RECEIVED
Mar 07 2023
S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable G.D. Morgan, Jr., Circuit Court Judge

Case No. 2021-CP-37-663

Daniel Lewis Crowe,

Petitioner,

vs.

The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Daniel Lewis Crowe appeals the final order of dismissal of the Honorable G.D. Morgan, Jr. and which was received by counsel March 6, 2023. Attached is a copy of the order.

Respectfully submitted,

/s/ Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, South Carolina 29204
(803) 445-1333
elizabeth@franklinbestlaw.com

March 7, 2023

STATE OF SOUTH CAROLINA COUNTY OF OCONEE	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
Daniel Lewis Crowe, SCDC #250759, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2021-CP-37-0663 **ORDER OF DISMISSAL**

I. INTRODUCTION

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by Daniel Lewis Crowe (Applicant) on September 28, 2021, alleging he is entitled to post-conviction relief based on newly-discovered evidence that the State committed prosecutorial misconduct by withholding exculpatory and impeaching information in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The State made its return on July 19, 2022, requesting the action be summarily dismissed as untimely and barred by the doctrines of *res judicata* and *laches*.

A hearing into the matter convened before the undersigned on August 25, 2022, at the Anderson County Courthouse. Applicant was present at the hearing and represented by Elizabeth Franklin-Best. Assistant Attorneys General Lillian L. Meadows and Taylor Z. Smith represented the State. During the hearing, Applicant presented testimony from the following witnesses: (1) the victim's daughter, Misty Heaton Price; (2) Applicant's wife, Charlotte Crowe; (3) Applicant's trial counsel, N. Gruber Sires, Jr.; and (4) Jay Phillips, a private investigator who was qualified as an expert on criminal investigations. In response, the State presented testimony from the following witnesses: (1) former Tenth Circuit Solicitor George M. Ducworth; (2) the Honorable Clinton D.

Singleton, a municipal court judge who was an investigator with the Tenth Circuit Solicitor's Office at the time of Applicant's trial; and (3) former Deputy Solicitor Susan S. Reese, who prosecuted Applicant's case.

In addition to testimony from those individuals, this Court had before it: (1) the transcript from Applicant's June 23–25, 1998 trial; (2) the records from Applicant's direct appeal, including the briefs and the opinion issued by the South Carolina Supreme Court affirming Applicant's conviction; (3) the records from Applicant's 2001 post-conviction relief action; (4) the records from Applicant's 2005 post-conviction relief action and the appeal therefrom; (5) the records from Applicant's 2012 post-conviction relief action; (6) the records from Applicant's 2014 federal habeas corpus action and the appeal therefrom; (7) the records from Applicant's 2021 common law petition for a writ of certiorari, including the order issued by the South Carolina Supreme Court instructing the circuit court to construe Mr. Crowe's post-conviction relief application as permissibly successive on remand; (8) the records from the Oconee County Clerk of Court regarding the subject conviction, including the indictment, arrest warrant, and verdict form; (9) Applicant's inmate records from the South Carolina Department of Corrections; and (10) the pleadings filed in the instant post-conviction relief action.

Additionally, this Court had before it a copy of a letter dated December 31, 1998, allegedly written by Misty Heaton Price and mailed to Solicitor Ducworth[1] that was filed with the post-conviction relief application and admitted into evidence. This Court additionally had copies of the following documents contained in the Tenth Circuit Solicitor's file[2] and admitted into evidence: a

[1] Applicant's Exhibit #6

[2] On October 19, 2021, the Honorable J. Cordell Maddox, Jr., acting in his capacity as Chief Administrative Judge, issued an order granting discovery to Applicant. Specifically, Judge

two-page document consisting of a written statement from Timothy Phillips and Deputy Solicitor Reese's handwritten notes regarding Mr. Phillips;[3] a four-page document consisting of a written statement from Sherry Heaton and Deputy Solicitor Reese's handwritten notes regarding Mrs. Heaton;[4] a three-page document consisting of a written statement from Benjamin Smith's statement to law enforcement and Deputy Solicitor Reese's handwritten notes regarding Mr. Smith;[5] a two-page document consisting of a written statement from Richard Griffin and Judge Singleton's handwritten notes;[6] and the last two pages of Deputy Solicitor Reese's trial brief.[7] [8]

Upon conducting and completing its analysis, this Court finds Applicant has failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRCP, and the Uniform Post-Conviction Procedure Act[9] (the Act). For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. During its July 1997 term, the

---

Maddox ordered the Tenth Circuit Solicitor's Office and Oconee County Sheriff's Office to "produce their complete files to counsel regarding the investigation and conviction of Applicant."

[3] Applicant's Exhibit #7

[4] Applicant's Exhibit #8

[5] Applicant's Exhibit #9

[6] Applicant's Exhibit #10

[7] Applicant's Exhibit #11

[8] Applicant's Exhibits #1, #3, #4, and #5 are copes of the affidavits of Misty Heaton Price, Charlotte Crowe, N. Gruber Sires, Jr., and LaDonna Beeker that were filed with the Supreme Court as part of the common law petition for a writ of certiorari. These affidavits were admitted and marked as exhibits for purposes of the record but were not considered by this Court as part of the testimony nor were they admitted into evidence. (PCR Tr. 8).

[9] S.C. Code Ann. §§ 17-27-10 to -160.

Oconee County Grand Jury indicted Applicant for murder (1997-GS-37-702).

On June 23, 1998, Applicant proceeded to a jury trial before the Honorable Gerald C. Smoak. N. Gruber Sires, Jr., represented Applicant and Deputy Solicitor Susan S. Reese[10] prosecuted the case.

A. Summary of Facts Established at Trial

On the afternoon of June 7, 1997, Applicant went to a birthday party at the home of John Smith. Applicant spent the afternoon and evening drinking liquor and beer. (Trial Tr. 307). As the evening progressed, Applicant became belligerent and picked fights with or attacked a number of other partygoers. (Trial Tr. 29; 51–53; 77–87; 93–96; 104, 109, 127). Eventually, Applicant made the mistake of calling Eddie Heaton's wife, Sherry Heaton,[11] a "bitch." Eddie, the victim, was a rather large man and a bouncer at a local club. He may have punched Applicant once and knocked him to the ground. Conflicting testimonies were presented on this topic, but in any event an altercation ensued. (Trial Tr. 29–30; 53–54; 96; 259–60; 309–10). After this incident, John had tired of Applicant's behavior and told him that he needed to leave the party. John gave Applicant a ride home because Applicant was drunk and could not find his keys. (Trial Tr. 30–31; 52–53; 80–81; 88; 96; 128; 261; 310). On the way home, Applicant told John he was coming back to kill Eddie and would kill John too if John testified. (Trial Tr. 55). John testified that Applicant's demeanor and behavior after making this threat gave credence to the possibility that he may follow through. (Trial Tr. 55–56).

John returned to the party and attempted to get people to leave because of Applicant's threat. (Trial Tr. 31; 56; 81; 128). Meanwhile, Applicant dozed off for a while, and then asked his

[10] At the time of trial, Deputy Solicitor Reese's last name was Chappell.

[11] John Smith, James Smith, and Benjamin Smith—all of whom testified at trial—are Sherry's brothers.

wife, Charlotte Crowe, to take him back to the party. However, this time, he was armed with a twenty-gauge shotgun. (Trial Tr. 288–89; 297–98; 310–16). At trial, Applicant testified that he brought the gun with the intention of scaring the party attendees, but claimed he only returned to the party to retrieve his vehicle. (Trial Tr. 328). Applicant also claimed that he never opened the shotgun to check for ammunition and was unaware the gun was loaded. (Trial Tr. 328).

Applicant arrived back at the party during the early morning hours of June 8, 1997. As he approached the partygoers, Applicant testified that he heard yelling, but admitted he could not make out what anyone was actually saying. Applicant testified that he construed the situation as aggression toward him. (Trial Tr. 315; 328–29). Applicant then pointed the shotgun at Eddie and shot Eddie in the chest at a close range.[12] Applicant then ran away as one of the partygoers fired at him with a pistol. (Trial Tr. 38; 90; 129; 316–17).

Applicant testified that he cocked the shotgun as he approached and claimed to see Eddie reaching across his body. While Applicant claimed to believe that this was an effort by Eddie to draw his own firearm,[13] multiple eyewitnesses testified that Eddie had not pulled a weapon out to threaten Applicant and did not have time to even react before Applicant shot him. (Trial Tr. 33; 82; 128–29; 316; 328–29). Partygoers also testified that Applicant could have reached his vehicle without bothering anyone. Trial Tr. 124–25; 129; 133; 262).

Meanwhile, Applicant returned to John's house, went inside, and threatened to kill those inside with the shotgun. A scuffle erupted, but the remaining partygoers managed to subdue Applicant until the police arrived. (Trial Tr. 58–61; 68–69; 83–86; 91; 98–99).

---

[12] James Smith testified that the distance between Applicant and Eddie was approximately ten feet. (Trial Tr. 133). Eddie's autopsy demonstrated that the shotgun's wadding was lodged into his gunshot wounds. (Trial Tr. 201–205).

[13] Applicant testified that he had seen Eddie with a gun earlier that day. (Trial Tr. 316).

Forensics revealed that the gunshot residue testing of Eddie's hands was consistent with presenting a defensive posture to a weapon fired by another individual. (Trial Tr. 229). Forensics also revealed that Eddie's blood tested negative for the presence of drugs or alcohol. (Trial Tr. 189).

