

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable George M. McFaddin, Circuit Court Judge

LEVERN MCCREA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001426

APPENDIX

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1 A I don't know of any *Brady* material that was not turned
2 over. In -- in kind of reviewing the file, I just note as
3 I sit here that there is reference to a letter that law
4 enforcement had given to the co-defendant, Mr. Briggs, I'm
5 assuming during Mr. Briggs' incarceration. I've never seen
6 any correspondence with regard to that.

7 Q Okay. To your knowledge, does any such letter exist?

8 A If it does, I'm not aware of it.

9 Q (Coughs) Excuse me. Do law enforcement officers -- or
10 does your office -- the Solicitor's Office I mean, is that
11 something they typically write down if they're offering a
12 deal to someone to cooperate with them? Do they usually
13 put that in writing?

14 A I was at the Solicitor's Office for 12 years. I've
15 never seen that done.

16 Q Okay. So when Mr. -- did you ever conspire with Mr. -
17 - Mr. Anderson to convict his client of murder?

18 A I did not.

19 Q Okay. After Mr. Anderson was relieved and Mr. McCrea
20 proceeded pro se based on Judge King's order, did you do
21 anything to assure that he had a full and complete copy of
22 the discovery materials and *Brady* material?

23 A I did. Once Mr. Anderson was relieved, then of
24 course, I started getting all these letter from -- directly
25 from Mr. McCrea. I remembered that there was one point

1 where -- it was probably September/early October where my
2 office received a letter from him on one day, and then the
3 very next day we got another letter; and then, before the
4 week is out, we got a third letter. And they were just
5 coming, and -- and he was essentially accusing me of
6 conspiring with his attorneys and that I was -- accused me
7 of trying to hoodwink him and trying to get him imprisoned
8 for the rest of his life. And he started -- now he was the
9 one directly demanding of me all of the things that Mr.
10 Anderson referenced in prior letters to me and demanding
11 other things as well. And as a result of that, I, probably
12 out of a little frustration, just wrote him a letter
13 explaining to him the things that I could provide to him I
14 would provide to him and that the other things that he was
15 requesting was -- was not discoverable.

16 And so during the course of -- obviously doing this --
17 one thing that -- that comes to mind, as it relates to
18 discovery material, was certain items that were given to
19 him during the trial, and if I can just explain that very
20 briefly.

21 After Mr. Anderson was relieved and Mr. McCrea started
22 sending all of these letters to me, it came to my mind that
23 for -- perhaps if he's writing me like this and he's
24 writing his previous counsel of record all of these
25 letters, I suspect that he might be, perhaps, writing the

1 girlfriend in North Carolina the same type letters.

2 So I issued a -- or had the Clerk's Office to issue a
3 subpoena as well as a -- a subpoena for in-person testimony
4 as well as a subpoena *duces tecum* for Ms. Smith, the
5 girlfriend in North Carolina, to bring with her any
6 correspondence between herself and -- and -- and Mr. McCrea
7 since he's been incarcerated. And I command -- in the
8 subpoena, it commanded her to bring those things with her
9 the week of -- of the trial and so she did. And so the
10 week that we had the trial would've been the first time I
11 would've had the opportunity to have those because she
12 brought them with her personally.

13 I think in addition -- and I don't know -- I don't
14 have a memory if I asked her to or she just did on her own,
15 I believe she drove the same vehicle that Mr. McCrea was
16 believed to have been driving at the time the murder was
17 committed; and I had one of the investigators to take
18 photographs of that vehicle while she was in South Carolina
19 for the trial. And I think I might've turned over those
20 pictures to him during the course of the trial.

21 Q Okay. So you gave those to him as soon as you were
22 able to.

23 A I -- I did.

24 Q Okay. Did Mr. McCrea have any witnesses that he
25 wanted to -- that he wanted to call at trial, and did you

1 subpoena them on his behalf?

2 A I don't have a recollection of -- of doing that. I --
3 we've had instances where there have been pro se defendants
4 who have wanted particular witnesses to be there and -- and
5 didn't, for whatever reason, subpoena them in advance for
6 trial. And I've had judges to order me to -- to -- to
7 subpoena them and have the officers go out and find them.
8 I -- I don't have a specific recollection one way or the
9 other as relates to whether or not that was requested at
10 this trial.

11 Q Was there anything else you can recall doing to
12 accommodate Mr. McCrea as a pro se defendant?

13 A During the course of the trial?

14 Q Uh-huh. Or in preparing for the trial after his
15 attorneys were relieved?

16 A I -- I know that in the time frame between when Mr.
17 Anderson was relieved and when the --the trial began, as a
18 result of receiving all of the letters from Mr. McCrea, I
19 asked the judge, during the term of court prior to when the
20 trial was scheduled to start, to conduct a status
21 conference so that Mr. McCrea would have the opportunity to
22 air out any and all grievances and make any and all
23 requests that needed to be made so that there would not be
24 those issues to come up at the trial of the case. And I
25 remember doing that because of some of the letters --

1 Q Uh-huh.

2 A -- that -- that he was filing.

3 Q And was that the hearing with Judge Newman --

4 A It was.

5 Q -- on October 12 of 2011?

6 A It was.

7 Q Okay. And that transcript's part of the record as
8 well.

9 To your knowledge, did Mr. McCrea have all of the
10 discovery materials before the trial ---

11 A Yes.

12 Q --- or as they came up during the trial?

13 A Yes.

14 Q Okay. Is there anything else about Mr. McCrea that
15 you recall that you believe is important for today's case?

16 A Just that -- two things: One, Mr. McCrea is a very
17 intelligent individual. I'd be candid in saying I
18 underestimated his -- his wits, but it did not take long
19 into the trial before I -- I realized that I should not
20 just assume that because he's a pro se litigant that he
21 wouldn't know what he was doing.

22 I thought it was interesting how -- and I -- I thought
23 it would be difficult for him as a pro se litigant to cross
24 examine the co-defendant, Mr. Briggs, because you have to -
25 - obviously, if -- if it is true that he was the one who

1 committed the crime and that Mr. Briggs was a testifying
2 witness to that, that that was a -- a very fine dance that
3 -- that you'd have to walk that -- that perhaps some of the
4 skilled lawyers wouldn't be able to -- to walk as
5 effectively. I was surprised. There were certain things
6 that I thought that he would ask that might open to -- the
7 door to things that typically would not be admissible in
8 trial. He -- he -- he walked -- he towed the line.

9 His closing arguments were appropriate. I was a City
10 prosecutor in Florence for 12 year -- for 5 years, I'm
11 sorry, before I began working at the Solicitor's Office in
12 Williamsburg County, and I -- I dealt with a lot of pro se
13 defendants in City court. And so you just kind of expect
14 that they wouldn't necessarily know how to finesse certain
15 things and how to ask certain questions.

16 He made repeated references to hearsay throughout the
17 trial. When I issued -- had the subpoena issued to Ms.
18 Smith to bring in correspondence between the two of them
19 during his period of incarceration, what I learned was in
20 -- in -- in reading the letters that he had wrote to her,
21 he was clearly saying what he wanted to say to her to -- to
22 keep her satisfied.

23 He promised that he would be a good father to their
24 child and -- and he talked about he was looking at life in
25 prison; and that if law enforcement were to ever come to

1 her and ask her, that she should just write a letter saying
2 that he was there the whole week. He told her in the
3 letter to say that Mr. Briggs did not come until -- to --
4 to North Carolina with them until a week after the murders
5 and became very upset with her when she refused to sign an
6 affidavit saying that he was there the whole time and never
7 left.

8 And it -- it dawned on me in reading those letters,
9 you know, to the extent that cunningness has a negative
10 connotation, how very cunning he was. But he was clearly
11 preparing for trial.

12 In some of the letters that he'd written to Mr.
13 Anderson that were made a part of the -- the record because
14 he'd either filed them at the courthouse or during the
15 course of the status conference it -- they were disclosed,
16 he talked about how he wanted to get Mr. Anderson off the
17 case. He -- he threw the "F Bomb" a few times during the
18 letters, called Mr. Anderson a "snake in the grass," and
19 said that he was working for the State and -- and
20 conspiring with me; and he made reference that he wanted to
21 represent himself.

22 So I -- you know, I say -- I say all that to say that
23 he was not your average pro se defendant.

24 And I recognize the gravity, obviously, of the charge
25 that he was facing, but he -- very intelligent. And -- and

1 I -- I remembered being nervous while the jury was
2 deliberating, I'll just put it that way.

3 Q Thank you very much. Nothing further.

4 THE COURT: Mr. Boozer.

5 MR. BOOZER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BOOZER:

8 Q Ms. Barr, how are you?

9 A I'm good, sir. How are you doing?

10 Q Doing fine, thank you. Ms. Barr, were you present at
11 the hearings where motions to be relieved were being filed
12 prior to trial?

13 A I was.

14 Q You were present for -- for any hearing that would
15 involve that, you would be there?

16 A I was.

17 Q Okay. Would you agree with me that none of the judges
18 when -- when motions to be relieved were involved, advised
19 Mr. McCrea of the advantages and disadvantages of Pro se
20 representation?

21 A I -- I would agree that I don't have any recollection
22 of any specific warnings being given to Mr. McCrea on ---

23 Q Would -- would ---

24 A --- that issue.

25 Q Would you also agree with me that no judge inquired as

1 to Mr. McCrea's background as -- as far as how much
2 education he had, what he did for a living, his
3 understanding of the charges, how much time he faced or
4 anything like that; or if he had ever been involved
5 representing himself? Do you -- you would agree that that
6 was never done?

7 A I hesitate only because during the first bond hearing,
8 I have a vague recollection of -- of it being asked of him
9 in -- as to his background, only as it related to that --
10 the bond. So to that extent, I have vague recollection of
11 that, but as to any of the subsequent hearings on defense
12 lawyers motions to be relieved as counsel, I don't
13 recollect that happening.

14 Q During the trial, do you recall whether Mr. McCrea was
15 shackled via leg restraints or had any sort of electronic
16 device on him?

17 A I believe he might've had on leg restraints. That
18 would've been consistent with -- with security precautions.
19 I don't ever remember seeing them, but I would've been
20 surprised if he didn't have some form of restraints. I did
21 not realize, until I heard him testify today, that he also
22 had something underneath his clothes on his chest. I was
23 not aware of that 'cause obviously I didn't see that. He
24 had on -- he was -- was fully clothed and had on a suit or
25 a nice shirt and -- and slacks.

1 Q So you think he had on leg shackles, and then, if your
2 understanding is correct based on his testimony, some sort
3 of electronic device?

4 A Correct.

5 Q Okay. Was there -- was that -- was that done at your
6 request or the judge's request or court staff's request?
7 Do you -- do you know?

8 A Unless a Defendant has posed a -- any type of risk to
9 -- or -- or made threats to anybody involved in the case, I
10 -- I wouldn't have not -- I would not have requested
11 particular restraints. I think that as a matter of course
12 any Defendant who -- my -- my experience in that courtroom
13 was any experience who -- any defendant who's been on trial
14 for a serious crime of that nature there would be
15 appropriate restraints.

16 Q But to your knowledge, was there ever any sort of
17 hearing to determine if he was some sort of risk to the
18 safety of the courtroom or sort of the decorum in -- in
19 keeping everything safe?

20 A There was -- I -- there was not a hearing as it
21 relates to that. My recollection of him with restraints is
22 not because those were visible in court. None of the
23 restraints that he was wearing were visible in court.

24 But I -- I do remember that during appropriate breaks,
25 when the jury would leave the courtroom and -- and take a

1 break of if we were on lunch break, I remembered law
2 enforcement walking him in or out of the courtroom, whether
3 he was returning from a break or whether we were about to
4 start a break, and then putting restraints on his arms if
5 they were going to take him back to the jail. But none of
6 the restraints would've been visible in court.

7 Q How -- how do you know that he had on leg restraints
8 if they weren't visible?

9 A Because I would've seen the -- when we walk into the
10 courtroom in Williamsburg County, more often than not the
11 jury -- the judge would want the Defendant and the lawyers
12 in court before the jury ever came in and would want the
13 lawyers and the parties to stay seated until the jury
14 leaves. And so during the course of him coming and going,
15 I would've -- I would've noticed that he had restraints on
16 him because I would've seen law enforcement at the end of
17 the day, as a part of them securing him and transporting
18 him, putting the hand restraints on him and -- and doing
19 something to his feet, which would indicate that he had
20 shackles on his -- on his legs.

21 Q Did Mr. McCrea -- was he free to move about the
22 courtroom?

23 A Well, he did move about the courtroom. Just as in
24 this courtroom we have a podium there, and so when he
25 addressed witnesses, cross-examined them, he came up to

1 the podium. The podium is seated -- what -- was placed in
2 the view of the jury. He gave an opening statement and a
3 closing argument. So yeah, he -- he was free to move
4 about.

5 Q And he was moving around with those shackles on his
6 legs?

7 A Yes.

8 Q Okay. And -- and certainly, did it have some visible
9 restriction on him?

10 A Well, if it served a purpose, it would have,
11 obviously, if it served it's purpose. I don't have a
12 memory of seeing him kinda looking down at his feet in
13 terms of how that restriction would've -- would've been
14 viewed.

15 Q Were -- were there any curative instructions given or
16 any instructions by the Court for the jury to ignore if
17 they did see any shackles or anything like that? Was
18 anything like that done to your knowledge?

19 A I don't recall that. I'm not sure.

20 Q If it's in the transcript, it's in there.

21 A That's right.

22 Q If it's not -- it's not, okay.

23 A Right.

24 MR. BOOZER: Your Honor, may I approach the witness
25 and --

1 THE COURT: Yes, sir.

2 MR. BOOZER: -- look at some exhibits?

3 May I approach the witness, Your Honor?

4 THE COURT: Yes, sir.

5 MR. BOOZER: Thank you.

6 Q Ms. Barr, I'm gonna hand you a copy -- I think there's
7 two of these that are in the record, but that one's marked
8 Exhibit 1(c.) If you would -- have you ever seen that
9 document before?

10 A I'm sure I have, although my vision is getting worse.
11 Do you mind if I get my reading glasses?

12 Q No, ma'am. Absolutely.

13 A Okay.

14 THE WITNESS: Judge, may I step down for a moment?

15 THE COURT: Yes, ma'am.

16 (The witness exits the stand momentarily.)

17 (Brief pause.)

18 A Yes, I'm familiar with the document.

19 Q Okay. Is this a document that would've been produced
20 by your office in discovery?

21 A Yes.

22 Q All right. And I'm want to direct your attention to
23 the line beginning (as read): "On July 30 ..." near the
24 top; do you see that?

25 A Yes.

1 Q And it says -- and this is from it looks like Brenda
2 Lambert. It says (as read): "On July 30, Investigator
3 Brown. along with Lieutenant Cowans and Chief Johnson,
4 made a letter for Chris Briggs which stated: 'Based on
5 our recent conversations, we believe that you have vital
6 information about Cora Brown's death. At this point we do
7 not believe that you're the actual shooter, and if you
8 freely and voluntarily provide all of the truthful details
9 surrounding Cora's death and pass the polygraph, Chris
10 will be charged with accessory after the fact.'"

11 The letter went on to say that (as read): "We will
12 talk with the judge and the Solicitor to get Chris Briggs
13 leniency on his charge. Investigator Brown, along with
14 Lieutenant Cowans, went to ..." -- and it looks like it's
15 blacked out -- "and made contact with ..." -- it's blacked
16 out -- "... who was able to make contact with Chris
17 Briggs. Stated that Chris had told him he was not willing
18 to talk with us without a lawyer. Stated he will explain
19 the letter to Chris as soon as he can get in touch with
20 him."

21 So after reading that, would you agree with me that
22 somewhere in existence there is a letter that is outlining
23 some sort of agreement for Mr. Briggs?

24 A It appears to.

25 Q Okay. Why was that not turned over?

1 A I'm not sure why that wasn't turned over. The
2 Solicitor's Office never had a -- that letter. I -- I
3 would assume that, based upon what's contained in that
4 paragraph, that that letter would've been given to someone
5 to give to Mr. Briggs. And the only thing that I could --
6 I could guess is that a copy was not made of that letter.

7 Q Would that not be subject to disclosure pursuant to
8 Rule 5?

9 A I think it would've been.

10 Q Okay. It definitely would've been, wouldn't it?

11 A Yeah. I ---

12 Q Okay.

13 A --- think it would've been.

14 Q And as a matter of fact, at the trial, did Mr. Briggs
15 not -- did he deny, during your examination and all also
16 Mr. McCrea's examination, that there was any sort of deal
17 that had been promised to him?

18 A I believe he did.

19 Q Okay. So Mr. McCrea -- it would've been important for
20 him to have had a letter where there was actually a deal
21 laid out 'cause that's pretty rare, is it not, to have?

22 A Is what pretty rare? I'm sorry.

23 Q Is it pretty rare for law enforcement or the State to
24 take a written letter or agreement and send it to a
25 witness before they even testify saying that, "If you

1 testify, we'll give you this." Is that pretty rare?

2 A It is.

3 Q Okay. So that would've been important for Mr. McCrea
4 to have during his examination of Mr. Briggs; would it
5 not?

6 A In theory, yes. Here -- let me explain why I qualify
7 my answer. It appears that this letter indicates that law
8 enforcement did not believe that Christopher Briggs was
9 the person who killed Ms. Brown, but they believed that he
10 had knowledge about the involvements of -- of the person
11 or persons who did; and that if the -- Mr. Briggs were
12 willing to give truthful information that could be -- the
13 truth, the authentic -- the authenticity of which could be
14 corroborated by the polygraph, that they would agree to
15 talk to the Solicitor and to the judge and advise the
16 Solicitor and the judge of his cooperation and request
17 leniency on his charge.

18 As far as this case is concerned, as I sit here today
19 and even with the trial of the case and in preparation for
20 the trial of the case, there was no evidence that ever
21 came to mind that Mr. Briggs was a participant in the
22 murder or acted to assist Mr. McCrea once the -- the
23 murder was committed.

24 I vaguely have a recollection of talking with the
25 officers about potential charges that defendants could

1 face. I -- and -- and that's -- and that's normal.
2 Before arrest warrants are issued, law enforcement
3 officers may talk to prosecutors who -- to find out what -
4 - what charges, if any, are appropriate.

5 And I remembered that -- you know, obviously, I wanted
6 to charge Mr. Briggs with something more than simply the
7 charge of misprision of a felony, but there was no
8 evidence -- no information in the file or in the
9 investigation that -- that I'm aware of that Mr. Briggs
10 actually assisted the principal once the felon had been
11 committed. So an accessory after the fact -- although law
12 enforcement might've believed that that was an appropriate
13 charge, it was not my belief, based upon what we could
14 prove, that that was an appropriate charge.

15 And in talking with Mr. Briggs prior to the trial of
16 the case, he wanted guarantees from me that he could get
17 probation. And I was very candid with him, in the
18 presence of several witnesses, that that was not being
19 offered. And -- and my recollection was that he actually
20 was sentenced to prison rather than given a probationary
21 sentence.

22 So yes, I believe, in principle, that that's something
23 that -- that should've been discovered. I -- I suspect
24 that, based upon how this read, that it was a letter that
25 was turned over or given to somebody to give to Mr.

1 Briggs. Never dawned on me, quite frankly, to ask Mr.
2 Briggs if he has that letter. But it is ---

3 Q You might want to ask law enforcement if they've got
4 the letter.

5 A They -- law enforcement does not have a letter to this
6 effect.

7 Q Have you checked with law enforcement?

8 A I did.

9 Q You -- before the trial or after the trial?

10 A My recollection is it was during the trial when that
11 issue came up.

12 Q When did that issue come up?

13 A I believe it was during the point where Mr. McCrea was
14 asking Mr. Briggs about the State offering him leniency or
15 -- or something along lines of a sentence recommendation
16 to ---

17 Q Well, you're saying ---

18 A --- induce him to testify.

19 Q That wasn't addressed to the judge where you said,
20 "Judge, I think there was a letter out there that we may
21 have written to Mr. Briggs." It didn't come up like that,
22 did it?

23 A It did not.

24 Q Okay.

25 A No.

1 Q So there's nothing on the record about the existence
2 of this letter.

3 A No, I'm sorry. I thought you were asking me when did
4 I ask law enforcement about it.

5 Q Yeah. So ---

6 A About the letter.

7 Q --- you -- you asked law enforcement during the trial
8 is your testimony --

9 A Correct.

10 Q -- about this letter.

11 A Correct.

12 Q So there's nothing in the record about -- about that
13 or you bringing it to the Court's attention.

14 A No, sir.

15 Q Okay.

16 A No, sir.

17 Q Okay. Let me ask you, going back to the June 22, 2011
18 motion to relieve Mr. Anderson, do you recall the Court --
19 Judge King stating that if Mr. Anderson were relieved,
20 that he would remain -- he would stand by to advise with
21 the procedure in the courtroom. Do you recall that? And
22 I'm happy to hand up the transcript if you don't have one.

23 A That'd be great.

24 (Mr. Boozer hands document to the witness.)

25 Q And specifically I'm looking at page 41, and just

1 direct your attention to -- beginning at probably line 11.

2 A Okay.

3 (Brief pause.)

4 Q Based on that, was it your understanding that Mr.
5 Anderson would remain as stand-by counsel?

6 A I mean, obviously, that -- the transcript speaks for
7 itself, and I -- I don't remember having a -- an
8 understanding one way or the other, but I would obviously
9 not disagree at all with the transcript.

10 Q Okay. And obviously, along those same lines, at the
11 pretrial hearing with Judge Newman and at the actual trial
12 with Judge Young, you would agree there was no discussion
13 about Mr. McCrea, with his -- advantages or disadvantages
14 of proceeding pro se or any inquiry into his background?
15 You would agree with that?

16 A At the pretrial with Judge Newman?

17 Q Correct.

18 A I don't remember. I -- I don't remember that.

19 Q And the transcript would, of course, speak for itself.

20 A Absolutely.

21 Q Okay.

22 MR. BOOZER: Beg the Court's indulgence?

23 (Brief pause.)

24 MR. BOOZER: Your Honor, that's all the questions I
25 have.

REDIRECT EXAMINATION BY MS. COLEMAN - KIMBERLY BARR 178

1 MS. COLEMAN: I have two very quick questions.

2 THE COURT: Yes, ma'am.

3 REDIRECT EXAMINATION

4 BY MS. COLEMAN:

5 Q Ms. Barr, did -- did Mr. McCrea have the opportunity
6 at trial to cross-examine Briggs on him using him as a
7 "get out of jail free" card?

8 A He did.

9 Q Okay. And the leg restraints that we were testifying
10 about earlier, would those have been metal shackles around
11 his ankle or were they a device underneath the clothing
12 that locked at the knee? Do you recall?

13 A I -- well, I know they were underneath the clothing
14 'cause I didn't see them. And the only time that I ever
15 have a recollection of -- of -- of him having leg
16 restraints was during the process when they were either
17 transporting him to the courthouse from -- from -- from
18 jail or if they were taking him from the courthouse to a
19 bathroom during bathroom breaks or -- or leaving. But he
20 -- he was dressed in a -- if not a suit, then a nice shirt
21 and slacks each time and nice shoes. They were not
22 visible.

23 Q Okay.

24 A But I -- I know that -- that the deputies would come,
25 and whenever there was a break and he had to be removed

1 from the courtroom or brought into the courtroom, I
2 remember them kind of fiddling around a little bit with
3 his -- with his legs.

4 Q All right. Thank you. Nothing further.

5 THE COURT: Mr. Boozer?

6 MR. BOOZER: Nothing further, Judge.

7 THE COURT: Thank you, Ms. Barr. May she be released?

8 MS. COLEMAN: She may be released.

9 THE COURT: Have a good day.

10 THE WITNESS: Thank you, Your Honor.

11 MR. BOOZER: Your Honor, with the exception -- I don't
12 know if we're doing the separate hearing now or --

13 THE COURT: I thought we had kinda deferred it off,
14 but I guess we haven't. I guess you're still here, ma'am.

15 THE WITNESS: And Your Honor, I -- I don't have any
16 problem. I'll be here as long as the Court needs me to be
17 here.

18 I -- I did want to just place something on the record
19 with regard to that. I -- I shared with Counsel when we
20 were back and Your Honor left the room, that I had never
21 been notified that the issue of a contempt finding was
22 going to be addressed. I certainly think if -- if there
23 was going to be a decision made as to whether or not
24 someone had willfully violated a court order, then the
25 person whose being accused of that willful conduct

1 should've been given notice of that proceeding and given
2 an opportunity to appear and present evidence as -- as
3 appropriate to be considered by the Court.

4 I indicated to Ms. Coleman that I remembered she was
5 very kind enough -- very kind to inform me that the Court
6 had made the ruling, but I've never been served with the -
7 - the order from that case and I expressed great hesitancy
8 about proceeding with a hearing for sanctions without,
9 one, having the notice -- proper notice and without an
10 opportunity to consult counsel.

11 THE COURT: Hold on a second.

12 THE WITNESS: Yes, sir.

13 THE COURT: Mr. Boozer?

14 MR. BOOZER: Thank you, Your Honor. If it pleases the
15 Court.

16 Judge, I'm fairly certain that, a, Ms. Coleman -- it
17 was my understanding, was notifying Ms. Barr of all -- of
18 everything. Of course, this case has been delayed a
19 couple of times and I'm fairly certain it was discussed
20 then.

21 Also when I was going about this and trying to get
22 discovery, I'm -- I'm fairly sure that I provided copies
23 of those orders that had been signed by Judge Gee as well
24 as Judge Gibbons with all this. So I certainly think
25 there was notice given.

1 THE COURT: Okay.

2 THE WITNESS: And -- and Judge, I'll just acknowledge
3 I -- I do have a copy of the discovery order from Judge
4 Gee indicating what the Solicitor's Office was required to
5 turn over.

6 THE COURT: Okay.

7 THE WITNESS: Obviously, I think, as it relates to
8 issues regarding a contempt hearing, for not -- for
9 allegedly not complying with those orders, I would've been
10 entitled -- I should've been entitled to receive notice of
11 that before a finding was made.

12 THE COURT: Okay. Ms. Coleman?

13 MS. COLEMAN: Your Honor, it was -- I -- I -- I
14 thought that I had sent her a copy of the order and -- and
15 communicated that today would be the contempt hearing, but
16 I admit that I did not have the opportunity to talk with
17 her specifically before today. So I'll take the blame for
18 that if that's a communication issue and I apologize.

19 THE COURT: No. It's -- it's not all about blame.
20 But I can tell you that, based on what I've just heard in
21 the last few minutes, we're not going to hear today any
22 hearing restricted to or related to sanctions or contempt
23 as to Ms. Barr.

24 A person who is a target of a contempt action or
25 sanctions is -- generally a person is served. I harken

1 back to my prior life in another court, and while that may
2 not apply here in -- in circuit court precisely, out of --
3 out of an abundance of fair play and -- and -- and doing
4 things the -- or trying to do things the right way, if
5 somebody has -- is facing sanctions or shall we say
6 contempt, that person is to be personally notified.
7 Serving his or her attorney doesn't get -- unless that has
8 been consented to with the consent of the -- the targeted
9 individual.

10 So we're -- we're not gonna do the sanction/contempt
11 hearing today. We'll certainly do it soon. Now, whether
12 we'll do it Tuesday or not, I don't know.

13 SCDC may already have plans to be somewhere else with
14 it's personnel on Tuesday. I don't know that.

15 And by all means, Mr. McCrea, I am not going to push
16 it down the road -- kick it -- kick the can down to
17 another law -- another lawyer. I'll be the one glad to
18 hear the hearing about the sanctions, but that appears to
19 be clearly a separate issue from the PCR matters.

20 So we will not do the sanctions today, and Ms. Barr is
21 -- was not aware of that and hasn't time -- had time to
22 prepare. She's entitled to that time to prepare for that.
23 So we're not doing that today.

24 I will discuss with the two attorneys how soon we can
25 get back to that. I've got non-jury court next week

1 through the Third Circuit. I'll be glad to look at my
2 docket next week to see when we might can do it next week,
3 and we may can do it Tuesday. I just don't know yet, but
4 we will do it.

5 And Mr. McCrea, we will get to it.

6 So that's been -- that issue's not on the table for
7 today. All right?

8 MS. COLEMAN: Thank you, Your Honor.

9 THE COURT: Now, is that your case, Ms. Coleman?

10 MS. COLEMAN: The State has no further witnesses. I
11 do have two cases I'd like to hand up, and we won't make
12 any arguments or anything.

13 THE COURT: All right. Here's what I'm gonna ask you
14 to do now and let me preface what I'm gonna say by saying
15 this: It has always been so, thus far, a pleasure to work
16 with Ms. Coleman and Mr. Boozer. I -- I -- I praise them
17 because they are very good at getting straight to the
18 point in these hearings without being repetitive,
19 redundant, and fighting each other.

20 I hear -- I'm not the smartest person in the world,
21 but I hear pretty fast, and I don't need things said over
22 and over again.

23 I'm gonna ask Mr. Boozer to do this first. Well, let
24 me back up further. And while I'm saying this to all, I'm
25 saying it to Mr. McCrea. Mr. McCrea's been dealing with

1 this case a long time, about a decade really. The wo
2 attorneys have been dealing with it for months, if not a
3 year or more. I don't know when they -- when you first
4 got this, but they've had it a long time.

5 All three of you know this case very well. I've only
6 been acquainted with it on a very personal basis since
7 this morning. Now, I have read the briefs, and I have
8 looked at some information, but today's when I got my
9 first heavy dose of this -- this -- this -- this matter,
10 this PCR matter.

11 If, Mr. McCrea, you're expecting a ruling today, it's
12 not gonna happen. I don't believe in fast, shake and bake
13 rulings especially on a matter this important. You're
14 entitled have me look over this and make a -- at least a
15 careful decision, as are both attorneys and both sides to
16 this matter.

17 So I'm gonna ask Mr. Boozer to send to me your
18 positions today, addressing each and every element and
19 issue brought before this Court today as number 1, 2, 3,
20 and 4, state what that issue is, and then give your reason
21 as to what the ruling should be and -- and mention
22 briefly, please briefly, any law or anything else or
23 testimony that backs up what you say. Once you've done
24 that, send to me that, and send to Ms. Coleman a copy of
25 it.

1 Ms. Coleman, I'll then ask you to reply to each one
2 too -- one, two, three, and four -- with your position in
3 the same manner. If you want to send me case law, please
4 don't -- don't prepare a brief suitable for framing at the
5 Supreme Court. I don't have time to read all that and do
6 all that other analysis. Just send me the case. Simply
7 send me the case, circle what you want me to read in that
8 case, and that's all I need.

9 Mr. Boozer, how long would you like to have to do
10 that? No rush.

11 MR. BOOZER: Your Honor, if I may have 30 days?

12 THE COURT: You'll need at least 30 days. Yes, sir.

13 MR. BOOZER: Yes, sir. At -- at least 30.

14 THE COURT: At least.

15 Once you've done that, Ms. Coleman, when you get it,
16 you -- you likewise may have 30 days --

17 MS. COLEMAN: Thank you, Your Honor.

18 THE COURT: -- to respond.

19 And again, I praise all of you for your -- your
20 cooperation here today. Mr. McCrea, I praise you for your
21 cooperation today.

22 And I will await to hear from you first, Mr. Boozer
23 and then from Ms. Coleman.

24 MR. BOOZER: Thank you ---

25 THE COURT: All right.

1 MR. BOOZER: --- Your Honor.

2 MS. COLEMAN: Thank you very much, Your Honor.

3 THE COURT: Thank y'all so much. And by the way,
4 thank you SCDC for helping us by bringing these persons to
5 court.

6 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit Court for Sumter County, South Carolina, on the 1st day of June, 2018.

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

E/BONNIE H. KELLY

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

January 30, 2019

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

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Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

February 6, 2017

Via Email

Warren Anderson
Assistant Solicitor
125 West Main Street
Kingstree, South Carolina 29556

**RE: Levern McCrea, #348291 v. State of South Carolina
2012-CP-45-363**

Dear Mr. Anderson:

As you are aware, I represent Mr. McCrea in his pending PCR case. I am in receipt of the Rule 5 discovery materials your office recently provided to me in Mr. McCrea's general sessions case and have delivered the same to him. He believes certain items exist and were not provided or disclosed in the materials he recently received. Below please find his descriptions of these items:

1. Clinton Dorsey police interview statements/reports.
2. Dee Franklin police interview statements.
3. Christen Green/Young police interview transcripts and police reports.
4. Robert Smith 6/28/10 police interview transcripts.
5. Carolina Pushia police interview statements and report.
6. Actual time of death on coroner report.
7. Letter of leniency for Christopher Briggs.
8. Christopher Briggs' April 2009 polygraph test.
9. Letter Mr. McCrea entered on the record during a pre-trial hearing before Judge Newman.
10. Mr. McCrea's booking record.
11. Commitment calendar.



I understand that Ms. Barr is no longer with the Solicitor's office, however, I am copying her with this letter as well. Please let me know your response as soon as possible.

Yours very truly,

A handwritten signature in black ink, appearing to read 'L.S. Boozer', with a stylized flourish extending from the end.

Lance S. Boozer

cc: Kimberly Barr, Esq. (via email)
Julie Coleman, AAG (via email)
Leverne McCrea, #348291

The State of South Carolina

OFFICE OF THE SOLICITOR
THIRD JUDICIAL CIRCUIT

Clarendon
Lee
Sumter
Williamsburg



Ernest A. Finney, III
SOLICITOR

843-355-9321
Extention: 7200
FAX 843-355-1578

Williamsburg County
Courthouse
125 W Main Street
Kingstree, South Carolina
29556

February 14, 2017

Lance Boozer
1400 Laurel St. Suite 4A
Columbia, SC 29201

RE: Additional Discovery for State v. Levern McCrea

Dear Mr. Boozer:

I am writing to respond to the letter you sent on the 6th asking for additional discovery materials. Many of the items were previously requested by Mr. McCrea in a letter he wrote to Ms. Barr back in 2011. In her response she explained that most of these items do not exist. I have attached that correspondence between Ms. Barr and Mr. McCrea to this letter. Our office checked again to make sure that nothing requested is present in our file. I'm not trying to be confrontational, but the items you asked for are simply not under the control of the Solicitor's office. I'm more than willing to work with you on this matter, just give me a call.

You will find on the following page our responses to your requests:



The State of South Carolina

OFFICE OF THE SOLICITOR
THIRD JUDICIAL CIRCUIT

Clarendon
Lee
Sumter
Williamsburg



Ernest A. Finney, III
SOLICITOR

843-355-9321
Extension: 7200
FAX 843-355-1578

Williamsburg County
Courthouse
125 W. Main Street
Kingstree, South Carolina
29556

Please be advised, I followed the same numerals from your letter:

- 1.) All statements and reports in our file have been sent to you.
- 2.) All statements and reports in our file have been sent to you.
- 3.) All statements and reports in our file have been sent to you.
- 4.) We have a statement from Roberta Smith it was given on 03/28/2010 not 06/28/10. It has previously been turned over to you.
- 5.) All statements and reports in our file have been sent to you.
- 6.) We have furnished you the entirety of the coroner report.
- 7.) We do not have a letter of leniency of Christopher Briggs in our possession.
- 8.) We have furnished you with the August 2009 Polygraph test. We are unaware of one from April of that year.
- 9.) This item would be part of the Clerk's file.
- 10.) We did not have a copy of Mr. McCrea's booking report in our file. We asked the jail to check their physical archives. I have attached a copy.
- 11.) We do not have a commitment calendar in our possession related to this case.

Sincerely,

Warren Anderson
Assistant Solicitor



State of South Carolina
Solicitor of the Third Judicial Circuit

Ernest A. Finney, III
 Solicitor

Williamsburg County Courthouse
 125 West Main Street
 Kingstree, South Carolina 29556

Phone (843) 355-9321
 Fax (843) 355-9313

October 7, 2011

Levern McCrea (2010 A-219 2533)
 C/O Florence County Detention Center
 6719 Friendfield Road
 Effingham, South Carolina 29541

RE: State vs. Levern McCrea
 Indictment No.: 2010-GS-45-0135

Dear Mr. McCrea:

In response to all three of your recent letters, please be advised of the following:

- A. As I have not yet prepared my witness list, I will hand that to you along with the rap sheets on those witnesses on October 17, 2011 at 11:00 a.m.
- B. I have enclosed the rap sheet of your co-defendant, Christopher Briggs
- C. A copy of a Family Dollar receipt dated 03/10/09 was previously mailed to you. Inv. Brown has stated to me that he did not receive a McDonald's receipt from you.
- D. I am not aware of any statement Christopher Briggs gave to the Kingstree Police Department, and therefore, I do not have possession of any such documents
- E. There is no written or recorded statement given about the victim being killed for lottery winnings. This was an oral statement.
- F. There are no supplemental reports send to SLED. I am not aware of any photographs being taken of the bag that contained your DNA as it was being opened. The DNA report on the glove and mask was mailed to you on 09/20/2011.
- G. All of the supplemental reports, including ones concerning Roberta Smith's statement and the discovery of the handgun, were given to your former attorney, Hank Anderson, on August 9, 2011.
- H. Mr. Briggs did not submit to a polygraph in April 2009, but I have enclosed his report from August of 2009.
- I. All SLED reports have been submitted to either you or Mr. Anderson.
- J. Copies of previous incident reports where you allege you were a victim was hand-delivered to Mr. Anderson on August 30, 2011 (after the last bond hearing).

Levern McCrea
October 7, 2011
Page Two (2)

Mr. McCrea, you do not need to keep writing me about discovery matters. Contrary to your letter, I have neither the time nor the inclination to play games with you as I take the prosecution of a murder case very seriously. As I shared with Mr. Anderson, neither Rule 5 nor Brady vs. Maryland requires the State to produce some of the material that you are requesting. However, in an effort to be conciliatory, I did provide a number of documents to Mr. Anderson that were not required by me to be disclosed.

So that we can resolve this matter in an expedited manner, I would like to schedule a pre-trial conference before the presiding judge on Wednesday, October 12, 2011 at 9:00 a.m. I will arrange to have you transported from the jail to the courthouse. At that time, we can address the concerns in your letter. Also, when I served the State's first responses to your discovery request in October 2010 (on Cezar McKnight), I served the State's request for reciprocal discovery. As of the date of this letter, I have not received any responses and the trial is slated to begin in ten days. If there are documents, exhibits, photographs or any other evidence that you will seek to have admitted at trial, you will need to bring them with you on Wednesday.

