

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

Appellate Case No. 2022-001735

The Honorable George M. McFaddin Jr., Circuit Court Judge

Tyrell Woods.....Petitioner,

v.

The State of South CarolinaRespondent.

**APPENDIX
VOLUME III OF III**

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(State’s Exhibit 1 – DVD of surveillance video – is on file with this Court.)

State of South Carolina)
) Court of General Sessions
County of Florence) 2017-CP-33-00204

Tyrell Woods)
)
 vs.) Transcript of Record
)
State of South Carolina)

April 22, 2022
Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge.

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NO EXHIBITS INTRODUCED

1 MR. BROOKER: I apologize, Your Honor.

2 THE COURT: Yes, sir.

3 MR. BROOKER: I'm ready whenever you're ready.

4 THE COURT: All right, sir.

5 MR. BROOKER: Your Honor, we would call Tyrell Woods.

6 THE COURT: Okay, sir.

7 THE DEPUTY CLERK: If you'll put your hand down on the
8 Bible and raise your right hand, as best you can.

9 TYRELL WOODS, after being duly sworn, testified as
10 follows:

11 THE DEPUTY CLERK: Thank you, have a seat.

12 DIRECT EXAMINATION

13 BY MR. BROOKER:

14 Q Mr. Woods, do you remember when you were arrested for
15 this crime?

16 A Yes, sir.

17 Q Okay. And roughly when was that?

18 A July 19th.

19 Q Okay.

20 THE COURT: Mr. Woods, I can barely hear you. Can you
21 move closer to that microphone or move it towards you closer?

22 THE WITNESS: Thank you. Is that better?

23 THE COURT: Yes, sir, much better.

24 MR. BROOKER: Okay.

25 THE COURT: Thank you.

1 THE WITNESS: You're welcome.

2 MR. BROOKER: I'm sorry.

3 Q When were you arrested, roughly?

4 A July 19th.

5 Q And what year was that?

6 A That was 2012.

7 Q Okay. And of course, when you were arrested, you were
8 appointed an attorney?

9 A Yes, sir, I was.

10 Q And that attorney, I believe, if I am not mistaken, was
11 Mr. Floyd?

12 A That's correct.

13 Q Was Mr. Floyd --

14 A Well, Mr. Floyd and Vick Meetze.

15 Q Mr. Floyd and Mr. Meetze?

16 A Um-hum.

17 Q Okay. Were they were first attorneys in connection with
18 the case?

19 A They were.

20 Q And how long after you were arrested, that they were
21 appointed to represent you?

22 A A few -- a few weeks afterwards. Like, I believe I
23 got -- well, I got arrested July 19th, 2012 and I believe it
24 was August, he became my attorney.

25 Q All right. In August of that year?

1 A Um-hum.

2 Q Okay. And when -- do you remember when was the first
3 time that you met him, either one of the attorneys?

4 A Yeah, that would've been August and that would've been
5 just going in front of the court whereas the State said that
6 they would be looking to charge -- try the case as a double in
7 the case.

8 Q So your first appearance before the court after you were
9 arrested, that's when you met your attorney, at that court
10 appearance?

11 A Yes, that's correct.

12 Q At that time, did he have discovery or anything like that
13 with him?

14 A No, no discovery was given or anything of that nature.
15 He just asked me, did I have an alibi, and I had provided him
16 with an alibi, and that was it.

17 Q Okay. You said you provided him with an alibi.

18 A Yes.

19 Q What sort of alibi?

20 A A alibi where I was during the time of the -- the
21 incident.

22 Q Oh, okay. Okay. You told him where you were at at the
23 time of the incident?

24 A Yes, that's correct.

25 Q Okay. Okay. Where were you during the time of the

1 incident?

2 A I let him know that I had went in several convenience
3 stores. I went to Walmart. I went to Walgreens and I went in
4 CVS, and he asked me why, and I told him that I was going, at
5 the time, me and my significant other, we were having a fight,
6 and so I had to go to Walmart, CVS and Walgreens. I purchased
7 balloons from one store because the other one didn't have it,
8 and a teddy bear from another, and a card from another, and
9 then, of course, I went back to her.

10 Q Okay. Okay. And -- okay. Now, at some point in time,
11 did you meet him again after that first meeting?

12 A Yes, I did.

13 Q When was the next time that you met with him?

14 A The next year, so that -- that next year, when I was --
15 when he came to see him at Turbeville.

16 Q It was in 2013?

17 A Yes, it was 2013.

18 Q Okay. And what did y'all discuss during that meeting?

19 A Well, he just made me aware of, like, you know, the Rule
20 5. So at that -- at that particular time, he had just gotten
21 hold of the Rule 5 and he just let me know the Rule 5, the
22 charges that were against me, and that was it, nothing --
23 nothing major, just to let me know, hey, I'm your lawyer,
24 these are the charges, I got your Rule 5, and he handed it to
25 me.

1 Q Okay. Did he go over it with you?

2 A No, not at the time, no.

3 Q Okay. No. Okay. Was there any other point in time in
4 which he went over your discovery with you?

5 A Well, the -- the other time he went over -- well, I only
6 saw him two times, so I only saw him two times. The next time
7 I saw him was where he actually got ahold of the video
8 surveillance, so he got that in his possession, then we
9 actually went over things.

10 Q Okay. Okay. All right. And those two times that you
11 met with him, roughly how long did those sessions last?

12 A Well, the one that was at Turbeville was briefly. The
13 one with the video, of course, we went over the video, and
14 then he flipped through some pages of the motion of discovery,
15 so that was maybe given a hour, hour and a half, two hours,
16 somewhere around there. I don't want to --

17 Q Okay. Okay. So that's the -- and that's the amount of
18 time that you had spent discussing your case with him on --

19 A Yes, as its entirety --

20 Q -- before the case?

21 A Yeah.

22 Q I'm sorry.

23 A As its entirety?

24 Q Yeah, in its entirety, before trial, before you went to
25 trial.

1 A That is correct, uh-hum.

2 Q Okay. And of course, y'all did go to trial in this case;
3 is that correct?

4 A That's correct.

5 Q And I want to ask you about one issue in this case. I
6 think one of the issues that you raised, at one of the PCR
7 issues that's raised in connection with your case was the
8 detective, James Lee's prior contact with you before he was
9 able to or before he was able to look at the, I think the
10 video in connection with this case. Had you, prior to being
11 arrested for this charge, had you ever met -- remember meeting
12 with Det. James Woods (sic)?

13 A Well, no, sir, I don't recall that meeting that he was
14 alleging inside the -- or that I saw in the transcript at the
15 time, so I don't recall that particular meeting. I know that
16 he said it was 2007, and in 2007, I would've been 14, and I
17 don't recall ever going to a sheriff's department with my
18 mother or with my father to be questioned about any incident
19 that he was referring to. So no, sir, I don't recall an
20 incident.

21 Q Did you and your attorney talk about or did he ask you
22 questions in reference to -- in reference to any prior contact
23 that you had had with a Det. Lee?

24 A No, he never asked me about any priors.

25 Q Did for some reason -- or did you ever volunteer to him

1 that, hey, or ever say to him that, hey, you know, what Det.
2 Lee testified to is not correct, that actually -- I don't ever
3 remember being brought down to the sheriff's department and
4 ever remember seeing Det. Lee in 2007?

5 A Oh, yes, I did, but he was telling me that I guess the
6 way that he was relating it to me was that if we were to
7 challenge what he's saying, then I would have to be placed on
8 the stand, you know, or something of that nature, that he
9 couldn't just say, hey, that's not true, without anything
10 backing it up --

11 Q Okay.

12 A -- so to speak.

13 Q Without putting you up, doing the suppression motion?

14 A Right.

15 Q Okay. Did y'all discuss the possibility of putting you
16 up, doing the suppression motion for the purposes of
17 contesting just that issue as to whether or not you had prior
18 contact with judge or excuse me, with Det. Lee?

19 A No, I actually -- I actually asked him about doing that a
20 few times, even going up and testifying, period, and he was
21 just like, he didn't think that I should go -- I don't go up.

22 Q Okay. Now, I think also that one of the issues that you
23 mentioned in this post-conviction relief application was that
24 I think surrounding them getting a Schmerber order to take
25 your fingerprints.

1 A Yes, sir, that's correct.

2 Q And I want to ask you about that. Do you remember when
3 you were brought before the court and so that a motion -- and
4 so that a hearing can be held in order to determine whether or
5 not you wanted to submit your -- you needed to submit
6 fingerprints?

7 A Yes, that was November, that was November the 16th, if I
8 am not mistaken. I know I was there for that. I was at
9 Kirkland when it happened, so that was November, November
10 16th, I think 2013.

11 Q Did you and your attorney discuss, prior to that hearing,
12 about the State wanting to obtain additional fingerprints and
13 palm prints from you?

14 A No, sir, we didn't. The first I really learned of the
15 fingerprints, of them wanting another set of fingerprints, was
16 when I actually got to court in Marion County. Prior to
17 leaving Kirkland, they told me that I was going for a -- in a
18 pending armed robbery charge, and which I wasn't familiar
19 with, and so when I got to -- to the courthouse in -- in
20 Marion County, they told me -- well, they brought me in front
21 of the -- the judge, and Ed -- Ed Clemmons, I do believe
22 that's his name, Solicitor Ed Clemmons.

23 So Solicitor Ed Clemmons, he motioned -- you know, he
24 said something of the sort, he was just -- I don't want to
25 misquote him, but he was like, Your Honor, well, we sent SLED

1 to obtain Mr. Woods prints, he refused to give them, you know,
2 and so we brought him down here today to have a discussion
3 with his lawyer because he say he want to have his discussion
4 with his lawyer before doing so, and we brought him here today
5 to have -- to speak to his lawyer. But if he still feel as if
6 he doesn't want to comply and give over his prints, we're
7 asking that you grant us those prints during the Schmerber
8 hearing -- during -- by way of a Schmerber order.

9 Q So if it --

10 A -- so --

11 Q I'm sorry. So it's my understanding is is that you
12 didn't volunteer to give your prints.

13 A Oh, no, sir, well, when SLED came down, I actually
14 refused to give it to him. So I refused to relinquish my --
15 my prints, and then when we got there, I told him I didn't
16 feel -- I -- I didn't -- I didn't feel why I had to come and
17 give him my prints. You know, I didn't want to. I even
18 protested during the -- during the hearing about giving up my
19 prints and -- and well, I did so after it seemed as if he was
20 reluctant to fight on my behalf during this here.

21 So when I got up there, you know, the judge heard from Ed
22 Clemmons, then he heard from trial counsel, and so which was
23 got before and then afterwards, he said, well, hey, I'm a
24 order that Mr. Woods give up his prints. I'm a order that he
25 give up his prints.

1 And afterwards, when I -- I still spoke to Scott B.
2 Floyd, I don't understand why I got to give him my prints, and
3 you know, it just don't make sense to me, and I said, well,
4 you know, can I speak for myself. So when -- when I told him,
5 I said if he doesn't say what I want him to say, then I'm
6 going to ask the judge myself, can I speak for myself, and
7 during the motion, I actually asked the judge, Your Honor, may
8 I speak.

9 And when he gave me the opportunity to speak, and I
10 expressed to him that I didn't understand why was it that, you
11 know -- that they needed my prints after they had had --
12 already had my prints in several agencies such as, you know,
13 Marion County Police Department, Sheriff's Office, the
14 Department of Corrections and things like -- of that nature.

15 And -- and he said, well, Your Honor, the solicitor at
16 the time, he said, well, Your Honor, we -- we need the prints
17 because well, if this goes to trial, we -- we don't want to
18 bring up Mr. Woods' prior record or prior convictions, and so
19 we want to protect him against that prejudice -- being
20 prejudiced during a trial. You know, and -- and during that
21 hearing, he said, Your Honor, we believe to already have the
22 prints, you know, and that's was his words, he said, we
23 believe to already have the prints.