B. Verdict and Direct Appeal

At the conclusion of the multi-day trial, the jury convicted Applicant as indicted of murder. Following the verdict, Judge Smoak sentenced Applicant to life without parole (LWOP) pursuant to section 17-25-45 based on a prior voluntary manslaughter conviction in 1993.[14]

Deputy Chief Appellate Defender Joseph L. Savitz, III, represented Applicant on direct appeal. On October 14, 1999, appellate counsel Savitz filed a brief with the South Carolina Supreme Court on the following issue:

> The judge erred by refusing to instruct the jury on involuntary manslaughter where appellant testified he did not know the shotgun was loaded when he pulled the trigger.

Following briefing, our Supreme Court issued a memorandum opinion affirming Applicant's conviction and sentence on July 20, 2000. *Crowe v. State*, 2000-MO-102 (S.C. Sup. Ct. filed July 20, 2000). The case was remitted back to the circuit court on August 7, 2000.

C. Initial Post-Conviction Relief Action: 2001-CP-37-0446

On August 21, 2001, Applicant filed his first PCR action, raising the following grounds for relief (excerpted verbatim):

1. Ineffective assistance of counsel
   a. "Attorney did not object to improper evidence."
   b. "Attorney failed to make pre-trial motions."

[14] Both murder and voluntary manslaughter are classified as "most serious" offenses under section 17-25-45(C)(1) of the South Carolina Code. Section 17-25-45(A)(1) requires an individual with one or more convictions of a most serious offense be sentenced to LWOP.

In its return, the State moved to summarily dismiss the application as untimely. On October 25, 2004, the Court convened a hearing into the matter before the Honorable Alexander S. Macaulay.[15] Applicant was present at the hearing and represented by Richard H. Warder. Assistant Attorney General Christopher L. Newton appeared on behalf of the State. On November 17, 2004, Judge Macaulay issued an order denying and dismissing the application with prejudice. Applicant did not appeal.

D. Second Post-Conviction Relief Action: 2005-CP-37-0356 and Subsequent Appeal

On April 26, 2005, Applicant filed his second PCR action, raising the following grounds for relief (excerpted verbatim):

> 1. "I have discovered evidence and witness that saw and/or knows that Defendant was involuntarily given drugs to render him under the influence at the time of the crime."
>   a. "This is new evidence that if known and presented at the time of trial would have resulted in a different result."

The State made its return on June 13, 2005, requesting the application be summarily dismissed as untimely and successive. Pursuant to this request, the Honorable J.C. Nicholson, Jr., acting in his capacity as Chief Administrative Judge, issued a conditional order of dismissal on October 4, 2005, provisionally denying and dismissing the application while giving Applicant twenty days to show why the dismissal should not become final. Mr. Warder filed a timely response

[15] In Applicant's 2012 PCR application, June 6, 2014 response to the conditional order of dismissal, and August 10, 2015 response to Respondent's motion for summary judgment in his federal habeas proceeding, Applicant contends Judge Macaulay orally dismissed his PCR as untimely but granted him a new trial based on newly-discovered evidence during the October 25, 2004 hearing. However, as discussed further below, because Applicant did not appeal Judge Macaulay's November 17, 2004 Order of Dismissal, neither party obtained a copy of the transcript from the hearing and it is now unavailable. *See* Rule 607(i), SCACR ("[A] court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period.").

to the conditional order of dismissal on Applicant's behalf, stating that, since the hearing and denial of his 2001 application, Applicant's son "learned of witnesses who know that he was given involuntary drugs which rendered him under the include at the time of the alleged crime." Mr. Warder further stated that Applicant "learned of an additional witness who is in the prison system, who was a witness to the events resulting in his involuntary intoxication and the attempt upon his life wherein he reacted in self-defense," after the hearing on his 2001 application. Judge Nicholson subsequently issued a final order on November 2, 2005, denying and dismissing the application with prejudice.

Mr. Warder filed a timely notice of appeal on Applicant's behalf. He then perfected the appeal by filing a petition for writ of certiorari with the Supreme Court, raising the following issue:

> Did the PCR Court err in summarily dismissing the petitioner's successive application where he alleges newly-discovered evidence subject to S.C. Code of Laws § 17-27-45(c)?

Assistant Attorney General Daniel E. Grigg filed a return to the petition on February 23, 2006. On January 4, 2007, the Court issued an order denying Applicant's petition. *Crowe v. State*, S.C. Sup. Ct. Order dated Jan. 4, 2007. The case was remitted back to the circuit court on January 23, 2007.

E. Third Post-Conviction Relief Action: 2012-CP-37-0335

On April 9, 2012, Applicant filed his third PCR action, raising the following grounds for relief (excerpted verbatim):

1. Ineffective assistance of PCR counsel:
   a. "Counsel failed to timely file PCR."
   b. "Denied appeal to first PCR action."
   c. "Did not receive full adjudication pursuant to § 17-27-90."

The State made its return on August 19, 2013, requesting the application be summarily dismissed as untimely, successive, and for failing to state a cognizable claim. Pursuant to this request, Judge Macaulay, acting in his capacity as Chief Administrative Judge, issued a conditional order of dismissal on September 30, 2013, provisionally denying and dismissing the application while giving Applicant twenty days to show why the dismissal should not become final. Applicant submitted a pro se memorandum in response. The Honorable R. Lawton McIntosh, acting in his capacity as Chief Administrative Judge, subsequently issued a final order on November 25, 2014, denying and dismissing the application with prejudice. Applicant did not appeal.

F. Federal Habeas Corpus Action: 1:14–3831–BHH–SVH

On December 5, 2014, Applicant filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. *See Crowe v. Warden of Perry Corr. Inst.*, No. 1:14-3831-BHH-SVH.[16] Applicant raised the following grounds for relief in his pro se petition (verbatim):

1. "The trial court erred in failing to instruct the jury that they could find Petitioner guilty of involuntary manslaughter."
    a. "Petitioner asserts the State Supreme Court's decision in denying relief on this issue was objectively unreasonable in light of the evidence presented. Petitioner submits that based on the facts of the case and the evidence presented by Petitioner the jury could have reasonably found Petitioner guilty of involuntary manslaughter had the jury been instructed on such."
2. "Ineffective assistance of counsel involuntary guilty plea"
    a. "Trial Counsel was ineffective for eliciting prior bad acts of Petitioner that mirrored the offense for which Petitioner was on trial for."
    b. "Trial Counsel was ineffective for failing to object to the Trial Court's jury instructions on malice that impermissibly shifted the burden of proof in violation of the Due Process Clause."

[16] In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2), D.S.C., all pre-trial proceedings are automatically referred to a United States Magistrate Judge.

c. "Trial counsel was ineffective for failing to object to the Trial Court's jury instructions when the Trial Court 'failed' to instruct the jury on the essential element of 'criminal intent."

d. "Trial Counsel was ineffective for relying solely on the State's evidence and failed to conduct any independent investigation, including but not limited to questioning witnesses, that were at the incident the night in question and had counsel conducted independent investigation counsel could have located the witnesses who had critical information concerning drugs being placed in Petitioner's drink unaware to Petitioner that would have supported involuntary intoxication theory."

e. "Trial Counsel rendered ineffective assistance of counsel when counsel entertained an actual conflict of interest."

3. "Newly Discovered Evidence"

a. "Petitioner discovered the existence of witnesses present the night in question who have knowledge that a third party secretly spiked Petitioner's drinks in a way that caused Petitioner's involuntary intoxication. The witnesses also observed the decedent attempt to cause Petitioner great bodily harm thus giving Petitioner the right to act in self-defense."

Respondent filed a return and motion for summary judgment on April 13, 2015. On April 14, 2015, the Honorable Shiva H. Hodges, United States Magistrate Judge, issued a *Roseboro*[17] order, advising Applicant of his responsibility to properly respond to the motion for summary judgment.

On August 10, 2015, Applicant filed a response in opposition to Respondent's motion for summary judgment. Judge Hodges subsequently issued a report and recommendation that Respondent's motion for summary judgment be granted and the petition be dismissed with prejudice. Applicant filed timely objections to the R&R on October 13, 2015.

[17] *See Roseboro* v. *Garrison*, 528 F.2d 309 (4th Cir. 1975) and *Webb* v. *Garrison*, No. 77-1855 (4th Cir. July 6, 1977) (requiring courts to provide explanation of dismissal/summary judgment procedures in federal habeas corpus cases).

On February 5, 2016, the Honorable Bruce Howe Hendricks, United States District Judge, issued an order adopting and incorporating the R&R by reference; granting Respondent's motion for summary judgment; dismissing the petition with prejudice; and denying a certificate of appealability. *Crowe v. Warden of Perry Corr. Inst.*, No. CV 1:14-3831-BHH-SVH (D.S.C. Feb. 5, 2016).

Applicant filed a *pro se* notice of appeal in the United States Court of Appeals for the Fourth Circuit. On June 1, 2016, the Court issued an unpublished per curiam opinion denying Applicant's request for a certificate of appealability and dismissing the appeal. *Crowe v. Warden of Perry Corr. Inst*, 651 F. App'x 193 (4th Cir. 2016).

Applicant then filed a petition for writ of certiorari in the United States Supreme Court. The Court denied Applicant's petition on November 28, 2016. *Crowe v. Lewis*, 137 S. Ct. 514 (2016).

G. Common Law Petition for a Writ of Certiorari: 2021-000697

On July 27, 2021, Applicant filed a common law petition for a writ of certiorari, asking our Supreme Court to remand his case for an evidentiary hearing on his allegation that the solicitor withheld exculpatory and impeaching information in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, Applicant asserted that the withheld information could have supported a defense of involuntary intoxication.[18] The State made its return to the petition on August 16, 2021. Applicant then filed a reply to the State's return on August 22, 2021.

