

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

CHRISTOPHER BROADNAX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001270

APPENDIX

VICTOR R SEEGER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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not contribute to the verdict beyond a reasonable doubt.").⁹

CONCLUSION

For the foregoing reasons, the decision of the court of appeals is

REVERSED IN PART, AFFIRMED IN PART.

KITTREDGE and BEATTY, JJ., concur. HEARN, J., concurring in a separate opinion in which PLEICONES, J., concurs.

⁹ The State also contends that the court of appeals erred in refusing to remand the case to the trial court, and in conducting the Rule 609(a)(1) balancing test itself. Our harmless error analysis renders the remand issue moot.

JUSTICE HEARN: I concur in the result reached by the majority. However, I would reverse the court of appeals' opinion and hold the trial court did not err in admitting Broadnax's prior convictions because armed robbery is a crime involving dishonesty under Rule 609(a)(2) of the South Carolina Rules of Evidence.

I appreciate the majority's discussion of the similar federal rule and its accompanying legislative history. As the majority correctly asserts, the federal rule has been interpreted to limit the application of Rule 609(a)(2), FRE to those prior convictions of crimes whose central elements involve *crimen falsi*. See *United States v. Smith*, 551 F.2d 348, 362–63 (D.C. Cir. 1976) ("[I]n its broadest sense, the term 'crimen falsi' has encompassed only those crimes characterized by an element of deceit or deliberate interference with a court's ascertainment of truth.").

However, the majority's analysis ignores that neither our rule nor its commentary, both of which were promulgated by this Court, contain any reference to *crimen falsi*. Cf. Rule 609 note ("Subsection (a) does change the law in South Carolina."). Further, I disagree with the majority that the common law somehow contains and thus preserves the concept that *crimen falsi* is the operative standard. Curiously, the sole case the majority cites to support this proposition, *State v. Peterson*, 35 S.C. 279, 14 S.E. 617 (1892), affirmed the trial court's admission of a prior conviction for the exact crime at issue today: robbery. *Id.* at 281, 14 S.E. at 618.

Accordingly, this Court's interpretation of Rule 609(a)(2), SCRE must be limited to its plain language. The Rule states:

For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be

admitted if it *involved dishonesty* or false statement, regardless of the punishment.

Rule 609(a), SCRE (emphasis added). As our court of appeals succinctly noted in *State v. Al-Amin*, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), the operative word for this analysis is "dishonesty." As elucidated by that court:

To restrict the application of Rule 609(a)(2) only to those offenses which evidence an element of affirmative misstatement or misrepresentation of fact would be to ignore the plain meaning of the word "dishonesty." "Dishonesty" is, by definition, a "disposition to lie, cheat, or **steal**." "To be dishonest means to deceive, defraud or **steal**." "In common human experience[,] acts of deceit, fraud, cheating, or **stealing** . . . are universally regarded as conduct which reflects adversely on a man's honesty and integrity."

Id. at 425, 578 S.E.2d at 43 (internal citations omitted). Restricting our analysis—as we must—to the plain language of 609(a)(2), SCRE there is no doubt armed robbery constitutes a crime involving dishonesty. Stealing, even more so when done at gunpoint, is essentially the type of behavior reflecting adversely on one's character for truthfulness envisioned by Rule 609(a)(2).

Holding that armed robbery is a crime of dishonesty pursuant to Rule 609(a)(2) would avoid the perverse result the majority creates, where shoplifting is a crime of dishonesty pursuant to *State v. Shaw*, 328 S.C. 454, 492 S.E.2d 402 (Ct. App. 1997), but armed robbery is not.¹⁰ Further, it comports with the outcome a majority of states have reached on the same issue. See Jane M. Draper, Annotation, *What Constitutes Crime Involving "Dishonesty or False Statement" Under Rule 609(a)(2) of Uniform Rules of*

¹⁰ I do not believe the result in this case is dictated by stare decisis. As the majority points out, the Court's decision in *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155–56 (2006), dealt only with the question of whether prior firearm convictions involve dishonesty. Thus, the Court was not required to reach the same issue that is before us today. See generally *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) (Sanders, C.J.) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.").

Evidence or Similar State Rule—Crimes Involving Violence or Potential for Violence, 83 A.L.R. 277 (2000) (compiling decisions from other jurisdictions); *see, e.g., Alexander v. State*, 611 P.2d 469, 476 n.18 (Alaska 1980) ("It is the larceny element of robbery which makes such a conviction admissible as impeachment of a witness.").

Accordingly, I would hold the trial court did not err by allowing in evidence of Broadnax's prior convictions pursuant to 609(a)(2) because armed robbery is a crime involving dishonesty, and would reverse the contrary decision of the court of appeals.

PLEICONES, J., concurs.

The Supreme Court of South Carolina

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The State, Petitioner,

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v.

ATTORNEY GENERALS
OFFICE

Christopher Broadnax, Respondent.

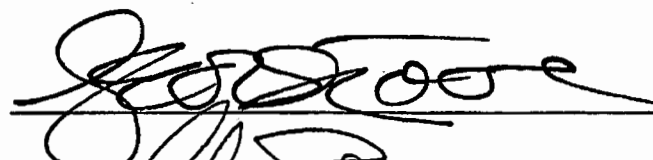
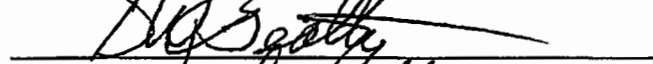
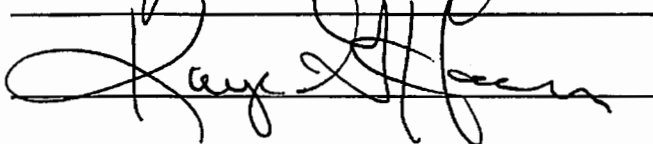
Appellate Case No. 2013-000615

Lower Court Case No's. 2009GS4004541;

2009GS4004539; 2009GS4004542 and 2009GS4004540

ORDER

Respondent's request in his Petition for Rehearing to remand this matter to the Court of Appeals for consideration of the issues not reached previously is granted.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

November 5, 2015

cc: The Honorable Jenny Kitchings
Mary Shannon Williams, Esquire
LaNelle Cantey DuRant, Esquire
The Honorable Jeanette W. McBride

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Christopher Broadnax, Appellant.

Appellate Case No. 2010-166606

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-258
Submitted May 2, 2016 – Filed June 8, 2016

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
all of Columbia, for Respondent.

PER CURIAM: Christopher Broadnax appeals his convictions for armed robbery
and four counts of kidnapping, arguing the trial court erred in: (1) denying his

motion to withdraw the life without parole (LWOP) notice due to the arbitrary use of the solicitor's discretion in the plea bargaining process; (2) denying his motion to withdraw LWOP on the basis that there is no standard to guide solicitors on when they should seek an LWOP sentence; and (3) denying his motion that the jury be informed he was facing the mandatory sentence of LWOP. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: S.C. Const. art. I, §3 ("No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."); *Sloan v. South Carolina Bd. of Physical Therapy Examiners*, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006) ("In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law."); *id.* ("[T]he standard for reviewing all substantive due process challenges to state statutes, including economic and social welfare legislation, is whether the statute bears a reasonable relationship to any legitimate interest of government."); S.C. Code Ann. § 17-25-45(G) (2014) ("The decision to invoke sentencing under this section is in the discretion of the solicitor."); *State v. Williams*, 380 S.C. 336, 348, 669 S.E.2d 640, 647 (Ct. App. 2008) ("[T]he United States Supreme Court has [] held a state is justified in punishing a recidivist more severely than it does a first offender."); *id.* ("Under recidivist sentencing schemes, the enhanced punishment imposed for a present offense is not to be viewed as an additional penalty for the earlier crimes, but instead as a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is a repetitive one."); *State v. Brooks*, 271 S.C. 355, 358-59, 247 S.E.2d 436, 438 (1978) ("The function of the jury is to determine whether a defendant is guilty or not guilty. The rule in this State is that ordinarily the jury is not concerned with the punishment fixed by law, nor with the discretion of the court in deciding upon the sentence.").

AFFIRMED.¹

WILLIAMS, LOCKEMY, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF RICHLANDCHRISTOPHER BROADNAX #099356

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INST./990 WISACKY HWY, BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence RICHLAND COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) CHARLES EVERETT GREEN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09-GS-40-4539: ARMED ROBBERY
 - (b) 2009-GS-40-4540: KIDNAPPING
 - (c) 2009-GS-40-4541: KIDNAPPING (OVER)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) ARMED ROBBERY: LIFE WITHOUT PAROLE (CONCURRENT) JUNE 17, 2010
 - (b) KIDNAPPING: LIFE WITHOUT PAROLE (CONCURRENT) JUNE 17, 2010

4.

(d) 2009-GS-40-4542; KIDNAPPING

(c) KIDNAPPING: LIFE WITHOUT PAROLE (CONCURRENT) JUNE 17, 2010 (OVER)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

☒ (b) after a plea of not guilty ✓ _____

(c) after a plea of nolo contendere _____

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

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

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

i. THE SOUTH CAROLINA APPELLATE COURT (COURT OF APPEALS)

ii. _____

iii. _____

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

i. REVERSED AND REMANDED FOR A NEW TRIAL

ii. _____

iii. _____

(c) the date of each such result:

i. REVERSED AND REMANDED ON JANUARY 09TH, 2013

ii. _____

iii. _____

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

i. STATE V. BRYANT, 369 S.C. 511, 517, 633 S.E. 2d 152, 155 (2006)

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:

5.

(d) KIDNAPPING: LIFE WITHOUT PAROLE (CONCURRENT) JUNE 17, 2010

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) TRIAL COURT ERROR
- (c) _____

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

- (a) (SEE ATTACHMENT)
- (b) (SEE ATTACHMENT)
- (c) _____

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

- iv. _____
- (d) the date of each such disposition: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) N/A
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? UNKNOWN
- (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? YES

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. JAMES H. MAY / CHARLIE LOCHRAN (RICH. CO. PUBLIC DEFENDER'S OFFICE)
- ii. LANELLE LANTY DURANT (APPELLATE DEFENSE)
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. AT TRIAL AND SENTENCE BY JAMES H. MAY AND CHARLIE LOCHRAN
- ii. ON APPEAL BY LANELLE LANTY DURANT OF THE S.C. APPELLATE DEFENSE
- iii. _____

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

APPLICANT SEEKS RELIEF FROM ALL THE LISTED CONVICTIONS AND SENTENCES, AND HAVE ALL SUCH VACATED.

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

NO

STATE OF SOUTH CAROLINA

)

)

VERIFICATION

County of

)

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.

* Christopher Broadnax

SWORN to and subscribed before me this 20
day of Dec., 2016.

Debra Eastbridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

**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.

✓ Christopher Broadmax
Applicant

SWORN or affirmed to and subscribed before me this

20 day of Dec., 2 .

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2024

RICHLAND COUNTY
FILED
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JEANETTE W. MCBRIDE
C.C.P. & G.S.

10. & 11. GROUND FOR RELIEF WITH SUPPORTING FACTS

10 (a)(1) Applicant contends that his right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to investigate and thereby erroneously arguing during pretrial motions hearing to exclude or suppress evidence found in vehicle under a Fourth Amendment violation.

11 (a)(1) During pretrial motions hearing applicant contends that his trial counsel was aware that the supporting affidavit to search and arrest warrants were statutorily defective due to falsified and misleading statements contained therein. Applicant communicated to counsel in several documented letters, prior to any court proceedings, that supporting affidavit to magistrate contained false and misleading statements which magistrate relied upon as facts to determine probable cause for issuance of warrants. After being so informed counsel still erroneously argued for suppression of evidence under a Fourth Amendment violation wherein defendant had no standing to challenge the search as a passenger and needed to demonstrate a reasonable expectation of privacy, rather than argue or contest the legality of the search because of a defect under warrant statute thereby affording defendant standing to object to the validity of the search.

10 (a)(2) Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failing to investigate defendant's allegation of police malfeasance when obtaining search and arrest warrants, thereby entitling defendant to an evidentiary hearing as pursuant to *Franks v. Delaware*, 438 U.S. 154, 155-156, 171-172 (1987) to determine whether the warrants were issued in reliance on a deliberately or recklessly false affidavit.

11 (a)(2) Applicant contends that during pretrial motions hearing his trial counsel was aware that the supporting affidavit to search and arrest warrants were statutorily defective due to falsified and misleading statements contained therein. Applicant communicated to counsel in several documented letters, prior to any court proceedings, that the supporting affidavit to arrest and search warrants supplied by affiant to magistrate contained false and misleading statements which magistrate relied upon as facts to determine probable cause for issuance of warrants. These false and misleading statements were in direct violation of the South Carolina search warrant statute [S.C. Code Ann. §17-13-140]; in violation of defendant's South Carolina Constitution rights provided under Article I, §10; in violation of defendant's United States Constitution 14th Amendment Due Process rights; and entitled defendant to an evidentiary hearing as pursuant to *Franks v. Delaware*, 438 U.S. 154, 155-156, 171-172 (1978) to determine whether the warrant was issued in reliance on a deliberately or recklessly false affidavit. The affiant's deliberate and reckless regard for the truth was essential to the magistrate's finding of probable cause, and therefore entitled the defendant to an evidentiary hearing to determine whether warrants were issued in reliance on a deliberately or recklessly false affidavit.

10 (a)(3) Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to object to witness Danny Weaver's identification of defendant's clothing as that which the robbery suspect wore during the commission of the crime.

11 (a)(3) During pretrial motions hearing it had been established by the Court's ruling (and agreed to by the State tr.pp.388 L/25 & 389 L/1-8) that there would be only one (1) in-court identification made by the prosecution's witnesses

(tr.pp.223 L/19-22 & 391 L/4-7) due to a previously out-of-court overly suggestive identification procedure conducted by Investigator A.L. Thomas with witnesses Gracious Tucker and Danny Weaver Jr. The in-court identification was given by witness Athur Lee Haynes. However, during trial, the State called witness Danny Weaver Jr. to the stand and elicited from him an in-court identification of the clothes the defendant wore on the day of his arrest as the clothes the robbery suspect wore during the commission of the crime, thereby effectively giving an indirect in-court identification of the defendant as being the perpetrator of the crime after he himself had participated in the previously out-of-court overly suggestive identification procedure. Defense counsel failed to object to this pretrial motions violation.

10 (b)(1) Applicant contends that the trial court erred by improperly restricting defense counsel's cross-examination designed to show bias on the part of a prosecution witness (during the cross-examination of witness Charles E. Green) thereby violating defendant's confrontation rights secured under the Sixth and Fourteenth Amendments to the United States Constitution.

11 (b)(1) The Sixth Amendment to the U.S. Constitution is applicable to the states through the Fourteenth Amendment. It guarantees a defendant the right to meaningful cross-examination of a witness concerning bias under the Confrontation Clause. The trial court's ruling prohibiting defendant's inquiry into the possibility that a witness was biased as a result of state's not charging witness (who was also a co-defendant that admitted to being a co-conspirator in a string of robberies) violated defendant's rights secured by the Confrontation Clause. This constitutionally improper denial of the defendant's opportunity to impeach a witness for bias was subject to harmless-error analysis.

Christopher Broadnax #099356
Lee Corr. Inst. F-6-A/1154-B
990 Wisacky Hwy
Bishopville, SC 29010

Date: January 13, 2017

Re: Issue To Be Amended

STATEMENT OF ISSUE I WISH TO AMEND

10 (b)(1) Ineffective assistance of appellate counsel.

Applicant contends that appellate counsel was ineffective by not raising in the Issues On Appeal that the trial court erred by improperly restricting defense counsel's cross-examination (during the cross-examination of witness Charles E. Green) thereby violating defendant's confrontation rights secured under the Sixth and Fourteenth Amendments to the United States Constitution. This issue was objected to by trial counsel throughout the trial(501-504; 711; 736; 826-828) and was therefore properly preserved for direct appeal review.

11 (b)(1) The Sixth Amendment to the U.S. Constitution is applicable to the states through the Fourteenth Amendment. It guarantees a defendant the right to meaningful cross-examination of a witness concerning bias under the Confrontation Clause. The trial court's ruling prohibiting defendant's inquiry into the possibility that a witness was biased as a result of state's not charging witness (who was also a co-defendant that admitted to being a co-conspirator in a string of robberies) violated defendant's rights secured by the

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JEANETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

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JEANETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Confrontation Clause. This constitutionally improper denial of the defendant's opportunity to impeach a witness for bias was subject to harmless-error analysis.

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing statement of issue to amend; that I know the contents thereof; and that the matters and allegations therein set forth are true.

Christopher Broadnax

SWORN to and subscribed before me this 17
day of Jan, 2017.

Debra Easteridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Christopher Broadnax, #099356,	)	Case No.: 2017-CP-40-0045
	)	
Applicant,	)	
	)	RETURN AND PARTIAL MOTION TO
v.	)	DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on January 5, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In September 2009, the Richland County Grand Jury indicted Applicant for kidnapping (2009-GS-40-4540). In November 2009, Applicant was subsequently indicted for armed robbery (2009-GS-40-4539) and two additional counts of kidnapping (2009-GS-40-4541, -4542). Deputy Public Defender James May, Esquire and Deputy Public Defender Charles Cochran, Esquire, represented Applicant. Deputy Solicitor Luck Campbell, Esquire and Assistant Solicitor Nicole Simpson, Esquire prosecuted the case. On June 10, 14-16, 2010, Applicant proceeded to trial before the Honorable G. Thomas Cooper, Jr. The jury found Applicant guilty as indicted on all charges. Judge Cooper sentenced Applicant to imprisonment to concurrent life sentences for each charge.

Applicant filed a timely notice of appeal. LaNelle Cantey DuRant, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals reversed and

remanded Applicant's conviction on January 9, 2013. State v. Broadnax, 401 S.C. 238, 736 S.C. 688 (Ct. App. 2013). The State filed a writ of certiorari with the South Carolina Supreme Court on March 25, 2013. The Supreme Court granted certiorari on June 12, 2014. The Supreme Court reversed in part and affirmed in part the holding of the Court of Appeals on July 8, 2015. The remittitur was returned on July 24, 2015. The Supreme Court recalled the remittitur and refiled an opinion on July 29, 2015. State v. Broadnax, 414 S.C. 468, 779 S.E2d 789 (2015). Applicant filed a petition for rehearing with the Supreme Court on August 6, 2015. The Supreme Court granted Applicant's petition on September 8, 2015. The Supreme Court also granted Applicant's request to remand the petition for rehearing to the Court of Appeals on November 5, 2015. The Court of Appeals affirmed Applicant's conviction on June 8, 2016. State v. Broadnax, Op. No. 2016-UP-258 (S.C. Ct. App. filed June 8, 2016). The remittitur was returned on June 29, 2016.