24 And so when he said that, you know, I -- I -- I told -- I
25 told Mr. Floyd, I said -- I said that doesn't sound right. I

1 said if he -- if he's saying that he believes that he already
2 have the prints, well, why is they so persistent about getting
3 me, and they brought me all the way down here from -- from
4 Columbia. And during that -- during that hearing and I -- I
5 don't have the transcript, I wish I did have the transcript
6 with me --

7 Q It's all right.

8 A -- I'm not sure what I am going to try to remember it or
9 recall it from the best of my ability, so during that time, he
10 said that they believed the -- believed to have had the print
11 and -- and so that he didn't want to prejudice me if it came
12 up at trial, and -- and I said, well -- and I -- I believe
13 that Scott B. Floyd actually believed him when he -- when he
14 said that, you know, that they had believed they had the
15 print.

16 Q I got you.

17 A Oh.

18 Q I got you. I got you. And -- okay. And so they did
19 take your prints that day involuntarily; is that correct?

20 A That is correct.

21 Q Took it right after the proceedings or right after the
22 hearing?

23 A Well, yes, right -- right after the hearing, but I did
24 ask counsel why was it that, you know, if they needed my
25 prints, I asked him because I -- I did ask him about the

1 search warrant you know, because I was -- where I was doing my
2 own research and things of that nature, and I asked him, well,
3 if they need my prints, I did -- after I refused to give them,
4 shouldn't they have to go through by way of a search warrant,
5 you know, and -- and he said, well, the Schmerber hearing is
6 the same thing.

7 And I told him, I said well -- and I told Scott B. Floyd,
8 I said, well, that's not -- trying to say the Schmerber -- I
9 say the Schmerber order is only used against us where in case
10 of emergency where the DNA is at risk of being lost forever,
11 you know, and -- such as cases as DUI and of the sort. And I
12 said, the Schmerber order is not a outright alternative to a
13 search warrant. I said, therefore, the State was obligated to
14 comply with Section 17-13-140.

15 Q I got you.

16 A And I -- and I told him this at the time, and he told me
17 that that was not the case.

18 Q Okay. Well, let's talk about the conspiracy charge and
19 of course, is is that were you originally charged with
20 conspiracy because that was one -- this is one of your
21 other -- and one of the other issues is is that you were never
22 served, I think a copy -- you were never -- it's my
23 understanding is is that one of your issues is is that you
24 were never served a warrant for conspiracy and then, of
25 course, you were never served a direct indictment for

1 conspiracy. Is that correct?

2 A That's correct.

3 Q Okay. So were you ever -- and I want to make that sure,
4 were you ever charged -- when you were arrested, were you ever
5 charged with conspiracy?

6 A No.

7 Q Okay.

8 A No.

9 Q Okay. And of course, there's at some point in time, did
10 anyone ever submit a copy of the indictment to you for
11 conspiracy?

12 A No, they didn't.

13 Q Okay.

14 A But my -- my charges have remained the same throughout
15 the -- throughout the entire thing as -- as I knew it. You
16 know, I was only charged with murder, attempted murder, armed
17 robbery, first degree burglary, and possession of a weapon
18 and -- and I know this to be true because if you -- if you
19 look at the transcript on page 156 and you look at lines 12
20 through 14, Scott B. -- see, I -- I learned of the conspiracy
21 charge the week of trial, but Scott B. Floyd told the judge
22 during the time of trial that he had only himself just gotten
23 the charge of conspiracy just a couple of days ago, and I
24 hadn't seen him, but I hadn't saw him nothing but two times.

25 And so when he got the charge, I didn't know anything

1 about it, when he said that had gotten it, and I only learned
2 of it the first day of trial.

3 Q And that was my next question, is that when was the first
4 time that you ever learned that you had been indicted for
5 conspiracy?

6 A Well, when they alleged me to being indicted for
7 conspiracy was --

8 Q Yeah, when did learn --

9 A -- first day -- the first day of trial.

10 Q I think you just gave an answer to that, but I want to
11 make sure. When was the first time that you learned that,
12 hey, they have an indictment for conspiracy against me?

13 A The first day of trial.

14 Q Okay.

15 A I -- I learned of it because the -- the solicitor, Ed
16 Clemmons, he -- he -- when he made the charges, he made
17 conspiracy.

18 Q Okay.

19 A And then that's when I asked him, you know, I was never
20 charged with conspiracy; where did the conspiracy come from?

21 Q Did --

22 A And that's how I learned.

23 Q And did you -- and once you learned -- once the case was
24 called and it was announced that conspiracy was one of your
25 charges, at some point in time, did you have the opportunity

1 to talk with your attorneys to figure out, hey, where did this
2 new conspiracy charge come from?

3 A Well, I did that right there when they -- they --
4 somewhere in between that time, they had like a recess or
5 something, and I -- and I was speaking to them, I was like,
6 hey, you know, I was never charged with conspiracy and you
7 know, of course, I know a little bit about law, so I would --
8 I would tell him, I was never directly indicted; I was never
9 arraigned for it; how are they able to go forward with
10 conspiracy charge? And I -- and I even asked him, I said,
11 well, wouldn't that be in violation of my due process, of the
12 Fourteenth Amendment, and that's when he said, he decided to
13 argue it, in trial.

14 So him and Mr. Ralph Wilson, both began to argue the --
15 the -- against the conspiracy charge, as whereas the same true
16 bill indictments. If you look, that was around the same time,
17 because I was the one that suggested and I asked about the
18 true bill when it came to an indictment.

19 Q Okay. And did he talk with you about the elements of
20 conspiracy? Once you learned that you had been charged with
21 conspiracy, did you and your attorney talk about the elements
22 of conspiracy and what type of evidence that they would need
23 to prove you guilty of conspiracy? Did y'all talk about it,
24 what that meant?

25 A No, no, we didn't speak about it. The only thing that we

1 speak about in regards to it when they began to argue it and
2 the solicitor, Ed Clemmons, said that -- that, well, this is
3 the least of all the charges, you know, so they have bigger
4 charges to worry about. And what I -- I told -- when I did
5 tell Scott B. Floyd, I said, well, that's not true; they
6 charged me with conspiracy. They -- they going to say that,
7 you know, whatever, all evidence, it doesn't matter who did
8 this, the hands of one, the hands of all, and that's when we
9 got into that particular discussion.

10 Q I got you. And at that particular period of time, you
11 may have already answered this, I don't want to spend a whole
12 lot of time on this --

13 A It's okay.

14 Q -- at that particular of time, and I'm talking about your
15 knowledge -- I'm talking about what your knowledge was at the
16 time that you were sitting there in the court, not what your
17 knowledge is now.

18 A Um-hum.

19 Q Did you have any knowledge of what were the elements of
20 conspiracy?

21 A No, I just know that it was conspiracy.

22 Q Okay.

23 A Um-hum.

24 Q Did you have any knowledge at that particular period of
25 time on what they were alleging that you had done or what

1 specific facts, what they're alleging, that constituted
2 conspiracy?

3 A No.

4 Q Did you talk with your attorney about or at that
5 particular period of time, when you didn't know what
6 conspiracy was and what the elements were, did y'all talk
7 about, hey, maybe we need to have a continuance or make a
8 request or a continuance if we can discuss this stuff and make
9 sure that you understand it?

10 A No, we didn't.

11 Q Now, did y'all talk about y'all's defense -- at any point
12 in time, did y'all talk about what the defense would be
13 against these charges with your attorney?

14 A No.

15 Q I know that you said this at the beginning of your
16 testimony that you told them that you went to a series at a
17 time in which this homicide was committed. I think you told
18 them is is that you went to a series of convenience stores and
19 that sort of thing; do you know whether or not anyone went and
20 checked to those convenience stores, those -- I think CVS and
21 I think a number of other places you said, did your attorneys
22 ever go and check at those places to try to discern about
23 whether or not there was video footage that would place you at
24 a different place --

25 A No. I --

1 Q -- at the time the burglary was committed?

2 A -- I even asked them about that and I asked them -- I
3 told them that he could either -- he could either go -- he
4 could even go and ask my significant other at the time, you
5 know, because the stores that I went to were in Florence
6 County, and they were on Irby Street, and I told them, you
7 know, hey, you can meet -- go and speak to my significant
8 other, and she would tell you, you know? No, he never made
9 contact with her or to my knowledge, he never went to any
10 stores, anything of that nature.

11 Q And of course, there's, I think, one of the other
12 complaints you made was that I think you allege ineffective
13 assistance of counsel, and of course, this is in number 6 of
14 my supplement, and said that trial counsel was ineffective in
15 failing to move to exclude and/or suppress or object to the
16 testimony by Det. Lee and Rouse regarding Shawn Davis'
17 (phonetic) identification of you or pre-trial identification
18 of you from a photo lineup. Was that testimony mentioned at
19 trial that you were identified through a photo lineup?

20 A Yes.

21 Q My understanding is is that your attorney and also, I
22 think, the attorney or your co-defendant, also discussed the
23 fact that you were identified through a photo lineup or by --
24 Shawn Bart (phonetic).

25 A That's correct.

1 Q Did your attorney, prior to him making that
2 determination, prior to him saying, well, strategically, we're
3 going to waive your confrontation -- right to confrontation
4 and allow this information to come in, did you all have a
5 conversation about that? Did he discuss that strategy with
6 you and ask you whether or not it was -- whether or not you
7 had an issue with waiving that confrontation clause right?

8 A No, we never had that conversation.

9 Q Did you know what his strategy at all, did you all
10 discuss that strategy surrounding, at all, in any part,
11 surrounding -- allowing Shawn Bart's out-of-court statements
12 to be mentioned in the trial? Did y'all discuss that at all?

13 A No.

14 Q Would you had consented to that had y'all discussed it?

15 A No.

16 Q Why wouldn't you? If he told you that, hey, this is the
17 strategy, I think this strategy is best for you, why wouldn't
18 you have accepted that?

19 A Why wouldn't I have accepted him just allowing Det. Lee
20 and Neil Rouse to --

21 Q Yeah, why wouldn't have allowed --

22 A Because I would --

23 Q -- why wouldn't you have agreed to allow him to pursue
24 that strategy if he thought that that strategy was within your
25 best interest?

1 A Well, I would've thought the -- the best thing to do if
2 he was going to do that is to allow the individual to come in
3 and say that themselves, you know, to him to go in court and
4 not allow someone else to say it because he -- he could -- he
5 could've got up there and said anything.

6 Q Okay. Now, I think one of the -- number 7 in our
7 supplement was you said that trial counsel was ineffective,
8 and I'm just going to ask you this briefly; you don't need to
9 get into the law. I think you said trial counsel was
10 ineffective on where the jury was instructed that malice --
11 that the malice element of murder could be inferred from the
12 conduct that showing a -- can be referred (sic) from conduct
13 that showed a total disregard for human life. Did y'all
14 discuss -- did he discuss with you -- I think I already know
15 the answer to this, but just for the record, did he discuss
16 with you that trial charge --

17 A No.

18 Q -- of malice?

19 A No, he didn't.

20 Q Okay. Okay. So you never talked about that, hey -- so
21 y'all never had a conversation about the judge's instructions
22 of what malice was? So y'all never had a conversation about
23 that?

24 A No.

25 Q Okay. And the reason why I am asking you that is

1 technically is is that you didn't waive -- I know this is kind
2 of silly, but you didn't waive any right that you had to have
3 the jury be charged with the appropriate law, did you not?

4 A No.

5 Q Okay. And I don't want to get into asking you an open-
6 ended question, but just in case is, is that is there anything
7 else that I did not ask you about the PCR issues that you
8 filed that you think is appropriate for the Court to know?

9 A You know what I -- actually, what I was kind of stuck on
10 you was the question you just asked me before the last one,
11 you said why I wouldn't -- you know, I wanted -- why wouldn't
12 I have allowed the testimony. I believe that what was the --
13 Det. James Lee and Neil Ross?

14 Q Yes, that's right.

15 A Can you -- so is that -- that previous question you was
16 asking me, were you asking me why wouldn't I have allowed
17 their testimony without Shawn Bart there? What -- what are
18 you -- what was you like asking?

19 Q I guess whether or not why wouldn't you have agreed with
20 the attorneys or why wouldn't you have agreed with the
21 attorney's strategy, I guess waive your right to
22 confrontation, if he told you that he thought that was within
23 your best interest?