On September 22, 2021, the Court issued the following order:

> Petitioner has filed a common law petition for a writ of certiorari in which he alleges the State withheld exculpatory material and impeaching evidence in violation of *Brady v. Maryland*, 373 U.S. 83

[18] Notably, Applicant raised this claim in the context of newly-discovered evidence in his 2005 and 2012 PCR applications and his 2014 petition for habeas corpus.

> (1963), during his murder trial. We grant the petition and remand the matter to the circuit court. On remand, the circuit court shall construe Petitioner's filing as a permissibly successive application for post-conviction relief.

Crowe v. State, S.C. Sup. Ct. Order dated Sept. 22, 2021.[19]

III. ISSUES BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleges he is entitled to relief in the form of a new trial based on his sole allegation that the State committed prosecutorial misconduct by withholding exculpatory and impeaching information in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, he contends the State failed to disclose to defense counsel that it knew of evidence tending to prove that Applicant was involuntarily drugged on the night that he shot and killed the victim, Eddie Heaton. That "evidence," according to Applicant, consists of an alleged meeting prior to trial between Misty Heaton Price, her sister, Judge Singleton, and Deputy Solicitor Reese memorialized in a letter dated December 31, 1998. The letter, allegedly written by Ms. Price and addressed to Solicitor Ducworth, states the following in its entirety:

> Mr. George Ducworth,
>
> I am writing you concerning the trial of Sonny Crowe, "Daniel Lewis Crowe." My name is Misty Heaton. Several months before the trial my family went to Mrs. Susan Chappel's[*sic*] office to review the statements against Sonny Crowe. My sister and I both told Mrs. Chappel[*sic*] that my stepmom, Sherry Heaton, had confided to the both of us under secrecy that she and some of her brother had drugged Sonny the night that he shot my dad. This was suppose[*sic*] to be before the shooting the same night. When we told Mrs. Chappel[*sic*] this Danny Singleton was there. Mrs. Chappel[*sic*] and Mr. Singleton both told us not to tell anyone else, that they would have to investigate. Then all she did was ask them if they drugged him. She never said another word about it and never investigated. Mrs. Chappel[*sic*] told us she was going to make the judge order them to give them copies of all the statements. She

[19] The Court neither found Applicant was entitled to an evidentiary hearing nor found the State could not raise valid procedural bars to the claim.

> wasn't going to let them know who her witnesses were or what they had against him. Mrs. Chappel[*sic*] and Mr. Singleton both told us this. Something needs to be done about this because Mrs. Chappel[*sic*] obviously doesn't care. She was concerned that it would ruin her case.
>
> Thank you,
> Misty Dawn Heaton

(Applicant's Exhibit #6). Applicant alleges that the prosecution's failure to disclose this pre-trial conversation with Ms. Price and subsequent letter constitutes a *Brady* violation because the information could have supported a defense of involuntary intoxication.

Following Judge Maddox's discovery order, the Tenth Circuit Solicitor's Office produced its complete files regarding the investigation, trial, and conviction of Applicant. Both parties subsequently examined the contents of the solicitor's file.

The State made its return to the application on July 19, 2022, asserting the action should be dismissed because Applicant's *Brady* violation claim is untimely pursuant to sections 17-27-20(A)(4)[20] and 17-27-45(C)[21] of the South Carolina Code. The State orally renewed its motion at the outset of the August 25, 2022 hearing before this Court. Specifically, the State argued the action was untimely because (1) Applicant's wife, Charlotte Crowe states in her affidavit that was filed with the Supreme Court that she personally mailed this letter to Solicitor Ducworth on December 31, 1998; (2) Applicant attached a copy of the December 31, 1998, letter to his response in opposition to Respondent's motion for summary judgment in his federal habeas corpus action on

---

[20] S.C. Code Ann. § 17-27-20(A)(4) provides that a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice."

[21] S.C. Code Ann. § 17-27-45(C) provides that the application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

August 11, 2015;[22] and (3) Applicant indicated in his August 11, 2015, response in opposition to Respondent's motion for summary judgment that he was aware the letter existed since at least October 25, 2004.[23] The State further noted the Supreme Court only instructed the circuit court on remand to construe Applicant's post-conviction relief application as permissibly successive, but did not find Applicant was entitled to an evidentiary hearing, that the statute of limitations must be equitably tolled, or that the materials presented in support of Applicant's *Brady* claim constitute newly-discovered evidence.

In response, Applicant stated that he was aware of the procedural bars in this case, which is why he initially litigated this matter through the common law petition for writ of certiorari in the Supreme Court. Applicant further disagreed with the State's interpretation of the Supreme Court's order, asserting that the Supreme Court granted Applicant's request for an evidentiary hearing despite those procedural bars. Additionally, Applicant stated he was not making an argument that the letter constitutes after discovered evidence. This Court took the motion to dismiss under advisement and proceeded with the evidentiary hearing.

IV. SUMMARY OF TESTIMONY FROM EVIDENTIARY HEARING

Misty Heaton Price

Applicant first called the victim's daughter, Misty Heaton Price to testify. Ms. Price testified that she was seventeen years old when her father was killed. (PCR Tr. 22). Sherry Heaton is her stepmother. Ms. Price testified that she went to the solicitor's office at some point before

[22] A copy of Applicant's response in opposition to Respondent's motion for summary judgment in his federal habeas corpus action is attached to the State's return and motion to dismiss as Exhibit #1 and a copy of the December 31, 1998, letter he included with the response is attached to the State's return and motion to dismiss as Exhibit #2.

[23] The hearing on Applicant's first post-conviction relief application convened on that date.

trial and spoke with Deputy Solicitor Reese and Judge Singleton about Applicant's case. (PCR Tr. 22). She stated that her sister, Christy Heaton Liveright, was also present. (PCR Tr. 31–32). Ms. Price stated the following when asked why she went to the solicitor's office:

> Okay. So, about a year after my dad died, my step-mama got a life insurance, it was like a hundred thousand dollars, and she needed us to sign the paper so we wouldn't ask for anything. So, she gave us a thousand dollars each if we would sign saying that we had no rights to anything of our father's. And that day she said -- because I had already heard rumors about there being drugs and Sonny being drugged.

(PCR Tr. 23). When asked what she told Deputy Solicitor Reese and Judge Singleton that day, Ms. Price responded:

> I told them that my stepmother told me that she had drugged Sonny. And they told me that I needed to keep my mouth shut and keep that to myself or I would mess up the integrity of the case against Sonny, that they knew everything that they needed to know about what happened at that point.

(PCR Tr. 23). Ms. Price was asked specifically whether Sherry's statement was that her brothers put illicit drugs in Applicant's drink. (PCR Tr. 27). She clarified that it was Sherry and her brothers. (PCR Tr. 27).

She opined, however, that the solicitor's office was "not interested in pursuing anything anyone else had done" and that they were "well aware of what happened at that party but they had their man." (PCR Tr. 28). Ms. Price further testified that she had this conversation with Deputy Solicitor Reese and Judge Singleton within a week of Sherry telling her about what happened the night of the party. (PCR Tr. 31). When asked if she ever spoke with Sherry's brothers about allegedly drugging Applicant, Ms. Price also testified that all the brothers "bragged about it" but did not tell her as much as Sherry did about the situation. (PCR Tr. 32). She then stated that Sherry's brothers "and several other people that were at the party had been talking about" drugging

Applicant. (PCR Tr. 32). She later clarified that she only spoke with Benjamin and James. (PCR Tr. 37).

Ms. Price was then asked about the letter she wrote to Solicitor Ducworth. She confirmed that the date on the top of the letter—December 31, 1998—was the date she wrote the letter and spoke with Charlotte Crowe, Applicant's wife. (PCR Tr. 31). She explained that, at the time of the trial, she thought Applicant deserved to be in prison. (PCR Tr. 28–29). However, she realized she wanted the "other people to pay for what they had done" at the time she wrote the letter. (PCR Tr. 29). Because the solicitor's office would not listen, Ms. Price explained, she asked Charlotte what she should do because it affected her too. (PCR Tr. 29, 34–35). She testified that:

> I went to [Charlotte's] house and I asked her what to do. And I sat and I wrote the letter at her house. And I left the letter with her. And I believed that she would get it to somebody, because she did care about getting Mr. Crowe out at the time. That wasn't my goal but I knew the only way to try and reach out was to go to the solicitor. And she said go over their head and she would mail it.

(PCR Tr. 36). She testified that Charlotte specifically told her to write to George Ducworth. (PCR Tr. 35). When asked why she made copies of the letter, Ms. Price stated that Charlotte made copies before she mailed it. (PCR Tr. 29). Ms. Price confirmed that she did not see Charlotte put the letter in the mail. (PCR Tr. 35).

When asked why she never spoke with Applicant's trial lawyer, Mr. Sires, about the contents of the letter, Ms. Price stated she never talked to anyone else until Charlotte and Applicant's PCR counsel, Ms. Franklin-Best, reached out to her about four or five years ago when Charlotte allegedly found the copy of the letter. (PCR Tr. 29, 35).

On cross-examination, Ms. Price was asked about the part of the letter where she claims the solicitor was going to have the judge issue an order making someone give statements to

someone else. (PCR Tr. 33). Specifically, she was asked who would be ordered to give what to whom. (PCR Tr. 34). She responded:

> I'm not sure about all of that now. I don't remember all of the details about the other people. I just remember about the drugging and how it affected me. And that I was upset and I wanted -- I wanted something done. I wanted them to do something.