Very truly yours,


Kimberly V. Barr
Assistant Solicitor

KVB: lsw
enclosures

AGENCY I.D. SC0450000		DATE/TIME OF ARREST 03/29/2011 1555		BOOKING REPORT WILLIAMSBURG COUNTY SHERIFF'S OFFICE		CASE NUMBER WC-0003486	
DEFENDANT NAME (LAST FIRST, MIDDLE) MCCREA, LEEVERN						RACE B	SEX M
AGE 46						DATE OF BIRTH 06/12/1964	
ETH N	HEIGHT 6-0	WEIGHT 175	HAIR BLK	EYES BRO	SOCIAL SECURITY NUMBER [REDACTED]	VIRGINIA SCARS AND MARKS N/A	
ADDRESS (NUMBER AND STREET) SANDHILL ROAD						CITY NESMITH	STATE SC
ZIP CODE 29580						REC'D U	PHONE NUMBER [REDACTED]
PLACE OF BIRTH CONNECTICUT						DRIVERS LICENSE NUMBER [REDACTED]	
EMPLOYER OR OCCUPATION UNEMPLOYED				NEXT OF KIN CALETHA MCCREA		ADDRESS (CITY AND STATE) SAME AS ABOVE/	
BOOKING OFFICER'S NAME C/O COURTNEY MCCLORIN				NUMBER 2667	ARRESTING OFFICER INV DEBRA COLLINS		
ARRESTEE ARMED ☐ YES ☒ NO				WEAPON TYPE [REDACTED]		AGENCY WILLIAMSBURG COUNTY	
JUVENILE DISPOSITION: 1 ☐ HANDLED, RELEASED 2 ☐ REFERRED TO OTHER AUTHORITY				J-This Jurisdiction S-State O-Outside State U-Unknown		NUMBER 268	
ADDITIONAL CASE NUMBERS						MORE IN REMARKS ☐	
IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A B C							
CHARGE I.D.		A		B		C	
CHARGE		MURDER / MURDER		LOSS OF a Weapon during a Violent Crime			
STATUTE		16-03-0010, 16-03-0020 /		M-06-2011			
TICK/WARR #		M-06-2010					
BOND AMOUNT							
BOND TYPE							
RET. DATE							
DISPOSITION							
SENTENCE		DAYS		AMOUNT		DAYS	
TIME SERVED							
GOOD TIME							
BALANCE							
PAID							
RECEIPT NUMBER							
RELEASE DATE 03/31/11		TIME 2		RELEASING OFFICER [Signature]		NUMBER J-7	
SIGNATURE OF RECEIVING OFFICIAL X		[Signature]		AGENCY RELEASED TO SCDC			
TRIAL DATE: / /		REMARKS:		LIST REMARKS BELOW			
TOTAL RESTITUTIONS (IF ANY):							
TOTAL RESTITUTIONS COLLECTED:							
DEFENDANTS PERSONAL PROPERTY RECEIPT				TOTAL CASH AT TIME OF ARREST \$0.00			
QUANTITY	ITEM			QUANTITY	ITEM		
1	PAIR OF PANTS (CREAM)						
1	JACKET (CREAM)						
1	PAIR OF BOOTS (BROWN)						
I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.							
X [Signature] DEFENDANT'S SIGNATURE AT THE TIME OF ARREST				[Signature] OFFICER			
I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.							
X [Signature]							

INCIDENT REPORT SUPPLEMENTAL

Page #: 6

Case Number: 0902123

E-15

Officer: 1727 LAMBERT, BRENDA

Date Entered/Changed: 03/15/2009

Reviewer:

Review Date:

WE WAS TOLD THAT [REDACTED] KNEW WHY LEVERN MCCREA KILLED CORA BROWN. WE TALKED TO [REDACTED], AND TOLD HER THAT WE NEEDED TO TALK WITH HER ABOUT CORA DEATH, AND SHE STATED THAT SHE DO NOT KNOW ANYTHING ABOUT HER DEATH. WE TOLD [REDACTED] THAT SOME ONE TOLD US THAT SHE KNEW WHY LEVERN KILLED CORA, AND [REDACTED] STATED THAT IF SHE KNEW ANYTHING SHE WOULD HAVE CALL OR COME BY, THE SHERIFF OFFICE, AND LET THE LAW KNOW. SHE STATED THAT SHE AND CORA WERE BEST FRIENDS, AND SHE WILL DO ANYTHING TO HELP US FIND OUT THE TRUTH. *****WILLIE BROWN*****

WIFE

ON JULY 30, INVESTIGATOR BROWN ALONG WITH LT COLLINS, AND CHIEF JOHNSON MADE A LETTER FOR CHRIS BRIGGS WHICH STATED BASE ON OUR RECENT CONVERSATIONS, WE BELIEVE THE YOU HAVE VITAL INFORMATION ABOUT CORA BROWN DEATH. AT THIS POINT WE DO NOT BELIEVE THAT YOU ARE THE ACTUAL SHOOTER AND IF YOU FREELY AND VOLUNTARILY PROVIDE ALL OF THE TRUTHFUL DETAIL SURROUNDING CORA DEATH, AND PASS THE POLYGRAPH. CHRIS WILL BE CHARGED WITH ASS, AFTER THE FACT. THE LETTER WENT ON TO SAY THAT WE WILL TALK WITH THE JUDGE AND THE SOLICITOR TO GET CHRIS BRIGGS LENIENCY ON HIS CHARGE.

INVESTIGATOR BROWN ALONG WITH LT COLLINS WENT TO [REDACTED], AND MADE CONTACT WITH [REDACTED], WHO WAS ABLE TO MAKE CONTACT WITH CHRIS BRIGGS. [REDACTED] STATED THAT CHRIS HAD TOLD HIM THAT HE DO NOT WANT TO TALK WITH US, WITH OUT A LAWYER. [REDACTED] STATED THAT HE WILL EXPLAIN THE LETTER TO CHRIS AS SOON AS HE CAN GET IN TOUCH WITH HIM.

INV. Willie Brown, Lt. Debra Collins & Chief Michael Johnson

*****WILLIE BROWN*****

JULY 30, 2009 LT COLLINS MADE CONTACT WITH [REDACTED] WHO STATED THAT HE WILL TALK WITH US BUT IT WILL BE AFTER MONDAY, CHRIS BRIGGS WANTS TO TALK WITH A LAWYER FIRST.

*****WILLIE BROWN*****

ON 08/04/2009 INV. BROWN WENT TO CHRIS BRIGGS HOUSE TO MAKE CONTACT WITH HIM, AND THE [REDACTED] WAS IN THE YARD BUT NO ONE CAME TO THE DOOR, I LEFT AND WENT DOWN THE ROAD, TO THE [REDACTED] WHERE CHRIS BRIGGS [REDACTED]. I THEN CALLED AND I WAS ABLE TO MAKE CONTACT WITH MS BRIGGS, AND I ASKED HER WHEN WAS THE LAST TIME SHE SEEN CHRIS, AND SHE STATED THAT SHE DO NOT KNOW NOTHING.

INV. BROWN AND LT COLLINS WENT BACK TO CHRIS BRIGGS HOUSE, AND THE [REDACTED] WAS GONE. WE THEN WENT DOWN TO THE ROAD, AND WAITED FOR CHRIS BRIGGS TO COME HOME. OFFICER WAS ABLE TO MAKE CONTACT WITH CHRIS BRIGGS, AND HE STATED THAT HE WAS NOT RUNNING FROM US. CHRIS STATED THAT HE WILL GO WITH US, BUT HE NEED TO DROP OFF HIS SON AT THE [REDACTED]. CHRIS BRIGGS CAME TO W.C.S.D ALONG WITH LT COLLINS, AND MYSELF. CHRIS BRIGGS STATED THAT HE WANT'S TO TALK BUT HE THINK THAT WE ARE GOING TO LOCK HIM UP.

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E-3A

Circuit Court Division/RMC
Williamsburg County Courthouse
125 West Main Street
Kingsree, S.C. 29556
(843) 355-9321, ext 7100 Fax (843)
355-1580

WILLIAMSBURG COUNTY
Clerk of Court
Sharon W. Stagers
E-mail address wmsbcocf@ffc-i.net

1039
Family Court Division
Williamsburg County Complex
147 West Main Street
Kingsree, S.C. 29556
(843) 355-9321, ext. 6100
FAX: (843) 355-1580

2/15/2017

Julie A. Coleman
Assistant Attorney General

S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

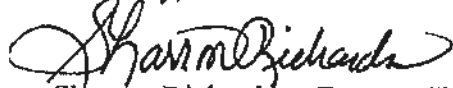
Dear Attorney Coleman,

As per your request, I wanted to confirm in writing that we do not have any grand jury impanelment documents from the grand jury proceedings on the State v Levern McCrea. 2010-GS-45-135.

The grand jury proceedings have historically been held in private and no minutes are maintained or taken when the grand jury is deliberating or voting.

The only documentation that results from the grand jury hearings are indictment of true bill or no bill.

Sincerely,


Sharron Richardson-Deputy Clerk



BHHG
A-8**ANDERSON LAW FIRM, P.A.**

265 WEST EVANS STREET, SUITE A, FLORENCE SC 29501-3464
POST OFFICE BOX 1904, FLORENCE SC 29503-1904
PHONE (843) 665-4300
FAX (843) 665-5511

ATTORNEYS AT LAW

HENRY M. ANDERSON, JR.
TODD S. TUCKER

February 7, 2011

Leevern McCrea, Inmate
Florence County Detention Center
6719 Friendfield Rd.
Effingham, SC 29541

Dear Leevern:

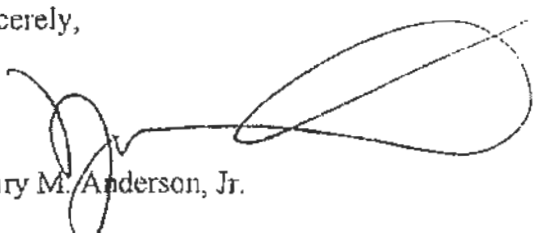
KEU * Thank you for your letter of February 1, 2011. As I'm sure you're aware, we did not go to court for a bond hearing. I tried to get them to bring you over; however, based upon my schedule in the court last week, as well as the court in Kingstree, we could not get in.

As far as my Motion, I did not actually file a Motion. I simply wrote Ms. Barr and asked her to bring you in. [As I'm sure you're aware, Mr. Cezar McKnight filed a Motion for a New Bond, as well as a Motion for a Speedy Trial. That is what I was going off of. That Motion was filed on November 12, 2010. Since he had already filed one there was no point in me filing one as well. Just for your records, I'm enclosing a copy of that.]

Hopefully by now you have received the information I sent you on February 3, 2011. In the meantime, if you have any questions or comments, please do not hesitate to call.

With kindest personal regards, I am

Sincerely,



Henry M. Anderson, Jr.
hds

Enclosure





10411614

A-1

CEZAR E. MCKNIGHT
ATTORNEY AT LAW

November 9, 2010

Williamsburg County Clerk of Court
125 West Main Street
Kingstree, SC 29556

RE: State of South Carolina v. Leevern McCrea
Indictment No.: 2010-GS-45-135

Dear Sir or Madam:

Enclosed please find original and two (2) copies of **Motion for Speedy Trial or In the Alternative for Release from Jail** for filing in connection with the above-referenced matter.

Please return clocked copies marked "true certified" to this office in the enclosed self-addressed stamped envelope. Please advise my office of the hearing date and time.

If further information is needed, please do not hesitate to contact me.

With kind regards, I remain

Sincerely,
LAW OFFICE OF CEZAR E. MCKNIGHT, LLC

[dictated, but not read]

Cezar E. McKnight, Esquire

CEM/ee
Enclosure(s)
cc: Kimberly Barr, Esquire
Leevern McCrea





ANDERSON LAW FIRM, P.A.

265 WEST EVANS STREET, SUITE A, FLORENCE SC 29501-3464
 POST OFFICE BOX 1904, FLORENCE SC 29503-1904
 PHONE (843) 665-4300
 FAX (843) 665-5511

ATTORNEYS AT LAW

HENRY M. ANDERSON, JR.
 TODD S. TUCKER

December 20, 2010

Levern McCrea, Inmate
 Florence County Detention Center
 6719 Friendfield Road
 Effingham, SC 29541

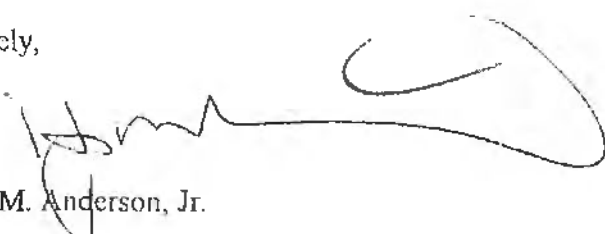
*PLEASE Refer to April 25, 2011
 letter. This is the final letter.*

Dear Levern:

It was a pleasure meeting with you on Sunday, December 19, 2010. I'm glad we were able to discuss your case. I'm in the process of getting some information on your case. Once I have it, I will come back to see you. I've ordered a copy of the transcript from your bond hearing. I've also written Cezar McKnight and asked him if I could come get his file. In the meantime, I will go ahead and subpoena the information from the car dealership in Greenville. Hopefully, I'll know something soon. In the meantime, if you have any questions or comments, please do not hesitate to call.

With kindest personal regards, I am

Sincerely,


 Henry M. Anderson, Jr.
 hds

as DEC 19, 2010

First lie, I'm in the process of getting some information on your case

Second lie, I've ordered a copy of your Bond hearing transcript?

Yes, I've ordered a copy of the transcript from your bond hearing.

I've subpoenaed the information from the car dealership.

on DEC 19, 2010 That he called the shop that

ANDERSON LAW FIRM, P.A.

265 WEST EVANS STREET, SUITE A, FLORENCE SC 29501-3464
 POST OFFICE BOX 1904, FLORENCE SC 29503-1904
 PHONE (843) 665-4300
 FAX (843) 665-5511

ATTORNEYS AT LAW

HENRY M. ANDERSON, JR
 TODD S. TUCKER

April 25, 2011

Leevera McCrea, 2010 2533 C-223
 Florence County Detention Center
 6719 Friendfield Rd.
 Effingham, SC 29541

Dear Leevern:

I have received several letters from you recently and I have answered them all in detail. You sent me another letter on April 20, 2011 and I will answer it in detail. I am not sure how much more clear I can be however I will answer them yet again.

First of all, I am not aware of anyone who is trying to deliberately delay your case. In order to have a second bond hearing, the law as I understand it says that you have to show a change of circumstance. I would like to see what was said at your first bond hearing so that we can certainly change the circumstances.

If you want to go forward in May, that is fine. As far as me representing you or not, I would personally like to be relieved as counsel. You put in a Motion to have me relieved. I sent it to Kimberly Barr. I asked her to have that matter heard as soon as possible.

As I have told you on three separate occasions, a Motion for Bond Reconsideration was submitted by Cezar McKnight in November of 2010. I have written Ms. Barr and asked her to schedule that as soon as possible. I have never had copies of your contract from dealerships. I am not even sure what dealership you are talking about. When I met with you on December 19, 2010, you told me that you had bought a 1996 Mercedes in Greenville. I think you indicated that you bought it in October or November of 2008. According to my notes you bought it from The ABU Auto in Greenville. I do not have any paperwork on that. I have never had any paperwork on that. However, if I am not relieved as counsel, I will certainly try and get some paperwork.

As far as paperwork that I have seen or statements that I have had, you have every single copy of everything that I have. You have copies of where I have requested it. I am not sure what else you want.

I can promise you that as soon as I get some additional information, I will send it to you.

With kindest personal regards, I am

Sincerely,

Henry M. Anderson, Jr.
 ccc



INCIDENT REPORT SUPPLEMENTAL

Page #: 6

Case Number: 0902123

E-15

Officer: 1727 LAMBERT, BRENDA

Date Entered/Changed: 03/15/2009

Reviewer:

Review Date:

WE WAS TOLD THAT [REDACTED] KNEW WHY LEVERN MCCREA KILLED CORA BROWN. WE TALKED TO [REDACTED], AND TOLD HER THAT WE NEEDED TO TALK WITH HER ABOUT CORA DEATH, AND SHE STATED THAT SHE DO NOT KNOW ANYTHING ABOUT HER DEATH. WE TOLD [REDACTED] THAT SOME ONE TOLD US THAT SHE KNEW WHY LEVERN KILLED CORA, AND [REDACTED] STATED THAT IF SHE KNEW ANYTHING SHE WOULD HAVE CALL OR COME BY, THE SHERIFF OFFICE, AND LET THE LAW KNOW. SHE STATED THAT SHE AND CORA WERE BEST FRIENDS, AND SHE WILL DO ANYTHING TO HELP US FIND OUT THE TRUTH. *****WILLIE BROWN*****

ON JULY 30, INVESTIGATOR BROWN ALONG WITH LT COLLINS, AND CHIEF JOHNSON MADE A LETTER FOR CHRIS BRIGGS WHICH STATED BASE ON OUR RECENT CONVERSATIONS, WE BELIEVE THE YOU HAVE VITAL INFORMATION ABOUT CORA BROWN DEATH. AT THIS POINT WE DO NOT BELIEVE THAT YOU ARE THE ACTUAL SHOOTER AND IF YOU FREELY AND VOLUNTARILY PROVIDE ALL OF THE TRUTHFUL DETAIL SURROUNDING CORA DEATH, AND PASS THE POLYGRAPH. CHRIS WILL BE CHARGED WITH ASS, AFTER THE FACT. THE LETTER WENT ON TO SAY THAT WE WILL TALK WITH THE JUDGE AND THE SOLICITOR TO GET CHRIS BRIGGS LENTIENCY ON HIS CHARGE.

INVESTIGATOR BROWN ALONG WITH LT COLLINS WENT TO [REDACTED], AND MADE CONTACT WITH [REDACTED], WHO WAS ABLE TO MAKE CONTACT WITH CHRIS BRIGGS. [REDACTED] STATED THAT CHRIS HAD TOLD HIM THAT HE DO NOT WANT TO TALK WITH US, WITH OUT A LAWYER. [REDACTED] STATED THAT HE WILL EXPLAIN THE LETTER TO CHRIS AS SOON AS HE CAN GET IN TOUCH WITH HIM.

INV. Willie Brown, Lt. Debra Collins & Chief Michael Johnson

*****WILLIE BROWN*****

JULY 30, 2009 LT COLLINS MADE CONTACT WITH [REDACTED] WHO STATED THAT HE WILL TALK WITH US BUT IT WILL BE AFTER MONDAY, CHRIS BRIGGS WANTS TO TALK WITH A LAWYER FIRST.

*****WILLIE BROWN*****

ON 08/04/2009 INV. BROWN WENT TO CHRIS BRIGGS HOUSE TO MAKE CONTACT WITH HIM, AND THE [REDACTED] WAS IN THE YARD BUT NO ONE CAME TO THE DOOR, I LEFT AND WENT DOWN THE ROAD, TO THE [REDACTED] WHERE CHRIS BRIGGS [REDACTED] I TEEN CALLED AND I WAS ABLE TO MAKE CONTACT WITH MS BRIGGS, AND I ASKED HER WHEN WAS THE LAST TIME SHE SEEN CHRIS, AND SHE STATED THAT SHE DO NOT KNOW NOTHING.

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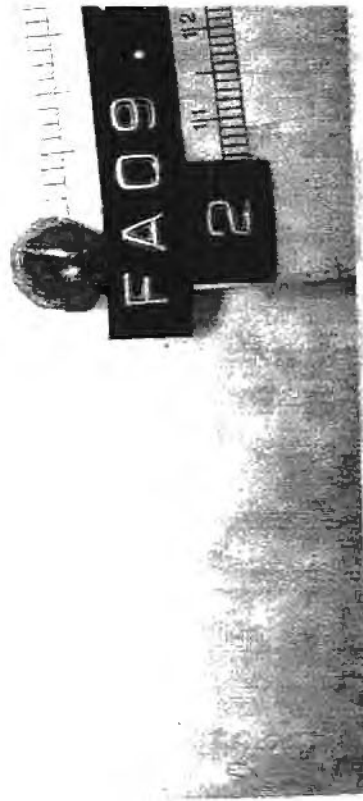
Your Honor, The first time I saw
 this, I was to go to the police station.





How to control the fire of a

gun in the field of battle



1. What is the purpose of this
document?



the literature on this



WILLIAMSBURG COUNTY SHERIFF'S OFFICE

207 SOUTH JACKSON STREET
POST OFFICE BOX 179
KINGSTREE, SOUTH CAROLINA 29556



KELVIN WASHINGTON, SHERIFF
DWIGHT WILLIAMS, CHIEF DEPUTY
MARIE MCBRIDE, ADMINISTRATIVE ASSISTANT

SHERIFF'S OFFICE 843-354-63
DETENTION CENTER 843-354-96
FAX 843-354-541

CONSENT TO SEARCH

13 MAR 09
DATE

Residence
LOCATION

I, Clinton Dorsey DO HEREBY CONSENT TO THE SEARCH OF MY PREMISES AND/OR AUTOMOBILE WITHOUT A SEARCH WARRANT BY AGENTS OF THE WILLIAMSBURG COUNTY SHERIFF'S OFFICE AND INDIVIDUALS IN THEIR COMPANY. THESE AGENTS ARE AUTHORIZED BY ME TO TAKE FROM MY PREMISES AND/OR AUTOMOBILE LETTERS, PAPERS, MATERIALS OR OTHER PROPERTY WHICH THEY DESIRE.

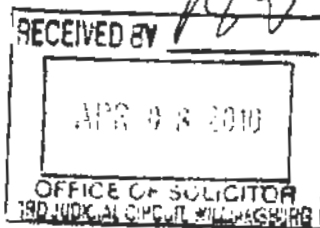
DESCRIPTION OF PROPERTY TO BE SEARCHED: 457 Copertown Rd
Nesmith S.C. 29580

THIS WRITTEN PERMISSION IS BEING GIVEN BY ME TO THE ABOVE NAMED FREELY VOLUNTARILY AND WITHOUT THREATS OR PROMISES OF ANY KIND.

WITNESS: Willie Brown

WITNESS: [Signature]

SIGNED: Clinton Dorsey





THE ... FIRE ... WORST THING A

WENT ...

THIS IS WHAT I NEED YOU TO

THE ... NOW.

MR. ...

THE ...

... BUT CONSPIRED
... DEPRIVE ME.

... YOU GIVE ME ...

... BACK "ALL" OF H ...

NOW!!!

... Supreme Court, and the ...
... my Mother, have copies of the paper.

I have been thinking about you
 and how much I love you. I have
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 much I love you. I have been
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Trust me, I am not a liar. I
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 you and how much I love you.



**LAW OFFICE OF
CHARLES DAVID BARR**
ATTORNEYS AND COUNSELORS AT LAW
Post Office Box 83
319 W. Main Street
Kingstree, South Carolina 29556
TELEPHONE: 843-355-8000
FASCIMILE: 843-355-8003
E-mail: barrandbarr@ftc-i.net

August 18, 2010

Samuel L. Floyd, Esquire
SAMUEL L. FLOYD, LLC
Attorney At Law
15 Courthouse Square
Kingstree, South Carolina 29556

RE: Levern McCrea
CDB File No.: 10-172 CRcdb

Dear Sam:

On April 6th, 2010, Caletha McCrea, the mother of Levern McCrea, hired me to represent her son, regarding two (2) charges: murder and possession of a weapon during a violent crime. I accepted representation for a fixed fee of Fifteen Thousand & 00/100 (\$15,000.00) Dollars. Ms. McCrea paid Five Thousand & 00/100 (\$5,000.00) Dollars.

I proceeded with investigating Mr. McCrea's case as I would any other, and on at least three (3) occasions I met with his mother at my office to update her regarding information that I had learned. This information was also shared with Mr. McCrea at the Florence County Detention Center, where I made an effort also to explain to him why it would be in his best interest to get the right bond Judge.

At the bond hearing, I asked McCrea some questions regarding his personal background, because if the Judge did set a bond, he would certainly want to know where McCrea would be staying, but bond was denied because he was regarded as being a potential danger to the community. McCrea was immediately taken back to Florence County Detention Center after the bond hearing. Subsequently, I was appointed to represent McCrea's Co-Defendant, Briggs, who is charged with misprisonment of a felony. I did not accept representation, but did discover when Briggs's bond hearing was being held. My information led me to believe that Briggs was the only eye witness to the alleged killing. I went to the bond hearing. At Briggs's bond hearing, he gave a detailed statement, claiming that McCrea had picked him up, took him to North Carolina where they obtained an automobile of a girlfriend, came back to South Carolina, went to the victim's residence and shot and killed her. I asked the Court Reporter to transcribe Briggs's statement. Briggs was given a Twenty-Five Thousand & 00/100 (\$25,000.00) Dollars Surety Bond. Moreover, I also learned that Briggs had taken Deputies to a secure location where he claimed McCrea had discarded the weapon. Law enforcement officials got divers to search the lake and recovered the gun.

My representation of McCrea ended at the beginning of the preliminary hearing, at which time autopsy and ballistics were not yet available (The first preliminary hearing was cancelled at the request of the Sheriff Department).

On the day of the scheduled preliminary hearing, Mr. McCrea came into the hearing room very upset and making all kinds of accusation against me. Some jailhouse lawyer had obviously told him that he needed "discovery" in order to effectively prepare for a preliminary hearing.

The Judge continued McCrea's preliminary hearing, and also honored my request that he not be allowed to testify; and moreover, giving McCrea time to get another lawyer. Upon leaving the Courtroom I did inform Mr. McCrea's mother that I would no longer be representing her son, and hopefully for peace sake I would give her a partial refund in the amount of Two Thousand Five Hundred & 00/100 (\$2,500.00) Dollars, which I did.

The following exhibits are chronologized in support of reasonable diligence and promptness with respect to particular case;

- Exhibit # 1: Newspaper account of Arrest of Christopher L. Briggs and Levern McCrea
- Exhibit # 2: Arrest Warrant for Murder, March 29th, 2010
- Exhibit # 3: Arrest Warrant Possession of a Weapon During a Violent Crime delivered March 30th, 2010
- Exhibit # 4: Notice of Appearance dated April 9th, 2010
- Exhibit # 5: Request for a Preliminary Hearing dated April 9th, 2010 (Facsimile & Formal Request)
- Exhibit # 6: Notice of Motion and Motion To Set Bond and Certificate of Service dated April 12th, 2010
- Exhibit # 7: Notice of Preliminary Hearing dated April 14th, 2010
- Exhibit # 8: Notice to Levern McCrea regarding Preliminary dated April 15th, 2010
- Exhibit # 9: Correspondence from Levern McCrea dated April 20th, 2010
- Exhibit # 10: Transmittal to Magistrate to transport Defendant from Florence County to Williamsburg County dated April 15th, 2010
- Exhibit # 11: Order of Transportation
- Exhibit #12: Appointment by Clerk to represent Defendant Briggs dated April 9th, 2010
- Exhibit # 13: Arrest Warrant for Defendant Briggs dated March 30th, 2010
- Exhibit # 14: Facsimile to Clerk regarding Defendant Briggs dated April 9th, 2010

- Exhibit # 15: Correspondence to Clerk dated April 19th, 2010 concerning Defendant Briggs and to Levern McCrea
- Exhibit # 16: Correspondence from Levern McCrea dated April 25th, 2010
- Exhibit # 17: Correspondence from Levern McCrea dated April 26th, 2010
- Exhibit # 18: Letter from Gary Wise, McCrea's cell mate dated April 21, 2010
- Exhibit # 19: Correspondence to Levern McCrea regarding Florence County Detention cell mate Gary Wise, Rule 5 Discovery, date for bond and date for Preliminary Hearing
- Exhibit # 20: Correspondence to Levern McCrea transmitting Bond Order dated May 20th, 2010
- Exhibit # 21: Request to Court Reporter for transcript of Christopher Briggs's Bond proceedings dated May 21st, 2010
- Exhibit # 22: Correspondence to Levern McCrea regarding Consent Order to be Relieved as Counsel
- Exhibit # 23: Correspondence from Levern McCrea dated May 6th, 2010

I met with this Complainant for the first time and discussed his case with him at the Williamsburg County Detention Center with his mother, as well as other family members standing outside. After agreeing to represent Mr. McCrea, I again saw him at the Williamsburg County Detention Center, on April 16th, 2010, to discuss issues regarding bond and preliminary hearing processes. Thereafter, prior to May 14, 2010, Levern McCrea was transferred to the Florence County Detention Center in Effingham, South Carolina. I went to Effingham primarily to discuss his preliminary hearing cancellation and choice of bond Judge. We also, in particular, talked extensively about Mr. Christopher Briggs. I again spoke briefly with the Complainant at the Courthouse in Williamsburg County on May 14, 2010, the date of the bond hearing.

I agreed with the Complainant's mother, with his knowledge and consent, to represent him for a fixed fee of the sum of Fifteen Thousand & 00/100 (\$15,000.00) Dollars on the charges of murder and possession of a weapon during a violent crime. Immediately following the preliminary hearing proceedings, when I left Court, I informed the Complainant's mother, that I would not be able to continue representing her son, and we agreed upon a partial refund. I did so not because she was entitled to it, but because of the very circumstances, as they now exist, I wanted to avoid.

If you need something further, or still need to talk with me, please let me know.

With kind regards,

Sincerely,

Charles David Barr

CDB/dc
Enclosure(s)



2-9-2011

MR. ANDERSON, how I've waited to write this letter to you. This will be, my last letter to your office. You will NEVER, EVER, REPRESENT ME IN ANY damn case. I knew you were a "snake", when you came here to get some information from me, lying about getting me a "P-R Bond". That's why you've BEEN withholding and conspiring, to keep my alleged co-defendant and EVERYONE ELSE'S statement's, out of my hands. So that the States Attorney Office, can gain tactical advantage over me illegally, to railroad me with your help. That's why the States Attorney's office, has had the newspaper constantly, putting my name, picture, and address in that Weekly Observer. how stupid, do you think I am !! You Bastered!

2)

Then you write me once more, lying about "asking" the State Attorneys Office, to bring me over for a bond hearing, that you "NEVER" put in a motion for? "How stupid do you really think I am!! The court's don't do anything without the proper paper work. YOU SNAKE!! Then you had the nerve, to write me again, lying for, and about CEZAR Mckenight, putting in a motion for me a bond hearing on NOV 12, 2010. Which is a straight up lie from hell. That's the reason me and that snake bastered, had a falling out when he had my case. Because he started lying about getting me another bond hearing, just like you have done, so disrespectfully.

3)

BECAUSE YOU HAVE LIED TO ME
AND MY FAMILY SO DISRESPECTFULLY.
THERE IS NO WAY, YOU WILL REPRESENT
ME EFFECTIVE OR HONESTLY, ON ANY
ALLEGED CHARGE OF ANYTHING. THAT
YOUR CONSPIRING WITH THE STATE'S
ATTORNEYS OFFICE ON, TO RAILROAD ME.
SO I'M REQUESTING THAT YOU SERIOUSLY,
PUT IN THE MOTION TO DISMISS YOUR
LYING ASS FROM MY CASE. BECAUSE
WE DEFINITELY HAVE A CONFLICT OF
INTEREST. AND MEMBERS OF MY
FAMILY, WILL BE IN COURT TO HELP
ME ADDRESS THE LIES THAT YOU
HAVE TOLD TO US AND ON PAPER.
YOU SON OF A BITCH SNAKE!!

H)

But it don't matter whether
 you put it in, or not. Because
 by the time you get this letter
 I will have had, many letters ready
 to go out too. the South Carolina
BARR ASSOCIATION, South Carolina
SUPREME COURT, the BETTER BUSINESS
BEARON, the COMMISSION ON LAWYERS
CONDUCT, and the Williamsburg
COUNTY CLERK OF COURT OFFICE. TO
 HAVE YOU DISMISSED FROM MY CASE.

"You not smart enough to play ME"
 Like you railroaded ZAKERY MORGAN,
 and he was EVEN helping you.
 You just did him like a dog.
 You lawyers will learn one day
 about lying and railroading people

5)

Did you REALLY expect me to Believe the Bullshit that you were telling me when you came to see? I don't know you! AND I NEVER TRUSTS you anyway! We're NOT Friends From back in the day's! AND IF you and Cezar, have given the State's Attorneys Office, Copies of my paperwork that I sent to CEZAR. For the States Attorneys, to have the upper hand of that information in this case. AND It will come out during the States Attorney's Response. I'm gonna sue your SNAKE ASS. AND For you to call yourself Slick, to disrespectfully, put in a motion for a speedy trial without keeping me Fully informed First, of what you're doing.?

6) That tells me that you and the States Attorneys Office, has already had the stage set for me in April. Like your slick ass stated when you came to see me, you SNAKE Bastered! Who's wife do you think your Fuck-
ing playing with? IF you think that I'm gonna let you Rail Road me like you people do these fools, that keep coming back and fourth to Jail for Recreation. Then you got another thing coming, you SNAKE. You have crossed the line with me. Stay the Fuck away from me. YOU SNAKE! AND ANY letters you send to me, will hit the trash, Bastered!

Florence County Detention Center
6719 Friendfield Road
Effingham, SC 29541

NAME: KEVIN McCREA
2010 2533

FLORENCE SC 295

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ANDERSON LAW FIRM
265 WEST EVANS STREET
Suite A, FLORENCE, S.C
29501-3464

295013464





MR. ANDERSON, I KNEW THAT YOU WERE NOT TO BE TRUSTED YOU SNAKE ASS LIAR. DID YOU REALLY THINK THAT I DIDN'T KNOW THAT MY ALLEGED CO-DEFENDANT HAD SAID THAT HE WAS THERE WHEN THIS CRIME TOOK PLACE? AND THE FACT THAT HE ALSO SAID THAT I KILLED HER BECAUSE SHE WAS SAYING THAT I WAS GAY? I KNEW OF THESE LIES FROM CHARLES BEEZE, AND YOU WITHHELD THIS INFORMATION FROM ME RIGHT FROM THE START, YOU SNAKE. THEN YOU GET UP IN COURT AND CONSPIRE WITH THE STATE TO LET THEM BRING UP CHARGES THAT ARE DISMISSED CHARGES. THEN YOU SNAKE ME BY MAKING IT SEEM THAT THERE WAS ANOTHER GUN I USED IN THIS CRIME,

2.

Do you really Fucking think that
you going to defend me on a Murder
charge, the way you snake^{me} at my Bone
hearing that you set me up for. Well,
think again Mother Fucker!!! Dismiss
your self you snake. This time I
will write to A "higher court" and I
will be sending them copies of the
lies that you wrote to me. I dont
know how much the state is paying
you and I dont give a Fuck. But
you will not be representing me
on anything. The minute you spoke
about CEZAR midnight speed trial
motion and never mentioned anything
else that we talked about. That's when

3. I should have address the court to dismiss your lying, conspiring ASS. "I'M GONNA GIVE YOU A word OF advise, Stay the Fuck away FROM ME". I will now have my Family to hire me A paid lawyer that will defend me and get me a Bond. I will be putting in the paper work to have you dismissed. By the way, you are no longer allowed to call Mrs. Edna Gogum. I wrote to her last Thursday telling her about this Feeling that I had about you. Damn, IF I wasn't Right, I told her over and over, that you was not to be trusted. Maybe now she will see what I was telling her about you, you SNAKE.

4.

I knew when my left eye was jumping for this whole two weeks. And it has never failed me before in life. And I let you get away with some shit that I should have known better. But that all right, because you dare. That's why you and the state attorney set me up to go in front of juries for the second time, and not in front of Judge Newman. I will be sending the higher courts all of the lies that you put on paper to me. Maybe them seeing the proof will convince them that you have been ineffective and lying to me in my case.

Florence County Detention Center
6719 Friendfield Road
Effingham, SC 29541

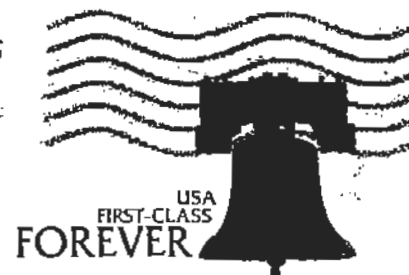
NAME: LEVERN McCREA

2010 - 2533

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FLORENCE SC 295

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MR. HANK ANDERSON
265 WEST EVAN STREET
SUITE A, FLORENCE, S.C
29501

29501\$3454



STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Levern McCrea, #348291,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2012-CP-45-0363

**POST-HEARING BRIEF IN
OPPOSITION TO
POST-CONVICTION RELIEF**

In response to Applicant's "Post-Hearing Brief in Support of PCR Application" and testimony and evidence presented at the evidentiary hearing, Respondent submits:

A. Applicant's shackles at trial were not visible to the jury and thus did not violate his Constitutional rights.

"The law has long forbidden routine use of visible shackles during the guilt phase." Deck v. Missouri, 544 U.S. 622, 626, 125 S. Ct. 2007, 2010, 161 L. Ed. 2d 953 (2005) (emphasis added). The credible testimony of Assistant Solicitor Kimberly Barr at the evidentiary hearing was that Applicant's restraints were not visible to the jury. Ms. Barr testified Applicant was shackled by his legs during the trial, which was standard security protocol. She further testified that Applicant was free to move about the courtroom, and he was not visibly constrained to a table, but she did not recall the restraints being visible to the jury.

Because the shackles were not visible, Applicant's Constitutional rights were not violated in this regard. There can also be no prejudice to Applicant in any manner because the jury did not see his shackles. This allegation should be denied.

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THIRD JUDICIAL CIRCUIT

B. Applicant failed to meet his burden of proving any Brady violations.

Applicant alleges Solicitor Kimberly Barr failed to turn over several pieces of Brady material before or during the trial. However, his allegations were directly contradicted by Barr's credible testimony at the evidentiary hearing. Brady v. Maryland, 373 U.S. 83 (1963) requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1998). Impeachment or exculpatory evidence is material only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Ms. Barr testified that she turned over all Rule 5 and Brady materials to attorney Cezar McKnight while he represented Applicant, and when he was relieved from the case and attorney Henry Anderson was appointed, she turned discovery over to him, as well. Ms. Barr testified that certain discovery was not available when the initial discovery went out, but it would have been supplemented as the Solicitor's Office received it. She testified that when Anderson was relieved from the case, she sent the discovery to Applicant himself. Ms. Barr credibly testified that she gave Applicant all the Brady material that she had.

Applicant alleges a "letter of leniency" was withheld, which was allegedly a communication from the investigators to Chris Briggs, a witness to the crime. Ms. Barr testified that she had never seen any such letter and did not have a copy of this letter, and she checked with

law enforcement about the letter during the course of the trial, but never obtained the letter. The letter, which was not introduced at the PCR hearing,¹ was discussed in a supplemental investigative report which was provided to Applicant in his pre-trial discovery. If the letter did, in fact, exist, Applicant was provided information about it and could have sought to obtain a copy from law enforcement. The State did not have a copy of the letter at any point and did not withhold it from Applicant. Because it was not in the possession of or known to the prosecution, and it was not suppressed by the prosecution, this cannot be a Brady violation. Gibson, 334 S.C. at 524, 514 S.E.2d at 324. Additionally, it was not material to the issue of guilt or innocence. Id. Most importantly, this letter could only be used as impeachment evidence, and the outcome of the trial would not have been different if Applicant had the letter, so there is no resulting prejudice. Clark, 315 S.C. at 388, 434 S.E.2d at 268.

Furthermore, Applicant claims photographs of bullets used at trial were not provided to him in discovery, but Ms. Barr testified the photographs were specifically turned over to him before the trial along with other evidence. Ms. Barr testified Applicant received all Rule 5 and Brady material before the trial or as she received it, and a status conference was held before Judge Clifton Newman before the trial to ensure Applicant had all discovery material. Applicant has failed to prove that any Brady material was actually withheld from him, and this allegation should be dismissed.

¹ Respondent notes Applicant cannot meet his burden of proving prejudice because he did not actually produce the document he alleges was withheld from him, leaving this Court to speculate about its existence or whereabouts. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); Glover v. State, 318 S.C. 496, 498-99, 411 S.E.2d 538, 540 (1995).

C. Applicant either forfeited or waived his Sixth Amendment right to counsel through his conduct.

Respondent hereby incorporates all previous argument and case law provided to this Court in its original Pre-Hearing Brief in Opposition to Post-Conviction Relief. The testimony presented by the witnesses at the evidentiary hearing further support Respondent's argument.

"[F]orfeiture results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right." United v. Goldberg, 67 F.3d 1092, 1100 (3d Cir. 1995). Although the record before the Court is clear that the trial court did not advise Applicant of the risks and dangers of representing himself, those warnings were not required for Applicant to forfeit his right to counsel. Like in Applicant's case, courts have found that a defendant may forfeit his right to counsel if his behavior is sufficiently egregious, even if it does not rise to a level of physical violence. See U.S. v. Thomas, 357 F.3d 357 (3rd Cir. 2004); Bultron v. State, 897 A.2d 758 (Del. 2006).

At the evidentiary hearing, Applicant's first attorney, Charles Barr, testified he had a contentious relationship with Applicant during his representation. He testified about letters he received from Applicant, admitted as an exhibit, which accused him of conspiring against him with the State, called him a "bastard," and threatened to attack and ruin his business reputation. Mr. Barr also testified about a grievance Applicant filed against him, as well as a document he prepared in response to the fee dispute raised by Applicant, admitted into evidence, which documented all action he took on the case and an incident in which Applicant came to a hearing "very upset and making all kinds of accusation against me." State's Ex. #2, p. 2 of 5. This testimony evidences Applicant's inappropriate and reprehensible conduct toward Mr. Barr and lays the foundation for a pattern of egregious conduct toward all of his attorneys.

Applicant's second attorney, Cezar McKnight, testified Applicant had a bad temper and frequently sent him letters filled with expletives and accusing him of conspiring with the State. He further testified that even though Applicant never physically threatened him, he feared for his life and safety in the presence of Applicant based on his communications in the letters. Similarly, Applicant's third attorney, Henry Anderson, testified Applicant sent him several threatening and inappropriate letters and Applicant refused to work with him, and one of Applicant's letters to him was eventually the basis upon which Anderson was removed from the case.

