

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jul 13 2023

S.C. SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

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

Appellate Case No: 2022-001409
Lower Court Case No: 2017-CP-40-07564

ANTHONY PORTERFIELD,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

APPENDIX
Volume IV of IV

ALAN WILSON
Attorney General

DANIELLE DIXON
Assistant Attorney General
S.C. Bar No. 73999

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

JOANNA KATHERINE DELANY
S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11433
Columbia, South Carolina 29211
(803) 734-1343

ATTORNEY FOR RESPONDENT

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1 to object to Mr. Porterfield wearing leg shackles during
2 trial. Do you recall bringing that issue to Judge
3 McMahon's attention and asking for those to be removed?

4 A. I don't remember the specific argument for
5 Mr. Porterfield, but we -- I've argued that in every case
6 I've ever tried in Richland County, which is that the
7 clients shouldn't be seen with shackles if they are at the
8 table. We'll concede that like the tables in here you
9 can't see underneath at their feet, but if they are going
10 to testify they should be allowed to actually have the
11 shackles off and walk up to the witness stand just like
12 every other witness. And some judges allow it depending on
13 the client, other judges will require while the jury's out
14 of the room the client to come up to the witness stand
15 beforehand and have their legs underneath the table where
16 the jury can't see it, but the shackles can remain on, the
17 jury comes into the room, sees the client on the stand
18 surrounded by officers, and that's -- that's commonly what
19 happens and I believe what happened in Mr. Porterfield's
20 case. I don't remember the specific objection, but I know
21 that we did because I've never not done it.

22 Q. Okay. And I'm glad you brought up trial the judge's
23 discretion in doing that because we've had His Honor Judge
24 McFaddin allow Mr. Porterfield to remove his arm shackles
25 here today.

1 If it will refresh your memory, it's on page 683.

2 Could you review that page, please.

3 A. Sure.

4 Yeah, I see the request, and -- and that looks
5 correct. I don't see a legal objection to it, any
6 references to due process rights or anything like that.
7 I just see a request and a denial for -- she did request
8 and they did deny her request to have the shackles taken
9 off so he could walk up.

10 Q. Now you mentioned sometimes defendants are placed on
11 the witness stand before the jury comes in. Was that what
12 was done in your memory for Mr. Porterfield?

13 A. Yeah, it looks like they brought him to this witness
14 stand before the jury got in.

15 Q. Now Mr. Porterfield has alleged that he knows a juror
16 definitely saw his leg shackles. Do you recall seeing that
17 as well or raising that to the trial court, whether a juror
18 had seen Mr. Porterfield in shackles?

19 A. I don't recall specifically for Mr. Porterfield, but
20 that has certainly happened multiple times in my career in
21 this courthouse just because the jurors and the clients go
22 out in the same hallway and -- and as great as our deputies
23 are here, you know, accidents happen. So I don't remember
24 specifically with him, but I would believe him if he said
25 that's what happened.

1 Q. Now moving onto the ninth issue, accomplice liability,
2 Ms. Walker, her memory was a little fuzzy on whether the
3 allegations by the two victims in this case had relayed
4 that two black males had robbed her. Do you recall whether
5 that was the allegation, that two individuals, two black
6 males committed this robbery and burglary?

7 A. That was the allegation, yes, sir.

8 Q. Okay. And being that there were two, although a
9 second person was not on trial and was an unnamed
10 co-defendant, did you object or consider objecting to
11 Judge McMahon reading a hand of one is the hand of all
12 instruction?

13 A. We did not object.

14 Q. And would that be if there are co-defendants or if
15 there was an unnamed co-defendant, if there are two alleged
16 assailants would you normally make an objection such as
17 that?

18 A. I don't know any reason -- strategic reason not to.
19 I make requests all the time that are denied. I --

20 Q. Do you think it would bear any fruit if you made that
21 objection?

22 A. I mean, I'd like to review the case law to see if
23 there is a case on point about unnamed co-defendants and
24 the application of hand of one hand of all. I don't know
25 the case law off the top of my head. If there's not a case

1 directly on point, I don't see any reason -- again, I don't
2 see any strategic reason why you wouldn't argue it even if
3 the judge is gonna rule against you and try to create some
4 type of appellate issue. But if there's a case on point,
5 I'll -- I'll concede to that case.

6 Q. Moving on to the tenth issue, you've testified already
7 about your typical practice in reviewing discovery. Do you
8 recall reviewing discovery with Mr. Porterfield in this
9 case?

10 A. Yes, that would have been more Mr. -- or Ms. -- she
11 would have hit me in the face -- Ms. Walker's probably
12 role, but I -- I remember reviewing discovery and him
13 having access to discovery if he wanted to view it.

14 Q. And you also said there was a two-week delay, so did
15 you-all -- and I think she testified you met five or six
16 times prior to trial. Does that sound correct to you?

17 A. Yes, sir.

18 Q. And was that just in general or in those -- well, in
19 your three months being involved, do you recall how many
20 times you met with him to prepare for trial?

21 A. Around that number. I remember meeting with him once
22 or twice in the office, I remember meeting twice at his
23 house because he had some transportation issues, and then,
24 you know, Ms. Walker would have met with him additionally
25 prior to my involvement.

1 Q. Ms. Walker testified yesterday that you kind of had
2 a two-prong defense; one, which was an alibi defense
3 wherein you would say that a couple of witnesses said
4 Anthony Porterfield wasn't there or couldn't have been
5 there at that date and time, and then a cross-racial
6 identification defense for which you called an expert.
7 Is that an accurate summary of your trial strategy to
8 defend Mr. Porterfield?

9 A. Yes.

10 Q. So being that that was your trial strategy, did you
11 discuss with Mr. Porterfield alibi witnesses ahead of time?

12 A. Yes, sir.

13 Q. And did you go over their statements or what their
14 proposed testimony would be?

15 A. Yes, sir.

16 Q. Now Mr. Porterfield, one of his allegations, and
17 I'm skipping ahead, says that those witnesses were not
18 adequately prepared. Do you recall preparing those
19 witnesses for trial? And for purposes of your
20 recollection, I keep forgetting their names. I believe
21 that was Nazirah Gale, Diana Addison, Adrian DeBerry,
22 Akeem Cofield and Aaron Griffin. Do those names ring a
23 bell?

24 A. Yes, and Tyrue Ruffin as we discussed, too.

25 Q. And Tyrue Ruffin, yes. And did you meet with each

1 of those witnesses; Nazirah, Ms. Gale, Mr. DeBerry,
2 Mr. Cofield and Mr. Griffin before trial?

3 A. If -- if they were cooperative. And, again, some of
4 them were more cooperative than others. I believe we spoke
5 with -- I believe we spoke with everybody on the phone. I
6 know I picked up Mr. Griffin. As Ms. Walker pointed out, I
7 picked up Mr. Griffin at about two in the morning, Friday
8 morning, the last day of trial, from the airport and took
9 him to the hotel.

10 Q. That was the guy who flew in from Florida?

11 A. That was the guy from Florida. So we spoke
12 face-to-face in my car for about twenty minutes on the
13 way to the hotel.

14 Q. Now what were the -- and Mr. Griffin -- I'm sorry,
15 Mr. Porterfield, rather, has said that these witnesses
16 were not prepared for trial. Do you think that they
17 were able to present an adequate alibi defense for
18 Mr. Porterfield? Was there any hay, so to speak, that
19 Ms. Campbell was able to make based on their testimony?
20 Any fatal flaws you saw in them?

21 A. I'll rely on the record, but I remember their
22 testimony being consistent with their statements that they
23 had given our investigator.

24 Q. And some of these were co-workers of Mr. Porterfield
25 that said he was at work at the time of the robbery?

1 A. That's correct.

2 Q. I skipped around a little bit, but I'll move back to
3 number eleven. Failure to prepare Mr. Porterfield for
4 trial. Did you -- or for his testimony rather. Did you
5 discuss with Mr. Porterfield beforehand his right to
6 testify, any possibility that he may testify?

7 A. Yes.

8 Q. And I think Ms. Walker testified that -- you know,
9 that decision can be spur of the moment based on how the
10 trial was going, but in this case Mr. Porterfield and
11 you-all had discussed testifying in advance of trial; is
12 that fair?

13 A. At least the possibility. I don't remember when the
14 decision was finalized. I don't remember whether the final
15 decision was made in trial or if we were committed to it
16 prior to trial.

17 Q. Well, in those three months that you represented him
18 and the five to six times you met, was it ever discussed
19 hey, you might testify and, if so, you know, this is our
20 strategy? Do you recall doing that?

21 A. Yes.

22 Q. Okay. So it was not a decision that was made on the
23 day of?

24 A. Again, he -- he may have made the decision to testify
25 the day of --

1 Q. Sure.

2 A. -- or he may have finalized that decision, but it's
3 something we would have talked about prior to the day of,
4 yes.

5 Q. Now yesterday there was some testimony from Ms. Walker
6 about a specific strategy of things that would be inquired
7 into about Nate Nathani or Gulzar Nathani, the victims'
8 father, regarding his relationship with Mr. Porterfield.
9 Do you recall discussing with Mr. Porterfield whether
10 he had, in fact, sold drugs to Mr. Nathani or stolen
11 merchandise to him? Did that come up in your discussions?

12 A. I don't remember the drugs. I'm not saying that
13 discussion didn't happen, I just don't recall it, but it
14 was generally known by everybody and all the lawyers and
15 police and witnesses in the case that they were dealing
16 stolen goods; that Mr. Nathani, you know --

17 Q. So he wasn't an angel?

18 A. Correct.

19 Q. Okay. And was there any consideration by you -- I
20 think Mr. Porterfield's exact words were that Ms. Walker
21 made some good points about not testifying about that.
22 Did she bring up to you hey, I want to tell the jury that
23 you sell stolen goods to Mr. Nathani? Did that ever come
24 up?

25 A. I don't have a memory of it. It may very well have.

1 I can see the pros and cons of it.

2 Q. Well, I'm -- I'm glad you said that because that's my
3 next question. Do you think that would be a good idea in
4 an armed robbery and burglary trial where a defendant is
5 accused of stealing electronics to bring up the fact that
6 he has, in fact, stolen electronics before?

7 A. Again, I think I'll mirror what Ms. Walker said and,
8 you know, that's -- that cuts both ways. It could hurt
9 Mr. Porterfield, but it could also hurt the credibility
10 of Mr. Nathani.

11 Q. Have you done that before in a trial, just say admit
12 that you're a thief when you are on trial for being a
13 thief?

14 A. I haven't had a lot of trials where they're accused
15 of being a thief. I've definitely brought up cases where
16 we talk about the bad -- the character of someone. I
17 remember a self-defense case specifically with a client
18 who was a prostitute and we went at great length talking
19 about her engagement in illegal activities and -- and kind
20 of her life story, so it definitely happens. I don't
21 recall the discussions in this case.

22 Q. Fair enough. I appreciate your candor.

23 Now as far as investigating the case, you and I
24 discussed a little while ago in your office about whether
25 you did or did not hire an investigator. I think the

1 testimony yesterday was there was a gentleman, Mr. Watkins
2 perhaps, that was hired as an investigator for your office.
3 Does that sound familiar to you?

4 A. Sure. My memory is Mr. Shealey hired Mr. Bobby
5 Watkins at the beginning of the case. Bobby Watkins did
6 a lot of -- he was an independent investigator and worked
7 for himself and did a lot of work for our office on behalf
8 of defendants. He passed away unexpectedly as we --
9 everybody's talked about at great length. We were then
10 using -- when we were getting closer to trial and trying
11 to track down our witnesses that had given statements to
12 Mr. Bobby Watkins, we used an in-house private investigator
13 that we have since hired at the Richland County Public
14 Defender's Office named Russell Dean.

15 Q. Dean Russell perhaps?

16 A. It was either Dean Russell or Russell Dean. I always
17 get it mixed up. I was not very impressed in that case
18 with his urgency in finding the witnesses, so I then
19 believe -- I hired someone else and I believe that was
20 Christopher Watkins, who works primarily here in Richland
21 County, to -- and who I was commonly using at the time to
22 track down the witnesses and try to get them under subpoena
23 and if they would review their statement and see if they
24 still agree with it.

25 Q. And -- and I think your earlier testimony is all of

1 the witnesses were found except for T.K.; is that right?

2 A. Tyrue Ruffin?

3 Q. Yes. I'm sorry, Tyrue Ruffin.

4 A. Right. Or they'll agree -- at least testify if they
5 say they're coming.

6 Q. Moving onto -- well, actually staying on that point
7 real quick, do you recall Mr. Porterfield asking you to
8 review security camera footage from nearby shopping
9 centers? Do you recall that?

10 A. I don't recall that. That would have been a good
11 question for Mr. Shealey, who would have been closer in
12 -- the attorney closer in time to the event, but I don't
13 recall anybody specifically talking to me about it.

14 Q. Well, in your defense practice do you typically look
15 for security camera footage at nearby shopping centers
16 close to a residence?

17 A. Yes. We -- Mr. Steven Harper in my office is
18 constantly getting security footage.

19 Q. Well, how long do those last or how long are they --
20 are they maintained?

21 A. It -- it varies, but generally three years later it's
22 not going to be there unless it's a unique situation where
23 they store a lot of videos for whatever reason.

24 Q. You have to act on that pretty quick then?

25 A. Yes.

1 Q. Now moving onto the issue regarding Mr. Porterfield's
2 cell phone records, and as you heard being acknowledged
3 prior, the State did admit both his cell phone records and
4 the records of Gulzar Nathani through Scott McDonald, I
5 believe. Did you consider objecting to the admission of
6 those records and, if so -- or, if not, why not?

7 A. I believe -- and if it's different in the record, I'll
8 be happy to look it up. I believe that issue, similar to
9 the jail call issues being kind of my witness, I believe
10 Ms. Walker was dealing with the phone record issue and
11 strategic decisions in the case.

12 Q. Okay. Who is Keith Patterson? Do you know who that
13 is?

14 A. I -- I don't. I remember you-all talking yesterday,
15 Ms. Walker being asked that question. I know that she
16 talked to somebody at AT&T about phone records; that she
17 had an actual like phone conference with him. I don't know
18 that person's name. That very well could be that person,
19 but I don't know.

20 Q. Now you may or may not recall this from Ms. Walker's
21 testimony. Do you recall her saying yesterday that the
22 proposed cell phone testimony would not necessarily place
23 Mr. Porterfield outside the area of where the robbery
24 occurred?

25 A. Right. Back then using triangulation, again, the

1 areas were so broad it wasn't gonna be -- we didn't think
2 it would be helpful.

3 Q. Now should you call a witness like that, would the
4 purpose be to show that Mr. Porterfield was not near the
5 scene of the robbery at the time when it's alleged to have
6 occurred?

7 A. I'm sorry. Could you repeat that?

8 Q. Well, wouldn't the purpose of calling somebody to
9 triangulate his position be to show hey, based on his cell
10 phone, he's in Timbuktu and not in Richland County?

11 A. Sure. And that's -- that's what happens. The tri --
12 triangulation records are usually more helpful when you're
13 talking about showing that you're in North Carolina other
14 than South Carolina or maybe even Lexington County rather
15 than Richland County, but all these places were so close
16 together, if my memory serves me correctly, it just -- it
17 was kind of a wash.

18 Q. And if it didn't show that, then there wouldn't be
19 much point in presenting that testimony?

20 A. Yeah. I rely on Ms. Walker's strategic decision, but
21 that makes sense to me, yeah.

22 Q. Well, let's think about this another way. Is that
23 another way of saying that if this cell phone showed he was
24 somewhere elsewhere, is that similar to you to an alibi?

25 A. Sure, yes. If it showed he was in North Carolina, we

1 would have wanted to present that.

2 Q. Now you did, in fact, present alibi witnesses because
3 that was part of your defense, right?

4 A. Correct.

5 Q. So essentially a cell phone expert would have been an
6 additional alibi witness?

7 A. Yes, probably a more credible one.

8 Q. If it had shown what he wanted.

9 A. If it had shown that he was in North Carolina, yes.
10 Ms. Campbell would not be able to cross-examine a cell
11 phone record.

12 Q. I think I've gone over this. Number fifteen and
13 sixteen. We're wrapping up here. I think you've testified
14 already about preparing the defendant's witnesses, and
15 just to reiterate, did you feel like you adequately
16 prepared them for trial given the limitations as far as
17 their willingness and one of them being in Florida?

18 A. Sure. Yeah, we did what we could.

19 MR. MATTHEWS: Thank you very much, Mr. Bank.
20 You've been very helpful. I don't have any other
21 questions. Can you please answer any questions
22 Mr. Derieg has?

23 THE WITNESS: Of course. Absolutely.

24 MR. DERIEG: Your Honor, could we take a short
25 break?

1 THE COURT: When I saw you look at the clock, I
2 thought that's what you were gonna say.

3 MR. DERIEG: Yes, sir.

4 THE COURT: Yes, sir. About fifteen minutes.

5 You know the rule. Don't talk to anybody.

6 THE WITNESS: Yes, sir.

7 (Recess taken at 10:03 AM.)

8 (Back on the record at 10:18 AM.)

9 BAILIFF: Remain seated and come to order.

10 THE COURT: Mr. Derieg.

11 MR. DERIEG: Thank you, Your Honor. I definitely
12 think we're gonna get done this morning.

13 CROSS-EXAMINATION

14 BY MR. DERIEG:

15 Q. How are you doing, Mr. Bank?

16 A. Good. How are you?

17 Q. Doing good.

18 If I accidentally call you Bobby, is that okay?

19 A. Yeah, absolutely.

20 Q. I might just slip into the -- just common -- common
21 speak, but we'll try and keep it professional here.

22 You said that you've been a lawyer for eight and a
23 half years and all of it at -- at the public defender's
24 office?

25 A. Yes.

1 Q. So roughly would that make you have been a lawyer
2 with the public defender's about a year and a half prior
3 to trial?

4 A. That sounds about right. I think. So I was barred
5 in November of 2013. I tried a CSC with Aimee Zmroczek
6 down in Aiken a week after I was sworn in and then I
7 started full-time at the PD's office and did about six or
8 seven months in magistrate court specifically and then
9 switched up to the most serious cases after that.

10 Q. And so the six to seven months is what you spent in
11 magistrate court?

12 A. Something like that. Yes, sir.

13 Q. So by 2015 you would have been doing the more serious
14 crimes?

15 A. Yes, sir.

16 Q. Okay. And when you talk about more serious crimes,
17 it's not just the high end stuff of -- you know, like armed
18 robbery and burglary first and murder and that kind of
19 thing? You know, you did like property crimes and things
20 like that?

21 A. Very rarely.

22 Q. Well, back then.

23 A. No.

24 Q. So after a year and a half, you just went feet first
25 into the major stuff?

1 A. After one week of being a lawyer I went feet first.

2 Q. Oh, yeah. With Aimee down in Aiken certainly. I bet
3 that was an interesting way to start your legal career.

4 A. Sure.

5 Q. Okay. Talking about prior inconsistent statements,
6 certainly it's not a -- the value of the items that were --
7 that were stolen or alleged to have been stolen, do you
8 recall it going from less than \$2,000 to a little over
9 10,000 and change?

10 A. I don't recall it, but I don't dispute it.

11 Q. Okay.

12 A. There were a lot of inconsistent -- there were
13 multiple statements given by everybody and there were a
14 number of inconsistencies with them. You know, we wanted
15 to show that the father was as biased as possible because
16 it was our defense -- part of our defense theory that went
17 into cross-racial identification is that the father was
18 kind of implanting the idea that this was Anthony that --
19 excuse me -- Mr. Porterfield that had done this. One of
20 our major points, for example, was that the girls on the
21 9-1-1 call didn't identify Mr. Porterfield. It wasn't
22 until after they talked to their father that they
23 identified Mr. Porterfield by his nickname at the time,
24 which was Amp, A-M-P. So any amount of impeachment or --
25 or bias, inconsistencies that could be shown through the

1 father and then also the two girls, was important to the
2 defense even if it didn't go directly to the elements of
3 the crime.

4 Q. Okay. So that's gonna make me, I guess, jump a little
5 -- well, actually in the same vein while we're talking
6 about the property that was alleged to be stolen, do you
7 recall that the father -- or I guess we've been calling him
8 Nate -- gave multiple statements about the -- the placement
9 or the location of the stolen items within that building
10 and that those locations changed?

11 A. That sounds correct.

12 Q. Okay. And I guess this will make me jump a little
13 bit, but since you've already talked about it you guys had
14 the idea of the -- or had the goal of trying to show that
15 the father was implanting the idea into the girls that it
16 was Amp that -- that did these crimes?

17 A. Yes.

18 Q. Do you recall -- well, it would have been Anastasia
19 that did the cross for the girls, right?

20 A. I believe she did the girls and I believe she said
21 yesterday she did the father.

22 Q. And they -- yeah, I think you're right actually. Do
23 you recall specifically how -- how she tried to attack
24 that idea that the father had planted the idea in the
25 girls' heads?

1 A. I remember her doing it. I don't remember
2 specifically. I'd -- I'd rather rely on the -- the
3 record obviously.

4 Q. Well, did you guys kind of brainstorm ideas on --
5 on how to do that pre-trial? Like when you guys were
6 preparing for the case?

7 A. I -- I believe so.

8 Q. Okay. Anything -- any particular strategies that --
9 that would have jumped out to you?

10 A. None that jump out.

11 Q. Well, other than the 9-1-1 call where the girls don't
12 identify anybody and then they talk to the dad and all of
13 a sudden somebody's identified.

14 A. Right. I think just looking, again, at any
15 differences in any of their statements. I mean, I'm
16 happy to look at -- at any of the statements if you want,
17 but I just -- there were inconsistencies.

18 Q. Right. Do you recall whether the girls called their
19 father before they called 9-1-1?

20 A. I don't remember the order of it.

21 Q. Okay.

22 A. I just remember that the name Amp or Anthony or
23 Mr. Porterfield didn't come up in the 9-1-1 call.

24 Q. Okay. Now do you -- do you remember anything about
25 Nate's testimony regarding phone calls being made to him

1 by -- by my client on that -- on that incident date?

2 A. My memory has just been refreshed from sitting in here
3 the last couple of days.

4 Q. Okay. All right. We'll come to back to that real
5 quick. And on the burglary first issue, you guys discussed
6 at length about the burg second and burg third-type of
7 stuff?

8 A. I don't remember me and Ms. Walker discussing that in
9 trial.

10 Q. Okay. You do -- you do remember that she made a DV
11 motion and part of her DV motion talked about -- talked
12 about whether or not it was a business or a dwelling?

13 A. Yes, I do remember that.

14 Q. Do you recall whether or not there were any objections
15 to -- to jury charges that were made by Knox McMahon
16 regarding like the definitions of dwelling or business or
17 any of the implications that might come from Knox on a jury
18 charge like that?

19 A. Not specifically. I know it's been brought up whether
20 we asked for lesser includeds and we did not.

21 Q. On the pre-trial jail calls, you said you guys did
22 403, you did 106. On the authentication, did you -- I was
23 trying to write it down and, in fact, keep up with you
24 because that was right around the time you had to slow
25 down, but did you say that you guys thought about the

1 authentication and didn't do it or that you-all -- that
2 wasn't part of something that you guys talked about and
3 you didn't do it or object to it?

4 A. I remember talking about it because, you know, we
5 knew that Mr. Waters' role was just kind of a made-up one.

6 Q. Well, had you seen in -- in previous trials where
7 Mr. Waters solely by himself wasn't allowed to get those
8 type of phone records in?

9 A. I hadn't seen anyone really argue, but everybody
10 just kind of accepted that Mr. Waters was the guy for
11 whatever reason who said -- I think we talked about it
12 for Mr. Porterfield's trial. I think just in the heat of
13 trial we just failed to do it. I think I remember even
14 having a folder labeled "authentication" and it just -- it
15 didn't happen. All we -- we simply renewed the initial
16 pre-trial objections related to 403 and context.

17 Q. So if you-all didn't do it, it's probably just because
18 you forgot about it or something like that?

19 A. Yeah, I think it just -- I think things were moving
20 fast.

21 Q. When did you find out about Ellison?

22 A. Years after Mr. Porterfield's case, but it was
23 obviously in place at the time. It's a 1970 something
24 case.

25 Q. Well, that -- that was gonna be my next question, was

1 when was that case?

2 A. Yeah, it was in the 1970's. It was good law at the
3 time of Mr. Porterfield's trial.

4 Q. And you obviously didn't do it because you-all didn't
5 know about it?

6 A. Right. I didn't research the issue as well as I
7 should have.

8 Q. And you said it took you years to find it after that?

9 A. Yeah, I had stumbled across it.

10 Q. Well, I mean, you told me, and I think Mr. Matthews
11 and I both learned about that case from you, so -- you
12 know, a decade later, too, so it's certainly not something
13 that's widely circulated. But in Ellison it talks about
14 jail mail where they -- they sign a card and basically give
15 -- give their rights away and say that they -- that anybody
16 -- or the -- the jail staff can read their mail, right?

17 A. Yeah. Well, just informs them that their mail will be
18 read.

19 Q. And that -- that's even out -- would you say it's a
20 more formal process to do something like that, where you're
21 actually signing a -- signing a waiver as opposed to just
22 hearing the thing get repeated over and over and over every
23 time you make a call?

24 A. Right. I -- I don't know exactly what they signed
25 and so I don't know if it was more in the context of them

1 waiving any rights or whether they were just being informed
2 that their rights would be violated.

3 Q. Right. And in Ellison it talked about especially
4 where somebody was stuck in jail and they couldn't get out
5 that those jail letters become essentially their -- their
6 lifeline to be able to communicate with the outside world,
7 right?