(PCR Tr. 33–34). Ms. Price was also asked about the portion of her affidavit that states she "told the solicitor and the sheriff" about Sherry's statement. (PCR Tr. 36). She responded that at the time she wrote the letter, she was not sure whether the man she spoke with at the solicitor's office was Danny Singleton or Stanley Sheriff, an investigator with the Oconee County Sheriff's Department. (PCR Tr. 36–37). However, she stated that she can now confirm it was Danny Singleton. (PCR Tr. 37).

Charlotte Crowe

Applicant next called his wife, Charlotte Crowe, to testify. Mrs. Crowe testified that she recalled Misty Heaton Price coming to her home on New Year's Eve in 1998. (PCR Tr. 39). She testified that Misty wrote the letter and then gave it to her. (PCR Tr. 39). Mrs. Crowe confirmed that she mailed the letter after she made copies. (PCR Tr. 39).

On cross-examination, Mrs. Crowe testified she mailed the letter to Solicitor Ducworth's office from her house. (PCR Tr. 39–40). She stated she could not recall the specific date that she mailed the letter but believes she did so a few days after Misty wrote it. (PCR Tr. 40). She testified she made copies of the letter at the library. (PCR Tr. 40).

When asked why she did not tell her husband's lawyer about the letter and what Misty told her, Mrs. Crowe responded that she did tell him or she thinks she did. (PCR Tr. 40). She was then asked whether, prior to his trial, she was spreading rumors that her husband had been drugged.

(PCR Tr. 40). She stated that she was told he was drugged and that "everybody was bragging about it." (PCR Tr. 40).

N. Gruber Sires, Jr.

Applicant next called his trial counsel, N. Gruber Sires, Jr. to testify. Mr. Sires testified he began practicing law in September of 1971. (PCR Tr. 42). In fact, he started the Oconee County Public Defender's Office in 1971 or 1972. (PCR Tr. 42). Mr. Sires testified he was Chief Public Defender for Oconee County until 2004. (PCR Tr. 42).

Mr. Sires testified he recalled representing Applicant at trial although he could not remember specific details about Applicant's defense or his trial strategy. (PCR Tr. 42–43). Mr. Sires testified that the State never provided any information to him suggesting Applicant may have been drugged by someone on the night he shot Eddie Heaton. (PCR Tr. 43). He was then asked whether he was ever informed that Misty Heaton Price and her sister had gone to the solicitor's office and told the prosecution and the investigator what they heard from Sherry Heaton. (PCR Tr. 43). He responded that did not know anything about it until Ms. Franklin-Best brought it to his attention and showed him the letter. (PCR Tr. 43).

Mr. Sires was then asked whether, closer to the time of trial, anyone from the solicitor's office told him that witnesses were indicating to them that Applicant had been drugged. (PCR Tr. 43). He responded that no one advised him of this information and, if he had known about these alleged statements, he would have called Misty as a witness. (PCR Tr. 43–44). He also stated he would have used the information to impeach Sherry Heaton and John Smith. (PCR Tr. 44). Additionally, he stated he would have requested a jury instruction on involuntary intoxication. (PCR Tr. 44).

On cross-examination, Mr. Sires testified that he did not recall hearing anything from Charlotte about Applicant being drugged. (PCR Tr. 44–45). He stated that he did not remember many details from the trial, but he thinks he would have remembered if Charlotte had provided him with that information. (PCR Tr. 45–46).

Jay Phillips

Jay Phillips was Applicant's final witness. Mr. Phillips testified that he is a retired deputy sheriff from Lexington County and that he now is a licensed private investigator. (PCR Tr. 46–47). He testified that he spent twenty-five years in law enforcement after graduating from the Criminal Justice Academy in 1988. (PCR Tr. 47–48). Mr. Phillips further testified that he has investigated hundreds of death or homicide cases. (PCR Tr. 48). He stated he was a sergeant in investigations for some period of time, and supervised the child abuse unit, the domestic violence unit, and the general procedures unit. (PCR Tr. 48). Mr. Phillips was then promoted to deputy commander, where he supervised all major crimes, narcotics, and crime scene investigations. (PCR Tr. 48). He has additionally given presentations and been a guest speaker at seminars all over the state. (PCR Tr. 48–49). This Court ultimately qualified Mr. Phillips as an expert on criminal investigations based on his experience in law enforcement. (PCR Tr. 55).

Mr. Phillips testified that he was not hired in this particular case, but that he is currently working with Ms. Franklin-Best on other cases. (PCR Tr. 56). He stated that she asked him to observe the proceedings in Applicant's case. (PCR Tr. 56). Mr. Phillips testified he made the following observations:

> I sat in on her meeting with Mr. Crowe yesterday, and listening to them go over the testimony that had been given in trial, specifically his, you know, the inability of three grown men to hold him down, that he was just exhibiting super-human strength, not feeling any pain. That was one of the drugs that they taught us about in officer

> safety called PCP. It was very popular in the late '80s and '90s, especially with the motorcycle gangs.
>
> The other thing that caught my attention was the evidence or testimony of foaming at the mouth. I have been trained and learned over the years that that is an indication of overdose. It can also be an indication of seizures and other things, but overdose is one of the things that will cause an individual to foam at the mouth. So, it just caught my attention, and there had been testimony that supported his behavior was considered the same as somebody that would have ingested a very powerful drug. And the foaming at the mouth would also support it was an overdose of drugs.

(PCR Tr. 56–57).

Mr. Phillips then testified about the specific training he received pertaining to these types of drugs. (PCR Tr. 57). He recalled a video he watched during PCP training that involved a large individual who was on PCP. (PCR Tr. 57). The man charged at law enforcement offers despite being shot over twelve times. (PCR Tr. 57). Mr. Phillips testified he was taught that "PCP is supposed to be a very powerful anesthetic, you don't feel any pain, you hallucinate, you don't know what is going on." (PCR Tr. 57). He explained that they were taught to recognize an individual exhibiting the type of behavior typically exhibited by individuals on PCP for officer safety purposes. (PCR Tr. 57–58). Mr. Phillips stated they were taught to be very careful and call for backup when dealing with an individual on PCP because they were potentially very dangerous. (PCR Tr. 58). He additionally testified that, to the best of his knowledge, every law enforcement officer in South Carolina received this training. (PCR Tr. 59).

Regarding Applicant's case, Mr. Phillips testified that as an investigator, if he had information that somebody was foaming at the mouth and exhibited superhuman strength, he would have followed up on the possibility that the person either intentionally or involuntarily was on drugs, (PCR Tr. 59). Specifically, he explained that:

> [F]rom an investigative standpoint, if they were unknowingly given the drugs, then that could be a matter of defense. If they took the

> drugs as a matter of personal choice, then it wouldn't affect the case, but as far as the investigation, you need to go down both roads. You have a defense path and you have a prosecution path. And you need to get all of the information that you can for the solicitor to have to be able to prepare and make decisions on their case.

(PCR Tr. 58–59).

On cross-examination, Mr. Phillips stated he had not read the trial transcript; however, he was aware from sitting in on meetings with Ms. Franklin-Best and the other witnesses that Applicant had been drinking alcohol on the night of the incident. (PCR Tr. 59).

He further testified that, based on his experience and training, he would not expect someone on PCP to remain cogent due to the "anesthetic portion of it" and that their memory while on PCP would be "fragmented at best." (PCR Tr. 60–61). The State then gave Mr. Phillips the following scenario:

> So say I'm at a party and our timeline is maybe a couple of hours long, but anyway, throughout that event, if I can later recount after allegedly being drugged, being beaten, can recount the details of interactions with someone from beginning to end; is that something that sounds to you like PCP?

(PCR Tr. 61) He responded:

> When would the interaction be? If the interaction was prior to the ingestion of the drug, then I would think that would be possible. If it was after the ingestion of the drug and it had taken its effect and had gone into, it is like a wild animal from the videos that I have seen and all of the training that I have had, they don't know who they are or what they are doing or anything else. It would be surprising to me if they had any real memory. They might have some hallucinations that they are remembering that they think could be real. But it is known to be a hallucinogenic.

(PCR Tr. 61–62). He then clarified that, an individual who is able to recount an event cogently, rationally, and explain things in detail, had not ingested PCP at all, not ingested it at the time of the event, or the PCP had not yet taken effect. (PCR Tr. 62). Mr. Phillips reiterated that he was not

a medical expert but that as a layman he has observed that drugs affect everyone differently and therefore start taking effect faster for some people than others. (PCR Tr. 62). He then testified that he did not know what the officers at the scene on the night Eddie Heaton was killed would have thought and reiterated that he had not seen any reports or documentation from the case. (PCR Tr. 63). Following Mr. Phillips' testimony, Applicant rested his case.

Tenth Circuit Solicitor George M. Ducworth

After Applicant rested, the State called former Tenth Circuit Solicitor George Ducworth. Solicitor Ducworth testified that he served as the elected solicitor from 1981 to 2001. (PCR Tr. 64–65). When asked if he recalled being involved in the prosecution of Applicant in June of 1998, Solicitor Ducworth stated he did not remember a whole lot about the case. (PCR Tr. 65). He was then given a copy of the letter[24] and asked if he recognized it. (PCR Tr. 65). Solicitor Ducworth stated he saw a copy of the letter a few days ago. (PCR Tr. 65). However, he did not have any recollection of receiving that letter in either the end of 1998 or beginning of 1999. (PCR Tr. 65).

