear Richland Clerk,

The attached document(s) is being sent to you for the purpose of filing a PCR action. Can you please file it, assign a case number and then return to me

A clocked stamped filed copy of the document as expeditiously as your time permits? I thank you in advance

Respectfully,

R. Luis Rivera

December 4, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Ryais Ryche Rivers, #356951, Applicant, v. State of South Carolina, Respondent.	2014-CP-40-7536 **RETURN**

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed December 8, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the March 2013 term of the Court of General Sessions for Richland County for two counts of Armed Robbery (2013-GS-40-1520; -1526) and three counts of kidnapping (2013-GS-40-1521; -1522; -1524). Applicant was represented by Kris Hines, Esq. Applicant appeared before the Honorable DeAndrea G. Benjamin on September 5, 2013, and pleaded guilty as indicted. Pursuant to negotiations, Judge Benjamin sentenced Applicant to concurrent terms of twenty (20) years' imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed the appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. State v. Rivers, No. 2013-001923 (S.C. Ct. App. filed February 26, 2014). The Remittitur was issued on March 19, 2014.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's guilty plea hearing, Applicant's records for the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. "4th, 5th, 6th, 13th, 14th, and 15th, Amendment Violations"
2. "Due Process Violation"
3. "Ineffective Assistance of Counsel"
4. "Subject Matter Jurisdiction"
5. "Fraud of the Court"

III.

Applicant alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must specifically set forth the grounds upon which the application is based. Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-

Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

IV.

Respondent Interprets Applicant's third and fifth claim as allegations of ineffective assistance of trial counsel. Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

V.

Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63

(1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

VI.

Respondent submits that the Applicant's allegation that the court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 321 S.C. 75, 472 S.E.2d 38 (Ct. App. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. Respondent moves for summary dismissal pursuant to South Carolina Code Ann.

§17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

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

IX.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

(signatures on following page)

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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June 5th, 2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND RYAIS RYCHE RIVERS, #356951 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2014-CP-40-7536 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

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

DATED this 5th day of June, 2015.

Sara B. Moore

Sara B. Moore, Legal Assistant
For Respondent

State of South Carolina)
)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2014-CP-40-7536

Ryais Ryche Rivers,

Applicant,

vs.

State of South Carolina,

Respondent.

Transcript of Record

February 5, 2016
Columbia, South Carolina

B E F O R E:

The Honorable J. Durham Cole, Judge

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

Jonathan D. Waller, Esquire
Attorney for the Applicant

J. Clayton Mitchell, III, Esquire,
Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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No Exhibits Introduced.

MR. MITCHELL: Judge, may it please the court? This is *Ryais Rivers vs. State of South Carolina*, 2014-CP-40-7536. He was indicted in March of 2013 with two counts of armed robbery, three counts of kidnapping. Was represented by Ms. Kris Hines. Pled before Judge Benjamin in September of 2013 as indicted. Pursuant to negotiations, he was sentenced to concurrent terms of twenty years' imprisonment.

There was an appeal filed; the Court of Appeals dismissed that. He filed this application timely December 2014. I'd note that he's here for the record and represented by Jonathan Waller, and I'll turn it over to him.

THE COURT: All right, Mr. Waller.

MR. WALLER: Thank you, Your Honor. Mr. Rivers had initially filed quite a lengthy application. We are proceeding forward on claim of ineffective assistance of counsel, multiple instances of that that's ultimately led to his plea being involuntarily and unintelligently made. At this time, I would call Ryais Rivers.

THE COURT: State your name, please.

WITNESS: Ryais Rivers.

THE COURT: What's your middle name?

WITNESS: Ryche, Ryais Ryche Rivers.

RYAIS R. RIVERS, BEING DULY SWORN,

TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION BY MR. WALLER:

Q. Good morning, Mr. Rivers. How are you this morning?

A. Good.

Q. Mr. Rivers, I want to, if I can, jump right into your case. How did Ms. Hines come to represent you on your charges?

A. She was appointed by state.

Q. Okay. Was she with the public defender's office?

A. Yes, sir.

Q. Okay, and you had five charges. Is that correct?

A. Yes, sir.

Q. Okay. When was the first time after you were arrested that you met with Ms. Hines?

A. I can't really recall.

Q. Okay. Do you know approximately how long it was?

A. Probably, like, four or five months.

Q. Okay. Did you have any other attorneys before Ms. Hines?

A. No.

Q. Okay. Did you have any other attorneys on these charges?

A. No.

Q. At any point? Okay. When you and Ms. Hines first met, what did y'all talk about?

A. Basically whether -- she was asking me whether, whether I wanted to plea or not.

Q. Okay. Did y'all talk about your constitutional rights?

A. No.

Q. Okay. Did, did you -- had you seen any discovery at that point?

A. No.

Q. Okay. When did you first see any discovery?

A. I want to say May, May or something like that.

Q. Okay, and about how long was that before you ended up pleading guilty?

A. Like four or five months before.

Q. Okay. Did you have an opportunity to view the video, surveillance video in this case?

A. No.

Q. Okay. Did y'all talk about the video?

A. No.

Q. Okay. When did you -- did you know there was a video?

A. Yeah.

Q. And when did you find out there was a video?

A. Well, I, I, I did view the video, but I viewed it with the detective. The detective showed me the video once.

Q. Okay, a law-enforcement detective or, like, a private investigator?

A. The law enforcement.
Q. Okay. Was that before Ms. Hines was representing you?
A. Yeah, before.
Q. Okay. You had an additional charge in another county. Is that right?
A. Yeah.
Q. Okay, and Ms. Hines did not represent you on that charge?
A. No.
Q. Okay. You were charged with multiple counts of armed robbery, multiple counts of kidnapping. Is that right?
A. Yeah.
Q. Okay. What did you and Ms. Hines discuss about the elements of each of those crimes and what the state would have to prove to prove you guilty of those?
A. We really, we really didn't state, like, what the state had to prove. She was just, like, telling me what they carry and how much time I could receive.
Q. Okay. Did you understand what the state would have to prove?
A. No.
Q. Okay. What was your understanding of the evidence the state had against you?
A. From my understanding, they had a video and a weapon. That's it.

Q. Okay.
A. Oh, and, and some statements.
Q. Okay, and you never gave a statement. Is that right?
A. No.
Q. You have a codefendant who gave a statement?
A. Yeah.
Q. Did y'all -- did you have an opportunity to view your codefendant's statement?
A. Yeah.
Q. Okay. Did y'all talk about that statement?
A. A little bit.
Q. Okay, and a search warrant was done in this case. Is that right?
A. Yeah.
Q. Okay, and you've got some issues with how that search warrant was done. Is that right?
A. Yeah.
Q. Okay. What, what do you think was done wrong with the search warrant?
A. Basically I, I, I think they, from my belief, I think they went -- they searched the -- my apartment before they got the search warrant.
Q. Okay. What makes you think, what makes you think that?
A. Just by reading, reading my paperwork, the, the

initial summary of, you know, what, what, what he did. It states that he was present during the commission of the search warrant. And on the follow-up summary it states that he obtained the search warrant and had other officers execute the search warrant.

Q. And that's the investigator on your case?

A. Yeah.

Q. Okay, and that was in his incident report or summary?

A. Yeah, and in the initial summary and then the follow-up summary.

Q. Okay, and that was information that was provided in your Rule 5?

A. Yeah.

Q. Okay. Did you bring that up with Ms. Hines?

A. No, because I didn't see it until after ---

Q. Okay.

A. --- I got to SCDC.

Q. Okay, and did y'all discuss the search warrant?

A. No.

Q. Okay. The search warrant never came up?

A. No.

Q. Did you know a search warrant had been done?

A. I mean, yes, processed, yeah.

Q. Okay, and you were, you were in the county detention center from the time you were arrested to the time you pled

guilty. Is that right?
A. Yeah.
Q. You never made bond?
A. No.
Q. Okay. Did you and Ms. Hines ever discuss your right to a jury trial?
A. Yeah.
Q. Okay. What, what did y'all, what did y'all talk about?
A. I mean, she basically, she told me -- she was basically, like, I don't think it's a good idea to go to trial. She told me I had a right to go to trial, but she was, like, I don't think it's a good idea to go to trial.
Q. Okay. Did y'all talk about what -- what did you -- what was your response to that?
A. I wanted to go to trial.
Q. Okay. Did y'all talk about what would happen? Like the procedures of actually going to trial?
A. No.
Q. Okay. When did you tell her that you wanted to go to trial?
A. She came to see me a few days before, a few days before, before I got sentenced, before I went to court.
Q. Okay, and at that point, do you know if you were scheduled to go to trial?

A. No.
Q. Okay. Did you, did y'all ever talk about a date for the trial to take place?
A. No. We -- she, she came to me and asked me if I wanted to take a plea, and I told her I don't, I don't know. I was undecided. So, she was, like, all right. Well, it's a court date set for such and such date. I can't remember the exact date or whenever, but she told me when the court date was set. So, when I got down to the holding tank, she pulled me out and came to talk to me, whatever, asked me if I want to sign the plea and I was, like, no. I want to go to trial, and then she was, like, oh. Well, if you choose to go to trial, then we're going to trial next week.
Q. Okay. So, it was a week from when you pled guilty was when you were scheduled to go to trial?
A. Yeah.
Q. Okay. Had y'all discussed any preparations to get ready for trial?
A. No.
Q. Okay, and again I want to talk a little bit about the search warrant again. It was your apartment that was searched. Is that right?
A. Yeah.
Q. And you and your codefendant lived together?