8 A. Right. And you see that with Mr. Porterfield, right?
9 He's in jail for just a number of months yet we have
10 hundreds of jail calls. That is just a way to communicate
11 with his family, with his loved ones. It's a way for him
12 to say to his family hey, contact my lawyer, I need to
13 see them. That's -- that's his contact. The only other
14 contact he's gonna have is with other inmates at the jail
15 and then correctional officers.

16 Q. Doesn't Ellison use some -- some pretty colorful
17 language to describe when the mail gets read for things
18 other than for jail purposes such as safety that chokes
19 off the lifeline of -- or chokes the neck of the defense
20 of the trial?

21 A. Sure. I mean, it -- the jail calls are essentially
22 just the prosecutors listening to your every word, right?

23 Q. Right.

24 A. There are circumstances where the jail may have a
25 reason, a security concern, to listen to calls and nobody

1 disputes that, but this isn't a situation where they have
2 security concerns, come across something incriminating and
3 then give it to the prosecutors. This is the prosecutors
4 directly asking about -- that I want all these phone calls.
5 And think about it. They don't ask for a warrant because
6 what would be the basis of the warrant? What would be
7 the probable cause to search Mr. Porterfield or anybody
8 else's phone calls? They're -- they're in jail, so they
9 must be saying something incriminating? No -- no competent
10 magistrate judge would sign that search warrant and so --
11 Q. And there's no evidence that came out at trial that
12 would have tended to give probable cause for them to get a
13 search warrant, right?
14 A. There's sure nothing that I can think of and that
15 would have been while we were in trial anyway. It would
16 have been too late to do anything.
17 Q. And you didn't object to no warrant, right?
18 A. There was no objection.
19 Q. Okay. Let's see. Now did you hear Anthony testify
20 yesterday or actually two days ago now that after -- after
21 hearing the jail phone calls that were played in court, you
22 know, specifically the ones that the State used, that it --
23 I think he used the word "compelled" him to testify? I
24 think -- I think maybe a better way to put that is make him
25 want to testify?

1 A. I was in and out on Monday a little bit more than
2 Ms. Walker, but that -- that makes sense to me. It would
3 have been part of I'm sure the decisionmaking process of
4 whether he testifies or not because --

5 Q. Because of that spin that Luck Campbell was putting
6 on the -- on the phone calls?

7 A. Sure. And while we could put other phone calls in
8 to attempt to get a context, I don't think that was
9 very effective. I think that's one of the benefits of
10 Mr. Porterfield testifying or one of the reasons he would
11 need to among others is to be able to explain to the jury
12 what those -- what those calls actually meant.

13 Q. And so if those -- if those statements or the jail
14 phone calls had been kept out at least through the State
15 due to not being able to authenticate the -- the -- who's
16 on both sides of each call or even one person that's on
17 each side of the call and for their failure to get the
18 search warrants, it -- it would have lessened at least --
19 maybe not been dispositive of whether or not he made a
20 decision to testify, but it certainly would have lessened
21 the reasons he had to testify, right?

22 MR. MATTHEWS: Your Honor, I believe counsel's
23 testifying right now. I didn't hear a question in
24 there.

25 THE COURT: If you could modify that.

1 MR. DERIEG: Sure.

2 BY MR. DERIEG:

3 Q. Do you think that had those jail phone calls been kept
4 out for whatever reason, be it authentication or for no
5 search warrant, that he would have had a -- he would have
6 had fewer reasons to want to testify?

7 A. So I think the jail phone calls while on the surface
8 seem like they may be insignificant and really didn't --
9 wouldn't have changed the jury's mind or -- or anything
10 like that, I think it's -- it's bigger than that, it has
11 a ripple effect, and it changes his analysis on --
12 Mr. Porterfield's analysis on whether he's gonna testify,
13 it changes the analysis on how his fiancée at the time is
14 gonna testify, it changes the analysis and the structure
15 of your closing argument. It affects a lot more than just
16 looking at three phone calls he made. So I agree, yes, it
17 would have factored into his decision whether to do it or
18 not and may have been the reason not to if they weren't
19 played.

20 Q. I want to jump back real quick just when we were
21 talking about the -- the Ellison stuff. Yeah. When they
22 make -- when the inmates make their phone call and the --
23 I guess notice is read by the robotic woman that these are
24 being -- these are recorded, do they -- do even have an
25 option to consent? Because I know on our end certainly we

1 have an option whether to consent or deny the call, but if
2 they're making a phone call do they even have an option
3 to consent whether or not to let their calls be -- be
4 recorded?

5 A. It is not their decision.

6 Q. And that -- and that was one of the things that the
7 Ellison court talked about, correct, where they couldn't
8 get out of jail and they didn't have the ability to
9 communicate with the outside world with -- without giving
10 consent to having the stuff read?

11 A. Right. Sorry. Yes, the Ellison court pointed out
12 that a person cannot be forced to waive their Fourth
13 Amendment right.

14 Q. All right. Do you recall -- you said the State tes
15 -- or played like three calls of -- of his jail calls.
16 Do you recall what, if any, of those phone calls were part
17 of the 247 batch that got the continuance?

18 A. I'm sorry. Repeat that.

19 Q. I'll ask it a much easier weigh. Were there any calls
20 in that 247 batch that -- that came in and you got a 2-week
21 extension for to listen to, were are any of those calls,
22 any of those 247, used by the State?

23 A. Yes, I believe it's -- the same three calls we've been
24 talking about?

25 Q. Uh-huh.

1 A. Yes.

2 Q. So originally those -- when the State originally
3 turned over three calls, those -- those weren't the
4 totality of the three calls that they played in court,
5 right?

6 A. Correct. No, that's, again, just another tactic of
7 that solicitor's office at that time to say hey, don't
8 worry, we're not gonna dump 300 phone calls on you, there's
9 just the three we want to use, so don't worry about the
10 other ones.

11 Q. Yeah, they --

12 A. And so -- and so they force your hand to say no, we
13 have to listen to the other ones and that then creates a
14 situation where rather than preparing for trial you're
15 listening to jail calls until 12:00 at night.

16 Q. Okay. And those first three calls, do you -- do you
17 remember the gap in time between the first three calls
18 being turned over and the 247?

19 A. I don't recall the specific amount of time. I can
20 tell you just practically what happens is they will hand
21 over three calls and then we will immediately say no, we
22 need the rest of them if you're going to disclose any of
23 them, and then they would start making disks and maybe we'd
24 have them that day, maybe the next day. I don't remember
25 the specific gap, but it would have been close in time.

1 It would have been an immediate request that we made.

2 Q. Okay. So those jail calls hadn't been disclosed when
3 you -- when you started working on the case like three or
4 four months prior?

5 A. Correct.

6 Q. Okay. And do you know at what point the State learned
7 of Diana Addison's number?

8 A. I don't.

9 Q. Okay. And you said that to your -- to your knowledge
10 the defense team didn't give over that number to -- to the
11 State, right?

12 A. Absolutely not.

13 Q. Was there something in this case that you guys were
14 forced to give over that you didn't feel was proper?

15 A. Yes. Ms. Walker brought this up I think pretty
16 completely yesterday. When the case was first scheduled
17 for trial in early February, we had an in-chambers meeting
18 with Judge King. I was present, Ms. Walker was present,
19 Ms. Meghan Walker with the prosecutor's office was present,
20 and Ms. Luck Campbell was present. There were issues
21 related to a continuance. I remember the issue relating
22 more to our witness from Florida, Mr. Griffin, not being
23 able to be there and him being such an important and
24 necessary witness, but there was also the issue of just
25 getting these jail calls and from what I remember for

1 whatever reason the alibi witnesses were talked about. I
2 think we were asked if we'd given notice under reciprocal
3 Rule 5, which we had, but --

4 Q. And what are you forced to give about that under
5 reciprocal Rule 5?

6 A. Sure. You're supposed -- you're forced to, say, just
7 make the Government aware that you're presenting an alibi
8 defense and then give the name of the -- or the place that
9 you are and the time that you're there. In this case, we,
10 as we've talked about the last three days, had written
11 statements from multiple alibi witnesses. That came to
12 the attention of the prosecutor's office and Judge King
13 who then said we were required under reciprocal Rule 5 to
14 turn those statements over. We informally, off the record,
15 in chambers objected to doing that and we said reciprocal
16 Rule 5 does not in any way require that, the rule is very
17 clear. He forced us to do it any way, so we turned over
18 the statements, and then as far as I recall the continuance
19 was essentially maybe informally granted or something, but
20 we did not get back on the record and object to that for
21 purposes of appeal, and that was just a complete error on
22 our part.

23 Q. And wasn't it that -- wasn't it you-all's intent
24 with those -- those defense witness statements to use, I
25 guess, specifically for impeachment? In case they got on

1 the stand and said something different than what those
2 statements said, you could introduce those statements to
3 impeach them or at least use them to refresh their memory?

4 A. Sure. Probably the latter, you know.

5 Q. Because it depends on how hostile a witness is against
6 you?

7 A. Maybe so. We didn't really anticipate anybody being
8 hostile here. I think it was more an issue of it being
9 so many years later, but what it turned into was after the
10 statements were given over all of those witnesses started
11 getting knocks on their door by law enforcement and
12 investigators with the Fifth Circuit Solicitor's Office.
13 I'm sure they would disagree with my characterization of
14 it, but my characterization of it would be that it was
15 intimidating.

16 Q. And so they had -- so they had the statements of all
17 the defense witnesses and I believe you testified that out
18 of all the -- the statements that you-all gave over to the
19 State the one that didn't testify was T.K.?

20 A. Tyrue Ruffin, yes.

21 Q. Yeah. And didn't his -- didn't his statement talk
22 about like going to the zoo or some -- some stuff that was
23 just kind of out there that really wasn't related to the
24 case?

25 A. I don't recall.

- 1 Q. Okay. Well, if it did talk about him being at the
2 zoo on -- on that day, would that not go to helping to
3 discredit Luck Campbell's insinuation that T.K. was the
4 other person in the -- in the room that day or helped my
5 client commit the crime that day?
- 6 A. Sure. Yeah, that could have -- could have forced her
7 to change her argument about that.
- 8 Q. Okay. I'll just be brief on the -- on the laptop bag.
9 Do you know how my -- how he came to -- how our client
10 Anthony ended up getting this laptop bag and using it
11 during court?
- 12 A. I remembered him using it, and as Ms. Walker said,
13 just a place for him to keep his papers, you know, pads
14 pens, normal stuff that anybody would have with them at
15 trial, and it just being at the -- you know, around the
16 defense table.
- 17 Q. And you said that it was a black laptop bag without
18 any real special markings on it, right?
- 19 A. That's my memory, yes.
- 20 Q. Do you remember how the -- the laptop bag that was
21 described by the victims in the case was?
- 22 A. A black laptop bag with no mark -- with no, you know,
23 identification markings.
- 24 Q. Okay. So at least similar characteristics, right?
- 25 A. Correct.

1 Q. And did anybody maybe suggest to him that he not have
2 a black laptop bag there with him in court every day?

3 A. No. We did not think about that.

4 Q. There was no -- I mean, you-all didn't -- did you know
5 prior to trial that there was a laptop bag involved in the
6 case?

7 A. Yes.

8 Q. And Ana would have known that, too?

9 A. Yes.

10 Q. Do you think if Anthony had known that, that it would
11 have made sense for him to have brought that black laptop
12 bag?

13 A. Sure. I mean, you know, any time you go to trial, the
14 client is part of the team, so you want them to have as
15 much information as -- as possible. Even though they're
16 not a lawyer, that it's, again, a team effort and so, you
17 know, if Anthony also knew that there was a black laptop
18 bag, I'm not sure whether he did or didn't, but if he did
19 that would have been another, you know, person that could
20 have thought oh, this is a bad idea.

21 Q. Well, that would -- that would have probably been
22 pretty dumb on his part had -- had he known that there was
23 a black laptop bag involved and brought it to court every
24 single day. I mean, that would be a pretty stupid thing to
25 do, right?

1 A. Well, at least it's not a good idea.

2 Q. Okay. Well, it certainly allowed Luck Campbell to --
3 to make a big deal out of it, right?

4 A. Absolutely.

5 Q. And do you recall during her -- well, just describe
6 for me just real quick again what she testified to and how
7 she actually used that bag and how she got it.

8 A. I'll rely on the record, but my memory of it was
9 that Ms. Walker was, I guess, cross-examining the witness,
10 Ms. Campbell was doing direct. I don't remember who the
11 witness was, I believe it was a State's witness, but
12 essentially Ms. Campbell either on direct or redirect
13 walked over to the defense table in an obviously
14 pre-planned move, grabbed the black bag and said was it
15 a bag like this? Because the witness had been testifying
16 about -- had been testifying about the bag and the
17 insinuation that was very apparent to everyone was that
18 this was the -- you know, this was the murder weapon
19 essentially, this is the proof. She was trying to use --
20 trying to make something evidence that wasn't evidence.

21 Q. If you -- if you'd look at page 501. I believe it's
22 right there at the front of that second book. Would that
23 refresh your memory as to who it was that was testifying
24 when Ms. Campbell was asking about the laptop bag brought
25 by --

1 A. It was Joe Clarke.

2 Q. Joe Clarke. Right. And if you'd look down at line --
3 lines 11 and 12, wouldn't that go to, I guess, your -- your
4 statement that it was a pre-planned move, they had seen
5 the bag and just, you know, like you said, a pre-planned
6 move to try and make some sort of point with -- with the
7 bag that they didn't know anything about?

8 A. Right. And my correction. It looks like Mr. Clarke
9 was my witness and I do remember that, so it would have
10 been on me to make the objection.

11 Q. Okay. And you didn't?

12 A. I did not and I should have.

13 Q. And did -- did Judge McMahon make an objection to what
14 Luck did?

15 A. No.

16 Q. Did he make -- well, Ana in her closing -- I think
17 you said that in her closing in order to make up for not
18 objecting, she tried to bring in a bunch of black laptop
19 bags as demonstrative evidence?

20 A. Correct.

21 Q. At that point wasn't it Judge McMahon who -- who
22 jumped in and objected to it at that time?

23 A. Yes, sua sponte.

24 Q. Do you remember whether or not Ms. Campbell objected
25 to it or did Judge McMahon just beat her to it?

1 A. I don't recall. If you've got a page number, I'm
2 happy to look at it, but I don't recall.

3 Q. Okay. I think on the -- on the Fourth Amendment, I
4 guess, search and seizure issue, when somebody is -- is
5 arrested that counts as a Fourth Amendment seizure, right?

6 A. Sure.

7 Q. Was there ever a -- was there ever a discussion prior
8 to trial as -- you know, trying to figure out the -- the
9 things that are gonna hurt you guys, that the circumstances
10 around his arrest would infer flight thereby inferring
11 guilt?

12 A. Correct.

13 Q. Was there anything about those circumstances that
14 you-all might have identified as potentially being Fourth
15 Amendment violations that could have at least the testimony
16 about his arrest be suppressed?

17 A. Yeah, we -- we approached it from a basic analysis for
18 flight about whether there's a nexus between the flight and
19 the arrest. We did not prepare, analyze or argue at trial
20 in -- in the Fourth Amendment context.

21 Q. And dealing with Fourth Amendment stuff, you know, you
22 end up typically getting into the fruit of the poisonous
23 tree and that kind of thing?

24 A. Yes.

25 Q. So if the -- if the arrest wasn't proper or properly

1 done potentially, the -- the inference of flight being
2 inference of guilt probably could have been negated?

3 A. I'll let the actual lawyers argue that, but I follow
4 your logic and we did not do that.

5 Q. And do you remember that it was a day before he was
6 arrested that Joe Clarke called him up and tried to get him
7 to meet at a gas station?

8 A. I remember something about that, yes, and that he
9 gave -- and they entered -- Joe Clarke talked about that
10 conversation at trial.

11 Q. Yeah.

12 A. And the fact that he didn't show up at the gas
13 station.

14 Q. I mean, would you ever meet Joe Clarke at a gas
15 station?

16 MR. MATTHEWS: Objection. Speculation. Relevance.

17 THE COURT: Sustained. Sustained.

18 BY MR. DERIEG:

19 Q. Did you -- did you talk to Joe Clarke prior to him
20 testifying?

21 A. No. I don't have any memory of it anyway.

22 Q. Do you have any recollection of testifying to -- or
23 not testifying to, meeting with any of the State's
24 witnesses prior to trial?

25 A. No.

1 Q. Okay. And the -- the day after the phone call
2 between Anthony and Joe Clarke where Clarke asked him to
3 meet him at a gas station, it's the next day that the
4 fugitive task force, and what he and his friends termed
5 as SWAT, started looking for him and ended up at this
6 third-party residence, right?

7 A. Yes.

8 Q. Do you recall whether or not at least through
9 Anthony's testimony or even Joe Clarke's testimony that in
10 the phone call the day before Joe Clarke never even told
11 him that there were warrants for him?

12 A. I don't recall that one way or the other.

13 Q. Okay. Do you recall that --

14 A. I don't think Joe -- it wouldn't make sense that Joe
15 Clarke would tell him that. Joe Clarke's practice, having
16 done a number of cases with him, would be to have the
17 person come in without knowing that they had warrants and
18 then being able to arrest them at that point.

19 Q. Do you recall it being Anthony's testimony that that's
20 exactly what happened? That he didn't know about it?

21 A. Yeah, that makes sense.

22 Q. And then the next day it's a fugitive task force?

23 A. Correct.

24 Q. And do you recall that it was a week prior to the
25 arrest that Joe Clarke actually got the warrants?

1 A. If that's what the warrants say. I don't -- that,
2 again, sounds correct.

3 Q. Do you recall Anthony testifying to that earlier this
4 week?

5 A. I don't know if I was in the courtroom for that.

6 Q. Okay. We'll let the record speak for itself, right?

7 A. Yes.

8 Q. Did you guys ever make a -- a burden shifting argument
9 regarding Luck Campbell's repeated use of T.K., T.K., T.K.,
10 T.K.? I know that -- I know she requested that Luck stop
11 saying T.K., but was there ever a burden shifting argument
12 actually made to the Court?

13 A. Right, and I don't think we got to the conclusion
14 of that with the attorney general's question. It looks
15 like we requested that it stop. I don't know if it was
16 a formal objection, but I didn't see a ruling, and there
17 may -- Judge McMahon may have made a ruling. If he did
18 not, again, that's an error on our part. That's our
19 responsibility to make sure that he makes a ruling on
20 that one way or the other.

21 Q. Right. And if you make an objection like that and --
22 especially after she's done it repeated times, wouldn't
23 also requesting a curative instruction to the jury also be
24 something that you would want to ask for?

25 A. Yes.

1 Q. Okay. And what would have been the proper way to --
2 to object to her continuously saying that? I think you
3 were talking about no continuing objection earlier.

4 A. Well, it would depend on what Judge McMahon's ruling
5 was.

6 Q. Right.

7 A. So if he ruled that it was -- if he overruled our
8 objection, we would need to continue to object every time
9 she does and if she continues to do it maybe ask the Court,
10 you know, Judge, could we just have this as a continuous
11 objection, you know, and get that on the record. You're
12 not changing your mind and, in fact, that's just for the
13 purposes of preservation.

14 Q. So you don't have to keep getting up every single
15 time?

16 A. Right, so you don't have to be a Jack-in-the-Box. On
17 the other hand, if Judge McMahon had sustained our
18 objection and it continued, then that's when you would be
19 getting into the areas of mistrial motions and -- and
20 things like that.

21 Q. Okay. Now let's talk about the -- the shackles real
22 quick and you said that there was a request made and denied
23 prior to Anthony testifying to take the shackles off?

24 A. Yes, it looks like there was a request.

25 Q. Okay. I think you said no -- no formal legal -- legal

1 objection, just kind of a request?

2 A. Well, yeah, from what I saw it wasn't tied into any
3 type of, you know, due process or any other -- of other
4 rights being violated.

5 Q. Okay. And you said you can't remember whether or not
6 Anthony told you in this case, but it's pretty common for
7 jurors in Richland County to see defendants in shackles in
8 back hallways?

9 A. I wouldn't say it's pretty common, but it's definitely
10 happened.

11 Q. Okay. Before trial or at any point in the trial prior
12 to Mr. -- Mr. Porterfield testifying, was there ever any
13 request or objection made to him having to wear shackles
14 for the entirety of the -- of the trial?

15 A. Around his feet, I don't recall.

16 Q. Okay. Do you -- do you recall why it was that
17 Ms. Campbell -- what reason Ms. Campbell gave for saying
18 that Mr. Porterfield did need shackles?

19 A. Sure. Well, there's what Ms. Campbell said and what
20 Ms. Campbell's intention is and what Ms. Campbell said is
21 that it's for security, but Ms. Campbell's intentions are
22 that hopefully somebody will see him in shackles and think
23 that he is a prisoner and safety concerns and dangerous and
24 is more likely to have committed the crime.

25 Q. Did you -- and thank you for your candor. Did

1 Ms. Campbell ever talk about him having a bench warrant
2 for a Schmerber hearing ever? Do you remember her using
3 that bench warrant as a reason for him to need to be
4 shackled for the entire trial?

5 A. My memory of it, and it may have been twofold, I
6 thought that that was the basis for her asking for his
7 bond essentially to be revoked once the trial began. So
8 obviously Mr. Porterfield was on bail at the beginning
9 of trial and once the trial starts the bond's over and
10 sometimes the judge will allow someone to kind of remain
11 out on an informal bond and in other circumstances the
12 judge will take the -- the client into custody for the
13 trial, and so my memory was that she used it for that.
14 But, again, and I know you-all are sick of hearing me
15 and Ms. Walker say it, we would rely on the record.

16 Q. Do you recall the reason that Judge McMahon gave for
17 shackling him or did he give any? Do you remember?

18 A. I don't. I don't recall.

19 Q. Do you recall any specific reasons to the -- and not
20 just generalizations, but specifically to reasons about
21 Anthony Porterfield given by Judge McMahon for him to have
22 been shackled?

23 A. I don't recall off the top of my head, no.

24 Q. Okay. Would it surprise you if he didn't give any?

25 A. It would not surprise me.

1 Q. All right. On the accomplice liability, do you
2 recall any testimony that would have provided any evidence
3 that Anthony Porterfield and some other party were acting
4 pursuant to a plan?

5 A. Well, no, because since you don't know who the other
6 person is, you can't talk about what they planned. So, no,
7 I don't remember, you know, specifically the word or idea
8 of a plan coming up in anybody's testimony.

9 Q. So there wasn't any of that?

10 A. No.

11 Q. Okay. Are you -- are you familiar with State V.
12 Dickman regarding accomplice liability?

13 A. Not off the top of my head, but I imagine it says
14 something about a requirement of having a plan.

15 Q. Evidence of --

16 A. Evidence of a plan.

17 Q. Yeah, and I'll -- I'll give you that site after --
18 after you get done testifying.

19 A. Sure. And the issue is, right, so Mr. Porterfield's
20 always maintained his innocence and said he wasn't there,
21 you don't know who the other -- the second person is and
22 the only other witnesses were the two girls who obviously
23 weren't with the two assailants prior to the crime being
24 committed.

25 Q. And do you recall an objection being made to the jury

1 charge of accomplice liability?

2 A. No.

3 Q. Okay. We've already talked about the statements given
4 to Judge -- or turned over by Judge King. And you said --
5 and in regards to the -- to Nate and the relationship with
6 Anthony, you said kind of everybody in the case knew what
7 was going on between them?

8 A. Yeah, I think everybody acknowledged that there was
9 some stolen goods coming in and out of that house.

10 Q. Yeah. And you said that -- that it was your belief
11 and certainly the goal to prove -- or show to the jury
12 that it was the father that was sort of crafting the -- the
13 testimony for his daughters?

14 A. Right, and -- and maybe less crafting the testimony,
15 but in the initial moments of the incident he was the one,
16 intentionally or unintentionally, kind of implanting the
17 idea of oh, this was probably Amp that did this.

18 Q. And, you know, I'm not quite sure how -- how it would
19 have would have affected the jury's view of Anthony if --
20 if you guys had gotten into that relationship, but it
21 almost certainly would have made the jury view the father
22 of the victims a bit differently, wouldn't it?

23 MR. MATTHEWS: Objection. Counsel testifying.

24 THE COURT: Sustained.

25 BY MR. DERIEG:

1 Q. Well, would it have been your goal to try and get the
2 jury to -- would it have been your goal to impeach the
3 credibility of Nate had you guys used that -- that type of
4 evidence --

5 A. Sure.

6 Q. -- or questions?

7 A. Yeah, if you can make him look like he's involved in
8 crime, the general belief is that juries will give that
9 witness less credibility.

10 Q. Right. And the jury already knows that Anthony is
11 being -- has been accused of a crime, right?

12 A. Correct.

13 Q. And so -- but they don't know about what's going on
14 with Nate?

15 A. Correct.

16 Q. All right. And I think regarding the investigation,
17 you said it would have been -- which Shealey was it that
18 had the case initially?

19 A. It was Luke.

20 Q. Luke. If Luke had requested that Watkins -- because
21 you said that Luke hired Watkins?

22 A. Yes. So there's -- there's Bobby Watkins.

23 Q. Bobby, right.

24 A. Then later there's a Christopher Watkins.

25 Q. If -- if Luke had asked Bobby Watkins to go and try

1 and collect the videotapes, would there have been a note
2 in your file or in -- and/or in Bobby Watkins' file about
3 that?

4 A. Yes, I would anticipate one. Luke is one of the
5 most qualified attorneys that I know in the State and
6 it's certainly something that I would have done if I were
7 involved initially.

8 Q. And were there any -- any notes in either man's file
9 that you read that said that anybody ever even considered
10 the videos from the surrounding businesses?

