

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

) Case # 2017-CP-33-204

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ORDER OF DISMISSAL

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the Anders¹ brief, Applicant's pro se brief, and the opinion of the Court of Appeals; (3) the clerk's records, including the multi-count indictment and arrest warrants; (4) Applicant's inmate records from the South Carolina Department of Corrections; and (5) the pleadings filed in Applicant's post-conviction relief action. Furthermore, several exhibits were introduced during the hearing, including a recording of the surveillance footage introduced during Applicant's trial and two fingerprint analysis forensic reports identified as being from the South Carolina Law Enforcement Division ("SLED"). After reviewing the record along with the testimony and evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof as to each and every one of the allegations raised and pursued. Therefore, for all the reasons that follow, Applicant's application for post-conviction relief is denied and dismissed with prejudice.

PROCEDURAL HISTORY

In May of 2013, the Marion County Grand Jury indicted Applicant—along with his uncle, Marco Siara Sanders—for murder, armed robbery, first-degree burglary, attempted murder, possession of a firearm during the commission of a violent crime, and conspiracy. On May 19, 2014, a joint jury trial was commenced in the Marion County Court of General Sessions with the Honorable D. Craig Brown, circuit court judge, presiding. During trial, Applicant was represented by Scott P. Floyd, Esquire, who was assisted by W. Vickery Meetze, Esquire, while Sanders was represented by Ralph Wilson, Sr., Esquire. Twelfth Judicial Circuit Solicitor Edgar Lewis Clements, III, prosecuted the case along with Assistant Solicitor Dudley Saleeby, Jr. At the conclusion of the four-day trial, the jury convicted Applicant and Sanders as indicted. Following the verdict, the trial judge sentenced both Applicant and Sanders to consecutive terms

¹ Anders v. California, 386 U.S. 738 (1967).

of imprisonment of life without parole for murder, life without parole for first-degree burglary, thirty years for armed robbery, thirty years for attempted murder, five years for conspiracy, and five years for possession of a firearm during the commission of a violent crime. At present, Applicant is incarcerated and serving those sentences in the custody and control of the South Carolina Department of Corrections.²

Following his convictions, Applicant timely appealed, and, on appeal, he was represented by Appellate Defender David Alexander from the South Carolina Commission on Indigent Defense's Office of Appellate Defense. Appellate counsel Alexander filed a brief on Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967), along with a petition to be relieved. Shortly thereafter, Applicant submitted a pro se appellate brief on his own behalf. Ultimately, following review, the South Carolina Court of Appeals dismissed Applicant's appeal through an unpublished opinion issued on January 20, 2016, and granted the petition to be relieved. State v. Woods, Op. No. 2016-UP-030 (S.C. Ct. App. filed January 20, 2016). On March 10, 2016, remittitur was issued, which brought the appellate process to an end.

SUMMARY OF FACTS ESTABLISHED AT TRIAL

At approximately 7:30 p.m. on the evening of the Fourth of July in 2012, a large white SUV was recorded on surveillance footage slowly driving by the Marion County residence of

² Meanwhile, regarding Sanders, the South Carolina Department of Corrections—through a November 15, 2021, news release—reported Sanders died “after being stabbed during a fight with other inmates” at Lee Correctional Institution. South Carolina Department of Corrections News/Press Releases, “Lee murder,” <https://public.doc.state.sc.us/agency-news-public/homeAction.do?method=view&id=571>.

seventy-year-old Samuel Rowell ("Victim"). (Trl. Tr. p. 266; Surveillance Footage Recording).³ Roughly ten minutes later, a man approached Victim's residence on foot, knocked on the door, waited a few seconds, and then walked away. (Surveillance Footage Recording). Around ten minutes after that, the man returned to Victim's door along with another man. (Surveillance Footage Recording). At that time, the man who had first approached the door was carrying what appeared to be a semi-automatic pistol while the other man was carrying a roll of duct tape along with what appeared to be a revolver equipped with a homemade silencer. (Trl. Tr. pp. 607-608; Surveillance Footage Recording). Ominously, the two men then entered Victim's residence with guns drawn. (Surveillance Footage Recording). Not long after that, Victim's surveillance system was intentionally damaged, and it permanently ceased all recording at 8:03 p.m. (Trl. Tr. p. 325; p. 481; pp. 540-543; p. 548).

Later on that evening, Eddie Godbold, Jr., who lived on the same dirt road as Victim and was one of Victim's longtime friends, went by Victim's residence—which was a single-wide mobile home with an extension added to the back—to inquire about a deep fryer Victim had agreed to let him borrow. (Trl. Tr. pp. 194-195; p. 199; p. 203; p. 297). Upon arriving, Godbold saw Victim's truck parked outside and, based on that, knew Victim must have been home. (Trl. Tr. p. 195). Godbold proceeded to Victim's front door, knocked, called out for Victim, and received no response from inside. (Trl. Tr. p. 195). Godbold then headed around to the back of the home, knocked on the back door, and again called out for Victim. (Trl. Tr. p. 195). However, once again, Godbold received no response from inside. (Trl. Tr. p. 195).

³ The recording of the surveillance footage, which was presented to and played for this Court during the post-conviction relief evidentiary hearing, was introduced during Applicant's trial as State's Exhibit # 18. (Trl. Tr. p. 10; p. 543).

At that point, Godbold began to head back towards the front of Victim's residence, and, as he passed by the residence's side door, he heard Victim yell out: "Eddie, *they're* trying to rob me." (Trl. Tr. p. 195) (emphasis added). In response, Godbold reached for the door, but, just as he did, multiple gunshots rang out from inside. (Trl. Tr. pp. 195-196; p. 201). Terrified, Godbold rapidly fled to the front of Victim's residence, hid behind some stairs for protection, and heard one more shot after the ones that seemed to have been fired at him. (Trl. Tr. p. 195; p. 201). Godbold then waited a few minutes before carefully getting into his vehicle and driving to a nearby neighbor's house for help. (Trl. Tr. pp. 196-197). Upon doing so, he was able to report to law enforcement the shocking events that were unfolding at Victim's home. (Trl. Tr. pp. 197-198; pp. 212-216).

In response, Sergeant Greg Pike of the Marion County Sheriff's Office was rapidly dispatched to Victim's residence at approximately 9:40 p.m. and arrived within a few minutes as the first officer at the scene. (Trl. Tr. pp. 217-218; p. 230; pp. 237-238). Upon arriving, Sergeant Pike met with Godbold, was alerted of what was known at that time, and observed several other neighbors gathered in the area. (Trl. Tr. pp. 218-219; p. 231; p. 238). Sergeant Pike then approached Victim's residence, announced his presence, looked inside, saw "socked feet" by the doorway, and called out to the person he could partially see. (Trl. Tr. pp. 219-220). Receiving no response, he leaned into the residence to get a better look and observed Victim's body on the floor inside. (Trl. Tr. p. 221). At that point, he stepped back, requested medical assistance, and waited for backup from other officers to arrive. (Trl. Tr. p. 222).

Shortly thereafter, more law enforcement personnel arrived at the scene, and an investigation into the incident was initiated. (Trl. Tr. pp. 233-234; pp. 236-238; p. 240; p. 294; pp. 390-391; p. 475). During the course of that investigation, officers found three fired nine-

millimeter cartridge cases on the ground just outside the side door to Victim's residence.⁴ (Trl. Tr. pp. 195-196; p. 201; p. 220; p. 299; p. 594). Additionally, they found damage to a lock for one of the doors leading into Victim's home along with damage to an interior door that led to a storage room containing boxes of liquor and cigars.⁵ (Trl. Tr. p. 299; p. 307). Likewise, they found several pillowcases in Victim's living room filled with loot gathered from Victim's home. (Trl. Tr. p. 306). One contained a box of Crown Royal liquor and ten boxes of cigars while the other had been filled with toiletries, prescription bottles, and medications. (Trl. Tr. p. 306). Furthermore, they found the damaged recorder from Victim's surveillance system, and the cords to that recorder had been slashed. (Trl. Tr. pp. 305-306; p. 325).

Tragically, in addition to that, the officers found Victim, who was deceased, on the floor near his own front door with blood pooling around his head. (Trl. Tr. p. 300). At that time, Victim was gagged with underwear that had been shoved into his mouth and secured with duct tape, his hands were bound behind his back with rope wrapped in duct tape, and his legs were bound together at his ankles with duct tape.⁶ (Trl. Tr. pp. 267-268; p. 300; p. 475). Victim also had an injury to his right forehead consistent with being struck with an object like the butt of a pistol along with a fatal gunshot wound to the top of his head. (Trl. Tr. p. 270; p. 276). Significantly, based on the presence of soot, the gun used to kill Victim was very close to or

⁴ Subsequent analysis of those cartridge cases revealed all three were fired from the same gun. (Trl. Tr. pp. 594-596).

⁵ As was later explained by Victim's brother, Victim stored alcohol and cigars at his residence because he sold those items during an annual event at the beach that was held during the week of Memorial Day. (Trl. Tr. p. 382; p. 385).

⁶ Notably, underwear similar to what was used to gag Victim was located in a dresser drawer that had been left ajar in Victim's bedroom. (Trl. Tr. pp. 321-322).

touching Victim's scalp at the time his killer shot him, and a .22-caliber bullet was later recovered from the base of Victim's skull.⁷ (Trl. Tr. p. 271; p. 273; p. 281).

As the investigation continued, the responding officers took statements from a number of people at the scene, and, through the information provided, the officers learned the perpetrators hastily sped away from the area in a large white or light-colored SUV. (Trl. Tr. pp. 408-409; p. 420; p. 438; p. 577). However, aside from that, the officers were not able to obtain any other leads at that time, so Detective James Lee of the Marion County Sheriff's Office spread word throughout the community about the suspects' vehicle in hopes of obtaining some useful information.⁸ (Trl. Tr. pp. 474-476; p. 577).

A few days later, Levern Nichols, who owned a car washing business in the area, learned investigators were looking for a white SUV in connection to the incident and quickly reached out to Detective Lee with some information he thought might be relevant.⁹ (Trl. Tr. pp. 441-443; p. 454; p. 465; p. 467; p. 491). More specifically, Nichols alerted the detective he saw two individuals he knew—Sanders and Sanders's nephew, Applicant—in a white Ford Expedition at a gas station just one day before Victim was killed inside his home. (Trl. Tr. p. 443; pp. 450-452; pp. 454-457; pp. 459-460; p. 462).

⁷ Due to its size, the bullet recovered from Victim's skull could *not* have been fired by the same gun that fired the nine-millimeter cartridge cases found at the crime scene. (Trl. Tr. p. 598).

⁸ By the time of trial, Detective Lee had retired from law enforcement. (Trl. Tr. pp. 474-475).