Attached to this return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. Failure to investigate and thereby erroneously arguing during pretrial motions hearing to exclude or suppress evidence found in a vehicle under a Fourth Amendment violation;
 - b. Failure to in arguing for suppression of evidence rather than that affidavit leading to issuance of search warrant was defective;
 - c. Failure to investigate defendant's allegation of police malfeasance when obtaining search and arrest warrants;
 - d. Counsel was aware of false and misleading statements in search and arrest

- warrants that lead to the magistrate's finding of probable cause, yet failed to request a hearing into the matter;
 - e. Failure to object to witness' identification of Applicant's clothing as that which the robbery suspect wore during the commission of the crime;
 - f. Failure to object to the above identification on the ground that parties had agreed there would only be one in-court identification at trial.
2. "Trial Court Error"
- a. "The trial court erred by improperly restricting defense counsel's cross examination."

III.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at

118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither 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, 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.

Respondent interprets Applicant's second allegation as a denial of due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

V.

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

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

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

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

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

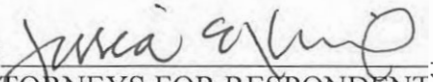
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA KINARD
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

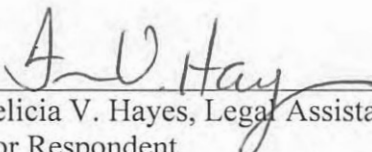
July 13, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2017-CP-40-0045
	)	
CHRISTOPHER BROADNAX, #099356,	)	
	)	
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 by depositing same in the United States mail, postage prepaid:

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

DATED this the 13th day of July, 2017.


 Felicia V. Hayes, Legal Assistant
 For Respondent

Christopher Broadnax #099356
Lee Corr. Inst. F-6-A / 2120-B

990 Wisacky Hwy
Bishopville, SC 29010

Ms. Jeannette W. McBride
Richland County Clerk of Court
P.O. Box 2766
Columbia, SC 29202-2766

March 06, 2018

Re: Christopher Broadnax vs State of South Carolina
C/A No: 2017-CP-40-0045
Issue(s) To Add/Amend/Supplement To PCR Application

Dear Ms. McBride,

Enclosed, please find for filing:

1) claim(s) and/or issue(s) to be added/amended to my
PCR Application:

2) a letter to my attorney Mr. Johnathan D. Waller which
includes a copy of the claim(s) and issue(s) I want to
add/amend to my PCR Application.

I humbly and respectfully ask that you:

1) file all enclosed as a matter of record:
2) forward the enclosed letter to my attorney at the
following address:

Mr. Johnathan D. Waller
The Giese Law Firm, LLC
1315 Blanding Street
Columbia, SC 29201

3) please return to me a time-clocked copy of all
enclosed at the address listed above.

Thanking you in advance for your time and assistance in this most important matter.

Sincerely,

Christopher Broadnax

Christopher Broadnax

ISSUE(s) TO BE ADDED/SUPPLEMENTED TO PCR APPLICATION

10 (b)(2) Applicant's right to the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated by appellate counsel's failure to file a timely challenge of the State Supreme Court's Opinion that there exists overwhelming evidence of guilt which enabled them to overturn the Appellate Court's ruling of Reversed and Remanded.

11 (b)(2) After having successfully appealed his convictions for armed robbery and 3 counts of kidnaping, Applicant contends that the State Supreme Court erroneously overturned the Appellate Court's decision of Reversed and Remanded by unknowingly applying falsified evidence as facts to determine that overwhelming evidence of guilt existed. Applicant contends that appellate counsel was ineffective due to having prior knowledge of the existence of the falsified evidence but ignored Applicant's request that she correct them or add to the Issues on Appeal the issue of ineffective assistance of trial counsel for not challenging this falsified evidence during the course of the trial.

The falsified evidence that; (1) "Respondent was positively identified by several employees who recalled Respondent's distinctive facial features and clothing", and (2) "one of the employees watched as Respondent's accomplice drove him away from the scene in a dented gray truck", was asserted in the search and arrest warrant affidavits, at trial and during appeal and appellate phases of Applicant's adjudications; however, no one appears to have wanted to contest these falsifications or correct them.

In support of this claim of ineffective assistance by appellate counsel, Applicant offers the following evidence of facts:

(1) Mr. Donald Kirby's sworn and signed statement given to the police at headquarters the day of the robbery in which,

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JEANETTE W. BRADY
CLERK
FILED
RICHLAND COUNTY

when asked, "What did the guy look like?", Mr. Kirby in no way expounded on a description such as during his trial testimony:

(2) tr.pp. 381 lines 1-15 where witness Gracious Tucker offers specific testimony that directly contradicts Mr. Kirby's assertion that the robber tied on a mask in front of them:

(3) tr.pp. 223 lines 19-22 where the trial court acknowledges to defense that there is only one in-court identification witness, that being Mr. Arthur Haynes:

(4) tr.pp. 30 lines 1-23 where prosecutor gives evidence that photographic line-ups were prepared but never shown due to the witness's inability to identify the robber because of the mask he was wearing:

(5) tr.pp. 6-7 lines 11-25 where defense counsel specifically renewed "Rule 5" and "Brady", asking for ANY conversations that the state has had with witnesses that differed from the witness statements that have been provided, and other issues regarding changes in statements:

(6) letters to trial and appellate counsels requesting that these falsifications and mischaracterizations be dispelled with the actual facts:

(7) evidence of the existence of another set of clothing that the suspect was "wearing during the commission of the crime".

(8) letter from appellate counsel stating that "there is not sufficient legal merit to file an amended petition for rehearing".

(9) notes taken during trial between defense counsel and defendant where counsel expresses best issues to file for reversible error.

Accordingly, applicant contends that appellate counsel's performance was ineffective, deficient, and caused the Applicant to suffer prejudice by not using the foregoing as (1) an Issue on Appeal in the initial phase of the

appellate proceedings; and (2) not using the foregoing to file a timely challenge of the State Supreme Court's Opinion which overturned the Appellate Court. Strickland v. Washington, 466 U.S. 668 (1984) 104 S.Ct. 2052, 80 L.Ed.2d 674; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); U.S. v. DeCoster, Jr., 487 F.2d 1197, 159 U.S.App.D.C. 326 Jones v. Barnes, 103 S.Ct. 3308 (1983); Smith v. State of S.C., 882 F.2d 895 (4th Cir. 1989); Ezell v. State, 548 S.E.2d 852 (S.C. 2001); Smith v. Robbins, 120 S.Ct. 746 (2000). Smalls v. State, Appellate Case No. 2016-001079 Opinion No. 27764 Heard November 14th, 2017 Filed February 07th, 2018.

AMENDMENT OR SUPPLEMENT TO PCR APPLICATION
ISSUE TO ADD/AMEND TO PCR APPLICATION

10. & 11. GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10 (b)(3) Applicant's right to the effective assistance of counsel as guaranteed by the Sixth Amendment to the U.S. Constitution and South Carolina law was violated as a result of appellate counsel's failure to include in the record on appeal the more viable, prominent, and sustainable issues that were available; specifically, trial counsel's objection to Donald Kirby giving an in-court identification of the defendant as the robber due to it being a violation of both "Brady" and "Riddle".

11 (b)(3) During direct examination of state's witness Donald Kirby Jr., Mr. Kirby referred to the robbery suspect as "the defendant". Defense counsel objected, was overruled, and Mr. Kirby as well as the prosecutor was allowed to continue referring to the robbery suspect as "the defendant" throughout this direct examination. (tr.pp. 334-349) At the end of this direct, the prosecutor then elicited from Mr. Kirby an in-court identification of the defendant as the robber to which defense counsel objected and was overruled.

At the break, defense counsel put on the record, first, the objection to describing the robbery suspect as "the defendant", and second, an objection to Mr. Kirby giving an in-court identification of the defendant as the robber; stating that both "Brady", and possibly "Riddle", had been violated. Defense counsel moved for a mistrial at that time (tr.pp. 389-393) stating that "Rule 5" as well as potentially "Riddle" is violated due to the lack of the state turning over any evidence of this impeachment as well as "Brady" material. In support of this claim, Applicant offers the following evidence of facts:

- (1) Mr. Kirby's sworn and signed statement given to

the police at headquarters the day of the robbery in which, when asked, "What did the guy look like?", Mr. Kirby in no way expounded on a description such as during his trial testimony:

(2) tr.pp. 381 lines 1-15 where witness Gracious Tucker offers specific testimony that directly contradicts Mr. Kirby's assertion that the robber tied on the mask in front of them:

(3) tr.pp. 223 lines 19-22 where the trial court acknowledges to defense that there is only one in-court identification witness, that being Mr. Arthur Haynes:

(4) tr.pp. 30 lines 1-23 where prosecutor gives evidence that photographic line-ups were prepared but never shown due to the witness's inability to identify the robber because of the mask he was wearing; and

(5) tr.pp. 6-7 lines 11-25 & 1-25 where defense counsel specifically renewed "Rule 5" and "Brady, asking for ANY conversations that the state has had with witnesses that differed from the witness statements that have been provided, and other issues regarding changes in statements.

Appellate counsel's failure to include in the record on appeal trial counsel's objection to this explosive testimony was deficient and caused Applicant to suffer prejudice. Strickland v. Washington, 466 U.S. 668 (1984) 104 S.Ct. 2052, 80 L.Ed. 2d 674; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); U.S. v. DeCoster, Jr., 487 F.2d 1197, 159 U.S.App.D.C.326; Jones v. Barnes, 103 S.Ct.3308 (1983); Smith v. State of S.C., 882 F.2d 895 (4th Cir. 1989); Ezell v. State, 548 S.E.2d 852 (S.C. 2001); Smith v. Robbins, 120 S.Ct. 746 (2000).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Christopher Broadnax, #099356,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No. 2017-CP-40-0045
	)	
State of South Carolina	)	
	)	
Respondent.	)	

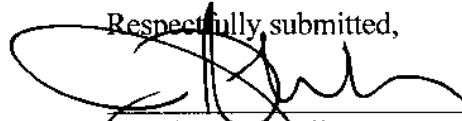
FILED
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KINETTE H. MCBRIDE
C.C.P. & G.S.

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on January 5, 2017, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by James May, Esquire and Charles Cochran, Esquire:
 - a. Counsel was ineffective for failing to ensure that Applicant was not viewed by the jury pool while shackled.
 - h. Counsel was ineffective for failing to contemporaneously object to Arthur Haynes, who had not made an identification of Applicant at that point, referring to the robber by Applicant's name.
 - c. Counsel was ineffective for eliciting improper testimony from Jonathan Brayboy after vigorously objecting to the same testimony on direct examination.
 - d. Counsel was ineffective for failing to object to jury charge after Applicant's requested charge was not presented to jury.
2. As to appellate representation rendered by LaNelle Cante DuRant, Esquire:

- a. Counsel was ineffective for failing to adequately petition the Supreme Court for rehearing following its Order Affirming in Part and Reversing in Part the Court of Appeals.
- b. Counsel was ineffective for failing to raise the meritorious issue of the trial court's overruling trial counsel's objection to the in-court identification given by Donald Kirby of the Applicant as the robber due to it being a violation of both *Brady*¹ and *Riddle*².

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

March 15, 2018

Columbia, South Carolina

¹ *Brady vs. Maryland*, 373 U.S. 83 (1963).

² *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006)

1 STATE OF SOUTH CAROLINA

2 COMMON PLEAS COURT

3 COUNTY OF RICHLAND

4 -----x

5 CHRISTOPHER BROADNAX,)

6)

7 Applicant,)

8)

9 vs.) Transcript of Record

10) 2017-CP-40-00045

11 THE STATE OF SOUTH)

12 CAROLINA.)

13 -----x

14 December 4, 2018

15 B E F O R E:

16 The Honorable Jocelyn Newman, Presiding Judge

17

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

19 Jonathan Waller, Esq.

20 Attorney for the Applicant

21

22 Kelly Oppenheimer, Esq.

23 Attorney for the State

24

25

26

27

28

29 Transcribed by Bobbi Fisher, RPR, CET, for DCRP,

30 Digital Courtroom Recorder Project

I N D E X

WITNESS	PAGE
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JIM MAY	
---------	--

Direct by Mr. Waller	9
Cross by Ms. Oppenheimer	20
Redirect by Mr. Waller	24

CHARLES COCHRAN	
-----------------	--

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CHRISTOPHER BROADNAX	
----------------------	--

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LaNELLE CANTEY DuRANT	
-----------------------	--

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E X H I B I T S

(None.)

P R O C E E D I N G S

(Whereupon, the following proceedings started at 2:14 p.m.)

THE COURT: Okay. Ms. Oppenheimer?

MS. OPPENHEIMER: Yes, ma'am.

THE COURT: Yes, ma'am.

MS. OPPENHEIMER: May it please the Court, Your Honor.

THE COURT: Yes, ma'am.

MS. OPPENHEIMER: Kelly Oppenheimer on behalf of the State. This is Christopher Broadnax versus the State of South Carolina, Docket No. 2017-CP-40-45.

During the September of 2009 term, the Richland County grand jury indicted Applicant for one count of kidnapping. Thereafter, during its November 2009 term, the grand jury indicted Applicant for two additional counts of kidnapping and one count of armed robbery. These charges stemmed from an armed robbery at the Church's Fried Chicken at the corner of Millwood and Forest Drive in Columbia. James Hunter May and Charles William Cochran represented Applicant on these charges.

On June 10th and June 14th through the 16th, 2010, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper Jr. The jury convicted Applicant, as indicted, of all charges.

Judge Cooper sentenced Applicant to concurrent terms of life without the possibility of parole for each charge.

1 Applicant filed a timely notice of appeal, and appellant
2 defender LaNelle Cantey DuRant perfected an appeal on
3 Applicant's behalf.

4 On appeal, she raised the following issues: Did the
5 trial court err in admitting Applicant's three prior armed
6 robbery convictions for impeachment purposes during his
7 testimony when the admission was overly prejudicial and a
8 violation of his due process right to a fair trial? Did the
9 trial court err in denying Applicant's motion to withdrawal
10 the life without parole notice during to the arbitrary use of
11 the prosecutor's discretion in the plea bargaining process,
12 which was a violation of the 14th Amendment's guarantee to due
13 process? Did the trial court err in denying Applicant's
14 motion to withdraw LWOP because there is no standard to guide
15 solicitors in when to seek the sentence of LWOP pursuant to
16 S.C. Code Section 17-25-45, which was a violation of the equal
17 protection policy of the 14th Amendment? And did the trial
18 court err in denying Applicant's motion that the jury be
19 informed that Applicant's facing the mandatory sentence of
20 LWOP, which denied Applicant his due process right to a fair
21 trial?

22 Following briefing and oral argument, the South Carolina
23 Court of Appeals reversed Applicant's conviction and sentences
24 and remanded to the lower court for a new trial, at published
25 opinion dated January 9th, 2013.

1 In its opinion, the Court of Appeals found the trial
2 court erred in admitting Applicant's prior convictions of
3 armed robbery pursuant to Rule 609(a)(2) of the South Carolina
4 Rules of Evidence, as armed robbery is not a crime of
5 dishonesty.

6 The Court of Appeals further found the admission of these
7 prior armed robberies created a high degree of prejudice, and
8 the Court of Appeals declined to address the remaining
9 arguments, as this issue was dispositive.

10 Thereafter, the State petitioned to the Supreme Court of
11 South Carolina, raising the following issues: The Court of
12 Appeals erred in holding that armed robbery is not a crime of
13 dishonesty under Rule 609(a)(2); the Court of Appeals erred
14 whenever he is to remand the case to the trial court in order
15 for the trial court to conduct an on-the-record Rule 609
16 balancing test as required by State v. Holt; and the Court of
17 Appeals erred in not denying the -- in not applying the
18 harmless error standard because any error in admitting
19 Applicant's armed robbery convictions was harmless due to the
20 overwhelming evidence of guilt.

21 By order dated June 12th, 2014, the Supreme Court granted
22 the petition for writ of certiorari, and the following
23 briefing and oral argument in the Supreme Court. The Supreme
24 Court reversed the decision of the Court of Appeals in part
25 and affirmed in part by published opinion.

1 In this decision, the Supreme Court held that armed
2 robbery is not a crime of dishonesty, but the Court further
3 found, in spite of the error in admitting Applicant's prior
4 convictions for armed robbery, such error was harmless beyond
5 a reasonable doubt, as the evidence implicating Applicant was
6 overwhelming.

7 A remittitur was issued on July 24th, 2015. Around July
8 29th, 2015, the Supreme Court issued an order recalling the
9 remittitur. They also re-filed its previous opinion reversing
10 the Court of Appeals.

11 Applicant then submitted a petition for rehearing, and on
12 September 8, 2015, the Supreme Court issued an order denying
13 the petition for rehearing with respect to the harmless error
14 issue and granting the petition for rehearing with respect to
15 the issue of whether the Supreme Court should remand to the
16 Court of Appeals to consider the arguments the Court of
17 Appeals did not reach in its previous ruling.

18 Following briefing on the petition for rehearing, the
19 Supreme Court issued an order remanding to the Court of
20 Appeals for consideration of the issues not previously
21 decided. Thereafter, the Court of Appeals affirmed
22 Applicant's convictions and sentences by unpublished opinion,
23 and the remittitur was issued on June 29th, 2016.

24 On January 5th, 2017, the Applicant filed an application
25 for post-conviction relief, alleging ineffective assistance of

1 trial counsel for failing to investigate, for erroneously
2 arguing during pre-trial motions to exclude or suppress
3 evidence found in the vehicle under a 4th Amendment violation
4 rather than arguing the affidavit supporting the search and
5 arrest warrants were statutorily defective and/or failing to
6 object to Danny Weaver's identification of Applicant's
7 clothing as that which the robber wore during the commission
8 of the crime. He also alleged trial court error for
9 improperly restricting counsel's cross-examination of his
10 co-defendant Charles Green.

11 The State made its return and partial motion to dismiss
12 on July 13th, 2017. Thereafter, on March 15th, 2018, through
13 his counsel, Applicant filed an amendment to the application
14 for post-conviction relief. He is present today and
15 represented by Mr. Jonathan Waller, and I will turn it over to
16 him at this time.