Solicitor Ducworth testified that he would have taken the following actions had he received the letter:

> Well, the first thing that I would have done, I would have talked to Susan Chappell, now Susan Reese. She was the deputy solicitor up in Oconee County and she prosecuted the case. I would have talked to her and then we would have turned it over to the defense, to Gruber Sires.

(PCR Tr. 66). He then testified that, prior to the filing of the instant PCR action, he had not received any information indicating that the prosecution withheld exculpatory evidence from the defense in this case. (PCR Tr. 65–66).

[24] Applicant's Exhibit #6.

On cross-examination, Solicitor Ducworth testified that, although he had administrative staff to assist him, he usually checked his own mail. (PCR Tr. 66). He reiterated that he did not have any recollection of receiving the letter. (PCR Tr. 66). When asked whether he can say definitively that the letter never came into his office, Solicitor Ducworth responded that he does not remember every single letter he received twenty-four years ago, but he certainly thinks he would have remembered something like this. (PCR Tr. 67).

The Honorable Clinton D. Singleton

The State called then called Judge Danny Singleton, who is currently a municipal judge for the City of Seneca. (PCR Tr. 68). He stated that he was previously in law enforcement and was a certified police officer who went through the criminal justice academy and received additional training. (PCR Tr. 74). He then left law enforcement for the Tenth Circuit Solicitor's Office, where he was an investigator for approximately three and a half years, including 1998. (PCR Tr. 68, 74). He testified that his duties included assisting the prosecution in preparing cases for trial, re-interviewing witnesses, and potentially discovering new evidence that could credit or discredit certain evidence. (PCR Tr. 68).

Judge Singleton recalled working with Deputy Solicitor Reese on Applicant's case. (PCR Tr. 68). He confirmed that he was not one of the "line investigators" in Applicant's case and did not participate in the initial interview of any of the witnesses. (PCR Tr. 74–75). Rather, he assisted the solicitor in preparing the case for trial after law enforcement had completed their investigation and turned the case over to the solicitor's office. (PCR Tr. 75). In helping Deputy Solicitor Reese prepare for trial, he recalled reviewing the files from law enforcement, re-interviewing witnesses, going over their statements, and taking notes as to whether there were any changes to their

statements. (PCR Tr. 68–69). He also testified that he was sure he spoke with Stanley Sheriff[25] and Ronald Wilbanks[26] about the case at some point. (PCR Tr. 75).

Judge Singleton was also given a copy of Applicant's Exhibit #7. (PCR Tr. 71). He identified the first page as Timothy Phillips' written statement to law enforcement that was taken by Investigator Stanley Sheriff. (PCR Tr. 71). However, he could not identify who the notes belonged to on the second page. (PCR Tr. 71–72).

He was then given a copy of Applicant's Exhibit #10. (PCR Tr. 72). Judge Singleton testified that the first page of the document appears to be a record of an interview of Richard Allen Griffin that was taken by someone from the sheriff's office. (PCR Tr. 72). He identified the second page as being in his handwriting. (PCR Tr. 72–73). He stated that it was his notes from an interview he conducted of Griffin on April 23, 1998, prior to trial. (PCR Tr. 73). Judge Singleton confirmed that Griffin told him something about how Applicant was "foaming at the mouth" on the night of the incident. (PCR Tr. 73–74).

Judge Singleton recalled that they anticipated Applicant would be asserting self-defense at trial. (PCR Tr. 69). He stated that he was not aware of any other defenses the prosecution expected Applicant to raise nor anything else Deputy Solicitor Reese asked him to investigate or interview witnesses about. (PCR Tr. 69). Judge Singleton stated that he could not recall specifically whether he took statements from any additional witnesses that were not previously interviewed by law enforcement. (PCR Tr. 75). He reiterated that one of his roles as an investigator in the solicitor's office was to speak with any potential witnesses. (PCR Tr. 75).

---

[25] Stanley Sheriff, an investigator with the Oconee County Sheriff's Department, was one of the officers that processed the crime scene and took custody of certain evidence.

[26] Ronald Wilbanks, an Oconee County Sheriff's Deputy, was one of the first responding officers that secured the crime scene.

Judge Singleton testified that he did not recall meeting with the victim's daughter, Misty Heaton Price, before trial. (PCR Tr. 69). He stated that neither Misty nor anyone else informed him that Sherry Heaton confessed to drugging Applicant. (PCR Tr. 69). He additionally testified that he did not tell any witness or family member in Applicant's case not to tell anyone anything that he spoke with them about. (PCR Tr. 69). He testified that he never told any witness or family member in Applicant's case that either he or Deputy Solicitor Reese were going to make the judge order someone to turn over some sort of statements to them. (PCR Tr. 69–70). Finally, he testified that he did not tell any witness or family member that they were going to hide from the defense the witnesses the solicitor was going to call at trial. (PCR Tr. 70).

Deputy Solicitor Susan S. Reese

Lastly, the State called Deputy Solicitor Susan S. Reese. She testified that she was not currently practicing law, but that she left the Spartanburg County Solicitor's Office in 2013 when she had her first child. (PCR Tr. 76). Before going to Spartanburg, she was a solicitor in the Oconee County Solicitor's Office. (PCR Tr. 76). Deputy Solicitor Reese recalled prosecuting Applicant for the murder of Eddie Heaton in 1998. (PCR Tr. 76). When asked about what she did when initially assigned the case, Deputy Solicitor Reese testified that she would have first obtained the information and files from the Oconee County Sheriff's Office and that there was likely a bond hearing shortly thereafter. (PCR Tr. 76–77). She testified that she would have done the first interview with the victim's wife, Sherry Heaton. (PCR Tr. 77). Deputy Solicitor Reese testified that she almost always had someone else from the solicitor's office with her when she interviewed witnesses. (PCR Tr. 77). She stated that most of the time Danny Singleton, one of their investigators at the time, would usually attend witness interviews with her. (PCR Tr. 77).

Deputy Solicitor Reese testified that she recalled her meeting with Sherry relatively well. (PCR Tr. 77). When asked how involved Eddie's family was with the case, she stated:

> Well, this was an interesting case because the wife of the victim and the wife of the defendant were cousins, I believe. So, although they were on opposite sides of the case, they still interacted. So we got a good deal of information from the family. And this is my memory: That the wife of the defendant, Charlotte Crowe, would talk a lot about the defense. And so we would get information from the family members during bond hearings and things about what she was planning to say at trial or how she was planning to testify. So they were pretty involved in relaying information that she had said to them.

(PCR Tr. 78). Deputy Solicitor Reese additionally testified that she recalled Eddie's family expressing concerns to her about whether Applicant could be convicted or held responsible for the murder since he was drinking alcohol the night he shot and killed Eddie. (PCR Tr. 78). Specifically, she recalled the following:

> The first indication that I had that there would be any issue with involuntary intoxication was involving Mr. Crowe. And I am doing this from memory, but I was in a meeting with Mrs. Heaton, the first time that I met with her, and at that time we were talking about her husband and how he had died. And she stopped me to tell me that Charlotte Crowe had said to her, or said to someone else, that Eddie Heaton -- that someone had brought drugs to the party and given them to Eddie Heaton and Eddie Heaton had been intoxicated. And that was, in her words, that was why he had to shoot him, why Mr. Crowe had to shoot him.
>
> And I remember that she was very upset by that, because she said that that wasn't true, that her husband didn't drink and that Charlotte was saying he was drinking and that they had given him something. And I told her not to worry about it, that we had a toxicology report on the way. So that was the first time that I heard about involuntary intoxication.
>
> Now the first time we had a bond hearing I do remember that several members of the people in the group said that they had heard from Mr. Crowe that the defendant couldn't be prosecuted because he was drunk at the time. And I reassured them that voluntary intoxication wasn't a defense. I do remember that.

(PCR Tr. 78–79). Deputy Solicitor Reese further recalled explaining to Eddie's family the difference between voluntary and involuntary intoxication. (PCR Tr. 79).

She testified that, within a day or two of receiving this information from Sherry regarding the rumor that Eddie was on drugs at the party, Mr. Sires called and asked her if they had received the toxicology report yet. (PCR Tr. 79). She recalled Mr. Sires being "very adamant" that it would have something to do with their defense, and specifically that Eddie was on drugs. (PCR Tr. 79–80). However, the toxicology report ultimately found no drugs or alcohol in Eddie's system. (PCR Tr. 80).

Deputy Solicitor Reese recalled expecting Mr. Sires to present a case of self-defense because a gun was found on or near the victim after he fell to the ground. (PCR Tr. 80). Additionally, the comments and rumors about Eddie possibly being on drugs gave her the impression that self-defense would be asserted. (PCR Tr. 80). When asked whether there was any additional defense she anticipated Mr. Sires would raise, she responded:

> Well, we begin to hear that -- I think we had three bond hearings, if I'm not mistaken. Again, doing it by memory, but I think we had several bond hearings and each time we would, we would hear -- we would gather the family in a group and it would either be in our conference room or the foyer and we would talk to them about decorum and what they could, if they wanted to speak, what they could say at the bond hearing. And at that time we were given information by different people, and it was, it was different, it was a different scenario each time. Charlotte says that, that I think there was a guy named Phillips in the case had put methamphetamine in Sonny's drink. Charlotte said that G[a]il Crenshaw put something in his drink. Charlotte said that one of the brothers put something in his drink. So, it changed from allegation to allegation. And so when we begin to hear those things, we would interview people and prepare to rebut her at trial. Because this wasn't -- we never got information -- no one ever came to us and said, I know that this happened. What we were being told was, Charlotte Crowe is telling people this happened, Charlotte Crowe says that she will testify to this.