11 A. No.

12 Q. And ultimately you guys never -- never had it as
13 evidence?

14 A. Correct.

15 Q. So you have no idea of whether it exists or not
16 because it was such a long time afterwards?

17 A. Correct.

18 Q. Okay. Now I believe you testified that back -- back
19 a decade ago those cell tower locations were much, much
20 broader than they are now, right?

21 A. Yeah. Typically today we don't use cell phone towers,
22 we use GPS.

23 Q. And --

24 MR. DERIEG: I beg the Court's indulgence for just
25 a minute, Your Honor.

1 THE COURT: Yes, sir.

2 BY MR. DERIEG:

3 Q. In your, I guess, review of discovery, particularly
4 the initial incident report, do you -- do you ever recall
5 the names of Deputy Bass or Deputy Stone?

6 A. I know their names generally as working with the
7 sheriff's department at that time, but I don't remember
8 specifically their involvement in Mr. Porterfield's case.

9 Q. Okay. So you don't know if they were the ones that --
10 that took the initial statements from the victims and their
11 father?

12 A. I'm not disputing that they are. I just don't -- I
13 don't recall.

14 Q. Besides the -- the argument on the DV motion about not
15 having proven dwelling rather than a business, did you guys
16 ask for like a burg second or a burg third jury charge as a
17 lesser included offense?

18 MR. MATTHEWS: Your Honor, I believe we've addressed
19 this issue already. It's been asked and answered.

20 THE COURT: I believe that was early on, Mr. Derieg.

21 MR. DERIEG: Okay.

22 THE COURT: It was.

23 BY MR. DERIEG:

24 Q. And you testified that Mr. Porterfield had plenty of
25 access to his discovery and was prepared for his testimony?

1 A. I believe so, yes, sir.

2 Q. But at the same time he still brought that black
3 laptop to court, right?

4 A. Right.

5 Q. Did you ever get a sense of what the family dynamic
6 was within that -- that household between Nate and his
7 daughters and his wife? Like was it kind of traditional
8 Middle Eastern where the father is the head of the
9 household?

10 MR. MATTHEWS: Objection. Speculation.

11 MR. DERIEG: I asked him if he got any indication
12 from the testimony.

13 THE COURT: What's the basis of your objection,
14 Mr. Matthews?

15 MR. MATTHEWS: Your Honor, I would object on
16 relevance. I don't think that's relevant to any of
17 the accusations.

18 THE COURT: Sustained. Sustained.

19 MR. DERIEG: May I make an argument and --

20 THE COURT: Yes, sir. Please do.

21 MR. DERIEG: It just goes to the -- his statement
22 that he made before about the goal being to try and show
23 that it would have been the father that implanted the
24 idea of Amp inside the daughters' heads.

25 MR. MATTHEWS: Your Honor, he's asked those questions

1 already. We've been over this already.

2 THE COURT: All right. I'll let him ask -- one more
3 time, Mr. Derieg. You can ask him one more time.

4 BY MR. DERIEG:

5 Q. I'm just asking through the testimony did you get the
6 -- a sense of what the family dynamic was?

7 A. I got the sense that it was a traditional father head
8 of household.

9 Q. Okay. And I think this is it. Do you -- do you
10 recall there being -- well, do you recall what the type of
11 court appearance it was that Anthony got a bench warrant
12 for?

13 A. Just from listening to the testimony that it was a
14 Schmerber hearing.

15 Q. And he consented to that?

16 A. Again, my memory comes from the testimony here. That
17 it sounds like he did.

18 Q. And a Schmerber hearing is to get a buccal swab DNA?

19 A. That can be a reason. There's other reasons, but,
20 yes, that's the most typical one.

21 Q. Okay. Do you recall testimony in the -- in the trial
22 that -- about DNA?

23 A. I believe that none of Mr. Porterfield's DNA was
24 anywhere on the scene, if I remember correctly.

25 Q. Right. And do you recall whether or not the girls

1 ever testified that the two black males that robbed them
2 were wearing gloves?

3 A. I don't recall.

4 Q. Well, for them to swab for DNA inside the house, it
5 would have made sense -- well, do you think they would have
6 swabbed for -- for DNA if the girls had told them that
7 they'd been wearing gloves?

8 A. I mean, it makes it more likely that they would.
9 There could be other reasons.

10 Q. Okay. And, I guess, just a final question. Do you
11 think that you-all made a big enough deal about him not
12 having his DNA or any other physical ties to the -- to the
13 crime scene?

14 A. Obviously not.

15 Q. Okay. Because I think Ana testified yesterday that --
16 that the only thing tying him to the crime scene was the
17 girls' statements. Would you agree with that?

18 A. Yes.

19 MR. DERIEG: That's it, Your Honor. That's all I
20 have.

21 THE COURT: Thank you.

22 REDIRECT EXAMINATION

23 BY MR. MATTHEWS:

24 Q. Mr. Bank, just a brief question. And this is an
25 academic question considering that the issue of whether you

1 and Ms. Walker turned over witness statements improperly
2 under Rule 5 is not an allegation before this Court
3 presented by Mr. Porterfield, but when do you think you
4 were required to turn over the Rule 5 -- under Rule 5 the
5 statements by Mr. Porterfield's witnesses?

6 A. Never.

7 Q. Never. So even right before they testify, your
8 position is they -- you never have to give them over?

9 A. Correct.

10 Q. The State does, but you don't have to give them over?

11 A. There's different rules for different parties.

12 MR. MATTHEWS: All right. Thank you for your
13 testimony today.

14 That's all I have.

15 THE COURT: Mr. Derieg, on that issue?

16 MR. DERIEG: I don't have any questions, Your Honor.

17 THE COURT: Okay. Thank you, sir. You've been
18 very patient for three days.

19 THE WITNESS: Thank you, Judge.

20 (Witness excused.)

21 MR. MATTHEWS: The State rests.

22 I know you don't want summations or closing
23 arguments, but for the record in relation to that last
24 statement, there has been testimony presented about
25 counsel's failure to object under Rule 5. First of all,

1 that would be a direct appeal issue and since they both
2 testified they did object to Judge King, but it's not one
3 of these sixteen accusations here, so I would point that
4 out. And I would object to the application being amended
5 at this point to add that.

6 THE COURT: Okay.

7 Gentlemen, as I mentioned yesterday -- I have from
8 Mr. Derieg, as I mentioned yesterday, a proposed order
9 and it appears, Mr. Derieg, that it addresses 1 through
10 16; am I right?

11 MR. DERIEG: And through testimony, yes, I addressed
12 1 through 16, but 17 and 18 are kind of a catchall in
13 case something else comes up and I haven't enumerated it
14 yet, and I think even in the -- in the attachment it also
15 reserves the right to, you know, if something comes up
16 during -- during the hearing for it to be included, and
17 it was not objected to prior to this time.

18 THE COURT: All right. To both of you, anything
19 that I've ruled during the hearing over the past three
20 days, I want you to -- Mr. Matthews, if you'd do the
21 same, as I mentioned yesterday, if you'd send me a
22 memorandum or a proposed order from the State or the
23 AG's office addressing those same things.

24 Now, Mr. Derieg, because this was done before the
25 hearing, certainly you can amend if you have to, as long

1 as what you-all bring to me happened during the trial.

2 Now several cases have been mentioned. I would
3 appreciate your giving me copies of those cases or any
4 other cases that you think are relevant. What I don't
5 want and I don't have time to read are the massive
6 United States Supreme Court-style briefs. I just don't
7 have the time to do all that, folks. My apologies.

8 And both of you have done a really good job of
9 being extremely thorough, which is fine. The more
10 thorough you are, the less I have to dig up later to
11 do my research, so you've done well.

12 As far as when you want to send me those things
13 and I'll read those things, I'm loathe to give you-all
14 deadlines at the beginning of these things because you're
15 like I am, you've got a lot more to do. You can jump on
16 this case this afternoon. I've got one more today, some
17 tomorrow. Not to mention what's waiting on me at the
18 office ahead of this case.

19 So with that said, Mr. Matthews, how much time would
20 you like to have to respond to the proposed order?

21 MR. MATTHEWS: Your Honor, I'm only gonna be in
22 this job for another week. I'll still be with the
23 Attorney General's office, but I'm transferring to a
24 different division, so I need to get it done by a week
25 from today, so I'd say -- I think it should be a single

1 deadline.

2 THE COURT: That's okay if that's what you want.

3 Where are you going?

4 MR. MATTHEWS: I'm just transferring to a different
5 division within the office, Medicaid fraud, but it's --
6 hopefully I'll be still invited to Christmas parties and
7 things of that nature.

8 THE COURT: I don't think they should let you go.

9 MR. MATTHEWS: Judge, I appreciate your comments.

10 THE COURT: What do you want, Mr. Derieg? How much
11 time do you want to reply?

12 MR. DERIEG: I would ask for ten days after the
13 submission of -- of the State's since they've got my
14 proposed order and have had three to four days to look
15 at it already and I hold the burden of proof.

16 THE COURT: And I'm not gonna hold either one of
17 you to strict deadlines on these things. Life gets in
18 the way of life. It happens to all of us.

19 I appreciate your patience. I'm not asking for
20 summations for the sake of -- Mr. Porterfield, I'm not
21 asking for summations today. Mr. Porterfield, I took
22 a lot of notes and she's taken a lot of notes. I
23 really don't need a closing argument today.

24 So with that said, gentlemen, and, ladies, thank
25 you-all for your patience with me. I appreciate it.

1 MR. MATTHEWS: Thank you, Your Honor.

2 MR. DERIEG: Thank you, Your Honor.

3 (Whereupon, the proceedings were concluded for
4 May 26, 2022, at 11:12 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on May 24th, 25th, and 26th, 2022.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

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

March 6, 2023

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

AGENCY I.D.
ORI 400000

INCIDENT REPORT

CASE NUMBER

1206035127

NCIC

INQ ENTD

INCIDENT TYPE				COMPLETED		FORCED ENTRY		PREMISE TYPE		UNITS ENTERED		TYPE VICTIM	
1. ROBBERY - 120				☒ YES ☐ NO		☒ YES ☐ NO		20/05				☒ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST ☐ GOVERNMENT ☐ RELIG. ORGN. ☐ SOC/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFFICER	
2. LARCENY/BREAKING AND ENTERING - 220				☒ YES ☐ NO		☒ YES ☐ NO		20/05					
3.				☐ YES ☐ NO		☐ YES ☐ NO							
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER)						SUBDIVISION		ZIP CODE		WEAPON TYPE			
[REDACTED] RD						COMP MAR		29210		11			
INCIDENT DATE		24 HR. CLOCK		TO		DATE		24 HR. CLOCK		DISPATCH DATE / TIME		24 HR. CLOCK	
06272012		1400				06272012		1405		06272012		1410	
DISPATCH TIME		TIME ARRIVED		DEPART TIME		AREA		GRID					
1410		1414		1414		4		14					
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RES		RACE		SEX		AGE	
NATHANI, GULZAR G				1 2 3		J		U		M		42	
ADDRESS										ETH.		DAYTIME PHONE	
[REDACTED] RD										N		8032378257	
										CITY		EVENING PHONE	
										COLUMBIA		445 8578	
										STATE		ZIP CODE	
										SC		29210	
VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RES		RACE		SEX		AGE	
NATHANI, RABIA G				1 2 3		J		U		F		18	
HEIGHT				WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DAYTIME PHONE	
502				129		1		2				8032378257	
ADDRESS										CITY		EVENING PHONE	
[REDACTED] RD										COLUMBIA			
										STATE		ZIP CODE	
										SC		29210	
VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN:				COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO									
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK				DRUGS ☐ YES ☒ NO ☐ UNK TYPE:									
☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DET./SPEC. ASMNT ☐ OTHER				☐ ALONE ☐ ASSISTED				GANG RELATED ☐ NO ☐ YES					
☒ SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE		SEX		AGE		ETH.		DATE OF BIRTH	
☐ RUNAWAY		UNKNOWN, UNKNOWN		B		M							
☐ WANTED		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										NCIC NUMBER	
☐ WARRANT		GOES BY AMP											
☐ ARREST		ADDRESS										CITY	
☐ JAIL												STATE	
												SC	
IMMONS		SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☒ UNK		ARRESTED NEAR OFFENSE SCENE: ☐ YES ☐ NO		OFFENSE DATE		OFFENSE TIME		ARREST DATE		ARREST TIME	
		DRUGS ☐ YES ☐ NO ☒ UNK TYPE:		TOTAL #ARRESTED:									

R/O was dispatched to I/L for a call of a confirmed armed robbery. Upon arrival R/O made contact with the vict who stated she and her 14 year old sister were at home and heard something outside. Vict stated she was at the door and observed "Amp" at the door. Vict stated he pushed her and the door out of the way and forced himself inside. Vict stated subj pulled a gun out and ordered her to a back room. Vict stated subj and another (had face hidden-NFI) went through the house and took:

2 HP Laptops (\$1000.00)

1 47" sony bravada TV (\$500.00) SN.

1 42" sony bravada TV (\$500.00)

The I/L is a home as well as a home based business which repairs electronics. Vict stated both subj left in a gold Hyundai Sonata. Desk Sergeant, LAB and CID were briefed of the incident. Refer to CID for further information.

PLAINTIFF'S
EXHIBIT

PROPERTY		SEIZED		\$		BURNED		\$		DAMAGED		\$	
☐ ACTIVE		☐ ADM. CLOSED				☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18					
☐ UNFOUNDED						☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER					
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY													
S. NO.		REPORTING OFFICER(S)		DATE		S. NO.		APPROVING OFFICER		DATE			
03		Stone, James		06272012				Barton, Edward		06272012			
						FOLLOW UP INVESTIGATION		S. NO.		OFFICER		DATE	
						☒ YES ☐ NO		1241		Charles, J		6-28-12	

Rabia Exhibit

Inv. Joe Clarke
RCSD/CID
Robbery
Case# 1206035127

06/28/2012

I received a report of an armed robbery which had occurred at [REDACTED] Rd, located in Richland County. In this incident two unknown B/M's forced entry of a home/office. The sole occupants of the home at that time were sisters Rabia and S. N. [REDACTED].

I then called the home and spoke with Mr. Nathani. He then put his oldest daughter Rabia on the phone. Rabia who is 18 years of age and a resident of the home relates the following account.

They were returning home from a local restaurant. When they drove up to the home they noticed two men were at the location sitting in gold in color Hyundai. Rabia states she and her sister went inside and as they were doing so, the men exited the car. She immediately recognized one of the men as "Amp". The other man with him she did not know. She claims Amp came to the door and asked to come inside. She went to close the door and asked her sister to call her father on the phone. Rabia claims Amp then pushed the door open hard enough to force her back inside, then he and the other man came inside. It was at this point that Amp produced a handgun and ordered both Rabia and her sister too another room. According to both women he ordered them to lie down on their stomachs and not move. He and the other man then began removing items from the home. I had learned from my supervisor Lt. Scott McDonald that RCSD had actually responded the day of the incident which was the afternoon of the 27th of June. I further learned that at this time, Inv. Bass of RCSD had made contact with all of the occupants of the home.

→ This is when RCSD was first made aware of the possible identity of the suspect. Rabia ← had told her father when he returned home, that it was "Amp" and another man who had done this. Mr. Nathani then related this information to responding RCSD units to include Inv. Bass. Nathani was certain that "Amp's" real name was Anthony. However he did not know for certain anymore personnel information. He did have a possible phone number for Amp. That number (803-629-8172) was given to Inv. Bass. Inv. Bass then relays that number, real time, to Lt. McDonald who is standing by at RCSDHQ. While Inv. Bass is completing a follow-up report, Lt. McDonald runs the phone number through available databases. The number comes back registered to an Anthony M. Porterfield, aka (Amp).

06/30/2012

I speak at length with Mr. Nathani by phone. In this conversation he relates the nature of his business. He is in the repair of electronics business. The incident location off [REDACTED] Rd is both his office and home. His family which in addition to his two daughters includes a teenage son and wife all contribute to the business. Nathani admits that he has done business with Anthony Porterfield in the past. That it was not uncommon for Porterfield to come by the home with multiple items to repair or sell. Nathani has a satellite location at Metro 1 flea market in Lexington County. He claims to have conducted business with Porterfield at this location as well. On the afternoon of the 27th

of June (Day of the incident) he, Nathani was working at the flea market. He states he received multiple calls from Porterfield. He says the calls were of a business nature. However he states Porterfield repeatedly asked his whereabouts'. Porterfield asked when he may be returning back to his home location off [REDACTED] Rd. Nathani claims he told Porterfield he would be back at the [REDACTED] Rd location after 6pm. In light of what occurred that day Mr. Nathani is convinced that Porterfield was tracking his movements. He feels that Porterfield knowing that he was not home could then come by the house and take items without fear of being discovered.

07/02/2012

I had requested and received a set of photo line-ups bearing the image of Anthony M. Porterfield. These line-ups came from the SCDMV photo registry and were compiled by SLED. This is a random (computer) selection of images.

I then went to the home of Mr. Nathani. There I made contact with his daughters Rabia and S. N. I spoke with 18 year old Rabia first. In a private conversation she provided a written account of what had occurred that day. I then presented the photo line-up. I asked if she could identify the man who had robbed her that day. Without hesitation Rabia picked the image of Anthony M. Porterfield. In the same manner I spoke with her younger sister S. N. The 14 year old S. N. was also shown a photo Line-up; she too chose the image of Anthony M. Porterfield.

I asked both women if they had ever seen the second man before. Both had never seen him before. They both state the second man seemed to be covering up with a "football jersey". Meaning he was trying to hide his identity with a shirt. He kept trying to pull the jersey over his face while in the home.

Mr. Nathani gave me a list of the items that had been taken from the home. Televisions, computer laptops among other electronics were removed from the home. The values of the items taken were in excess of \$10,000. These items did not necessarily belong to Nathani but to the multiple customers he served.

A records check of Anthony M. Porterfield (10-23-86) revealed he was operating with a suspended driver's license. He has multiple arrests in his past to include Burglary, weapons violations and narcotic infractions. He also had violated conditions of his probation as late July of last year.

07/10/2012

I secured warrants for the arrest of Anthony M. Porterfield for the following charges. Burglary first for the forced entry of a home while armed with a handgun, with the intent to commit a crime inside. I also charged with one count of armed robbery for the subsequent removal of personal property of the victim while armed with a firearm. Finally I charged with 2 counts of kidnapping for the forced confinement of both Rabia and S. N. Nathani. Both women were held at gunpoint. Taken to another location of the home and prevented from escape.

07/17/2012

Statement

State of South Carolina))
County of Richland) W. S.

Date 07. 02. 2012
Time 15:00

Personally appeared before me, this date, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one:

RABIA NAHANT Ph(H) # 803-445-8598 Ph(W) # _____

Who makes the following statement under oath to wit:

Q: Inv. J.A. Clarke

A: R. NATHAN

ON 06.27.2012 14:00

I Aboard with my sister Came back from Chile P.I. A we see Champain Color & Door Car. w/ Gloria's Sister inside. I get out of my Car w/ items in hand the driver gets out w/ Laptop and Black Bag. He asked if my Father at the Business. I told him No my Sister and he went inside to put things down. While inside my sister (SORIA) had the Carless phone so she could call our Father. I was inside (just inside the door.) When Subject Came to Front door. I attempted to close the door. Subject pulled a handgun. And forced this way inside. The 2nd man the one who had been in the passenger seat came inside. He (2nd man) was attempting to hide his face with his shirt. They told us to be quiet, sit on our stomachs with our head down. They were inside 10-15 minutes they went inside the nearest rooms and took items from inside. They then left.

Q: Did they say anything too you?

A: If you remain quiet we will not hear you.

Q: Did the second man have a weapon?

A: no.

This statement was made in the presence of Inv. Joe Clarke of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this ____ day of _____ 2017

Signed:

Witness:

Witness:

Notary Public for South Carolina
My commission expires

Statement

State of South Carolina)

Date _____

) W. S.

County of Richland)

Time _____

Q: Did either man touch you in anyway?

A: No

Q: Do you know either of the men?

A: yes

Q: Explain what?

A: I SAW him A Couple of times Come to our Business either AS A Customer or sell things.

Q: So this person has been inside the Business Before?

A: yes

Q: How many times has this person been here?

A: more than 10 times

Q: So the man who pulled a gun and robbed you is a man who has been here as many as 10 times?

A: yes.

Q: Do you know the name of this person?

A: "Ramp"

Q: Do you know his real name?

A: No.

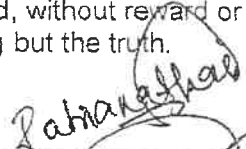
Q: I showed you a photo here of you picked picture #2 is this the man who robbed you?

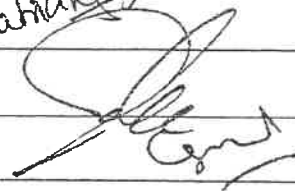
A: yes.

This statement was made in the presence of Inv. Joe Clarke of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this ____ day of _____ 2012

Signed: 

Witness: 

Witness: _____

Notary Public for South Carolina
My commission expires _____

Investigative Statement

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

On August 16, 2012, Detective B.G. Watkins of Watkins Detective and Security Agency, located at 2026 Assembly Street, Columbia, SC, 29201, interviewed Gulzar G. Nathani, Rabia Nathani, eighteen years of age, and S. N. [REDACTED], fourteen years of age, at the address of [REDACTED] Road, Columbia, SC, who stated the following:

Ms. Rabia Nathani said shortly before 2:00 p.m. on June 27, 2012, she and her sister S. N. [REDACTED] returned to their residence after having gone to Chic-Fila. Rabia said as they drove into her driveway, she noticed that the defendant was standing out beside a car and another black male was seated in the car. After getting out of the car, she says she asked the defendant what they wanted and he said he was there to see their daddy. She informed the defendant was no there, but at the flea market. Rabia states that after she and her sister entered their home, and as she was in the process of closing the front door, the defendant pushed against the door forcing her backwards, at which point the defendant and the other black male who had been seated in the car entered the home. At which point and time Rabia said the defendant put a gun to her head and shortly after, defendant gave the gun to the other man with him and the girls were ordered to sit down. S. N. says they sat down and they told the defendant and the other man to take whatever they wanted. Rabia says they complied with the robbers instructions and after a few minutes of the defendant and the other man looking around in front room area where the computers and other electronics were housed, which their father worked on, the men left the house by way of the car that the defendant was driving according to both girls. Both girls say that they knew the defendant by Amp, and had seen the defendant talking and doing business with their father on previous occasions there at their home and knew his name to be Amp. That Amp is what their father called him and/or referred to him as Amp in their presence. Rabia says when she and her sister initially returned home from Chic-Fila, Amp was standing out beside the car and another man was seated inside the car, which Amp would later drive away in after the burglary. She says Amp's face was not covered at anytime from the time she arrived until the time he burglarized the house and drove away. She does say that the man with Amp attempted to pull his shirt up over his face as he entered their home along with Amp. She does say that items were taken by the man called Amp and the party with him.

Rabia says that she is sure that it was around 2:00 p.m. on June 27, 2012 when she and her sister returned from Chic-Fila and fell victims to the burglary by the man that she calls Amp and the man accompanying him. Rabia says that immediately after the

burglary Amp and the man with him entered a car that Amp drove the two of them away in. She says she immediately used the house landline phone (803) 772-2090 and called her father's cell phone number (803) 445-8598 and advised him of the burglary by Amp and the other person. The father advised them to call the police and the father who was at the flea market on US #1 came home immediately. As for the father, he says he has known Amp for some five to six months before the crime in question. He says he met Amp at the flea market on US #1 and Amp had sold him computers and computer parts during the time element. He says when he first met Amp as he was questioning Amp where he got the items that he was selling the victim and he told the victim that he worked for the Recycling place and showed Mr. Nathani ~~his identification card~~ from the Recycling place. Mr. Nathani says that his girls knew Amp by sight and knew that he referred to Mr. Porterfield as Amp, because the girls had been in the father's company when the father was doing business with Amp and they knew the father called Mr. Porterfield "Amp." Mr. Nathani also allowed PI to listen to a voice recording that Mr. Nathani said he received from the man he called Amp on July 17, 2012 and the length of the recording is 3 minutes and 45 seconds. PI listened to the conversation and certain ~~appears that it is the voice of the defendant~~. During the voice conversation, the caller questions Mr. Nathani about having heard that the police wanted to question him and the caller is concerned that Mr. Nathani did not call him before calling the police and accusing him of the offense. ~~Mr. Guza Nathani, as well as his girls are from Pakistan~~ and the name of his company is "Comp Mart" and he advertises as buying, selling, trading, and fixing computers, gaming consoles and cell phones. His business telephone number is (803) 445-8598 and his e-mail is gulzamathani@yahoo.com. Mr. Nathani says he and his daughters would be willing to answer any other questions should there be any.

END OF STATEMENT

This statement was made in the presence of Private Detective B.G. Watkins of Watkins Detective and Security Agency.

I make this statement of my own free will and accord without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 16th day of August, 2012

Sheryl D. Bryant
Notary Public for South Carolina

Signed: R. D. C.

Witness: _____

My Commission Expires: 10/2/2017

Witness: _____

Armed Robbery (Page 1)
at Comp Mart.

Laptops stolen. 1224 Broad River Rd.