A. Yeah.
Q. Okay, and you and Ms. Hines never discussed how the search warrant was obtained?
A. No.
Q. Okay. Did you ever ask Ms. Hines about the circumstances around the search warrant?
A. No.
Q. Okay. Did you, did you know what to ask her about?
A. No.
Q. Okay. Did you ask her about watching the video?
A. No.
Q. Okay. Did you -- when you pled guilty, the sentence was a negotiated, concurrent time. The solicitor's office had not asked for a specific amount of time at the negotiations. Did you understand what negotiated meant?
A. No.
Q. Did y'all talk about that beforehand?
A. No. She was just, like, all right, well, take the plea and everything will be concurrent. I didn't understand if that was negotiated or not. I didn't know whether she spoke to the, you know, solicitor, whatever, and they negotiated that.
Q. Okay. When you ultimately made the decision to plead guilty, who, who was there when you made that decision?
A. Me, Kris Hines, the public defender from Orangeburg

Breen Stevens, and Kris Hines's boss.

Q. Okay. Why, why were the other two people there?

A. Breen Stevens was trying to see if I was going to plea to the charge from Orangeburg and get all that knocked out the same day, out at the same time. I don't know why her boss was there.

Q. Okay, and based on -- did, did Breen Stevens or her boss have any conversations with you?

A. Her boss did.

Q. Okay. What did her boss tell you?

A. He basically told me, like, if you go to trial, there's no winning this. You know the right thing to do basically.

Q. Okay. Had you met him before?

A. No.

Q. Okay. Do you know why he was in the room with you then?

A. No.

Q. Okay. Did you know who he was at the time?

A. No. He was introduced as her boss.

Q. Okay. Did they ever talk about was he going to help her if they went to trial?

A. No.

Q. Okay. When she told you that the trial was scheduled for the week after, did that concern you?

A. Yeah. We didn't have, we, we didn't have no trial strategy, nothing.

Q. Okay. What -- had y'all met -- how many times did y'all meet totally, you think?

A. Three.

Q. Okay. At any of these meetings, did y'all talk about getting prepared for trial?

A. No.

Q. Did y'all talk about an investigator at all?

A. No.

Q. Okay. Do you think that y'all might could have used an investigator?

A. Yeah, definitely.

Q. Okay. Why do you, why do you think that?

A. Because he -- I, I, I feel like the investigator would have, you know, he would -- I feel like he would have investigated the, the whole search warrant and went through the case, chopped it up and broke it down to bits and pieces and investigated certain things that he felt needed to be investigated.

Q. Okay. There was some, some key evidence that was found in that search warrant.

A. Yeah.

Q. Is that right? Okay. When you pled guilty, the judge asked you if anybody had pressured you or threatened you to

plead guilty, and you said that, that they hadn't. Was that, was that true?

A. No.

Q. Okay. How were you feeling that day when you decided to plead guilty?

A. I mean, apparently it's going to be pressure because you going -- you -- this, this basically your life on the line, so -- and I wanted to trust, I wanted to trust in my counsel, you feeling me? So, I felt like she had everything under wraps. So, I just, you know, went, went with the flow.

Q. Okay, and did the thought of going to trial the next, the next week, did that, did that influence your decision at all?

A. Yeah, deeply.

Q. Okay. Is that why you pled guilty?

A. Yeah.

Q. Okay. If your attorney has been prepared to go to trial the next week, would that have changed your opinion?

A. Yeah. I would have went to trial.

Q. Okay, you would have gone to trial?

A. Yeah. The whole, the whole thing was to get me to plea before my codefendant pled guilty so that -- so, so, so, so the judge would probably be more lenient on me.

Q. Okay, and your codefendant pled the same day ---

A. The same day.
Q. --- at the same hearing?
A. Yeah.
Q. You and Ms. Hines never talked about the search warrant?
A. No.
Q. You never saw the video with her?
A. No.
Q. You never talked about your codefendant's statement?
A. Yeah. We, we -- she did read his statement to me.
Q. Okay, and you didn't feel that she was ready to go to trial the next week?
A. No.
Q. Okay. If all those things had taken place, would you have still pled guilty?
A. No. I'd have went to trial.
Q. Okay. Mr. Rivers, I've asked all the questions that I have. Is there anything you think I've left out or neglected to ask you that you think the court should know? Only about Ms. Hines's representation.
A. No.
Q. Okay.
MR. WALLER: Please answer any questions Mr. Mitchell has.
CROSS-EXAMINATION BY MR. MITCHELL:

Q. All right, good morning, Mr. Rivers.
A. Good morning.
Q. Let's see, you were facing five counts of kidnapping, three counts of armed robbery. Is that right?
A. No.
Q. No?
A. Two counts armed robbery, three counts kidnapping.
Q. That's what you pled to. Wasn't it more than that?
A. No.
Q. That was it? Okay. So, you've already admitted that you lied to Judge Benjamin. Is that right?
A. Yeah.
Q. So, you lied to her about being pressured in the plea?
A. Yeah.
Q. So, now it's your testimony that you were pressured because you thought you had a trial coming up the next week?
A. Yeah. That's what I was told.
Q. Okay. So, you decided not to go to trial and you decided to plead guilty, right?
A. Yeah.
Q. Because you wanted to avoid the risk of going to trial, right?
A. No. Because I was trusting my attorney.
Q. Okay, but like you testified, you wanted to plead

guilty to avoid the risk of more time, right, being convicted at trial. Is that fair to say?

A. No, it's not, because I was adamant about going to trial until all this stuff came up about her and her boss coming to speak with me.

Q. Okay. So, you never said anything at the plea, though?

A. Huh?

Q. You never said anything at the plea about any of this?

A. Yeah. I did.

Q. Okay, and your codefendant, Mr. Phillips, gave a confession. Is that right?

A. Yeah.

Q. And that was the statement you were talking about?

A. Yeah.

Q. And in that statement, he implicated you, right?

A. Yeah.

Q. He said that you were in on it?

A. Yeah.

Q. Okay. Now, you testified you never talked about the video, but you saw the video or never saw ---

A. With the, with the investigator.

Q. --- the video? What's that?

A. Investigator showed me a video.

Q. So, you had seen the video?

A. Yes.
Q. So, you never talked about it? She just showed it to you and that was it?
A. Who?
Q. Ms. Hines.
A. No. Ms. Hines never showed me the video.
Q. Just the investigator showed it to you?
A. Yeah.
Q. I got you. I got you. So, you admitted to being on that video, too, right?
A. No. When?
Q. At the plea. You admitted to being on the video, right?
A. If, if you want to say that.
Q. Okay. Well, the record reflects that, will reflect your answer. Let's talk about the negotiations. You knew going in this was going to be a concurrent sentence, right?
A. Yeah.
Q. So, you knew it wasn't going to be, like, thirty plus thirty, right? It was just give you thirty on all of them or twenty on all of them, right?
A. Yeah.
Q. Okay.
A. But I was, I was, I was told, well, I'm going to push for ten. Nine times out of ten, you're going to get ten

years, okay?
Q. What's that? I can't hear you.
A. I was told by Ms. Hines that, well, nine -- oh, well, nine times out of ten you're going to get ten years, so.
Q. Okay, and Ms. Hines asked Judge Benjamin for ten years. Do you recall that?
A. Yeah.
Q. And the state was asking for thirty, right?
A. I ain't sure what the state asking for.
Q. Okay, but you got twenty, right?
A. Yeah.
Q. You had issues with the search warrant, you said. So, y'all never talked about whether the search warrant was proper?
A. Yeah.
Q. Did you talk about that with Ms. Hines?
A. No.
Q. Okay. So, y'all never talked about that?
A. No.
Q. Okay, and from that warrant, they were able to recover a lot of the items that were stolen, right, in your apartment?
A. Allegedly.
Q. Okay. There were some Facebook pictures of you with guns and whatnot the state was looking at. Is that right?

A. Yeah.
Q. So, Ms. Hines advised you to plead guilty. Is that right or?
A. Yeah.
Q. So, how did those discussions go? Y'all, y'all talked about would be best for you, and she said she thought pleading guilty would be best?
A. Yeah.
Q. Because the evidence she thought maybe was strong?
A. Yeah.
MR. MITCHELL: All right, no further questions. Thank you.
REDIRECT EXAMINATION BY MR. WALLER:
Q. Just briefly, Mr. Rivers, if you had told Judge Benjamin that you were threatened and pressured to plead guilty, do you think that she would have accepted your plea that day?
A. No.
Q. Okay. How about if you told her that it wasn't you on that video? You think she would have accepted your plea?
A. No.
Q. Okay, and your attorney, you felt that your attorney was not prepared for the trial the next week?
A. Yeah.

Q. Okay. So, did you feel that you had to agree with the judge's questions in order to be able to get the matter resolved?

A. Yeah. I didn't want to, you know, irritate the judge or nothing.

Q. Okay.

MR. WALLER: No further questions.

THE COURT: Let me clarify on thing. Mr. Waller, you just asked if he had told the judge that that wasn't him on the video, does he think she would have taken the plea. He said no. So, you've read his transcript. The video apparently was shown in court to, to the applicant.

MR. WALLER: Yes, sir, Your Honor.

THE COURT: And he was asked if that was him on the video by the judge.

MR. WALLER: Yes, sir, Your Honor.

THE COURT: And he said yes, it was.

MR. WALLER: Yes, sir.

THE COURT: Well, I'm not sure I'm understanding what his testimony is.

MR. WALLER: Your Honor, my understanding is his testimony was that he felt pressured and had felt the need to answer the judge's questions in a way that would get the plea done.

THE COURT: Oh, I see. Well, let me clarify that.

