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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**ORIGINAL**

Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

**RECEIVED**

JUL 26 2019

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KENNETH CAMPBELL, JR.

APPELLANT

APPELLATE CASE NO 2018-001669

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER  
Appellate Defender

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in refusing to allow appellant to cross-examine the State's star witness regarding a lie he told on the witness stand about taking a polygraph examination?

## STATEMENT OF THE CASE

Appellant Kenneth Campbell, Jr. was indicted by a Berkeley County grand jury for two counts of armed robbery, two counts of kidnapping, murder, attempted murder, first-degree burglary, and a weapons charge. R. \_\_\_\_\_. On August 27, 2018, appellant was tried before the Honorable Deadra Jefferson and a jury. R. 1. Bryan A. Alfaro and Wilton McNeely represented the State. R. 2. Mark L. Archer represented appellant. R. 2. Appellant was tried with co-defendants Jacob Mouzon, Sherrod Palmer, and Drake Campbell. R. 2. William Thrower represented Mouzon, James Smiley represented Palmer, and Grant B. Smaldone represented Drake Campbell. R. 2. The jury acquitted appellant of murder, attempted murder, and burglary, but convicted him of armed robbery and kidnapping. R. 1313-16. Pursuant to South Carolina's recidivism statute, Judge Jefferson sentenced appellant to life imprisonment without the possibility of parole. R. 1339. This appeal follows.

### **STANDARD OF REVIEW**

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. at 429–30, 632 S.E.2d at 848. .

## ARGUMENT

The trial court erred in refusing to allow appellant to cross-examine the State's star witness regarding a lie he told on the witness stand about taking a polygraph examination.

The State's case against the four defendants in this joint murder trial rested largely on the credibility of its star witness, Darius Hamilton. Hamilton was charged with murder, armed robbery, and kidnapping along with appellant Kenneth Campbell, Jr., Drake Campbell, Sherrod Palmer, and Jacob Mouzon. In the early morning hours of July 21, 2016, Krystal Snipes and Kadeem Johnson returned home and were accosted by five masked armed men, one of whom was Hamilton. R. 238 – 245. Hamilton and the other men forced the couple into their home at gunpoint and began robbing their house. R. 244 – 251.

Snipes and Johnson were led into their bedroom and one of the gunmen taped up their hands. R. 250 – 252. Hamilton's fingerprint was found on a roll of tape, which was the only fingerprint connecting any of the defendants to the crime. R. 925, 975, 981, 985. No forensic evidence recovered in the case ever connected appellant to the crime. R. 909.

Snipes was pregnant and was allowed to lie on the bed, but Johnson was forced to kneel on the floor. R. 250 – 252. One of the gunmen took off his mask and Snipes saw his face. R. 256. Snipes identified Mouzon as the gunman. R. 257-58. R. 284. At trial, Snipes had no question that Snipes was the gunman, but when shown a photo lineup after the crime, her confidence in her identification of Mouzon was only fifty percent. R. 284. R. 261. Snipes did not identify any of the other defendants. R. 314.

Mouzon argued with the other assailants about how Snipes and Johnson had seen his face. R. 282. Mouzon then shot Johnson in the head, shot Snipes, and ran. R. 282. Johnson

died instantly from the gunshot wound to the head, but Snipes survived her wounds and was able to call 911. R. 944. R. 287.

The gunmen stole a Hello Kitty bag full of cocaine and the couple's cars, two Crown Victorias. R. 344. R. 441. The police radioed a description of the cars and Officer Corinthian Green, while en route to the scene, passed a car matching the description. R. 359. He did a U-turn and gave chase. R. 361-62. The Crown Victoria stopped in the road and at least one person fled into the woods. R. 362-64. A bandana recovered near this car had Drake Campbell's DNA. R. 372. R. 1062.

The police set up a perimeter and used dogs to track the suspects. R. 390-92. R. 611-615. An officer found a black hooded sweatshirt and DNA from this clothing matched Mouzon. R. 392. R. 1059. The police also found an AK-47. R. 393. The Hello Kitty bag was found near a church where suspects were spotted. R. 400.

Appellant was alone when he was arrested laying under some brush. R. 545-47. R. 614. He was wearing an orange shirt and bright blue pants. R. 548. Snipes said the assailants wore all black. R. 353. The police arrested appellant approximately twelve hours after the shooting and ten miles away from the scene. R. 907-08. Drake Campbell and Mouzon were caught together. R. 634-36. Palmer was caught later in Danville, Virginia. R. 899.

Hamilton testified for the State and claimed he had no deal with the State. R. 845. However, the day after Hamilton talked to the solicitors pursuant to a proffer agreement, he was given a bond after previously being held without bond. R. 803-04. Hamilton agreed he told multiple lies to the police, including once while questioned inside of a church. R. 818-21. When asked about lying to the police inside a church, Hamilton replied, "You can always repent." R. 819, ll. 11 – 23.