17 THE COURT: I don't have the amendments to the PCR
18 applications.

19 MS. OPPENHEIMER: I apologize, Your Honor. Can I email
20 Your Honor a copy?

21 THE COURT: Yes. I have my laptop right here.

22 MS. OPPENHEIMER: I apologize, Your Honor.

23 THE COURT: That's okay.

24 (Pause in the proceedings.)

25 THE COURT: All right. Mr. Waller?

1 MR. WALLER: And, Judge, just to address the State's
2 partial motion to dismiss, in their return in partial motion
3 to dismiss, I believe on page 4 at the beginning of Section 4,
4 if I'm reading it correctly, they are alleging that there's a
5 due process error.

6 Your Honor, in reviewing the application and reviewing --
7 in a review that was submitted by them, I mean, certainly we
8 feel that it was improper to restrict the defense counsel's
9 cross-examination. I don't know if we can address that issue
10 in -- I believe that issue was properly addressed on the
11 appellate stage, which we have allegations of ineffective
12 assistance of appellate counsel. And so those -- it may come
13 up, is kind of the best way I'm putting it. I don't want
14 to -- I don't want to box myself in, but I don't want to
15 completely carve out that issue either.

16 THE COURT: I understand.

17 MR. WALLER: Some of our allegations are that there were
18 meritorious appeal issues that were not raised on appeal.

19 THE COURT: Right.

20 MR. WALLER: So I think that maybe the way it was written
21 in his original application was not correct. Obviously, he
22 was filing this without the assistance of counsel, and I
23 certainly did file an amendment. So I don't know that I
24 necessarily even need that allegation, given my amendment,
25 but --

1 THE COURT: Okay.

2 MR. WALLER: I don't really want to consent to their
3 motion to dismiss either.

4 THE COURT: I understand. I understand. So let's just
5 proceed with the evidentiary hearing.

6 MR. WALLER: Thank you, Your Honor.

7 The Applicant would call Jim May.

8 JIM MAY,
9 the witness, after having been duly sworn, was examined and
10 testified to as follows:

11 THE CLERK: Thank you. Have a seat in the witness stand,
12 please. State your name for the record.

13 THE WITNESS: My name is Jim May.

14 DIRECT EXAMINATION

15 BY MR. WALLER:

16 Q Good afternoon, Mr. May. How are you today?

17 A Doing well. Thank you.

18 Q Mr. May, where do you currently work?

19 A I work for the United States Attorney's Office. I'm the
20 senior litigation counsel and assistant United States
21 attorney.

22 Q But prior to going to the U.S. Attorney's Office, where
23 did you work?

24 A I worked, until May the 4th, 2012, as assistant public
25 defender in Richland County.

1 Q Okay. And how long overall have you been practicing
2 criminal law?

3 A I have been practicing criminal law since November 13th,
4 2007.

5 Q How did you come to represent Mr. Broadnax?

6 A I was appointed.

7 Q Through your role at the public defender's office?

8 A Yes.

9 Q Okay. If you recall, how long after you were appointed
10 to represent him did you have a chance to meet with him?

11 A I believe I met with him within the first week because I
12 approached Luck Campbell and asked to plead to 25 or 30 years
13 immediately to try to prevent a life without parole sentence
14 being enacted.

15 Q Okay. And was that an issue throughout your
16 representation, trying to plead him and not being able to?

17 A Yes.

18 Q Okay. How long, if you recall, after he was arrested was
19 the trial?

20 A I do not know that. I imagine between 10 and 18 months,
21 but I cannot be sure.

22 Q Okay. Did you tell the Court at one point you thought it
23 was a waste of resources by having the trial?

24 A He was willing to plead within the first week of being
25 arrested to 25 years. Absolutely, it was a waste of

1 resources.

2 Q Okay. When you met with Mr. Broadnax, what did y'all
3 talk about? Did you have any defenses or things you wished to
4 pursue?

5 A We talked. We had no defenses. He was found in the
6 floorboard of a pickup truck after the armed robbery, sitting
7 on the gun, the mask, and the money, and his co-defendant
8 fingered him, as well as he was identified. He didn't have a
9 defense. Our only defense was to fight as much as we could
10 trying to raise some sort of error, which I believe, if you
11 look at the transcript, we had numerous days of pre-trial
12 hearings, attempting to give him whatever defense we could.
13 Unfortunately, the facts weren't for him, especially when you
14 consider his criminal history.

15 Q Okay. And we'll get to the criminal history in just a
16 minute.

17 Do you -- have you had a chance to review his file now
18 that you're not with that office anymore?

19 A No.

20 Q Okay. Do you have a pretty good recollection of the
21 case?

22 A Yes.

23 Q Okay. What do you recall of Mr. Broadnax's criminal
24 history?

25 A I remember he had numerous armed robbery convictions.

1 Q Okay. The State sought to introduce three of those. Do
2 you recall that?

3 A And we objected and that was, I think, the basis for the
4 Court of Appeals overturning it.

5 Q Okay. The State -- he had a 1979 conviction and three
6 1991 convictions. Those were the ones sought to be
7 introduced. Why didn't they seek to introduce the 1979
8 conviction as well?

9 A You have to ask Ms. Campbell.

10 Q Okay. Talk about the identification. What was provided
11 to you in discovery of identifications made of Mr. Broadnax?

12 A Well, I mean, he had his co-defendant that identified him
13 in the floorboard as the person who committed the robbery.
14 Then you had, I believe, two employees of Church's Chicken, to
15 the best of my recollection, who identified I think it was a
16 green stripped shirt, a mask, and then he has a lazy eye, and
17 that was what one of the eyewitnesses -- that's how they
18 described it.

19 Q Okay. Was there a show of identification done in this
20 case?

21 A There was -- there was because it happened at the
22 Church's Fried Chicken at the corner where Taylor turns into
23 Forest, and -- what's the road that --

24 THE COURT: Two Notch --

25 THE WITNESS: Two Notch and --

1 THE COURT: Millwood.

2 THE WITNESS: Millwood.

3 A It was at that corner. And then he was then caught just
4 past Benedict's football stadium down on your left. It was a
5 fairly quick turn-around. And the best of my recollection is
6 the male -- the male employee is the one who identified him.

7 Q Okay. When you got to trial, were there identifications
8 made by some of the other victims that you recall?

9 A I do not know. I know that there was -- we would have
10 had to have been done a Biggers hearing for the show of ID.
11 If there wasn't a show of ID, there would not have been a
12 Biggers hearing. And there was definitely not a Biggers
13 hearing for his co-defendant, who pointed him out in the
14 floorboard.

15 Q Okay. Do you recall if Mr. Broadnax was restrained
16 during the trial?

17 A I believe he was restrained in lead shackles. I believe
18 that we would have made a Missouri v. Deck [verbatim] motion.
19 That was my common practice. Did it happen in this case? I
20 would guess it would have. But my recollection -- so I can
21 tell you that, after about my second trial, I had mostly
22 violent criminals as the people I represented, and so what
23 they would do, especially -- I think it was Judge -- was this
24 Judge Cooper?

25 Q It was.

1 **A** That he would have the defendant put up on the stand
2 because -- he'd have them move from the defense table, where
3 you can't see it, to the stand while the jury was out.

4 But the case was Missouri v. Deck. We argued every case.
5 We asked that he be allowed to walk up.

6 **Q** Okay.

7 **A** The Court and security would generally say no, and then
8 we'd have a -- you know, a compromise.

9 **Q** Sure. Was there ever a time that you recall where
10 Mr. Broadnax would have been in the presence of the jury while
11 shackled where they can see the shackles?

12 **A** No, but he would have been always shackled in the
13 presence of the jury.

14 **Q** Okay. You presented some proposed jury charges?

15 **A** I'm sure I did.

16 **Q** Okay. And some of them were not read -- not charged to
17 the jury by the judge. Was there a strategy behind not
18 objecting after the charge to your proposed charges not being
19 asked?

20 **A** Well, my understanding is that it would have been already
21 objected to. We'd renew all objections at the close of any
22 evidence and the close of any -- at the end of the
23 instruction; however, I do not recall that being one of the
24 issues. I think we raised a whole lot of issues that were
25 brought up on appeal. I don't believe that was one of them.

1 Q Okay. How many times do you think you met with
2 Mr. Broadnax?

3 A I'd probably see him in the jail at least once a week, if
4 not twice a week. I met with him that --

5 Q And would you have met with him every time?

6 A I would not have met with him every time. I probably had
7 to average between 35 and 55 defendants at any given time. I
8 know that there was never a month that I wouldn't meet with
9 somebody, but I met with Broadnax a lot.

10 Q Okay. Did you do any investigation or any research into
11 the search of the vehicle after being stopped?

12 A I mean, we attempted to raise any kind of issue we could
13 because we had to play for a fumble. I mean, really,
14 Broadnax's case was all about playing for a fumble because the
15 State was not providing any reason not to do that. We thought
16 we found it when the Court of Appeals, you know, found that it
17 was -- you know, that it should be reversed. It was not his
18 car, so standing would be somewhat of an issue.

19 But I think that the record is pretty clear. We raised
20 every single thing we could, largely to try to get a pound of
21 flesh and to try to get the State to give us an offer of 25
22 years, which is what we literally begged them to give us
23 within the first week of defending Mr. Broadnax.

24 Q Do you recall how old Mr. Broadnax was at this time?

25 A He had an armed robbery before I was born, so it would

1 have been -- I'd want to say 52, but I could be wrong.

2 Q So another 25 years on top of that?

3 A We thought it was reasonable.

4 Q Okay.

5 A We were trying to make a reasonable concession.

6 Ms. Campbell was not willing to consider anything besides a
7 life plea. You can't plead (indiscernible) to life.

8 Q Okay. Was that the offer extended, was a plea to life?

9 A He could plead to life.

10 Q Okay.

11 A She would say that numerous times.

12 Q Okay. Never anything, even a straight-up plea?

13 A There is no straight-up plea because they serve life
14 without parole.

15 Q Right. She would -- there was never -- well, I guess it
16 was LWOPed?

17 A Right. They'd have to withdraw LWOP. And if he pled, he
18 gets life without parole. So you have got to play for a
19 fumble.

20 Q There was never any talk of her withdrawing the LWOP, I
21 guess is my question.

22 A Never.

23 Q Okay.

24 A And I think when you look at it, I think that there was
25 an interesting witness. We put up a clerk who was with

1 Charlie and me when we were at the Columbia Police Department
2 when A.L. Thomas, who was the investigator on the case, made a
3 comment that she had her fangs out for him. And we put Taylor
4 Bell on the stand, who heard that and was our witness, in a
5 pre-trial hearing to try to -- you know, again, we were trying
6 to do anything we could to just get him a plea. And she
7 wouldn't give anything.

8 **Q** Okay. Did you do any research into the strike system as
9 it existed in 1991 or 1979 to -- where he would have been
10 counseled, that it counted as a strike if he later got in
11 trouble?

12 **A** I mean, we looked at various things. We looked at -- I
13 think we filed one of the more inventive motions, the Bush v.
14 Gore motion, determining, you know, why it would be arbitrary
15 and capriciously applied to some people and not others. I
16 think that we looked at everything we could think about.

17 Again, I think we filed over, you know, 60 motions in the
18 case and had a pretty expansive motions practice just trying
19 to do anything to dislodge a plea in the case. Because,
20 again, it was a -- at least in my information, an untriable
21 case but for the fact that we had to try it because there was
22 no offer.

23 **Q** Okay. Do you recall any evidence presented at trial that
24 y'all had not been presented with in discovery?

25 **A** Nothing stands out. Not saying that there wasn't

1 something. I can tell you that I've been apoplectic on the
2 record. So if there is a place you can point me to the
3 record, and I'll be happy to examine it, but that is something
4 that I would have -- I would have made a scene about.

5 Q Do you recall Ms. Campbell representing to the Court
6 there was going to be one in-court identification?

7 A I mean, there had to have been more than one. She may
8 have represented that. But we have at least the co-defendant
9 who is going to identify him. And you had at least --

10 Q Of the victims. Let me clarify. The victims.

11 A Okay. Again, I think this is almost ten years ago. My
12 best recollection is that only the male employee actually went
13 to the show-up ID. I could be wrong on that, but that's my
14 best recollection. As far as a Biggers issue, it would have
15 only been to the show-up ID because they're inherently
16 suggestive.

17 Any other ID, if it happened from another person, I don't
18 know what the objection would be.

19 Q Okay. Do you recall Mr. Broadnax being viewed at the
20 police station, for lack of a better word, by one of the
21 victims?

22 A I don't recall that.

23 Q Okay.

24 A Not saying it didn't happen. I just don't recall.

25 Q Sure. It's been a long time. I understand that.

1 MR. WALLER: Beg the Court's indulgence, please.

2 THE COURT: Yes, sir.

3 (Pause in the proceedings.)

4 BY MR. WALLER:

5 Q Mr. May, did you have any communication -- you filed a
6 notice of appeal; is that right?

7 A Yes. Our office did.

8 Q Did you have any communication with appellate defense
9 about what issues to raise?

10 A I believe I did; however -- sounds terrible. I lost
11 three trials when I was a public defender, and I remember
12 calling appellate defense. I do not know if absolutely I did
13 in this case, but this is one of the three cases that I got a
14 guilty verdict on so I believe I did, but -- I mean,
15 especially the way we developed the record, I'd be shocked if
16 I did not. I imagine Mr. DuRant can tell you.

17 Q I guess my question was, Did you actively participate in
18 the appeal?

19 A Well, we were prohibited from being active participants
20 in the appeal once it leaves our office.

21 Q Okay. I don't have anything further.

22 A Okay.

23 Q Please answer anything Ms. Oppenheimer has.

24 THE COURT: Yes, ma'am.

25 MS. OPPENHEIMER: May it please the Court, Your Honor.

1 THE COURT: Yes.

2 CROSS-EXAMINATION

3 BY MS. OPPENHEIMER:

4 Q Just to kind of go back, you were first chair in this
5 case?

6 A Yes, ma'am.

7 Q So you would have done most of the legal research and
8 investigation into the facts?

9 A I believe -- I would have done a lot of it. Most --
10 Charlie did a lot. I mean, it was Charlie's first trial, I
11 believe, so I think that he was very eager to do a lot. But
12 it only became a trial when we were forced to and when we
13 couldn't plead it.

14 Q All right. Did you file the Rule 5 and Brady motions?

15 A That would have been done as course.

16 Q And do you recall what evidence you received in
17 discovery?

18 A I remember we received discovery -- I mean, we received
19 all the police reports. We received -- I know that there was
20 a -- there was a dash cam that showed the arrest. It was a
21 grayish, like, primer-colored pickup truck, and we got the
22 statements from all the victims. I know that Mr. Broadnax
23 came over, and Charlie and I and at the time, I believe,
24 Ms. Nicole Simpson was helping Ms. Campbell in the case. We
25 reviewed all the discovery I believe in one of the jury rooms

1 right back here.

2 Q And so was he arrested very shortly after this robbery
3 occurred?

4 A No more than five minutes.

5 Q And he was found in the floorboard of the truck matching
6 the description that one of the victims gave?

7 A Yeah, so the robber disappeared behind the back of the
8 Church's Fried Chicken in a silver pickup -- or a gray-colored
9 pickup truck and takes off down Millwood towards the
10 intersection, crosses over. They call it out because it
11 appeared to be coming from the same direction. And however
12 long it takes to drive from, you know, Millwood/Forest
13 interchange to past -- right past the Benedict stadium was
14 when the arrest -- was when they got stopped. I believe that
15 was House Road. I could be wrong, but I think that's what it
16 is. He stopped, I mean, I'd guess two and a half minutes at
17 most.

18 Q And do you recall when he was taken out of the floorboard
19 of that truck, were the gun and the money in plain view?

20 A To the best of my recollection, they were in plain view.
21 I think it was also a mask there.

22 Q Okay. So this was not a search warrant case?

23 A Well, there may have been a search warrant. The driver
24 was arrested as well, so I mean, the car had been towed.

25 Q And would you agree that all of the victims were

1 consistent in their descriptions of the robber?

2 **A** To the best of my recollection, striped shirt, lazy eye
3 and mask and gun.

4 **Q** And it was that lazy eye that was very distinctive to the
5 victims; correct?

6 **A** That was what was very distinctive to the victims and
7 that's what was very distinctive to us.

8 **Q** Okay. And so you had a Neil v. Biggers hearing, I
9 believe, for one of the victims. Do you recall?

10 **A** It seems right. I believe it was the male, but I could
11 be wrong. I believe there was one show up, so you had the
12 Biggers hearing for that show-up identification.

13 **Q** Okay. So there was only one show-up identification in
14 this case?

15 **A** I think that's right. That's what's ringing -- there may
16 have been two, maybe, but there was definitely one. It was in
17 a parking lot, three-quarters of a mile, half a mile from the
18 robbery incident.

19 **Q** And do you recall what Judge Cooper ruled as to that
20 show-up identification?

21 **A** I believe he would have ruled that, because of the time
22 and the similarity of the -- the shortness of time, similarity
23 of the description, and the attention of the victim, that it
24 would have been appropriate that those factors would have
25 outweighed the inherent suggestiveness of the Biggers show-up

1 ID.

2 Q All right. And so you said that you made multiple
3 motions at this trial. You kind of threw everything at Judge
4 Cooper.

5 A Judge Cooper was not happy with us.

6 Q I understand.

7 You do recall it being your standard practice to make a
8 motion to preclude shackling?

9 A Yeah, I'm almost positive Missouri v. Deck -- I'm 99.9
10 percent positive that's what the case is, and that I would
11 make it in every case. Now, it should be a part of the record
12 because I have built up a stack about this big and we'd just
13 start, you know, having motion hearings for four days and mess
14 up the Solicitor's schedule.

15 MS. OPPENHEIMER: And, Your Honor, that motion is on page
16 28 of the trial transcript.

17 THE WITNESS: Is it a Deck motion?

18 MS. OPPENHEIMER: It is.

19 THE WITNESS: Okay.

20 BY MS. OPPENHEIMER:

21 Q Do you recall Judge Cooper saying that the lead shackles
22 would remain on as a safety precaution?

23 A I know that we fought it every time, and we never won.

24 Q All right. And you have testified that Mr. Broadnax was
25 always willing to plead guilty to 25 years.

1 **A** Yes.

2 **Q** But the State would not go for a plea.

3 **A** Yes.

4 **Q** So he was willing to accept his guilt and responsibility
5 in this case?