Applicant's terrible and threatening behavior toward all three of his attorneys clearly amounted to a forfeiture of his right to counsel. The court warned Applicant as his attorneys were being relieved that he needed to examine his own attitude and conduct, (Dec. 6, 2010 Mot. Tr. p. 14, line 6-9), and specifically told Applicant that if he continued his disrespectful behavior, Counsel Anderson would be relieved. (June 22, 2011 Mot. Tr. p. 40, line 19-p. 41, line 10). If his behavior continued, despite the warning, the court relieved Counsel Anderson and gave Applicant fifteen days to either retain counsel or proceed *pro se*. Applicant clearly forfeited his right to counsel through his behavior, as evidenced by the testimony presented at the evidentiary hearing.

In the alternative, the testimony presented at the evidentiary hearing supports Respondent's assertion that Applicant waived his right to counsel through his behavior. Cezar McKnight testified that he specifically remembered advising Applicant that he would "be a fool if he represented himself." This, combined with the warnings from the courts before relieving counsel that Applicant was not an attorney and was not trained in the law, creates sufficient advice of the dangers of representing himself at trial by a source other than the trial court. Furthermore, Applicant's testimony at the evidentiary hearing shows he had sufficient

background under the Cash factors to make a valid waiver of counsel despite a lack of Faretta warnings. State v. Cash, 309 S.C. 40, 419 S.E.2d 811 (Ct. App. 1992).

Finally, for the Court's reference, Respondent notes an unpublished opinion from the South Carolina Court of Appeals finding a valid waiver of the right to counsel in a similar situation. State v. Grant, No. 2011-UP-499, 2011 WL 11735791 (S.C. Ct. App. 2011).

Accordingly, Respondent asserts Applicant has failed to meet his burden of proving an allegation that he is entitled to post-conviction relief and asks this Court to deny his application.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN,
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
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P.O. Box 11549
Columbia, S.C. 29211

August 2, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG) FOR THE THIRD JUDICIAL CIRCUIT

2012-CP-45-0363

Levern McCrea, #348291,

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER GRANTING
POST-CONVICTION RELIEF**

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CLERK OF COURT
JUDICIAL CIRCUIT

This matter comes before the Court by way of an Application for post-conviction relief filed on July 9, 2012, by Levern McCrea (Applicant). The State (Respondent) filed a return on September 5, 2013, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on June 1, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office appeared on behalf of the State. At the hearing, Applicant testified on his own behalf. Charles Barr, Esquire (Barr); Cezar McKnight, Esquire, (McKnight); Henry M. Anderson, Jr., Esquire (Anderson); and Assistant Solicitor Kimberly V. Barr (Assistant Solicitor) of the Third Circuit Solicitor's Office also testified. After a review of the record and all evidence presented, this Court grants Applicant's relief as to Applicant's allegation that he was not properly advised of the dangers of pro se representation under Faretta. Accordingly, Applicant is granted a new trial. However, this Court finds Applicant has failed to meet the requisite burden of proof on the remaining allegations in his application and denies and dismisses those allegations with prejudice.

PROCEDURAL HISTORY

The records before this Court establish the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. During the September 2008 term, the Williamsburg Grand Jury indicted Applicant for murder, possession of a weapon during a violent crime, and misprison of a felony (2010-GS-45-135). Applicant originally retained Barr to represent him on the charges. Applicant eventually fired Barr due to irreconcilable differences. The court appointed McKnight, to represent him. McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. After hearing from both McKnight and Applicant, the court relieved McKnight and appointed Anderson. Anderson filed a motion to be relieved as counsel, citing irreconcilable differences. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King. Judge King denied the motion to be relieved after hearing from Anderson, Applicant, and Assistant Solicitor. Judge King advised Applicant that if he continued his course of conduct then he would have no choice but to relieve Anderson and require Applicant proceed pro se.

Shortly thereafter, Applicant wrote Anderson various letters stating that Anderson was lying, would not represent him properly, and explaining that he wanted Anderson relieved and he would represent himself. By Order filed September 14, 2011, Judge King relieved Anderson. The Court noted that Applicant was "very difficult if not impossible to deal with, not only as a client but as an individual. He has been abusive, vile, and profane to Anderson as evidenced by letters dated February 9, 2011 and May 17, 2011." Applicant proceeded pro se in his case and represented himself during his jury trial before the Honorable W. Jeffrey Young. The jury found Applicant guilty as indicted for murder and possession of a



weapon during a violent crime. On October 20, 2011, Judge Young sentenced Applicant to life in prison for murder, and five years imprisonment for possession of a weapon during a violent crime to run consecutively with the sentence for murder.

Applicant subsequently filed for appeal. Applicant failed to timely serve the notice of appeal on opposing counsel, as provided for in Rule 203, SCACR. Applicant's pending appeal was dismissed by Order dated April 20, 2012. The remittitur was issued on August 3, 2012.

Applicant filed a timely application for post-conviction relief on July 9, 2012. An evidentiary hearing into the matter was convened on June 1, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office appeared on behalf of the State.

SUMMARY OF FACTS

Facts for Underlying Murder and Weapon Offense Charge

Applicant and his friend, Christopher Briggs (Briggs), went to Mt. Olive, North Carolina together on March 10, 2009. (Trial Tr. 122.) Applicant was going to North Carolina to meet up with Roberta Smith (Smith) who has a child in common with Applicant. (Trial Tr. 122.) Applicant and Briggs stayed there for a while and left that afternoon "about dark." (Trial Tr. 127.) Briggs testified when they left they were in Smith's vehicle because Applicant wanted to use it to tow another vehicle he owned back to his house. (Trial Tr. 127-128.) Briggs testified they consumed alcohol and Applicant smoked a blunt containing tobacco and cocaine on their way home. (Trial Tr. 129.) Briggs testified he fell asleep on their drive home and when he woke up he was still in the passenger seat of Smith's vehicle which was parked in Cora Brown's (Victim) front yard. (Trial Tr. 130.) Briggs testified Applicant was not in the vehicle when he woke up. (Trial Tr. 130.) Briggs testified he heard a gunshot coming from Victim's residence,

observed two cars pass by the residence, and then heard several additional gunshots. (Trial Tr. 130.) Briggs testified a couple of moments later Applicant came out of Victim's residence walking "with a little speed." (Trial Tr. 135.) Briggs testified Applicant was carrying a little black bag and a purse when he left Victim's residence. (Trial Tr. 135.)

Briggs testified Applicant said, "Man listen to me, listen man my life is in your hands. If you feel like you going to say something I can go ahead and take care of this now." (Trial Tr. 136.) Briggs testified he took that statement to mean that Applicant would do him bodily harm. (Trial Tr. 137.) Briggs testified Applicant had a "rubber glove . . . like they use in the hospital" on his right hand when he came out of the house. (Trial Tr. 138.) Briggs testified Applicant also changed the license plate on Smith's vehicle the night of the murder. (Trial Tr. 140-141.) Briggs testified Applicant told him, "I took care of that. Won't be calling nobody else no faggot." (Trial Tr. 141.) Briggs testified Applicant told him he knocked on Victim's door and she cracked the door open, he forced his way into her home. (Trial Tr. 141.) Briggs testified Applicant then drove Smith's vehicle back to North Carolina with Briggs in the car. (Trial Tr. 141.) Applicant and Briggs then stayed the night at Smith's residence and left early the following morning. (Trial Tr. 142.) Briggs testified Applicant attempted to sell the gun to Smith's brother when they returned to North Carolina. (Trial Tr. 144.) Smith's brother did not purchase the gun.

Briggs testified on their way back to South Carolina, Applicant had the gun in a bag. Briggs testified Applicant pulled over and threw the bag in a wooded area. (Trail Tr. 146.) Briggs testified he later took law enforcement to the area where Applicant threw out the gun and they were able to recover it. (Trial Tr. 150.) Briggs testified in the weeks after Victim's murder,

Applicant told Briggs if Applicant got arrested to go recover the gun and shoot Applicant's sister, Stephanie, so the police would think the killer is still out there. (Trial Tr. 154.)

Motions to Relieve Counsel

On the April 6, 2010, Applicant retained Barr to represent him in his criminal trial. (PCR Tr. 100-101.) Barr testified he met with Applicant several times and represented him at a bond hearing. (PCR Tr. 101.) Barr testified Applicant's bond motion was denied and Barr requested a preliminary hearing. (PCR Tr. 101-102.) Barr testified the first preliminary hearing was cancelled by the sheriff's office, but during the second preliminary hearing, Applicant came in "raising sand" with Barr and he had to request a continuance in order to give Applicant time to get another attorney. (PCR Tr. 102-103.) Barr testified he was later relieved as counsel through a consent order. (PCR Tr. 103.) Barr testified he was relieved because Applicant was "very upset" with him for failing to file Rule 5 motion prior to the preliminary hearing. (PCR Tr. 103.) Barr testified Applicant was "talking a lot of trash" to him and he does not allow clients to speak to him in that manner. (PCR Tr. 103-104.) Barr testified Applicant was going to fire him, so he believed their separation was mutual. (PCR Tr. 104.)

Applicant was appointed his second attorney, McKnight, by Judge Clifton Newman in July 2010. McKnight testified he filed a motion to be relieved because he felt like he "was getting the short end of the stick." (PCR Tr. 115.) McKnight testified Applicant went out and hired Barr and then said he was indigent and Judge Newman appointed McKnight. (PCR tr. 115-116.) Judge Newman did not relieve McKnight at that time and McKnight testified he "shook it off" and "began to do what I could to vigorously represent [Applicant]." (PCR Tr. 116.) On November 14, 2010, McKnight filed a motion to be relieved and a hearing was held before the Honorable George C. James, Jr. on December 6, 2010. (PCR Tr. 116.) McKnight testified he

filed that motion because "there existed such a level of acrimony between myself and [Applicant] that we could not effectively communicate." (PCR Tr. 116.) McKnight testified they came up with viable defenses but then Applicant would "bombarded with all of this mail that was laced with profanity." (PCR Tr. 116.) Applicant accused McKnight of being in "cahoots" with the Solicitor's Office, which McKnight testified was not true. (PCR Tr. 116.) At the conclusion of that hearing, Judge James relieved McKnight and allowed another attorney to be appointed to represent Applicant. (Dec Tr. 20.)

Applicant's third attorney, Anderson, was appointed by the Williamsburg County Clerk of Court in December 2010. Anderson testified he represented Applicant until September 2011. (PCR Tr. 131.) Anderson testified he met with Applicant seventeen times, received discovery from the State, and reviewed the discovery with Applicant. (PCR Tr. 131-132.) Anderson reviewed possible defenses with Applicant and was preparing Applicant's case for trial. (PCR Tr. 132.) Anderson testified when he met with Applicant in person he did not have an issue with him, however, Anderson testified he received numerous letters accusing him of lying to Applicant, conspiring with the State, and stating Applicant no longer wanted his services. (PCR Tr. 133.) Anderson testified the letters were the basis for him filing a motion to be relieved. (PCR Tr. 136.) On June 22, 2011, a hearing was held on Anderson's motion to be relieved as counsel for Applicant before the Honorable Howard P. King. During that hearing, Anderson testified his relationship with Applicant deteriorated and Applicant told Anderson he did not want to talk to him anymore and "[f]orbid me to talk to his girlfriend, his family. He didn't want anything else to do with me." (June 2011 Tr. 9.) At the conclusion of that contentious hearing, Judge King gave Applicant the choice to proceed pro se or continue with Anderson. Applicant stated, "I don't have a choice, I am going to have to keep him. I don't have a choice; the court is



not giving me a choice.” (June 2011 Tr. 40.) Judge King denied Anderson’s motion to be relieved and lectured Applicant about treating Anderson with respect. (June 2011 Tr. 41.) Judge King advised Applicant that if he found out Applicant was not treating Anderson with respect, he would relieve Anderson and have Applicant proceed pro se with Anderson as possibly stand-by counsel. (June 2011 Tr. 41.)

Following that hearing, Anderson testified he thought he and Applicant were doing “pretty good.” (PCR Tr. 141.) Anderson testified he met with Applicant ten times after the June 2011 hearing before Judge King. (PCR tr. 141.) However, on August 29th, Applicant wrote Anderson a letter stating,

Because of your deliberate betrayal of me and my family for the third time, I no longer need your lying assistance. I will now represent myself in my case when the time comes. Now you can put in the paperwork to Judge King or Judge James. I don’t give a damn. Or I’ll do it myself. You have played with my freedom long enough. You protected Kimberly Barr and the State who is paying you. There are no more warnings, [Anderson].

(PCR Tr. 141-142.) Anderson testified that letter was the basis of Judge King’s order relieving him as counsel. (PCR Tr. 142.) In Judge King’s order, Judge King found Applicant waived his right to counsel based on his behavior.

PROCEDURAL HISTORY AND ALLEGATIONS FOR THE CURRENT ACTION

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

1. Denied the right to appeal
 - a. Applicant did not voluntarily and intelligently waive his right to appeal.
2. Defendant’s waiver of right to counsel was not knowing and voluntary
 - a. Defendant was not warned of dangers of self-representation
3. “Was Applicant 3 trial counsels ineffective prior to Applicants trial, which forced Applicant to proceed to trial with no trial counsel, or standby counsel and applicant never waived his rights to counsel in a violation of Applicants Const. rights of the U.S. under

the 6th Amendment , and a violation of Applicants due process and equal protection under the 14th Amendment?"

- a. "Did the investigators commit investigative misconduct in a violation of Applicants U.S. Constitutional right under the 14th Amendment under De Process and Equal Protection of law?"

On October 20, 2014, Applicant, through counsel, amended his post-conviction relief application to include the following allegations:

1. "Preliminary hearing taken, in State v. McClure, 277 S.C. 432, 289 S.E.2d 158; State v. Funderburke, 259 S.C. 256, 191 S.E.2d 520. S.C. Code Law 17-23-160."
2. "That July 12, 2009, to July 8, 2010, indictment flawed. It has been rubber stamped. State v. Rector, 158 S.C. 212, 155 S.E. 385."
3. "Direct Appeal taken, State v. White, 208 S.E.2d 35, 29."
4. "Sixth Amendment right to counsel was violated and Fourteenth Amendment Right to due process of law was violated. Gardner v. State, 570 S.E.2d 184; U.S. v. Midgett, 342 F. 3d. 321."
5. "State made Applicant wear shackles during trial and the jurors saw them when he sat down and stood up. Deck v. State of Missouri, 125 S.Ct. 200 (2005). That prejudiced Applicant."

On December 3, 2014, Applicant, through counsel, issued a motion for summary judgement alleging there were no genuine issues of material fact to be decided in Applicant's matter as Applicant was not properly advised of the dangers of proceeding pro se prior to trial pursuant to Faretta v. California, 422 U.S. 806 (1975). Applicant's motion stated the record failed to demonstrate Applicant made an informed choice when proceeding *pro se* in his jury trial.

On February 20, 2015, Applicant's post-conviction relief counsel, Charles T. Brooks, III, issued a motion to be relieved as Applicant's counsel on three grounds:

1. Applicant requested Brooks be relieved;
2. Applicant threatened, harassed, and displayed vulgarity in several written communications;
3. Applicant filed two grievances with the Office of Disciplinary Counsel, which damaged their relationship.

On February 25, 2015, Judge Cothran signed Brooks' motion to be relieved as counsel and asked the clerk's office to appoint another attorney for Applicant. In October of 2016, Lance S. Boozer, Esquire (Boozer) was appointed by the clerk's office to represent Applicant in his post-conviction relief matter.

On July 12, 2015, Respondent issued a response to Applicant's motion for summary dismissal stating Applicant forfeited his Sixth Amendment right to counsel due to his continued irreprehensible behavior towards three separate defense counsels. On February 8, 2016, the Honorable Tanya A. Gee filed an order denying Applicant's motion for summary judgment finding issues of material fact exist with regard to whether the Applicant forfeited his right to counsel based on his behavior. Judge Gee also ordered the State to provide Applicant with a copy of his prior transcripts.

In May 2018, Respondent received a pro se amendment to Applicant's original post-conviction relief application. In Applicant's amendment, he accuses Assistant Attorney General Julie Coleman (AAG Coleman) and the "State's attorney's / witnesses" of conspiring for the purpose of impeding, hindering, and obstructing the "due court of justice."

After submission of pre-hearing briefs by both parties, Applicant's post-conviction relief hearing went forward before the Honorable George M. McFaddin on June 1, 2018. Applicant was represented by Boozer and AAG Coleman represented the State. Applicant proceeded on the following issues:

1. Applicant's rights were violated when he was shackled throughout the duration of his trial.
2. Brady violations were committed by the State resulting in prosecutorial misconduct.
3. Applicant was denied his right to counsel.

Following the evidentiary hearing, this Court requested post-hearing briefs from Applicant and Respondent.



FINDINGS OF FACTS AND CONCLUSIONS OF LAW

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

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness



under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 300 S.C. 115.

Applicant alleges his rights were violated because he was shackled during his trial.

Applicant alleges his rights were violated because he wore shackles during his trial, which he claims made it “virtually impossible” to move about the courtroom. (PCR Tr. 77.) Applicant further alleges the jury observed his shackles during the trial. (PCR Tr. 77.) Applicant testified during his trial he also had a remote controlled “shock device” strapped to his chest and back. (PCR Tr. 77.) Applicant testified the leg shackles would get stuck periodically throughout the trial where the officer had to pull up his pants to unlock the shackles. (PCR Tr. 77.) Applicant testified you could hear the shackles when he would walk around. (PCR Tr. 78.) Applicant testified the “shock device” was not visible, but that officers had a remote control. (PCR Tr. 78.)

Assistant Solicitor Barr testified she believed Applicant may have had leg restraints on during the trial. (PCR Tr. 166.) Assistant Solicitor Barr testified she was unaware of any device under his clothes until she heard his testimony during the PCR hearing. (PCR Tr. 166.) Assistant Solicitor Barr testified she did not make a request to have Applicant placed in restraints, however, her experience has been any defendant who has been on trial for a serious crime like Applicant, it would be proper to have him in restraints. (PCR Tr. 167.) Assistant Solicitor Barr testified there was never a hearing regarding Applicant’s restraints. (PCR Tr. 167.) Assistant Solicitor Barr testified she did not see Applicant’s leg restraints during court. (PCR Tr. 168.) Assistant Solicitor Barr testified she observed them during breaks when law



enforcement would secure Applicant to go in and out of the courtroom outside of the presence of the jury. (PCR Tr. 168.) Assistant Solicitor Barr testified Applicant was free to walk around with the restraints on and he did walk up to the podium during the trial. (PCR Tr. 168-169.) Assistant Solicitor Barr testified none of Applicant's restraints were visible in court. (PCR Tr. 167, 168.)

In Deck v. Missouri, 544 U.S. 622 (2005), the United States Supreme Court held routine use of visible restraints violates due process, and found visible restraints may be used only if "justified by an essential state interest" such as security. Deck, 544 U.S. at 624 (quoting Holbrook v. Flynn, 475 U.S. 560, 568-69 (1986)). Relying on precedent concerning the guilt phase of trials, the Court concluded "the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial judge's determination, in the exercise of his discretion, that they are justified by a state interest specific to a particular trial" including "potential security problems and the risk of escape at trial." Id. at 629. Due to the prejudicial effect of visible shackles, "due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case." Id. at 632. Even if exceptional circumstances warrant the use of visible restraints, the trial judge must make on-the-record findings as to the circumstances that compel their use. Id. at 633 (emphasizing that the determination "should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial").

Deck emphasizes its holding is limited to the use of **visible** shackles: "Thus, where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." Id. at 634; see also Cole v. Roper, 623 F.3d 1183, 1193 (8th Cir. 2010) (finding



defendant's restraints did not violate due process because the defendant was not subject to visible restraints).

This Court finds Applicant failed to present evidence substantiating his claim that his rights were violated because he was shackled throughout the trial. This Court finds Assistant Solicitor Barr's testimony credible that Applicant's restraints were not visible to the jury. Assistant Solicitor Barr testified Applicant was shackled by his legs during the trial, which was standard security protocol. She further testified Applicant was free to move about the courtroom, and he was not visibly constrained to his table. Assistant Solicitor Barr also testified she did not recall the restraints being visible to the jury. "The law has long forbidden routine use of **visible** shackles during the guilt phase." Deck v. Missouri, 544 U.S. at 626 (emphasis added). Because the shackles were not visible, Applicant's constitutional rights were not violated in this regard. Applicant has also failed to establish any resulting prejudice from this allegation because the jury did not see his shackles. Accordingly, this allegation is denied and dismissed with prejudice.

Applicant alleges Brady violations were committed by the State resulting in prosecutorial misconduct.

Applicant alleges the State failed to provide him with material discovery prior to the start of trial and alleges he was handed material evidence during the trial, which should have been provided to him in advance.

Applicant testified he was prejudiced by the State because Assistant Solicitor Barr was handing him "exculpatory, impeaching Brady evidence that was material to my defense the first, second, and third day during my trial." (PCR Tr. 60.) Applicant testified he addressed the court during his trial and claimed he was being "spoon-fed" discovery. (PCR Tr. 60.) Applicant alleged Assistant Solicitor Barr failed to give him an interview transcript from Smith's second statement to law enforcement. (PCR Tr. 71.) Applicant also testified there was a second

statement from another witness that the State failed to provide him as well. (PCR Tr. 72.) Applicant also testified there was a statement that was vital to his defense from Clinton Dorsey that he never received in discovery. (PCR Tr. 74.) Applicant alleged a "letter of leniency"¹ was not turned over to him in discovery. (PCR Tr. 20-21.) Applicant also testified photographs² of bullets used at trial were not provided to him by the State. (PCR Tr. 70.)

Anderson represented Applicant from December 2010 until September 2011. Anderson testified he received all of the discovery from the State and he believed it was a full and complete copy. (PCR Tr. 131-132.) Anderson testified he reviewed all of the discovery with Applicant and he believed Applicant understood the evidence against him. (PCR Tr. 133.) Applicant proceed to trial on October 17, 2011.

Assistant Solicitor Barr testified that she turned over all Rule 5, SCRCrimP, and Brady materials to McKnight while he represented Applicant, and when he was relieved from the case and Anderson was appointed, she turned discovery over to him, as well. (PCR Tr. 151, 154.) Assistant Solicitor Barr testified that certain discovery was not available when the initial discovery went out, but it would have been supplemented as her office received it. (PCR Tr. 155.) Assistant Solicitor Barr testified that when Anderson was relieved from the case, she sent the discovery to Applicant himself. Assistant Solicitor Barr testified that she gave Applicant all of the Brady material that she had. (PCR Tr. 158-159.) Assistant Solicitor Barr went on to testify that she did not have the "letter of leniency" in her possession, which is why it was not

¹ This letter was allegedly between investigators to Briggs indicating law enforcement was trying to get Briggs leniency "on his charge." (PCR Tr. 65.) Barr testified the letter appeared to be from law enforcement to Briggs indicating they believe he had knowledge of the homicide and if he was willing to provide a truthful statement that could be corroborated by polygraph, they would agree to talk to the Solicitor and to the judge and advise them of his cooperation and request leniency on his charge. (PCR Tr. 173.)

² Applicant exhibit 7 are the five photos referenced by Applicant during his testimony.



turned over to Applicant. (PCR Tr. 172.) Assistant Solicitor Barr testified if she had the letter it would have been disclosed pursuant to Rule 5. (PCR Tr. 172.) Assistant Solicitor Barr testified she checked with law enforcement when the issue came up at trial and they did not have a copy of that letter. (PCR Tr. 175.) Assistant Solicitor Barr testified Applicant received all Rule 5 and Brady material before the trial or as she received it, and a status conference was held before Judge Clifton Newman before the trial to ensure Applicant had all discovery material.

Brady v. Maryland, 373 U.S. 83 (1963) requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)). In order to prevail on this claim, Applicant must show "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles v. Whitley, 514 U.S. 419, 434 (1995).

Applicant has failed to establish the State has committed prosecutorial misconduct by failing to provide Brady material prior to Applicant's trial. Anderson represented Applicant up until about a month before his trial. Anderson testified he had received full and complete discovery from the State and reviewed that discovery with Applicant less than a month before Applicant proceeded to trial. Although Anderson was relieved prior to the trial, Assistant

Solicitor Barr testified she provided Applicant with all of the discovery and held a status conference prior to the start of trial to ensure Applicant had received all of his requested material. (PCR Tr. 161.)

Applicant has failed to show this Court how any of the discovery materials he claims were withheld from him by the State could undermine the confidence in the verdict since Applicant has failed to establish the State was in possession of the any of the materials Applicant alleges were withheld from him prior to trial. As Anderson and Assistant Solicitor Barr testified, the State provided full and complete discovery prior to trial. Additionally, Anderson testified he reviewed all of the discovery with Applicant and Applicant understood the evidence against him.

Additionally, Applicant has failed to establish that the statement from Clinton Dorsey actually exists. Applicant testified based on a search warrant he saw, he believes Clinton Dorsey involved himself in Applicant's case and that there was a statement taken from him by law enforcement. (PCR Tr. 73-74.) If the statement does in fact exist, Applicant has failed to show the statement was material to his guilt or innocence since Applicant failed to produce the statement during the evidentiary hearing. It is inconceivable that Applicant could satisfy his burden of proving his allegation of prosecutorial misconduct as he has failed to show this Court the alleged statement he claims was withheld by the State. See Rule 71.1(e), SCRPC (an applicant has the burden of proving the allegations in his or her application); Caprood, 338 S.C. at 109, 525 S.E.2d at 517 (an applicant has the burden of proving both deficiency and prejudice). See also State v. Decker, 275 Kan. 502, 507, 66 P.3d 915, 920 (2003) (internal citations omitted).

This Court finds Applicant failed to present any evidence substantiating his claim that the State violated the rules of discovery. This Court finds Anderson and Assistant Solicitor Barr's testimony very credible that she complied with Rule 5 and Brady motions with McKnight and

Anderson and later with Applicant himself. This Court finds Applicant's testimony not credible. As such, Applicant has failed to meet his burden as set forth in Strickland and this allegation is denied and dismissed with prejudice.

Applicant alleges he was denied his right to counsel

Applicant alleges he was forced to proceed to his trial pro se and was never properly warned regarding the dangers of proceeding pro se at trial.

Applicant testified on April 3, 2010, he retained Barr Barr, Esquire. (PCR Tr. 28.) Applicant testified Barr represented him until June of 2010. (PCR Tr. 28.) Applicant testified Barr met with him at the Kingstree County jail and told Applicant he was going to "put in a bond hearing, preliminary hearing" and Applicant agreed. (PCR Tr. 28-29.) Applicant testified he asked Barr to about a discovery motion and Barr responded that he would do the discovery motion after the bond hearing and preliminary hearing. (PCR Tr. 29.) Applicant testified that did not make any sense to him and that Barr looked at him "strange" and stated he would be in touch. (PCR Tr. 29.) Applicant testified he did not hear anything from Barr until eight weeks later, despite calling him and sending him letters. (PCR Tr. 29.) Applicant testified Barr saw him just before he was to appear before a judge and began asking him personal questions. (PCR Tr. 30.) Applicant testified they went before the judge and Applicant's bond was denied. (PCR Tr. 30.) Applicant testified he was really upset with Barr and wanted to speak with him prior to his preliminary hearing, but Barr never responded to his letters. (PCR Tr. 30.) Applicant testified two weeks later he was before the court for his preliminary hearing and he addressed his concerns about Barr with the court. (PCR Tr. 30.) Applicant testified he fired Barr that day in court and asked the court to make Barr give him his money back. (PCR Tr. 30.)

Applicant testified on June 23, 2010, Assistant Solicitor Barr brought Applicant back to court and had William Rivers appointed to represent him. (PCR Tr. 32.) Applicant testified Mr. Rivers was a family member of the victim in his case and asked the court to appoint him another attorney. (PCR Tr. 32 -33.)

Applicant testified on July 20, 2010, McKnight was appointed to represent him. (PCR Tr. 33.) Applicant testified McKnight then put in a motion to be relieved because Applicant had attempted to retain his services after firing Barr. (PCR Tr. 33.) A hearing on McKnight's motion was held before Judge Clifton Newman on August 12, 2010. (PCR Tr. 33-34.) Applicant testified McKnight did not want to represent him because he believed Applicant could afford his fees. (PCR Tr. 35.) Applicant testified McKnight was not getting his usual fee to represent someone charged with murder, and he neglected to assist him in his case. (PCR Tr. 36.) Applicant testified he met with McKnight two times before he was relieved on December 6, 2010. Applicant testified McKnight never discussed with him the dangers of proceeding pro se in his case. (PCR Tr. 38.) Applicant testified he was not informed during the December 6, 2010, hearing regarding the dangers of proceeding pro se. (PCR Tr. 38.)

Applicant testified his next attorney was Anderson. (PCR Tr. 38.) Applicant testified Anderson was appointed on December 12, 2010. (PCR Tr. 39.) Applicant testified Anderson was relieved in September of 2011. (PCR Tr. 39.) Applicant testified he met with Anderson more than a dozen times. (PCR Tr. 39.) Applicant testified his relationship with Anderson was good from the beginning. (PCR Tr. 39.) Applicant testified he started questioning a few inconsistencies that occurred in conversations with Anderson. (PCR Tr. 40.) Applicant testified they discussed Anderson getting a copy of his vehicle sale contract, and when he discussed it with Anderson later, Anderson did not know what he was talking about. (PCR Tr. 40.)

Applicant testified Anderson's response to him regarding his request for a second bond hearing led him to start to "distrust" Anderson. (PCR Tr. 44.) Applicant testified Anderson eventually asked to be relieved from Applicant's case. (PCR Tr. 48.)

Applicant testified on June 22, 2011, Anderson asked to be relieved in a motion hearing before Judge King. (PCR Tr. 49.) Applicant testified he told the court about all of the "lies and inconsistencies" in Anderson's letters to him. (PCR Tr. 49.) Applicant testified at the hearing Judge King gave him two options: 1) keep Anderson, or 2) go forward on your own. (PCR Tr. 49.) Applicant testified he felt he did not really have a choice and was forced to keep Anderson. (PCR Tr. 50.) Applicant testified he was not warned of the dangers of proceeding pro se during that hearing with Judge King. (PCR Tr. 50.) Applicant testified he believed Anderson would be appointed as stand by counsel for him if Anderson was relieved. (PCR Tr. 50.) Applicant testified he did not want stand by counsel as he is indigent and the court is required to immediately appoint substitute counsel. (PCR Tr. 51.) Applicant testified Anderson stayed on as his counsel after the hearing. (PCR Tr. 51.)

On August 30, 2011, Applicant testified he has a bond hearing where Anderson represented him and made prejudicial comments. (PCR Tr. 52.) Applicant testified Anderson told the bond court that, "They cannot say, Yes, we are sure this is the gun used; or, No, we're sure this gun wasn't used." (PCR Tr. 52.)³ Applicant testified Anderson told him that his comment did not sway the court's decision in denying him bond. (PCR Tr. 53.) Applicant testified Judge King relieved Anderson from Applicant's case by order dated September 12, 2011. (PCR Tr. 53.) Applicant testified he was not appointed another lawyer and could not afford to retain one at that time. (PCR Tr. 53.) Applicant testified there was never any colloquy

³ Applicant referenced the bond hearing transcript during his testimony and the quote comes from the bond hearing transcript on August 30, 2011, page 8, lines 17-18.

conducted with him regarding the dangers of proceeding pro se or representing himself. (PCR Tr. 53-54.) Applicant testified he was forced to represent himself. (PCR Tr. 54.)

Applicant testified he had a pretrial hearing before Judge Clifton Newman on October 12, 2011, regarding discovery issues and he appeared pro se at that hearing. (PCR Tr. 54.) Applicant testified Judge Newman did not ask him whether he wanted counsel at that time. (PCR Tr. 54-55.) Applicant testified no stand by counsel was ever appointed to him. (PCR Tr. 55.) Applicant testified his trial started on October 17, 2011 before Judge Young. (PCR Tr. 56.) Applicant testified at the beginning of trial Judge Young stated Applicant had elected to represent himself, and he disagrees with that statement. (PCR Tr. 57.) Applicant testified he was not asked if he wanted another lawyer and was not offered stand by counsel. (PCR Tr. 57.) Applicant testified he was not proved any Faretta⁴ warnings prior to his trial. (PCR Tr. 58.) Applicant testified after his trial he attempted to file an appeal, but his appeal was dismissed because he did not serve opposing counsel. (PCR Tr. 58-59.)

On cross-examination, Applicant testified he understood the serious nature of his charges. (PCR Tr. 97.) Applicant testified he had been in trouble before and was represented by attorney on his previous case. (PCR Tr. 95-96.) Applicant testified he recalled Judge King warning Applicant that he did not have his choice of attorneys and he needed to respect his attorneys or he may have to go pro se. (PCR Tr. 98.) Applicant testified he recalled Judge King warning Applicant that if he threatened Anderson or wrote him any other "nasty letters" that Anderson would be relieved without a hearing. (PCR Tr. 98.)

Barr testified he was retained by Applicant on April 6, 2010. (PCR Tr. 101.) Barr testified he represented Applicant during his bond hearing, and bond was denied because the

⁴ Faretta v. California, 422 U.S. 806 (1975).

court felt Applicant was a danger to the community. (PCR Tr. 101.) Barr testified the original preliminary hearing was cancelled by the sheriff's department and at the second preliminary hearing Applicant came in "raising sand" with him, so he requested a continuance to give Applicant time to hire another lawyer. (PCR Tr. 102.) Barr testified he represented Applicant for eight or nine weeks. (PCR Tr. 103.) Barr testified Applicant talked a lot of "trash" to him and he does not allow his clients to talk to him like that. (PCR Tr. 103.) Barr testified he got off Applicant's case after he was told by Applicant that he was going to fire him. (PCR Tr. 104.) Barr testified he received letters from Applicant where Applicant called him a "bastard" and accused him of conspiring with the State. (PCR Tr. 107.) Barr testified Applicant filed a fee dispute and a grievance against him. (PCR Tr. 107.) Barr testified Applicant threatened to destroy his business and claimed he had letters regarding Barr's use of drugs. (PCR Tr. 110.) Charels testified Applicant threatened to send out "dozens" of letters to organizations to destroy his reputation. (PCR Tr. 110.) Barr testified he did not discuss with Applicant proceeding pro se in his case because he believed Applicant would obtain another attorney after he was relieved. (PCR Tr. 110.) Barr testified there was not a hearing relieving him from Applicant's case because it was done through a consent order. (PCR Tr. 111.) Barr testified he did not discuss the dangers of proceeding pro se with Applicant. (PCR Tr. 112.) Barr testified Applicant understood the seriousness of the charges against him and he had discussed with him potentially damaging testimony that would be coming from a State's witness. (PCR Tr. 112.)

McKnight testified Applicant approached him about representing him after Barr and Applicant had a falling out. (PCR Tr. 114.) McKnight testified after preliminary talks, McKnight had to have emergency appendectomy surgery and spent eight days in the hospital. (PCR Tr. 115.) McKnight testified he then received a notice of appointment from the court and



that is how he came to represent Applicant. (PCR Tr. 115.) McKnight testified he filed two motions to be relieved in Applicant's case. (PCR Tr. 115.) McKnight testified he filed the first motion because he felt he was getting the short end of the stick. (PCR tr. 115.) McKnight testified Applicant went out and hired a lawyer, paid the lawyer, and is now suddenly indigent. (PCR Tr. 115.) McKnight testified Judge Newman denied his first motion to be relieved and McKnight testified he "shook that off" and proceeded to vigorously represent Applicant. (PCR Tr. 116.)

McKnight testified his filed a second motion to be relieved on November 24, 2010. (PCR Tr. 116.) McKnight testified there was a hearing on this motion before Judge James on December 6, 2010. (PCR Tr. 116.) McKnight testified he filed the second motion because there was "a level of acrimony" between him and Applicant and they could not effectively communicate. (PCR Tr. 116.) McKnight testified he discussed the case with Applicant and they would talk about viable defenses and then he would get bombarded with mail "laced with profanity." ((PCR Tr. 116.) McKnight testified Applicant accused him of being in "cahoots" with the State, which was not true. (PCR Tr. 116-117.) McKnight testified he felt he needed to file a motion to be relieved because Applicant made it impossible to talk to him. (PCR Tr. 117-118.) McKnight testified he was worried about visiting him in jail because he did not feel comfortable working with him as he had a "mercurial tempter." (PCR Tr. 118.) McKnight testified he explained to Applicant that he was filing a motion to be relieved because his behavior was not conducive to a good attorney/client relationship. (PCR Tr. 120.) McKnight testified he did explain to Applicant that "he who represents himself has a fool for a client, and if you go out there on this murder case, you're gonna get hammered." (PCR Tr. 120.) McKnight testified he told Applicant that Assistant Solicitor Barr was going to eat him alive. (PCR Tr. 121.)

McKnight testified he had a specific recollection of telling Applicant it is not a good idea to represent himself. (PCR Tr. 121-122.) McKnight testified Applicant is extremely intelligent, too smart for his own good. (PCR Tr. 122.) McKnight testified Applicant understood his charges and the consequences if he were to get convicted. (PCR Tr. 122.)

On cross-examination, McKnight testified Applicant sees everyone as his enemy and no one as his friend. (PCR Tr. 124.) McKnight testified Applicant never physically threatened him, but the tone of the letters were antagonistic and contained foul language. (PCR Tr. 125.) McKnight testified the tone of the letters made him feel unsafe. (PCR Tr. 126.) McKnight testified he visited Applicant after received those letters and Applicant's demeanor in person was that McKnight was the greatest thing, but in the letters Applicant was mean. (PCR Tr. 126.)

McKnight testified he did not go into detail with Applicant regarding the technicalities and procedural issues Applicant may face if he were to represent himself. (PCR Tr. 128.) McKnight testified the court did not go over the dangers of proceeding pro se with Applicant during either motion to be relieved because that was not before the court. (PCR Tr. 128-129.)

Anderson testified he was appointed to represent Applicant in December 2010 and represented Applicant until September of 2011. (PCR Tr. 131.) Anderson testified he met with Applicant seventeen times, not including the times they were in court together. (PCR Tr. 131.) Anderson testified he had received full discovery from the State. (PCR Tr. 132.) Anderson testified he reviewed discovery with Applicant, and he believes Applicant understood the evidence against him. (PCR Tr. 132.) Anderson testified he reviewed possible defenses with Applicant and was preparing for trial. (PCR Tr. 132.) Anderson testified Applicant assisted him in his defense and they discussed strategies and arguments. (PCR Tr. 132.) Anderson testified he never had an issue with Applicant in person, but that he received numerous letters accusing

him of lying to Applicant and stating Applicant no longer wanted his services. (PCR Tr. 133.) Anderson testified the letters he received included profanity and accused Anderson of being in "cahoots" with the State. (PCR Tr. 135-136.) Anderson testified he filed a motion to be relieved because of the letters Applicant sent him in this case. (PCR Tr. 136.) Anderson testified there was a hearing on June 22, 2011, before Judge King regarding his motion to be relieved. (PCR Tr. 136.) Anderson testified he was not relieved at that time. (PCR Tr. 136.) Anderson testified he told Judge King that it was hard to defend someone who constantly saying you are lying, you are withholding evidence, and you are working with the State. (PCR Tr. 137.) Anderson testified he discussed the motion with Applicant and Applicant wanted Anderson relieved. (PCR Tr. 137.) Anderson testified Applicant sent him letters saying he no longer wanted to speak to Anderson and that he would file a motion to have Anderson relieved if Anderson did not file one on his own. (PCR Tr. 137.) Anderson testified Applicant told him he would represent himself. (PCR Tr. 137-138.) Anderson testified he told Applicant about his qualifications when they first met and explained to Applicant that he would do an excellent job representing him. (PCR Tr. 139.) Anderson testified he does not recall any specific discussion with Applicant regarding how he should not represent himself. (PCR Tr. 139.) Anderson testified Applicant told him he had a twelfth grade education and Anderson believed Applicant understood everything they discussed about his case. (PCR Tr. 140-141.)