24 A Right, and by that being in my best interest, you mean
25 bringing Shawn Davis back or allowing that testimony --

1 Q I mean --

2 A -- from Det. Lee and Neil Rouse?

3 Q Yeah, I don't want to get too bogged down in this. I'll
4 try to reask it.

5 A No, I'm -- I'm just trying to --

6 Q Yeah, that's all right. Basically is, is it that if he
7 told you that, hey, waiving your confrontation clause right is
8 within your best interest, why wouldn't you have accepted
9 that?

10 A Oh, okay. Well, my -- my answer still says the same,
11 that I would've wanted the individual to come over there and
12 say it theirselves (sic), and the only reason why I say that is
13 because in my Rule 5, I -- I saw it was -- I guess it was
14 something of the nature of like a statement but not -- not a
15 official statement where they just question him and he -- and
16 then a statement where he gave another individual name and
17 then he -- he didn't say that, that he had you know, picked me
18 out of a lineup the first time. He actually said he didn't
19 know who it was. So I -- I would not have waived that; I
20 would have want -- you know, I would have preferred him to
21 come up here, you know, versus allowing the testimony from the
22 two officers.

23 Q Is that because that you thought that he had a -- there
24 was enough in your discovery where he could've been challenged
25 on credibility?

1 A Yes.

2 Q Yes.

3 A Um-hum.

4 Q About the identification.

5 A Right.

6 MR. BROOKER: Okay. If you can indulge me for just a
7 second, Your Honor, let me make sure that I don't think any
8 follow-up --

9 Q And that is the only -- that's the only thing that you
10 want to mention in reference to any of the issues that you
11 raised on appeal that we went over?

12 A Right.

13 Q Let me ask you just one more thing, and I'm about
14 finished, and I want to ask you about trial counsel. And that
15 is is that your trial counsel, I think in this particular
16 case, filed a motion -- excuse me, I mean, I think prepared
17 a -- an Anders brief for you, and I think in that Anders
18 brief, I think there was only one issue that was mentioned.
19 Did you and your trial counsel ever talk about, or did you
20 ever confer with trial counsel prior to your trial counsel
21 filing a brief on your behalf?

22 A Trial counsel or appellate counsel?

23 Q Excuse me, I meant appellate counsel. I apologize.

24 A No, I never spoke to the appellate counsel at all.

25 Q Okay. And my understanding is is that he filed an Anders

1 brief. Do you know what an Anders brief is?

2 A Yes, at -- now, I do, you know. So now, I do. I know
3 that it's -- it's just a brief stating that there was no -- no
4 merits as it relates to being on direct appeal.

5 Q Okay. And -- and I think the -- the only issue that was
6 raised in that Anders brief, you correct me if I am wrong, if
7 you can remember, was the trial court's denial of your
8 attorney's motion to squash -- or to squash or either dismiss
9 the portion of the indictment on the issue of conspiracy on the
10 grounds that you had never actually been served or prevented
11 (sic) with notice of conspiracy; is that correct?

12 A That is correct.

13 Q Okay. Did y'all talk about any other motions, let's say
14 for instance, the motion that was made at trial by the trial
15 counsel and that motion was to suppress or -- suppress the
16 testimony of James Lee, Det. Lee, in reference to any
17 identification that he could make from the video. Did he ever
18 talk with you about that and say this is the reason why I am
19 going to appeal that issue; did y'all ever have that
20 conversation?

21 A No, nuh-uh.

22 Q Would you have wanted him to appeal that issue, so that
23 the Court of Appeals could determine whether or not trial
24 counsel's ruling on this -- the trial court's ruling on that
25 was actually correct?

1 A Well, absolutely, if I know at the time that I could do
2 that or that - that that was a issue that could be raised at
3 direct appeal, you know. I know now but at the time, I
4 didn't, so I would have wanted him to, of course, I would've.

5 Q Okay. Okay.

6 MR. BROOKER: I don't think I have any further questions,
7 Your Honor, for Mr. Woods.

8 THE COURT: All right. (Indiscernible), sir.

9 MR. BROOKER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FARTHING:

12 Q Good afternoon, Your Honor. I've got a couple of
13 questions for you.

14 MR. FARTHING: Your Honor, may I approach first?

15 THE COURT: Yes, sir.

16 MR. FARTHING: I'm going to hand him a copy of the
17 transcript he asked for.

18 THE COURT: Yes, sir.

19 Q This is the transcription of that November hearing. I'm
20 going to ask you a couple of questions about it in a minute
21 but not -- let me ask you a couple of stuff unrelated to that
22 first.

23 The first thing I want to talk to you about is the
24 charges. So before the first day of the trial, what was your
25 understanding on what you were charged with?

1 A Murder, attempted murder, armed robbery, first degree
2 burglary and possession of a weapon.

3 Q Did you know you had been indicted for those?

4 A No, I just know that in my Rule 5, I had arrest warrants
5 for those.

6 Q So you never saw an indictment at any point in time ever
7 in this case, never saw the -- a paper copy of it?

8 A I saw one, I believe like the week of trial where we
9 started questioning things and then it had everything that I
10 had, and then again after I got my -- my Rule 5, sent to me
11 over, you know, during the appeal process and things.

12 Q Okay. And you know in this case, it was one indictment,
13 right for all the charges, right? It's a six-count indictment
14 for one -- or one indictment with all six charges and one
15 indictment, right?

16 A Well, yes, I do understand that but if you -- if you look
17 at the Rule 5 and when -- when I actually got it, it only
18 listed the five charges, so I got the Rule 5 during 2013 of
19 March, and so conspiracy wasn't in the Rule 5.

20 Q Right, you're talking about the arrest warrants, right?

21 A No, I'm speaking about the Rule 5 in its totality.

22 Q Right, the discovery.

23 A So --

24 Q But the indictment itself, there was never a five-count
25 indictment that was replaced with a six-count indictment, was

1 there?

2 A Well, the -- I only saw one, so I didn't see multiple
3 indictments, and again, there was only -- only five charges
4 during my whole Rule 5 discovery.

5 Q Right but there's only one indictment in this case, and
6 it's a six-count indictment that issued in May of 2013, right?

7 A Well, if you say that's the -- that's the one that I saw,
8 so --

9 Q Okay. So at the outset of your trial, right at the very
10 beginning, did you hear the solicitor call the case?

11 A At the beginning?

12 Q Yes, sir.

13 A Yes, as he always do.

14 Q What happened after that? Did the trial judge read the
15 indictment?

16 A I can't recall. I don't --

17 Q Let me call your attention --

18 MR. FARTHING: Your Honor, may I approach again?

19 THE COURT: Yes, sir.

20 Q This is the first half of the trial transcript. Take a
21 look right here at pages 12 through 14. Does that appear to
22 be --

23 THE WITNESS: Sorry about that, Your Honor.

24 Q -- the trial judge reading the indictment in its totality
25 there?

1 A Okay. So you say, where do you want me to start?

2 Q Start the very bottom of that page 12. You can read it
3 out, if you want.

4 A Page 12 at the bottom?

5 Q Yeah, where the judge --

6 A Okay.

7 Q -- starts talking?

8 A The court -- okay.

9 "All right. Ladies and gentlemen, the State has called
10 the case, the State of South Carolina v. Marco Sanders and
11 Tyrell Woods. Marco Sanders and Mr. Woods have been charged
12 in the six-count indictment with the offense of murder, armed
13 robbery, burglary first degree, attempted murder, possession
14 of a weapon, and commission of a violent crime and
15 conspiracy."

16 Q You can keep on going if you want.

17 A Okay. How far along do you want me to go?

18 Q Just read through the indictment, if you don't mind.

19 A The entire indictment?

20 Q Yeah, if you don't mind. I mean, you don't have to read
21 it on the record if you don't want, but can you just confirm
22 for me that looks like the judge reading the indictment?

23 A Oh, okay. Okay. Well, of course, it's right here in
24 the --

25 Q Right. And it keeps going all the way through the

1 conspiracy charge?

2 A Yeah, it's -- it --

3 Q So he read all of the indictments on the record.

4 A Yes, he read them all. I'm not disputing that. I'm just
5 saying that I --

6 Q No, no, I'm with you. I'm with you.

7 A -- I never received it.

8 Q So had you known about the conspiracy -- I'm just asking
9 you the hypothetical, if you had known about the conspiracy
10 charge -- well, let me ask you this first. How did you plead
11 to these charges?

12 A Not guilty.

13 Q Did you ever have any interest in pleading guilty to
14 them?

15 A No.

16 Q Never even thought about negotiating with the solicitor
17 on a lesser offense or anything?

18 A No. And there -- there -- I mean, there was a time where
19 the -- where trial counsel came to me and said that, you know,
20 that he'll be willing to offer me 30 years if I had, and I
21 told him that didn't make sense.

22 Q And so had you known about this -- you know, I understand
23 what you're saying about your knowledge of the conspiracy,
24 what would you have pled to the conspiracy if you had known
25 about it, let's say the very day the grand jury had turned

1 that indictment, what would your plea to that offense have
2 been?

3 A Well, it would -- of course it would have been not
4 guilty, but the thing is is, you -- you pretty much can't beat
5 conspiracy if you know it -- it places the burden on you to
6 prove that you -- you did conspire, so that's a hard thing to
7 go against conspiracy.

8 Q Right. Let me ask you, so you talked about -- you've
9 seen the Rule 5 discovery and everything.

10 A Um-hum.

11 Q And I think you said you reviewed the surveillance
12 footage with defense counsel.

13 A That's correct.

14 Q And you saw the fingerprint evidence or understood there
15 was fingerprint evidence?

16 A That's correct.

17 Q And did he talk about any of the witness statements and
18 everything with you?

19 A As it relates to?

20 Q The statements that we had in the file like, you know,
21 from LaVerne Nicholas (phonetic) and Mr. Godbold and things
22 like that?

23 A Oh, yes, he did.

24 Q Based on that discovery, based on the indictment, were
25 you -- did you have any confusion at all who the State was

1 alleging you were -- you had murdered?

2 A Alleging? You mean, as far as prior to --

3 Q Yeah, were you confused about what we were saying you
4 did?

5 A Oh, no.

6 Q You understood where the offenses were alleged to have
7 taken place?

8 A Well, I -- I understood, you know, where -- where they
9 say that it happened, it had a particular, you know,
10 establishment, but I don't --

11 Q Yeah, I'm not saying that you've ever been there. I'm
12 just saying you understood that we were saying, you know,
13 these were crimes in Marion County and occurred at the
14 victim's house?

15 A In Marion, yeah.

16 Q Right. And so there's no question in your mind well
17 before we got into this trial that you were being alleged to
18 have committed a crime in Marion County?

19 A Marion -- well, yeah --

20 Q Yeah.

21 A -- I suppose.

22 Q And Marion County of this state, right?

23 A Marion County.

24 Q Yeah.

25 A Um-huh.

1 Q Yeah, Marion County, South Carolina.

2 A Well, Marion County.

3 Q Yeah, that's where you're from, right? I'm not talking
4 about now, but --

5 A Yeah, well, I'm -- I'm from Marion County.

6 Q Right. Have you ever been to another Marion County in
7 any other state?

8 A Well, honestly, yes, I have.

9 Q Which one?

10 A Ohio.

11 Q Oh. So but you knew that you're being charged with a
12 crime in Marion County, South Carolina, not Marion County,
13 Ohio here, right?

14 A Well, I knew that I was being charged with a count --
15 crime.

16 Q Yeah, I'm not trying to be funny. I'm just asking.

17 A All right. Yeah.

18 Q Yeah. So you understood it was South Carolina charges.

19 A Well, I understood it was Marion County.

20 Q Yeah, got you. And the first-degree burglary count of
21 this indictment even specifically identified Mr. Rowell's
22 address, right?

23 A Yes.

24 Q Okay. Let me ask you this, if you had gotten an arrest
25 warrant on that conspiracy charge, would you have done

1 anything differently?