1. HP TouchSmart TX2 (Repair) Officer Chris.
SN SCNE41C M13- \$ 1799.89 803 457 4411

2. MR. Mike P53. 81500

2. ASUS net ECPC 10.1" (Repair) MR. Jersey.
803 550 6260.
\$ 200.

3. Gateway Laptop (Repair) Mr. Jersey
803 550 6260.
\$ 350.

4. HP Laptop CQ56 (Repair) MS. LSEC.
803 309 4876.
\$ 400.

(2) HP Laptops on report for
1000

5. HP DV9000 17" Laptop Mr. Nathani
\$ 450.

6. HP " " " " " " " "
\$ 450.

7. Dell Latitude D630. Mr. Nathani
\$ 300.

8. Dell Inspiron 1545 Mr. Nathani
\$ 450.

(Page 2)

9. MR. SKINNEY 803 238 4455

Compaq Laptop (Broken charging port)

\$400

10. LEAH Acer Laptop 315 489 5020
803 201 5597

\$450

Total 284950

(Page 3)

Was on report Personal + home electronics
for \$500 a piece

1. Sony Bravia 47" LCD HD TV \$1400

2. Sony Bravia 42" LCD HD TV \$800

3. LAPTOP CHARGERS. (Different Laptop/Brands)

60 Chargers @ 402 \$2400

4. Play station 3. 80GB. fat Q+3 \$600

5. Playstation 3. Mr. Mike 803-546-7782
(Copy) \$200

6. IPad 3 16GB. white \$500

Total \$5900

TOTAL COST OF ALL ITEMS \$5900

+ 450

\$6350

Exhibit 8

8/23/2018

██████████ Rd, Columbia, SC 29210 - MLS 441629 - Coldwell Banker



ColdwellBankerHomes

██████████ Rd, Colum

\$149,000

For Sale | Active | Commercial | 2,150 Sq. Ft. | 20 Par



Photo 3/20



1567



Exhibit 9

8/23/2018

██████████ Rd, Columbia, SC 29210 - MLS 441629 - Coldwell Banker



Great building with plenty of parking in rear. Perfectly situated along the ██████████ corridor. Formerly professional offices, could be your new home for your business close to I-26, Greystone Blvd and Bush River Road. Great opportunity to live upstairs from your office in the apartment on the second floor. Large fenced area behind house and approximately 0.6 acres on ██████████ Road. Call to take a look!

Full Property Details for ██████████ Rd

General

Price: \$149,000

Status: Active

Type: Commercial

MLS ID: 441629

Updated: 7/23/2018

Added: 188 day(s) ago

Viewed: 67 times

Location

Area: Irmo/St Andrews/Ballentine

County: Richland

Heating & Cooling

Cooling Type: Central

Lot Features

Lot Size (Acres): 0.57

Lot Size: 344x80x344x64

Zoning: GC

Disclosures and Reports

https://www.coldwellbankerhomes.com/sc/columbia/██████████road/pid_22983595/

Exhibit 10

8/23/2018

Heating Type: Central

[REDACTED] Rd, Columbia, SC 29210 - MLS 441629 - Coldwell Banker

APN: 07307-05-12

Utilities

Sewer: Public

Water: Public

Structural Information

Construction: Brick

Roof: Comp Shingle

Stories/Levels: 1

Square Feet: 2,150

Year Built: 1950

Listed by ERA Wilder Realty

Schools serving [REDACTED] Rd

School District: Richland 01

Score	Name	Grades	Distance
	<u>H. B. Rhame Elementary School</u> 1300 Arrowwood Rd, Columbia, SC 29210	PK-5	0.3 mi
	<u>St. Andrews Middle School, Columbia, SC</u> 1231 Bluefield Rd, Columbia, SC 29210	6-8	0.2 mi
	<u>Columbia High School, Columbia, SC</u> 1701 Westchester Dr, Columbia, SC 29210	9-12	1.6 mi

Disclaimer: School ratings provided by [GreatSchools](#). Ratings are on a scale of 1-10. [Learn more about GreatSchools ratings](#). School attendance boundaries provided by Pitney Bowes and are for reference only. Contact the school directly to verify enrollment eligibility.

Price & Sales History for [REDACTED] Rd

Date	Details	Price	Change	Source
6/21/2018	Price Reduced	\$149,000	-9.7%	MLS
2/16/2018	Listed	\$165,000	—	MLS

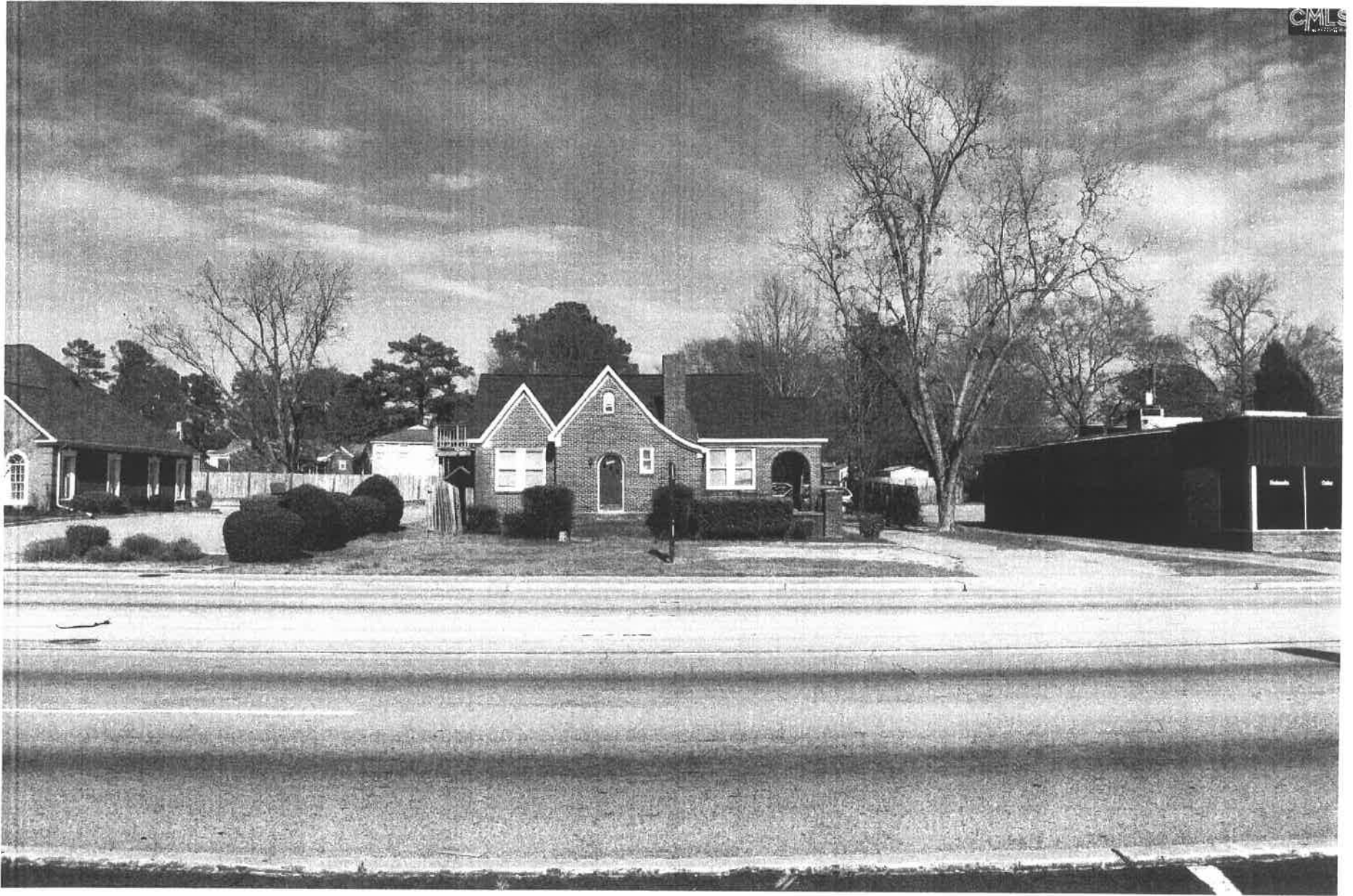
Disclaimer: Historical sales information is derived from public records provided by the county offices. Information is not guaranteed and should be independently verified.

Listed by ERA Wilder Realty

[REDACTED] Road, Columbia, SC 29210 (MLS# 441629) is a Commercial property. [REDACTED] Road is currently listed for \$149,000 and was received on February 16, 2018. Want to learn more about [REDACTED] Road? Do you have questions about finding other [Commercial real estate for sale in Columbia](#)? You can browse all Columbia real estate or contact a Coldwell Banker agent to request more information.



1570





Exhibit

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 10, 2012,
the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

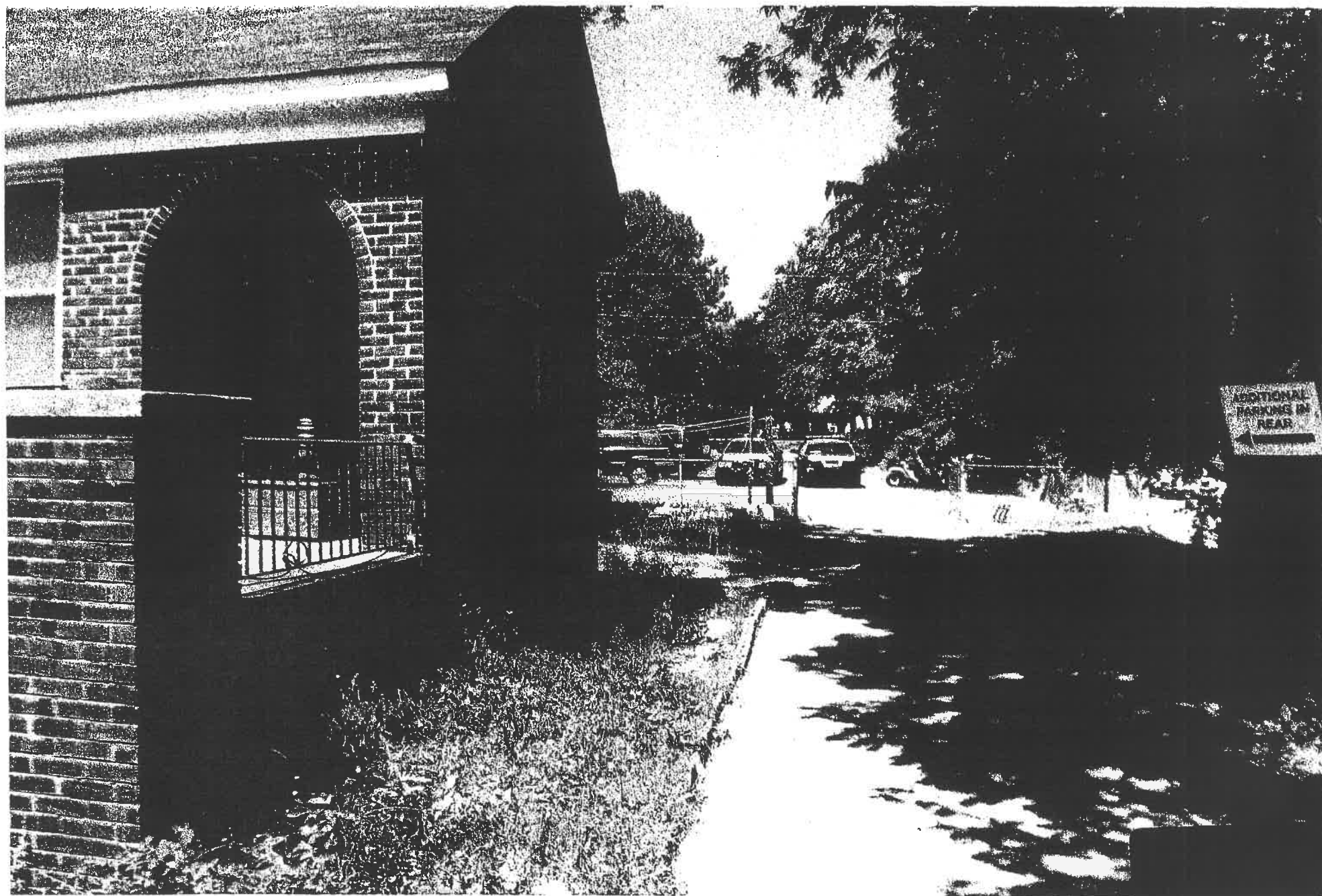
That Anthony M Porterfield and/or another co-defendant did in Richland County on or about June 27, 2012, enter the dwelling of RABIA G NATHANI located at [REDACTED] Road, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight therefrom, the defendant displayed what was or appeared to be a firearm, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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



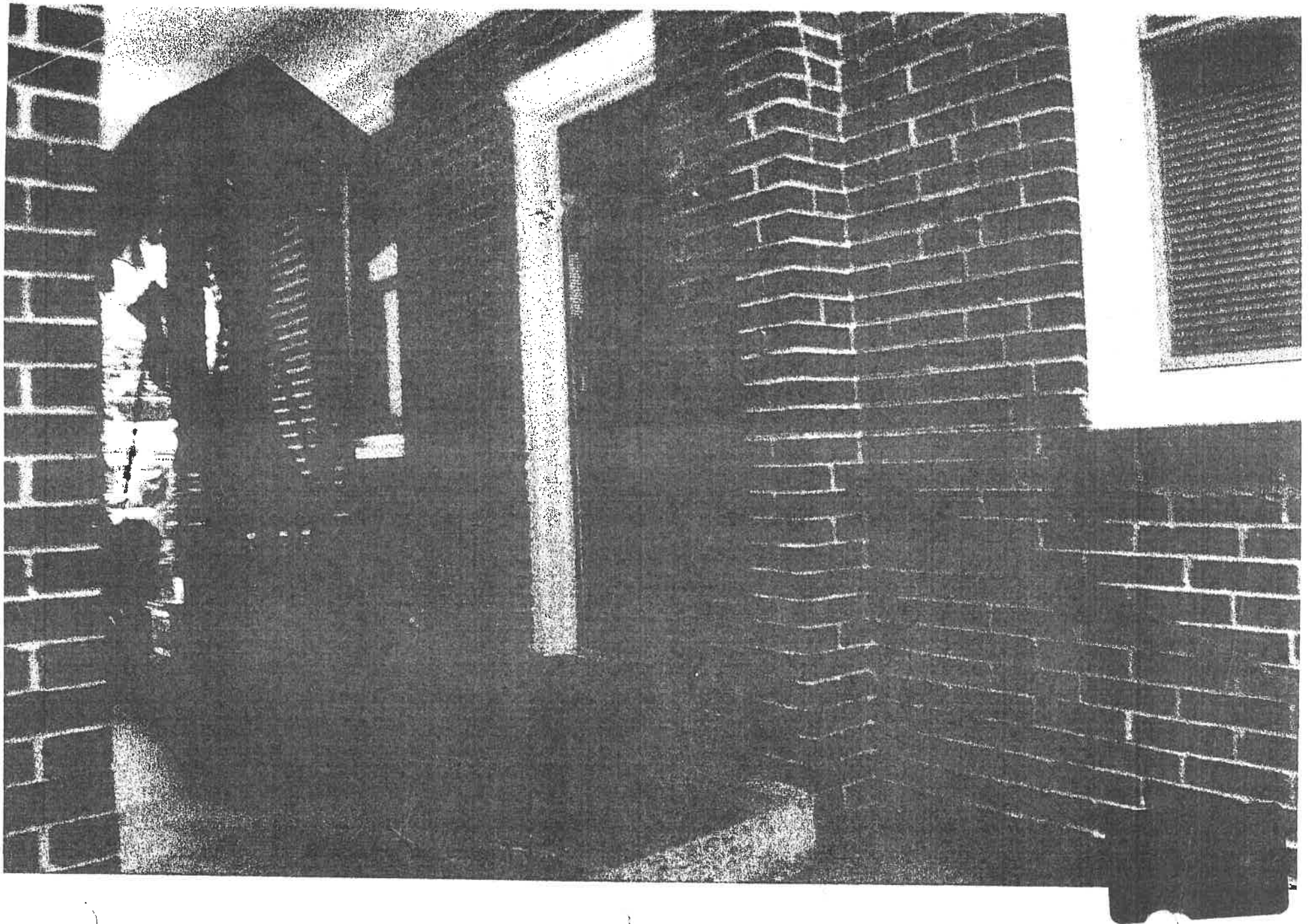
DAN JOHNSON, SOLICITOR

Exhibit 19



1573

Exhibit 13



1574

STR# TYPE

1 1025-3

means it was a residential
property converted into
a commercial property
(store).

(Appraisal Information Summary)

ZNG: GC

EXHIBIT 17

Means it is listed with
Zoning (Richland County zoning)
as a "General Commercial"
property.

(Real Property View Screen)

Exhibit 17

[RVIEWT000339AUG2318][1808]

REAL PROPERTY VIEW SCREEN

ACCT: R07307-05-12

OWNER: SMITH M EVERETT & JOAN H

KEY: 00098628

YEAR: 2018

] /JTWRS

PARENT:

PO BOX 775

ACRES:

LEGAL: LOTS 3,4,5,6,25-27 BLK B

EDISTO BEACH

SC 29438 0775

79.8X163.1X175.2X60.6X176.5X

LOC: [REDACTED] [REDACTED] [REDACTED] RD

4.4X162.4

TAXDIST: 1UR NBHD: C5A.00

#SU HUFFMAN HGTS

ZNG: GC ZNG2: RS-MD ZSUP:

VALUES

ASSMTS

RENTAL%

PROPERTY CLASSIFICATION

LAND: 97800

%

PCA CODE: 2 ALL OTHER CLASS

BLDG: 20800

%

]

IMPR:

%

EXEMPTIONS:

MARKET: 118600

7120

HSE YR/#: -

PERCENTAGE: %

AG USE:

QUAL CODE: 9

TAXABLE: 118600

7120

ADJUSTMENT#: DATE:

JV#:

MARKET DATA

]

ACTIVITY: 2014/08/26

SALE DATE:2014/07/11 REASON FOR CHANGE:

BOOK/PAGE:R1958 810 ASSESSMENT CHANGE:

PRICE: 1 NOTIFICATION DATE:

FLAGGED?: N

FUNC:[] DATA:[

] SUB:[] YR:[2018]

MESSAGE:

][@]

14:54:19:59

INPUT REQUEST

0.00

[APRSUT000344AUG2318][1808]

NO CURR-YR APPRS

A P P R A I S A L I N F O R M A T I O N S U M M A R Y

KEY:00098628

OWNER:SMITH M EVERETT & JOAN H

ACCT:R07307-05-12

LEGAL:LOTS 3,4,5,6,25-27 BLK B

LOC: [REDACTED] RD

79.8X163.1X175.2X60.6X176.5X

TYPE: TAXABLE VALUE: 118639 CURRENT PREVIOUS

AREA CODE: C5A.00-C INCOME: LAND: 97839 97800

#STRUCTURES: 1 MARKET: 118639 STRUCTURE: 20800 20800

TOTAL SQFT: 2332 APPRAISAL: 118639 MISC IMPR:

BASE SQFT: 1956 USE: 118639 MARKET: 118639 118600

LAND TYPE: 300S CENSUS TRACT: 104010000000 LAND USE:

ACRES: WATER: 2 SEWER: 2

PCT-COMMON: LAST INSPECTION DATE: 2016/03/10

STR#	TYPE	CL	ACT	EFF	Q	LOC	COND	BASE	TOTAL	VALUE	FEATURES
1	1025-3	1	1950	1950	3		30	1956	2332	20800	

CONTINUE(X):[]

ASSMT CODE[]

LAST ACTIVITY: 2017/08/16

FUNC:[] DATA:[]

] SUB:[] YR:[2018]

MESSAGE: * * * END OF LISTING * * *

][@]

15:01:32:32 INPUT REQUEST

0.00

[SALEHT000340AUG2318][1808]

S A L E S H I S T O R Y

KEY:00098628

OWNER:SMITH M EVERETT & JOAN H

ACCT:R07307-05-12

LEGAL:LOTS 3,4,5,6,25-27 BLK B

LOC: [REDACTED] RD

79.8X163.1X175.2X60.6X176.5X

OWNER	SALE DATE	BOOK/PAGE	DEED	QUAL	V/I	PRICE
[] [SMITH M EVERETT & JOAN H	2014/07/11	R1958/0810	WD	9	I	0000000001]
[] [SMITH M EVERETTE	1998/07/29	R0135/0932	WD	2	I	0000000005]
[] [SMITH M EVERETT & JOAN H	1993/03/23	D1133/0555	WD			0000000000]
[] [FULMER LOIS JACOBS ET AL	1993/03/22	D1133/0553	WD	7	I	0000000000]
[] [MILLER RUBY C JACOBS ET AL	1992/01/21	D1068/0750	WL	9		0000000000]
[] [JACOBS RUBY P ET AL	1991/08/14	ES404/0784	WL			0000000000]
[] [JACOBS HERBERT L	1983/07/00	D654 /0535	WD	Q	I	000107730]
[] [						]
[] [						]
[] [						]
[] [						]
[] [						]
[] [						]
[] [						]
[] [						]

CONTINUE(X):[]

FUNC:[] DATA:[

] SUB:[] YR:[2018]

MESSAGE: * * * END OF LISTING * * *

][@]

14:55:16:29 INPUT REQUEST

0.00

phone # @
time

Δ - Anthony Porterfield

Background →

- include wisdom teeth
- nervous/anxiety

2012 →

- work history
- what did he do
- how long
- Supervisor / coworkers
- Girlfriend

6/27/12 → Calendar own

- Work
- Roommate, NeNe (car, DL?)^e
- Work
- Night
- Normal schedule

★ · Time card

↑ arrest
f^{ail} calls (explain "THEM") (setting)

"The Arab"

Burg. 3rd (if needed)

Steve Thompson of Robbin's 3 Brad's

Anthony Porterfield

PRETRIAL

- Burg. 2nd → mtn. to preclude use for impeachment under 404(b)

- Flight

- ∅ ref. to PD's office

- Jail calls

- Transcripts by state?

- Secret jury list

- Biggers

- Denno

Counsel was prepared to request for charge on lesser included offense and did not. Bright elements locked

- Scheduling → AT&T records custodian

- Sequester?

CLOSING

Jury Instructions
Circumstantial
Eyewitness testimony

laptop bag
(collect 4th floor)

5-24-16

To whom this may concern,

I am writing this office to request the chain of custody for the phone records used in my trial. A Sergeant Robert Waters, who was employed at Alvin S. Gilman Detention Center, testified to the validity of the jail phone calls entered into evidence at trial. He mentioned that the phone company the institution had in 2012 could only pick up or retrieve a specific call is if they (the authorize personnel) had a phone number.

Mr. Waters testified to the facts of how the phone system worked, and how information is stored, but he never made it clear how did he come into contact with the number in which I was associated with. I'm basically asking for the name of the officer or authority who served the warrant or subpoena on Mr. Waters to retrieve those phone records. I am also looking for the date and time those records was produced.

Thank you for your assistance. If for any reason your office cannot provide me with such information. I ask that you please contact me back and let me know the appropriate office to address.

Sincerely,

Wally M. Pettit

1582



General Sessions

Trial Date: Feb. 23rd - 27th 2015

Prosecutor: Meghan Walker, and Luke Campbell

Defense: Anastasia Walker, and Robert Banks

Judge: Knox McMahon

Case: Anthony Pardenfield v. State

2/25/15

Δ ★ State bringing up alibi → burden shifting?