Anderson testified he received a letter from Applicant on August 29, 2011, that stated, "Because of your deliberate betrayal to me and my family for the third time, I no longer need your lying assistance. I will now represent myself in my case when the time comes." (PCT Tr. 141.) Anderson went on to testify that the letter stated, "You can put in the paperwork to Judge King or Judge James. I don't give a damn. Or I'll do it myself. You have played with my

freedom long enough. You protected [Assistant Solicitor Barr] and the State who is paying you. There are no more warnings, Mr. Anderson.” (PCR Tr. 141-142.) Anderson testified he provided that letter to Judge King when he asked to be relieved the second time. (PCR Tr. 142.) Anderson testified Judge King’s order reliving him found Applicant had waived his right to counsel through his behavior. (PCR Tr. 142.)

On cross-examination, Anderson testified he believes Judge King discussed with Applicant that Applicant was not trained in the law and he would be his “best bet” to have an attorney, but he does not recall Judge King specifically advising him of the dangers of proceeding pro se. (PCR Tr. 144.) Anderson testified after his first motion to be relieved, Judge King indicated that if he were to relieve Anderson that he would remain on Applicant’s case as stand by counsel, however, Anderson testified that after his second motion to be relieved was granted by order from Judge King he believed he was fully relieved from Applicant’s case. (PCR Tr. 147.) Anderson testified had he been stand by counsel for Applicant he could have helped him file his appeal. (PCR Tr. 147-148.)

Assistant Solicitor Barr testified that once Applicant went pro se she made sure he had a full and complete copy of his discovery. (PCR Tr. 158.) Assistant Solicitor Barr testified she started to receive letters from Applicant accusing her of conspiring with his previous attorneys and trying to get him imprisoned for the rest of his life. (PCR Tr. 158-159.) Assistant Solicitor Barr testified she wrote Applicant a letter explaining what she would provide him and what she would not provide him as some of the things he was requesting were not discoverable. (PCR Tr. 159.) Assistant Solicitor Barr testified they had a status conference prior to the trial so Applicant could air out any grievances and make all of the requests he wanted to so those issues would not come up at trial. (PCR Tr. 161.) Assistant Solicitor Barr testified Applicant was very intelligent

individual and she realized early in the trial she should not assume he did not know what he was doing. (PCR Tr. 162.) Assistant Solicitor Barr testified Applicant's closing argument was appropriate and he made repeated references to hearsay throughout the trial and was clearly prepared for trial. (PCR Tr. 164.)

On cross-examination, Assistant Solicitor Barr testified that she does not recall any specific warnings being provided to Applicant regarding the advantages and disadvantages of proceeding pro se at his trial. (PCR Tr. 165.) Assistant Solicitor Barr testified she believes at the first bond hearing a judge inquired about Applicant's education, but does not recall the judges at the subsequent motion hearings inquiring into Applicant's background. (PCR Tr. 166.)

The Sixth Amendment to the Constitution requires that in all criminal proceedings, the accused shall have the right to the assistance of counsel. U.S. Const. amend. VI. A defendant may waive his Sixth Amendment right to counsel. According to the United States Supreme Court, in order to waive the right to counsel, the accused must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. Gardner v. State, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002). The courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do presume acquiescence in the loss of fundamental rights. Johnson v. Zerbst, 304 U.S. 458, 464 (1938). Absent a specific inquiry by the trial court into the hazards of proceeding pro se, a court will examine the record to determine whether the accused was advised of his rights from some other source or had sufficient background to intelligently waive his right to counsel. Gardner v. State, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002). Courts considering the following factors in determining if the accused has a sufficient background to understand the dangers of self-representation: 1) the accused's age, educational background, and physical and mental health; 2) whether the accused was

previously involved in criminal trials; 3) whether the accused knew the nature of the charge(s) and the possible penalties; 4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation; 5) whether the accused was attempting to delay or manipulate the proceedings; 6) whether the court appointed stand-by counsel; 7) whether the accused knew he would be required to comply with the rules of procedure at trial; 8) whether the accused knew of legal challenges he could raise in defense to the charges against him; 9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and 10) whether the accused's waiver resulted from either coercion or mistreatment. State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992) (citations omitted).

The record before this Court shows Applicant was not provided proper Faretta warnings by any judge that relieved counsel in Applicant's case. This Court finds the testimony of Barr, McKnight, Anderson, and Assistant Solicitor Barr very credible as it relates to this allegation. The testimony of each of Applicant's prior attorneys and Assistant Solicitor Barr indicates Applicant was not provided a sufficient warning of the dangers of proceeding pro se before Applicant represented himself at trial. Although there is no scripted Faretta hearing a judge must undertake, the record must demonstrate "the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." Gardner, 351 S.C. at 411-412, 570 S.E.2d at 186 (2002) (citations omitted). In a PCR action, if the record fails to demonstrate the petitioner made an informed choice to proceed pro se, with "eyes open," then the petitioner did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial. Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (2001).

This Court finds Applicant was not provided sufficient warning regarding the dangers of proceeding pro se prior to representing himself at trial. As such, this Court grants Applicant's application for post-conviction relief as it relates to this allegation. Accordingly, this Court grants Applicant a new trial.

CONCLUSION

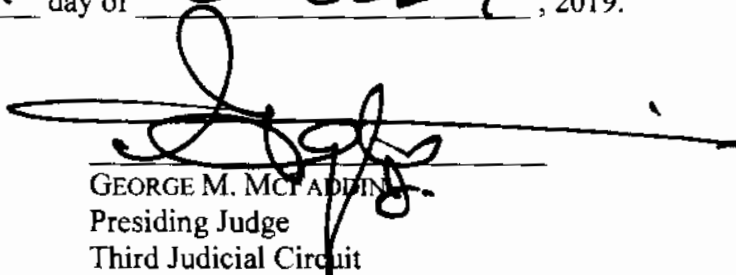
Based on the foregoing, the Court finds and concludes Applicant has established he is entitled to a new trial based on his allegation that he was not adequately warned of the dangers of proceeding pro se prior to representing himself at trial. Accordingly, Applicant is entitled to a new trial. As to the remaining allegations in Applicant's application for post-conviction relief, this Court finds Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application as it relates to the remaining allegations.

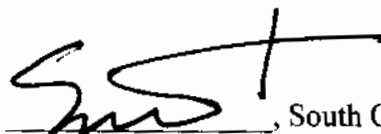
The Court notes either party must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991),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

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is granted as it relates to Applicant's claim that he was not adequately advised of the dangers of proceeding pro se prior to his trial; and
2. Applicant's remaining allegations for post-conviction relief are denied and dismissed with prejudice; and
3. Applicant shall be transported back to Williamsburg County to await retrial.

AND IT IS SO ORDERED this 23 day of October, 2019.


GEORGE M. McADAMS
Presiding Judge
Third Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Levern McCrea, #348291,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2012-CP-45-0363

MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(e)

This matter comes before the Court by way of an application for post-conviction relief filed July 9, 2012. Respondent made its Return on September 5, 2013. An evidentiary hearing was held on June 2, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office. This Court issued an order granting post-conviction relief filed on November 14, 2019, and served on Respondent on November 15, 2019. Respondent now respectfully moves for the Court to amend the order granting PCR pursuant to Rule 59(e), SCRCPP, based on the following:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. During the September 2008 term, the Williamsburg Grand Jury indicted Applicant for murder, possession of a weapon during a violent crime, and misprison of a felony (2010-GS-45-135). Applicant originally retained Charles Barr, Esquire (Barr) to represent him on the charges. Applicant eventually fired Barr due to irreconcilable differences. The court appointed Cezar McKnight, Esquire (McKnight), to represent him. McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. After

hearing from both McKnight and Applicant, the court relieved McKnight and appointed Henry M. Anderson, Jr., Esquire (Anderson). Anderson filed a motion to be relieved as counsel, citing irreconcilable differences. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King. Judge King denied the motion to be relieved after hearing from Anderson, Applicant, and Assistant Solicitor. Judge King advised Applicant that if he continued his course of conduct then he would have no choice but to relieve Anderson and require Applicant to proceed pro se.

Shortly thereafter, Applicant wrote Anderson various letters: (1) stating Anderson was lying and would not represent him properly; and (2) explaining that he wanted Anderson relieved and he would represent himself. By order filed September 14, 2011, Judge King relieved Anderson. The Court noted that Applicant was "very difficult if not impossible to deal with, not only as a client but as an individual. He has been abusive, vile, and profane to Anderson as evidenced by letters dated February 9, 2011 and May 17, 2011." Applicant proceeded pro se in his case and represented himself during his jury trial before the Honorable W. Jeffrey Young. The jury found Applicant guilty as indicted for murder and possession of a weapon during a violent crime. On October 20, 2011, Judge Young sentenced Applicant to life in prison for murder, and five years imprisonment for possession of a weapon during a violent crime to run consecutively with the sentence for murder.

Applicant subsequently filed for appeal. Applicant failed to timely serve the notice of appeal on opposing counsel, as provided for in Rule 203, SCACR. Applicant's pending appeal was dismissed by order dated April 20, 2012. The remittitur was issued on August 3, 2012.

Applicant filed a timely application for post-conviction relief on July 9, 2012. An evidentiary hearing into the matter was convened on June 1, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Lance Boozer, Esquire.

Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office appeared on behalf of the State. A final order of dismissal granting relief on one of Applicant's allegations was filed on November 14, 2019.

II. Argument in Support of Reconsideration

In granting relief, this Court found Applicant was denied his right to counsel. However, based on the circumstances in this case, the State argued Applicant was not denied his right to counsel because he forfeited his right to counsel or waived his right to counsel by conduct. See United States v. Goldberg, 67 F.3d 1092, 1100 (3d Cir. 1995) ("Unlike waiver, which requires a knowing and intentional relinquishment of a known right, forfeiture results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right."); United States v. McLeod, 53 F.3d 322, 325 (11th Cir. 1995) ("Courts . . . have recognized that a criminal defendant may forfeit constitutional rights by virtue of his or her actions. The Sixth Amendment right to counsel, for example, may be forfeited by a defendant's failure to retain counsel within a reasonable time, even if this forfeiture causes the defendant to proceed *pro se*. . . . [W]e conclude that under certain circumstances, a defendant who is abusive toward his attorney may forfeit his right to counsel." (footnotes and citations omitted)); see also United States v. Fowler, 605 F.2d 181, 183 (5th Cir. 1979) ("The right to assistance of counsel, cherished and fundamental though it be, may not be put to service as a means of delaying or trifling with the court."); State v. Shelton, 270 S.C. 577, 580, 243 S.E.2d 455, 457 (1978) ("A trial judge has the inherent power to preserve order in his court and to see that justice is not obstructed by any person or persons."). Although both of these arguments were raised by the State in pre and post-hearing briefs, this Court did not explicitly address either of the State's argument in its order granting relief. The State is requesting this Court amend the order granting post-conviction relief and provide further findings addressing these arguments.

III. Conclusion

The State requests this Court amend the order granting post-conviction relief to address the State's argument that Applicant forfeited his right to counsel or waived his right to counsel by conduct.

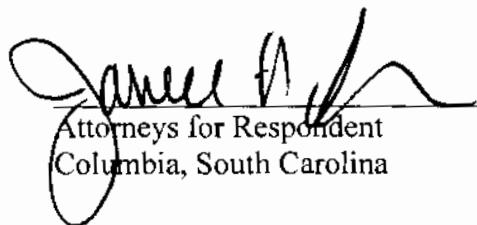
Respectfully submitted,

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Nov. 25th, 2019

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

2012-CP-45-0363

LEVERN MCCREA, #348291,

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 **Motion to Alter or Amend Pursuant to Rule 59(e)** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy L. Griffith, Esquire
Timothy L. Griffith, Attorney at Law
125 West Main Street
Sumter, South Carolina 29556

DATED this the 25th day of November, 2019.


Kaitlyn S. Slide, Legal Assistant
For Respondent

State of South Carolina)
County of Williamsburg)

In Circuit Court of the
Third Judicial Circuit
2012-CP-45-00363

LEVERN McCREA,

Plaintiff,

VS.

THE STATE,

Defendant.

Transcript of Record

Sumter, South Carolina
December 30, 2019

B E F O R E:

The Honorable George M. McFadden, Jr.

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

Mr. Timothy Griffith, Esquire
Attorney for Plaintiff

Ms. Janell Gregory, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: I think we're all here now.

2 MS. GREGORY: Yes, sir, Your Honor.

3 THE COURT: All right. Motion by the State or the
4 Attorney General's Office for me to reconsider or alter or
5 amend the prior ordered that I granted. And I would ask
6 that we do it this way, I'm sure that you've got things for
7 me to read, ma'am, as just as Mr. Griffin does also. I'm
8 very familiar with this case. I labored over it a long
9 time months ago. And I would ask please that whatever you
10 want to tell me tell me one time. I don't need to hear it
11 two or three times. And I rarely rule from the bench on
12 matters like this and I probably won't today. I'd like to
13 take time away from the spotlight, so to speak, to look at
14 these things here. So, ma'am, I'm ready whenever you are.

15 MS. GREGORY: Thank you, Your Honor. As you noted we
16 are here on our motion to reconsider and in the alternative
17 if you don't change your ruling, we would ask for a
18 specific findings on why the argument of forfeiture and
19 waiver by conduct are not appropriate in applicant's case.

20 Your Honor, I have two cases for you to review. May I
21 approach?

22 THE COURT: Yes, ma'am.

23 MS. GREGORY: I'll reference these during my argument
24 and they're highlighted.

25 (Whereupon, she provides copies for the judge)

1 Your Honor, regarding forfeiture, the South Carolina
2 of State v. Boykin is the case that has been noted
3 throughout the pre-and post hearing briefs. And this case
4 is distinguishable from Boykin on the forfeiture aspect
5 because the court found in that case forfeiture is not
6 appropriate because Boykin's actions only occurred one
7 time. Here we have a consistent, continuous bad behavior
8 from Mr. McCrea to not one, not two, but three attorneys.
9 And if you look at McLeod which is one of the cases I
10 handed you, and for the court reporter that's M-c-L-e-o-d,
11 United States versus McLeod. I think if you turn to the
12 highlighted section on Page 3. Forfeiture, the loss of a
13 right to counsel. Regarding forfeiture in this case the
14 applicant abused two attorneys, threatened to sue them, ask
15 them to engage in unethical conduct and the federal court
16 found that that was sufficient for forfeiture. Meaning
17 repeated abuse of threatening, coercive behavior was enough
18 to deem that the defendant waived his right to counsel.
19 Here we have very similar behavior from this applicant and
20 if you look - also in your packet is the pre-hearing briefs
21 and on page - there's a case cited called Bultron and that
22 is B-u-l-t-r-o-n and in that case forfeiture was also
23 deemed appropriate because the applicant used continuing
24 profanity insulting conduct. Although, Bultron fell short
25 of violence which we also have here, that behavior forced

1 the attorneys to withdrawal and the court found in that
2 case also forfeiture was deemed appropriate.

3 THE COURT: All right. Ma'am, you said pretrial
4 brief ---

5 MS. GREGORY: Yes. On Page 4.

6 THE COURT: Of what you gave ---

7 MS. GREGORY: It's in your packet, yes, sir.

8 THE COURT: Wait a minute, now. I'm confused, now.
9 I've got something here that's got four pages here that
10 says motion to alter or amend, that's not it, right?

11 MS. GREGORY: No, sir. It's the pre-hearing brief it
12 in manila envelope that I gave you. It's titled pre-
13 hearing brief in opposition to PCR application.

14 THE COURT: Let me find it. Is it buried deep?

15 MS. GREGORY: It should not be I think I put these in
16 order.

17 THE COURT: Pre-hearing brief and support?

18 MS. GREGORY: In opposition, Your Honor, and on Page
19 4.

20 THE COURT: And the name of the case?

21 MS. GREGORY: It's Bultron, B-u-l-t-r-o-n. It's the
22 very last full paragraph ---

23 THE COURT: I see it.

24 MS. GREGORY: --- on that page.

25 THE COURT: I see it.

1 MS. GREGORY: Where that court held that continuing
2 profanity insulting conduct was enough for forfeiture which
3 is very similar to the case we have here with, Mr. McCrea,
4 where he again sent vile abusive letters to each of his
5 attorneys that led to all of them being relieved and him
6 proceeding pro se at trial. Again, in that same brief,
7 Your Honor, on Page 5, Thomas was also found to have, where
8 conduct was also found to have been satisfying, sorry, been
9 substantial for forfeiture. Verbally abusive. The
10 defendant was verbally abusive in that case to a point that
11 counsel refused to cooperate with him and try to force him
12 to file meritless claims. That conduct continued with four
13 attorneys. Here we have three attorneys. And that conduct
14 continued through his PCR process as he's on his fourth PCR
15 attorney at this time.

16 So again, Your Honor, the behavior that we are seeing
17 in McLeod, Bultron and Thomas which forfeiture was deemed
18 to be appropriate is the same kind of reoccurring
19 continuance behavior regarding abusive vile language.
20 Abusive disrespectful behavior to his attorneys that led to
21 all of them being relieved and Mr. McCrea proceeding pro se
22 at trial.

23 And one other note of forfeiture, Your Honor, if you
24 look at footnote 13 at McLeod, the case I sent them to you,
25 footnote 13 is interesting to me because it goes over the

1 continuous behavior that this particular defendant McLeod
2 had that even continued as we have here outside of the
3 trial and the motion hearing that led to his forfeiture.
4 So these two defendants are incredibly similar and I think
5 if you were to look at McLeod, Bultron and Thomas, Your
6 Honor, you'll see forfeiture would be appropriate here as
7 this is very distinguishable from Boykin. As this is not a
8 single incident of bad behavior. This is a continuous
9 pattern of bad behavior. So that's our argument on
10 forfeiture, Your Honor.

11 If, in the alternative, Your Honor does not believe
12 forfeiture is appropriate we also believe that Mr. McCrea's
13 conduct has resulted, could result in a waiver by conduct.
14 Again, in Boykin, "Boykin held that once the applicant has
15 been worn that his misconduct would, thereafter, be treated
16 as a waiver of right to counsel. Any subsequent misconduct
17 is treated as a waiver by conduct". And in Goldberg, which
18 is a federal case, there's not a valid waiver unless the
19 applicant's provided Faretta warnings.

20 Now, here, although, we don't have a blatant script of
21 Faretta warnings in any one particular transcript, Your
22 Honor.

23 THE COURT: Mmm, hmm.

24 MS. GREGORY: Faretta warnings require that (1)
25 applicant be aware of his right to counsel. Which he had

1 multiple attorneys, asked for numerous attorneys. Charles
2 Barr was originally hired by him. He was absolutely aware
3 of his right to counsel. Second, applicant must be aware
4 of the dangers of proceeding pro se. And in lieu of a
5 specific colloquy regarding those dangers of proceeding pro
6 se applicant here, I'm sorry, in Faretta you can also look
7 at the entire record to determine whether this applicant
8 had a specific background that was sufficient of enough for
9 him to have basically known those rights and created a
10 valid waiver of those rights. And the court set out the
11 Cash factors and in that same brief that you found, the
12 brief in opposition of the PCR application, Your Honor,
13 there is a lengthy analysis of the Cash factors which is
14 Page 12 through 19 and I won't specifically go over each of
15 those but ---

16 THE COURT: All right. Hold on! Hold on, ma'am.

17 MS. GREGORY: Sure.

18 THE COURT: Now, you're on Page 12. What are we
19 looking at, now?

20 MS. GREGORY: We're looking at the Cash factors.

21 THE COURT: Well, what -- how is you're pleading
22 labeled?

23 MS. GREGORY: I'm sorry.

24 THE COURT: This -- these pleadings you're looking
25 at are motions you said look up Number 13?

1 MS. GREGORY: I'm looking at Page 12, it's the same
2 brief that you just looked at. The pre-hearing brief in
3 opposition to PCR application. We looked at Page 4 and 5.
4 Now, we're gonna look at 12 thru 19. And, Your Honor, the
5 Cash factors just show outside of a specific Faretta
6 warning.

7 THE COURT: What page, ma'am? Is this it, ma'am?
8 I can't -- I'm having trouble finding these things. I'm
9 not being critical.

10 MS. GREGORY: Oh, you're fine.

11 THE COURT: I just can't find nothing. Is that it?
12 (Whereupon, the attorney goes to bench to show judge
13 paperwork)

14 THE COURT: Okay. All right. Thank you.

15 MS. GREGORY: You're welcome. On Page 12, Your
16 Honor, the Cash factors go through Page 19. And, again, if
17 an applicant meets those Cash factors which there are, I
18 believe, nine or ten elements too, then there could be a
19 valid waiver of his right to counsel meaning he would be
20 Faretta. And that lengthily analysis shows that he meets
21 the Cash factors which would indicate (1) he understands
22 his right to counsel and, (2) he could've created a valid
23 waiver of his right to counsel through his conduct because
24 the Faretta would have been met.

25 THE COURT: Okay.

1 MS. GREGORY: And further, Your Honor, I did provide
2 you some transcripts in your packet. And if I could draw
3 your attention to Judge James', I believe it is the June,
4 I'm sorry, ---

5 THE COURT: December 6, 2010?

6 MS. GREGORY: Judge, yes, sir, December 6, 2010, Page
7 11 and 12 of that particular transcript. At the very end
8 of Page 11 which line 25, Judge James says, "I will tell
9 you this you cannot continue to play these games of being
10 dissatisfied with things going along exactly as you want
11 and provoking a change and lawyer. It's not going to
12 happen again. Do you understand?" And Mr. McCrea
13 response, "Oh, yes, definitely." That area along with
14 Page 20, Your Honor....

15 THE COURT: Okay.

16 MS. GREGORY: Again, the court is addressing him and
17 explaining his rights so he is entitled to a fair trial.
18 He's had two excellent attorneys represent you. And,
19 again, causing him that his attitude is creating an issue
20 in his case. That coupled with the June 22nd, Judge James
21 transcript on Page 32 of that one. And really the entire
22 Page of 32 he basically has a colloquy with Mr. McCrea
23 going over that he's not an attorney, that your attorney
24 knows what's appropriate to do. That you, um, ---

25 THE COURT: Now, was that with Judge King?

1 MS. GREGORY: That is with Judge King, yes, sir.
2 It's the June 22, 2011 transcript.

3 THE COURT: All right. I have that.

4 MS. GREGORY: Page 32 and it starts on line 5.

5 THE COURT: Okay.

6 MS. GREGORY: And again this colloquy, it is a
7 colloquy, but it's not specifically using the words "it's
8 dangerous for you to proceed alone" but he's telling him
9 everything that the attorney is going to be capable of
10 doing for him indicating, but he doesn't use the word
11 "dangerous" but he's indicating that it's going to be
12 beneficial to him to have an attorney present and
13 representing him.

14 So looking at the transcripts together that he had
15 before Mr. Anderson was relieved and before he chose to
16 proceed pro se and before he sent the letter to Anderson
17 saying, "put in the paperwork through judge James and Judge
18 King, I don't give a damn I'll represent myself." You
19 know, he was sufficiently warned that it's appropriate to
20 have an attorney. The attorney is trained in the law. The
21 attorney knows what to do and how to benefit you in this
22 case and that entire page, Your Honor, shows that, although
23 the word "dangerous to proceed alone" is not use. There's
24 no specific to script for Faretta.

25 And then also looking at Page 35 of that same

1 transcript at the very top line 1 through 7, Judge King
2 says, "if I relieve Mr. Anderson the court will not appoint
3 you a new lawyer. Your choice would be either to retain
4 counsel or proceed pro se." He was absolutely warned (1)
5 that he -- it's clear he has right to counsel, (2) that he
6 has no longer getting a counsel prior to Mr. Anderson being
7 relieved and that he's going to have to retain an attorney
8 or proceed per se. Knowing that he continued this behavior
9 of being disruptive, disrespectful and I believe Judge King
10 said they were the vile, most worst letters he's ever seen.
11 He continued that behavior knowing what the result was
12 going to be. He either had to retain an attorney or
13 proceed per se. And finally, Your Honor, on Page 38,
14 again, this is additionally what I consider a Faretta
15 warning where the court says, "you are also not ---

16 THE COURT: Hold on! Hold on, ma'am. Thirty-eight
17 from what transcript?

18 MS. GREGORY: The June 22nd .

19 THE COURT: King?

20 MS. GREGORY: Yes, sir.

21 THE COURT: What's the page again please?

22 MS. GREGORY: Thirty-eight and it's going to be line
23 21 and 22.

24 THE COURT: All right.

25 MS. GREGORY: And he says, "you are also not trained

1 in the law." And applicant says, "I am not." And the
2 court says, "you've admitted that." So clearly there is
3 communication to Mr. McCrea that he is not trained in the
4 law, attorney would benefit him which would be on the
5 previous page of 32, you know, trying to make Mr. McCrea to
6 understand that there is a benefit to having an attorney,
7 and that continued behavior that he continued to exhibit
8 would result in him waving that right to an attorney and he
9 continued that conduct, Your Honor, which is why less than
10 three months after this particular hearing on June 22, Mr.
11 Anderson sent in a letter to Judge King saying that he
12 received additional letters from Mr. McCrea and that he
13 could no longer represent him. And Judge King did just as
14 he said he was going to do and he relieve Mr. Anderson and
15 Mr. McCrea did not retain an attorney and proceeded to his
16 trial pro se.

17 THE COURT: Okay.

18 MS. GREGORY: So we would say first, Your Honor,
19 forfeiture would be the strongest argument here. But
20 certainly waiver by conduct is also very strong based on
21 the transcripts and the citations I gave you. So we would
22 just ask that you reevaluate your ruling in this PCR
23 matter and deny Mr. McCrae's application in full and
24 dismiss it with prejudice. And in the alternative, Your
25 Honor, we would just ask for specific findings as to why

1 forfeiture or waiver by conduct is not appropriate in this
2 case.

3 THE COURT: Okay, ma'am. Mr. Griffith?

4 MR. GRIFFITH: If it please, the court, Your Honor?
5 Mr. McCrea had his PCR hearing before Your Honor and the
6 State at that time had knowledge of and had certainly
7 plenty of experience in PCR and could have brought these
8 items before the court at that time. The State had ample
9 opportunity to present that information. The hearing was
10 conducted. They weren't in a hurry or anything like that.
11 They had ample opportunity. They had the previous
12 knowledge of this information in advance. The State, also
13 in writing the order, participated in writing the order. I
14 wrote the order and they wanted to expand upon it and did
15 and finally completed that order. Your Honor, so they had
16 time at that time to seek, ask the court, of course, for
17 the order to state certain reasons. But, Your Honor, also
18 Mr. McCrea has been waiting some long time and not only
19 that but the State had plenty of time after the order was
20 signed to ask that it be amended and they did not and given
21 the certain amount of time they went past that time. And
22 so Your Honor having already ruled, also, if Your Honor
23 will look in the State presented the McLeod case Your
24 Honor. In the footnotes number 13 if Your Honor will look
25 at the bottom of that it will say that, "the court denied

1 the motion, but granted McLeod's motion, filed after the
2 sentencing hearing, to dismiss Keith. The court appointed
3 Thomas Goggans, McLeod's current counsel, to handle
4 McLeod's appeal." So the court saw to it that in McLeod
5 that he ended up having an attorney after all. And so the
6 court was concerned about certainly his behavior but also
7 concerned that he would be represented properly in trial.
8 Mr. McCrea -- the State has even testified here today that
9 has had problems with previous attorneys with certain
10 attitude but, Your Honor, he is in entitled to an attorney
11 as we all are entitled to an attorney and his behavior did
12 not rise to the level of denying him the opportunity to
13 have counsel and arguing past that, Your Honor, decision
14 was made by Your Honor. It's already in the books. We, in
15 fact, have filed the order and have filed an appeal on the
16 other items that were in his complaint for PCR. And so
17 because the matter was already decided sometime back, I
18 think the State is past their time to have the opportunity
19 to seek that this be changed or altered.

20 Your Honor, they were present at the hearing. They
21 had the opportunity. And after the case is heard, they're
22 asking really that the case be basically heard again. They
23 want to present their evidence again even though Your Honor
24 did have, didn't make a decision right at that hearing, had
25 time to look over the information that was presented and

1 made your ruling at that time. Your Honor, we would
2 argue that the State's motion to amend should be denied and
3 that the order has already been placed, ample time has
4 passed for them to have made this motion. And, Your Honor,
5 we'd also argue that their motion to amend with specificity
6 the time has passed, Your Honor. They were given ample
7 time. All those things were present at the time that the
8 order was written. They participated in writing the order
9 and I think, Your Honor, they are just drawing at some
10 straws here and trying to win after they've already lost
11 the case. That's it, Your Honor.

12 THE COURT: Ma'am, he talks about the time being
13 run out for y'all to seek a reconsideration or alter or
14 amend, what about that?

15 MS. GREGORY: Your Honor, we have ten days from the
16 date of the served filed copy of the order and we are well
17 within that ten day period. Unfortunately, Mr. Griffith
18 and Mr. McCrea filed a notice of appeal during that ten
19 days so we had to dismiss that and hold that appeal in
20 abeyance so that we could file our ten day 59 (e) which is
21 well within the Rules of Civil Procedure and we are
22 certainly not outside of that timeframe to ask this court
23 to alter or amend its ruling so. And we ended up writing
24 the order which is kind of unique for the party that did
25 not ---

1 THE COURT: Right.

2 MS. GREGORY: --- prevail to write the order but Mr.
3 Griffith's order did not meet the standards and the rules.
4 So we ended up writing it. And, again, we can't ask this
5 court, ex parte, to provide us a new ruling or anything
6 else. We are following the procedures that are set forth
7 which is the 59(e). This is the appropriate avenue for us
8 to ask for that so we are certainly doing things
9 appropriately.

10 And in response to the footnote 13 in McLeod, McLeod
11 has deemed to have forfeited his right to counsel based on
12 his behavior for a motion for new trial. The attorney that
13 was represented, representing him later was on appeal.
14 This was a completely different -- this was a completely
15 different motion, a completely different movement in his
16 case that he got a new attorney, but for his behavior
17 forfeited the right to an attorney for his motion for a new
18 trial. So he certainly was not given an attorney. He had
19 forfeited that right, Your Honor. And that behavior that
20 created that forfeiture is incredibly similar to the
21 behavior shown by Mr. McCrea.

22 THE COURT: Okay. One last word, Mr. Griffith?

23 MR. MCCREA: No, Your Honor ---

24 MR. GRIFFITH: One last thing, Your Honor.

25 THE COURT: Hold on! Does he want to talk to you,

1 Mr. Griffith?

2 MR. McCREA: No, I would like to speak to with you.

3 THE COURT: No, sir. No, sir. No, sir. I'll
4 speak to your attorney today. I'm not trying to be
5 disrespectful, Mr. McCrea ---

6 MR. McCREA: I'm not. I'm not, Your Honor.

7 THE COURT: I'm talking about me.

8 MR. McCREA: Oh.

9 THE COURT: I'm not trying to be disrespectful.
10 I'm following the rules and listening to your attorney.
11 Mr. Griffith?

12 MR. GRIFFITH: Your Honor, again, the State had
13 ample time and had the opportunity to present this at the
14 first PCR hearing, Your Honor.

15 THE COURT: Okay.

16 MR. GRIFFITH: They could've presented it there. It
17 was known at the time. They did not present and I believe
18 that, Your Honor, they did not present it in a way that the
19 court accepted it to change their ruling. And, Your Honor,
20 I believe it's been hashed out enough and the court should
21 deny their motion.

22 THE COURT: Okay. All right. You'll have both
23 done well. You've been brief and precise. Just what I
24 really need. I am going to read what you gave to me.
25 Everything before today I have already read at least twice

1 but I will go back and read what I have now to look at. I
2 don't like to issue drive-by rulings. Fast food rulings as
3 I call them. I want time to look at this. I don't want to
4 drag it out. Let's talk about the time factor here.
5 Folks, this has been one of those cases where I can't blame
6 anybody, either side, Mr. McCrea, his lawyers or the State
7 or myself or any other judge for the time that this case
8 has consumed. It happens. It happens. The volume of all
9 the cases we hear, you, AG's Office, Mr. Griffith, good
10 gosh I know you're loaded down, the court is loaded down.
11 We can either sling it against the wall with what I call
12 those statue rulings or we can take our time and do the
13 best we can. I would prefer to do the latter. So you will
14 hear from me very soon. I appreciate the conduct of all of
15 you today to include you Mr. McCrea and you will hear from
16 me.

17 MS. GREGORY: Thank you, Your Honor.

18 THE COURT: Thank y'all so much.

19 MS. GREGORY: Thank you, Your Honor.

20 (CONCLUSION OF THE HEARING ON DECEMBER 30, 2019)

21
22
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25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit Court for Williamsburg County, South Carolina, on the 30th day of December, 2019.

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

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

July 23, 2020

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

FILED
12/31/2019
Williamsburg County
Clerk of Court
Kingstree SC

Appeal from Williamsburg County
Honorable George M. McFaddin, Jr., Circuit Court Judge
Appellate Case No. 2019-001890

Levern McCrea,

Petitioner,

vs.

State of South Carolina,

Respondent.

MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

The State of South Carolina (Respondent), through its undersigned counsel, would respectfully ask this Court to dismiss the appeal initiated by Petitioner based on lack of jurisdiction for the following reasons: (1) Petitioner filed the notice of appeal prior to the final order being filed with the Williamsburg County Clerk of Court; (2) Petitioner's notice of appeal did not include a copy of the final order and was not properly notarized; and (3) Petitioner was the prevailing party in his post-conviction relief action as he was awarded a new trial by the lower court and, therefore, he is not an aggrieved party. The State has filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRPC, in this matter, and the motion is set for a hearing in the Third Circuit before the Honorable George M. McFaddin on December 30, 2019. The State would respectfully show unto this Court:

I. PROCEDURAL HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. During the

September 2008 term, the Williamsburg Grand Jury indicted Petitioner for murder, possession of a weapon during a violent crime, and misprision of a felony (2010-GS-45-135). Petitioner originally retained Charles Barr, Esquire (Barr) to represent him on the charges. Petitioner eventually fired Barr due to irreconcilable differences. The court appointed Cezar McKnight, Esquire (McKnight), to represent him. McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. After hearing from both McKnight and Petitioner, the court relieved McKnight and appointed Henry M. Anderson, Jr., Esquire (Anderson). Anderson filed a motion to be relieved as counsel, citing irreconcilable differences. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King. Judge King denied the motion to be relieved after hearing from Anderson, Petitioner, and the Assistant Solicitor. Judge King advised Petitioner that, if he continued his course of conduct, he would have no choice but to relieve Anderson and require Petitioner to proceed pro se.

Shortly thereafter, Petitioner wrote Anderson various letters: (1) stating Anderson was lying and would not represent him properly; and (2) explaining that he wanted Anderson relieved and he would represent himself. By order filed September 14, 2011, Judge King relieved Anderson. The Court noted that Petitioner was "very difficult if not impossible to deal with, not only as a client but as an individual. He has been abusive, vile, and profane to Anderson as evidenced by letters dated February 9, 2011 and May 17, 2011." Petitioner proceeded pro se in his case and represented himself during his jury trial before the Honorable W. Jeffrey Young. The jury found Petitioner guilty as indicted for murder and possession of a weapon during a violent crime. On October 20, 2011, Judge Young sentenced Petitioner to life in prison for murder and five years' imprisonment for possession of a weapon during a violent crime to run consecutively with the sentence for murder.

Petitioner subsequently filed for appeal. Petitioner failed to timely serve the notice of appeal on opposing counsel, as provided for in Rule 203, SCACR. Petitioner's pending appeal was dismissed by order dated April 20, 2012. The remittitur was issued on August 3, 2012.

Petitioner filed a timely application for post-conviction relief on July 9, 2012. An evidentiary hearing into the matter was convened on June 1, 2018, at the Sumter County Courthouse. Petitioner was present at the hearing and represented by Lance Boozer, Esquire. Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office appeared on behalf of the State. A final order granting relief on one of Petitioner's allegations was filed on November 14, 2019. Despite prevailing in the post-conviction relief action, Petitioner filed a notice of appeal prior to Respondent being able to file a motion to reconsider pursuant to Rule 59(e), SCRCR.

II. MOTION TO DISMISS

The post-conviction relief court granted Petitioner relief on one of the three grounds Petitioner raised in his post-conviction relief application; the other two grounds were denied and dismissed with prejudice. In the order granting relief, the post-conviction relief court granted Petitioner relief on his allegation that he was denied his right to counsel and forced to proceed to trial pro se because the court found Petitioner was not warned of the dangers of proceeding pro se at trial. In pre- and post-hearing briefs, Respondent argued Petitioner forfeited his right to counsel and Petitioner waived his right to counsel by conduct; however, the post-conviction relief court did not provide a ruling as to either argument raised by Respondent. After the order granting relief was filed, Respondent timely filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCR, to address the lower court's findings on Respondent's arguments. However, prior to Respondent filing its motion, Petitioner initiated his appeal.

Respondent is requesting this Court dismiss Petitioner's appeal for lack of jurisdiction since Petitioner, who is not the aggrieved party since he actually prevailed in the circuit court proceeding, initiated his appeal prior to the final order being filed with the Williamsburg County Clerk of Court.¹ See State v. Rearick, 417 S.C. 391, 790 S.E.2d 192 (2016) (holding "an 'aggrieved party' permitted to appeal is one who is injured in a legal sense or has suffered an injury to person or property"); see also Rule 203(b)(1), SCACR, ("A notice of appeal shall be served on all respondents within thirty(30) days after receipt of written notice of entry of the order or judgment." (emphasis added)); Canal Ins. Co v. Caldwell, 338 S.C. 1, 5, 24 S.E.2d 416, 418 (Ct. App. 1999) (pointing out Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of jurisdiction "and results in dismissal of the appeal" (emphasis added)).

Further, Petitioner's notice of appeal did not contain the order granting relief and was not properly notarized prior to filing as required by Rule 203(d)(1)(B)(i) and (ii), SCACR. Petitioner's prematurely, and improperly, filed notice of appeal did not divest the circuit court of jurisdiction in this post-conviction relief matter and Respondent would ask this Court dismiss Petitioner's appeal for lack of jurisdiction so the circuit court may hear and rule on Respondent's motion. See, e.g., Tatnall v. Gardner, 350 S.C. 135, 137-138, 564 S.E.2d 377, 378-379 (Ct. App. 2002) (recognizing an improper appeal does not confer jurisdiction to the appellate court); see also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (holding the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court

¹ The State is not asserting Petitioner does not have the right to appeal the circuit court's decision; however, the proper way for the prevailing party to appeal is by filing a cross-appeal pursuant to Rule 203(c), SCACR.

with an orderly mechanism through which to guide appeals in this State.)

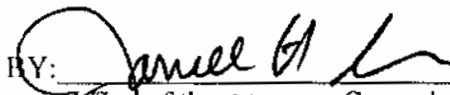
III. CONCLUSION

WHEREFORE, the State requests an order dismissing Petitioner's improperly-filed appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

JANELL H. GREGORY
Assistant Attorney General

BY: 
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 20, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Honorable George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2019-001890

LEVERN MCCREA,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

I, Kaitlyn Slice, certify that I have served the within Motion to Dismiss Appeal for Lack of Jurisdiction by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served. This 20th day of December, 2019.


KAITLYN S. SLICE
LEGAL ASSISTANT

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Levern McCrea, #348291,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2012-CP-45-0363

**ORDER GRANTING
RESPONDENT'S MOTION TO
RECONSIDER, ALTER, OR AMEND
PURSUANT TO RULE 59(e) SCRPC, AND
DENYING POST-CONVICTION RELIEF**

This matter comes before this Court by way of an application for post-conviction relief filed on July 9, 2012, by Levern McCrea (Applicant), and amended on October 20, 2014, by Applicant's PCR counsel. An evidentiary hearing was convened on June 1, 2018, before this Court. Applicant was present and represented by Lance Boozer, Esquire. Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court took the matter under advisement and requested post-hearing memorandums from both parties. Both parties submitted memorandums as requested. Thereafter, by Order dated October 29, 2019, and filed November 14, 2019, this Court granted Applicant post-conviction relief.