⁹ During trial, testimony was elicited establishing Nichols had previously worked at the Marion County Sheriff's Office prior to being fired due to "issues with controlled substances." (Trl. Tr. p. 442; p. 449). However, the trial judge did not permit trial counsel to elicit testimony about the specific reason Nichols was fired in front of the jury upon determining the reason was not probative of Nichols's truthfulness. (Trl. Tr. p. 468; p. 470).



Upon learning that critical information, Detective Lee began searching for Sanders and Applicant, and, through his efforts, he was able to verify Applicant's girlfriend at the time owned a white Ford Expedition. (Trl. Tr. pp. 476-480; pp. 510-511). Additionally, through the use of photographic line-ups containing pictures of Sanders and Applicant, the detective obtained identifications of the two from an individual named Shawn Davis, who had spoken with officers at the scene on the night of the incident. (Trl. Tr. p. 493; pp. 501-502; pp. 576-577; p. 581; p. 585). Following that and in light of everything that had been uncovered in the investigation up to that point, Detective Lee obtained arrest warrants for Sanders and Applicant in connection to Victim's murder. (Trl. Tr. p. 487; p. 502).

A few days later, Applicant surrendered and was taken into custody on July 19, 2012. (Trl. Tr. p. 487). Meanwhile, Sanders could not be located at that time as—unbeknownst to law enforcement—he had fled from South Carolina to New Jersey. (Trl. Tr. p. 530; p. 579).

Despite Sanders's absence from the state, the investigation into the incident continued on, and Detective Lee was able to obtain a recorder identical to the one from Victim's surveillance system that had been damaged. (Trl. Tr. pp. 481-482; pp. 543-543). By using the new equipment, officers were able to play the footage that was recorded just before the cords to Victim's recorder were cut. (Trl. Tr. pp. 490-491; pp. 540-543). Upon viewing the recovered footage, Detective Lee, who had prior existing knowledge of both Sanders and Applicant, recognized the two men and was able to identify them as the gunmen who entered Victim's home shortly before he was killed. (Trl. Tr. pp. 503-505). Similarly, Detective Neil Rouse, another investigator from the Marion County Sheriff's Office who was assisting with the investigation, viewed the footage, and, based his knowledge of Sanders that extended back to

December of 1993, he was also able to recognize and identify Sanders as one of the perpetrators.¹⁰ (Trl. Tr. p. 578; p. 580).

As the investigation progressed, Sanders was apprehended in New Jersey and brought back to South Carolina by November of 2012. (Trl. Tr. p. 530). Following that, known fingerprint standards collected from Applicant, Sanders, and Victim were submitted for analysis along with the evidence that had been collected from the crime scene at Victim's residence. (Trl. Tr. p. 308; pp. 512-515; pp. 526-527; pp. 530-532; p. 535; pp. 619-620; p. 622). Upon analyzing the evidence collected from the crime scene, Thomas Darnell, a latent print examiner and expert in latent print identification from SLED, was able to recover a number of identifiable prints. (Trl. Tr. pp. 623-624). He then compared those recovered prints to the known standards that had been submitted and was able to make a number of identifications. (Trl. Tr. pp. 640-641). Specifically, he identified four fingerprints attributable to Sanders and sixteen attributable to Applicant. (Trl. Tr. pp. 626-631). Significantly, the four identified prints from Sanders were found on two different cigar boxes located at the crime scene. (Trl. Tr. p. 627). Meanwhile, two of Applicant's prints were found on two different boxes of cigars, four of his prints were found on a box of liquor, one was found on a cardboard box recovered from Victim's kitchen, two were found on the *adhesive side* of the duct tape that had been collected *from around Victim's head*, three were found on the non-adhesive side of the duct tape *used to bind Victim's ankles*, and four were found on the *adhesive side* of that same duct tape. (Trl. Tr. pp. 626-631).

Ultimately, based on everything that was uncovered through the investigation into the incident, Applicant and Sanders were both indicted through a single multi-count indictment for

¹⁰ Unlike Detective Lee, Detective Rouse was not familiar with Applicant at that time and did not identify him from the footage. (Trl. Tr. p. 586).

murder, armed robbery, first-degree burglary, attempted murder, possession of a firearm during the commission of a violent crime, and conspiracy. (Trl. Tr. pp. 13-15; Indictment). Following that, the two were jointly brought to trial on those charges. (Trl. Tr. pp. 12-15).

Towards the outset of trial, both Applicant's trial counsel and Sanders's trial counsel challenged the admissibility of the evidence of the detectives' identifications from the recovered surveillance footage, and the trial judge conducted an in camera hearing on the matter. (Trl. Tr. p. 71; pp. 105-109). During the course of that hearing, Detective Rouse and Detective Lee discussed their identifications while recounting their knowledge of Sanders and Applicant. (Trl. Tr. pp. 72-103). More specifically, Detective Rouse explained he had known Sanders for fifteen years, knew Applicant for four years, and recognized Sanders from the footage. (Trl. Tr. pp. 73-75; pp. 77-79; pp. 83-84). Likewise, Detective Lee explained he had known Applicant since around 2007, also knew Sanders, had a face-to-face encounter with both of them on one occasion, and was familiar with Applicant through that encounter along with through seeing his photograph in connection to other cases. (Trl. Tr. pp. 90-92; pp. 94-96; pp. 100-101; p. 103). Following the presentation of that testimony, both Applicant's and Sanders's trial counsel challenged the identifications based on the purported insufficiency of the investigators' familiarity with the two while the solicitor argued both Detective Lee and Detective Rouse had sufficient past knowledge to make the identifications. (Trl. Tr. pp. 105-111). Upon considering the matter, the trial judge—relying upon the appellate decisions in State v. Fripp, 396 S.C. 434, 721 S.E.2d 465 (Ct. App. 2012), and State v. Mitchell, 399 S.C. 410, 731 S.E.2d 889 (Ct. App. 2012)—ruled the testimony was admissible due to the fact the investigators' prior knowledge of the defendants could aid the jury and noted any issues with the sufficiency of the investigators' knowledge were matters of weight that could be argued to the jury. (Trl. Tr. pp. 112-114).

Following that ruling, Applicant's trial counsel raised a number of pre-trial objections, including a motion to suppress the fingerprint evidence collected from Applicant. (Trl. Tr. pp. 118-124). Ultimately though, the trial judge denied Applicant's suppression motion after Applicant's trial counsel conceded he could not establish Applicant was prejudiced by the manner in which his fingerprints were collected. (Trl. Tr. pp. 126-127).

In addition to that, Applicant's trial counsel—along with Sanders's—raised an objection to the conspiracy charge due to the fact that particular charge was directly indicted. (Trl. Tr. pp. 165-166). However, in objecting, Sanders's trial counsel conceded he received the indictment containing the conspiracy charge prior to the trial, and Applicant's trial counsel did not do anything to suggest he had not also received the indictment on Applicant's behalf. (Trl. Tr. p. 166). At that time, the trial judge took the matter under advisement, and the trial proceeded forward. (Trl. Tr. p. 167).

During the course of trial, testimony was presented from Godbold, the responding officers, the investigators, and other witnesses recounting the events surrounding the incident along with the details of the ensuing investigation that culminated in Sanders and Applicant being arrested for and charged with numerous offenses stemming from Victim's killing. (Trl. Tr. pp. 194-210; pp. 212-257; pp. 260-281; pp. 284-288; pp. 291-342; pp. 358-400; pp. 405-445; pp. 453-467; pp. 474-505; pp. 507-535; pp. 539-588; pp. 591-611; pp. 614-653). Meanwhile, throughout the trial, Applicant's trial counsel—along with Sanders's—raised numerous objections, including to Detective Lee's testimony regarding the identifications he made from the surveillance footage and to Applicant's fingerprints being admitted. (Trl. Tr. pp. 503-504; pp. 513-514).



At the conclusion of the State's case, Applicant's trial counsel—along with Sanders's—sought a directed verdict on all charges while renewing the request for the conspiracy charge to be dismissed. (Trl. Tr. pp. 662-663). However, the trial judge rejected those motions. (Trl. Tr. pp. 663-664). Following that, both Sanders and Applicant elected not to testify, and the defense rested without calling any witnesses or presenting any additional evidence. (Trl. Tr. pp. 667-668; pp. 670-671). The parties then presented their closing arguments to the jury, and the trial judge—without objection—instructed the jury on the applicable law.¹¹ (Trl. Tr. pp. 672-742). Thereafter, the case was submitted to the jury, and, after just over ninety minutes of

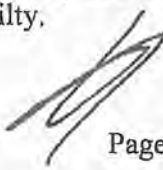
¹¹ As part of his jury charge, the trial judge instructed the jury on identification evidence as follows:

Now, an issue in this case, ladies and gentlemen, is the identification of the defendants as the individual who committed the crimes charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification . . . of the defendants before you may convict them.

Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the defendants. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short a time was available, how far or close the witness was, the lighting conditions, and whether the witness had the chance to see or know the person in the past.

Once again, I instruct you the burden of proof on the State extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendants as the individuals who committed the crime. If, after examining the testimony, you have a reasonable doubt as to the accuracy of the identifications, you must find the defendants not guilty.

(Trl. Tr. pp. 729-730).



deliberations, the jury convicted both Sanders and Applicant as indicted. (Trl. Tr. p. 743; pp. 746-748).

ALLEGATIONS RAISED

In his application for post-conviction relief, Applicant raised a number of allegations, including allegations of ineffective assistance of counsel and lack of subject matter jurisdiction. Through counsel, Applicant subsequently submitted two separate amendments to the application raising several supplemental allegations. Following that, counsel for the State at the outset of the evidentiary hearing asked post-conviction relief counsel to identify the specific grounds Applicant wished to pursue, and post-conviction relief counsel complied with that request. In addition to that, post-conviction relief counsel raised one new supplemental ground, and the State confirmed it had no objection despite the lateness of the most-recent addition.

Specifically, the allegations identified as the ones upon which Applicant was proceeding forward were:

1. Trial counsel was ineffective for failing to argue the in-court lay opinion identification testimony from Detective James Lee identifying Applicant from surveillance footage should have been excluded pursuant to Rule 701 of the South Carolina Rules of Evidence.
2. Trial counsel was ineffective for failing to move to suppress the "fingerprint analytical reports by SLED" on the basis the Schmerber¹² order requiring the production of Applicant's fingerprints for the purpose of analytical comparison to the prints found at the crime scene and on victim did not comply with Section 17-13-140 of the South Carolina Code of Laws.
3. Trial counsel was ineffective for failing to move to exclude, move to suppress, or object to testimony from Detective James Lee and Detective Neil Rouse about Shawn Bart Davis identifying Applicant in a pre-trial photographic lineup when

¹² Schmerber v. California, 384 U.S. 757 (1966).

Davis was not present at trial in violation of the Confrontation Clause of the United States Constitution.