> And we also, we had also been told at that time that, although she had said that she was not the person that brought him back to the party where he killed Mr. Heaton, that she was now going to testify in court that she, that she did bring him back. So we were constantly getting information of things that she was telling people in her family.

(PCR Tr. 80–81). Deputy Solicitor Reese testified she does not recall ever meeting with the victim's daughter, Misty, prior to trial. (PCR Tr. 81). When asked whether Misty or anyone else ever told her that Sherry Heaton confessed to drugging Applicant, she stated:

> No. And I went back in the file when I saw this. I actually went back and looked at the file. And I had kind of a procedure when I would interview someone. When someone would come into my office, I would actually create a file with their name on it and I would put that file, I would keep that file and I would pull out statements that they had given before. And then Mr. Singleton and I would, either one of us or both of us, take notes during an interview, so I went back and I looked to see if there was a file in her name and there was not. And there were no notes of an interview that we ever done with her.
>
> Any time -- and also, when I interviewed anyone I put them on the trial list. That is something that I did because I had been told at one time that I couldn't call a rebuttal witness if they were not on the trial list so I -- even a hostile witness, I would put them on the trial list because you never knew when something might come up. So I looked back to see if she was ever on the trial list and she was not.

(PCR Tr. 82). She stated that she may have met with Misty informally at one of the bond hearings. (PCR Tr. 83, 93). Deputy Solicitor Reese testified, however, that she has no memory or record in her file indicating she met with Misty. (PCR Tr. 93). She stated she was "pretty meticulous" about her notes. (PCR Tr. 93).

When asked about her obligation to meet with victims under the South Carolina Victims Bill of Rights, she stated that she met with Eddie's wife and her younger daughter. (PCR Tr. 93–94). She recalled the younger daughter being around eight years old at the time. (PCR Tr. 94).

However, she reiterated that no one ever told her that Sherry Heaton admitted to anything because she would have prepared for that. (PCR Tr. 83, 94).

When asked what she would have done had she received that information, she testified:

> Well, the first thing that I would have done would be to let Mr. Sires know that this allegation was out there. The second thing that I would have done would have been to call in Sherry Heaton for a second interview, which I didn't do. Because I never had this information. But more importantly, this would have been the easiest claim to rebut because Mrs. Sherry Heaton worked that day at Scooter's Bar. She was there all day.
>
> The testimony, even testimony from Mr. Crowe at trial, was that they didn't get to the party until between 12 and 1:00. She worked until the bar closed. They came after. They rode up on their motorcycles and Mr. Crowe was already being escorted out of the party at that point. He had already had altercations.
>
> And the altercation with Mr. Heaton happened immediately. So she didn't have access to him to put anything in his drink at any point. And if I had been told that she had admitted to doing something like that, I would have subpoenaed the work records from the bar and I would have talked to the bar owners, and I would have gotten the names of the other employees at the bar that were with her at the bar that day. I didn't do any of that in the file because I never had that information. I prepared to rebut everything else, but I didn't have this information

(PCR Tr. 83–84).

Like Judge Singleton, Deputy Solicitor Reese testified that she did not tell any witness or family member involved in Applicant's case not to tell anyone anything that she spoke with them about; that she never told any witness or family member that she was going to make the judge order someone to turn over some sort of statements to them; and that she never told any witness or family member that she was going to hide from the defense the witnesses she planned on calling at trial. (PCR Tr. 84).

On cross-examination, PCR counsel clarified to Deputy Solicitor Reese that the allegation is not that Sherry herself drugged Applicant. (PCR Tr. 85). Rather, Sherry's brother, John Smith,

and other individuals at the party that night drugged him. (PCR Tr. 85). Deputy Solicitor Reese responded that it was her understanding based on Misty's affidavit that Sherry stated she and her brothers drugged Applicant. (PCR Tr. 85).

When asked if she recalled from the trial who gave Applicant a drink that night, she remembered John saying that Applicant made his own drink. (PCR Tr. 85). She specifically recalled Mr. Sires asking John on cross-examination if he gave Applicant a mixed drink. (PCR Tr. 85). Deputy Solicitor Reese reiterated that the defense had all of this information. (PCR Tr. 85).

She was then given a copy of Applicant's Exhibit #7. Judge Singleton previously identified the first page as Timothy Phillips' written statement to law enforcement. (PCR Tr. 71). Deputy Solicitor Reese confirmed that the second page of the document were her handwritten notes from her interview of Phillips. (PCR Tr. 86). Specifically, her notes indicated that when she met with Phillips, she had been given information that Charlotte Crowe was saying Phillips had drugged Applicant by putting meth in his drink. (PCR Tr. 86). She stated that she wrote "drugs in drink?" and "meth at party?" at the top of her notes because it was something she planned on asking Phillips about during his testimony. (PCR Tr. 86). Deputy Solicitor Reese was then asked whether the topic came up during her interview with Phillips. (PCR Tr. 87). While reading her notes, she confirmed that she asked him if there were any drugs at the party. (PCR Tr. 87). Phillips told her that there probably were drugs at the party but that they didn't let him know and that he had already given up drugs. (PCR Tr. 87). He also told her that "something was going on with Sonny, he was too crazy." (PCR Tr. 87).

Deputy Solicitor Reese was then given a copy of Applicant's Exhibit #8. (PCR Tr. 87). She testified that the first three pages appear to be Sherry Heaton's written statement to law enforcement. (PCR Tr. 87). The second page consisted of her handwritten notes she would have

taken when she met with Sherry. (PCR Tr. 87–88). Specifically, she was asked about her note, "somebody brought him acid," that was indicated in quotation marks. (PCR Tr. 88). Deputy Solicitor Reese responded:

> Yes, that was referring to Eddie Heaton. That was the initial interview that I had with Mrs. Heaton. She was concerned that Charlotte had said that somebody brought acid and put it in Eddie Heaton's beer. And she was upset about that. These notes are from when we were talking about back around, rolled toward his bike, he was laying beside him towards -- we were talking about Eddie and she stopped me and said -- I did remember that pretty well -- she said that she -- that Charlotte had said these things, and that somebody had put something in his drink. And she was very upset. She said Eddie didn't drink, that he wasn't drinking beer. And I told her that we would get the toxicology report. And that is when she started calling me about the toxicology.

(PCR Tr. 88). Deputy Solicitor Reese further stated that the issue about acid was resolved after her meeting with Sherry when the toxicology report came back showing that Eddie did not have drugs or alcohol in his system. (PCR Tr. 88–89). Deputy Solicitor Reese further testified that she only interviewed Sherry once. (PCR Tr. 89). She stated that, had she been given the information alleged by Misty, she would have interviewed Sherry a second time and asked her about whether she and her brothers drugged Applicant. (PCR Tr. 89).

Deputy Solicitor Reese was then given a copy of Applicant's Exhibit #9. (PCR Tr. 89). She testified that the first two pages appear to be Benjamin Smith's written statement to law enforcement and the third page were her handwritten notes from her meeting with Benjamin. (PCR Tr. 89). She was asked about her note that states "on acid." (PCR Tr. 89). She explained that she asked Benjamin if anyone at the party was on acid, and he responded that everyone was "just drinking," as further indicated in her notes. (PCR Tr. 89–90). Specifically, she asked him if he was on acid because acid had come up, and he responded that he was not. (PCR Tr. 90).

When asked how acid first came up, Deputy Solicitor Reese testified that she believes she first heard it from Sherry, who told her Charlotte Crowe was saying to people that someone put acid in Eddie's beer. (PCR Tr. 90). Deputy Solicitor Reese testified that she did not remember if they tried to speak with Charlotte about the acid, but she does not think they did. (PCR Tr. 90). She noted that Charlotte was the defendant's wife and likely would not speak to her. (PCR Tr. 90). Nonetheless, she explained that it was not something she felt she needed to speak with Charlotte about because Charlotte was not at the party and therefore did not have any personal knowledge about the matter. (PCR Tr. 90–91). Again, Deputy Solicitor Reese testified that the issue of Eddie possibly being on acid was resolved with the toxicology report. (PCR Tr. 90–91).

Further, when asked about her testimony regarding multiple instances where she heard Charlotte saying certain things about the case, Deputy Solicitor Reese testified that Charlotte did not have any information but was just "throwing things out there to people." (PCR Tr. 91). She further testified that she potentially could have tried to speak with Charlotte, however, she was focused on preparing for Charlotte's trial testimony. (PCR Tr. 91). Deputy Solicitor Reese pointed out that, during her testimony, Charlotte never stated she had personal or independent knowledge of these matters. (PCR Tr. 91).

Deputy Solicitor Reese was then given a copy of Applicant's Exhibit #11. (PCR Tr. 91). She identified the document as the last two pages of the trial brief she would have used to prepare for trial. (PCR Tr. 91). She stated that the document included notes to herself that she likely prepared the Friday before trial. (PCR Tr. 91–92). She further explained that the first part of the brief would have had the questions she was going to ask each person and that the last part would be her impression of the defense. (PCR Tr. 92). When asked specifically what her notes indicate about what the defense would be, Deputy Solicitor Reese stated:

> I thought that it would be self-defense. The statement of the defendant is that he had to come back to get his car with his shotgun and the group began to threaten him. He said at that point Heaton went for something in his vest and he shot in self-defense. Defendant may have to take the stand to present this defense. No witness gave a statement to anything like that. The defendant.
>
> The key to self-defense is just return threats to others as well as Heaton, an actual statement that he would be back to kill him. The second line of defense may be someone drugged the defendant. There have been rumors to that effect, but no one has come forward with that information. And those that we heard did it have denied it.
> ....
>
> And then down at the bottom I think I put in here too that Charlotte Crowe raised the issue of attempt to drugging the defendant which we will be able to refute on rebuttal.