EXAMINATION BY THE COURT:

Q. Mr. Rivers, you've heard me -- my questions I asked your lawyer, Mr. Waller. Have you reviewed the plea transcript?

A. No, sir.

Q. You haven't?

THE COURT: Would you be kind enough to show him that portion?

MR. WALLER: Your Honor, I don't have a ---

THE COURT: Okay. I've got one.

MR. WALLER: --- hardcopy.

THE COURT: I got one. You got it?

MR. MITCHELL: Yes, sir, Your Honor.

THE COURT: It's...

MR. MITCHELL: Page 11.

THE COURT: Is that the video reference?

Yeah.

BY THE COURT:

Q. Mr. Rivers, you got your transcript there?

A. Yes, sir.

Q. You on page 11?

A. Yeah.

Q. You see on line 8?

A. Yeah.

Q. Court asked you if you agree with the facts as stated

by the solicitor. You remember what the facts were that the solicitor stated?

A. Yeah.

Q. All right. Do you remember the video being shown to the judge at the time of your guilty plea?

A. Yeah.

Q. Now, do you see on line 17?

A. Yeah.

Q. And she said: What you saw there on the video. Then you said: Yes, ma'am. She said: All right, that's you, one of those guys is you? And you said: Yes, ma'am.

A. Yes.

Q. You're saying when you said that, you were lying or you just, maybe you were just saying whatever it took to get through the plea?

A. What I'm saying is I was told to answer all the questions accordingly.

Q. You were told to answer the questions accordingly?

A. Answer, answer all the questions accordingly, simple questions, all that: yes, ma'am; no, ma'am; make sure to be respectful. Yeah, that's what I was saying.

Q. Okay. Well, why didn't you just be respectful? If your answer was no, why didn't you just say no, ma'am?

A. I didn't want to irritate the judge.

Q. Why would that irritate the judge?

A. Because she -- because everybody was ready to proceed. You're throwing a wrench in the whole program.

Q. Well, I understand, but if she asked you what your name was, you wouldn't give her a different name, would you?

A. No.

Q. Well, do you think that would irritate her if you gave her a different name?

A. Yeah.

Q. You do? Well, so you just thought that you had to say yes every time she asked you something?

A. Yeah.

Q. So, are you telling me you were instructed just to any time she asked you a question say yes?

A. No. No.

Q. Okay. Well, then why did you say yes if the answer was no?

A. Because I wanted to get everything over with.

Q. Okay.

THE COURT: Okay, anything else?

MR. WALLER: Nothing further, Your Honor.

THE COURT: Thank you. Okay, you can step down.

(THE WITNESS EXITS THE STAND.)

MR. WALLER: Nothing further from the applicant, Your Honor.

THE COURT: Okay.

MR. MITCHELL: Your Honor, the state calls Ms. Kris Hines.

LAURA KRISTINE HINES, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: Please have a seat. State your full name for the record, and please spell your last.

WITNESS: Laura Kristine Hines, H-i-n-e-s.

DIRECT EXAMINATION BY MR. MITCHELL:

Q. Good morning, Ms. Hines.

A. Good morning.

Q. Thanks for being here with us today, two days in a row.

A. Yes.

Q. Give us a bit of your background. How long have you been doing criminal defense?

A. I graduated from law school in 2004. I clerked for a federal judge for a year and a half and then went to work for Jack Swerling doing criminal defense. There was about a year and a half since then that I did administrative law. The rest of the times, other than the year and a half, since 2005 I have done criminal defense. I went to work for the Richland County Public Defender's Office in September of 2008, and I currently work at the Kershaw County Public Defender's Office.

Q. So, in, in your experience, you've handled many cases. Armed robbery, kidnapping, charges of that serious nature?

A. Yes.

Q. Okay. So, you were appointed to represent Mr. Rivers. Is that right?

A. Yes, I was.

Q. Okay. When y'all first met -- what do you typically go over with your clients and did you go over?

A. In this case, my notes indicate that I met with him for the first time on January the 2nd of 2013. My notes indicate that he was arrested on December the 19th of 2012. And at the time that I met with him in January of 2013, the main thing that I discussed -- we did not at that time discuss the specifics of the case.

And the reason for that is because at the time, the public defender's office was -- had been appointed on both him and his codefendant and actually all -- there were four codefendants in this case, and the public defenders had open files on all of them, and we had to do a conflict review. So, I told him not to discuss specifics of the case. Advised him of the conflict review and what that would mean. Basically what that meant was that three of the codefendants would be sent to other attorneys outside of the public defender's office, and Mr. Rivers's case was the one that was kept within the public defender's office.

Also, according to my handwritten notes from that day, he did advise -- I asked him about his prior record and I, I do have a note that he had a juvenile armed robbery. And then that he had a newborn son that was born twenty-four hours before he was locked up, and he had a daughter on the way.

Q. Born twenty-four hours after -- before he ---

A. Before he was ---

Q. --- he was locked up?

A. Locked up. That's what my notes indicate.

Q. So, did you meet with him more than three times?

A. I, I did. I, I can give you the dates. Actually, let me count.

(A PAUSE.)

A. My indication is that I met with him seven times.

Q. Okay. Well, in those subsequent meetings, did you get down into the facts of the case and, I guess, advising him of his -- of the charges and whatnot?

A. Yes, we did.

Q. You, did you advise him of the elements, his constitutional rights, the penalties, kind of the generic ---

A. I did. I don't -- I, I can look at my notes. I, I know that I, I, I generally -- my general practice is to advise my clients of their right to a trial and tell them

that they have a right to plea or go to trial, and that's their decision to make. As far as a detailed explanation of, of the -- you know, do you want to testify, that comes with trial prep. Detailed explanation of right to confront witnesses, cross-examine witnesses, that usually comes towards the end, you know, the -- to drill down into it, but, but I do discuss jury trial versus plea.

Q. Did you file a discovery motion in this case?

A. I did.

Q. Did you review that discovery with Mr. Rivers?

A. Yes, I did.

Q. What was contained in some of that discovery?

A. Let me get my notes from that.

(A PAUSE.)

A. Okay, there was a -- the incident report. There were a video. There were -- the codefendant was arrested in Charleston, so there were some incident reports from Charleston and a search warrant for, for the hotel room in Charleston. The codefendant's statement, then that -- the codefendant being Mr. Carrol, when I refer to him, his statement. There was also a Courtney. I'm not sure. I don't have her last name written here -- Courtney Chapelle. There was an indication that she had bought the pistol from a pawn shop. They got those records. She gave a statement, and then there was an Angel Young who gave a --

Courtney Chapelle gave a written statement, as did Phillip -- Carrol Phillips.

Q. Did these statements implicate Mr. Rivers?

A. Yes, they did. Angel Young, who was the fourth codefendant, gave a verbal statement that she was there and knew the codefendants. That was basically what my notes indicate that her verbal statement said. There were -- there was a dog track done that was unsuccessful. There were -- there was a tip that they lived -- that the suspects lived at the address that, that Mr. Rivers and Mr. Phillips lived at. There was a criminal history. There were some Facebook photos. There was the search warrant. That's basically, basically what it was.

Q. Okay. Let's talk about the search warrant. Did you see any issues with the search warrant?

A. I, I did not.

Q. Did you discuss -- did you have any discussions about the search warrant in particular?

A. Let me just look at my notes and see; I don't have any independent recollection of that. I, I know I discussed the evidence with him, and I know I discussed the fact that -- of what was found, but let me just look at -- through my notes to see if we discussed the, the, the challenge to his search warrant. I don't recall.

(A PAUSE.)

A. I don't have anything in my notes. I don't recall if I -- if we discussed specifically a challenge to the search warrant ---

Q. Okay.

A. --- or not.

Q. If you had caught any issues with the search warrant, was that something you would have challenged if the case had gone to trial?

A. Yes.

Q. So the video, did you review the video ---

A. Yes.

Q. --- with Mr. Rivers?

A. I, I don't recall if I, I, I...

Q. He testified ---

A. I probably did not. Honestly, I probably did not. I don't recall whether I did or not, but I probably did not. And the reason I say that is because it's very difficult to get a laptop into the Alvin S. Glenn Detention Center to show them. So, normally when we want to show them a video, we would have them brought over to the courthouse. And I know that he was brought up over, and I know that he -- I know that we discussed the video and that he had seen the video. I don't know if we sat down and watched it together.

Q. Right.

A. And we probably didn't just because of the logistics of, of it and, and having those -- had those discussions about it.

Q. It was his testimony he thought the investigator showed it to him, and that's ---

A. And I, I believe ---

Q. --- likely?

A. I believe that -- I, I, I, I would -- I, I do believe that, that an investigator had shown it to him and, and that he had seen it.

Q. Okay.

A. But as far as me sitting down with him and showing it to him, I, I, I don't recall and probably did not.

Q. Okay. Well, what discussions did you have about the video?

A. I, I know that when I discussed the video -- it was, it was a very clear video, more clear than most of them. Most videos you could clearly see that the -- one of the guns, and I believe it was one that the codefendant was carrying, that Mr. Phillips was carrying -- Phillip Carrol. It was very distinctive. It was a sawed-off shotgun with camouflage tape on it, and you could actually -- the video was so clear that you could actually see the camouflage on the gun, and you could see -- you know, they walked in and the one with the -- which I believe was Mr. Rivers with the

9 mm, threw a backpack over it, across the, the counter at the person behind the counter. And then the person behind the counter is seen filling it up and giving it back, and they leave. It was, it was a very -- one of the most clear videos that -- high-quality videos that I've probably seen in my career.

Q. Did the state plan to use the video to show -- to prove identity to show it was him? Did they have any stills, stills or anything like that?