2 A Well, that's hard to say, yeah.

3 Q I understand.

4 A But that's hard to say.

5 Q There's nothing off the top of your head that you would
6 immediately have done or anything like that? I mean, and I
7 guess this goes back to my earlier question, there's no doubt
8 in your mind, at least, if you had seen the conspiracy arrest
9 warrant, you wouldn't have said, okay, I'm pleading guilty.

10 A I -- well, one thing that I can -- I don't know how to
11 refer to you, but one thing I can say is that conspiracy
12 and -- and the caliber of charges that it was, knowing how
13 it -- how hard conspiracy is and your chances with the State,
14 I -- I would make individuals plead guilty to charges that
15 weren't there, so --

16 Q Right.

17 A -- there's no telling again.

18 Q You know, though, you understood that we can pursue a
19 hand to one, hand of all theory whether you've got a
20 conspiracy indictment or not, right? Because we can pursue to
21 a hand to one, hand of all for murder with or without a
22 conspiracy.

23 A Well, I'm -- I'm not aware of that. I know that the
24 State was alleging accomplice liability --

25 Q Right.

1 A -- and therefore, the, you know, conspiracy was
2 instrumental in -- when you're claiming such a -- a issue.

3 Q I understand. Thank you.

4 A Um-hum.

5 Q Just a couple of more. I want to ask you -- let me talk
6 about appellate counsel. So you never spoke ever with David
7 Alexander from appellate defense?

8 A No, not that I recall. No.

9 Q Did you ever write him any letters?

10 A I don't recall. I have my folder over there but I -- I
11 know I -- I wrote -- I think I probably have. I know I wrote
12 Scott Floyd before trial. I know I wrote several people. So
13 he may have been one of the ones that I wrote.

14 Q Did he ever write you back?

15 A No.

16 Q Did you ever try to communicate through him -- with him
17 through any family members or anything like that?

18 A No, but I definitely tried -- when you -- when you
19 become -- like, when you're assigned to a public counsel,
20 there's a number that you can call, directly out from the
21 prison or -- and I would try the -- I tried that way several
22 times.

23 Q You just didn't get through. So you know you filed an
24 Anders brief. What did you do after that? Did you file your
25 own brief?

1 A Pretty -- pretty much and --

2 Q And so he raised the issue to the appellate court with
3 his Anders brief related to the indictment, and you filed your
4 own pro se brief, and then the Court of Appeals considered
5 both of those things and then dismissed the appeal?

6 A Yes, at the time, you know, I wasn't too keen on law, you
7 know? So I was just desperately trying to --

8 Q Right. But you called some attention --

9 A -- ongoing --

10 Q -- you called the Court of Appeals' attention to a couple
11 of different issues through your pro se brief?

12 A I mean, yeah.

13 Q All right. Let me back up a little bit and this is the
14 transcript there, on November 1, the little skinny one. I
15 know you talked about that a little bit on direct. Prior to
16 that day, November of 2012, had the police ever taken your
17 fingerprints before?

18 A Yes, so they took him -- well, you know, anytime that you
19 are arrested or you go from one agency to another, they do
20 take your prints.

21 Q Right. So you've had your fingerprints taken a decent
22 amount of times, right?

23 A Right.

24 Q When did your first, I guess, charge and we can go back
25 to juvenile, when did you have your first juvenile

1 adjudication?

2 A Well, I think it was --

3 Q 2004 sound right?

4 A Yeah, 2004, is one of them.

5 Q Yeah, and you had -- at least based on -- and I'm only
6 going with what we got in the trial transcript, at the end
7 when the solicitor was talking but -- so between 2004 and
8 2008, does seven juvenile adjudications, something like that,
9 sound about right or --

10 A Well --

11 Q -- seven different charges?

12 A Well, it -- it actually depends on what you're saying.
13 So you're saying 2004, that I actually had a charge, and it
14 wasn't that it was -- actually, if I remember, I think it was
15 saying, like, ongoing a child life --

16 Q Right.

17 A -- you know, with a mother --

18 Q Yeah.

19 A -- whatever. So at -- at that time, I actually got --
20 since that you asked me about it, my -- my siblings and I
21 don't have the same father. You know, my mom -- well, have
22 been with their father since I was four years of age and --
23 and so you know, I -- I told my mom that I didn't agree with
24 the way that he had punished me, you know and he put his hands
25 on me. And so we -- we got into a argument and -- and things

1 where -- where I left and my mom called the police because I
2 left the house during that time.

3 Q Got you. And there was -- in addition to that, there was
4 a 2008 second degree burglary conviction and that was in
5 general sessions.

6 A Yeah, that --

7 Q That's the one that's got the YOA sentence.

8 A Yes, that's correct.

9 Q So based on that record, I was just talking about, you've
10 met a lot of police officers over the years.

11 A Well, I wouldn't say a lot but --

12 Q Some, right?

13 A Of course, we've all met some --

14 Q Right.

15 A -- whether we be in anybody -- any trouble or not --

16 Q Do you --

17 A -- we all met some.

18 Q Do you remember all of them that you've ever met?

19 A Yes, I would -- I would think so.

20 Q So you think -- like, you could name every police officer
21 you've met, remember them by face and name and all those
22 things?

23 A I -- because I haven't been in that contact with them.

24 Q Sure, so -- and let me phrase it this way, so even brief
25 meetings with police officers, you're able to remember them

1 where you would be able to see them in the light or so, even
2 if you haven't met them a bunch of times --

3 A I can't --

4 Q -- you're saying you could do that?

5 A I can't say that. I'm just saying the ones that I've had
6 constant, you know --

7 Q Okay.

8 A -- what I mean --

9 Q So constant. I got you now.

10 A A lot, yeah.

11 Q So if you only had brief contact then with Det. Lee, you
12 know, you're indicating you don't remember having any contact,
13 it is possible you had contact with him and just didn't know
14 it --

15 A No, because --

16 Q -- because you don't remember him?

17 A No, and I -- the reason why I say no with that is because
18 I would have, you know, the way that he's saying that he -- he
19 knows that he -- that he saw me, I would have remembered that
20 because there was a contact. You know, there -- it was
21 contact. You said you saw me in the sheriff's office, while I
22 was going through something like this right there, so would
23 be -- that would not be in a brief encounter, that would be
24 something I would clearly remember due to the circumstances.

25 Q Got you. I know you, on direct, expressed a little

1 skepticism about them having your prints already at the time
2 of this November 2012 hearing. Will you go to page 6 of that
3 transcript, it's got a 776 at the top because this is part of
4 the -- it was originally part of the record on appeal, so it's
5 got two numbers, but it will be 776 and then the little, tiny
6 6 on the top right corner.

7 A Oh, okay.

8 Q Can you just read out to me the very last, starting on
9 line 18, where it says, "The defendant". Can you read out to
10 me what you said there?

11 A Yeah, so I would give them -- I would volunteer if they
12 could give them electronically.

13 Q No, I'm talking about start with line 18.

14 A "I don't have a problem with giving my fingerprints, I
15 just ask that they -- if they take them, if they do have to
16 take them, could it be electronically taken instead of putting
17 them on paper because I do understand that you can be lifted
18 and I do believe that they already have enough in the system
19 for them instead of getting them on paper, so I would give
20 them -- I would volunteer if they could give them
21 electronically."

22 Q Got you. And so you knew at that point in time, they
23 already had your fingerprints and --

24 A No, that's not -- what I am saying is they had them in
25 the system --

1 Q Right, right.

2 A -- so they tell --

3 Q They had your fingerprints in the system. Law
4 enforcement had your fingerprints in the system, based on what
5 we were talking about with all those times your fingerprints
6 had been taken over the years?

7 A Right, in the system.

8 Q Got you.

9 A Right.

10 Q Yeah, that's all I'm asking. It's not a trick.

11 MR. FARTHING: One moment, Your Honor.

12 THE COURT: Yes, sir.

13 Q Sorry, there is one really quick thing I forgot about.
14 So just very briefly on Shawn Davis, what did -- I'm asking
15 about the testimony that came out during trial. From your
16 understanding, what did Det. Lee and Det. Rouse say regarding
17 the identification? What did they say he identified you as?

18 A They -- they said, like, you identify me, why don't they
19 just, you know, identify me out of the lineup.

20 Q Right, identified you out of the lineup, but there
21 weren't any other -- there were no other details given about
22 him identifying you from the lineup as a person he saw going
23 to the victim's house or standing in the victim's area with a
24 gun, nothing like that, right?

25 A Well, yes, because Det. Lee said that's what he based

1 his -- his arrest warrant --

2 Q Right. He followed --

3 A -- off of.

4 Q So a question was asked to him about whether he showed an
5 arrest warrant to Shawn Davis, and he said -- I mean, excuse
6 me, not arrest warrant, the photo lineups to Shawn Davis, and
7 then after he did it, he went and got the arrest warrants.

8 A Right, so --

9 Q But --

10 A -- he -- he identified me as one of the suspects.

11 Q Well, no, he never said he identified you as one of the
12 suspects. He said, I showed him the photo lineups, and as a
13 result of doing that, I got the arrest warrants, right?

14 A No, no.

15 Q Well, we'll get that with the transcript.

16 A All right.

17 MR. FARTHING: I don't think I have any further
18 questions. Thank you, Your Honor.

19 THE COURT: You're welcome.

20 MR. BROOKER: I'll just be very brief, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BROOKER:

23 Q I think when you were asked to look at, I think, page --
24 I think 776 of the transcript --

25 A Um-hum.

1 Q -- of the -- I think it's the transcript of the Schmerber
2 hearing and line 18, where you said, I don't have no prob --
3 "I don't have a problem giving up my fingerprints." That's
4 what it says.

5 A Yes.

6 Q Okay. But prior to that, if you could go up to line 6 on
7 that same page --

8 A So -- all right, do you want me to read that?

9 Q Yeah, what did the Court say prior to you saying that?

10 A The Court said, "All right. I'm going to go ahead and
11 order that he give over his prints." That's why I made the
12 statement I made because they had already ordered me to give
13 them up.

14 Q Okay. So you were just complying -- you were complying
15 with the judge's -- the order that the judge had already
16 gave --

17 A That's correct.

18 Q -- as to those fingerprints?

19 A That's correct.

20 Q This wasn't some sort of voluntary admission --

21 A No.

22 Q -- by you, was it not?

23 A Nuh-uh.

24 Q And with respect to Mr. Shawn, I think it was Shawn
25 Davis, did Shawn Davis allege in this photo lineup that he saw

1 you with a gun on that day, the day of the shooting?

2 A Yes, he alleged that I was one of the suspects.

3 Q Okay. And that you had a gun on -- that he saw you with
4 a gun on that day of that shooting?

5 A Yes.

6 Q Okay. And just to clear up the issue with respect to the
7 indictment, and I think this will be the last question, I
8 think you were asked on the cross-examination about the
9 indictment, about whether or not you ever received the five-
10 page -- excuse me -- a five-count indictment versus a six-
11 count indictment. Did you ever receive an indictment at all?

12 A No, I just saw it the week of trial.

13 Q You just saw it the week of the trial?

14 A Um-hum.

15 Q But for five of those charges in the indictment you had
16 received a -- you had received once before.

17 A That is correct.

18 Q So you were familiar with those charges.

19 A Yes.

20 Q Just didn't know about the conspiracy one.

21 A That's correct.

22 Q Okay.

23 MR. BROOKER: No further questions, Your Honor.

24 THE COURT: Mr. Farthing?

25 MR. FARTHING: Just very brief follow-up.

1 THE COURT: Yes, sir.

2 RE-CROSS-EXAMINATION

3 BY MR. FARTHING:

4 Q So you understood then that Shawn Davis' statement, his
5 out-of-court statement was that he saw you with a gun, right?

6 A Yes, at -- well, the second time that he was --

7 Q Right, right but he had made an out-of-court statement
8 that he saw you with a gun.

9 A Well, I don't -- well, by out-of-court, you mean when he
10 spoke with Det. Lee or --

11 Q What --

12 A -- the (indiscernible)?

13 Q -- what Mr. Brooker just asked you about, that Shawn
14 Davis saw you with a gun.

15 A Well, that's what he told Det. Lee to my understanding.

16 Q Did that testimony about that statement come out during
17 trial?

18 A No, I just think that he testified that I -- that I was a
19 suspect.

20 Q That's right, yes.

21 A A suspect.

22 Q Well, I don't know about suspect, but yeah.

23 A Yes.

24 Q Shawn -- no testimony was elicited about Shawn Davis
25 telling Det. Lee or Det. Rouse he saw you with a gun; that

1 didn't come out.