(PCR Tr. 92–93). Deputy Solicitor Reese testified that the issue of whether Applicant was involuntarily intoxicated actually did come up at trial. (PCR Tr. 93). While Mr. Sires never specifically stated Applicant was involuntarily intoxicated, he asked all of the witnesses at the party—including Applicant—whether someone made him a drink, whether there were drugs there, etc. (PCR Tr. 93).

V. STANDARD OF REVIEW

The Act provides that a person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

> 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
>
> 2. That the court was without jurisdiction to impose sentence;
>
> 3. That the sentence exceeds the maximum authorized by law;
>
> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
>
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A). In a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRCP; *see Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

To obtain a new trial based on after discovered evidence under section 17-27-20(A)(4), a PCR applicant must show the evidence:

> (1) would probably change the result if a new trial is had;
> (2) has been discovered since the trial;
> (3) could not have been discovered before trial;
> (4) is material to the issue of guilt or innocence; and
> (5) is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); *see Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979))); *see also, e.g.*, *United States v. Connolly*, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

However, the granting of a new trial based on after-discovered evidence is disfavored. *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); *see also State v. David*, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the

utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

The "credibility of newly-discovered evidence . . . is a matter for determination by the circuit judge to whom it is offered." *State v. Mayfield*, 235 S.C. 11, 34, 109 S.E.2d 716, 729 (1959); *Harris*, 391 S.C. at 544–45, 706 S.E.2d at 529 ("The credibility of newly-discovered evidence is for the trial court to determine."); *see e.g.*, *State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment.").

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

Although there is arguably a basis to summarily dismiss this action as procedurally barred under 17-27-45(C), this Court proceeds on the merits to the sole claim of whether the State committed prosecutorial misconduct by withholding exculpatory and impeaching information in violation of *Brady*. In analyzing this claim, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the testifying witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds Applicant failed to meet the requisite burden of proof regarding newly-discovered evidence under S.C. Code Ann. § 17-27-20(A)(4) and further failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. *See* Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); *Lucero v. State*, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of

establishing that he or she is entitled to relief."); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Set forth below are the relevant findings of facts and conclusions of law pursuant to S.C. Code Ann. § 17-27-80.

1. Newly-discovered evidence

As aforementioned, it is a "fixed rule that the credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered." *State v. Parker*, 249 S.C. 139, 141, 153 S.E.2d 183, 184 (1967); *see, e.g.*, *State v. Deese*, 266 S.C. 534, 538, 225 S.E.2d 175, 176 (1976) (reiterating that "[wh]en testimony is in direct conflict and depends largely on the credibility of the new evidence, the trial judge is charged with the duty of assessing the evidence."); *c.f. Clemons v. Mississippi*, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

In *State v. Harris*, the defendant moved for a new trial based on a post-trial affidavit of his co-defendant that his testimony against Harris at trial was incorrect. 391 S.C. 539, 542, 706 S.E.2d 526, 528 (Ct. App. 2011). Specifically, the co-defendant alleged the solicitor threatened him with at least thirty years in prison if he did not testify as instructed. *Id.* at 542–43, 706 S.E.2d at 528. Following a hearing, the circuit court judge issued an order denying Harris's motion. Our Court of Appeals affirmed, applying the *Clark* factors and finding:

> This issue comes down to a matter of the credibility of the witnesses, which we leave to the trial court's discretion. The trial court found [the solicitor] to be credible. It also found the circumstances surrounding [the co-defendant]'s recantation as well as [the co-

> defendant]'s testimony at trial made the recantation unreliable. The record supports the trial court's assessment.

Id. at 545, 706 S.E.2d at 529.

Similarly, the newly-discovered evidence at issue here is Ms. Price's statement that Sherry Heaton told her Applicant was involuntarily intoxicated the night he killed Eddie Heaton as a result of Ms. Heaton and her brothers putting illicit drugs in Applicant's drink. Although it carries some probative value, such a statement suffers from obvious credibility problems and must be evaluated in light of the evidence presented at trial, the other testimony presented at the PCR hearing, and the record as a whole. *See State v. Wright*, 269 S.C. 414, 420–21, 237 S.E.2d 764, 767–68 (1977) (finding the record supported the trial court's determination the recanted testimony of one of the witnesses was not believable, noting the other witness against the appellant had not recanted); *see also See Goss v. State*, 425 S.C. 101, 108, 820 S.E.2d 373, 376 (2018) ("When a factfinder evaluates the credibility of witnesses, the mental process employed often requires the credibility evaluations to be based upon a consideration of all the evidence, not simply the parts the factfinder chooses to see and hear first-hand.").

As to credibility, this Court finds credible the testimony elicited from Judge Singleton and Deputy Solicitor Reese that: (1) they did not recall meeting with the victim's daughter, Misty Heaton Price, before trial; (2) neither Ms. Price nor anyone else informed them that Sherry Heaton confessed to drugging Applicant; (3) they did not tell any witness or family member in Applicant's case not to tell anyone anything that they may have spoken about; (4) they never told any witness or family member in Applicant's case that the solicitor was going to make the judge order someone to turn over some sort of statements to them; and (5) they did not tell any witness or family member that they were going to hide from the defense the witnesses the solicitor was going to call at trial.

This Court further finds the claims contained in the letter regarding Deputy Solicitor Reese allegedly telling Ms. Price (1) that "she was going to make the judge order them to give them copies of all the statements" and (2) that she "wasn't going to let them know who her witnesses were or what they had against him" not credible. (Applicant's Exhibit #6). The credibility concerns regarding these claims are highlighted by Ms. Price's testimony at the PCR hearing that she could not remember who "them" was or any details "about the other people" and "who was supposed to do this or that." (PCR Tr. 33–34). Rather, she testified she "just remember[ed] about the drugging and how it affected [her]." (PCR Tr. 33).

This Court further notes several additional inconsistencies within Ms. Price's testimony compared to the claims she made in the letter. First, in the letter, Ms. Price claimed Deputy Solicitor Reese and Judge Singleton told her and her sister "not to tell anyone else" about Sherry Heaton's alleged confession, and that they would investigate the matter. (Applicant's Exhibit #6). She then states that "all she did was ask them if they drugged him" and that "she never said another word about it and never investigated." (Applicant's Exhibit #6). However, at the PCR hearing, Ms. Price testified that Deputy Solicitor Reese and Judge Singleton told her that she "needed to keep [her] mouth shut and keep that to [herself] or I would mess up the integrity of the case against [Applicant]," and "that they knew everything that they needed to know about what happened at that point." (PCR Tr. 23). She further testified nothing happened after her conversation with Deputy Solicitor Reese and Judge Singleton, and that they told her they were "not interested in pursuing anything anyone else had done, they were well aware of what happened at that party but they had their man." (PCR Tr. 28).

Additionally, this Court finds credible the testimony of Solicitor Ducworth, Judge Singleton, and Deputy Solicitor Reese that they never spoke with Misty Heaton Price regarding

the alleged drugging of Applicant by Sherry Heaton and/or her brothers nor had they seen the aforementioned letter dated December 31, 1998. (Applicant's Exhibit #6). Specifically, Deputy Solicitor Reese testified that there was nothing in her file—which Applicant examined— regarding Misty or her sister. The credibility of this testimony is reinforced by the fact that Applicant did not find anything in the solicitor's file indicating either Deputy Solicitor Reese or Judge Singleton met with Ms. Price or had any information regarding Sherry Heaton and her brothers drugging Applicant. Rather, this Court finds credible Deputy Solicitor Reese's testimony that she heard rumors from different people during the several bond hearings that Charlotte Crowe may testify about someone putting something in Applicant's drink. (PCR Tr. 77–78, 80–81). She additionally recalled Eddie's family expressing concerns to her about whether Applicant could be convicted or held responsible for the murder since he was drinking alcohol the night he shot and killed Eddie. (PCR Tr. 78). Finally, she recalled initial accusations from the defense that Eddie was on drugs that night although the toxicology report ultimately found no drugs or alcohol in Eddie's system. (PCR Tr. 79–80).

Additionally, Deputy Solicitor Reese noted that Ms. Price's name was not on the witness list and neither she nor Judge Singleton interviewed Sherry Heaton a second time. (PCR Tr. 82). Deputy Solicitor Reese explained that she put anyone she interviewed on her trial witness list out of an abundance of caution because she was told at one point that she could not call a rebuttal witness unless they were on the original list. (PCR Tr. 82). All of this testimony is consistent with Deputy Solicitor Reese and Judge Singleton's testimony that they never spoke with Misty Heaton Price regarding the alleged drugging of Applicant by Sherry Heaton. Deputy Solicitor Reese also provided detailed testimony about what she would have done and how she would have rebutted this allegation had she been aware of it.

Further, the probative value of the purported evidence at issue is minimal because the alleged statements made by Sherry Heaton according to Ms. Price constitute inadmissible hearsay. (PCR Tr. 24–27). *See, e.g.*, *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (collecting cases) ("This Court has repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial."). Additionally, Ms. Price's credibility may be assessed not only by the aforementioned internal inconsistencies within her statements and testimony, but also by contrasting Sherry Heaton's purported confession against what are fairly solid facts.