4. Trial counsel was ineffective for failing to raise an objection based on the quality of the fingerprint evidence in light of the fact a non-admitted forensic report from the fingerprint analysis conducted in Applicant's case contained a statement in reference to one of the tested items indicating "NO CONCLUSION will be rendered due to quality of Item 64 / Woods, Tyrell."
5. Trial counsel was ineffective for failing to object when the trial judge instructed the jury malice could be inferred from conduct that showed a total disregard for human life.
6. Trial counsel was ineffective for failing to move to quash the indictment on the ground the indictment was fatally defective because it did not sufficiently allege the place of the crime.
7. Appellate counsel was ineffective for failing to appeal the trial judge's ruling denying Applicant's motion to exclude the in-court lay opinion identification testimony from Detective James Lee identifying Applicant from surveillance footage pursuant to Rule 701 of the South Carolina Rules of Evidence.
8. Appellate counsel was ineffective for failing to argue on appeal through a merits brief the trial judge abused his discretion by failing to dismiss the conspiracy charge based on trial counsel's motion seeking dismissal of that charge.

STANDARD APPLICABLE TO ALLEGATIONS RAISED

Evaluation of Ineffective Assistance of Trial Counsel Claims

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). Pursuant to that right, the defendant is entitled to effective assistance of trial counsel. McMann v. Richardson, 397 U.S. 759, 771, n. 14 (1970); see Strickland v. Washington, 466 U.S. 668, 685 (1984) ("An accused is entitled to be assisted by an attorney,



whether retained or appointed, who plays the role necessary to ensure that the trial is fair.”). Significantly though, effective assistance of trial counsel does not mean perfect or mistake-free representation. See Weaver v. Massachusetts, ___ U.S. ___, 137 S. Ct. 1899 (2017) (“[A] defendant has a right to effective representation, not a right to an attorney who performs his duties ‘mistake-free.’ ” (citation omitted)); Burt v. Titlow, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland, 466 U.S. at 687-688. Meanwhile, trial counsel’s assistance is considered to be constitutionally ineffective only when “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Id. at 686; see Harrington v. Richter, 562 U.S. 86, 110 (2011) (“Representation is constitutionally ineffective only if it so undermined the proper functioning of the adversarial process that the defendant was denied a fair trial.” (citation and internal quotations omitted)).

When faced with a claim of ineffective assistance of trial counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant raising an ineffective assistance of trial counsel claim must establish: (1) counsel’s representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel’s deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the heavy burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552



S.E.2d 315, 317 (2001); see United States v. Balzano, 916 F.2d 1273, 1292 (7th Cir. 1990) (characterizing the required showing a defendant must make in order to successfully establish an ineffective assistance of counsel claim as a “high mountain a defendant must climb”); Stone v. State, 419 S.C. 370, 380, 798 S.E.2d 561, 566 (2017) (instructing “the law requires [a reviewing court to] presume counsel rendered adequate assistance and exercised reasonable professional judgment” and only find to the contrary when the applicant has overcome that presumption by establishing both deficiency and prejudice); see also Weaver, 137 S. Ct. at 1912 (explaining “the rules governing ineffective-assistance claims must be applied with scrupulous care” (citation and internal quotations omitted)).

Regarding the deficiency prong of the analysis, the proper measure of performance is whether counsel provided representation within the objectively reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); see Richter, 562 U.S. at 110 (instructing the proper analysis “calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind”). When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for overcoming that presumption. Butler, 286 S.C. at 442, 334 S.E.2d at 814; see Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Furthermore, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, will make every effort “to eliminate the distorting effects of hindsight,” and will “evaluate the conduct from counsel’s perspective at the time” in light of the then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel’s performance was deficient, the

applicant must demonstrate “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 687. Thus, counsel’s performance will be considered to be deficient only when it objectively amounted to incompetence under prevailing professional norms and not when it simply “deviated from best practices or most common custom.” Richter, 562 U.S. at 105; see State v. Woullard, 813 N.E.2d 964, 971 (Ohio Ct. App. 2004) (“Defense counsel’s strategy must have been outside the realm of legitimate trial strategy so as ‘to make ordinary counsel scoff’ before a conviction will be reversed on the basis of ineffective assistance.” (citations omitted)).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.”¹³ Strickland, 466 U.S. at 691. In order for that burden to be met, counsel’s deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the proceeding would have been different but for counsel’s unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989); see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). Importantly, “[t]he likelihood of a different result must be substantial, not just

¹³ Notably, “a court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.” Strickland, 466 U.S. at 697. In fact, a reviewing court ordinarily should dispose of an ineffective assistance of counsel claim on the grounds of lack of sufficient prejudice “[i]f it is easier” to do so. Id.

conceivable.” Richter, 562 U.S. at 112; see Strickland, 466 U.S. at 694 (“A reasonable probability is a probability sufficient to undermine confidence in the outcome.”).

Evaluation of Ineffective Assistance of Appellate Counsel Claims

In addition to having a right to effective assistance of counsel at trial, a criminal defendant in South Carolina has a right to effective assistance of appellate counsel on direct appeal. Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990); see McMann, 397 U.S. at 771 (“[T]he right to counsel is the right to the effective assistance of counsel.”); see also Evitts v. Lucey, 469 U.S. 387, 393-394 (1985) (recognizing “a State that afforded a right of appeal” must “make that appeal more than a ‘meaningless ritual’ by supplying an indigent appellant in a criminal case with an attorney” (citation omitted)). Importantly though, appellate counsel is not required to raise every nonfrivolous issue present in the record in order to provide effective assistance on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004); see Evitts, 469 U.S. at 394 (“[T]he attorney need not advance *every* argument, regardless of merit, urged by the appellant[.]”). In fact, appellate counsel may provide the most effective assistance by focusing on a single strong issue instead of raising every conceivable issue that could possibly be raised. See Jones v. Barnes, 463 U.S. 745, 751-752 (1983) (“Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.”).

In order to prevail on a claim of ineffective assistance of appellate counsel, a post-conviction relief applicant has the burden of overcoming the strong presumption appellate counsel provided adequate representation and, to do so, must establish both deficiency and prejudice. Gilchrist v. State, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005); see Tisdale, 357 S.C. at 476, 594 S.E.2d at 167 (“The burden of proof is on [the applicant] to show that counsel’s

performance was deficient as measured by prevailing professional norms, and that [the applicant] was prejudiced by this deficiency.”); Thrift, 302 S.C. at 537, 397 S.E.2d at 525 (“The burden is on the applicant in post-conviction proceedings to prove the allegations in his application.”). To establish deficiency, the applicant must demonstrate appellate counsel’s performance objectively amounted to incompetence under prevailing professional norms and did not simply deviate “from best practices or most common custom.” Richter, 562 U.S. at 105; see Dunn v. Reeves, ___ U.S. ___, 141 S. Ct. 2405, 2410 (2021) (“[E]ven if there is reason to think that counsel’s conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen.” (citation, internal quotations, and brackets in original omitted)). Meanwhile, to establish prejudice, “the applicant must show that, but for [appellate] counsel’s errors, there is a reasonable probability he would have prevailed on appeal.” Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003); see Hill v. State, 415 S.C. 421, 433, 782 S.E.2d 414, 420 (Ct. App. 2016) (affirming the denial of Hill’s claim appellate counsel was ineffective for failing to raise a directed verdict issue on appeal because Hill would not have been entitled to reversal on appeal had the issue been raised and, thus, Hill could not meet his burden of establishing “a reasonable probability of a different outcome” existed). Significantly, meeting the requisite burden of establishing both deficiency and prejudice is generally “difficult” for an applicant raising an ineffective assistance of appellate counsel claim. Smith v. Robbins, 528 U.S. 259, 288 (2000).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of trial counsel and ineffective assistance of appellate counsel through the post-conviction relief

action presently before this Court. In analyzing Applicant's claims, this Court has thoroughly reviewed the record in its entirety. Additionally, this Court 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 has failed to meet the high burden required for a grant of post-conviction relief, and, accordingly, all allegations are denied with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to Section 17-27-80 of the South Carolina Code of Laws.

I. Allegation of Ineffective Assistance of Trial Counsel Related to Detective Lee's Identification Testimony

Through his first allegation, Applicant contends trial counsel was constitutionally ineffective for failing to argue Detective Lee's testimony identifying him from the surveillance footage should have been suppressed or excluded pursuant to Rule 701 of the South Carolina Rules of Evidence. For all the reasons that follow, this allegation is denied.

RELEVANT FACTS

Towards the outset of Applicant's trial, Applicant's trial counsel—along with Sanders's—did, in fact, challenge the admissibility of Detective Lee's identification of Applicant from the surveillance footage captured at the crime scene just before Victim was murdered, which resulted in the trial judge conducting an in camera hearing on the matter. (Trl. Tr. pp. 71-114). As support for the objection, Applicant's trial counsel elicited testimony from Detective Lee about the limited nature of the investigator's prior "one-on-one" encounter with Applicant. (Trl. Tr. pp. 100-101). Applicant's trial counsel then attempted to use the limited nature of that encounter, which he noted occurred when Applicant was just a teenager, to convince the trial judge Detective Lee did not have an adequate foundation to be able to accurately identify



Applicant from the footage such that his testimony on the matter should be ruled inadmissible. (Trl. Tr. pp. 109). However, relying upon relevant South Carolina appellate precedent analyzing such evidence pursuant to Rule 701, the trial judge overruled trial counsel's objection, including when trial counsel later renewed it during Detective Lee's testimony before the jury. (Trl. Tr. pp. 112-114; pp. 503-505).

Later on during the post-conviction relief evidentiary hearing, Applicant's trial counsel was questioned about his objection to Detective Lee's identification testimony. During that questioning, trial counsel confirmed he elicited testimony from Detective Lee during the in camera hearing about his basis for being able to identify Applicant from the footage in an effort to support his objection to the admissibility of Detective Lee's identification testimony. He further confirmed he objected to the evidence but the objection was overruled after the trial judge conducted an analysis pursuant to Rule 701. In addition to trial counsel's testimony, Applicant also testified about the issue concerning Detective Lee's identification testimony and indicated he did not personally recall meeting Detective Lee in 2007 as had been testified to by the detective. Applicant further acknowledged he had met a number of law enforcement officers during his lifetime and initially professed he could remember all of them. However, when confronted about his ability to remember every law enforcement officer he ever encountered no matter how brief the meeting (which would support the idea Detective Lee could have a basis for identifying Applicant even if he had only encountered him a single time), Applicant vacillated and asserted he could not actually say he could truly remember every officer he had encountered. Additionally, Applicant noted he discussed the issue with trial counsel, and trial counsel suggested it would not be a prudent choice for him to testify under the circumstances involved. Beyond that, no other witnesses were presented, and, thus, no additional evidence was presented

regarding Detective Lee's basis of knowledge concerning Applicant or how Detective Lee would have responded during trial to any additional questioning on that particular subject matter.