6 **A** Yes.

7 **Q** And I believe the jury charge that you requested, I
8 believe it involves a Merrick (ph) presence charge and
9 requesting the language "accident location" versus "scene and
10 vicinity." Do you recall that?

11 **A** No, but it sounds like something I would have done.

12 **Q** Okay. And you would have renewed all of your previous
13 objections and motions at the appropriate times?

14 **A** We were annoying about it. I mean, we did it ad nauseam.

15 MS. OPPENHEIMER: Beg the Court's indulgence.

16 (Pause in the proceedings.)

17 MS. OPPENHEIMER: Your Honor, I have no further
18 questions.

19 THE COURT: Mr. Waller?

20 REDIRECT EXAMINATION

21 BY MR. WALLER:

22 **Q** No one ever saw the robber get into that truck; is that
23 right?

24 **A** That's a correct statement.

25 **Q** They saw him go around the corner and then they saw the

1 truck pull off very quickly afterwards, but no one ever saw
2 him getting in the truck.

3 **A** That's 100 percent right.

4 MS. OPPENHEIMER: Nothing further. Thank you.

5 THE WITNESS: Do you have anything, Judge?

6 THE COURT: I don't. You can step down.

7 THE WITNESS: Thank you. May I be excused?

8 THE COURT: Absolutely.

9 THE WITNESS: Thank you.

10 THE COURT: Call your next witness.

11 MR. WALLER: The Applicant will call Charles Cochran.

12 CHARLES COCHRAN,

13 the witness, after having been duly sworn, was examined and
14 testified to as follows:

15 THE CLERK: State your name for the record.

16 THE WITNESS: Charles Cochran.

17 DIRECT EXAMINATION

18 BY MR. WALLER:

19 **Q** Good afternoon, Mr. Cochran. How are you today?

20 **A** I'm good. How are you?

21 **Q** I'm doing well. Mr. Cochran, do you recall
22 Mr. Broadnax's case?

23 **A** I do.

24 **Q** Okay. When did you get involved with it?

25 **A** I don't specifically recall that, but probably would have

1 been within the month leading up to trial. Thereabouts.

2 **Q** Are you still at the Richland County Public Defender's
3 Office?

4 **A** No, I'm not.

5 **Q** Have you had access to this file or anything since then?

6 **A** I have not.

7 **Q** Okay. Do you have a pretty good recollection of it?

8 **A** Fairly good recollection of it.

9 **Q** Okay. You said you got involved about a month prior to
10 the trial. What were you tasked with doing?

11 **A** As Mr. May testified to, there was extensive pre-trial
12 legal issues that we wanted to address, so I would have been
13 involved in helping him research and draft some of those
14 motions. I recall seeing Mr. Broadnax one time at the jail
15 and then maybe one or two times here at the courthouse when we
16 would review the case file with the prosecutors and some small
17 investigation. I know Mr. May and I went out to the crime
18 scene together and then prepping my own role in whatever I did
19 in the actual trial.

20 **Q** Okay. What defenses did you and Mr. May, I guess,
21 discuss with Mr. Broadnax and what were you-all working on
22 here?

23 **A** Beyond the legal issues, the factual issues of trial,
24 from what I recall, would have been casting a reasonable doubt
25 on the identifications from the victims and the co-defendant.

1 Q What do you remember about the identifications made by
2 the victims?

3 A By the victims? I recall that I think two or three
4 workers or employees at the restaurant testified and said
5 something to the effect of -- of an armed robber wearing a ski
6 mask and then having some descriptions of clothing and then
7 the distinctive feature that they would all refer back to was
8 that because it was a ski mask, they could see his eyes and
9 that one of his eyes was lazy.

10 Q Okay. In your Rule 5 that your office generated, does it
11 ask for contents of any statements or in the substance of a
12 person -- of a statement given and not reported? Do you
13 recall?

14 A Yeah. I believe it would have been included a request
15 for those.

16 Q Was there any identifications made or statements given
17 that y'all had -- at trial, that y'all had not been provided
18 with prior?

19 A I don't believe so.

20 Q Okay. What was your role during the trial?

21 A From what I remember, I did the opening statement,
22 cross-examined some of the witnesses, and then I believe that
23 was it.

24 Q Okay. Did you have any contact with appellate counsel?

25 A I did not.

1 Q Do you recall the issue regarding Mr. Broadnax invoking
2 his right to remain silent prior to being read his Miranda
3 rights?

4 A Invoke him -- invoking his right to remain silent prior
5 to being --

6 Q And then the State attempting to do a comment on that.

7 A I don't recall that issue.

8 Q Okay. Do you recall Mr. Broadnax testifying that he had
9 attempted to eat some drugs on the side of the -- when they
10 were first stopped?

11 A I do remember that.

12 Q Okay. Was there ever discussion about objecting to the
13 voluntary intoxication in the jury charge?

14 A I did not --

15 MS. OPPENHEIMER: Your Honor, this is outside the scope
16 of the pleadings, I believe. I don't -- I don't recall there
17 being a request by defense counsel for that charge.

18 THE COURT: Mr. Waller?

19 MR. WALLER: Judge, it was charged. I'm just asking if
20 there was any talk of objecting to it.

21 THE COURT: Okay. What allegations that go to?

22 MR. WALLER: Your Honor, I can't point to a specific one.
23 I'm just asking some -- I guess some generalized questions to
24 kind of get a feel for the trial.

25 THE COURT: Okay. The objection is sustained. Move on.

1 BY MR. WALLER:

2 Q Did you personally review all the discovery or were you
3 just tasked with certain parts?

4 A I would have -- I know I was present for the reviews of
5 the case file with the prosecutors and I recall specifically
6 seeing the dash cam videos in the case and I recall
7 specifically going through the actual documents that would
8 have pertained to the testimony for the witnesses that I
9 cross-examined.

10 Q Did you prepare any of the pre-trial motions and argue
11 any of the pre-trial motions?

12 A I would have had some involvement in that, yeah.

13 MR. WALLER: Beg the Court's indulgence's.

14 THE COURT: Yes, sir.

15 (Pause in the proceedings.)

16 MR. WALLER: Nothing further, Mr. Cochran. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION

20 BY MS. OPPENHEIMER:

21 Q You testified that, I believe, two or three of the
22 employees from Church's testified at trial?

23 A That's what I remember, yeah.

24 Q And would they have all pointed out this distinctive
25 feature of Mr. Broadnax?

1 **A** Yes, from what I recall.

2 **Q** And that was a lazy eye?

3 **A** Yes.

4 **Q** And it is pretty distinctive, would you agree?

5 **A** Yes.

6 **Q** In other words, it's not something that everyone has,
7 that it would be something, if you're looking into the eyes --

8 MR. WALLER: Objection, Your Honor. I don't know -- I
9 think it calls for some speculation on the --

10 THE COURT: Sustained.

11 MS. OPPENHEIMER: I'll move on, Your Honor.

12 BY MS. OPPENHEIMER:

13 **Q** And you testified that you were involved in some drafting
14 of the motions?

15 **A** I believe so, yeah.

16 **Q** But you were second chair, so you came on as second chair
17 after Mr. May had already been appointed?

18 **A** Yes. Well after.

19 **Q** So would he have had most of the involvement in the
20 investigation?

21 **A** Yes.

22 **Q** And do you recall that all of the witnesses were able
23 to -- or were pretty sure in their identification, those that
24 ID Mr. Broadnax?

25 **A** I can't honestly recall whether or not any of them made

1 in-court identifications. I remember there was at least one
2 show-up ID where the clothing and maybe his eye was part of an
3 ID at that time.

4 MS. OPPENHEIMER: Beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 MS. OPPENHEIMER: No further questions, Your Honor.

7 THE COURT: Anything further?

8 MR. WALLER: Nothing further, Your Honor.

9 THE COURT: All right. Thank you, sir.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Any objection to him being excused, at least
12 from the subpoena?

13 MS. OPPENHEIMER: No objection, Your Honor.

14 MR. WALLER: No objection.

15 THE COURT: All right. Free to go.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness.

18 MR. WALLER: I call Christopher Broadnax.

19 CHRISTOPHER BROADNAX,

20 the defendant, after having been duly sworn, was examined and
21 testified to as follows:

22 THE CLERK: Thank you. Have a seat in the witness stand,
23 please.

24 State your name for the record.

25 THE WITNESS: Christopher Broadnax.

1 DIRECT EXAMINATION

2 BY MR. WALLER:

3 Q Good afternoon, Mr. Broadnax. How are you?

4 A I'm okay.

5 Q Mr. Broadnax, I want to kind of take you back to right
6 when you were arrested on these charges. Do you recall that?

7 A Yes, I do.

8 Q Okay. How long after you were arrested did you get a
9 lawyer?

10 A I can't say specifically. I was arrested in May. I
11 think I had a lawyer by July or August.

12 Q Okay. And how long were you in the detention center
13 before your trial?

14 A It was almost a year.

15 Q Okay. All right. So I want to talk about pleading
16 guilty. Did you ever want to plead guilty?

17 A I told Mr. May and Mr. Cochran from day one that I did
18 not commit this crime, but the first thing he told me was
19 that, if he could plead me to 20, he would do it because
20 Ms. Campbell was not going to offer a plea.

21 Q Okay. Were you ever offered -- whether you'd take it or
22 not, were you ever offered a plea?

23 A No.

24 Q Okay. And you were okay with that? You wanted to go to
25 trial?

1 **A** Yes. I wanted to go to trial from day one.

2 **Q** Okay. All right. So Mr. May was appointed to represent
3 you through his role in the public defender's office.

4 **A** Yes.

5 **Q** What -- did y'all have a chance to go over the discovery
6 the State had?

7 **A** I wrote him three letters in which I asked him about
8 certain things in the discovery, and he responded. He came to
9 visit and we discussed it for a short period of time.

10 **Q** Okay. Talk about a couple of the specific issues in your
11 discovery. Okay? So you were identified by a couple of the
12 victims in the case at the trial. Do you remember that?

13 **A** I remember.

14 **Q** Did you and Mr. May have a chance to discuss those
15 identifications made of you?

16 **A** Yeah. And I also put that in one of the letters that I
17 sent to him. I actually sent them to the clerk of court and
18 asked her to make a copy and send it to him. I let him know
19 that, when I was arrested, as I sat in the interrogation room,
20 Investigator Thomas had brought in two individuals, a male and
21 a female, and asked them, "Is that him?" And they asked me to
22 turn around. And I told them I looked at two people I never
23 seen before. And I explained that to Mr. May. And I told him
24 that I felt that that was unlawful.

25 **Q** Okay. You were arrested at that point?

1 **A** Yes.

2 **Q** Okay. And you said it was a male and a female. Were
3 those two of the victims in this case?

4 **A** I later found out that it was a Ms. Gracious Tucker
5 and --

6 **Q** Mr. Kirby, maybe?

7 **A** Not -- no. I believe it was Danny Weaver.

8 **Q** So you later found out. When did you later find out? At
9 the trial?

10 **A** At trial.

11 **Q** Okay. And they identified you at the trial; is that
12 right?

13 **A** Ms. Tucker said no. She did not identify me.
14 Mr. Weaver, because of the fact that it was an overly
15 suggestive identification procedure that he performed, he did
16 not identify me specifically but in his questioning -- when he
17 questioned him, he identified the clothes I had on as the
18 clothes that the robber wore during the identification. And
19 that pretty much made me the robber.

20 **Q** Okay. So he wasn't allowed to get into that
21 identification, where he had seen you at the detention or the
22 police station?

23 **A** Yeah, they brought that up in the courtroom. He was on
24 the stand and they said that they would not talk about that.
25 However, him identifying my clothes, that they came down to

1 the property and got, is just the same as identifying me as
2 the robber.

3 Q Okay. You were also identified by Mr. Hanes. Do you
4 recall that? Arthur Hanes?

5 A Yes.

6 Q Okay. And what's your understanding of how Mr. Hanes
7 identified you?

8 A Well, from all records that I have read, statements,
9 testimony that I have heard, everyone agreed that whoever this
10 suspect was, he came in with a mask on. So I'm trying to
11 figure out, well, how can you identify somebody who has on a
12 mask?

13 Q When you were first arrested and pulled out of the truck,
14 did you learn that someone and identified you at that
15 location?

16 A Yeah.

17 Q Okay. Was that Mr. Hanes?

18 A I was told that it was, yeah.

19 Q Okay. All right. Did you --

20 A Actually, it wasn't me he identified.

21 Q Okay.

22 A In his statement, he said --

23 MS. OPPENHEIMER: Objection, Your Honor. Hearsay.

24 THE COURT: Sustained.

25 BY MR. WALLER:

1 Q All right, Mr. Broadnax.

2 THE WITNESS: Your Honor, that's in the transcript.

3 BY MR. WALLER:

4 Q Hold on, Mr. Broadnax. You can't testify to what someone
5 else said. Okay?

6 A Okay.

7 Q Mr. Hanes identified you; is that right? Or he
8 identified someone on that scene.

9 A I'm not sure how to answer that because --

10 THE COURT: Well, it's a yes-or-no question.

11 A Well, no, he didn't identify me. He actually identified
12 shirt and pants.

13 Q Okay. He identified you in court. Do you remember that?

14 A Yes.

15 Q Okay. Did you and Mr. May have a chance to talk about --
16 or Mr. Cochran -- have a chance to talk about that
17 identification, on the scene of your arrest?

18 A None other than what was written in his written
19 statement.

20 Q Okay. Did y'all have a chance to discuss --

21 MS. OPPENHEIMER: Your Honor, can he repeat his answer?
22 I just couldn't hear him.

23 THE COURT: Your answer, sir?

24 MR. WALLER: Your Honor, may I approach?

25 THE COURT: Yes. It is a little difficult to hear. And

1 then you can scoot a little bit forward.

2 THE WITNESS: There's an obstruction here.

3 MR. WALLER: I don't even remember what my question was.

4 THE COURT: Me either.

5 UNIDENTIFIED SPEAKER: You talked about the ID on the
6 scene.

7 BY MR. WALLER:

8 Q Did you and Mr. May have a chance to discuss that you
9 were identified at the scene of your arrest?

10 A Yes.

11 Q Okay. What did y'all talk about, that identification?

12 A Well, I don't want to reiterate some hearsay and have it
13 objected to. We spoke about what happened at the stop prior
14 to Mr. Hanes arriving and identifying the clothing that I had
15 on.

16 Q I'm going to get to that in just a second. I want to
17 talk about the identification of Mr. Hanes being driven to the
18 scene and identifying, in your words, the clothing that the
19 robber was wearing. Did y'all talk about that, how, when you
20 got to trial, what was going to happen with that
21 identification?

22 A No, he didn't specifically -- I don't recall him
23 specifically mentioning that particular incident.

24 Q Okay. Did y'all discuss how the truck was stopped and in
25 the search of the truck after you were arrested?

1 **A** Yes, we did.

2 **Q** Okay. What did y'all talk about?

3 **A** Well, they were arguing probable cause, there being no
4 reason for the police to stop the vehicle. I'm trying to put
5 my answer in a way that there's no objection to what I'm
6 saying because I don't want to...

7 **Q** What did you and Mr. May talk about? You can answer that
8 question.

9 **A** Okay. As far as the stop on the truck?

10 **Q** Yes, sir.

11 **A** Well, he asked me at what point was I in the truck. And
12 I explained to him how I came to be in the truck as opposed to
13 being at the scene of the crime.

14 **Q** Okay. Was it your understanding that no one had ever
15 witnessed you or the robber getting into this truck?

16 **A** Yes, that's my understanding.

17 **Q** Okay. What was your understanding of what -- of how the
18 truck was able to be stopped then?

19 **A** They said that they initiated a stop but there was no
20 traffic violation.

21 **Q** Okay. You were a passenger; is that correct?

22 **A** Yes, I was.

23 **Q** And driven by someone else?

24 **A** Yes.

25 **Q** Was it your vehicle?

1 **A** No.

2 **Q** Did you and Mr. May or Mr. Cochran ever discuss being
3 able to challenge a search of that vehicle?

4 **A** Yes, we did.

5 **Q** What y'all talk about?

6 **A** Well, I was explaining to them that I felt as though it
7 was an illegal search mainly because the affidavit that I was
8 served, the search warrant affidavit, it was defective.

9 **Q** Okay. Why did you tell your lawyer you thought it was
10 defective?

11 **A** Because the -- I was asking him to challenge the veracity
12 of statements made in the search warrant affidavit where the
13 search warrant affidavit alleged that the defendant was
14 followed by Arthur Hanes, who observed him get into this
15 vehicle, saying that he saw me get into a vehicle.

16 **Q** Okay.

17 **A** And that just isn't true.

18 **Q** Okay. What was Mr. Mays' response?

19 **A** I didn't get one.

20 **Q** Okay. Well, when you told him that, what did he say?

21 **A** He said we'll deal with it when the time comes.

22 **Q** Okay.

23 MS. OPPENHEIMER: Can you repeat your answer? I'm sorry.

24 THE WITNESS: He said that we'd deal with it when the
25 time came.

1 BY MR. WALLER:

2 Q All right. There were some identifications -- sorry, let
3 me back up.

4 Your co-defendant was arrested at the same time; is that
5 right?

6 A Correct.

7 Q The co-defendant gave a statement against you and
8 actually testified; is that right?

9 A Yes, he did.

10 Q Did you and Mr. May have a chance -- or Mr. Cochran have
11 a chance to discuss the co-defendant and the fact that he was
12 testifying against you?

13 A Yeah, we discussed it.

14 Q What did y'all talk about?

15 A Well, he asked me -- I don't want to say. We discussed
16 why he would take the stance that he did, why he was he
17 testifying in that manner. I had no answer for that because I
18 didn't know.

19 Q Okay. All right. I'm going to bounce around just a
20 little bit, Mr. Broadnax.

21 During your trial, was there a time when you were not
22 behind this table or up on this witness stand while you were
23 in shackles when the jury was in the room?

24 A During the jury selection process, they were sitting
25 behind me, and I was in shackles.

1 Q So they were sitting back there?

2 A Yes.

3 Q And you were in shackles up here.

4 A No, I was sitting at the table back right --

5 Q Right. Okay.

6 A -- like where they're sitting at.

7 Q Okay. And you were in shackles at that point?

8 A Yes.

9 Q Did you ever have to get up and move around or stand up
10 or anything like that?

11 A Only when we took a break.

12 Q Say that one more time.

13 A Only when we took breaks.

14 Q Was the jury pool still in the room at that point?

15 A Well, because we hadn't selected the entire jury yet,
16 yeah, they were still sitting back there.

17 Q Okay. Did you provide Mr. May or Mr. Cochran any
18 witnesses you wanted to talk to or any information you wanted
19 them to investigate?