2 A I don't recall.

3 Q Okay. But if he had gotten on the stand, though, it
4 might've, right?

5 A Well, there's no telling what would've came out
6 because -- which is why I say I don't know because he told two
7 different statements and he gave two different individual
8 names.

9 Q But you weren't aware, though, in South Carolina, if
10 somebody got on the stand and he said something completely
11 different to what he said out of court, we can impeach him
12 with the prior inconsistent statement, right?

13 A Yes, I'm aware of that.

14 Q Yeah, so we would've been able to get that statement and
15 even if he testified to something totally different --

16 A Well, that --

17 Q -- right.

18 A -- probably would've went in my favor. What I'm saying
19 is that he gave before the -- the testimony that you're
20 speaking about, he gave one before that saying he didn't know
21 who the individuals was and gave a description of the
22 individual and a name, and then the second time, he named me
23 as a suspect. So that's what I'm speaking about. So if you
24 guys would've done that, that probably would have been in my
25 favor.

1 Q All right. I understand.

2 MR. FARTHING: Thank you very much. No further
3 questions.

4 MR. BROOKER: Nothing else, Your Honor.

5 THE COURT: Thank you, sir. You may step down.

6 THE WITNESS: All right. Thank you, Your Honor.

7 THE COURT: Mr. Brooker?

8 MR. FARTHING: Your Honor, do you mind if you go retrieve
9 my transcript from up there?

10 THE COURT: Oh, that's fine, sure.

11 MR. FARTHING: Thank you.

12 THE WITNESS: I'm not sure I left it.

13 MR. BROOKER: I guess the final witness, Your Honor, is
14 going to be --

15 THE WITNESS: I have it.

16 MR. FARTHING: You can keep that. That's okay. Thank
17 you.

18 MR. BROOKER: -- David Alexander.

19 THE COURT: Okay. All right, sir.

20 THE DEPUTY CLERK: Can you hear us fine, Mr. Alexander?

21 MR. ALEXANDER: Yes, I can.

22 Can the Court hear me?

23 THE COURT: Yes, sir.

24 MR. FARTHING: Your Honor, do you mind if I scoot up
25 here, just to be able to hear a little bit better?

1 THE COURT: That's fine.

2 Mr. Brooker, you can too, if you want to.

3 MR. BROOKER: Yes, sir.

4 MR. ALEXANDER: I've been able to hear Mr. Farthing very
5 well, but Mr. Brooker seems to cut in and out sometimes.

6 THE COURT: All right. Thank you.

7 MR. FARTHING: I think he's implying that I talk too
8 loud.

9 MR. ALEXANDER: And too fast.

10 THE COURT: Is she over there?

11 THE DEPUTY CLERK: Yeah, (indiscernible) swear him in?

12 THE COURT: Swear him in.

13 DAVID ALEXANDER, after being duly sworn, testified
14 as follows:

15 THE COURT: All right. Proceed, sir.

16 DIRECT EXAMINATION

17 BY MR. BROOKER:

18 Q Mr. Alexander, were you the appellate counsel for Mr.
19 Woods in connection with the case that's relevant to this PCR
20 hearing?

21 A Yes.

22 Q Okay. And I'm assuming is is that once you became his
23 appellate counsel, that at some point in time, I'm assuming
24 you do what, I guess, most attorneys do and that is, get the
25 transcript of the record?

1 A Yes.

2 Q Okay. And I'm assuming that you get everything that you
3 need in order to prepare and so that you can file the
4 necessary briefs in connection with the appeal --

5 A Yes.

6 Q -- and so that you can -- I'm sorry, go ahead.

7 A Yes.

8 Q And also, so that you can discern what appealable issues
9 may exist.

10 A That's correct.

11 Q Okay. So I am assuming that you read the transcript in
12 Mr. Woods' case.

13 A I did.

14 Q And my understanding is, is that, and I'm pretty sure you
15 know this better than I do, is is that in order for you to
16 raise an appeal, and often you appeal an issue, is that that
17 issue must've first been raised and preserved at the trial
18 level.

19 A Normally, that's correct, yes.

20 Q Okay. So yeah, normally, that's correct. So normally,
21 you're limited to what trial counsel raised and of course,
22 preserved.

23 A Normally, yes.

24 Q Okay. Now, I noticed that at least there was one issue
25 that was raised and preserved, and if my memory serves me

1 correctly, that Mr. Woods' trial counsel joined in a motion to
2 suppress an in-court -- to suppress an out-of-court
3 identification of Mr. Woods from a video surveillance tape
4 that was taken at the crime scene by Det. Lee.

5 A He did.

6 Q Okay. All right. And of course, when you read that
7 transcript, do you remember that in that transcript, when Det.
8 Lee discussed his interactions with or his prior meetings with
9 Mr. Woods --

10 A I don't recall.

11 Q -- prior to him --

12 A I read it but I don't recall it.

13 Q Okay.

14 A If you want to direct me to the spot in the transcript,
15 I'm happy to look at it.

16 Q I'm sorry. I didn't hear you. I'm sorry, Mr. Alexander.

17 A I don't recall that specific testimony here today. I
18 certainly read it. If you want me to look at that part of the
19 transcript, I'm happy to go there.

20 Q Okay. Okay. Well, let me ask you at least a question
21 that's in reference to that, is that it's my understanding is
22 that when the Court is making a determination as to whether or
23 not that evidence is admissible, basically, the Court refers
24 to Rule 7 or I think it's 701, that deals with what a
25 nonexpert can testify to.

1 A Well, the case law in the appellate courts analyzes that
2 under 701 and 403, but I mean, the trial court is going to go
3 whatever objection the trial lawyer raises.

4 Q Okay. Okay. And I think what the law is is that if the
5 law that's identified, I think in State v. Flip, is is that if
6 the Court takes a look at whether or not whenever a witness is
7 making an identification from a video, like in this particular
8 situation, they're trying to determine whether or not that
9 person has a rational basis in which to --

10 MR. BROOKER: Scratch that question. I want to make sure
11 that I say this correctly.

12 Q The Court is trying to make sure that the witness, when
13 he testifies to an identification from a video, specifically a
14 witness that was not an eyewitness and he is simply making an
15 identification from a video or either from a picture, the
16 Court is trying to determine whether or not that person has
17 some sort of prior knowledge on -- that he can base that
18 perception on.

19 A I think that's part of the Court's analysis, yes.

20 Q Okay. And the course of this is that normally in trying
21 to determine whether or not that person has some sort of prior
22 knowledge to base that perception on, is that normally you're
23 looking back at, you know, how many opportunities or that the
24 witness had to perceive that particular person in the past.

25 A That would certainly be something you would explore.

1 Q Okay. Do you remember in the transcript, Mr. Woods, or
2 at least Det. Lee, testified that he met Mr. Woods, I think,
3 on one prior occasion, physically met Mr. Woods on one prior
4 occasion back in 2007?

5 A I don't specifically remember that, but if you want to
6 direct me to the spot in the transcript, I'm happy to look at
7 it.

8 Q Okay.

9 MR. BROOKER: I'm happy to grab it, Your Honor.

10 THE COURT: Sure.

11 MR. FARTHING: We'll -- the State will agree that that is
12 in the transcript, so let's --

13 MR. BROOKER: That's fine.

14 MR. FARTHING: Yeah, I 100 percent agree with you, that's
15 in there.

16 MR. BROOKER: Okay. I've got --

17 Q So if the Det. Lee stated that his -- that he had one
18 sole physical contact on which the witness or with Mr. Woods
19 about five years before he made his identification, I'm not
20 asking you to say is it that whether or not that meets the
21 standard, but do you think that that creates a legitimate
22 issue?

23 A I think that creates an issue for the trial judge to rule
24 upon. An appeal, what you're dealing with is the standard of
25 review and that to me, that decided this, along with Mitchell

1 (phonetic) and Tripp (phonetic). My memory of the issue is
2 that the objections really went to the weight of the testimony
3 and not its admissibility, and I didn't see it as a viable
4 appellate issue.

5 Q Okay. Now -- and I know you say is is that it's an issue
6 for the trial judge, but of course, whenever a trial judge
7 makes an issue with respect to the admissibility of evidence,
8 that that issue is reviewable on appeal based upon an abuse of
9 discretion standard.

10 A Well, it depends on the specific issue but yes, I think
11 in this case it would be an abuse of discretion standard.

12 Q So the Court of Appeals would determine whether or not
13 when the judge says that, hey, Det. Lee had sufficient enough
14 information to base his perception on who that person was on
15 the video, the trial court or -- excuse me, the appellate
16 court would determine whether or not the trial judge had
17 sufficient enough information to make that basis or whether or
18 not they believe that the trial court abused its discretion
19 and there was insufficient evidence for the trial court to
20 make that determination or draw that conclusion.

21 A I think you've stated what the appellate court would
22 examine correctly, yes.

23 Q Okay. Okay. Oh, good. And the only thing I'm asking
24 you is, and I don't say whether or not the trial court
25 would've ruled one way or the other, but would you agree with

1 me is is that in a situation where Mr. Rouse or at least Mr.
2 Neil (sic), said that he had one, I think, physical meeting
3 with Mr. Woods, and that was five years ago, and he was 14
4 years old, I think he was a juvenile at the time, there was no
5 testimony with respect to whether or not that meeting was one
6 week -- excuse me, whether or not that one encounter, physical
7 encounter, was one minute, one hour, or one second.

8 Now, would you agree with me at least, there is a --
9 there is at least a debatable issue as to whether or not there
10 was enough information there -- there was enough evidence
11 there in which the judge could make a -- draw a conclusion
12 that Mr. Rouse's identification was rationally based upon
13 previous perceptions that he had?

14 A I think the trial judge could've made that ruling based
15 on his opportunity to observe the witnesses, but he did not
16 make that ruling.

17 Q Absolutely. I know. And you're right; he didn't make
18 that ruling. The only thing I'm trying to figure out -- ask
19 you is, is that was that, or was that an appealable issue?

20 A I could have raised it because it was preserved, if
21 that's what you're asking me, but in my judgment, it was not
22 an issue that had any merit.

23 Q Okay. Did you talk with Mr. Woods at any point in time
24 in reference to what issues you would raise?

25 A I don't recall that.

1 Q Now, you did raise one issue, I believe, and of course,
2 that issue I think that was -- if my memory serves me
3 correctly, let me see, my memory is not that good, I think you
4 raised the issue of -- if you could indulge me for just a
5 second, let me get the Anders brief, just so I can look at the
6 Anders brief.

7 MR. BROOKER: That's it. Thank you, sir.

8 Q I think you raised the issue regarding the indictment; is
9 that correct?

10 A That's correct.

11 Q And I think specifically, the issue was whether or not
12 I'm -- the issue surrounded whether or not the Court could
13 proceed, I think with the conspiracy charge because Mr. Woods
14 had never been initially served with warrants for conspiracy,
15 and then later on when there was a direct indictment for
16 conspiracy, he had never been served the direct indictment.

17 A That was the issue that I raised in the Anders brief,
18 yes.

19 Q Okay. And to your understanding, do you know when -- do
20 you remember Mr. Woods first learned of his indictment for
21 conspiracy?

22 A My memory of the record, and I knew I was prepared to
23 testify about this because I knew you had brought this issue,
24 was that the State never really said that they had served him
25 with it, they never really disputed that fact. The attorneys

1 said they had gotten it, and -- but I don't think that fact
2 was really disputed by the solicitors in this case.

3 Q Okay. Okay. And is that a legitimate issue as to
4 whether or not the State could go forth on the conspiracy
5 issue if the defendant has never received notice of that
6 particular charge?

