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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2023-000741

King Chevais Conyers ……, Petitioner,

v.

The State of South Carolina ……...…, Respondent.

APPENDIX
(VOLUME VI)

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, we've reached the stage of the trial where I will instruct you on the law applicable to this case. Please pay close attention. I typically do not send a copy of my charges back with you.

Madam Foreperson, you are responsible for writing the verdicts, and I'll go over the verdict forms with you.

Ladies and gentlemen, there is absolutely no significance in the way that I read these charges or the way that I address the defendants. As you know, we have two defendants in this case and I must charge you on the law applicable to each defendant.

I remind you that during this trial, you and I have had certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case, and I have the duty to rule on the admissibility of the evidence that has been offered during this trial. You are to consider only the evidence before you. If there was any testimony ordered stricken from the record, you must disregard that testimony. You are to consider only the testimony that you heard from the witness stand, the exhibits that have been made part of the record in this case, as well as the stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the

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sole judge of the law in this case. It is your duty to accept the law and apply the law exactly as I state it to you now. If you have any idea as to what the law is or what the law ought to be and it does not agree with what I am about to tell you, you must abandon your own ideas because you are sworn to accept the law and apply the law exactly as I state it to you now.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judges of the facts. A trial judge may not make any comment regarding the facts in this case. You are not to infer from anything that I have said or done throughout the progress of this trial that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is solely a matter for you to determine.

The indictments in this case charge the Defendant Belton with murder, burglary in the first degree, and possession of a firearm during the commission of a violent crime. The indictments in this case charge Defendant Conyers with murder, burglary in the first degree, and possession of a firearm during the commission of a violent crime. I remind you the fact that Mr. Belton and Mr. Conyers was arrested, charged and indicted in this case, is not evidence and cannot be considered by you as evidence of guilt, nor does it create a presumption or inference of guilt.

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An indictment is simply the formal written instrument which contains the charge made against the defendant. It is the formal document by which this case is brought into court. Just as the indictment in this case is not evidence, any terminology or labels used to refer to the individuals involved in this case cannot be considered as evidence. For example, the use of the words defendant and victim are merely labels and may not be considered by you as evidence.

The indictments in this case allege several different offenses against Mr. Belton. The charges are, indictment number one, 2014-GS-10-6481, murder; indictment number two, 2014-GS-10-6482, burglary in the first degree; indictment number three, 2014-GS-10-6483, possession of a firearm during the commission of a violent crime.

The indictments in this case allege different offenses against Mr. Conyers. The charges are, indictment number one, 2014-GS-10-6484, murder; indictment number two, 2014-GS-10-6485, burglary in the first degree; indictment number three, 2014-GS-10-6486, possession of a firearm during the commission of a violent crime.

Each indictment contains a separate and distinct offense. You must decide each indictment separately, on the evidence and the law applicable to it, uninfluenced by your decision as to any other indictment.

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State vs. Belton and Conyers
Charge of the Court
November 6, 2015

A defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment and for each defendant.

I charge you, there are two defendants in this case. Defendant Belton is charged with murder, first degree burglary, and possession of a firearm during the commission of a violent crime. Defendant Conyers is charged with murder, first degree burglary, and possession of a firearm during the commission of a violent crime. The defendant and the evidence and the law concerning that defendant and that indictment should be considered separately and individually. Your verdict does not have to be the same for each defendant. The fact that you may find one defendant guilty or not guilty should not control your verdict as to the other defendant. When more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other or you may acquit both, or you may convict both. It will depend upon your view of the testimony and the evidence. You must take each defendant and consider the evidence as to that defendant and the instructions to you on the law. You will then write a separate verdict of guilty or not guilty for Mr. Belton and for Mr. Conyers as to each indictment. There are six separate verdict forms.

Defendant Belton has pled not guilty to the

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indictments alleging the criminal offenses against him. Defendant Conyers has pled not guilty to the indictments alleging the criminal offenses against him. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you, it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the defendant was indicted unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. The presumption does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based upon evidence satisfying the standard of guilt beyond a reasonable doubt.

The presumption of innocense is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled until you, and unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors before in civil cases where you were told it was only necessary to prove that a fact is likely more true than not true, such as by a greater weight or preponderance of the evidence. Proof beyond a reasonable doubt is proof that

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leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we do know with absolute certainly and in criminal cases, the law does not require the burden of proof that overcomes every possible doubt.

If based upon your consideration of the evidence you are firmly convinced that Mr. Belton is guilty of the crime charged, you must find Mr. Belton guilty. If on the other hand you think there is a real possibility that Mr. Belton is not guilty, you must give Mr. Belton the benefit of the doubt and find him not guilty.

If based upon your consideration of the evidence you are firmly convinced that Mr. Conyers is guilty of the crime charged, you must find Mr. Conyers guilty of the crime charged. If on the other hand you think there is a real possibility that Mr. Conyers is not guilty, you must give Mr. Conyers the benefit of the doubt and find him not guilty.

There are two types of evidence that are generally presented throughout a trial, direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact. It does not require any deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given either

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direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and, when taken together, point conclusively to the guilt of the defendant beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed. The State has a burden of proving a defendant guilty beyond a reasonable doubt. This burden rests with the State, regardless of whether the State relies on direct evidence, circumstantial evidence, or a combination of both.

Necessarily, you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze the facts and determine which evidence convinces you of its truth. In determining the believability of the witnesses who have testified in this case, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of the testimony of one witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety, or reject the testimony of a witness in its entirety. You may consider whether the witness has exhibited to you any motive, interest, bias, or other prejudice in this case, and you may consider the manner and appearance of a

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witness while he or she was on the witness stand'

A person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the witnesses' believability. Remember, you are the sole judges of the facts in this case and of the believability of any and all of the witnesses.

There has been evidence presented that witnesses have made prior statements which are not consistent with the witness' prior testimony. You may use this evidence to decide whether to believe the witness. You may also use the evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe the earlier statements or to believe the testimony given at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness' testimony as to other matters. You may reject all testimony of that witness or give all or part of the testimony the weight you think it deserves.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or to conclusions. An exception to this rule exists for witnesses we call expert

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witnesses. A witness who by education, experience, has become some expert in art, science, profession, or calling, may state an opinion as to relevant and material matter in which the witness claims to be an expert and may also state the reasons for that opinion. You should consider any expert opinion received in evidence in this case and, like any other evidence, give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contracted.

In order to establish criminal liability, criminal intent is required. For example, the particular mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty because there is no way to tell with

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exact certainty what the person intended to do. The law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact, by taking into consideration the acts of all the parties and all the facts and circumstances of this case. Criminal intent is a mental state. It is a conscious wrongdoing. It is up to you to determine what the defendant intended to do, based upon the circumstances shown to have existed.

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a natural or probable consequence of the facts done in carrying out the common plan and purpose. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, o, as it is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is

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going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal.

The State must prove beyond a reasonable doubt, by competent evidence, the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present aiding, abetting, or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more are acting with a common plan or intent are present at the commission of a crime, it does not actually matter who commits the crime. All are guilty. The hand of one is the hand of all. Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting.

Intent is also a necessary element, for there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means

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intending the result which actually occurs, not accidently or involuntarily. Intent may be shown by acts and conducts of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

An issue in this case is the identification of the defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict the defendant. Identification testimony is an expression of belief or an impression by a witness. You must determine the accuracy of the identification of the defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short a time was available, how far or close the witness was, the lighting conditions, and whether the witness had a chance to see or know the person in the past.

Once again, I instruct you, the burden of proof on the State extends to every element of the crime charged and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the person

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who committed the crime. If after examining the testimony you have a reasonable doubt as to the accuracy of the defendant, you must find the defendant not guilty.

Mr. Belton is charged with the crime of murder. Mr. Conyers is charged with the crime of murder. In order to prove this crime, the State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury, or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exists for any particular crime before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act. Malice aforethought may be express or inferred. These terms, express and inferred, do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are provided. Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. Malice may be inferred from conduct showing a total disregard for

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human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends upon the facts and circumstances of each case. If one intentionally kills another during the commission of a felony, the inference of malice may arise. Under the laws of the state of South Carolina, first degree burglary is a felony. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be taken into consideration by you, along with all the other evidence in this case, and you may give it the weight that you decide it should receive.

Defendant Belton is charged with the crime of first degree burglary. Defendant Conyers is charged with the crime of first degree burglary. The State must first prove beyond a reasonable doubt that the defendant entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. In order to prove that the defendant entered the building, the State does not have to show that the defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of a body such as a hand, foot, or even an instrument such as a hook or other instrument. In addition, the State does not

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have to prove that force was used to gain entry. Next, the State must prove beyond a reasonable doubt that the defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary. On the other hand, if the defendant intended to commit a crime at the time of the entry, it is burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed.

Intent may be shown by acts and conduct of the parties and the defendants, and other circumstances from which you may naturally and reasonably infer intent. Finally, the State must prove beyond a reasonable doubt that when entering, while in the dwelling, or when fleeing, the defendant or an accomplice was armed with a deadly weapon or explosive. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case; or the State must show that when entering, while in the dwelling, or when fleeing, the defendant or an accomplice caused physical injury to anyone not participating in the crime; or, when entering, while in the dwelling, or when fleeing, the defendant or accomplice used or threatened to use a dangerous object; or,

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when entering, while in the dwelling, or when fleeing, the defendant or an accomplice displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or, the defendant entered or remained in the dwelling in the nighttime. Nighttime is the period between sunset and sunrise during which there is not enough daylight to recognize a person's face except by artificial light or moonlight.

Mr. Belton is charged with the crime of possession of a weapon during the commission of or attempt to commit a violent crime. Mr. Conyers is charged with the crime of possession of a weapon during the commission of or attempt to commit a violent crime. The State must prove beyond a reasonable doubt that the defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime. A firearm means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, is designed to, or may be readily converted to expel a projectile.

In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must find first that the defendant was guilty of either committing a violent crime or attempting to commit a violent crime. Under the laws of the state of South Carolina, murder is a violent crime and first degree burglary is a violent crime.

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The State must prove beyond a reasonable doubt that the weapon furthered, advanced, or helped in the commission of the crime.

You have heard testimony concerning the penalty a person can serve for the crimes alleged in these indictments. In determining the guilt or innocense of the defendant, you cannot consider any possible penalty for any particular crime. The punishment for the crime is a matter for me to determine and should never be considered by you in any way whatsoever in arriving at an impartial verdict as to the guilt or innocence of the defendant.

I instruct you and emphasize the fact that defendant Belton did not testify is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of the guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has the constitutional right to remain silent and the assertion of this right by Mr. Belton must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusion whatsoever from the fact that Defendant Belton in this case did not testify. The fact that Mr. Belton did not testify should not even be discussed in the jury room. The burden of proof, as I have indicated to you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a

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reasonable doubt.

Ladies and gentlemen, I am now going to go over the verdict forms with you. As I indicated to you, there are six separate verdict forms, three for each defendant. Ladies and gentlemen, again, there is no significance in the way that I read these verdict forms. I simply have to read one piece of paper first and one particular charge first.

In the Court of General Sessions for the Ninth Judicial Circuit, 2014-GS-10-6481, State of South Carolina versus Jeremiah Fitzgerald Belton, we, the jury, find the defendant, Jeremiah Fitzgerald Belton, not guilty, or, we, the jury, find the defendant, Jeremiah Fitzgerald Belton, guilty of murder.

Once you have reached a unanimous decision, meaning all twelve of you must agree, you will sign that verdict form and date it.

You will go through the remainder of the verdict forms, remembering that there are two defendants and three charges for each defendant. You much decide each verdict, each indictment, uninfluenced by your decision as to the previous indictment.

Ladies and gentlemen, this is the last time that I will say this to you. Do not begin your deliberations. Do not discuss this case amongst yourselves. We'll be gathering the evidence to go back with you, the verdict forms, and at

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that time the bailiffs will indicate to you when you may begin your deliberations.

Is there any member of my first twelve who, for whatever reasons, feel at this point you would be unable to continue your deliberations? If you feel that you would be unable to continue your deliberations, or begin your deliberations and continue until a verdict is reached, please stand.

[Whereupon, there is no response]

THE COURT: Thank you. All twelve jurors have indicated that they are able to begin and continue deliberations.

To my alternate, at this time you have reached -- completed your service to this case, but I'm going to have you stay with us until the first twelve have been given this case and the verdict forms to begin their deliberations. At that point, I will come and release you. So, again, do not begin any deliberations. You're going to be kept in a separate place, but do not begin thinking or discussing this case with yourself. All right?

Ladies and gentlemen, please rise for the jury.

[Whereupon, the jury exits the courtroom at 12:05 p.m.]

THE COURT: Thank you. Be seated.

Any objection, correction, to the charge as read?

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From the State?

MS. SHEALY: Your Honor, I would ask that related to your felony murder charge, you indicated that burglary first is a felony. I would also ask that you advise them that attempted armed robbery and armed robbery is a felony because that's what they were coming in to do, was to rob.

THE COURT: Mr. Mlynarczyk?

MR. MLYNARCZYK: In the sense that it -- I mean, it's not on the indictment. I think it might confuse them. I think your charge was sufficient.

MR. MURPHY: I think your instruction was sufficient.

Again, this is -- there's no question that there was a home invasion, so any intent I don't think is applicable.

THE COURT: It's noted for the record. I will not -- I will not charge that.

MS. SHEALY: Okay.

THE COURT: Any other objections, corrections?

MS. SHEALY: Not from the State.

MR. MLYNARCZYK: Not from Mr. Belton, Your Honor.

MR. MURPHY: None, Your Honor.

THE COURT: And y'all have reviewed the verdict forms, so they're going to go back.

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There is no objection as to what is going back? From the State?

MS. SHEALY: That's correct, Your Honor.

MR. MLYNARCZYK: Only the objections on the record, Your Honor.

MR. MURPHY: That's correct, Your Honor.

THE COURT: We'll be at ease. Thank you.

MR. MURPHY: Thank you, Your Honor.

[Whereupon, evidence goes out to the jury at 12:09 p.m.]

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State vs. Belton and Conyers
Verdict
November 6, 2015

VERDICT

THE COURT: We have a verdict. Anything before we bring in the jury? From the State?

MS. SHEALY: Nothing, Your Honor.

MR. MLYNARCZYK: Nothing, Your Honor.

MR. MURPHY: Nothing, Your Honor.

[Whereupon, the jury enters the courtroom at 2:04 p.m.]

THE BAILIFF: Jurors are all present, Your Honor.

THE COURT: Thank you. Please be seated.

I understand you have reached a verdict. If you will please fold the verdict forms and hand them to the bailiff, and we'll make sure that they are in order.

[Whereupon, the Court reviews documents]

THE COURT: Mr. Belton, please rise.

[Whereupon, Mr. Belton complies]

THE CLERK OF COURT: The State of South Carolina, in the County of Charleston, in the Court of General Sessions for the Ninth Judicial Circuit, the State of South Carolina versus Jeremiah Fitzgerald Belton, case number 2014-GS-10-06481, we, the jury, find the defendant, Jeremiah Fitzgerald Belton, guilty of murder. Signed Madam Forelady, November 6th, 2015.

