VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Honorable Brian M. Gibbons, Circuit Court Judge

RECEIVED
OCT 18 2019
S.C. SUPREME COURT

JAKEIVAN A. PULLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000371

APPENDIX

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1 There's a lot of things said in this trial. I want you
2 to ask some of these questions of yourselves.
3 Could the witnesses who say they were 100 percent sure
4 really be 100 percent sure?
5 Could the police really ID someone from a video screen
6 about the size of that computer that was divided up into
7 nine camera shots?
8 Could they really identify someone and just say hey,
9 that's somebody in Laurens County?
10 Ask yourself that question.
11 Ask yourself can I believe the witness especially when
12 his story changes so that it will benefit him?
13 Ask yourself, does the evidence speak for itself?
14 You've seen the video footage many times in this case.
15 Yet, the prosecution had to interpret the video for you.
16 Everybody says the video speaks for itself yet time and time
17 again they ran it over and over again. They said that's so
18 and so, that's so and so. Look, he's doing this, he's doing
19 that.
20 Does the evidence speak for itself?
21 Does it tell you that that little image that's this
22 tall is somebody in this courtroom?
23 Does it tell you that.
24 Can you believe, can you believe the positive
25 identification in this case?

1 I don't believe that this case has had one positive ID.
2 They're a lot of people who are told what to say in this
3 courtroom. A lot of people who are told who was in the
4 courtroom, that the these two defendants are the two people
5 on there. But there's no positive ID in this case.
6 I'd like to review the evidence with you for just a few
7 moments and ask that you deliberate on what we go over when
8 you consider the State's evidence.
9 I believe there's several problems with this case. The
10 first problem was their first witness, and I know she's a
11 victim and I'm not trying to put her down in anyway. But
12 she came right out and says I can identify Mr. Smiley in
13 this courtroom.
14 But do you believe that a person can identify someone
15 one year later whom she only briefly saw and she's only
16 seeing this much of him?
17 Can you identify somebody one year later when that's
18 all you saw of them?
19 When you see, when you seen the video, that's all she
20 saw of the person holding the gun. If she was 100 percent
21 sure, and then you saw how unreliable a witness she was.
22 Right after watching the video I asked her this
23 question. I said was the person holding the gun, did he
24 have his hair and head covered, and she said to us, after
25 watching the video, no, he didn't. She's not a very

1 reliable witness.

2 She never picked him out of a live lineup. She never
3 picked him out of a photo lineup. The first time that she
4 had seen my client was Tuesday of this week. Of course she
5 could point him out. She was told by the defense, I mean by
6 the prosecution where the defendants were sitting.

7 All right. Then there's Captain Krissy Cofield. She
8 was another person who claims that she can see tiny objects
9 on a video screen this small, and that she can identify who
10 they are with 100 percent certainty. She said she had grown
11 up with one of the defendants as a member of her extended
12 family. Yet she didn't know his first name. She didn't
13 know his first name, but she could tell you that she could
14 identify him from, from this, this far up. She could
15 identify him by his forehead.

16 Did you notice -- and also by his haircut.

17 Did you notice how similar other defendants' haircuts
18 were in this courtroom?

19 I don't think she could identify him on that video
20 based on this much of his head showing. I don't think she
21 was that, well, that familiar with him that she doesn't know
22 his first name.

23 Then there's Deloris Byrd. She testified that shortly
24 after the incident she picked up Robinson and Pulley.

25 How that helps me?

1 Some other witness putting Robinson and Pulley
2 together. Smiley's nowhere in that scene.
3 Then there's Patrick Durkin. He was the young officer
4 who said that, after there was an announcement to go start
5 looking around in the area, and drive around and start
6 looking for suspects, he's the one that told us that he saw
7 a car coming down the street. Let me, let me refresh your
8 memory with one of these, one of these diagrams.
9 He testified that he was driving around back here in
10 this perimeter. He was driving down this street, and he saw
11 someone driving down this way, and that forced him to have
12 to turn around cause he wanted to see what those people were
13 up to. He said they were driving down this way, they
14 stopped around here, picked someone up in this driveway,
15 turned around and went this way, and he was already heading
16 this way. So, he had to turn around in the same driveway
17 and go back, and that he left. That -- they went that way
18 and he went that way and he had, he stopped him.
19 You might be saying how does that help, help your case?
20 Well, when I questioned the, Chip Steppe, the guy with
21 the dogs, I asked him why is it dogs couldn't find the shirt
22 that was from the scene of the crime, and he responded that
23 it was very likely that they had ditched the shirt when
24 they'd gotten in their car. They had driven away, ditched
25 the shirt, but Mr. Durkin, Officer Durkin, he said that they

1 were picked up and they went off that way. They weren't
2 picked up and dropped there and then went back that way.
3 So, Mr. Durkin helps us out by saying that no, they
4 didn't ditch the shirt using the car. There was somebody on
5 foot who walked a couple doors down and ditched that shirt,
6 and Mr. Steppe and Mr. Super Dog did not touch that.
7 All right. Then we, then we go to Porsha Miller.
8 Porsha Miller, she was another person who was told what to
9 say. She shows up in Court and she testified that my client
10 had a green looking jacket with a hood on. That's very
11 convenient because we need to have my client with a green
12 jacket with a hood on so he can be placed in that store.
13 The problem with her testimony is that she also said
14 that the sheriff came there and arrested my client. If you
15 look at what the sheriff's deputy said, the sheriff's deputy
16 said he came downstairs and he had on a t-shirt and jeans,
17 and then the evidence says, and he was arrested at that
18 point, the evidence says that all he had was a t-shirt, a
19 pair of shorts.
20 Where's the green hoodie that Porsha Miller said that
21 he was wearing that day to link him to the crime scene?
22 He wasn't wearing it that day in her apartment. The
23 police arrested him, detained him. There's no evidence that
24 he was wearing a green or a dark or a navy blue or any kind
25 of jacket with a hood.

1 So, once again, there you have a witness being told
2 what to say, and other witnesses disproving that that link
3 of that, that little fact is not really what's going on.
4 Then there's, there's Robbie Haupfear. Oh, I'm sorry.
5 Robbie Haupfear was I believe the sheriff's deputy who
6 helped me out by saying that my client was not wearing a, a
7 hoodie. Go back there. Right. And Mr. Haupfear, Haupfear
8 also testified that when he went to Porsha Miller's, Porsha
9 Miller's apartment there was nobody trying to run away,
10 there was nobody hiding under a bed, there's nobody hiding
11 in a back closet, that when he was asked to come downstairs
12 from going to the bathroom, my client walked down very
13 casually. If he just committed a crime and was afraid of
14 the police, I don't think he would of been so casual.
15 There's another problem with that scene. There was
16 money there. There was a lighter there that was brought
17 into evidence, but there's no way to tie that money to my
18 client. There was no fingerprinting done of the lighter.
19 There's no fingerprinting done of the money. We had a money
20 expert in here, a fingerprint expert, said that money can
21 sometimes give us fingerprints. He said a lighter could
22 give us fingerprints. Yet, the State didn't think that was
23 important enough to have that sent off for fingerprint
24 analysis.
25 So, once again, we don't know whose, whose lighter that

1 was. We don't know whose money that was, and Porsha Miller
2 testified that she had friends over that day. She said that
3 Mario Suber was in the house the day, in the apartment that
4 day, and I believe Robert, Robert, Robbie Haupfear also said
5 that, that there was another individual in that apartment
6 when he went to get my client.
7 Then there's Leann Riggott. I believe that she made up
8 her mind once one of the defendants was feeding her his
9 version of the events. We have what, what I've mentioned at
10 the beginning of this case in my opening remarks is that we
11 have is a cookie jar crime. One person did the crime, and
12 to get out of trouble, he said it wasn't me, it was my
13 little brother.
14 This whole case is not based on positive ID. There is
15 no positive ID of who was in that store that day. This
16 whole case is based on the testimony of one person to the
17 police, and that's Lakasion Robinson, Robinson.
18 Leann Riggott made up her mind that what her version of
19 the story was was true, and then she went and that colored
20 everything she did from that point forward. She was another
21 one of the people that came to us today or in the last few
22 days here and said without, without a 100 percent certainty
23 I can watch a video with one-ninth of the screen, tiny
24 little images on a small screen, and I can tell you that
25 somebody walking around with a hoodie on is Davoris Smiley.

1 I don't know where she got his name out of all the
2 people that live in Laurens. She pulled it out of a hat,
3 pulled it out of the air. I don't know. But she just --
4 she had her mind made up that this is who it was, and I
5 think that what the reality of the situation is, Robinson
6 said it. So then she had to go and pursue it.
7 The prosecution -- I mean the police say put on a good
8 face, that the case that they presented makes sense even
9 when things come back later to disprove it.
10 Here's the sad thing. A lot of things came back later
11 to disprove their theory of the case. The problem was they
12 already a plea and a sentence from their key witness, and
13 they couldn't go back to him and say, listen, I think you're
14 the one who did it.
15 What came back way after Lakasion Robinson did his plea
16 and got probation?
17 What came back so much later, actually came back the
18 week of this trial?
19 We got it on Monday I believe it was. It was the DNA
20 evidence. The DNA evidence says that the black shirt was
21 Robinson's shirt. The, the evidence -- the DNA evidence
22 said that there were two people that contributed DNA to that
23 shirt, and the other contributor wasn't one of the
24 defendants in this room.
25 There was another shirt that was found with the black

1 shirt, and it came back that there was no DNA from Robinson,
2 Pulley, or Smiley. So now we have a third, a fourth
3 possible person who was wearing something that night, and it
4 was ditched in the, in the bushes. A fourth possible
5 suspect.
6 Was it Mario Suber?
7 Was it this guy named Black?
8 We don't know who it was. The police didn't follow-up
9 with that. They didn't even know to follow-up with that
10 because the DNA for that shirt didn't come back until just
11 this week.
12 So, there's a lot of things that are left open.
13 There's a lot of evidence that we don't have. There's a lot
14 of evidence we probably will never have, but it just
15 seems -- and if you'll, if you'll follow the logic here,
16 Leann Riggott took one person's version of the story, of the
17 events, and that's how the whole investigation went from
18 that point forward. So, of course, we got to make his
19 version work.
20 Right interesting thing is, as we're wrapping up the
21 State's evidence, their last two witnesses help us out
22 incredibly. Officer, SLED Officer Crooks, he said that
23 fingerprinting was done at the scene of the crime, but none
24 of the fingerprints came back to the defendant, my, my
25 client, Mr. Smiley.

1 You saw on the video the gunman touched the cash
2 register. He touched the front door, grabbed things,
3 touched things. None of the fingerprints came back to
4 implicate Mr. Smiley.
5 Then we have Mr. Meeh. I already mentioned what he
6 brought in for us, the, the clothing. Once again, the black
7 shirt that was supposedly worn by one of the defendants in
8 the room here didn't come back with his, with his DNA, and,
9 and they do say that State's gonna tell you it was only worn
10 for a short time.
11 There was a lot of stress going on from whoever was
12 suppose to be wearing that shirt. There was probably
13 sweating going on there. There was, there was a claim that
14 they ran out the door. They're running out the door.
15 They're running through a couple blocks away to get away
16 from the scene of the crime supposedly.
17 I believe that if one of the defendants in this room
18 was wearing that, it would of shown up in the, as a
19 contributor, and Mr. Meeh also helped us in implicating a
20 fourth possible suspect that, that shirt that was submitted
21 as evidence, it has, it had two contributors, and none of
22 those two contributories to the white t-shirt fits any of
23 the, any of the other defendants. Not even Lakasion, and we
24 know what the other ones were wearing. The State made it
25 very clear as to what they were wearing when they were

1 apprehended, but we don't know if there was possibly a
2 fourth person there.
3 There was a lot of switching going on. The State is
4 believing the story of Lakasion that he switched hats with
5 someone, he switched shirts with someone.
6 What if he switched shoes?
7 What if he switched something else?
8 We don't know what he switched. When they left the
9 camera, all we see in this video are three people walking
10 by, and two people walking back, and one person walking
11 back. We don't know who switched what.
12 I just -- I believe, ladies and gentlemen of the jury,
13 that this isn't a slam dunk. This is a case that requires
14 asking lots of questions. This is a case that requires
15 really questioning the credibility of almost every witness,
16 and then it requires you to say if I can't answer all these
17 questions to my satisfaction, then I'm gonna have to give a
18 verdict of not guilty.
19 Thank you.
20 THE COURT: Ms. Moore for Mr. Pulley.
21 MS. MOORE: Thank you, Your Honor.
22 THE COURT: Yes, ma'am.
23 MS. MOORE: Good afternoon, ladies and gentlemen of the
24 jury.
25 If you will recall a couple of days ago I asked you to,

1 to please pay very close attention to what the witnesses
2 could and could not tell you, and also, in anticipation of,
3 of your watching the video, I asked you to please look at
4 that video, and you determine what you can and can't see in
5 that video, and, ladies and gentlemen of the jury, I submit
6 to you that now that all of the evidence has been presented
7 in this courtroom, I had, I had no idea that this case was
8 as big of a mess as it actually is.
9 Let's talk about these witnesses, and I know Mr.
10 Mitchell has, has gone over it, but I wanted to point a few
11 things out to you. The State started with Anna Sebastian,
12 and I concur with what Mr. Mitchell said about Ms.
13 Sebastian. She is, in fact, a victim.
14 This is an armed robbery and conspiracy trial for my
15 you client. And, so, that it is appropriate to ask Ms.
16 Sebastian questions about what happened on the night of this
17 robbery.
18 What did she tell you?
19 She sat in that witness chair and very plainly pointed
20 to my client and said Jakeivan Pulley. She pointed to Mr.
21 Smiley and said Davoris Smiley, and say yes, those are the
22 men that, that robbed me that night.
23 But what did she say when this robbery was fresh in her
24 mind?
25 How did she describe these individuals who went into

1 the store?
2 Two black males.
3 That's it. Certainly no, no discussion about specific
4 names. Remember that she told you in this courtroom that
5 the first time that she had heard the name was that day when
6 she testified. In her original statement, which was entered
7 into evidence in this case, she didn't say anything about
8 allegedly my client going into the store prior to the
9 robbery and leaving. But yet, somehow, here almost a year
10 later, she has a recollection of all of this.
11 Then what happens?
12 Mr. Mitchell asks her did you show her a lineup?
13 Oh, yes. Yeah, we showed her a lineup.
14 Okay. How interesting.
15 Well, how many people were you shown in this lineup?
16 What did she say, multiple?
17 I can't remember the exact phrase.
18 Oh, yeah, several, multiple.
19 Interesting.
20 Upon my cross-examination she admitted that she was
21 confused, that, in fact, in this case, there was no lineup.
22 There's no lineup. That, in fact, not until two days ago
23 did you actually have a victim of that night identifying
24 anybody. Certainly not in the record of this case.
25 She, she used the word I am confused.

1 What she was talking about?
2 Talking about Mr. Melendez, what he said. Oh, no, no,
3 that was -- oh, now, I was talking about a robbery that
4 happened a year prior where there was the lineup or some
5 type of identification.
6 Let's talk about Krissy Cofield, Captain Krissy
7 Cofield?
8 Did you notice that, in the State's direct examination
9 of Captain Krissy Cofield, which, by all accounts, the
10 evidence has established she is the one who identified my
11 client, none of the victims, right, till two days ago, did
12 you notice that the State, on direct examination, only
13 showed her that portion of the video that shows the
14 individual coming into the store with no masks?
15 That's it.
16 Remember?
17 It wasn't until Mr. Mitchell cross-examined her, and
18 the State, in redirect said, oh, wait a minute, oh, wait a
19 minute, she did actually see other parts of the video and
20 we'll get to that in just a minute.
21 What was this person seen doing on this video?
22 Buying a Coke.
23 Not masked. Walking around a store. Talking to the
24 shop keeps.
25 Krissy Cofield, on the basis of a 15-inch screen, which

1 Detective Riggott testified in regard today, sent out an all
2 points bulletin. Remember Officer Durkin talked about that.
3 Ladies and gentlemen of the jury, you -- we all have
4 seen this video basically for almost two days straight now,
5 and on redirect, again not in the direct, but in redirect
6 Krissy Cofield tells you that on the basis of this
7 gargantuan, huge screen certainly compared to a 15-inch
8 screen that was actually in there that night, and these
9 individuals' nose, mouth, chin, and neck are covered. She
10 doesn't have any doubt the person in video is Jakeivan
11 Pulley, and I challenged her on that.
12 How?
13 Oh, it's -- oh, I can, I can recognize him. It's his
14 hairline and his eyes.
15 Ladies and gentlemen, I, I think that's what you call
16 the definition of reasonable doubt. Particularly, think
17 about Krissy Cofield and that night, according to the
18 robbery, looking at that 15-inch screen versus this, and,
19 again, I'll tell you, ladies and gentlemen of the jury, I've
20 sat and watched that video for almost two days straight, and
21 you can't see anything in that video.
22 Then we had Mr. Robinson.
23 Now, ladies and gentlemen of the jury, you saw Mr.
24 Robinson yourself. You got an opportunity to see him. He
25 took the stand. You saw his demeanor. You saw the fact

1 that he was basically unresponsive to a lot of the questions
2 that were asked of him.
3 He contradicted himself, didn't he, on very key points?
4 Remember that Detective Riggott was operating under the
5 assumption that my client, Jakeivan Pulley, was the one who,
6 in fact, stuffed the sweater in the bushes.
7 Where did she get that information?
8 Kasion Robinson.
9 He told you, from that witness stand, that no, that was
10 me. No, I stuffed it. I stuffed it.
11 Do you think that's a key point?
12 Kasion Robinson, in watching this video, could not or
13 certainly would not identify the individuals who were seen
14 walking up and down Harper Street. Saw him. He didn't
15 testify to that. Displayed images of the actual robbery,
16 which we've seen for two days.
17 He didn't identify anyone. He -- the question becomes
18 why not. I'll tell you why not. You heard about it today.
19 DNA expert, what did he say?
20 He said that these defendants were excluded, and that's
21 a big difference between excluded and inconclusive.
22 Specifically asked him. Said no, they were, they were
23 excluded. There was, in fact, a second strain for that DNA,
24 but it excluded the defendants.
25 Ladies and gentlemen, I, I submit to you that, that Mr.

1 Robinson has every reason to come to this courtroom and
2 testify inconsistently on the basis of his original
3 statements that he gave to law enforcement, and that is
4 quintessential definition of reasonable doubt.
5 As I stated, Officer Durkin, basically what did he tell
6 us?
7 He basically confirmed what Krissy Cofield told us,
8 that she sent out an all points bulletin, after watching the
9 videotape, of an individual buying a Coke in a store and a
10 15-inch screen, and sent an all points bulletin, stops some
11 suspicious looking males, explained that, and put them into
12 investigative detention. Subsequently my client was
13 arrested, but he has never been identified by the victims in
14 close proximity to this incident.
15 Ladies and gentlemen of the jury, Officer Steppe, who
16 I'll, I'll call the dog guy, I can't say that, you know,
17 there's really anything that he testified to established
18 anything, and I got to tell you I'm sure that you were
19 sitting there thinking the same thing I was thinking about a
20 lot of this stuff that he was testifying to that's fairly
21 incredulous.
22 Remember when he said anything is possible. Key points
23 on that. The dogs were never given anything to specifically
24 smell. He testified to that. No dogs, you know, for 20, 20
25 hour period. Oh, no, no, no, the 20 hour period, even

1 though there are cells and the debris from our bodies that
2 falls into the atmosphere and into the, into the, the ground
3 and the floor, oh, yeah, my dog can distinguish any
4 suspects, between any suspects and anybody else.
5 That established nothing and, furthermore nor, Durkin
6 established why, in fact, my client was apprehended, and
7 Mr. Mitchell pointed out in his closing that we really do
8 have some very suspicious information in this case.
9 Porsha Miller. Porsha Miller. Here is a young woman
10 who came to this courtroom to testify, and, yet, when she's
11 asked about a gentleman named Mario Suber, who's an
12 African-American male, she got really defensive.
13 Did you notice that?
14 She got defensive, and she was insistent. Oh, no, no,
15 Mario. No, never. No, he wasn't in my house. No, Mario
16 wasn't in my house.
17 Where was he?
18 Oh, well, he was around. He was outside.
19 Where was he?
20 Remember?
21 I cross-examined her.
22 Do you recall making a voluntary statement on or near
23 the time of the actual robbery?
24 What does she say?
25 She told the police that Mario was inside her

1 apartment. She squirmed.
2 Ladies and gentlemen, you are the trier of fact. The
3 judge will instruct you on that. It's up to you to find the
4 facts and evidence in this case. That's suspicious.
5 Why is she doing that?
6 I think Mr. Mitchell's points were very well taken on
7 that.
8 Talk a little bit about Detective Riggott's testimony.
9 Did you notice how many times Detective Riggott said
10 the phrase appears to be?
11 Well that appears to be. Well, yeah, that appears to
12 be the, the same, same shirt. Yeah, that, again, that
13 appears to be the same, same jeans. Well, yeah, that
14 appears to be the same, the same shoes. Yeah, it appears to
15 be.
16 Ladies and gentlemen, I submit to you that you don't
17 need this testimony. You've watched this video for two
18 days. It's up to you to determine not what appears to be,
19 but what is in regard to my client in an armed robbery and
20 conspiracy prosecution.
21 And just note, there again, Detective Riggott was also,
22 on the night of the robbery, looking at that 15-inch screen.
23 Let's take a look at it.
24 How, how big is 15-inches?
25 And, again, you can estimate. She estimated. If it's

1 projected on a screen it's much smaller.
2 Detective Riggott also admitted that there was an
3 individual named Black.
4 Did you follow-up on that?
5 We're trying to figure out who robbed a store here.
6 Did you figure it out?
7 It's in the information that you're given.
8 No, never followed up.
9 Ladies and gentlemen, I, I would submit to you that I
10 think probably the most disturbing testimony in this entire
11 armed robbery and conspiracy trial was the testimony of
12 Captain John Stankus, my only witness, and the last witness
13 in this case.
14 Ladies and gentlemen of the jury, when you are the
15 captain, and you are transmitting information to SLED for
16 the purposes of assisting SLED in using their forensic
17 capabilities and testing, don't you think that you need to
18 have the accurate information transmitted to SLED?
19 Is that something to be blasé about?
20 Captain John Stankus, your name's right here, submitted
21 by.
22 Well, I, you know, I really -- I just transmitted the
23 information.
24 The problem is that my client is identified as subject
25 one. Lakasion Robinson is identified as subject two, and

1 Davoris Smiley is identified as subject three, and as I, I
2 had Captain Stankus testify, he submitted to SLED that
3 subjects one and two switched shirts during the robbery so
4 the DNA on both should be on both shirts. This turned out
5 to be a wash. Right, it's not on there.
6 Subject two, Robinson, and subject three touched the
7 cash register, and subject one, my client, touched the front
8 door and the counter top. This is information that is
9 transmitted by Captain John Stankus to SLED to assist them
10 in their evaluation of this evidence.
11 Now, ladies and gentlemen of the jury, when you start
12 your deliberations, when you think about this clothing
13 that's right behind me, I want you to ask yourself has, in
14 fact, the State, in any way, shape, or form, not just proof
15 beyond a reasonable doubt, the judge is gonna discuss that
16 with you in just a little while, had they actually proven to
17 you that the clothing that you see here is the clothing that
18 you see in the robbery and on those individuals outside
19 because I'll tell you what it appears to be, what it appears
20 to be, or is a more reasonable explanation here that Mr.
21 Robinson had that shirt on the whole time, and Mr. Pulley
22 didn't have the shirt on the whole time, the clients
23 excluded by DNA.
24 Laurens Police thinks it was Robinson and Smiley went
25 in there and touched the cash register and that was the

1 information that was transmitted to SLED, and the fact that,
2 not until two days ago, did we have a victim who actually
3 identified anybody.
4 Members of the jury, I leave you with that. If you
5 will recall, a couple of days ago, I asked you to please
6 take a look at this evidence, and make a finding beyond a
7 reasonable doubt, and, as I said, there is -- not only do we
8 have a reasonable doubt, but we do, in fact, have a doubt
9 for there is a reason cause the solicitor asked you to take
10 a look at.
11 Proof beyond a reasonable doubt in a criminal case is
12 not a technicality. It is a vital protection for someone
13 who comes into this courtroom and is accused of a crime, in
14 particular, a serious crime like armed robbery and
15 conspiracy.
16 Thank you.
17 THE COURT: The State may proceed.
18 SOLICITOR MOWRY: Thank you, Your Honor.
19 THE COURT: Yes, sir.
20 SOLICITOR MOWRY: Ladies and gentlemen, after listening
21 to Mr. Mitchell and Ms. Moore, I'm reminded of the old
22 slight of hand magicians that will distract your attention
23 with some minor movement while they're doing the trick down
24 here, and that, in essence, ladies and gentlemen, is what
25 we've got here. They are desperately trying to distract

1 your attention away from the facts to protect their clients
2 from being convicted.
3 There's an old expression that I've heard from time to
4 time that goes, who are you gonna believe, me or your lying
5 eyes, and that's what they're trying to convince you of
6 right now. Believe them and not your own eyes.
7 I am of an age where I remember when Michael Jordan was
8 just becoming a star, and he did a series of commercials for
9 Nike, the shoe company. He did them with Spike Lee, the
10 director, who was playing a character named Mars Blackman.
11 Some of y'all may remember these commercials. And during
12 these commercials, Michael Jordan would be performing some
13 unbelievable acrobatic basketball move, and the catchline or
14 the tagline in the commercial was, money, Michael Jordan, it
15 must be the shoes.
16 Well, ladies and gentlemen, in this case it must be the
17 shoes. Let's take a look at what we got here. All of this
18 evidence that we presented to you of clothing that is tied
19 back to the various defendants, and you're gonna have the
20 video back there with you. You may be sick of looking at
21 it, but if you wish to look at it some more you'll have
22 that, that video back there. What I'd like you to do, as
23 you're considering all this, is think about what each of
24 these defendants was wearing.
25 At the start, here's Mr. Robinson's clothes. He

1 identified himself as wearing those clothes. Sorry. I
2 thought I had it up quicker. In the video, Lakasion
3 Robinson identifies himself as wearing these items, the
4 black pullover, the white shoes, and these jeans. Davoris
5 Smiley, these shorts with this kind of funky belt, this pair
6 of boots, the ankle high tan boots, and the yellow cap. But
7 most obvious, Jakeivan Pulley, who came in wearing the jeans
8 with those decals on there, the black shoes, and this top.
9 Get this aimed a little better.
10 At any rate, there's Davoris Smiley.
11 Flip the lights for me please, sir.
12 Excuse me. Not Davoris Smiley. But Lakasion Robinson.
13 As I said, electronics are not my friends.
14 That's what it looked like from behind. This right
15 here.
16 What color shoes has he got on?
17 Little white tennis shoes.
18 There's no doubt that's Lakasion Robinson, and, ladies
19 and gentlemen, there's no doubt that's the figure now
20 wearing the black, the -- not wearing the black pullover,
21 but now wearing the yellow hat that you see going down the
22 street.
23 Mr. Mitchell would have you believe that all of these
24 defendants went behind the coin laundry and practically got
25 naked, exchanging pants, exchanging shoes, exchanging

1 everything. There's Mr. Pulley with his jeans. The same
2 individual that we saw go into the store to buy a Coke, the
3 same individual that we saw come behind the counter to
4 threaten Anna Sebastian.
5 Additionally, ladies and gentlemen, we have Davoris
6 Smiley. Look at the video. Look at the video. He's got
7 the hat at first. He's wearing these shorts. He's got
8 these boots on. You can see them in the, in the large video
9 of the store, and if you want to know what Mr. Smiley looked
10 like up close, let me suggest that you look at that picture.
11 That's the view that Anna Sebastian had. That's the
12 view that Diana Melendez had of him pointing gun with which
13 hand?
14 His left-hand.
15 Which way was he writing?
16 With his left-hand.
17 Which way is the gunman pointing?
18 With his left-hand.
19 Lakasion Robinson was no where at the scene. Mr.
20 Mitchell can wish it all he wants. It don't make it so.
21 There is Davoris Smiley writing with his left-hand.
22 There is Davoris Smiley pointing a gun with his left-hand
23 hours before that robbery took place.
24 You heard Deputy Rainey from Greenville County. In the
25 early morning hours of that very day, he's making videos or

1 taking pictures like that.
2 Do we know that this is the same hat?
3 Take a look at the logo on the back. Major league
4 logo, major league baseball logo. Very same hat. You can
5 see in another picture, the front of it. You can see the P
6 for Pittsburg. You can see the doo rag on his head.
7 If you look at the video you'll get another look at
8 this gun. Take a look at it. Take a look at the video.
9 Compare the video. The gun you see in the video to that
10 gun.
11 Ladies and gentlemen, it's either the same gun or a
12 twin, another one that's made just like it.
13 Now, let's talk about some of the evidence.
14 Mr. Mitchell would have you believe that nobody identified
15 these two defendants.
16 Well, ladies and gentlemen, about four people
17 identified these defendants. Anna Sebastian, who was in the
18 store and getting robbed, and having a gun shoved in her
19 face.
20 Ladies and gentlemen, I don't know about you, but there
21 are a lot of folks that could have that happen to them and
22 they'll say it's something I'll never forget. You just get
23 that burned into your mind. And they made it sound like oh,
24 their faces were so covered.
25 How many times in the video do you see them pulling

1 those make shifts masks up, the make shift masks that were
2 nothing more than t-shirts?
3 She got a good chance to see them up close and real
4 personal.
5 Krissy Cofield. She's identifying a relative. She's
6 identifying a relative. Might not be a real close relative,
7 but it's a relative. She knows who he is. She knows what
8 he looks like.
9 Is there any doubt in your mind that the person wearing
10 these clothes, went in the store to buy the Coke, is there
11 any doubt in your mind that that same person came back in
12 and threatened Anna Sebastian and Diana Melendez, give me
13 the money?
14 We didn't call Diana Melendez. She was 16 years old
15 when this happened. She was traumatized by it. She's in
16 special education. We didn't call her. Mr. Mitchell did.
17 What did Diana Melendez tell us?
18 She tells us that one of the robbers says to other one,
19 let's go D or let's get out of here D as in Debo, as in
20 Davoris Smiley. We didn't call her. That's the defense's
21 own witness that tells you that.
22 Leann Riggott testified that she knew Davoris Smiley
23 from the community, had known him for several years. You
24 can look on the video and see that it's a rather unique
25 personality, rather unique shape. And, so, she recognized

1 him.

2 Is it shocking that when he was arrested he's wearing

3 ankle high brown boots just as the figure on the screen,

4 that he's wearing these gray shorts that at first he was

5 wearing this baseball hat before he swapped it out with

6 Lakasion Robinson?

7 Now, why do you think he did that?

8 Well, he wanted to pull that hood up over his head, and

9 front or back, the baseball hat was going to be a tip off.

10 He didn't want to be recognized.

11 Why do you think they traded clothes?

12 Why do you think that Jakeivan Pulley wanted this black

13 pullover?

14 Because he had just been in the store to case it, to

15 scope it out, to see who's in there, and he knew he would be

16 recognized if he, if he went back in wearing the same

17 clothes.

18 But minutes after he did that, he puts on that and he

19 goes down the street. You see him. The same jeans, the

20 same black shoes, and then a couple of minutes later, you

21 see Lakasion Robinson coming down the street now wearing a

22 t-shirt, but those little white shoes, the white shoes.

23 You think they exchanged all their clothing?

24 That makes absolutely no sense at all. Absolutely no

25 sense at all.

1 The plain fact of the matter is that this item went
2 over here to Pulley. This item went over here to Robinson.
3 And when they met back up, around [redacted], this
4 item went back to Pulley, this item went into the bushes.
5 It's that simple.
6 Now, Mr. Mitchell would have you believe that Davoris
7 Smiley wasn't at the scene I gather.
8 But what did Davoris Dorrah, the resident at [redacted]
9 [redacted] tell you?
10 He told you that the three of them, those two
11 defendants, and Lakasion Robinson, all came up together,
12 that Davoris Smiley used the bathroom, that they made phone
13 calls, and they left.
14 What did this Black do?
15 According to a witness, Black, Detective Riggott told
16 it she tried to track down, but nobody could seem to point
17 her towards just that nickname, picked up Davoris Smiley and
18 took him away.
19 And where was he found?
20 About three or four miles away, about three or four
21 hours later. Plenty of time to ditch his hoodie, to ditch
22 his gun, or give it to somebody for safekeeping. But
23 apparently not fast enough to dispose of $705 that he had on
24 him, and what Porsha Miller tells you is that, when he got
25 there, there was nothing in her baby's crib, that he asked

1 to use the bathroom upstairs at [REDACTED], and
2 that when the police came, and Mr. Smiley came downstairs,
3 low and behold there are all those items plus $705 in cash
4 in that crib along with these other items.
5 So, we have identifications of Pulley and Robinson.
6 Both of them from Anna Sebastian. Of Pulley from Krissy
7 Cofield. Of Pulley from Lakasion Robinson. Of Smiley from
8 Anna Sebastian, from Leann Riggott, from Lakasion Robinson,
9 and also from Porsha Miller.
10 Now, ladies and gentlemen, do you recall that I asked
11 Anna -- I showed her this picture of Lakasion Robinson, and
12 I asked her categorically was that one of the people that
13 came in. You can look at the robbers. Completely different
14 height. Mr. Robinson was the tallest of the three. He was
15 also the slenderest of the three.
16 The white shoes, the nose knows, he looks nothing like
17 either one of those two witnesses or defendants, and Anna
18 Sebastian can say that he was not a robber because you can
19 watch him walk down towards Watts Street, walk down towards
20 town, and never be seen again on the video.
21 Look at the shape of the heads of the robber who comes
22 around the counter.
23 Does that look anything like Robinson?
24 Does the robber with the gun look anything like
25 Robinson?

1 No.
2 They look like Jakeivan Pulley and Davoris Smiley.
3 Think about the clothing. Pulley with the gray tank, the
4 black shoes, the jeans with the patches. Smiley with the
5 brown boots, the hat at the first, these gray shorts, the
6 belt.
7 Let me show you this picture.
8 Does that look familiar, the belt, the jeans, the doo
9 rag, the hat, fifteen hours before the armed robbery?
10 Does that look at all familiar?
11 Look in the video and ask yourselves that's exactly
12 what he had on. Yes, it is.
13 These are not rocket scientists, ladies and gentlemen.
14 They didn't think about cameras apparently, and they've
15 gotten themselves in a world of trouble.
16 Think about Davoris Dorrah who says that all three of
17 them came to the house at [redacted], that two left in
18 one car after Mr. Smiley had left, the dog search.
19 Now, Ms. Moore can belittle that as much as she wants.
20 But use your common sense. Some of you may be hunters.
21 Some of you may of used dogs before. Use your common sense.
22 Which direction did the robbers go as soon as they left
23 the store?
24 They came out the door. They went left. They went
25 around the coin laundry and disappeared.