20 A No, actually, I didn't, not as far as witnesses were
21 concerned because when you are dealing with a street person,
22 street drug dealer, you have no address for them, no way of
23 contacting them.

24 Q Okay. And is it safe to say you didn't have any
25 information about the incident and you maintained that it

1 wasn't you; is that right?

2 A Yes.

3 Q The State -- you testified; is that right?

4 A Yes, I did.

5 Q Okay. The State attempted to and did introduce three
6 prior armed robbery convictions that you have had; is that
7 correct?

8 A Yes.

9 Q Those were from 1991?

10 A Mm-hmm.

11 Q Okay. You had a previous, prior to that armed robbery
12 conviction, from 1979; is that right?

13 A Yes. Yes, I did.

14 Q Okay. So you had four total, but '79 and three in 1991
15 prior to this armed robbery.

16 A Yes.

17 Q Okay. Do you recall if the State tried to introduce the
18 1979 one?

19 A Yes, I do. I recall -- well, the prosecution tried to
20 introduce all four previous armed robberies. I'm not sure how
21 the judge ruled on it. I don't recall. I have to go back and
22 look at the transcript.

23 Q Okay. Let me move on from that.

24 All right. Mr. Broadnax, you were ultimately convicted;
25 is that right?

1 **A** Yes.

2 **Q** Following your conviction, an appeal -- a notice of
3 appeal was filed. Did you have any conversations with Mr. May
4 or Mr. Cochran about your appeal?

5 **A** About my appeal?

6 **Q** Yes, sir.

7 **A** No.

8 **Q** Who was your appellate lawyer?

9 **A** Ms. LaNelle Cantey DuRant.

10 **Q** Okay. Did you have any conversations or communications
11 with her?

12 **A** Yes.

13 **Q** Okay. Did y'all discuss the issues that were going to be
14 raised?

15 **A** Well, ever since, we discussed them, but I was told that
16 whatever issues she choose to decide on appeal would be at her
17 discretion.

18 **Q** Okay. Did you ever -- did you ever suggest any issues to
19 her?

20 **A** Yes, I did.

21 **Q** And what did you suggest to her?

22 **A** Well, I told her that, during the course of trial, there
23 had been at least three motions for mistrial, one of them
24 being for possible Brady violation, the other being a Doyle
25 violation, and I can't recall the other one. But, yeah, we

1 did discuss the issues. I asked her about them, and that's
2 what I was told that whatever issues she decided, it was at
3 her discretion.

4 Q Okay. When -- did you ever find out what those issues
5 were prior to her filing anything?

6 A The issues that she chose to file?

7 Q Did he tell you, "Mr. Broadnax, these are the issues I'm
8 intending to file"?

9 A Through a letter, yes.

10 Q Okay. Was that before or after she had already filed?

11 A That was after.

12 Q She said, "These are the issues that I went ahead and
13 filed"?

14 A "These are the issues I filed in your case."

15 Q Did you have any questions or concern about the issues
16 that she filed?

17 A Yes, because I asked her about the issues I recommended,
18 that I suggested.

19 Q Okay. What were the issues that you recommended and
20 suggested? You said just a minute ago about some motions for
21 a mistrial. Were there anything else?

22 A I don't recall specifically, other than the Brady
23 violation, and I asked her to file ineffective assistance of
24 trial counsel.

25 Q Okay. In an appeal?

1 **A** Yes.

2 **Q** Okay. All right. So you don't remember specifically
3 except for the motions for mistrial and you said there was a
4 Brady violation, you thought?

5 **A** Yes.

6 **Q** A Doyle violation, you thought?

7 **A** Yes.

8 **Q** And you were not sure of the third one but you recall
9 three.

10 **A** Yeah, I do recall three. I got them in there somewhere.

11 **Q** What was her response to your question about, hey, why
12 didn't you file this evidence?

13 **A** Same as before: "The issues I choose to file on appeal
14 are at my discretion."

15 **Q** Okay.

16 **A** Can I get some water?

17 MR. WALLER: Your Honor, may I approach?

18 THE COURT: Yes.

19 THE WITNESS: Thank you.

20 BY MR. WALLER:

21 **Q** All right, Mr. Broadnax. I believe I have asked you all
22 the questions that I have for you. Is there anything you
23 think I have left out or the judge needs to be aware of
24 Mr. May, Mr. Cochran, or Ms. DuRant's representation of you?

25 **A** Well, Your Honor, I would like to say this: I wish she

1 was here to either dispute it or agree with it, but Mr. May
2 did tell me, as well as Ms. Cantey herself, told me, at one
3 point, if I was dissatisfied with their representation, to
4 file for ineffective assistance of counsel. So here we are.

5 Q Is there anything else that the Court needs to be aware
6 of, Mr. Broadnax?

7 A I did have a couple of other issues that I had wanted to
8 bring up. I don't have them with me handy here. And I doubt
9 if she'd let me file them at this time anyway.

10 Q Please answer any questions Ms. Oppenheimer has.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MS. OPPENHEIMER:

14 Q I kind of want to start at the end. An appeal was filed
15 on your behalf; right?

16 A Yes.

17 Q And you aware that your appeal is kind of famous in the
18 legal world because it created new law?

19 A Yes.

20 Q And you're aware that Ms. DuRant was successful in
21 creating that new law, that armed robbery is no longer
22 considered a crime of dishonesty; correct?

23 A Yes, I'm aware of that.

24 Q And you are aware that the Supreme Court said that, even
25 if that was error, that it was harmless because of the

1 overwhelming evidence of guilt against you; correct?

2 **A** Yes, I'm aware of that. However, that's one of my
3 contentions, that there was not overwhelming evidence of
4 guilt.

5 **Q** Well, let's get into some of the evidence against you.
6 You were found in an old gray Dodge pickup truck; correct?

7 **A** Yes.

8 **Q** And that was shortly after this robbery occurred;
9 correct?

10 **A** I don't know because I didn't have knowledge that a
11 robbery had occurred.

12 **Q** But it was your contention at trial that, within mere
13 minutes of this robbery occurring, that you happened to see
14 Mr. Green driving down the street and you flagged him down and
15 hopped in his car?

16 **A** Actually, it was my contention that I saw Mr. Green
17 coming down Two Notch Road. I had no knowledge that a robbery
18 had occurred. So I don't know whether it happened in minutes
19 or whatever.

20 **Q** But that was sheer luck that you happened upon Mr. Green
21 in a truck matching the description of the truck at the
22 robbery; correct?

23 **A** I know Mr. Green because he lived around the corner from
24 my sister where I stayed.

25 **Q** Okay.

1 **A** So I'm very familiar with him.

2 **Q** And so you were found kind of close to that intersection
3 of Taylor, Forest, Millwood, and Two Notch; correct? That's
4 when you were pulled over?

5 **A** That's not correct. The truck was pulled over a half a
6 mile from where that Church's is.

7 **Q** Okay. And you were found in the floorboard; correct?

8 **A** Yes, I was on the floorboard.

9 **Q** And you were on top of a plastic bag; correct?

10 **A** No, I wasn't.

11 **Q** Well, in that plastic bag was a gun and some money;
12 correct?

13 **A** To my knowledge, this stuff was underneath the seat that
14 I was sitting in.

15 **Q** The officers testified that, once you got out of the
16 truck, they saw the bag; correct? Do you remember that
17 testimony?

18 **A** Yeah, I remember the testimony.

19 **Q** So they saw it when you got out, was their contention.

20 **A** Is that a question?

21 **Q** Is that a yes?

22 **A** Is that a question?

23 **Q** Their testimony is that they saw the bag with the gun and
24 the money after you got out of this car; correct?

25 **A** That was their testimony, yeah.

1 Q And you testified that -- well, you sat at trial this
2 entire time; correct? And you heard all of the victims
3 testify; right?

4 A Right.

5 Q And I believe it was Mr. Hanes identified you; is that
6 correct?

7 A Correct.

8 Q And he was the man who actually was given the show-up ID
9 shortly after your arrest; correct?

10 A Yes.

11 Q And do you recall Mr. May moving to suppress that
12 identification prior to your trial?

13 A Of Mr. Hanes? No.

14 Q You don't recall Mr. May moving to suppress that
15 identification and you had what's called a Neil vs. Biggers
16 hearing?

17 A I remember specifically -- I think her name was Jenny --
18 they said that the next issue was moot because they didn't
19 have time to do a Neil vs. Biggers, and this person Jenny, I
20 guess she's clerk of court or whoever she was, she said, Yes,
21 you do, because I'll do it overnight. So they may have had
22 that.

23 Q Well, Mr. Hanes was allowed to identify you in court;
24 correct?

25 A Yes.

1 Q And he also identified the clothing that you were
2 wearing; correct?

3 A Yes.

4 Q He said that you had a green striped shirt on; correct?

5 A Actually, he said it was more of a green shirt with green
6 panel on one side and a black panel on the other.

7 Q All right.

8 A Sort of like a bowling shirt.

9 Q He also testified that the robber had a lazy eye;
10 correct?

11 A Yes, he did.

12 Q And you do have a lazy eye; correct?

13 A That's what you-all have called it.

14 Q And all of the victims actually testified that the robber
15 had a lazy eye; correct?

16 A No, that's not correct.

17 Q And even though the victims might not have been able to
18 specifically identify you, do you recall them giving a
19 description of you or a description of what clothing the
20 robber was wearing and any distinctive facial features?

21 A From their accounts in their written testimony, no.

22 Q I'm talking about at trial. At trial, they gave a
23 description of the clothing the robber was wearing; correct?

24 A Mr. Hanes did, yes.

25 Q And would you agree that the other people -- the other

1 employees in the Church's also gave a description of the
2 clothing?

3 THE WITNESS: The answer to that question, Your Honor --
4 the answer to that question is yes; however, if the
5 prosecution is standing right there in front of them with the
6 clothes in their hand, waving them at them, they can't help
7 but identify the clothing.

8 BY MS. OPPENHEIMER:

9 Q And all of them identified your distinctive facial
10 feature and your eye; correct?

11 A What was identified was that the suspect had a lazy eye.

12 Q And Mr. Green also identified you; correct?

13 A Green?

14 Q Your co-defendant identified you; correct?

15 A In what respect?

16 Q That you were the robber, that you told him to take you
17 to the Church's, and that you went in with a gun --

18 A Oh, yeah, that was his testimony.

19 Q And Mr. Green does not have a lazy eye; correct?

20 A I don't imagine he does, no.

21 Q And he was driving a truck -- an old gray pickup truck;
22 correct?

23 A Yes.

24 Q And do you recall that law enforcement officers
25 testifying that they pulled that truck over because it matched

1 the description that was given?

2 **A** Yes, I recall them testifying to that.

3 **Q** And you testified earlier that you didn't give Mr. May or
4 Mr. Cochran any leads or witnesses to investigate; correct?

5 **A** Correct.

6 **Q** I'm sorry?

7 **A** That's correct.

8 **Q** And do you recall Mr. May making a motion at the very
9 beginning of trial to suppress the evidence that was found in
10 the truck?

11 **A** Yes.

12 **Q** And he argued that it wasn't your truck, you were just a
13 passenger, that you had no knowledge of that evidence being in
14 the truck; correct?

15 **A** Actually, I believe that was Mr. Cochran that made that
16 argument.

17 **Q** But that argument was made; correct?

18 **A** Yes.

19 **Q** And, ultimately, they were unsuccessful because the judge
20 said it was in plain view and there was no standing for you to
21 challenge the search of the truck; correct?

22 **A** Yeah, correct.

23 **Q** And you testified that, during jury selection, you were
24 shackled but the jury was behind you; correct?

25 **A** Correct.

1 Q So they were never in front of you during jury selection;
2 correct?

3 A Only when they were asked to be seated in the jury box.

4 Q And do you recall Mr. May making a motion for your
5 shackles to be removed?

6 A To be removed?

7 Q Yes. At the very beginning of trial.

8 A Yes.

9 Q And do you recall Judge Cooper saying that it was a
10 safety concern?

11 A I don't recall what reason he gave. Matter of fact, he
12 said he defers to security on that issue.

13 Q But your hands were not shackled during the trial;
14 correct?

15 A No.

16 MS. OPPENHEIMER: Beg the Court's indulgence.

17 (Pause in the proceedings.)

18 MS. OPPENHEIMER: No further questions, Your Honor.

19 THE COURT: Anything further, Mr. Waller?

20 MR. WALLER: Nothing further, Your Honor.

21 THE COURT: All right. You can go sit back next to your
22 lawyer.

23 Any additional witnesses, Mr. Waller?

24 MR. WALLER: Your Honor, the Applicant would call LaNelle
25 DuRant.

1 LaNELLE DuRANT,
2 the witness, after having been duly sworn, was examined and
3 testified to as follows:

4 THE CLERK: Thank you. Have a seat in the witness stand,
5 please.

6 State your name for the record.

7 THE WITNESS: LaNelle Cantey DuRant.

8 DIRECT EXAMINATION

9 BY MR. WALLER:

10 **Q** Good afternoon, Ms. DuRant. How are you today?

11 **A** I'm good. Thank you.

12 **Q** Ms. DuRant, how did you come to represent Mr. Broadnax?

13 **A** Well, I work in the Office of Appellant Defense in the
14 Commission of Indigent Defense, and the cases are assigned to
15 us. We have no choice on cases.

16 **Q** Okay. When you get assigned a case, what's your
17 procedure for kind of getting started?

18 **A** Well, the rules state that we can only go by what is in
19 the transcript and in the exhibits that were admitted.

20 **Q** Okay.

21 **A** So we had to wait until we get it. We send a letter to
22 the client, letting them know -- it's a form letter -- that I
23 am their attorney and tell them a little bit about our
24 procedure, not a lot, but just some. Then we get the
25 transcript. And we have to read the transcript, order the

1 exhibits, look at all of that, and note the objections that
2 were made.

3 Q Okay. And, in this case, the transcript was 835 pages
4 without any exhibits?

5 A Correct.

6 Q Would that have taken a while to produce and for you to
7 read?

8 A Yes.

9 Q Okay. Having read it myself, I understand.

10 A And Mr. May did a great job of objecting. There were --
11 this case, probably in the 12 years I have been there, had
12 more objections than any case I have had.

13 Q Okay. Once you order the transcript and the exhibits,
14 what do you do next? What's your next step?

15 A Well, of course, on a direct appeal, you're looking to
16 see if the judge made any errors of law, in admitting evidence
17 or not admitting evidence. So you have to check the law with
18 each objection to see if you think the law has merit.

19 Then because of different objections, you choose the
20 cases -- you choose the objections, the issues that you feel
21 will be winning issues with the Court, and that requires some
22 knowledge of the appellate court and how they operate and how
23 they think, if that's possible to subjectively do that.

24 But you do want to choose issues that you think will make
25 a difference to the Court.

1 Q In this case, you raised four issues.

2 A Correct.

3 Q Are there times when you raise issues that may not be as
4 likely meritorious because you have got some strong issues or
5 do you -- what goes into your thought process behind what
6 issues you're raising?

7 A Well, of course you look at them all and see if you think
8 there really is an issue, if the judge made an error. But you
9 want to -- first of all, you choose issues, too, that the
10 client wants as much as you can. You cannot always do that,
11 and we're not under an obligation to do the issues they choose
12 because we're looking at the law, and they don't always have
13 access to the law.

14 But I try to choose issues that will make a difference,
15 not only for this client but for other clients too, in making
16 law.

17 Q In this case, did you have any conversations or
18 communications with Mr. Broadnax about what issues would be
19 raised prior to you briefing them and all that? Did you
20 discuss that with him?

21 A Well, I did talk with Mr. Broadnax several times. It was
22 on the telephone; we don't get to visit our clients. But I
23 don't -- we do not -- I don't remember telling him what issues
24 I was going to raise. Sometimes I can, sometimes I can't,
25 because we have deadlines and we have to meet those deadlines,

1 and there's not always time to make sure the client knows what
2 issues you're going to raise.

3 Q Okay. Were there any issues that he suggested that you
4 raise, that you recall?

5 A I don't remember. He probably did, but I just don't
6 remember.

7 Q Okay. You raised -- obviously, the first issue was
8 that -- about his prior convictions being admitted -- I'll
9 call them the use for impeachment purposes and the jury was
10 allowed to hear those. That's the one that the Court of
11 Appeals reversed his conviction on.

12 A Correct, yes.

13 Q That's the one that's kind of rewritten -- overruled
14 established case law and kind of turned everything on its
15 ears, so to speak.

16 The other three issues were concerning life without
17 parole and the notice that was given to him. What were you
18 basing those issues on, if you recall?

19 A Yes, I recall. I have extremely strong feelings about
20 that life without parole statute because I think it's totally
21 unfair and unconstitutional, honestly, because people go to
22 prison, like Mr. Broadnax, when they haven't really hurt
23 anyone. You know, armed robberies hurt people but not
24 physically causing damage, and I think that's totally unfair.
25 And I have clients in prison for drugs doing life, and I have

1 very strong feelings that that statute is a horrendous
2 statute. And we don't get many cases where the attorneys
3 raise that issue as an objection. So I was delighted that
4 Mr. May did raise that issue, and I was hoping that, because
5 armed robberies are so prejudicial, that the judges allow it
6 in, that the Court could consider the life without parole
7 statute. I mean, you have to start the thinking process with
8 the Court that this is not a fair statute.

9 Q When the Supreme Court reversed the Court of Appeals and
10 reinstated Mr. Broadnax's conviction, did you file a petition
11 for rehearing?

12 A With the Court of Appeals?

13 Q With the Supreme Court.

14 A After their opinion?

15 Q Yes, ma'am.

16 A Yes, I did.

17 Q What was your argument based on, if you recall?

18 A Two things. One was I argued against a harmless error.
19 I mean, the Supreme Court ruled correctly in saying -- and
20 overruling, would mean that armed robbery was not a crime of
21 dishonesty but to say that it was harmless error, it was too
22 prejudicial. There was no way that it was harmless error for
23 Mr. Broadnax.