ANALYSIS

Although Applicant now contends trial counsel was constitutionally ineffective for failing to challenge Detective Lee's identification testimony pursuant to Rule 701, the record establishes trial counsel did just that by raising an objection to the testimony. Since trial counsel raised an objection to Detective Lee's identification testimony, trial counsel could not be deficient for failing to do something he did, in fact, do. See Larimer v. Yates, 483 F. App'x 317, 320 (9th Cir. 2012) (concluding trial counsel was not deficient for failing to object to certain testimony when trial counsel did, in fact, object to the testimony); see also Richter, 562 U.S. at 111 ("[I]t is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy."). And, while trial counsel theoretically could have asked some additional questions of Detective Lee in an effort to support his asserted objection (as is virtually always true with any witness and any issue), trial counsel did ask appropriate questions in his attempt to raise doubt about Detective Lee's basis of knowledge, and, absent complete speculation, it remains entirely unclear what Detective Lee's responses would have been to any additional questions posed since no testimony was presented from the detective during the evidentiary hearing. See Pinholster, 563 U.S. at 195-196 (explaining trial counsel is entitled to constitutionally-protected independence and wide latitude in making tactical decisions and instructing there will rarely be just one technique or approach that would be considered constitutionally reasonable for trial counsel to undertake in representing a defendant); Strickland, 466 U.S. at 689 ("There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.");



see also Glover v. State, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540 (1995) (“The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.” (footnote omitted)).

In the light of that, Applicant has not demonstrated—and cannot demonstrate—Detective Lee’s identification testimony would have been suppressed but for the manner in which trial counsel challenged that evidence during trial, and Applicant certainly has not shown the outcome of the trial itself would have been different but for the manner in which the issue was handled by trial counsel. See Roseboro v. State, 841 S.E.2d 706, 711 (Ga. Ct. App. 2020) (“When trial counsel’s failure to file a motion to suppress is the basis for a claim of ineffective assistance, the defendant must make a strong showing that the damaging evidence would have been suppressed had counsel made the motion.” (citation and internal quotations omitted)). And, that is particularly true considering the testimony elicited during trial concerning Detective Lee’s basis of knowledge fully supported the trial judge’s decision to admit the identification evidence and let the jurors—who were thoroughly instructed by the trial judge on assessing identification evidence—decide its weight. Cf. State v. Mitchell, 339 S.C. 410, 731 S.E.2d 889, 895-896 (Ct. App. 2012) (“While Lt. McClurkin was not present during the alleged crime, he knew Mitchell through his twenty years of living in the Newberry area. This was the only fact presented at trial that allowed Lt. McClurkin to identify Mitchell [T]hat fact did give a basis for concluding that Lt. McClurkin was more likely to correctly identify the defendant from the photograph than the jury.”).

Under such circumstances, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in regard to trial counsel’s performance concerning Detective Lee’s identification testimony, and, thus, Applicant did not and cannot overcome the

presumption trial counsel provided adequate representation during trial. Accordingly, this allegation is denied.

II. Allegation of Ineffective Assistance of Trial Counsel Related to the Failure to Raise an Objection Based on the Purported Insufficiency of the Order for Applicant's Fingerprint

Through his second allegation, Applicant contends trial counsel was constitutionally ineffective for failing to move to suppress the "fingerprint analytical reports by SLED" on the basis the Schmerber order requiring the production of Applicant's fingerprints for the purpose of analytical comparison did not comply with Section 17-13-140 of the South Carolina Code of Laws. For all the reasons that follow, this allegation is denied.

RELEVANT FACTS

A few months after Applicant's arrest in connection to Victim's killing, the solicitor asked a circuit court judge to issue a Schmerber order for a new standard of Applicant's fingerprints during the course of a pre-trial hearing conducted on November 16, 2012.¹⁴ (Nov. 2012 Hrg. Tr. pp. 3-5; Trl. Tr. p. 487). In seeking the new standard, the solicitor confirmed the State already had Applicant's fingerprints on file, but the solicitor explained he nonetheless wished to obtain a fresh standard in order to prevent Applicant's past criminal history from needing to be revealed during trial as the source of the standard already in the State's possession. (Nov. 2012 Hrg. Tr. p. 5). Furthermore, the solicitor specifically called the circuit court judge's attention to the arrest warrants that had already been issued while explaining the process for obtaining the standard would in no way be intrusive. (Nov. 2012 Hrg. Tr. pp. 3-4). In rebuttal, Applicant's trial counsel explained Applicant did not wish to provide another fingerprint standard because he believed there was no need for one since the State was already in possession

¹⁴ At that time, Applicant was being held at the Department of Corrections due to a parole violation in an unrelated case, but he was present for the hearing. (Nov. 2012 Hrg. Tr. p. 3).

of his fingerprints by virtue of both his most-recent arrest and earlier conviction. (Nov. 2012 Hrg. Tr. pp. 4-5). Ultimately though, after considering the matter, the circuit court judge ordered Applicant to provide a new fingerprint standard. (Nov. 2012 Hrg. Tr. p. 6). Following that, Applicant stated he had “no problem with giving up [his] fingerprints” and confirmed he would volunteer them *if* they could be taken electronically, but the solicitor explained electronic collection was not possible at that time. (Nov. 2012 Hrg. Tr. pp. 6-7). Applicant’s fingerprint standard was then collected that day at the courthouse through conventional means involving ink. (Nov. 2012 Hrg. Tr. pp. 6-7; Trl. Tr. pp. 507-508; pp. 512-515; pp. 526-527).

Subsequently, towards the outset of the ensuing trial, Applicant’s trial counsel unsuccessfully raised an in limine objection to Applicant’s fingerprint standard, but that objection was not based on the alleged insufficiency of the Schmerber order. (Trl. Tr. pp. 123-127). Thereafter, trial counsel again objected when the State sought to admit Applicant’s fingerprint standard, and that objection was once again overruled. (Trl. Tr. pp. 513-514). Following that, Darnell testified as an expert about the fingerprint analysis he conducted in Applicant’s case, and he confirmed he determined through that analysis sixteen of the fingerprints recovered at the crime scene belonged to Applicant, including six found on the adhesive side of the duct tape used to bind Victim. (Trl. Tr. pp. 626-631). Furthermore, Darnell explained fingerprint characteristics are unique to an individual and no two people have ever been found to have the same fingerprints. (Trl. Tr. pp. 616-617; p. 622).

Later on during the post-conviction relief evidentiary hearing, Applicant’s trial counsel was questioned about his failure to raise an objection concerning the sufficiency of the Schmerber order issued for the new fingerprint standard. During his testimony, trial counsel offered his recollection of what occurred during the pre-trial hearing and indicated he did not

remember the circuit court judge making any specific findings regarding the existence of probable cause. However, he explained he did not object based on the absence of any such findings during trial because he did not think a Schmerber order was necessary to obtain a fingerprint standard from Applicant. In addition to trial counsel's testimony, Solicitor Clements also offered testimony on the subject of the fingerprint evidence. Through his testimony, the solicitor confirmed he—in the event the already-collected standard was suppressed—would have immediately requested a new standard be collected and would have immediately had the expert re-conduct his analysis using that new standard. Thus, Solicitor Clements explained the results of the fingerprint analysis were inevitably going to be introduced one way or another as a part of the State's case. Finally, Applicant also testified about the matter and alleged his fingerprints were involuntarily taken at the conclusion of the November 2012 hearing. However, he further readily admitted his fingerprints had been collected by the State on a number of other occasions while explaining they were taken any time he was arrested or transferred between facilities.

ANALYSIS

Although Applicant now contends trial counsel was constitutionally ineffective for failing to raise an objection to the fingerprint evidence based on the purported insufficiency of the Schmerber order issued for the most-recently-collected fingerprint standard, trial counsel's failure in that regard did not constitute deficient performance because—as trial counsel recognized—Applicant had no valid basis upon which to refuse to submit to fingerprinting by virtue of his lawful arrest and detention regardless of whether such fingerprinting had been pre-authorized by a warrant or court order. See Maryland v. King, 569 U.S. 435, 465-466 (2013) (explaining the warrantless collection of fingerprints from a lawfully-detained person is constitutionally reasonable); see also Davis v. Mississippi, 394 U.S. 721, 727 (1969)

("Fingerprinting involves none of the probing into an individual's private life and thoughts that marks an interrogation or search."). Thus, trial counsel could not have been and was not deficient for failing to raise a meritless objection. See Mayo v. State, 347 S.C. 422, 426, 556 S.E.2d 380, 382 (2001) (recognizing defense counsel cannot be constitutionally ineffective for failing to object when "there was no sustainable objection" that could have been raised). Moreover, even assuming for argument's sake a meritorious objection predicated on the propriety of the Schmerber order could have somehow been lodged under the circumstances involved, Applicant still could not establish he suffered any prejudice as a result of trial counsel's failure to raise such an objection because—as both a valid probable cause basis and an inexorable desire on the part of the State for the collection of Applicant's fingerprints unquestionably existed—an admissible standard of Applicant's fingerprints, which were individually unique to him, would have been properly obtained and used for comparison purposes just as Solicitor Clements made clear even if trial counsel had somehow been able to obtain the suppression of the already-collected standard.¹⁵ See Nix v. Williams, 467 U.S. 431, 444 (1984) ("If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received."); cf. State v. Simmons, 384 S.C. 145, 177, 682 S.E.2d 19, 35 (Ct. App. 2009) (explaining a new fingerprint

¹⁵ Notably, collection of a new standard may not have even been necessary since Applicant's fingerprints were—by his own admission—already on file with the State before the most-recent fingerprint standard was collected. See State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) ("The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct." (citation omitted)).



standard can be collected during trial and introduced into evidence without violating a defendant's constitutional rights). Therefore, since the highly-incriminating fingerprint evidence would have been introduced during Applicant's trial regardless of whether trial counsel had raised a Schmerber-based objection to that evidence, there was no likelihood the outcome of Applicant's trial would have been different but for trial counsel's failure to so object. See Strickland, 466 U.S. at 693-694 ("It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. . . . The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.").

For those reasons, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in regard to trial counsel's performance concerning the purported insufficiency of the Schmerber order, and, thus, Applicant did not and cannot overcome the presumption trial counsel provided adequate representation during trial. Accordingly, this allegation is denied.

III. Allegation of Ineffective Assistance of Trial Counsel Related to the Failure to Raise a Confrontation-Based Objection to the Testimony Concerning Davis

Through his third allegation, Applicant contends trial counsel was ineffective for failing to move to exclude, move to suppress, or object to testimony from Detective Lee and Detective Rouse about Davis identifying Applicant in a pre-trial photographic lineup when Davis was not present at trial in violation of the Confrontation Clause of the United States Constitution. For all the reasons that follow, this allegation is denied.