As to indictment number 2014-GS-10-06482, we, the jury, find the defendant, Jeremiah Fitzgerald Belton,

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guilty of burglary in the first degree. Signed Madam Forelady, November 6th, 2015.

As to indictment number 2014-GS-10-06483, we, the jury, find the defendant, Jeremiah Fitzgerald Belton, guilty of possession of a firearm during the commission of a violent crime. Signed Madam Forelady, November 6th, 2015.

Ladies and gentlemen of the jury, if this is your verdict, please indicate so by raising your right hand.

Please let the record reflect that all jurors have raised their right hands.

THE COURT: Thank you. Anything further, Mr. Mlynarczyk?

MR. MLYNARCZYK: Make a motion for a new trial, Your Honor.

THE COURT: As far as the jury?

MR. MLYNARCZYK: No, Your Honor.

THE COURT: All right. Thank you.

MR. MLYNARCZYK: Nothing.

THE COURT: We'll handle the motions and matters after. All right? Thank you.

Mr. Conyers, please stand.

[Whereupon, Mr. Conyers complies]

THE CLERK OF COURT: The State of South Carolina, in the County of Charleston, in the Court of General

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Sessions for the Ninth Judicial Circuit, the State of South Carolina versus King Chevais Conyers, case number 2014-GS-10-06484, we, the jury, find the defendant, King Chevais Conyers, guilty of murder. Signed Madam Forelady, November 6th, 2015.

As to case number 2014-GS-10-06485, we, the jury, find the defendant, King Chevais Conyers, guilty of burglary in the first degree. Signed Madam Forelady, November 6th, 2015.

As to case number 2014-GS-10-06486, we, the jury, find the defendant, King Chevais Conyers, guilty of possession of a firearm during the commission of a violent crime. Signed Madam Forelady, November 6th, 2015.

Ladies and gentlemen of the jury, if this is your verdict, please indicate so by raising your right hand.

Please let the record reflect that all jurors have raised their right hand.

THE COURT: Thank you.

Anything further required of the jury, Mr. Murphy?

MR. MURPHY: Yes, Your Honor. We would ask to poll the jury, please.

THE COURT: Please be seated. Thank you.

[Whereupon, Mr. Conyers complies]

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POLLING OF THE JURY

THE COURT: Using the jurors numbers.

THE CLERK OF COURT: Beginning with Madam Forelady.

Ladies and gentlemen, whenever your juror number is called, if you would please stand.

I will then ask a few questions. Please answer each question appropriately.

Staring with Madam Forelady, juror number 129. Is this your verdict?

JUROR NUMBER 129: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 129: Yes.

THE CLERK OF COURT: Thank you. You may be seated.

Juror 201, is this your verdict?

JUROR NUMBER 201: Yes.

THE CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 201: Yes.

THE CLERK OF COURT: Thank you.

Juror 357, is this your verdict?

JUROR NUMBER 357: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 357: Yes.

THE CLERK OF COURT: Thank you.

Juror 192, is this your verdict?

JUROR NUMBER 192: Yes, sir.

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State vs. Belton and Conyers
Polling of the Jury
November 6, 2015

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 192: Yes, sir.

THE CLERK OF COURT: Thank you.

Juror 159, is this your verdict?

JUROR NUMBER 159: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 159: Yes.

THE CLERK OF COURT: Thank you.

Juror 166, is this your verdict?

JUROR NUMBER 166: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 166: Yes.

THE CLERK OF COURT: Thank you.

Juror 180, is this your verdict?

JUROR NUMBER 180: Yes, sir.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 180: Yes, sir.

THE CLERK OF COURT: Thank you.

Juror 290, is this your verdict?

JUROR NUMBER 290: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 290: Yes.

THE CLERK OF COURT: Thank you.

Juror 179, is this your verdict?

JUROR NUMBER 179: Yes, sir.

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THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 179: Yes, sir.

THE CLERK OF COURT: Thank you.

Juror 255, is this your verdict?

JUROR NUMBER 255: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 255: Yes.

THE CLERK OF COURT: Thank you.

Juror 262, is this your verdict?

JUROR NUMBER 262: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 262: Yes.

THE CLERK OF COURT: Thank you.

Juror 271, is this your verdict?

JUROR NUMBER 271: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 271: Yes.

THE CLERK OF COURT: Thank you.

Your Honor, the jury has been polled and the verdict stands.

THE COURT: Anything further, Mr. Murphy?

MR. MURPHY: Nothing, Your Honor.

THE COURT: Ladies and gentlemen, this completes your service to this case. It also completes your service for the week.

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State vs. Belton and Conyers
Polling of the Jury
November 6, 2015

If you will please go back to your jury room, I'll be there in just a few moments to personally thank you for your service to Charleston County.

Please rise for the jury.

[Whereupon, the jury is excused and exits the Court at 2:10 p.m.]

THE COURT: Thank you. Be seated.

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MOTION FOR A NEW TRIAL BY MR. MLYNARCZYK

THE COURT: Outside the presence of the jury, anything further?

MR. MLYNARCZYK: Yes, Your Honor.

I would just make a motion for a new trial at this time, that the verdict was based on emotion and other -- that the evidence didn't support the findings. I would just like to make a motion at this time for a new trial for Mr. Belton.

THE COURT: Anything? Any response from the State?

MS. SHEALY: Well, Your Honor, I think that the jury obviously has paid attention during the entire trial, they've been given ample evidence to support their findings, and that they were deliberative.

THE COURT: At this time, based upon the evidence that has been presented, your motion for a new trial is denied.

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MOTION FOR A NEW TRIAL BY MR. MURPHY

THE COURT: Mr. Murphy, anything?

MR. MURPHY: Yes, Your Honor.

For the record, we would make a motion for a new trial, as well. We don't believe the evidence -- or the verdict conformed with the evidence presented.

THE COURT: Ms. Shealy, anything as to Defendant Conyers?

MS. SHEALY: The same argument that I made as related to Mr. Belton.

THE COURT: Based upon the testimony that was presented, and the jury's verdict, your motion for a new trial is denied.

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SENTENCING OF MR. BELTON

THE COURT: Are you prepared for sentencing at this time?

MR. MLYNARCZYK: Yes, Your Honor.

MR. MURPHY: Yes, Your Honor.

THE COURT: Do you have your sentencing sheets?

MS. SHEALY: I do, Your Honor.

THE COURT: My clerk is going to review those. I'm going to release the jury. It will be just a few moments. Thank you.

[Whereupon, a recess is taken from 2:12 p.m. to 2:26 p.m.]

THE COURT: Mr. Mlynarczyk, are you prepared for sentencing?

MR. MLYNARCZYK: Yes, Your Honor.

MS. SHEALY: Thank you, Your Honor.

Your Honor, I wanted to -- do you want -- okay. I wasn't sure you were ready for me.

Present in the courtroom all week has been Kip Simmons' older sister, and his father Melvin Simmons, Sr., his mother Gloria Simmons, his brother Vincent Simmons, his daughter MS , obviously, and her mother, and his son Darius Simmons.

Could you just hold your hand up Darius?

You've heard the facts. You can imagine the

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grieving that the family has gone through.

Jeremiah Belton has been known in the Charleston community for a long time, Judge. He has a prior record of accessory after the fact of murder, possession of crack, voluntary manslaughter, obviously meaning he's killed before, purchase of body armor, failure to stop for a blue light, resisting arrest with a deadly weapon, possession of a stolen vehicle, receiving stolen goods, and driving under suspension.

Previously, we filed a notice of intent to seek life without parole on him. As a Court's Exhibit, Your Honor, I would like to have marked our notice and the accompanying paperwork, which are signed by not only Mr. Belton but also his attorney, and the underlying certified copy of the sentencing sheet for voluntary manslaughter.

[Whereupon, Court's Exhibit Number 7 is marked by the court reporter]

THE COURT: Anything further?

MS. SHEALY: No, Your Honor.

THE COURT: Mr. Mlynarczyk?

MR. MLYNARCZYK: May it please the Court, Your Honor.

Jeremiah Belton's family has been here all week, too. And throughout the process, they've been with me.

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I understand that -- you know, we acknowledge the service of life without parole. You know, again, I understand the Court -- you know, I've already made the motion, made the ruling, and that he does intend to appeal. But if the Court does find that life without parole is not applicable or doesn't apply, we would ask for a minimum sentence of thirty years. And --

THE COURT: Mr. Mlynarczyk, how would it not apply?

MR. MLYNARCZYK: I'll reserve --

THE COURT: It appears that it was properly --

MR. MLYNARCZYK: -- I'll reserve it for appeal, Your Honor. I understand. I understand.

That's all I have, Your Honor.

Again, for the record, we'll put in a notice of appeal. Thank you.

THE COURT: Mr. Belton, please stand.

[Whereupon, Mr. Belton complies]

THE COURT: Mr. Belton, you have heard the verdict.

MR. BELTON: [Indicates affirmatively]

THE COURT: Is that a yes?

MR. BELTON: Yes, ma'am.

THE COURT: Has your attorney advised you of your right to appeal?

MR. BELTON: Yes.

THE COURT: You understand that you must appeal

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within ten days, you or your attorney?

MR. BELTON: Yes.

THE COURT: Do you understand that you have been served with a life without the possibility of parole notice?

MR. BELTON: Yes.

THE COURT: Do you wish to address the Court at this time?

MR. BELTON: I don't feel --

THE COURT: I'm sorry?

MR. BELTON: I don't feel like there was any evidence against me in this case. I don't feel like I was represented properly. And the jury made the decision out of emotion instead of dealt with the facts.

THE COURT: Anything before I impose sentence upon you?

MR. BELTON: No.

THE COURT: Anything further, Mr. Mlynarczyk?

MR. MLYNARCZYK: No, Your Honor.

THE COURT: Ms. Shealy, the life without the possibility of parole applies to the murder and to the burglary first; is that correct?

MS. SHEALY: That is correct.

THE COURT: All right. Is that your understanding, Mr. Mlynarczyk?

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MR. MLYNARCZYK: It is, Your Honor.

THE COURT: It's the order of the Court on 2014-GS-10-6481 that you be committed to the State Department of Corrections for a term of life without the possibility of parole under Section 17-25-45. It's the order of the Court on 2014-GS-10-6482 that you be committed to the State Department of Corrections for a term of life without the possibility of parole under Section 17-25-45. It's the order of the Court on 2014-GS-10-6483 that you be committed to the State Department of Corrections for a term of five years. They will run concurrent. Good luck to you.

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SENTENCING OF MR. CONYERS

MS. SHEALY: Your Honor, regarding King Conyers, he has a prior record for trespassing, breaking and entering automobile, and an assault with intent to kill, indicating obviously that previously he has tried to kill before.

MR. CONYERS: No, I didn't.

MS. SHEALY: Your Honor, it would be the State's position that this man is equally deserving of a life without parole sentence.

THE COURT: Has he been served --

MS. SHEALY: No, but I --

THE COURT: -- with a notice?

MS. SHEALY: No.

He is not qualified for a mandatory one, but I certainly believe he is deserving of one.

THE COURT: Of a life sentence?

MS. SHEALY: Yes, Your Honor. Both under the burglary and under the murder.

THE COURT: Tell me the -- tell me his prior record again.

MS. SHEALY: Trespassing, breaking and entering automobile, and assault with intent to kill.

THE COURT: All right. Thank you.

All right. Mr. Murphy, I'm happy to hear from you,

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Mr. Conyers, or anyone else regarding sentencing.

MR. MURPHY: Thank you, Your Honor. May it please the Court.

We know that you are limited by statute very much for what you can do in terms of sentencing. Based on his age and the facts that you heard, we would ask for a minimum sentence of thirty years, Your Honor.

I believe Mr. Conyers would like to address you.

THE COURT: Mr. Murphy, did you address with your client the fact that the murder charge is a violent and a most serious offense?

MR. MURPHY: Yes.

THE COURT: And that the burglary charge is a violent and a most serious offense?

MR. MURPHY: Yes.

THE COURT: That murder carries from a mandatory minimum of thirty years up to life?

MR. MURPHY: Yes.

THE COURT: And that burglary in the first carries from fifteen to life?

MR. MURPHY: Yes.

THE COURT: And that possession of weapon carries up to five years?

MR. MURPHY: Yes, Your Honor.

THE COURT: Did you also explain to your client

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that he has the right to appeal this plea but he must do so within ten days?

MR. MURPHY: Yes, Your Honor.

THE COURT: Mr. Conyers, I will be happy to hear from you, but I have tolerated two outbursts from you already this afternoon.

MR. CONYERS: I apologize, ma'am.

THE COURT: Thank you.

I will be happy to hear from you in order to impose a sentence upon you, but I am not going to tolerate any misbehavior. Do you understand?

MR. CONYERS: Yes, ma'am.

THE COURT: Happy to hear from you.

MR. CONYERS: I don't feel like I was represented to the fullest, and I don't accept my lawyer's capability. And I didn't do this crime. I was not there. I did not do this. I could not do it, ma'am. I was -- for the last seven years. They might have said all of this, but it is not from me. There's no question. I was not there. I did not do this, ma'am. And I don't want to go to prison for something I didn't do. I was in for fifteen months for something I didn't do.

I've got a little girl. I've got a little girl, she -- and cry and cry and cry because her daddy ain't

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here.

I didn't do this. I didn't have nothing to do with killing y'alls family. I didn't do this.

THE COURT: Mr. Conyers, I need you to address the Court.

MR. CONYERS: I don't know what else to say. I can't do nothing.

That's it. Thank you, ma'am. Thank you.

THE COURT: Thank you, Mr. Conyers.

Is there anyone else who wishes to address the Court?

MR. MURPHY: No, Your Honor.

THE COURT: Mr. Murphy, anything else?

MR. MURPHY: Nothing, Your Honor.

THE COURT: It's the order of the Court on 2014-GS-10-6484 that you be committed to the State Department of Corrections for a term of life. I'll give you credit for the time that you have served. It's the order of the Court on 2014-GS-10-6485 that you be committed to the State Department of Corrections for a term of life. Give you credit for the time that you have served. It's the order of the Court on 2014-GS-10-6486 that you be committed to the State Department of Corrections for a term of five years. I'll run all three indictments concurrent. Good luck to you, sir.

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MR. MURPHY: Thank you, Your Honor.

THE COURT: All right. Anything further from the State, Ms. Shealy?

MS. SHEALY: No, Your Honor.

THE COURT: Mr. Mlynarczyk?

MR. MLYNARCZYK: Your Honor, the only thing I would like to ask, I would like to send letters to the jurors, if they would like, you know, to discuss with me the case, just to follow up. I'm asking permission of the Court if that's okay. I will let them know in the notice that they don't have to respond, and I would like to thank them for their service, and then, you know, contact me if they wish to discuss the case. Do I have permission from the Court for that?

THE COURT: I don't have any objection.