On November 25, 2019, Respondent filed a timely Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRPC). A hearing on the motion was convened on December 30, 2019, at the Sumter County Courthouse. Applicant was

represented by Timothy L. Griffith, Jr., Esquire¹. The State was represented by Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office.

After thoroughly reviewing the record once again, along with motions, returns, and memorandums submitted, and the testimony and evidence presented at the evidentiary hearing, and the arguments made at the motion to reconsider, alter, or amend hearing, this Court grants Respondent's motion to reconsider its prior order granting post-conviction relief. Specifically, this Court alters and amends its judgment to reflect that Applicant did receive the proper *Faretta*² warnings, and therefore, he waived his right to counsel by his conduct. As a result, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to relief on any of the grounds raised, and accordingly, denies the application in full.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In September 2008, the Williamsburg County Grand Jury indicted Applicant for Murder, Possession of a Weapon During a Violent Crime, and Misprision of a Felony (2010-GS-45-135). On October 17-21, 2011, Applicant proceeded pro se at his jury trial and was found guilty as indicted for Murder and Possession of a Weapon During a Violent Crime. On October 20, 2011, the Honorable W. Jeffrey Young, sentenced Applicant to life in prison for Murder, and five years of imprisonment for Possession of a Weapon During a Violent Crime to run consecutively.

Applicant subsequently filed a notice of appeal. Applicant failed to timely serve the Notice of Appeal on opposing counsel, as required by Rule 203 of the South Carolina Appellate Court

¹After Applicant's evidentiary hearing, Lance Boozer, Esquire, was relieved as Applicant's counsel. Thereafter, Timothy L. Griffith, Esquire, was appointed to represent Applicant.

²*Faretta v. California*, 422 U.S. 806 (1975).

Rules. Applicant's pending appeal was dismissed by Order dated April 20, 2012. The Remittitur was issued on August 3, 2012.

Current Application

On July 21, 2012, Applicant filed his PCR application, alleging he is being held in custody unlawfully for the following reasons:

1. Denied the right to appeal
 - a. Applicant did not voluntarily and intelligently waive his right to appeal.
2. Defendant's waiver of right to counsel was not knowing and voluntary
 - a. Defendant was not warned of dangers of self-representation
3. "Was Applicant 3 trial counsels ineffective prior to Applicants trial, which forced Applicant to proceed to trial with no trial counsel, or standby counsel and applicant never waived his rights to counsel in a violation of Applicants Const. rights of the U.S. under the 6th Amendment , and a violation of Applicants due process and equal protection under the 14th Amendment?"
 - a. "Did the investigators commit investigative misconduct in a violation of Applicants U.S. Constitutional right under the 14th Amendment under De Process and Equal Protection of law?"

On October 20, 2014, Applicant, through counsel, amended his post-conviction relief application to include the following allegations:

1. "Preliminary hearing taken, in State v. McClure, 277 S.C. 432, 289 S.E.2d 158; State v. Funderburke, 259 S.C. 256, 191 S.E.2d 520. S.C. Code Law 17-23-160."
2. "That July 12, 2009, to July 8, 2010, indictment flawed. It has been rubber stamped. State v. Rector, 158 S.C. 212, 155 S.E. 385."
3. "Direct Appeal taken, State v. White, 208 S.E.2d 35, 29."
4. "Sixth Amendment right to counsel was violated and Fourteenth Amendment Right to due process of law was violated. Gardner v. State, 570 S.E.2d 184; U.S. v. Midgett, 342 F. 3d. 321."
5. "State made Applicant wear shackles during trial and the jurors saw them when he sat down and stood up. Deck v. State of Missouri, 125 S.Ct. 200 (2005). That prejudiced Applicant."

On December 3, 2014, Applicant, through counsel, issued a motion for summary judgement alleging there were no genuine issues of material fact to be decided in Applicant's matter as Applicant was not properly advised of the dangers of proceeding pro se prior to trial

pursuant to *Faretta v. California*, 422 U.S. 806 (1975). Applicant's motion stated the record failed to demonstrate Applicant made an informed choice when proceeding pro se at his jury trial.

On February 20, 2015, Applicant's post-conviction relief counsel, Charles T. Brooks, III, issued a motion to be relieved as Applicant's counsel on three grounds:

1. Applicant requested Brooks be relieved;
2. Applicant threatened, harassed, and displayed vulgarity in several written communications;
3. Applicant filed two grievances with the Office of Disciplinary Counsel, which damaged their relationship.

On February 25, 2015, Judge Cothran signed Brooks' motion to be relieved as counsel and asked the clerk's office to appoint another attorney for Applicant. In October of 2016, Lance S. Boozer, Esquire (Boozer) was appointed by the clerk's office to represent Applicant in his post-conviction relief matter.

On July 12, 2015, Respondent issued a response to Applicant's motion for summary dismissal stating Applicant forfeited his Sixth Amendment right to counsel due to his continued irreprehensible behavior towards three separate defense counsels. On February 8, 2016, the Honorable Tanya A. Gee filed an order denying Applicant's motion for summary judgment finding issues of material fact exist with regard to whether the Applicant forfeited his right to counsel based on his behavior. Judge Gee also ordered the State to provide Applicant with a copy of his prior transcripts.

In May 2018, Respondent received a pro se amendment to Applicant's original post-conviction relief application. In Applicant's amendment, he accuses Assistant Attorney General Coleman and the "State's attorney's / witnesses" of conspiring for the purpose of impeding, hindering, and obstructing the "due court of justice."



After submission of pre-hearing briefs by both parties, Applicant's post-conviction relief hearing commenced before the Honorable George M. McFaddin on June 1, 2018. Applicant was represented by Boozer and Assistant Attorney General Coleman of the South Carolina Attorney General's Office represented the State. Applicant proceeded only on the following issues:

1. Applicant's rights were violated when he was shackled throughout the duration of his trial.
2. *Brady* violations were committed by the State resulting in prosecutorial misconduct.
3. Applicant was denied his right to counsel.

At the hearing, Applicant testified on his own behalf. Charles Barr, Esquire (Charles); Cezar McKnight, Esquire, (McKnight); Henry M. Anderson, Jr., Esquire (Anderson); and Assistant Solicitor Kimberly Barr (Barr) of the Third Circuit Solicitor's Office also testified. Following the evidentiary hearing, this Court requested post-hearing briefs from Applicant and Respondent.

After initially reviewing the record and all evidence presented, this Court granted Applicant relief as to Applicant's allegation that he was not properly advised of the dangers of pro se representation under *Faretta*. More specifically, this Court initially found Applicant was denied his Sixth Amendment right to counsel by proceeding pro se when he did not receive proper *Faretta* warnings. This Court denied and dismissed with prejudice Applicant's allegations that his rights were violated by being shackled during trial and that the prosecution committed *Brady* violations. More specifically, this Court found Applicant had not met his burden regarding the shackles because the evidence showed they were not restricting and were not visible to the jury. This Court also found Applicant failed to show the prosecution committed a *Brady* violation, as the credible testimony from Barr and Anderson showed Applicant did receive full discovery from the prosecution. Respondent filed a timely Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP, arguing that Applicant was not denied his right to counsel because: (1) Applicant forfeited his right

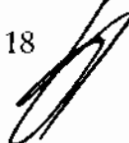
to counsel by his egregious conduct toward multiple defense attorneys such that *Faretta* warnings were not necessary, or alternatively, (2) Applicant was given *Faretta* warnings over the course of various hearings throughout his case, had the necessary background to provide a waiver of his right to counsel, and based on his conduct, waived his right to counsel. A hearing on the matter was convened on December 30, 2019.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a thorough review of the record once again and consideration of the arguments presented by both parties, this Court grants Respondent's motion to reconsider its prior order granting post-conviction relief pursuant to Rule 59(e), SCRCP. Additionally, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to relief of any of the grounds raised, and accordingly, denies and dismisses the application in full.

Respondent moved this Court to reverse its earlier decision and deny post-conviction relief, contending Applicant failed to establish that he was denied his Sixth Amendment right to counsel because either: (1) Applicant forfeited his right to Counsel, or alternatively, (2) Applicant was given the proper *Faretta* warnings, and waived his right to counsel by his conduct. This Court reverses its finding that Applicant's Sixth Amendment rights were violated because Applicant did not receive adequate *Faretta* warnings. This Court finds Applicant did receive the proper *Faretta* warnings by way of various statements and warnings made during the myriad of hearings throughout Applicant's case, and that these *Faretta* warnings, along with Applicant's consistent and extreme behavior, support a finding of waiver by conduct. This Court declines to hold that Applicant forfeited his right to counsel.

A defendant may waive his right to counsel through his conduct. *United States v. Goldberg*, 67 F.3d 1092, 1100 (3d. Cir. 1995). Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent

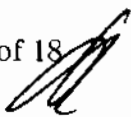


misconduct is treated as a "waiver by conduct." *Id.* Most courts have held there can be no "waiver by conduct" unless the defendant is first warned of the consequences of his actions. *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). "[T]o the extent that the defendant's actions are examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives *Faretta* warnings." *Goldberg*, 67 F.3d at 1100.

To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. *Bridwell v. State*, 306 S.C. 518, 413 S.E.2d 30 (1992); *Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990); *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) ("*Faretta* requires that a defendant 'be made aware of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open.'") (citation omitted). In the absence of a specific inquiry by the trial judge addressing the disadvantages of a pro se defense as required by the second *Faretta* prong, the appellate court will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source. *Bridwell*, 306 S.C. at 519, 413 S.E.2d at 31; *Prince v. State*, 301 S.C. at 424, 392 S.E.2d at 463. Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a "waiver by conduct." *Boykin*, 324 S.C. at 556.

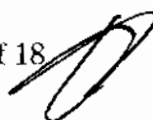
This Court finds the record clearly establishes Applicant was aware of his right to counsel. Applicant asked for appointed attorneys several times throughout his case, and was appointed attorneys several times. Accordingly, Applicant clearly was aware of his right to counsel.

This Court finds the record reveals that Applicant had a sufficient background to make



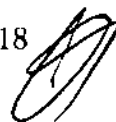
a knowingly and intelligent waiver of counsel. In *State v. Cash* the court listed ten factors in determining whether a defendant had sufficient background to make a valid waiver of counsel. Specifically, the court listed: (1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment. *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992).

In applying the factors listed above, the Court of Appeals found that Cash had sufficient background to understand the disadvantages of self-representation. Specifically, the Court noted Cash was forty-six years old, had six years of college, and had been previously involved in criminal proceedings. *Id.* at 44. The Court noted that Cash understood the nature of the charges against him and the possible penalty. *Id.* The Court noted that there was no indication that Cash was represented by counsel before trial or that an attorney advised him of the difficulty of self-representation, the record showed that Cash appreciated the difficulty of his particular case. *Id.* The Court cited to Cash's statement that he could do a better job of preparing his defense than a public defender. *Id.* The Court cited that there was no indication Cash was attempting to delay or manipulate the proceeding in declining the assistance of counsel. *Id.* at 45. The trial judge appointed stand by counsel for Cash. *Id.* The Court noted



that Cash was aware that he would be required to comply with the procedural rules. *Id.* The Court noted that Cash was aware prior to trial of possible legal challenges he could raise in defense to the charge against him. *Id.* The Court noted during the pretrial hearing in which Cash declined the assistance of counsel, the exchange between the judge and Cash did not consist of merely pro forma questions.

In *State v. McLauren*, the South Carolina Court of Appeals applied the *Cash* factors to determine whether defendant had a sufficient background to make a valid waiver of the right to counsel. *State v. McLauren*, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002) (citing *Cash*, 309 S.C. at 43, 419 S.E.2d at 813). The Court noted McLauren was a mature man with both formal and informal education. There was no evidence in the record of any physical or mental impairment. *Id.* at 495. McLauren was involved in prior criminal proceedings and knew of the nature of the charges. *Id.* McLauren addressed questions by the court and made motions. *Id.* Although McLauren was not assigned an attorney before trial and appeared pro se at his arraignment, the court appointed him stand by counsel during trial. *Id.* There was no indication that McLauren was attempting to delay or manipulate the proceedings. *Id.* The Court noted that the record indicated that McLauren knew to comply with the procedural rules and had at least some familiarity with the rules. *Id.* Specifically, the Court cited the fact that McLauren made motions, called several witnesses, and objected at times to the prosecutor's questions. *Id.* McLauren knew of the legal challenges he could raise in defense to the charges against him. *Id.* The Court noted that the exchange between McLauren and the court did not consist merely of pro forma questions. *Id.* The Court noted McLauren language and actions at trial indicated he had an understanding of the legal system. *Id.* Finally, the Court noted that there was no evidence that McLauren's waiver resulted from coercion or mistreatment. *Id.*



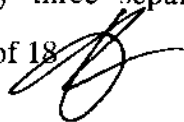
The application of the *Cash* factors in Applicant's case is similar to *McLauren*. Both Applicant and McLauren showed no signs of mental or physical impairment. Applicant and McLauren had a similar background and knowledge of criminal proceedings as they both were involved in prior criminal proceedings. Like McLauren, Applicant was aware of the charges against him and his defenses, and participated in his own criminal proceedings in this case by making arguments and asking questions. Neither McLauren nor Applicant appeared to be attempting to delay their trials. Additionally, like the trial court in *McLauren*, the trial court in Applicant's case did not merely ask Applicant pro forma questions. Moreover, the waiver in both cases clearly was not the result of coercion or mistreatment. This Court finds Applicant had a sufficient background to make a valid waiver by conduct, and applies the *Cash* factors to Applicant's case in more detail below.

In the instant case, Applicant had sufficient background to make a valid waiver under the *Cash* factors. First, Applicant was born June 12, 1964 and was forty-seven years old at the time of trial. There was no evidence in the record of any physical or mental impairment.

Second, Applicant had been previously involved in criminal proceedings. The record indicates that he had a criminal record dating back to 1986. (Tr. p. 636, l. 18-p. 638, l. 16).

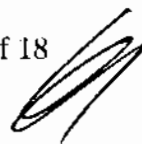
Third, Applicant was well aware of the nature of the charge. Notably, during the motion to relieve Counsel Anderson, the Assistant Solicitor recited the charges against Applicant and gave a brief factual context of the State's evidence against Applicant. (June 22, 2011 Mot. Tr. p. 2, l. 23-p. 4, l. 20). Furthermore, Applicant continuously referenced during a pre-trial conference that he was not facing a "shoplifting charge." (December 12, 2011 Mot. Tr. p. 17, l. 14-16; p. 18, l. 6-11). Based off of the record, it is apparent that Applicant was well aware of the serious nature of the charges he faced.

Fourth, Applicant was represented by three separate attorneys prior to trial.



Specifically, Applicant retained Charles Barr, Esquire. Subsequently, Applicant fired Charles Barr because he "deliberately and intuitionally ignored [his] letters and phone calls for 9 and an a half weeks." (June 22, 2011 Mot. Tr. p. 13, ll. 6-8). Applicant accused Charles Barr of "conspire[ing] with the State's attorney's office Ms. Kimberly Barr." (June 22, 2011 Mot. Tr. p. 14, ll. 5-6). Applicant was then appointed Cezar McKnight. Counsel McKnight filed a motion to be relieved as counsel on November 24, 2010. A hearing was held on December 6, 2010, in front of the Honorable George C. James, Jr. During the hearing, Counsel McKnight stated that there existed an acrimonious relationship between the two of them. (December 6, 2010 Mot. Tr. p. 3, ll. 15- 19). Counsel McKnight noted that Applicant told him to go to hell and accused him of conspiring with the State in attempt to "railroad him" (December 6, 2010 Mot. Tr. p. 4, l. 20- p. 5, l. 1). Applicant advised the court that he "requested Attorney McKnight to represent him." (December 6, 2010 Mot. Tr. p. 10, ll. 21-23). Applicant opined that Counsel McKnight is a "great attorney." (December 6, 2010 Mot. Tr. p. 10, ll. 21-23). After hearing all arguments, Judge James relieved Counsel McKnight and ordered Applicant be appointed another attorney.

Applicant was then appointed Counsel Anderson. Counsel Anderson filed a motion to be relieved. A hearing was held on June 22, 2011, in front of the Honorable Howard P. King, Judge King. In support of his motion to be relieved, Counsel Anderson noted that Applicant had filed complaints with the office of disciplinary counsel, Applicant questioned his motives and relationship with the State's attorney, and Applicant stated that he would no longer talk to him. (June 22, 2011, Mot. Tr. p. 8, l. 21-9 l. 23). Judge King noted that Applicant's letter dated February 9, 2011, was one of the most "vilest, worst letters" he had ever read from a client to an attorney. (June 22, 2011, Mot. Tr. p. 19, ll. 18-22). Applicant stated that he did "not trust attorney Anderson" and believed that he was not in his best interest. (June 22, 2011 Mot. Tr.



p. 3, ll. 17-20). At the conclusion of the hearing, Judge King advised Applicant that he was going to require Counsel Anderson to continue to represent him. However, Judge King advised Applicant that if he continued to disrespect Counsel Anderson then he would waive his right to counsel and be required to proceed pro-se or retain private counsel. (June 22, 2011 Mot. Tr. p. 40 l. 19-p. 41, l. 16). Following the hearing, Counsel Anderson submitted a second motion to be relieved citing various letters from Applicant. In the letters, Applicant stated "I no longer need your lying assistance. I will now represent myself in my case when the time comes. Now, you can put in the paper work to Judge King or Judge James, I don't give a damn!" (September 14, 2011, Order p. 6). Judge King issued an order dated September 14, 2011, relieving Counsel Anderson, advising Applicant to retain counsel within 15 days, and noting that the case is set for date certain on October 17, 2011.

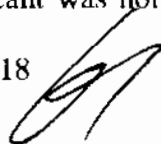
Fifth, there is no indication that Applicant was attempting to delay or manipulate the proceedings. On the contrary, he continuously attempted to have his case dismissed based on a purported speedy trial violation. It is clear that Applicant wanted his case brought to trial as quickly as possible.

Sixth, the record is clear that Applicant knew to comply with procedural rules and had at least some familiarity with the rules. Applicant made several motions, legal arguments, cross examined several witnesses, and objected to the prosecutor's questions. During a pre-trial conference, Applicant claimed that the State had violated Rule 5 and *Brady*. The Court engaged in lengthy colloquy regarding whether the State had complied with *Brady* and Rule 5. Furthermore Applicant requested a list of the State's witnesses and the juror list prior to trial. (December 12, 2011, Mot. Tr. p. 52, l. 21-22). Applicant continually requested documents or arguments be noted for the record for an Appeal. (December 12, 2011, Mot. Tr. p. 4, l. 6-19; Tr. t. p. 48, ll. 6-14).



Seventh, the record reveals Applicant knew of the legal challenges he could raise in his defense to the charges against him. During a pre-trial conference he stated to the judge that he had a list of witnesses that he needed to contact. (December 12, 2011, Mot. Tr. p. 55, ll.1-4). Applicant provided their names and information to the court in an effort to subpoena them for trial. (December 12, 2011, Mot. Tr. p. 55, l. 5-p. 56, l. 22). The court specifically noted that it had "provided reasonable assistance for [Applicant] to get witnesses for his defense." (December 12, 2011, Mot. Tr. p. 56, ll. 23-24). Applicant provided the court with various documents that he intended to introduce at trial. Applicant further requested copies of Investigator's Brown, Investigator Wayne McFadden and Investigator Lambert's infractions or complaints. (Tr. p. 41, ll. 4-8).

Eighth, the exchange between Applicant and the court did not consist of merely pro forma questions. To the contrary, the Applicant was advised by several different courts about the right to counsel and the dangers of proceeding pro-se. Specifically, Judge James advised Applicant in December 6, 2010, that he cannot continue to "play this game of being dissatisfied with things going exactly as you want and provoking a change in lawyer. It's not going to happen again." (Dec. 6, 2010, Mot. Tr. p. 11, l. 25 – p. 12, l. 3). Applicant indicated he understood. Judge James further advised Applicant that "you're presumed innocent, you're entitled to a fair trial but you have to examine your own attitude and conduct and I'm beginning to see a pattern. You've had two excellent attorneys represent you your attitude is that if somebody doesn't do exactly what you think out to be done they're engaged in a conspiracy." (Dec. 6, 2010, Mot. Tr. p. 20, ll. 13-21). On June 22, 2011, Judge King advised Applicant that he did not get his choice of appointed counsel. (June 22, 2011, Mot. Tr. p. 10, ll. 14-17). Judge King advised Applicant that Counsel Anderson was a highly respected and well thought of criminal defense attorney and that Applicant was not an attorney. (June 22, 2011,



Mot. Tr. p. 11, ll. 7-9; p. 32, ll. 10-12). Judge King further advised Applicant that Counsel Anderson knows "what is appropriate to do... he has the judgement and the training to do those things that are appropriate to be done, not you Mr. McCrea. You have admitted to me that you are not an attorney." (June 22, 2011, Mot. Tr. p. 32, ll. 5-10). Judge King advised Applicant that if he relived Counsel Anderson, the court will not and is not going to appoint a new lawyer. (June 22, 2011, Mot. Tr. p. 35, ll.1-7). Judge King further advised Applicant that he could either retain counsel or appear pro se if he wanted to relieve Counsel Anderson. (June 22, 2011, Mot. Tr. p. 35, ll. 4-8). Applicant initially advised Judge King that he wanted to relieve Counsel Anderson and proceed pro se. (June 22, 2011, Mot. Tr. p. 35, ll.2-8). However, after asking several times, Applicant chose to proceed to trial with Counsel Anderson. (June 22, 2011, Mot. Tr. p. 40, ll. 13-15). Judge King advised Applicant that if he did not treat Counsel Anderson with respect, then he would sign an order relieving Counsel Anderson and requiring Applicant to proceed pro se. (June 22, 2011, Mot. Tr. p. 40, l. 19- p. 41, l. 16). Notably, during pre-trial, Applicant informed the trial judge that Judge King had already advised him the disadvantages of proceeding pro se. (Tr. p. 34, l. 25 -p. 35, l. 9).

Ninth, there was no evidence that Applicant's waiver resulted from coercion or mistreatment. While Applicant claimed that he "forced" to relieve all three attorneys due to their conspiring with the State, this Court notes that three separate circuit court judges rejected Applicant's claims. Instead, three experienced criminal defense attorneys were relieved due to Applicant's repeatedly abusive, threatening, and coercive behavior towards his various counsels.

Based upon the foregoing, this Court finds Applicant had a sufficient background to make a knowingly and intelligent waiver of counsel. An application of the *Cash* factors to



Applicant's case clearly supports a finding that Applicant had a sufficient background to waive his right to counsel.

This Court also finds Applicant was advised of the dangers of proceeding pro se through his various hearings on his counsel's motions to be relieved. Specifically, Judge James advised Applicant on December 6, 2010, he could not continue to "play this game of being dissatisfied with things going exactly as [he] want[s] and provoking a change in lawyer. It's not going to happen again." (December 6, 2010, Mot. Tr. P. 11, l. 25 – p. 12, l. 3). Applicant indicated he understood. Judge James further advised Applicant that "you're presumed innocent, you're entitled to a fair trial but you have to examine your own attitude and conduct and I'm beginning to see a pattern. You've had two excellent attorneys represent you....your attitude is that if somebody doesn't do exactly what you think ought to be done, they're engaged in a conspiracy." (Dec. 6, 2010, Mot. Tr. P. 20, ll. 13-21).

On June 22, 2011, Judge King advised Applicant that you do not get your choice of appointed counsel. (June 22, 2011, Mot. Tr. p. 10, ll. 14-17). Judge King advised Applicant that Counsel Anderson was a highly respected and well thought of criminal defense attorney and that Applicant was not an attorney. (June 22, 2011, Mot. Tr. p. 11, ll. 7-9; p. 32, ll. 10-12). Judge King further advised Applicant that Counsel Anderson knows "what is appropriate to do... he has the judgement and the training to do those things that are appropriate to be done, not you Mr. McCrea. You have admitted to me that you are not an attorney." (June 22, 2011, Mot. Tr. p. 3, ll. 5-10). Judge King advised Applicant that if he relieved Counsel Anderson, the court would not appoint a new lawyer. (June 22, 2011, Mot. Tr. p. 35, ll. 1-7). Judge King further advised Applicant that he could either retain counsel or appear pro se if he wanted to relieve Counsel Anderson. (June 22, 2011, Mot. Tr. p. 3, ll. 4-8).

Applicant initially advised Judge King that he wanted to relieve Counsel Anderson and proceed pro se. (June 22, 2011, Mot. Tr. p. 35, ll. 2-8). However, after asking several times, Applicant chose to proceed to trial with Counsel Anderson. (June 22, 2011, Mot. Tr. p.40, ll. 13-15). Judge King advised Applicant that if he did not treat Counsel Anderson with respect, then he would sign an order relieving Counsel Anderson and requiring Applicant to proceed pro se. (June 22, 2011, Mot. Tr. p. 40, ll. 19- p. 4, l. 16). Notably, during pre-trial, Applicant informed the trial judge that Judge King had already advised him the disadvantages of proceeding pro se. (Tr. p.34, l. 25- p. 35, l. 9).

Based upon the above, this Court finds the record clearly establishes Applicant received sufficient *Faretta* warnings by way of colloquies between the trial court and Applicant during various hearings throughout the duration of Applicant's case. Applicant clearly had a sufficient background to make a waiver of his right to counsel and understood his communications with the court. Despite being informed by the trial court of the consequences of continuing his violent and inappropriate behavior, Applicant proceeded to engage in such behavior. Therefore, this Court finds Applicant waived his right to counsel by his conduct, and therefore, was not denied his right to counsel. Accordingly, this Court grants Respondent's motion to reconsider, alter, or amend, and finds Applicant did receive proper *Faretta* warnings, and waived his right to counsel by his conduct. This Court upholds its previous findings that Applicant failed to meet his burden as it relates to his allegations that his rights were violated by the shackles worn at trial and that the prosecution committed a *Brady* violation. This Court finds Applicant has failed to establish any constitutional deprivations entitling him to relief of any of the grounds raised. Accordingly, this Court denies and dismisses Applicant's PCR application in full and denies Applicant PCR relief.



CONCLUSION

Based upon the foregoing, this Court finds Applicant was sufficiently advised of the dangers of proceeding pro se such that any failure of the trial court to make a specific inquiry addressing the disadvantages of a pro se defendant is cured. The trial court advised Applicant several times he had representation from various attorneys with legal experience, and that Applicant did not have legal knowledge. The trial court further advised Applicant that he could not continue his behavior, and if he did, he would not be appointed a new attorney and would have to proceed pro se. Applicant acknowledged that the trial court advised him of the dangers of proceeding pro se. Despite being continually warned about the consequences of his violent and inappropriate behavior toward his attorneys, Applicant continued this behavior, thereby waiving his right to counsel. As discussed above, this Court also finds Applicant had the necessary background to make such a waiver of counsel by conduct. Accordingly, this Court finds Applicant waived his right to counsel by his consistent hostile behavior. This Court affirms its other findings that Applicant failed to meet his burden as it relates to his *Brady* allegation and allegation regarding the shackles worn at trial. Therefore, this Court finds Applicant has not established any constitutional deprivations that would require a grant of post-conviction relief. This Court denies and dismisses the entirety of Applicant's PCR application with prejudice.

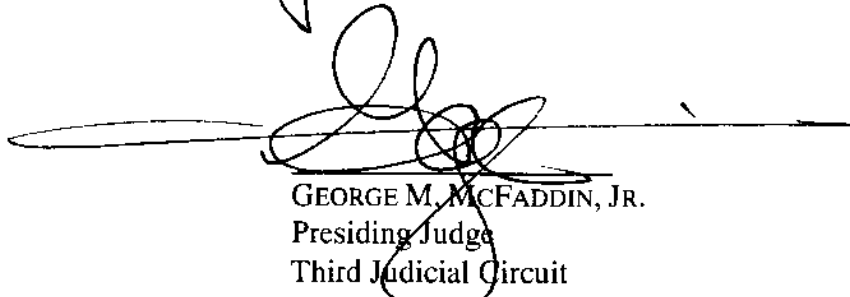
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IT IS THEREFORE ORDERED THAT:

1. Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e), SCRCRCP is GRANTED;
2. The application for post-conviction relief is denied and dismissed with prejudice in full; and
3. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24th day of September, 2020.

South Carolina


GEORGE M. MCFADDIN, JR.
Presiding Judge
Third Judicial Circuit

WITNESSES

SHERIFF'S OFFICE

Willie Brown

ARREST WARRANT NUMBER

062010, M 062011 & M 062012

/A: 3/296/10

ACTION OF GRAND JURY

True bill

Dorene Hall
Foreperson of Grand Jury
Date: 7-7-11

VERDICT

Foreperson of Petit Jury
Date:

AMENDED

DOCKET NO. 2010-GS-45-0135

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JULY TERM 2011

THE STATE

vs.

LEVERN MCCREA

CHRISTOPHER LAQUAN BRIGGS

Indictment for

MURDER - §16-3-10, POSSESSION OF
A WEAPON DURING VIOLENT CRIME-
§16-23-490 AND MISPRISON OF A
FELONY - COMMON LAW

ERNEST A. FINNEY, III, SOLICITOR

FILED

11 JUL -7 AM 11:31

CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

A CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

1154

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

**MURDER - §16-3-10, POSSESSION OF A
 WEAPON DURING VIOLENT CRIME-§16-23-490
 AND MISPRISON OF A FELONY – COMMON LAW**

At a Court of General Sessions, convened on July 7, 2011, the Grand Jurors of
 WILLIAMSBURG County present upon their oath:

COUNT ONE – MURDER - §16-3-10

That **LEVERN MCCREA** did in Williamsburg County between March 12, 2009 and March 13, 2009, feloniously, wilfully and with malice aforethought, kill one **Cora Brown** by means of shooting the victim, and that the said victim did die as a proximate result thereof, in violation of Code Section 16-3-10, Code of Laws of South Carolina (1976), as amended.

**COUNT TWO - POSSESSION OF A WEAPON DURING VIOLENT
 CRIME - §16-23-490**

That **LEVERN MCCREA** did in Williamsburg County between March 12, 2009 and March 13, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, in violation of Code Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT THREE – MISPRISON OF A FELONY

That **CHRISTOPHER LAQUAN BRIGGS** did in Williamsburg County between March 12, 2009 and March 30, 2010, withhold information and/or evidence from the **Williamsburg Sheriff's Department**, a law enforcement agency, concerning the Murder of Cora Brown, thus engaging in criminal neglect, in violation of the Common Laws of the State of South Carolina.

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


 ERNEST A. FINNEY, III, SOLICITOR

A CERTIFIED TRUE COPY


 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

FILED
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 CLERK OF COURT
 WILLIAMSBURG, S.C.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG	)	

Levern McCrea,	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF MOTIONS
	)	C/A No. 2011-GS-43-01125
v.	)	
	)	
State of South Carolina,	)	
	)	
DEFENDANT.	)	
_____	)	

Williamsburg County Courthouse
December 6, 2010

BEFORE:

HONORABLE GEORGE C. JAMES, JR., PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Kim Barr
Assistant Solicitor Doward Harvin
Attorney for State of South Carolina

Cezar McKnight, Esquire
Attorney for Levern McCrea

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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1 Mr. Harvin: This is State vs. Levern McCrea.

2 The Court: Levern McCrea?

3 Mr. Harvin: Yes, sir. Indictment Number 2010-GS-
4 45-135. Mr. McCrea is charged with the offense of Murder
5 and possession of a weapon during a violent crime. He is
6 here with his attorney Mr. Cezar McKnight. Mr. McKnight
7 filed a motion with the court, Your Honor, to be relieved
8 as counsel.

9 The Court: All right. When was the indictment
10 issued? It looks like the middle to latter part of this
11 year.

12 Mr. Harvin: Yes, sir.

13 The Court: Were you appointed or retained?

14 Mr. McKnight: I was appointed, Your Honor.

15 The Court: All right. And I've got your motion
16 here. You say there exist just a acrimony relationship
17 between the two of you to the point that you cannot
18 effectively communicate?

19 Mr. McKnight: Yes, I do, Your Honor. First of all
20 ...

21 The Court: Without indulging any confidences can you
22 elaborate on that?

23 Mr. McKnight: Yes. First of all, good-morning.
24 Your Honor, I got appointed to represent Mr. McCrea by
25 the Order of Judge Clifton Newman back in July of this

Levern McCrea vs. The State of South Carolina

4

1 year. Mr. McCrea has been in custody since March of this
2 year. From the time that I have represented Mr. McCrea,
3 I spend the bulk of my practice, particular during the
4 week, writing him letters in which he ask me over
5 repeatedly to do things. I will either go to the jail
6 and inform him of the fact that it is impossible to do it
7 or write him as such.

8 The Court: Or you do what you can do?

9 Mr. McKnight: Or I do what I can do. He's not in
10 the Williamsburg County Detention Center. He's in the
11 Florence County Detention Center. I don't know if you've
12 ever been in that facility ...

13 The Court: Yes, I have.

14 Mr. McKnight: ... but it's a quarter of a mile walk
15 to the holding area and when you're back there it's just
16 you and the defendant. Mr. McCrea recently wrote me a
17 letter in which he told me to go to hell. Permission to
18 approach, Your Honor.

19 The Court: Yes.

20 Mr. McKnight: He repeatedly alleges that I'm
21 involved with a active conspiracy with Ms. Kimberly Barr
22 to "railroad him". I think if anyone knows me if I'm in
23 a conspiracy it's not when the solicitor's office. Your
24 Honor, he also wrote me on the 20th telling, using various
25 other profane language, telling me what I'm doing is

1 basically BS. Permission to approach?

2 The Court: Yes. Now, you handed me a letter dated
3 November 10th.

4 Mr. McKnight: November the 10th, and this one is
5 dated October the 20th.

6 The Court: Okay.

7 Mr. McKnight: But, Your Honor, in response to his
8 letters I've written him on various times, specifically
9 on November 8th, where I go into quite, into quite
10 elaborate detail as to why we can't do what it is he
11 wants us to do. Your Honor, I take my job as counsel
12 very seriously. Is this the best situation that I want,
13 no. I'd like a client who is paying; however, my job is
14 to defend his rights under the constitution of the State
15 of South Carolina and the United States and I will
16 diligently do that within my power. I have been doing
17 everything that I possibly can to mount him a vigorous
18 defense. Honestly, Your Honor, he has a good chance of
19 maybe even being acquitted, but I cannot work in a
20 situation where someone greets me with profanity and I've
21 got to risk going to the Detention Center and possibly
22 being physically accosted. Because when you're in that
23 room, it's you and him and you're locked up in there and
24 anything could happen and I cannot work under those
25 situations. If you, so, if you'd please, Your Honor,

Levern McCrea vs. The State of South Carolina

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1 relieve me as counsel. If not then I've got another
2 motion I need you to hear and that's with regard to a
3 speedy trial.

4 The Court: All right. Let me read this for a few
5 minutes.

6 Mr. McKnight: Go ahead.

7 (Pause in Court)

8 The Court: Is this a county case or city police?

9 Mr. McKnight: This is county, Your Honor.

10 The Court: Okay. Ms. Barr, have you all turned over
11 everything in discovery?

12 Ms. Barr: We've turned over everything, I believe
13 the rules require we turn over.

14 The Court: Well, let me ask you a question more
15 specific. Has law enforcement given you everything that
16 you're required to turn over?

17 Ms. Barr: The investigation is still ongoing. The
18 gun that was recovered, it has not been analyzed by SLED.

19 The Court: But has Law Enforcement turned over
20 everything to you that is subject or falls within Rule 5
21 or Brady?

22 Ms. Barr: Yes, sir. That they have; yes, sir.

23 The Court: Have you turned over to Mr. McKnight?

24 Ms. Barr: I have.

25 The Court: All right. Let me keep reading. All

1 right. Mr. McKnight, does he understand that he is not
2 necessarily entitled to all of the statements that exist,
3 does he understand that, that's Rule 5.

4 Mr. McKnight: I understand that. And I've tried to
5 tell him that. In fairness to Mr. McCrea, we believe
6 there are some things that we're entitled to that we
7 haven't gotten. Particularly, a receipt that we believe
8 is exculpatory because it creates an alibi. Be that as
9 it may, we don't have it and it's referenced
10 significantly in his Rule 5.

11 The Court: Do you have that receipt?

12 Ms. Barr: I'm not sure I understand what's he's
13 talking about. I'll be happy to ... Judge to the extent
14 that there ...

15 The Court: Okay. I don't want this turned into a
16 discovery motion ...

17 Mr. McKnight: Right.

18 Ms. Barr: Yes, sir.

19 The Court: ... but wherever I go, wherever any judge
20 goes this is a constant problem and it's not always, it's
21 not Mr. McKnight, always a situation where you have
22 unscrupulous people who are not giving you stuff. It's
23 not all one sided. By the same token, I'm not native
24 enough to think that the prosecution and law enforcement
25 turn over everything there is to turn over. I don't

Levern McCrea vs. The State of South Carolina

8

1 understand why it can't just be done, but I also don't
2 understand why defendants continue to say well they say
3 they've given me everything but they haven't and then
4 everybody looks at me. What am I suppose to do. I order
5 the State to abide by Rule 5 and Brady. That's all I can
6 do. So, if there is a receipt you all need to talk about
7 it and give it to him.

8 Ms. Barr: We'll discuss that today, Judge.

9 The Court: And if the statements of these witnesses
10 are exculpatory, that's a Brady issue.

11 Ms. Barr: Yes, sir, I understand that.

12 Mr. McKnight: And, Your Honor, in fairness to the
13 Solicitor's office, I'm not at all suggesting that they
14 are engaged in trying to keep it from me, it's just
15 something that I know that we're entitled to and I don't
16 have it and it's referenced in the transcript of the
17 interrogation.

18 The Court: Okay. I'll allow Ms. Barr some leeway on
19 that because its in the discovery motion.

20 Mr. McKnight: Yes, sir.

21 The Court: All right. Now, as far as your Motion to
22 be Relieved, are you Levern McCrea?

23 Mr. McCrea: Levern McCrea, Your Honor.

24 The Court: All right. Do you want Mr. McKnight to
25 be relieved?

1 Mr. McCrea: Your Honor, with all due respect, and
2 I'm pretty sure you're well aware of. That there is a
3 rule of practice that an attorney to be obligated to
4 avoid a conflict of interest in the matter that they are
5 retained or appointed to represent their client in the
6 court of law. If my attorney begins to start lying to me
7 about certain motions that he's going to put in that
8 becomes a conflict of interest, Your Honor.

9 The Court: Do you want him relieved?

10 Mr. McCrea: I ... I watched, honestly I watched –
11 well, let me start from July 21st when Judge Newman
12 appointed Attorney McKnight to represent me. He put in a
13 motion to dismiss himself from my case due to the fact
14 that he wasn't getting paid. Secondly, that became a
15 conflict because I didn't feel as though that he was
16 going to represent me effectively because of that fact.

17 The Court: Now, what leads you to believe that, sir?

18 Mr. McCrea: Because he, I mean it's court record.
19 It's a part of the court record from ...

20 The Court: Did he say that to you?

21 Mr. McCrea: He said it to the Court.

22 The Court: He told a judge that he wasn't going to
23 represent you effectively because he wasn't getting paid?

24 Mr. McCrea: No, not that he wasn't going to
25 represent me effectively, he mentioned due to the fact

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1 that he wasn't getting paid that that was the reason for
2 his motion.

3 The Court: Motion to be relieved?

4 Mr. McCrea: Yes, sir.

5 The Court: Who did he tell that to?

6 Mr. McCrea: He put in a motion around about August
7 the 12th or so.

8 The Court: All right.

9 Mr. McCrea: I think the Clerk of Court has record of
10 that, the court stenographer here. And, again, for Mr.
11 McKnight to state that every time I call or every time
12 there's an issue he runs to Florence County Detention
13 Center he's told a lie. He's been there once. He had my
14 case almost three months before he came with an
15 incomplete Rule 5, which the State's attorneys office has
16 had almost ten months to complete a full Rule 5, not half
17 of it or some of it. I'm entitled to all exculpatory
18 evidence as well as Mr. McKnight knows as well as that
19 receipt that proves that I was else where when this crime
20 was committed.