RELEVANT FACTS

During the juror qualification process conducted on the first day of trial, an individual named Shawn Bart Davis was identified as a potential witness amongst the other names that had

been included by the parties in their proposed witness lists. (Trl. Tr. p. 28; p. 33). After that, Davis was referenced again briefly by the solicitor before the trial's evidentiary phase got underway. (Trl. Tr. p. 127). Specifically, the solicitor indicated Davis, who was incarcerated at that time, had made an identification from a lineup, but he was undecided about whether he was going to call Davis as a witness during trial. (Trl. Tr. p. 127). Following that, Sanders's trial counsel indicated he had also issued a subpoena for Davis and would need him brought in for the trial if the solicitor decided not to use him as a witness. (Trl. Tr. pp. 127-128).

Subsequently, as the trial proceeded forward, the subject of Davis did not come up until the trial's third day. (Trl. Tr. p. 403). As to how that subject first arose, Sanders's trial counsel asked Detective Lee on cross-examination about the use of photographic lineups during the investigation. (Trl. Tr. pp. 492-494). In response to the questioning, Detective Lee explained he showed an individual lineups contained Sanders's and Applicant's photographs on July 12, 2012, and the detective obtained arrest warrants after doing so. (Trl. Tr. pp. 492-494). Thereafter, on redirect examination, the solicitor asked a few brief follow-up questions of his own on the now-broached subject of the lineups, and, during that questioning, Detective Lee again confirmed he showed lineups containing Sanders's and Applicant's photographs to someone prior to obtaining arrest warrants while identifying the individual the lineups were shown to as Davis. (Trl. Tr. pp. 501-502).

Subsequent to that testimony, the subject of Davis did not come up again until the solicitor began his questioning of Detective Rouse. (Trl. Tr. pp. 576-577). And, during that questioning, Detective Rouse merely indicated he took statements from several of Victim's friends and neighbors, including Davis, on the date of the incident. (Trl. Tr. pp. 576-577). Following that, Sanders's trial counsel proceeded to question Detective Rouse about Davis on

cross-examination, elicited testimony from the detective establishing someone showed a lineup to Davis, and confirmed arrest warrants were obtained after Davis said “those were the two people.” (Trl. Tr. p. 585). Importantly, Sanders’s trial counsel further elicited testimony from Detective Rouse establishing he had no idea how Davis would have known Sanders and Applicant “were the two people,” and the detective confirmed Davis never told him Sanders and Applicant were actually involved in the incident. (Trl. Tr. p. 588).

As the trial continued on, neither the solicitor nor the defense elected to call Davis as a witness, and they rested their cases without doing so. (Trl. Tr. p. 670). Thereafter, during the solicitor’s closing argument, the solicitor made no reference to Davis or any identifications being made from photographic lineups. (Trl. Tr. pp. 672-698). Conversely, during his closing argument, Sanders’s trial counsel referenced Davis—albeit not by name—and used the officers’ interactions with him along with his absence from trial to attack the quality of the State’s case, which he characterized as being the product of a “rush to judgment.” (Trl. Tr. pp. 704-705). Similarly, during his closing argument, Applicant’s trial counsel challenged the quality of the State’s case by contending the State did not have anything to support the arrests other than the word of Davis, whom he noted was on probation at the time. (Trl. Tr. p. 712). Likewise, trial counsel asserted Davis only “supposedly” identified Sanders and Applicant from the lineups, and he further pointed out nothing was presented about the basis upon which Davis made his identifications due to the State’s failure to call him as a witness, which solely allowed for speculation on the matter. (Trl. Tr. p. 712).

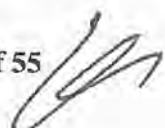
Later on during the post-conviction relief evidentiary hearing, Applicant’s trial counsel testified about Davis and the trial testimony surrounding him. In doing so, trial counsel explained Davis had told the investigators he saw Sanders and Applicant prior to the incident

and, at that time, the men were either armed or appeared to be armed. Beyond that, trial counsel confirmed he did not object to the testimony about Davis during trial as a matter of strategy even though an objection potentially could have been lodged. More specifically, he asserted he did not do so because the solicitor advised him Davis was available and would be called as a witness if necessary, which could have potentially resulted in damaging testimony being elicited from Davis about having seen Sanders and Applicant in possession of weapons. Trial counsel further explained the limited testimony elicited about Davis without objection did not establish Davis saw Sanders and Applicant doing anything wrong while testimony from Davis himself could have provided an additional link to the crime that would have been risky for the defense. In addition to trial counsel's testimony on the matter, Solicitor Clements confirmed Davis was available as a witness, he strategically decided not to use him as part of the State's case, he would have called him to the witness stand if a confrontation-based objection was raised, and doing so would have been detrimental to the defense. Furthermore, Applicant also offered testimony on the subject of Davis and indicated he would not have consented to Davis not being called if he was asked about it. However, he confirmed Davis's out-of-court statement indicated Davis had seen him armed with a gun.

ANALYSIS

Although Applicant now contends trial counsel was constitutionally ineffective for failing to raise a confrontation-based objection to the testimony elicited about Davis's identification of him from a photographic lineup, trial counsel's failure in that regard did not constitute deficient performance because: (1) it was a conscious and reasoned choice made as a matter of trial strategy; and (2) it was not an invalid strategic decision under the circumstances involved. See Strickland, 466 U.S. at 690 (explaining "strategic choices made after thorough investigation of

law and facts relevant to plausible options are *virtually unchallengeable*" (emphasis added)). Significantly, as was explained during the evidentiary hearing, trial counsel's decision not to object resulted from his desire to prevent the admission of damaging testimony from Davis, who was available to testify, would have been called as a witness in response to a confrontation-based objection, and had previously stated he saw Sanders and Applicant armed with weapons prior to the incident. See id. at 681 ("Among the factors relevant to deciding whether particular strategic choices are reasonable are the experience of the attorney, the inconsistency of unpursued and pursued lines of defense, and *the potential for prejudice from taking an unpursued line of defense.*" (emphasis added)). Therefore, Applicant's experienced trial counsel's sound decision not to raise an objection to the limited testimony presented about Davis did not constitute deficient performance, and it certainly did not constitute a strategic choice *no* competent attorney would have made. See Stone, 419 S.C. at 383, 798 S.E.2d at 568 ("There are a variety of reasons counsel may soundly choose not to make such an objection, including the reality that not all evidence offered by the State is harmful to the defendant. Under certain circumstances, therefore, counsel may employ a strategy of not objecting—even when counsel has a good argument for exclusion—if counsel reasonably perceives the benefits of doing so are outweighed by some other consideration."); see also Reeves, 141 S. Ct. at 2410 ("[E]ven if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that *no* competent lawyer would have chosen." (emphasis added and citation, internal quotations, and brackets omitted)); cf. Watson v. State, 370 S.C. 68, 73, 634 S.E.2d 642, 644 (2006) (concluding trial counsel was not constitutionally ineffective for failing to object because that failure was the result of a valid choice made to prevent the potential introduction of damaging testimony that could have been



introduced if an objection was raised), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Moreover, notwithstanding the fact trial counsel's decision not to object constituted a valid trial strategy and, thus, was not deficient performance, Applicant was not prejudiced by that decision because there was no reasonable likelihood of a different result at trial but for trial counsel's reasoned strategic choice because: (1) the alternative choice of raising an objection would have been more harmful than helpful to the defense since it would have almost certainly led to the introduction of additional damaging testimony linking Applicant to the charged crimes; and (2) the limited nature of the unobjected-to testimony about Davis that was elicited ensured it could not have been harmful to the defense or impactful to the outcome of trial since—as presented—it did not establish Davis actually observed anything incriminating or even explain upon what basis Davis was capable of making an identification.¹⁶ See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where . . . counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel."); cf. Bruno v. State, 347 S.C. 446, 452, 556 S.E.2d 393, 396 (2001) ("Because there was no evidence regarding **the results** of the polygraph test, Bruno failed to meet his burden of establishing the prejudicial impact of this evidence.").

For those reasons, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in regard to trial counsel's performance concerning the testimony surrounding Davis, and, thus, Applicant did not and cannot overcome the presumption trial counsel provided adequate representation during trial. Accordingly, this allegation is denied.

¹⁶ As previously noted, the trial judge's instructions to the jurors on evaluating identification evidence alerted them they must consider factors such as "whether the witness had an adequate opportunity to observe the offender at the time of the offense." (Trl. Tr. pp. 729-730).



IV. Allegation of Ineffective Assistance of Trial Counsel Related to the Failure to Challenge the Quality of the Fingerprint Evidence Based on the Contents of the Forensic Reports from SLED

Through his fourth allegation, Applicant contends trial counsel was constitutionally ineffective for failing to raise an objection based on the quality of the fingerprint evidence in light of the fact a non-admitted forensic report from the fingerprint analysis conducted in Applicant's case contained a statement in reference to one of the tested items indicating "NO CONCLUSION will be rendered due to quality of Item 64 / Woods, Tyrell." For all the reasons that follow, this allegation is denied.

RELEVANT FACTS

As has already been discussed, Darnell offered expert testimony during trial about his analysis of all the submitted fingerprint evidence and his conclusion twenty of the prints recovered at the crime scene were attributable to Sanders and Applicant. (Trl. Tr. pp. 614-653). In discussing his analysis, Darnell explained he was able to reach his conclusion by comparing identifiable prints—which meant prints with sufficient clarity or detail for comparison purposes—from the crime scene to known fingerprints collected from Victim, Sanders, and Applicant. (Trl. Tr. pp. 619-621; pp. 623-624). Darnell further indicated he had no doubt in the accuracy of the identifications he made, and he noted his work was reviewed by another latent print examiner. (Trl. Tr. p. 651; p. 653). Notably, during Darnell's testimony, no forensic reports were introduced or admitted into evidence. (Trl. Tr. pp. 9-11; pp. 613-653). However, Sanders's trial counsel cross-examined Darnell about his reports and elicited testimony establishing many of the examined items identified within them were listed as having no value for identification purposes. (Trl. Tr. pp. 643-645).

Later on during the post-conviction relief evidentiary hearing, Applicant—through post-conviction relief counsel—introduced a SLED forensic report that appears to be connected to Darnell’s initial fingerprint analysis in Applicant’s case, and that report is dated November 5, 2012. (App. Ex. # 1 (Forensic Report)). Additionally, Applicant—also through post-conviction relief counsel—introduced a supplemental SLED forensic report that appears to be connected to further fingerprint analysis conducted by Darnell in Applicant’s case, and that second report is dated November 19, 2012. (App. Ex. # 3 (Supplemental Forensic Report)).