24 So I raised that issue in the petition for rehearing.
25 And then Mr. Broadnax had particularly wanted his other issues

1 addressed, which were not addressed by the Court of Appeals,
2 just the first issue. And because he really wanted those
3 other issues heard, I did what was unheard of. I asked the
4 Supreme Court to remand it to the Court of Appeals for them to
5 rule on that issue -- those three issues. And so that was in
6 a petition for rehearing, asking for that.

7 Q Okay.

8 MR. WALLER: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 (Pause in the proceedings.)

11 MR. WALLER: Thank you, Ms. DuRant. I have no further
12 questions.

13 THE WITNESS: Thank you.

14 THE COURT: Ms. Oppenheimer.

15 CROSS-EXAMINATION

16 BY MS. OPPENHEIMER:

17 Q Ms. DuRant, how long have you been at appellate defense?

18 A Twelve years.

19 Q And how long have you been practicing law?

20 A Since '98. 1998.

21 Q And the four issues that you raised on appeal, did you
22 feel like those were your strongest issues?

23 A I did.

24 Q And you were successful at first in the Court of Appeals;
25 correct?

1 **A** Yes.

2 **Q** And do you recall the Supreme Court's reasoning behind
3 finding harmless error?

4 **A** Overwhelming evidence of guilt.

5 **Q** Do you recall what some of that evidence was?

6 **A** Well, I think probably the biggest problem was that
7 Mr. Broadnax's eye, as has been talked about at length here
8 today. But I think that was a major problem, even -- I think
9 that he was found, allegedly, with the gun and the money
10 shortly after the robbery. But I still think none of that
11 overcame the prejudice in admitting the three armed robberies.

12 **Q** But the Supreme Court --

13 **A** His prior convictions.

14 **Q** Sorry. The Supreme Court disagrees with you; correct?

15 **A** Well, the Supreme Court and I frequently disagree, so
16 that's not unusual.

17 **Q** And I believe that there were some issues that
18 Mr. Broadnax may have suggested that you raise. Would those
19 have been subjected to a harmless error review as well?

20 **A** The issues of the -- I'm sorry. The three issues that
21 were not addressed? Is that --

22 **Q** No, the issues that Mr. Broadnax maybe suggested that you
23 raise, would those have been subjected to a harmless error
24 review?

25 **A** Oh, I'm sure they would have been, yes.

1 Q And, again, that overwhelming evidence of guilt would
2 have been evaluated?

3 A Right.

4 Q And you testified that you raised these three issues
5 about the LWOP statute. Did the Court of Appeals disagree
6 with you in that it's not unconstitutional?

7 A Well, they didn't address it. Oh, you mean in their
8 final opinion?

9 Q On remand.

10 A It was an unpublished opinion, and I think they did say
11 that, that it was not a problem.

12 Q Okay. And sorry I'm jumping around a little bit.

13 A That's okay.

14 Q Your petition for rehearing in the Supreme Court, are you
15 required to file a petition for rehearing?

16 A No. I very, very seldom do, but I felt very strong about
17 Mr. Broadnax's case, and I wanted to have those issues
18 addressed.

19 MS. OPPENHEIMER: No further questions, Your Honor.

20 THE COURT: Mr. Waller? Sorry.

21 MR. WALLER: Just very briefly.

22 REDIRECT EXAMINATION

23 BY MR. WALLER:

24 Q Ms. DuRant, is every issue that you can raise subject to
25 harmless error? Are there others that are not subject to a

1 harmless error review?

2 **A** Well, I think the Court -- I can't speak for the Court.
3 I can only tell you in my experience. I have had numerous
4 cases over there that made good law. Well, not numerous;
5 several cases that made good law that were deemed harmless
6 error. So whether every issue is considered by harmless
7 error, I think the Court probably does that.

8 **Q** Are there some issues that there's no way they can be
9 harmless?

10 **A** Well, I think that's a subjective issue because I don't
11 think this case was harmless.

12 **Q** I understand. All right. Thank you, Ms. DuRant. I have
13 no further questions.

14 THE COURT: Anything further, Ms. Oppenheimer?

15 MS. OPPENHEIMER: Nothing further, Your Honor.

16 THE COURT: All right. You may step down.

17 Any additional witnesses, Mr. Waller?

18 MR. WALLER: No additional witnesses, Your Honor.

19 THE COURT: Anything, Ms. Oppenheimer?

20 MS. OPPENHEIMER: Nothing from the State, Your Honor. We
21 just ask that Ms. DuRant be excused from her subpoena.

22 THE COURT: Absolutely. You're free to go.

23 MS. DuRANT: Thank you, Your Honor.

24 THE COURT: Thank you.

25 Do you want to argue now or do you want to submit a

1 proposed order?

2 MR. WALLER: Your Honor, I have a brief motion and then I
3 guess I'll address that.

4 THE COURT: Sure.

5 MR. WALLER: Your Honor, I would make a motion under Rule
6 15(b) of the South Carolina Rules of Civil Procedure to amend
7 the pleadings to conform with the evidence presented. Judge,
8 Mr. Broadnax testified that he requested that Ms. DuRant
9 include an issue regarding the reported Doyle violation in the
10 case. Judge, that -- it wasn't objected to by the State. I
11 don't believe there's any prejudice by allowing that amendment
12 to be added. It was a big issue during the trial or a lengthy
13 discussion outside of the presence of the jury, but
14 essentially the Solicitor asked a question regarding
15 Mr. Broadnax's -- his comment on his right to remain silent or
16 him invoking his right to remain silent. It was objected to
17 properly by Mr. May. A motion for mistrial was made. A jury
18 instruction was given and then objected to and all the
19 complicated procedure that goes along with the curative
20 instruction, and Mr. Broadnax testified that he asked that be
21 included.

22 So I would just make a motion to amend the pleadings to
23 include an allegation of ineffective assistance of appellate
24 counsel for not including that issue.

25 THE COURT: What says the State?

1 MS. OPPENHEIMER: Your Honor, I guess the only thing that
2 we would object to is just there is contradictory testimony
3 that was presented today that Mr. Broadnax said he suggested
4 that the Doyle violation be raised by Ms. DuRant; however,
5 Ms. DuRant testified she could not specifically recall. That
6 would be our only objection. And I believe it was just a very
7 small portion of this evidentiary hearing, so, you know, if
8 Your Honor chooses to grant the motion, we will address it in
9 a proposed order if you'd like.

10 THE COURT: But, yeah, the motion to amend is granted.
11 He may not be successful on that ground, and I would agree
12 that that was such a small part of the evidence that was
13 presented here today but I think allowing the amendment is
14 appropriate based on the evidence.

15 MR. WALLER: Thank you, Your Honor. And to touch on
16 argument versus proposed orders, there are some things that
17 are specifically, I believe, pled and they're part of the
18 record, so I was going to inquire as to if Your Honor wanted
19 to review those issues or for us to submit the proposed
20 orders.

21 THE COURT: I'm happy for you to submit proposed orders,
22 I mean, for me. I won't say this is a hard and fast rule but
23 generally where there's a trial -- and particularly here where
24 there's an allegation of ineffective assistance of appellate
25 counsel, it's more difficult for me to rule from the bench

1 because I do need to review the transcript. You know, of
2 course I need to review all transcripts, but it's much easier
3 to review a plea transcript while sitting here during the
4 evidentiary hearing, and I cannot do that with a trial.

5 So I don't intend to make a decision today, whether you
6 made oral argument or presented your arguments in writing, so
7 I'm fine with you presenting a proposed order that
8 incorporates your arguments --

9 MR. WALLER: Okay.

10 THE COURT: -- since I'll need some time to review
11 everything anyway.

12 MR. WALLER: That works. I just wanted to inquire of the
13 Court because there are some things that I think weren't maybe
14 testified to. It's been a long time. There were some
15 recollection issues. I don't believe, with the exception of
16 Ms. DuRant, any of the other witnesses are still at their
17 previous employments, they don't have access to the file. So
18 there are some issues that I think will need to be pointed out
19 to Your Honor that would make it easier if we can do that.

20 THE COURT: I agree. Okay.

21 MR. WALLER: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MS. OPPENHEIMER: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (Pause in the proceedings.)

1 MS. OPPENHEIMER: I apologize. This -- just as we were
2 discussing, it just came to my attention. There are two
3 issues specifically in the amendment. They're 1(b) and 1(c)
4 that are specifically fact-based, and I believe that they had
5 gone into -- if we had gone into those issues with trial
6 counsel, some testimony would have come to light about what
7 would have been beneficial to either party because they are so
8 fact-specific, and there was no testimony to these issues at
9 the hearing.

10 The State would move to dismiss these two because we did
11 not have the opportunity to question trial counsel about them.

12 MR. WALLER: Well, Judge, specifically with relation to
13 1(b), there was testimony about it. The hearing's been going
14 on almost two hours now; I can't tell you exactly where it
15 was, but I have a big red check mark next to that question.
16 And so I do believe there was testimony regarding that issue.

17 As far as 1(c), Your Honor, it -- while there was no
18 testimony asked of trial counsel, I don't believe that
19 precludes it from being considered by the Court. The
20 transcript speaks for itself. Certainly the Court may or may
21 not determine that there was a trial strategy behind that
22 decision but that's in the purview of the Court.

23 MS. OPPENHEIMER: Your Honor, in brief response, I
24 believe that the testimony regarding Mr. Hanes with 1(b), we
25 didn't go into the failure to object to the reference of

1 Mr. Broadnax's name. We went to the identification itself.

2 1(c), you know, the Applicant has a responsibility to
3 produce the evidence and facts supporting his allegations in
4 his case in chief. There was nothing mentioned about Officer
5 Jonathan Brayboy, and anything about trial strategy would have
6 been something that I would have needed to ask trial counsel
7 on the record during the evidentiary hearing, and neither
8 myself nor Your Honor nor Mr. Waller can simply assume trial
9 strategy when there's been no testimony to that effect.

10 MR. WALLER: Your Honor, I'm not alleging that I can
11 assume it. I have the burden of proof. If I fail to meet my
12 burden, then I have, but I think that -- I think that the
13 record -- the transcript is what it is. I believe that you
14 can at least go forth for a decision by the Court.

15 THE COURT: So the State's motion to dismiss those two
16 grounds of the application is denied. It may be, after a
17 review of my notes and a review of the transcript, that it is
18 maybe -- those grounds are deemed abandoned even particularly
19 1(c) because I certainly didn't hear the name Jonathan Brayboy
20 today; however, I understand your point, but it could be so
21 obvious in the transcript, I don't know, that no trial
22 strategy could explain it. I just don't know that at this
23 point, having not read the transcript in its entirety.

24 So I think that it would be premature to dismiss those
25 grounds, although the Applicant may not prevail on those

1 grounds ultimately.

2 MS. OPPENHEIMER: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. WALLER: Thank you, Your Honor.

5 (At 3:51 p.m., the above hearing concluded.)

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1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Christopher Broadnax v. The State

3 2017-CP-40-00045

4 DATE OF PROCEEDING: December 4, 2018

5
6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; that said proceedings were transcribed
9 to the best of my ability from the audio recording and
10 supporting information; and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14
15 

16
17 _____
18 Bobbi J. Fisher, RPR, CET

19 NCRA Registered Professional Reporter (RPR)

20 AAERT Certified Electronic Transcriber No. CET-1148

21 Prepared: January 3, 2021
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25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NO. 2017CP4000045

CHRISTOPHER BROADNAX (SCDC #99356)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other Rule 41(b), SCRPC
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

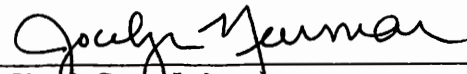
RICHLAND COUNTY
FILED
2020 SEP -2 AM 11:24
JANETTE W. HENDERSON
C.C.P., G.S., & F.C.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2757
Judge Code

August 26, 2020
Date

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Christopher Broadnax (SCDC #99356),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017CP4000045

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2020 SEP -2 AM 11:24
C.C.P. 5th J.C. & F.C.

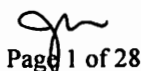
This matter comes before the Court upon Application for Post-Conviction Relief ("PCR Application") filed by Applicant Christopher Broadnax on January 5, 2017, and amendments filed on January 24, 2017, March 15, 2018, and March 16, 2018. Respondent filed its Return and Partial Motion to Dismiss on July 14, 2017. On December 4, 2018, an evidentiary hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Jonathan D. Waller, Esquire. The State was represented by Assistant Attorney General Kelly Oppenheimer.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED; and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

I. Conviction and Appeal

Applicant is currently confined at the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment from the Richland County Clerk of Court. He was indicted at the September 2009 term of the Richland County Grand Jury in indictment 2009-GS-40-04540 for Kidnapping. During its November 2009 term, he was indicted for two additional counts of


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Kidnapping (in indictments 2009-GS-40-04541 and 2009-GS-40-04542) and one count of Armed Robbery (indictment 2009-GS-40-04539). Applicant was represented on these charges by James Hunter May, Esquire ("Attorney May") and Charles William Cochran, Esquire ("Attorney Cochran").

Applicant was tried by a jury beginning on June 10, 2010. On June 16, 2010, following deliberations, Applicant was convicted of all charges as indicted. The Honorable G. Thomas Cooper, Jr., imposed concurrent sentences of life without the possibility of parole ("LWOP") on all charges.

A timely Notice of Appeal was filed, and Appellate Defender LaNelle Cantey DuRant ("Appellate Counsel") perfected the appeal on Applicant's behalf. On appeal, Applicant raised the following issues:

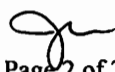
1. Did the trial court err in admitting Applicant's three prior armed robbery convictions for impeachment purposes according to Rule 609(a)(2), SCRE, during his testimony when the admission was overly prejudicial under Rule 403, SCRE, and a violation of his due process right to a fair trial?

2. Did the trial court err in denying Applicant's motion to withdraw the life without parole notice due to the arbitrary use of the prosecutor's discretion in the plea bargaining process which was a violation of the Fourteenth Amendment's guarantee to due process?

3. Did the trial court err in denying Applicant's motion to withdraw LWOP because there is no standard to guide solicitors in when to seek a sentence of LWOP pursuant to SC Code section 17-25-45 which is a violation of the Equal Protection Clause of the Fourteenth Amendment?

[and]

4. Did the trial court err in denying Applicant's motion that the jury be informed that Applicant was facing the mandatory sentence



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of LWOP which denied Applicant his due process right to a fair trial?

Following briefing and oral argument, the South Carolina Court of Appeals reversed Applicant's convictions and sentences and remanded to the lower court for a new trial. *State v. Broadnax*, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013). In its opinion, the Court of Appeals found the trial court erred in admitting Applicant's prior convictions of armed robbery pursuant to Rule 609(a)(2), SCRE, as armed robbery is not a crime of dishonesty. The Court of Appeals further found the admission of these prior armed robberies created a high degree of prejudice, but declined to address Applicant's remaining arguments.

On March 25, 2013, Respondent filed a Petition for Writ of Certiorari at the Supreme Court of South Carolina. In its Petition, Respondent made the following arguments:

1. The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE;
 2. Additionally, the Court of Appeals erred when it refused to remand the case to the trial court in order for the trial court to conduct an on-the-record Rule 609, SCRE, balancing test as required by *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000);
- [and]
3. Furthermore, the Court of Appeals erred in not applying the harmless error standard because any error in admitting Applicant's armed robbery convictions was harmless due to the overwhelming evidence of guilt.

By order dated June 12, 2014, the Supreme Court granted the Petition for Writ of Certiorari. Following briefing and oral argument in the Supreme Court, the Supreme Court reversed the decision of the Court of Appeals in part, and affirmed the Court of Appeals' decision in part. *State v. Broadnax*, 414 S.C. 468, 779 S.E.2d 789 (2015). Specifically, the Supreme Court affirmed the finding that armed robbery is not a crime of dishonesty or false statement for purposes of

impeachment under Rule 609(a)(2), SCRE. However, the Supreme Court determined that the error in admitting such evidence was harmless beyond a reasonable doubt, as there was overwhelming evidence implicating Applicant in the crimes.

After issuing a Remittitur on July 24, 2015, the Supreme Court recalled it by Order dated July 29, 2015. On the same date, the Supreme Court refiled its decision in this matter. Again, the decision of the Court of Appeals was reversed in part and affirmed in part on the same grounds.

On August 6, 2015, Applicant filed a "Petition for Rehearing or for Remand to the Court of Appeals to Consider Unadjudicated Issues." On September 8, 2015, the Supreme Court issued an Order denying the petition for rehearing with respect to the harmless error issue but granting the petition for rehearing to determine whether the matter should be remanded to the Court of Appeals to consider the other arguments set forth in the original appeal.

The matter was ultimately remanded to the Court of Appeals. After considering Applicant's remaining arguments, the Court of Appeals affirmed Applicant's convictions and sentences. *State v. Broadnax*, Op. No. 2016-UP-258 (S.C. Ct. App. filed June 8, 2016). The Remittitur was issued on June 29, 2016.

II. PCR Application and Amendments

On January 5, 2017, Applicant filed the instant PCR Application, in which he alleges that he is being unlawfully detained based on the following allegations:

1. Ineffective Assistance of Trial Counsel;

- (a) failure to investigate and thereby erroneously arguing during pretrial motions hearing to exclude or suppress evidence found in vehicle under a Fourth Amendment violation;
- (b) failing to investigate [Applicant's] allegation of police malfeasance when obtaining search and arrest warrants, thereby entitling [Applicant] to an evidentiary

hearing pursuant to *Franks v. Delaware*, 438 U.S. 154, 155-156, 171-172 (1987) to determine whether the warrants were issued in reliance on a deliberately or recklessly false affidavit; [and]

(c) failure to object to witness Danny Weaver's identification of [Applicant's] clothing as that which the robbery suspect wore during the commission of the crime.

2. Trial Court Error

(a) improperly restricting defense counsel's cross-examination designed to show bias on the part of a prosecution witness (during the cross-examination of witness Charles E. Green).

By amendment filed on January 24, 2017, Applicant asserted claims of ineffective assistance of appellate counsel. He alleged that Appellate Counsel failed to raise all issues on appeal and specifically failed to argue that the trial court erred in restricting defense counsel's cross-examination of witness Charles E. Green.

Applicant amended his PCR Application again on March 15, 2018. This time he made the following allegations:

1. As to representation rendered by James May, Esquire and Charles Cochran, Esquire:

(a) Counsel was ineffective for failing to ensure that Applicant was not viewed by the jury pool while shackled;

(b) Counsel was ineffective for failing to contemporaneously object to Arthur Haynes, who had not made an identification of Applicant at that point, referring to the robber by Applicant's name;

(c) Counsel was ineffective for eliciting improper testimony from Jonathan Brayboy after vigorously objecting to the same testimony on direct examination; [and]

(d) Counsel was ineffective for failing to object to jury charge after Applicant's requested charge was not presented to the jury.