A. I, I -- the, the state intended, I'm positive had it gone to trial, the state would have introduced or sought to introduce the video into evidence, not just stills but the entire video. In fact, they played it at the plea.

Q. Now, you could see the face? You could see the ---

A. Yes. There -- hold on just a second. There may have been a mask or a -- yeah. No, they were wearing masks. You couldn't see their face.

Q. Okay.

A. No, you wouldn't have been able to -- the -- according to my notes from -- that I took from upon review of it, they were masked.

Q. Okay.

A. So, identity would, would -- identity would have come from the statements of the codefendants, not the video.

Q. So, what was your advice to Mr. Rivers on whether he

should accept this plea offer?

A. My advice was that he should accept this plea offer.

Q. Okay, and why was that?

A. Because I felt like if we had gone to trial, he would've been convicted. My concern was -- and I know I discussed this with him. He had the charge out of Orangeburg. The charge out of Orangeburg, the warrants weren't served until much later because they -- we actually had to get a court order from Judge Goodstein to have those warrants served, and so he actually -- Breen Stevens, who was his lawyer in Orangeburg, just met him for the first time the week before the plea. We were both at the jail.

Mr. Stevens and I met at the jail and I introduced them and -- but my concern was that if he went to trial on this case and the Orangeburg case was out there, that he might be looking at life without parole as a strike. And Orangeburg basically had made an offer to have concurrent time to what happened in Richland. But because they're -- they moved very quickly on making the offer because the warrant wasn't served -- I have the paperwork. I can give you the date. It was very late in my representation of, of Mr. -- in fact, when I talked to, I talked to Breen Stevens on September the 3rd, and he had just received discovery in the case, which was right before, right before we did the plea.

Q. Okay. So, part of your advice was that if he does take this case to trial, that he could then be facing a LWOP case in Orangeburg?

A. Yes, and, and also I felt like -- I mean, we had -- there were -- there would have been at least the two girls and potentially the other, the male codefendant, Carrol Phillips, testifying against him if he did go to trial, and the video. I, I, I felt like it was a situation where there was a great deal of evidence against him, and it was not in his best interest to go to trial, but, but rather to try to work out something that would be concurrent and...

Q. Just handle all the charges ---

A. Handle all the charges.

Q. --- kind of in one fell swoop? Okay.

A. Yes. He would, he would have been facing 150 years at trial.

Q. And that's actually reflected in the transcript when he was going over this with Judge Benjamin, I believe.

It seems he has an issue with Mr. Strickler ---

A. Yeah.

Q. --- attending the plea.

A. Mr. Strickler did not attend the plea.

Q. Okay.

A. What happened, we -- I had -- I met with Mr. Rivers. Let me look at my notes.

Q. Who is Mr. Strickler for ---

A. Mr. Strickler is the chief public defender for the Fifth Circuit and my boss. He -- I met with -- I went to Alvin S. Glenn the day before and on September the 4th with Breen Stevens. That's when I met with him. The -- at that time, he indicated he wanted to plea. He was brought over on September the 5th for the plea and as we were discussing it, and Mr. Stevens was there, he did not want to plea. Mr. Stevens actually at some point left. The Orangeburg solicitor and public defender were here to try to do their plea concurrent. They actually left at some point. I'm not sure if -- I believe that the three of us, Mr. Stevens, Mr. Strickler, and I were all together.

I, I asked Mr. Strickler to talk with Ryais about his decision to go to trial because I felt like it was a poor decision, and when Mr. Strickler went in after Breen Stevens left, I believe it was me and Mr. Strickler and Ryais in the room for at least a portion. Mr. Stevens may have been there, but Mr. Strickler went through and asked him what kind of evidence do they have against you and had Mr. Rivers tell him what the evidence was and what evidence he thought the state would be presenting at trial. And then asked him if that -- if a jury sees that, what do you think the result is going to be, and Mr. Rivers said I think I'll be convicted, and Mr. Strickler said then why

are we here talking about trial when -- instead of a plea. And at that point, Mr. Rivers did decide to go ahead with the plea.

When Mr. Rivers -- and that was, that, that conversation took place in the jury room in the back behind the courtroom, and when we actually did the plea, I don't recall if Doug Strickler was in the courtroom. I know that he was not standing up. He didn't say anything during the plea. If he, if he was in the courtroom at all, he would have been sitting in the gallery. But that was really the purpose of him coming was he and I both wanted to make sure -- I felt that Mr. Rivers was making a mistake in trying to go -- say he wanted a trial, and we wanted to make sure that he understood what he was doing, what kind of evidence the state had against him, and he was able to, to clearly explain that to Mr. Strickler.

Q. Okay, and wrapping up, Mr. Rivers testified he was coached to say yes, coached to just kind of give answers that would move the plea along. Is that what you would normally tell clients ---

A. No.

Q. --- to do?

A. No. I, I tell my clients that when they're in front of the judge, they need to be respectful and say yes, ma'am. No, ma'am. Not roll their eyes, not give, you

know, like, yeah, no, nuh-uh. They need to be clear and say yes, ma'am. No, ma'am. Be respectful and answer the judge's questions.

Q. And be truthful, correct?

A. Yes.

MR. MITCHELL: No further questions. Please answer anything Mr. Waller has for you.

CROSS-EXAMINATION BY MR. WALLER:

Q. Ms. Hines, you testified, I believe, at the beginning of Mr. Mitchell's questions that when you first meet your client, you tell them they have a choice whether to plead guilty or go to trial. Is that ---

A. Yeah.

Q. --- right?

A. During -- now, the first time I met with Mr. Rivers, I would not have had that conversation because there was a conflict.

Q. Okay.

A. And it wouldn't have been until the conflict was resolved that I actually talk about -- because I don't know -- when I come in and I know that there's a conflict and a conflict review has to be done, I don't know if I'm going to be their lawyer or if that person is going to be sent out to a private attorney. In this case, I did continue the representation, and the other three were sent out to

private attorneys. But at the time, the first time I met with him, I didn't know and I didn't discuss case specifics. That conversation about plea or trial would have come later after the conflict had been resolved.

Q. Okay. Do you recall if you specifically had that conversation with Mr. Rivers?

A. I don't specifically recall having that conversation with Mr. Rivers. It's been a while, and there's -- I do -- my notes indicate that on September the 4th we discussed trial and plea strategy. My note says -- and this was when Mr. Stevens was there. My, my note from that day that's in the computer says I met with him, with the Orangeburg public defender Breen Stevens:

> Discussed trial/plea strategy. Defendant has no offer and is on the trial docket for next week. Has an offer from Orangeburg for concurrent time.

So, that discussion did take place at that time. I don't know if it took place -- I don't recall any of the other -- the, the previous notes that I have are not as clear.

Q. Okay, but is your standard practice to, when you first meet with clients, to, to tell them that?

A. Yes.

Q. Okay, and in this case, you said, you testified that you felt like he was making or would have made a poor

decision by going to trial?

A. Yes, I did.

Q. So, you asked Mr. Strickler to speak with him?

A. Yes.

Q. Was, was Mr. Strickler asked to speak with him to encourage him to plead guilty?

A. Yes.

Q. Okay, and how did Mr. Strickler go about encouraging him to plead guilty?

A. What Mr. Strickler did, and he didn't know -- when, when, when Mr. Strickler came into the room, he really didn't know the facts. He didn't know the -- he, he knew a basic rundown that I had given him ten minutes before, before he walked into the room and met Mr. Rivers.

He didn't -- he, he came in and he said -- he, he talked directly to Mr. Rivers and he said I want, I want to know from your mouth what the evidence is that, that, that you know about that they are going to -- that the state is going to introduce at your trial. And Mr. Rivers told him about the statements, told him about the video, told him about the, the evidence in the case. And, and each time that Mr. Rivers would tell him something, he was like -- Mr. Strickler said something to the effect of what else is there? Is there anything else that you know about, any other evidence that -- and then after they had gone through

and Mr. Rivers had told him about all of the evidence that he knew about, which I recall being all the evidence in the case, he then said -- and Mr. Strickler said to Mr. Rivers and what do you think is going to happen at a trial when a jury hears all that evidence? And Mr. Rivers said I think that I would be convicted. I think that I will be found guilty.

And Mr. Strickler said and what do you think would happen at sentencing? What do you -- what are you facing, and had Mr. Rivers tell him what he was looking at. And then he, he said given everything that we've talked about, do you think it's a good idea to do that? And Mr. Rivers said no, I don't and, and he said he would take the plea, and then we went out and took the plea.

Mr. Strickler never said I think you should plead guilty. Mr. Strickler approached it as you tell me what evidence they have. You tell me what you're facing. You tell me what you think is going to happen, and are you making a good decision based on everything you've told me.

Q. Okay. Was that a conversation you could have had with Mr. Rivers?

A. You know, honestly that is a conversation I probably could have had with Mr. Rivers, but I had never seen it approached that way. And that is a conversation that now, after having sat and watched Mr. Strickler do that, I do

that regularly with my clients now and ask them to explain to me, you tell me instead of me trying to tell them. At the time, I had never seen it approached that way, never thought of approaching it in that manner, and so that's not something I would have done with him in that way.

I would have had and I did have conversations with him where I did tell him that I, I thought it was in his best interest to plea. I don't think I, I don't think I said he would probably get ten years. I think that I said that he would get concurrent time and it would be less than if he went to trial. And I know that I -- I believe I asked for ten years, but it's ten to thirty.

But, but the way that Mr. Strickler approached it, to have the defendant, client actually bring it out and tell, that, that's not something I would have done at that point until I saw him do it, and, and I have adapted that into my, my -- the way that I represent people now.