Significantly, Applicant testified at trial and recalled the events on the night of the shooting in great detail. (Trial Tr. 299–339). Applicant recalled "being ragged about" for "supposedly having jumped on Tim Phillips," although he denied doing so. (Trial Tr. 309). He recalled Eddie and Sherry Heaton arriving around 12:00 am on their motorcycles. (Trial Tr. 309). Although he could not recall the words exchanged between he and Eddie, Applicant testified Eddie "made him mad" and hit him in the face. (Trial Tr. 309).

Applicant testified he drank five or six beers and a liquor drink between the hours of 1:00 pm and 1:00 am that day and testified that at the time John drove him home he was "in no shape to drive or anything." (Trial Tr. 307, 310). However, Applicant recalled John driving him home, seeing his children when he got home, drinking water, and laying down on the couch. (Trial Tr. 310–11). He recalled asking Charlotte to take him to get his car because he feared someone at the party would damage it. (Trial Tr. 311–12). He recalled going out to the well house, retrieving the shotgun, and Charlotte driving him back to John's. (Trial Tr. 312–14).

Applicant further recalled where Charlotte let him out of the car, the exact route he took to John's driveway, and where the partygoers were standing when he approached the trailer. (Trial Tr. 314–15). Although he could not make out what anyone was actually saying, Applicant testified he construed the situation as aggression toward him. (Trial Tr. 315; 328–29). He recalled pointing the shotgun and firing it at Eddie. (Trial Tr. 316–17). Finally, he recalled shot being fired at him as he ran away. (Trial Tr. 316–17).

At the PCR hearing, Jay Phillips noted his concern that Applicant was "foaming at the mouth," according to one witness that testified at trial. (PCR Tr. 56–57; Trial Tr. 94). However, Mr. Phillips also testified that based on his experience and training, he would not expect someone on PCP to remain cogent due to the "anesthetic portion of it" and that their memory while on PCP would be "fragmented at best." (PCR Tr. 60–61). Specifically, he stated he would be surprised if someone who had been drugged and beaten "had any real memory" of what occurred or could recount details of any interactions they had. (PCR Tr. 61). He then clarified that an individual who is able to recount an event cogently, rationally, and explain things in detail, had not ingested PCP at all, not ingested it at the time of the event, or the PCP had not yet taken effect. (PCR Tr. 62). Overall regarding PCP, Mr. Phillips testified he was taught that "PCP is supposed to be a very powerful anesthetic, you don't feel any pain, you hallucinate, you don't know what is going on." (PCR Tr. 57).

Aside from Mark Evans' trial testimony that Applicant was at some point "foaming at the mouth," Applicant did not present any evidence at the PCR hearing indicating he had been drugged or that he otherwise "lost his ability to exercise independent judgment and volition while committing the crimes alleged against him" as a result of involuntary intoxication. *State v. Shands*, 424 S.C. 106, 125, 817 S.E.2d 524, 534 (Ct. App. 2018) (quoting Ralph King Anderson, Jr., *South*

Carolina Requests to Charge—Criminal, § 6-4); *cf. United States v. Knott*, 894 F.2d 1119, 1122 (9th Cir. 1990) (emphasizing that "[a] mental disease or defect must be beyond the control of the defendant if it is to vitiate his responsibility for the crime committed" and "[i]nsanity that is in any part due to a defendant's voluntary intoxication is not beyond his control").

Further, Applicant's ability to vividly recall the details of the killing and what occurred throughout the night in question is not consistent with him being under the influence of PCP, particularly in light of Phillips' credible testimony regarding the effects of PCP. *See Roach v. Martin*, 757 F.2d 1463, 1471 (4th Cir. 1985) (rejecting Roach's claim that, "contrary to anything that was produced at trial, . . . he was under the influence of phencycodine (PCP) at the time of the murders . . . and that the development of this fact might tend to support either an insanity defense or a case in mitigation based on diminished capacity" in part because "the state court record clearly supports a finding that Roach vividly recalled the details of the murders and that he was able to distinguish between right and wrong"); *id.* at 1478 (finding "counsel adequately discovered the effects of the drug on Roach and reasonably concluded that Roach remembered too many details of the murders to pursue a defense based on alcohol and drugs"); *DeLong v. Thompson*, 985 F.2d 553 (4th Cir. 1993) ("When a defendant recalls the events surrounding a murder 'with such conciseness' that a defense of intoxication is implausible, counsel is not ineffective for not pursuing such a defense.").

Importantly, Applicant's testimony regarding the perceived aggression toward him and that he acted in self-defense suggests Applicant recognized the gravity of the situation and that he was able to differentiate between right and wrong. *See State v. Lewis*, 328 S.C. 273, 279, 494 S.E.2d 115, 117–18 (1997) (finding that "[e]ven appellant's own testimony that he was 'out of [his] mind' does not indicate he could not differentiate between right and wrong or recognize his conduct as

wrong" and that the appellant's actions after the shooting "suggest appellant recognized the gravity of the situation and that his conduct was wrong, and tend to establish his sanity rather than his insanity").

Accordingly, this Court finds Applicant failed to meet the first prong of the *Clark* test for newly-discovered evidence because the testimony of Misty Heaton Price lacks sufficient credibility to determine that it would have changed the outcome of the trial. *See Hayden*, 278 S.C. at 612, 299 S.E.2d at 855–56 (finding the credibility of a witness is a factor in determining whether testimony will likely change the result at the new trial). Applicant's request for relief by way of this allegation is **DENIED.**

2. *Brady* violation

Applicant further alleges the State violated *Brady* because the solicitor knew of, and yet failed to disclose, the alleged meeting with Misty Heaton Price wherein she provided information that Sherry Heaton stated Applicant was involuntarily intoxicated the night he killed Eddie Heaton. The *Brady* disclosure rule—which requires the prosecution to provide a defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment—is "grounded in the defendant's fundamental right to a fair trial mandated by the Due Process Clause of the Fifth and Fourteenth Amendments." *State v. Kennerly*, 331 S.C. 442, 452, 503 S.E.2d 214, 219–20 (Ct. App. 1998).

In *Brady v. Maryland*, the United States Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. To establish a due process violation, an individual asserting a *Brady* claim must demonstrate the evidence was: (1) favorable to the accused; (2) in the

possession of or known to the prosecution; (3) suppressed by the prosecution; and (4) material to guilt or punishment. *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999); *accord. Kyles v. Whitley*, 514 U.S. 419, 43–42 (1995). *Brady* applies to both impeachment and exculpatory evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1985) (citing *Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend")).

Impeachment or exculpatory evidence is material for *Brady* purposes "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." *Id.* at 682; *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Bagley*, 473 U.S. at 682 (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). In other words, the prosecution's "evidentiary suppression is so serious as to undermine confidence in the trial's outcome." *State v. Durant*, 430 S.C. 98, 107, 844 S.E.2d 49, 53 (2020) (citing *Gibson*, 334 S.C. at 525, 514 S.E.2d at 325).

Here, Mr. Sires' testified that he could not remember specific details about Applicant's defense or his trial strategy. (PCR Tr. 43, 45). However, he testified that the State nor anyone else provided information to him suggesting Applicant may have been drugged by someone on the night he shot Eddie Heaton. (PCR Tr. 43). Deputy Solicitor Reese likewise testified no one ever provided the solicitor's office with that information. (PCR Tr. 81). Rather, she recalled hearing rumors from different people that Charlotte Crowe may testify about someone putting something in his drink. (PCR Tr. 77–78, 80–81). However, she stated these rumors always described a different scenario and were never consistent. (PCR Tr. 81).

Although this Court finds credible Mr. Sires' testimony that he did not recall the specific details of his defense, the record also supports Deputy Solicitor Reese's testimony regarding these rumors in that Mr. Sires asked various witnesses questions that would indicate he may have heard similar rumors. Specifically, Mr. Sires asked (1) John if he gave a mixed drink to Applicant, (Trial Tr. 65); (2) Stanley Sheriff whether Applicant was given blood test in the hospital to determine if anything was in his system, (Trial Tr. 173–74); (3) Applicant's daughter whether he looked disorientated when he got home that night, (Trial Tr. 271); and (4) Charlotte whether Applicant appeared "to act like he didn't know what he was doing," (Trial Tr. 287–88).

In light of the credible testimony provided by Solicitor Ducworth, Judge Singleton, and Deputy Solicitor Reese's, this Court finds Applicant failed to demonstrate the State either possessed or suppressed evidence that Applicant was involuntary intoxicated the night he shot and killed Eddie Heaton in the form any alleged pre-trial conversation with Ms. Price or her subsequent letter. Again, the credibility of this testimony is reinforced by the fact that there was nothing in the solicitor's file—which both parties examined—about Misty Heaton Price and is consistent with the record as aforementioned.

Accordingly, Applicant's claim pertaining to prosecutorial misconduct in the form of a *Brady* violation is **DENIED.**

VII. CONCLUSION

For all the foregoing reasons, this Court finds Applicant has failed to meet his burden of proof as to any of the allegations advanced in this post-conviction relief action and has not established any constitutional violations or deprivations entitling him to post-conviction relief. Therefore, Applicant's application for post-conviction relief is denied on all grounds and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR 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:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.
3.

AND IT IS SO ORDERED this 23rd day of February, 2023.

FILED OCONEE COUNTY, SC
2023 MAR -1 PM 3:10
MELISSA C. BURTON
CLERK OF COURT

G. D. MORGAN, JR.
Presiding Circuit Court Judge
Tenth Judicial Circuit

Anderson, South Carolina

CERTIFIED TRUE COPY
MAR 0 1 2023
CLERK OF COURT
OCONEE COUNTY, SC