MR. MLYNARCZYK: Thank you, Your Honor.

MR. MURPHY: Nothing, Your Honor.

THE COURT: Anything? Nothing further?

MS. SHEALY: No, Your Honor.

THE COURT: Ms. Shealy, Mr. Cooper, Mr. Mlynarczyk, and Mr. Murphy, just wanted to thank you for your courtesy and professionalism. This was a very emotionally-charged trial and so I appreciate your professionalism and courtesy to each other, most importantly, and to the Court and to my staff and the

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personnel here. And thank you for being respectful of each side's family. Thank you.

MS. SHEALY: Thank you, Your Honor.

MR. MLYNARCZYK: Thank you.

MR. MURPHY: Thank you, Judge.

[Whereupon, Court's Exhibit Number 8 is marked by the court reporter]

[Whereupon, Court's Exhibit Number 9 is marked by the court reporter]

[JURY TRIAL CONCLUDES AT 2:37 P.M.]

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State vs. Belton and Conyers

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable Kristi L. Harrington, on Friday, November 6, 2015.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 3rd day of April, 2016.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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1177

JKS20100804305

WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

20100011213B

ARREST WARRANT NUMBER

2014A1010203371

DATE OF ARREST

July 9, 2014

ACTION OF GRAND JURY

FILED

Foreperson of Grand Jury
Date:

VERDICT

Guilty

11/6/15
Foreperson of Petit Jury Date:
INDICT

DOCKET NO. 2014GS1006484

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

KING CHEVAIS CONYERS
DOB:
B/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 3, 2014 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about July 10, 2010, with malice aforethought, KING CHEVAIS CONYERS did kill and murder Melvin Simmons by means of shooting the victim, and that Melvin Simmons did die in Charleston County as a proximate result thereof on July 10, 2010; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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

JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

1179

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON
STATE VS.
KING CHEVAIS CONYERS
AKA: King Chavais Conyers
Race: Black/African American Sex: M
DOB: SS#:
Address:
City, State, Zip:
DL# SID# SC01443065
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2014GS1006484
A/W: 2014A1010203371
Date of Offense: 07/10/2010
S.C. Code §: 16-03-0010, 0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder
In violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Jennifer Kneece Shealy, Assistant Solicitor SC Bar # 7919 | Defendant | Attorney for Defendant SC Bar # 14184

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of Life ~~days/months/years or~~ ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a ~~fine of~~ $ _____, provided that upon the service of _____ days/months/years and or payment o f $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions o probation, which are ~~incorporated by~~ reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 2014-GS-10-6485 & 6486

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing
Total: $_____ plus 20% fee: _____ $_____
Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (If paid in installments)	$	$ 3.40
TOTAL		$ 133.40

Clerk of Court/Deputy Clerk: Jennifer Cuevas
Court Reporter: Mia Person

☐ Ordered PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§47.12 requires $500 be paid to Clerk during probation.

Presiding Judge: [signature]
Judge Code:
Sentence Date: 11/6/15

SCCA/217 (03/2011)

JKS20100804305

WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2010011213B

ARREST WARRANT NUMBER

2014A1010203373

DATE OF ARREST

July 9, 2014

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury *Date:* 11/14/15

INDICT

DOCKET NO. 2014GS1006485

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

KING CHEVAIS CONYERS
DOB:
B/M

Indictment for

Burglary 1st Degree

1181

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 3, 2014 the Grand Jurors of Charleston County present upon their oath:

Burglary 1st Degree

That in Charleston County, South Carolina, on or about July 10, 2010, the Defendant KING CHEVAIS CONYERS, did enter the dwelling of Melvin Simmons, located at Old Georgetown Road, McClellanville, South Carolina, without consent and with the intent to commit a crime therein. That, in addition, the entry occured at night and/or the defendant was armed and/or the defendant caused injury to a victim; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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

JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS

STATE VS.

KING CHEVAIS CONYERS

AKA: King Chavais Conyers
Race: Black/African American Sex: M
DOB: SS#:
Address:
City, State, Zip:
DL# SID# SC01443065
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2014GS1006485
A/W: 2014A1010203373
Date of Offense: 07/10/2010
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Burglary First Degree
In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

7919 — Jennifer Kneece Shealy, Assistant Solicitor SC Bar #
Defendant
14184 — Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☑ State Department of Corrections ☐ County Detention Center, for a determinate term of 1 YR days/months/years or ☐ under the Youthful Offender Act not to exceed ____ years and/or to pay a fine of $ ____; provided that upon the service of ____ days/months/years and or payment of $____; plus costs and assessments as applicable*; the balance is suspended with probation for ____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-10-6486 & 6484

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP ____
Total: $____ plus 20% fee: ____ $____ ____ days/hours Public Service Employment
Payment Terms: ____ Obtain GED ☐

☐ Set by SCDPPPS ____ Attend Voc. Rehab. Or Job Corp. ____
May serve W/E beginning ____
Recipient: ____ Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of $____ Beginning ____
$____ Paid to Public Defender Fund

Other: ____

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)	$	$ 3.40
TOTAL		$ 133.40

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Laurel Conyers
Court Reporter: Mia Person
Presiding Judge:
Judge Code:
Sentence Date: 11/6/15

SCCA/217 (03/2011)

1183

JKS20100804305

WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2010011213B

ARREST WARRANT NUMBER

2014A1010203374

DATE OF ARREST

July 9, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury — Date: 11/6/15

INDICT

DOCKET NO. 2014GS1006486

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

KING CHEVAIS CONYERS
DOB:
B/M

Indictment for

Possession Of A Firearm During The Commission Of A Violent Crime

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 3, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Firearm During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about July 10, 2010, the Defendant, KING CHEVAIS CONYERS, did possess a handgun during the commission, or attempted commission, of Murder and/ or Burglary 1st Degree, violent crimes. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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

JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

1185

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS

STATE VS.

KING CHEVAIS CONYERS

AKA: King Chavais Conyers
Race: Black/African American Sex: M
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2014GS1006486
A/W: 2014A1010203374
Date of Offense: 07/10/2010
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: **Possession Of A Weapon During The Commission Of A Violent Crime**
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Jennifer Kneece Shealy, Assistant Solic for 7919 SC Bar # | Defendant | Attorney for Defendant 14184 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____ provided that upon the service of _____ days/months/years and or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-10-0484 + 0485
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing
Total: $_____ plus 20% fee: _____ $_____
Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso 47.9 (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)	$	$ 3.40
TOTAL		$ 133.40

☐ **Ordered** PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Hazel Emery
Court Reporter: Mia Vernon

Presiding Judge: _____
Judge Code: 515
Sentence Date: 11/6/15

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of November, 2016.

ALAN WILSON
ATTORNEY GENERAL

May 21, 2018

The Honorable Julie J. Armstrong
Clerk of Court - Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2210

Re: **King Conyers, #317737 v. State of South Carolina**
2018-CP-10-494

Dear Ms. Armstrong:

Enclosed please find the original **Return and Motion for a More Definite Statement** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/jaj
Enclosure

cc: James K. Falk, Esquire

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

STATE OF SOUTH CAROLINA)	IN THE COURT OF
)	COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	
)	
)	
KING CONYERS,)	
)	
Applicant,)	TRANSCRIPT OF RECORD
)	2021-CP-10-00494
vs.)	
)	
STATE OF SOUTH CAROLINA,)	
)	
The State.)	
)	

_____

December 8, 2021
Charleston, SC

HONORABLE JENNIFER B. MCCOY, JUDGE.

A P P E A R A N C E S

CHRISTOPHER R. GEEL, ESQUIRE
For Applicant

LAUREN T. MIMS, ASSISTANT ATTORNEY GENERAL
SAMANTHA J. WEIDAUER, ASSISTANT ATTORNEY GENERAL
For The State

Proceedings recorded by DCRP,
Digital Courtroom Recorder Project

Transcribed by:
Julie A. Cendroski,
Circuit Court Reporter III
Seventh Judicial Circuit

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EXHIBITS

	MARKED	ENTERED

NO EXHIBITS PROFFERED

KING CONYERS VS. THE STATE OF SOUTH CAROLINA

THE COURT: All right. This is the matter of -- Mr. Conyers, welcome. Are you King Conyers?

MR. CONYERS: Yes, ma'am.

THE COURT: All right. You don't need to stand up. That's okay, thank you. I was just making sure we have the right person in the courtroom.

King Conyers, this is your PCR. You are here with your attorney, Mr. Geel. And we also have representatives from the attorney general's office, representing the State today, as well as other witnesses who have been called to testify during the course of this PCR.

We just indicated we have one appearing by Webex, without the objection of the petitioner. And I'll hear from the State first on a brief background history of the case, and then we'll turn it over to Mr. Geel.

MS. MIMS: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

MS. MIMS: This is a post-conviction relief matter in King Conyers versus State. Case number 2018-CP-10-1910.

THE COURT: Okay.

MS. MIMS: On November 2014, the Charleston County grand jury indicted applicant for the murder of

Melvin Simms, Jr., a first-degree burglary and possession of a firearm during the commission of a violent crime. Christopher L. Murphy, esquire, represented the applicant. Assistant solicitor, Jennifer Kay Shealy and Daniel Cooper prosecuted the case.

On November 2nd, 2015, Applicant proceeded to a jury trial before the Honorable Kristi L. Harrington, Circuit Court judge. The jury found Applicant guilty as indicted. Judge Harrington sentenced Applicant to imprisonment for two confirmed terms of life for murder and first-degree burglary, and a concurrent five years for the weapons charge.

Applicant then filed a timely notice of appeal and an appeal was perfected on his behalf by appellate defender David Alexander of the South Carolina Commission of Division of Appellate Defense, who submitted a brief and Motion to Be Relieved pursuant to Anders v. California.

The South Carolina Court of Appeals granted counsel's motion to be relieved and dismissed the appeal on January 10th, 2018. The remittitur was returned to the Circuit Court on January 26th, 2018.

And, Your Honor, based on the State's understanding of the allegations and the anticipated

testimony of Jeremiah, Jeremiah Belton and Troy Mason, the State would request this Court to apprise the two anticipated witnesses of the possible consequences and ramifications of their recantation or testimony and determine whether individual counsel needed to be appointed for this.

THE COURT: All right. All right, Mr. Geel, you may call your first witness.

MR. GEEL: Thank you, Your Honor. Before I do that, does the Court have a copy of my amendment filed November 29th? I have an extra if we need it. I just want to make sure you had the most recent ---

THE COURT: I have it right here, right on top.

MR. GEEL: Perfect.

THE COURT: Yes, sir.

MR. GEEL: Perfect, thank you, Your Honor. Oh, and just as one brief housekeeping matter as to Mr. Belton and Mason, I am aware that Mr. Belton has an attorney currently. He's got a pending PCR. We can address that at the appropriate time, but he is represented by counsel.

THE COURT: Okay.

MR. GEEL: Okay. Thank you, Your Honor. For our first witness we would call David Alexander.

THE COURT: All right. David Alexander, they've

called you first. So what we'll do is, I'll just flip this around so that you can -- and if you want to step forward, Mr. Geel --

MR. GEEL: Okay.

THE COURT: Feel free. Can you do that?

THE CLERK: Yes.

THE COURT: Here, we can move.

(Unknown person speaking, inaudible.)

THE COURT: Mic closer to the speaker. Can you flip it up there, yeah, without your cord breaking?

DAVID ALEXANDER

DIRECT EXAMINATION

BY MR. GEEL:

Q. Mr. Alexander, are you able to hear me?

A. Yes, that's fine.

Q. Okay, thank you. Where are you employed, Mr. Alexander?

A. Appellate Defense, South Carolina Commission of Indigent Defense.

Q. Okay. And you were the appellate attorney for King Conyers in this case; is that correct?

A. Correct.

Q. Okay. So, very briefly, as far as the issues that you would raise in a direct appeal for a case like this, can you just talk generally about what your --

strategically, what sort of strategic considerations do you take into account when deciding whether or not to raise any particular issue on direct appeal?

A. Well, it varies from case-to-case, but generally it's that issue that you think is a winning issue you're going to raise that. If you have multiple good issues or a single very good issue, then you probably won't raise a more preserved merits order issue that's almost certainly a lead issue to go along with that, but it sort of depends on the appeal.

Q. So, as far as the decision whether to raise an issue, would you agree that there really isn't much of a strategic reason to not raise an issue that you believe would win and result in a reversal of conviction?

A. I would agree with that.

Q. Okay. So, let's turn to the -- did you have an opportunity to review our amended, this whole issue as to appellate counsel? Did you have an opportunity to review that before your testimony?

A. I have not seen it.

Q. Okay. I didn't read the allegation just so you're advised of what's going on. So, what I indicated is that appellate counsel was constitutionally ineffective when he failed to challenge the qualification of the State's expert witness on appeal.

This pertains to the testimony of Mr. Lewis Walker. Are you familiar with what Mr. Walker testified to if I say him by name?

A. Yes.

Q. Okay. And, and I know it's been a while since you handled the appeal, but as you testify today, do you have an opinion as to whether that issue was preserved for appellate review? In other words, did you have an option to raise it on appeal?

A. Yes, I think it was.

Q. Okay. Again, and understanding that it's been a little while, are you able to say what your reason for not raising that particular issue was on his appeal?

A. Taking into account the standard of review for an issue like that, I didn't think it had any merit.

Q. Okay. So in other words, is it fair to say, then, that you simply, you didn't think it would prevail on appeal?

A. Absolutely not.

Q. Okay. And, again, sort of assuming without conceding that it would have prevailed on direct appeal, is there any strategic reason why you would not have raised it if that were the case?

A. No. If I thought it were a winning issue, I would certainly raise it.

Q. Okay. Court's indulgence, Your Honor. Okay. Thank you, Mr. Alexander.

Nothing further, Your Honor.

THE COURT: Any questions from the State?

MS. MIMS: No, Your Honor.

THE COURT: All right. Any objection of this witness being relieved for the remainder of this proceeding?

MR. GEEL: No, Your Honor.

THE COURT: Any from the State?

MS. MIMS: No.

THE COURT: Okay. All right. Mr. Alexander, thank you very much for attending today. You are free to leave.

MR. ALEXANDER: Thank you, Your Honor.

THE COURT: All right, thank you. All right. You may call your next witness.

MR. GEEL: Thank you, Your Honor. At this time Applicant calls Vondayna Brown. I think she's outside.

THE COURT: Ms. Brown.

THE CLERK: Place your left hand on the bible and raise your right. Thank you. Do you swear or affirm the testimony you shall give in court today in this case is the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Yes, ma'am. Take a seat and state your first and last name for the record.

THE WITNESS: Vondayna Brown.

THE COURT: How do you spell your first name?

THE WITNESS: V, as in Victor, O, as in orange, N, as in Nancy, D, as in dog, A, as in apple, Y, as in yesterday, N, as in Nancy, A, as in apple.

THE COURT: I have a feeling you've done that before.

THE WITNESS: Yes, ma'am, all the time.

THE COURT: All right, go ahead.