Q. Okay. So, you and Mr. Rivers had had conversations where you, you told him you thought that the evidence was strong against him? You didn't do it the way Mr. Strickler did it, but you, you presented to him saying the evidence was strong. You thought he was making a bad decision by going to trial?

A. Yes.

Q. Okay, and he, even after those conversations, he still

wanted to go to trial?
A. Yes.
Q. Until he spoke with Mr. Strickler?
A. Yes.
Q. Okay. How close were you to actually going to trial like timeframe wise?
A. We were a week away from trial.
Q. Okay. What preparation have you done at that point to be ready for trial?
A. I had, I had a second seat, a second -- whenever in -- when I was a Richland County public defender and even to this day whenever we try cases, we, we have two attorneys, and I had a second seat, and I had discussed trial strategy. I discussed, had gone through the -- and, and looked at, you know, different -- you know, the statements, what, what kind of cross-examine I could potentially have, what we were looking at. I had gone through and done basic trial preparation.
Q. Okay. Mr. Strickler wasn't the second seat?
A. No.
Q. Okay. I believe you testified that he had kind of a basic framework of the, the information of the case. He, he didn't know everything about the case?
A. He, he didn't know. What he knew was a basic description of this client of mine is facing these charges.

It's -- solicitor is going to call it to trial next week. He's got Orangeburg charges; there's a potential LWOP in there. I think he should take the plea. He says he wants a trial. Can you talk to him, and, and, and Mr. Strickler has been a public defender since 1981. He's, he's had that conversation with several of my clients through the years and, and probably every other public defender that's gone through the Richland County Public Defender's Office. There is a time when, and when we think that they are making a poor decision and we bring in Mr. Strickler because he, he has the experience that we don't have to, to have those conversations.

Q. You testified a little bit about the video, that you had viewed the video.

A. Uh-huh.

Q. And it was clear, clear quality video.

A. Uh-huh.

Q. I believe you testified, and correct me if I'm wrong, that the person who you believe was Mr. Rivers on the video was one that threw the bag over the counter?

A. If I'm remembering correctly, and I could be wrong, but if I'm remembering correctly, I believe, I believe that the person with the revolver, with the 9 mm, was the one that threw the backpack over the counter and that the other one had the long, sawed-off shotgun camouflaged color and

kind of came in. If I'm remembering correctly, I believe that that one came in first and kind of went around. There kind was of like a counter that went this way, and so there was a section. And, and the one with the camouflage gun came in first, and then the second one to come in had the 9 mm and threw the bag, if I'm remembering correctly. It's been three years, so I could be wrong.

Q. Okay, and were you able to, when you viewed the video, were you able to see faces of the two people?

A. I don't think so.

Q. Okay. Do you have -- is that copy of the transcript, plea transcript still up there?

A. It is.

Q. Could you turn to page 11, line 23 and continuing on to the next page?

A. Yes. Okay. Yeah.

Q. Codefendant indicates to the court that he was one that, that threw the bag over of the counter.

A. Okay. Yeah.

Q. Is that ---

A. If, if that ---

Q. I know it's been some time, but does that differ from your recollection of the video?

A. Well, I guess it's been three years and, and I would have to watch the video again. If, if that's what -- I'm

just remembering. I can picture the, in my mind, the, the scene with the bag, and I could be wrong. I haven't looked at the video since 2013.

Q. Okay.

A. So, if, if he's saying that, I, I can't disagree with it.

Q. Did Mr. Rivers ever indicate to you which person he was in the video?

A. I don't recall.

Q. Okay. The issue with the search warrant, do you recall any discrepancy with the investigators' summaries?

A. I don't but -- I don't recall.

Q. Okay. Briefly, what was your understanding of the tip that came in that led investigators to having the names, the full names of the codefendant and either the first or last name of Mr. Rivers but not both? Do you, do you recall how that tip came in?

A. No, I don't recall. I would have to look back at the discovery.

Q. Okay.

A. I, I can do that if you like.

Q. Do you recall doing any investigation on how that ---

A. I ---

Q. --- that tip was ---

A. I did not do any investigation on how that tip came

in.

Q. Okay.

MR. WALLER: Beg the court's indulgence?

A. I, I, I didn't hire an investigator. I didn't.

(A PAUSE.)

MR. WALLER: No further questions.

WITNESS: Okay.

MR. MITCHELL: Nothing in redirect.

THE COURT: You may step down.

(THE WITNESS EXITS THE STAND.)

MR. MITCHELL: And no further witnesses.

THE COURT: All right, anything else?

MR. WALLER: Your Honor, just, just briefly to wrap up. Ms. Hines clearly, I believe, testified that she brought in her boss, Mr. Strickler, who did not know anything about the case to influence Mr. Rivers to plead guilty. Your Honor, we presented the court with what I think are several instances that Ms. Hines was ineffective and influenced Mr. Rivers's decision to plead guilty, and I think that that could ultimately be -- the largest one is bringing in her boss who didn't know anything about the case to influence him to plead guilty because she didn't agree with Mr. Rivers wanting to go to trial. So, I would ask the court to consider that.

MR. MITCHELL: Judge, I don't think there's anything

improper by bringing in Mr. Strickler. He's the chief public defender. And I think the testimony really was just that he reiterated exactly what Ms. Hines was saying all along and just kind of did it from a different approach.

I think that, you know, Ms. Hines felt it was definitely not in his best interest to go to trial, and that's what Mr. Strickler imparted on him, too, and I don't think that amounts to coercion. I think especially if you, you know, if you read the transcript, I don't think there's any coercion there, and I think if there was, he should have said something then. Thank you.

THE COURT: All right, I'll review the record in the case and issue an order.

MR. MITCHELL: Thank you, Your Honor.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 5TH DAY OF FEBRUARY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/*ELIZABETH B. HARRIS*, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

OCTOBER 4TH, 2017

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Ryais Ryche Rivers, #356951, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2014-CP-40-07536 **ORDER OF DISMISSAL**

RICHLAND COUNTY
FILED
2015 FEB 19 PM 4:04
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before this Court by way of an application for post-conviction relief filed December 8, 2014, by Ryais Ryche Rivers (Applicant). The State (Respondent) made its return on June 5, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 5, 2016, at the Richland County Courthouse before the Honorable J. Derham Cole. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Assistant Attorney General J. Clayton Mitchell, III, of the South Carolina Attorney General's Office, represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denied this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During its March 2013 term, the Richland County Grand Jury indicted Applicant for three counts of kidnapping (2013-GS-40-01521; -01522; 01524) and two counts of armed robbery (2013-GS-40-01520; -01526). Assistant Public Defender Kris Hines, of the Fifth Circuit Public Defender's Office, represented Applicant on these charges. On September 5, 2013, Applicant appeared before the Honorable DeAndrea G. Benjamin and pled guilty as indicted to all charges.

Pursuant to a negotiated sentence, Judge Benjamin sentenced Applicant to a term of imprisonment of twenty years for each charge. The sentences were to be served concurrently.

Applicant filed a timely notice of appeal. Thereafter, by written order dated February 26, 2014, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on March 19, 2014.

STATEMENT OF FACTS

On December 4, 2012, two males wearing masks and gloves walked into the Nancy's Nook, located on Broad River Road, with a handgun and a sawed-off shotgun. Tr. 7. As they walked into the store, the men pointed the guns at the store clerks. Tr. 7. Applicant's co-defendant, Carroll Phillips, III, told a patron in the store to: "[D]rop your fucking pocket book and back the fuck up." The patron complied, and the co-defendant took her purse and everything inside. Tr. 7. Applicant then tossed a black over the counter, and one of the clerks began filling it up. Tr. 7-8.

Deputy Shelia All, of the Richland County Sheriff's Office, was dispatched at approximately 9:51 in the evening to Nancy's Nook, located on Broad River Road. Tr. 6-7. As Deputy All approached the scene, someone flagged her down and reported seeing two black males exit the store with guns and a black bag. Tr. 7. K-9 units were, therefore, dispatched but unable to track the suspects. Tr. 7.

At that point, the case was turned over to the investigative unit. Tr. 8. Investigator Carwell later received a tip that Applicant and Phillips had robbed the Nancy's Nook with a sawed-off shotgun. Tr. 8. The tipster also informed Investigator Carwell Applicant and Phillips lived at Cross Roads Apartment complex. Tr. 8.

Investigator Carwell then confirmed with the apartment manager that Applicant and Phillips lived in apartment number [redacted]. Tr. 8. Investigator Carwell attempted to make contact with the two suspects by knocking on their door, but he was unsuccessful in making contact with them. Tr. 8-9. Investigator Carwell also searched for the two men on Facebook, where he observed photographs of Applicant and Phillips with the weapons used in these crimes. Tr. 9. Investigator Carwell obtained a search warrant and executed the warrant at their apartment. Tr. 9.

During the search, law enforcement officers found the patron's belongings, as well as clothing matching the description of the robbers. Tr. 9.