21 With all due respect to Attorney McKnight, he's a
22 great attorney. I've watched him work some years ago.
23 I've even requested that Attorney McKnight represent me,
24 which there was another procedure that the Clerk of Court
25 and the State's attorneys office had to go by which was a

1 list that they would normally have for attorneys that's
2 going to be appointed. I wrote Attorney McKnight a letter
3 trying to apologize. I understand he had his own
4 practice and he's a busy attorney. I have the upmost
5 respect for him. At that particular time I did write him.
6 My finance has just lost their moms. I had a first
7 cousin who I'm extremely close just die within a month
8 apart and maybe I went over, a little overboard in
9 addressing Attorney McKnight.

10 The Court: Yeah, you did. I'm reading the letters
11 and you went overboard.

12 Mr. McCrea: Yes, sir; yes, sir. I could admit to
13 that.

14 The Court: I'm not going to make them part of the
15 record because arguably they contain some frivolous
16 communication.

17 Mr. McCrea: Yes, sir. And ...

18 The Court: Here's what you got to understand. I know
19 that he's a vigorous, energetic lawyer.

20 Mr. McCrea: Yes, sir.

21 The Court: Some might say that you shoot yourself
22 in the foot by helping create this situation. I'm not
23 going to go any further. I'm going to relieve him. I'm
24 going to order that the Clerk's office to appoint the
25 next named lawyer. I will tell you this, you can't play

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1 this game of being dissatisfied with things going along
2 exactly as you want and provoking a change in lawyer.
3 It's not going to happen again. Do you understand.

4 Mr. McCrea: Oh, yes, sir. Definitely.

5 The Court: So, I don't want to hear anything about
6 any discovery today. Whoever it might be, you need --- I
7 understand you're incarcerated and you are presumed
8 innocent but there are certain ways to get things done
9 and there are certain ways not to get it done and you're
10 going about it the wrong way. Just because you can write
11 a letter doesn't mean you can send it. You need to play
12 that 24-hour game. Read it 24-hours later and say is
13 this what I really want to send.

14 Mr. McCrea: You're absolutely right, Your Honor.

15 The Court: Because in the end this is not going to
16 do anything but hurt you.

17 Mr. McCrea: You're absolutely right.

18 The Court: Ms. Barr, I'm not going to do anything
19 but order you all to comply with Rule 5 and Brady.

20 Ms. Barr: Yes, sir.

21 The Court: And you can use your own judgment as to
22 whether or not that's been done. Mr. McKnight, there's
23 no reason for you to have any communication with anybody
24 else about this case anymore except when the new lawyer
25 is appointed you will return your file over as the

1 ethical rules require you to do.

2 Mr. McKnight: Yes, Your Honor.

3 Mr. McCrea: If I may also address the Court of
4 another issue, Your Honor. If I may.

5 The Court: All right.

6 Mr. McCrea: I definitely have a serious complaint of
7 a Fourteenth Amendment violation, Your Honor.

8 The Court: No, no, what's the basis for your motion
9 in that regard? Does that have anything to do with Mr.
10 McKnight?

11 Mr. McCrea: No, sir, but ...

12 The Court: All right ...

13 Mr. McCrea: ... it's a violation of the Fourteenth
14 Amendment of due process of law.

15 The Court: What is?

16 Mr. McCrea: They took --- they took --- I've never
17 waived any preliminary hearing. They just took the
18 preliminary hearing away from me, Your Honor, and I'm
19 requesting how is that possible when I haven't had the
20 opportunity to have an attorney to represent me that I'm
21 aware of at my preliminary hearing. Not one that they
22 just appoint me.

23 The Court: When did his preliminary hearing time
24 expire?

25 Ms. Barr: Judge, what my understanding of that ...

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1 Mr. McCrea: Your Honor, excuse me ...

2 The Court: If you interrupt again, I'm going to hold
3 you in contempt, do you understand? That goes for
4 anybody who interrupts, do you understand that?

5 Mr. McKnight: Your Honor, if I can ...

6 The Court: All right. Let the record show that Mr.
7 McCrea, all he chooses to do is when anybody else is
8 talking including me, is to sit there and smirk and shake
9 his head. If you want to do that, as I told somebody
10 earlier today, that doesn't help you. Do you understand
11 that?

12 Mr. McCrea: Yes, sir.

13 The Court: All right. So, be quite right now, can
14 you do that? Can you do that?

15 Mr. McCrea: Yeah, yeah, not a problem.

16 Mr. McKnight: To provide some clarity, Your Honor,
17 he was --- he requested a preliminary hearing while he
18 was being represented by Mr. Charles David Barr. For
19 whatever reason, he and Mr. Barr could not get along at
20 the time and they could not have the preliminary hearing
21 and subsequent to that he was indicted. That's the
22 reason why and I explained that to him in his letter ...

23 The Court: I saw that.

24 Mr. McKnight: ... that he has been indicted and as
25 such we've lost our right to request a preliminary

1 hearing.

2 The Court: All right. Was Mr. Barr relieved for the
3 same reasons you were?

4 Mr. McKnight: He fired --- let me tell, so the Court
5 will clearly know. He originally retained Mr. Charles
6 David Barr, paid him a substantial sum of money, what I
7 don't know. He then subsequently fired Mr. Barr. Now,
8 he, Mr. McCrea tells me at that time he tried to retain
9 me but at the time I was medically unable because I had
10 an emergency appendectomy. I did file a motion to be
11 relieved because he petitioned, when I say he, Mr.
12 McCrea, begged Judge Newman to appoint me as his counsel
13 when he had already paid Mr. Barr and beyond that his
14 mother had even paid me prior to be getting sick to go
15 talk to him. So, I had already explained to them what
16 the fee was going to be and that was the sole purpose of
17 my visit to him was for his mother to pay me to visit him
18 and talk about his case. So, now it comes out and it
19 seems to me patently unfair for Charles to have the money
20 and me to have the burden so I made that motion to Judge
21 Newman to please relieve me as counsel because he
22 subsequently approached me and was willing and had the
23 financial wherewith all to pay me and I didn't believe
24 that he was indi ... excuse me ...

25 The Court: Indigent.

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1 Mr. McKnight: Indigent, excuse me. Thank you. At
2 that time, Judge Newman, said no Mr. McKnight he's
3 indigent now, he tells the Court's he's indigent, he's
4 indigent, you're the lawyer. So, immediately, less than
5 two weeks later I filed my Rule 5 Brady Motion, I then
6 went to the jail to visit with him and we sat down and we
7 had what I believed to be a good conversation and I told
8 him patently, I'm not happy about being here but I'm
9 going to do my best because that's what I'm suppose to
10 do. So, subsequent to that I've been writing Ms. Barr
11 trying to get the discovery request and finally, like I
12 said the Solicitor's office is pretty busy sometimes and
13 I think it's really reasonable if I request discovery the
14 end of July, first part of August and they get it to me
15 about October normally, under normal circumstances that's
16 pretty speedy because a lot of times it takes a whole lot
17 longer then that so we're trudging along. Since that
18 time, Your Honor, a number of things have gone on that
19 I'm not going to put on the record, disciplinary things,
20 but I get letter after letter, after letter, after letter
21 and it just rolls to that. So, this isn't about money,
22 the money issue is over with. The thing about it is I
23 didn't feel there was an atmosphere that I could
24 effectively communicate with my client and if I can't do
25 it as a lawyer, I can't represent him effectively.

1 The Court: Anything else?

2 Mr. McCrea: Yes, sir. Ms. Barr stated that they
3 didn't have the test for the weapon that was given to
4 them by someone else, which I have that paperwork that
5 states it came back inconclusive. So, why would she sit
6 here and say that that weapon hasn't been tested when it
7 has, when I have the paperwork, a part of the Brady
8 material that I have with me. So, that was a lie under
9 oath just now. And, again, the Fourteenth Amendment
10 Right to due process of law, Your Honor. I'm entitled to
11 and at that particular time I didn't have counsel to
12 represent me. During that time after firing Attorney
13 Charles Barr for conspiring with the State's attorney's
14 office ...

15 The Court: You've got two lawyers ...

16 Mr. McCrea: Excuse me.

17 The Court: Don't interrupt.

18 Mr. McCrea: Okay.

19 The Court: You've got two lawyers that conspired
20 with the State?

21 Mr. McCrea: Your Honor, I had one at first ... Yeah
22 and it definitely felt like it the second go round and I
23 have a right to my opinion and to address an issue that I
24 think is a problem. I think I'm entitled to that. The
25 constitutions giving me that right. And, for, at that

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1 particular time, Your Honor, after firing attorney Barr,
2 at that time I didn't have counsel to represent me. The
3 state's attorney's office or the Clerk of Court just
4 appointed me an attorney that I had no knowledge of that
5 didn't even know my name.

6 The Court: Who?

7 Mr. McCrea: I don't even remember ...

8 The Court: So, you think you're entitled to an
9 appointment of an attorney that you specifically want?

10 Mr. McCrea: No, that's not what I'm saying, Your
11 Honor. At the time, Your Honor, if I can repeat this
12 again, to reiterate what I'm trying to say to you. When
13 I didn't have counsel after firing Attorney Charles Barr,
14 on the 26th of May, 2010, I put in a motion and they
15 brought me to court on July 21st and the Court appointed
16 me Attorney McKnight. After that situation, they brought
17 me to Court on June the 9th and I requested, and I
18 mentioned to the Court that I had no knowledge of this
19 attorney, he knows nothing about my case, he's a relative
20 to the victim. So, that was a conflict of interest from
21 the beginning.

22 The Court: But you know ...

23 Mr. McCrea: And then ...

24 The Court: ... that lawyer was never appointed,
25 right?

1 Mr. McCrea: Never.

2 The Court: Okay. Then we don't need to talk about
3 that.

4 Mr. McCrea: But my point is I still have a right to
5 a preliminary hearing. How could they just take a
6 preliminary hearing away from me.

7 The Court: They indicted you.

8 Mr. McCrea: Yeah, but before then, Your Honor, still
9 I haven't have a particular attorney at that time for
10 them to represent me.

11 The Court: The last thing. Do you care to comment
12 on that, Ms. Barr?

13 Ms. Barr: Judge, I think there was a decision made
14 by my office that because the preliminary hearing had
15 been continued two times at the defendant's conduct, we
16 had the victims coming back and forth and we made a
17 decision that we would submit the case to the grand jury
18 to see whether or not they believed it should proceed and
19 that's what we did. I think at the last preliminary
20 hearing that had, he and Mr. Barr got into a argument and
21 he wanted to represent himself and the magistrate said no
22 I'm going to continue this and it just became an ongoing
23 situation. It seem to be a problem created by Mr.
24 McCrea. So our office chose to present the case to the
25 grand jury.

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1 The Court: All right. I'll give you the final word.

2 Mr. McCrea: Your Honor, if you review the
3 transcripts dated May 26, 2010 as well as June 9, 2010
4 and July 21st, 2010, that's not true what she's saying and
5 Judge Newman was here and corrected the whole situation
6 and it wasn't my fault. Again, to perjure herself on
7 record and make that statement is totally untruth. It's
8 not right.

9 The Court: All right. Is it the State's position
10 that once he's indicted, the preliminary hearing is off
11 the board?

12 Ms. Barr: Yes, sir.

13 The Court: All right. Now, again, you're presumed
14 innocent, you're entitled to a fair trial but you have to
15 examine your own attitude and conduct and I'm beginning
16 to see a pattern. You've had two excellent attorneys
17 represent you. You can't just ... see that look you're
18 giving me. That is a window to your attitude. Your
19 attitude is that if somebody doesn't do exactly what you
20 think ought to be done they're engaged in a conspiracy
21 and they're not, and they're not doing their job. Your
22 due process argument is rejected and another lawyer will
23 be appointed.

24 Ms. Barr: Thank you, Your Honor.

25

CERTIFICATE

This is to certify that the Motion to Relieve Counsel transcript in the matter of Levern McCrea vs. The State of South Carolina, consisting of Twenty (20) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal
this 8th day of July, 2015

Melissa R. Singletary
Certified Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 STATE OF SOUTH CAROLINA)
)
 v.)
)
 LEEVERN MCCREA,)
)
 Defendant,)
 _____)

IN THE COURT OF GENERAL SESSIONS
 THIRD JUDICIAL CIRCUIT

INDICTMENT NO.: 2010-GS-45-135

ORDER RELIEVING COUNSEL

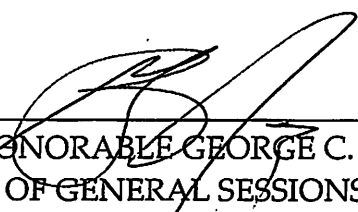
CAUTION WILLIAMS
 CLERK OF COURT
 KINGSTREE, S.C.

10 DEC -6 PM 3:33

FILED

COMES NOW Cezar McKnight, Attorney for the Defendant above named,
 moving this Honorable Court for an Order relieving him as attorney for the Defendant
 in the above referenced matter. Based upon the attorney's motion and testimony
 provided at the Hearing held on December 6, 2010, it is
 ORDERED, ADJUDGED and DECREED that Cezar E. McKnight is hereby relieved as
 counsel for the Defendant in the case of State of South Carolina vs. Leevern McCrea
 Indictment No.: 2010-GS-45-135.

SIGNED this 6 day of December, 2010, at Kingstree, South Carolina.



 THE HONORABLE GEORGE C. JAMES, JR.
 JUDGE OF GENERAL SESSIONS COURT
 WILLIAMSBURG COUNTY

1 State of South Carolina) In the Court
2 County of Williamsburg) Of General Sessions

3 Indictment No.: 2010-GS-45-135
4

5
6 State of South Carolina,)
Plaintiff.)
7)
8 vs.) Transcript of Record
9)
10 LEVERN MCCREA,)
Defendant.)

11
12
13 August 30, 2014
Kingstree, South Carolina
14

15
16 B E F O R E:

17 The Honorable R. Cothran Ferrell, Judge.
18

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

20 Kimberly Barr, Assistant Solicitor
Attorney for the State
21

22 Henry M. Anderson, Esquire
Attorney for the Defendant
23

24 Brenda J. Sigwald, Circuit Court Reporter
For the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

BOND HEARING

MS. BARR: Please the Court, Your Honor?

THE COURT: Yes, ma'am.

MS. BARR: Your Honor, this next matter before you concerns the Indictment 2010-GS-45-135, it's the State versus Levern McCrea. Mr. McCrea was indicted by the Williamsburg County Grand Jury on July -- well, it was an amended indictment in July. He was indicted in 2010, charged with murder and possession of a weapon during the commission of a violent crime.

This charge concerns the killing of Cora Brown. She died on March 13th, 2009. The defendant was arrested about a year later in March of 2010. He was before the Court on the May 16th of 2011 before Judge James requesting that he be considered for bond. Judge James denied his motion for bond at that time and held if he was not tried by the August 2011 term of court, the issue for bond could be revisited.

And, Judge, I believe that during the July term of court, we had a Schmerber Motion. It was granted over the objection of the defendant. And his DNA was taken to be compared to certain items of evidence that were sent to SLED. We have not gotten the results of that analysis back, Judge, but obviously we're not in a position to try the case before the end of this term, so the defendant is

1 before the Court again and he's here again with his lawyer,
2 Mr. Hank Anderson.

3 **THE COURT:** Okay. Yes, sir?

4 **MR. ANDERSON:** Judge, my recollection is slightly
5 different from Ms. Barr's. Your Honor, previously he had a
6 bond hearing before Judge Brown. You know Judge Brown was
7 sitting with Judge Newman. I think that was in May of
8 2010, Your Honor. At that time bond was denied. Later the
9 attorney that he had representing him in that case was
10 relieved. He was appointed Caesar McKnight. Caesar
11 McKnight filed a motion for bond and/or speedy trial
12 motion.

13 Your Honor, that was what was actually heard when
14 Caesar McKnight was later relieved and I was appointed.
15 That was what was heard back in May of this year.

16 Your Honor, my understanding was that this case was
17 set for -- to be tried by the second week in August and if
18 not, bond would be set. It wasn't that I could bring him
19 back for a bond reconsideration or the issue of bond, but
20 my understanding was that the bond would actually be set
21 because we had already done a speedy trial motion in May.

22 Judge James heard it. He asked Ms. Barr how many
23 more terms are coming up. One was in July. I think it was
24 a two-week term in July and then this two-week term in
25 August. My understanding, Your Honor, I don't have the

1 transcript, I've asked for a copy of it, but I don't have
2 it, was that if it was not tried this second week then bond
3 would be set. And Your Honor, that's my understanding.
4 But I am prepared to go forward and tell you why I think it
5 should be set and why I think it should be set in a very
6 reasonable amount.

7 **THE COURT:** You have -- is there any kind of order
8 signed by Judge James?

9 **MS. BARR:** No, sir, Your Honor. And, Judge, just
10 to be very brief with you, it was not my understanding that
11 the motion for a speedy trial was heard in May. The only
12 thing that I recollect being heard was the issue about
13 bond.

14 **THE COURT:** Well, if Judge Brown had denied bond,
15 my position is no other circuit judge can set bond. Once a
16 circuit judge denies bond, unless there's a change in
17 circumstances that that judge didn't know, I don't have the
18 authority to override another circuit judge. Only if some
19 information comes up --

20 **MR. ANDERSON:** Your Honor, I think there has been a
21 change in circumstances.

22 **THE COURT:** Okay. Now, speedy trial is a whole
23 different motion. But if there's a change in circumstances
24 that wasn't available to Judge Brown when he denied bond,
25 then I can hear it. But short of a change of circumstance,

1 I don't have authority override a circuit judge. I can
2 override a magistrate, but I can't override a circuit judge
3 unless I have information that he didn't have at the time.

4 **MR. ANDERSON:** Your Honor, I think there has been a
5 change of circumstances. I can certainly share that to
6 you; and, Your Honor, Judge James, when he heard the motion
7 in May of this year, he said if this wasn't tried by the
8 second week in August, then bond would be set. That was my
9 understanding. If not bond set, but certainly bond would
10 be heard -- but certainly bond would be set. But I can
11 show you a change in circumstances.

12 **THE COURT:** Well, I'll be glad to hear whatever
13 you've got.

14 **MR. ANDERSON:** First of all, Your Honor, that first
15 bond hearing. My client, Your Honor, he's 47. He has a
16 prior record that consists of two things. He's been
17 convicted of two things. Number one, he has a position of
18 a cocaine charge in 1993. Your Honor, secondly, he has a
19 driving under suspension conviction in 2006. Your Honor,
20 that first bond hearing, the State indicated, and I think
21 somebody from probation indicated, we understand that he
22 has absconded, we have a warrant for his arrest out of
23 another state.

24 We think there's some criminal charges pending in
25 Connecticut. Your Honor, at this point in time, the murder

1 investigation was still ongoing. It was very early in the
2 stages. He had just been arrested, even though the
3 incident had occurred a year early. The investigation
4 involving Mr. McCrea was still in the early stages. As
5 Your Honor -- the part about my client having been
6 absconded was totally incorrect. The part about him having
7 warrants out of another state, totally incorrect.

8 I think -- and I don't know this -- but I think
9 Judge Brown thought, well, might be a flight risk because
10 he had absconded from probation. That is not the case,
11 Your Honor. He doesn't have any warrants anywhere else.
12 He's not on probation anywhere else. He's only got those
13 two convictions. The one in '93, which he did have
14 probation for, but that has long since expired; and the
15 driving under suspension, it was just thirty days or pay a
16 fine and that was in 2006.

17 Your Honor, the other change in circumstances is
18 some reports have come back from SLED. A codefendant was
19 arrested, Your Honor. He was arrested. He gave a
20 statement, he was in another facility. He was in the
21 Georgetown County Detention Center facing a CDV second,
22 probably a CDV high and aggravated. He gave a second
23 statement. The first statement he gave law enforcement,
24 Mr. McCrea didn't have anything to do with anything. He
25 and I were out of town. He gets in trouble. He gives a

1 second statement that says please come to Georgetown County
2 Detention Center, I want to tell you something. So he
3 tells them, Hey, Mr. McCrea did it. He confessed to me and
4 I can show you where the gun is.

5 So, Your Honor, they take it, get the gun. Those
6 ballistic reports have come back inconclusive. Your Honor,
7 I don't think that information was available at the first
8 bond hearing. So at this point in time, Your Honor, the
9 only evidence that ties my client to this crime is a
10 codefendant who initially said he didn't have anything to
11 do with it we were in another state.

12 But then once he gets in trouble, he says, Well,
13 actually Levern did have something to do with it and I can
14 show you where the gun is. The gun has come back -- based
15 on the age of the gun and the elements the gun had been
16 exposed to, it is inconclusive, Your Honor.

17 They cannot say, Yes, we are sure this gun was
18 used; or, No, we're sure this gun wasn't used. And that is
19 it, Your Honor. There's no other evidence out there that
20 indicates my client had anything to do with this. He has
21 been in jail since March of 2010. She a resident of
22 Williamsburg County.

23 His mother is here in the audience, Your Honor.
24 She owns two pieces of property here in Williamsburg
25 County. He has worked in the past. He was working at the

1 time he was arrested. Your Honor, he has -- he's not a
2 flight risk. He has no reason to go anywhere. Your Honor,
3 his family is here. He does have a girlfriend that lives
4 in Anderson, but, Your Honor, that is certainly not out of
5 the state and, Your Honor, I just think that based on the
6 length of time in this case and based on the fact that he's
7 just been waiting his day in the jail since 2010.

8 Judge James set a trial date. That trial date has
9 come and gone. Your Honor, I do believe there's been a
10 change in circumstances that I indicated to you earlier and
11 I think bond should be set. His codefendant is out on a
12 \$25,000 bond and has been out since he gave that second
13 statement.

14 **THE COURT:** Listen, do you have any -- you disagree
15 about his change in circumstances?

16 **MS. BARR:** I do, Judge.

17 Your Honor, let me first of all just say that the
18 codefendant hasn't been out since he gave a statement. I
19 think he was released several months after he gave the
20 statement and I will go on the record that the codefendant
21 is only indicted for misprison of a felony. He's not
22 indicted for murder as the defendant is.

23 And, Judge, just as it relates to the analysis on
24 the firearm that was discovered. I will take exception to
25 the assertion that it's inconclusive. The report, as I

1 understand it, says that the bullets that were found are
2 consistent with what was used to kill the victim and that
3 the bullets that killed the victim could have been fired
4 from the weapon that was found. So I kind of take
5 exception to that characterization. I also take exception
6 to the characterization that this case was set for trial
7 this term.

8 Judge James, when he rendered his order, he said if
9 it's not called for trial by the end of the August term,
10 the issue about bond can be revisited. So it's not a
11 situation where we had to try this case in August or
12 otherwise the defendant would be dismissed. Judge, you
13 are, of course, mindful of the fact that the defendant is
14 charged with murder. Under the circumstances, a most
15 serious murder. The victim was shot multiple times,
16 including in the head, inside her own residence. Nothing
17 apparently -- apparently the motive seems to be in the case
18 that the defendant was angry with the victim. At least
19 that's what we're being told. Judge, the defendant might
20 have only two convictions on his record, but he was
21 arrested and charged with aggravated assault. That was
22 later dismissed. He was also charged with armed robbery
23 and that was later dismissed. And Judge, that armed
24 robbery case took place in 2008, a year before the victim
25 was murdered in the case. So we take the position that

1 based on his criminal history and based on the serious
2 nature of this charge and the possible penalty, he is a
3 danger to the community and he is a flight risk.

4 Judge, one of the things that the trial court will
5 hear in the trial of this case is that the defendant was
6 gone to North Carolina. And so, Judge, he obviously has
7 access and means and connections to places outside of the
8 State of South Carolina; and we believe that that's
9 evidence that he's a flight risk. I think one of the
10 defenses -- one of his alibi defenses was, I wasn't here,
11 supposedly when the murder happened I was in North
12 Carolina.

13 And so we would submit to the Court that based on
14 all of those circumstances, he is a flight risk. He does
15 pose a danger to the community and we would ask that bond
16 be denied.

17 **THE COURT:** The information that probation gave
18 that he said to Judge Brown that he had absconded, is that
19 inaccurate?

20 **MR. ANDERSON:** Yes, sir.

21 **MS. BARR:** Judge, I'll be candid, I've had a number
22 of bond hearings since this time and I don't know whether
23 or not that -- I don't remember whether or not that was
24 stated or whether or not it's true.

25 **MR. ANDERSON:** Judge, it was stated. I got a copy

1 of that transcript.

2 **THE COURT:** Well, then how do you know it was not
3 true.

4 **MR. ANDERSON:** Because I've got a copy of his prior
5 record, Your Honor. He's never absconded from anything.

6 **THE COURT:** But being absconded wouldn't be on his
7 record, would it?

8 **MR. ANDERSON:** Would that be on his record?

9 **THE COURT:** No, I've never seen that.
10 Well, he was on probation --

11 **MR. ANDERSON:** They said he had absconded from
12 another state. Your Honor, he's only been on probation in
13 one state. And that was in...

14 **THE COURT:** Oh, so he wasn't on probation in 2006
15 in South Carolina?

16 **MR. ANDERSON:** No, sir. No, sir.

17 **THE COURT:** Okay.

18 **THE DEFENDANT:** I'd like to address the Court if I
19 could, Your Honor.

20 **THE COURT:** Do you have his -- is your lawyer okay
21 with this?

22 **THE DEFENDANT:** I've lived and worked in South
23 Carolina since 1989. I have two kids here and my own
24 house. I'm 47 years old with no violence on my record.
25 What the State's attorney's office is trying do is put the

1 attention when I have no violent history at all. She's
2 lied, Ms. Kimberly Barr, as well as Agent Adams here, lied
3 deliberately under oath and say that I've absconded from
4 the State of Connecticut and still running from parole and
5 probation, which is a total lie and a total void of truth.
6 She's lied constantly about this gun matching this crime
7 that my alleged codefendant gave them, that do not match
8 this crime, Your Honor.

9 He only mentioned my name when he got in trouble
10 trying to get out of trouble. He used me as a
11 get-out-of-jail-free card. They sit here and fabricate
12 these stories deliberately to the judge on the date of May
13 14th 2010 by saying, Your Honor, that I'm running from
14 parole and probation, that I've absconded from the State of
15 Connecticut, which is a total void of truth, Your Honor.
16 And she knows that.

17 South Carolina has been my home since 1989, Your
18 Honor. I have nowhere else to go. Eighth Amendment
19 guarantees me the right to a reasonable bond, same as the
20 way they gave my less codefendant, \$25,000 surety bond for
21 lying.

22 **THE COURT:** Well, she tells me that your
23 codefendant is not charged with murder.

24 **THE DEFENDANT:** And that's funny. You look at the
25 evidence. It's really not on point. Different than to me,

1 Your Honor. I mean, they gave him a bond for lying.
2 Nothing's matching up. That's a problem, I think. Eighth
3 Amendment guarantees me the right to a reasonable bond,
4 Your Honor. I've been locked up almost twenty months, Your
5 Honor, because of hearsay evidence. They have no proof,
6 but a statement; and that's not fair, that's not right.
7 I'm guaranteed a reasonable bond, the same as my
8 codefendant.

9 THE COURT: Did he -- the hearing that you had in
10 front of Judge James --

11 THE DEFENDANT: He stated clearly, Your Honor, if
12 they weren't prepared in May, gave them ample amount of
13 time that he would give me a bond. He gave them the second
14 week in this month, to the 29th, Your Honor and besides
15 that --

16 THE COURT: Well, I --

17 THE DEFENDANT: Excuse me. Excuse me, excuse me,
18 I'm sorry.

19 THE COURT: Go ahead.

20 THE DEFENDANT: And besides that, December 12th, if
21 I'm not mistaken, Your Honor, Judge James insisted that Ms.
22 Barr turn over all exculpatory evidence which I've asked
23 that she do. Still she's given us evidence in portions and
24 every time we receive a piece of evidence, it's something
25 else that's missing or a piece of information pertaining to

1 my defense. So she deliberately refused to answer to Judge
2 James' request when he's telling her to turn over evidence.
3 And my attorney, Mr. Anderson can definitely address that
4 issue. It's been ongoing, unprofessionally from Ms. Barr
5 and for her to sit here and make me see as if I'm this
6 madman which is totally insane, Your Honor.

7 I'm innocent of these charges and the evidence that
8 we are taking has definitely proven that point. For her to
9 sit here and they deliberately lie and that's the only
10 reason why the first judge denied me a bond, due to the
11 fact that she and Agent Adam Smith deliberately and
12 inflammatory -- made inflammatory statements to the Court,
13 criminally, to make that judge deny me a bond on my bond
14 hearing May 14, 2010, by stating that I'm running from
15 parole and probation, that I'm on parole and probation,
16 that I've absconded from parole and probation and there are
17 no warrants that prove that fact and she lied to the Court,
18 Your Honor; and it's really, it's funny, Your Honor, about
19 and I have a question for you if I may, Your Honor. More
20 like a statement.

21 (WHEREUPON the attorneys were conferring.)

22 **MR. ANDERSON:** Judge, when we had the Schmerber
23 Hearing in front of Judge James, one of the things that I
24 put on the record was that I did not want this to affect
25 what was coming up later in August. Judge James said on

1 the record, Mr. Anderson, that will not change what I
2 previously ordered as far as this case being tried by the
3 second week in August. But, Your Honor, -- that's why I
4 objected to the Schmerber Hearing because I said my man's
5 been in jail for thirteen, fourteen months, they could have
6 gotten this evidence a year ago. They could have gotten it
7 six months ago, but now -- they're getting it now, and I
8 said on the record at that time, I don't think it will be
9 back in time, but I don't want that prejudiced to my client
10 when we come up for bond at the end of August.

11 **THE COURT:** Anything further on that?

12 **MS. BARR:** Judge, just to say that -- I cannot say
13 enough that Judge James did not order this case to be
14 tried. Judge James specifically said if it was not tried
15 in August -- and there's a difference between the two
16 statements. But the judge said that if it was not tried by
17 the end of all term, that the issue of bond could be
18 revisited. Also, Judge, the -- I think one of the things
19 that Mr. Smith had indicated to me from probation that he
20 was -- the defendant was on probation for the drug charge
21 and that drug charge was out of Connecticut and he was on
22 probation from 2007.

23 So he has a record in another state and I don't
24 know if he will say he did or didn't. But he has a record
25 in another State of Connecticut and he's supposedly in

1 North Carolina and we believe that is evidence of itself --
2 in and of itself of flight risk.

3 And, Judge, we also have to be mindful of the fact
4 that he's correct, the defendant -- the codefendant has
5 been released and quite frankly I wonder and worry if
6 something will happen to him.

7 MR. ANDERSON: Your Honor, if I may say something
8 else, please.

9 THE COURT: Wait a minute.

10 MR. ANDERSON: Okay.

11 THE COURT: So he was on probation here for charges
12 from Connecticut.

13 MS. BARR: That's what Mr. Anderson indicates to
14 me, Your Honor, yes.

15 THE COURT: How long was he on probation?

16 MR. ANDERSON: It should have finished in 2007.
17 The case was expired. It was transferred here from
18 Connecticut.

19 THE COURT: Okay. And while he was being
20 supervised here, did he abscond?

21 MR. ANDERSON: He does not indicate that he
22 absconded, Judge. It indicated other violations.

23 THE COURT: Was he -- was his probation revoked so
24 he was sent back or did he complete it?

25 PROBATION AGENT: Judge, I'd have to go back to the

1 file to look. It will take about two minutes to look for
2 that.

3 **MR. ANDERSON:** Your Honor, the record that I have
4 indicates the '93 and the 2006 -- and I'll with be happy to
5 hand that to indicat what he's talking about.

6 **THE COURT:** Well, I'll let him pull that. Assuming
7 that Judge James dealt with a speedy trial motion, when
8 does the State think that they will be in a position to try
9 this case?

10 **MS. BARR:** Quite frankly we're kind of at the mercy
11 of SLED. We have contacted our investigator and asked them
12 to put in a request that the DNA evidence be analyzed
13 sooner rather than later. Obviously, we're at their mercy
14 on that. Realistically --

15 **THE COURT:** Is that -- is that the only thing left
16 that keeps you from trying this case?

17 **MS. BARR:** Yes, sir.

18 **THE COURT:** When's your next term of court.

19 **MS. BARR:** October 10th.

20 **THE COURT:** Usually I found out the best way to
21 speed them up is to send them a subpoena. As soon as that
22 gets there, you get results.

23 **MS. BARR:** Okay.

24 **THE COURT:** If you wait on them it will take a long
25 time to bring results. That gets them here a lot quicker.

1 **MS. BARR:** Yes, sir.

2 **THE COURT:** Nobody has a transcript or anything
3 from Judge James?

4 **MS. BARR:** I don't.

5 **MR. ANDERSON:** Your Honor, I requested it. That's
6 all I know.

7 **THE COURT:** Here's what I'm going to do. I'll call
8 him tonight and see if he has any recollection of this or
9 what his position is and let y'all know something
10 tomorrow --

11 **MS. BARR:** Yes, sir.

12 **THE COURT:** As to what he tells me.

13 **THE DEFENDANT:** Okay. Thank you Your Honor, thank
14 you. I just want to say something else. Your Honor, this
15 crime alledgedly happened around 11. Still in working with
16 Anderson, I just had a little boy that I haven't seen in
17 four months in March like four days, six days before this
18 crime alledgedly happened. Just had a new kid. First,
19 Your Honor, I'm happy to go see my kid. That's the reason
20 why I was in North Carolina because I had just had a new
21 baby boy.

22 She thinks that I have ties to North Carolina. I
23 just had a new baby boy. That's the reason why I was in
24 North Carolina, Your Honor.

25 **THE COURT:** Your son's in North Carolina?

1 **THE DEFENDANT:** Yes, sir. He's a brand new kid.
2 Brand new, Your Honor. This is unbelievable right here.
3 Honestly. I mean honestly.

4 **THE COURT:** Okay. I'll let you know something
5 tomorrow.

6 **THE DEFENDANT:** Yes, sir. Unbelievable.

7 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 30th
11 day of 30th day of August, 2011.

12 I FURTHER CERTIFY that the 20 foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 25th day of July, 2014.

19
20
21
22
23
24
25

s/ Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

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State of South Carolina

Court of General Sessions

County of Williamsburg

CLERK OF COURT
KING TREE, S.C.

Indictment # 10-GS-45-0135

State of South Carolina

Vs.

ORDER RELIEVING COUNSEL

Leevern McCrea

This matter is before me on motion of the Defendant's attorney, Henry M. Anderson, Jr., Esq. (Anderson) to be relieved as counsel. This is the second time a motion has been made by Anderson to be relieved. The first motion came before me on June 22, 2011 and resulted in the Court's Order dated ~~June 29~~ ^{Tacy} June 29, 2011.

The Defendant, Leevern McCrea (McCrea) has been very difficult if not impossible to deal with, not only as a client but as an individual. He has been abusive, vile and profane to Anderson as evidenced by the letters dated Feb 9, 2011 and May 17, 2011 which the Court reviewed prior to the earlier hearing. Not only has he been uncivil and rude, and in general very obnoxious as an individual, he has been unruly and overbearing as a client who refuses to accept the advice and recommendations of his attorney and thinks he knows more about the law and the way the case should be handled than a knowledgeable, experienced criminal defense lawyer.

In the previous Order the Court noted that an indigent defendant does not get his choice of appointed counsel, but that McCrea was fortunate to get a very competent lawyer in Anderson. He was advised that his claim for ineffectiveness was premature and would be appropriate after a trial and conviction.

In denying Anderson's earlier motion to be relieved, McCrea was warned that his uncivil and

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obnoxious behavior toward his counsel would not be tolerated and that he must conduct himself in a civil manner and show respect to his counsel. He was further warned that his actions could result in his waiving his right to appointed counsel.

McCrea's behavior and attitude have not improved, and he continues to berate and verbally abuse Anderson. See letters of Anderson to McCrea and Anderson to the Court dated Sept 1, 2011 attached hereto. He continues to accuse Anderson of unethical and improper behavior.

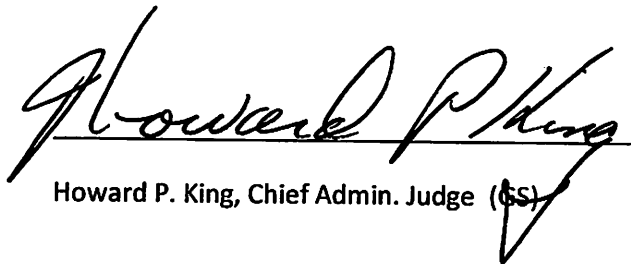
Under the law an indigent defendant is entitled to appointed counsel if he cannot afford one.

However, he can forfeit that right by his actions, language, and conduct. Such is the case here. McCrea has had one previous retained counsel, Charles Barr, Esq., whom he fired, and one previous appointed lawyer, Caesar McKnight, Esq., who was relieved. Appointed counsel is performing a duty imposed by the privilege of being a lawyer, but he does not have to accept or tolerate the type of abuse and accusations heaped upon him by the defendant in this case. By his actions McCrea has waived his right to appointed counsel.

Accordingly, the Court does hereby relieve Henry M. Anderson, Jr., Esq. from any further responsibility to represent the Defendant, Leveern McCrea. Furthermore, if McCrea desires to retain private counsel he must do so within fifteen (15) days and that lawyer must notify the Assistant Solicitor by October 1, 2011. If McCrea does not retain private counsel, he must proceed *pro se*.

Additionally, this case is set certain for trial during the week of October 17, 2011 and retaining counsel will not entitle McCrea or his counsel to a continuance.

AND IT IS SO ORDERED!


Howard P. King, Chief Admin. Judge (CS)

September 12, 2011.

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ANDERSON LAW FIRM, P.A.

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ATTORNEYS AT LAW

HENRY M. ANDERSON, JR
TODD S. TUCKER

September 1, 2011

The Honorable Howard P. King
Third Judicial Circuit
PO Box 189
Sumter, SC 29151

Re: State vs. Leevern McCrea
Case No.: 2010-GS-45-135

Dear Judge King:

Please be advised that I have had some more trouble with Mr. McCrea. I am enclosing a copy of his latest letter to me. As you can see, he indicates that I deliberately betrayed him for the third time. He goes on to say that he no longer needs my lying assistance and that I need to go ahead and put in the paperwork to you or Judge James, that he "doesn't give a damn" or he can do it himself. He indicates he will represent himself.

Of course, in your Order you indicated that you advised him he must refrain from the use of vile and profane language and threats against his attorney. You also indicated that if another incident arose between he and I that because of his improper conduct the court would relieve me and he could get private counsel or represent himself.

Your Order was sent to me. I advised Leevern of your Order. Since you ordered that I represent him I have done just that. I met with him on July 14, 2011; July 19, 2011; July 22, 2011; July 28, 2011; July 31, 2011; August 8, 2011; August 10, 2011; August 13, 2011; and August 19, 2011. I have done nothing but prepare for his trial for the last two months. I have sent out numerous subpoenas. I have obtained records he wanted. I have done nothing but work for him for the last several weeks. I have let my private practice suffer, and I have let my public defender work in Marion suffer trying to get ready for what I thought would be his trial this week.

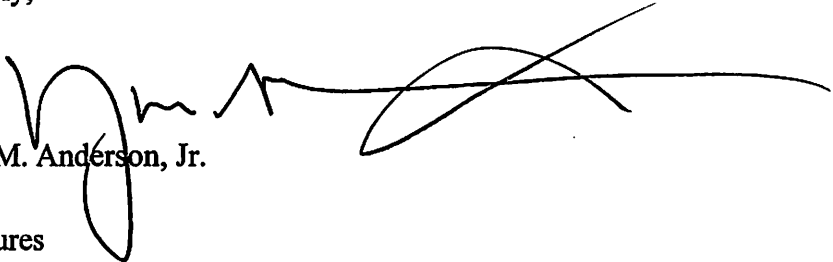
We did not try his case. I did not think that the State would get the DNA results back in time. As a result of that, I was informed by Judge James that we could petition the court for bond. As you can see from my letter to Leevern, he thought we were going Monday. I drove to Kingstree on Monday. I was told by Kimberly at that time we would do this later in the week. They asked me what day was good for me. I told them I wanted to go ahead and get this done and went back over there Tuesday.