MR. GEEL: Thank you, Your Honor.

VONDAYNA BROWN,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GEEL:

Q. Ms. Brown, am I audible to you over there?

A. Yes, sir.

Q. Can you hear me? Okay. Just let me know if you have any difficulty hearing my questions. I know there's some distance. Ms. Brown, what is your relationship to Mr. Conyers?

A. That is my ex-boyfriend and my child's father.

Q. Okay. And how long have you known Mr. Conyers?

A. Since 1999.
Q. Okay. And so you knew him around the time of these alleged incidents, 2010 --
A. Yes, sir.
Q. -- and thereabouts? What was your relationship status in 2010?
A. We were together in a relationship.
Q. A romantic relationship?
A. Yes, sir.
Q. Okay. And what was the living situation? Did you all live together?
A. Yes, sir, we lived together.
Q. Whereabouts did you all live?
A. 1000 Hoover Street on West Columbia, South Carolina.
Q. Okay. And were you working at that time?
A. No, sir.
Q. And what about Mr. Conyers, was he working?
A. Columbia Farms.
Q. I'm sorry?
A. Columbia Farms.
Q. And what is that?
A. It's a chicken plant or poultry plant.
Q. Okay. And he was working there in 2010?
A. Yes, sir.

Q. Okay. And what was his, if you recall, what was his schedule like around that time?

A. He would leave around 7, 7:30 in the morning to four to five in the evening. He'd get home by five.

Q. Okay. I'd like to move forward to the date July 9th, Friday, 2010. Do you recall being with Mr. Conyers on that particular day?

A. When he got off work and before he went to work.

Q. Okay. Can you go into a little bit more detail? Describe what happened that day, Friday.

A. He gets up on Friday morning around six. He gets up early. He leaves the house around 7, 7:30. He has to be to work at 8. It's a 30-minute walk there to work. He stays at work all day and he gets off at five -- well, he gets off at four and gets home around 4:30, 5 o'clock. And that's his schedule every day. Never changed.

Q. And so, just to be clear on this point, that was his schedule that day on July 9th?

A. Yes, sir.

Q. Okay. What -- and so, what about the next day? What happened in the evening hours the next day?

A. The next day was my niece birthday party. July 10th was her birthday. She was born on July 10, 2005. We went to my niece's -- well, we woke up that morning

and we walked to the gas station and we got a beer, actually. Not early that morning, but the afternoon when we got something to drink. Well, that might have been on a Friday, but Saturday, I know we left the house around five-ish to get to the party. And he cooked on the grill, so we had a great time.

Q. Okay. Now, why is that particular day memorable to you?

A. Because that's my niece's birthday party.

Q. Okay.

A. That was my first born niece.

Q. Okay. So ---

A. My baby.

Q. I need you to just clarify. So from the time that Mr. Conyers arrived home from work on Friday, until the following evening, were you with him the entire time?

A. When he got home from work, yes, sir.

Q. And on the Friday afternoon/evening, what time was that approximately?

A. He gets home around five. And when he gets home, that's when we actually walked to the Kangaroo off of Sunset Boulevard and got an Old English beer.

Q. Okay. So, now, moving forward. At some point Mr. Conyers ended up getting charged with this, the

offense that brings us here today, correct?

A. Yes, sir.

Q. Now, when those charges were pending and prior to his trial, did you have an occasion to speak with his attorney or anyone from the defense team to talk about his alibi?

A. No, sir.

Q. And just to clarify, you are aware or you were made aware at some point that Friday night into Saturday morning is when this incident was alleged to have taken place?

A. Yes, sir.

Q. And when you heard about that, did you remember essentially what you've just testified, that you all were together that night?

A. Yes, sir.

Q. Okay. So, again, just to clarify, did you, did you talk to Mr. Conyers about that?

A. I didn't find out that he had got arrested until he called me from prison.

Q. Okay.

A. And when he called me, my first question is, why are you in prison?

Q. Uh-huh.

A. And he told me that he had gotten arrested for

something that he had did on July the 10th. And I'm like, well, how did you do something on July the 10th when you were at a birthday party? So they're just gonna stick you inside of a situation, because -- let me calm down. Excuse me if I get emotional, but somebody -- the hardest thing I've had to do for the last seven years of my life is watch somebody be accused of something that they had nothing to do with. Nothing at all.

So when he called me and told me that he was in prison for a murder that took place on July 10th, all I could do was let it all out. We argued on the phone, you know, how could this happen? Why was this happening?

Q. So, did you -- was there any point where you offered to make a statement or testify at trial or anything along those lines?

A. I said that I could be a witness because I was with him.

Q. Okay.

A. I knew you didn't do it because we were together.

Q. Okay. Were you ultimately subpoenaed to come to trial?

A. No, sir, not until you came along.

Q. Were there any investigators or anyone like that

who contacted you?

A. No, nobody.

Q. Okay.

A. I think the State might have reached out to me, but I denied. I didn't want to talk to them, the other party.

Q. Okay. And when the -- when the jury trial did ultimately take place in 2015, were you aware of it? I mean, what happened?

A. I was supposed to make it to one of the trials, but I had just bought a PT Cruiser in 2011, and on the way to get on the "I", the head gasket blew and we were stuck in the middle of the road.

Q. You were on your way to --

A. Yes.

Q. -- testify?

A. Yes, sir.

Q. What -- let me ask you a question. Was it your understanding that you were going to testify at the trial?

A. Yes, sir. That I was supposed to come and speak my peace.

Q. And who told you, you were going to testify at the trial?

A. The lawyer.

Q. Okay. So what communication did you have with Mr. Murphy?

A. I got a phone call, maybe the day before that I was supposed to come to court.

Q. And who was that phone call from?

A. The lawyer.

Q. And when you say "the lawyer", do you mean Mr. Conyers' lawyer?

A. Yes, sir.

Q. All right.

A. Because that was the first and the last time I had heard from him.

Q. Okay. And so, did you ultimately testify at the trial?

A. No, sir, I never made it.

Q. Okay. I'd like to touch very briefly on another subject. The -- there was some evidence that Mr. Conyers -- a phone that was alleged to have been Mr. Conyers at trial. During the time of, you know, let's say 2010 through sort of 2015, were you aware at any point of Mr. Conyers having an 843 phone number?

A. No, sir.

Q. Okay. And just to clarify, a phone number ending in 9516?

A. No, sir.

Q. And how, how are you sure that that was not his phone number?
A. Because I had an Android slide that we shared.
Q. Okay. And so you know what the number to that phone was?
A. That number was ---
Q. You don't have to say it.
A. Yeah, I know that number.
Q. Let's just say this, was it an 803 number?
A. No, sir.
Q. Was it an 843 number?
A. Yes, sir.
Q. Okay. But it did not end in 9516?
A. No, sir, not at all.
Q. Okay.
A. I still got the same number to this day.
MR. GEEL: Okay. Thank you, Your Honor. Nothing further from this witness.
THE COURT: Okay. Any questions from the State?
MS. MIMS: Yes, just briefly.

CROSS-EXAMINATION

BY MS. MIMS:
Q. Can you hear me fine?
A. Yes, ma'am, I can.
Q. I'm Lauren Mims, I'm representing the State. So

do you remember writing a voluntary statement to be presented for a motion for a new trial for Mr. Conyers?

A. (No verbal response.)

Q. Okay. Would it refresh your recollection if I showed it to you?

A. Yes, ma'am.

Q. Okay. Is that your signature there?

A. Yes, ma'am.

Q. Okay. So in that statement, do you -- well, do you recollect saying that you were in contact with the attorney's office?

A. When they spoke to me about coming to court.

Q. And do you -- at what point of trial was that? Was that like ---

A. Like the day before.

THE COURT: Is that part of the record, that statement you just showed?

MS. MIMS: It should be part of the record. There was a motion for a new trial.

THE COURT: If you have one, just so I can follow along while you're talking to her.

MS. MIMS: Yes.

THE COURT: Thank you. All right.

BY MS. MIMS:

Q. And so when you spoke with the attorney, did you

tell him what you intended on saying at trial?

A. No, ma'am. That was, the statement that you had right there is the statement that I gave.

Q. Okay. So this is after the trial, after Mr. Conyers ---

A. Yes, ma'am.

Q. So you never spoke with Mr. Murphy before this?

A. No, ma'am. Not until the day before and he told me I had to be to court the very next day.

Q. Okay. So when you spoke to him the day before, did you tell him what you intended on testifying?

A. No. He just told me what time I needed to be here.

Q. Okay. So on direct you said that you were at a birthday party for your niece, right?

A. Yes, ma'am.

Q. And it was a fairly small gathering, correct?

A. Yes, ma'am.

Q. Ten to twelve, ten to fifteen people?

A. About ten people, exactly.

Q. And so your sister has this party, correct?

A. Yeah.

Q. And your sister is Natasha Brown, correct?

A. Yes, ma'am.

Q. And is it fair to say that everyone or all the

attendants at the party would have known who was at the party?

A. Yes, ma'am.

Q. And Mr. Conyers was grilling at the party?

A. Yes, ma'am.

Q. So everyone who was at the party would have known Mr. Conyers was there?

A. Yes, ma'am.

Q. All right.

A. You're welcome.

MS. MIMS: No further questions, Your Honor.

THE COURT: Okay. Mr. Geel, any further questions?

MR. GEEL: Nothing, Your Honor. Thank you.

THE COURT: Okay. Ma'am, you can have a seat back in the gallery or you may be excused, whatever your pleasure.

THE WITNESS: Thank you. Yes, ma'am, thank you.

THE COURT: Yes, ma'am.

Okay. You can call your next witness.

MR. GEEL: Thank you, Your Honor. At this time I'd like to call Troy Mason, he's in custody.

THE COURT: All right.

MR. GEEL: And, again, Your Honor, just as a housekeeping matter, I'm not sure if he has an attorney

yet. Right now he's serving a sentence, but my understanding is he doesn't have any pending cases or anything, but I even confirmed with him whether he has an attorney.

THE COURT: Okay.

MR. GEEL: I don't think he does, though. I have no reason to think he does.

THE COURT: What kind of testimony do you -- you don't tend to elicit any testimony regarding any current charges you've been on?

MR. GEEL: No. No, Your Honor. No, nothing like that.

THE COURT: Okay.

MS. MIMS: This is recantation testimony, so he could possibly be charged later.

THE COURT: All right. Let me see the attorneys at the bench real quick.

MS. MIMS: I mean, it's up to you.

MR. GEEL: Okay.

(Bench conference was held off the record.)

MR. MASON: Hey, I asked somebody to come downstairs and speak with me first before I come up here.

THE COURT: All right. Mr. Mason, we're not gonna have you testify today. I think that by what you

just told me, obviously you'd like to talk to an attorney, and I fully appreciate that, and want to make sure you can exercise that right. So, you're not gonna have to testify today. What we're gonna do is order that you get an attorney to represent you for purposes of the testimony you're required to do at this hearing. It might that we just -- we're gonna continue the hearing and do everything but you --

MR. MASON: That's fine.

THE COURT: -- and then give you an opportunity to get an attorney. And then if we do -- if you do testify later, obviously it would be with the advice of an attorney and we might just do it by Webex or something like that, okay?

MR. MASON: All right. Ma'am?

THE COURT: We might not have to bring you all the way back down here.

MR. MASON: I'm still going to, I just need to speak to an attorney first.

THE COURT: I understand that, but I don't have an attorney just to appoint you, you know, at a moment's notice, so I just can't do it right now, so...

MR. MASON: Thank you.

THE COURT: But I appreciate you telling me that. Okay, so you're excused.

Okay. Mr. Geel, understanding the situation with that witness, do you have any other witnesses you wish to call at this time?

MR. GEEL: Yes, Your Honor. At this time we would call Jeremiah Belton.

THE COURT: Okay.

MR. GEEL: Who's in custody. Same situation, but he does have an attorney who I've been in communication with. My understanding is he does want to testify.

THE COURT: Who ---

MR. GEEL: So Ms. Leslie Sarji --

THE COURT: Ms. Sarji?

MR. GEEL: -- I spoke with her last week, and I have not spoken to Mr. Belton directly, but I heard through Ms. Sarji that I believe he's gonna want to testify. If he does attest to the same thing, then we'll just address it the same way.

THE COURT: Mr. Belton, how are you?

MR. BELTON: I'm all right.

THE COURT: Come over here, if you don't mind, toward the witness stand. Mr. Belton, you've been called as a witness in Mr. King Conyers' PCR matter. I've been advised by Mr. Conyers' attorney that you do have a lawyer right now, Ms. Sarji; is that right?

MR. BELTON: Yes, ma'am.

THE COURT: Okay. Have you been able to discuss with her your willingness to testify today?

MR. BELTON: Yes, ma'am.

THE COURT: And do you wish to testify today?

MR. BELTON: Yes.

THE COURT: All right.

MR. BELTON: Yes, ma'am.

THE COURT: Okay. Have a seat and the clerk will swear you in.

THE CLERK: Please raise your right hand. Do you swear or affirm the testimony that you tell to this court is the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes.

THE CLERK: Thank you. Can you, please, state your name for the record?

THE WITNESS: Jeremiah Belton.

MR. GEEL: Thank you, Your Honor.

JEREMIAH BELTON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GEEL:

Q. Mr. Belton, are you able to hear me all right from over there?

A. Yes, sir.

Q. My name is Chris Geel and I'm Mr. Conyers' attorney. This is the first time we've had the opportunity to talk about this case, correct?

A. Yes, sir.

Q. Okay. I just wanted to talk a little bit about what happened during the case and your recent PCR hearing. Now, Mr. Belton, you were a co-defendant to Mr. Conyers; is that right?

A. Yes, sir.

Q. And you all were the only two that went to trial in this case, correct?

A. Yes, sir.

Q. The other co-defendants either didn't testify or they cooperated against you. They testified for the State; is that correct?

A. Correct.

Q. Okay. Now, since -- and you were convicted as well, along with Mr. Conyers, correct?

A. Yes, sir.

Q. Okay. And since that, since your conviction you subsequently filed a PCR application for postconviction relief as well, correct?

A. Yes, sir.

Q. And you've had the hearing, but you have not received a decision on that. Is that accurate?

A. Yes, sir.
Q. Okay. And you testified at your PCR hearing, correct?
A. Yes, sir.
Q. And just one -- just to clarify, one of the issues you raised in your PCR is that you had an alibi witness that your lawyer failed to call.
A. Yes.
Q. Correct?
A. Yes, sir.
Q. Okay. So just to clarify, your testimony from your PCR and the, the alibi witness issue, you were not present during the incident that brings you here, you and Mr. Conyers to court?
A. I was not present at the crime scene.
Q. Okay. And you had an alibi witness to substantiate that in order to prove that?
A. Yes, sir.
Q. And your lawyer failed to call that witness to trial. Is that accurate?
A. Correct.
Q. Okay. So you not having been at the crime scene when the incident took place, all the testimony at trial that alleged that you were present, that's inaccurate? You dispute all that testimony?