CURRENT APPLICATION

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

1. Did the trial court err, and was the [Applicant's] 5th, 6th, 13th, 14th, 15th Amendment rights of the U.S. Constitution, as well as Article IV § 2, and his due process rights violated, by the language and or charge contained therein, which did created and or form conclusive presumption(s), that took away the Applicant's presumption of innocence, and automatically shift [sic] the burden of persuasion to the [Applicant], in regard to the crucial elements of dispute?
2. Did the trial court err, and was the Applicant's 5th, 6th, 14th Amendment rights of the U.S. Constitution violated, as well as Article IV § 2 and his due process rights violated, as well as rules of court, to include rules of criminal procedure, as well as the court lacking subject matter jurisdiction, and or was prohibited from enacting and or invoking and or continuing its subject matter jurisdictionary [sic] "[p]owers" due to the "[p]rocedural [d]efect" in that there was no "[w]ritten" (emphasis added) order of continuance obtained pursuant to Article 4 § 4 of the South Carolina Constitution?
3. Did the trial court err, and was the Applicant's 5th, 6th, 14th Amendment rights of the U.S. Constitution violated, as well as Article IV § 2 and his due process rights violated, due to the "procedural defect," in that the prosecuting agents acted as sole witnesses on the warrants and or indictment(s)?
4. Did the trial court err, and was the Applicant's 5th, 6th, 14th Amendment rights of the U.S. Constitution violated, as well as Article IV § 2 and his due process rights violated, by the indictments for kidnappings' failure to descend to particulars, making use of the generic terms of the statute, in the body of the charging instrument?
5. Did the trial court err, and was the Applicant's 5th, 6th, 14th Amendment rights of the U.S. Constitution violated, as well as Article IV § 2 and his due process rights violated, by the indictments for armed robbery's failure to allege money amounts, items stolen, making use of the generic terms of the statute, not alleging what the Applicant was armed with, and making use of other loose, cryptic and ambiguous language in the body of the charging instrument?
6. Did the trial court err, and was the Applicant's 5th, 6th, 14th Amendment rights of the U.S. Constitution violated, as well as Article IV § 2 and his due process rights violated, by the prosecution making reference to various

statements at the Applicant's plea hearing, being entered into verbal evidence as they relate to his plea hearing, where there was no evidence adduced at the plea hearing that demonstrates that the alleged victims (or co-defendants) were given a copy of those statements at the time they were made, nor was there signed by them a copy of a receipt for the taking therefor?

7. Did the trial court err, and was the Applicant's 5th, 6th, 14th Amendment rights of the U.S. Constitution violated, as well as Article IV § 2 and his due process rights violated, by the trial and or plea court allowing constructive amendment of the indictments at the Applicant's trial and or plea hearing?
8. Was counsel appointed by the State inept and constitutionally ineffective in violation of the Applicant's 5th, 6th, 14th Amendment rights of the U.S. Constitution, as well as Article IV § 2, and his due process rights which led to an unreasonable guilty plea that was not freely, knowingly, voluntarily or intelligently given, creating an egregious miscarriage of justice?
   a. Counsel was inept and constitutionally ineffective because counsel failed to protect the Applicant's due process rights, in that when the indictments possessed a structural constitutional error and or defect, by the language and or charge contained therein, took away the Applicant's presumption of innocence and automatically shift [sic] the burden of persuation [sic] to the [Applicant], counsel said nothing, nor did counsel do anything. Counsel should have objected and motioned to quash the indictments[;]
   b. Counsel was inept and constitutionally ineffective because counsel failed to protect the Applicant's due process rights, in that when the trial court went beyond the (180) day deadline mandated and prescribed by judicial order issued by the South Carolina Supreme Court pursuant to the provisions of Article V § 4 of the South Carolina Constitution, counsel said nothing, nor did counsel do anything. The court was prohibited from continuing their subject matter jurisdictionary [sic] powers. . . . Counsel should have objected and motioned for default and judgment [sic][;]
   c. Counsel was inept and constitutionally ineffective because he [sic] failed to protect the Applicant's due process rights, in that where there was a "[p]rocedural [d]effect" in the establishing of the warrants and or indictments due to the prosecuting agents acting as sole witnesses on the warrants and or indictments, counsel said nothing, nor did counsel do anything. Counsel should have objected to at least preserve the issue for appellate review. Counsel should have motioned to quash the indictments[;]
   d. Counsel was inept and constitutionally ineffective because he [sic] failed to protect the Applicant's due process rights, in that when the indictments for kidnapping and the indictments for armed robbery either failed to descend to particulars, failed to allege how the kidnapping

occurred, makes use of the generic terms of the statute, makes the use of the terms "and/or," do not alleged who the supposed co-defendants were, do not sufficiently allege the elements, or conspiracy or whether the Applicant is principle 1st, 2nd, or 3rd, the armed robbery fails to allege money amounts or items stolen, alleges I was armed or pretended to be armed two materially different sets of facts. . . . None of these essential requirements were properly alleged in the body of the charging instrument yet counsel said nothing, nor did counsel do anything. Counsel should have objected and motioned to quash the indictments . . .[;]

e. Counsel was inept and constitutionally ineffective because he [sic] failed to protect the Applicant's due process rights, in that he [sic] allowed the prosecution to make reference to various statements at the Applicant's plea hearing, being entered into verbal evidence also pursuant to establishing the court record as it relates to the Applicant's plea hearing where there was no evidence adduced at the plea hearing that demonstrates the alleged victims and or co-defendants were given a copy of those statements at the time they were made, nor was there a receipt signed by them for the taking therefor which stands in clear defiance to the applicable statutes SC Code Ann §§ 19-1-80 and 19-1-90. Counsel said nothing nor did counsel do anything. This matter should have been addressed before the court and placed on the court record to preserve it for appeal[;]

f. Counsel was inept and constitutionally ineffective because counsel failed to protect the Applicant's due process rights, in that when constructive amendment of the indictments occurred before the court, counsel said nothing, nor did counsel do anything. Counsel should have at least objected to preserve this issue in the court record. He [sic] should have motioned for a directed verdict based upon this issue and the impossibility to prove all the various allegations alleged within the indictments. Counsel should have motioned to quash the indictments or for a trial based upon the inability to prove all the various allegations . . .[;]

g. Counsel was inept and constitutionally ineffective because he [sic] failed to protect the Applicant's due process rights, when any competent attorney could see that the SC Supreme Court engaged in acts of fraud on the court, modern day slavery and abused its discretion in their holdings. . . . Counsel should have done a better job researching and or studying his or her profession . . .[;]

h.

9. Did the SC Supreme Court in State v. Gentry supra err, engaged in acts of fraud on the court to essentially establish modern day slavery, and abused their discretionary "[p]owers," which even took away our right to vote, and in such, the trial court did err, and lacked subject matter jurisdiction, and or was

> prohibited from enacting and or invoking and or continuing its subject matter jurisdictionary [sic] "[p]owers," even though they possess such "[p]ower," due to the indictment defects and or errors contained and argued within this documents, in violation of the Applicant's 4th, 5th, 6th, 13th, 14th, 15th Amendment rights of the U.S. Constitution, as well as Article IV § 2 and the laws of Due Process?

At the evidentiary hearing, Applicant proceeded forward on allegations of ineffective assistance of counsel for: (1) failing to prepare for trial; (2) failing to show Applicant the underlying video; and (3) failing to challenge the search warrant, as well as an allegation his plea was involuntarily made.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Assistant Public Defender Hines (Counsel). This Court also had before it a copy of Applicant's plea transcript, the records of the Richland County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was facing two counts of armed robbery and three counts of kidnapping. He denied that he was facing five counts of kidnapping and three counts of armed robbery. He further testified Counsel was appointed to represent him, and they met three times. He testified he could not recall the first time after he was arrested he met with Counsel. He estimated, however, he first met with Counsel approximately four or five months after his arrest. Applicant further testified during their first meeting, Counsel only asked him whether or not he wanted to plead guilty. He elaborated they did not discuss his constitutional rights and he had not seen any discovery at that point. He further elaborated he did not see any discovery materials until four or five months before he pled guilty. He also testified he did not see the surveillance video, and he and Counsel did not discuss the video. He explained, however, he knew there was a video and he and a law enforcement officer viewed the video once before Counsel represented him. He further explained he never asked Counsel about watching the video. He testified, however, at the plea and after being shown the video, he admitted to being on the video. Applicant also testified Counsel did not explain to him what the State would be required to prove at trial, but rather she just told him the potential

sentences for each charge. He elaborated he did not understand what the State would have to prove. He further elaborated he thought the only evidence the State had against him was the video, a weapon, and the statement his co-defendant gave. He testified he and Counsel reviewed his co-defendant's statement, they talked about it "a little bit," and she read the statement to him. He also testified he never gave a statement to law enforcement, but his co-defendant implicated him in his confession to law enforcement.

Applicant also testified a search warrant was executed in connection with this case. He explained the search warrant was for his apartment and he and his co-defendant lived there together. Applicant testified he and Counsel never discussed how the warrant was obtained and never discussed whether or not the warrant was proper. He testified he believed law enforcement searched his apartment prior to obtaining a search warrant. He explained he has this belief because on the initial summary it states what the investigator did and he was present during the execution of the search warrant, but on the follow-up summary it states the investigator obtained a search warrant and other officers executed the search warrant. Applicant testified he did not raise this concern with Counsel, because he did not see this paperwork until after he was in the Department of Corrections. He elaborated he and Counsel never discussed the search warrant, as it never came up in conversation. He further elaborated, however, he knew a search warrant had been executed, and law enforcement allegedly found stolen items in his apartment. Applicant also testified he did not ask Counsel about the circumstances of the search warrant because he did not know about what to ask Counsel. He testified an investigator would have been beneficial because the investigator could have "investigated the, the whole search warrant and went through the case, chopped it up and broke it down to bits and pieces and investigated certain things that he felt needed to be investigated."