- ① Joe Clarke → Nazirah Gale
- ② Jail calls

Π Clarke → thoroughness of investigation
Jail calls → probative "manufacturing" evidence that can be refuted

Judge : ∅ burden shifting ...
Motion in limine —

Objection = ORDER

FLIGHT

Δ ∅ info re: warrants

Additional calls under 106



1174149
08/06/2012
SCAMP

MOBILITY USAGE
(with cell location)



Fax Server

9/10/2012 10:47:06 AM

PAGE

14/028

Fax Server

Run Date: 08/06/2012
Run Time: 10:14:43
Voice Usage For: (803) 629-8172
Account Number: 534115288374

Item	Conn. Date	Conn. Time	Seizure Time	Originating Number	Terminating Number	Elapsed Time	Number Dialed	IMEI	MSI	Description	Cell Location
27	06/27/12	12:13P	0:21	12018787995	18036298172	0:00	18036298172	012529002037280	310410405468552	m2M	[08996/04078;-81.02967:34.04933:120]
28	06/27/12	12:32P	0:00	18036298172	19802539037	0:05	19802539037		310410405468552	M2m	[]
29	06/27/12	12:32P	0:00	12018787995	18036298172	0:04	18036298172		310410405468552	m2M	[]
30	06/27/12	12:32P	0:22	12018787995	18036298172	0:00	18036298172	012529002037280	310410405468552	m2M	[08996/04317;-81.02868:34.02463:0]
31	06/27/12	01:00P	0:00	18036298172	19802539037	0:06	19802539037		310410405468552	M2m	[]
32	06/27/12	01:00P	0:00	1803631994	18036298172	0:05	18036298172		310410405468552	m2M	[]
33	06/27/12	01:00P	0:30	18036298172	1803631994	0:08	1803631994	012529002037280	310410405468552	M2m_DIR	[08996/03779;-80.91176:34.07042:300, 08996/00148;-80.96464:34.07303:120]
34	06/27/12	01:01P	0:21	1803631994	18036298172	0:00	18036298172	012529002037280	310410405468552	m2M	[08996/04038;-80.94358:34.08275:120, 08996/00148;-80.96464:34.07303:120]
35	06/27/12	01:04P	0:08	18036298172	18034458598	0:03	18034458598	012529002037280	310410405468552	M2M_DIR	[08996/04237;-80.98600:34.06434:0, 08996/04239;-80.98600:34.06434:240]
36	06/27/12	01:13P	0:04	18038658600	18036298172	0:00	18036298172	012529002037280	310410405468552	O2M_DIR	[08996/04239;-80.98600:34.06434:240]
37	06/27/12	01:14P	0:00	18036298172	19802539037	0:09	19802539037		310410405468552	M2m	[]
38	06/27/12	01:14P	0:00	18038658600	18036298172	0:09	18036298172		310410405468552	O2M	[]
39	06/27/12	01:15P	0:21	18038658600	18036298172	0:00	18036298172	012529002037280	310410405468552	O2M	[08996/00132;-81.02453:34.07203:120]
40	06/27/12	01:17P	0:30	18036298172	18032397274	1:00	18032397274	012529002037280	310410405468552	M2m_DIR	[08996/00135;-81.02453:34.07203:120, 08996/04075;-81.02967:34.04933:120]
41	06/27/12	01:19P	0:03	18036298172	18032397274	0:05	18032397274	012529002037280	310410405468552	M2m_DIR	[08996/04075;-81.02967:34.04933:120]
42	06/27/12	01:23P	0:15	18036298172	18034511709	1:50	18034511709	012529002037280	310410405468552	M2m_DIR	[08996/04075;-81.02967:34.04933:120]
43	06/27/12	01:38P	0:10	18036298172	18039790447	0:17	18039790447	012529002037280	310410405468552	M2m_DIR	[08996/04075;-81.02967:34.04933:120]
44	06/27/12	02:26P	0:33	18036298172	18034511709	0:09	18034511709	012529002037280	310410405468552	M2m_DIR	[08996/00047;-81.07511:34.021:0, 08996/00507;-81.03902:34.00989:330]
45	06/27/12	02:32P	0:01	18034458598	19802539037	0:05	18036298172		310410405468552	M2m_PWD	[]
46	06/27/12	02:41P	0:17	18036298172	18039790447	0:13	18039790447	012529002037280	310410405468552	M2m_DIR	[08996/04075;-81.02967:34.04933:120]
47	06/27/12	02:45P	0:00	18036298172	19802539037	0:09	19802539037		310410405468552	M2m	[]
48	06/27/12	02:45P	0:00	12018787995	18036298172	0:09	18036298172		310410405468552	m2M	[]
49	06/27/12	02:46P	0:00	12018787995	18036298172	0:00	18036298172		310410405468552	m2M	[]
50	06/27/12	02:46P	0:11	18036298172	18039790447	0:16	18039790447	012529002037280	310410405468552	M2m_DIR	[08996/04078;-81.02967:34.04933:120]
51	06/27/12	02:48P	0:01	18036298172	19802539037	0:09	19802539037		310410405468552	M2m	[]
52	06/27/12	02:48P	0:00	18039790447	18036298172	0:09	18036298172		310410405468552	m2M	[]

maximum range 34 km

direction

btwn

if necessary travelling signal strength

AT&T Proprietary

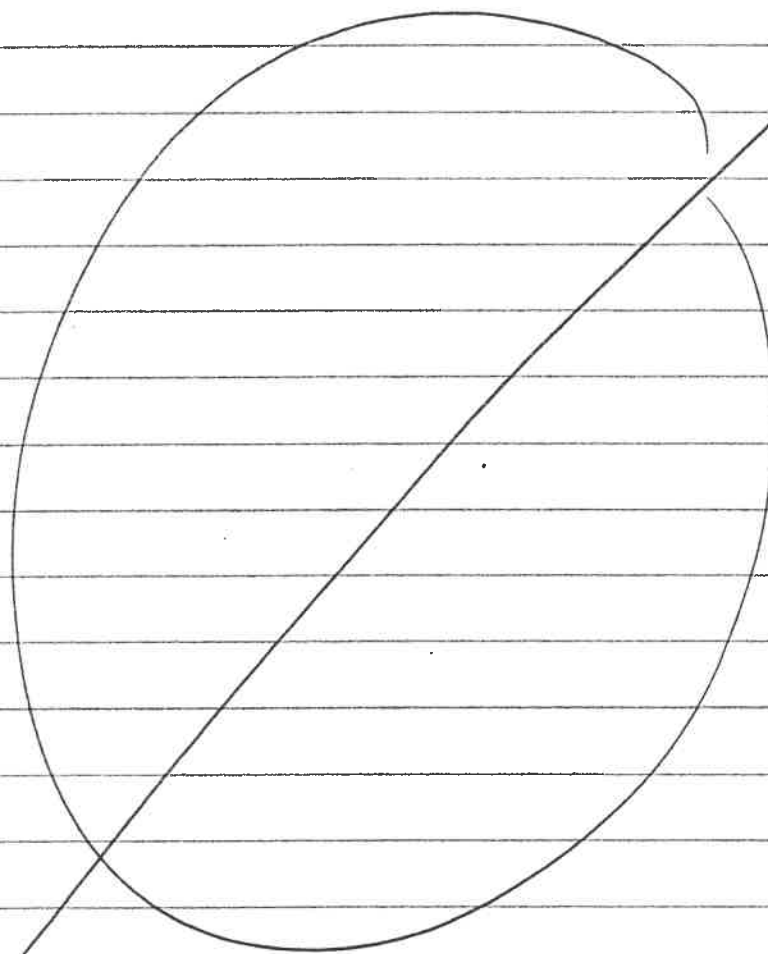
fmj

The information contained here is for use by authorized person only and is not for general distribution.

Page 2



AT&T Conf. Call w/ Engineer: 2/6/15



see records.

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT	COUNTY RICHLAND
STATE OF SOUTH CAROLINA V. Anthony Porterfield	CASE NO. 2012A4010600029, 2012A4010600031, 2012A4010600030, 2012A4010600033
SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)	
TO: T-Mobile Subpoena Compliance 4 Sylvan Way, Parsippany, NJ 07054 Phone: (973) 292-8911 Fax: (973) 292-8697	
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE Richland County Judicial Center 1701 Main St. Columbia, SC 29201	COURTROOM To be determined DATE AND TIME As soon as possible
☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) OR OBJECT(S) Please email or fax the below requested phone records of phone # (803) 979-0447 to shealeyl@rcgov.us . Fax: (803) 929-6156. Please call if there is a problem with this request.	
<u>CALL LOGS AND TEXT MESSAGES</u> Any and all call logs and text messages from phone # (803) 979-0447, belonging to Ms. Nazirah Gale, between the dates of 6/27/2012 – 6/28/2012.	
If you have any questions or concerns you can contact myself or Tremele Mays at (803) 929-6150.	
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.	
CLERK OF COURT <i>Janette W. McBride</i>	DATE
(BY) DEPUTY CLERK <i>[Signature]</i>	8/23/2012

E-911 DATA – POST-2004. AS IT RELATES TO E-911 CAPABLE HANDSETS

All Automatic Location Identification information that AT&T has in its possession concerning Anthony Porterfield between / on 6/27/12 -6/28/12 in reference or attributable to AT&T number phone number 803-629-8172. In addition to the latitude and longitude coordinates and the respective accuracy and reliability data that AT&T is required by law to maintain under 47 C.F.R. § 20.18(e) & (h), this subpoena commands the production of any and all information that would provide more accurate determination of the precise coordinates of Anthony Porterfield's cellular handset or SIM card location at all recorded intervals. This information includes, but is not limited to, the Emergency Services Routing Key and/or the Emergency Services Routing Digit (information that identifies the cell tower site and the call origination for wireless phones), Forward Link Triangulation and/or Enhanced Forward Link Trilateration data, Local Exchange Carrier data, RF Pattern Matching data, Time Difference of Arrival data and or Enhanced Observed Time Difference data, and the cell tower locations in reference to Anthony Porterfield's AT&T account and any other system information that may be used to determine Anthony Porterfield's location while utilizing wireless network services, and any recorded or transcribed voice or data content preserved in association with such information.

TOWER LOCATION DATA

All AT&T network cellular tower customer location records, immediately available, archived, or otherwise retrievable or recoverable, in reference or attributable to Anthony Porterfield, phone number 803-629-8172, including latitude and longitude coordinates, cellular tower ID, and respective accuracy and reliability data that would provide more accurate determination of the precise coordinates of Anthony Porterfield's cellular handset or SIM card location at all recorded intervals, and any other system information that may be used to determine Anthony Porterfield's location while utilizing wireless network services between and including 6/27/12 – 6/28/12.

ADJUNCT TOWER LOCATION DATA

1. A map (or maps, as necessary) showing the physical location of, stating the street address of, and specifying the longitude and latitude of, all towers owned, operated, or utilized by AT&T located in Columbia, SC and any and all towers with signal coverage extending to, or accessible from Columbia, SC, as the same existed between 6/27/12 – 6/28/12
2. With respect to each tower located in Columbia, SC such maps, programming specifications, documents, records, or other data which are necessary to establish, describe, identify, or otherwise provide the following information, or from which the following information can be calculated, derived, determined, or otherwise obtained:
 - (a) the height of each tower;
 - (b) the direction, as specified in degrees in relation to 0 degrees north, in which each sector antenna on each tower was installed or aimed, during the time period specified in Item 1 above;
 - (c) the projected or predicted coverage area or signal range for each sector antenna, during the time specified in Item 1 above;
 - (d) the maximum expected, anticipated, planned, or intended distance (stated in miles or kilometers), in each direction, which a signal will be transmitted between each sector antenna and a cellular phone; and
 - (e) the maximum measured, observed, or otherwise known distance (stated in miles or kilometers), in each direction, which a signal will be transmitted between each sector antenna and a cellular phone.
3. A signal strength projection or prediction model map (or maps, as necessary) for each sector antenna of each tower located in Columbia, SC or other maps, documents or records, showing the projected or predicted signal range, and the projected or predicted strength of the signal for each area or location within such range, during the time period specified in Item 1 above.
4. A map (or maps, as necessary) or other documents or records identifying the location of, and describing the nature of, all topographic features (including, without limitation, hills, ridges, valleys, buildings, structures, or other physical matters) as the same existed during the time period specified in Item 1 above, which were known, projected, or predicted to affect the signal range or strength, and which were accounted for, or otherwise considered, in connection with developing or creating the signal strength projection or prediction models for each sector antenna of each tower located in Columbia, SC.
5. With respect to each tower located in Columbia, SC, such documents, records, or other data which are necessary to establish, describe, identify, or otherwise provide the following information, or from which the following information can be calculated, derived, determined, or otherwise obtained:

(a) the capacity of each sector antenna, as indicated by the maximum number of calls or volume of data which each sector antenna could receive, transmit, or process at any given time during the time period specified in Item 1 above;

(b) the actual usage level or call density of each sector antenna for each five minute increment of time on 6/27/12 - 6/28/12 expressed either in terms of (1) the actual number of calls or volume of data being received, transmitted, or processed by each sector antenna at any given time or (2) the percentage of capacity being used by each sector antenna at any given time, on that date; and

(c) the programming specifications for each sector antenna or related switching device with respect to switching, relaying, forwarding, routing, or retrying calls in the event of the antenna reaching or operating at its maximum capacity, during the time period specified in Item 1 above.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT

DATE

(BY) DEPUTY CLERK

7-25-12

THIS SUBPOENA IS ISSUED UPON
APPLICATION OF THE:

☐ SOLICITOR ☒ DEFENDANT

NAME AND ADDRESS OF ATTORNEY or
DEFENDANT (IF PRO SE/SELF
REPRESENTED)

Assistant Public Defender Luke Shealey
Richland County Public Defender
803-929-6150
1701 Main St.
Richland County Judicial Center
Columbia, SC 29201

State v. Anthony Porterfield

Witness	Role	Attorney	Cross/Direct
Anthony Porterfield	Δ	Ana	D
Investigator Joseph Clarke	Lead investigator	Bobby	C
* ~~Master Deputy James Stone~~	Responding officer	Bobby	C
CSI Shawn Schroder	Crime scene analyst	Ana	C
Keith B. Evans	911 operator	Ana	C/D
Gulzar Nathani	Home/business owner, father of victims	Ana	C/D
Rabia Nathani	Older of the two victims	Ana	C
S. N. [REDACTED]	Younger of the two victims	Ana	C
Lt. Scott McDonald	Clarke's supervisor, responded day of the incident	Bobby	C
* ~~Inv. Bass~~	Made contact with all parties, researched phone numbers	Bobby	C
Sgt. D. Caldwell	Fugitive task force	Bobby	C
Master Deputy Warren Cavanaugh	K-9 handler	Bobby	C
Diana Addison	Δ's girlfriend/fiancé	Bobby	C/D
John Barron	DNA	Ana	C
Russell Dean	PD investigator	Bobby	D
* ~~Tyrue Ruffin~~	Ex-roommate, alibi	Bobby	D
Nazirah Gale	Ride from apt., alibi	Bobby	D
Calvin Woods	Co-worker, alibi	Bobby	D
Hakeem Coffeil	Co-worker, alibi	Bobby	D
Adrian Deberry	Co-worker, alibi	Bobby	D
Aaron Griffin	Boss, alibi	Bobby	D
Dawn McQuiston	ID expert	Ana	D
* ~~AT&T - Keith Patterson~~	Engineer/custodian	Ana	D
ASG custodian of records	Jail calls	Ana	C



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Anthony Porterfield,)

vs.)

The State of South Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-40-7564

ATTACHMENT TO APPLICATION
FOR POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2022 MAY 24 AM 9:32
JANET L. W. MURPHY
C.C.P., G.S., F.C.

Applicant Anthony Porterfield specifically alleges the following ineffective assistance of counsel in this matter:

1. Failure to adequately cross victims and their father regarding prior inconsistent statements / not calling witnesses regarding prior inconsistent statements.
2. Failure to object to Burg 1st indictment.
3. Failure to object to the foundation for jail calls.
4. How State obtained Diana Addison's number.
5. Laptop bag issue.
6. Failure to address 4th Amend violations regarding Defendant's capture.
7. Missing witness rule.
8. Failure to object to Defendant having to wear shackles and restraints.
9. Accomplice Liability.
10. Failure to review discovery with defendant before trial.
11. Failure to prepare defendant for testimony.
12. Refusing to ask victims' father and Defendant about their prior relationship.
13. Failure to properly investigate.
14. No objection to use of victims' or Defendant's cell phone records due to lack of foundation.



15. Failure to adequately prepare Defendant's witnesses.

16. Failure to call expert witness to explain cell tower logs of Defendant's phone / no objection to State's witnesses interpreting those same records without being qualified to do so.

Applicant reserves the right to amend his allegations prior to any hearing in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. P. Derieg", with a stylized flourish at the end.

Lir Patrick Derieg (76135)
DERIEG LAW FIRM, LLC
PO Box 475
Graniteville, SC 29829
(803) 206-3140
Derieglaw@gmail.com

May 23, 2022
Columbia, South Carolina

WITNESSES

(S) Joseph Clarke – Richland County
Sheriff

ARREST WARRANT NUMBER

2012A4010600029

ACTION OF GRAND JURY

TRUE BILL

Joe R. Koenig
Foreperson of Grand Jury
Date: **OCT 10 2012**

VERDICT

1072
Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS4005295

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

**THE STATE
vs.**

Anthony M Porterfield

**Indictment for
BURGLARY 1ST DEGREE**

**SC Code: 16-11-0311
CDR Code: 0079**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jesse W. Wiggins
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 10, 2012,
the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Anthony M. Porterfield and/or another co-defendant did in Richland
County on or about June 27, 2012, enter the dwelling of RABIA G
NATHANI located at without consent and with the
intent to commit a crime therein and when, in effecting entry or while in the
dwelling or in immediate flight therefrom, the defendant displayed what was
or appeared to be a firearm, in violation of Section 16-11-0311(A), Code of
Laws of South Carolina, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Anthony M. Porterfield, #310529,	)	2017-CP-40-7564
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter is before this Court by way of an application for post-conviction relief (PCR) filed on December 14, 2017. The State made its return on May 31, 2018. A hearing was held at the Richland County Courthouse on May 24-26, 2022, with all participants, including Applicant, physically present. Applicant was represented by Lir P. Derieg, Esquire. The State was represented by Assistant Attorneys General Scott Matthews, Danielle Dixon, and Russ Barlow. Stacy S. Johnson was the Court Reporter for the proceeding.

This Court heard testimony from the Applicant, Diana Addison, Anastasia Walker, Esquire, and Robert Bank, Esquire. This Court had before it an amended application filed on May 24, 2022. This Court also had before it the State's return, Applicant's records from the South Carolina Department of Corrections, the Clerk of Court's records regarding the subject convictions, and the transcript of Applicant's trial, dated February 23-27, 2015.

PROCEDURAL HISTORY

Anthony M. Porterfield ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. In October 2012, a Richland County Grand Jury indicted Applicant for two counts of kidnapping (2012-GS-40-5294, 2012-GS-40-5297), one count of first degree burglary (2012-GS-

40-5295), and one count of armed robbery (2012-GS-40-5296). These charges resulted from a home invasion and robbery in which Applicant and an unnamed co-defendant robbed the home business of Gulzar Nathani. Applicant held Gulzar Nathani's daughters, Rabia and S. N., at gunpoint and took several electronic items from the home.

On February 23, 2015, Applicant's case was called to trial before the Honorable R. Knox McMahon, circuit court judge. Anastasia Walker, Esquire and Robert Bank, Esquire represented Applicant. Assistant Solicitors Luck Campbell, and Meghan Walker of the Fifth Circuit Solicitor's Office prosecuted the case. On February 27, 2015, the jury found Applicant guilty as indicted of all charges. Judge McMahon sentenced Applicant to imprisonment for concurrent terms of thirty years for each offense.

Applicant appealed. Appellate Defender Susan Barber Hackett of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal on April 5, 2017. State v. Porterfield, Op. No. 2017-UP-141 (S.C. Ct. App 2017). The remittitur was returned to the circuit court on April 21, 2017.

At the hearing, Applicant raised several allegations of ineffective assistance of counsel. Applicant did not pursue any allegations of ineffective assistance of appellate counsel, prosecutorial misconduct, or due process, and this Court finds those allegations were waived.

FACTS AT TRIAL

On June 27, 2012 at approximately 2:00 PM, Rabia and S. N. returned home from eating lunch at Chick-Fil-A. They witnessed two black males parked in their driveway in a gold colored car. Rabia recognized one of the two men as Applicant. Rabia knew Applicant by his nick name, Amp. (R. 194). The other man was wearing a mask. Applicant requested to speak

with Gulzar, so the two girls entered the home and looked for their cordless phone. While S. N. went upstairs to get a cordless phone, Applicant pulled a handgun out of a black laptop bag and forced his way inside the home. (R. 195-96). Applicant forced the two sisters to lay on the ground in a hallway inside the home while he and the unidentified black male took various electronic items from the house. Once the two men left the house, the victims called 911. When law enforcement arrived, each of the victims identified Applicant by his nickname Amp. Law enforcement showed each sister a six-person photo lineup and each sister identified Applicant in the lineup. Both photo lineups were admitted into evidence at trial and each victim identified Applicant as their assailant in court.

Applicant took the witness stand in his own defense and called five alibi witnesses. Applicant attempted to establish that he was at work during the time of the robbery rather than at the Nathani residence. One of Applicant's alibi witnesses, Aaron Griffin, provided Applicant's time card from the day of the robbery which purported to show Applicant was at work at 2:00 PM on June 27, 2012. Applicant also called an expert witness, Dr. Dawn McQuiston, who testified regarding cross-racial misidentifications in eyewitness testimony. At the conclusion of trial, Applicant was convicted of all charges.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

DISCUSSION

In a post-conviction relief action, an applicant carries the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, an applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Padilla v. Kentucky, 559 U.S. 356, 371 (2010) ("Surmounting Strickland's high bar is never an easy task.").

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court will now address each allegation of ineffective assistance of counsel:

I. Failure of Counsel to cross examine Rabia, S. N., and Gulzar Nathani regarding their prior inconsistent statements

Applicant has alleged that his trial attorneys were deficient in their representation of him because they failed to adequately cross examine the two victims and their father regarding their prior inconsistent statements. Specifically, Applicant highlights three inconsistencies he believes should have been emphasized by trial counsel: (1) the value of the items taken, (2) the identification of the car in Victim's driveway, and (3) the identification of the restaurant victims visited immediately prior to the robbery. This Court finds that trial counsel was not deficient in failing to cross examine any of the witnesses on these deficiencies and even if trial counsel were deficient, Applicant did not suffer any prejudice from trial counsel's failure.

At the evidentiary hearing, both Ms. Walker and Mr. Bank admitted that they failed to cross examine the Nathani family regarding any of the aforementioned topics. However, this Court finds the three alleged inconsistencies were not actually inconsistent with the Nathani family's trial testimony and any suggestion to the contrary is not supported by the record. By contrast, the statements Applicant entered at the evidentiary hearing closely matched the testimony given at trial.

For example, Applicant entered an initial investigative report that included information from the initial statements provided by each member of the Nathani family. (Applicant's Exhibit #1). Regarding the value of items taken, Gulzar Nathani estimated in his initial statement "the value of the items taken were in excess of \$10,000." (Applicant's Exhibit #1, p. 3). Mr. Nathani did not testify regarding the value of the items on either direct or cross examination at trial. (R. 254-77). This explicitly contradicts Applicant's claim that the estimated value was inflated from

a small amount in his initial statement to law enforcement to a much larger amount at trial.

Therefore, trial counsel was not deficient in failing to cross examine Mr. Nathani about the value of the items taken, and even if they were, Applicant was not prejudiced by the failure because the value of the goods stolen was not an element of any of the crimes for which Applicant stood trial.

Applicant also asserts trial counsel were ineffective for failure to cross examine the victims regarding the location of the restaurant they visited. This Court finds there was no inconsistency on this detail. In her initial statement to law enforcement, Rabia Nathani stated she and her sister were returning from Chick-Fil-A. (Applicant's Exhibit #1, p. 4). Rabia Nathani repeated this detail in her testimony at trial. (R. 191). Therefore, this Court finds no inconsistency. Finally, while Ms. Nathani stated to Investigator Clarke that she saw a gold Hyundai but told Officer Stone it was a champagne color 4-door car, her statements closely mirrored what she eventually testified to at trial. (Applicant's Exhibit #1, page 2-4). At trial, Ms. Nathani testified the car was either gold or champagne colored. (R. 207-08). This Court finds no meaningful inconsistency regarding the color or make of the car. Because the inconsistencies identified by Applicant were not actually inconsistent with the victim's trial testimony, trial counsel was not deficient in failing to highlight them. Even if trial counsel were inconsistent, there is not a reasonable probability that the outcome of Applicant's trial would be different had trial counsel engaged in further cross-examination. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

II. Failure of Counsel to object to first degree burglary indictment

Next, Applicant alleges trial counsel was ineffective in failing to object to the first-degree burglary indictment. This allegation is not supported by the record. Both Ms. Walker and Mr. Bank testified there was nothing structurally or facially wrong with the first-degree burglary indictment and this Court finds the indictment was facially sufficient. However, trial counsel nonetheless properly challenged whether the State had proved the elements of first-degree burglary by making a motion for a directed verdict at the close of the State's case. (R. 546-48). Both Ms. Walker and Mr. Bank testified they argued to the trial judge the State had not proven the elements of first degree burglary because they had not proven Mr. Nathani's home business was a dwelling within the meaning S.C. Code § 16-11-311. Therefore, trial counsel made an appropriate challenge to the sufficiency of the indictment and were not deficient in their representation of Applicant in that regard. Even if they were deficient for not raising a pretrial objection to the indictment, Applicant was certainly not prejudiced by their failure, because any objection to the indictment would have been overruled on the basis the indictment was sufficient. Further, Applicant was also convicted of one count of armed robbery and two counts of kidnapping for which he received thirty year prison sentences. Therefore, even if Applicant was entitled to a new trial on the charge of first-degree burglary, Applicant has not raised any challenge to his remaining indictments and thus would not be able to obtain any functional relief. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

III. Failure of Counsel to object to the admission of his jail phone calls under Rule 901, SCRE.

Next, Applicant alleges trial counsel was ineffective in failing to object to the admission of his jail phone calls under Rule 901 SCRE. This allegation lacks any merit. Although Ms. Walker and Mr. Bank candidly admitted they did not object to the admission of the phone calls on this basis, such an objection would not have been sustained. Robert Waters properly testified regarding the authenticity of the phone calls as a custodian of records from Alvin S. Glenn detention center. (R. 335). Even if Mr. Waters were not the proper witness to authenticate Applicant's phone calls, every witness who testified at the PCR hearing freely acknowledged that the phone calls were authentic. Applicant, Diana Addison, Anastasia Walker, and Robert Bank each admitted the phone calls featured Applicant's voice and were a fair and accurate depiction of his phone calls. Therefore, trial counsel was not deficient for failing to object to the phone calls on this basis.

Within this allegation, Applicant also insists he was prejudiced by trial counsel's failure to argue against the admission of the phone calls as an unreasonable search or seizure under the Fourth Amendment to the United States Constitution and our Supreme Court's holding in State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666 (1976). However, Ellefson is distinguishable from the facts of Applicant's case, because Ellefson involved the seizure of a prisoner's written correspondence. Although our State's appellate courts have yet to address the admissibility of jail phone calls under a Fourth Amendment analysis, this Court relies on guidance from the United States Supreme Court and the Ninth Circuit Court of Appeals to reject Applicant's argument on this issue.

The Fourth Amendment to the United States Constitution protects citizens “against unreasonable searches and seizures” by the State. U.S. Const. Amend. IV. “Nonetheless, the State’s intrusion into a particular area...cannot result in a Fourth Amendment violation unless the area is one in which there is ‘a constitutionally protected reasonable expectation of privacy.’” New York v. Class, 475 U.S. 106, 112 (1986) (quoting Katz v. United States, 389 U.S. 347, 360 (1967)). “Such a ‘constitutionally protected reasonable expectation of privacy’ exists only if (1) the defendant has an ‘actual subjective expectation of privacy’ in the place searched and (2) society is objectively prepared to recognize that expectation.” United States v. Van Poyck, 77 F.3d 285, 290 (9th Cir. 1996) (quoting United States v. Davis, 932 F.2d 752, 756 (9th Cir. 1991)). “[S]ociety is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell...;accordingly, the Fourth Amendment proscription against unreasonable searches and seizures does not apply within the confines of a prison cell.” Hudson v. Palmer, 468 U.S. 517, 526 (1984). Even if a prisoner believes his phone calls are private, “no prisoner should reasonably expect privacy in his outbound telephone calls.” Van Poyck, 77 F.3d at 290-291.