In the first of those reports, numerous items are referenced, and the listed results of the analysis of fifteen of those items are “IDENTIFIED with Item 64 / Woods, Tyrell.”¹⁷ (App. Ex. # 1). Meanwhile, one of the referenced items—Item 3.1, which is identified in the report as a latent print developed from a cigar box—has analysis results stating “NO CONCLUSION will be rendered due to the quality of Item 64 / Woods, Tyrell.” (App. Ex. # 1). Similarly, for the same item, the first report *also* has analysis results stating “NO CONCLUSION will be rendered due to the quality of Item 60 / Rowell, Samuel” and “NO CONCLUSION will be rendered due to the quality of Item 63 / Sanders, Marco Sirra.” (App. Ex. # 1).

The supplemental second report is much shorter. (App. Ex. # 3). It contains the results of an analysis of the same Item 3.1 referenced in the first report. (App. Ex. # 3). As to those results, it states “IDENTIFIED with Item 106 / Woods, Tyrell.”¹⁸ (App. Ex. # 3).

¹⁷ In the same report, Item 64 is identified as “[m]ajor case prints bearing the name Woods, Tyrell received from SLED AFIS.” (App. Ex. # 1). In addition to that, Item 60 is identified in the report as “[o]ne (1) set of post mortem major case prints from Rowell, Samuel.” (App. Ex. # 1). Meanwhile, Item 63 is identified as “[f]ingerprint card bearing the name Sanders, Marco Sirra received from SLED AFIS.” (App. Ex. # 1).

¹⁸ Item 106 is identified in the supplemental report as “[m]ajor case prints bearing the name Woods, Tyrell received from S/A Scott Hardee.” (App. Ex. # 3). During Applicant’s trial, Agent Scott Hardee from SLED presented testimony identifying himself as the individual who

In addition to the introduction of the two forensic reports, Applicant's trial counsel was questioned during the evidentiary hearing about the information contained in those reports. Through that questioning coupled with trial counsel's responses to it, post-conviction relief counsel expressed a view the contents of the report meant the first of Applicant's fingerprint standards was not of sufficient quality for comparison purposes while trial counsel indicated he had a different view and believed the contents of the report may have meant Item 3.1 was what was of insufficient quality for an identification to be made. In any event, trial counsel agreed he did not move to suppress the report on the basis it indicated Applicant's fingerprint standard was insufficient for comparison purposes.¹⁹ Beyond that, no further testimony was presented about the report or what its contents meant, including from its author—Darnell.

ANALYSIS

Applicant now contends trial counsel was constitutionally ineffective for failing to raise an objection based on the quality of the fingerprint evidence in light of his perceived views of what was meant by the contents of the two forensic reports from the fingerprint analysis. However, in doing so, Applicant did not offer any testimony from Darnell, who expressed certainty in the accuracy of his fingerprint identifications during trial, or anyone else with actual knowledge of the reports to demonstrate what their contents truly meant. In the absence of such testimony, this Court can only speculate as to what the first report—which, in addition to the lone portion Applicant presently points to as significant to his claim, contains information indicating fifteen *other* fingerprints recovered from the crime scene were matched to “Item 64 /

collected Applicant's fingerprints at the courthouse in November of 2012. (Trl. Tr. p. 507; pp. 512-515).

¹⁹ As previously noted, the report itself was not introduced into evidence during Applicant's trial. (Trl. Tr. pp. 613-653).

Woods, Tyrell”—meant through the information it contained regarding the results of the analysis of Item 3.1. See Speaks v. State, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“In post-conviction proceedings, the burden of proof is on the applicant to prove the allegations in his application.”). And, because the meaning remains entirely unknown absent rank speculation, Applicant simply cannot meet his burden of establishing trial counsel was deficient for failing to raise an objection or challenge that very well could have resulted in a clarification from the expert that would have been detrimental—as opposed to beneficial—to Applicant’s interests. See, e.g., Ward v. Whitley, 21 F.3d 1355, 1362 (5th Cir. 1994) (“It is a basic rule of cross-examination: Never ask a question for which you do not know the answer.”). Beyond that, Applicant likewise cannot establish the result of his trial would have been different but for trial counsel’s failure to raise a challenge based on the contents of the forensic reports absent total speculation as to what the result of such a challenge would have been. See Glover, 318 S.C. at 499, 458 S.E.2d at 540 (explaining mere speculation standing alone cannot satisfy an applicant’s burden of establishing prejudice); Putnam v. State, 417 S.C. 252, 261-262, 789 S.E.2d 594, 599 (Ct. App. 2016) (“The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.” (citation and internal quotations omitted)); cf. Vanover v. State, 433 S.C. 31, 44, 856 S.E.2d 160, 167 (Ct. App. 2021) (“We have no idea what Daughter’s answer or explanation for the Doe allegation would have been. Daughter did not testify at the PCR hearing. We do not see how we could find this alleged deficiency to be prejudicial without some sense of what Daughter’s explanation would have been.”). Therefore, Applicant cannot meet his requisite burden of establishing his claim of constitutional ineffectiveness, and that is particularly true given that nothing in the reports standing alone supports a conclusion the fingerprint evidence should not have been admissible



during trial. See Strickland, 466 U.S. at 700 (explaining an ineffective assistance of counsel claim cannot be established if the applicant fails to make the requisite showing of either deficient performance or sufficient prejudice).

For those reasons, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in connection to trial counsel's performance in failing to raise any objections based on the contents of the fingerprint analysis forensic reports, and, thus, Applicant did not and cannot overcome the presumption trial counsel provided adequate representation during trial. Accordingly, this allegation is denied.

V. Allegation of Ineffective Assistance of Trial Counsel Related to the Trial Judge's Jury Instructions on Malice

Through his fifth allegation, Applicant contends trial counsel was constitutionally ineffective for failing to object when the trial judge instructed the jury malice could be inferred from conduct that showed a total disregard for human life. For all the reasons that follow, this allegation is denied.

RELEVANT FACTS

During trial, the testimony and evidence presented established Applicant's and Sanders's elderly victim was killed during the course of a home invasion committed by two armed individuals working together with one another to carry out their heinous scheme. (Trl. Tr. p. 266; pp. 607-608; Surveillance Footage). It also established Victim was struck in the head, bound and gagged, and robbed in his own home, which was ransacked for loot. (Trl. Tr. pp. 267-270; pp. 276-278; pp. 299-310; pp. 321-322; p. 325). Tragically, it further established the perpetrators killed Victim with a close-range gunshot to the head after he cried out for help from a longtime friend who came by while the home invasion was still being carried out and who was himself driven away by gunfire. (Trl. Tr. pp. 195-196; p. 201; pp. 270-271; pp. 275-276).



Based on that testimony and evidence, the solicitor argued in his closing argument to the jury the elements of murder, including the element of malice, had clearly been established since Victim was bound with duct tape and executed. (Trl. Tr. p. 72). In light of that, the solicitor aptly contended the dispositive issue in the case was who was responsible for the terrible acts committed before identifying all the reasons why the jury should conclude the State met its burden of proving Applicant and Sanders were the ones guilty as charged. (Trl. Tr. pp. 679-698). Thereafter, through his closing argument, Sanders's trial counsel—instead of attempting to dispute the existence of malice—focused his efforts on convincing the jury the State had not sufficiently demonstrated Sanders was one of the people involved in Victim's brutal killing. (Trl. Tr. pp. 699-709). Likewise, Applicant's trial counsel also used his closing argument to attempt to convince the jury the State had failed to sufficiently establish Applicant and Sanders were the perpetrators of the charged offenses as opposed to attempting to dispute whether the killing itself was, in fact, a murder. (Trl. Tr. pp. 710-717).

Following the parties' closing arguments, the trial judge instructed the jury on the applicable law. (Trl. Tr. pp. 718-472). As part of his jury instructions, the trial judge emphasized the defendants were presumed innocent, the State had the burden of proving their guilt for each and every element of the charged offenses beyond a reasonable doubt, and the defendants must be found to be not guilty unless the State satisfied its requisite burden to the jurors' unanimous satisfaction. (Trl. Tr. pp. 719-722; pp. 739-740). Furthermore, the trial judge defined the elements of each of the charges offenses, including murder and its accompanying element of malice. (Trl. Tr. pp. 732-739). In doing so, the trial judge explained malice as follows:

Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse

and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

...

Malice aforethought may be express or inferred. These terms, express or inferred, do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished; for example, lying in wait for a person or any other acts of preparation going to show that the deed was within the defendant's mind would be express malice. Malice may be inferred from conduct showing a total disregard for human life.

(Trl. Tr. pp. 732-733). After those instructions were presented, no objections were raised, including by Applicant's trial counsel. (Trl. Tr. p. 742).

Later on during the post-conviction relief evidentiary hearing, Applicant's trial counsel was questioned about the trial judge's jury instructions on malice and his failure to raise any objections. More specifically, trial counsel was questioned about the portion of the charge indicating malice could be inferred from conduct showing a total disregard for human life. In response to that questioning, trial counsel indicated he did not interpret that language as an improper statement of the law and did not believe the instructions as presented could be viewed as lessening the State's burden of proof when considered as a whole and in context. Furthermore, as his testimony continued, trial counsel explained he did not see any reason to object to the malice instruction presented and was not aware of any existing case law that established the language employed was improper. Beyond that, trial counsel confirmed the defense strategy he was pursuing was not focused on attempting to convince the jury the act committed—the shooting of an elderly bound-and-gagged victim in the head from close range—was not a malicious one.



ANALYSIS

Although Applicant now contends trial counsel was constitutionally ineffective for failing to object to the trial judge's jury instruction indicating malice may be inferred from conduct showing a total disregard for human life, such an instruction has previously been recognized as being a proper jury instruction on malice in South Carolina. See State v. Cottrell, 421 S.C. 622, 644, 809 S.E.2d 423, 435 (2017) (concluding the trial judge committed no error in instructing the jury on malice in a murder case when he "instructed only that malice could be inferred from conduct showing a total disregard for human life"); State v. Brooks, 428 S.C. 618, 632, 837 S.E.2d 236, 243 (Ct. App. 2019) (stating the jurors were "correctly instructed by the circuit court" they could infer malice in a murder case from conduct that "showed a total disregard for human life"); cf. State v. Taylor, 434 S.C. 365, 862 S.E.2d 924 (Ct. App. 2021) (rejecting the appellant's contention the trial judge erred through the manner in which he instructed the jury on malice in a case in which the trial judge—as part of his jury charge—instructed the jury malice "could be inferred from conduct that shows a total disregard for human life"). Likewise, that particular instruction was consistent with what malice has been recognized to mean in our state. See State v. Heyward, 432 S.C. 296, 322, 852 S.E.2d 452, 465 (Ct. App. 2020) ("Malice aforethought is defined as the requisite mental state for common-law murder and it utilizes four possible mental states to encompass both specific and general intent to commit the crime." (citations and internal quotations omitted)); see also State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675 (1957) ("Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice."). Therefore, trial counsel's failure to raise an objection to a malice instruction that has only been previously

recognized as being a proper one was neither objectively unreasonable, incompatible with professional norms, nor constitutionally deficient. See Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004) (concluding trial counsel was not deficient for failing to raise an objection when there was “no statutory law or judicial precedent in this State” supporting the objection); see also Hillerby v. State, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (Ct. App. 2020) (“Deficiency is judged by whether trial counsel failed to provide reasonably effective assistance under prevailing professional norms.” (citation and internal quotations omitted)).