1 What did Chip Steppe say?
2 I'll flip it this way.
3 He went down here, began to work his dog a little bit.
4 His dog picked up a scent.
5 And where did his dog go?
6 To [redacted].
7 Who got seen at [redacted]?
8 Davoris Smiley, Jakeivan Pulley.
9 Davoris Dorrah, the resident, tells us that they were
10 there. Officer Durkin stops the car with Robinson and
11 Pulley and takes them into custody.
12 The gun. Ladies and gentlemen, that gun, you take a
13 look at it.
14 Again, you take a look on the video, and you make the
15 determination, ladies and gentlemen, does that gun look
16 exactly like what's in the video?
17 Now, Robinson says that Smiley had the gun.
18 Which left-hander do you think it is?
19 Another slight of hand thing that Mr. Mitchell tried to
20 pull. That Robinson's left-handed, therefore Robinson was
21 the gunman. Robinson, the much more slender, the much
22 taller, wearing white shoes, wearing jeans.
23 No.
24 Whose that with the gun in those pictures, the gun that
25 looks just like the one in the robbery?

1 It's Davoris Smiley and nobody else.
2 Now, I just want to remind you about Porsha Miller.
3 Smiley shows up in the small hours of the morning, asked to
4 use the bathroom. Upstairs, next to bedroom, nobody in the
5 daughter's room, the daughter is spending the night at, at a
6 relative's house according to Porsha Miller, and in the
7 daughter's room, were nobody could of left it because Mario
8 Suber, the man with the shoulder length dreadlocks -- did
9 you see anyone even close to shoulder length dreadlocks
10 anywhere in the video?
11 Another slight of hand maneuver by the defense.
12 You find $700.
13 Fingerprints. Lord knows I wish I could present you
14 some fingerprints of the robbers.
15 Ladies and gentlemen, that was the case. We don't have
16 any. The police got as much as they could from the scene.
17 I wish I could of given you more on that.
18 The DNA.
19 Well, let me remind you of something, ladies and
20 gentlemen. It's not that the two defendants were excluded
21 from having worn this shirt because of the DNA. That was
22 one of the reasons that I asked Paul Meeh, the DNA analyst
23 about this. Yes, it came back Robinson.
24 Why?
25 Because this was his shirt.

1 He'd been wearing it.
2 But I asked him specifically, does that mean that
3 nobody else wore that shirt, that neither one of these two
4 could of worn it?
5 No.
6 No, it might be that they wore it for some short period
7 of time, and just didn't leave any DNA or findable DNA.
8 So, what does your common sense tell you?
9 That Lakasion Robinson gave Jakeivan Pulley this shirt
10 to disguise himself from having been in this store for a few
11 minutes before. That's all.
12 Now, ladies and gentlemen, I ask you at the start of
13 the trial to do three things, and you've already done of
14 them admirably. You listened very closely to the testimony
15 and the evidence that was presented from this witness stand.
16 I asked you to listen very carefully in a couple of minutes
17 when His Honor instructs you on the law in this case.
18 The law, ladies and gentlemen, of armed robbery. The
19 use of a gun or a deadly weapon to steal something of value
20 from another person. That's what armed robbery is.
21 Now, you might argue or think to yourself well, there
22 was only one person with the gun, does that mean the other
23 person wasn't guilty of it?
24 Ladies and gentlemen, we have a law in South Carolina
25 and it's entitled the hand of one is the hand of all. If

1 two people go into a criminal enterprise, such as an armed
2 robbery, then every act committed by every one of the
3 robbers is gonna be imputed to the others. In other words,
4 if you've got somebody sitting outside as the getaway
5 driver, and the other person goes in the store and sticks up
6 the store and takes the money, and comes out and jumps in
7 the car and the getaway driver drives away, the getaway
8 driver is just as guilty as the man who pointed the gun.
9 The hand of one is the hand of all.
10 In conspiracy, ladies and gentlemen, you've had a
11 chance to see a lot of conspiracy here. The exchange of
12 clothes, first of all.
13 But before they come into the store, what did the two
14 figures do?
15 The two figures, Smiley and Pulley, they go off up the
16 street and then when they come back, what do they have over
17 their faces?
18 The make shift masks, white t-shirts that they thought
19 was gonna disguise them from Anna Sebastian. Too bad for
20 them they didn't work very well. They conspired, they
21 planned, they plotted to commit this act.
22 Then the use of the weapon during the commission of
23 violent crime. I think you'll all agree, armed robbery is a
24 violent crime, and that certainly qualifies as a deadly
25 weapon, as a gun.

1 So, listen very carefully when His Honor instructs you
2 in the law in this case, ladies and gentlemen, and that's
3 the law that you take back there with you to the jury room.
4 That's law in which you base your decisions. Then I ask you
5 to do one last thing for me, and use your common sense.
6 I'm not quite sure what critical sense is. I ask you
7 to use your common sense. Test the evidence with your jury
8 common sense, and I think your common sense will tell you,
9 ladies and gentlemen, that the State has proved this case
10 beyond a reasonable doubt, that these defendants did rob the
11 Guatemex Store, that Davoris Smiley did point that gun at
12 Diana Melendez and Anna Sebastian, and you would be more
13 than justified in bringing back a verdict of guilty on all
14 counts.
15 Thank you very much.
16 THE COURT: Ladies and gentlemen of the jury, that
17 completes the closing arguments or statements made by
18 counsel. I told you earlier that once we've reached this
19 stage of the trial it would my responsibility to charge you
20 concerning the law to be applied in this case.
21 Throughout this case I have instructed you concerning
22 your conduct, and I'll ask you one other, one more time if
23 any of you have any difficulty in complying with any of my
24 instructions to you during this trial, I'd ask that you now
25 please stand.

1 (No response.)
2 THE COURT: It appears that all jurors have been able
3 to comply with my instructions thus far.
4 Now, when we started this case the other day I went
5 over with you the indictments in this case, and I explained
6 to you that the indictments in this case are the charges
7 that bring this matter before this Court. It informs this
8 Court, you, I, and the other participating, of the charges
9 to be tried in this case. It informs the defendants of the
10 charges that have been lodged against the defendants in this
11 matter.
12 At the time I'm going to go over with you again the
13 indictments in this case. First of all, there are three
14 indictments that have been lodged against Davoris Smiley.
15 The first indictment that I will go over with you is Case
16 Number 11-GS-30-1062. That indictment is for the offense of
17 armed robbery.
18 The indictment states, in part, that the defendant,
19 Davoris Smiley, did, in Laurens County, state aforesaid, on
20 or about the 24th day of April, willfully and unlawfully,
21 while armed with a deadly weapon, or while alleging, either
22 by action or by word, that he was armed while using a
23 representation of a deadly weapon, or any object which a
24 person present during the commission of the robbery
25 reasonably believed to be a deadly weapon, feloniously take

1 from the person or presence of Anna Sebastian, and a
2 juvenile, by means of force or intimidation, goods or monies
3 described as follows: United States currency, with the
4 intent to deprive the owner permanently of such property,
5 Guatemex Store, in violation of Section 16-11-330 of the
6 Code of Laws of South Carolina, 1976 as amended, against the
7 peace and dignity of the State and contrary to the statute
8 in such case made and provided.
9 The second indictment in Mr. Smiley's case is for the
10 possession of a weapon during the commission of violent
11 crime. That indictment states that Davoris Smiley did, in
12 Laurens County, in the state aforesaid, on or about the
13 24th day of April, 2011, possess a firearm, or visibly
14 display what appeared to be a firearm or visibly display a
15 knife during the commission of a violent offense, to wit,
16 armed robbery, or any lesser included violent offense in
17 violation of Section 16-23-490 of the Code, of the South
18 Carolina Code of Laws, 1976, as amended, against the peace
19 and dignity of the State and contrary to the statute in such
20 case made and provided.
21 The third indictment against Mr. Smiley is for the
22 offense of criminal conspiracy. That indictment states that
23 that Davoris Smiley, along with another person or persons,
24 did, in Laurens County, state aforesaid, on or about the
25 24th day of April, 2011, willfully and unlawfully unit,

1 combine, conspire, confederate, agreed between and among
2 themselves, and have a tacit understanding with each other
3 or with other persons whose names are unknown to the grand
4 jurors for the purpose of committing the act of armed
5 robbery in violation of Section 16-17-410 of the Code of
6 Laws of South Carolina, 1976 as amended, against the peace
7 and dignity of the state and contrary to the statute in such
8 case made and provided.
9 The second defendant in this case, Jakeivan Pulley,
10 there's two indictments in his case. The first indictment
11 is Case Number 11-GS-30-1057. It is for the offense of
12 armed robbery.
13 That indictment alleges that Jakeivan Pulley did, in
14 Laurens County, in the state aforesaid, on about the 24th
15 day of April 2011, willful and unlawfully, while armed with
16 a deadly weapon or while alleging, either by action or
17 words, he was armed while using a representation of a deadly
18 weapon, or any object which a person present during the
19 commission of the robbery reasonably believed to be a deadly
20 weapon, feloniously take from the person or the presence of
21 Anna Sebastian and a juvenile, by means of force or
22 intimidation, goods or monies described as follows: United
23 State currency, with the intent to deprive the owner
24 permanently of such property, Guatemex Store, in violation
25 of Section 16-11-330 of the South Carolina Code of Laws,

1 1976 as amended, against the peace and dignity of state and
2 contrary to the statute in such case made and provided.
3 The second indictment against Mr. Pulley is for
4 criminal conspiracy. That's Case Number 11-GS-30-1058.
5 That indictment states that Jakeivan Pulley, along with
6 another person or persons, did, in Laurens County, state
7 aforesaid, on or about the 24th day of April, 2011,
8 willfully and unlawfully unite, combine, conspire,
9 confederate, agree between and among themselves and have a
10 tacit understanding with each other or with other persons
11 whose names are unknown to the grand jurors for the purpose
12 of committing the act of armed robbery in violation of
13 Section 16-17-410 of the South Carolina Code of Laws, 1976
14 as amended, against the peace and dignity of the State and
15 contrary to the statute in such case made and provided.
16 Those are the indictments in this case and I will
17 remind you the fact that a defendant has been arrested,
18 charged, and indicted in a case is not evidence in the case,
19 and can not be considered by you as evidence of guilt in the
20 case. Nor does the fact that an indictment has been issued
21 create any presumption or inference of guilt. Those are
22 simply the documents, the formal written instruments, that
23 contain the charges made against the defendants. It's the
24 document that brings this case into this Court.
25 Now, in this case there are two defendants in this, and

1 each of them has been charged with armed robbery and
2 conspiracy. And in the case of Mr. Smiley, he's also been
3 charged with the possession of a weapon during the
4 commission of violent crime.
5 Now, the case of each defendant and the evidence and
6 the law concerning that defendant should be considered
7 separately and individually by you. Your verdict does not
8 have to be the same for both defendants. The fact that you
9 may find one defendant guilty or not guilty should not
10 control your verdict as to other defendants.
11 Where more than one person is charged with a crime, if
12 the evidence warrants it, you, the jury, can convict one and
13 acquit the other. You can convict both or you can acquit
14 both. You must take, take each defendant individually and
15 consider the evidence as to that defendant and take my
16 instructions concerning the law individually as to each
17 defendant. You will be asked to write separate verdicts of
18 guilt or not guilt as to each individual defendant on each
19 charge before this Court.
20 There are multiple charges, and I've explained to you
21 the charges that have been lodged against each defendant,
22 and each indictment alleges a separate and distinct offense.
23 You, the jury, must consider each indictment separately on
24 the evidence and the law applicable to that indictment, and
25 not be influenced by your decision as to other indictments.

1 The defendant, defendants can be convicted or acquitted
2 on any or all of the charges that have been lodged, and,
3 again, you will be asked to write a separate verdict not
4 only as to each defendant, but as to each charge that the
5 defendant faces.
6 To all of those indictments, the defendants in this
7 case have entered the plea of not guilty. Under the law and
8 the Constitution of this state, and of the United States,
9 that plea places the burden of proof in this case solely
10 upon the State. That burden is to prove the defendant
11 guilty beyond a reasonable doubt.
12 Now, a person whose been charged with the commission of
13 a criminal crime, a criminal offense in South Carolina is
14 never required to prove himself innocent of that charge. I
15 will instruct you that it's an important rule of law that a
16 defendant, in a criminal case, no matter what the
17 seriousness of the crime might be, will always be presumed
18 to be innocent of the crime for which the indictment has
19 been issued unless guilty has been shown and proven to you,
20 the jury, by evidence that satisfies you of that guilt
21 beyond a reasonable doubt.
22 The presumption of innocence doesn't end when you begin
23 your deliberations. It accompanies the defendant throughout
24 the proceedings and into your deliberations. Some people
25 describe the presumption of innocence that every defendant

1 has somewhat like the robe that I wear into the courtroom.
2 It remains about the defendant's shoulders from the
3 beginning of the trial throughout the proceeding. It
4 accompanies the defendant into your deliberations. It
5 remains about the defendants' shoulders until such time as
6 it has been stripped from the defendant by evidence that
7 satisfies you of that defendant's guilt beyond a reasonable
8 doubt.
9 Now, the presumption of innocence is not just a legal
10 theory. It's not just a legal phrase. It's a substantial
11 right that every defendant is entitled to unless you, the
12 jury, find the defendant guilty by proof that satisfies you
13 of that guilt beyond a reasonable doubt.
14 Now, you've heard me talk already about proof beyond a
15 reasonable doubt several times in this charge. It's an
16 important rule of law that the State has the burden of
17 proving its case beyond a reasonable doubt, and you may be
18 asking yourself well, just what is meant by a reasonable
19 doubt.
20 What is a reasonable doubt?
21 I will tell you that reasonable doubt is that kind of
22 doubt that would cause a reasonable person to hesitate to
23 act, and the State has the burden of proving the defendant
24 guilty beyond a reasonable doubt.
25 Now, some of you may of served as jurors in civil

1 cases, and let me explain to you, a civil case is a case
2 where someone is seeking monetary damages from somebody,
3 money. It can be because of an injury. It can be because
4 of a breach of a contract. It can be, be because someone is
5 failed to pay a debt that they owe. That's what is meant by
6 civil case where someone is seeking a monetary judgment
7 against someone else, and in those cases the standard of
8 proof is proof by the great weight or the preponderance of
9 the evidence. That's been described as the scales of
10 justice tilting ever so slightly in favor or either the
11 plaintiff or the defendant.
12 Now, that's not the standard of proof that applies to a
13 criminal case. The standard of proof in a criminal case is
14 more powerful than that. It's proof beyond a reasonable
15 doubt. Proof beyond a reasonable doubt would be that kind
16 of proof that would leave you firmly convinced of the
17 defendant's guilt.
18 Now, I'm gonna tell you there's very few things that go
19 on in this world that can be proven beyond any doubt
20 whatsoever, and that's not the standard of proof that the
21 State is held to in this case. The State is not required to
22 present proof that overcomes every possible doubt in a case.
23 I will tell you that if, after, after considering all
24 of the evidence in the case, if you are firmly convinced of
25 the defendant's guilt beyond a reasonable doubt, you must

1 find the defendant's guilty on those issues. However, on
2 the other hand, if you think there's a reasonable
3 possibility that the defendant is not guilty of the charge
4 or issue or matter that you're deciding, then you must give
5 the defendant the benefit of that doubt, and find the
6 defendant not guilty on that matter.
7 Now, I wanted to remind you that, during the trial, you
8 and I have had different duties to perform. It's my duty,
9 as the trial judge, to rule upon certain questions or issues
10 that have come up or perhaps the admissibility of evidence,
11 and you are to consider only the evidence that was placed
12 into the record of the case. If there was any question that
13 I overruled or if there was any matter that excluded from
14 the record of the case during the trial, you should
15 disregard that information in its entirety. You are only to
16 consider the evidence that was placed into the record of the
17 case during the trial of this case.
18 I now have the additional duty to charge you concerning
19 the law in this case, and as the presiding judge, I told you
20 at the beginning of the trial, I'll tell you again, I am the
21 sole judge of the law in this case. It's your duty, as
22 jurors, under the oath that you've taken, to take the law as
23 I give it to you now, and apply it to the facts as you
24 determine them to be. If you came into the courtroom with a
25 notion as to what law is or what it ought to be, leave those

1 notions outside of the jury room before you begin your
2 deliberations.
3 Again, you must take the law as I give it to you. You
4 should then apply it to the facts as you determine them to
5 be, and, thereby, you should be in a position to render a
6 just, true, and a fair verdict in this case.
7 Now, I told you at the beginning of the trial, in every
8 case tried in this court before a jury the jury is the sole
9 and exclusive judge of the facts in this case. I will tell
10 you now that you should not take from anything that I might
11 of done in the discharge of my duties as the presiding
12 officer during this trial to indicate to you that I have a
13 preference one way or the other as to how you determine the
14 facts in this case. The law doesn't allow me an opinion
15 concerning the facts. I do not have an opinion as to how
16 you determine the facts in this case.
17 Now, there are two types of evidence that you have the
18 right to consider in this matter, and let me explain to you
19 what I mean by two types of evidence.
20 First of all, you have the right to consider what is
21 called direct evidence. Now, direct evidence is testimony
22 by a witness who claims to have direct knowledge concerning
23 the facts about which that witness testified. Someone who
24 actually saw what happened, felt it, heard it, experienced
25 it. That's testimony by witness testifying directly about

1 the fact that's sought to be proven.
2 There's another type of evidence that you, the jury,
3 have the right to consider, and that evidence is referred to
4 as circumstantial evidence. Now, circumstantial evidence is
5 proof of a chain of facts or circumstances that indicate the
6 existence of a fact. Sometimes it's described as proof of
7 collateral facts from which a main fact could be inferred.
8 Now, let me explain to you what common sense, sense
9 example of what I mean by proof of a fact by circumstantial
10 evidence. Let's say last night, before you went to bed, you
11 looked outside the window at your home. The stars were
12 shining. It was a beautiful evening outside. You went to
13 bed, you slept well all night, didn't wake up at all. The
14 next morning you got up and looked out the very same window
15 you looked out the night before, and the sun might be
16 shining, but you notice from the trees, all the trees are
17 wet and water is dripping off you trees. The grass in front
18 of your house may be wet. There could be puddles in the
19 driveway or in the road outside your home.
20 Now, you, you slept all night. You didn't see it rain.
21 You didn't hear it rain. But from the facts that you know
22 to be true you could reasonably infer that some time during
23 the night it rained. Now, that's what we mean by proof of
24 collateral contacts from which a main fact can be reasonably
25 inferred.

1 Now, the law makes no distinction between the weight or
2 the value that you, the jury, can give to the, to either
3 direct or circumstantial evidence nor is there a greater
4 degree of certainty required of circumstantial evidence than
5 that of direct evidence. You should weigh all the evidence
6 in the case. And if, after weighing all the evidence, if
7 you're not convinced of the defendant's guilt beyond a
8 reasonable doubt, you must find the defendant not guilty.
9 On the other hand, if you're firmly convinced of the
10 defendant's guilt beyond a reasonable doubt, you must find
11 the defendant guilty.
12 Now, circumstantial evidence, again, is a proof of
13 chain of, or a chain of facts that indicate the existence of
14 another fact, and, again, it immediately establishes
15 collateral facts from which a main fact can be reasonably
16 inferred.
17 Now, ladies and gentlemen, I told you at the beginning
18 of the trial, and you probably understand now, it will be
19 your responsibility, and as part of the fact finders in this
20 case, to determine the credibility of the witnesses you've
21 heard, to determine the believability of the testimony that
22 they've offered in this case. It's your duty, as a juror,
23 to analyze the evidence that you've heard and determine
24 which evidence convince you of its truth.
25 In determining believability of witnesses who've

1 testified, you can believe one witness against all the
2 others or all the others against one. You can believe all
3 of, part of, or none of what a witness has told you. You
4 have the right to weigh the testimony that you've heard.
5 You have the right to consider anything that might be in the
6 record that would assist you in determining credibility or
7 believability.
8 Again, you have the right to consider such factors as
9 whether or not a witness exhibited an interest, a bias, or
10 prejudice, or other motive. You can consider an appearance
11 and manner of testimony. Again, you have the right to
12 consider anything that's in the record of the case to
13 determine the question of credibility or believability of
14 the witnesses who've testified.
15 Now, ladies and gentlemen of the jury, I'm going to
16 instruct to you and I'm going to emphasize to you the fact
17 that the defendants in this case, the fact that they did not
18 testify is not a factor to be considered by you in anyway in
19 your deliberations and in your consideration of the question
20 of guilt or innocence in this case. It must not be
21 considered by you in any manner whatsoever.
22 A defendant has a Constitutional right to remain
23 silent. The assertion or the exercise of that right, the
24 right to remain silent, should not even be considered by you
25 in your deliberations. I repeat, under your oath, you are

1 to draw no conclusions whatsoever from the fact that the
2 defendants in the case did not testify. The fact that the
3 defendants did not testify should not even be discussed by
4 you in anyway in the jury room during your deliberations.
5 I have instructed you and the law is that the burden of
6 proof is solely upon the State. The defendant is not
7 required or any defendant is not required to prove himself
8 innocent. The burden of proof in this case is solely upon
9 the State. It remains upon the State to prove the defendant
10 guilty beyond a reasonable doubt.
11 Now, ladies and gentlemen, there was testimony in this
12 case by witnesses who were declared to be experts in this
13 case, and I explained to you at that time that it's an
14 exception to the general rule of evidence in this state that
15 allows, that allows experts to state opinions solely within
16 their area of expertise and to state the reasons for the
17 opinions that they have within their expert, area of
18 expertise. That's different from lay witnesses who are not
19 allowed to testify concerning opinions on matters.
20 I will tell you that just because a witness has been
21 declared to be an expert gives that witness' testimony no
22 greater weight than that of any other witness. You should
23 consider the testimony of an expert witness like any other
24 witness. You give it the weight that you think it deserves.
25 If you find that the expert's opinion is, is not supported

1 by sufficient facts or by sufficient reasoning or by
2 sufficient education or experience, you have the right to
3 disagree, to, to disregard that opinion in its entirety.
4 In other words, you treat the testimony of an expert
5 like any other witness. You give it the weight you think it
6 deserves. You have the right to, to totally disregard the
7 testimony of an expert if you find that it should not be
8 followed even though the expert's opinion may not be
9 contradicted in anyway. Again, you're the sole judges of
10 the facts and you give it the weight you think it ought to,
11 ought to have.
12 Now, an issue in this case is the identification of the
13 defendants as the persons who committed the crimes that are
14 charged. I will tell you the State has the burden of
15 proving identity beyond a reasonable doubt. You must be
16 satisfied, beyond a reasonable doubt, of the accuracy of the
17 identification of the defendant before you can convict the
18 defendant of the crimes that are charged.
19 Identification testimony is an expression or a belief
20 or an impression by a witness. You must determine the
21 accuracy of the identification of the defendant as the
22 person who committed the crime. You must consider the
23 believability of each identification witness in the same way
24 as any other witness.
25 You may consider whether the witness had adequate

1 opportunities to observe the offender at the time of the
2 offense. This can be affected by such things as the length
3 of time available or how far or how close the witness was
4 from the occurrence, the lighting conditions, whether the
5 witness had a chance to see or know the person before the
6 occurrence.
7 Once again, I instruct you the burden of proof on the
8 State extends to every element of the crime charged. That
9 includes the burden of proving, beyond a reasonable doubt,
10 the identity of the defendant as the person who committed
11 the crime that was charged. I will tell you, again, if,
12 after examining all of the evidence, if you have a
13 reasonable doubt as to the accuracy of the identification,
14 you must find the defendant not guilty.
15 Now, I will tell you it is the law in this state that
16 if a crime is committed by two or more people acting
17 together in committing the crime, the act of one is
18 considered to be the act of all. A person who joins with
19 another to commit an unlawful act is criminally responsible
20 for everything done by the other person which happens as a
21 probable or natural consequence of the acts done in carrying
22 out the common plan and purpose.
23 For example, two people can be guilty of killing
24 another person when only one person of the two had a gun and
25 there was only one bullet that killed the person and only

1 one of the two people fired the shot that caused the death
2 if those two or two or more people are acting together
3 assisting each other in the commission of the offense. In
4 that case the act of one is the act of all or sometimes it's
5 been said, under the law, the hand of one become the hand of
6 all.
7 Now, prior knowledge that a crime is going to be
8 committed without anything more than that is not sufficient
9 to make someone guilty of that crime. Mere knowledge that
10 another one is going, another person is going to commit a
11 crime, even if the defendant was present when the crime is
12 committed, is not sufficient to convict the defendant as a
13 principal. Guilt as a principal is shown by actual or
14 constructive presence, presence at the scene of the crime as
15 a result of some prior arrangement between the actors.
16 Therefore, a finding of a prior arrangement or a common
17 plan or scheme is necessary in order for someone to be found
18 guilty as a principal. The State must prove, beyond a
19 reasonable doubt, by competent evidence, all of the
20 theories, the theory of the hand of one is the hand of all.
21 A principal in a crime is one who either actually commits
22 the crime or who is present aiding, abetting, assisting in
23 the commission of the crime.
24 When a person does an act in the presence of and with
25 the assistance of another, the act is done by both. Where

1 two or more people are acting with a common plan or intent
2 and they are present at the commission of the crime, it does
3 not matter who actually commits the crime. All are guilty.
4 The hand of one is the hand of all.
5 Presence at the commission of a crime means to be
6 sufficiently near to aid, abet, and assist in the commission
7 of the crime. I will tell you merely being present where a
8 crime is committed is not sufficient to commit, convict,
9 convict one as a principal on the theory of aiding and
10 abetting.
11 Intent is a necessary element. There must of been a
12 common design or intent to commit the crime and the crime
13 must have been committed pursuant thereto with the person
14 aiding, abetting, by some act or overt act.
15 Intent means intending the result which occurs. Not an
16 accident or involuntary action. Intent may be shown by acts
17 and conduct of the defendant and other circumstances from
18 which you, the jury, might reasonably infer intent. Again,
19 the State has the burden of proving those elements beyond a
20 reasonable doubt.
21 Now, I'm going to discuss the law on the charges that
22 are before this Court. In this case, both defendants have
23 been charged with conspiracy, and the defendants having been
24 charged with conspiracy, the State must prove, beyond a
25 reasonable doubt, that the defendants combined with one or

1 more persons for the purpose of committing an unlawful act
2 or committing an unlawful act, a lawful act by unlawful
3 means.
4 There has to be a mutual understanding, an agreement, a
5 common plan. Mere passive knowledge or consent to criminal
6 conduct by another is not enough to make them a conspirator,
7 conspirator. There must be guilty knowledge and also
8 participation.
9 Similarly, the mere fact that a defendant may of
10 associated with a person or met another person and discussed
11 common aims or interest does not establish proof of the
12 existence of a conspiracy or that the defendant was involved
13 in a conspiracy. On the other hand, it's not necessary that
14 the agreement be a formal one, that it be in writing, that
15 the persons hold a meeting and expressly state the terms and
16 common plan or that the agreement be stated in words between
17 them.
18 The agreement of a criminal conspiracy may come into
19 being through an implied or mutual understanding. The
20 willful, intentional, and knowing adoption by two or more
21 persons of a common plan is sufficient.
22 No overt acts need to be shown to establish a
23 conspiracy. A conspiracy may be shown by circumstantial
24 evidence and the conduct of the parties. In order to
25 convict the defendant of conspiracy, the State must prove,

1 beyond a reasonable doubt, not only that the defendant knew
2 of the unlawful conduct, but the defendant agreed to combine
3 with the other person for the purpose of accomplishing the
4 unlawful conduct.
5 Now, that's the law concerning conspiracy.
6 Both defendants are charged with the offense of armed
7 robbery. In order to prove this offense, the State must
8 prove, beyond a reasonable doubt, that the defendants took
9 personal property and personal property is property that's
10 not attached to real estate. Anything that's movable, can
11 be moved around is personal property.
12 So, the State must prove that the defendant took
13 personal property from the person or presence of another
14 person. The property is in the presence of a person if it's
15 within their reach, inspection, observation or control so
16 that the person could, if not overcome by violence or
17 prevented by fear, keep possession of that property. The
18 State must prove, beyond a reasonable doubt, that the
19 defendant carried the property away intending to permanently
20 deprive the owner of the property, and to keep the property
21 for the defendant's own use. The slightest removal of
22 property or the complete possession of the property, if even
23 for an instance by the defendant, is sufficient to show a
24 taking and a carrying away of the property. Taking and
25 carrying away of the property must have been done with

1 violence or by putting the owner of the property in fear of
2 violence.
3 Finally, the State must prove, beyond a reasonable
4 doubt, that the defendant was armed with a deadly weapon
5 during the robbery.
6 Now, a deadly weapon is any article, instrument, or
7 substance which is likely to cause death or great bodily
8 harm, and whether an instrument is been used as a deadly
9 weapon depends upon the facts or circumstances of each case.
10 I will tell you that there are examples in South
11 Carolina of instruments which may be considered by a jury to
12 be a deadly weapon, and they include a pistol, a shotgun, a
13 rifle, a dirk, a dagger, a knife, a slingshot, metal
14 knuckles, razors, gasoline fire bombs, Molotov cocktails. A
15 gun can be a deadly weapon even if it's not operating and,
16 and -- let me move on.
17 Now, one of the defendants, Mr. Smiley, is charged with
18 one additional crime, and that is possession of a weapon
19 during the commission of or an attempt to commit a violent
20 crime, and in that case the State must prove, beyond a
21 reasonable doubt, that the defendant was in possession of a
22 firearm or visibly displayed what appeared to be a firearm
23 during the commission of a violent crime.
24 A firearm means any machine gun, automatic rifle,
25 revolver, pistol, or any weapon which will and it is

1 designed to or may be readily converted to expel a
2 projectile. In order to find the defendant guilty of
3 possession of a weapon during the commission of a violent
4 crime, you must first find the defendant guilty of
5 committing the violent crime, and in this case the alleged
6 violent crime is armed robbery.
7 I will tell you that in Code Section 16-1-6 of the
8 South Carolina Code of Laws, armed robbery is defined as a
9 violent crime under the law of this state.
10 Mr. Larry Sherfield, will you raise your hand?
11 (Juror complies.)
12 THE COURT: Just raise your hand, sir. That's fine.
13 You're going to be the foreperson of my jury. You can
14 put your hand down.
15 What that means is that, during the deliberations, you
16 will be responsible to preside over the deliberations of the
17 jury. If there's any questions that the jury might have of
18 the Court during deliberations, you'll write that on a piece
19 of paper and submit it to the Court through the bailiff who
20 will be seated outside of the jury room door.
21 Also, I will be giving you a verdict form in a few
22 minutes, and you will have that in your possession, and you
23 will be responsible for filling out that form once a verdict
24 has been reached.
25 Now, I tell you that I can't answer each and every

1 question that you may have during deliberations. I'm not
2 allowed to enter into your decisions concerning the facts in
3 this case.
4 I will, I will, however, tell you, Mr. Foreman, don't
5 edit any question the jury might have. Simply get the jury
6 to agree on the form of the question, write it down, I'll
7 decide what the appropriate answer will be.
8 Once the verdict's been reached, again, you'll inform
9 the bailiff. You'll come back into the courtroom for us to
10 reach, to, to receive the verdict.
11 I told you at the beginning of the trial your verdict
12 must be unanimous. Each and every one of you must agree
13 upon the verdict before it becomes the verdict of the jury.
14 That's on each question that I ask you. So, a verdict can't
15 be reached on any question that I ask you on the verdict
16 form until all of, all 12 of you agree on the verdict. Then
17 it becomes the verdict of the jury and should be recorded by
18 the, by the foreperson and be submitted to the Court once
19 all questions have been answered.
20 Again, none of you has any greater say than the others
21 in the outcome of the case. The verdict must be unanimous
22 before the jury has reached a verdict.
23 Now, I've gone over a lot of things with you. I'm
24 going to do a couple of things right now. I'm going to send
25 you back to the jury room. I'm gonna go over my charge with

1 the lawyers to see if I've misspoken about anything or if I
2 need to add anything to my charge concerning the law. We're
3 going to gather the evidence up and it will be given to you
4 to take into the jury room with you. And, so, we want to be
5 sure that only the proper evidence goes back there for your
6 consideration.
7 So, we've got a couple of things to take care of before
8 I turn the case over to you.
9 Mr. Foreman, I'm going to ask you not to let the jury
10 begin any discussions until I've brought you back to the
11 courtroom and given you final instructions.
12 At this time, retire to the jury room.
13 Thank you very much.
14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)
16 THE COURT: Any objections to the charge from the
17 State?
18 SOLICITOR MOWRY: No objections, no additions, no
19 deletions, Your Honor.
20 THE COURT: From the defense, Mr. Mitchell?
21 MR. MITCHELL: No objections, Your Honor.
22 THE COURT: Ms. Moore.
23 MS. MOORE: No, Your Honor.
24 THE COURT: I'm going to ask the attorneys to come
25 forward and let's segregate the evidence to be taken back to

1 the jury room and let's be sure we have an agreement as to
2 what the evidence ought to be.
3 I have verdict forms here. Once you finish that, I'll
4 let you take a look at those. See if there's any objections
5 to the verdict form.
6 (Pause.)
7 THE COURT: All right. Do we have any agreement as to
8 the exhibits from the State's part?
9 SOLICITOR MOWRY: Yes, sir.
10 MR. MITCHELL: Yes, sir.
11 THE COURT: Mr. -- you got an agreement too, ma'am?
12 MS. MOORE: I do, Your Honor.
13 THE COURT: All right. Let's bring the jury back.
14 Wait a second. Wait a second, Mr. Bailiff. We got to
15 get the defendants back in the courtroom. Just wait a
16 second.
17 (WHEREUPON, the defendants come into the courtroom at
18 this time.)
19 THE COURT: All right. Mr. Bailiff, let's bring the
20 jury in.
21 (WHEREUPON, the following takes place within the
22 presence of the jury.)
23 THE COURT: All right. Ladies and gentlemen of the
24 jury, and Mr. Foreman, I am going to pass over some verdict
25 forms. Let me pass this one first.