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Evidently, Leevern sent his letter to me before I could even get back to see him on Tuesday. I am sure that I will get another letter today or tomorrow telling me what a terrible job I've done and how I'm a lying you know what. I have never intentionally misled Mr. McCrea. I have done everything within my power to make this relationship work. Unfortunately, it is obvious to me that it is not going to work. As a result of this latest incident, and as a result of your Order, I would respectfully request that you relieve me as counsel and let Mr. McCrea represent himself. If I receive any additional correspondence from Mr. McCrea, I will send it to you. In the meantime, I am enclosing a copy of the letter I sent back to him.

With kindest personal regards, I am

Sincerely,



Henry M. Anderson, Jr.

hds

Enclosures

cc: Kimberly Barr

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September 1, 2011

Leevern McCrea, Inmate
Florence County Detention Center
6719 Friendfield Rd.
Effingham, SC 29541

Dear Leevern:

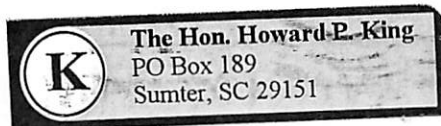
I received a copy of your letter of August 29, 2011. That letter was obviously written on Monday, August 29, 2011. Evidently you did not believe I was taking you up for a bond hearing. It was mailed out on August 30, 2011. I went with you to a bond hearing on August 30, 2011. I have reviewed your letter. I'm sure I'll be receiving another one since your bond hearing of August 30, 2011, was denied. Please be advised that I am not waiting for that letter. I will go ahead and file an affidavit. I will send a copy of that affidavit to you. I will send a copy of it to Judge King. I will ask him to file the same and relieve me.

I am sorry that you feel that I have betrayed you. That is certainly not the case. I resent the fact that you indicated that I did. I also resent the fact that you said that I lied to you. You know and I know that I have done nothing but work extremely hard for you the last two months. In the meantime, if you have any questions, please do not hesitate to let me know.

Sincerely,

Henry M. Anderson, Jr.
hds

526
HAK



COLUMBIA, SC 292

13 SEP 2011 PM 3 L



CAROLYN WILLIAMS
WILLIAMSBURG COUNTY CLERK OF COURT
WILLIAMSBURG COUNTY COURTHOUSE
125 W. MAIN STREET
KINGSLEE, SC 29558

MR. ANDERSON,

BECAUSE OF your deliberate
betrayal to ME and my Family For the
Third time. I NO LONGER NEED your lying
ASSISTANCE. I WILL NOW REPRESENT MYSELF
IN MY CASE WHEN THE TIME COMES.

NOW, YOU CAN PUT IN THE PAPER WORK TO
JUDGE KING OR JUDGE CLARKES, I DON'T GIVE
A DAMN! OR I'LL DO IT MYSELF. YOU HAVE
PLAYED WITH MY FREEDOM LONG ENOUGH
TO PROTECT KIMBERLY BARR AND THE STATE
IN WHICH WHO ARE PAYING YOU.

THERE ARE NO MORE WARNING FOR
MR. ANDERSON. !!

$$\begin{array}{r} 100 \\ \times 40 \\ \hline 000 \\ 400 \\ \hline 4000 \end{array}$$

Lg6
JHK

1210
STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

State of South Carolina

PLAINTIFF (S)

VS.

Leverne Mc Grea

2010-GS-45-00135

DEFENDANTS(S)

11 SEP 15 AM 11:06

CASSEL, WILLIAMS
CLERK OF COURT

AFFIDAVIT OF SERVICE

2010-GS-45-00135

The undersigned Maurice Morris, being duly sworn, says on
oath that he served the order Relieving Counsel, signed by Judge
Howard P. King in this action on the

Asst. Solicitor Kimbley V. Barr by delivering same to

() The Defendant personally

() a person of discretion residing

(note relation to defendant)

at the defendant's residence

(x) Regina Holloway, Law office of Ronnie A. Subb the legal assist.
(title)

at its place of business and leaving with ~~him~~ her one copy of same at 108 West Main St - Kingstree, SC 29556

on the 14th day of September 20 11 at 4:00 (~~AM~~/P.M.) and that Deponent

knows the person so served to be the Solicitor mentioned and described in the pleadings

served, and that Deponent is not a party to, nor interested in the action.

Signed Maurice Morris
Williamsburg Deputy ~~Sheriff~~ Clerk, County, S.C.

Sworn to before me this 15th
day of September 20 11

Debra S. Gre

Notary Public for South Carolina

My Commission Expires 4/1/2021

COUNTY OF Williamsburg

Entered 20
Book Page No.

QUARTER ENDING

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

1211

State of South Carolina

PLAINTIFF (S)

VS.

Leevern M^cCreag

2010-95-45-00135

DEFENDANTS(S)

AFFIDAVIT OF SERVICE

FILED
11 SEP 16 AM 11:21
CLERK OF COURT
WILLIAMSBURG, S.C.

The undersigned Teresa B. Henneghan, being duly sworn, says on

oath that -he served the Defendant; Leevern M^cCreag

in this action on the

Defendant Leevern M^cCreag by delivering same to

(☒) The Defendant Leevern M^cCreag personally

() _____ a person of discretion residing
(note relation to defendant) at the defendant's residence

() _____ the _____
(person served if corporate defendant) (title)

at its place of business and leaving with him/her one copy of same at Florence Co. Det Center

on the 15th day of Sept 20 11 at 1:20 (A.M. (P.M.)) and that Deponent

knows the person so served to be the Defendant mentioned and described in the pleadings

served, and that Deponent is not a party to, nor interested in the action.

Signed Teresa B. Henneghan
Deputy Sheriff
Florence, County, S.C.

Sworn to before me this 15th
day of September 20 11

Maurice A. Morris

Notary Public for South Carolina

My Commission Expires 7/21/2020

COUNTY OF Florence

Entered _____ 20 _____
Book _____ Page _____ No. _____

QUARTER ENDING _____

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

COURT OF COMMON PLEAS

Levern McCrea,)

PLAINTIFF,)

v.)

State of South Carolina,)

DEFENDANT.)

TRANSCRIPT OF HEARING
C/A No: 2010-GS-45-135

Sumter County Courthouse
December 12, 2011

BEFORE:

HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Kimberly Barr
Attorney for State of South Carolina

Levern McCrea, Pro Se

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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Levern McCrea vs. State of South Carolina

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1 Ms. Barr: The next matter before you is 2010-GS-45-
2 135. It is an indictment for murder and possession of a
3 weapon during the commission of a violent crime against
4 this defendant Levern McCrea. As it stands now, Judge,
5 he is representing himself in connection with the charges
6 and the case is ordered set to be tried next week
7 pursuant to an order of Judge King.

8 Your Honor, Mr. Hank Anderson was Mr. McCrea's last
9 attorney of record and he was relieved, I believe,
10 sometime in September and since that time I've been
11 getting a number of letters from Mr. McCrea asking for
12 certain discovery material and I have taken the position
13 that either the discovery material has been provided to
14 him or his previous attorneys or that it is not required
15 to be disclosed pursuant to Rule 5 or Brady. So I
16 requested a status conference on this case given that we
17 are set to try it next week so we can resolve all of the
18 issues about any discovery or any concerns that Mr.
19 McCrea might have.

20 The Court: All right.

21 Ms. Barr: Judge, I made a copy of some of the
22 letters that he wrote along with my response to those
23 letters and Judge I will hand them to the Court.

24 Mr. Brown: Permission to approach, Your Honor.

25 The Court: Yes sir.

Levern McCrea vs. State of South Carolina

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1 (Counsel approaches with documents)

2 The Court: Yes sir.

3 Mr. McCrea: First of all, Your Honor, I'd like to

4 ...

5 The Court: You need to stand.

6 Mr. McCrea: Okay. First of all, Your Honor, I'd
7 like to object to this proceeding due to the Sixth
8 Amendment speedy trial violation. I'm also requesting to
9 have my statements a part of the record for the purpose
10 of appeal.

11 The Court: Say it again.

12 Mr. McCrea: I'm also requesting to have my
13 statements here a part of the record for the purpose of
14 appeal.

15 The Court: Statements as part of the record?

16 Mr. McCrea: Yes sir.

17 The Court: Is it something in writing or something
18 you'd like to say?

19 Mr. McCrea: I actually have some exhibits.

20 The Court: Okay. Pass them up and the court
21 reporter will ...

22 Ms. Barr: Judge, do we need to make copies? Do you
23 have a copy Mr. McCrea? Sir?

24 Mr. McCrea: I have copies. Also, Your Honor, I'd
25 like to use the exhibits --- the state's attorney's

1 office has requested copies of the exhibits that I have
2 given to Your Honor.

3 The Court: Say that again.

4 Mr. McCrea: The state's attorney's office is
5 requesting copies of my exhibits in reference to the
6 reason why I am representing myself. They should have
7 copies of these exhibits here. This is for the court to
8 basically decide the reason why I am forced to represent
9 myself because of the attorneys in the past. Why they
10 conspired. I have the proof to show you. These are
11 exhibits that I would like to enter.

12 The Court: Well, you said that you have some
13 exhibits that you want to make a part of the record ...

14 Mr. McCrea: Yes sir.

15 The Court: ... for an appeal.

16 Mr. McCrea: Yes sir.

17 The Court: Anything you want to make a part of the
18 record, if you hand it to Ms. Collins and she will give
19 them to the court reporter and have them marked as an
20 exhibit and made a part of the record for the defense.

21 Mr. Brown: Your Honor ...

22 The Court: I don't need any assistance in doing my
23 job. I don't need any help in doing my job.

24 If you submit the original of any exhibits then you
25 will not have a copy of it. The solicitor wants to know

Levern McCrea vs. State of South Carolina

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1 if you want copies made. Copies, of course, anything
2 that is made a part of the exhibit is a public record.
3 Any exhibits that you make as a part of the record the
4 solicitor is entitled to see. You would want a copy of
5 it, I would think.

6 Mr. McCrae: Thank you, sir.

7 The Court: So that's her question. Do you want
8 copies made of what you are submitting?

9 Mr. McCrae: Yes, yes I do.

10 The Court: All right. So we will file the original
11 and make copies and give copies of it back to the
12 Defendant, Mr. McCrea. Let's see what it is that he has
13 handed up. All these things that you are submitting
14 seems to be letters that you wrote to different lawyers.
15 Mr. Anderson or Mr. McKnight or comments that you made on
16 letters that you wrote to Mr. McKnight or Mr. Anderson.
17 Is that what all this is?

18 Mr. McCrea: Those are actually letters to the
19 attorneys.

20 The Court: All right. Other than making a copy of
21 these and giving you back the original, and giving you a
22 copy of the original, do you need these to say anything
23 that you want to say today?

24 Mr. McCrea: No sir.

25 The Court: Okay. So, make a copy of them and then

1 we will mark them as an exhibit.

2 Mr. McCrea: If I may, Your Honor.

3 The Court: Yes sir.

4 Mr. McCrea: Can I read you something. Read through
5 this memorandum, the sixth amendment, speedy trial
6 violation. I would definitely like to have this part in
7 the record.

8 The Court: Yes sir.

9 Mr. McCrea: Okay. The Sixth Amendment to the United
10 States Constitution as applied states, the Fourteen
11 Amendment and the South Carolina Constitution guarantees
12 the defendant the right to a speedy trial. State vs. ---
13 The right to a speedy trial is not theorectically and
14 absolute right to and a hard realty and the need to have
15 the charges properly disposed Dickerson vs Floyd. The
16 determination of whether or not the accused has been
17 denied his constitutonal right to a speedy trial depends
18 on the circumstances of each case. A speedy trial does
19 not mean immediately, it simply means a trial without
20 unreasonable or unnecessary delay, State vs. Duke. The
21 Sixth Amendment speedy trial provision does not provide
22 the defendant protection until he or she is indicted.
23 The South Carolina Supreme Court has considered the
24 purpose of the speedy trial guanatees in determining when
25 the Defendant's rights to a speedy trial begins to run.

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1 On or about the 12th day of March 2009 the murder was
2 committed. On March the 29th, 2010 the defendant was
3 arrested and charged with murder and a weapons possession
4 during the violent crime. The defendant was served with
5 warrants for this alleged crime on or about March the
6 30th while at the Williamsburg County Detention Center,
7 the Defendant's alleged co-Defendant, Mr. Briggs was also
8 arrested in connection to this crime on or about January
9 8, 2010. March the 31st, the co-Defendant was charged
10 with one misprison of a felony. On or about April 5,
11 2010, the Defendant was represented by counsel, Mr.
12 Charles David Barr. On May 14, 2010, Defendant was
13 represented by attorney Charles, bond denied. On or
14 about May 26, the defendant went to a preliminary hearing
15 with Attorney Charles Barr a conflict of interest with
16 counsel took place before preliminary. Fired counsel at
17 the beginning of the hearing. On October, excuse me, on
18 or about July 8, 2010, the Defendant was indicted on the
19 count of murder, possession of a weapon during a crime.
20 On or about July 21, 2010, Defendant was represented by
21 attorney Cezar McKnight. Counsel Cezar McKnight
22 submitted on behalf of the defendant a Motion for a
23 Speedy Trial pursuant to the Sixth Amendment of the
24 United States Constitution, 17-23-90 of the South
25 Carolina Code of Laws as amended, 1976. Counsel also

1 filed in conjunction to the speedy trial motion he
2 submitted an alibi notice also on or about November the
3 9th 2010. On December the 6th, 2010, the Defendant
4 requested the removal of Mr. McKnight as counsel which
5 was granted by Judge James. On or about December the
6 12th, 2010, the Defendant was appointed Hank Henry
7 Anderson by Judge James. He still desired counsel for
8 the defendant. On November the 9th, 2010, attorney Cezar
9 McKnight filed before this court a motion for speedy
10 trial. I have some exhibits here, Your Honor, also that
11 I would also like to enter.

12 The Court: All right.

13 Mr. McCrea: After the defendant's dismissal of
14 counsel, Mr. McKnight, the defendant was then represented
15 by Attorney Hank Anderson. I also have a couple of cover
16 letters here. On February the 7th, 2011, Defendant was
17 forwarded a letter from counsel Anderson indicating that
18 a motion for a speedy trial and a new bond was in deed
19 filed and still pending and was submitted by attorney
20 McKnight, which councilman Anderson stated that since he
21 had already filed there was no point in filing one as
22 well. April 19, 2011, the Defendant was sent another
23 letter from attorney Hank Anderson reiterating that Mr.
24 McKnight's motion is still pending within the court and
25 there was no need for him to resubmit one. On July 19,

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1 2011, the Defendant appeared before the court for the
2 purpose of a hearing for DNA and bond. However, Mr.
3 Anderson refused to file for a motion to dismiss due to
4 the statute of limitations set forth in the Sixth
5 Amendment of the United States Constitution of 17-23-30.
6 The Honorable Judge James offered councilman Anderson the
7 opportunity to file for a motion of dismissal. However,
8 councilman Anderson replied Defendant argue rest upon the
9 facts as set forth by the law. The statute of limitation
10 has long since expired and because of the defendant's
11 speedy trial motion submitted November 9, 2010. More so,
12 there is nothing indicating or documenting as an
13 opposition or an extension requested by the solicitor,
14 Ms. Kimberly Barr, in this matter. What is established
15 is that the actual motion is still valid and active.
16 This motion has been asserted into the court since
17 November the 9th, 2010 which constitutes the violation of
18 the defendant Sixth Amendment of the United States and
19 violates 17-23-90 of the South Carolina Code of Laws
20 amended in 1976.

21 The Defendant surely asserts the Sixth Amendment
22 Right upon early stages of this proceeding. Defendant's
23 attorney Mr. Cezar McKnight submitted this motion for
24 speedy trial approximately a year ago but for reasons
25 unknown this motion has fallen upon deaf ears. The

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1 Defendant's due process right has clearly been violated
2 as a matter of law. The Defendant submits this motion for
3 dismissal as a matter of law and request a hearing
4 regarding the facts as set forth by the record.

5 In this instance, the defendant submitted a motion
6 for speedy trial and pursuant to the Sixth Amendment of
7 the United States Constitution and 17-23-90 of the South
8 Carolina Code of laws, the Defendant in this matter was
9 arrested on March 29th, the defendant was indicted on
10 July 8, 2010. On November 9, 2010, a motion for speedy
11 trial was submitted on behalf of the defendant in
12 accordance with the law United States vs. Merit... The
13 Sixth Amendment speedy trial provision does not provide
14 defendant protection until he or she is indicted. The
15 defendant argues statute of limitation and all factors of
16 delay set forth in Barker vs. Wingo, the court identifies
17 four factors to be used in determining whether a
18 defendant has been denied the right to a speedy trial. One,
19 length of delay, two, the reason asserts to justify the delay;
20 three, when and how the defendant asserts his right to a
21 speedy trial and four the prejudice to the defendant. Courts
22 must engage in a balancing test with these related factors
23 which must be considered together of the circumstances as may
24 be relevant. Baker, United States. In accordance with 18 USC
25 3161, Code section 3161, time limits and exposure in any case

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1 in which a plea of not guilty is entered at trial of the
2 defendant charged in any information or indictment with the
3 permission of an offense shall commence within seventy days from the
4 filing date and make public of the information or indictment unless
5 the defendant consents in writing to the contrary the trial should
6 not commence less than thirty days from the date on which the
7 defendant first appeared through counsel or expressly ways counsel
8 and elects to proceed pro se.

9 However, in this instance the defendant relied solely upon
10 counsel to assert his motion for a speedy trial which counsel
11 submitted on behalf of the defendant. The people have not addressed
12 and/or submitted justification in regards to this motion in
13 accordance with the facts set forth in Barker vs. Wingo, 1972.
14 There is nothing before the court opposing the defendant's motion to
15 let them delay. The reason the state asserts justification to the
16 defendant. There are clear factors that must be considered in
17 establishing the prejudice against the defendant and this instance
18 the related factors clearly support the prejudice against the
19 defendant. The defendant submitted a speedy trial motion on
20 November the 9th, 2010, however, the state without opposition and or
21 asserted a reason has failed to meet the statute of limitations set
22 forth by law. And the state's motion for DNA on July 19th, 2011
23 establishes the state's due diligence in affording the defendant his
24 right to a speedy trial. The Defendant request that this court
25 dismiss this case with all factors mentioned above and a relevant

1 fact as set forth by law. As an alternative, the defendant's
2 requesting a hearing on all the above factors by law.

3 I have the exhibits that I'd like to enter as well, Your
4 Honor.

5 The Court: All right.

6 Mr. McCrea: Also, Your Honor, due to the prosecutions failure
7 to disclose all elements of evidence that may be presented before
8 the court would also constitute a fourteen amendment violation
9 because it is impossible for me, the defendant, to prepare a defense
10 against undisclosed evidence, Your Honor, and I have a list of some,
11 I should say, Brady material that I'm entitled to have. Here's a
12 receipt, Your Honor, that was given to Officer Brown that Ms. Barr
13 has wrote to me stating that it was never given to Officer Brown and
14 I have proof to show you that they did take the receipts that would
15 prove one of the elements of my presence being elsewhere at the time
16 of this crime, Your Honor. I would also like to enter this in.

17 The Court: Sir?

18 Mr. McCrea: I'd also like to enter this into
19 evidence to prove the point that Officer Brown did take
20 these receipts as stated clearly here.

21 The Court: All right.

22 Mr. McCrea: The letter that Ms. Barr wrote to me
23 through this letter protecting or trying to help their
24 case.

25 The Court: All right. Is there something else you

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1 want to submit?

2 Mr. McCrea: Yes, Your Honor. Also, Your Honor, if I
3 can go through the list of items that are still missing
4 from my discovery.

5 The Court: Well, first, we are going to hear the
6 solicitor's response regarding your speedy trial motion.

7 Mr. McCrea: Okay.

8 Ms. Barr: Your Honor, as Mr. McCrea stated the
9 murder happened in March of 2009. There was not an
10 arrest made until March of 2010. So there was a year that
11 went by before the arrest was made. As a result, in most
12 murder cases you have a lot of evidence, typically have a
13 lot of evidence that is submitted to SLED for analysis
14 and that is certainly the situation that we find
15 ourselves in in this case. As a matter of fact, the last
16 DNA report was not generated until September the 9th of
17 2011. So to that extent, the investigation is still on
18 going. I've provided Mr. McCrea with a copy of that SLED
19 report.

20 In addition, Judge, part of the delay has come about
21 as a result of the defendant's own actions. He has had
22 three very well qualified, very experience attorneys
23 either retained or appointed to represent him and they
24 each have sought to be relieved as his counsel based upon
25 his treatment of them and his unreasonable demands. Mr.

1 Barr had represented him up until July of 2010, then Mr.
2 McKnight was then appointed, he represented him until
3 December of 2010 and then Mr. Anderson was
4 subsequently appointed and he represented him until
5 September of 2011. Judge, the case is set for trial next
6 week so I think at this point the motion is moot and I'm
7 not aware of any statute of limitations on a murder case.
8 So, I'm not quite sure what the defendant means when he
9 talks about a statue of limitation.

10 The Court: All right. Any response Mr. McCrea?

11 Mr. McCrea: Yes sir.

12 The Court: Okay.

13 Mr. McCrea: Your Honor, Ms. Barr mentioned the fact
14 that I've been through three attorneys. She is
15 absolutely right. It has been due to the fact my first
16 retained attorney hide from me until we were going to my
17 bond hearing. I had sent letters, made phone calls and
18 then he waits two minutes before we go to the Judge and
19 he was making stuff up. He was asking for my name and
20 address and he has had two months to obtain this
21 information from me. That's what cause the first
22 conflict of interest. He had been paid to represent me
23 not hide from me. And two minutes before I go in front
24 of the Judge you are asking me my name and address and
25 then you're up here making stuff up about me. That's not

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1 an attorney that is in my best interest. The second
2 attorney, Mr. McKnight, I don't know if you recall that
3 but you actually appointed Attorney McKnight to represent
4 me and he also stated on the record that he didn't want
5 to represent me due to the fact that he felt as though I
6 was able to retain counsel. And due to that fact, is the
7 main reason why it created a conflict. And me requesting
8 Attorney McKnight to order transcripts that shows perjury
9 on the state's attorneys. Lying under oath on the
10 state's attorneys. So if that was reason for them to
11 show that I have absconded from the state and go on
12 probation then that doesn't exist then there is a reason
13 to show the change of circumstance because the only
14 reason the court denied me bond was due to that fact. So
15 that was reason, Attorney McKnight, he just didn't want
16 to do anything for me. And it was due to that fact, that
17 he stated in front of you, because he wasn't getting paid
18 so that caused a great conflict. And I'm saying here
19 that I have proof to show that what the state's
20 attorney's office said under oath was a lie. So, that's
21 what caused conflict between me and Mr. McKnight. Those
22 are some of the exhibits that I'm requesting the court to
23 review as well. Then there is Attorney Anderson, which
24 you will see clearly lied because he is appointed to
25 represent me December 12th and he pays me a visit

1 December the 19th, 2010. Okay, first day he comes to see
2 me he is lying to me. He states he's going to put in a
3 motion to obtain my car contract from the dealership
4 where I purchased my Mercedes. Okay. Five months later
5 I'm writing him requesting or asking him if he retained
6 any information and he says to me in the letter I don't
7 even know what you're talking about. I don't even know
8 what car dealership your talking about. I'm like what
9 are you talking about. We discussed this and you have it
10 in writing. So, he's treating me like I'm just a
11 complete idiot. You writing me, I've made contact with
12 the dealership and then five months later you're writing
13 me telling me I don't even know what dealership you're
14 talking about. That causes a problem. This is no
15 shoplifting charge, Your Honor, so I don't need no
16 attorney that is supposed to be helping me lie to me.
17 So, how can --- how can I trust him due to that fact and
18 this never stopped. I mean he sabotaged both bond
19 hearings. He hide from me the whole week when he knows
20 I'm about to go to a bond hearing. He hides from me a
21 whole week. I get here. Just like I been waiting for
22 you for hour. They had me over there in Kingstree in the
23 County for four or five hours and then he gets up here
24 and he's asking me or he's explaining charges that was
25 dismissed twenty years ago but he tells me that the state

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1 can't go back no more than ten years. Why would you
2 mention a charge that's been dismissed. Twenty years, I
3 got the charge twenty years. So it just never stopped.
4 It was just constant lying, constantly. Like I said and
5 some of those exhibits will show you a lie on him, lying
6 constantly. So, again, like I said this is no
7 shoplifting charge. This is a serious charge, Your
8 Honor, that I'm being set up for my alleged co-Defendant,
9 and the evidence is going to prove it, Your Honor. There
10 are a lot of things that are still missing from this
11 discovery, Your Honor.

12 The Court: All right. Before we get into discovery,
13 I'm going to rule on the speedy trial issue. Anything
14 further from the State about that issue?

15 Ms. Barr: Nothing further from the State, Your
16 Honor. Well, if I just may say this. Mr. McCrea is
17 correct when he talks about the fact to be considered by
18 the court, Judge the Defendant was arrested in March of
19 last year and we would submit that given this is a murder
20 case 18 months to trial time is not unreasonable and here
21 that is usually early in terms of how we're able to do it
22 based on scheduling. Your Honor, I would ask the court
23 to consider the reasons why the case has been pending for
24 eighteen months and also take in consideration the
25 various changes of lawyers and the investigation that is

1 continuing to be on going. We also submit, Judge, there
2 has been no prejudice to the Defendant.

3 The Court: One of the leading cases on this issue
4 for speedy trial is State vs. Brazel(sp). In that case,
5 the Defendant claimed his right to speedy trial was
6 violated. In that case the Defendant had not be brought
7 to trial for three years and five months and the court
8 ruled that the right to speedy trial was not violated by
9 delays totaling three years and five months. Further the
10 state failed to offer a satisfactory justification for
11 the delay. In that case the court said the delay is not a
12 result of any prejudice to the defense and that there was
13 no evidence that the delay was willful and intentional
14 and that the trial judge effected the speedy trial right
15 by setting the trial date less than two months away from
16 the date of the indictment and warning the prosecutor
17 that any further delay would result in a dismissal. The
18 court went onto consider the factors that must be
19 considered in deciding whether the right to speedy trial,
20 constitutional right to speedy trial violation. Among
21 those things the court is to consider are the factors
22 that Mr. McCrea pointed out in his presentation to the
23 Court. The Court highlighted that due process, the
24 provision of the constitution plays a limited role in
25 effecting against the indictment delayed and then

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1 allowing the case to get stale to the extent that it
2 prejudices the right of the defendant to a fair trial.
3 The purpose of a speedy trial is to prevent the prejudice
4 to the defendant caused by the passage of time to
5 minimize the possibility of lengthy incarceration prior
6 to trial to reduce the lesser substantial impairment of
7 liberty imposed on a defendant while released on bond and
8 to shorten the destruction caused by arrest in the
9 criminal charges. According to State vs. Monroe it says
10 that a speedy trial does not mean an immediate one and
11 should not imply undue haste for the State like the
12 Defendant is entitled to a reasonable time in which to
13 prepare its case. A speedy trial simply means a trial
14 without unreasonable and unnecessary delay. In this
15 case, Mr. McCrae seems to be hanging his hat primarily on
16 the fact that when Mr. McKnight was his lawyer and he
17 filed a Motion for speedy trial and that Mr. McKnight
18 filed a motion for speedy trial and there hasn't been a
19 trial. Of course, Mr. McKnight was lawyer number two of
20 three. Included in the papers that Mr. McCrea has made a
21 part of the record, they include a number of letters to
22 Mr. McCrea and his lawyers explaining various things
23 about problems they are having with Mr. McCrea or
24 attempting to answering Mr. McCrea's questions. Mr.
25 McCrea's notes on those letters regarding how the lawyers

1 are misrepresenting things and how they are not properly
2 representing him and how the lawyers are lying to him
3 and, of course, all of the problems with the lawyers work
4 against the case being brought to trial in a speedy
5 manner. A speedy trial was filed by Mr. McKnight. When
6 was it filed.

7 Mr. McCrae: November 9th, Your Honor.

8 The Court: November ...

9 Mr. McCrea: November 9th of 2010.

10 The Court: Was it ever ruled on, any hearing on that
11 issue?

12 Mr. McCrea: No, it's the state's due diligence.
13 She's trying to state, Your Honor, that the reason being
14 is because of me.

15 The Court: I understand what she is saying, the
16 question is whether a judge has ruled on your motion for
17 speedy trial.

18 Mr. McCrea: No, Your Honor, because I haven't been
19 able to present them. Mr. Anderson, again, lied again.
20 I mean, they are just asking for DNA and prints, Your
21 Honor, and I still don't have those results and I'm
22 entitled to those.

23 The Court: We'll get to the discovery issue.

24 Mr. McCrea: Yes sir.

25 The Court: We're still talking about the speedy

1 trial.

2 Mr. McCrea: Yes sir.

3 The Court: The motion was filed - the motion has yet
4 to be ruled on in granting a speedy trial, of course, if
5 the judge orders a speedy trial the State cannot rule on
6 a motion filed. The court must rule on motions filed.
7 So, where Mr. McKnight filed a motion for speedy trial
8 then he's subsequently relieved as counsel and then Mr.
9 Anderson becomes a lawyer and then Mr. Anderson is
10 relieved as counsel. So the first hearing, appears the
11 first opportunity to have a hearing on this motion for
12 speedy trial is your presenting it to the court at this
13 time.

14 Mr. McCrea: Yes sir.

15 The Court: So the constitution grants the right to a
16 speedy trial. The State has scheduled the case for a
17 trial. So my ruling is that your constitutional right to
18 a speedy trial is not been denied by the State. The
19 State has continued its preparation of the case and
20 expedited it in an expediate manner that the bringing of
21 the matter to a trial has been complicated to some degree
22 by the multiple changes in lawyers including the hearing
23 in which the judge decided that you were representing
24 yourself and that a trial set for next week is a speedy
25 trial considering the complexities of a murder case, the

1 delay in arrest and indictment not caused by any fault of
2 the State but just the natural course of events. I
3 believe that the scheduling of a trial for next week
4 satisfies your right to a speedy trial. That's the
5 speedy trial issue.

6 You mentioned another issue about a receipt and the
7 State violating discovery and you handed up a transcript
8 taking about that. I'm going to file this original of
9 these documents. First original Exhibit One and then the
10 copies that you have submitted.

11 Mr. McCrea: Can I have a number for those.

12 The Court: All right. We're going to file
13 everything that you want. Exhibit Number Two, they
14 haven't brought --- This is Exhibit Number Two which
15 includes a transcript on the issue involving a note, a
16 note of Mr. Brown ...

17 Mr. McCrea: A receipt.

18 The Court: A receipt. That's the second exhibit.

19 Mr. McCrea: May I ...

20 The Court: Yes sir. That's the third exhibit?

21 Mr. McCrea: Yes sir.

22 The Court: We're going to talk about the second
23 exhibit. We're going to give them a chance to make a
24 copy of that. We're going to hold up the discussion and
25 hear Ms. Barr's response and argument about the missing

1 receipt and Mr. Brown what he testifies to and all of
2 that. We're going to take a break in these proceedings
3 while they are making those copies and while you're
4 contemplating your response so we can hear this other
5 matter from Mr. Sabb.

6 (There was a break in the proceedings)

7 (Back on the record)

8 The Court: Ms. Barr regarding the earlier issue.

9 Ms. Barr: Yes sir, Judge. I was aware that the
10 defendant provided law enforcement around the time of his
11 arrest with a copy of a receipt from Family Dollar, I
12 think it totaled sixty-one odd dollars and he gave that
13 to Investigator Brown, I believe. Mr. Brown provided me
14 a copy of that and I submitted a copy of that to Mr.
15 McCrea at his request. In a subsequent letter to me he
16 also stated that there was a McDonald's receipt. Judge,
17 if there is a McDonald's receipt that he gave to law
18 enforcement I don't know anything about that. When he
19 gave me the letter I asked Mr. Brown about that last week
20 and he indicated to me that he doesn't have any record of
21 any McDonald's receipt.

22 The Court: All right. Mr. McCrea.

23 Mr. McCrea: Yes sir. In that, the pages ...

24 The Court: The transcript?

25 Mr. McCrea: Yes sir. It clearly states that, you

1 can read what it says that's the proof where they say
2 they are going to keep it, they are not going to give it
3 back.

4 The Court: All right. This is a transcript of a
5 statement that you gave?

6 Mr. McCrea: That's the transcript from the first
7 police interview, the 28th of March, Your Honor. The
8 25th.

9 The Court: Okay. Investigator Collins ask the
10 question did I give you the receipt back. Investigator
11 Brown, I've got them right here. You think we should
12 keep them. Investigator Brown, I've got the receipts
13 they aren't going no place. Question, those are his
14 girlfriend's receipts. I know he needs to stop lying.
15 That's what you are referring to?

16 Mr. McCrea: Yes sir. Those two pages.

17 The Court: Somewhere, Brown, during that time I got
18 the receipts at McDonald's. All I want you to do, Brown,
19 listen, that's your answer, that's what you say. During
20 that time I got the receipt at McDonald's. All I want
21 you to do Brown, that's you talking, right?

22 Mr. McCrea: Yes sir.

23 The Court: The next page you asked from Brown, did
24 you go to McDonald's? I went through the drive thru,
25 ordered two double cheeseburgers and fries. They take

1 your picture up there, I know it was during that time.
2 All right. It is your position that these, that he
3 should go to McDonald's and get some receipts to prove
4 your ailbi?

5 Mr. McCrea: No, he had the receipt along with the
6 one that Ms. Barr sent me. There was two of them along
7 with the police report filed against these two gentlemen
8 that pulled a gun on me.

9 The Court: So receipts from McDonald's?

10 Mr. McCrea: One receipt from McDonald's and there
11 was another receipt from the Family Dollar store.

12 The Court: Those stores are located where?

13 Mr. McCrea: One is on the way to North Carolina and
14 the other one is actually in South ... actually in North
15 Carolina.

16 The Court: Those receipts will help prove your
17 ailbi?

18 Mr. McCrea: Prove one element.

19 The Court: Prove one element.

20 Mr. McCrea: Yes sir.

21 The Court: And it is your contention that the State
22 has the receipt based on this colloquy in your statement?

23 Mr. McCrea: Yes sir. They never gave them back.

24 The Court: All right. Ms. Barr.

25 Mr. Barr: Judge, I've got Investigator Brown in the

1 courtroom and I have, again, I've asked him about that
2 and I don't know anything about a receipt from
3 McDonald's. May I ask the Defendant what date he
4 maintains the receipt was for. And he said I'm on the
5 way to North Carolina. I'm assuming that's the
6 McDonald's receipt that he has on the way to North
7 Carolina. Because the Family Dollar receipt is actually
8 in North Carolina.

9 Mr. McCrea: It's on the way to North Carolina. The
10 14th of the month, 2009. That's the receipt that they
11 took that they didn't give back.

12 The Court: All right.

13 Ms. Barr: Judge, even if that is the case, the
14 murder, or the victim's body was discovered by law
15 enforcement the 12th of March and he's got a receipt dated
16 the 14th of March, two days after. I'm not quite sure how
17 that is relevant. I'll have law enforcement double check
18 and triple check and if there is a McDonald's receipt
19 I'll be happy to give that to them.

20 Mr. McCrea: Your Honor, excuse me. They failed to
21 keep the receipts twenty-two, twenty-three months and
22 then they was only able to find the one for March 10th.
23 Not the 11th. I gave them both of them at the same time.
24 So how is it possible that they going to keep those
25 receipts, they are his girlfriend's receipts. We're

1 going to hold on to them they are not going anywhere was
2 what was stated. They still have the receipts and it
3 proves that was an element. I came back from North
4 Carolina, I left on the 9th and came back on the morning
5 of the 12th. To go to Anderson, South Carolina the second
6 time, I didn't, on the day of the 14th, the morning of the
7 14th so it has relevance to me presenting my case.

8 The Court: Well, any evidence recovered by the State
9 that is relevant or material to proving the defense or
10 enabling the defendant to present a complete defense the
11 state must disclose to the defendant and the defendant is
12 offering proof from this interview that the State is
13 acknowledging having in its possessions the McDonald
14 receipts so he wants the receipts turned over. He wants
15 the court to order the State to produce them or explained
16 why they don't have them. Do you want to take some
17 testimony on the issue. Mr. Brown or Ms. Barr? It is a
18 discovery issue.

19 Ms. Barr: Judge, we can take some brief testimony,
20 Your Honor.

21 The Court: All right.

22 Ms. Barr: We call Investigator Willie Brown.

23 Clerk: You solemnly swear to tell the truth, the
24 whole truth and nothing but the truth, so help you God?

25 Mr. Brown: I do.

1 Mr. Brown - Examination by Ms. Barr:

2 Q: Sir, you are employed with the Williamsburg County
3 Sheriff's Department?

4 A: Yes I am.

5 Q: Are you a certified police officer?

6 A: Yes, I am.

7 Q: You were involved in the investigation of the murder
8 of Cora Brown back in March of 2009?

9 A: Yes I was.

10 Q: As part of that investigation you interviewed Mr.
11 McCrea and several other persons, is that correct,
12 or participated in those interviews?

13 A: That's correct.

14 Q: All right. And you would have been involved in
15 collecting evidence and so forth in connection with
16 that case?

17 A: I would have.

18 Q: All right. After the arrest was made and after the
19 case had been indicted, did I send a request to the
20 Sheriff's Department for a copy of the case file?

21 A: Yes I did.

22 Q: And did you turn over to me everything that you had
23 in your case file?

24 A: Yes I did.

25 Q: Do you recall me asking you on last week about the

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1 location if any of a McDonald's receipt that the
2 Defendant Levern McCrea was requesting?

3 A: I do.

4 Q: Do you have a specific recollection of taking a
5 McDonald's receipt from him?

6 A: No ma'am.

7 Q: But you did, in fact, at least took one receipt from
8 him?

9 A: That's correct.

10 Q: And I believe that was ...

11 A: A receipt from Family Dollar.

12 Q: Let me ask you. In terms of any documents that Mr.
13 McCrea would have given you at the time of his
14 statement, what would you have done with those
15 documents?

16 A: Made copies of them and keep them in the case
17 folder.

18 Q: The originals would be in the case folder?

19 A: That's correct.

20 Q: Have you had an opportunity since I asked you about
21 it on last week to go back and review your case
22 folder to see if there is another receipt in the
23 file, have you had that opportunity?

24 A: I did.

25 Q: Were you able to find any such McDonald's receipt?

1 A: No ma'am. Can I just kind of elaborate on it?

2 Q: Yes sir.

3 A: I recall him turning in a Family Dollar receipt.

4 The reason why I think the McDonald receipt issue
5 came up because it was a different date and we told
6 him that wasn't the date we were concentrating on.

7 We was concentrating I think the 11th or the 10th, I
8 can't remember the date off hand. And I said we
9 need proof we can go to McDonald's and check. So,
10 we kept the Family Dollar receipt, that's the one we
11 kept.

12 Q: So you had an exchange with him in terms of his
13 statement about McDonald's that his going to
14 McDonald's occurred after the murder?

15 A: That's correct.

16 Q: And in your mind, I'm assuming you didn't think that
17 was relevant because it happened after the murder?

18 A: That's correct.

19 Ms. Barr: That's all the questions I have.

20 The Court: Did you ever have a McDonald's receipt?

21 Mr. Brown: I don't know if he was able to provide us
22 with one or he was just telling us about one. And then I
23 think we had a conversation about the receipt and an
24 ailbi but I don't recall ever seeing a McDonald receipt.

25 The Court: So in the transcript, Investigator

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1 Collins asked did I give you the receipts back and your
2 response, I've got them right here. I've got the
3 receipts they are not going any place, they are his
4 girlfriend's receipts. What receipts were you talking
5 about?

6 Mr. Brown: To my recollection I was referring to.
7 I think it was a Family Dollar receipt and another
8 receipt from a store I think Chris Briggs may have had.

9 The Court: All right. Mr. McCrea. You can ask any
10 questions you would like.

11 Mr. McCrea: Your Honor, he's lying. He has purgered
12 himself. He said receipts.

13 The Court: Do you want to ask him any questions?

14 Mr. McCrea: Oh yes.

15 Mr. Brown - Cross Examination by Mr. Brown:

16 Q: Investigator Brown, you stated that there was
17 another receipt from Mr. Briggs. Mr. Briggs wasn't
18 with me at that time you interviewed me.