A. Yes, sir.
Q. Okay. And so -- and just to clarify, you did not testify at your jury trial?
A. No, sir, I did not.
Q. And was that on the advice of counsel? I mean, you had an attorney at trial?
A. Under the advice of counsel.
Q. Okay. Okay. So just to put a fine point on it, not being at the crime scene, you're not able to offer any evidence as far as Mr. Conyers being there? You don't know whether he was there or not?
A. Was at the crime scene?
Q. Right.
A. Not at no crime scene.
Q. Okay.
A. I wasn't with him.
Q. Okay. You, you were not there, right?
A. Right.
Q. Okay. And had you opted to testify or had your alibi witness would have, you know, if your lawyer had called your alibi witness, would this have been your testimony at trial if you had chosen to testify?
A. Yes, sir.
Q. You would have told the jury that you simply were not there?

A. Right.
Q. Okay. Court's indulgence, Your Honor.
Okay. Just to clarify one point, Mr. Belton, you were not at the crime scene, but is it true that you traveled from Charlotte to Columbia and then to the Charleston area?
A. Correct.
Q. So you were with the individuals who were at the crime scene prior to their going to the crime scene?
A. Correct.
Q. Okay. And was Mr. Conyers with your group?
A. No, sir.
Q. Okay. Okay. Thank you, Mr. Belton. Nothing further from this witness, Your Honor.
THE COURT: All right.
MS. MIMS: Beg the Court's indulgence for a moment. No, no further questions from the State, Your Honor.
THE COURT: No questions at all?
MS. MIMS: Huh-uh.
THE COURT: Okay. All right. You're free to leave. Thank you, sir.
THE WITNESS: All right.
THE COURT: Safe travels.
All right. Your next witness?

MR. GEEL: Thank you, Your Honor. At this time we would call Chris Murphy.

THE COURT: Okay.

THE CLERK: Do you swear or affirm the testimony that you give the court is the truth, whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Thank you. Please state your name for the record.

THE WITNESS: Christopher Lewis Murphy.

CHRISTOPHER LEWIS MURPHY,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GEEL:

Q. Hey, Mr. Murphy, are you able to hear me all right from over there?

A. Yes.

Q. Just let me know if you have any issues with hearing my question, okay?

A. Yes, sir.

Q. All right. Mr. Murphy, you represented Mr. Conyers in his jury trial in this case?

A. I did.

Q. Okay. And were you appointed to represent him?

A. Yes, sir.

Q. Okay. And are you -- you're a private attorney, correct?

A. That's correct.

Q. Okay. And at the time that was also true, you were a private attorney in 2010?

A. Yes, sir.

Q. Or 2015?

A. This was a 608 appointment.

Q. And as far as when you were appointed, the duration of time between your appointment and trial, did you feel as though you had adequate time to prepare for trial?

A. Yes.

Q. I mean, was it several months, let's say, at least?

A. It was plenty of time. It was several months, yes.

Q. Okay. Talk a little bit, just sort of, I guess, like a 30,000-foot view. What were your concerns generally about the case and sort of going to trial? What did you feel like strategically were gonna be the things that you would have to tackle during trial?

A. So, basically what happened was there was an allegation that five guys went to this house in Georgetown and there was a shootout over some drugs,

trying to get some drugs. And that was kind of -- and two of the fellows died. One was the victim. Another fellow that died was one of the, the robbers. The evidence showed that King, Belton, and another fellow were partying in North Charleston, drove up to Columbia and then to Charlotte and back to Charleston.

And then they, it seems like they ran out of drugs or stuff to party on and they figured out, let's go to this guy's house in Georgetown. And that's when the shootout occurred. So that's kind of the, the big picture.

The problem that I had was that King said he wasn't there, he wasn't there, he had nothing to do with it. And that didn't make any sense with the evidence against him. And so that was the biggest problem that we faced. And because King denied having any knowledge of anything that happened, he wasn't very helpful to the case. Couldn't offer any opinions or explain why folks were saying these things, because he was just simply denying that he had anything to do with it.

Q. Now, you just mentioned the, the other evidence that they had against him. Are you able to recall sort of what the pieces of evidence that you were most concerned about were?

A. It -- the main evidence that I was concerned

about was the testimony of the co-defendants. There were two guys that corroborated. And the fellow that I considered the most violent, ended up getting the least sentence, and he was the one that cooperated and testified, as I recall, to who was involved in going from North Charleston up to, to Georgetown for this shooting.

And so those two corroborators, would have been Troy Mason and Mario Caldwell, does that ---

A. It sounds familiar.

Q. Okay. So there were two co-defendants who were essentially gonna place Mr. Conyers as being one of the robbers, is that accurate?

A. That's what I remember.

Q. Can you talk, again, understanding that it's been several years, other evidence, phone evidence, or anything else that you were concerned about?

A. Yeah. So the phone evidence was that they had King's phone or a phone that King was using, and it was going -- they were doing these pings, these cell tower pings from North Charleston all the way up to Charlotte and back down and then back up to Georgetown. So the testimony was that Conyers was using this cellphone or had this cellphone number and it pinged all the way up there.

Now, I did challenge -- this was back in that time when this ping technology just started coming out, and I know that I challenged the cred -- or the qualifications of the fellow that testified and that got denied, but that's where we were. That was another bit of evidence.

Q. Now, so the phone that was pinging, you recall that they -- it wasn't abundantly clear that that was actually Mr. Conyers' phone. In fact, that's one of the arguments you made numerous times at trial, would you agree?

A. If you say that, I believe it. I know that there was very little evidence that it was actually his. It was one witness, maybe two, but it was one of the issues definitely.

Q. Okay. So just to kind of put these in the two categories, you have the corroborating witnesses who are placing Mr. Conyers there, and then you have this phone that you argue to the jury is unclear that it was his phone, and those are the sort of two big pieces of evidence. Is that consistent with your recollection?

A. That is, yes.

Q. Does anything else come to mind, as far as sort of big problems that you wanted to address at trial?

A. The biggest issue was -- and whenever you try

cases, you either try to extend the timeline or shorten the timeline. In this case I was trying to shorten the timeline. And the reason why is because the actual shooting up in Georgetown, all of the evidence, the forensics, everything indicated that three people went in there with the guns. And all of the evidence indicated that King was not one of those fellows that actually went in there with the gun.

And so, when you looked at the whole scope of things, having him testify or his wanting to testify that he had nothing to do with anything, he wasn't in North Charleston, he didn't drive up to Columbia, didn't make any sense. And what I was trying to explain to King is, what makes sense is you were involved in the beginning. You drove to Georgetown, but you didn't go in the house and didn't fire any shots and didn't have anything to do with the actual murders.

But he refused. He said he just wasn't there. So we had this inconsistency at trial and what his position was. And, again, it just didn't make sense.

Q. Okay. So let's talk a little bit about that. He, he indicated to you that he wasn't there, he simply wasn't there at the, at the crime scene or there prior to these incidents. At some point you did notify the State that you were intending to present an alibi or

that you might present an alibi; is that correct?

A. That's correct, yes.

Q. Can you talk a little bit about that?

A. Yeah. So there's two parts to that alibi. And I remember very clearly I did call this -- the folks at the Columbia Farms, the chicken farm about King working there. And he did work there during that time, during that time period, but the actual day in question, he was off that week or two or three days. I couldn't call those folks as a witness because they weren't going to say he was working the day of this incident, that Friday, so that was out.

The second part of the alibi was the birthday party or the niece's birthday party, and that was what Ms. Dayna, Ms. Brown was talking about. He was supposed to be there, and we were ready to call Dayna, and I spoke to her several times on the phone. I even remember she was pregnant at the time of trial. And she was going to testify that, yeah, Conyers was with me and we were at our niece's party. And we were all set to go to trial with that testimony.

Q. Okay. Let's pivot over to Mr. Conyers potentially testifying, you just, you just sort of touched on that.

A. Yeah.

Q. So, was it -- was your trial strategy going into trial to have him testify or to not have him testify or were you sort of on the fence? Where were you on that?

A. Had to testify, he had to testify.

Q. And did you anticipate that he was going to assert an alibi defense, essentially, as you discussed? He was going to say he wasn't there?

A. I did, yes.

Q. And you all had discussed that prior to trial and that was why -- that was your understanding?

A. Oh, yeah, definitely.

Q. Okay. Talk a little bit about your sort of preparation with Mr. Conyers. He was -- did he make bond? He was in jail?

A. He was in jail the whole time.

Q. Okay. Talk a little bit about sort of your visits with him. Again, I know it's been years, but how many occasions, if you'd have to estimate, did you visit with him and how much time did you visit with him preparing for trial?

A. That's, I mean, I couldn't say with any specificity -- specifics. I couldn't give any specifics. I do typically meet with folks at the initial request or the initial time. I'll send them letters -- I always send them multiple, lots of letters,

explaining, evidence explaining stuff, the situation. But I typically don't go to see them a lot. They called me on the phone and we correspond via letters. When you get to trial, that's when we start ramping up the visits and going over the specifics of stuff. And so, that's the best I can give you.

Q. Can you talk a little bit about your standard practice, as far as disclosing discovery materials to your clients who are in custody?

A. Yeah. I try to give them, if I'm allowed to, I'll give them as much as I can. In this case there was boxes of documents. A lot of it was just cellphone records from all those folks who didn't have anything to do with it, so I wouldn't have given them those, just because they wouldn't have made any sense. But I typically give clients as much information as I get, as I'm allowed to give it, I'll give it to them.

Q. So the discovery materials in this case, other than the cellphone records, they were provided to Mr. Conyers or someone from your office or you provided them to him?

A. I would have sent them by mail. I mean, so if it's a stack six inches or twelve inches, I would send it in an envelope. In this case I remember it being boxes. I would not have sent him the whole boxes. I

would have sent him the most pertinent stuff, and that would have been it, so...

Q. Okay. Let's move forward to the actual trial or thereabouts. At some point did you become aware that the co-defendant had filed or was arguing a Motion to Sever, to be tried separately from Mr. Conyers?

A. I mean, I don't remember it, but I'm sure it happened.

Q. Did you give thought to joining that Motion to Sever? Did you want to seek a Motion to Sever?

A. Probably not. And I very rarely seek Motions to Sever. And in this case I would not have, because King was the least culpable in my mind. And I don't want -- when we go to trial, I like the State to be focused on the other guy and not necessarily my fellow. If we were alone, all the focus would be on King. And so, I like having the State, making them prove their case against multiple folks, rather than just mine.

Q. Okay. And so, are you aware of a motion hearing having taken place on the co-defendant's Motion to Sever?

A. I don't remember it. I don't even know if I was there or not.

Q. Okay.

Your Honor, may I approach the witness briefly?

THE COURT: Yes.

BY MR. GEEL:

Q. Let me show you -- and, Your Honor, for purposes of the record, this is a copy of the transcript of motion proceedings on October 27th, 2015.

Mr. Murphy, would you mind flipping to the second page where it lists counsel who are present. And on that, are you able to see where it lists the attorneys and the defendants who are present?

A. Yes.

Q. And on that record, does it indicate that Mr. Conyers and you are present at that hearing?

A. No. It says not present.

Q. Okay. Now, again, understanding that it's been quite a while, do you have any independent recollection of not appearing at that hearing?

A. I don't.

Q. Okay. So are you able to offer any sort of explanation or, or reason why you wouldn't have been there?

A. It wasn't my motion.

Q. Okay. And what about having Mr. Conyers be present for the hearing?

A. It wasn't his motion either.

Q. Okay. So, bearing that in mind, just to make

sure I understand your answer, it being a co-defendant's pretrial motion, you didn't feel that Mr. Conyers needed to be present for it. Is that fair to say?

A. I might not have even gotten notice of it, because of that. I don't know how they -- what the policy was with the State and having these motions, what it was. I mean, I just don't know.

Q. Okay. So you're not sure of whether you were notified of the hearing?

A. I don't know about that. That's exactly right.

Q. And you're not -- again, just to clarify, you're not sure of what your thought process was necessarily was at the time, as far as appearing or joining that motion?

A. No, I don't know that, but I do know that I would not have made a motion or I would not have been trying to sever King from this case, from Belton.

Q. Okay. On that same note, I wouldn't mind jumping forward. There was a portion during the trial where you moved to exclude testimony by the clerk of court. Does that ring a bell when I mention that to you, the record from the clerk of court?

A. Yeah. That was, I believe it was where he lived or having previously lived in Georgetown or maybe had a conviction there. I remember doing that.

Q. Okay. And, you know, the -- Your Honor, may I approach one more time?

THE COURT: Yes.

MR. GEEL: And, Your Honor, for purposes of the record, I'm showing Mr. Murphy the trial transcript at page 606.

BY MR. GEEL:

Q. Mr. Murphy, if you wouldn't mind looking at lines 9 on page 606, where the Court says: Mr. Murphy, your client's not here for this, do you waive his appearance? And you answer: Yes, I have. Do you recall that particular moment at trial?

A. No.

Q. Understanding it's been a while.

A. Probably -- I don't remember, but I definitely did waive his appearance for whatever the motion was. I can't remember the details, but that would be common. I mean, I typically would do that.

Q. Okay. So do you recall discussing that with Mr. Conyers, whether you had his permission to waive his appearance for a portion of the trial?

A. I don't, and I probably did not ask him.

Q. Okay. So let's rewind a little bit to when the trial started. You talked about how -- you talked with Ms. Brown about providing an alibi, serving as an alibi

witness.

A. Yes.

Q. She ultimately did not appear for trial; is that correct?

A. That's correct.

Q. And what do you recall about her not appearing?

A. She -- I remember she said -- she's right, I did not subpoena her because I spoke with her and she was going to appear. She did call me as -- and said she had car trouble and could not appear at trial, so she's right about that, there's no question.

Q. At the time when she -- let me say it this way. At the time when it became clear to you that she was not going to be appearing for trial, did you consider bringing to it to the Court's attention or moving for a continuance, or asking for the Court's input on that?

A. Yeah. No, I did not. And the reason why is because she was going to testify she was at her sister's kids' birthday party, so I'll just refer to it as the sister.

The sister was here, and the State brought the sister in as the, as the alibi, as the rebuttal witness. And I spoke to the sister at trial and she was adamant King was not at that birthday party. And she would swear up and down that she [sic] was not there. So,

knowing that the sister was gonna come in and say that Ms. Brown and King are lying about this, there was no need. I didn't have any heartburn about her not coming up and testifying about this.

Q. So, so was it your intention not to call her to testify either way?

A. I was going to call her until I spoke with the sister. And once I spoke with the sister and was able to eyeball her and hear her story, there was no way I was calling anybody else to claim she was -- these folks were at that birthday party.

Q. And now, that sister did not ultimately testify at trial, correct?

A. She did not, because there was nothing for her to testify about. When King got up on the stand, I said, you cannot talk about being at this party because that sister's going to bury you if you claim that. The State's gonna call her and you're gonna be buried. So we made sure we did not open that door.