He further testified he and Counsel discussed his right to a jury trial, but Counsel informed him she did not believe it would be a good idea to go to trial and it was her belief it was in his best interest to plead guilty because the evidence against him was strong. He testified he told Counsel he wanted to go to trial, and he told her that a few days before he "got sentenced, before [he] went to court." Applicant elaborated he and Counsel did not discuss what would happen at trial and did not discuss the procedures involved in proceeding to trial. He further elaborated he and Counsel never discussed a date on which the trial would take place. He testified, however, when Counsel

came to ask him if he wanted to plead guilty and he told her he had not decided, she told him a court date was set. He explained Counsel told him the specific date, but he could not remember the date at the time of the evidentiary hearing. He further explained when he "got down to the holding tank," Counsel came to talk to him and asked him if he wanted to "sign the plea." Applicant testified at that time, when he told her he did not want to plead guilty and wanted to proceed to trial, Counsel told him he would go to trial the next week, which concerned him because they did not have a trial strategy. He elaborated he and Counsel had not discussed anything in preparation for trial and had not discussed obtaining an investigator, which he believes could have been used. He also testified Counsel's boss, who he had never met prior to his plea, told him if he went to trial, "there's no winning this." He elaborated he was adamant about proceeding to trial "until all this stuff came up about her and her boss coming to speak with me."

Applicant admitted to lying to the plea court. He testified at his plea, when he told the plea court no one had threatened him or coerced him into pleading guilty, that statement was not true. He further testified he believes had he told the plea court he was pressured and threatened into pleading guilty, the plea court would not have accepted his plea. He further elaborated had he told the plea court he was not on the video, he believes the plea court would not have accepted his plea. He explained he was told to answer the plea court's questions with "yes ma'am" or "no ma'am" and was told to be respectful. Applicant also testified he felt he needed to agree with the plea court's questions in order to get the matter resolved, and he did not want to irritate the plea court, which was why he admitted to being on the video. He testified had he denied being on the video, it would have irritated the plea court because "everybody was ready to proceed. You're throwing a wrench in the whole program." He explained he admitted to being on the video because he wanted to "get everything over with."

He testified he wanted to trust Counsel and believed she had everything "under wraps," so he tried to go with the flow. He explained the thought of going to trial the next week played heavily on his decision to plead guilty. He testified he decided not to proceed to trial and to plead guilty, and he did so because he trusted Counsel. He denied pleading guilty to avoid the risk of receiving a lengthier sentence if convicted at trial. Applicant elaborated had Counsel been prepared for trial the next week, he would have proceeded to trial. He further elaborated the plan

was for him to plead before his co-defendant so that the court would be more lenient on him, but his co-defendant pled guilty on the same day and at the same hearing as Applicant.

Applicant testified at his plea, he did not know what negotiated meant, and he and Counsel did not discuss that beforehand. He elaborated Counsel told him if he took the plea, his sentences would be concurrent. He further elaborated he did not know whether or not Counsel had negotiated concurrent sentences with the solicitor. Applicant also testified he knew he would receive a concurrent sentence going into the plea, and he knew is sentence would either be twenty or thirty years on all charges. He elaborated, however, Counsel told him she would push for a ten-year sentence and that nine times out of ten, he would get ten years. He further testified he recalled Counsel asking the plea court for ten years, but he was not sure for what sentence the State was asking. He testified he received a twenty-year sentence.

Applicant rested his case after his testimony, and Respondent presented the testimony of Counsel. She testified she graduated from law school in 2004, at which point she clerked for a federal judge for a year-and-a-half. She further testified after her clerkship, she worked for Jack B. Swerling, Esquire, doing criminal defense work. She testified she began working for the Richland County Public Defender's Office in 2008, and she has been practicing criminal law for her entire career except for a year-and-a-half. She further testified she has handled many cases of a serious nature, including armed robbery and kidnapping case.

Counsel also testified she was appointed to represent Applicant, and she met with Applicant for the first time on January 2, 2013. She testified at that time, they did not discuss the specifics of the case. She explained she did not discuss the specifics because at that time, the Public Defender's Office had open cases for Applicant and his co-defendants, so they had to perform a conflict review. She further explained she told Applicant she could not discuss the specifics at that time and also advised him of the conflict review.

She testified she met with Applicant seven times. She testified after the initial meeting and after the conflict had been resolved, she and Applicant discussed the particulars of this case. She further testified she advised Applicant of his constitutional rights, the elements of the offenses, and the penalties. She explained she tells all of her clients they have a right to go to trial or to plead guilty, and that is their decision to make. She further explained detailed explanations of the

right to testify and the right to confront witnesses arise during preparation for trial. Counsel also testified during their meeting on September 4th, she and Applicant discussed trial and plea strategy.

Counsel further testified she filed discovery motions in this case and reviewed the discovery with Applicant. She testified in discovery were the following materials: the incident report, the surveillance video, a search warrant and incident reports from Charleston, which involved Applicant's co-defendant, Phillips, Phillips's statement, records from the pawn shop where the gun was purchased, statements from other co-defendants, an anonymous tip indicating the suspects lived at the address where Applicant and Phillips lived, Facebook photos, and the search warrant. Counsel testified these statements implicated Applicant. She explained Angel Young, who was also a co-defendant, gave a verbal statement indicating she was there and knew Applicant and the other co-defendants. She further testified she and Applicant discussed the evidence against him and also discussed the items found when the search warrant was executed. She explained, however, she probably did not review the video with Applicant because it is very difficult to bring a laptop into the detention center. She further explained typically when she wants to show her clients a video, she has them brought to the courthouse. She testified Applicant was brought to the courthouse, but she could not recall if she and Applicant watched the video. However, she recalled discussing the video and what she had seen on the video with Applicant. She further testified she recalled Applicant had seen the video, and believed an investigator showed it to him. Counsel testified the video was clear, and she could clearly see one of the guns, which Phillips was carrying. She explained the gun was very distinctive, as it was a sawed-off shotgun with camouflage tape on it. She further explained, on the video, Applicant can be seen with a nine millimeter gun, throwing a backpack across the counter at the person behind the counter.[1] She testified Applicant and Phillips were wearing masks, so she could not see their faces; so the identity of the robbers would have not come from the video, but rather the co-defendants' statements. She could not recall whether Applicant ever indicated to her which person he was on the video. Counsel also testified had this case proceeded to trial, the State would have sought to play the entire video.

[1] At the plea, Phillips testified he was the one who threw the bag over the counter. Tr. 11-12. Counsel explained her confusion at the evidentiary hearing, indicating she had not watched the video since 2013.

She also testified she did not see any issues with the search warrant. She did not recall whether there were any discrepancies with the investigators' summaries of the warrants. She testified she did not recall whether or not she and Applicant specifically discussed a challenge to the search warrant. She explained, however, if she had seen any issues with the search warrant, she would have challenged the warrant if the case had proceeded to trial. She further testified she did not hire an investigator, so she did not investigate the anonymous tip law enforcement received.

Counsel testified she advised Applicant he should accept the plea offer. She further testified she advised him to take the plea, because she believed Applicant would have been convicted at trial. Counsel explained had he proceeded to trial at least two, if not all, of the co-defendants would testify against Applicant and the State would also introduce the surveillance video, which all amounted to a substantial amount of evidence against Applicant. She further explained her concern was Applicant had a pending charge in Orangeburg County and, therefore, Applicant might be looking at life without parole if convicted at trial on these charges. Counsel testified the warrants in Orangeburg were not served until much later after his arrest in Richland County, but the Orangeburg County Solicitor's Office very quickly offered Applicant a plea for which his sentence on the Orangeburg County charge would run concurrent to the Richland County charge. She also testified it would be in Applicant's best interest not to proceed to trial, but rather attempt to handle all of the charges at once and get concurrent sentences on all of them. She testified at trial, Applicant would have been facing 150 years imprisonment.

She testified on September 4th, she and Assistant Public Defender Breen Stevens, of the Orangeburg County Public Defender's Office and who had been appointed to represent Applicant on his pending Orangeburg County charge, met with Applicant. She testified at that time, Applicant did not have any plea offers for the Richland County charges but had an offer for the Orangeburg County charge, and his case was on the trial docket for the next week. She further testified at that meeting, Applicant indicated he wanted to plead guilty. She testified Applicant was brought to the courthouse on September 5th; but as she and Applicant were discussing the plea, Applicant indicated he did not want to plead guilty. She explained at that point, she asked Doug Strickler, Esquire, who was the Chief Public Defender for the Fifth Circuit and Counsel's boss at the time, to discuss with Applicant his decision to proceed to trial and to encourage Applicant to plead guilty because she believed Applicant proceeding to trial was a poor decision. She further

explained during the meeting, Chief Public Defender Strickler, who did not know the specific facts of the case, asked Applicant to explain to him the evidence the State would present at trial and what Applicant believed the result would be if the jury saw that evidence. Counsel testified during that meeting, Applicant clearly explained the evidence against him, including the statements and the video, and indicated he thought he would be convicted at trial, to which Chief Public Defender Strickler asked him why then were they discussing a trial rather than a plea. She testified Chief Public Defender Strickler also asked Applicant what he believed would happen at sentencing after being convicted at trial. She further testified Applicant then decided to proceed with the plea, thinking it was not a good idea to proceed to trial. Counsel also testified Chief Public Defender Strickler never told Applicant he believed he should take a plea. She explained at the time, she had never thought of approaching a client with his option to proceed to trial or plead guilty in the manner in which Chief Public Defender Strickler did with Applicant; but now she typically approaches all of her clients in this manner. She testified although she was telling Applicant the evidence was strong against him, Applicant did not want to plead guilty until after speaking with Chief Public Defender Strickler. She further testified she, as well as other attorneys in her office, frequently brought Chief Public Defender Strickler in to have these conversations with defendants because he had a vast amount of experience as a public defender.

Counsel further testified by the time Applicant decided to plead guilty, she had already underwent basic trial preparation. She explained she had a second chair for trial and had discussed trial strategy. She further explained she had prepared potential cross-examination of the witnesses.