Hamilton claimed appellant was the leader and planned the robbery with Palmer. R. 775-77. Hamilton owned the truck that the assailants used to go to Snipes' and Johnson's house. R. 723-25. He claimed at some point during the evening, appellant started "passing out guns." R. 732, ll. 10 – 18. They waited at Johnson's house for several hours for him to return home. R. 735. Johnson arrived, but then left. R. 737. The group then split up with two on one side of the house and three on the other side. R. 738. When Johnson returned, he was with Snipes and the group approached them at gunpoint asking for marijuana and money. R. 738-41.

Hamilton said appellant and Mouzon took the couple into the house. R. 742-43. Hamilton taped their hands. R. 743. Members of the group began bringing items out of the house and continued looking for marijuana. R. 744-47. Mouzon then said, "they seen my face." R. 748. Hamilton claimed he saw Mouzon shoot Snipes and Johnson. R. 748. They got into the Crown Victorias and Hamilton's truck and left. R. 749-50.

In an attempt to take the sting out of cross-examination, the solicitor went over Hamilton's many conflicting statements and lies in direct-examination. R. 759-770. In his first statement, in the church, Hamilton admitted going to the area (but not the house) and said he stayed inside his car for three hours. R. 759-60. He did not name Palmer in this first statement. R. 760. The next day he added a new individual to his statement, a man named Mark Turner who happened to play basketball occasionally with Mouzon. R. 762-64. In another statement to prosecutors in November 2016, Hamilton continued to minimize his involvement and denied going inside the house. R. 766-67. Finally in the meeting before Hamilton made bond, Hamilton arrived at a version resembling his trial testimony. R. 768-70. Hamilton's version included taping up the victims after he learned about his fingerprint being found on the tape. R. 834-35.

Appellant began his cross-examination of Hamilton reiterating that Hamilton signed a proffer agreement with the State promising to tell the truth, but continued to lie. R. 778-79.

Appellant then asked:

Q. And this agreement says that you can be required to take a polygraph exam if the solicitor's office wants you to, doesn't it?

A. Yes.

Q. Did they ever ask you to take a polygraph exam?

A. Yes.

Q. They did?

A. Yes.

Q. Did you take it?

A. Yes, sir.

R.779, l. 22 – 780, l. 7. Counsel for Palmer stated he had a matter of law and Judge Jefferson excused the jury. R. 780.

Palmer's attorney said he never received any information that Hamilton took a polygraph from the State. R. 780-81. The solicitor then stated unequivocally that Hamilton never took a polygraph. R. 782-83. Judge Jefferson then began discussing the admissibility of polygraph results and their scientific reliability. R. 782-83.

The court stated its intention to strike the question and its answer and give a curative instruction. R. 783. Appellant's counsel protested, stating that he would "stay away from" polygraph questions in the future, "but what I'm asking for is did the prosecution carry—" and the judge interrupted him. R. 783, l. 21 – 784, l. 3. While the trial judge continued to opine about the reliability and admissibility of polygraphs, appellant's counsel attempted to steer the discussion back to the solicitor's right to ask for a polygraph in the proffer. R. 784, ll. 8 – 23.

Appellant's counsel said, "And the issue is, did they care enough about whether he was telling the truth or not—" and the trial judge again interrupted and told trial counsel he could not ask Hamilton whether he passed a polygraph. R. 784, l. 19 – 785, l. 1. 3. Trial counsel replied he had no intention of asking Hamilton whether he passed a polygraph. R. 785. Judge Jefferson then said, "You can't just leave it lingering in the air unaddressed." R. 785, ll. 10 – 20. She stated that, "There are many other things that you can ask in that proffer agreement that go to his credibility, other than the polygraph." R. 785, ll. 16 – 20.

Counsel for Palmer then argued that because Hamilton had already said before the jury that he took a polygraph (which was a lie), "It's assumed that the State would not put a witness on the stand who failed a polygraph," and asked to cross-examine Hamilton over the fact that he did not take an examination. R. 786, l. 18 – 789, l. 14. The trial judge flatly refused. R. 789, ll. 13 – 19. The trial judge then instructed the parties to work on a stipulation regarding Hamilton and polygraph and took a recess. R. 790, l. 4 – 792, l. 17.

The parties ultimately agreed on a stipulation. R. 792. When the jury returned, Judge Jefferson told them they were to disregard appellant's counsel's question and Hamilton's answer "in its entirety." R. 795, ll. 15 – 21. The solicitor then read the following stipulation to the jury: "[A]ll parties had stipulated that the witness Darius Hamilton was not asked to consent to a polygraph, nor was one administered to him as part of his November 2016 proffer agreement with the Ninth Circuit Solicitor's Office." R. 795, l. 23 – 796, l. 5.