Here, Applicant freely acknowledged he knew his jail phone calls were being recorded. Similarly, both Ms. Walker and Mr. Bank acknowledged each phone call is preceded by a disclaimer that a phone call is being recorded. Therefore, Applicant had no reasonable expectation of privacy in his jail phone calls. Accordingly, trial counsel was not deficient in failing to challenge the admission of the phone calls on this basis, and Applicant was not prejudiced by their failure to challenge the authenticity of the jail calls. This Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

IV. Counsel provided the State with Diana Addison's phone number

Applicant next argues trial counsel was ineffective in providing the State with his girlfriend, Diana Addison's phone number. He contends the State was able to use this information to locate calls Applicant made from the jail to Addison, some of which were later introduced at trial. This allegation is plainly contradicted by the evidence presented at the PCR hearing. Both Mr. Bank and Ms. Walker denied this allegation. Additionally, Mr. Bank testified he was very familiar with how jail phone calls were recorded at Alvin S. Glenn and that the State would have been able to obtain copies of the phone calls regardless of whether he provided the State with Addison's phone number. This Court finds credible trial counsel's testimony that they did not provide the State with Addison's phone number. Even if they did, Applicant was not prejudiced by that disclosure, because the State would have discovered the phone calls using the four-digit number assigned to Applicant for making calls from the jail. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation

V. Counsel's failure to object to the State's demonstrative use of Applicant's black laptop bag

Applicant next argues that trial counsel was ineffective for failing to object to the State's demonstrative use of a black laptop bag during the testimony of Investigator Joseph Clarke¹. Each trial counsel testified that they did not expect the Assistant Solicitor to use the laptop bag as a demonstrative exhibit and thus were not prepared to object at the time. While acknowledging that they should have objected, trial counsel also testified they formulated a plan to show the jury multiple black laptop bags in closing argument to emphasize how ubiquitous such bags are. However, counsel's plan was thwarted when the trial judge ordered them not to show the bags to

¹ The Assistant Solicitor asked Investigator Clarke if the black laptop bag that Applicant possessed was similar to the bag the victims described the perpetrators as carrying.

the jury because they had not been entered into evidence. (R. 954). At the PCR hearing, Applicant, Ms. Walker, and Mr. Bank each testified that the laptop bag in question was a plain black bag with no identifying characteristics or marks. Because trial counsel articulated a clear strategy to combat an unexpected maneuver by the State, trial counsel was not deficient in their representation.

Additionally, this Court finds Applicant was not prejudiced by their failure to object because there is no probability the outcome of Applicant's trial would have been different had they objected. The jury did not convict Applicant of the crimes for which he stood trial because of the solicitor's demonstrative use of a nondescript laptop bag that Applicant happened to have in his possession during the trial. Rather Applicant was convicted of these crimes because two eyewitnesses identified him as the assailant. Although Rabia Nathani testified Applicant had a laptop bag, she never specified what color it was and S. N. never testified about a laptop bag at all. Neither victim specified any identifying characteristics of the laptop bag that would connect the bag used at trial with the bag Applicant was alleged to have on the day of the robbery. (Tr. 195, 224-52). Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

VI. Counsel's failure to address 4th amendment violations regarding Applicant's arrest

Applicant next argues trial counsel was ineffective for failing to object to any violations of the Fourth Amendment that resulted from his arrest. This allegation lacks any merit. First and foremost, Applicant has not identified any Fourth Amendment violations that took place. Rather, Applicant merely questions how law enforcement was able to find him at the residence on [REDACTED] Street where he was arrested. Notably, law enforcement had a warrant for Applicant's

arrest when they sent a fugitive team to apprehend him. Applicant has presented no evidence to this Court that his arrest was unlawful in any way. Applicant merely complains that he was arrested at a location where he anticipated law enforcement would not find him. To the extent Applicant complains about the State being able to introduce evidence of Applicant's flight from law enforcement as a result of his arrest at [REDACTED] Street, such evidence is irrelevant to an analysis of whether Applicant's Fourth Amendment rights were violated. Applicant candidly admitted he fled from law enforcement when they arrived at the residence and he had to be extricated from under the house by a police dog. Applicant's flight from police at when they arrived at [REDACTED] Street has no relevance as to whether Applicant suffered any Fourth Amendment violations.

Even if trial counsel were deficient in failing to raise Fourth Amendment concerns regarding Applicant's arrest, Applicant has not identified what evidence he thinks should have been suppressed as a result of a Fourth Amendment violation. Applicant, Ms. Walker, and Mr. Bank each testified that there was no evidence seized from Applicant as a result of his arrest. Therefore there was no evidence to be suppressed as a result of any Fourth Amendment violations that took place during Applicant's arrest. Thus, there is no probability the outcome of Applicant's trial would have been different had counsel objected to the circumstance surrounding Applicant's arrest. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

VII. Counsel's failure to object to the State's burden shifting arguments

Applicant next argues trial counsel was deficient for failing to object to the State's burden shifting argument regarding Applicant's failure to call Tyrue Ruffin (TK) as a witness. Applicant's argument is plainly contradicted by the record. Trial counsel did, in fact, object to

the State's comments regarding TK not being present at trial and specifically argued the State was shifting the burden of proof to Applicant. (R. 676-77). Trial counsel's objection is further evidenced by the fact that this issue was raised to the Court of Appeals on direct appeal and thus was properly preserved for appeal. Because this objection was raised to the trial judge, trial counsel clearly was not deficient on this issue. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

VIII. Counsel's Failure to object to Applicant wearing leg shackles and restraints during trial

Applicant next argues trial counsel was deficient for failing to object to Applicant being forced to wear leg shackles during trial. This allegation is also plainly contradicted by the record. Trial counsel unambiguously asked the trial judge to remove Applicant's shackles just before his testimony. (R. 683). Additionally, Mr. Bank testified it was his typical practice to ask for shackles to be removed in all of his trials. Because this objection was raised to the trial judge, trial counsel was clearly not deficient on this issue. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

IX. Counsel's failure to object to the trial judge's jury instruction on accomplice liability

Applicant next argues trial counsel was deficient for not objecting to the trial judge's accomplice liability instruction. Although both of Applicant's attorneys admitted they failed to object to the accomplice liability instruction, this Court finds trial counsel was not deficient on this issue because the instruction was supported by the evidence. Our Supreme Court recently clarified "For an accomplice liability instruction to be warranted, the evidence must be 'equivocal on some integral fact and the jury [must have] been presented with evidence upon

which it could rely to find the existence or nonexistence of that fact.’” State v. Washington, 431 S.C. 394, 407, 848 S.E.2d 779, 786 (2020) (quoting Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011)). Here, there was conflicting evidence as to whether Applicant or the unidentified codefendant was the armed assailant. At trial, both Victims testified there were two black males who committed the robbery. On direct examination Rabia Nathani, stated she saw Applicant with the gun. (R. 196). However, on cross examination, Rabia’s testimony changed and she maintained the unidentified assailant had the gun. (R. 210-11). Whether Applicant or the codefendant was armed could have been significant to the jury’s deliberations, particularly in regard to the armed robbery offense. Because the evidence was equivocal on an integral fact, the accomplice liability instruction was supported by the evidence, and trial counsel was not deficient in failing to object. Therefore, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

X. Counsel’s failure to review discovery with Applicant prior to trial

Applicant next argues trial counsel was deficient for failing to review discovery with him prior to trial. This allegation is contradicted by the testimony offered at the PCR hearing. Each of Applicant’s attorney credibly testified they went over discovery with Applicant five to six times prior to trial. Trial counsel recalled some of these meetings were at the public defender’s office while others were at Applicant’s home. Because trial counsel met with Applicant multiple times prior to trial to review discovery, trial counsel were not deficient in their representation of Applicant on this point. Further, Applicant has failed to prove prejudice because he has failed to identify any evidence they failed to review and how it would have changed the outcome of the trial. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

XI. Counsel's failure to prepare Applicant for his testimony

Applicant also argues trial counsel was deficient in failing to prepare him for his testimony. This claim is contradicted by the testimony offered at the PCR hearing. Both Ms. Walker and Mr. Bank credibly testified they prepared Applicant before trial for the possibility that he may have to testify. Although, the ultimate decision on whether Applicant would testify may have been made on the day of his testimony, each trial attorney testified Applicant had previously been prepped for that possibility in advance. Because trial counsel met with Applicant five to six times in preparation for trial, and discussed his potential testimony in advance, trial counsel was not deficient for failing to prepare Applicant to testify. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

XII. Counsel's failure to elicit evidence about Applicant's prior relationship with Gulzar Nathani.

Applicant next argues trial counsel was deficient in failing to question Gulzar Nathani about his prior relationship with Applicant. Applicant claims it may have been beneficial for the jury to know that he previously sold drugs and stolen goods to Mr. Nathani. According to Applicant, if the jury knew about his past conduct with Mr. Nathani, they would question his motive to rob the victims. This Court finds this allegation is manifestly without merit. It defies common sense to suggest it would be beneficial for a defendant who is on trial for stealing electronics to admit he previously sold stolen electronics. The jury may have been inclined to conclude that merely because Applicant stole electronics in the past, he necessarily stole them from Mr. Nathani. Such a conclusion is the forbidden propensity inference that our Supreme Court has repeatedly sought to prevent when analyzing the State's admission of a defendant's prior bad acts under Rule 404(b) SCRE. See generally State v. Perry, 430 S.C. 24, 842 S.E.2d

654 (2020). Applicant admitted during his testimony that Ms. Walker “made some good points” when advising him not to testify about his prior felonious relationship with Mr. Nathani. Despite trial counsel’s willingness to speculate at the PCR hearing that such a strategy may have made a difference in hindsight, which this Court does not find credible, advising Applicant to admit he had previously stolen electronics, would not have been reasonable under prevailing professional norms, especially when Applicant faced an armed robbery charge. Put another way, counsel would have likely been deficient in their representation if they had advised Applicant to admit he previously sold stolen goods to Mr. Nathani. Further, Applicant did not show a reasonable likelihood the outcome of the trial would have been different had he testified he sold stolen goods to Mr. Nathani. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation

XIII. Counsel’s failure to properly investigate

Applicant next argues trial counsel was deficient for failing to properly investigate his case. In support of this argument, Applicant asserts trial counsel should have obtained surveillance footage from nearby shopping centers to prove he wasn’t near the scene of the robbery. This Court finds this allegation is contradicted by the testimony presented at the PCR hearing. Far from failing to investigate, each trial attorney credibly testified they utilized the services of Detective B.G. Watkins to interview witnesses. Although Detective Watkins tragically passed away before trial, trial counsel could still utilize the information he gathered in preparation for trial. Additionally, trial counsel called five alibi witnesses to aid in Applicant’s defense at trial. The testimony of the alibi witnesses served the same purpose Applicant claims would have been accomplished if security cameras from nearby shopping centers had been reviewed.

Further, Applicant has not proved prejudice because he has not entered into evidence any footage, making any assertion as to what may be on the video speculative. Although Applicant asserts security camera footage would have established that he wasn't at the scene of the robbery, the footage may have actually established the opposite. If the footage from nearby stores showed Applicant or his vehicle, then Applicant's alibi would be defeated if not severely diminished. If the security footage didn't show Applicant, then it wouldn't prove anything. Applicant could have been anywhere other than in front of that security camera at the specific time reviewed. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

XIV. Counsel's failure to object to the admission of the cell phone records of

Applicant and Gulzar Nathani

Applicant next claims trial counsel was ineffective for failing to object to the admission of cell phone records through Captain Scott McDonald. This Court finds this allegation fails for two reasons. First, Captain McDonald was a proper witness to authenticate the phone records. Although Captain McDonald was not a custodian of records for the phone company, he testified his particular job at the Sheriff's Office involved obtaining phone records. (R. 433). Therefore, had an objection been made to the admission of the phone records, it may well have been overruled depending on how Captain McDonald obtained the records and verified them. Second, Applicant suffered no prejudice from the admission of the phone records. The State admitted the phone records for the limited purpose of highlighting that Applicant and Mr. Nathani exchanged many phone calls prior to the robbery, but stopped calling each other after the robbery. (R. 436). However, Applicant had already admitted a portion of Mr. Nathani's records in his cross examination of Mr. Nathani. (R. 270-71). Because Mr. Nathani's records had already been

admitted (through Applicant), the State could have made the same point regarding the frequency of phone calls before and after the robbery regardless of whether Applicant's phone records were admitted. Therefore, there is no probability that the outcome of Applicant's trial would have been different if trial counsel had objected to the admission of the phone records. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

XV. Counsel's failure to prepare Applicant's witnesses

Applicant next claims trial counsel was deficient for failing to prepare Applicant's witnesses. However, was unable to identify any specific way he felt his witnesses were unprepared other than his complaint that the authenticity of his time card was called into question during the solicitor's cross examination of Aaron Griffin. Applicant also made vague complaints regarding how some of his witnesses needed to have their memory refreshed with their statements. Meanwhile, trial counsel credibly testified they prepared each witnesses for their testimony as much as they could given some of the witnesses' refusal to cooperate and the geographic location of others. Applicant confuses the imperfect testimony of his witnesses with a lack of preparation by his attorneys.

Within this allegation, Applicant also alleges his trial counsel was ineffective for failing to object to Judge King requiring the statements of his witnesses to be turned over to the State. This claim is contradicted by the testimony of Mr. Bank and Ms. Walker at the PCR hearing. Each attorney testified they met with Judge King in chambers and objected when Judge King asked that the statements of defense witnesses be turned over. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

XVI. Counsel's failure to call an expert witness to explain cell phone tower logs

Applicant's final allegation is that trial counsel was deficient for failing to call an expert witness to explain Applicant's cell phone tower logs. Mr. Bank testified that using cell phone tower logs to determine a person's position was an inexact science in 2015. Mr. Bank and Ms. Walker credibly testified that Applicant's cell phone records revealed he was in the general area of the crime when it was committed. Therefore, each attorney testified that cell phone tower testimony would not have benefitted Applicant because it would not have conclusively shown he was elsewhere at the time of robbery. Trial counsel thus engaged in a reasonable trial strategy to establish Applicant's whereabouts at the time of the robbery through the use of alibi witnesses rather than cell phone tower logs, and was not deficient in failing to call a cell phone tower log expert. Even if counsel were deficient, there is no probability the outcome of Applicant's trial would have been different if they had called such an expert based on trial counsel's testimony that the records showed Applicant in the general area where the crime when it was committed. In fact, such an expert may have harmed Applicant's alibi defense. Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

Therefore, this claim, and the application itself, are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this _____ day of _____, 2022.

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

_____, South Carolina

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

) 2017-CP-40-7564

ORDER GRANTING

) **POST-CONVICTION RELIEF**

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PROCEDURAL HISTORY

Page 1 of 25

burglary (2012-GS-40-5295), and one count of armed robbery (2012-GS-40-5296). These charges arose following a home invasion and robbery of Gulzar Nathani's home-business.

On February 23, 2015, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Anastasia Walker, Esquire and Robert Bank, Esquire represented Applicant. Assistant Solicitors Luck Campbell and Meghan Walker of the Fifth Circuit Solicitor's Office prosecuted the case. On February 27, 2015, the jury found Applicant guilty as indicted. Judge McMahon sentenced him to concurrent terms of thirty years' imprisonment for each offense.

Applicant appealed. The South Carolina Court of Appeals dismissed Applicant's appeal following a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Porterfield, Op. No. 2017-UP-141 (S.C. Ct. App 2017). The remittitur was sent on April 21, 2017.

FACTS PRESENTED AT TRIAL

At trial, Gulzar Nathani's daughters (Child 1 and Child 2)¹ testified they were returning home from lunch at approximately 2:00 p.m. on June 27, 2012, when they noticed two black men and a vehicle in their driveway. Child 1 recognized one of the men as Applicant, whom she knew as "Amp." (R. 194). The other man was wearing a mask. After Applicant asked to speak to Nathani, Child 1 and Child 2 went inside to look for their phone. When Child 2 went upstairs, Applicant pulled a handgun out of a black laptop bag and forced his way inside. (R. 195-96). Applicant then forced the two children to the ground while he and the other man took various electronic items. After the men left, the children called 911. When police arrived, Child 1 and Child 2 identified Applicant by his nickname "Amp." Each also identified him from a six-person photo lineup. At trial, they identified Applicant as one of the assailants.

Applicant testified in his own defense. Additionally, he called five alibi witnesses to

¹ This Court is redacting their names to protect their privacy. For reference, the older daughter is identified as Child 1.

attempt to establish he was working at the time of the robbery. One of Applicant's witnesses, Aaron Griffin, provided Applicant's timecard from the day of the robbery, which purported to show Applicant was at work at 2:00 p.m. on the day of the home invasion. Applicant also called Dr. Dawn McQuiston, an expert who testified regarding cross-racial misidentifications in eyewitness testimony. At the conclusion of trial, Applicant was convicted of all charges.

ISSUES BEFORE THIS COURT

At the PCR hearing, Applicant proceeded on the sixteen allegations in his Amended Application. Specifically, he alleged trial counsel was ineffective in the following regards:

1. Failure to adequately cross victims and their father regarding prior inconsistent statements / not calling witnesses regarding prior inconsistent statements.
2. Failure to object to Burg 1st indictment.
3. Failure to object to the foundation for jail calls.
4. How State obtained Diana Addison's number.
5. Laptop bag issue.
6. Failure to address 4th Amend violations regarding Defendant's capture.
7. Missing witness rule.
8. Failure to object to Defendant having to wear shackles and restraints.
9. Accomplice Liability.
10. Failure to review discovery with defendant before trial.
11. Failure to prepare defendant for testimony.
12. Refusing to ask victims' father and Defendant about their prior relationship.
13. Failure to properly investigate.
14. No objection to use of victims' or Defendant's cell phone records due to lack of foundation.
15. Failure to adequately prepare Defendant's witnesses.
16. Failure to call expert witness to explain cell tower logs of Defendant's phone / no objection to State's witnesses interpreting those same records without being qualified to do so.

Applicant did not pursue any allegations of ineffective assistance of appellate counsel, and this Court finds such allegations were waived.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the trial transcript in its entirety. Additionally, this Court listened to testimony during the PCR hearing, where it had the opportunity to observe the witnesses, pass upon their credibility, and weigh their testimony.² After consideration, this Court finds Applicant has proved allegations one and five of the Amended Application. This Court finds Applicant has failed to meet his burden of proof on the remaining allegations. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

In a PCR action, an applicant carries the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, an applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Padilla v. Kentucky, 559 U.S. 356, 371 (2010) ("Surmounting Strickland's high bar is never an easy task.").

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

² This Court will set forth testimony from the PCR hearing as relevant below.

performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Allegations Applicant has Proved:

This Court finds Applicant has met his burden of proof on allegations one and five of the Amended Application, as set forth below:

- 1. Trial counsel failed to adequately cross-examine the victims and their father regarding prior inconsistent statements and failed to call witnesses regarding prior inconsistent statements. Rule 613 SCRE, "Prior Statement of Witness."**

The failures, omissions, and absences of effective counsel during the Applicant's trial, as listed above, prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 625. That prejudice can be shown for the following reasons:

1. The failure to adequately cross-examine the alleged victims and their father, as well as a failure to call witnesses regarding those prior inconsistent statements prevents the Applicant from any chance to impeach the testimony of the victims and their father. If those witnesses had been properly impeached and their veracity questioned by the jury, it is reasonable to believe the result of the trial would have been different.

- 5. Trial counsel failed to object to the State's use of an Applicant's laptop bag during the direct examination of Investigator Joseph Clarke.**

Where an assistant solicitor's improper remarks are not objected to by trial counsel, and where trial counsel fails to request a curative instruction regarding the assistant solicitor's improper remarks, trial counsel's representation is found to be ineffective and that relief under a

PCR action should be granted. Fortune v. State, 428 S.C. 545, 837 S.E.2d 37 (S.C. 2019).

During Applicant's trial, an assistant solicitor was allowed to make improper remarks regarding the laptop bag that Applicant had with him during trial (R. 501) without an objection by trial counsel, nor was a curative instruction to the jury asked for.

By not objecting to the State's use of Applicant's laptop bag during the testimony of Inv. Clarke, the State could never have made the inference or argument that Applicant's laptop bag in court was the same laptop bag alleged to have been used in the crime. Had the State not been able to make that argument or inference to the jury, it is reasonable to believe the result of the trial would have been different. Failing to object also cost Applicant the ability to argue the issue on appeal.

Based on the foregoing, this Court finds Applicant has proved allegations one and five of the Amended Application.

Allegations Applicant has NOT Proved:

This Court finds Applicant has NOT proven the remaining allegations, as set forth below:

2. Failure to object to first-degree burglary indictment.

Applicant contends trial counsel was ineffective for not objecting to the first-degree burglary indictment. At the PCR hearing, Walker and Bank testified there was nothing structurally or facially wrong with the indictment. Although Walker disputed whether the home was a "dwelling" within the meaning of the first-degree burglary statute, she stated she raised that issue at the directed verdict stage—the appropriate time to do so. Bank recalled discussing whether the structure was a "dwelling" and agreed the appropriate time to raise that issue was at the directed verdict stage.

This Court finds Applicant has not proved this allegation. The indictment was facially

sufficient to put Applicant on notice of what he was being tried for, and counsel thus had no reason to object. See State v. Tumbleston, 376 S.C. 90, 95, 654 S.E.2d 849, 852 (Ct. App. 2007) ([A]n indictment is a ‘notice document.’); id. at 96–97, 654 S.E.2d at 852 (“[T]he circuit court should evaluate the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense intended to be charged.”); Thompson v. State, 357 S.C. 192, 195, 593 S.E.2d 139, 140 (2004) (“The language in the body of each indictment together with the reference to the statute in each title sufficiently alleges all the elements of criminal conspiracy.” (overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005))). Here, the indictment alleged

Anthony M. Porterfield and/or another co-defendant did in Richland County on or about June 27, 2012, enter the dwelling of [Child 1] located at [address³], without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight therefrom, the defendant displayed what was or appeared to be a firearm, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

Pertinently, the indictment gave Applicant sufficient facts to know what he was being tried for and cited the first-degree burglary statute. There was thus no basis to object, and counsel were not deficient for not challenging the indictment. 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, because the indictment was sufficient, Applicant has not shown prejudice from counsel’s failure to object.

³ This Court has redacted the address from this order to protect the privacy of the victims.

Further, the proper time to argue whether the home was a “dwelling” under the statute was at the directed verdict stage. Counsel properly raised this issue in the directed verdict motion and specifically argued the home-business was not a dwelling within the meaning of the burglary statute. (R. 546-48). Thus, Applicant has failed to prove deficiency or prejudice, and this allegation is **denied** and dismissed with prejudice.

3. Failure to object to the admission of jail phone calls.

Applicant avers counsel was ineffective for failing to object to the admission of calls he placed from the detention center based on lack of foundation.⁴ At the PCR hearing, Applicant also contended counsel was ineffective for not moving to suppress the calls under the Fourth Amendment. Applicant has failed to prove counsel was ineffective in these regards.

At the PCR hearing, Applicant recalled the detention center played a message at the beginning of each call indicating the call was being recorded. He also admitted it was his voice in the calls that were admitted at trial. Walker and Bank testified Applicant never disputed it was him in the calls. Walker did not recall any authentication issues. Bank testified he challenged the calls based on Rule 403, SCRE, and he speculated they should have moved to suppress the calls based on the Fourth Amendment. Although Bank recalled discussing authentication, he had never known anyone to argue Waters could not authenticate calls from the detention center.

Initially, Applicant did not enter these calls into evidence at the PCR hearing. Without these calls, this Court cannot assess the likelihood that the outcome of trial would have been different if the calls were not admitted. Cf. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (“A PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in

⁴ These calls were admitted during the testimony of Robert Waters, an employee of the detention center.

order to establish prejudice from the witness' failure to testify at trial.”). Thus, Applicant has failed to prove prejudice.

Further, Applicant has not shown counsel was deficient for not challenging the calls based on lack of foundation/authentication. This Court finds credible Walker and Bank’s testimony that Applicant never disputed it was him in the calls. Likewise, this Court finds credible Bank’s testimony that he had never known anyone to challenge whether Waters—a detention center employee—could authenticate the calls; thus, the decision not to challenge the calls on authentication did not fall below prevailing professional norms. Bank articulated a valid strategy in challenging the calls through Rule 403, SCRE, instead of authentication, and he did in fact raise this argument at trial.⁵ (Tr. 23-43, 335). Because counsel articulated a valid strategy in challenging the calls through a different rule, counsel was not deficient.

Additionally, the calls were properly authenticated, and thus counsel were not deficient for not objecting based on foundation. See Winkler, 418 S.C. at 653, 795 S.E.2d at 692 (“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.”). At trial, Waters testified he had reviewed the calls and they were in fact calls from the detention center. (Tr. 334-35). This testimony was sufficient to meet the very low threshold of authentication. See Rule 901, SCRE (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”); Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC, 413 S.C. 58, 64–65, 773 S.E.2d 607, 610 (Ct. App. 2015) (“[T]he burden to authenticate . . . is not high’ and

⁵ Bank also argued the defense was entitled to enter the remainder of the calls pursuant to Rule 106, SCRE, but it would be overly burdensome to enter more than twenty hours of recorded calls, so the Court should just exclude all of them.

requires only that the proponent 'offer[] a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.'" (alterations in original) (quoting United States v. Hassan, 742 F.3d 104, 133 (4th Cir.2014))); cf. State v. Thompson, 420 S.C. 386, 399, 803 S.E.2d 44, 50 (Ct. App. 2017) (disagreeing with argument that "State was required to present testimony of a witness identifying the caller's voice" to authenticate recording of 911 call). Thus, Applicant has not proved counsel was deficient for not objecting. For the same reasons, it is not reasonably likely an objection based on authenticity would have changed the outcome, and thus Applicant has not shown prejudice.