Counsel also testified she did not coach Applicant regarding his answers to the plea court's questions. She testified she informs all of her clients they needed to be respectful towards the judge at the plea, and they also need to be truthful at the plea. She testified she did not tell Applicant he would likely receive a ten-year sentence, but rather he would receive a concurrent sentence and the sentence he would get at a plea would be less than he would receive at trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant's allegations are two-fold: (1) ineffective assistance of counsel for failing to prepare for trial, for failing to show Applicant the underlying video, and for failing to challenge the search warrant; and (2) involuntary guilty plea.

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *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 an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to prepare for trial

Applicant alleges Counsel was ineffective for failing to prepare for trial. "There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Counsel testified she met with Applicant seven times prior to his guilty plea. During these meetings, they discussed everything, including potential sentences, the elements of the offenses, Applicant's constitutional rights, and the evidence the State had against Applicant. Furthermore, Counsel informed Applicant of the risk of a possible sentence of life without parole on the pending Orangeburg County charge should Applicant proceed to trial and be convicted of the Richland County charge, thereby advising Applicant of the strike laws in South Carolina. In addition, Counsel testified at the time of Applicant's plea, she had already undergone preliminary trial preparation, including developing trial strategy and preparing cross-examination. Counsel was preparing for trial, as she not only reviewed with Applicant the elements of the charge and potential sentences but also reviewed with Applicant the discovery and the risks and benefits at trial. In addition, Counsel reviewed the extent of the evidence against Applicant with him, particularly highlighting the likelihood of prevailing at trial. This Court, therefore, finds Applicant has failed to establish any deficiency on the part of Counsel. *See Harris*, 377 S.C. at 75, 659 S.E.2d at 145 (finding trial counsel was not deficient when he had been practicing law for a number of years and had met with the applicant, however brief, particularly in

light of the fact counsel is presumed to have rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case).

This Court similarly finds Applicant has presented no evidence which would establish any prejudice on the part of Applicant. In particular, Applicant has wholly failed to provide this Court with any evidence as to what benefit could have been realized from additional preparation by Counsel. *See Harris*, 377 S.C. at 75, 659 S.E.2d at 145 ("Furthermore, Harris did not offer any evidence or argument as to how counsel's alleged lack of preparation prejudiced him. Therefore, it is merely speculative that counsel's alleged deficient performance was prejudicial to Harris."). Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to review the evidence

Applicant further alleges Counsel was ineffective for failing to review all of the evidence with Applicant. Specifically, Applicant alleges Counsel never showed him the surveillance video from the crime scene. Applicant testified he and Counsel never viewed the video and, similarly, never discussed the video. He testified, however, he was aware of the surveillance video, as a law enforcement officer had previously shown him it. On the other hand, Counsel testified although she probably did not watch the video with Applicant, she reviewed it and she and Applicant discussed it. Counsel further testified the video was very clear, and she was able to clearly view everything that happened on the video. This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not credible. This Court further finds, based on the foregoing testimony, Applicant has failed to establish any deficiency on the part of Counsel.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Applicant wholly failed to present this Court with any concrete evidence as to what benefit would have been realized from these videos. Because Applicant failed to produce the video at the evidentiary hearing, any testimony as to how this video could have been beneficial is "purely speculative." *Bannister v. State*, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998). Moreover, at the plea, Applicant agreed with the facts as presented by the State and further indicated one of the men in the video was, in fact, him. Tr. 11. This Court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to challenge the search warrant

Applicant alleges Counsel was ineffective for failing to challenge the search warrant. Applicant testified there were some discrepancies in the summaries of the warrants; and based on those discrepancies, he believed law enforcement searched his apartment prior to obtaining a search warrant. Counsel, however, testified she did not see any problems with the search warrant. She further testified had she seen any deficiencies in the warrant, she would have challenged the warrant at trial. This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not. Accordingly, because there were no deficiencies in the warrant upon which Counsel could move to suppress, Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from the alleged deficiency. A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses." *State v. Thomason*, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (citing *State v. Munsch*, 287 S.C. 313, 338 S.E.2d 329 (1985)). Through a plea, a defendant admits all of the elements of the offense charged and waives all defenses, except for the sufficiency of the indictment. *Id.* At Applicant's plea, Applicant indicated the facts as recited by the State were correct. Tr. 11. Moreover, Applicant indicated to the plea court he understood by pleading guilty he would not have a jury trial, would not be able to confront the witnesses against him, and would not be able to present a defense. Tr. 15-16. Based on Applicant's solemn admission of guilt at the plea, this Court finds this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further alleges his guilty plea was not voluntarily made. In particular, Applicant alleges Counsel had her boss, Chief Public Defender Strickler, speak with Applicant in order to coerce him into pleading guilty. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record,

and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Id.* at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* However, the overarching concept remains "a guilty plea should only be accepted where the record evidences 'an affirmative showing that it was intelligent and voluntary.'" *Boykin v. Alabama*, 395 U.S. 238, 242 (1969) (internal quotation omitted); *Parke v. Raley*, 506 U.S. 20, 29 (1992). This is because "waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970).

Key to the analysis in reviewing a plea for voluntariness is looking to "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Raley*, 506 U.S. at 29 (quoting *Alford*, 400 U.S. at 31). In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin*, 395 U.S. at 244. Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is "usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. This Court finds Applicant's plea was entered into freely and voluntarily. The record before this Court reflects the trial court thoroughly reviewed all of Applicant's constitutional rights with him, including his right to a jury trial. Tr. 15-16. Applicant indicated he understood his constitutional rights and, understanding he would be waiving those rights, entered a guilty plea. Tr. 16. Applicant further indicated no one had

promised him anything or held out any hope of reward in order to get him to plead guilty. Tr. 20. Additionally, Applicant indicated he was pleading guilty of his own free will. Tr. 20-21.

Additionally, Counsel testified she and Applicant reviewed all discovery materials, the elements which the State would be required to prove at trial, the potential punishments, and his constitutional rights. Counsel further testified despite the fact she told Applicant the evidence was strong against him and thought a guilty plea would be in his best interest, Applicant still wanted to proceed to trial. It was at that time, Counsel asked Chief Public Defender Strickler to discuss the matter with Applicant. Chief Public Defender Strickler had little knowledge of the specifics of this case and merely asked Applicant to explain to him the evidence against him and what he thought would happen at trial given all of the evidence that would be presented. It was at that time Applicant indicated he believed he would be convicted at trial and, therefore, Applicant made the decision to plead guilty. Neither Counsel nor Chief Public Defender Strickler coerced him or forced him to plead guilty.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Consequently, this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the 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.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 12 day of February, 2018.

J. DERHAM COLE
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina

WITNESSES

(S) John Carwell – Richland County Sheriff

ARREST WARRANT NUMBER

2012A4010600442

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 13 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4001526

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2013

42

THE STATE
vs.

Ryais Ryche Rivers

Indictment for
ARMED ROBBERY

SC Code: **16-11-0330(A)**
CDR Code: **0139**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment as to

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
C.C.C. PLS. &G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Ryais Ryche Rivers and/or another co-defendant and/or other co-defendants did in Richland County on or about December 4, 2012, commit robbery by feloniously taking from the person or presence of Aniecia Harvey, by means of force or intimidation, goods and/or monies of NANCY'S NOOK, such goods and/or monies being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a deadly weapon, or while alleging, either by actions or words, that he or she 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. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended)

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

DAN JOHNSON, SOLICITOR

WITNESSES

(S) John Carwell – Richland County Sheriff

ARREST WARRANT NUMBER

2012A4010600446

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 1 3 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4001522

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2013

42

THE STATE
vs.

Ryais Ryche Rivers

Indictment for
KIDNAPPING

SC Code: **16-03-0910**
CDR Code: **0095**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY OF ORIGINAL FILED
C.C.C. P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Ryais Ryche Rivers and/or another co-defendant and/or other co-defendants did in Richland County on or about December 4, 2012, unlawfully seize and/or confine and/or inveigle and/or decoy and/or kidnap and/or abduct and/or carry away one Aniecia Harvey, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

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

DAN JOHNSON, SOLICITOR

WITNESSES

(S) John Carwell – Richland County Sheriff

ARREST WARRANT NUMBER

2012A4010600444

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 13 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4001521

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2013

42

THE STATE
vs.

Ryais Ryche Rivers

Indictment for
KIDNAPPING

SC Code: **16-03-0910**
CDR Code: **0095**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY OF ORIGINAL FILED, C.C.C. P.&G.S. RICHLAND COUNTY SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Ryais Ryche Rivers and/or another co-defendant and/or other co-defendants did in Richland County on or about December 4, 2012, unlawfully seize and/or confine and/or inveigle and/or decoy and/or kidnap and/or abduct and/or carry away one Gayle O'Kelly, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

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

DAN JOHNSON, SOLICITOR

WITNESSES

(S) John Carwell – Richland County Sheriff

ARREST WARRANT NUMBER

2012A4010600443

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 1 3 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4001520

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2013

42

THE STATE
vs.

Ryais Ryche Rivers

Indictment for
ARMED ROBBERY

SC Code: **16-11-0330(A)**
CDR Code: **0139**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Ryais Ryche Rivers and/or another co-defendant and/or other co-defendants did in Richland County on or about December 4, 2012, commit robbery by feloniously taking from the person or presence of Gayle O'Kellly, by means of force or intimidation, goods and/or monies of Gayle O'Kelly, such goods and/or monies being described as Purse and/or contents, with the intent to deprive the owner permanently of such property, while armed with a deadly weapon, or while alleging, either by actions or words, that he or she 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. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended)

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

DAN JOHNSON, SOLICITOR