1 Mr. Bailiff, if you'll hand this one to Mr. Sherfield
2 for me.
3 (Bailiff complies.)
4 THE COURT: Now, Mr. Sherfield, what I've handed to you
5 is the verdict form that applies to Mr. Smiley's cases, and
6 let me go over that with you. At the top you'll see it
7 states it's in this county and this state. Over to the
8 right it states the Court that we're in, the Court of
9 General Sessions for the Eighth Judicial Circuit. Below
10 that is the caption stating it's the State of South Carolina
11 versus Mr. Smiley. Over to the right is a verdict form for
12 three different indictments, and I'm not going to go over
13 the numbers with you, but there's three numbers.
14 The first question that it asks you is as to the
15 offense of, well, there's two, two charges.
16 First of all, armed robbery and criminal conspiracy.
17 Below those first two charges, those first two questions I
18 have the choices of not guilty or guilty.
19 Now, let me tell the jury, don't take from the fact
20 that I put those choice in any order on the form to indicate
21 that I have a preference about the verdict. I can assure
22 you I've been doing this about eight years now, and that's
23 the way every verdict form I've prepared is. It's in that
24 same order. That's the way it is on my computer. So, it
25 doesn't show a preference for either guilty or not guilty or

1 not guilty or guilty by the order I've put them in.
2 When a verdict's reached on those two issues, on the
3 question of the armed robbery indictment, and on the
4 criminal conspiracy indictment, you'll put a check beside
5 the appropriate verdict, either not guilty or guilty.
6 Now, in order to reach that third question at the
7 bottom of the page, that has to do with the possession of a
8 weapon during the commission of a violent crime. You would
9 not ask, answer that question if the defendant was found not
10 guilty of armed robbery because there would not have been a
11 violent crime committed.
12 So, if you have found the defendant guilty of armed
13 robbery, then you must answer the indictment as to whether
14 or not he is guilty of possession of a weapon during the
15 commission of a violent crime, and you'll check again either
16 guilty or not guilty as to that charge as it applies to
17 Mr. Smiley.
18 Now, the next verdict form I'll pass to you, Mr.
19 Bailiff, if you'll pass this one over, is the form that's in
20 Mr. Pulley case. Now, Mr. Pulley is charged under two
21 indictments. One if criminal conspiracy, the conspiracy
22 charge. The other is the charge of armed robbery.
23 Again, the choices on those two charges are either not
24 guilty or guilty. Once a verdict has been reached on the
25 questions, you'll put a check or an X in the appropriate

1 line. Once you've answered all of the questions that are
2 required to be answered, you would sign the forms and date
3 them, knock on the door, let the bailiff know you've
4 completed your work. We'll bring you back into the jury
5 room to accept the verdicts.
6 Now, ladies and gentlemen, we're going to send the
7 evidence back to you, and you have that available to you to
8 observe during your, during your deliberations. I don't
9 know whether we have the ability for them to play the video
10 back there.
11 Is that available in the jury room?
12 SOLICITOR MOWRY: We can make that available, yes, sir.
13 THE COURT: If you would like to have that video played
14 during your deliberations, let us know. We'll make
15 arrangements to get that to you or being you either back
16 into the courtroom and allow you to observe it in the
17 courtroom. We'll make that available to you if you're like
18 to review that video. It's in evidence. You have a right
19 to view it if you feel that's necessary in reaching your
20 verdict.
21 Now, I know it's a little late in the evening. We're
22 gonna put you into the jury room and let you begin your
23 deliberations. If you feel that the deliberation are going
24 to go on to such, to such a length of time that you might
25 need some supper brought to you, let us know. We'll have

1 that delivered to you in the jury room. If we go past 5:30
2 or so I'll send the clerk in. We'll get numbers for your
3 family if you want someone called and told where you are.
4 The clerk will call them and let them know that you're in
5 the jury room doing your responsibility in deliberations in
6 this case. So, we'll send someone in.
7 But now, when someone's in the room either taking your
8 dinner order or getting those phone numbers if it becomes
9 necessary to do that, don't be deliberating at that point in
10 time. Suspend your deliberations. Don't discuss the case
11 until that person has completed their work and left the jury
12 room. When that person is left, then you can resume your
13 deliberations at that time.
14 Now, at this time I'm going to ask the jury to retire.
15 Now, sir, you are the alternate. I'm going to ask that
16 you remain seated. The 12 members of the jury are now
17 instructed to retire to the jury room and begin your
18 deliberations.
19 Thank you very much.
20 BAILIFF: Your Honor, I think one of them might of
21 asked for a smoke break before we start. I don't know.
22 THE COURT: Well, if there's any of you that need to
23 smoke, don't begin discussion until that person is stepped
24 out with the bailiff, had the smoke, and comes back into the
25 room. In other words, all 12 have to be present for

1 deliberations to go forward.
2 So, if that person stepped out of the room, suspend
3 your deliberations until they get back.
4 You may retire with the jury panel.
5 Thank you, sir.
6 (WHEREUPON, the following takes place outside the
7 presence of the jury, and the alternate juror was dismissed
8 at this time.)
9 THE COURT: Now, any objections to my final
10 instructions by the State?
11 SOLICITOR MOWRY: No, sir, You Honor.
12 THE COURT: Any instructions, objections by the
13 defense?
14 MR. MITCHELL: No, Your Honor.
15 MS. MOORE: No, Your Honor.
16 THE COURT: All right. Court will be in recess until
17 such time as a verdict has been reached.
18 Defendants remain in custody.
19 Thank you very much.
20 SOLICITOR MOWRY: Thank you, Your Honor.
21 (WHEREUPON, the jury began deliberations at 4:21PM and
22 returned with a verdict at 4:48PM.)
23 THE COURT: All right. I'm informed that a verdict has
24 been reached.
25 Is the State ready to receive the verdict?

1 SOLICITOR MOWRY: Yes, sir Your Honor.
2 THE COURT: Is the defense ready to receive the
3 verdict, Mr. Mitchell?
4 MR. MITCHELL: Yes, sir, Your Honor.
5 THE COURT: Ms. Moore.
6 MS. MOORE: Your Honor, there are a few family members
7 we were waiting on. They are on their way.
8 THE COURT: Well, how long do you think it will be?
9 MS. MOORE: I would ask for ten minutes.
10 THE COURT: I'm gonna go ahead at this time and proceed
11 with receiving the verdicts.
12 MS. MOORE: Yes, sir.
13 THE COURT: Bring the jury in.
14 I will caution anyone, if you can not control your
15 emotions when the verdict is reached, you should leave the
16 courtroom at this time.
17 (WHEREUPON, the following takes place within the
18 presence of the jury.)
19 THE COURT: Mr. Foreman, I have been informed by the
20 bailiff that you have reached verdicts in this case.
21 Is that true?
22 FOREMAN: Yes, sir.
23 THE COURT: Pass the form to the bailiff please.
24 (Foreman complies.)
25 THE COURT: Thank you, sir.

1 Madam Clerk, you may publish the verdicts.
2 CLERK: As to Indictment Number 2011-GS-30-1057, for
3 the offense of armed robbery against the defendant Jakeivan
4 Pulley, we, the jury, unanimously find the defendant,
5 Jakeivan Pulley, guilty.
6 As to the Indictment Number 2011-GS-30-1058, we, the
7 jury, as to the offense of criminal conspiracy, unanimously
8 find the defendant, Jakeivan Pulley, guilty.
9 As to the Defendant Davoris Smiley, as to Indictment
10 Number 2011-GS-30-1064, we, the jury, as to the offense of
11 criminal conspiracy, unanimously find the defendant, Davoris
12 Smiley, guilty.
13 As to Indictment Number 2011-GS-30-1062, for the
14 offense of armed robbery, we, the jury, unanimously find the
15 defendant, Davoris Smiley, guilty.
16 As to Indictment Number 2011-GS-30-1063, for the
17 offense of possession of a weapon during the commission of a
18 violent crime, we, the jury, unanimously find the defendant,
19 Davoris Smiley, guilty.
20 Ladies and gentlemen of the jury, if this is your
21 unanimous verdict, let it be shown by raising your
22 right-hand.
23 (WHEREUPON, all jurors raise their hands at this time.)
24 THE COURT: Thank you.
25 Anything further for the jury before I release them,

1 from the State?
2 SOLICITOR MOWRY: No, sir, Your Honor.
3 THE COURT: From the defense?
4 MR. MITCHELL: No, Your Honor.
5 MS. MOORE: No, Your Honor.
6 (WHEREUPON, the jury panel was dismissed at this time.)
7 THE COURT: All right. State prepared for sentencing
8 at this time?
9 SOLICITOR MOWRY: Yes, sir. Your Honor, I apologize.
10 I'm back in the days of rubber stamps for this kind of
11 stuff.
12 Thank you, sir.
13 THE COURT: I'm gonna ask that all of the papers get
14 signed. If you would finish with that for the defense, and
15 please let me know.
16 Ma'am, any further outburst will be treated as contempt
17 of court and could be sentenced to up to a year in prison by
18 this Court. If you can't control your emotions you may step
19 outside.
20 Thank you, ma'am.
21 Mr. Mitchell, have you signed the form?
22 MR. MITCHELL: Yes, Your Honor.
23 THE COURT: Pass those, those back up please.
24 Pass them up, Ms. Moore.
25 All right. I'll hear from counsel table. You can just

1 stay back there.

2 All right. Mr. Smiley, you have been found guilty by a

3 jury of your peers of armed robbery, possession of a weapon

4 during a violent crime, and criminal conspiracy.

5 Mr. Pulley, you have been found guilty by a jury of

6 your peers for armed robbery and criminal conspiracy.

7 At this point in time I'll hear from counsel

8 considering sentencing in this matter.

9 I'll start with Mr. Smiley.

10 Mr. Mitchell, this is your opportunity to speak in

11 mitigation.

12 MR. MITCHELL: Yes, Your Honor.

13 The first thing I would like to say is that the, Mr.

14 Smiley here is very young. He's -- he was 18 when this

15 happened. He just turned 19 and that he has his whole life

16 ahead of him.

17 I would just ask that you would not give him the

18 maximum sentence. The Court -- the, the prosecution, when

19 we were talking about plea, pleading out this case was

20 recommending ten years. I know that that offer came and

21 went. But at the same time, my client was just really

22 wanting to -- he didn't know that, how the process worked

23 and he wanted to have his chance in a trial, and I just, I

24 just ask you won't use that against him, and he's remorseful

25 about this situation.

1 And I just ask that you give him a chance that we would
2 teach him the, the society and the, the laws would teach a
3 lesson for the sentence, but that it wouldn't, it wouldn't
4 take away his whole life.
5 THE COURT: Mr. Smiley, this is your opportunity to
6 address the Court concerning this matter.
7 Is there anything that you'd like to say to me?
8 You can stand while you're speaking. Thank you.
9 DEFENDANT: I just want to say I apologize. I ain't
10 trying to be in prison for the rest of my life. I'm trying
11 to, you know what I'm saying, at least be able to learn from
12 it and do something with my life. That's all.
13 THE COURT: Thank you, sir.
14 Is, is there any member of his family who wishes to
15 speak on his behalf?
16 I don't know if there is anyone who would like to do
17 that.
18 MR. MITCHELL: I think they, they were just a little
19 distraught and they walked out, Your Honor.
20 THE COURT: I understand.
21 Ms. Moore, this is your opportunity to speak on behalf
22 of Mr. Pulley.
23 MS. MOORE: Thank you, Your Honor.
24 As Mr. Mitchell said, my client was also 18 at the time
25 of this crime, and, Your Honor, I, I, would ask the Court to

1 show mercy to Mr., Mr. Pulley, Your Honor. Again, he was
2 very young.
3 Mr. Mitchell properly stated that the offer was, in
4 fact, ten years. Again, that offer came and went. Your
5 Honor, when you're so young you don't appreciate how young
6 you really are.
7 Your Honor, I would just ask this Court to, to impose a
8 sentence that, that does what a sentence is suppose to do.
9 You know certainly there is that aspect of retribution. But
10 also, Your Honor, for an 18 year old, for the purpose of
11 rehabilitation, and give him a light at the end of the
12 tunnel so that there is, in fact, the hope for
13 rehabilitation.
14 Your Honor, I, being a defense attorney, I get very
15 frustrated because I feel like, in, in this state and
16 certainly states across this country, we spend more on
17 incarceration than we do education, and the question is what
18 are we getting for our money.
19 Your Honor, I'm certainly mindful that, that this Court
20 must impose a suitable sentence for what happened in this
21 matter, and, Your Honor, I would just ask for leniency on
22 behalf of Mr. Pulley.
23 THE COURT: Mr. Pulley, this is your opportunity to
24 speak to this Court.
25 Is there anything you'd like to tell me?

1 DEFENDANT: Yes, sir, I know what I did is wrong, and I
2 apologize and I ask for not only your forgiveness, but the
3 victims, and I mean yeah, I'm young. I got my whole life
4 ahead of me. I got a kid. But I mean I just ask you, just
5 you know what I'm saying, take thought of the matter, you
6 know what I'm saying.
7 I mean I understand what I did, a wrongful thing and
8 really wasn't thinking at the time I was doing it, and
9 wasn't thinking about nothing else but myself, and the last
10 couple months that I've been locked up I had nothing to do
11 but think. And during that duration of time, whatever time
12 you do give me, and I will continue to think.
13 I ask you and this little bit of time I got in touch
14 with myself and with God, and I mean, like I say, I ask for
15 forgiveness. God already done forgave me and he put me at
16 peace with myself on my heart, my soul.
17 So, thank y'all.
18 THE COURT: Thank you.
19 Anyone wish to speak on behalf of Mr. Pulley?
20 (WHEREUPON, a person stands in the audience.)
21 THE COURT: Sir, your name is?
22 MR. PULLEY: Timothy Pulley.
23 THE COURT: Bullock?
24 MR. PULLEY: Pulley.
25 THE COURT: Thank you.

1 MR. PULLEY: Yes, sir, I'm his father.
2 THE COURT: Yes, sir, I'll be happy to hear from you.
3 MR. PULLEY: First of all, I ask for leniency for him.
4 I like to apologize to the Court for this matter of taking
5 time. But I like to apologize to the victim and the family
6 of whoever is concerned. I just ask for your leniency for
7 him and hope he get himself together and everything else.
8 So, that's all I have.
9 THE COURT: Thank you, sir.
10 I'll hear from the State.
11 SOLICITOR MOWRY: Your Honor, I don't have anything
12 much more to add. I would just simply like to ask that the
13 criminal histories be made part of the record, and I would
14 ask you to hear from Mr. Wilshire, our victim advocate, who
15 will speak on behalf of the victims in this case.
16 THE COURT: Mr. Wilshire.
17 MR. WILSHIRE: May it please the Court?
18 THE COURT: Yes, sir.
19 MR. WILSHIRE: The victims would defer to your wisdom
20 and experience in sentencing, Your Honor.
21 THE COURT: Thank you.
22 Is there currently a charge pending against Mr. Smiley?
23 SOLICITOR MOWRY: Yes, sir, evidently so. For
24 concealed weapon by inmate at the detention center in
25 January, in January.

1 THE COURT: I appreciate and have considered the age of
2 the, of the defendants. I have also considered the criminal
3 records that have been submitted to me for both defendants.
4 The crime that was involved, was involved in this case
5 is a crime that is one classified by the laws of this state
6 as a violent crime. It is a most serious offense. That of
7 armed robbery. It is one which places the lives of innocent
8 people at risk, and I've considered all of those factors as
9 well.
10 For both defendants, in the case of criminal
11 conspiracy, the Sentence is five years to run concurrent
12 with other sentences.
13 In the case of Mr. Smiley, the possession of a weapon
14 during the commission of a violent crime is also five years
15 run currently.
16 I have given both defendants credit as will be
17 determined by the Department of Corrections for time
18 previously served on all sentences.
19 In the case of the armed robbery, for Mr. Smiley, the
20 Sentence is 15 years.
21 For the -- in the case of Mr. Pulley, the Sentence is
22 12 years.
23 Good luck to you.
24 Court's adjourned.
25 SOLICITOR MOWRY: Thank you, Your Honor.

1 MR. MITCHELL: Thank you, Your Honor.
2 (WHEREUPON, the criminal records for the defendants
3 were marked as Court's Exhibit Nos. 2 and 3 and received
4 into evidence at this time.)
5
6 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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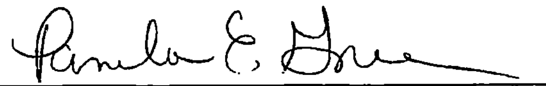
1 C E R T I F I C A T E

2

3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions for
9 Laurens County, South Carolina, on the 28th and 29th day of
10 February, and the 1st day of March, 2012.
11 I do further certify that I am neither of kin, counsel
12 nor interest to any party hereto.
13
14
15
16 June 26th, 2012
17
18
19

20
21 PAMELA E. GREEN, Court Reporter
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8
RJ

FORM 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF Laurens	)	
	)	2014 **-CP30-** 138
Jakevion A. Pulley #344247	)	
Full name and prison number (if any) of Applicant	)	
	)	
v.	)	**APPLICATION FOR**
	)	
State of South Carolina	)	**POST-CONVICTION RELIEF**
	)	

2014 FEB 19 A 9:58

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 veified (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 clr to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exeise 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 thfees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland Correctional institution
2. Name and location of Court which imposed sentence General Sessions of Laurens County
3. Name(s) of co-defendant(s) (if any) Davoris Smiley & Lakasian Robinson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   - (a) #2011-GS-30-1057 Armed Robbery
   - (b) #2011-GS-30-1058 Criminal conspiracy
   - (c) ________
5. The date upon which sentence was imposed and the terms of the sentence:
   - (a) Armed Robbery - 3-1-2012 12 years violent sentence
   - (b) Criminal Conspiracy - 3-1-2012 5 year Non-violent sentence

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(c) ______

6. Check whether a finding of guilty was made:
   (a) after a plea of guilty ______
   (b) after a plea of not guilty Found guilty at trial
   (c) after a plea of nolo contendere ______
7. Did you appeal from the judgment of conviction or the imposition of sentence?
   yes
8. If you answered "yes" to (7), list:
   (a) the name of each Court to which you appealed:
   i. State of South carolina Court of Appeals
   ii. ______
   iii. ______
   (b) the result in each such Court to which you appealed:
   i. Dismissed Appeal
   ii. ______
   iii. ______
   (c) the date of each such result:
   i. Submitted NOV. 1, 2013- Filed Jan. 8, 2014
   ii. ______
   iii. ______
   (d) if known, citations of any written opinion or orders entered pursuant to such results:
   i. The opinion was it had no Precedential value should not be cited.
   ii. ______
   iii. ______
9. If you answered "no" to (7), state your reasons for not so appealing:
   (a) ______
   (b) ______
   (c) ______
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See Supporting MeMorandum

(b) See Supporting MeMorandum

(c) See Supporting MeMorandum

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

(a) See Supporting MeMorandum

(b) MeMorandum

(c) MeMorandum

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. ______

ii. ______

iii. ______

iv. ______

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

i. ______

ii. ______

iii. ______

iv. ______

(c) the disposition thereof:

i. ______

ii. ______

iii. ______

iv. __________

(d) the date of each such disposition:

i. __________

ii. __________

iii. __________

iv. __________

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

i. __________

ii. __________

iii. __________

iv. __________

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

NO

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

(a) which grounds have been presented:

i. __________

ii. __________

iii. __________

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

i. __________

ii. __________

iii. __________

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

(a) See Supporting memorandum

(b) Memorandum

(c) Memorandum

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

(a) your arraignment and plea? No

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ______

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

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

i. Scarlet B. Moore Esq. P.O. Box 17615 Greenville S.C. 29606

ii. Katherine H. Hudgins P.O. Box 11589 Columbia S.C. 29211

iii. ______

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

i. Trial

ii. Appeal court P.O. Box 11589 Columbia S.C. 29211

iii. ______

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

That the Sentence be Vacated.

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

No

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STATE OF SOUTH CAROLINA)

) VERIFICATION

County of)

LYNDELL LANCASTER
2014 FEB 19 A 9:58
LAURENS COUNTY
CLERK OF COURT

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

SWORN to and subscribed before me this 7
day of Feb, 2____.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 21, 2021

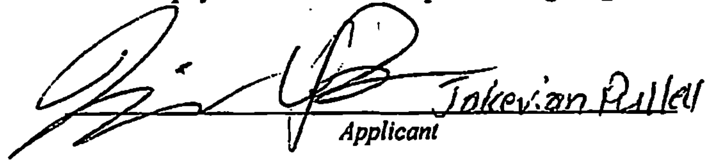
Revised 3/2003

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

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

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

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



Applicant

SWORN or affirmed to and subscribed before me this 7 day of Feb., 2014.

Notary Public

My Commission Expires: May 20, 2021

Revised 3/2003

State of South Carolina
County of Laurens

Jakevian Pulley #314247
Applicant
"VS"

State of South Carolina
Respondent

In the court of
Common Pleas

C/A No. ______

Memorandum To support
PCR Pleadings

This is a Memorandum To support my PCR Pleadings Prusuant to the S.C. Code Ann. § 17-27-10. To support Section 10 of my PCR application, I would state as Follows:

(10-A)

I would contend that the circuit court lacked Jurisdiction to entertain my case, and Sentence me. Thus Violating my rights under the 14th Amendment, and Art. IV § 2 of The U.S. constitution as under Art. I 3 of The S.C. Constitution.

(10-B)

I would further contend That I received ineffective assistance of Appellate court counsel, Thus violating my rights under the 6th and 14th Amendments, and Art. IV § 2 of the U.S. Constitution, and under Art. I §§ 3 and 14 To the S.C. Constitution.

(10-C)

I would further contend That I recieved ineffective assistance of Trial counsel Thus Violating my rights under The 6th and 14th Amendments, and Art. IV § 2 of the U.S. constitution, and under Art. I §§ 3 and 14 to the S.C. Constitution.

(LACK OF Jurisdiction)

(II-A-1)

It is my Proposition that the circuit court lacked Jurisdiction due to my "indictments" not being filed w the clerk of court. In relevant language, Rule 3(c) SCRCrimP states: The "Indictment" [S]hall be [F]iled with The clerk of court." Inasmuch because The word [S]hall is used in this rule it is [M]andatory that the indictments be filed, and this command is inflexible.

In so far There is No domestic Precedent To address The Jurisdictional argument Sub judice, however Stare Decisive informs The court That "when there is No S.C. case law directly on point with the question of law, The court can look to other Jurisdictions, and to Federal cases For Persuasive authority. Cothran VS. Brown, 350 S.C. 352, 566 S.E. 2d. 548 (S.C. App. 2002) Golini VS. Bolton, 326 S.C. 333, 482 S.E. 2d. 784 (S.C. App. 1997) Ellis VS. Oliver, 335 S.C. 106, 515 S.E. 2d. 268 (S.C. App. 1999) Jones VS. Equicredit corp. of S.C., 556 S.E. 2d. 713 (S.C. App. 2001)

To support my Proposition, and give it a Sound Foundation, In The Precedent U.S. VS. Hill, 210 F. 3d. 881 (8th cir. 2000) The Federal courts of Appeals stated: "The [F]iling of a valid indictment is a prerequisite to the courts [J]urisdiction.

In Sharp VS. Johnson, 107 F. 3d. 282 (5th cir. 1997) The court stated: Jurisdiction is conferred upon the trial court by [F]iling of an indictment; It is the Filing of an indictment not it's reading which invest the court with Jurisdiction. Likewise my Foundation and Proposition before the court has merit. Therefore under The controlling law The circuit court lacked Jurisdiction which is a 14th Amendment Violation and the actions by the court are void. Burnham VS. Superior court of Cal., 495 U.S. 604, 110 S.Ct. 2105 (1990)

#11-B-11#

It is my Proposition That my appellate court counsel was inept and constitutionally ineffective For Filing me a "No Merit" brief Pursuant to Anders vs. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). Likewise my trial counsel Moved the Court For a directed verdict T.R.R. 4711.17 and renewed the motion For Appellate review T.R.R. 495 L.16-25 & Under the controlling law, The Direct verdict motion had [M]erit For the sake of clarity, In the body of my indictment I am actually charged with having the weapon. However during The Trial of the case, There was No Testimony adduced or produced by any witness That I was armed as stated in the charging instrument In so far there was a variance in the allegation (allegata), and The Proof (Probata) I ipso Jure was entitled to the direct verdi Any Competent appellate court counsel would have seen this Preserved For appeal and raised it.

The issue that my appellate counsel put in my Anders Brief, Should have been in a Merit Brief because the argument was preserved at Trial, Moreover I had a Jurisdicti question of law For my indictments Not being Filed and Jurisdictional defects can be raised at anytime even For the First time on Appeal.

I was Prejudiced by my counsels ineffectiveness, because there is a reasonable Probabili that if counsel would have Filed a Merit Brief To the Court of Appeals with the issues, The outcome of my Appeal could have been different, And a reasonable probabili is a Probability sufficient To undermine Confidence in The out come Strickland vs. Washington. So there was no meaningful adversary testing on Appeal U.S. vs. Chronic

(II-C-1)

I would contend that my trial counsel was inept and constitutionally ineffective For failing to investigate, research, and preparing me a defense to suppress the Armed Robbery Charge From my Trial.

For the sake of clarity counsel should have had a Franks hearing. Pursuant To Franks vs. Delaware

Due to Law Enforcement lying to the Magistrate For the warrant To issue. Law Enforcement Under oath Told the Magistrate that I was armed with the [G]un, and I was not. If my counsel would have had a Franks hearing and the truth was ~~was~~ revealed as it was at Trial, There is a reasonable probability that the court would have suppressed this charge From the trial as a matter of Law and a reasonable probability is a probability sufficient To undermine confidence in the outcome Strickland vs. washington

In so Far the Failure of counsel to investigate, research, and prepare is equivalent to no counsel at all. Wallace vs. Kern, 392 F. Supp. 834, Id. at 844.

Likewise counsel at the very least must investigate, CoBB's vs. State, 305 S.C. 299, 408 S.E. 2d. 233 (S.C. 1991)

Dupree vs. State, 305 S.C. 285, 408 S.E. 2d. 215 (S.C. 1991)

I would further contend That my Trial counsel was inept and Constitutional ineffective For failing to properly argue my direct verdict motion to The court. Counsel argued the motion in generic Terms, and Never informed The court that there was never No Testimony adduced at trial by any witness that I was armed. In Fact there was a [F]atal variance at trial Because my indictment states: was in Fact armed, and I was Not. A criminal defendant in South Carolina is entitled to be tried only on indicted offenses. State vs. Munn, 292 S.C. 497, 357 S.E. 2d. 461 (1987)

It is a rule of universal observance in administering The criminal LAW that a defendant must be Convicted, if convicted at all of The [P]articular offense Charged in The bill of the indictment. State vs. Gunn, 313 S.C. 124 437 S.E. 2d. 7; (S.C. 1993) quoting State vs. Cody 180 S.C. 417, 186 S.E. 165 (S.C. 1936)

I was Prejudiced by my counsels ineffectiveness because there is a reasonable Probability That if counsel would have argued to the Judge That there was no evidence whatsoever adduced at Trial as stated in my indictment For armed Robbery I might have been aquitted, and a reasonable Probability is a Probability sufficient To undermine Confidence in the outcome. Strickland vs. Supra. Assuming Arguendo, The hands of one, hands of all Jury instruction has No effect of Force during The direct verdict stage of Trial.

I would further contend counsel was inept and ineffective for failing to request a cautionary jury instruction for my co-defendant Robinson guilty plea being adduce at trial, Tr. P. 232 L. 14-25. In as much as a general rule, a witness accomplice guilty plea may be admitted into evidence if it serves a legitimate purpose and a proper limiting instruction is given. U.S. vs Valuck, 286 F. 3d. 221 (5th cir. 2002) U.S. vs. Marroquin, 885 F. 2d. 1240 (5th cir. 1989)

I was prejudiced by my counsels ineffectiveness because the jury was free to draw the inference that because my co-defendant was guilty I was guilty and this type of speculation and conjecturing is impermissable and a reasonable probability is a probability sufficient to undermine confidence in the outcome Strickland vs. Washington, supra also see, State vs. Murphy, 270 S.E. 642, 244 S.E. 2d. 36 S.C. 1978)

11-C-4)

I would further contend that counsel was inept, and constitutionally ineffective for failing to request a jury instruction for the jurors not to consider false evidence at all. There was evidence adduced at trial by the States witness "Lakaison Robinson" that was misleadin, Tr. P. 245 L. 3-25 through Tr. P. 249 L. 1-25. This witness had already been exposed by counsel for lying under oath in his statement and in the court room. Counsel should have requested a jury instruction under Miller vs. Pate, 386 U.S. 1 (1967) Not to even consider false evidence. I was prejudiced by counsels ineptitude because there is a reasonable probability that if counsel would have requested this instruction It would have been illuminated that False In one thing Is False In Everything. And his testimony would not have been considered and I would have been acquitted and a reasonable probability is a probability sufficient to undermine confidence in the outcome Strickland vs. Washington.

I would further contend That counsel was inept and constitutionally ineffective for Failing To ha a identification hearing before trial. likewise counsel was aware prior to Trial that Ther was No Photo-lineup in the discovery material. on that Fact alone (ipso Facto) counsel shou have had a Neil Vs. Biggers hearing. Pursuant to Neil vs. Biggers

Or a Identification hearing To see if The Victims in the case could make a Positive Id on my person State vs. Simmons, 417 S.E. 2d. 92 (1992) Reliability is the linchpin in determining the admissibility Of Identification
Manson vs. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243 (1977) citing
Stovall vs. Denno, 388 U.S. 293, 87 S.Ct (1967)
The Shortcomings of Counsel Failing to have a Identification hearing allow the States witne to come in the court room and make the assumption That I committed The crime, and There is a Fact present in this case From the video that the culprits were wearing MASK!! Proving Identification beyond a reasonable doubt is imperative,
U.S. vs. Telfaire, 469 F. 2d. 552 (1972) and counsel basically undercut my defense. I was Prejudiced by my counsels ineptitude because There is a reasonable Probability if counse would have requested an Identification hearing. The witness would not have made a positive Id on me, and the outcome of the case could have been different and a reasonable Probability is a probability Sufficient to undermine confidence in the outcome Strickland vs. Washington
$(III-C-(e))

I would further contend that counsel was inept and constitutionally ineffective For Failing to have a suppression hearing For a Pretexual Traffic Stop. Law enforcement Told the court That he stopped the vehicle I was in For a Traffic Stop T.P. 274 L. 8-12. However officer Patrick Durkin Stopped the vehicle because The Captain Told him to T.P. 273 L. 16. A Pretexual traffic stop occurs when Law Enforcement say they are stopping you for one thing but They are really stopping you for something else, U.S. vs. Bloomfield 24 F. 3d. 1042 (1994)

I was Prejudiced by my counsels Shortcomings because I could have have had the Clothing I was wearing [S]uppressed From the Trial and The outcome could have bee different, and a reasonable Probability is a Probability sufficent To undermine confider in the outcome Strickland V.S. Washington

I would further contend That my counsel was inept and constitutionally ineffective For Failin to investigate research, and prepair me a defense For False arrest. Counsel Helped the prosecution by leading officer Durkin during cross examination. That at The time my person was sezed I was placed under "investigation detention" T.p. 280 L. 1-12 However under U.S. Supreme Court Jurisprudence I was under arrest at the time officer Durkin told me don't move under the 4th Amendment Jurisprudence your not under arres when the Formal words arrest are uttered to you. You are under arrest when your movement is restricted by law enforcement, Florida VS. Royer

Likewise there is No doubt an arrest when the officers Point their guns at you I was Prejudiced by my counsels ineptitude because if she would have investigated research, and prepaired me a defense For False arrest instead of leading the witness it was an investigation Detention, I could have had evidence suppressed, and the outcome could have been different and a reasonable probability is a probability sufficient To undermine The confidence in the outcome, Strickland VS. Washington

I would Further contend my counsel was inept, and constitutionally ineffective. For Failing to investigate, research, and Prepairing me a defense For my "Indictments" Not being File by the clerk of court in violation of Rule 3(c) SCR Crimp. There is no debate, disp or contravercy That the word [S]hall is being used in Rule 3(c) therefore a command word is used The indictments must be Filed as The Rule of Law States. I was prejudiced by my counsels ineptitude because there is a probability that a jurisdiction defect could have been exposed For The indictments Not being Filed.

U.S. V. Hill 210 F.3d 881 (8th cir. 2000)
Sharp vs. Johnson, 107 F.3d 282 (5th cir. 1997)
Santus vs. State, 834 S.W. 2d. 953 (Tex 1992)
Stucker vs. State, 799 S.W. 2d. 863 (Tex 1990)

I was Presudiced by my counsels shortcomings, because if counsel would have investigated, researched, and Prepaired me defense, and brought This matter to the courts attention. The Court may have Noticed that it did not have Jurisdiction to hear my case. and a reasonable probability is a probability sufficient To undermine confidence in The outcome Strickland VS. Washington

...constitutionally ineffective ...
...uld Further contend That Trial counsel was inept and constitutionally ineffective ... when he gave his
...bject to the trial Courts Judge constructively amending my indictment when he gave his
...instructions to the Jury (Tr.p. 552 L.15-25 through Tr.p. 554 L.1-20). I am charge
...e body of my indictment with actually being armed and committing The robbery and because The
...ctment in the State of South Carolina is the charging instrument That gives Notice of what you
...st be Prepared to Face at Trial
...ese are the [E]lements That the state must Prove at trial

...ncan vs. Louisiana 391 U.S. 145, 88 S.Ct. 1444 (1968)
...tterson vs. New York 432 U.S. 197, 97 S.Ct. 2319 (1977)

...n as much my trial, There was no evidence Produced That to The Jury That I was armed, and
The only way I got convicted in when the trial court Judge constructively amended my
...ndictment and charge the Jury to the law Pertaining the "hands of one is the hands of all"
I.N the State of South Carolina Stare Decisis dictate That "Any Person who aids, abets
and encourages another in and is Present during the commisson of a crime is guilty as a Principal
State vs. Burdetta 335 S.C. 34, 515 S.E. 2d. at 531 (S.C. 1999)
State vs. Stuckey 556 S.C. S.E. 2d at 412 (S.C. App. 2001)
State vs. Langley 515 S.E. 2d at 100-101 (S.C. App. 1999)
Furthermore, when several People Pursue a common design to commit an unlawful act
and each take part agreed upon or assigned to him in an effort to insure The success of the
common undertaking The act of one, is The act of all, and all are presumed to be
Present and guilty, State vs. Jennings, 335 S.C. 82, 515 S.E. 2d. 107 (1999) For the
sake of Clarity I am Not arguing The Law The gist and thrust of my logic is
that if The State was going to use "hands of one, hands of all" law
to convict me then There should have been something of some type
of language in The body of the indictment to Notify me of that so I ca...
prepair me a defense to it. Insofar to be informed of the nature of The
Accusation against you under The 6th Amendment To the U.S. Constitution means
to be informed of The "TRUE Nature" of the accusation against you
Henderson vs. Morgan, 426 U.S. at 645, 96 S.Ct. at 2257

likewise to receive real Notice of the cause and true Nature of the accusation
against you is of "paramount" importance because it is the first and most universally
recognized requirement of "Due Process"! Smith vs. O'Grady 312 U.S. 329, 61 S.Ct. 572 (1941)
The law is written, [I.e. Lex Scripta Est] "When The government through it presentation
of evidence, and or its argument of the [C]ourt through its instructions to the Jury or
both [B]roadens The bases for conviction beyond those charged in the indictment, a
constructive Amendment - Sometimes reffered to as a [F]atal variance occurs.