Likewise, Applicant has not shown counsel was ineffective for not moving to suppress the calls under the Fourth Amendment. Counsel were not deficient because their failure to raise this argument did not fall below prevailing professional norms. Based on the frequency with which jail calls are introduced into evidence at criminal trials and the fact our appellate courts have not issued a published opinion addressing this whether the admission of jail calls violates the Fourth Amendment, the only logical inference is that this is not an argument routinely raised.⁶ Thus, counsels' failure to raise it did not fall below prevailing professional norms.

⁶ At the PCR hearing, Bank referenced State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666 (1976), as support for an argument that the calls should have been suppressed under the Fourth Amendment. However, Ellefson, which involved the seizure of a detainee's letters rather than the recording of phone calls, is distinguishable because the letters in Ellefson "were obtained by the State through the efforts of a detective who was Not connected with the operation of the jail." Id. at 498, 224 S.E.2d at 668. The Ellefson court acknowledged jail employees could read detainees' letters to maintain security. See id. at 500, 224 S.E.2d at 669 ("If jail security justified surveillance of his mail, then the Jail officials could open the letters in order to achieve that legitimate government purpose."). The Ellefson court also acknowledged the "host of decisions upholding introduction of evidence resulting from prison inspections" when "the search was either explicitly or implicitly conceived as being properly calculated to maintain prison or jail security." Id. at 499, 224 S.E.2d at 669. The Ellefson court primarily took issue with the fact a detective—whose "efforts were entirely investigatory and in pursuit of securing a conviction"—was the person reviewing the mail, reasoning the search was not justified by jail security or any legitimate jail purpose. Id. at 498, 501, 224 S.E.2d at 668 669 ("The testimony of the detective

Additionally, Applicant has not shown prejudice. Applicant admitted he knew the calls were recorded. Thus, he had no reasonable expectation of privacy during these calls—making it not reasonably likely the calls would have been suppressed on Fourth Amendment grounds. See New York v. Class, 475 U.S. 106, 112 (1986) (“[T]he State’s intrusion into a particular area . . . cannot result in a Fourth Amendment violation unless the area is one in which there is a constitutionally protected reasonable expectation of privacy.”); United States v. Van Poyck, 77 F.3d 285, 290 (9th Cir. 1996) (“Such a constitutionally protected reasonable expectation of privacy exists only if (1) the defendant has an actual subjective expectation of privacy in the place searched and (2) society is objectively prepared to recognize that expectation.” (internal quotation marks omitted)); id. at 290-291 (“[N]o prisoner should reasonably expect privacy in his outbound telephone calls.”); cf. Hudson v. Palmer, 468 U.S. 517, 526 (1984) (“[S]ociety is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell . . . ; accordingly, the Fourth Amendment proscription against unreasonable searches and seizures does not apply within the confines of a prison cell.”). Thus, this allegation is **denied** and dismissed with prejudice.

4. **Providing the State with Diana Addison’s phone number.**

Applicant contends trial counsel was ineffective for providing the State with his girlfriend Diana Addison’s phone number. At the PCR hearing, Addison testified she was present during

refutes the idea that the search was for any legitimate jail purpose.”). Applicant has not submitted evidence that anyone other than the detention center searched his calls. Further, due to more recent opinions, this Court finds counsel was not deficient for failing to object. See, e.g., State v. Matthews, 296 S.C. 379, 389-90, 373 S.E.2d 587, 593 (1988) (rejecting defendant’s claim that seizure of letters from prison cell violated Fourth Amendment; noting prisoners do not have an expectation of privacy in a prison cell and even if they did, such a “right would be subordinate to corrections officials’ legitimate interest in security”); State v. Martin, 2017-UP-246 (2017) (finding introduction of jail calls did not violate Fourth Amendment when prisoner had no reasonable expectation of privacy after being informed the calls were recorded).

some of Applicant's meetings with trial counsel, and counsel mentioned she had given the State Addison's phone number. Applicant averred this information allowed the State to identify calls he placed at the detention center, some of which were later introduced at trial. However, Walker and Bank denied giving Addison's number to the State. Bank explained the detention center assigns each detainee a four-digit number to enter at the beginning of calls, and the State could have obtained the calls regardless of whether it had Addison's phone number.

Applicant has not shown counsel was ineffective in this regard. This Court finds Addison's testimony on this issue NOT credible. Conversely, this Court finds credible counsel's testimony that they did not give the State Addison's number. Thus, Applicant failed to prove deficiency. Applicant likewise failed to prove prejudice because he did not enter the calls into evidence—thus making this Court unable to determine whether a reasonable likelihood exists that the outcome of trial would have been different without these calls. Cf. Bannister, 333 S.C. at 303, 509 S.E.2d at 809 ("A PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial."). Finally, based on Bank's testimony, the State would have discovered the calls using Applicant's four-digit number regardless of whether it had Addison's number. In other words, the State did not need Addison's number to locate the calls. Thus, this allegation is **denied** and dismissed with prejudice.

6. Failure to address Fourth Amendment Violations from Applicant's arrest.

Applicant alleges counsel was ineffective for not challenging his arrest based on Fourth Amendment grounds. At the PCR hearing, he acknowledged law enforcement obtained warrants for his arrest about a week before his arrest and located him at a friend's house using the Fugitive Swat Team. He averred, however, that police must have violated his Fourth Amendment rights

because he had his phone turned off, he walked to this home when he learned police were looking for him, and the Swat team surrounded the home about ten to fifteen minutes later. Basically, Applicant questioned how law enforcement located him at this home. During cross-examination, he admitted he was not arguing any evidence should have been suppressed; he was arguing he was somewhere with an expectation of privacy because no one knew he was at that home (other than the people who lived there).

Applicant has failed to prove counsel was ineffective in this regard. Initially, Applicant has not identified a Fourth Amendment violation that occurred when he was arrested. Notably, law enforcement had a warrant for Applicant's arrest when they sent a fugitive team to apprehend him. Applicant has presented no evidence that his arrest was unlawful; he merely complains that he was arrested at a location where he anticipated law enforcement would not find him. Thus, he has not shown counsel was deficient for failing to challenge the arrest on Fourth Amendment grounds.

Further, Applicant has not identified any evidence he believes should have been suppressed and therefore has not shown prejudice.⁷ Applicant, Walker, and Bank each testified no evidence was seized from Applicant following his arrest. Therefore, there was no evidence to be suppressed, and no probability the outcome of Applicant's trial would have been different had counsel objected to the circumstances surrounding Applicant's arrest. Accordingly, this allegation is **denied** and dismissed with prejudice.

7. Failure to object to the State's burden-shifting arguments.

Applicant argues counsel was ineffective for not objecting when the State referenced his failure to call Tyrue Ruffin (TK) as a witness. At the PCR hearing, Applicant testified TK was

⁷ To the extent Applicant complains about the admission of evidence about his flight, such evidence is irrelevant to an analysis of whether his Fourth Amendment rights were violated.

an “associate” that he mentioned in jail calls; TK became relevant to the State because the other man who entered the home was never identified. Applicant averred the solicitor’s questions to witnesses asking where TK was constituted burden-shifting.⁸ He acknowledged counsel *did* raise this issue but averred they did not make a contemporaneous objection. Walker testified she *did* object. Bank recalled they spoke to TK but “he was not a true alibi witness.”

Applicant has failed to prove counsel was ineffective in this regard. Trial counsel did, in fact, object to the State’s questions about whether TK was in the courtroom and argued the State was shifting the burden of proof. (Tr. 676-77). The trial court disagreed, stating, “There is a recent case on the missing witness rule I agree the burden cannot be shifted.” (Tr. 677). Because this objection was raised, counsel was not deficient.

To the extent Applicant avers counsel were deficient for not making a contemporaneous objection to preserve this for appeal, Applicant did not prove counsel was deficient because the State’s questions were not improper under current South Carolina law. See State v. Charping, 333 S.C. 124, 128, 508 S.E.2d 851, 853 (1998) (“[I]t is always proper for an attorney in argument to the jury to point out the failure of a party to call a witness.”); State v. Shackelford, 228 S.C. 9, 11, 88 S.E.2d 778, 779 (1955) (“Where the evidence indicates that there are witnesses, seemingly accessible to the accused, or under his control, who are or should be cognizant of material and relevant facts and competent to testify thereto, and whose testimony would presumably aid him or substantiate his story if it were true, it is not improper for the prosecuting attorney to comment upon his failure to produce them.”); In re Gonzalez, 409 S.C. 621, 635, 763 S.E.2d 210, 217 (2014) (recognizing applicability of missing witness rule to fact witness that is “under the control of the party failing to call him” and defining control “to mean

⁸ This was the issue raised in the Anders brief.

the uncalled witness is an agent, employee, relation, or *associate* of the party failing to call him” (emphasis added)).⁹ For the same reason, it is not reasonably likely the outcome would have been different had Applicant objected; thus, Applicant has not shown prejudice.

Finally, Applicant did not prove counsel was ineffective for not objecting to the State’s closing argument. The State’s lengthy closing argument referenced the multiple, conflicting alibi stories presented by Applicant. (Tr. 957-58, 966-68). In its twenty-page argument, the State made only a brief passing reference (“TK—who still hasn’t made it”) to TK not being at trial. (Tr. 966-67). This Court finds counsel was not deficient for not objecting to this brief, passing reference. Additionally, because this was a brief, passing reference in a lengthy closing argument, it is not reasonably likely the outcome of trial would have been different had counsel objected. See also Gonzalez, 409 S.C. at 636, 763 S.E.2d at 218 (finding improper adverse inference argument during closing argument harmless when the issue was “before the jury during cross-examination[and] any adverse inference arguably arose at that time, so the explicit suggestion of an adverse inference by the State in its closing argument was merely cumulative”). Thus, this allegation is **denied** and dismissed with prejudice.

8. Failure to object to Applicant wearing leg shackles during trial.

Applicant next argues trial counsel was deficient for failing to object to Applicant being in leg shackles during trial. At the PCR hearing, Applicant testified counsel told him to keep his feet under the table and motioned for him to put his hand down when he lifted it. He stated he

⁹ As noted in Applicant’s brief to the Court of Appeals, “Although the law is clear that South Carolina does not permit an adverse inference comment when the defendant presents *no* evidence, *the law is less clear concerning an absolute bar to such a comment when the defendant presents evidence*, particularly[] evidence of an alibi.” (Anders Br. 17, emphasis added). This shows that at the time of Applicant’s trial, South Carolina law did not prohibit an adverse inference comment when a defendant presented evidence. Thus, counsel were not deficient for not objecting. Cf. Winkler, 418 S.C. at 653, 795 S.E.2d at 692 (“An attorney is not required to anticipate potential changes in the law which are not in existence at the time of the conviction.”).

was oblivious to the fact that shackles were not supposed to be seen. Walker recalled asking the court to remove Applicant's shackles before he testified. Bank recalled the jury was not present when Applicant went to the witness stand. He agreed the jury would not have seen Applicant's legs during trial due to the way the tables are set up in the Richland County Courthouse.

Applicant has failed to prove counsel was ineffective in this regard. Initially, counsel *did* raise this issue to the court by asking to remove Applicant's shackles prior to his testimony and thus they were not deficient. (Tr. 683). To the extent Applicant avers counsel was deficient for not making this request at the start of trial, this Court notes the trial court denied the request to remove the shackles when counsel raised this issue. (Tr. 683). Based on that decision—which was within the trial court's discretion—it is not reasonably likely the outcome would have been different had counsel raised this issue at the start of trial. Additionally, Applicant has presented no evidence other than speculation that any juror saw him shackled. See Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999) (“Petitioner did not offer the testimony or affidavits of any of the seated jurors that they saw petitioner in chains and petitioner was prejudiced thereby. Without this evidence, petitioner's claim is not supported by any probative evidence and is based on pure speculation.”). Accordingly, Applicant failed to prove prejudice. Thus, this allegation is **denied** and dismissed with prejudice.

9. **Failure to object to accomplice liability charge.**

Applicant contends counsel was ineffective for not objecting to the accomplice liability charge because evidence did not support it.¹⁰ At the PCR hearing, Applicant testified the State never identified an accomplice other than to speculate it was TK, and thus there was no evidence of a co-defendant. However, he agreed Child 1 and Child 2 always alleged two men were

¹⁰ The accomplice liability charge is on pages 989-92 of the trial transcript.

present. Applicant maintained he was not present during the home invasion.

Applicant has not shown counsel was ineffective in this regard. First, counsel was not deficient for not objecting to the accomplice liability charge because evidence supported the charge. See State v. Washington, 431 S.C. 394, 407, 848 S.E.2d 779, 786 (2020) (“For an accomplice liability instruction to be warranted, the evidence must be ‘equivocal on some integral fact and the jury [must have] been presented with evidence upon which it could rely to find the existence or nonexistence of that fact.’” (quoting Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011))). Here, there was conflicting evidence as to whether Applicant or the unidentified man was the armed assailant. At trial, both children testified two men committed the robbery. Although Child 1 stated she saw Applicant with the gun during direct examination, on cross-examination she stated the unidentified assailant had the gun. (R. 196, 210-11). Whether Applicant or the unidentified assailant was armed could have been significant to the jury—especially regarding the armed robbery offense. Because the evidence was equivocal on an integral fact, the accomplice liability instruction was supported by the evidence, and trial counsel was not deficient in not objecting. Likewise, because evidence supported the charge, Applicant was not prejudiced by counsel’s failure to object. Thus, this allegation is **denied** and dismissed with prejudice.

10. Failure to review discovery with Applicant prior to trial.

At the PCR hearing, Applicant testified counsel was ineffective for not reviewing all the discovery with him prior to trial. He admitted to seeing the arrest warrants, cell phone records, and TK’s statement, but he asserted he did not see statements from alibi witnesses. Applicant believed it would have been more effective to have TK testify than Nazirah Gale (“Nana”). However, he acknowledged he was told TK wasn’t helpful and would testify that he (TK) was at

the zoo when the home invasion occurred. In contrast, Walker testified it was her common practice to review discovery with clients, and she reviewed discovery with Applicant five to six times prior to trial. Bank stated he met with Applicant three to four times, and Walker would have met with Applicant more. He agreed Applicant had plenty of access to discovery.

Applicant has not shown counsel was ineffective in this regard. Initially, this Court finds counsel's testimony on this issue credible and Applicant's testimony on this issue not credible. Because counsel met with Applicant multiple times before trial and reviewed discovery, counsel was not deficient. Further, Applicant has failed to prove prejudice because he has not identified any evidence they failed to review or how it would have changed the outcome of trial. Pertinently, Applicant has not introduced into evidence the purported alibi witness statements or any testimony from TK. Without such evidence, this Court would be speculating about whether Applicant suffered prejudice from counsel's failure to review such evidence with him. See Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (“[T]o support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.”). Accordingly, this allegation is **denied** and dismissed with prejudice.

11. Failure to prepare Applicant for his testimony.

Applicant asserts counsel was ineffective for not preparing him to testify. At the PCR hearing, Applicant recalled discussing whether he would testify and explained he didn't want to testify, but things took a complete turn prior to trial and he was led to believe he could put everything in perspective if he testified. He averred his testimony was necessary to contradict

the State's "spin" about his jail calls. Applicant stated counsel did not prepare him; counsel simply told him to "go tell [his] story."

Walker recalled discussing with Applicant whether he should testify and reviewing with him his impeachable offenses. Bank recalled discussing with Applicant pretrial the possibility that he would testify, although he did not recall when the decision was made. He explained they may have finalized the decision on the day of trial but would have discussed it.

Applicant has failed to show counsel was ineffective in this regard. This Court finds credible counsel's testimony that they prepared Applicant before trial for the possibility of testifying. Although the decision may have been made on the day of his testimony, Walker and Bank testified they prepared Applicant for that possibility in advance. Because counsel met with Applicant five to six times prior to trial and discussed his potential testimony, counsel was not deficient in this regard. Likewise, Applicant has failed to explain what more counsel should have done to prepare him and thus has not shown how the outcome would have been different with more preparation. Thus, Applicant failed to prove prejudice, and this allegation is **denied** and dismissed with prejudice.

12. Failure to elicit evidence about Applicant's relationship with Gulzar Nathani.

At the PCR hearing, Applicant testified he sold Nathani electronics that Applicant had stolen from his employer. Applicant stated he earned over \$50,000 from this arrangement. He explained he wanted to testify about this at trial but counsel advised him not to. However, he admitted Walker "made some good points" when advising him not to testify about his prior felonious relationship with Nathani.¹¹ Applicant averred the jury would question his motive to

¹¹ Applicant *did* testify at trial that he sold old electronics to Nathani. (Tr. 701-04). Additionally, he testified, "I knew the business that I had with Mr. Nathani. And I knew that, you know—I knew everything wasn't legitimate." (Tr. 706).

rob Nathani if they knew about his past conduct with Nathani. He acknowledged Bank tried to discuss Nathani's "true" business but the judge cut him off.

Applicant has not shown show counsel was ineffective in this regard. It defies common sense to suggest it would be beneficial for a defendant who is on trial for stealing electronics to admit he previously sold stolen electronics. Had Applicant offered this testimony, the jury may have concluded Applicant must have robbed Nathani merely because Applicant stole electronics in the past. Such a conclusion is the forbidden propensity inference that our Supreme Court has repeatedly sought to prevent when analyzing the admission of prior bad acts under Rule 404(b) SCRE. See generally State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020). Despite trial counsel's willingness to speculate in hindsight at the PCR hearing that such a strategy may have made a difference—which this Court does not find credible—this Court finds advising Applicant to admit he had previously stolen electronics would not have been reasonable under prevailing professional norms, especially in an armed robbery trial. In fact, this Court finds counsel would have been deficient if they had advised Applicant to admit he previously sold stolen goods.

Further, Applicant did not show a reasonable likelihood the outcome would have been different had he testified he sold stolen goods to Nathani. This Court finds such testimony would have made it even more likely the jury would convict him. Applicant has failed to meet either prong of Strickland; thus, this allegation is **denied** and dismissed with prejudice.

13. Failure to properly investigate.

At the PCR hearing, Applicant testified Nathani had said Applicant called him multiple times, but phone records did not support that statement. Applicant contended counsel should have further investigated the cell site locations for cell phone calls. Additionally, he asserted there were several businesses around Nathani's home, and counsel should have obtained

surveillance footage to prove he wasn't near the scene of the robbery.

Walker and Bank testified they hired Detective B.G. Watkins to investigate. Although Detective Watkins passed away before trial, counsel used information that Detective Watkins gathered to prepare for trial. Walker testified Luke Shealy, Applicant's counsel prior to Walker and Bank, had subpoenaed cell phone records showing GPS coordinates, but triangulation did not come up trial. She explained triangulation was less accurate at the time of this offense than it is today. Walker did not recall discussing video surveillance from surrounding businesses.

Applicant has failed to prove counsel was ineffective in this regard. Initially, counsel's investigation was more than adequate. Counsel hired an investigator and used the evidence he gathered to call five alibi witnesses at trial. Overall, counsel's investigation did not fall below prevailing professional norms, and Applicant has not proved deficiency. Additionally, Applicant did not enter into evidence any information he believed counsel would have obtained upon further investigation. Specifically, he did not enter any video footage or evidence regarding cell site locations. Thus, he has not proved prejudice. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Accordingly, this allegation is **denied** and dismissed with prejudice.

14. Failure to object to the admission of Applicant's and Nathani's cell phone records.

Applicant next alleges trial counsel was ineffective for failing to object to the admission of cell phone records through Captain Scott McDonald. At trial, the State used Nathani's and Applicant's phone records to show they exchanged many phone calls prior to the robbery but stopped calling each other after the robbery. During the PCR hearing, Applicant averred counsel was ineffective for not objecting to the admission of the records through Captain McDonald.

Applicant has not shown counsel was ineffective in this regard. This Court finds Captain McDonald was a proper witness to authenticate the phone records because his job involved obtaining and interpreting phone records. (R. 433). Thus, counsel was not deficient. See Deep Keel, 413 S.C. at 64–65, 773 S.E.2d at 610 (“[T]he burden to authenticate . . . is not high’ and requires only that the proponent ‘offer[] a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.’” (alterations in original) (quoting Hassan, 742 F.3d at 133)). Further, Applicant did not prove prejudice because he did not enter the records at the PCR hearing, making this court unable to discern how the records prejudiced him. Additionally, the records were cumulative to records previously admitted by Applicant.¹² (App. 270-71). Finally, the value of the phone records—to show that phone calls between Applicant and Nathani ceased after the robbery—was minimal to the State’s case, and this Court finds it is not reasonably likely the outcome would have been different without the records. Thus, this allegation is **denied** and dismissed with prejudice.

15. Failure to prepare Applicant’s witnesses.

Applicant next claims trial counsel was ineffective for failing to prepare Applicant’s witnesses. At the PCR hearing, he testified Nana’s testimony that she picked him up from work that day contradicted his testimony that TK picked him up.¹³ Applicant also asserted some of his witnesses needed to have their memory refreshed with their statements. Meanwhile, trial counsel

¹² Applicant had previously admitted a portion of Nathani’s phone records during his cross-examination of Nathani. (R. 270-71). Because Nathani’s records had already been admitted (through Applicant), the State could have made the same point regarding the frequency of phone calls before and after the robbery without Applicant’s phone records.

¹³ Although Nana testified prior to Applicant, Applicant testified he recalled TK—not Nana—picking him up from work at the beginning of his lunch break that day. (Tr. 692). Notwithstanding this inconsistency, Applicant and Nana both testified they were at Applicant’s apartment during Applicant’s lunch break while TK was moving out, and Nana drove Applicant back to work. (Tr. 580-83, 695-99).

testified they prepared each witness for their testimony as much as possible due to some of the witnesses' refusal to cooperate and the geographic location of others.

Applicant has not proved counsel were ineffective in this regard. Initially, this Court finds credible counsels' testimony that they prepared each witness as much as possible due to some of the witness' refusal to cooperate and the geographic location of others. Thus, counsel was not deficient. Further, Applicant has not proved prejudice. Pertinently, Applicant primarily complains that his testimony differed from Nana's testimony. However, given a witness's requirement to testify truthfully, it is unclear what he wanted counsel to do to better "prepare" this witness. In other words, it would have been unethical for counsel to "prepare" Nana by telling her what her testimony should be. Further, the inconsistency about who picked Applicant up from work for his lunch break was immaterial to the alibi defense. To establish the alibi, Applicant needed to show what time he *returned* to work. Both Nana and Applicant testified she drove him back to work after being at his apartment while TK was moving out. Thus, the material portion of their testimony was consistent, and Applicant has not shown prejudice. Therefore, this allegation is **denied** and dismissed with prejudice.

16. Failure to call an expert to explain cell phone tower logs

Applicant's final allegation is that trial counsel was ineffective for not calling an expert witness to explain Applicant's cell phone tower logs. Bank testified using cell phone tower logs to determine a person's position was an inexact science in 2015. Additionally, Bank and Walker testified that Applicant's cell phone records revealed he was in the general area of the crime when it was committed. Therefore, cell phone tower testimony would not have aided Applicant because it would not have shown he was elsewhere at the time of the robbery.

Applicant has not proved counsel was ineffective in this regard. Initially, this Court finds credible counsel's testimony that the records showed Applicant was in the general area of the crime when it was committed—making their decision to not further pursue his cell phone location objectively reasonable. Further, counsel engaged in a reasonable strategy to establish Applicant's whereabouts at the time of the robbery through alibi witnesses. Thus, Applicant has not shown counsel was deficient for not calling a cell phone tower expert. Finally—and importantly—Applicant did not present the testimony of an expert at the PCR hearing and thus did not establish prejudice. Cf. Glover, 318 S.C. at 498–99, 458 S.E.2d at 540 (“In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.”). Accordingly, this allegation is **denied** and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds Applicant has met both prongs of the Strickland test for ineffective assistance of counsel as to allegations one and five of the Amended Application. This Court finds and concludes Applicant has failed to meet his burden of proof as to the remaining allegations in the Amended Application. Thus, Applicant's convictions are **vacated** and a **new trial** is ordered.

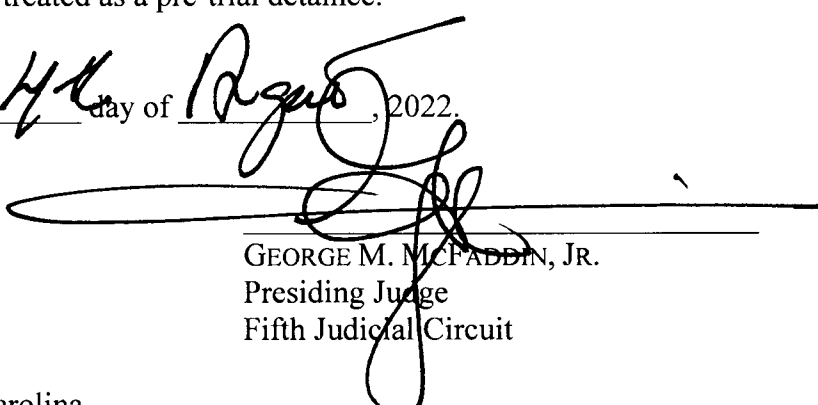
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an

Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Pursuant to Rule 71.1(g), SCRPC, if Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is GRANTED as to two claims presented by Applicant and denied as to all others;
2. Applicant shall be remanded to the Richland County Detention Center pending retrial or other disposition of the underlying charges referenced in this order; and
3. Applicant shall be treated as a pre-trial detainee.