2. As to appellate representation rendered by LaNelle Cantey DuRant, Esquire:

(a) Counsel was ineffective for failing to adequately petition the Supreme Court for rehearing following its Order Affirming in Part and Reversing in Part the Court of Appeals; [and]

(b) Counsel was ineffective for failing to raise the meritorious issue of the trial court's overruling trial counsel's objection to the in-court identification given by Donald Kirby of the Applicant as the robber due to it being a violation of both *Brady*¹ and *Riddle*.²

Applicant filed a final amendment on March 16, 2018, in which he alleged contends that Appellate Counsel (1) failed to challenge the Supreme Court's finding that there was overwhelming evidence against him; and (2) failed to challenge the "falsified evidence [admitted] during the course of the trial."

At the evidentiary hearing, Applicant proceeded forward on the allegations of ineffective assistance of counsel, as well as an allegation that Appellate Counsel was ineffective for failing to raise a *Doyle*³ issue on appeal.

III. Trial Testimony

On May 24, 2009, Applicant entered a Church's Fried Chicken restaurant and held four of the employees at gunpoint while he stole money from the cash register. At trial, Respondent presented testimony from two of the four victims, both of whom positively identified Applicant as the armed assailant. They both testified that the robber pointed a silver automatic gun at them and described the robber as a black male with a lazy eye, who wore a striped shirt and put a mask on

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

² *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).

³ *Doyle v. Ohio*, 426 U.S. 610 (1976).

his face when he entered the building. After the robber exited the building, one of the victims saw him walk towards a gray Dodge truck.

Within minutes of the robbery, law enforcement conducted a traffic stop on a gray Dodge truck just a few blocks from the Church's Fried Chicken. Inside the vehicle, they found Applicant crouching on the floorboard over a plastic bag. Applicant, who was wearing a striped shirt and had a lazy eye, was lying on top of a silver gun, money, and a mask. One of the victims, Arthur Haynes ("Haynes"), was brought to the scene and confirmed that the gray truck was the same one he had seen. Haynes also immediately identified Applicant as the perpetrator based on his clothing and physical features, specifically noting the lazy eye.

Applicant's co-defendant, Charles Green ("Green"), also testified at trial. Green stated that he drove Applicant to the Church's Fried Chicken in his gray Dodge truck that afternoon. He saw Applicant, who was wearing a striped shirt, enter the restaurant with a plastic bag. When Applicant returned to the truck and got in, he sat upright in the passenger's seat, but Applicant crouched down on the floorboard once he saw police cars.

Green was described as "a black male, older black male with a gray beard and a red shirt," whose appearance was drastically different than that of Applicant. Haynes and the other victim, Donald Kirby, Jr. ("Kirby") testified that Green, the man driving the truck, was not the robber. In addition, a police officer testified that he had seen no other gray Dodge trucks in the area during law enforcement's pursuit of Green and Applicant.

IV. Testimony at Evidentiary Hearing

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of Attorney May, Attorney Cochran, and Appellate Counsel. The Court also had before it a copy of Applicant's trial transcript, the records of the Richland County Clerk of Court

regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the record on appeal.

A. Attorney May

Attorney May testified that he has practiced criminal law since November 13, 2007 and, at the time of Applicant's conviction, was employed by the Richland County Public Defender's Office. He was appointed to represent Applicant and met with Applicant at the county jail immediately, within a week of his arrest. Throughout the representation, Attorney May met with Applicant "a lot" and wouldn't let a month pass without having a meeting.

Attorney May was assigned as "first chair" on this case and did most of the research, but he did have assistance from his co-counsel, Attorney Cochran. Attorney May filed discovery motions pursuant to Rule 5, SCRCrimP, and *Brady v. Maryland*, 373 U.S. 83 (1963). In response, he received substantial information from Respondent, including police incident reports, statements from each of the victims, and video footage of Applicant's arrest. He reviewed all of the discovery materials with Applicant.

He also had an early meeting with the prosecutor assigned to Applicant's case. According to Attorney May, Applicant stated during their initial meeting that he was willing to plead guilty as charged as long as his sentence would be less than twenty-five or thirty years. Attorney May requested a plea offer from the prosecutor, but she declined to agree to a sentence of less than twenty-five years. The prosecutor would only allow Applicant to plead to a life sentence, and she refused to withdraw the LWOP notice previously served on Applicant.

Based on Attorney May's review of the case, he believed that Applicant had no viable defenses to the charges. Applicant was identified by a co-defendant and at least two of the victims and was arrested near the scene within minutes of the robbery with a gun, a mask, and cash, all in

plain view. Attorney May also testified that the descriptions given by the victims were consistent with one another and that Applicant's lazy eye was a distinctive feature. Nevertheless, Attorney May was committed to raising any issues he could raise to defend Applicant.

Attorney May objected to the introduction of Applicant's numerous convictions for prior armed robberies (a factor which was ultimately the key issue in Applicant's appeal). He also ensured that a hearing was conducted pursuant to *Neil v. Biggers*, 409 U.S. 188 (1972), for one witness's show-up identification. Finally, because Applicant remained in leg shackles during the trial, Attorney May made a motion pursuant to *Deck v. Missouri*, 544 U.S. 622 (2005). As a remedy, the trial court placed Applicant on the witness stand outside the presence of the jury. Attorney May could not recall a time when the jury was able to see Applicant's ankle shackles.

He testified that throughout the trial, he made numerous objections and motions in an effort to get Respondent to make a plea offer. According to Attorney May, he did everything he could to preserve issues for appeal. He also objected to the jury charge and renewed all previous motions and objections at the appropriate time. Following Applicant's conviction, Attorney May (or someone in his office) filed a Notice of Appeal on Applicant's behalf; and, although he was not actively involved in the appeal, Attorney May had some communication with the Office of Appellate Defense regarding issues to raise on appeal.

B. Attorney Cochran

Attorney Cochran, also employed by the Richland County Public Defender's Office at the time, became involved in the case during the month leading up to the trial. He was the "second chair" on Applicant's case and was involved in drafting pre-trial motions on Applicant's behalf, although Attorney May did most of the investigation. He testified that he met Applicant only once at the county jail, but they met a few more times at the courthouse. Attorney Cochran visited the

crime scene with Attorney May. They also reviewed discovery with the prosecutor, and he reviewed all documents relevant to the trial witnesses which he cross-examined.

According to Attorney Cochran, their defense at trial was simply to create reasonable doubt as to the victims' identifications of Applicant. This was difficult, however, as he explained that the victims recounted the assailant wearing a ski mask and having a lazy eye, which was distinctive. The victims' description of the assailant's clothing was also consistent with Applicant's attire that night.

Attorney Cochran did not recall any issue arising at trial concerning Applicant invoking his Fifth Amendment privilege or Respondent attempting to comment on the same. He did, however, recall Applicant testifying at trial that he ate drugs immediately prior to his arrest. Attorney Cochran's involvement ended with Applicant's conviction, as he had no contact with Appellate Counsel.

C. Applicant

Naturally, Applicant's recollection of the prosecution was slightly different. He testified that although he was arrested in May, counsel was not appointed to represent him until July or August. He remained detained in the county jail for nearly a year before trial. Applicant also disputed that he wanted to plead guilty. He testified that he has always professed his innocence and "wanted to go to trial from day one." According to Applicant, a twenty-five-year guilty plea was Attorney May's idea, not his.

Applicant testified that he wrote three letters to Attorney May about certain issues in discovery. Attorney May visited him to discuss the evidence, including the victims' identifications. Applicant pointed out two which he thought to be defective. Specifically, Applicant testified that Danny Weaver ("Weaver") only described Applicant's clothing but did not

identify him specifically, while Gracious Tucker did not identify Applicant at all. Applicant also recalled that two people did show-up identifications of him, not just one. He believed that the show-up identifications were unlawful and wanted Attorney May to challenge that evidence.

He also believed that Haynes' identification was deficient. Applicant could not understand how Haynes could have identified him as the perpetrator if the person was wearing a ski mask. Instead, according to Applicant, Haynes identified him by his shirt and pants only. Ultimately, however, Applicant conceded that Haynes recognized his lazy eye, as did each of the victims. Applicant also conceded that he did not provide Attorney May with the names of any witnesses or other leads to investigate in his defense, claiming that he didn't know of any way to contact potential witnesses because they were all "street drug dealers."

Another issue Applicant discussed with Attorney May was the search of the gray Dodge truck. Applicant believed that law enforcement lacked probable cause to make a traffic stop on the truck because the driver had not committed any traffic violations. He also believed that the search warrant affidavit (which led to the search of Green's truck) was defective, making the search illegal. Applicant wanted Attorney May to challenge the veracity of the statements made in the affidavit. He admits that Attorney May did move to suppress the evidence found in the truck, but the motion was denied. Applicant pointed out that he was simply a passenger in the truck and that the truck didn't belong to him, making an effort to distance himself from its contents but also undermining his argument for suppression.

Next, Applicant complained that the shackles on his legs were visible to the jurors. Specifically, he testified that the jury pool was seated behind him during *voir dire* and jury selection. He also stated that he walked around in his shackles in front of the jury but only during breaks. He recalled some potential jurors being in the courtroom during those breaks.

Applicant also complained about Respondent's use of his prior convictions for Armed Robbery. Although Respondent attempted to introduce all four convictions, the trial court only admitted the three 1991 convictions into evidence and excluded a conviction from 1979.

Following his conviction, Applicant spoke to Appellate Counsel about an appeal but has no recollection of discussing the appeal with Attorney May or Attorney Cochran. According to Applicant, he identified for Appellate Counsel several potential appellate issues, including three motions for a mistrial, but Appellate Counsel told him that the issues which would ultimately be raised would be in her discretion. Applicant testified that he was not informed of the contents of the appeal until after it had been filed. He raised concern that she omitted his suggestions, but Appellate Counsel again responded that she used her discretion to determine which arguments to make. Applicant testified that she told him to file a PCR Application if he was dissatisfied.

D. Appellate Counsel

Appellate Counsel was the final witness to testify at the evidentiary hearing. This case was assigned to her when she worked at the Office of Appellate Defense. She explained the constraints of the appellate court rules, which restrict appeals to issues contained within the trial transcript and accompanying exhibits. Appellate Counsel believed that Attorneys May and Cochran did a good job objecting at trial, noting that Applicant's trial had more objections than she had seen in during her twelve-year tenure with the Office of Appellate Defense.

Appellate Counsel raised for issues on appeal, which she believed to be the strongest arguments. In her experience it is best to choose "winning issues" based on the law and her knowledge of the courts, trying to choose issues that will make a difference. Generally, she tries to do what her client asks of her as much as possible, but she also explained that she must balance those requests with applicable legal principles.

According to Appellate Counsel, she spoke to Applicant several times by phone and wrote him a letter explaining appellate procedure. She also testified that she spoke to Applicant briefly before submitting the appellate brief but did not recall him mentioning any specific appellate issues at that time.

Appellate Counsel testified about the initial success they found at the Court of Appeals before having that swept away by the Supreme Court. She states that although she's not required to, she filed a petition for rehearing after receiving the Supreme Court's opinion because she felt very strongly about this case. She also explained that she requested remand to the Court of Appeals because Applicant wanted rulings on the outstanding appellate issues. Appellate Counsel believed that she did all she could (within the confines of the law and appellate rules) to overturn Applicant's conviction. Ultimately, however, his lazy eye proved problematic.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has also had the opportunity to observe each witness who testified at the evidentiary hearing, to closely pass upon their credibility, and to weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. §17-27-80 (2003).

Trial Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Where a PCR 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." *Id.*

at 686; *see also* *Butler v. State*, 286 S.C. 441 (1985). 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. at 691. The applicant must overcome this presumption in order to receive relief. *Bell v. State*, 321 S.C. 238 (1996); *see also* *Cherry v. State*, 300 S.C. 238 (1989).

The court applies a two-pronged test in evaluating allegations of ineffective assistance of 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 prevailing professional norms." *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. at 688). 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." *Id.* at 117-18. "The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRPC.

I. Investigation

Applicant's first allegation is that Attorneys May and Cochran failed to properly investigate his case. He contends that because trial counsel didn't procure testimony of favorable witnesses or investigate his allegations of "police malfeasance when obtaining search and arrest warrants," Attorneys May and Cochran made improper arguments as to pre-trial motions and deprived him of an evidentiary hearing. The Court disagrees.

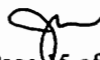
"Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker*, 350 F.3d at 442 (quoting *Green v.*

French, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

As to the lack of witnesses favorable to Applicant, Applicant admits that he did not give his attorneys any leads or witnesses to investigate prior to trial. In fact, Applicant testified that he had no contact information for the potential witnesses he would have wanted counsel to call, as they were drug dealers. Therefore, this Court finds that Applicant has failed to establish any deficiency on the part of counsel.

The remainder of Applicant’s argument on this issue is that the statements made by law enforcement in support of the search warrant and arrest warrant in this case were untrue, and counsel should have investigated that. However, this allegation is unsupported. Applicant did not provide the Court with a copy of the search warrant in question or demonstrate how it was defective. And while the Court has reviewed the arrest warrants, they are facially valid. Applicant has not offered any evidence – by testimony or otherwise – to support his allegations and, therefore, cannot demonstrate that counsel was deficient.

Applicant has also failed to establish any prejudice resulting from the alleged deficiencies. There is a complete absence of evidence as to what additional investigation counsel should have



done or how it would have been beneficial to Applicant's case. Therefore, this allegation must be denied and dismissed with prejudice.

II. Suppression of Evidence

In connection with the allegation of counsel's failure to investigate, Applicant also alleges that counsel was ineffective for failing to suppress the evidence found in the gray Dodge truck. Specifically, Applicant argues that Attorney May presented this issue to the trial court as a Fourth Amendment violation when he should have argued that the search warrant affidavit was defective. The Court disagrees, as the search warrant was superfluous and not necessary to support the introduction of evidence.

"In general, a police officer 'may [] stop and briefly detain a vehicle if they have reasonable suspicion that the occupants are involved in criminal activity.'" *Robinson v. State*, 407 S.C. 169, 182, 754 S.E.2d 862, 868 (2014) (quoting *State v. Pichardo*, 367 S.C. 84, 97-98, 623 S.E.2d 840, 847 (Ct. App. 2005)). Reasonable suspicion requires that there be an objective, specific basis for suspecting that the person stopped is engaged in criminal activity. *Id.* at 182, 754 S.E.2d at 869 (citation omitted). This can be based on an officer's reasonable inferences in light of his experience and in conjunction with articulable facts that "'reasonably warrant' the intrusion." *Id.* at 182, 754 S.E.2d at 869 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 27 (1968)).

Furthermore, law enforcement officers may search an automobile without having obtained a warrant so long as they have probable cause to do so. *Collins v. Virginia*, 138 S.Ct. 1663, 1670 (2018) (citing *California v. Carney*, 471 U.S. 386, 392-93 (1985)). Indeed, "'if there is probable cause to search a vehicle, a warrant is not necessary so long as the search is based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained.'" *State v. Tynes*, 402 S.C. 211, 217, 740 S.E.2d 512, 515 (Ct. App. 2013). Moreover, "'objects

falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence.” *Robinson*, 407 S.C. at 186, 754 S.E.2d at 870-71 (quoting *State v. Wright*, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011)).

Attorney May testified that he and Attorney Cochran did everything that they could to find some error issue in Applicant’s case. They researched various ways to argue for suppression of the evidence found in the gray Dodge truck. Based on his research, Attorney May concluded that Applicant lacked standing to challenge the search because he was not the owner of the truck. In addition, as indicated above, Applicant has failed to offer any evidence to support his allegation that the search warrant affidavit was defective.

Applicant also fails to meet his burden of proving that Attorney May was deficient in failing to challenge probable cause for the traffic stop which led to Applicant’s capture. During the suppression hearing (of which Applicant complains), a law enforcement officer testified that he was approximately three-quarters of a mile from Church’s when police dispatch alerted him of the armed robbery and the suspect fleeing in a gray Dodge truck. Just fifteen or twenty seconds later, the officer noticed the truck occupied by Applicant. Because of the timing, the proximity to the crime scene, and the matching vehicle description, the officer certainly had the requisite reasonable suspicion and was justified in conducting the traffic stop. Therefore, Applicant cannot prove any deficiency on the part of counsel.

Finally, Applicant is unable to prove prejudice resulting from this alleged deficiency. In fact, his argument fails because the allegedly defective search warrant was not the basis of the Court’s admission of evidence. First, the search warrant was rendered unnecessary by the officer’s probable cause to search the truck. In addition, the evidence in question was in plain view on the passenger’s side floorboard of the vehicle. Finally, as predicted by Attorney May, the trial court



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found that Applicant lacked standing to challenge the search warrant because he didn't own the vehicle. Accordingly, this allegation must be denied and dismissed with prejudice.

III. Weaver's In-Court Identification

Applicant's next argument is that counsel was ineffective for failing to object to a witness's in-court identification of the robber's clothing. Unfortunately, Applicant is misinformed, as this identification never occurred.

The testimony of the witness, Weaver, was initially proffered by Respondent outside of the jury's presence. Weaver stated that he identified Applicant as the robber after he saw Applicant at the police station in handcuffs. Respondent conceded that the manner of Weaver's identification was overly suggestive and agreed not to allow Weaver to make an in-court identification of Applicant. Instead, when Weaver testified before the jury he relied on his recollection of the robber's clothing, describing it as "greenish looking pants and this like stripey shirt." He stated that Applicant's clothing was "consistent with" what he saw at the crime scene, which is proper. However, there was no in-court identification for Applicant to object to and, therefore, no deficiency on the part of Attorney May.

Applicant has also failed to prove any prejudice resulting from the alleged deficiency. All four of the victims described the clothing Applicant was wearing during the robbery – green pants and a striped shirt. Applicant's co-defendant testified that Applicant was wearing a striped shirt and light colored pants on the day of the robbery. In addition two of the victims, who both stated that they got a clear look at the robber's face, described the robber as having a lazy eye. Applicant admitted both at trial and at the evidentiary – and this Court observed – that he does, in fact, have a lazy eye. Based on the foregoing, this Court finds this allegation must be denied and dismissed with prejudice.