Inasmuch a constructive Amendment is a fatal variance because The Indictment
is altered "to change The elements of the offense charged such That the
defendant is actually convicted of a crime [o]ther Than that charged in the
indictment, U.S. vs. Randall 171 F.3d. at 203 (4th cir 1999) citing
U.S. vs. Schnabel, 939 F.2d. 197 (4th cir 1991) also see T.C.P. 496 L. 22-25
U.S. vs. Leichtnam, 948 F.2d. 370 (7th cir 1991) and
U.S. vs. Miller, 471 U.S. 137, 105 S.ct. 1811 (1985)
U.S. vs. Helmsley, 941 F.2d. 71 (2nd cir 1991)
U.S. vs. Vebeliunas, 76 F.3d 1283 (2nd cir 1996)
The courts have also Stated "A variance in the indictment tending to [M]islead The defendant
in making his defense. A variance occurs when the Facts Proved at Trial are different
From Those alleged in the indictment. A variance constitutes grounds For Reversing a
conviction only when it affects The Defendants Substantial Rights and that is when
The variance deprives a defendant of sufficently specific information To prepair
a defense, and to be protected against [Suprise] at trial. Moreover a Fatal
variance destroys a criminal defendants Fundamental Rights to be informed of
the true Nature and cause of accusations against him
Hunter vs. State, 916 F.2d. 595 (1990) and U.S. vs. Peterman, 841 F.2d. 1474 (10th cir 1988)

Ricotkad vs. Procunec, 736 F. 2d. at 207 (No.4) (5th cir. 1984)

It is universally recognized in the state of South Carolina that if a criminal defendant is going to be convicted at all he must only be convicted of the particula offense charged in the bill or body of the indictment, State vs. Gunn, 313 S.C. 124 437 S.E. 2d. 75 (1993)

I was prejudiced by my counsels ineptitude For Failing to object to the constructiv Amendment because if she would have objected and explained To The court that there was nothing in the bill of my indictment about the hands of one is the hands of all. Then there is a reasonable possibility That the outcome of my case could have been different, and a reasonable probability is a probability sufficent To undermine confidence in the outcome Strickland vs. Washington, sup

I would Further Contend That Counsel was inept, and constitutionally ineffective under the U.S. Vs. Chronic For Failing to Put Forth a meaningful adversarial Testing of The case at Trial, do to multiple failures to object, and helping The state case against me to win.

1) Counsel did not object To the solicitor using The language "I would submit To you". This language is improper and nothing that is improper is lawful (Tr. P. 68 L. 19; Tr. P. 71 L. 9)
sees:
State vs. Hawkins, 310 S.C. 50, 425 S.E. 2d. 50
State vs. Pierce, 263 S.C. 23, 207 S.E. 2d. 414

2) Counsel did not object To The Solicitor identifying me in the opening statement Tr. P. 19 L. 6-8)

3) Counsel did not object To The solicitor saying I would testify (Tr. P. 19 L. 23-25)

4) Counsel did not object to The witness identifying me, The evidence was the robber had on mask and she could not see there face (Tr. P. 90 L. 22-25; Pg. 91 L. 20-21)

5) Counsel did not object To my identification with no Foundation (Tr. P. 92 L. 12)

6) Counsel did Not object to "hearsay" when the witness said "She Said," and identified me with no Foundation (Tr. P. 92 L. 16-18)

7) Counsel did not object To hearsay and To my I.D. (Tr. P. 94. L. 1-7)

8) Counsel did not object To my Identification (Tr. P. 98 L. 3)

9) Counsel did not object To my Identification (Tr. P. 103 L. ~~20~~ 23)

10) Counsel did not object To the witness identifying me as the mask man on the video (Tr. P. 106 L. 4-6)

11) Counsel violated the S.C. Code Ann §§ 17-?-?? and 17-?-?? making reference to the States witness statement, and putting it in to evidence, (Tr. P. 116 L. 16-21; Tr. P. 114 L. 2-13) without making sure the witness received an exact copy of statement...

State vs. Motes, 264 S.C. 317, 215 S.E. 2d 190 (1975)

State vs. Batton, 223 S.E. 2d 863 (1976)

For the violations see: Tr. P. 227 L. 25 through Pg. 228 L. 1-14; Pg. 229 L. 3; Pg. 231 L. 14; Tr. P. 238 L. 21-25 through 239 L. 1-23; Pg. 252 L. 8; 330 L. 14; 366 L. 18; 420 L. 24; 424 L. 24-25 through 425 L. 20

12) Counsel did not object To The witness identifying me (Speculation) (Tr. P. 141 L. 22)

13) Counsel did not object To my identification (Tr. P. 155 L. 13-20)

14) Counsel did not object To Speculation For identifying me with a mask on (Tr. P. 157 L. 7-12)

15) Counsel did not object to the officer saying he stopped the vehicle I was in For "Traffic" stop. It was a pretex stop. (Tr. P. 274 L. 9; Tr. P. 278 L. 21)

16) Counsel led the States witness to say that I was in investigation detention but I really was under arrest (Tr. P. 280 L. 4-12) counsel should have let The officer answer The questions, Not answer For The officer.

17) Counsel did not object To in court identification of me - (Tr. P. 472 L. 21-22)

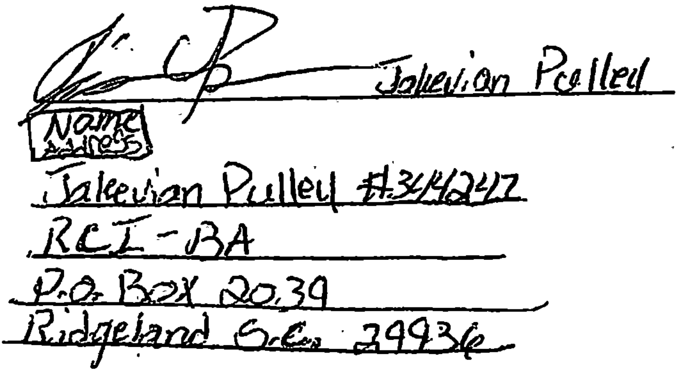
18) Counsel did not object to BRUTON ERRORS that took place at trial when my co-defendants statement was used against me Pursuant to

[illegible] vs. US, 271 Va. 1042, 150 S.Ct. 1000 (2007) (Tr.P. 231 L. 14-25; Tr.P. 238 L. 21 through 239 L. 22 Tr.P. 246 L. 10-25 through Tr.P. 247 L. 1-14)

In as much with all These errors illuminated in the record with counsel failing to have a Franks vs. Delaware, hearing For the officer lying to get the arrest warrant, Failing to Properly argue the direct motion, Failing to request a cautionary jury instruction For my co-defendants Plea being brought up at trial, Not requesting a jury instruction For subordination of perjury For my co-defendants lying, Failing to have a Neil vs. Biggers hearing on identification, Failing to Put Forth a defense For a Pretextual traffic stop, Leading the States witness to say I was In investigation detention, and Not under arrest which was critical, Didn't say nothing about my indictments Not being Filed which is jurisdictional, and didn't say Nothing about a constructive Amendment, clearly shows That there was no meaningful adversarial Testing at Trial, For clarity my "Counsel LAID DOWN"!!

This type of Shortcoming by counsel is Subject To U.S. vs. Chronic analysis and No Prejudice Need To be Shown.

Feb. 7, 2014
DATE



Jakevion Pulley
Name
Address
Jakevion Pulley #342427
RCI-BA
P.O. Box 2039
Ridgeland S.C. 29936

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
Jakevian A. Pulley, #344247, Applicant, v. State of South Carolina, Respondent.	2014-CP-30-0138 **RETURN**

In response to the post-conviction relief application filed February 19, 2014, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Applicant was indicted at the July 2011 term of the Laurens County Grand Jury for Armed Robbery (2011-GS-30-1057) and Criminal Conspiracy (2011-GS-30-1058). Scarlett Moore, Esquire, represented the Applicant. On March 1, 2012, the Applicant proceeded to trial before a jury and was found guilty of both charges as indicted. The Honorable Roger L. Couch sentenced him to confinement for twelve (12) years for Armed Robbery, and five (5) years, concurrent, for Criminal Conspiracy.

A timely notice of appeal was filed on the Applicant's behalf and an appeal perfected pursuant to Anders v. California, 386 U.S. 783 (1967). The South Carolina Court of Appeals

affirmed the Applicant's conviction by written Order. State v. Pulley, Op. No. 14-UP-008 (S.C. Ct. App. Filed January 8, 2014). The Remittitur was issued on January 27, 2014.

Attached herewith and incorporated herein are the records of the Laurens County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the application, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "I would contend that the circuit court lacked jurisdiction to entertain my case, and sentence me. Thus violating my rights under the 14th Amendment and Art. IV. § 2 of the U.S. Constitution an(sic) under Art. I § 3 of the S.C. Constitution."
2. "I would further contend that I received ineffective assistance of appellate court counsel. Thus violating my rights under the 6th and 14th Amendmenst and Art. IV. § 2 of the U.S. Constitution and under Art. I § 3 and 14 of the S.C. Constitution."
3. "I would further contend that I received ineffective assistance of trial counsel. Thus violating my rights under the 14th Amendment and Art. IV. § 2 of the U.S. Constitution and under Art. I § 3 and 14 of the S.C. Constitution."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent construes these allegations as ineffective assistance of counsel claims. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney=s performance by its "reasonableness under 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that,

but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The 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 the record does not conclusively refute. Accordingly, 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).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on

appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

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

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. *See See* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by* Gentry, *supra*. However, "[c]ircuit courts obviously have

subject matter jurisdiction to try criminal matters." Gentry, *supra*, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

The Respondent submits the York County Grand Jury returned a True-Bill indictment on April 22, 2010. Therefore, this allegation should be denied.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By:________________________

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

June 13, 2014.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS)
)
) 2014-CP-30-0138
JAKEVIAN A. PULLEY, #344247)
)
Applicant,)
)
vs) AFFIDAVIT OF SERVICE BY MAIL
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)

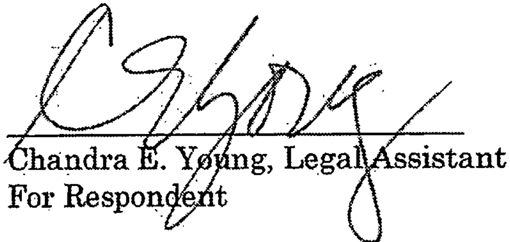
1. I am an employee of the Respondent in the above-captioned action.

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

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

Carson M. Henderson
109-B Oak Avenue
Greenwood SC 29646

DATED this 13th day of June, 2014.



Chandra E. Young, Legal Assistant
For Respondent

608 Re: 2014-CP-30-0138

Dear Clerk,

would you please stamp-date and file both copies of my PCR amendments and forward the extra copy back to me.

I am thanking you in advance for your time and efforts in this matter.

I, Jakevian A. Pulley #344247 certify under the penalty of perjury that the foregoing is true and correct.

[signature] 344247

6/29/16

LYNN W. LANCASTER
2016 JUL -1 A 10:09
LAURENS COUNTY
CLERK OF COURT

RECEIVED
JUN 29 2016
P.C.I. MAILROOM

State of South Carolina LYNN W. LANCASTER) Court of Common Pleas

County of Laurens) 2014-CP-30-0[illegible]

Jahovian [illegible]. Pulley, #[illegible] 2016 JUL -1 A 10:09) AMENDMENTS TO ORIGINAL
Applicant,) P.C.R. APPLICATION

v.)

State of South Carolina LAURENS COUNTY
Respondent. CLERK OF COURT

The applicant in the above entitled case respectfully request to amend his Original PCR Application that was filed on February 1[illegible], 2014 in the Laurens County Clerk of Court's office.

Attached and enclosed are the following amendments:

LEGAL CITATION

The applicant allege and can prove that he was denied effective assistance of counsel. The applicant submits that the extensive trial transcript record speaks for itself as to the competency of counsel. Trial counsel and appellate counsel was not diligent in their representation of the applicant and did not perform well within the range of competence demanded of attorneys in criminal matters and did not perform within the wide range of reasonable professional assistance.

In Strickland v. Washington, 466 U.S. 668, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial, 104 S.Ct. 2052. The applicant submits that counsel's performance was deficient and his performance prejudiced him.

Counsel's performance prejudiced the applicant to the point where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The applicant is requesting an evidentiary hearing and a new trial.

[illegible]

Due Process Violation

- Trial counsel failed to object to the Due Process violation that the state committed.

- Trial counsel failed to produce the co-defendant's plea transcript.

- Counsel was ineffective for failure to argue applicant's Due Process rights pertaining to Rule 3(b), 3(c).

- Trial counsel failed to challenge/move to suppress my co-defendant's involuntary statement.

- Trial counsel failed to properly challenge my co-defendant's pre-arranged plea agreement with the state.

- Trial counsel failed to request a jury charge of the lesser included offense.

- Trial counsel was ineffective for failing to object to introduction of the evidence seized pursuant to the unlawful search.

- Trial counsel was ineffective for failing to object to the pictures introduction.

- Trial counsel failed to request a mental competence hearing/evaluation which denied applicant due process of law.

Due Process Violation

Trial Counsel Failed To Object To The Due Process Violation That The State Committed.

During trial and prior to Robinson's testimony, Pulley moved to exclude the testimony based on the fact that the state failed to disclose that Robinson was allowed to plead guilty to misprison of a felony and given a probationary sentence in exchange for his cooperation, in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194. (R. p. 1[illegible]-1[illegible]; p. 197, lines [illegible]-[illegible]). It appears that on July [illegible], 2011, Robinson waived presentment of the indictment to the grand jury and pled guilty to misprison of a felony. (R. p. 1[illegible], lines 1[illegible]-p. 1[illegible], lines 1-17). During a proffer offered by Pulley, Robinson was asked if he was testifying because of any offer made by the prosecution. (R. p. 1[illegible], lines 11-15).

The state denied the existence of a deal and stated, "I'm aware of nothing, your Honor. If there was anything, it would have been an informal vocal agreement, oral agreement that would come back and testify for us. I'm not even aware of that. (R. p. 1[illegible], lines 7-1[illegible]). The attorney who represented Robinson at the guilty plea was questioned during the proffer about the existence of a deal. (R. p. 1[illegible] lines 17-1[illegible]). Robinson's attorney testified, "I mentioned that he would [Robinson] cooperate and I told him that he may be called as a witness in this case. (R. p. 1[illegible], lines [illegible]1-2[illegible]).

The judge denied the motion to exclude Robinson's testimony based upon public knowledge. Obviously there was a deal in place for Robinson to testify for probation. Trial counsel failed to secure the necessary documents/records to prove that the State hid the fact that Robinson's testimony was bought.

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Brady, 373 U.S. at 87, 83 S.Ct. at 1196-97. Brady 373 U.S. at 87, 83 S.Ct. at 1196-97. Brady applies to impeachment evidence as well as exculpatory evidence. State v. Von Dohlen, 322 S.C.

[illegible], [illegible], 471 S.E.2d [illegible], [illegible]. However, Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, as in the case at bar. See, State v. Copeland, 27[illegible] S.E.2d 785, 7[illegible].

Under Brady the test is not whether the solicitor failed to reveal the information, but whether the omission deprived the defendant of a fair trial. [illegible] v. Town of Mount Pleasant, [illegible] S.C. [illegible], 470, [illegible] S.E.2d [illegible], [illegible] the mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense. A defendant shows a Brady violation as in the case at bar by demonstrating that favorable evidence could have been presented to put the whole case in such a different light as to undermine confidence in the verdict.

The evidence of an agreement with Robinson in exchange for his cooperation in Pulley's trial was favorable to the accused, was known by the prosecutor, was not disclosed by the state and was impeaching. The knowledge of an agreement between the state and Robinson was in the exclusive control of the state. Pursuant to Brady, the state had a duty to disclose the agreement. The failure to disclose constitutes a due process violation. Robinson's testimony should have been objected to and suppress, based upon the Brady violation.

Trial Counsel Failed To Produce The Co-Defendant's Plea Transcript.

By the time of the trial, the applicant's co-defendant Robinson had already pled guilty, Robinson offered to turn state's witness in return for a lenient sentence. (App. p. [illegible] [illegible]-[illegible]). Evidence was proffered at the applicant's trial, both by Robinson's attorney and a Eighth Circuit solicitor, regarding Robinson's plea and any potential deals involved.

Instead of requesting a copy of Robinson's plea transcript, trial counsel failed to challenge the co-defendant's plea with accurate proof from Robinson's plea hearing. It is a reasonable probability that had counsel supplied the Court with a proof of a deal by Robinson, there is a reasonable probability that

the outcome of the applicant's jury trial would have been different.

The applicant was denied a fair trial by the acts and omissions of trial counsel.

Counsel Was Ineffective For Failure To Argue Applicant's Due Process Rights Pertaining To Rule 3(b), 3(c).

In accordance with Rule 3(b) and Rule 3(c) of the S.C. Rules of Criminal Procedure, an arrest warrant must be transferred to the solicitor within [illegible] days from receipt from the issuing official and the accused must be indicted within [illegible] days of a warrant being issued. The applicant was served with a warrant and an indictment which was not served within [illegible] days and therefore, the indictments should have been dismissed. Trial counsel did not properly address and follow through with the issue of the dismissal of the indictment and therefore was ineffective in his representation of the applicant in the trial of the matter. Therefore this Court should grant relief.

As additional authority not previously mentioned, applicant cites, State v. Jane Blackwell, indictment for obstruction of justice Greenwood County Court of General Sessions Order of Judge Wyatt T. Saunders dated March [illegible], [illegible], dismissing charge because the State failed to comply with Rule 3 of the criminal practice which dictates the state has [illegible] days to indict once a warrant is issued.

Exceptional circumstances exists because this Court should consider the case of State v. Jane Blackwell, Greenwood County Court of General Sessions Order - Equal Protection of the Law. The applicant was grievously prejudiced by the solicitor's negligence in not taking action on the arrest warrant.

There is a reasonable probability that the outcome would have been different had trial counsel challenged Rule 3(c).

Trial Counsel Failed To Challenge/Move To Suppress My Co-Defendant's Involuntary Statements.

Statements are inadmissible at trial when they are made involuntarily. State v. Franklin, [illegible] S.C. [illegible], [illegible]

(19[illegible]). A statement is made involuntarily when it is induced by a promise of leniency. State v. Peake, 291 S.C. [illegible], [illegible] S.E.2d 4[illegible]7 (1987).

Trial Counsel Failed To Properly Challenge Co-Defendant's Pre-Arranged Plea Agreement With The State.

The deliberate deception of a court and jurors by the presentation of evidence known to be false violates the Fourteenth Amendment. The same result obtains when the state/solicitor, although not soliciting false evidence, allows it to go uncorrected when it appears. Giglio v. United States, 405 U.S. 150. In other words, the state cannot create a materially false impression regarding the facts or the credibility of the witness.

Prosecutor's falsehood alone do not automatically entitle a petitioner to relief. Relief is compelled when the false impressions are material, which means when there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. United States v. Agurs, 427 U.S. 97, 103; Napue v. Ill., 360 U.S. 264; Mooney v. Holohan, 294 U.S. 103; Campbell v. Reed, 594 F.2d (4th Cir.). The record will suggest a reasonable likelihood that during deliberations the jurors considered the false evidence or plea deal. This does not entail an inquiry into whether the evidence might have made a difference in the outcome if it had not been considered. There is a reasonable probability that the outcome would have been different had trial counsel properly armed with the necessary documents to show that there was in fact a deal that was not brought to light. Applicant was denied a trial.

Trial Counsel Failed To Request A Jury Charge Of The Lesser Included Offense.

Trial Counsel's actions prejudiced the applicant and unduly subjected him to federal law violations. The applicant in the entitled case was not identified as one of the robbers. In Keeble v. United States, 412 U.S. 205, 93 S.Ct. 1993. The Supreme Court stated although the lesser included offense doctrine developed at common law to assist the prosecution in cases where the

evidence failed to establish some element of the offense originally charged, it is now beyond dispute that the defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater. Sansone v. United States, [illegible] U.S. [illegible] S.Ct. [illegible], Berra v. United States, [illegible] U.S. 1[illegible]1 7[illegible] S.Ct. [illegible]. Petitioner/Applicant should have been granted a lesser charge to the jury.

In Stevenson v. United States, supra, The U.S. Supreme Court ruled that where some of the elements of the crime charged themselves constitute a lesser crime if the evidence justified it, would no doubt be entitled to an instruction which would permit a finding of guilt of the lesser offense. See, Spaziano v. Florida, 46[illegible] U.S. 447, 104 S.Ct. [illegible]154. The absence of a lesser included instruction increases the risk that the jury will convict...simply to avoid setting the defendant free. The goal of the "Beck Rule" in other words is to eliminate the distortion of the factfinding process that is created when the jury is forced into an all or nothing choice between capital murder and innocence. See, Beck v. Alabama, [illegible] U.S. [illegible], 1[illegible] S.Ct. [illegible].

Applicant asserts that the failure of trial counsel to request a jury instruction of the lesser included offense not only subjected him to due process rights violations under the 14th Amendment, but also clearly subjected him to equal protection rights violation under the 5th Amendment of the U.S. Constitution. As the result of the U.S. Supreme Court's ruling and mandates in State v. [illegible], supra; State v. [illegible], supra and State v. Crafts, supra, the very same constitutional equal protection rights should have been afforded to the applicant.

Applicant asserts he was denied a substantial constitutional right of effective assistance of counsel in violation of the 6th amendment of the U.S. Constitution.

Trial Counsel Was Ineffective For Failing To Object To Introduction Of The Evidence Seized Pursuant To That Unlawful Seizure.

The Applicant relies heavenly on 4th amendment precedent

to contend that his arrest was illegal. The State of South Carolina is free to provide its citizens with a greater degree of protection than that guaranteed by the Federal Constitution. California v. [illegible], 4[illegible] U.S. [illegible], 10[illegible] S.Ct. 24[illegible], [illegible]. See the clear language of South Carolina's law governing warrantless arrests.

This State's law is explicitly clear on the authority of a police officer to make a warrantless arrest. See §17-13-30 (violate any of the criminal laws of this State if such arrest be made at the time of such violation of law or immediately thereafter. Section §17-13-30 is further buttressed by the requirements of §23-13-60, which clearly holds that:

> The deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant and, in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own country or in an adjourning county.

See, State v. Martin, 275 S.C. 141, [illegible] S.E.2d [illegible] (19[illegible]) (holding that §17-13-30 must be construed in light of §23-13-60). Both of these statutes employ terms such as "freshly committed," "immediately thereafter" and "upon prompt information or complaint", indicating that the legislature stressed the immediacy of events necessary for a warrantless arrest. It did not authorize law enforcement to conduct warrantless arrest long after the commission of a crime, as in the case here. Where a crime can no longer be considered "freshly committed", law enforcement must obtain a warrant in order for the arrest to be valid.

Here, the store was robbed by three people around nine o'clock p.m. on April 24, 2011. The police were contacted and arrived 15 minutes later. Not long after arriving at the store, the Respondent's co-defendants had been apprehended. The question now becomes whether the robbery constituted a freshly committed crime or whether the extended period of time between the robbery and the arrest rendered the crime stale.

The record in this case demonstrates that the applicant was arrested without a warrant in contradiction of South Carolina law. The clothing seized by law-enforcement where the applicant

was booked into the detention center was a direct product of this unlawful arrest. This evidence was the most damaging evidence presented by the prosecution during the applicant's trial. By failing to object to the introduction of this evidence, applicant was denied a fair trial.

Trial Counsel Was Ineffective For Failing To Object To The Pictures Introduction.

Nothing in the record shows that law enforcement had probable cause to search the applicant's cell phone for the pictures that were used to convict him. The 4th amendment provides that no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. These fundamental protections are applicable to the states through the Fourteenth Amendment. Stanford, 37[illegible] U.S. at 4[illegible], Wolf v. Colorado, 33[illegible] U.S. 25, Mapp v. Ohio, [illegible] S.Ct. 1[illegible].

The affidavit in support of the search warrant in question states that the applicant and co-defendants:

> conspired and did rob at gun point the [illegible] store located at 110[illegible] W. Harper St., in the City limits of Laurens, S.C.. The subjects touched items in the store and all three suspects had cell phones on their person at the time of arrest and it is believed that the three may have had conversations on their cell phones before and or after the robbery between themselves and or others.

Nothing in this affidavit indicates any information whatsoever supporting a probable cause to seize pictures from the applicant's cell phone. There is nothing in the affidavit that demonstrates that the affirming officer [illegible] Higgott, even knew of the pictures in question much less that they were evidence of the crime in question. Instead, it merely states that conversations were made by the suspects. Higgott testified that the only knowledge she had of the cell phone being used in connection with the robbery was limited to applicant and a co-defendant texting one another. Law enforcement was unaware that these incriminating pictures even existed until the applicant's phone was searched. The complete lack of probable cause supporting seizure of these pictures is so bare on the face of the search warrant and application that even a reasonably

trained officer could not reasonably rely on the affidavit. U.S. v. Leon, 468 U.S. 897, 923 quoting Brown v. Illinois, 422 U.S. 590, 610-11 (Powell, J, concurring in part.

Instead, the pictures in question were seized from the applicant's phone were used to connect him to the robbery. This gun was never recovered despite law enforcement finding numerous other items located at Laurens Terrance allegedly taken from the store. Had trial counsel objected to the introduction of the pictures, there is a substantial likelihood that the result of the trial would have been different. Applicant was denied a fair trial.

Patrick Durkin was preffered as an expert witness by the state for the purpose of testifying that the gun in the pictures taken from the Respondents phone was the same gun depicted in the Guatemex surveillance footage - See testimony of Patrick Durkin (App. p. 254-360).

Trial Counsel Was Ineffective For Calling/Allowing Diana Melendez To The Stand Without Previously Investigating Her Testimony.

It was both error and prejudice for trial counsel to have called Diana Melendez to testify in the applicant's case in chief.

Melendez was an eye-witness to the allege robbery and personally observed both robbers. Never having even spoken to Melendez prior to calling her as a witness, trial counsel called her to the stand for the purpose of testifying that Pulley was the gunman. Trial counsel failed to object. Melendez testified while incriminating the applicant Pulley.

At a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. There was no investigation into the witness Melendez, counsel failed to object and he never spoke to her before allowing her to be put on the stand. This was not trial strategy, it was a gamble and the applicant lost. Applicant was denied a fair trial.

Trial Counsel Failed To Request A Mental Competency Hearing/Evaluation Which Denied Him Due Process Of Law.

The applicant in the referenced case gave his attorney information about his childhood. Mental competency became an issue because of the prior treatment and medication that he was taking. Trial counsel refused to request a mental evaluation which denied him due process and procedural due process of law.

When a criminal defendant's mental capacity is questioned and the trial attorney has reason to believe that the applicant is not fit to stand trial because the person lacks the capacity to understand the proceeding against him or to assist in his own defense, upon request the judge shall:

1. Order examination of the person by two examiners designated by the Dept. of Mental Health.

2. Order the person committed for examination and observation to an appropriate facility of mental health or Dept. of Disabilities and Special Need.

In applicant's case, defense counsel's representation alone should have invoked S.C. Code §44-23-410. Counsel was in a unique position to evaluate applicant's ability to assist him, since that entailed frequent conversation and interaction. Defense counsel's concern about applicant's mental capacity was additionally supported by the uncharacteristic nature of the charge. Applicant had a relatively clean criminal record when he was arrested. The prosecution would have suffered no harm from a mental examination if trial counsel would have requested an examination well before his hearing/trial.

In Medina v. Singletary, 115 S.Ct. 2505, Due Process [also] requires that a hearing be held whenever evidence raises a sufficient doubt about the mental competency of an accused to stand trial. This procedural competency principle operates as a safeguard to ensure that the substantive competency principle is not violated. Claims involving these principles raise similar but distinct issues, the issue in a substantive claim is whether the defendant was in fact competent to stand trial, but the issue in a procedural competency claim is whether the trial court should have conducted a competency hearing. See. [illegible] v. Singletary, [illegible] F.2d 14[illegible], 14[illegible]; United States v. Day, [illegible]

[illegible]. A denial of either of these rights as in the case at bar should provide the basis for relief. [illegible] v. [illegible], [illegible] at 1373.

Applicant have made a substantive competency claim by alleging he was tried and convicted while mentally incompetent. Due Process prohibits the conviction of a person who is mentally incompetent. Bishop v. U.S., 350 U.S. [illegible], 76 S.Ct. [illegible], 100 L.Ed. [illegible], Godinez v. Moran, [illegible], 113 S.Ct. [illegible], Pate v. Robinson, [illegible] U.S. 375, [illegible] S.Ct. [illegible], [illegible] v. State, 417 S.W.2d [illegible].

Trial counsel knew that sanity was an issue that should have been fully addressed. Mental alertness and understanding displayed by the applicant in colloquies with the trial court did not justify ignoring applicant's history with his attorney's pronounced irrational behavior, while the applicant's demeanor at the plea hearing might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to forgo a hearing on that very issue. Bishop, [illegible] U.S. [illegible], 76 S.Ct. [illegible].

Applicant's constitutional rights were abridged by his failure to receive an adequate hearing on his competence to stand trial. See, Cooper v. Oklahoma, 517 U.S. [illegible], 116 S.Ct. [illegible] ([illegible]) and Drope v. Missouri, [illegible] U.S. [illegible], [illegible] S.Ct. [illegible].

In Pate v. Robinson, [illegible] U.S. 375 the court held the failure to observe procedures adequate to protect a defendants right not to be tried and convicted while incompetent to stand trial deprives him of his due process right to a fair trial.

Counsel's performance was deficient and that deficient performance prejudiced his defense.

State of South Carolina) Court of Common Pleas
County of Laurens) [illegible]
LYNN W. LANCASTER

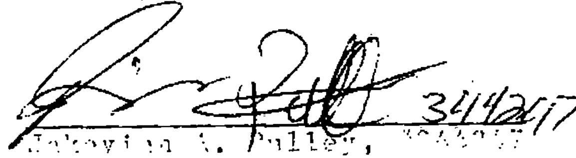
Jakevian L. Pulley, [illegible],)
Applicant,) CERTIFICATE OF SERVICE
2016 JUL -1 A 10:09
v.)
)
State of South Carolina,)
Respondent.)
LAURENS COUNTY CLERK OF COURT

The applicant in the above entitled case certify that he have served a copy of his PCR amendments on the Respondents by placing a copy in the Perry mailroom hands for mailing postage prepaid addressed as follows:

Office of Attny. General
P.O. Box 1154[illegible]
Columbia, S.C. [illegible]

Laurens County Clerk
P.O. Box 2[illegible]7
Laurens, S.C. [illegible]

I, Jakevian L. Pulley, [illegible], certify and verify under the penalty of perjury that the foregoing is true and correct.



344217

Jakevian L. Pulley, [illegible]

6/29/16

This ___ day of July 2016,

at Perry, South Carolina.

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STATE OF SOUTH CAROLINA) IN THE COURT OF
) COMMON PLEAS
) OF THE EIGHTH
COUNTY OF LAURENS) JUDICIAL CIRCUIT
)
)
)
JAKEIVAN A. PULLEY)
)
Applicant,) TRANSCRIPT OF RECORD
) 2014-CP-30-00138
vs.)
)
THE STATE OF SOUTH CAROLINA,)
)
Respondent.)
)

October 16, 2018
Greenwood, South Carolina

B E F O R E:

HONORABLE BRIAN M. GIBBONS, Judge.