7 A Well, there wasn't much of an argument made about that
8 below specifically, but what I was able to dig up didn't
9 really support filing a meritorious issue on this. I made the
10 best argument I could based on that older case, the pre-Gentry
11 case. I'm looking through my brief. State v. Green. There
12 was another case that came out after that, Magazine v. State
13 that I think really -- especially after Gentry, and there's
14 also the case that says someone who is getting an LWOP notice,
15 service on attorney is good; I didn't think it was a viable
16 issue. I made the best argument I could and let the Court of
17 Appeals examine it under the Anders procedure.

18 Q Okay. But when you filed it under the Anders procedure,
19 do you think that is sending a signal to the Court -- well, it
20 is, it's sending a signal to the Court is that you believe
21 that it's not a meritorious issue.

22 A It's not a signal. It's a certification to the Court
23 that it is not a meritorious issue.

24 Q Okay. And do you believe by -- well, obviously, that
25 would've -- obviously, by telling the Court -- that you're

1 asserting to the Court it's not a meritorious issue, do you
2 think that that has an effect on the way in which the Court
3 proceeds with that issue?

4 A Well, it certainly has an affect because it triggers the
5 Court's responsibility to review the entire record and
6 determine if there are any other issues available. In a
7 merits case, they only look at the issue that I raise.

8 Q Okay. And of course, it is that when you do that,
9 generally is is that my understanding, and you probably know
10 the procedure better than I do, is is that the Supreme Court
11 will contact the -- or will contact the defendant to give the
12 defendant an opportunity to file a brief, a pro se brief.

13 A That's correct.

14 Q Okay.

15 A Well, it's Court of Appeals, but yes.

16 Q Yeah, the Court of Appeals. I'm sorry, Court of Appeals.

17 A Yes.

18 Q And I want to ask you one more line of questioning and
19 I'll be finished with you. If you file a -- whenever you file
20 a -- when you file a brief, and you file an argument, and
21 you're making an argument that you think, well, this is not
22 the greatest argument in the world, it has some merit but it's
23 not the strongest argument in the world, is there a process
24 that you go by in order to determine whether or not to simply
25 proceed on that issue on its merits and not file it as an

1 Anders brief or to file it underneath the Anders procedure?
2 How do you determine when to do that, when to file a brief,
3 because I'm pretty sure, and I'll ask this in the form of a
4 question, I'm pretty sure that sometimes when you're doing
5 briefs, that you have some issues are very strong and then
6 some issues that's not as strong.

7 When do you decide, you know, hey, this issue is not that
8 strong and I'm going to do an Anders brief, and then decide
9 well, hey, this is not the greatest issue in the world, I'm
10 not going to do an Anders brief, I'm going to file a regular
11 merits brief?

12 A Yeah, well, there's no real set procedure to make that
13 decision. You have to base it on the individual case, the
14 research you do in the case, and your own experience. I mean,
15 I've filed many merits briefs that I thought we're probably
16 going to lose but I will file an Anders brief if I think
17 there's really just no way to win.

18 But you know, I can say that I certainly don't have a
19 strategic reason for filing an Anders brief or for admitting
20 what would be a winning issue, and if it's a winning issue,
21 you know, that's really for the Court to determine in an
22 appeal within an appeal in this proceeding, in a PCR
23 proceeding. I hope that answers your question.

24 Q Okay. And when you make the determination that the issue
25 may not have any merit, are you simply basing that on the

1 existing case law, the existing precedent?

2 A Yes, for the most part, yes and how it's raised, and
3 standard of review, and any preservation problems, and any
4 harmless error argument that may be made. I think those are
5 the main factors that go into it.

6 Q Okay. And have you ever filed a brief, and of course,
7 challenge existing precedent?

8 A Yes.

9 Q Do you think, you know, Supreme Court, Court of Appeals
10 has this wrong?

11 A Do I think the -- which question are you asking?

12 Q I'm sorry.

13 A Which issue?

14 Q I'm sorry. I didn't make myself clear. Well, let me ask
15 you something, is that when Mr. -- and I know that you say is
16 that when you did the research, that you didn't think that
17 there was a lot of merit here, and so what you're saying is is
18 that when a defendant has never been served on notice of a
19 particular charge and doesn't receive notice of that charge
20 until it's announced during the course of a trial, I think
21 your position is is that that does not implicate due process?

22 A I didn't think that that had any merit as a due process
23 issue, given that the attorneys had notice and given the state
24 of the law.

25 Q Do you know when the attorneys had notice? When Mr.

1 Scott had notice?

2 A I think they said it was several weeks before the trial;
3 that's my memory of the transcript.

4 Q Okay.

5 MR. BROOKER: I don't have any further questions, Your
6 Honor.

7 THE COURT: Cross?

8 MR. FARTHING: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. FARTHING:

11 Q Mr. Alexander, just a couple of questions for you. Where
12 and how are you currently employed?

13 A I work for Appellate Defense. It's a Division of the
14 South Carolina Commission on Indigent Defense.

15 Q When and how did you get involved in Mr. Woods' case?

16 A Once a transcript is completed and comes into our office,
17 the chief appellate defender assigns the case. He assigned
18 this case to me.

19 Q So at the point in time you got Mr. Woods' case, how long
20 had you been practicing?

21 A Oh, 18 years.

22 Q How much of that was --

23 A I was admitted in 2000.

24 Q Sorry. How much of that was devoted to appellate work?

25 A I've been doing exclusively appellate work since 2012.

1 Q And this is going to sound like a stupid question, but
2 how many of those years were focused on criminal appellate
3 work?

4 A 100 percent since 2012.

5 Q So it's safe to say you had a pretty good amount of
6 appellate experience before you were appointed to handle Mr.
7 Woods' case?

8 A Yes.

9 Q How many appeals do you think you've handled prior to
10 that, just as a general of a guess that you can give me, if
11 you can even give me one?

12 A 4- to 500.

13 Q Any of those cases involve major felonies?

14 A Very many of them.

15 Q How about any prior experience with murder appeals?

16 A Yes.

17 Q And you've even handled capital murder cases, right?

18 A Yes.

19 Q Any of those appeals, all tolled total, lead to the
20 filing of any merits briefs?

21 A Yes.

22 Q Any of them result in oral arguments?

23 A Yes.

24 Q Any of those results in decisions unpublished or
25 published?

1 A Yes.

2 Q Any of those result in reversals in your client's favor?

3 A Yes.

4 Q And I think you've even given me a handful of stinging
5 defeats?

6 A Perhaps.

7 Q Yeah. So do you have any specialized training or
8 experience?

9 A No.

10 Q Do you do any training? Do you ever talk at a public
11 defender's conference or do any CLEs or anything like that?
12 I'm not asking if you attend them; I'm asking if you've
13 presented them.

14 A I've never spoken at a public defender's conference.
15 I've spoken at various CLEs, for PCR lawyers, for public
16 defenders, and for magistrate judges.

17 Q Got you. Let me go just to your standard process for
18 appeals real quick. What do you do typically when you get an
19 appeal to you? What is the first thing you do, and then can
20 you walk us through the process?

21 A When I first get assigned the case, I look through it to
22 figure out, what I am going to need, what exhibits I am going
23 to need, order those, and then basically, at that point, the
24 client unfortunately gets in line for me to get to this case.
25 And then when I get to this case, I read everything, I do the

1 legal research that I need for the issues that are raised by
2 the trial court, make the Anders merits decision, and file the
3 brief.

4 Q Do you ever talk to trial counsel or the client when
5 you're doing that process?

6 A Sometimes I do.

7 Q Sometimes but not always?

8 A Not always.

9 Q And that is really a -- I know you talked about it a
10 little bit, but a case-specific judgment call that you do
11 based on your experience?

12 A This -- this will sound somewhat callous and perhaps
13 arrogant, but I really don't need the trial lawyer or the
14 client's advice. I mean, the record is the record in an
15 appeal, and I can't go outside of the record.

16 Q Right. Right. And so the appellate process is very
17 regulated by our appellate court rules, and we're limited to
18 do it, and if you try to put facts in your brief that are
19 outside the record, there's likely going to be a motion to
20 strike or some sort of response from the State.

21 A A very strong response from the State and from the court.

22 Q How do you decide what issues to raise?

23 A I think an issue has a chance to win. I'm talking about
24 merits briefs here. I try to raise a very focused, coherent
25 brief, that's my strategy. I think some people have used a

1 shotgun approach; that's never been my point. I want a very
2 focused appeal where all issues come together. That's the
3 ideal. You don't always get that. I mean, you may have some
4 issues that are really good that aren't connected to each
5 other, but in general, I try to present a very focused appeal
6 to the Court.

7 Q And the reason you do that is you're aware of the U.S.
8 Supreme Court's view on how many issues the best appellate
9 counsel raise, right?

10 A I think it's three.

11 Q Well, the U.S. Supreme Court actually says the best
12 attorneys raise one, but it sounds like -- I think they said
13 one or two at most, but I think they'd be okay with three,
14 sometimes probably two.

15 So that leads me to my next question. Do you always
16 raise every preserved issue?

17 A No.

18 Q And the reason that -- for that is what we just talked
19 about, that if you raise a bunch of issues, that it distracts
20 from one that might be stronger than others?

21 A Yes.

22 Q All right. I know I've asked you about merits briefs,
23 have you filed Anders briefs in the past?

24 A Yes.

25 Q Do you have an idea of about how many?

1 A I do not.

2 Q It's a pretty substantial number, though?

3 A It's not insignificant, unfortunately.

4 Q Out of those, how many have been kicked back by the Court
5 of Appeals for merits briefing?

6 A I would say in ten years, maybe between five and ten,
7 less than ten.

8 Q Out of those, how many have ultimately ended up being
9 successful for your client at the end of the appellate
10 process?

11 A I'm pretty sure the answer is zero.

12 Q Okay. I'm almost done. Let me just ask you a couple of
13 questions more specific to Mr. Woods. Did you speak with him
14 in this case?

15 A I don't recall.

16 Q Okay. And do you think you spoke to Mr. Floyd in this
17 one?

18 A I don't recall.

19 Q Okay. What did you ultimately end up filing? I know we
20 already have it established, but it was an Anders brief in
21 this case, right?

22 A Correct.

23 Q And just real quick, can you explain one more time why
24 that was?

25 A I am -- first of all, I didn't think there was a very

1 specific objection made. I uncovered the Green case, but I
2 thought the Magazine case really was controlling, and I didn't
3 think it would -- the appellate court would find any merit to
4 it at all, especially post-Gentry.

5 Q Right. And do you think that even in the post-Gentry
6 world that we're in right now, do you -- at least in your
7 opinion, can you think of any prejudice that was suffered in
8 this case regarding that?

9 A I could not.

10 Q And I'm just throwing a hypothetical out here, if you
11 could, what would the result have been on appeal if he was
12 successful challenging that conspiracy charge?

13 A The result would have been --

14 Q It would --

15 A -- a reversal.

16 Q -- a new trial on the conspiracy part?

17 A Yes.

18 Q Right. And so that would've knocked a 5-year portion of
19 a sentence that including that 5 years was two life without
20 parole sentences that were reported to be consecutive, along
21 with a consecutive 65-year term for the other charges, aside
22 from conspiracy?

23 A That's correct.

24 Q Okay. And let me ask just one more thing about -- we had
25 some talk about Det. Lee's testimony regarding the

1 surveillance footage. What were your thoughts on that issue?

2 A I think after Mitchell, really that's a -- very much a
3 standard of review control question.

4 Q Right. And the standard of review is really the key to
5 appellate practice, is it not?

6 A It's a key.

7 Q Yeah. Did you see any of the cases related to that issue
8 that you thought were something that was a wrongly decided
9 case in the past that was, you know, ripe for being overturned
10 on appeal?

11 A If I had, I probably would have merits this case.

12 Q And did you -- I know I asked you about prejudice with
13 the conspiracy charge; did the other evidence and the harmless
14 error standard factor in at all on the thoughts on the Det.
15 Lee issue?