AND IT IS SO ORDERED this 4th day of August, 2022.



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


_____, South Carolina

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2017-CP-40-7564

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND
ORDER GRANTING
POST-CONVICTION RELIEF
PURSUANT TO RULE 59(e), SCRP**

V.

PURSUANT TO RULE 59(e), SCRP

Respondent.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed by Anthony M. Porterfield (Applicant) on December 14, 2017. In response, the State of South Carolina served its return and requested an evidentiary hearing.

An evidentiary hearing convened in the Richland County Courthouse on May 24-26, 2022. Lir Patrick Derieg, Esquire, represented Applicant, and Assistant Attorney General Scott Matthews represented the State. During the hearing, Applicant testified on his behalf and called his fiancée, Diana Addison, as a witness. The State called as witnesses Applicant's trial attorneys Anastasia Walker, Esquire, and Robert Bank, Esquire. This Court had before it the original application and the amended application, the State's return, Applicant's records from the South Carolina Department of Corrections, the Clerk of Court's records regarding the subject convictions, and the transcript of Applicant's trial.

Following the hearing, this Court requested proposed orders from each party. After submission and review of these orders, this Court granted post-conviction relief to Applicant on two of the sixteen grounds raised in his amended application. Specifically, this Court found counsel was ineffective for not adequately cross-examining witnesses to reveal inconsistencies in their statements and not objecting when the solicitor used Applicant's black laptop bag for

demonstrative purposes. This Court denied relief on the remaining grounds. The State received notice of entry of this Order from the public index on August 23, 2022.

Respondent does not challenge the portion of the Order denying relief. However, Respondent submits the portion of the Order granting relief fails to comply with section 17-27-80 of the South Carolina Code. Specifically, this section does not contain specific finding of fact or state expressly its conclusions of law in the two sections of the order granting relief. See id. (“The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.”). Likewise, Respondent contends Applicant did not prove counsel was ineffective in its cross-examination of the victims or in responding to the State’s unexpected use of his laptop bag. Respondent now moves to alter or amend this order and requests this Court reconsider its ruling on the portion of the Order granting relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-year sentence. In October 2012, the Richland County Grand Jury indicted Applicant for two counts of kidnapping (2012-GS-40-5294, 2012-GS-40-5297), one count of first-degree burglary (2012-GS-40-5295), and one count of armed robbery (2012-GS-40-5296). These charges arose following a home invasion and robbery of Gulzar Nathani’s home-business.

On February 23, 2015, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Anastasia Walker, Esquire and Robert Bank, Esquire represented Applicant. Assistant Solicitors Luck Campbell and Meghan Walker prosecuted the case. On February 27, 2015, the jury found Applicant guilty as indicted. Judge McMahon sentenced him to concurrent terms of thirty years’ imprisonment for each offense.

Applicant appealed. The South Carolina Court of Appeals dismissed Applicant’s appeal

following a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Porterfield, Op. No. 2017-UP-141 (S.C. Ct. App 2017). The remittitur was sent on April 21, 2017.

FACTS PRESENTED AT TRIAL

At trial, Gulzar Nathani's daughters (Child 1 and Child 2)¹ testified they were returning home from Chick-fil-A on the day of the home invasion when they noticed two black men and a gold or champagne sedan in their driveway. (R. 191, 229). Child 1 and Child 2 recognized one of the men, whom they knew as "Amp," and they identified Applicant as Amp at trial. (R. 194, 232, 235). The other man was wearing a mask. Child 1 testified Applicant asked to speak to their father; she told Applicant her father was not home, but she would call him. (R. 194-95). She stated Child 2 entered the house to find the phone; at that time, Child 1 was standing by the door holding it open and "he was standing by his car." (R. 195). Child 1 testified that while Child 2 was inside, Applicant pulled a handgun out of a black laptop bag and forced his way inside. (R. 195-96). Applicant then forced both children to the ground while he and the other man took various electronic items. After the men left, the children called 911. When police arrived, Child 1 and Child 2 identified Applicant by his nickname "Amp." Each also identified him from a six-person photo lineup. At trial, they identified Applicant as one of the assailants.

Applicant testified in his own defense and called five alibi witnesses to attempt to establish he was working at the time of the robbery. Applicant also called Dr. Dawn McQuiston, an expert who testified on cross-racial misidentifications in eyewitness testimony. At the conclusion of trial, Applicant was convicted of all charges.

ISSUES BEFORE THIS COURT

At the PCR hearing, Applicant proceeded on the sixteen allegations in his Amended

¹ The State is redacting their names to protect their privacy. For reference, the older daughter is identified as Child 1.

Application. Specifically, he alleged trial counsel was ineffective in the following regards:

1. Failure to adequately cross victims and their father regarding prior inconsistent statements / not calling witnesses regarding prior inconsistent statements.
2. Failure to object to Burg 1st indictment.
3. Failure to object to the foundation for jail calls.
4. How State obtained Diana Addison's number.
5. Laptop bag issue.
6. Failure to address 4th Amend violations regarding Defendant's capture.
7. Missing witness rule.
8. Failure to object to Defendant having to wear shackles and restraints.
9. Accomplice Liability.
10. Failure to review discovery with defendant before trial.
11. Failure to prepare defendant for testimony.
12. Refusing to ask victims' father and Defendant about their prior relationship.
13. Failure to properly investigate.
14. No objection to use of victims' or Defendant's cell phone records due to lack of foundation.
15. Failure to adequately prepare Defendant's witnesses.
16. Failure to call expert witness to explain cell tower logs of Defendant's phone / no objection to State's witnesses interpreting those same records without being qualified to do so.

This Court found Applicant met his burden of proof on issues one and five but failed to meet his burden of proof on the remaining allegations.

ARGUMENT IN SUPPORT OF MOTION TO ALTER OR AMEND THE ORDER

Respondent submits the portion of the Order granting relief does not comply with section 17-27-70 of the South Carolina Code. Respondent likewise submits Applicant did not prove counsel was ineffective in their cross-examination of victims or in their response to the State's unexpected use of Applicant's laptop bag.

i. The Order does not comply with section 17-27-70 of the South Carolina Code

Section 17-27-70 expressly provides that following an evidentiary hearing, the court "shall enter an appropriate order with respect to the conviction or sentence in the former

proceedings The court shall make specific findings of fact, and state expressly its conclusion of law, relating to each issue presented.”

Although the portion of the Order addressing the allegations the Court denied relief on contains adequate findings of fact and conclusions of law, the portion of the Order granting relief contained only conclusory statements. In granting relief, this Court found:

1. **Trial counsel failed to adequately cross-examine the victims and their father regarding prior inconsistent statements and failed to call witnesses regarding prior inconsistent statements. Rule 613 SCRE, “Prior Statement of Witness.”**

The failures, omissions, and absences of effective counsel during the Applicant’s trial, as listed above, prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry at 625. That prejudice can be shown for the following reasons:

1. The failure to adequately cross-examine the alleged victims and their father, as well as a failure to call witnesses regarding those prior inconsistent statements prevents the Applicant from any chance to impeach the testimony of the victims and their father. If those witnesses had been properly impeached and their veracity questioned by the jury, it is reasonable to believe the result of the trial would have been different.
5. **Trial counsel failed to object to the State’s use of an Applicant’s laptop bag during the direct examination of Investigator Joseph Clarke.**

Where an assistant solicitor’s improper remarks are not objected to by trial counsel, and where trial counsel fails to request a curative instruction regarding the assistant solicitor’s improper remarks, trial counsel’s representation is found to be ineffective and that relief under a PCR action should be granted. Fortune v. State, 428 S.C. 545, 837 S.E.2d 37 (S.C. 2019).

During Applicant’s trial, an assistant solicitor was allowed to make improper remarks regarding the laptop bag that Applicant had with him during trial (R. 501) without an objection by trial counsel, nor was a curative instruction to the jury asked for.

By not objecting to the State's use of Applicant's laptop bag during the testimony of Inv. Clarke, the State could never have made the inference or argument that Applicant's laptop bag in court was the same laptop bag alleged to have been used in the crime. Had the State not been able to make that argument or inference to the jury, it is reasonable to believe the result of the trial would have been different. Failing to object also cost Applicant the ability to argue the issue on appeal.

The State submits the section of the Order addressing trial counsel's cross-examination of the victims does not contain any findings of fact. Although it references "the failures, omissions, and absences . . . as listed above," nothing above that portion of the Order explains what those failures, omissions, and absences were. Likewise, the Order does not explain or set forth the inconsistencies in the victims' statements or clarify what witnesses counsel should have called to combat these allegedly inconsistent statements. Without clarifying what the alleged inconsistent statements were or what witness testimony would have contradicted the victims' allegedly inconsistent statements, it is impossible to determine whether counsel actually was deficient, and how this alleged deficiency prejudiced Applicant.

The State further submits the portion of the Order addressing counsel's failure to more adequately respond to the State's use of Applicant's laptop bag does not contain sufficient findings of fact. Specifically, it is unclear from this Order what comment the Solicitor made that this Court found improper, how this prejudiced Applicant, or how an objection would have made it more likely an appellate court would reverse on appeal. Because this Order does not contain adequate findings of fact and contains only conclusory legal conclusions, the State submits it does not comply with section 17-27-70. Thus, the State respectfully requests this Court alter or amend the Order to contain adequate findings of fact and conclusion of law.

ii. *Applicant did not prove counsel was ineffective in their cross-examination of the victims*

During the PCR hearing, Applicant contended counsel was ineffective for not

cross-examining the victims about inconsistent statements. According to Applicant, Child 1 and Child 2 initially told police they were home when they heard something outside, and they then noticed men in a gold Hyundai. In their second statement, which was provided the following day, Child 1 and Child 2 said they were returning home when they noticed two guys sitting in a car in their driveway. In their third statement, they said one guy was in the car and the other was outside the car. Finally, at trial Child 1 and Child 2 testified they were returning from Chick-fil-A when they noticed one guy at their door and one at the car. In addition to the foregoing alleged inconsistencies, Applicant testified Nathani initially claimed the value of the stolen goods was \$2,000, but he later alleged the value was \$10,00. Finally, Applicant asserted the victims described the car as gold, whereas one of his witnesses at trial testified she drove a Champagne-colored Impala.

The State submits Applicant has not shown counsel was ineffective for not further cross-examining the victims regarding allegedly inconsistent statements and respectfully requests the Court reconsider its ruling in this regard. At the PCR hearing, Applicant entered into evidence an incident report; Investigator Joe Clarke's investigative notes; a written statement from Child 1 dated July 2, 2012; and Detective B.G. Watkins' Investigative Statement regarding his interview with Child 1, Child 2, and Nathani on August 16, 2012. Of these four documents, the only one that indicates the children were home when the men arrived was the incident report prepared by Officer James Stone. Importantly, this was Officer Stone's interpretation; it was not a statement of either of the children. The State submits it is speculative as to what Child 1 or Child 2 would have said had they been questioned about whether they initially told officers they were home before the robbery occurred. Likewise, the State submits that the incident report itself was not admissible as impeachment evidence under Rule 613(b), SCRE. See id. (setting

forth circumstances when a prior inconsistent statement *by a witness* is admissible for impeachment); cf. State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (finding no error in excluding officer's testimony that lieutenant agreed to consider the cooperation of a witness with pending charges as impeachment of lieutenant's denial that he had made an agreement).

The only written statement from a victim that Applicant entered into evidence at the evidentiary hearing was Child 1's July 2, 2012 statement, wherein she stated—consistent with her trial testimony—that they were returning from Chick-fil-A when they noticed the men. The remaining investigative reports consistently indicate the children said they were returning from a restaurant or they were returning from Chick-fil-A. These statements were not inconsistent with the victims' trial testimony, and thus there was no reason to cross-examine them about this issue. As a result, counsel was not deficient for not further cross-examining the victims on this point. Further, it is not reasonably likely an inconsistency as to whether the victims were home versus returning home when the home invasion occurred would be material enough to change the jury's verdict. Thus, Applicant has not established any resulting prejudice.

Additionally, Applicant has not shown counsel was ineffective for not further cross-examining Child 1 and Child 2 about whether the men were inside the car or outside the car when the victims returned home from Chick-fil-A. Notably, Child 1 initially testified—consistent with her written statement—that the two men were inside the car when she returned home. (R. 208-09). She then stated, "At first he was standing on our porch by the door when we parked. When we got out he came down—he came downstairs." (R. 208). Thus, the very inconsistency Applicant points to was before the jury, and counsel therefore was not deficient for not cross-examining Child 1 on this issue. Additionally, the inconsistency in Child 1's testimony on this point was not material to the overall question of whether Applicant committed this crime.

Thus—as evidenced by the fact the jury convicted him notwithstanding the fact the jury *heard* this inconsistent testimony—it is not reasonably likely the outcome would have been different had counsel further cross-examined Child 1 on this point.²

Additionally, Applicant has not shown counsel was ineffective for not cross-examining Nathani about the value of the stolen goods. It appears the initial “statement” Applicant relies on as “evidence” of Nathani’s inconsistent statement is the incident report prepared by Officer Stone, where he indicated the victims told him the perpetrators took two laptops valued at \$1,000 and two televisions valued at \$500 each.³ However, this incident report was not a prior statement of Nathani and thus would not have been admissible to impeach Nathani’s testimony. See Rule 613. (setting forth circumstances when a prior inconsistent statement *by a witness* is admissible for impeachment). Importantly, Nathani did not testify about the value of the items at trial, and thus there was nothing to impeach him about on this issue. (R. 254-77). Finally, as trial counsel testified, this evidence did not go to any elements of the crime. Based on the foregoing, the State submits Applicant has not shown counsel was deficient or any resulting prejudice.

Finally, Applicant has not proved counsel was ineffective for not calling a witness to impeach the victim’s testimony about the color or make of his car. Notably, he did not present any such witness at the PCR hearing or explain how such testimony would have undermined the victim’s testimony in a material way. Thus, Applicant has not shown counsel was ineffective in

² Applicant has not submitted any evidence of a prior statement from Child 2 regarding whether the individuals were in the car or outside the car when Child 1 and Child 2 returned home; thus, he has not proved counsel was ineffective for not further cross-examining Child 2 on this point.

³ Investigator Clarke’s investigative notes indicate Nathani provided a list of stolen items valued at \$10,000 on July 2, 2012—just four days after the robbery. Applicant’s exhibit includes a handwritten list of electronic items and their value.

this regard.⁴

iii. *Applicant did not prove counsel was ineffective in responding to the State's reference to Applicant's laptop bag*

At the PCR hearing, Applicant asserted trial counsel was ineffective for not objecting to the State's demonstrative use of his black laptop bag during Investigator Joseph Clarke's testimony.⁵ The State submits Applicant failed to prove counsel was ineffective in this regard and respectfully requests this Court reconsider its ruling on this issue.

At the PCR hearing, Walker and Bank both testified Applicant carried a black laptop bag to trial each day; the bag was a plain black bag with no identifying characteristics or marks. They further explained they did not expect the Assistant Solicitor to use Applicant's laptop bag as a demonstrative exhibit and thus were not prepared to object at the time. The State submits the Solicitor's use of Applicant's black laptop bag was not foreseeable, and thus counsel's failure to be prepared to object did not fall below prevailing professional norms. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) ("[T]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." (quoting Strickland v. Washington, 466 U.S. 668 (1984))).

Although counsel acknowledged—in hindsight—that they should have objected, trial counsel also testified they formulated a plan to show the jury multiple black laptop bags in

⁴ Although not clear, it seems Applicant is asserting trial counsel should have used Nazirah Gale's testimony that she drove a gold Impala to impeach the victims' testimony that the perpetrators drove a gold or champagne-colored car. (R. 584). Notably, Gale testified at trial that Applicant sometimes drove her gold Impala. (R. 584). Although she claimed he did not use her car that day, she testified she picked him up from work in that car for his lunch break and later dropped him back off at work; the timeframe for this was near the timeframe of the robbery. (R. 580-84). It strains credibility to suggest it would somehow strengthen Applicant's case to further highlight the victims' testimony that the car in their driveway was a gold sedan when the person who picked Applicant up that day actually drove a gold sedan.

⁵ During direct examination, the Assistant Solicitor pointed to a black laptop bag Applicant had at trial and asked if it was similar to the bag the victims described the perpetrators as carrying.

closing argument to emphasize how ubiquitous such bags are.⁶ See Buckson v. State, 423 S.C. 313, 320–21, 815 S.E.2d 436, 440 (2018) (“A PCR court’s analysis of counsel’s strategic decisions must be ‘highly deferential’ to counsel’s judgment, and ‘a fair assessment of attorney performance requires that *every effort be made to eliminate the distorting effects of hindsight*.’” (emphasis added) (quoting Strickland, 466 U.S. at 689)). The State submits counsel articulated a clear strategy to combat an unexpected maneuver by the State and thus were not. See Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (“When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel.”). Further, during Applicant’s case, counsel elicited testimony from Diana Addison, Applicant’s fiancée, that the black laptop bag belonged to her and Applicant did not have access to it in 2012, which was the year the robbery occurred. (R. 633-34). The foregoing shows counsel employed a strategy to combat the State’s unexpected maneuver; thus, they were not deficient.

Additionally, the State submits Applicant was not prejudiced by counsel’s failure to object because it is not reasonably likely the outcome of Applicant’s trial would have been different had they objected. Notably, the black laptop bag was not a critical piece of evidence in the investigation or at trial. Although Child 1 testified Applicant had a laptop bag at the time of the robbery, she never specified what color it was or provided a description of it. Likewise, Child 2 never testified about a laptop bag at all. Neither victim specified any identifying characteristics of the laptop bag that would connect the bag used at trial with the bag Applicant allegedly had on the day of the robbery. (Tr. 195, 224-52). As counsel attempted to demonstrate, a black laptop bag is ubiquitous and common. It is not reasonably likely the jury

⁶ However, counsel’s plan was thwarted when the trial judge ordered them not to show the bags to the jury because they had not been introduced into evidence. (R. 954).

convicted Applicant because of the solicitor's demonstrative use of a nondescript laptop bag that Applicant had at trial. Rather, Applicant was convicted of these crimes because two eyewitnesses who knew him prior to the crime identified him as the assailant. Based on the foregoing, Applicant has not proved prejudice.

CONCLUSION

Based on the foregoing, Respondent respectfully requests this Court reconsider its finding that Applicant proved two grounds of ineffective assistance of counsel. Respondent further respectfully request this Court issue an order denying relief and dismissing this application.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: 
Danielle Dixon

Attorneys for Respondent
Post Office Box 11549
Columbia, South Carolina 29211

August 30, 2022

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Anthony M. Porterfield, 310529, 2017-CP-40-7564

2017-CP-40-7564

Applicant,

v.

State of South Carolina,

Respondent.

**MEMORANDUM IN SUPPORT OF
MOTION TO ALTER OR AMEND
ORDER GRANTING
POST-CONVICTION RELIEF
PURSUANT TO RULE 59(e), SCRCF**

This matter is before this Court by way of Anthony Porterfield's (Applicant's) application for post-conviction relief (PCR) filed December 14, 2017. On August 17, 2022, this Court entered an Order granting Applicant relief on two grounds. Respondent received written notice of the entry of this Order from the Richland County Public Index on August 23, 2022. On August 30, 2022, Respondent served its Motion to Alter or Amend on opposing counsel and the Honorable George M. McFaddin, Jr.

Respondent submits this memorandum in support of its motion at the request of Judge McFaddin. Respondent contends (1) the motion is timely, (2) the Order granting relief does not comply with section 17-27-70 of the South Carolina Code, and (3) Applicant did not prove counsel was ineffective in any regard. Respondent respectfully requests a hearing.

i. The Motion to Alter or Amend is Timely¹

The plain language of Rule 59(e), SCRCF, provides, "A motion to alter or amend the judgment shall be served not later than 10 days *after receipt of written notice of the entry of the order.*" (emphasis added). The entry of an order occurs when the Clerk of Court files a signed

¹ Respondent submits Applicant has not properly raised this issue through a Return or other proper filing. However, because counsel for Applicant has emailed the Court regarding this issue, Respondent will address it out of an abundance of caution.

order. See Upchurch v. Upchurch, 367 S.C. 16, 24, 624 S.E.2d 643, 647 (2006) (“Entry of the order occurs when the clerk of court files the order. Delivery of the order to the clerk is not analogous to the entry of the order.”), disapproved of on other grounds by Miles v. Miles, 393 S.C. 111, 711 S.E.2d 880 (2011).² This is because “[a]n order is not final until it is entered by the clerk of court.” Id. at 22, 624 S.E.2d at 646. Because a signed but unfiled order is not a final order, it does not constitute an entered order and thus does not trigger the time for filing a Rule 59(e) motion. See Bowman v. Richland Mem’l Hosp., 335 S.C. 88, 92, 515 S.E.2d 259, 261 (Ct. App. 1999) (“[T]he final and effective date of the trial judge’s order was the date the order was entered by the clerk of court . . . , not when the order was signed. The order was not binding on the parties until it was delivered to the clerk of court for filing.”).

Here, the State received Judge McFaddin’s signed order on August 15, 2022, and mailed it to the Clerk of Court for filing that same day. However, because the order had not been filed or entered by the Clerk of Court, it was not a final order. Likewise, the unfiled order did not trigger the timeline for filing a motion to alter or amend. Cf. Bowman, 335 S.C. 88, 515 S.E.2d 259 (1999) (finding “appellants had ten days from the date the order was entered by the clerk of court to amend their complaint,” and the trial court erred in finding the timeframe began the day the order was signed rather than the day it was entered by the clerk of court). Respondent did not receive and was not served a copy of the order after it was entered by the Clerk of Court.³

² Although Upchurch dealt with the timeliness of a notice of appeal rather than the timeliness of a Rule 59(e) motion, the language of the rules regarding timeliness of appeals and timeliness of Rule 59(e) motions is nearly identical. See Rule 59(e) (“A motion to alter or amend the judgment shall be served not later than 10 days *after receipt of written notice of the entry of the order*.”); Rule 201, SCACR (“A notice of appeal shall be served on all respondents within thirty (30) days *after receipt of written notice of entry of the order or judgment*.”).

³ Although attorneys who utilize e-filing receive an email notification when a filing is made with the Clerk of Court, PCR actions do not utilize e-filing. Thus, attorneys in PCR actions do not receive any type of email notification when a filing is made in a PCR action.

Respondent, on its own diligence, checked the Richland County Public Index on August 23, 2022, to see if the Order had been entered, and learned it was entered on August 17, 2022. Thus, Respondent received written notice of the *entry* of the Order on August 23, 2022, when it checked the public index. Respondent's service of its Motion to Alter or Amend on August 30, 2022—just seven days later—was timely.

ii. The Order does not comply with section 17-27-70 of the South Carolina Code

Section 17-27-70 expressly provides that following an evidentiary hearing, the court shall enter an order making "specific findings of fact, and state expressly its conclusion of law, relating to each issue presented." Although the portion of the Order addressing the allegations the Court denied relief on contains adequate findings of fact and conclusions of law, the portion of the Order granting relief contains only conclusory statements.⁴ Respondent incorporates by reference its argument addressing this issue set forth in the Motion to Alter or Amend.

iii. Applicant did not prove counsel was ineffective in any regard

Applicant has not shown counsel was ineffective (1) for not further cross-examining the victims regarding allegedly inconsistent statements and (2) in their response to the State's unexpected reference to Applicant's black laptop bag. Respondent incorporates by reference its argument addressing these issues as set forth in the Motion to Alter or Amend.

CONCLUSION

Respondent requests this Court reconsider its finding that Applicant proved two grounds of ineffective assistance of counsel and issue an order denying relief and dismissing this

⁴ Counsel for Applicant has asserted Respondent cannot challenge the Order because Respondent helped draft it. To the contrary, Respondent revised the portion of the Order *denying* relief and clearly stated it would not revise the portion of the Order granting relief. The State submits it would have been improper for it to revise the portion of the Order granting relief because it was not the prevailing party on that issue.

application. Respondent further respectfully requests a hearing on these issues.

Respectfully submitted,

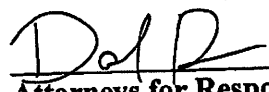
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By:


Attorneys for Respondent
Post Office Box 11549
Columbia, South Carolina 29211

September 9, 2022

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Anthony Porterfield, 310529,

Applicant,

vs.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
)

) CASE NO.: 2017-CP-40-7564
)

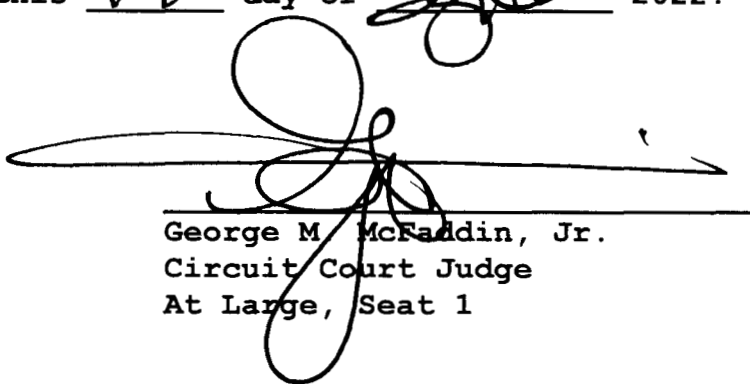
) ORDER ON RESPONDENT'S MOTION
) TO RECONSIDER
)

2022 SEP 26 AM 10:48

RICHLAND COUNTY
FILED

I have considered Respondent's Motion for Reconsideration of PCR recorded September 1, 2022, and I respectfully decline to alter, amend, or vacate the Court's previous ruling.

AND IT IS SO ORDERED this 12th day of September 2022.


George M. McFaddin, Jr.
Circuit Court Judge
At Large, Seat 1