A P P E A R A N C E S

CARSON M. HENDERSON, ESQUIRE
For The Applicant

JANELL GREGORY, ASSISTANT ATTORNEY GENERAL
For The State

Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

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1 EXHIBITS

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1 JAKEIVAN A. PULLEY VS. THE STATE OF SOUTH CAROLINA
2 THE COURT: All right, Madam AG.
3 MS. GREGORY: Yes. Before you is Jakeivan, I
4 hope I'm saying that right, Pulley. Applicant was
5 indicted in the July 2011 term of the Laurens County
6 grand jury for armed robbery and criminal conspiracy.
7 On March 1st, 2012, Applicant proceeded to trial
8 before the Honorable Roger Couch. Applicant was
9 represented by Scarlet Moore. The jury found Applicant
10 guilty as indicted. Judge Couch sentenced Applicant to
11 12 years imprisonment for the armed robbery and five
12 years concurrent for criminal conspiracy.
13 He filed a timely application for postconviction
14 relief on February 19th, 2014, alleging that he was
15 being held in custody unlawfully based on subject-matter
16 jurisdiction, ineffective assistance of appellate
17 counsel and ineffective assistance of trial counsel. He
18 is here and represented by Carson Henderson.
19 THE COURT: All right. Mr. Henderson, are you
20 all ready to proceed?
21 MR. HENDERSON: Yes, sir.
22 THE COURT: All right. You may call your
23 witness.
24 MR. HENDERSON: I call Mr. Pulley.
25 THE COURT: All right. Sir, just come on around

1 and have a seat right there. Whatever paperwork you
2 have is fine. Thank you. And, Mr. Pulley, do you swear
3 to tell the Court the truth, the whole truth and nothing
4 but the truth so help you God?
5 THE WITNESS: Yes, sir.
6 THE COURT: Thank you, sir. Have a seat.
7 Yes, sir.
8 JAKEIVAN A. PULLEY,
9 having been duly sworn, testified as follows:
10 DIRECT EXAMINATION
11 BY MR. HENDERSON:
12 Q. Now, Jakeivan, I appreciate you speaking loudly,
13 okay?
14 A. Yes, sir.
15 Q. Because Madam Court Reporter's taking down
16 everything and plus it helps me hear on the other side
17 of the room. First of all, are you asking that the
18 Court grant you a new trial?
19 A. Yes, sir, I did.
20 Q. Okay. And you filed an application seeking PCR
21 relief, didn't you?
22 A. Yes, sir, I did.
23 Q. And I want to run you down your allegations and I
24 want you to tell the Court on each one of these
25 allegations why you think Ms. Moore was ineffective and

1 how you were prejudiced by that.
2 A. Yes, sir.
3 Q. Okay, do you understand that?
4 A. Yes, sir.
5 Q. Okay. And, again, I'm reading down your
6 application as we go. I'm gonna start with something
7 before then. Something you and I have addressed. I
8 think you touched on it. Talking about subject matter
9 jurisdiction. Explain to the Court why you thought
10 trial court didn't have subject-matter jurisdiction.
11 A. Actually, Your Honor, as far as subject matter
12 jurisdiction I'm aware of as of now that as long as this
13 is a criminal matter that each circuit court has
14 subject-matter jurisdiction because of the matter being
15 criminal. But I came today with another piece of paper
16 why I wanted to amend my PCR because jurisdiction could
17 be filed at any time and it's just not subject-matter
18 jurisdiction, it's jurisdiction at hand.
19 THE COURT: Yes, sir.
20 THE WITNESS: But...
21 BY MR. HENDERSON:
22 Q. And explain that to His Honor.
23 A. I have, I have a summons from the clerk of court.
24 Not the clerk of court, municipal court, sir, as for a
25 preliminary hearing. But as far as my preliminary

1 hearing was concerned, the preliminary hearing was never
2 given. But pursuant to section 43-232,
3 Gladshaw vs. State, provides in part:
4 (Reading.) Any magistrate who issues a warrant
5 charging a crime beyond his jurisdiction shall grant and
6 hold the preliminary investigation of it upon the demand
7 in writing of the defendant made at least ten days
8 before the convening of the next court of General
9 Sessions. When such a hearing has been so demanded, the
10 case shall not be transmitted to the court of General
11 Sessions or submitted to the grand jury until the
12 preliminary hearing shall have been had. The magistrate
13 to retain jurisdiction and the court of General Sessions
14 not to acquire jurisdiction until after such
15 preliminary. (Ends reading.)
16 So therefore, Your Honor, I was detained in
17 Laurens County Detention Center on May the 17th, I want
18 to say, when the preliminary hearing was -- let me be
19 sure. Let me be sure. Yeah, May 17th. I've got the
20 paperwork right here, sir. May 17th was the preliminary
21 hearing and the summons was requested.
22 Q. Now, let me interrupt your real quick, Jakeivan.
23 Are you asking that that be marked as a Court's Exhibit?
24 A. Yes, I would like to submit it.
25 THE COURT: Any objection to that being part of

1 an exhibit?
2 MS. GREGORY: No objection.
3 THE COURT: All right. Mr. Henderson, can you
4 help him in doing that?
5 MR. HENDERSON: I will.
6 THE COURT: All right, thank you. Just hand it
7 to my court reporter and she'll mark it as
8 Petitioner's 1.
9 (Whereupon, Petitioner's Exhibit Number 1,
10 Summary Court Summons, was marked for identification.)
11 (Whereupon, Petitioner's 1 was entered into the
12 record.)
13 MR. HENDERSON: And, Your Honor, for the record,
14 I'm just gonna leave this sitting right here on the
15 corner.
16 THE COURT: I'm gonna look at it all.
17 MR. HENDERSON: Okay.
18 BY MR. HENDERSON:
19 Q. Jakeivan, sorry for the interruption, but I just
20 wanted to make sure that it got marked, so proceed.
21 A. Okay. As I said, at that time I was detained in
22 the Laurens County Detention Center. And I understand
23 that when I'm detained that I am transported by them,
24 you know. I mean, and everything that concerns me is
25 done by the detention center. At that time I was

1 detained up until the day of my trial until I went to
2 prison. Never have been out back in society since I
3 caught my charge April the 24th of 2011.
4 But, you know, like I say, my absence was
5 neglected. Something that I demanded, something that I
6 asked for, you know? And statute law, you know, tell me
7 that I should get that if I demanded it, you know? I
8 mean, shall is an flexible command. I mean, there's no
9 way around that.
10 But I also have that I would like to mark as
11 another exhibit, I wrote the clerk of court. I asked
12 the clerk of court in November the 13th, 2014, did they
13 have anything pertaining to a preliminary hearing on
14 file. And this is the letter that she wrote me back
15 saying that she did have -- she did not have anything on
16 file about a preliminary hearing period.
17 MR. HENDERSON: And, Your Honor, I would ask that
18 this be marked as Petitioner's Number 2.
19 THE COURT: Any objection?
20 MS. GREGORY: No, that's fine.
21 THE COURT: All right. Without objection,
22 introduced as Petitioner's two.
23 (Whereupon, Petitioner's Exhibit 2, 11/13/14
24 Letter, was marked for identification.)
25 (Whereupon, Petitioner's Exhibit 2 was entered

1 into the record.)
2 BY MR. HENDERSON:
3 Q. Jakeivan, sorry for the interruption. Again, I
4 just want to make sure stuff gets introduced and we get
5 it marked.
6 A. Yes, sir.
7 Q. And I'll let you continue on this ground.
8 A. Okay. But, like I say, I asked her for that.
9 She said she had nothing on file. So, therefore, I
10 couldn't understand if it was -- if my absence would
11 have been understood if I had counsel and my counsel was
12 there to make sure that everything in the preliminary
13 hearing went okay that I demanded, but it was nothing --
14 no transcript, nothing on record for a preliminary
15 hearing. Nothing.
16 So I mean, that pretty much in itself, as the
17 statute on the law speaks, it invest the Court with the
18 jurisdiction after it's done.
19 Q. And, Jakeivan, let me ask you, you communicated
20 with Ms. Moore here that you wanted to have your
21 preliminary hearing?
22 A. Yes, sir, I did. And I also, when we talked on
23 the day that she came, she told me. She said that for
24 some odd reason that she didn't know of they just bonded
25 me over just, just because. I mean, that's what she

1 told me, so I accepted that fact, you know what I'm
2 saying, because this is my legal advisor.
3 Q. Did you send in the request for the preliminary
4 hearing or did Ms. Moore send it in?
5 A. I sent in the request for preliminary hearing.
6 Q. Okay.
7 A. The proper paperwork was done. That's the reason
8 of me getting the summons because we all know that
9 Laurens County or any county in this court is not just
10 going to send you a summons for a preliminary hearing
11 just because you have a criminal charge.
12 Q. Did you let the Court know that Ms. Moore was
13 going to be your lawyer when you filled out the
14 preliminary hearing form?
15 A. At that time -- at that time in -- at that time
16 when I filled out the preliminary hearing form, I had
17 also had to fill out a paper, a piece of paper about
18 getting counsel, you know, so I did not let the counsel
19 -- the State know that she would be my lawyer because at
20 the time I did not have one. You know what I'm say? I
21 did not have representation when I filled the actual
22 paperwork out.
23 Q. But when Ms. Moore was appointed, did you let her
24 know when your preliminary hearing date was?
25 A. When Ms. Moore was appointed. And another thing

1 is I received my discovery on -- let's see, let's see.
2 I have a letter from Ms. Moore right here dated July the
3 15th, 2011. And on this she talks about coming to see
4 me and also sending my discovery with this letter. And
5 that time was the time that I actually received the
6 summons to actually appear in a preliminary hearing.
7 But the thing is before this she knew that I had to
8 appear at a preliminary hearing, obviously, because we
9 had discussed it when she came to see me.
10 Q. Let me clarify that. I want to make sure I heard
11 you right and make sure His Honor heard you right. Are
12 you saying that when Ms. Moore mailed you that letter,
13 she also mailed you the preliminary hearing notice?
14 A. Yes, sir. I know ---
15 Q. So you got your preliminary hearing notice from
16 your lawyer and not from the clerk's office, so to
17 speak.
18 A. I never, I never received that paperwork until I
19 got my discovery, which she sent to me.
20 Q. Undercover of that letter?
21 A. Undercover of this letter.
22 Q. Are you asking that that letter be --
23 A. Yes, I am.
24 Q. -- marked as an exhibit?
25 THE COURT: Any objection?

1 MS. GREGORY: No.
2 THE COURT: Without objection, introduced as
3 Petitioner's 3.
4 (Whereupon, Petitioner's Exhibit Number 3,
5 7/15/11 Letter, was marked for identification.)
6 (Whereupon, Petitioner's Exhibit Number 3 was
7 entered into the record.)
8 BY MR. HENDERSON:
9 Q. Again, Jakeivan, I'll let you continue on this
10 particular ground.
11 A. And I also have the paperwork in which the day
12 that, I'm guessing, that she possibly received these, it
13 was -- the paperwork for my discovery is dated June 7th,
14 2011, after May. That month comes after May. So, I
15 mean I have this paperwork with Mr. Jerry Peace's name
16 on it. And another piece of paperwork with Mr. Ronald
17 Flemming name on it at the end of it. Two sets of
18 different paperwork as my discovery.
19 Q. And that's discovery that your lawyer, Ms. Moore,
20 provided to you, I guess, by mail?
21 A. Yes, sir, it is.
22 Q. Okay. And did you all subsequently go over that
23 discovery?
24 A. Oh, we went over the discovery more than one
25 time, you know? And during the plight of us going over

1 discovery, like I said, I was unaware of what the law
2 required, but my eight years of being - almost eight
3 years of be incarcerated, you know, I understand that
4 that's a healthy job that you guys have to really do,
5 you know what I'm saying?
6 So I did a lot of studying and I did a lot of
7 going over a lot of things and I went back through my
8 discovery myself. And this is one of the glitches that
9 I noticed that was -- I mean, any trained professional,
10 being that I'm not even a trained professional, should
11 have noticed.
12 Q. And I want to keep moving down your allegations,
13 Jakeivan. Before we really get into the meat of the
14 issues, let's get with some of those preliminary issues.
15 Again, you're also saying that your indictment was not
16 filed with the court. You made that allegation?
17 A. Yes, I did make that allegation, sir. Excuse me,
18 I have another question.
19 Q. You can't ask questions. You can testify.
20 THE COURT: You can ask him, just you can't ask
21 me.
22 THE WITNESS: I've got a question. Some
23 paperwork that I'm, that I'm putting in an exhibit,
24 right?
25 THE COURT: Yes, sir.

1 THE WITNESS: I actually forgot to make a copy of
2 that paperwork, copy of those paperwork.
3 BY MR. HENDERSON:
4 Q. I will make you a copy before we leave.
5 A. So they don't just get lost in the network of
6 things.
7 Q. Absolutely. I'm not gonna let you leave with
8 less stuff than you brought with you. There's no doubt
9 about that.
10 A. But you asked if I had ---
11 Q. About the indictment not being filed.
12 A. About the indictment not being filed. That's
13 some of the paperwork I think I left on the table right
14 there, sir. But the document in question, I do have an
15 indictment which -- I have two indictments, which ---
16 Q. And what I'm saying to you, Jakeivan, is that the
17 Court would have copies of those indictments as well.
18 A. Okay. Okay. You know, and the reason I'm
19 looking for them is because I would like to put them
20 into evidence also, your know? But my reason for
21 bringing up the indictments is because there was, I
22 mean, from my understanding of the law, a rule rather,
23 Rule C, Rule 3(c) requires that the clerk of court file
24 these indictments in whatever county that you're in.
25 Buy my, it seems that my indictment was not clock

1 stamped, nor was my indictment true billed.
2 My indictment was just true billed was just
3 rolled on the indictment like, you know, and my thing is
4 like even though it has a grand jury foreman signature
5 on it, who was to say that it was the grand jury that
6 wrote the signature or wrote true billed on it? It
7 could have been anybody that wrote it on there. So,
8 therefore, I think that the stamp, the filing and the
9 true bill stamp is required in the state of South
10 Carolina. It's actually sealed the indictment.
11 Q. Did you raise those concerns with Ms. Moore?
12 A. No. At the time, like I said, I wasn't
13 understanding or purvey of the law, so I didn't know.
14 But another thing that I would like to put into
15 evidence is I happen to come across, it's basically an
16 order. The order was dated like ten years ago. Over
17 ten years ago. October 23rd, 2002, by Chief Justice,
18 Mr. Toal (sic). And this particular order is one of the
19 same thing that's telling the clerk of courts that as
20 many indictments in the State of South Carolina that's
21 not being filed and that it's so ordered that you shall
22 file it when you receive them. And I would also like to
23 put this order into evidence.
24 Q. Are you asking that it be marked as a Court's
25 exhibit?

1 A. Yes, sir, I am.
2 Q. Or a Petitioner's exhibit?
3 A. Yes, sir, I am.
4 THE COURT: Any objection to that?
5 MS. GREGORY: No.
6 THE COURT: All right. I can take judicial
7 notice of documents like that, official orders, but for
8 the purpose of this record we'll make it an exhibit.
9 Petitioner's next in line introduced.
10 (Whereupon, Petitioner's Exhibit Number 4, Order
11 By Chief Justice Toal, was marked for identification.)
12 (Whereupon, Petitioner's Exhibit Number 4 was
13 entered into the record.)
14 COURT REPORTER: It's 4.
15 MR. HENDERSON: Thank you.
16 BY MR. HENDERSON:
17 Q. All right. Jakeivan, I'll let you continue on.
18 Anything else you want to say about the indictment?
19 A. Oh, man. But at the end of the day, I mean
20 really, I mean from all that I said, I mean, it is with
21 the courts, I mean, it's a rule, you know what I'm
22 saying? I mean, like I said once before, the word shall
23 is inflexible. It's a command word. And this would, I
24 mean, this right here in itself constitutes a
25 jurisdictional defect period. And that's all I, I mean,

1 I really like to say on that part.
2 Q. On that issue, okay. Let's move on a little bit
3 to the meat of the matter or to the heart of the matter,
4 okay? Now, you went to trial for an armed robbery,
5 correct?
6 A. Yes, sir, I did.
7 Q. And a conspiracy.
8 A. Yes, sir, I did.
9 Q. Okay. You were tried with a gentleman by the
10 name of Davoris Smiley, that's D-A-V-O-R-I-S,
11 S-M-I-L-E-Y; is that correct?
12 A. Yes, sir, I did.
13 Q. Mr. Smiley was charged with armed robbery,
14 conspiracy and also possession of a weapon during the
15 commission of a violent crime, correct?
16 A. Yes, sir.
17 Q. You and Mr. Smiley went to trial together. You
18 all were codefendants.
19 A. Yes, sir.
20 Q. Now you didn't testify, did you?
21 A. No, sir, I didn't.
22 Q. Mr. Smiley didn't testify.
23 A. No, sir, he didn't.
24 Q. Okay. And you were represented by Ms. Moore.
25 A. Yes, sir, I was.

1 Q. And I think Mr. Smiley was represented by Chad
2 Mitchell, if I'm not mistaken.
3 A. Yes, sir, he was.
4 Q. And you all were both convicted.
5 A. Yes, sir, we were.
6 Q. You filed a direct appeal.
7 A. Yes, sir, I did.
8 Q. Okay. Obviously that was unsuccessful. Do you
9 know if Mr. Smiley filed a direct appeal?
10 A. He did not.
11 Q. Okay.
12 A. He went straight to PCR.
13 Q. PCR. So he beat you to the PCR draw, so to
14 speak?
15 A. Yeah, pretty much.
16 Q. And, in fact, the PCR Court granted him a new
17 trial.
18 A. Yes, they did.
19 Q. Okay. And that was upheld by our Supreme Court,
20 correct?
21 A. Yes, it was.
22 Q. Okay. Granting him a new trial. And, again,
23 some of the issues are the same as Mr. Smiley and some
24 of them are different.
25 A. The only issue that we have that is different is

1 that his counsel did not meet with him in terms of that
2 he should have meet him to discuss the case.
3 Q. And how many times did you meet with Ms. Moore
4 for trial preparation, from the first time you met her
5 all the way up to the day you all went to trial?
6 A. Oh, I can, one thing I can say about meeting Ms.
7 Moore, it had to be at least four to five times, you
8 know what I'm saying? But every time that I asked to
9 meet with her, she upheld that, you know? She actually
10 came and seen what I wanted. Now, I mean, other than
11 investigating things that should have been investigated,
12 no. But she came to see me.
13 Q. Now, there weren't a lot of objections at your
14 trial, were there?
15 A. Oh, no, there wasn't.
16 Q. There weren't a lot of objections on Mr. Smiley's
17 behalf, is that fair to say?
18 A. Yes, that is fair to say.
19 Q. And I think that's one of the reasons that Mr.
20 Smiley got granted a new trial, is your understanding;
21 is that correct?
22 A. Yes, sir.
23 Q. Did Ms. Moore indicate to you how much experience
24 she had defending folks accused of crimes in a General
25 Sessions courtroom?

1 A. No.
2 Q. Did you ever ask that?
3 A. I mean, the -- I asked her one time when the
4 questioning was kind of weaved around, so I didn't
5 really question her anymore.
6 Q. Right. Now, keep in mind you understand you were
7 arrested and accused of an armed robbery?
8 A. Yes, sir, I am.
9 Q. No doubt about that. You knew why you were on
10 trial?
11 A. Yes, sir, I did.
12 Q. Okay. And when the, when the police came out
13 investigating -- well, I guess, the police got called to
14 a convenience store that had been robbed.
15 A. Uh-huh.
16 Q. Is that your understanding?
17 A. Yes, sir.
18 Q. But you sat through the trial and you heard the
19 State's evidence.
20 A. Yep, that's my understanding.
21 Q. Okay. And sometime thereafter I'm not clear,
22 you're actually over ---
23 A. A friend's.
24 Q. You're over at a friend's house?
25 A. Blocks away.

1 Q. Right. I mean, you're not disputing that, are
2 you?
3 A. No, sir, I'm not.
4 Q. Okay. And you get into the car or you get into a
5 car with another male and two females.
6 A. Uh-huh.
7 Q. Do you remember that?
8 A. Yes, sir, I do remember that.
9 Q. Okay. Can you tell the Court about that. Who
10 did you get in the car with?
11 A. Well, I got in the car with a female by the name
12 of Deloris Byrd and Sierra Cunningham, which are both
13 family members of mine. And they were actually coming
14 to take me to my mother's house because it was Easter
15 Sunday, you know, and I had spent all day with my kids
16 and everything after that, so it was just -- it was late
17 night. It was time to go from where I was at.
18 Q. And you actually get into the car.
19 A. I got into the car and we went to the bottom of
20 the road, we turned around.
21 Q. Let me ask you -- I'm gonna, I'm gonna follow
22 that, but I'm gonna try to butt in a little bit. At the
23 time you got into the car, did you realize there was a
24 police officer behind you at some point?
25 A. At the time that I got in the car and my other

1 friend stepped out of the house to come and get in the
2 car, that I seen the lights from the top of the road and
3 lots ---
4 Q. When you say lights, headlights?
5 A. Headlights.
6 Q. Not blue lights.
7 A. No, I seen headlights from the top of the road.
8 Q. Okay.
9 A. And Laurens County for some odd reason their
10 police cars, when they hit the brakes the police car
11 squeaks for some odd reason. So I knew who it was off
12 the top. So once we got in the car, went on down the
13 road. And, like I said, we turned around and the police
14 followed us on down the road. But once we turned
15 around, he was going past us and he turned around at the
16 bottom of the road. So we went on up the road about our
17 business, turned.
18 Q. I'm gonna stop you right here. You mentioned
19 there was another male in the car with you.
20 A. Yes, there was.
21 Q. And tell the Court who the male -- I think you
22 identified ---
23 A. The man was my codefendant Lakasian Robinson, the
24 one who took the stand and testified.
25 Q. Okay. Now pick it back up. I just want the

1 Court to know that there's four people in this car.
2 A. So we made a right turn going back down South
3 Harper. And at the time, like, it was like probably
4 about a mile, maybe a mile-and-a-half on down the road
5 the police officer got behind us, put the blue lights
6 on, stopped us.
7 Q. Okay.
8 A. We asked, once he stopped ---
9 Q. I'm gonna stop you right there. He pulled you
10 over. The driver, I assume, pulls over.
11 A. Uh-huh.
12 Q. Let me ask you, did he accuse anybody of any
13 traffic infraction?
14 A. No, he did not.
15 Q. No speeding?
16 A. No, he did not.
17 Q. No not using a turn signal?
18 A. No, he did not.
19 Q. Okay. And basically it comes to find out that he
20 stopped this car because he saw two black males getting
21 into the car?
22 A. That was his reasoning. And as you'll see in the
23 transcript that he said he stopped the car first because
24 he's seen two black males get in the car. And then
25 after he was led on ---

1 Q. I understand. I'm gonna stop you right there.
2 So he basically stopped you guys because there was two
3 black males.
4 A. Getting in the car.
5 Q. I understand.
6 A. Racial profiling.
7 Q. And before this testimony, and understand that it
8 came to be you learned somewhere down the line too that
9 multiple black men, two or three black men, had been
10 accused of robbing a convenience store.
11 A. Of this same crime, yes, sir, I did.
12 Q. Okay. And when this officer pulls you over, he
13 says I'm stopping you guys, basically I saw two black
14 males sitting in ---
15 MS. GREGORY: Objection, he's testifying.
16 THE COURT: Overruled. I'm gonna let you lead
17 your witness also. Go ahead. It is a bench trial.
18 MR. HENDERSON: It is. Exactly what ---
19 THE COURT: Hang on. I'm gonna find, I'm gonna
20 put it in the record since there will be a transcript of
21 this. I'm the finder of facts, okay? And what's the
22 rule? Is it Rule 1 -- 60 -- there's an evidence rule
23 saying that the Court can facilitate the testimony.
24 What is the rule? You should know that law clerk.
25 Anyway, I'm doing that, okay? So, again, you are

1 correct he's leading the witness, but he's facilitating
2 testimony to move things along and I'm gonna let you do
3 the same thing with your witness as well under the
4 fundamental fairness and balance, okay?
5 MS. GREGORY: Okay.
6 THE COURT: Thank you. Go ahead.
7 BY MR. HENDERSON:
8 Q. And Jakeivan, he told you guys basically he
9 stopped you because he saw two black males getting into
10 a car that as the crow flies means several blocks from
11 this place that was robbed.
12 A. Uh-huh.
13 Q. Let me ask you this. Prior to that evidence
14 coming out at trial, had you discussed that with Ms.
15 Moore? I mean, did you know this testimony was coming?
16 A. Me and Ms. Moore, when I spoke to Ms. Moore about
17 his testimony, because like ---
18 Q. Who's "his" testimony?
19 A. Mr. Patrick Durkin.
20 Q. The police officer that stopped you.
21 A. I learned the day before, I think it was the day
22 or a couple of days before going to trial that he
23 actually was going to get on the stand to testify. I
24 didn't know until then, but I asked her, I was like, um,
25 well he told us he stopped the car because he seen two

1 black males get in the car. And, I mean, can he do
2 that? And she was just like, well, no, he can't do that
3 but when we get to trial we'll deal with that once we
4 get there.
5 Q. Let me stop you right there. Prior to trial, do
6 you know if Ms. Moore filed any type of Motion to
7 Suppress based upon an unlawful stop?
8 A. No, sir, there was not a motion filed that I know
9 of.
10 Q. No, no written motion that you know of?
11 A. That I know of period.
12 Q. Let me ask you, prior to the testimony of Mr.
13 Durkin, Officer Durkin -- I think that's D-U-R-K-I-N, if
14 I'm not mistaken.
15 A. Uh-huh.
16 Q. Prior to his testimony, did Ms. Moore say whoa,
17 whoa, whoa, Your Honor, I've got a Motion in Limine to
18 make, we need to have a hearing about whether or not
19 that evidence is going to be admissible?
20 A. No, sir, she didn't. From -- during his
21 testimony, actually she led the witness into telling the
22 Court that I was running -- that he said I was under the
23 investigation tentatively. That's what she actually did
24 during the course of his testimony, which for some odd
25 reason also when he got on the stand he said that the

1 captain was the one who told him to stop the vehicle,
2 but he never gave a reason why the captain told him to
3 stop the vehicle.
4 Q. Right. So he's acting on orders, it turns out,
5 Officer Durkin, to stop the car after he said I see two
6 black males getting into a car.
7 A. Yeah, that's it.
8 Q. Right. And Officer Durkin, he didn't give on the
9 stand when he talks about why he stopped you guys, he
10 didn't offer any testimony about similar clothing.
11 A. None of that.
12 Q. Similar height.
13 A. Nothing.
14 Q. The only thing was gender, that you're male, and
15 race that you're black.
16 A. Exactly.
17 Q. Is that the only reason he said he stopped you?
18 A. Which constitutes a pretextual stop.
19 Q. Right. I mean, he didn't accuse this young lady
20 of any type of traffic violation, did he?
21 A. Nope.
22 Q. And I've read the transcript. There's nothing in
23 that transcript about any reason that he had to stop
24 that car.
25 A. Nope.

1 Q. So he gets you out of the car.
2 A. Yes, sir.
3 Q. And he holds you.
4 A. He got -- when, when they stopped us, he stopped,
5 he frisks just me and the male.
6 Q. Okay. And you didn't have anything on you.
7 A. No, didn't have anything on me. Just frisked me
8 and the male. Then he was like, yo, you, pointed at me,
9 you get back in the car, so I got back in the car. The
10 other dude, yo, stand right there for a second. He told
11 him to get back in the car. And then Ms. Detective
12 Leann Liggy (sic), she shows up. She pulls him out of
13 the car and she take him and put him in another car in
14 the back. She's standing there ---
15 Q. A squad car?
16 A. Yeah.
17 Q. Okay.
18 A. And she's standing there, she talked to him there
19 for a minute. And then she did some type of gesture
20 with her hand to the police. And Mr. Durkin told the
21 driver like okay, well ---
22 Q. At that point in time you're still sitting in
23 your car?
24 A. Yeah. She was like well -- he was like, well,
25 you all can go. But then Leann Liggy, she ran down and

1 she was like no, no, no, no, no, stop the vehicle. No,
2 no, no, cut it off, cut it off, cut if off. We cut the
3 car off. She was like, open the back door. She looked
4 at me, closed the back door, got on the phone, walked
5 back that way, talked to him again. Then she told me,
6 yo, I need you to step, I need you to step out of the
7 car for a minute.
8 And after she told me to stop out of the car, I'm
9 asking her what am I stepping out of the car for? And
10 she was, like, ain't nobody told you? No, ain't nobody
11 told me nothing yet. So, okay, you're gonna know in due
12 time, but what we need you to do is we need you to step
13 out of the car.
14 And Ms. Christy Cofield, who's actually a family
15 member of mine, she came and she was like, well, look,
16 just do me a favor, just come over here by my car for a
17 minute and sit. As a matter of fact, I want you to sit
18 in the back of the car.
19 Q. Now, is she a law enforcement officer?
20 A. Yes. She was the captain. She was either the
21 captain -- I think she was the captain that was on shift
22 that night. So, you know, I followed, you know what I'm
23 saying? Because they tried, at first they tried to put
24 the handcuffs on me and I wouldn't, I wouldn't let them,
25 because I was like, man, if you all ain't -- if you're

1 not locking me up, no, you're not putting handcuffs on
2 me. So she was like, okay, and she put me in the back
3 of the car.
4 They talked to him for about 30 minutes. They
5 stood around and talked for another 20 minutes. And
6 then she came back to the car. She was like, yo, step
7 out of the car please. I stepped out of the car, she
8 put handcuffs on me. She put handcuffs on me, put me in
9 the car.
10 Q. Then you went straight to jail.
11 A. I went straight to the city.
12 Q. And haven't been out since then.
13 A. No.
14 Q. Okay. And then, again, do you think Ms. Moore
15 was ineffective for not moving to suppress the stop?
16 A. I do, because if this stop hadn't ever been made,
17 just because of the pretext of my skin color --
18 Q. Right.
19 A. -- then I would never be detained by anybody.
20 I'd still be out there with the two kids that I've got.
21 I'd still be with my family. I'd still be out there
22 with my wife.
23 Q. So you think you've been prejudiced by that.
24 A. Pretty much.
25 Q. Not pretty much, have you been prejudiced by it?

1 A. At the end of the day, that's what it all boils
2 down to, skin color.
3 Q. Okay. Did you and Ms. Moore ever discuss her
4 filing any type of Motion to Suppress that evidence to
5 challenge that stop?
6 A. Ms. Moore, when me and Ms. Moore spoke about
7 anything of the stop, it was more of where he a officer
8 of the law. He got the right to stop me whenever he
9 want to stop. So, like I said, at the time I wasn't
10 purvey of what the law requires, but now I am. I wasn't
11 privy to what the law requires, so me, as being a
12 first-time offender, a first charge ever as an adult, I
13 was like, okay, you know, you're my lawyer, you know
14 what I'm saying? So obviously you know what you're
15 talking about.
16 Q. Now, let me ask you, Jakeivan, and I'll move on a
17 little bit from that just kind of step-by-step. Now,
18 some of the clothes that you were wearing when the
19 police pulled you out of the car when they stopped you,
20 some of them, not all of them, were similar to clothing
21 worn by one of the robbers.
22 A. Yes, sir, it was.
23 Q. And you're not disputing that, are you?
24 A. No, sir, I'm not.
25 Q. Okay. And I'm sure you talked to Ms. Moore about

1 that.

2 A. Yes, sir, we did.

3 Q. Now, you understand that if you -- there's a good

4 chance that if Ms. Moore is successful in challenging

5 the stops, that she could have challenged any clothes

6 that were on you at the time of the stop? Did you all

7 discuss that?

8 A. Me and Ms. Moore discussed the taking of my

9 clothes, because one thing that, like I said, I wasn't

10 very much privy of the law, but one thing that I did

11 know and understand because my father has been locked up

12 several times, is that I know the search and seizure

13 law. You just can't take what's mine just because

14 you're law enforcement without having a warrant. And

15 you definitely just can't take what's mine and use it

16 against me without having a warrant. I know that. And

17 I told her that. And me and her discussed that. And

18 she said she was gonna deal with it. But, hey...

19 Q. She never dealt with it.

20 A. Pretty much never has.

21 Q. So there was no written motion again on this

22 issue?

23 A. There was no written -- there was not written

24 motion for reporting this trooper as a bad search.

25 Q. Any verbal motion at trial before Mr. Durkin

1 testified?

2 A. Nope. The only thing that was -- once they asked

3 her at trial could they put ease -- did she object to

4 these clothing going into evidence. She said, I have no

5 objection.

6 Q. And she didn't object, did she?

7 A. No, she did not.

8 Q. Okay. So basically is it fair to say, just

9 getting to the heart of the matter, by not challenging

10 the stop, everything else that came after that came into

11 evidence.

12 A. Everything else came into evidence.

13 Q. And Ms. Moore didn't object to it.

14 A. No, she did not.

15 Q. Okay. And you recognize, too, that all this

16 should have been dealt with on the front end on the

17 stop?

18 A. I recognize that because at trial basically

19 Strickland versus Washington, anything, anything that

20 denied me a fair trial or prejudiced me or she did not

21 investigate or she could have done to suppress this or

22 suppress that, it could have been different. My trial

23 could have came out different if, you know ---

24 Q. If the evidence had been suppressed.

25 A. None of this evidence had came about.

1 Q. Right.
2 A. It could have came out different.
3 Q. And, again, I want to go back to a point I
4 covered a while ago, Ms. Moore didn't object to a lot.
5 A. No, she didn't.
6 Q. And you understand that you also filed a claim
7 against appellate counsel.
8 A. Yes, I did.
9 Q. Basically for filing that no merits brief, an
10 Anders brief.
11 A. Yes, I did.
12 Q. And you understand now, don't you, that appellate
13 counsel can only base their arguments off of what trial
14 counsel does?
15 A. Understood. And my reasoning for filing that
16 particular thing against appellate court, the appellate
17 matter was because the one thing that she did, she did
18 challenge and asked for a motion with the particular
19 Brady situation. And the no merits brief was on the
20 Brady situation, and I wasn't understanding how this is
21 a merit, but you filed a no merits brief with the same
22 what the merit is. That don't -- that doesn't make
23 sense.
24 Q. And, again, where I can't go into give you legal
25 advice in here, but that's exactly how it's done. I

1 mean, again, your appellate counsel is kind of, not kind
2 of, she is relative by what trial counsel objects to.
3 A. But on circumstances --
4 Q. Right.
5 A. -- trial counsel did object to the Brady
6 violation. She did file a motion for the Brady
7 violation at trial. She did that.
8 Q. And tell us for what Brady violation are you on?
9 A. It was the evidence that we did not receive
10 because at trial my codefendant actually came out and
11 let us know that he had a deal. There was a deal in
12 place, and the deal was that basically he get probation
13 for his testimony.
14 Q. And that's Mr. Robinson, correct?
15 A. Yes, sir, Mr. Lakasion Robinson.
16 Q. And that's the gentleman that was in the car when
17 you got stopped?
18 A. Yes, it was.
19 Q. Okay.
20 A. And, um, she did, she did ask for that with
21 Brady. We asked for everything with Brady, and that's
22 one particular piece of evidence that wasn't given to
23 us, the impeachment evidence that we could have used.
24 But also, that also goes back to the, one of the prongs
25 for the preliminary hearing situation that if the

1 preliminary hearing was had, we could have had favorable
2 evidence or impeachment evidence, cross-examine any
3 witness that they had and preserve favorable testimony
4 for this particular impeachment evidence, but we didn't
5 have it.
6 Q. Okay. Let me ask you -- I want to move on a
7 little bit. And it's your understanding, you listened
8 to, you sat through this trial, you've heard the
9 evidence presented against you and Mr. Smiley?
10 A. Yes, I did.
11 Q. There were no photo lineups shown to anybody,
12 were there?
13 A. No, there was not.
14 Q. There was not. Prior to court, for more of a
15 better term, nobody had really, nobody in the store had
16 ID'd you as being the robber, had they?
17 A. Nobody.
18 Q. Okay. And I think there is a store video that
19 shows a couple or three people actually wearing some
20 sort of mask or handkerchiefs or something along those
21 lines.
22 A. Yes, sir.
23 Q. You've seen, you've seen the evidence, haven't
24 you?
25 A. Yes, sir.

1 Q. Okay. Now, let me ask you, two people, I think
2 one or two people from the store, I'm looking through my
3 notes, testified at trial that they recognized you on
4 the video; is that correct?
5 A. Um.
6 Q. Was it one or two?
7 A. I want to say it was one. I'm not, I don't --
8 I'm not sure, so I really can't, you know, give you a
9 positive answer to that.
10 Q. So let me stop you right there, though. Prior to
11 that person in the store identifying you, did you know
12 that identification was coming?
13 A. Actually I did not, for the simple fact is --
14 Q. Yes or no?
15 A. No, I didn't.
16 Q. Did Ms. Moore know that identification was
17 coming?
18 A. No, she did not.
19 Q. Did she object to that identification?
20 A. No, she did not.
21 Q. Okay. Do you understand there'd been a fair
22 amount of time between this robbery and your trial; is
23 that correct?
24 A. Yes, sir.
25 Q. About how far was it? About the length of time

1 more or less.

2 A. Like a year. I mean years.

3 Q. It took a good while, fair to say.

4 A. (Witness nods head up and down.)

5 Q. Is that a yes?

6 A. Yes.

7 Q. Okay. You've got to answer verbally.

8 A. Yes. Yes. Yes.

9 Q. Because Madame Court Reporter's taking everything

10 down.

11 A. I apologize.

12 Q. And the person in the video is wearing a mask.

13 A. Uh-huh.

14 Q. Is that fair to say?

15 A. Yes, sir.

16 Q. And the clothes that have already come into

17 evidence that are somewhat similar or partially similar

18 to the person in the video.

19 A. Uh-huh, yes, sir.

20 Q. And, again, do you think that Ms. Moore should

21 have challenged that in-court identification?

22 A. I mean, she should have challenged that in-court

23 identification. And she also prior to court, she should

24 have had a Neil versus Biggers hearing. That's what she

25 should have had for identification purpose, yes.