16 A Likely. I mean, I take into account all of those factors
17 when I make a decision, yes.

18 Q Well, thank you very much for your testimony. I don't
19 have any further questions.

20 THE COURT: Mr. Brooker?

21 MR. BROOKER: No further questions.

22 THE COURT: All right. Thank you, sir. I appreciate it.

23 THE WITNESS: Thank you, Your Honor. I appreciate you
24 let me testifying by Webex.

25 THE COURT: No problem, sir. Have a good day.

1 THE WITNESS: You, too.

2 THE COURT: All right.

3 MR. BROOKER: No further witnesses, Your Honor, by
4 Petitioner.

5 THE COURT: Let us take a break. We've been at it an
6 hour and a half here, approximately 15 minutes, okay?

7 (Recess.)

8 THE COURT: Because I've listened intently the last two
9 days, taken lots of notes, Ms. Toohey's taken notes, I don't
10 need closing arguments. You've both been very good at putting
11 forth your positions at trial. So what I am going to do is
12 let me take this under advisement, under consideration. If I
13 have a question, I will email it to both of you for a reply.
14 All right?

15 MR. BROOKER: Yes.

16 THE COURT: Secondly, I want to thank all of you for your
17 patience, your civility with each other and with me. Your job
18 is hard. My job is hard. My job is really hard when I have
19 to separate the lawyers from fighting all the time, which
20 unfortunately does occur; it's a very unpleasant task, but
21 y'all have been decent with me and each other, and I
22 appreciate that a lot.

23 Mr. Woods?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I don't know what I'm going to do with your

1 case yet, but I'll let your lawyer know at a certain time.

2 Otherwise, the best of luck to you, sir.

3 THE DEFENDANT: I really appreciate it. Thank you, Your
4 Honor.

5 THE COURT: All right. Yes, sir.

6 And are you the remaining officer here now?

7 UNIDENTIFIED SPEAKER: (Indiscernible).

8 THE COURT: Oh, I see. I'm sorry.

9 UNIDENTIFIED SPEAKER: He's checked out.

10 THE COURT: Okay. All right.

11 UNIDENTIFIED SPEAKER: (Indiscernible).

12 THE COURT: All right. I will wait here.

13 THE DEPUTY CLERK: There's no need for more than two.

14 THE COURT: There's four?

15 THE DEPUTY CLERK: Yes.

16 THE COURT: Is there a fourth one? Is there a fourth
17 officer?

18 UNIDENTIFIED SPEAKER: (Indiscernible). Yes, sir.

19 THE COURT: Is --

20 UNIDENTIFIED SPEAKER: Do you want him up here?

21 THE COURT: If you don't mind.

22 UNIDENTIFIED SPEAKER: No problem.

23 THE COURT: Please.

24 (Pause.)

25 THE COURT: All right. I think we're all here now. To

1 those officers who helped with transport today, I think you're
2 often overlooked, but I sincerely appreciate your efforts and
3 what you do to make this whole thing work. I can only imagine
4 the chaos that must ensue every day of the week throughout the
5 entire state with y'all moving people around. I don't know
6 how you do it. Even if only half the county is running to
7 criminal court, that's 23 counties, that's a lot of movement,
8 and it may not mean much, but I do appreciate it a lot. Thank
9 you for your patience, too.

10 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

11 THE COURT: All right. Best of luck to all of you.

12 Thank you.

13 All right, gentlemen, you'll hear from me.

14 MR. FARTHING: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 (End of Transcript of Record)

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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-

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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).

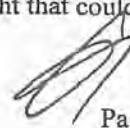
As the investigation progressed, Sanders was apprehended in New Jersey and brought back to South Carolina by November of 2012. (Trl. Tr. p. 530). Following that, known fingerprint standards collected from Applicant, Sanders, and Victim were submitted for analysis along with the evidence that had been 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

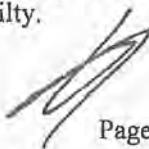
¹¹ As part of his jury charge, the trial judge instructed the jury on identification evidence as follows:

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).



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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 matter 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.").

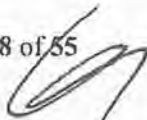
For those reasons, Applicant has failed to meet his requisite burden of establishing both deficiency and prejudice in regard to trial counsel's performance concerning the purported insufficiency of the Schmerber order, and, thus, Applicant did not and cannot overcome the presumption trial counsel provided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

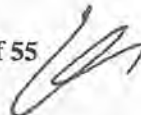
Later on during the post-conviction relief evidentiary hearing, Applicant’s trial counsel testified about Davis and the trial testimony surrounding him. In doing so, trial counsel explained Davis had told the investigators he saw Sanders and Applicant prior to the incident

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

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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.


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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

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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).

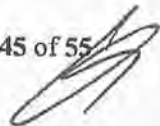
Later on during the post-conviction relief evidentiary hearing, trial counsel was questioned about his failure to object to the sufficiency of the indictment concerning place. During that questioning, trial counsel confirmed he was aware an indictment must generally identify the place of the crime in 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 (Ct. 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. Cl. 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.

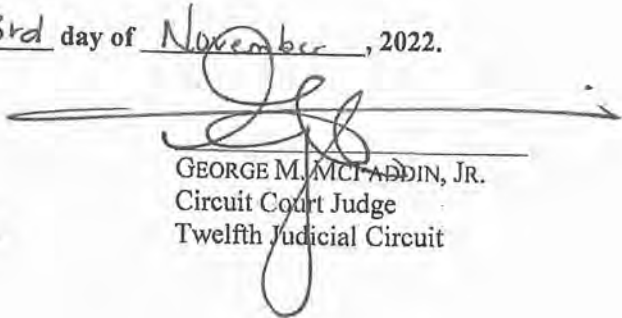
Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by Applicant's counsel to secure the appropriate appellate review if so desired. Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to the assistance 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.

Swinter, South Carolina


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

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT**

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Detective James Lee
Marion County Sheriffs Office
2715 East Highway 76
Mullins, SC 29574

LATENT PRINTS
November 05, 2012
SLED LAB: L12-08093
Your Case No: 20120700095
Incident Date: 7/4/2012
[V] Samuel Rowell
[S] Tyrell Woods
[S] Marco Sirra Sanders

2012 NOV - 6 11:36
[Handwritten signature]

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 1 One (1) disposable coffee cup from club area.

RESULTS:

No fingerprint evidence was developed.

Item: 3 One (1) box of "Black & Mild" cigars.

Item: 3.1 Latent print developed on Item 3 cigar box.

RESULTS:

NO CONCLUSION will be rendered due to the quality of Item 60 / Rowell, Samuel.

NO CONCLUSION will be rendered due to the quality of Item 63 / Sanders, Marco Sirra.

NO CONCLUSION will be rendered due to the quality of Item 64 / Woods, Tyrell.

OFFICE OF SOLICITOR
12TH JUDICIAL CIRCUIT
MARION, SC

NOV 06 2012

REC'D BY *[Signature]*



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



NO CONCLUSION will be rendered due to the quality of Item 104 / Commander, Valarie.

The latent(s) submitted were not suitable for the South Carolina Automated Fingerprint Identification System (SCAFIS). Please submit complete inked fingerprint and palm prints for further examination and comparison.

Item: 4 One (1) box of "Black & Mild" cigars.

Item: 4.1 Latent print developed on Item 4 cigar box.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 5 One (1) box of "Black & Mild" cigars.

Item: 5.1 Latent print developed on Item 5 cigar box.

RESULTS:

IDENTIFIED with Item 63 / Sanders, Marco Sirra.

Item: 6 One (1) box of "Black & Mild" cigars.

Item: 6.1 Latent print developed on Item 6 cigar box.

RESULTS:

IDENTIFIED with Item 63 / Sanders, Marco Sirra.

Item: 6.2 Latent print developed on Item 6 cigar box.

RESULTS:

IDENTIFIED with Item 63 / Sanders, Marco Sirra.



Item: 6.3 Latent print developed on Item 6 cigar box.

RESULTS:

IDENTIFIED with Item 63 / Sanders, Marco Sirra.

Item: 7 One (1) box of "Black & Mild" cigars.

RESULTS:

NO VALUE for identification

Item: 8 One (1) box of "Black & Mild" cigars.

Item: 8.1 Latent print developed on Item 8 cigar box.

RESULTS:

NO VALUE for identification

Item: 9 One (1) box of "Black & Mild" cigars.

Item: 9.1 Latent print developed on Item 9 cigar box.

RESULTS:

NO VALUE for identification

Item: 10 One (1) box of "Black & Mild" cigars.

RESULTS:

No fingerprint evidence was developed.

Item: 11 One (1) box of "Black & Mild" cigars.

RESULTS:

No fingerprint evidence was developed.



Item: 12 One (1) box of "Black & Mild" cigars.

RESULTS:

NO VALUE for identification

Item: 13 One (1) "Crown Royal" box.

Item: 13.1 Latent print developed on Item 13 Crown Royal box.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 13.2 Latent print developed on Item 13 Crown Royal box.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 13.3 Latent print developed on Item 13 Crown Royal box.

RESULTS:

NO VALUE for identification

Item: 13.4 Latent print developed on Item 13 Crown Royal box.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 13.5 Latent print developed on Item 13 Crown Royal box.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 13.6 Latent print developed on Item 13 Crown Royal box.

RESULTS:

NO VALUE for identification



Item: 13.7 Latent print developed on Item 13 Crown Royal box.

RESULTS:

NO VALUE for identification

Item: 15 One (1) "Axe" box set.

Item: 15.1 Latent print developed on Item 15 Axe box.

RESULTS:

NO VALUE for identification

Item: 15.2 Latent print developed on Item 15 Axe box.

RESULTS:

NO VALUE for identification

Item: 16 One (1) "Black Suede" cologne box.

RESULTS:

NO VALUE for identification

Item: 17 One (1) "Eternity" cologne bottle.

RESULTS:

NO VALUE for identification

Item: 18 One (1) clear ziplock bag.

Item: 18.1 Latent print developed on Item 18 ziplock bag.

RESULTS:

NO VALUE for identification



Item: 18.2 Latent print developed on Item 18 zip lock bag.

RESULTS:

NO VALUE for identification

Item: 19 One (1) medicine bottle labeled "Diclofenac 75 mg".

RESULTS:

NO VALUE for identification

Item: 20 One (1) medicine bottle labeled "Vardenafil 20 mg".

RESULTS:

NO VALUE for identification

Item: 21 One (1) medicine bottle labeled "Naproxen 500 mg".

RESULTS:

NO VALUE for identification

Item: 22 One (1) medicine bottle labeled "Hydrocodone 7.5 500 mg".

RESULTS:

NO VALUE for identification

Item: 23 One (1) medicine bottle labeled "Naproxen 500 mg".

RESULTS:

No fingerprint evidence was developed.

Item: 24 One (1) empty medicine bottle labeled "Vardenafil 20 mg".

RESULTS:

NO VALUE for identification



Item: 25 One (1) "Bunker Hill Security" digital recorder.

Item: 25.1 One (1) pair of swabs from cut connectors on back of Item 25 digital recorder.

RESULTS:

Samples collected and sent to the DNA Department for further analysis.

Item: 25.2 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification

Item: 25.3 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification

Item: 25.4 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification

Item: 25.5 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification

Item: 25.6 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification

Item: 25.7 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification



Item: 25.8 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification

Item: 25.9 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification

Item: 25.10 Latent print developed on Item 25 digital recorder.

RESULTS:

NO VALUE for identification

Item: 26 One (1) cartridge case headstamped "FC Luger 9mm" from outside entrance.

RESULTS:

No Examination Performed

Item: 26.1 One (1) pair of swabs collected from Item 26 cartridge case.

RESULTS:

Samples collected and sent to the DNA Department for further analysis.

Item: 27 One (1) cartridge case headstamped "FC Luger 9mm" from outside entrance.

RESULTS:

No Examination Performed

Item: 27.1 One (1) pair of swabs collected from Item 27 cartridge case.

RESULTS:

Samples collected and sent to the DNA Department for further analysis.



Item: 28 One (1) cartridge case headstamped "FC Luger 9mm" from outside entrance.

RESULTS:

No Examination Performed

Item: 28.1 One (1) pair of swabs collected from Item 28 cartridge case.

RESULTS:

Samples collected and sent to the DNA Department for further analysis.

Item: 31 One (1) disposable coffee cup with lid from table in enclosed front patio.

RESULTS:

No fingerprint evidence was developed.