IV. Leg Shackles

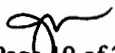
Applicant also alleges that counsel was ineffective for failing to ensure that jurors did not see the shackles on Applicant's legs. He contends that he walked around during breaks in view of potential jurors who could see the shackles. The Court finds no support for this allegation.

"The law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need." *Deck v. Missouri*, 544 U.S. at 626. That special need may be physical security, escape prevention, or courtroom decorum. *Id.* at 628 (citations omitted). If such a special need exists, the trial court must make a determination that visible shackles are justified; otherwise, the accused may suffer a due process violation. *Id.* at 629.

First, Attorney May did, in fact, make a motion to preclude shackling of Applicant pursuant to *Deck v. Missouri*. In response, the trial court made the requisite determination that there was a security need for Applicant to wear leg shackles but agreed to remove his wrist shackles so that jurors could not see the restraints. That appears to have worked, as Attorney May could not recall a time when jurors could see the shackles on Applicant's ankles. Although Applicant testified that jurors could see him walking around during breaks, this Court finds that Applicant's testimony lacks credibility. Such a scenario would be highly unusual, does not comport with typical courtroom procedure and logistics, and is not corroborated. Therefore, Applicant cannot sustain his burden of proof; and this allegation must be denied and dismissed with prejudice.

V. Haynes' Identification

Applicant complains that trial counsel should have objected when witness Haynes referred to Applicant by name during his testimony. He contends that during an in-court identification,


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Attorney May should have objected when Haynes used Applicant's name. The Court finds no prejudice.

At trial, Haynes testified that he noticed the robber's eyes, remarking that the robber's left eye was "kind of messed up, slanted like." He also stated that he could clearly see the robber, who was about eight feet away from him, and described his clothing. He later gave law enforcement a description of the robber and the getaway vehicle. When Applicant was apprehended, Haynes was taken to the roadside where he identified the gray Dodge truck and identified Applicant based on his clothing and his "slanted eye, messed up eye." He testified that he had no doubt that Applicant was, in fact, the robber.

Based on the foregoing, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. Accordingly, this allegations must be denied and dismissed with prejudice.

VI. Officer Brayboy's Testimony

According to Applicant, Attorney Cochran vigorously objected to certain testimony from Officer Jonathan Brayboy during Respondent's direct examination then elicited that same objectionable testimony during his cross-examination. However, Applicant presented no evidence whatsoever regarding this allegation during the evidentiary hearing. Therefore, the Court deems this allegation abandoned and denies and dismisses it with prejudice.

VII. Jury Charge

Next, Applicant asserts that trial counsel was ineffective for failing to object to the jury charge at trial. Applicant contends that when his requested jury charge was not read to the jury, trial counsel should have objected. The Court disagrees that this amounts to ineffective assistance of counsel.

A jury charge which is substantially correct and covers the law does not require reversal. *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996). Furthermore, “the substance of the law is what must be charged to the jury, not any particular verbiage.” *Adkins*, 353 S.C. at 318-19, 577 S.E.2d at 464 (emphasis added).

Here, trial counsel made every effort to modify the jury charge to benefit Applicant. Counsel requested a charge on mere presence, to which the State had no objection. However, counsel requested the trial court modify its standard charge to replace “scene” with “arrest location.” The trial court ultimately declined to use “arrest location,” but agreed to modify the charge to refer to “scene and vicinity.” Counsel replied that they would prefer only “vicinity” being charged. Ultimately, the trial court declined to modify the charge, stating “I think it’s one and the same.” Thereafter, the trial court charged the jury on mere presence as follows:

Now, mere presence at the scene or in the vicinity of a crime is not sufficient to prove someone guilty of a crime. The burden is on the State to prove every element of the crime charged. If you find after reviewing all the evidence that the State has proved that the defendant was only present at the scene or in the vicinity of a crime and that they have not proved beyond a reasonable doubt any other participation in the crime, then you must find the defendant not guilty. The law is that proof of mere presence at the scene or in the vicinity of a crime is not sufficient to find someone guilty.

This Court, therefore, finds Applicant has failed to establish any resulting prejudice from this alleged deficiency, as counsel was successful in getting a jury charge on mere presence. The trial court’s mere presence charge substantially covered the law, and Applicant is not entitled to any specific verbiage within his requested charge. Accordingly, this allegation must be denied and dismissed with prejudice.



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Appellate Counsel

A defendant is also entitled to effective assistance of appellate counsel. *Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See, e.g., *Ezell v. State*, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); *Southerland*, 337 S.C. 615-16, 524 S.E.2d at 836. See also *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the United States Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." *Smith v. Robbins*, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." *Jones*, 463 U.S. at 754.

Additionally, the Supreme Court of South Carolina has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. *Tisdale*, 357 S.C. at 476, 594 S.E.2d at 167. "Generally, only when ignored issues are clearly stronger than those

presented, will the presumption of effective assistance of counsel be overcome.” *Smith v. Robbins*, 528 U.S. at 288 (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)). In order to meet his burden, an applicant must establish a reasonable probability that, but for appellate counsel’s failure to raise a specific issue on appeal, he would have prevailed on his appeal. *Id.* at 285-86.

I. Petition for Rehearing

Applicant’s first complaint about Appellate Counsel is that she failed to adequately petition the Supreme Court for rehearing following its Order affirming the Court of Appeals in part and reversing in part. The Court finds no error here.

Here, Appellate Counsel filed a petition for rehearing following the Supreme Court’s order finding any error at trial by presenting evidence of Applicant’s three prior armed robbery convictions was harmless due to overwhelming evidence of Applicant’s guilt. In particular, Appellate Counsel asked the Supreme Court “to reconsider its ruling that the error was harmless in light of the overwhelming evidence of guilt; or in the alternative, to remand his case to the Court of Appeals for a ruling on the three remaining issues that the Court of Appeals did not address because they had reversed on the first issue.” She also argued that “the harmless error standard was not proper in [Applicant’s] case as the admission of the three prior armed robbery convictions was highly prejudicial, especially in light of the fact that he was on trial for armed robbery.” Finally, Appellate Counsel argued “[s]hould this Court affirm its decision, in the alternative, [Applicant] asks this Court to remand his case to the Court of Appeals for a ruling on his three remaining issues not reached in their decision.”

Based on the foregoing, this Court finds Applicant has failed to establish any deficiency on the part of Appellate Counsel. Similarly, this Court finds that Applicant has wholly failed to

establish any resulting prejudice from the alleged deficiency. He has not identified anything more than Appellate Counsel should have argued in order to have the Supreme Court grant her petition for rehearing with respect to the harmless error issue. Furthermore, following a review of the petition for rehearing, the Supreme Court issued an order denying the petition for rehearing with respect to the harmless error issue but granted the petition for rehearing with respect to the issue of whether it should remand to the Court of Appeals to consider the three remaining issues not previously decided. Appellate Counsel was, therefore, successful in getting part of the petition granted. This Court finds this allegation must be denied and dismissed with prejudice.

II. *Brady and Riddle* Violations

Applicant's next argument is that Appellate Counsel was ineffective by failing to raise "the meritorious issue of the trial court's overruling trial counsel's objection to the in-court identification given by Kirby of the Applicant as the robber due to it being a violation of both *Brady* and *Riddle*." The Court disagrees.

The uncontroverted testimony is that Appellate Counsel raised the four strongest issues she could have raised on appeal. Indeed, Appellate Counsel was successful in changing well-established law, in that armed robbery is no longer considered a crime of dishonesty which can be used to attack a witness's credibility under Rule 609(a), SCRE. Furthermore, Appellate Counsel testified that although she considers all issues raised by her clients, she still must make a determination of which issues to raise based on the law. Based on the foregoing, this Court finds Applicant has failed to establish any deficiency on the part of Appellate Counsel.

Similarly, this Court finds that Applicant has failed to establish any prejudice resulting from the alleged deficiency. "[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or

punishment, irrespective of the good faith of the prosecution.” *Brady*, 373 U.S. at 87. Evidence is material “if there is a ‘reasonable probability’ that the result of the proceeding would have been different had the information been disclosed.” *Riddle*, 369 S.C. at 44-45, 631 S.E.2d at 73 (citation omitted). When determining whether suppressed evidence was material under *Brady*, a court must consider the collective impact of the undisclosed evidence. *Id.* at 46, 631 S.E.2d at 74 (citation omitted).

Here, Kirby testified that he gave a statement to law enforcement describing the robber as a tall, dark man, approximately five feet nine inches tall, with a cock eye. He further described the robber as wearing pants and a striped shirt. Kirby stated that he got a good look at the robber while he was in the Church’s and could clearly see the robber’s face. He was paying attention to what the robber looked like “[b]ecause I wanted to give a good description. If the police asked how he looked, I wanted to be able to give a good description of him.” At trial, Kirby identified Applicant as the man who robbed the Church’s. On cross-examination, Kirby testified that he was never shown any photo lineups and was not taken to the scene of the traffic stop for a show-up identification. He reiterated he was never shown a picture of Applicant prior to trial.

Based on the foregoing, this Court finds no evidence that Respondent had any indication prior to trial that Kirby would specifically identify Applicant as the robber. Rather, the evidence suggests that Respondent knew only that Kirby had described the robber and his clothing to police. The identification was not evidence in the State’s possession prior to trial and, therefore, was not subject to disclosure pursuant to *Brady*. In addition, the Court finds it highly unlikely that an appellate court would have reversed Applicant’s conviction on this issue, particularly in light of their finding of overwhelming evidence of Applicant’s guilt. Therefore, this allegation must be denied and dismissed with prejudice.

III. *Doyle* Violation

Applicant's final complaint is that Appellate Counsel was ineffective for failing to argue that Respondent violated *Doyle*. However, Appellate Counsel testified that she raised the four strongest issues on appeal, and she was successful in changing well-established law at the time. Accordingly, this Court no deficiency here.

When an individual is taken into custody, "procedural safeguards must be employed to protect the privilege [against self-incrimination] . . . to assure that the exercise of the right will be scrupulously honored." *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966). Therefore, "he must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Id.* at 479. "Silence in the wake of these warnings may be nothing more than the arrestee's exercise of these *Miranda* rights." *Doyle v. Ohio*, 426 U.S. 616, 617 (1976). Therefore, "it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial." *Id.* at 618.

At trial, Applicant testified that he saw Green driving down the street after Applicant had purchased some crack cocaine and gave Green the "universal sign to stop." He stated that shortly after getting into Green's truck, law enforcement pulled up behind them, so Applicant crouched down in the truck and attempted to eat the crack cocaine. On cross-examination by Respondent, Applicant testified he never asked law enforcement why he was being detained after they stopped the truck or why he was being arrested for armed robbery.

Doyle applies only after *Miranda* warnings have been given and after the arrestee invokes his right to silence. Here, Respondent merely asked Applicant why he didn't ask any questions of

police or assert his innocence when he was initially detained. At that time, *Miranda* warnings were neither given nor necessary, and *Doyle* does not apply. This Court finds it highly unlikely that an appellate court would have reversed Applicant's conviction on this issue, particularly in light of their finding of overwhelming evidence of Applicant's guilt. Therefore, this allegation must be denied and dismissed with prejudice.

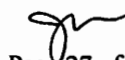
Overwhelming Evidence

In addition to the other findings, this Court agrees with the Supreme Court's determination that overwhelming evidence of Applicant's guilt was presented at trial. In support of this finding the Supreme Court noted the following evidence against Applicant:

[Applicant] was positively identified by several employees who recalled [Applicant's] distinctive facial features and clothing. Furthermore, one of the employees watched as [Applicant's] accomplice drove him away from the scene in a dented gray truck, which the police stopped [] only a short distance away within minutes after the employees reported the robbery. Inside the getaway vehicle, police found [Applicant] crouching in the floorboard area, sitting adjacent to a gun and a bag of money matching the employees' descriptions.

Broadnax, 414 S.C. at 479, 779 S.E.2d at 794.

In summary, not only has Applicant failed to meet his burden of proving any deficiencies by Attorney May, Attorney Cochran or Appellate Counsel, but he has also failed to establish any prejudice resulting from the alleged deficiencies. Because the evidence against Applicant was overwhelming, there is no reasonable probability the result of any of the proceedings would have been different absent the alleged deficiencies.



Page 27 of 28
Order of Dismissal

Broadnax v. State, 2017CP4000045

CONCLUSION

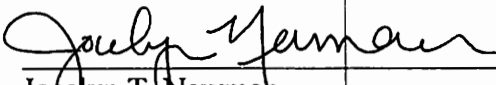
Based on the foregoing, the Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant the requested relief. Therefore, the Application for Post-Conviction Relief is denied in its entirety.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS, THEREFORE, ORDERED that the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED.


Jocelyn T. Newman
CIRCUIT COURT JUDGE

August 26, 2020
Columbia, South Carolina.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

DOCKET NO. 2009-GS-40-4539

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2009

42

THE STATE
vs.

CHRISTOPHER BROADNAX

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330(A)

CDR Code: 0139

Class FEL-A(V)

WITNESSES

✓ (s) AL THOMAS, CPD

ARREST WARRANT NUMBER

K612405

ACTION OF GRAND JURY

TRUE BILL

NOV 19 2009

For person of Grand Jury

Date:

VERDICT

Guilty

John B. Alenithy
For person of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

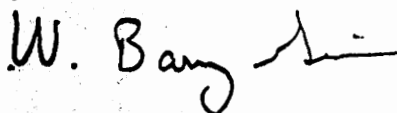
INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 18, 2009 the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That CHRISTOPHER BROADNAX did in Richland County on or about May 24, 2009, commit an armed robbery by feloniously taking from the person or presence of DANNY WEAVER, by means of force or intimidation goods or monies of, DANNY WEAVER, such goods or monies being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, all in violation of §16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

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



WARREN B. GIESE, SOLICITOR

WITNESSES

✓ (S) AL THOMAS, CPD

ARREST WARRANT NUMBER

K612406

ACTION OF GRAND JURY

TRUE BILL

SEP 17 2009

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-4540

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2009

42

THE STATE

vs.

CHRISTOPHER BROADNAX

Defendant

Witness:

C.C.C. PLS. AND G.S.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY
OF ORIGINAL FILED,

Jeannette Wynn
C.C.C.P&G.S.

RICHLAND COUNTY
SOUTH CAROLINA

Indictment for

KIDNAPPING

SC Code: 16-3-910

CDR Code 0095

Class FEL/A(V)

1140

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on SEPTEMBER 16, 2009, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That CHRISTOPHER BROADNAX did in Richland County on or about MAY 24, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct and/or carry away the victim, GRACIUS TUCKER, by any means whatsoever without authority of law. All in violation of §16-3-910, Code of Law of South Carolina.

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

W. B. Giese

Warren B. Giese, SOLICITOR

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jessie L. H. H. H. H.
C.C.C. REG. S.
RICHLAND COUNTY
SOUTH CAROLINA

DOCKET NO. 2009-GS-40- 4541

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2009

42

THE STATE
vs.

CHRISTOPHER BROADNAX

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code: 0095
Class FEL/A(V)

WITNESSES

(S) A. L. Thomas, CPD

ARREST WARRANT NUMBER

K612407

ACTION OF GRAND JURY

TRUE BILL

NOV 19 2009

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 18, 2009, the Grand Jurors of Richland County present upon their oath;

KIDNAPPING

That CHRISTOPHER BROADNAX did in Richland County on or about May 24, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: Donald Kirby, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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

W. B. Giese

Warren B. Giese, SOLICITOR

COUNTY OF
STATE

RICHLAND

CHRISTOPHER BROADNAX

AKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: ARMED ROBBERY

in violation of § 16-11-330 (A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

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

ATTEST:

[Signature] 77500 SC Bar # _____ Defendant [Signature] 79278 SC Bar # _____
Solidator Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 400 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: LIFE WITHOUT PAROLE

☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-289 (DUI Breath Test) \$500 \$ _____
\$35.13 (Public Def/Prob) \$25 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
\$90.11 TP (SCCJA Surcharge) \$5 \$ _____
TOTAL \$ _____

Jeanette W. McBride (ps)

Clerk of Court/ Deputy Clerk

Court Reporter: Williams

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09 -GS- 40 - 4539

A/W#: K612405

Date of Offense: 5/24/09

S.C. Code §: 16-11-330(A)

CDR Code #: 0139

SENTENCE SHEET

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,**

Jeanette W. McBride
C.C.C.P.&G.S.

☐ Appointed PD or appointed other counsel, §23-13-71
☐ Requires \$500 be paid to Clerk of Court for Probation

PRESIDING JUDGE [Signature]

Judge Code: 2126

Sentence Date: 6-17-10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND
STATEINDICTMENT/CASE#: 2009-GS-40-4540AW#: K612406Date of Offense: MAY 24, 2009S.C. Code §: 16-3-910CDR Code #: 0095VS. CHRISTOPHER BROADNAX

AKA: _____

Race: _____ Sex: _____ Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: FEDUAPPINGin violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

77500
Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LWOP 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: LIFE OF PAROLE☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service, Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$56-1-289 (DUI Breath Test) \$500 \$ _____

\$35.13 (Public Def/Prob) \$25 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

\$90.11 TP (SCCA Surcharge) \$5 \$ _____

TOTAL \$ _____

Jaquette W. McBride

Clerk of Court/ Deputy Clerk

Court Reporter: WilliamsRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund
Other: _____ OF ORIGINAL FILED,_____ \$25
_____ JAMES H. WILSONC.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE 2126Judge Code: 2126
Sentence Date: 6-17-10

1146
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND
STATE

VS.
CHRISTOPHER BROADNAX
AKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: KIDNAPPING

in violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0095

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

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

ATTEST: Cliffy 77600 Solicitor SC Bar # _____ Defendant James H. Williams 74278 Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LWOP 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: LIFE WITHOUT PAROLE
☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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 \$ _____
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-289 (DUI Breath Test) \$500 \$ _____
\$35.13 (Public Def/Prob) \$25 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
\$90.11 TP (SCCJA Surcharge) \$5 \$ _____
TOTAL \$ _____

Jeannette W. McBride
Clerk of Court/ Deputy Clerk
Court Reporter: Williams

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009 -GS- 40 - 4541

A/W#: K612407

Date of Offense: May 24, 2009

S.C. Code §: 16-3-910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0095

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

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

ATTEST: Cliffy 77600 Solicitor SC Bar # _____ Defendant James H. Williams 74278 Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LWOP 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: LIFE WITHOUT PAROLE
☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

\$ _____

Other: _____

Judge Code: 2026

Sentence Date: 6-17-10

PRESIDING JUDGE: G. Williams