1 Q. Okay. I was gonna ask you, was there any type of
2 ID hearing?
3 A. No, there was not.
4 Q. Just had some kid wanting to come in from the
5 store and say, hey, that's him over there. He's the one
6 in the video?
7 A. It was, the way she, who couldn't even speak
8 English, she got on the stand and they asked her, you
9 know, was this the guy that -- did you pick him out of
10 the photo lineup? And actually she asked, Ms. Scarlet
11 Moore, is this the guy that you picked out in the photo
12 lineup.
13 Q. Let me stop you right there. There was no photo
14 lineup.
15 A. Exactly.
16 Q. Okay, pick back up.
17 A. But the lady said, yes, I picked him out of the
18 photo lineup. But then Ms. Moore said, well, would you,
19 would you be, you know, we know it's you, did you know
20 that it was never a photo lineup period? And the woman
21 said, well, I'm thinking about another case that we had
22 in Greenville, South Carolina at our other store.
23 Q. Another robbery.
24 A. Yeah. She was identifying me to a whole nother
25 (sic) case that was in a whole nother particular county

1 that I had nothing to do with that had, I guess,
2 happened prior before me, a year ago.
3 Q. And Ms. Moore didn't do anything about any of
4 this testimony?
5 A. She didn't object to none of that.
6 Q. Okay.
7 A. She did nothing.
8 Q. Okay. Do you think in hindsight do you believe
9 she should have?
10 A. Oh, most importantly she should have.
11 Q. Do you think you were prejudiced by her not?
12 A. Yes, I was.
13 Q. And do you think there's a realistic chance that
14 the --
15 A. I was ---
16 Q. -- outcome would have had a different result?
17 A. I was prejudice because that, that let the jury
18 come to their own conclusion that, okay, well, his
19 lawyer didn't say it was him. She didn't even object to
20 the lady, the victim saying it was him, even though it
21 was no photo lineup, so they can draw their own
22 conclusion from that, you know?
23 And at the end of the day if you're gonna
24 represent me to the best of your ability, then, you
25 know, it was masks worn and you know it was masks worn

1 by individuals, that should have been the first thing
2 that you did, an identification hearing, because that is
3 the lynchpin to identification. That sets the
4 foundation for this whole armed robbery case.
5 Q. And you understand filing an ID motion, that's
6 different from the suppression, somewhat different on
7 the suppression on the car stop?
8 A. Uh-huh.
9 Q. I mean I know there would be a merger kind of
10 somewhere down the line.
11 A. Yes, sir, I understand.
12 Q. But you agree that she should have been objecting
13 all this stuff?
14 A. Yes, she should have objected to all of that.
15 Q. Trying to keep all of this stuff out of the
16 evidence.
17 A. Exactly.
18 Q. Okay. And, again, I'm just kind of moving down
19 your list of complaints that you said that you don't
20 believe Ms. Moore properly argued her -- a directed
21 verdict motion. Again, your allegation was there was no
22 evidence presented in the State's case in chief that you
23 were on.
24 A. Exactly.
25 Q. None whatsoever.

1 A. In the State's case, the evidence that was
2 produced at trial was that you, you were charged with
3 armed robbery, conspirited (sic) armed robbery. The
4 State, the warrants that I have received from the State
5 with you, Mr. Davoris Smiley, you're charged with armed
6 robbery, conspiracy to armed robbery and commission of
7 that violent, violent crime with the gun. So from the
8 jump, it's obviously known by the State that, no, he
9 didn't have a gun because if I did, then I would have
10 received the same third charge as he received.
11 But, um, from the video it shows that they showed
12 in court that the gunman was left-handed. In court it
13 was shown and proved that I'm not left-handed.
14 Q. Because you're right-handed.
15 A. I'm right-handed.
16 Q. Now they also, if I'm not mistaken, Jakeivan,
17 when Mr. Robinson testified, he talked about his, his
18 pleading guilty, correct?
19 A. Uh-huh.
20 Q. Do you recall whether or not the State brought
21 that up or did Ms. Moore bring that up?
22 A. Actually, Ms. Moore, when me and Ms. Moore had a,
23 a conversation and I asked her ---
24 Q. Now, when was this conversation made?
25 A. Um, this was like, this was the morning of the

1 trial.
2 Q. Okay.
3 A. And I asked her, I was like, did you -- is it
4 positive like he ain't, like he got 18 months suspended
5 to a year probation, you know? I got armed robbery.
6 Davoris Smiley got armed robbery. He started off with
7 an armed robbery charge, but somehow, someway, everybody
8 else is either facing trial or got ten or got 12 years
9 or 15-year plea bargains, but he's the only one that
10 ended up with an 18-months suspended to a year. Why?
11 Is it -- was there some type of deal in place? Ain't I
12 entitled to the same stuff that he entitled to?
13 Q. Okay. Let me stop you right there. Prior to
14 that conversation, had Ms. Moore ever indicated to you
15 that Mr. Robinson got some sort of sweetheart deal or --
16 A. Prior to that conversation, the only thing that
17 Ms. Moore told me was, well, you know, Mr. Robinson
18 might take the stand. That's the only thing that she
19 told me.
20 Q. But when he took the stand, who brought out the
21 fact that he'd actually pled guilty? Do you remember
22 that from the government or Ms. Moore?
23 A. Um, it was asked about by Ms. Moore, so --
24 Q. On her cross-examination?
25 A. On her cross-examination, so the State provided

1 the paperwork, which the paperwork that the date that
2 they say in the transcript is not even the date that he
3 got, that he got sentenced or he took the plea. That
4 wasn't even a thing. But she asked, they provided and
5 showed the paperwork, that he took a plea.
6 So she went further on into trying to find out
7 why did you take this plea? What made your plea deal so
8 sweet? What you did better than what they did? I mean,
9 what was the reason behind you getting this sweet plea
10 deal and nobody else got the same thing that you got.
11 Q. Let me ask you, did she ask for any type of
12 curative instruction by the judge when she asked this
13 question about whether or not that just because somebody
14 else has pled guilty, doesn't mean this person's guilty?
15 A. No, sir, she didn't.
16 Q. Okay. So she opened the door to bring out the
17 fact that somebody else has pled guilty?
18 A. Yes, sir, she did.
19 Q. No defendant?
20 A. Yes, sir, she did.
21 Q. And after opening the door and receiving that
22 information, she didn't ask the Court for some sort of
23 curative instruction?
24 A. No, sir, she didn't.
25 Q. Then that can't be used against you?

1 A. No, sir, she didn't.
2 Q. Okay.
3 A. She left the jury to believe that just because he
4 pled guilty I was guilty too.
5 Q. Okay. And Mr. Smiley's sitting over here kind of
6 sinking in the same ship?
7 A. Yes, he is.
8 Q. And his lawyer is not objecting to any of this
9 stuff either, is he?
10 A. No, he's not.
11 Q. Okay. Let me ask you, Jakeivan, I think we've
12 hit all the high points. Is there anything else that
13 you want to bring to His Honor's attention? Again, you
14 understand this is your day in court, of issues that you
15 believe Ms. Moore was ineffective on and that
16 ineffectiveness on that particular issue caused you
17 prejudice?
18 I know we've covered several issues here. We've
19 covered the preliminary hearing. We've covered the
20 indictments not being filed. We've covered the traffic
21 stop. We've covered the ID. We've covered this plea by
22 codefendants. Is there anything else under a big
23 heading that you want to bring to the Court's attention
24 that you believe you were prejudiced on?
25 A. Um...

1 Q. And I guess the clothing, too, but that's kind of
2 all tied in.
3 A. Yeah. And that's what I was gonna speak on.
4 Like, I mean, that's one thing that I really, truly need
5 and want on the record for the simple fact is that
6 without those clothing, without the clothing at the
7 trial, then the trial would have been totally different,
8 you know what I'm saying?
9 Q. Let me stop you right there. Before you ever get
10 to the clothing, you get to a traffic stop.
11 A. Uh-huh.
12 Q. Okay. Now pick back up.
13 A. Yes, sir. But I was -- and I just want it noted
14 that I actually, well, my clothing was took from me.
15 And I, of course, met Ms. Moore. I told Ms. Moore, I
16 said that when they locked me up, Detective Leann Liggy,
17 she told the officers that took me to the county jail,
18 she said, take his clothes, bag them and bring them
19 back. But I got a warrant for a, a search and seizure
20 warrant that I would like to put in evidence, too. And
21 on this warrant ---
22 Q. Pull it out.
23 A. On this warrant, the only thing that they asked
24 for on this warrant is a cellphone. That's it. No
25 clothing. Search warrant.

1 MR. HENDERSON: May I get that marked, please?
2 (Petitioner's Exhibit Number 5, Search Warrant,
3 was marked for identification.)
4 THE COURT: Any objection?
5 MS. GREGORY: No.
6 THE COURT: Without objection introduced.
7 (Whereupon, Petitioner's Exhibit Number 5 was
8 entered.)
9 BY MR. HENDERSON:
10 Q. So you're saying, telling the Court, that Ms.
11 Moore never objected to a seizure of your clothing?
12 A. No, sir. And ---
13 Q. But you understand, again I don't want to cut you
14 off, but make it clear that His Honor understands, we
15 never get to this point but for a contesting traffic
16 stop.
17 A. Understood.
18 Q. You know, it keeps going back to that traffic
19 stop.
20 A. Yes.
21 Q. Okay. And like I see, the search warrant that's
22 now in evidence, it only asks for a cellphone, which my
23 cellphone is a red Samsung phone. They took whatever
24 they took out of the cellphone. They looked through,
25 they asked for text messages, pictures,

1 incoming/outgoing calls, all of that, but never once in
2 the search warrant or any search warrant that I received
3 was they asked for clothing. So the clothing was just
4 basically seized. Like, you know, that's it, nothing
5 more, nothing less. They just took it because, I guess
6 because they felt like taking it.
7 But, Your Honor, I also, you know, I feel like
8 they damages, man. That damaged the fundamental rights,
9 the fundamental fairness of the whole, of the whole
10 proceeding because it could have come out totally
11 different without those clothing if they had been
12 objected to.
13 Q. Or the stop. We never would have got to the
14 clothes but for the stop.
15 A. Without the stop, it wouldn't have got to us.
16 Q. Right.
17 A. But even, even though, you know, you go back to
18 the stop, if the stop had have been challenged or
19 whatever. But with me, man, it's like if I can't -- if
20 I couldn't get past none of that or none of that was
21 even brought up, it still all goes back to the
22 beginning, the beginning. Under the constitutional law
23 I reserved all my rights when I went to trial, so I have
24 equal protection, just like everybody else sitting in
25 this room.

1 And I take you back to the preliminary hearing.
2 Once again, that's what invested the court with
3 jurisdiction after it was done because I asked for it,
4 you know what I'm saying? The law states, statute
5 states that you just can't bond me over just to bond me
6 over because you want to once I demand a hearing. And
7 the hearing was not given, you know?
8 And it's all, it's actually what I wanted to put
9 on record is Colton vs. Alabama, 1970. The majority,
10 the majority stressed the particular importance of a
11 preliminary hearing and noted five advantages that could
12 result from counsel's assistance at that point in their
13 hearing. One, a lawyer's skilled examination or
14 cross-examination of a witness may lead the magistrate
15 to conclude that the State lacks the probable cause
16 needed for a bond over. I didn't get that right.
17 And all the things that I'm bringing up today,
18 maybe if it hadn't been brought up in front of the
19 magistrate, an indictment wouldn't even existed. A bond
20 over wouldn't even happen.
21 Two, the skilled interrogation by an experienced
22 lawyer can fashion a valuable impeachment tool for use
23 in cross-examination at trial. The impeachment evidence
24 came out at trial that we didn't receive in Brady that
25 it was a deal struck, you know? So if the preliminary

1 hearing had have been set and done, then we would have
2 already had that information.
3 Q. Let me ask you this. Let me stop you right
4 there, interrupt you. When you said the word "deal".
5 Now, did you definitely know that Mr. Robinson had got a
6 deal? When was the first time you all learned, a couple
7 of days ahead of trial or during trial?
8 A. Actually we learnt from the words of Mr. Robinson
9 himself. And even after it came out and my lawyer asked
10 and he agreed to having a deal, the State asked, well,
11 you got a deal, who gave you the deal? And he actually
12 pointed to Solicitor Moore and he told Solicitor Moore
13 it was you.
14 Q. Let me ask you now, you were in jail this whole
15 time?
16 A. I'm in jail the whole time.
17 Q. You didn't have any way to investigate any type
18 of public records, did you?
19 A. Nothing.
20 Q. About whether or not Mr. Robinson had pled guilty
21 to something?
22 A. I did not.
23 Q. Now, Ms. Moore, the best you knew, she was
24 walking the streets?
25 A. That's her job.

1 Q. Right. But she could have gone to the courthouse
2 or online and figured out whether or not there was a
3 deal going on. Of course, if he pled to a sweetheart
4 deal.
5 A. And ---
6 Q. You understand that, don't you --
7 A. I do understand.
8 Q. -- that's public record? Okay.
9 A. And actually even in the transcript the judge
10 himself said, Ms. Moore, that's public record. This is
11 something that you should have known. If you had
12 investigated it like you were supposed to have
13 investigate as the trial counsel then you would have
14 known this.
15 Q. Right.
16 A. So if the trial judge, the criminal judge can see
17 that you didn't investigate the things that you were
18 supposed to see, then I mean, it's bound you, you're
19 ineffective. He sees that you're ineffective.
20 But back to number three. The defense counsel
21 may use the preliminary examination to preserve
22 favorable testimony for a witness who does not appear at
23 trial.
24 Four, trained counsel can more effectively
25 discover the case the State has against his client and

1 make a possible better preparation for trial.

2 Five, counsel can also be influenced -- influence

3 you at the preliminary hearing in making effective

4 arguments on such matters, so -- so -- on such matters

5 as necessity for early phychiatric violation of bail.

6 Your Honor ---

7 Q. Let me stop you right there, Jakeivan. I just

8 want to be able to dove tail back into this prelim. You

9 requested the prelim prose, on your own.

10 A. Yes, I did.

11 Q. With notice with Ms. Moore.

12 A. Yes, sir.

13 Q. So obviously you didn't get the notice until you

14 got it from Ms. Moore.

15 A. Yes, sir.

16 Q. Did she ever notify you before that day that you

17 had the opportunity for a prelim?

18 A. She -- me and her actually, like I say, me and

19 her actually talked about why I was not getting the

20 preliminary hearing. And she told me, like I said, they

21 just bind it over, just basically because they wanted

22 to. So I'm like, they can do that? She's basically

23 like, yo, it's the Court. The Court can do what the

24 Court want to do.

25 Q. Right.

1 A. Do you know what I'm saying?
2 Q. When did you all have that conversation?
3 A. We had that conversation, it was either the day
4 of or the day after the preliminary hearing was supposed
5 to be held. Because the, I forgot the officer's name
6 that actually worked at the county jail. The only
7 reason that I knew the day of that I was supposed to go
8 to a preliminary hearing, is because he was like ---
9 Q. Not what anybody told you.
10 A. He was like, yo, they woke me up early that
11 morning for transport. We're supposed to transport you
12 over here to the preliminary hearing. They called
13 several times, you know what I'm saying? But nobody
14 never came back and said nothing about the preliminary
15 hearing. I never went, no none of that.
16 Q. Do you know if Ms. Moore showed up for the
17 preliminary hearing?
18 A. Well, obviously the clerk of court they speak --
19 the letter from the clerk of court speak for itself
20 because she said she had no transcript on trial about a
21 preliminary -- on file about a preliminary hearing
22 period.
23 Q. Okay. Jakeivan, I think we probably covered
24 about everything. Again, are you asking this Court to
25 grant you a new trial?

1 A. Well, I'm asking this Court if I'm entitled to be
2 granted a new trial, it'd be, you know, sent back to the
3 lower courts or whatever. I mean, that's cool. If I
4 get -- I don't even care if it's two, three or a year
5 time back, you know what I'm saying?
6 I just want to be home for my kids, yo. My
7 daughter turn 10 years old on the 26th of November.
8 I've missed all these years, man. Eight years of,
9 almost eight years of my daughters life that I have
10 missed and I could have been there if ---
11 Q. Jakeivan, I want you to be clear, and we've had
12 this discussion, but you understand His Honor here can't
13 take time off your sentence.
14 A. Understood.
15 Q. You know, all this judge can do is a new trial.
16 A. Understood.
17 Q. It's either all or nothing at all, you understand
18 that?
19 A. Yeah.
20 Q. And you're asking him to go down the all road,
21 you want all, you want a new trial?
22 A. I want whatever it is that I can get from this
23 hearing to bag this up and get the sentence that I have
24 right now off of me I'm willing to take whatever, you
25 know, because, like I said, I mean at the end of the

1 day, man, don't none of this sit right. Wasn't none of
2 this right, you know what I'm saying?
3 And I mean I know for self (sic) that if
4 jurisdiction can be proved and I can prove that and show
5 the evidence in that, then a warrant, indictment, all of
6 that is void. It ain't got -- they have no choice in
7 the court but to dismiss them once you show
8 jurisdiction.
9 Q. Now you understand this Court can't dismiss
10 anything.
11 A. I know and I understand that.
12 Q. All this Court can do is grant you a new trial.
13 A. Okay.
14 Q. You understand that?
15 A. I'm understanding ---
16 Q. And you're asking him --
17 A. I'm understanding that --
18 Q. -- to grant you a new trial.
19 A. -- from what you're telling me.
20 Q. Okay. I am. That's all this judge, this fine
21 judge, all he can do in this PCR capacity is grant you a
22 new trial. That's it. You understand that?
23 A. (Nods head up and down.)
24 Q. And you're asking him to grant you a new trial?
25 A. I'm asking you whatever is capable of you to be

1 done, you know, and come to the rightful conclusion of
2 the law.
3 MR. HENDERSON: Your Honor, I don't have anything
4 right now on direct.
5 THE COURT: All right. Are you ready?
6 CROSS-EXAMINATION
7 BY MS. GREGORY:
8 Q. You want a new trial even though you're facing up
9 to 35 years if you were to go back and get convicted
10 again?
11 A. I mean, I'm willing to gamble that.
12 Q. All right.
13 MR. HENDERSON: I'm sorry, I didn't hear that.
14 THE COURT: He said he's willing to gamble that.
15 THE WITNESS: I'm willing to gamble that. But,
16 like I said like a few minutes ago, you know, at the end
17 of the day, like if I could show jurisdiction or
18 whatever, I'm not worried about a new trial for the
19 simple fact like the last eight years, your job that
20 you've been doing for I don't know how long, I've been
21 studying the law just like you, you know what I'm
22 saying?
23 THE COURT: Well, let me interrupt you here, sir.
24 Has the State submitted any memorandum on the
25 jurisdictional issue? Because I didn't see that in the

1 return?

2 MS. GREGORY: No. We ---

3 THE COURT: And I think that was just amended to

4 reflect the day. I mean, that was amended, I think he

5 amended it when he first got up here.

6 MS. GREGORY: Yes, that's correct.

7 THE WITNESS: We corrected it.

8 MS. GREGORY: That's correct.

9 THE COURT: You know, obviously I'm gonna take

10 this matter under advisement.

11 MS. GREGORY: Right.

12 THE COURT: But I'm gonna ask both sides to brief

13 that issue while I'm thinking about what I'm gonna do,

14 okay? So go ahead. I just wanted to make sure that

15 steers whatever questions you have if you want to ask

16 them at this time.

17 BY MS. GREGORY:

18 Q. You mentioned that you met with your -- with Ms.

19 Moore a few times, quite a few times.

20 A. Uh-huh.

21 Q. And you went over discovery quite a few times

22 with her?

23 A. Uh-huh.

24 Q. And did you discuss any possible defenses with

25 her for anything for her to investigate? Alibi or

1 anything like that?

2 A. Actually, you know, I had an alibi, but she told

3 me that, you know, we ain't got to worry about that

4 because that probably got no standing period. She told

5 me that, so I didn't -- we didn't focus on the alibi.

6 Q. All right.

7 A. We didn't focus on that.

8 Q. Do you recall getting a plea offer and rejecting

9 it and wanting to go to trial?

10 A. Actually, the plea officer -- the plea offer that

11 I got, I got a paper, a piece of paper that came from my

12 discovery. The only plea offer that I ever received was

13 June 10th, 2011, the day of the offer. And at that

14 particular time when I was asked about the plea offer

15 months later, which was after August the 19th, wasn't on

16 the paper no more. So I can't take the plea that's not

17 on the table so, therefore, we just, you know, we'll go

18 to trial because that was the only plea that I was

19 afforded period. Just one.

20 Q. And you rejected it and went to trial?

21 A. Yes, ma'am. I mean, I had no choice because if I

22 did ---

23 Q. Were you on probation at the time of the

24 incident?

25 A. At the time of the Batson hearing?

1 Q. Yes. At the time of the armed robbery, were you
2 on probation?
3 A. Adult probation or DJJ probation?
4 Q. Any probation.
5 A. II was under DJJ probation at the time.
6 Q. And you were out, what, two days before the
7 incident?
8 A. Two days?
9 Q. Before the incident.
10 A. No.
11 Q. When were you out?
12 A. I was out a few months before this incident.
13 Q. A few months before this. Do you recall
14 apologizing to the Court for committing the crime?
15 A. Do I recall apologizing to the Court? Yes, I do
16 partly recall apologizing to the Court.
17 Q. For committing the crime?
18 A. For wasting their time.
19 Q. Well you apologized for committing the crime,
20 right?
21 A. I mean, I wouldn't -- I wouldn't too much say
22 that committing a crime and apologize to the Court for
23 wasting your time and all the victims and everybody
24 else's time is apologizing for a crime.
25 MS. GREGORY: All right. No further questions.

1 THE COURT: Any redirect based upon that cross,
2 Mr. Henderson?
3 REDIRECT EXAMINATION
4 BY MR. HENDERSON:
5 Q. What was the plea offer, Jakeivan, that had
6 expired by the time it got to you?
7 A. Ten years. Ten years for armed robbery and five
8 years concurrent with the, with the above two years for
9 criminal conspiracy.
10 Q. And you ultimately got a 12 after trial.
11 A. Yes, I did.
12 Q. Okay. So that offer had expired by the time Ms.
13 Moore got it to you?
14 A. Yeah.
15 MR. HENDERSON: Okay. I don't have anything
16 else, Your Honor.
17 THE COURT: All right. Thank you, sir, you can
18 step down. Mr. Henderson, you can call your next
19 witness.
20 MR. HENDERSON: Your Honor, we're going to rest.
21 THE COURT: All right. Petitioner rests.
22 MS. GREGORY: Your Honor, Ms. Moore, we call
23 Scarlet Moore.
24 THE COURT: Do you need a break, Madam Court
25 Reporter or are you okay?

1 COURT REPORTER: Maybe a short bathroom break.
2 THE COURT: Yeah. Let's take a comfort recess.
3 We'll reconvene at noon, okay?
4 MR. HENDERSON: That sounds good.
5 THE COURT: All right.
6 (Whereupon, a recess was had from 11:48 a.m. -
7 12:08 p.m.)
8 THE COURT: All right. Petitioner's rested,
9 correct? Right?
10 MR. HENDERSON: Yes, sir.
11 THE COURT: You may call your first witness.
12 MS. GREGORY: Yes. Ms. Scarlet Moore.
13 (Whereupon, witness comes forward.)
14 THE COURT: All right. Just have a seat there.
15 Ma'am, do you swear to tell the truth, the Court the
16 truth, the whole truth and nothing but the truth so help
17 you God?
18 THE WITNESS: I do.
19 THE COURT: Thank you very much, you can be
20 seated.
21 SCARLET B. MOORE,
22 having been previously sworn, testified as follows:
23 DIRECT EXAMINATION
24 BY MS. GREGORY:
25 Q. Ms. Moore, how long have you been practicing law?

1 A. I've been practicing law for approximately 17
2 years. I was first licensed in the state of Louisiana,
3 and then in 2004 I became licensed in South Carolina.
4 Q. And how much of that has been in criminal law?
5 A. Definitely the majority. I think there was a
6 period between -- well, let me, let me, let me explain.
7 I specifically went to law school to be a criminal
8 defense lawyer. I focused on criminal classes. That's
9 what I wanted to do.
10 And in law school I worked with George Pugh, who
11 was the author of the *Evidence Handbook Notes*, which
12 specifically dealt with criminal evidentiary assignments
13 of error. I also clerked for a federal criminal
14 practitioner. After law school I clerked for a criminal
15 court judge for a year and then I became a public
16 defender for two years.
17 And that's when I moved to South Carolina in
18 2004. Then between 2004 and 2011 I actually taught at
19 Lander University. And some of the classes that I
20 taught were Criminal Justice Systems, as well as
21 Juvenile Delinquency. So I had an opportunity to teach
22 those classes.
23 But I started taking criminal appointments in
24 South Carolina in 2011. So for the past seven years
25 I've been, been doing criminal. I also taught for two

1 years at Charlotte School of Law from '11 to '13, which
2 wouldn't, in fact, been prior to Mr. Pulley's trial as
3 a, as it turns out. I taught Substantive Criminal Law
4 to first year law students, as well as Criminal
5 Procedure. So I would say that definitely the majority
6 of my practice has been focused on not just practicing
7 criminal law, but also teaching.
8 Q. Okay. And you were appointed in this case?
9 A. I was.
10 Q. And was the Applicant cooperative during your
11 representation?
12 A. He was. I, I really enjoyed working with Mr.
13 Smiley -- I mean, excuse me, Mr. Pulley. I'm sorry, Mr.
14 Pulley.
15 MR. PULLEY: Yes.
16 BY MS. GREGORY:
17 Q. Did you file any Rule 5 or Brady motion?
18 A. I did. And I've got a clocked copy in my file.
19 I did.
20 Q. And you went over that with him?
21 A. I did. I think he testified that I did and we
22 did.
23 Q. Regarding the preliminary hearing, was there ever
24 a preliminary hearing in this case?
25 A. To my, to my recollection in my notes, there was

1 not a preliminary hearing in this case. I do have notes
2 in my file that when I first met with him, my
3 recollection was that he, in fact, had requested the
4 preliminary hearing initially. That's not unusual for
5 people who have been arrested. They'll go ahead and
6 check a box. So I did have a date of May 17th. And I
7 also did have information about who the magistrate was.
8 Q. Uh-huh.
9 A. But other than that I have no recollection. I do
10 not believe that a preliminary hearing ever took place,
11 but I don't have any notes about, about why. I do know
12 that Mr. Pulley was on DJJ probation at the time. And I
13 always look at a preliminary hearing as a probable cause
14 hearing that also can be waived. And so I never, I
15 certainly never considered any subject-matter
16 jurisdiction issues --
17 Q. Okay.
18 A. -- that were raised on direct.
19 Q. If you had had a preliminary hearing, do you
20 think it would have been successful in not binding this
21 over for trial?
22 A. I, I do not. I think Mr. Pulley was very
23 unfortunate. And he, he mentioned Christy Cofield is
24 his relative. She was -- she worked with Laurens
25 police.

1 Q. Uh-huh.
2 A. She was one of the first officers on the scene
3 and observed the video surveillance, which I guess we'll
4 get into that later.
5 Q. Right. Yes.
6 A. Or we can get into it now.
7 Q. That's fine.
8 A. But the bottom line is that she, she identified
9 Mr. Pulley on the video. So I think on the basis of
10 just her testimony alone, that would have been probable
11 cause for an arrest.
12 Q. Okay.
13 A. So I just, I just don't -- I don't think that a
14 preliminary hearing would have in any way changed the
15 outcome.
16 Q. Okay. And was he properly indicted in this case?
17 Did you see any reason to object to the indictments?
18 A. Well, it's -- I listened to the testimony about
19 the indictments not being filed. I did have in my file
20 copies of the indictments, and they are stamped by Lynn
21 Lancaster's true copies, a true copy of the originals.
22 I think Mr. Pulley was I guess -- I -- and the
23 way I looked at his testimony was that I don't think
24 he's arguing that they don't say true bill, which they
25 do. And they're signed with the verdict, you know, or

1 the information. But I think he's just, you know,
2 questioning did that actually in fact happen.
3 Again, all I have in my -- I've got in my file, I
4 do have copies of the indictments and they are stamped
5 by Lynn Lancaster. So I guess my point is I never
6 thought that there was anything unusual about the
7 indictments.
8 Q. Okay. Let's go over your, just the facts of the
9 case.
10 A. Okay.
11 Q. There was -- I guess explain how the facts and
12 his charges came about, like what happened in this case.
13 A. Okay. So, so what happened was -- and my, my
14 recollection was, I think, pursuant to your questioning
15 of Mr. Pulley. I recall that he was on DJJ probation.
16 And it was literally only a few days. Now, again, I
17 don't know exactly how many days it was following his
18 release from DJJ, but this happened within a few days.
19 And so looking at the evidence that was presented, Mr.
20 Pulley went into the Guatemex prior to the store
21 closing.
22 Q. Uh-huh.
23 A. He did not have a mask on and was seen clearly.
24 And it was amazing that what came out at trial was this
25 very small store in Laurens County had just an

1 incredibly sophisticated surveillance equipment.
2 Q. Okay.
3 A. Not only inside the store, but also outside the
4 store, which would prove to be very damaging to the
5 defendants in this case. And so the testimony and the
6 evidence that was presented at trial was that Mr. Pulley
7 went into the Guatemex prior to closing and bought, I
8 think a drink, as I recall.
9 Q. Okay.
10 A. Something small, like within a dollar or so, and
11 was seen looking at this, this cash register. At least
12 that's the theory that, that was presented to the, to
13 the jury.
14 And then subsequently he was seen exiting the
15 Guatemex because I stayed and the surveillance cameras
16 were very sophisticated outside the Guatemex. And he
17 was seen meeting with two other individuals who, I
18 guess, later were discovered to be Mr. Smiley and Mr.
19 Robinson.
20 Q. Uh-huh.
21 A. And so they are seen walking up and down the
22 street together. And then I think they changed clothing
23 and that type of thing. But then subsequently, two of
24 them went into the store. They're seen very clearly
25 going into the store. And at this point they do have

1 masks on. Robbed the store.

2 The allegation, looking at the video, is that it

3 was Davoris Smiley who was holding the gun. And my

4 client was alleged to have been the one who actually

5 took the money out of the drawer. And so at least that

6 was the testimony at trial.

7 And so then they exited, exited the Guatemex. If

8 was a very short time. So when the robbery finished,

9 the store sent an alarm --

10 Q. Right.

11 A. -- to law enforcement to, to let them know that

12 they had been robbed. As I stated, I think Mr. Pulley

13 was very unfortunate for his case. And one of the first

14 officers on the scene was Christy Cofield, who was his

15 cousin who knows him.

16 And so Ms. Cofield, Officer Cofield identified

17 him on surveillance. It was my understanding from

18 reviewing the file last night, that the store clerk

19 identified Mr. Pulley as one of the robbers, and as

20 having entered the store prior to without the mask.

21 Q. Uh-huh.

22 A. So it was a very short time between the actual

23 report to law enforcement and Officer Cofield showing up

24 to the time that the car was -- that Mr. Pulley was

25 arrested.

1 Q. Okay. And did he have unique clothing on --
2 A. Yes.
3 Q. -- that Ms. Cofield or Officer Cofield put out in
4 a bulletin to officers?
5 A. I don't -- I do not recall if she specifically
6 put that information out regarding clothing, but he --
7 they did have very distinctive clothing, especially --
8 particularly, as you can see in the video, my client was
9 wearing jeans with some type of medallion or some type
10 of design on the pockets. But the clothing, I agree,
11 the clothing is very distinctive.
12 Q. Was there any legal basis for challenging any of
13 the identifications in this case?
14 A. The identifications, so what happened was there
15 was certainly no, no basis to challenge Officer
16 Cofield's identification. The clerk who came into
17 court, she did, in fact, sit on the stand and identify
18 the -- my client as the one who had robbed. But my
19 remedy at that point was cross-examination.
20 Q. Right.
21 A. There was no -- there was certainly no lineup.
22 There was no, you know, allegation of any kind of
23 suggestive nature about an improper lineup or anything
24 like that. And I think that working with Officer
25 Cofield is really how my client was identified

1 ultimately.
2 Q. Okay. Did you discuss with Mr. Pulley the
3 elements of the crime that the State was required to
4 prove in this case?
5 A. I did. I did. As he stated, we did meet about
6 four or five times. We also -- I also sat in a
7 multipurpose room for a couple of hours going over every
8 last one of the surveillance, pieces of the surveillance
9 videos, so none of that was a --
10 Q. Okay.
11 A. -- surprise when it was, was at trial.
12 Q. And just the codefendant is Mr. Smiley; is that
13 correct?
14 A. Correct.
15 Q. And Chad Mitchell was his attorney?
16 A. Correct.
17 Q. The Applicant testified that his case was
18 overturned in PCR and he received a new trial. Were
19 they arrested at the same time?
20 A. They were not arrested at the same time.
21 Mr. Pulley and Mr. Robinson were arrested fairly shortly
22 after the robbery. I cannot remember exactly how much
23 time it was --
24 Q. Uh-huh.
25 A. But essentially it was a, I would say that it was

1 close in proximity to the actual armed robbery. Mr.
2 Smiley was arrested hours later. And what the, what the
3 PCR judge found was that -- and then also there was also
4 an actual search of Mr. Smiley, his person --
5 Q. Uh-huh.
6 A. -- which yielded a phone, which yielded very
7 incriminating photographs. Also, they -- the search
8 also yielded, as I recall, money against Mr. -- Mr.
9 Smiley.
10 But all of -- but regarding all of that evidence,
11 first of all, my client would not have had standing to
12 challenge any of that. But furthermore, it was evidence
13 that essentially the PCR judge found that had trial
14 counsel made a Motion to Suppress, that it's -- and,
15 again, I don't remember what the standard was, but the
16 concern was that it was at least viable for him to file
17 a Motion to Suppress based on an illegal arrest.
18 Because I think they put him in investigative detention.
19 Q. Uh-huh.
20 A. But there was certainly no -- I don't think there
21 was any probable cause to arrest him at that point. And
22 then also, failing to move to suppress --
23 Q. Okay.
24 A. -- the phone and the money.
25 Q. And that's what it was overturned on. And

1 Mr. Pulley was not there at the scene?
2 A. That's correct. It was, it was based on, again,
3 the chain to Mr. Smiley was a different chain regarding
4 Mr. Pulley. But Mr. Pulley's phone was retrieved, but
5 there was nothing found on the phone. There were no
6 test messages. There were no phone calls, there were no
7 pictures that were introduced against him at trial.
8 Q. Okay.
9 A. So there was, there was really none of that. And
10 his clothing, as I recall, his clothing was, was taken
11 in inventory pursuant to his arrest.
12 Q. Okay.
13 A. And those were the clothing -- and that was the
14 clothing that he was, was found in.
15 Q. Okay. And he was found in at the vehicle stop.
16 A. Correct.
17 Q. Was there any issues legally with the vehicle
18 stop?
19 A. I, I didn't -- I did not see any viable issues to
20 essentially suppress a stop when you got a, essentially
21 an eyewitness. Excuse me, not an eyewitness, but a, an
22 identification from law enforcement identifying her
23 cousin and then also working with the, the clerks at the
24 store to identify that, yes, in fact this is the person
25 who subsequently came in.

1 I think, I guess in my mind that would have been
2 certainly probable cause to arrest. It was posed as an
3 investigatory stop, as Mr. Pulley stated.
4 Q. Uh-huh.
5 A. At some point Officer Cofield did, in fact, come
6 to the scene. And he was arrested. I just didn't -- I
7 didn't see it. Now, if, if -- I think Mr. Smiley's
8 situation is, is a very different situation. Again,
9 this is hours and hours later.
10 Q. Right.
11 A. And really at that point Christy Cofield had not
12 identified Mr. Smiley, for example.
13 Q. Okay.
14 A. So, I mean, I just, I feel like it was a
15 different, different situation.
16 Q. And when the clothing that was collected was
17 introduced in court, do you recall objecting?
18 A. I seem to recall -- I think you and I discussed
19 that briefly. I seem to recall making an objection
20 about the foundation for the clothing. I recall that.
21 But ultimately I did not move to suppress the clothing
22 because I did not see a basis for it. I did not see a
23 basis for it.
24 Q. The plea agreement that was offered to Mr.
25 Pulley, had that expired at the time that you provided

1 that to him?
2 A. Well, I know that I've got a note in my file that
3 I met with him on September 16th of 2011. My notes said
4 that he rejects the ten-year plea agreement.
5 Q. All right.
6 A. So that was, again, that was the day, I can't
7 remember what the dates were, that Mr. Pulley testified
8 to on his direct examination. But I also recall that
9 there was also a plea offer, and I just, I don't have
10 the specific notes in my file. I don't know if it was
11 the ten years, but it must have been because -- I'm
12 sorry, I'm rambling.
13 So I know for a fact that there was a plea offer
14 on the table on the day of his trial. And the reason
15 why I specifically remember this is because his mother,
16 his stepfather, as well as his father were all wanted
17 access to Mr. Pulley on that day to speak to him about
18 taking the plea.
19 Q. Okay.
20 A. And so -- and so ultimately they did not speak
21 with him, but I do know that there was a plea still on
22 the table as of the date of trial and we went forward
23 with the trial.
24 Q. And his rejection of the plea was prior to the
25 expiration of the plea?