Q. Okay. So let's talk about Mr. Conyers actual testimony. So he ultimately did testify at trial, correct?

A. Yes, sir. Yes.

Q. And did you ultimately ask him about whether he -- you know, his alibi?

A. I don't -- I doubt I did, because he -- I was very worried about opening that door for that sister coming in, or the niece -- yeah, the sister coming in. So whatever I asked him is in the transcript. And, again, I was, I was very worried about that specific issue.

Q. Let's talk a little bit about the phone evidence that came in at trial. Are you -- do you recall from the trial the sort of distinction between -- pardon me. The fact that the State was alleging that there was an 843 phone number that belonged to Mr. Conyers?

A. If you say so. I don't remember those details, but...

Q. Do you recall having any kind of discussion with him about whether that was actually his phone number?

A. I think there was some discussion where he said -- he denied it was his phone, is what I recall, but...

Q. And as far as investigating that, do you recall -- again, understanding it's been a while, talking with other witnesses or trying to present evidence that this was not actually his phone number?

A. I think I tried to figure that out. And whether it was his phone or not really wasn't the issue. It was, he had that phone and was using it going up and down that day, so it didn't really matter whose phone it

was, but he was making those calls on it. Or it wasn't even calls, it was more like texts. And I remember they were texting so fast. I couldn't believe folks could type so fast on those phones, but it was just a string of texts going, just a continual stream of texts. So that phone clearly went up and down and the evidence was that King was the one that had it.

Q. Now, when you say the evidence was that King had it, are you referring to the testimony of the other co-defendants?

A. It was very scant testimony, whatever it was. It wasn't that this was King's phone number forever. He always used it. It was, he had that, he called me. It wasn't much, as I remember, but, but it was enough to get to a jury.

Q. Let's talk a little bit about Constance Manigault, do you -- the young lady whose home in North Charleston, they were alleged to have kind of been partying at. Do you recall her testimony, as far as what she stated at trial?

A. I don't remember her at all.

Q. Okay. She -- the record will speak for itself, but she, she identified Mr. Conyers as, as "Bes". She indicated that she had met him on an occasion in the past. Does that ring a bell?

A. Bes, does -- B, as in bravo?
Q. Yes.
A. Yes, that does that ring a bell, yep.
Q. So Ms. Manigault identified Mr. Conyers and testified that she had met him on an occasion in 2010. Is that ---
A. If you say so. I'm not going to disagree.
Q. Sure. So, understanding that that's what happened at trial, did you consider challenging her identification of Mr. Conyers in court?
A. Probably. I don't recall doing it and probably not. I wouldn't have known what to challenge because she said that's him. I wouldn't have known -- I don't know what objection I could have made.
Q. You don't know what objection you could have made to an ID of someone who observed Mr. Conyers out of court and then ID'd him in court?
A. Well, I thought it was just an ID in court. She identified him, so...
Q. I mean, on occasion in the past, you've done a Neil v. Biggers hearing, you know, challenging an identification, correct?
A. Right. I didn't do that beforehand, no.
Q. Okay. So, sort of setting that aside, if that wasn't done, is there any sort of strategic reason you

can think of why that wasn't done?

A. No. I just didn't think -- I didn't think it was going to be fruitful at all. And when I try these cases, these criminal stuff, I don't just throw out motions because I can, just the same way I don't make objections just because I can. I want to make sure that if I'm gonna do something, it has merit and it has a strong probability of success. So that would have been -- I just wouldn't -- my thinking was it wouldn't have been fruitful at all.

Q. All right. And so the last thing that I would like to touch on is the, you know, application. We discussed a remark by the prosecutor during closing arguments. Do you recall us discussing that last week?

A. I do, yep.

MR. GEEL: Okay. Your Honor, may I approach the witness?

THE COURT: Uh-huh.

MR. GEEL: And, Your Honor, for purposes of the record, I'm showing Mr. Murphy trial transcript pages 1124 and 1125.

BY MR. GEEL:

Q. Mr. Murphy, would you look down at line 23 on the bottom of page 1124 where it says: Let's pause and think about that.

A. Yes.
Q. Okay. I'll just read that into --
A. Okay.
Q. -- the record that portion.
A. Okay.
Q. Let's pause to think about that.
When I asked him, well, why would Constance Manigault come in here and say you've been to your house?
She has.
And then on the top of page 1125:
Your name is in her phone.
She must have found me on Facebook.
Preposterous. Ridiculous.
And then on line three:
Let's talk a minute about the culture of these guys, they're criminals but we don't understand it, but they do. You don't ask questions, you don't talk to police, there's a code. You don't snitch, you don't trust anybody you don't flinch or think it's odd that when you're at a woman's house and everybody has a loaded weapon. Ecstasy, cocaine, marijuana and you

protect your associate. That's their culture.

Now, this is during Ms. Shealy's closing argument, at least that's what's indicated on the transcript.

A. Yes, sir.

Q. Do you, do you recall -- I mean, do you recall her making those remarks during her closing now, as we sit here today?

A. I, I don't remember it specifically, but clearly it happened.

Q. Okay. So, are you able to offer any insight into -- I mean, obviously there was no objection to that remark.

A. Right.

Q. Are you able to offer any insight into what your thought process was in that moment?

A. Well, it goes into -- I don't make objections clearly or just for the purpose of making objections, since I try to look at what's the probability of success. In jury trials, I think that's absolutely imperative, that if you're going to object and it's overruled, that jury is looking at me like I'm trying to hide something. Whether its inflammatory or not, that's for a court to decide, but I did not make an objection.

And if I should have, then that's for someone with a higher pay grade than me, so...

Q. Understood. So if I'm understanding you, you don't want to make an objection that is overruled. If you're gonna make an objection, you'd like for it to be sustained, in other words? You want the Court to agree with you?

A. I want the Court -- I don't want to risk an overruled objection. I don't -- when you make an objection, all that does is bring more attention and more focus to whatever issue it is. This was a week-long trial. And as with every trial, and I don't remember this specifically, but the jurors are tired, they want to get out. They're not listening as closely as they were at the beginning, and I don't want, unless something is incredibly damaging and just completely off the walls wrong, I'm not going to object at closing.

Again, it just -- I don't want to -- most likely it would be overruled, which I don't want. And if it's sustained, then all I do is bring more focus on it from a jury.

Q. And so just to be clear, that was your thought process -- you imagine that was your thought process when Ms. Shealy was closing?

A. I'm sure it was. It's been my thought process

for as long as I've been doing trial work.

MR. GEEL: Court's indulgence, Your Honor. I just want to make sure that I've covered everything.

THE COURT: Okay.

MR. GEEL: Okay. Thank you, Your Honor. Nothing further.

THE COURT: All right. Any questions from the State?

CROSS-EXAMINATION

BY MS. MIMS:

Q. Hey, Mr. Murphy, I'm Lauren Mims. Just for a little bit of background, how long have you been practicing law?

A. Twenty-three years, I think.

Q. Okay, 23 years. And how much is criminal?

A. I've been doing criminal the entire time, so if you're asking -- it's not exclusive, it's probably not even 50 percent. It's less than 50 percent, I would say. I mean, definitely less than 50 percent, but...

Q. Okay. And at the time was it less than 50 percent or in 2010 was it mostly criminal?

A. No.

Q. Or a little more or a little less?

A. Back at the time it was probably about 50/50.

Q. Okay. And so, we spoke a little bit before. You

testified a little bit, too, in our direct, but what type of investigation did you do into this case? Like what kind of evidence did you look into?

A. So there was boxes of documents that I would have gone through. I talked to, obviously, I got King's side, point of view. And I spoke with the girlfriend and I spoke with the folks at the chicken farm. And so, other than that, that's all I looked at. That's -- those are the only people I talked to.

Q. And so did the Applicant at any time provide you with names of witnesses who may be beneficial to his case?

A. His girlfriend is the only one he gave me information on.

Q. Okay. And so, did he never -- he never provided Jeremiah Belton or Troy Mason?

A. No.

Q. (Inaudible.)

A. I mean, Belton was at trial with his co-defendant, so he had an attorney that he did a very good job of representing him as well.

Q. And Mr. Mason, he did not? Okay. And so your overall -- what was your overall theory and strategy in the case?

A. So, this is where it's a hard thing in terms of

strategy or theory because I gotta go with what the client wants, even though it didn't make any sense. And so, we were -- our whole theory was he wasn't there. And it was kind of a silly proposition because all the evidence, a lot of it indicated he was there. And so, I wasn't gonna get up there and say everybody's lying, and I wasn't gonna get up there and say the evidence is wrong, but it was just a very difficult defense because, like I said, it just didn't make sense.

Q. And so, did you go over his right to testify with him?

A. Oh, yes, definitely. I told him, the only chance you've got of getting out of this is by testifying. He's gonna have to save himself. I mean, there wasn't any other way.

Q. And from your recollection, the judge did so as well?

A. Oh, yeah.

Q. And so, did you discuss his potential testimony with him?

A. Oh, yes. Yes.

Q. And any problems that may arise from it?

A. I told him, yeah. I said, you're gonna have to explain where you were, why you weren't there, and it's gonna have to make sense, and he wasn't able to do that.

Q. And so, were there ever any plea negotiations?
A. There was no plea negotiations. He could plead straight up. And we had a conference. The judge indicated that if there was a plea, she would give somewhere in the range of 35 years, so there was -- there was nothing. It was, King wanted to. He had nothing to lose by going to trial.
Q. So it was his decision -- ultimate decision to go to trial?
A. Right. It was either plead straight up or go to trial. It wasn't -- there was never anything, not even a 28-year sentence or a 29-year sentence. It was ---
Q. And so, let's talk a little bit about the alibi witness. So when did Mr. Conyers tell you about his alleged alibi?
A. It would have been a few months or weeks before. I mean, it was, it was done within plenty of time before trial. I mean... And so, after I did it, after I got that, I would have filed the paperwork for the notice of alibi. And that's when the State did their investigation and found the sister.
Q. And so you had no intention on calling Natasha Brown, would you?
A. Natasha Brown is, is the sister?
Q. Yes.

A. Or is the -- okay. So, I had never talked to the sister beforehand. I was hoping that she would not talk to the police and would not cooperate with the State. That way we can just call Ms. Brown up.

When we got to trial, that's when I spoke with the sister and realized something was going on, which I really didn't understand, but she was very hostile towards Conyers, towards King. There was no helping him at all. There was no saying he was at this party. I mean, she was a 100 percent positive of that. And she had nothing to lose by this testimony, so...

Q. And so, of course, that didn't support the Applicant's alibi at all.

A. It didn't support anything, that's correct. In fact, I mean, just reading her and talking to her, any evidence that we put up saying we were at that birthday party was gonna get shot down, and King would not have had any chance at beating these charges.

Q. So due to that -- well, your interactions with Ms. Brown, did you feel the need to propose a continuance based on her inability -- or the other Ms. Brown, Mr. Conyers' girlfriend at the time.

A. The girlfriend, right.

Q. Yes. Did you ---

A. Yes. Right.

Q. Did you feel the need to request a continuance based on her inability to show up, knowing what you knew from ---

A. Right. There was no way I was going to request a continuance based on that, because I wasn't gonna call her anyway. There, there wasn't any calling her.

Q. And I think you spoke to this earlier, but with Mr. King's [sic] testimony in the trial, was it a strategic decision to not ask him about his alibi?

A. It was. I mean, like I said, I was very cognizant of not opening that door and giving the State a chance. She was here. She wanted to testify, and I did not want to open that door to get her up on the stand.

Q. Okay. And so, let's talk a little bit more on some evidence in the cellphone records. So what was your understanding of the cellphone records in the trial and their importance in the trial?

A. I mean, it showed that -- all the cellphone record showed was the traveling from North Charleston, up to Columbia, to Charlotte, back, and then to, to Georgetown. And it was just showing the string of just the travel plans. And it was actually kind of amazing that they did that much traveling in that little time. I mean, they were on the road a while.

Q. And so what was your theory of defense surrounding the phone records?

A. Well, I mean, we -- and if I remember, like I said, there was very little evidence that it was King's phone, but there was either one person testified or somebody said this was his phone number or he called me on this, and that was enough. And, and I think I asked King if that was his phone on direct and he denied it, but I don't remember that.

Q. Yes. On direct examination of Mr. Conyers you asked him whether or not the number ending in 9516 was his number. And what was your reason for asking?

A. Well, I mean, he was saying it was his phone and I didn't disagree with him. Again, it didn't matter whose phone it was, but he clearly had access to that phone. So it -- the phone went up and down that travel, that distance, and the question was, who was using it? Who had it? And so, King said it wasn't his. There was somebody else who said he was using it that night.

Q. And, as you spoke earlier on direct, the -- you, you objected to the admission of the cellphone expert in this case.

A. Yeah. I still, I thought it was -- I mean, he could not explain any of the science or the data of how that cellphone was pinging. All he was doing was

reading, reading certain data and I didn't think that qualified, but I was wrong.

Q. And that was part of your defense?

A. Oh, yeah, we tried to keep them out. That was, if we could have kept that out, it would have helped a whole lot, but...

Q. Okay. Let's move on to the motion of severance. I know we kind of talked about it a little bit on direct. Did you submit any pretrial motions?

A. Like I said, I very rarely do that, unless I think we're going to win and there's a real good basis for that. But in terms of severance, I almost never submit severance motions.

Q. So it would be safe to say that you wouldn't have filed or joined in a motion to sever if you didn't think it was in the best interest of your client?

A. Right. No question. I like -- kind of my thought is to hide in the weeds and let the State focus on Belton. He was clearly more culpable. We were just kind of there. And my thought was, let them focus on him and, and we can kind of stay in the background and that'll help us, rather than us being the only one sitting at that defense table.

Q. Okay. So you spoke a little bit about the closing argument. Do you generally object to closing

arguments?

A. No, typically not. I mean, the judge always says they're not evidence, you're not to consider them. They're only arguments. And I think the jury listens to that. And unless they're just flat out saying something that just didn't happen, I'm not going to object.

Q. And was there any strategic decision to not object, or...

A. Again, it was just a I don't like to object. I don't like to be overruled on objections. And I don't like to bring attention to the stuff. I didn't think it was a big deal at the time.

Q. Okay. From the testimony of Constance Manigault, you stated that you had little to no recollection of her testimony or...

A. Yeah. I don't remember her testifying.

Q. So do you remember if there was any evidence of her identification of Mr. Conyers? Like, was there any photo lineup? Any --

A. I don't remember that.

Q. -- police record? And so, why not -- well, at the time, do you think you would have objected to in court identification?

A. Well, I mean ---

Q. I mean, well, you wouldn't remember.

A. So, the State doesn't bring this stuff -- they make sure their witnesses are prepared. And so, we knew she was going to -- at least at some point I knew she was going to identify him. I don't know when that was. It might have even been during trial. But I almost never make those type of motions because I just don't think we're going to get anywhere with them.

Q. Do, do you think it would have been easier or made a strategic decision to discredit her testimony through cross-examination instead?