Item: 31.1 One (1) pair of swabs from mouth area of Item 31 coffee cup lid.

RESULTS:

Samples collected and sent to the DNA Department for further analysis.

Item: 32 Papers from front porch table.

Item: 32.1 Latent impression developed on Item 32 paper.

RESULTS:

IDENTIFIED with Item 60 / Rowell, Samuel.

Item: 36 One (1) "Crown Royal" cardboard box from kitchen.

Item: 36.1 Latent impression developed on Item 36 Crown Royal cardboard box.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.



Item: 37 One (1) "Crown Royal" cardboard box from kitchen.

RESULTS:

NO VALUE for identification

Item: 38 One (1) "Crown Royal" cardboard box from kitchen.

RESULTS:

NO VALUE for identification

Item: 39 One (1) latent lift from front door.

RESULTS:

NO VALUE for identification

Item: 48 Gray duct tape removed from around victim's head and mouth.

Item: 48.1 Swabs from non adhesive side of Item 48 duct tape.

RESULTS:

Samples collected and sent to the DNA Department for further analysis.

Item: 48.2 Latent impression developed on adhesive side of Item 48 duct tape.

RESULTS:

NO VALUE for identification

Item: 48.3 Latent impression developed on adhesive side of Item 48 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 48.4 Latent impression developed on adhesive side of Item 48 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.



Item: 48.5 Latent impression developed on adhesive side of Item 48 duct tape.

RESULTS:

NO VALUE for identification

Item: 49 Gray duct tape removed from around victim's feet.

Item: 49.1 Latent impression developed on non adhesive side of Item 49 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 49.2 Latent impression developed on non adhesive side of Item 49 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 49.3 Latent impression developed on non adhesive side of Item 49 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 49.4 Latent impression developed on non adhesive side of Item 49 duct tape.

RESULTS:

NO VALUE for identification

Item: 49.5 Latent impression developed on non adhesive side of Item 49 duct tape.

RESULTS:

NO VALUE for identification

Item: 49.6 Latent impression developed on adhesive side of Item 49 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.



Item: 49.7 Latent impression developed on adhesive side of Item 49 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 49.8 Latent impression developed on adhesive side of Item 49 duct tape.

RESULTS:

NO VALUE for identification

Item: 49.9 Latent impression developed on adhesive side of Item 49 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 49.10 Latent impression developed on adhesive side of Item 49 duct tape.

RESULTS:

IDENTIFIED with Item 64 / Woods, Tyrell.

Item: 50 Gray duct tape and rope removed from around victim's hands.

RESULTS:

NO VALUE for identification

Item: 50.1 Swabs from non adhesive side of Item 50 duct tape.

RESULTS:

Samples collected and sent to the DNA Department for further analysis.

Item: 50.2 Rope wrapped inside Item 50 duct tape from around victim's hands.

RESULTS:

Rope collected and sent to the DNA Department for further analysis.



- Item: 60** One (1) set of post mortem major case prints from Rowell, Samuel.
- Item: 62** Kool brand cigarette pack from couch in side room where victim was located.
RESULTS:
NO VALUE for identification
- Item: 63** Fingerprint card bearing the name Sanders, Marco Sirra received from SLED AFIS.
- Item: 64** Major case prints bearing the name Woods, Tyrell received from SLED AFIS.
- Item: 65** One (1) Hydrocodone medicine bottle - empty, collected from pillow case.
RESULTS:
NO VALUE for identification
- Item: 66** One (1) box labeled as "Eardrops carbamide peroxide 6.5%", collected from pillow case.
RESULTS:
NO VALUE for identification
- Item: 67** One (1) broken disposable coffee cup collected from club area floor.
RESULTS:
No fingerprint evidence was developed.
- Item: 67.1** Swabs from mouth area of Item 67 coffee cup.
RESULTS:
Samples collected and sent to the DNA Department for further analysis.
- Item: 104** Fingerprint card bearing the name Commander, Valarie received from SC Department of Corrections.



If this case should go to trial, it is respectfully requested that you notify this examiner at least two weeks prior to the scheduled court date. This will allow for proper preparation of court displays for presentation.



Thomas E. Darnell
Forensic Scientist



| | | |
|-------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | COURT OF GENERAL SESSIONS |
| COUNTY OF FLORENCE |) | 2013-GS-33-256 |
| |) | |
| |) | |
| |) | |
| State Of South Carolina |) |) |
| |) | |
| vs. |) | TRANSCRIPT OF RECORD |
| |) | |
| Tyrell Woods |) |) |
| |) | |
| <u>DEFENDANT</u> |) | November 16, 2012 |
| | | Marion, South Carolina |

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

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

ED CLEMENTS, SOLICITOR
Attorney for the State

SCOTT P. FLOYD, CHIEF PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter



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I N D E X

(WHEREUPON, no witnesses were called.)

1 MR. CLEMENTS: Your Honor, this is Mr. Tyrell
2 Woods. He's represented by Mr. Scott Floyd. He has been
3 charged with murder along with Mr. Marco Sanders.
4 Mr. Tucker's gone down to get the warrant number, I'm
5 sorry I don't have that up here. But what we're here for
6 this morning is Mr. Woods is being housed in the
7 department of corrections I think from probation
8 violation; is that correct?

9 THE DEFENDANT: That's correct.

10 MR. CLEMENTS: Or parole violations and SLED
11 went to go take major case prints from him. And my
12 understanding is Mr. Woods asked the SLED agent do I have
13 to do this. And they said, no, you don't have to. And he
14 says, well, I prefer to talk to my attorney before I do
15 this. So I talked to Mr. Floyd. We decided to bring him
16 this morning and put this matter on the record. If
17 Mr. Woods talks to his attorney and still decides that he
18 does not want to submit major case prints, we would ask
19 pursuant to Schmerber vs. California, and we have the SLED
20 officer here this morning, that we be allowed to take the
21 major case prints being that it would not be a matter that
22 would be that intrusive as something that needs to be done
23 for the investigation and it would certainly be less
24 intrusive than drawing blood. So that's the issue right
25 now before the Court. And I'm not sure if Mr. Floyd had a

1 chance to talk with him or not.

2 MR. FLOYD: Your Honor, I have not. He's been
3 in the department of corrections. And I was speaking with
4 other gentleman in there, but I'll be glad to take him
5 right now and speak to him.

6 THE COURT: Okay, thank you.

7 MR. CLEMENTS: And if this not resolved, Your
8 Honor, then we would need you to make a ruling. Thank
9 you, Your Honor. The warrant numbers for Mr. Woods murder
10 2012A3310100041. He has also has a warrant for burglary
11 first 2012A3310100045, armed robbery would be the same
12 number ending in 46, possession of a weapon during the
13 commission of a violent crime the same number ending in
14 47, and that's it, Your Honor.

15 (WHEREUPON, off the record.)

16 (WHEREUPON, back on the record.)

17 MR. CLEMENTS: Please the Court, Your Honor,
18 we're back with Mr. Woods. Mr. Floyd has informed me he
19 has talked with him and at this time Mr. Woods does not
20 want to agree to having his fingerprints.

21 And, Mr. Floyd, you mind if I put the reason on
22 the record?

23 MR. FLOYD: Your Honor, I can tell you basically
24 he feels it is intrusive because he has been arrested in
25 Marion County. He's in the department of corrections

1 system. He already has a conviction. So he feels there,
2 obviously, fingerprints on him already in the system that
3 they can use to accomplish this without forcing him to do
4 another round of fingerprints.

5 MR. CLEMENTS: May I address that Your Honor?

6 THE COURT: Yes, sir.

7 MR. CLEMENTS: Your Honor, I understand what
8 Mr. Woods is saying. He is correct we do have
9 fingerprints of his on file. The problem is is that when
10 we go to trial and we believe that we already have a match
11 on his fingerprints actually at the scene based on
12 matching them to prior fingerprints that have been drawn
13 from him. At trial when that fingerprint analyst talks
14 about that and he is asked where did you get his
15 fingerprints to make the comparison and he says, well, we
16 got them because of his prior criminal history, then we
17 have jeopardized him. And so that is why we want to draw
18 a fresh set of fingerprints, so that it will not be
19 possible that his criminal history come up and the jury
20 hears about it so that he will be prejudice. We're trying
21 to prevent that.

22 THE COURT: Have you explain that to him?

23 MR. FLOYD: Your Honor, he understands that, but
24 certainly we don't have to bring that up in a trial. I
25 mean, we can easily handle that during the course of a

1 trial I believe.

2 THE COURT: Anything you need to add to it?

3 MR. CLEMENTS: Your Honor, we're just trying to
4 do things the right way and in the process to make sure we
5 protect his rights.

6 THE COURT: All right. I'm going to go ahead
7 and order that he give over his fingerprints.

8 MR. CLEMENTS: Thank you, Your Honor. Mr.
9 McEachin just reminded me of something too. Also, Your
10 Honor, we also have his DNA on file, so if the issue comes
11 up and I don't think it will today. But if the issue
12 comes up about wanting to get a buccal swab from Mr.
13 Woods, we would also ask for that under Schmerber vs.
14 California as well.

15 THE COURT: Any objections to that?

16 THE DEFENDANT: May I speak?

17 THE COURT: If you think it's wise to do.

18 THE DEFENDANT: I don't have no problem with
19 giving up my fingerprints. I just ask that if they take
20 them, if they do have to take them, could it be
21 electronically taken instead of putting them on paper.
22 Because I do understand that they can be lifted and I do
23 believe that they already have enough in the system for
24 them instead of getting them on paper. So I would give
25 them -- I would volunteer if they could get them

1 electronically.

2 THE COURT: Can you do that?

3 MR. CLEMENTS: No, sir, Your Honor. We have the
4 guy here and he has his ink pad and his paper, but I don't
5 know of any way to electronically ---

6 THE COURT: How about your lawyer sits with you
7 while that's being done and monitors the situation, make
8 sure that it's done properly and stores properly and
9 carried out of here properly. Would you be okay with it
10 then?

11 THE DEFENDANT: I guess so, Your Honor.

12 THE COURT: You can sit there with him.

13 MR. FLOYD: Yes, sir.

14 THE COURT: Any problem with the swabs?

15 MR. FLOYD: We're fine with that, Your Honor,
16 and I'll be glad to sit with him.

17 THE COURT: Do that and that way it can give him
18 some comfort.

19 MR. FLOYD: Certainly.

20 MR. CLEMENTS: Thank you, Your Honor.

21 END OF REQUESTED TRANSCRIPT

22

23

24

25

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Detective James Lee
Marion County Sheriffs Office
2715 East Highway 76
Mullins, SC 29574

LATENT PRINTS
November 19, 2012
SLED LAB: L12-08093
Your Case No: 20120700095
Incident Date: 7/4/2012
[V-Deceased] Samuel Rowell
[S] Tyrell Woods

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL

ITEMS OF EVIDENCE:

Item: 3.1 Latent print developed on Item 3 / cigar box.

RESULTS:

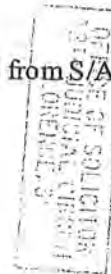
IDENTIFIED with Item 106 / Woods, Tyrell.

Item: 64 Major case prints bearing the name Woods, Tyrell received from SLED AFIS.

RESULTS:

IDENTIFIED with Item 106 / Woods, Tyrell.

Item: 106 Major case prints bearing the name Woods, Tyrell received from S/A Scott Hardee.



2012 DEC - 5 P 3:12

VED



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



Thomas E. Darnell
Forensic Scientist



THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Dec 12 2022

S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Honorable George M. McFaddin, Jr., Presiding Judge

Case No. 2017-CP-33-204

Tyrell Woods, #344913.....Petitioner,

v.

The State of South Carolina.....Respondent.

NOTICE OF APPEAL

Tyrell Woods appeals the order of the Honorable George M. McFaddin Jr., filed November 10, 2022. Attached is a copy of the order.

Respectfully submitted,

/s/ Ranee Saunders
Ranee Saunders
3710 Landmark Drive, Suite 113
Columbia, South Carolina 29204
(803) 445-1333
ranee@franklinbestlaw.com

December 12, 2022