1 A. Well, and yeah. Well, the next thing that
2 happened was we started picking a jury at that point,
3 yes.
4 Q. Okay.
5 A. But he rejected, he rejected the September 2011
6 discussion. We discussed it and he rejected that.
7 Q. Okay.
8 A. And that would -- he would not have rejected it
9 prior to the expiration.
10 Q. Okay. Did you discuss his version of the facts,
11 Applicant's version of the facts? Like any alibi
12 witnesses. Did he give you anything to investigate for
13 a defense?
14 A. Well, my client, my client gave incriminating
15 statements to law enforcement in this case. And, you
16 know, when I first, when I first met with Mr. Pulley he
17 told me that he did this thing. And at the time what he
18 was hoping was he said that he had met with, I believe
19 it was Officer Lynch and Officer Liggett and that he was
20 hoping to get status as an informant with law
21 enforcement and asked me to contact them for the
22 possibility of determining whether or not there was a
23 possible favorable plea deal for him.
24 And, in fact, I remember distinctly talking to
25 Leann Liggett. She unilaterally rejected any notion

1 that Mr. Pulley would be an informant. She said he gave
2 a statement. She said the evidence was very compelling
3 in this case.
4 Q. All right.
5 A. She had a strong case. And that basically she
6 didn't have any incentive to try to, to give him any
7 kind of favorable plea deals.
8 Q. Okay.
9 A. But I do want to specifically state --
10 Q. Sure.
11 A. -- that I have absolutely no recollection and no
12 notes in my file about a possible alibi witness. That
13 was never discussed.
14 Q. Okay. You never gave you anybody --
15 A. No.
16 Q. -- to investigate or --
17 A. No. Because he told me he did this thing.
18 Q. Okay. So he never denied committing the robbery
19 to you?
20 A. No, he never did. Even on, even on the day of
21 trial.
22 Q. Okay. Did he ever indicate he did not understand
23 something that you went over with him?
24 A. No. No. In fact, I, I thought Mr. Pulley did a,
25 did an excellent job of assisting me at trial. I really

1 did. He, he -- and I've still got his notes that he, he
2 wrote that day about things that he wanted me to, to
3 ask, any question.
4 Q. Okay. And there's a third defendant here who
5 testified against them.
6 A. Uh-huh.
7 Q. Did you object to the testimony of that third
8 defendant?
9 A. So let me, let me tell the Court what happened
10 with Mr. Laquarius Robinson (sic). And it was not a
11 surprise that, you know, that -- again, I don't, I don't
12 recall -- let me back up.
13 The issue with the Brady, I did -- so, first of
14 all, to answer your question, I did, I did object on the
15 ground of Brady to the introduction of Laquarius
16 Robinson's testimony because what specifically happened
17 was at a break Mr. Pulley's father came to me and told
18 me that, that the State was putting a lot of pressure on
19 Laquarius to testify.
20 Prior to our break, Mr. Robinson had been called
21 to the stand. And even pursuant to the preliminary
22 questions that Mr. Mallory asked him, like what is your
23 name, you know, whatever he asked. Just, you know, just
24 essentially, you know, state your name for the record.
25 Q. Right.

1 A. You know, where do you live type of just general
2 questions, he was silent. He didn't, he didn't give any
3 response to even those basic questions. And as I
4 recall, Mr. Mallory said, do you intend to answer any of
5 my questions? And there was no.
6 And so at that time the court took a break and it
7 was during that break that Mr. Pulley's father came to
8 me and apparently had overheard a conversation that
9 allegedly the State was saying, listen, if you don't
10 testify in this case we're jerking your probation. And
11 so I did not know anything about that prior to Mr.
12 Pulley's father telling me that.
13 Q. Right.
14 A. Now, I think what the testimony was at trial was
15 that on the four corners of the, the guilty plea, there
16 certainly was no notation that, you know, he had to
17 testify in order to get probation. But certainly what
18 concerned me was, was there in fact some secret deal
19 that his probation was gonna be hanging over his head if
20 he didn't testify.
21 And I also think that that's why the judge got
22 Mr. Robinson's attorney over to court. That's why she
23 testified at the matter. That's why I wanted, I
24 questioned her. I also proffered the testimony of Mr.
25 Robinson, just to get to the bottom of, you know, is he,

1 you know, is he going ---
2 Q. Yeah.
3 A. Yeah, is there going to be some type of penalty
4 for him. So to me, that's, that's a Brady issue.
5 There's a, an affirmative duty placed on the State
6 because otherwise how am I gonna know about it?
7 Q. Right.
8 A. But my client's father hears about it. Overhears
9 it in a hallway.
10 Q. Right.
11 A. Which I think goes further than just knowing the
12 existence of a plea deal.
13 Q. Right.
14 A. So but at the time when Mr. Robinson did testify
15 for the jury, all of that was disclosed. I mean, all of
16 that was disclosed.
17 Q. Okay. So...
18 A. And I think what Judge Couch, and relying on the
19 1978 opinion, was saying well, you know, the plea was a
20 public record. Okay. Well, that's, that's absolutely
21 correct, but there's nothing in that plea that talks
22 about he's gonna have his probation revoked --
23 Q. Right.
24 A. -- if he doesn't testify, which is again the
25 allegation. And I think, I think Mr., I think Mr.

1 Robinson in his trial testimony somewhat corroborated
2 that. I mean, he -- I think he, he felt compelled to
3 cooperate. But then I think his attorney was --
4 testified differently.
5 Q. Okay. The attorney was Kate Anderson; is that
6 right?
7 A. Yes.
8 Q. And you were able to examine her on the stand and
9 she indicated that there was no repercussion for him not
10 testifying?
11 A. That's what she testified to, correct.
12 Q. Okay. What was your trial strategy in this case?
13 A. Well, it's difficult when your client tells you
14 that they did it. I still think ethically that you can
15 certainly challenge the, challenge the witnesses, their
16 recollection. You can cross-examine witnesses for the
17 jury, but it's -- I certainly was not in a position
18 where I can offer affirmative evidence regarding my
19 client's --
20 Q. Right.
21 A. -- innocence at that point. I also -- and this
22 didn't really come up in Mr. Pulley's examination, but I
23 did not move to sever his mistrial. My client gave
24 incriminating statements. It was a Bruton issue. And
25 while the statements were tossed out because it was a

1 joint trial, and so I did not consider, I did not
2 consider severing the, the trial on that basis.
3 Q. It's better for Mr. Pulley?
4 A. Well, and it's always a concern. I would imagine
5 as a juror if I hear that he's given statements and they
6 are incriminating, then that's very --
7 Q. Uh-huh.
8 A. -- damaging to, to the case. So none of this,
9 none of my client's statements were introduced.
10 Q. Okay. And did you move for a directed verdict at
11 the close of the State's case?
12 A. As I recall I did. I think. I'm sorry, I -- it
13 should be in the transcript.
14 MS. GREGORY: It's page 470 and 495, Your Honor.
15 THE WITNESS: Okay.
16 THE COURT: Okay.
17 THE WITNESS: I would, I would -- again, I just
18 don't have any independent recollection that I did, but
19 I know it's in the trial transcript.
20 BY MS. GREGORY:
21 Q. And the jury instructions that were provided to
22 the jury by the Court, did you see any issues with
23 those?
24 A. I, I did not.
25 Q. Okay.

1 A. They looked very standard to me. I, I did not
2 request a curative instruction regarding the plea deal
3 on Mr. Robinson. That's kind of an issue with a
4 double-edged sword.
5 Q. Uh-huh.
6 A. Because you certainly want the jury to, to hear,
7 well, wait a second, he might be conflicted or there
8 might be something influencing his testimony, but at the
9 same time they did hear about his plea deal.
10 Q. Right.
11 A. I, I did not request a curative instruction
12 regarding that.
13 Q. On the search warrant that Mr. Pulley brought up,
14 are you familiar with that search warrant that he
15 brought up on his testimony?
16 A. I am. And I think he testified that it was
17 regarding his cellphone, the search warrant to --
18 Q. Correct.
19 A. -- to, in fact, search his cellphone.
20 Q. Right.
21 A. Correct. Yes, I'm familiar with that.
22 Q. Were there any issues with that search warrant?
23 Did anything come of that search warrant of his phone?
24 A. No. They, they -- and that was, that was induced
25 prior to trial with Mr. Mallory. He confirmed that

1 there was no -- they had not retrieved any incriminating
2 statements, evidence, photographs, text messages. None
3 of that information was introduced at trial.
4 Q. Okay. All right, so no further questions.
5 THE COURT: Mr. Henderson.
6 MR. HENDERSON: Yes, sir.
7 CROSS-EXAMINATION
8 BY MR. HENDERSON:
9 Q. I'm gonna start off by commending you for trying
10 these guys together. I agree that was good strategy to
11 keep out all the statements of the group. And I think
12 you did a good job on that absolutely. Because like you
13 just told His Honor, no statements that my client made
14 implicating himself came into evidence; is that correct?
15 A. That's correct. No.
16 Q. Okay. So the jury never heard anything that my
17 client may or may not have done implicating himself?
18 A. That's correct.
19 Q. Okay. Going back then to this traffic stop.
20 Again, there's no doubt there's a robbery here.
21 Jakeivan's on the video earlier in the evening, going
22 into the store, coming out of the store. And then later
23 on the Store is robbed. Obviously Jakeivan, I think he
24 said, admitted to that. He said there was similar
25 clothing between he and the person on that video. Not a

1 hundred percent but similar clothing. I mean, do you
2 recollect him testifying to that?
3 A. I, I just I don't recall. Well, no, he, he did
4 not testify. Mr. Pulley did not testify.
5 Q. No, I'm talking about here.
6 A. Oh, here.
7 Q. When he spoke today.
8 A. Right. Right. Right. Well, as I recall, all
9 three, quote, outfits -- I know ment don't wear outfits,
10 but that's all I can say -- all three pieces of clothing
11 were -- as I recall, all three had jeans on with very
12 distinctive patterns or patches or that type of thing on
13 the, on the back pockets, so yes.
14 Q. Okay. On the video here. Now, when Officer
15 Durkin, I think his testimony was he heard about a
16 robbery.
17 A. Okay.
18 Q. Came over the radio. Do you recollect? I mean,
19 I'm reading from the transcript. He testified to that.
20 A. I just, I don't recall his testimony. But I do
21 know that there was an all points bulletin issued after
22 the robbery. I know that they called -- the store
23 called immediately. The officers showed up immediately.
24 And then at that point they put an all points bulletin
25 out, as I recall.

1 Q. But it was an all points bulletin for black men,
2 wasn't it?
3 A. I don't recall that. I just don't recall.
4 Q. And, again, looking at Officer Durkin's testimony
5 was that at that point in time that he's out on patrol,
6 he's got the call looking for black males who had robbed
7 a store. At that point in time, at least looking
8 through the trial transcript of the testimony, it hadn't
9 been disclosed what anybody was wearing. Do you dispute
10 that?
11 A. I, I just, I don't recall.
12 Q. Okay.
13 A. I don't recall that. I'm just not, like, don't
14 have razor sharp memories or specifics about the trial
15 transcript.
16 Q. Okay. It hadn't gone out over the radio waves,
17 for lack of a better term, that anybody, any police
18 officer had recognized anybody. Do you recognize -- do
19 you remember that?
20 A. Well, no. The thing is that, as I stated, I
21 mean, Christy Cofield, who's working for Laurens police
22 was one of the first officers on the scene and, in fact,
23 identified Mr. Pulley at, at the scene.
24 Q. Let me ask you that. The issue was at the point
25 in time that Officer Durkin stopped this car, that's the

1 time I'm interested in, not what Officer Cofield learned
2 later and then told Officer Durkin. I'm talking about
3 at the time of the traffic stop. Officer Durkin's
4 testimony was: I knew that black males had run up their
5 store. I see two black males getting into a car. I
6 called my -- I called headquarters, they say stop them.
7 A. Okay.
8 Q. Do you remember that testimony?
9 A. I, I don't recall that testimony.
10 Q. Okay. And, again, His Honor's got the
11 transcript, if His Honor will read it. And I want to
12 make sure I'm not putting any words in anybody's mouth.
13 I know I'm kind of giving a summary of it, but my best
14 recollection of reading Officer Durkin's testimony was
15 all I know is I'm looking for two black men.
16 A. Okay.
17 Q. I see two black men, I'm told to pull him over.
18 Now, you didn't challenge that, did you?
19 A. Well, I -- so prior, prior to trial I did not --
20 I did not file any motions to suppress, no, I did not.
21 Q. Okay. And did you know from Officer Durkin that
22 testimony was coming?
23 A. I don't understand your question.
24 Q. Well ---
25 A. Did I understand from him testifying that the

1 testimony was coming?
2 Q. Right. From discovery, did you know Officer
3 Durkin's testimony was going to be that, hey, I got a
4 call about black men had robbed the store. I'm driving
5 down the road, I see two black guys get into a car. I
6 called it into dispatch, they say stop him?
7 A. I have no recollection. I don't recall.
8 Q. Okay. But if you didn't know about it before
9 trial, you didn't object to that, did you?
10 A. Okay. So are you saying I didn't object to
11 Officer Durkin's testimony?
12 Q. Right.
13 A. Well, I think the transcript speaks for itself.
14 As I've stated, I don't -- I did not review --
15 Q. Okay.
16 A. -- Officer Durkin's testimony --
17 Q. Okay.
18 A. -- but the transcript speaks for itself.
19 Q. Okay. And I'll represent to you, you didn't.
20 A. Okay.
21 Q. But, and again, when he says the only reason he
22 stopped him was because they were showing two black
23 males and that is it. Do you recollect any testimony of
24 any traffic violations?
25 A. I don't, I don't recall. I just don't recall.

1 Q. Okay.

2 A. Again, I think I've stated I did not review

3 Officer Durkin's testimony.

4 Q. Okay. And you would agree with me that sometime

5 after my client is stopped, and Mr. Robinson and the two

6 females, that another officer, Ms. Cofield comes down

7 there and identifies my client?

8 A. That's, that's my understanding. And, again, I

9 did, I did look at the incident reports last night.

10 Q. Right.

11 A. And apparently they called it an investigatory

12 detention.

13 Q. Right.

14 A. And so then that's what happened. And at that

15 point obviously Christy Cofield had identified my

16 client.

17 Q. Right. But after this stop, they held him. I

18 guess they held my client and Mr. Robinson, I guess

19 trying to include them or exclude them from this

20 robbery.

21 A. I just remember, again, from the incident report,

22 I just recall if was an investigative detention.

23 Q. Right. But whatever, whatever it was, it stemmed

24 from this stop of Officer Durkin seeing two black males

25 getting into a car.

1 A. Well, I think it would -- it would have certainly
2 stemmed from whatever information was released across
3 the airwaves about a robbery that had just occurred at
4 Guatemex. That's what it would have been based on.
5 Q. Right.
6 A. Again, I don't -- I'll tell you, I'll tell you,
7 Mr. Henderson, I never viewed this as, you know -- the
8 bottom line is that there was a -- there was probable
9 cause and a basis to arrest Mr. Pulley when he pulled
10 that car over. Now, the bottom line is that the search
11 -- or the retrieval of the clothing stems from the
12 arrest. That's, that's what happened.
13 I guess what I'm saying is that I never viewed
14 this as a situation where just two random black males
15 were searched and then there was all this incriminating
16 evidence in the car. It just simply wasn't the case.
17 Cofield showed up eventually. And I guess, I
18 guess what I'm saying is I never, I never questioned
19 whether or not there was, in fact, at that time probable
20 cause to arrest my client. And so I never -- I did not
21 try to suppress a stop.
22 Q. Or the seizure. The stop and the seizure.
23 A. Correct. Or and which was the arrest.
24 Q. Right.
25 A. That was the arrest.

1 Q. Well, no, stopping and not letting them go was
2 the seizure.
3 A. Well, no, at that -- well, it was a -- well,
4 however you want to discuss it.
5 Q. Right.
6 A. I mean, the bottom line is that they got his
7 clothes from the, the arrest. That's where he got his
8 clothes.
9 Q. I understand. But ---
10 A. And I don't mean to interrupt you, but that,
11 that's what they got, okay? So that's the, that's the
12 evidence that would have certainly been of concern or
13 possible subject to a Motion to Suppress.
14 Q. Oh, I understand. But keep in mind, the only way
15 they got these clothes was from this stop and the
16 seizure of the car.
17 A. Okay. The way that -- I don't know if I would --
18 you say -- I think you're speculating. You're saying
19 that that's the only way that they got the clothes.
20 Q. Well, how else did they get the clothes? Did I
21 miss something in the transcript?
22 A. No. But I'm saying but that's specifically how
23 they got the clothing.
24 Q. Absolutely.
25 A. That's how they got the clothing. But I just, I

1 guess I just disagree with your characterization that
2 that's the only way they wold have gotten the clothing,
3 so...
4 Q. Well, how -- well, keep in mind we don't know
5 what would have happened out here. I agree with you
6 there.
7 A. That's the only point I'm trying to make.
8 Q. But, in fact, we know that they got the clothing
9 based upon this stop and this seizure.
10 A. Correct. Pursuant to the arrest of Mr. Pulley,
11 correct.
12 Q. Right. I mean, the stop and the seizure --
13 A. Right.
14 Q. -- is where they got it from, which led into the
15 arrest. Let me ask you, on your timeline on this case,
16 did you ascertain whether or not Officer Cofield or
17 anybody else had looked at this store video prior to
18 Officer Durkin pulling over this car because he sees two
19 black males get into it?
20 A. I have no recollection of that.
21 Q. Did you ever put together any timeline?
22 A. I have absolutely no recollection of that.
23 Q. So you don't know what happened first?
24 A. No, I do. I know specifically what happened
25 first. What happened first was there was a robbery.

1 Q. Right.
2 A. And then there was the, the clerk's called law
3 enforcement. And then I knew specifically who showed
4 up.
5 Q. Okay.
6 A. And I know that they watched the surveillance
7 videos. And at that point they had Mr. Pulley. And
8 from there, there was some type of bulletin that was
9 issued. And then it was very shortly thereafter that
10 the car was stopped by Officer Durkin. So that's ---
11 Q. That ---
12 A. That's the only timeline I, I know.
13 Q. Let me ask you this. Do you know for a fact,
14 based on any timeline or investigation that any officer
15 actually looked at this video in the store before
16 Officer Durkin pulled this car over?
17 A. Okay. I don't, I don't know that. What I'm
18 saying is that the information was sent -- again, I'm
19 just going by what the incident report said. There was
20 an identification at the, at the Guatemex. And that's
21 when the points bulletin. But if I recall, but again,
22 I'm really just speculating. I really don't remember.
23 But it just seems like, you know, the reason why Officer
24 Durkin stopped the car was because of the robbery. And,
25 again, I'm just speculating about that.

1 Q. Okay.
2 A. I think I've been clear about what the position
3 is.
4 Q. McGee says that's why he stopped, stopped the
5 car.
6 A. Okay.
7 Q. He saw two black males. So you don't know.
8 Well, you know, when they called and reported the
9 robbery, they said black males had robbed us, or
10 something along those lines. You would agree with that?
11 A. I don't -- I wouldn't dispute that. There was
12 certainly, I know that the clerk called law enforcement
13 immediately after they left. After the robbers left
14 the, the store.
15 Q. Right. And, again, I'm just trying to figure out
16 whether or not anybody had ID'd anybody. Clothing
17 descriptions. I know somebody prior to Officer Durkin
18 pulling this car over because he saw two black males
19 several blocks from the store that he just heard had
20 been robbed.
21 A. And I don't have any recollection of that.
22 Q. Okay. So you don't know what came first.
23 A. I don't. I just, like I said, I'm just giving
24 you the timeline that I, that I knew.
25 Q. Okay.

1 A. But I do -- I think we can say for certainty
2 that, that he was arrested following Christy Cofield's
3 identification.
4 Q. Oh, I agree with you there. I'm just trying to
5 figure out did Officer Durkin know about her ID prior to
6 pulling this car over.
7 A. Okay.
8 Q. And you said you just don't know.
9 A. I just, I don't have any recollection about that
10 fact.
11 Q. Did you ever seek to find out the answer to that
12 fact?
13 A. No.
14 Q. Okay. So during your investigation you didn't
15 see what came first?
16 A. Well, again, pursuant to the, the incident
17 report, I guess so what we're talking about is whether
18 or not there would have been a valid ground to challenge
19 the stop.
20 Q. Absolutely.
21 A. And so -- and in my mind after looking at, after
22 looking at the incident report to see how they, in fact,
23 got to Mr. Pulley, I did not -- I did not find a legal
24 basis to challenge the stop.
25 Q. Okay. And you agree you didn't challenge it.

1 A. I did not challenge it, no.
2 Q. Okay. And isn't it true that Officer Cofield,
3 the only way or the only person on that video she ID'd
4 was Mr. Pulley not wearing a mask when he was in there
5 earlier? Isn't that fair to say?
6 A. She -- she -- well, actually at trial, which was,
7 I thought was pretty incredulous, she did, in fact,
8 identify him on the video without the mask. But then
9 she also stated that she could tell it was him with the
10 mask, which again, I thought was a little incredulous.
11 Q. Did you object to that?
12 A. No, I did not object to that.
13 Q. Did you know that was coming?
14 A. But I cross-examined her on that.
15 Q. Did you know that was coming? I mean, from your
16 talks to Officer Cofield prior to trial, did you know
17 she was gonna get on the stand and say, hey, not only do
18 I recognize him without a mask, I'm gonna speculate that
19 was him in the mask?
20 A. I did not. No, I didn't object to that. I think
21 the transcript speaks for itself.
22 Q. Oh, I understand that. But in your conversations
23 with Officer Cofield, or did you have any conversations
24 with Officer Cofield during your investigations?
25 A. I had -- I had a conversation. But you have to

1 also understand, Mr. Henderson -- I'll answer your
2 question. I recall having a conversation with Officer
3 Cofield on the day of trial, because I saw her in the
4 solicitor's office, okay? With that having been said,
5 just recall that my client has already told me in our
6 first meeting that he did this thing.
7 Q. Well ---
8 A. Okay. And I don't, I don't have any doubt that,
9 you know, again, my ethical obligation is certainly I
10 can ethically file a Motion to Suppress. I can
11 ethically, you know challenge the witness statements,
12 their recollection. But I will tell you this. I did
13 not -- I did not -- it wasn't a surprise that Officer
14 Cofield took the stand and identified my client. That
15 was not a surprise. And, again, you're asking me if I
16 objected to her identifying him with a, a mask on. I
17 did not, because that was her testimony. I tried to
18 cross her on that.
19 Q. You didn't object at all.
20 A. I did not, because I -- it wasn't an objection.
21 That came out pursuant to my cross, as I recall. So I
22 crossed her on her memory and recollection --
23 Q. Well, can you ---
24 A. -- for the jury to say that, you know, well wait
25 a second, yes, I can still tell it's him with a mask on.

1 Q. Now keep in mind, while all this is going on with
2 your talks with Officer Cofield that day in the
3 solicitor's office, by that point in time you knew that
4 the State was not putting in any of these incriminating
5 statements.
6 A. I did.
7 Q. Okay. So you already knew that the State might
8 not -- well, they knew. The State had to have known
9 that you got a leg up on them by them not being able to
10 put those statements in.
11 A. I don't, I don't know what the State thought
12 about that issue.
13 Q. Obviously the State always loves to put in
14 admissions and finger pointing's, but you did a great
15 job in keeping it out. All I'm saying is at that point
16 in time you knew that the jury wasn't going to hear this
17 stuff.
18 A. I knew the jury wasn't -- wasn't going to hear my
19 client's statements.
20 Q. Right. And yet you still say in the back of my
21 mind you're still going back in how you're approaching
22 this case, you're thinking in the back of your brain my
23 client's admitted he did this.
24 A. Okay. So but at the same time what I stated, you
25 know, I think what you're talking about is, again,

1 looking at any investigation or any alibi witnesses or
2 anything like that, it wasn't a surprise to me that
3 Christy Cofield took the stand and identified my client.
4 I don't -- I guess my point is, you're asking me if I
5 objected, I've said no.
6 Q. Right.
7 A. I did not object to her stating that she could
8 identify him with a mask on at trial.
9 Q. And you didn't object to the clerk who ID'd him
10 at trial either.
11 A. Correct.
12 Q. In court.
13 A. Well, whatever the transcript, the transcript
14 speaks for itself.
15 Q. Right. And I think your testimony was -- and,
16 again, I think you just testified to it, too, on cross,
17 as well as direct, that you didn't see any reason to
18 challenge the stop and the seizure.
19 A. I did not.
20 Q. Of the car.
21 A. I did not.
22 Q. Now, again, there was not evidence of a car being
23 used in this robbery, was there? Did that ever come
24 out?
25 A. There, there was no -- well, I don't recall any

1 -- when you say used in the robbery, there certainly ---
2 Q. A get away car.
3 A. They apparently they walked into the -- they
4 walked into the Guatemex and then they, they exited on
5 foot.
6 Q. Right.
7 A. If that's your question.
8 Q. Right. Bingo. The robbery was committed, I
9 think, by people who entered on foot and left on foot.
10 A. Right.
11 Q. A car was not, on the all points bulletin that
12 we've been robbed, there wasn't a mention of a car, was
13 there?
14 A. I don't recall. But what you're asking me is on
15 the all points bulletin was --
16 Q. Right.
17 A. -- there a mention of the car? I don't know.
18 Q. I'll represent to you there wasn't.
19 A. Okay. I, I just don't know.
20 Q. Okay. And, again, this goes back to Officer
21 Durkin seeing just two black males get into the car and
22 he's gonna stop them.
23 A. Okay.
24 Q. And, again, you've testified --
25 A. I don't ---

1 Q. -- you don't see any reason to challenge that
2 stop.
3 A. I've said that multiple times.
4 Q. Okay.
5 A. Correct.
6 Q. And, again, I'm looking. You said that Jakeivan
7 had rejected the ten-year offer?
8 A. That's correct.
9 Q. Okay. I'm looking and he's giving me something
10 too. And I may put him back up and get it into evidence
11 unless -- well, I might get it into evidence through
12 you. Does that look familiar to you?
13 A. Okay. It does.
14 Q. Let me show it to Ms. Gregory.
15 A. Yes, absolutely it does. This, this would have
16 been essentially like a cover sheet.
17 Q. Okay.
18 A. And an expiration on that is correct. That
19 having been said, as I stated, I've got a note from
20 September 16th, 2011, that it was still on the table. I
21 discussed that with Mr. Pulley. And then, as I stated,
22 I remember distinctly having a conversation with his
23 mother, his stepfather as well as his father about the
24 plea deal even as of the date of trial.
25 Q. Let me stop you right there. Let me move this

1 into evidence.
2 THE COURT: Any objection?
3 MS. GREGORY: No.
4 THE COURT: Without objections, introduced as
5 Petitioner's next in order.
6 (Whereupon, Petitioner's Exhibit Number 6,
7 State's Offered Plea, was marked for identification.)
8 (Whereupon, Petitioner's Exhibit Number 6 was
9 entered into the record.)
10 MR. HENDERSON: And I'm gonna ask again to stop
11 you at Petitioner's Number 6. It looks like the date of
12 this offer ws June the 10th of 2011. It looks like the
13 offer was armed robbery for ten years to be concurrent
14 with a conspiracy. And this offer expired on August the
15 19th of '11.
16 A. Correct. That's what it says.
17 Q. Okay.
18 A. Correct.
19 Q. And you're saying that you had a conversation
20 with Mr. Pulley sometime in September about this offer?
21 A. No. So I had a conversation. So what happens is
22 the State sets these deadlines in, in the plea
23 agreement. But oftentimes they will extend the plea,
24 plea offers. I guess my point is just because this
25 cover sheet says that day, the offer was still on the

1 table, at least as of September of 2011 and as late as
2 the trial date.
3 I remember it distinctly, Mr. Henderson, because
4 after Mr. Pulley was sentenced he got 12 years. His
5 family seemed very pleased that he only got the two-year
6 bump over what the plea offer was. But I remember -- I
7 remember that, those conversations distinctly. So that,
8 that offer was on the table after this cover sheet.
9 Q. Now, keep in mind it's somewhat off kilter, off
10 tangent, but I'm believing that Mr. Robinson, who was
11 arrested, out of the same car stop as Mr. Pulley was,
12 isn't he the one who pointed the police over to Mr.
13 Smiley, who was at another location?
14 A. I don't recall that.
15 Q. Okay. I mean, that's fine.
16 A. I'm sorry, I don't recall that.
17 Q. Okay. So ---
18 A. Again, I don't recall the specifics about Mr.
19 Smiley's arrest.
20 Q. Because I know you were saying a while ago that
21 some of Mr. Smiley's stuff is not related to my client.
22 A. What I'm saying is -- you know, the questions
23 was, you know, was I familiar with the PCR that was
24 granted --
25 Q. Right.

1 A. -- relative to Mr. Smiley and why were those
2 issues granted, which would have had nothing to do with
3 Mr., Mr. Pulley. That what I, that's what I meant.
4 Q. But it seems like all of Mr. Smiley's stuff came
5 through the stop with Mr. Pulley.
6 A. Okay. I ---
7 Q. Or that car that Mr. Pulley was in.
8 A. I don't have ---
9 Q. Okay.
10 A. I don't have recollection of that at all.
11 Because Mr. Smiley was apprehended at a totally
12 different location at a different time.
13 Q. When, when did you learn that Mr. Robinson had
14 actually pled guilty to a lot lesser charge, during
15 trial?
16 A. I just, I don't recall, Mr. Henderson. I do know
17 -- I'll tell you I did know that Mr. Robinson had been
18 offered a favorable plea agreement and that he was, that
19 he was out, okay? Again, what I didn't know was that
20 there was a testimony deal where his probation would be
21 revoked if he didn't, if he didn't testify, which
22 certainly has a lot more teeth to it regarding a
23 possible Brady issue.
24 So, again, we knew, we knew that he had been
25 offered a plea agreement. We knew that he was out. He

1 wasn't incarcerated. Mr. Smiley and my client were
2 incarcerated. But as far as when I knew that, I have no
3 idea.
4 Q. Okay.
5 A. I cannot recall that.
6 Q. And, again, you did put up one, one witness. I
7 think you put up a law enforcement officer, didn't you?
8 A. I don't recall.
9 Q. Okay.
10 A. I don't recall that.
11 Q. Did you not read this transcript?
12 A. I reviewed it, but I didn't -- I certainly didn't
13 study it line-by-line.
14 Q. Okay. And, again, when you brought out on
15 cross-examination the fact that Mr. Robinson had pled
16 guilty ---
17 A. I'm sorry, can I go back to the question?
18 Q. Yeah.
19 A. Well, I'll have to ask you a question. I
20 remember wanting to introduce the evidence regarding the
21 lack of fingerprints on the -- is that what you mean?
22 Q. Yes.
23 A. So that was -- so I called -- I must have called
24 the -- I just didn't recall calling a witness.
25 Q. You did.

1 A. But I knew I did want to introduce the evidence.
2 And, essentially, the fact that the fingerprints, I
3 guess, didn't match up with my client's fingerprints. I
4 knew I wanted to get that in front of the jury.
5 Q. And you said also again that you didn't -- when
6 you brought out, not the State, but when you brought out
7 the fact that Mr. Robinson had pled guilty, you didn't
8 ask for any type of curative instruction.
9 A. I did not.
10 Q. And you didn't ask for any instructions to be in
11 the final jury charge, did you?
12 A. No, I did not. No.
13 Q. Okay. And, again -- again, you know, I'm just
14 thinking back to Officer Durkin's testimony that he
15 didn't -- he didn't testify that he received any type of
16 description over the radio other than black males had
17 robbed a store.
18 A. As I stated, the transcript is going to speak for
19 itself.
20 Q. Okay. Okay.
21 A. I just don't have any recollection of any of
22 that.
23 Q. Okay.
24 MR. HENDERSON: Okay. I don't have anything
25 further, Your Honor.

1 THE COURT: Any redirect?
2 MS. GREGORY: No, sir.
3 THE COURT: Thank you, ma'am, you may step down.
4 The State can call its next witness.
5 MS. GREGORY: We're gonna call Kat Hudgins. I
6 need to call her.
7 THE COURT: All right. That's for the appellate
8 thing?
9 MS. GREGORY: Yes, it is.
10 THE COURT: Thank you for pursuing that.
11 MR. HENDERSON: Your Honor, we're gonna withdraw
12 against Ms. Hudgins.
13 MS. GREGORY: Okay.
14 MR. HENDERSON: She did a fine job with what she
15 had.
16 THE COURT: That's what I thought he testified
17 to.
18 MS. COUCH: Okay.
19 THE COURT: Okay? All right, good. She's out,
20 so we don't need to call her. Have you got ---
21 Q. And I should have cold capped that earlier. I
22 guess I probably should have communicated it better,
23 so...
24 THE COURT: All right. Anybody else that you
25 plan to call?

1 MS. GREGORY: No, sir.
2 THE COURT: Okay. The State rests. Anything in
3 reply?
4 MR. HENDERSON: No, sir, Your Honor.
5 THE COURT: All right. Give me just a moment.
6 MS. GREGORY: Can Ms. Moore be excused?
7 THE COURT: Yes. Thank you, ma'am.
8 MS. MOORE: Thank you.
9 THE COURT: Thank you very much.
10 (Whereupon, witness leaves the courtroom.)
11 THE COURT: All right. Let's hear some brief
12 argument from both sides and, of course, I'm gonna take
13 the matter under advisement. I need to read, go through
14 that transcript. It's pretty thick and I want to read
15 it based upon the legal issue presented. Yes, sir.
16 CLOSING ARGUMENT
17 BY MR. HENDERSON:
18 Your Honor, very briefly. And I think you've
19 probably picked up on it. I think Ms. Moore picked up
20 on it. But for the fact of this traffic stop we
21 wouldn't be here most likely. And I think there's good
22 evidence to support that. If you read the transcript,
23 especially Officer Durkin's testimony, that he got --
24 you know it went out radio wide, city wide that, hey,
25 there's been an armed robbery. Two or three black

1 males.

2 So he's going down the street, he sees two black

3 males get into a car in a residential neighborhood. He

4 follows them all the time, radioing in. No descriptions

5 of anybody who's doing the robbing other than black

6 males.

7 And so he testifies that somebody told him, his

8 captain or somebody, their superior said pull them over.