A. Well, and I don't remember the cross-examination that I gave her. But the bottom line is ---

Q. I have it here, if you want me to bring it up.

A. I can take a look at it. I'm happy to do that. But I can tell you while you're ---

Q. Okay.

A. And I know you're doing one thing.

Q. Yes. I'm sorry.

A. So, I can tell you this is in terms of shortening the timeline that I talked about. Manigault didn't see the crime, and so as the State's trying to expand the timeline to everything, I'm trying to shorten it.

Q. Uh-huh.

A. If Manigault didn't see the crime, she really didn't have anything to add to the trial. I can briefly

look at this. And I believe I did cross-examine her on the details of this number. She said she got a phone call from him the next day. So I did ask her some questions about it. Again, she didn't see the actual crime, so it was very brief.

MS. MIMS: I beg the Court's indulgence.

THE COURT: Uh-huh.

MS. MIMS: No more questions. No further questions, Your Honor.

THE COURT: Mr. Geel?

MR. GEEL: Just one point of clarification, if I could, Your Honor?

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. GEEL:

Q. Mr. Murphy, talking about Ms. Manigault's testimony, you've just indicated that you're kind of -- I don't want to put words in your mouth, but you have a sort of inclination to not make motions if you don't think you're gonna get anywhere with them, I think is the phrasing that you used. Just to clarify what you mean there, I mean, when you're saying "getting anywhere with them", you mean have them sustained by the Court? In other words, have the evidence excluded from the trial?

A. Correct, yes.
Q. Okay.
A. If I'm gonna be successful on it.
Q. Right. And successful being that the evidence doesn't go in front of the jury? That's the sort of metric that you ---
A. Yes.
Q. So just briefly, on sort of preservation of error, you're aware that a particular objection or motion, it has to be raised and then ruled on in order for it to be preserved, right?
A. Yes, sir.
Q. So if, for example, there was an identification, or something along those lines, that you didn't feel was ultimately going to be excluded, but you felt was objectionable, it would then be preserved for appellate review if you actually made the motion and got a ruling on it, correct?
A. Right. Correct.
Q. Whereas it's waived if you don't make the motion at all?
A. Right, exactly. And then you can come and say I made a mistake and he gets a second shot at PCR.
Q. Right. So I guess what I'm getting at is the distinction between actually winning the motion at trial

versus preserving the issue and having it ruled on ultimately by an appellate court.

A. Right.

Q. And you would agree that you must actually make the motion in order to have it ruled on?

A. Right. No question.

MR. GEEL: Okay. Nothing further. Thank you, Your Honor.

THE COURT: Okay. All right. Any other questions, Ms. Mims?

MS. MIMS: No.

THE COURT: Any objection to him being released for the remainder of the proceeding?

MR. GEEL: No, Your Honor.

MS. MIMS: No, Your Honor.

THE COURT: Okay. Thank you, Mr. Murphy. Take care.

MR. MURPHY: Thank you, Judge.

THE COURT: Any other witnesses?

MR. GEEL: Yes, Your Honor. Our last witness is Mr. Conyers.

THE COURT: Okay. He can stay where he is. I can hear him just fine. Is that okay with you?

MR. GEEL: That's fine with me, I'll just move the microphone.

THE COURT: All right. I'll have the clerk swear an oath at counsel's table. Mr. Conyers, just raise your right hand to the best of your ability.

THE CLERK: Do you swear or affirm that the testimony you give today is gonna be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, I do.

THE COURT: You may be seated. Just state your name for the record.

THE WITNESS: King Conyers.

THE COURT: All right.

KING CONYERS,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GEEL:

Q. Okay. Mr. Conyers, just make sure to speak into the microphone, okay?

A. (No verbal response.)

Q. Mr. Conyers, can you start off, please, by telling the Court about your meetings with Mr. Murphy in preparation for trial? You were at the jail during the pendency of these charges?

A. Yes, I was.

Q. Okay. Approximately -- here, do you need some water?

A. Uh-huh.

MR. GEEL: Sorry, Your Honor.

THE COURT: That's fine.

MS. MIMS: You can have that one.

BY MR. GEEL:

Q. Is that better?

A. I think so.

Q. If you could just tell the Court, could you estimate how many times you met with Mr. Murphy in preparation for trial?

A. I think I met with him at least three or four times.

Q. And roughly how long were those meetings?

A. Like ten, fifteen minutes, maximum.

Q. Okay. And so, the entire trial preparation process was less than an hour total with your and Mr. Murphy, is that fair to say?

A. Yes, sir.

Q. Okay. What were your concerns about the case? What were the issues that you ---

A. Um...

Q. Just let me finish the question before you answer. What were the concerns that you brought to Mr. Murphy's attention?

A. On my alibi witness. That's all I can remember

is my alibi witness and how I wasn't there.

Q. Okay. And we heard some testimony about how you provided Ms. Brown's contact information to him. Is that who you're talking about when you say alibi witness?

A. Yes, sir.

Q. Okay. And also, were you -- did you inform Mr. Murphy of what your alibi was and tell him what you would testify to if you were asked about it?

A. Yes, from the very beginning.

Q. Okay. Let's talk a little bit now -- you heard some testimony now that your sister or someone along those -- there would have been someone who would have appeared at trial to dispute your alibi?

A. We heard about it at trial.

Q. Okay. And now, do you dispute that testimony?

A. Yes. She ---

Q. And -- I'm sorry, go ahead.

A. From what I learned, she was -- she had charges and they were threatening to take her kids from her.

Q. And when did you learn about that?

A. At the trial.

Q. Okay. So was it a surprise to you when you learned that she would dispute your alibi?

A. Yes.

Q. Okay. But nevertheless, were you ready to testify about your alibi?

A. Yes, I was ready.

Q. And we'll talk about it in a little bit more detail in a moment, but did you expect to testify about your alibi at trial? Did you think you were going to?

A. Can you repeat the question?

Q. When you were proceeding to trial, did you think you were going to be testifying and telling the jury about your ---

A. No. I didn't know I would have to testify until, I think, the third or fourth day in trial. The third or fourth day in trial when Ms. Brown didn't show up and he rushed me to now I would have to testify because Ms. Brown car broke down.

Q. Okay. So let's talk a little bit. Let's rewind back to when you were in jail. Talk about your sort of preparation with your attorney with respect to your testimony. You're saying you weren't expecting to testify. What sort of discussions did you have with your lawyer about that?

A. We -- the only thing we discussed is he said they had some cellphone numbers that didn't link to me. And two guys that are getting a plea deal that are going for the State, they're going to testify against me. That's,

that's all he told me. I never got a motion of discovery or anything.

Q. So when you say you never got a motion of discovery, do you mean you weren't provided the documents?

A. No, I never received a Rule 5.

Q. So did you, did you have the opportunity to know what sort of evidence the State would present at your trial?

A. No. The only thing I knew was what he told me.

Q. And that is what? Could you say that?

A. The two co-defendants would testify against me. And there's some cellphone numbers, none linking to me. And that was basically it. That's the conversation we had, like three or four times. And I told him about my alibi witness at the beginning.

Q. So when -- jumping ahead very briefly to when you were actually in trial --

A. Uh-huh.

Q. -- was this the first occasion that you had to hear about the State's evidence or at least the bulk of the evidence?

A. Yes.

Q. Okay. So you and your lawyer didn't discuss anything beyond what you already mentioned as far as the

State's evidence?

A. He, he always told me this is a very weak case, they don't have anything on you. The motion of discovery is for the two co-defendants that testified against me, and it really doesn't have anything to do with you.

Q. And those two co-defendants, just so the record is clear, you're talking about Caldwell and Mason?

A. Caldwell and Mason.

Q. Okay. Okay. Let's jump over to -- you heard some testimony already about the -- there was a Motion to Sever from Mr. Belton.

A. Uh-huh.

Q. And did you have any discussions with Mr. Murphy about whether you would join that motion? Do you recall?

A. I can't remember. I know that I was down here and it was a Franks/severance hearing.

Q. Franks/severance, is that what you just said?

A. Uh-huh. It was a Franks hearing and a severance hearing.

Q. So when you say you were down here, do you mean that you were in the courthouse?

A. They brought me to the courthouse, but they told me I had to go back because my attorney wasn't present.

Q. Okay. Did you know why you were there at the courthouse that day?

A. They said for a motion. The bailiff, I guess the bailiff. I don't know what they call who come talk to you when you're in the holding cell.

Q. And is that when you learned it was a Franks/severance hearing?

A. Uh-huh.

Q. So you were in the courthouse when you found out what the purpose of the motion was?

A. Yes. I, I don't know how it operates, but I was outside that door, like I just came in, and they told me.

Q. And so, did you, did you have any understanding at that point of whether that was going to be your motion or whether it was a co-defendant? Do you have any understanding along those lines?

A. My understanding was both our motion.

Q. Okay. Did you expect that you would be present at any sort of pretrial motions for your co-defendant?

A. I thought because we, we were going to trial together, I would have to be present at all motions.

Q. Did you and your lawyer ever discuss you not being present at any motion hearings or any pretrial proceedings?

A. No.
Q. Did you give him permission to not appear or to excuse you from any of those proceedings?
A. No, I never give him permission.
Q. Okay. And so let's jump forward to, you heard Mr. Murphy talking about it during trial. There was an indication where he presented some argument and that he's told the Court that he waived your presence. Do you recall Mr. Murphy just talking about that?
A. Yes, I remember him saying it.
Q. And, again, you not being in the courtroom, you were not present for those arguments, correct?
A. Correct.
Q. Did you give Mr. Murphy permission at any point during your jury trial to, to waive your presence?
A. No, I didn't.
Q. Did you expect that you would be present during the entirety of your trial? In other words, for all the substantive proceedings?
A. Yes. I thought I would be present for everything.
Q. Okay. So let's jump forward and talk about the alibi situation at trial. What do you recall about your discussions with Mr. Murphy when it became clear that Ms. Brown was not going to be able to appear at trial?

A. It was like when Ms. Brown, when he told me he couldn't get in contact with Ms. Brown or something, she's not gonna be here, right then and there he told me I would have to testify in, like, in the next ten minutes. So I told him okay.

Q. Was there any discussion -- and again, I know it's been several years. Did you discuss with him the idea of moving for a continuance or asking the Court for any kind of guidance as to getting Ms. Brown there?

A. I knew nothing about that at the time, but now I know he should have asked for a continuance.

Q. So you didn't discuss it with him why she wasn't there or what he intended to do about it?

A. No.

Q. Did you say anything to him about this, or it just didn't come up?

A. I was agreeing to the lawyer at that point in time. I didn't know what he was supposed to do, what he was doing wrong or right.

Q. Okay. So let's talk a little bit about your actual testimony. You've already indicated that you were surprised by the fact that you had to testify, that this came as a surprise to you. Did you know what Mr. Murphy was gonna ask you, had you sort of gone over potential testimony with him?

A. We went over it in that ten-minute time span.
Q. Okay. So did you know what you were gonna say when you testified?
A. No.
Q. Did you know what he was going to ask you about?
A. I didn't know what he was gonna ask me. I didn't know what I was gonna say.
Q. Did you expect that he was gonna ask you about your alibi?
A. I didn't, I didn't know what he was going to ask me, but I knew I had an alibi. I continuously asked him what happened with Ms. Brown and was it gonna happen? Could she come the next day? And he really didn't give me no answer.
Q. Okay. Were you ready at that time when you testified to discuss your alibi? Were you ready and prepared to --
A. Yes.
Q. -- testify about it?
A. Yes.
Q. Okay. And just to be clear so we're on the same page, would your testimony had been essentially what Ms. Brown stated, that you were with her at the party?
A. It would have been the same.
Q. And that you worked on the Friday?

A. Yes.
Q. And that you came home that evening?
A. Yes.
Q. And that you were with Ms. Brown for the rest of the weekend, essentially, all the way through Saturday night?
A. Yes, sir.
Q. And so -- and you were prepared to testify to that at trial?
A. Yes. I was prepared to testify to that at trial.
Q. And you told Mr. Murphy that you were -- you discussed it with him, that you were --
A. Uh-huh.
Q. -- able to testify to that?
A. Yes.
Q. And, again, when he put you on the stand, did you expect he was gonna ask you about that?
A. I, I thought he was. I thought he was gonna ask me where I was at, but he never did.
Q. All right. Let's talk a little bit about the phone evidence in your case. There was an allegation at trial that there was an 843 phone number that ends in 9516, among others involved in the case. They had indicated that you were the owner of a phone or the user of a phone that started with an 843 area code. Do you

recall that?

A. I recall them saying that's a phone that I had, which wasn't.

Q. Okay. Now, this may be a strange question. How do you know -- what would have been unusual about you using an 843 number at that time?

A. Because I lived in Columbia at the time and we had an 803 phone number, the phone that we shared.

Q. When did you move to Columbia?

A. 2009.

Q. Okay. And so, when -- at any point did -- I mean, in your life have you ever had any 843 phone number?

A. Yeah, when I was younger. When I lived in Charleston.

Q. Okay. So -- but at the time of this incident and thereafter --

A. Uh-huh.

Q. -- you had an 803 number?

A. Yeah. All my numbers were 803 from then on.

Q. Okay. And what about the number that Ms. Brown testified to? Did you all, the device you shared, do you remember what the phone number was for that phone?

A. I can't remember. It was 803 something.

Q. Okay. You're certain it was not an 843 number?

A. Uh-huh.
Q. And so after ---
THE COURT: You need -- I'm sorry, you gotta make sure he says yes or no.
THE WITNESS: Yes. I -- I ---
BY MR. GEEL:
Q. Okay. And so after 2009, at no point did you ever use an 843 phone number? Is that what you're saying?
A. Yes.
Q. All right.
A. I never used an 843 number.
Q. Okay. Okay. Let's touch briefly on the discussion of Constance Manigault.
A. Uh-huh.
Q. She identifies you in the courtroom. Do you recall having any discussions with Mr. Murphy about that, about anticipating that she would identify you or anything along those lines?
A. No.
Q. Okay. Was it a surprise? Do you remember at the time, was it a surprise to you that she identified you?
A. Yeah, it was a surprise.
Q. Did you know who she was?
A. I didn't even know who she was.

Q. Had you heard of her at any point?
A. He, he mentioned a name, and I told them then that I didn't know who that was.
Q. And when you say "He", do you mean Mr. Murphy?
A. Mr. Murphy.
Q. So you and Mr. Murphy had discussed the fact that Ms. Manigault --
A. Uh-huh.
Q. -- might identify you in court?
A. Yes.
Q. Okay. And so, once she actually ultimately did identify you in court, it's something that Mr. Murphy had told you might happen?
A. He, he really, he really didn't discuss a lot of anything.
Q. So you don't recall whether you had a specific discussion with him about that?
A. About her identifying me?
Q. Uh-huh.
A. He, he might have. I, I don't recall, but he might have have [sic].
Q. Okay. And so the last thing is the closing argument remarks, the remarks that Ms. Shealy made during her closing arguments.
A. Uh-huh.

Q. Did you happen to have any discussion with Mr. Murphy during the closing argument or at any point about those remarks?