The trial judge improperly limited cross-examination about Hamilton's lie about the polygraph. The court mistook the issue as one concerning the admissibility of polygraph results instead of concerning Hamilton's credibility and the solicitor's office decision not to give their witness who told repeated lies a polygraph about the version he told at trial. Hamilton told what

the solicitor admitted was a lie directly from the witness stand and the trial judge refused to allow the question or cross-examination. This limitation violated appellant's right of confrontation and cross-examination. Davis v. Alaska, 415 U.S. 308 (1974). Hamilton committed perjury on the witness stand and appellant could not cross-examine him about it. State v. Brown, 296 S.C. 191, 193, 371 S.E.2d 523, 525 (1988) (this Court has unequivocally held it will not condone perjury). The court also struck from evidence appellant's question and Hamilton's lie, therefore this admitted act of perjury was not to be considered under the judge's instructions.

As was noted in State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 818 (2001), Rule 608, SCRE preserves South Carolina precedent holding that generally "anything having a legitimate tendency to throw light on the accuracy, truthfulness, or sincerity of a witness may be shown and considered in determining the credit to be afforded his testimony." See also, State v. Brewington, 267, S.C. 97, 226 S.E.2d 249 (1976). Prohibiting a criminal defendant from engaging in otherwise appropriate cross-examination violates the Confrontation Clause. State v. Pradubsri, 403 S.C. 270, 276-77, 543 S.E.2d 98, 102 (Ct. App. 2013).

Hamilton's testimony and credibility were crucial because nothing else conclusively tied appellant to this crime. The jury's verdict reflected the lack of evidence in the case. The jury convicted Mouzon of all crimes, but he was identified by Snipes and DNA evidence matched him to the black sweatshirt found in the woods. R. 1310-11. The jury acquitted Palmer of all charges. R. 1312-13. Appellant and Drake Campbell were acquitted of murder, attempted murder, and burglary, but convicted of armed robbery and kidnapping. R. 1313-16. Had appellant been able to show the jury that Hamilton continued his torrent of lies from the witness stand, the result of the trial would have likely been a full acquittal. This Court should reverse.

**CONCLUSION**

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.

A handwritten signature in black ink, appearing to read 'DAVID ALEXANDER', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of July, 2019.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

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V.

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PETITION TO BE RELIEVED AS COUNSEL

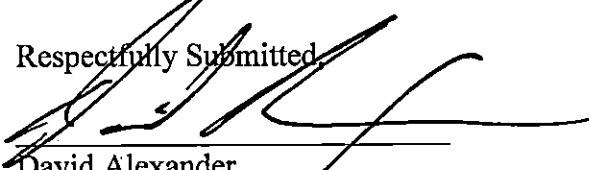
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Counsel for Kenneth Campbell states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on August 27 - 31, 2018, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Kenneth Campbell.

Respectfully Submitted,



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David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 26th day of July, 2019.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Berkeley County  
Honorable Deadra L. Jefferson, Circuit Court Judge

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

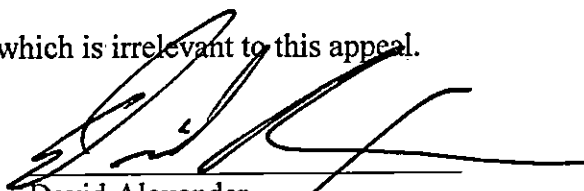
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Trial Transcript (August 27-31, 2018)
- (3) Sentencing Sheets

I certify that this designation contains no matter which is irrelevant to this appeal.

July 26, 2019



David Alexander  
Appellate Defender

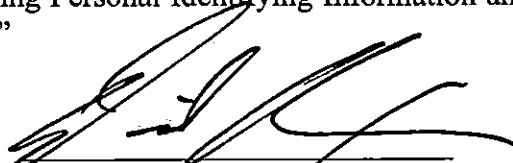
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ATTORNEY FOR APPELLANT

**CERTIFICATE OF COUNSEL**

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

July 26, 2019.



David Alexander  
Appellate Defender

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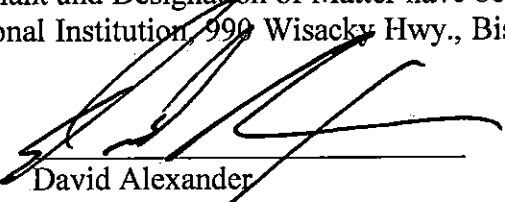
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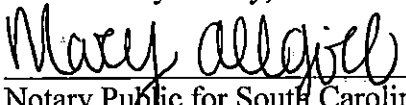
APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Kenneth Campbell, 365925, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 26th day of July, 2019.

  
\_\_\_\_\_  
David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 26th day of July, 2019.

 (L.S)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.