9 He pulls them over, and basically holds them there until

10 people go, have a chance to go down to this convenience

11 store, officers, and watch this video. I think that's

12 the inference you draw from this.

13 And low and behold, somebody who looked at this

14 video says, hey, one fellow without a mask is my cousin,

15 Jakeivan Pulley. And then that, that goes downhill from

16 there.

17 THE COURT: So what about the lawyer's contention

18 that it was an investigative detention, which is, you

19 know, different from a -- a different analysis? What is

20 your position on that?

21 MR. HENDERSON: Well, it might be an

22 investigative detention once they've got him pulled

23 over, but he's still got to have some valid reason to

24 pull this car over, not just a hunch. Not just the

25 fact, though, that we've got two black males getting

1 into a car.
2 THE COURT: So she should have filed a Motion to
3 Suppress?
4 MR. HENDERSON: That's a Fourth Amendment issue.
5 Unlawful ---
6 THE COURT: It should have been just, like all
7 typical public defenders do, just file your litany of
8 motions at the very beginning, motions in limine just to
9 see why?
10 MR. HENDERSON: Absolutely, Your Honor.
11 Absolutely. Because I think it's crucial here, again,
12 but for this stop and, again, it's a stop without a
13 reason other than that. This is a racial profiling
14 stop. I mean, there's no other way ---
15 THE COURT: The clothes are thrown out as fruit
16 of the poisonous tree, then there's no clothes to tie
17 this defendant into this --
18 MR. HENDERSON: Absolutely.
19 THE COURT: -- other than the cousin's testimony
20 that, yeah, that's my cousin on the video. They'd still
21 have that. I mean, that's the issue you've got to
22 overcome.
23 MR. HENDERSON: That's a different issue.
24 THE COURT: Right.
25 MR. HENDERSON: That's a different issue. I

1 understand that. That's totally separate. And also,
2 all this Mr. Smiley stuff. I know it's ---
3 THE COURT: But hold on a second, let me
4 interrupt because you all have been interrupting each
5 other all day. It goes to the second prong of
6 Strickland versus Watson.
7 MR. HENDERSON: Correct, Your Honor.
8 THE COURT: Okay?
9 MR. HENDERSON: Correct.
10 THE COURT: Number one, you know, was counsel's
11 performance deficient? Well, I think you've got a
12 pretty decent, I'm not gonna say good, because I
13 actually need to read everything, but you've got a
14 pretty viable argument that, yes, she should have filed
15 a Motion to Suppress or at least argued that, okay?
16 But you've still got to overcome the prejudicial
17 standpoint. And, you know, you may have some problems
18 -- and I know he wants to talk, but I'm gonna let him
19 talk for you.
20 You have -- it appears you have some issues there
21 because, you know, because of being a law enforcement
22 making the ID. But, of course, he brought up, you know,
23 the ID issue. And, of course, there wasn't a Biggers
24 hearing either.
25 MR. HENDERSON: Right. There was no ---

1 THE COURT: What do you want to say about that?
2 MR. HENDERSON: Right. Again, there were no ID
3 hearings, especially about the clerk there. A Hispanic
4 lady who didn't speak good English at all, basically
5 just being able to come into a courtroom a year,
6 year-and-a-half later and say, hey, that's the guy that
7 robbed me. I mean, the lawyer should have seen that
8 coming and objected.
9 And the cousin knowing my client without, you
10 know, unmasked, so to speak, granted I think you can
11 always testify I know my cousin, I know my family, but
12 to allow her unchallenged to start speculating that I
13 know about anybody who's wearing a mask, how I could
14 recognize that it's somebody, you know, that causes me
15 problems too.
16 You know, when you look at the Biggers ID stuff
17 and if you kept out the fact, too, that my client will
18 stop within several blocks of this store, of this
19 robbery, and keep out the clothes, then you've just got
20 this video and that's all you're dealing with.
21 And they should have kept out all this Smiley
22 stuff. I think the Appeals Court agreed with that, too.
23 You know, just because all the Smiley stuff actually
24 came from this stop. If you'd been able to keep out
25 Smiley's stuff, you know, this trial would have been a

1 whole different ball game, Your Honor, but for the fact
2 of -- now, granted, could there possibly have been
3 evidence to convict, even just on what's there? Of
4 course. We never know what 12 people are going to do.
5 But I think there is a reasonable probability but for
6 Ms. Moore not doing this stuff and not handing it over
7 for her counsel to do stuff...
8 THE COURT: Maybe that's why Couch gave him 12
9 years.
10 MR. HENDERSON: That might have been. And,
11 actually we've discussed that.
12 THE COURT: The long play.
13 MR. HENDERSON: I understand.
14 THE COURT: Okay.
15 MR. HENDERSON: And we've discussed it. I
16 haven't had a lot of experience in front of Judge Couch,
17 but on something like this I was expecting a stiffer
18 sentence.
19 THE COURT: Right. I got ya.
20 All right. Yes, ma'am.
21 CLOSING ARGUMENT
22 BY MS. GREGORY:
23 Counsel was very experienced in criminal law and
24 she testified that she would have filed a Motion to
25 Suppress if she thought it was meritorious. I believe

1 all the allegations that Mr. Pulley talked about during
2 his testimony, she went through and had a valid strategy
3 for each one about a reason for each one. I don't think
4 he was prejudiced. I think they failed to meet the
5 <u>Strickland</u> standard here.
6 I think as you go through the transcript you're
7 gonna see with Officer Durkin's testimony, which starts
8 on Page 270, that he had reason to pull the car over.
9 Page 280 to 281, he talks about the investigative
10 detention and the clothing description and everything
11 regarding Christy Cofield, who showed up to the scene at
12 that point and identified him.
13 And you have an attorney who was working with a
14 client who never denied doing it. So she moved for a
15 directed verdict twice, which Mr. Pulley said she
16 didn't.
17 There were just numerous things that he brought
18 up in his testimony that she was able to refute very
19 credibly. I just think they failed to meet their burden
20 here.
21 THE COURT: All right. Well, as you all heard me
22 say, I've got to take this matter under advisement.
23 I've got a lot to think about. I want to read through
24 all the documents as well. I would like both lawyers to
25 brief the issues, since it just came out this morning,

1 the jurisdictional issue subject matter. I want you all
2 to brief that. Have that to me by the end of the month,
3 please. That's just two weeks from now.
4 MR. HENDERSON: Just something short and sweet?
5 THE COURT: Yeah, short and sweet. You know,
6 streamline because he threw out some case law during his
7 testimony, and I want you all to give both of you all an
8 opportunity to brief it, if you want to. You don't have
9 to, but I want to think about it and look at it and then
10 I'll be back in touch with you all and let you know
11 instructions for an order, okay?
12 MS. GREGORY: Okay.
13 THE COURT: Do you want to talk to him some more?
14 (Discussion occurred off the record between
15 counsel and Applicant.)
16 MR. HENDERSON: We don't have anything else
17 further.
18 THE COURT: All right. That concludes this
19 hearing. Thank you very much.
20 (Whereupon, hearing concluded at 1:07 p.m.)
21
22 --- THIS ENDS REQUESTED TRANSCRIPT ---
23
24
25

1 COURT REPORTER CERTIFICATE

2

3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the Court of
10 Common Pleas for Laurens County, South Carolina, on the
11 16th day of October, 2018.
12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17
18
s/Julie A Cendroski
19 Julie A. Cendroski
Circuit Court Reporter
20 Seventh Judicial Circuit
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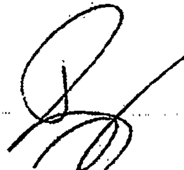
STATE OF SOUTH CAROLINA COUNTY OF LAURENS Jakeivan A. Pulley, #344247, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT 2014-CP-30-0138 ORDER OF DISMISSAL

LAURENS COUNTY
CLERK OF COURT
2019 FEB 25 AM 11:01
LYNN W. LANCASTER

This matter comes before the Court by way of an application for post-conviction relief filed on February 19, 2014, by Jakeivan Pulley ("Applicant"). The State ("Respondent") filed a Return on June 16, 2014, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 16, 2018, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Carson Henderson, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Scarlett Moore, Esquire, ("Counsel") also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Laurens County Clerk of Court's order of commitment. During the July 2011 term, the Laurens County Grand Jury indicted Applicant for armed robbery (2011-GS-30-1057) and criminal conspiracy (2011-GS-30-1058). Counsel represented Applicant. Assistant Solicitors Warren Mowry and Rosemerry Fielder-Commander of the Eighth Circuit Solicitor's Office prosecuted the case.



On February 28, 2012, Applicant proceeded to a jury trial before the Honorable Roger L. Couch. After a three day trial, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for twelve years on the armed robbery charge and a concurrent five years for the criminal conspiracy charge.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 783 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction by written order. State v. Pulley, Op. No. 14-UP-008 (S.C. Ct. App. Filed January 8, 2014). The Remittitur was issued January 27, 2014.

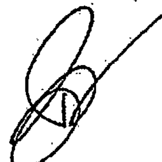
II. SUMMARY OF FACTS

On April 24, 2011, Applicant and two co-defendants planned and executed an armed robbery of the Guatemex store in Laurens County. Anna Sebastian ("Victim") was working as the clerk in her brother-in-law's store on that date and testified at trial that Applicant came into the store about 8:45p.m. on April 24th. (Trial Tr. 88.) Victim testified Applicant asked if he could buy something for one dollar in the store. (Trial Tr. 89.) Victim sent her niece to show Applicant where he could find a soda for less than a dollar. (Trial Tr. 89.) Applicant provided Victim with payment and he left the store. (Trial Tr. 89-90.) A few minutes later, a woman came into the store to send money. (Trial Tr. 90.) While she was sending money, Applicant and one of his co-defendant's entered the store brandishing a gun and demanded all of the money the woman was sending. (Trial Tr. 90.) Victim testified she recognized Applicant during the robbery as the same man that had come in earlier and purchased a soda. (Trial Tr. 90.) Victim testified she recognized Applicant even though he had covered his mouth covered during the robbery. (Trial Tr. 90.) Victim also testified Applicant and his co-defendant made her open the cash register and she complied. (Trial Tr. 92.) Victim testified both Applicant and co-defendant took money from the

cash register after she opened it. (Trial Tr. 92.) Victim testified some of the money fell on the floor and when Applicant went to pick it up, he noticed Victim attempting to set off the alarm. (Trial Tr. 93-94.) Victim testified Applicant grabbed her by the hair and then fled the scene with co-defendant. (Trial Tr. 94.)

Victim testified officers showed up after Applicant and co-defendant fled. (Trial Tr. 94.) The store was equipped with high quality video surveillance and officers were able to see a video of the incident that night. (Trial Tr. 69, 131.) Captain Christy Cofield, who was a patrol lieutenant at the time of the incident, testified she observed the video of Applicant coming into the store to purchase a soda prior to the robbery. (Trial Tr. 141.) Capt. Cofield stated she recognized Applicant because he is part of her extended family and she is familiar with him. (Trial Tr. 142.) Capt. Cofield testified based on the video she had officers looking for a black male with "some type of orangey red looking emblem on the back pockets." (Trial Tr. 143.) Capt. Cofield testified she knew Applicant as "J Rock," but once she learned his name, she told her officers to be on the lookout for Applicant. (Trial Tr. 144.)

Officer Patrick Durkin with the Greenwood City Police Department testified he responded to the armed robbery and was told to be on the lookout for two males. (Trial Tr. 271-272.) Officer Durkin testified he observed two males about two blocks from the incident location getting into a vehicle that had just stopped and then immediately pulled off again. (Trial Tr. 272.) Officer Durkin testified he found the behavior suspicious and radioed to see if he could get additional descriptors of the suspects. (Trial Tr. 272 -273.) Officer Durkin testified he relayed what he observed over the radio and was in the process of stopping the vehicle when Capt. Cofield instructed him to stop the vehicle. (Trial Tr. 273.) Officer Durkin testified Applicant was in the vehicle with another co-defendant and two females. (Trial Tr. 274.) Officer Durkin testified



1. Subject Matter Jurisdiction
    a. Applicant claims court did not have jurisdiction because his indictments were not true billed and filed with the court;
    b. Applicant claims the court did not have jurisdiction because he requested a preliminary hearing and never received a preliminary hearing.
2. Ineffective Assistance of Counsel
    a. Counsel failed to challenge the traffic stop;
    b. Counsel failed to object to his clothes being introduced at trial;
    c. Counsel failed to conduct a hearing pursuant to Neil v. Biggers, 409 U.S.188 (1972);
    d. Counsel failed to obtain discovery regarding Robinson's plea deal;
    e. Counsel failed to properly argue her directed verdict motion;
    f. Counsel failed to convey a plea offer prior to expiration.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified the lower court did not have subject matter jurisdiction because he does not believe his indictments were true billed. Applicant testified his indictments were not filed with the clerk of court. Applicant testified he requested a preliminary hearing on his charges, but never received one. Applicant testified at the time he requested the preliminary hearing he was not represented by any attorney. Applicant testified he received a letter from Counsel stating she was going to obtain discovery and it also would include a copy of his summons. Applicant testified he proceeded to a jury trial on his charges. Applicant testified he filed a direct appeal in his case. Applicant testified he met with Counsel four or five times regarding his case. Applicant testified Counsel did not investigate his case and he did not believe she had much experience. Applicant testified he asked her how much experience she had and she never answered his question.

Applicant testified on the night of the incident he got into a car with some other people. Applicant testified when he got into the car he saw headlights from a police car and noticed that a police car was following them. Applicant testified police pulled over the car and the officer did

not explain why he pulled the car over. Applicant testified he talked to Counsel about the stop, but she never filed a motion to suppress the bad stop. Applicant testified his clothes were very similar to the clothes worn by the robber during the robbery. Applicant testified the search warrant in the case was only for his cell phone and did not mention his clothes. Applicant testified Counsel did not object to the clothes being introduced into evidence. Applicant testified if Counsel had kept his clothing from coming in at trial, the trial would have been different. Applicant testified Counsel did not object to a lot of things during the trial. Applicant testified there were no photo line-ups prior to trial and Counsel did not object to any of the identifications made during trial. Applicant testified Counsel should have had a Biggers hearing and he was prejudiced as a result of her failure to request such a hearing.

Applicant testified there was a Brady violation because one of the co-defendant's had a deal that was not turned over to Counsel. Applicant testified when his co-defendant testified about pleading guilty, Counsel and Applicant had a discussion about his co-defendant's plea deal. Applicant testified he only found out about his co-defendant's plea deal during his co-defendant's testimony at trial. Applicant testified Counsel did not properly argue her directed verdict motion. Applicant testified he wants a new trial on his charges.

During cross-examination, Applicant testified he went over discovery with Counsel. Applicant testified he had an alibi. Applicant testified he did receive a plea offer from the State, but it had expired by the time he learned about it.[1] Applicant testified he rejected the plea offer. Applicant testified he was on probation at the time of the robbery. Applicant testified he recalled apologizing to the court for the incident.

[1] Applicant entered a written plea agreement into evidence that showed a plea offer from the State with an expiration date of August 19, 2011. (See Plaintiff's Exhibit 6.)

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified she has been practicing law for seventeen years and most of that time has been spent in criminal law. Counsel testified she was a public defender for two years as well. Counsel testified she was appointed to represent Applicant. Counsel testified she filed Rule 5 and Brady motions and went over all of the discovery with Applicant. Counsel testified she does not recall Applicant requesting a preliminary hearing. Counsel testified a preliminary hearing would not have made a difference in this case. Counsel testified she received two true billed indictments for Applicant. Counsel testified there were no issues with the indictments.

Counsel testified Applicant was on probation through the Department of Juvenile Justice at the time of the incident. Counsel testified Applicant was released only a few days before the robbery occurred. Counsel testified the facts of the case were that Applicant went into the store without a mask on prior to the robbery to buy a soda. Counsel testified the video surveillance showed Applicant and his two co-defendants walking around the store and then shows Applicant and one of the co-defendants re-entering the store and masks on. Counsel testified the first officer on the scene was a family member of Applicant's and recognized him from the video. Counsel testified the store clerk also identified Applicant during the trial. Counsel testified the vehicle Applicant was riding in was stopped and Applicant was wearing the distinctive pants that were observed on the video surveillance. Counsel testified she had no basis to challenge the identification of Applicant as one of the suspects in the robbery.

Counsel testified she discussed the elements of the crimes with Applicant and reviewed the surveillance video with him. Counsel testified the co-defendant that was tried with Applicant was not arrested at the same time as Applicant. Counsel testified Applicant's phone was picked up by

police. Counsel testified Applicant's clothes were taken incident to his arrest as he was wearing them at the time he was arrested. Counsel testified she did not file a motion to suppress because the traffic stop was good based on the identification information provided to officers. Counsel testified she did make several objections to the pants being introduced, but did not see any real basis to prevent the clothes from coming in at trial.

Counsel testified there was a plea offer on the table up until the date of the trial. Counsel testified she met with Applicant on September 16, 2011, where he rejected the plea offer. Counsel testified Applicant gave incriminating statements to law enforcement. Counsel testified Applicant told her he did commit the armed robbery and wanted to see if he could get a plea deal if he became an informant for law enforcement. Counsel testified the State rejected this idea because they felt they had a strong case against Applicant. Counsel testified Applicant never denied committing the crime.

Counsel testified she did object to the testimony of Robinson. Counsel testified she was not aware of Robinson's plea deal until Applicant's father told her. Counsel testified Applicant's father overheard a conversation between Robinson and the State and that is how he found out. Counsel testified she proffered Robinson's testimony and the trial court allowed the testimony. Counsel testified she did not request a curative instruction regarding Robinson's testimony.

Counsel testified she did not move to severe the trial because of incriminating statements Applicant made and having Applicant and one of his co-defendants tried together kept the statements from being used against Applicant at trial. Counsel testified she did argue for a directed verdict. Counsel testified there were no issues with the search warrant.

On cross-examination, Counsel testified Applicant and his co-defendants had distinctive clothing on the day of the incident. Counsel testified she did not challenge the traffic stop because

the stop was investigatory and Applicant had been identified as one of the suspects by a family member in law enforcement who viewed the high quality surveillance video when she responded to the scene. Counsel testified based on the incident report she did not find a legal basis to challenge the traffic stop. Counsel testified she believed there was probable cause to arrest Applicant.

Counsel testified because of Applicant's confession, she had ethical questions about certain trial strategies. Counsel testified she did not object to Victim's in court identification of Applicant. Counsel testified Applicant rejected the ten year plea offer. During the hearing, Counsel was presented with the cover letter Applicant introduced during his testimony that showed a plea offer from the State expired on August 19, 2011. Counsel testified the plea offer was still on the table as of September and all the way up until the date of trial.

APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115.

V. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

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

Subject Matter Jurisdiction

Applicant does not believe indictments are valid

Applicant alleges his indictments were not true billed or filed with the clerk's office. This Court finds this allegation meritless as this Court was able to review the record in this case, which included a copy of Applicant's true billed indictments. This Court finds Applicant's indictments were also filed with the clerk's office. Consequently, this allegation is denied and dismissed with prejudice.

Applicant alleges the trial court did not jurisdiction since he did not have a preliminary hearing

Applicant claims the trial court did not have subject matter jurisdiction over his case because he was not provided a preliminary hearing. The defendant's right to request a preliminary hearing is provided solely by state statute. It is not required by either the State or Federal Constitution and is not necessary before a grand jury can indict a person for a crime. State v. Irby, 166 S.C. 430, 164 S.E. 912 (1932). The indictment itself constitutes a finding of probable cause and thus avoids the need for a preliminary hearing. State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982) (citations omitted).

This Court finds Applicant was properly indicted by the Laurens County Grand Jury and therefore a preliminary hearing was not required. This Court finds credible Counsel's testimony that a preliminary hearing would not have made a difference in the outcome of Applicant's case. This Court finds Applicant has failed to establish how Counsel was deficient for not requesting a preliminary hearing or how he was prejudiced as a result. Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Counsel

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

Counsel failed to challenge the traffic stop

Applicant alleges Counsel was ineffective for failing to file a motion to suppress the traffic stop. Applicant's implication that the traffic stop in this case was unlawful is entirely without

merit. "A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for the arrest, that the person is involved in criminal activity." State v. Woodruff, 344 S.C. 537, 544 S.E.2d 290 (2001) (internal citations omitted). "[A]n officer may stop a car and briefly detain the occupants if he has a reasonable suspicion that the occupants are involved in a criminal activity." Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994).

At trial, Officer Durkin testified he responded to the robbery call and was told to be on the lookout for two males. He also testified he observed two males getting into a car that barley stopped and then immediately took off again. This suspicious activity was observed shortly after the robbery and within close proximity of the robbery location. As Officer Durkin relayed what he observed over the radio as he initiated a stop on the vehicle. Capt. Cofield, who had observed the video surveillance of the robbery and is a relative of Applicant, came to the traffic stop location and was able to identify Applicant as one of the suspects involved in the robbery.

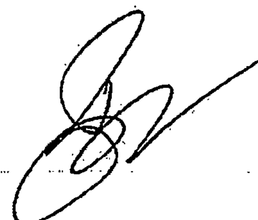
This Court finds credible Counsel's testimony that she did not see a legal basis to file a motion to suppress as she believed the traffic stop was investigatory and valid. After a review of the record and testimony provided during the post-conviction relief hearing, this Court finds Applicant has failed to establish how Counsel was deficient for failing to file a motion to suppress the traffic stop or how he was prejudiced by her decision since, based on the information before this Court, it is unlikely that motion would have been successful. Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

Counsel failed to object to Applicant's clothes being introduced at trial

Applicant alleges Counsel was constitutionally ineffective for failing to object to his clothes being introduced as evidence at trial. Applicant testified at the post-conviction relief hearing that his clothes were similar to the clothes worn by the robbery suspect. Specifically, Applicant was wearing a pair of jeans that had an orange design on the pockets and was readily indefinable in the surveillance video.

This Court finds this allegation is without merit. This Court finds credible Counsel's testimony that she did not see a legal basis to keep the clothes from being introduced as evidence. Although multiple clothing items attributed to Applicant were introduced at trial, Counsel did make several objections to the jeans being offered into evidence. (Trial Tr. 98.) Counsel's objection led to a discussion outside the presence of the jury regarding the admissibility of Applicant's jeans. The lower court allowed the State to proceed to mark the jeans for identification purposes, but required additional foundation be laid before being admitted into evidence. The State again attempts to enter the jeans into evidence through Officer Durkin's testimony, and again Counsel objected. (Trial Tr. 276.) A discussion regarding Counsel's objection was held and the lower court again instructed the State to lay a better foundation prior to admitting the jeans into evidence. The State was finally able to admit the jeans into evidence after the proper foundation had been laid. (Trial Tr. 371.)

Based on the foregoing, this Court finds Applicant has failed to establish how Counsel was constitutionally ineffective as Counsel made appropriate objections to clothing items during the trial. This Court finds the clothing admitted against Applicant during trial was proper and Counsel made objections where appropriate. Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.



Counsel failed to conduct a Biggers hearing

Applicant alleges Counsel should have challenged the identification of Applicant as one of the suspects in the robbery. In Neil v. Biggers, 409 U.S. 188, 198-200 (1972), the United States Supreme Court set forth a two-pronged test to determine whether due process requires the suppression of an eyewitness identification. "To ensure due process, Neil v. Biggers requires courts to assess, on a case-by-case basis, the following: (1) whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, (2) whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Heyward, 422 S.C. 488, 494, 812 S.E.2d 432, 435 (Ct. App. 2018), reh'g denied (Apr. 26, 2018), cert. granted (Sept. 21, 2018) (citing State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012)).

This Court finds a Biggers hearing was unnecessary as Applicant was identified by his relative, Capt. Cofield, and Victim on the night of the robbery. At trial, Victim testified she observed Applicant come into the store prior to the robbery to buy a soda. Shortly thereafter, two masked suspects entered the store and Victim recognized one of the masked suspects as Applicant during the robbery. Victim testified at trial she was also recognized Applicant by his jeans. Victim was also able to identify Applicant in court during the trial.

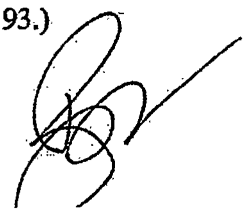
Capt. Cofield was able to recognize Applicant as she reviewed the surveillance video of the robbery during her investigation. Capt. Cofield was familiar with Applicant based on her familial connection to him and her identification of Applicant was not premised on any unnecessary or unduly suggestive police procedure. This Court also finds credible, Counsel's testimony that she did not see a legal basis to challenge the identification of Applicant.

Therefore, this Court finds Applicant cannot meet his requisite burden of establishing Counsel was constitutionally ineffective for failing to request a Biggers hearing. Additionally, there is no reasonable likelihood the identification would have been suppressed had the trial court conducted a Biggers hearing, as Capt. Cofield was familiar with Applicant because of their familial connection. Therefore, this allegation is denied and dismissed with prejudice.

Counsel failed to obtain discovery regarding Robinson's plea deal

Applicant alleges Counsel was constitutionally ineffective for failing to obtain information regarding Robinson's plea deal prior to trial. However, this Court finds this allegation is without merit as this Court finds credible Counsel's testimony that she did file Rule 5 and Brady motions in this case and Robinson's plea deal was not provided to her despite her efforts.

This Court finds credible Counsel's testimony that she did obtain discovery from the State and reviewed that discovery with Applicant. During the trial, Counsel objected to Robinson's testimony and argued the State's failure to provide information regarding Robinson's plea deal was a violation of the discovery motions she filed. (Trial Tr. 186 -187.) Counsel also argued Robinson's testimony should be excluded under Rule 601(b)(1), SCRE. (Trial Tr. 186 -187.) The State provided the lower court with a copy of Robinson's plea agreement, which showed there was no condition in Robinson's plea deal that required him to provide testimony against Applicant and the other co-defendant. Further, Robinson's plea agreement was entered in July of 2011, nearly seven months before the start of Applicant's trial. Robinson's attorney, Kate Anderson-Kendall, also testified. She testified that during the plea hearing she told the plea court Robinson would cooperate and may be called as a witness during Applicant's trial. (Trial Tr. 192.) However, Anderson-Kendall also testified Robinson would not suffer any consequences for not testifying against Applicant or his co-defendant since his case was closed. (Trial Tr. 193.)

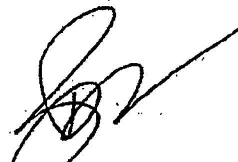


Counsel argued the State violated Brady by not providing Robinson's plea deal in the original discovery. The State responded Robinson's confession that he gave law enforcement the night of their arrest was provided to Counsel and corroborated what was seen on the surveillance video. After a brief recess, the lower court found the State did not violate the discovery motions since Counsel was provided Robinson's confession, which corroborated what was captured on the surveillance video, which was also provided to Counsel. Additionally, the lower court cited Anderson v. Leeke, 271 S.C. 435, 248 S.E.2d 120 (1978), to show the State only has an obligation to provide favorable evidence to the defendant that the State has and the defendant is not able to obtain. The lower court found Counsel could have obtained the plea hearing transcript just as easily as the State since it was a public plea. Ultimately, the lower court allowed Robinson to testify at trial.

Based on the foregoing, this Court finds Applicant has failed to establish how Counsel was constitutionally ineffective as she did obtain discovery in this case and she did attempt to exclude Robinson's testimony at trial. Further, this Court finds Applicant has failed to show any resulting prejudice from Counsel's alleged deficiency. Therefore, this allegation is denied and dismissed with prejudice.

Counsel failed to properly argue her directed verdict motion

Applicant alleges Counsel was constitutionally ineffective because she did not properly argue her directed verdict motion. Applicant believes Counsel should have argued the traffic stop was invalid and the resulting evidence against Applicant should be suppressed. This Court finds this allegation meritless. Based on a review of the record and Counsel's credible testimony, this Court finds Counsel did properly argue for a directed verdict at the close of the State's case. (Trial Tr. 471.) The lower court properly found there was sufficient evidence to justify the case going



forward and denied Counsel's motion. Applicant has failed to meet his requisite burden for this allegation and this allegation must be denied and dismissed with prejudice.

Counsel failed to convey a plea offer prior to expiration

Applicant alleges Counsel was constitutionally ineffective for failing to convey a plea offer prior to its expiration[2]. To be successful on an allegation of an unconveyed plea offer, Applicant must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Petitioner was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted he original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. Id. at 613, 675 S.E.2d at 422. To show prejudice from a failure to convey a plea offer, Applicant must:

> Demonstrate a reasonable probability [he] would have accepted the earlier plea offer had they been afforded effective assistance of counsel. [He] must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Missouri v. Frye, 566 U.S. 134 (2012).

This Court finds credible Counsel's testimony that Applicant had a plea offer open up until the date of his trial. This Court also finds credible Counsel's testimony that the plea offer was conveyed to Applicant and Applicant rejected the offer. Although Applicant claims he was told about the plea offer after it expired, he also testified that he rejected the plea offer. Applicant has

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[2] See Plaintiff's Exhibit 6

failed to meet his requisite burden for this allegation. Therefore, this allegation must be denied and dismissed with prejudice.

VI. CONCLUSION

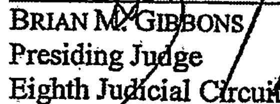
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

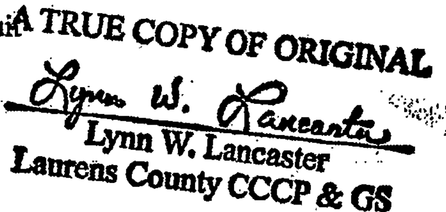
1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this ________ day of ________ 2/19 ________, 2019.



BRIAN M. GIBBONS
Presiding Judge
Eighth Judicial Circuit

________, South Carolina



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	
	)	2014-CP-30-0138
JAKEIVAN A. PULLEY, #344247,	)	
Applicant,	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

LAURENS COUNTY
CLERK OF COURT
2019 FEB 25 AM 11:01
LYNN W. LANCASTER

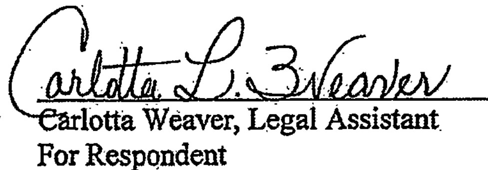
1. I am an employee of the Respondent in the above-captioned action.

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 original proposed **Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carson M. Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Avenue
Greenwood, South Carolina 29646

DATED this the 14th day of February, 2019.



Carlotta Weaver, Legal Assistant
For Respondent

WITNESSES

Leann Riggott
Laurens Police Department

WARRANT NUMBER

1284954

true Bill
[signature]
Foreman of the Grand Jury
Date: 7-15-11

VERDICT

Guilty
[signature]
Foreman 3/1/12

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2011
Indictment # 11GS30- 1057

THE STATE

vs.

Jakeivan Pulley

INDICTMENT FOR

ARMED ROBBERY
16-11-0330

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

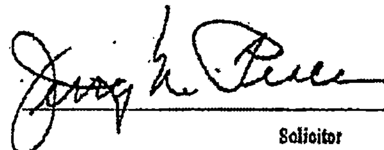
INDICTMENT FOR

ARMED ROBBERY
16-11-0330

At a Court of General Sessions, convened on the 15th day of July, 2011 the Grand Jurors of Laurens County present upon their oath:

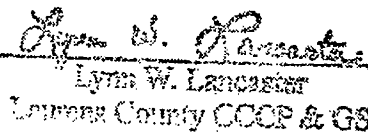
That Jakeivan Pulley, did in Laurens County, state aforesaid, on or about the 24th day of April, 2011 willfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Ana Sebastion and a juvenile, DOB 7/6/95 by means of force or intimidation, goods or monies described as follows: United States currency, with intent to deprive the owner permanently of such property, Guatemex Store in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Leann Riggott
Laurens Police Department

WARRANT NUMBER

1284958

true Bill

[signature]
Foreman of the Grand Jury

Date: 7-15-11

VERDICT

Guilty

[signature]
Foreman 3/1/12

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2011
Indictment # 11GS30- 1058

THE STATE

vs.

Jakeivan Pulley

INDICTMENT FOR

CRIMINAL CONSPIRACY
16-17-0410

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

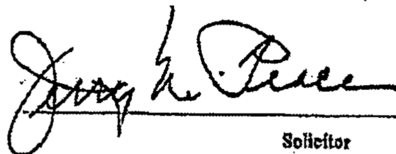
INDICTMENT FOR

CRIMINAL CONSPIRACY
16-17-0410

At a Court of General Sessions, convened on the 15th day of July, 2011 the Grand Jurors of Laurens County present upon their oath:

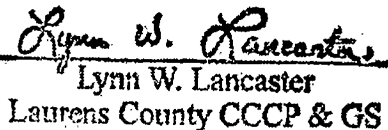
That Jakeivan Pulley, along with another person or persons did in Laurens County, state aforesaid, on or about the 24th day of April, 2011 willfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Armed Robbery, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster
Laurens County CCCP & GS

760

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Laurens
STATE VS.
Jakeivan Pulley
AKA:
Race: BLK Sex: M Age: 19
DOB: SS#
Address:
City,State,Zip:
DL#: SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 11GS30-1057
A/W#: I284954
Date of Offense: 4/24/2011
S.C. Code § : 16-11-0330
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we

in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Warren Mowry | 4124 | Jakeivan Pulley | Scarlet B. Moore | 72534
Mowry, Warren | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 12 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed ______ years and/or to pay a fine of $ ______; provided that upon the service of ______ days/months/years and/or payment of $ ______; plus costs and assessments as applicable*; the balance is suspended with probation for ______ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/1/12

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ ______ plus 20% fee: ______ $ ______
Payment Terms:
☐ Set by SCDPPPS
Recipient:
*Fine:

§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP ______
______ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ______
May serve W/E begining ______
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______
$ ______ paid to Public Defender Fund
Other: Crime is not sexually related

☐ Appointed PD or appointed other counsel, 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Lynn W. Lancaster
Court Reporter: [signature]

Presiding Judge: [signature]
Judge Code: 2135
Sentence Date: 3/1/12

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Laurens)
STATE VS.)
Jakeivan Pulley)
AKA:)
Race: BLK Sex: M Age: 19)
DOB: SS#:)
Address:)
City,State,Zip:)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS30-1058
A/W#: 1284958
Date of Offense: 4/24/2011
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Warren Mowry (signature) 4124 Jakeivan Pulley Scarlet B. Moore 72534
Mowry, Warren SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed ______ years
and/or to pay a fine of $ ______; provided that upon the service of ______ days/months/years and/or payment
of $ ______; plus costs and assessments as applicable*; the balance is suspended with **probation** for ______
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/1/12

☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ ______ plus 20% fee: ______ $ ______
Payment Terms: ______
☐ Set by SCDPPPS ______

Recipient: ______

*Fine:

§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
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§ 50-21-114(BUI Breath Test Fee)	$50	$
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Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP ______
______ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ______
May serve W/E begining ______
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______
$ ______ paid to Public Defender Fund
Other: ______

☐ Appointed PD or appointed other counsel, 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Lynn W. Lancaster
Court Reporter: Pamela Drew

Presiding Judge (signature)
Judge Code: 2135
Sentence Date: 3/1/12

SCCA/217 (03/2011)