Beyond that, Applicant could not have been prejudiced by trial counsel’s failure to object to the now-challenged portion of the malice instructions because such an objection—even if sustained—could not have and would not have had any impact on the outcome of Applicant’s trial in light of the absolutely overwhelming evidence of malice that was presented. Cf. State v. Franks, 432 S.C. 58, 83, 849 S.E.2d 580, 593 (Ct. App. 2020) (“[W]e find the evidence of malice was overwhelming such that the erroneous inference of malice instruction was harmless beyond a reasonable doubt.”). As previously stated, Applicant’s elderly victim was bound, gagged, and executed with a close-range gunshot to the head during the course of a home invasion and robbery, and, thus, the only conclusion any rational fact-finder could arrive at from those facts would be the person who killed Victim did so with malice. Cf. Brooks, 428 S.C. at 632, 837 S.E.2d at 243 (concluding the presentation of an erroneous jury instruction indicating malice could be inferred from the use of a deadly weapon was harmless when that particular improper instruction “could not have eclipsed the impact of Fred’s powerful testimony that he raised his hands to show he was unarmed and this capitulation had no effect on [Brooks]”). Under such circumstances, Applicant cannot and did not establish the prejudice necessary to warrant a grant of post-conviction relief on this allegation. See Strickland, 466 U.S. at 693-694 (explaining a

defendant “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different” in order to establish the prejudice necessary to warrant a grant of post-conviction relief).

For those reasons, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in regard to trial counsel’s performance concerning the trial judge’s jury instructions on malice, and, thus, Applicant did not and cannot overcome the presumption trial counsel provided adequate representation during trial. Accordingly, this allegation is denied.

VI. Allegation of Ineffective Assistance of Trial Counsel Related to the Sufficiency of the Indictment

Through his sixth allegation, Applicant contends trial counsel was constitutionally ineffective for failing to move to quash the indictment on the ground the indictment was fatally defective because it did not sufficiently allege the place of the charged crimes. For all the reasons that follow, this allegation is denied.

RELEVANT FACTS

Through the multi-count indictment issued by the Marion County Grand Jury in Applicant’s case, Applicant—along with his uncle, Sanders—was charged with murder, attempted robbery, first-degree burglary, attempted murder, possession of a firearm during the commission of a violent crime, and conspiracy. (Indictment). At multiple points in that indictment, the caption reflected the indictment was being issued in the State of South Carolina and the County of Marion. (Indictment). Likewise, in all six counts contained in the body of the indictment, the county in which the charged offenses were alleged to have occurred was clearly identified as Marion County, and, in the first-degree burglary count, Victim’s specific street address was even identified. (Indictment).

Early on during trial, Applicant's trial counsel—demonstrating his familiarity with and review of the indictment—raised a challenge based on the fact the indictment had not been stamped as true billed by the grand jury. (Trl. Tr. p. 155). That challenge led the trial judge to conduct an in camera hearing on the matter and confirm the indictment had indeed been true billed by the grand jury. (Trl. Tr. p. 158; pp. 160-165). Following that, trial counsel raised a different—but ultimately unsuccessful—challenge to the indictment by questioning whether conspiracy had properly been charged. (Trl. Tr. pp. 165-167). However, trial counsel did not raise any challenges to the sufficiency of the indictment in regard to its description of the place in which the charged crimes were committed. (Trl. pp. 155-167).

Later on during the post-conviction relief evidentiary hearing, trial counsel was questioned about his failure to object to the sufficiency of the indictment concerning place. During that questioning, trial counsel confirmed he was aware an indictment must generally identify the place of the crime in order to be sufficient. Trial counsel further confirmed he did not object to the sufficiency of the indictment in Applicant's case, did not believe it was defective, did not see any basis upon which to challenge its sufficiency, did not have any trouble understanding the charges alleged, and did not have any concerns about the notice it provided, including in regard to where the charged offenses occurred. In addition to trial counsel's testimony, Applicant also testified during the evidentiary hearing and confirmed he understood going into his trial he was charged with offenses that occurred in Marion County, South Carolina.

ANALYSIS

In seeking post-conviction relief, Applicant now contends his trial counsel was constitutionally ineffective for failing to challenge the sufficiency of the indictment as to the

place of the charged offenses. Importantly though, the indictment in Applicant's case was sufficiently specific as to place because it identified the specific county where the offenses were alleged to have occurred—Marion County. Similarly, there could be—and, based on Applicant's testimony, was—no confusion about whether the indictment was alleging the charged offenses occurred in the specific Marion County located *in South Carolina* as opposed to some other state. Under such circumstances, the indictment in Applicant's case met all the requirements necessary for it to be deemed sufficient, including in regard to its description of the place of the charged offenses. See S.C. Code Ann. § 17-19-20 ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided."); State v. McIntire, 221 S.C. 504, 510, 71 S.E.2d 410, 412-413 (1952) ("The twofold purpose of the statute in requiring the indictment to allege the place of the commission of the crime is to lay jurisdiction of the court, and inform the accused *of the county* in which he is charged with the violation of the law." (emphasis added)); State v. Moore, 24 S.C. 150, 156 (1886) (recognizing it is sufficient for an indictment to simply identify the county in which the crime was alleged to have occurred "[w]here the place is not a matter of essential description of the crime, but is alleged as a matter of jurisdiction only in the court"); see also State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005) ("[W]hether the indictment could be more definite or certain is irrelevant.").

Because the indictment met all the requirements of legal sufficiency, trial counsel could not have been and was not deficient for failing to raise a meritless and unsupportable objection to

the indictment's sufficiency. See Winkler v. State, 418 S.C. 643, 653, 795 S.E.2d 686, 692 (2016) ("One of the key circumstances a court must consider in its examination of counsel's decision not to make a particular objection is whether there was any law to support the objection."). Likewise, since Applicant was self-admittedly on notice as to the location where the charged offenses occurred based on the information that was contained in the indictment, Applicant could not have been prejudiced by the manner in which the indictment was drafted, and there was no reasonable likelihood of a different result at trial had trial counsel actually raised an objection to the indictment's sufficiency. See Strickland, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."); see also State v. Smalls, 336 S.C. 301, 307, 519 S.E.2d 793, 796 (Cl. App. 1999) ("[T]he true test of an indictment's validity is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet.").

Resultantly, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in regard to trial counsel's performance concerning the sufficiency of the indictment, and, thus, Applicant did not and cannot overcome the presumption trial counsel provided adequate representation during trial. Accordingly, this allegation is denied.

VII. Allegation of Ineffective Assistance of Appellate Counsel Related to the Failure to Raise an Issue on Appeal Concerning Detective Lee's Identification Testimony

Through his seventh allegation, Applicant contends appellate counsel was constitutionally ineffective for failing to appeal the trial judge's ruling denying Applicant's motion to exclude the in-court lay opinion identification testimony from Detective Lee identifying Applicant from the surveillance footage pursuant to Rule 701 of the South Carolina Rules of Evidence. For all the reasons that follow, this allegation is denied.

RELEVANT FACTS

As has already been discussed, the trial judge allowed Detective Lee—over Applicant's trial counsel's objection—to testify about his identification of Sanders and Applicant from the surveillance footage captured at the crime scene on the date Victim was senselessly killed. (Trl. Tr. pp. 71-114; pp. 503-505). Supporting his ruling in that regard, testimony was presented establishing Detective Lee knew both Sanders and Applicant, had been familiar with Applicant for a number of years, encountered both of the men face to face previously, had seen Applicant's photograph in connection to other cases, and knew them both from the community. (Trl. Tr. pp. 90-92; pp. 94-96; pp. 100-101; p. 103; pp. 480-481).

Subsequently, Applicant was convicted, he appealed, and his appellate counsel filed an Anders brief instead of a merits brief. (Anders App. Br. pp. 1-14). Through the Anders brief, appellate counsel did not raise any issues related to the trial judge's ruling admitting Detective Lee's identification testimony. (Anders App. Br. pp. 1-14). Following that, Applicant submitted his own pro se brief. (Pro Se App. Br. pp. 1-10). Through that brief, Applicant raised a number of issues but—like appellate counsel—did not include any related to Detective Lee's identification testimony. (Pro Se App. Br. pp. 1-10). Ultimately, the Court of Appeals dismissed Applicant's appeal and relieved appellate counsel pursuant to the Anders review process. State v. Woods, Op. No. 2016-UP-030 (S.C. Ct. App. filed Jan. 20, 2016).

Later on during the post-conviction relief evidentiary hearing, appellate counsel testified about his representation of Applicant on appeal. In doing so, he discussed his substantial background handling criminal appeals, including his past experience with murder cases and his success in obtaining reversals in some cases on behalf of his clients. He further explained he reviewed the record and made a case-specific judgment call to submit an Anders brief in

Applicant's case after seeing no issues—including one related to Detective Lee's identification testimony—he believed would have been likely to be successful on appeal under the circumstances involved.

ANALYSIS

Although Applicant now contends appellate counsel was constitutionally ineffective for failing to raise an appellate challenge to the trial judge's evidentiary ruling admitting Detective Lee's identification testimony, appellate counsel's reasoned choice not to raise that particular issue on appeal did not constitute deficient performance because the issue was not a viable one or one that no reasonably competent attorney would have failed to raise. See Anderson v. United States, 393 F.3d 749, 754 (8th Cir. 2005) ("The question here is not whether counsel's choice to omit an argument on appeal was an intelligent or effective decision, but rather whether his decision was an unreasonable one which only an incompetent attorney would adopt. Counsel is not required to raise every potential issue on appeal." (citations, internal quotations, and brackets in original omitted)); see also McCoy v. Ct. of Appeals of Wisconsin, Dist. 1, 486 U.S. 429, 436 (1988) ("[T]he [appellate] lawyer may not ignore his or her professional obligations. Neither paid nor appointed counsel may deliberately mislead the court with respect to either the facts or the law, or consume the time and the energies of the court or the opposing party by advancing frivolous arguments. An attorney, whether appointed or paid, is therefore under an ethical obligation to refuse to prosecute a frivolous appeal." (footnote omitted)); Bennett v. State, 383 S.C. 303, 309, n. 6, 680 S.E.2d 273, 276, n. 6 (2009) ("Appellate counsel filed an Anders brief, as opposed to a brief on the merits. Even in this context, when analyzing a claim of ineffective assistance of appellate counsel, we apply the Strickland test."). That is true because an issue challenging the admission of Detective Lee's identification testimony had no realistic prospect of