19 A: That's correct.

20 Q: So why would you include Mr. Briggs when I'm being
21 interviewed at that time and gave you these receipts
22 personally.

23 A: We interviewed Mr. Briggs separately and interviewed
24 you seperately.

25 Q: I'm speaking of the March 25th date when I gave you

1 both receipts and you stated that they are not going
2 anywhere. You stated the receipts so what other
3 receipts could you have been talking about that you
4 have in your hand?

5 A: The only one that I remember taking from Mr. McCrea
6 was the one of the Family Dollars it was dated
7 around the time the death happened.

8 Q: You said receipts though, sir. There were two
9 receipts, you said receipts. So that's more than
10 one.

11 A: I was implying to the one that was taken from
12 Christopher Briggs for some chips and soda from a
13 convenience store.

14 Q: Again you are involving Christopher Briggs when I
15 was there present with you during this interview.
16 Mr. Briggs is not here. I'm speaking about the
17 receipts. You mentioned, I'm going to keep them
18 they are not going anywhere. So you're talking
19 about more than one receipt, not Mr. Briggs receipt
20 Officer Brown. That's funny but it makes sense
21 because there is more than one. You said receipts.
22 Ms. Barr: We are going to object at this point.

23 The Court: You have to ask questions, not argue with
24 the witness. You just have to ask him questions and give
25 him a chance to answer.

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1 Q: There are more than one receipt. I gave you two
2 receipts. You stated clearly yourself that you have
3 receipts.

4 A: I remember one.

5 Q: You stated there were two receipts.

6 A: I said I remember seeing a Family Dollar receipt
7 from you.

8 Mr. McCrae: No further questions.

9 The Court: Okay. Anything further, Ms. Barr?

10 Mr. Brown - Redirect Examination by Ms. Barr:

11 Q: Mr. Brown, I'm sorry, I've got one follow up. I'm
12 going to show you page 66 of that recorded interview
13 with Mr. McCrea and I'm going to direct your
14 attention to line 21. I need you to just read the
15 top of that page real quick. You all were talking
16 about the date of the murder possibly being March
17 10, 2009?

18 A: That's correct?

19 Q: Is that when the Defendant provided you with the
20 receipt for the Family Dollar dated March 10, 2009?

21 A: Yes ma'am.

22 Q: I think you told him words to the effect that that
23 receipt doesn't mean s-h-i-t?

24 A: That's correct.

25 Q: And you just specifically said that receipt, is that

1 right?

2 A: That's correct.

3 Ms. Barr: That's all the questions I have.

4 The Court: All right. Any further questions, Mr.
5 McCrae?

6 Mr. McCrae: Your Honor ...

7 The Court: Do you have any questions of this
8 witness?

9 Mr. McCrea: Yes sir.

10 Mr. Brown - Recross by Mr. McCrae:

11 Q: Officer Brown, again I did give you two receipts and
12 ...

13 Mr. McCrea: I have nothing further for this witness.

14 The Court: All right. All of this is before your
15 trial and it is dealing with issues of discovery and
16 getting ready for trial. Obviously if the State has
17 evidence they are under a duty to turn it over but if
18 they are telling you that they don't have it then I can't
19 make them create something that they say that they don't
20 have. The issues concerning what is said and what was
21 done and all that, that is what a trial is all about and
22 that's what the jury will be hearing testimony on and
23 arguments next week. So, if the law enforcement says
24 that they were talking about a Family Dollar receipt and
25 you say and you testify that you gave them a receipt from

1 a McDonald's that proves your ailbi or some element of
2 the Albi then it becomes a question of credibility and
3 the jury has to pick who they believe based on the
4 testimony and also based on the arguments. One advantage
5 you have over the officers is that you can argue to the
6 jury, you can argue if you testify, you can argue if you
7 know you're going to testify but you can't argue in lieu
8 of testifying. You can't say well he is lying because I
9 did such and such unless you have testified to some of
10 the issue. So, you all have a dispute on that issue. Ms.
11 Barr says she doesn't have a receipt. She's not
12 withholding any receipt. The officer has testified that
13 he doesn't have a receipt so there is nothing further
14 that I can do on that issue. But the issue is one in
15 which you all can have at it next week. One of many
16 issues.

17 What's the next issue about discovery?

18 Mr. McCrea: Yes sir, Your Honor. There is discovery
19 as far as supplemental reports, the glove, mask in which
20 Ms. Barr has not sent any evidence. She sent the DNA,
21 pages are missing from the DNA results just weeks ago
22 forcibly they took palm prints from me. There's another
23 issue I'd like to address with you Your Honor. I don't
24 have any of those supplemental reports, Your Honor.

25 The Court: Supplemental reports. How about that Ms.

1 Barr?

2 Ms. Barr: Your Honor, in his letter he request and
3 I'm not sure what he means when he says supplemental
4 reports here. In the letter dated I believe it was
5 September the 20th he asked for supplemental reports where
6 we sent items to SLED to be analysis. And we don't' send
7 supplemental reports to SLED when we send items to SLED
8 to be analyzed. He also asked for supplemental reports
9 made, witnesses made certain statements to the police. I
10 actually hand delivered that to his then attorney of
11 record Mr. Anderson all our supplemental reports. I
12 think I redacted references to people's address and their
13 telephone numbers but I sent every single supplemental
14 report that we had to Mr. Anderson. I hand-delivered
15 that and put it in his hand a long time ago.

16 The Court: Did Mr. Anderson give you all the reports
17 from the State?

18 Mr. McCrea: Nothing, Your Honor, nothing or I
19 wouldn't be asking for it right now. Also, Your Honor,
20 there was a statement made on the incident report of - a
21 statement made and obviously it had to have been made due
22 to the fact of the victim being killed because of some
23 lottery winnings, Your Honor, that has to be -
24 supplemental report twice. Why would Investigator
25 Lambert go through all this trouble if she didn't get

1 that first hand information to call South Carolina
2 Lottery headquarters and also inquire stores within the
3 Hemmingway community in reference to it.

4 The Court: Let me just say this on the issues. In
5 reference to the reports given to Mr. Anderson, Mr.
6 McKnight or Mr. Barr, if those things were not given to
7 him, he's representing himself and he has a right to
8 them. He can't defend himself if he hasn't received
9 those writings. If it's a matter of going to the copy
10 machine and making another copy and give to him. You've
11 got to give it to him.

12 The Court: Judge, I don't have a problem with doing
13 that. He talks about the supplemental report that
14 somebody made a claim that the victim was killed for her
15 lottery winnings and that's in the report so he knows
16 that so that tells me he has it.

17 Mr. McCrea: Well, I have the supplemental report of
18 other incidence besides that as well, Your Honor. There
19 are statements made that I'm entitled to have. There's a
20 statement made from my alleged co-Defendant, Your Honor,
21 when he was locked up he gave both investigators. I'm
22 still requesting that as well, Your Honor.

23 The Court: I don't know how much --- what he has or
24 what he doesn't have. If you all have things that you
25 can photocopy and give to him then your best course of

1 action is to photocopy and give to him and eliminate the
2 issue. You have enough complicated issues as it is
3 rather than whether or not he has a copy of those that
4 you may have in your file.

5 Ms. Barr: Judge, may I just go down the list of
6 things I provided to his attorneys and ask him whether or
7 not he has those things?

8 The Court: All right.

9 Ms. Barr: This is the most recent supplemental that
10 was sent to Mr. Anderson. It's handed to Mr. Anderson it
11 was a disk containing 267 images and autopsy and crime
12 scene photos.

13 The Court: Do you have that?

14 Mr. McCrea: Yes I do.

15 The Court: He has that.

16 Ms. Barr: At the same time I gave Mr. Anderson 24-
17 color photographs of the firearm, the ski mask and other
18 items that were located when those things were recovered.

19 The Court: Do you have that?

20 Mr. McCrea: Yes sir.

21 Ms. Barr: At the very same time in that same package
22 I handed him a copy of the incident report and all of the
23 supplemental reports and they were redacted ...

24 The Court: That is what you do not have?

25 Mr. McCrea: I don't have it. None of it.

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1 The Court: How many pages is ...

2 Ms. Barr: That's the supplemental right there,
3 Judge.

4 Mr. McCrea: You're saying this supplemental report.
5 You talking about when the gun was submitted and picked
6 back up and resubmitted for testing again. These are the
7 dates and times I am requesting, Your Honor.

8 The Court: You can get what you have but they don't
9 want to make another copy if you already have it. So be
10 clear on what you have and what you don't have.

11 Mr. McCrea: Okay. I don't have the dates and times
12 ...

13 The Court: Let's clarify what you have.

14 Mr. McCrea: Okay.

15 The Court: Then we can eliminate and go about what
16 you don't have. You have reason to believe that he has
17 which ones.

18 Ms. Barr: Your Honor, I'm looking on his table.
19 Those are the redacted supplemental reports that I hand
20 delivered to Mr. Anderson.

21 The Court: You have that?

22 Mr. McCrea: Yes.

23 The Court: He has that.

24 Ms. Barr: He has a copy of the cover letter where I
25 handed it to him.

1 Mr. McCrea: It doesn't have anything coming from
2 ballistics or anything coming from the glove and this
3 other stuff was ... its incident of evidence being
4 tested. That's the stuff that I'm missing

5 The Court: He has the reports but the results of
6 whatever analysis was done by ballistics, fingerprints,
7 forensics, DNA, whatever.

8 Ms. Barr: Your Honor, on June 13th I gave Mr.
9 Anderson the March 29, 2009 transcribed statement of
10 Christopher Briggs.

11 The Court: All right. Do you have that?

12 Mr. McCrea: Say that again, please.

13 Ms. Barr: March 29, 2009 statement of Christopher
14 Briggs, 17 pages.

15 Mr. McCrea: Yes.

16 The Court: He has that.

17 Ms. Barr: March 28, 2009 transcribed statement of
18 Roberta Smith, 19 pages.

19 Mr. McCrea: Got it.

20 The Court: He has that.

21 Ms. Barr: March 31, 2009 transcribed statement of
22 Christopher Briggs. 15 pages.

23 Mr. McCrea: I have that one also.

24 Ms. Barr: April 1st, 2009 transcribed statement of
25 Christopher Briggs, 23 pages.

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1 Mr. McCrea: I have that.

2 Ms. Barr: Williamsburg County incident report of
3 Corporal Kennedy Grayson and that's just the initial
4 incident report dated 3//12/2009. That's the initial
5 incident report.

6 The Court: About someone being shot and killed ...

7 Mr. McCrea: Oh yes.

8 Ms. Barr: On the same time I also gave Mr. Anderson
9 a SLED crime scene report dated 11/16/2009.

10 Mr. McCrea: No. I don't have that.

11 Ms. Barr: I gave him SLED latent prints report dated
12 10-08-2009.

13 Mr. McCrea: I don't have it.

14 The Court: Are those things that you have right
15 there that you can copy them for him?

16 Ms. Barr: Yes sir.

17 The Court: Sled crime scene and latent prints
18 report.

19 Ms. Barr: Your Honor, when he was represented by Mr.
20 McKnight on October 5, 2010, I gave him his Miranda
21 Waiver Form for the 3/25/2009 interview.

22 The Court: Do you have that?

23 Mr. McCrea: Yes I do have that.

24 The Court: He has that.

25 Ms. Barr: I gave Mr. Briggs Miranda Form for the

1 March 29, 2010 interview.

2 Mr. McCrea: I have it.

3 The Court: You've got that?

4 Mr. McCrea: Yes sir.

5 The Court: I gave him Mr. Briggs' polygraph report
6 dated 8/4/2009 or it might have been his polygraph dated
7 8/4/2009.

8 Mr. McCrea: Yes sir. I do have that. Your Honor,
9 there was also another polygraph test taken in April of
10 2009 of Mr. Briggs. I'd like to have it.

11 The Court: Another polygraph report is likely to be
12 admitted into evidence but do you have a copy of that?

13 Ms. Barr: And Judge, he wrote me about that. I
14 don't know was it April 2009?

15 Mr. McCrea: April of 2009, yes ma'am.

16 Ms. Barr: I've got Mr. Briggs polygraph report dated
17 August 4th, 2009, I've got Mr. McCrea's polygraph report
18 dated March 27, 2009. I don't know about a April 2009
19 polygraph of Mr. Briggs.

20 Mr. McCrea: Your Honor, one was taken.

21 Ms. Barr: Your Honor, on October 5, 2010, I gave Mr.
22 McKnight the Defendant's transcribed statement dated
23 March 25, 2009 consisting of 99 pages.

24 Mr. McCrea: Yes sir.

25 Ms. Barr: I gave Mr. McKnight the Defendant's rap

1 sheet.

2 Mr. McCrea: Yes sir.

3 Ms. Barr: I gave him a copy of the indictment.

4 Mr. McCrea: I have that.

5 Ms. Barr: Notified him that physical evidence was
6 available for his inspection and also let him know that
7 the crime scene photos, autopsy photos would be provided
8 once we received a blank cd, but that's been taken care
9 of.

10 The Court: Have you looked at the physical evidence?

11 Mr. McCrea: Yes sir.

12 Ms. Barr: I gave him a copy of both of his arrest
13 warrants. I gave him SLED evidence processing report
14 dated 4/6/2009.

15 Mr. McCrea: Processing what?

16 Ms. Barr: SLED evidence process report date
17 4/6/2009.

18 Mr. McCrea: No, I don't have that, Your Honor.

19 The Court: Is that something you can copy?

20 Ms. Barr: I'll be happy to copy all the SLED
21 reports. I can give them to him today. My records
22 indicate that I also gave SLED latent print reports dated
23 October 8, 2009.

24 Mr. McCrea: The results?

25 Ms. Barr: Yes.

1 Mr. McCrea: Don't have it.

2 Ms. Barr: A SLED firearms report dated 12/23/2009.

3 Mr. McCrea: I have that.

4 Ms. Barr: All this stuff was together, Judge. SLED
5 Trace Evidence Report dated 4/2/2009.

6 Mr. McCrea: I have it.

7 Ms. Barr: Autopsy report of Cora Brown.

8 Mr. McCrea: I have it.

9 Ms. Barr: SLED DNA report dated 5/6/2009. And I
10 believe on September the 9th, I'm not sure what date ...

11 The Court: Do you have the SLED DNA report dated
12 5/6/2009?

13 Mr. McCrea: From what, not from the glove. I don't
14 have all the pages. He just sent me DNA analysis with
15 one of six missing.

16 The Court: 5/6/09, that's the report you're talking
17 about, Ms. Barr?

18 Ms. Barr: Yes.

19 The Court: How many pages is it?

20 Ms. Barr: It's a DNA analysis. It is three pages
21 and it is vaginal swabs, rectal swabs for Cora Brown,
22 blood standard for Cora Brown, fingernail clippings for
23 Cora Brown.

24 The Court: All right. Have you got that?

25 Mr. McCrea: Yes sir. I've got that.

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1 The Court: You do have that.

2 Ms. Barr: That was the first discovery response.

3 Judge, the last discovery response to his lawyers I sent
4 him the latest DNA lab report dated September the 9th,
5 2011. I mailed that to him at the jail. So he should
6 have that.

7 Mr. McCrea: A page is missing again, Your Honor.
8 One of six and five or six. I believe ...

9 Ms. Barr: Judge ...

10 Mr. McCrea: There's items 37.2 and 38.2 that I don't
11 have. I assume they were in those pages. I have them
12 right here. Those are the only ones that's been sent.

13 The Court: Ms. Barr.

14 Ms. Barr: Judge, I think what happened and it's a
15 simple explanation. I asked them to send it to the
16 courier and fax it, to have it copied, so the first page
17 of the fax if it helps you that is page one of seven that
18 he is talking about. So, he would have gotten page two
19 of seven which was the first page of the report. If he
20 tells me what he is missing I can make a copy of that.

21 The Court: All right. What else are you missing?

22 Mr. McCrea: Again, one of six, five of six and ...

23 Ms. Barr: Five and Six, I'm sorry, Mr. McCrea do you
24 have this?

25 Mr. McCrea: Yeah, I do have that. Okay. 37.2 and

1 38.2.

2 The Court: He wants the cover sheet of one of two.

3 Ms. Barr: Now, here's the information you requested.

4 I probably didn't even keep the cover sheet it came from
5 SLED. Yes, it was faxed from a 803 number, so it came
6 from SLED. Your Honor, you mentioned something about
7 Item 37.1 is the swab from the ski mask. 37.2 is debris
8 from the ski mask. If he has a question about that I'll
9 be happy to address that.

10 The Court: All right. What is the question about
11 that?

12 Mr. McCrea: I just don't have it in writing. I just
13 don't have the paper, it doesn't list that result.

14 The Court: Is that something that was analyzed?

15 Ms. Barr: It is. It is in the report. The results
16 of the analysis is in the report.

17 The Court: I mean is it that he not reading it right
18 or ...

19 Ms. Barr: That would be my guess.

20 The Court: It's not easy to follow these 37.1
21 compared to 3.3 and all that.

22 Ms. Barr: Page 3 of 6 talks about the examinations
23 and all of that and the results.

24 Mr. McCrea: Yes, but it doesn't have 37-2 or 38-2.

25 The Court: What do you say about that Ms. Barr?

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1 Ms. Barr: Are you looking at page 406, Mr. McCrea?
2 It indicates 37 ...

3 Mr. McCrea: Yes it says returned, 24.1, 37.1, 37.2,
4 38.1, 38.2 and 41.1. 37, I don't have. I have the rest
5 of them.

6 Ms. Barr: It indicates that those items were
7 resubmitted to SLED on August 5th, 2011. That would have
8 been after we had his DNA sample and they were returned
9 without DNA analysis because there was no DNA contained
10 within those.

11 The Court: Does that answer your question?

12 Mr. McCrea: Yes sir.

13 The Court: They didn't find anything so they didn't
14 send you anything.

15 Mr. McCrea: I understand. With this report it's
16 hard to understand what they submitted and resubmitted.
17 Again, you know, the statement in referenced to this
18 lottery that definitely ...

19 The Court: What's that about Ms. Barr, the
20 statements about the lottery?

21 Ms. Barr: Judge, when this crime initially happened,
22 we didn't have any idea who had done it. So a lot of
23 times the police officer will go out into the community
24 to see what the talk is to see if they can develop leads.
25 Somebody said that they heard from somebody else who

1 heard from somebody else that she had lottery funds.
2 This was not a transcribed statement as I understand it,
3 it was just people talking in the community from trying
4 to help as best they could I would imagine.

5 Mr. McCrea: No, it was a bit more than that, Your
6 Honor, because a lot of them was saying, which I was in
7 the upstate then in North Carolina, in the upstate. So
8 they didn't see the Mercedes Benz, their assumption was,
9 okay he may have done it because why does he drive a
10 Mercedes Benz. It's what the situation was for twenty
11 years. So it's not like the car was fifty thousand,
12 jealously. They took the initiative to contact lottery
13 headquarters and also inquire in the community in
14 reference to some winnings, Your Honor.

15 The Court: What are you trying to get from the State
16 about that?

17 Mr. McCrea: I want the actual statement because that
18 is part - would be a part of my argument as well.

19 The Court: You want something that states that the
20 lottery commission sent to the solicitor's office or law
21 enforcement, the Sheriff's Department or SLED saying how
22 much money she was paid out in the lottery?

23 Mr. McCrea: Well, they stated that. That
24 information had to come from somewhere, Your Honor.
25 That's my point.

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1 The Court: Well ...

2 Mr. McCrea: They took the initiative to research it
3 so it came from somewhere they got a statement from
4 someone.

5 The Court: Well, I don't know that.

6 Mr. McCrea: It's in the supplemental report. I mean
7 ...

8 The Court: What does it say in the supplemental
9 report?

10 Mr. McCrea: Investigator Lambert did contact South
11 Carolina Education Lottery in reference to Cora Brown.
12 Lottery security stated that the only thing showing on
13 Cora Brown in October 2008 that she won \$2.00. That's
14 one.

15 The Court: All right. She won \$2.00.

16 Mr. McCrea: Officer Lambert again made contact with
17 Johnny Tanner in reference to Cora winning some money on
18 the lottery in his store. Johnny stated Cora did not win
19 any money. It's just that they pursued it enough, they
20 listed it in this supplemental report that information
21 had to come from somewhere.

22 The Court: They called Columbia and said do you all
23 have any record of her winning and they said yeah we show
24 that she won \$2.00. The state is not required to go on a
25 fishing expedition to try to dig up something that's not

1 probative of anything. I mean I don't know. The State -
2 -- she says that they don't have anything to give you
3 from the lottery people.

4 Mr. McCrea: That was along with the receipt as well.
5 It was also stated in the report that that is how I
6 bought my car as well, Your Honor.

7 The Court: I understand but I'm not doing the trial
8 so the Judge who does the trial you may or may not be
9 able to get into this whole thing about I heard she won
10 some lottery money from the lottery but if the state
11 doesn't have anything, any documents from them to give to
12 you then the state doesn't have any. If you have Brenda
13 Lambert on the witness stand and you want to ask her some
14 questions about it, then maybe you can question her about
15 it. Where is the evidence, what kind of proof did you
16 get from them. What did they tell you. You know you can
17 ask her all of that if you're allow to ask that, I don't
18 know, but there is no other discovery that I know of.
19 The State doesn't have anything else.

20 Mr. McCrea: Yes, sir. And again, Christopher Briggs
21 wrote a letter while he was in the Georgetown County
22 Detention Center to the investigator I'd like to have
23 that letter.

24 The Court: Do you have a letter from Christopher
25 Briggs?

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1 Ms. Barr: I don't believe so. If he can give me
2 some idea of what the letter says and who it was sent to
3 I can try to see what he is talking about. If it went to
4 the investigator and he can tell me who the investigator
5 is. What time it was supposedly sent.

6 Mr. McCrea: How would I know that. Officer Brown --
7 -- how would I know that?

8 Ms. Barr: Well, he gave three statements and he has
9 all three of them.

10 The Court: If the State received a letter, if the
11 investigator received a letter from Christopher Briggs
12 and the State has a copy of that letter, the State is
13 required to turn it over. So search to see if you have a
14 letter from Christopher Briggs and if you do you have to
15 turn it over to the Defendant.

16 Ms. Barr: All right.

17 The Court: If there is none then you can't turn it
18 over. So far it appears that there is possibly some SLED
19 crime scene report and latent prints report and a Briggs
20 polygraph report dated April '09 that he may not have.

21 Mr. McCrea: Jury list as well as the list of
22 witnesses I do not have either, Your Honor.

23 The Court: Well, Rule 5 does not require that they
24 turn over the witness list. They have to give that
25 information to the judge at the beginning of the trial

1 when the jury is to be qualified. The Rule 5 does not
2 require that you receive a copy of the State's witness
3 list.

4 Mr. McCrea: Well, Your Honor, okay. That's funny
5 but when Ms. Barr wrote Attorney Anderson she clearly
6 stated that she would give it to him within 10 days prior
7 to trial. I'm at a disadvantage already.

8 The Court: I'm just answering your question. The law
9 does not require they give it to you. If they
10 voluntarily gives it to you then she intended to give
11 Anderson then that would be fine, either way. What do
12 you plan to do about the witness list, Ms. Barr?

13 Ms. Barr: When I wrote to him in response to these
14 letters I told him that I would give him the witness list
15 Monday at eleven. I was very --- he asked for the rap
16 sheet of the witnesses as well and I told him that I had
17 not prepared by witness list but that I would make sure
18 that any witnesses that were called he would be provided
19 with a copy of their rap sheet before they were called
20 and I would give him the witness list along with it.

21 The Court: The case State vs. Miller says Brady and
22 Rule 5 do not require discovery witness list. Of course,
23 when you qualify the jury the jury must know which
24 witnesses are being called. The State does not have to
25 give the defendant in advance the witness list.

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1 Mr. McCrea: Again, Your Honor, that's one of the, I
2 mean, I'm not an attorney, I mean she was willing to give
3 him all of the discovery so he's able to cross examine
4 the witnesses.

5 The Court: What she was willing to give him, she is
6 willing to give you as well but that will be on Monday
7 morning when the jurors come in at the time of trial but
8 not in advance of the trial. As far as the list of
9 everyone, a list of who has been summoned for jury duty,
10 well you didn't ask for jurors, you're asking about
11 witnesses.

12 Mr. McCrea: A jury list as well, Your Honor.

13 The Court: Madam Clerk, do you all have the list of
14 who is coming for jury duty next week?

15 Clerk: We do.

16 The Court: Now the trend for the jury is that the
17 jurors are only required to disclose their name and their
18 juror numbers. You have a list of ...

19 Clerk: This is the one for this week.

20 The Court: What else do we have?

21 Mr. McCrea: Yes sir, Your Honor. At one particular
22 time attorney Anderson had subpoenaed some information
23 and there are some witnesses that I would like to call
24 ...

25 The Court: Where are they, in South Carolina?

1 Mr. McCrea: Yes sir. In South Carolina. One is in
2 North Carolina and three of them are in South Carolina.
3 I don't have the exact addresses. I have not been able
4 to contact them personally and speak with them.

5 The Court: Well, I mean, if you have specific
6 information regarding people you want to be some of the
7 witnesses then the clerk can issue a subpoena to go with
8 it but you have to give her enough information so that
9 she will know how to find them and that is if they are in
10 Williamsburg County. She will give them to the Sheriff
11 and they will subpoena them to be here. Now, if you have
12 someone that is in another county then that information
13 would probably have to be sent over to another sheriff in
14 another county to some of those people if they could be
15 found. If you don't have addresses for those people then
16 it will be kind of difficult.

17 Mr. McCrea: There are two in Andrews, one in North
18 Carolina, which they have that address and one in
19 Williamsburg County.

20 The Court: All right. You want to give those - I
21 assume you have talked with them.

22 Mr. McCrea: Not since incarceration.

23 The Court: What part of North Carolina are they in?

24 Mr. McCrea: Mt. Olive.

25 The Court: Mt. Olive, North Carolina?

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1 Mr. McCrea: Yes sir.

2 The Court: Where is that near?

3 Mr. McCrea: North Carolina. Not quite to familiar
4 with the towns that close.

5 The Court: Well, if you want to do a subpoena to Mt.
6 Olive North Carolina, the trial is Monday if you put a
7 letter in the mail tomorrow, I guess she'll get it. I'm
8 not sure she will come. Do you have a phone number. Do
9 you want to call her and ask her and tell her to be here.

10 Mr. McCrea: Yes, Your Honor, I was about to ask to
11 make some calls. I can get in contact with people that I
12 knew.

13 The Court: All right. You got it set up where he
14 can make some phone calls and try to line up these
15 witnesses? There's a telephone in there.

16 Speaker: We can do that when you finish here.

17 The Court: All right. If you have people you want
18 the clerk to get subpoenas ...

19 Clerk: Yes.

20 The Court: Madam clerk will you be able to generate
21 them subpoenas?

22 Clerk: Yes.

23 The Court: The Court has provided reasonable
24 assistance for him to get witnesses for his defense.
25 When you are representing yourself you are handicapped

1 because the things that lawyers can do, the court is not
2 obligated to provide legal services for you, but to
3 expedite the trial we will try to find those witnesses.

4 What else do we have?

5 Mr. McCrea: I guess, again, the procedure when a
6 person is first locked up they take the finger prints and
7 palm prints. It's just strange to me that they wait this
8 late and they came here to ask for DNA and palm prints
9 just some weeks ago. They stated it was my doing, it was
10 the facts these attorneys had nothing to do with the
11 attorneys, it was the state's attorney due diligence in
12 dragging this thing on, Your Honor, and I still don't
13 have those as well. I mean, this has taken two years
14 that they could have gotten done in either Kingstree and
15 Florence County. They wanted them personally, with force
16 they took them and that's another question, Your Honor,
17 twice Officer Brown has assaulted and during one
18 particular time Mr. Anderson wrote Judge King and then
19 once they transferred me to Sumter some weeks ago and the
20 officer came and was video taping me was choking me,
21 pulling my arms, twisting my arms, Your Honor, is that
22 procedure for your officers to do. When they already
23 have finger prints and palm prints just all of a sudden
24 they have my prints or nothing else and then here comes a
25 subpoena for them to get fingerprints and palm prints

1 with Williamsburg County had them, Florence County had
2 them, they could have easily got them from them but no
3 they want them right then and there. That's a disgrace
4 to me. I don't have those results but then forcibly, to
5 forcibly try to get prints from me is definitely not
6 professional.

7 The Court: All right. Ms. Barr what do you say
8 about that?

9 Ms. Barr: Your Honor, Your Honor, they did take his
10 fingerprints but I don't think they took his palm prints
11 is one of the reasons while we filed the motion so that
12 we could get his palm prints and that was done I believe
13 somewhere around September. He actually was transported
14 to Sumter so that the hearing could be held there. We
15 weren't holding court in Williamsburg County during that
16 time. But, Judge, now I'm not sure if this was around
17 about the same time that Judge King did the order
18 relieving counsel, I'm assuming it was about the same
19 time. And, Judge King, basically said we need to set the
20 case for a day certain trial. The palm print report I
21 don't know if it's back yet. I spoke with Vicky Collins
22 last week from SLED and she said she was putting a rush
23 on it. I asked her to put the analysts under subpoena so
24 that she or he could bring the report. I called today in
25 anticipation of this hearing and got Ms. Collins voice

1 mail. She called me back and said that she was in class
2 and that I needed to talk with her lieutenant. With
3 everything going on in Court I haven't had a chance to
4 call and talk to the lieutenant. She told me last week
5 they were going to put a rush on it. She thought the
6 trial was this week but given that it is next week she
7 was grateful that she had an additional week.

8 The Court: All right. As soon as we're done here
9 make that call.

10 Ms. Barr: Absolutely.

11 The Court: Other than that, what else do you have?

12 Mr. McCrea: That's basically it. I have the names
13 and I need to make some calls to get the addresses and
14 that's it.

15 The Court: All right. Let him make some phone calls
16 and give the clerk a list of the people.

17 Mr. McCrea: Thank you.

18 Ms. Barr: Judge, also, if I could just make a note
19 on the record real quick. When Mr. McKnight initially
20 served me with a Rule 5 request, I responded to him. I
21 also served him with a reciprocal Rule 5 request and I
22 wrote to Mr. McCrea on last week advising him that I had
23 served a Rule 5 request on discovery and asked that if he
24 has any documents that he intends to introduce at trial
25 that he bring them with him today so that we can kind of

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1 be prepared. I think I've served my Rule 5 request for
2 reciprocal discovery in October of 2010. I also notified
3 the subsequent attorney Mr. Anderson that I had filed a
4 request for reciprocal discovery and I have not received
5 a response. So if there are things that Mr. McCrea seeks
6 to introduce in trial I would ask that he be required to
7 disclose those.

8 The Court: All right. Mr. McCrea, do you have any
9 documents or other tangible objects, results, reports,
10 examinations and test that you plan to use?

11 Mr. McCrea: Again, I'm still missing some stuff and
12 I don't have ...

13 The Court: If you have any documents that ...

14 Mr. McCrea: Other than what I gave you, no.

15 The Court: Here are additional group of exhibits,
16 this exhibit give back. The witnesses that you need to
17 get in touch with Ms. McGee, John's Avenue in Andrews.

18 Mr. McCrea: Yes sir.

19 The Court: Sharone McCee ...

20 Mr. McCrea: I think it's Sharone.

21 The Court: McCee. She's in Andrews?

22 Mr. McCrea: It's a he.

23 The Court: A he?

24 Mr. McCrea: Yes sir.

25 The Court: Roberta Smith. The State has a statement

1 or something from Roberta Smith?

2 Ms. Barr: We do, Your Honor.

3 The Court: Do you know if that person will be here?

4 Ms. Barr: Yes sir.

5 The Court: All right. Curtis Green in Nesmith. So
6 it appears that Calinda and Sharone in Andrews. Are you
7 going to be able to call and get a specific address for
8 them?

9 Mr. McCrea: I should be able to.

10 The Court: All right.

11 Speaker: That's in Georgetown County.

12 The Court: That's in Georgetown County. Is it in
13 the town of Andrews or where do they live?

14 Mr. McCrea: Jones Avenue, that's basically in town.

15 The Court: All right. I think that is it for this
16 hearing today. The purpose of the hearing today was to
17 help clarify some of the problems in advance but not all
18 of the problems so that when you all come back Monday for
19 trial you won't spring all these things on the presiding
20 Judge at the last minute and things that can be cleared
21 up are going to be cleared up and you're going to give
22 him the results of these other test?

23 Ms. Barr: Yes Your Honor, I can do that before he
24 goes.

25 Mr. McCrea: Your Honor, one more thing before we go.

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1 The Court: Yes.

2 Mr. McCrea: Mr. Anderson had some papers. What did
3 he do with the file, did he give it back to Ms. Barr
4 because there are some papers with regard to my defense.

5 The Court: No, he would not give Ms. Barr anything.
6 Have you received anything from Mr. Anderson?

7 Ms. Barr: No sir.

8 The Court: He would not give anything. He has an
9 obligation as a lawyer to keep confidences of his client.
10 I'm sure he didn't send Ms. Barr anything. All right.

11 Mr. McCrea: Thank you, sir.

12 (This Hearing was adjourned)

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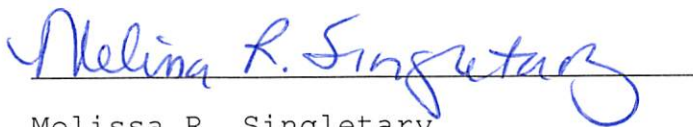
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CERTIFICATE

This is to certify that the Hearing transcript in the matter of Levern McCrea vs. State of South Carolina, consisting of Sixty-two pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 10th day of August, 2014.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Levern McCrea, #348291,	)	2012-CP-45-363
	)	
Applicant,	)	
	)	POST-HEARING BRIEF IN SUPPORT
v.	)	OF PCR APPLICATION
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Per the Court's instructions, please allow this memo to serve as a supplement to Applicant's pre-hearing brief and additional case law in support of his PCR application following an evidentiary hearing held June 1, 2018.

A. Applicant's rights were violated when he was shackled throughout the duration of his trial.

The Fifth and Fourteenth Amendments of the United States Constitution prohibit using physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that restraints are justified by a state interest specific to the particular defendant on trial. Deck v. Missouri, 544 U.S. 622, 125 S. Ct. 2007 (2005).

It is undisputed from the testimony of both the Applicant and Assistant Solicitor Kimberly Barr that Applicant remained in shackles throughout the duration of his five (5) day trial. Even more egregious, unlike a shackled defendant who is represented by counsel and is generally confined to counsel's table, Applicant was *pro se* and was forced to shuffle around the courtroom while attempting to examine witnesses and otherwise move about. This was clearly visible to the jury as it was to Ms. Barr. No hearing was held to determine whether the shackles

were “justified by an essential state interest” such as courtroom security as the law requires. Applicant need not demonstrate actual prejudice as it is “inherently prejudicial.” Id. at 635.

Applicant’s application for PCR should be granted based upon this violation.

B. Brady violations were committed by the State resulting in prosecutorial misconduct.

The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution’s possession that may be favorable to the accused. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). The State must disclose Brady evidence even when a criminal defendant does not specifically request the evidence. United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

Applicant alleged and testified the State withheld evidence subject to Rule 5 Brady disclosure even after repeated requests for disclosure. Applicant alleged and testified in addition to discovery being “spoon fed” to him prior to and even during trial, photographs of bullets, a statement he believed was taken of Roberta Smith on or about June 28, 2018, a Clinton Dorsey police interview/statement, and a “letter of leniency” were withheld. At the PCR hearing, Applicant introduced a supplemental investigative report marked Exhibit #6. The report was prepared by the Williamsburg County Sheriff’s Department during their investigation into the case. The report stated:

On July 30, Investigator Brown along with Lt. Collins, and Chief Johnson made a letter for Chris Briggs which stated base (sic) on our recent conversations, we believe the (sic) you have vital information about Cora Brown (sic) death. At this point we do not believe

that you are the actual shooter and if you freely and voluntarily provide all of the truthful detail surrounding Cora (sic) death and pass the polygraph Chris will be charged with ass., (sic) after the fact. The letter went on to say that we will talk with the judge and the solicitor to get Chris Briggs leniency on his charge.

During the trial, Briggs testified on behalf of the State and was the State's sole alleged witness to the crime. Briggs' credibility was a key issue in this case and it was he who claimed the Applicant committed the crime. There was no murder weapon or DNA evidence conclusively linking Applicant to the crime. During Briggs' testimony, he denied that there were any promises made or deals offered to him. However, clearly from the supplemental report, a deal had certainly been conveyed to Briggs by the State. This deal, memorialized in the form of a letter, would have been subject to disclosure by the State but the State failed to do so or ensure its preservation. At the PCR hearing, Ms. Barr testified that at some point, she became aware that there was a letter but she could not locate it. However, as the record reflects, Ms. Barr never notified the Court or the Applicant. Ms. Barr should have disclosed this key piece of missing evidence on the record to the Court and Applicant.

Applicant respectfully submits his PCR application should be granted.

C. Applicant was denied his right to counsel at trial.

Regarding Applicant's claim that he was denied the right to counsel during his trial, Applicant refers to the previously submitted pre-hearing brief for a detailed discussion of the law. Additionally, testimony at the PCR hearing established the following:

First, attorneys Charles Barr, Cezar McKnight, Hank Anderson and former Assistant Solicitor Kimberly Barr all admitted Applicant was never provided Faretta style warnings. Mr. Barr testified he was relieved without a hearing so there would not have been an opportunity for

a judge to advise Applicant of his right to counsel and the dangers of pro se representation. Cezar McKnight requested that he be relieved twice during his short representation of the Applicant. Candidly, both in his request to the trial court to be relieved and at the PCR hearing, McKnight admitted that he initially wanted to be relieved because Applicant first attempted to privately retain his services, however, he was eventually appointed by the court and he did not believe it was fair that he should be representing him as an appointed attorney when he thought he could have privately retained his services or that he was able to initially afford Mr. Barr. Although McKnight testified he had essentially moved past the disappointment about being appointed, a review of the transcript from McKnight's second motion to be relieved reflect those sentiments continued to linger. Additionally, during the motion McKnight explained to the Court he felt "threatened" by the Applicant and that he feared being physically accosted if he were to visit Applicant in the detention center. At the PCR hearing, McKnight admitted that Applicant had never actually threatened him and he never feared for his own safety while meeting with the Applicant.

Second, all the transcripts available to this Court reflect that no Faretta warnings were provided to the Applicant. Third, Applicant credibly testified that he was never provided any Faretta warnings. As discussed in Applicant's pre-trial hearing brief, "[T]o the extent that the defendant's actions are examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings." United States v. Goldberg, 67 F.3d 1092, 1100 (3d Cir.1995); State v. Jacobs, 271 S.C. 126, 128, 245 S.E.2d 606, 608 (1978); State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct.App.

1996). Applicant submits he could neither have waived his right to counsel either affirmatively or by conduct as no Faretta warnings were ever given to Applicant.

Finally, Judge King indicated that in the event Anderson was relieved as counsel he would remain to assist as standby counsel, however, this never occurred. Applicant, Anderson and Ms. Barr all testified at the PCR hearing they believed Anderson would have remained as standby counsel if he were ever relieved. Not only was Applicant forced to represent himself at his week-long trial, he was forced to do so without the assistance of standby counsel.¹

Applicant respectfully submits his PCR application should be granted.

Respectfully submitted,



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¹ At the conclusion of the hearing, the State provided Applicant with State v. Samuel, 2018 WL 1077731. In Samuel, the defendant actually requested to represent himself at trial, however, following a lengthy inquiry of both the defendant and counsel, the trial court denied defendant's request and determined the defendant was lying about whether he had legal coaching in preparation for trial. The Supreme Court reversed, finding that the trial court denied defendant's right to self-representation and that the court's inquiry and questioning of his counsel should have been limited to whether the defendant's request to proceed *pro se* was knowing and voluntary, not whether he was able to represent himself. Samuel does not stand for the proposition that whether standby counsel is available to a *pro se* defendant is irrelevant as it is anticipated the State will argue. Any such argument is in contradiction to the Cash factors outlined in Applicant's pre-hearing brief.