success on appeal in light of the considerable discretion afforded to evidentiary rulings on appeal, the clear existence of evidentiary support for the trial judge's determination the detective had sufficient prior knowledge to be able to make the identifications, and the existence of other overwhelming evidence of Applicant's guilt in the form of the profoundly-incriminating fingerprint evidence. See State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); see also State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt that was presented during trial); cf. United States v. Robinson, 804 F.2d 280, 282 (4th Cir. 1986) ("A lay witness may give an opinion concerning the identity of a person depicted in a surveillance photograph if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury."); Mitchell, 339 S.C. at 731 S.E.2d at 895-896 (affirming a ruling admitting an officer's testimony identifying the defendant from photographs despite the fact the officer only indicated he was familiar with the defendant through living in the same community); State v. Fripp, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) ("[T]he identification of a familiar person does not require any specialized knowledge, skill, experience, or training[.]"). And, for precisely the same reasons, Applicant could not have been prejudiced by appellate counsel's failure to raise an issue challenging the identification testimony since such an issue—even if raised—was not at all likely to have been successful or resulted in a different outcome on appeal under the circumstances involved. See Anderson, 354 S.C. at 434, 581 S.E.2d at 835 (explaining an applicant seeking post-conviction relief based on a claim of ineffective assistance

of appellate counsel must—in addition to demonstrating deficiency—demonstrate prejudice by establishing there was a reasonable probability he would have prevailed on appeal but for appellate counsel’s errors); cf. Bennett, 383 S.C. at 309-310, 680 S.E.2d at 276 (“Even if appellate counsel’s performance was deficient, we find that such performance did not prejudice Respondent. In order to show that he was prejudiced by appellate counsel’s performance, a PCR applicant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. Ms. Bennett’s out-of-court statements admitted at trial were cumulative evidence and not necessary to prove Respondent’s guilt. Appellate counsel’s performance did not prejudice Respondent and was, therefore, not ineffective.” (citation and internal quotations omitted)).

For those reasons, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in regard to appellate counsel’s performance concerning the non-raised identification testimony issue, and, thus, Applicant did not and cannot overcome the presumption appellate counsel provided adequate representation on appeal. Accordingly, this allegation is denied.

VIII. Allegation of Ineffective Assistance of Appellate Counsel Related to the Conspiracy Charge Issue

Through his eighth and final allegation, Applicant contends appellate counsel was constitutionally ineffective for failing to argue on appeal through a merits brief the trial judge abused his discretion by failing to dismiss the conspiracy charge based on trial counsel’s motion seeking dismissal of that charge. For all the reasons that follow, this allegation is denied.

RELEVANT FACTS

Five warrants were issued for Applicant’s arrest in connection to Victim’s killing, and those arrest warrants alleged Applicant had committed the offenses of murder, first-degree

burglary, armed robbery, possession of a firearm during the commission of a violent crime, and attempted murder. (Arrest Warrants). Following that, a single multi-count indictment was issued by the Marion County Grand Jury in Applicant's case, and, through that indictment, Applicant—along with Sanders—was indicted for six offenses, including conspiracy. (Indictment).

At the beginning of Applicant's ensuing trial, the trial judge—with Applicant present—read aloud each count of the lone indictment, including the count charging Applicant with conspiracy. (Trl. Tr. pp. 13-15). After that and before the jury was sworn, Applicant's trial counsel—along with Sanders's—sought for the conspiracy charge to be ruled invalid because the process for serving a direct indictment purportedly was not followed as to that particular charge. (Trl. Tr. p. 165; p. 168). Ultimately though, the trial judge declined to dismiss the conspiracy charge, and Applicant was convicted as indicted on all counts, including the one for conspiracy. (Trl. Tr. p. 167; pp. 663-664; p. 748).

Following his conviction, Applicant appealed, and his appellate counsel filed an Anders brief on his behalf along with a petition to be relieved. (Anders App. Br. pp. 1-14). Through that brief, appellate counsel addressed and analyzed the following issue: "Whether the trial court erred in refusing to dismiss [Applicant]'s conspiracy charge because he was never served with a warrant or the indictment for this charge?" (Anders App. Br. pp. 1-14). Furthermore, in his brief, appellate counsel—demonstrating his research into the matter and awareness of pertinent adverse authority—acknowledged the existence of the South Carolina Supreme Court's decision in Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004).²⁰ (Anders App. Br. p. 12).

²⁰ Pursuant to his ethical responsibilities, appellate counsel was required to disclose controlling adverse South Carolina authority of which he was aware. See Rule 3.3(a)(2), RPC, Rule 407, SCACR (requiring an attorney "to disclose to the tribunal legal authority in the controlling

Thereafter, Applicant submitted a pro se brief on his own behalf and, through it, also raised an issue related to the trial judge's failure to dismiss the conspiracy charge. (Pro Se App. Br. pp. 1-10). Upon considering those briefs and conducting the requisite review pursuant to Anders, the Court of Appeals dismissed Applicant's appeal and granted appellate counsel's petition to be relieved. State v. Woods, Op. No. 2016-UP-030 (S.C. Ct. App. filed Jan. 20, 2016).

Later on during the post-conviction relief evidentiary hearing, Applicant testified about the conspiracy charge and asserted he was never served with an arrest warrant or direct indictment for that offense. However, Applicant further admitted he did receive a copy of the indictment and acknowledged he heard the trial judge read all the charges, including the one for conspiracy, at the outset of trial. In addition to that testimony, appellate counsel also offered testimony concerning the issue related to the conspiracy charge, explained he raised that precise issue through his Anders brief after reviewing the record in Applicant's case, and indicated he did not believe the issue was a viable one based on his research, which led to his decision to file an Anders brief as opposed to a merits brief.

ANALYSIS

Although Applicant now contends appellate counsel was constitutionally ineffective for failing to raise a merits challenge on appeal to the trial judge's refusal to dismiss the conspiracy charge, appellate counsel's reasoned choice not to raise that particular issue through a merits brief did not constitute deficient performance because, just as appellate counsel wisely determined through his analysis of the matter, the issue was not a viable one pursuant to established South Carolina precedent. See Anders v. California, 386 U.S. 738, 744 (1967) ("Of

jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel").

course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he *should* so advise the court and request permission to withdraw.” (emphasis added)).

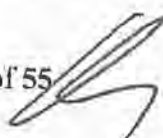
Demonstrating the non-viability of Applicant’s complaints related to the conspiracy charge, Applicant was unquestionably on notice of that charge through the lone multi-count indictment that was issued in his case and through the trial judge’s act of reading each and every one of the counts in the indictment—including the count charging Applicant with conspiracy—in Applicant’s presence at the beginning of trial, and, thus, there was no proper or logical basis upon which the trial judge could grant trial counsel’s motion to dismiss the charge. See Magazine v. State, 361 S.C. 610, 616, 606 S.E.2d 761, 764 (2004) (reversing a grant of post-conviction relief that was based on the fact Magazine was not personally served with warrants or an indictment and, thus, purportedly did not receive proper notice because adequate notice of all charged offenses had, in fact, been provided to Magazine by the trial judge’s act of reading the charges aloud at the beginning of trial); see also Gentry, 363 S.C. at 102, 610 S.E.2d at 500 (explaining an indictment is simply a notice document). And, just as appellate counsel’s performance was not deficient for failing to raise the conspiracy charge issue through a merits brief, Applicant likewise could not have been prejudiced by appellate counsel’s performance because such an issue—even if raised through a merits brief—was not reasonably likely to have had any success on appeal in light of our state’s existing case law, which is strongly supported by the fact the Court of Appeals dismissed Applicant’s appeal after review even though the conspiracy charge issue was raised in both appellate counsel’s and Applicant’s submitted briefs. See Anderson, 354 S.C. at 434, 581 S.E.2d at 835 (“To prove prejudice, the applicant must show that, but for counsel’s errors, there is a reasonable probability he would have prevailed on appeal.”); cf. Towbridge v. State, 45 So. 3d 484, 486-487 (Fla. Dist. Ct. App. 2010) (“Although

Anders does not require the appellate court to conduct a fine tooth comb review of all conceivable issues, it does require the court to independently examine the record to the extent necessary to discover any errors apparent on the face of the record. This independent judicial review of the record helps to assure a fair result despite the lack of a merits brief by appointed counsel. Thus, the Anders procedure helps to promote—rather than undermine—confidence in the correctness of the result of the appeal. It is reasonable to presume that when the court affirms an Anders appeal it has fully considered and rejected all potential issues that were apparent on the face of the record. Accordingly, at least with respect to an issue that was apparent on the face of the record, the petitioner cannot establish that any alleged deficient performance by counsel in not briefing such an issue compromised the appellate process to such a degree as to undermine confidence in the correctness of the result because the issue was necessarily considered by the court in its Anders review. This is particularly true where, as here, the issue that is the basis of the claim of ineffective assistance of appellate counsel was identified by counsel in the Anders brief.” (citations and internal quotations omitted)).

For those reasons, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in regard to appellate counsel’s performance concerning the conspiracy charge issue, and, thus, Applicant did not and cannot overcome the presumption appellate counsel provided adequate representation on appeal. Accordingly, this allegation is denied.

CONCLUSION AND ADVISEMENTS REGARDING APPEAL

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 that would require this Court to grant his



application for post-conviction relief. Therefore, Applicant's application for post-conviction relief is denied and dismissed with prejudice.

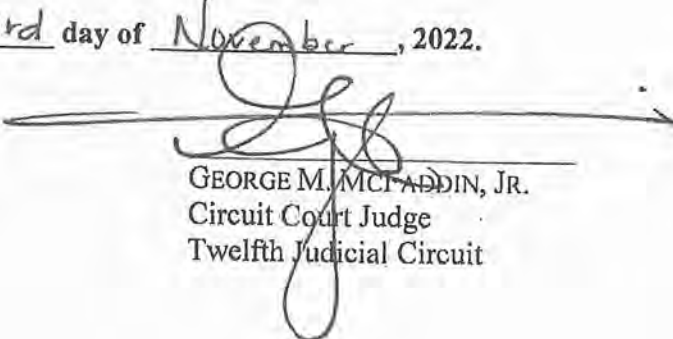
Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by Applicant's counsel to secure the appropriate appellate review if so desired. Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to the assistance of appellate counsel when seeking review of an order denying post-conviction relief. Rule 71.1(g) of the South Carolina Rules of Civil Procedures provides post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf in the event the applicant wishes to seek appellate review of a post-conviction relief ruling. Applicant is directed to Rule 243 of the South Carolina Appellate Court Rules for guidance on the appropriate procedures for an appeal in a post-conviction relief matter.

IT IS THEREFORE ORDERED:

- (1) This application for post-conviction relief is denied and dismissed with prejudice; and
- (2) Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 3rd day of November, 2022.

Sunter, South Carolina


GEORGE M. MCFADDIN, JR.
Circuit Court Judge
Twelfth Judicial Circuit