A. No, sir.

Q. Do you, as you sit here today, do you remember her saying that?

A. Yes. I was kind of perplexed. I was confused about what was going on. I didn't think she could say stuff like that at the time.

Q. Okay. But Mr. Murphy was kind of, I guess, thinking -- you all were talking when she submitted that remark?

A. He really kind of didn't do much of anything.

Q. Okay. Just very briefly, as far as your appellate attorney, you heard the testimony of Mr. Alexander earlier?

A. Uh-huh.

Q. Did you have any discussions with him that you can recall about challenging the State's cellphone expert, Mr. Walker? Did you have any discussions with him about that issue that you can recall?

A. I wrote a couple of motions. I can't remember. It was a couple years ago.

Q. Okay. But ultimately, it would have been his decision what issues to raise?

A. Yes.

Q. Okay. All right. Mr. Conyers, is there anything else that you want to let the judge know about, or Mr. Murphy, in this proceeding while you're testifying?

A. I feel like I was abandoned the whole time through. He didn't do much of anything. He, he continuously told me that there's no evidence on you. There's two people testifying against you. They're gonna see you there. They're getting a plea deal. And this is a very weak case. He told me that the whole time. I never received a motion of discovery. We didn't go over what all was in the motion of discovery because I didn't have it. I didn't know what, what's said against me or how to combat anything.

There was a situation at the end of trial, I can remember, where I told him that he should have looked through the cellphone numbers and call all the numbers that was inside of the cellphone and see if any of them link to me. My mother number would have been in there. My brother, my sister, my girlfriend at the time. Somebody's number would have been in there.

Q. Okay. So just to clarify that last point. I want to make sure it's clear for the record. You told Mr. Murphy to look through these phone records and told him that you would not be able to find --

A. Uh-huh.
Q. -- other people's ---
A. Nobody would have been able to ---
Q. And your thought process there was that if this phone number was not calling other people you know, then that would prove that it wasn't your phone?
A. Yes.
Q. Is that your thought process?
A. (No verbal response.)
Q. Okay. And so you discussed that with Mr. Murphy prior to trial?
A. Yeah. Before and at trial.
Q. Okay. All right. Is there anything else you'd like to tell the Court about?
A. Um... I just beg of the Court that I get a decision soon, hopefully today, so I can go back home to my family.
MR. GEEL: That's all I have from this witness, Your Honor. Thank you.
THE COURT: All right. Any questions from the State?
MS. MIMS: Just a few, Your Honor.
THE COURT: And you can go wherever, as long as everybody can hear you. All right.
MS. MIMS: I'll stay here with Mr. Conyers, if

that's okay with Mr. Conyers.

THE COURT: All right.

CROSS-EXAMINATION

BY MS. MIMS:

Q. So, you presented an alibi witness to Mr. Murphy. Were there any other witnesses that you wanted him to investigate?

A. I think it was -- what's her name? Whitley. I don't know Whitley's last name. It was her and Whitley.

Q. Okay. But at no point did you want Troy Mason to testify on your behalf?

A. I didn't know Mr. Mason at the time.

Q. Okay. So when you were discussing trial strategy, did you discuss possible defenses or theory?

A. He, he always told me that we have -- I have a very weak case. The two guys that was gonna testify against me, that's what they have. And they have some cellphone records that doesn't link to me.

Q. Okay. And so, was that -- did you -- I beg the Court's indulgence.

So when you discussed possible defenses with Mr. Murphy, did he ever tell you whether or not the phone number, the phone being yours or the number being yours, whether that mattered or not at trial or whether it mattered to your defense? Did you have a discussion

with him?

A. He never discussed -- there was never identification with the phone. People still don't know who phone it is, but they got, what's her name, Ms. Manigault? I don't -- I think her name was Manigault, to say that it was mine. That's why they said it was mine.

Q. So, so, Ms. Manigault did identify you with that phone number, but at trial?

A. At trial. She said it was my phone.

Q. Then you had never had any discussion with Mr. Murphy about whether or not it being your actual phone mattered?

A. No.

Q. Okay. So how do you know Constance Manigault?

A. I don't know Constance Manigault.

Q. You never met Constance Manigault?

A. I never met her.

Q. And with regards to discovery, did you ever receive any discovery?

A. None.

Q. So you never discussed discovery at all with him or do you ---

A. We discussed -- the same two things we discussed over and over again. There's two people that are gonna

testify against me, and there's a number of cellphone records. That was it.

Q. And no -- okay.

A. I never received the rule five. I constantly asked for it.

Q. You constantly asked for the discovery?

A. Uh-huh.

Q. And, and what did Mr. Murphy ---

A. He said it was too volumus. It was too big or too large for me to receive. I never knew anything about any statements or -- he always said that the evidence points to Caldwell and Mason and it really doesn't have anything to do with me.

Q. Okay. And so, just for the record, you did discuss discovery those two or three things that you said you discussed with him?

A. The, the two or three things -- the witnesses testifying against me and the cellphone that doesn't have -- I mean, I'm not linked to. That, that's what we discussed.

Q. All right, thank you.

MS. MIMS: No further questions, Your Honor.

THE COURT: Redirect?

MR. GEEL: No, thank you, Your Honor.

THE COURT: Okay. All right. All right. Happy

to hear our closing remarks if you all are ---

MR. GEEL: Your Honor, since we're keeping the record open for Mr. Mason --

THE COURT: Oh, right.

MR. GEEL: -- I'd ask if we could just submit a proposed order --

THE COURT: Sure.

MR. GEEL: -- when we sort of get that issue out.

THE COURT: That'll be fine. Just as long as you all are here, just kind of clear up some things for me. Obviously he's already attempted the direct appeal process; is that correct?

MR. GEEL: Yes.

MS. MIMS: Yes.

THE COURT: All right. It appears that the remaining issue on appeal was this issue of this prior warrant being used to establish some sort of a connection between him and Judge Harrington to allow that in for that purpose?

MR. GEEL: That's correct. And that was, as it happens, it's not sort of germane to this motion.

THE COURT: No, no.

MR. GEEL: But that was what they were arguing about when Mr. Conyers was out of the courtroom. During our issue of not having him be present --

THE COURT: Uh-huh.

MR. GEEL: -- Mr. Murphy had moved to exclude that piece of evidence. And there was a few pages of argument about whether that was coming in and Mr. Conyers was not present. That's in page 606 of the transcript.

THE COURT: Okay. All right. Well, so I guess the next step would be to ask how long we're going to need Troy Mason? I mean, how long is it gonna take for him to get an attorney? I don't know much about process.

MR. GEEL: Your Honor, I guess we'd have to talk to Ashley Pennington to figure out about getting him a contract appointment. I mean, I don't know how we get one.

THE COURT: Is that who handles it for even PCR's, is their office?

MR. GEEL: Must be.

THE COURT: Yeah? Okay.

MR. GEEL: So, Your Honor, I don't mind sort of checking with her. By "her" I mean Ashley, in sort of figuring out how we get Mr. Mason a lawyer. As far as the substance of his testimony, it would be -- I expect it would be very similar to what Mr. Belton testified to. So it'll be short and kind of in the same vein, but

I'd be happy to let the Court know. I can look into what we need to do.

THE COURT: Yeah. I, I guess what I'm asking you all to do is look into the issue. Look into it within 30 days. Obviously, he can just update me as soon as possible on that.

MR. GEEL: Sure.

THE COURT: So that we can go ahead and wrap this up.

MR. GEEL: Yeah.

THE COURT: That would be good.

MR. GEEL: And, Your Honor, I think you touched on it, it would be -- would we do that on Webex or would we do that in court? Does the court have a preference or...

THE COURT: I'm happy with Webex, as long as Mr. Conyers, you know, waives the right --

MR. GEEL: Okay. I'll talk to Mr. Conyers.

THE COURT: -- to come all the way back here just for one eyewitness, but...

MR. GEEL: Right. I'll talk to Mr. Conyers about that as well.

THE COURT: Yeah.

MR. GEEL: I guess I'll ---

THE COURT: Just advise us either way. I am --

I'm here either way.

MR. GEEL: Right.

THE COURT: It really doesn't matter that much to me.

MR. GEEL: Great.

THE COURT: Okay. Thank you all very much.

MR. GEEL: And, Your Honor, just for the purposes of the record, the record is still open until Mr. Mason testifies?

THE COURT: Yes, that's correct. We are, for the record, awaiting the testimony of Mr. Mason, who exercised his right to have an attorney, advise him prior to testifying through the course of his PCR, and I'm awaiting defense counsel, as well as the AG to apprise me of when we can wrap the hearing up with his testimony. Does that sound good?

MR. GEEL: Sounds good, Your Honor.

MS. MIMS: Yes.

THE COURT: All right.

(Hearing concluded at 1:34 p.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability from the Digital Court Reporter Program, the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the court of COMMON PLEAS for Charleston County, South Carolina, on the 8th day of December, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto. This was transcribed from the Digital Court Reporter Program.

s/Julie A Ceendroski
Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	2018-CP-10-00494

King Conyers,

Plaintiff,

vs.

State of South Carolina,

Defendant.

TRANSCRIPT OF HEARING

September 16, 2022
Charleston, South Carolina

B E F O R E:

The Honorable Jennifer B. McCoy, Judge Presiding

A P E A R A N C E S:

Attorney for Applicant -
Christopher Geel, Esquire

Attorneys for the State -
Lauren Mims, Esquire

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P R O C E E D I N G S

* * * * *

THE COURT: All right, welcome. I'd like to begin briefly, we'll do a quick roll call, so to speak. We are being recorded by Webex, which is controlled through Court Administration. And we'll just start, if we can, with the AG's Office, and then we'll move to the Petitioner's attorney, and we'll take a roll call. All right, hold on, Ms. Mims, let me get you unmuted here, ways of the decade. Go ahead.

MS. MIMS: I'm Lauren Mims on behalf of the State.

THE COURT: All right.

MS. MIMS: Now, did you need me to do like a quick recitation or a call of the case?

THE COURT: Not quite yet, let's get everybody accounted for here.

MS. MIMS: Okay.

THE COURT: Mr. Geel?

MR. GEEL: Good morning, Your Honor, Chris Geel here for the Applicant King Conyers.

THE COURT: Okay, is Ms. Weidauer going to participate?

MS. MIMS: No, Your Honor.

THE COURT: No? Okay. All right, and then I see we have joining us from the Solicitor's Office here, I'll let y'all state your names.

MS. SHEALY: Jennifer Kneece Shealy.

MR. COOPER: And Daniel Cooper.

THE COURT: All right, thank y'all. And I see Mr. Pennington's Tenda is up. I'm not sure if he's participating, his video is not on. So that seems to be everybody that has their video on. Now, Ms. Mims, I know this was sort of a -- a pickup, so to speak, of a hearing that was actually, I think, last December in my Court; is that correct?

MS. MIMS: Yes, Your Honor.

THE COURT: Okay. Well, let me -- I'm happy to hear from you, if you don't mind just giving a quick procedural background for the record about kind of how we got here and what to anticipate today.

MS. MIMS: Okay. So may it please the Court? I'm Lauren Mims here on behalf of the State. This is a post-conviction relief matter of King Conyers vs. State, Case Number 2018-CP-10-00494. In November 2014, the Charleston County Grand Jury indicted Applicant for the murder of Bubba Simmons, Jr., of first degree burglary and possession of a

firearm during the commission of a violent crime. Christopher L. Murphy, Esquire, represented the Applicant. Assistant Solicitor Jennifer Shealy, as well as Daniel Cooper, prosecuted the case. On November 2nd Applicant proceeded to a jury trial -- November 2nd, 2015, excuse me, Applicant proceeded to a jury trial before the Honorable Kristi Lea Harrington. The jury found Applicant guilty. As indicted, Judge Harrington sentenced Applicant to imprisonment for two concurrent terms of life for murder and first-degree burglary, and a concurrent five years for the weapon's charge. Applicant then filed a timely notice of appeal. An appeal was perfected on his behalf by Appellate defender, David Alexander, of the South Carolina Commission on Indigent Defense, who submitted a brief motion to be relieved pursuant to Anders v. California. South Carolina Court of Appeals granted counsel's motion to be relieved and dismissed the appeal on January 10th, 2018. The remittitur was returned to the Circuit Court on January 26th, 2018. This PCR matter began on December 8th, 2021, at the Charleston County Courthouse in front of Your Honor. At that time, you took testimony from Mr. Conyers, Mr. Murphy, Mr. Belton, as well as Mrs. Brown. Mr.

Mason asked to be represented by counsel at that hearing, and the record was opened for that matter for him to retain counsel, or he was appointed counsel from the Public Defender's Office, Mr. Pennington, who is present today. And since then, Applicant has amended his application to include another allegation that I believe was sent to the Court this morning; and I would ask that Mr. Geel put that allegation on the record.

MR. GEEL: Your Honor, may I?

THE COURT: Yeah, please.

MR. GEEL: Thank you. So, yes, Ms. Mims is correct. So just for some bit of background, the co-Defendant, Mr. Belton, also had a pending PCR. They had had the hearing on that PCR long before we appeared for the hearing in this case, but after the hearing before Your Honor in December, it -- it was in January, Belton's PCR was granted. We filed a supplement, adding an amendment and an additional allegation. That the -- the -- the crux of that PCR was that Belton was entitled to relief. He was granted a new trial, because there was an alibi defense that was not presented at his trial. So we submitted an amendment, essentially, alleging -- we summarized it in that -- in that amendment, that

based on SC Code 17-27-20, this -- this grants this Court with broad discretion to grant PCR in the interest of justice, and, essentially, what -- what we're alleging here is, that because Belton was granted a new trial, in other words, if this Court -- I know it was a different judge, but this Court determined that there was reason to question the verdict in his case, that that also entitles Conyers to relief, as this was a hand, a one hand of all case. So we'll go into the argument more later, but, essentially, that's -- that's the gist of the amendment. So it arose after the -- the hearing that Your Honor held in December, and that's why the amendment came in since that time.

THE COURT: Okay. Yeah, remind me who -- so go ahead, Mr. Geel, I'm happy to hear from you. Do you have any witnesses?

MR. GEEL: Oh, that's all I had, as to the amendment ---

THE COURT: Okay.

MR. GEEL: -- Your Honor.

THE COURT: We're here, because, I believe -- is it my understanding that we have an additional witness to testify?

MR. GEEL: Yeah, that's correct, Your

Honor.

THE COURT: Okay.

MR. GEEL: So we had -- so Mr. Mason testified at Mr. Belton's PCR hearing.

THE COURT: Uh-huh.

MR. GEEL: And, essentially, recanted his trial testimony at trial. Mr. Mason identified Belton and Conyers as being co-conspirators in this home invasion. At Belton's PCR hearing in January, 2020, Mason recanted that testimony, and submitted an affidavit. So we are in possession of that. And our intention in December was to have him come and testify to, essentially, you know, essentially, the same testimony in our hearing; but as Your Honor will recall, he indicated -- he, being Mason, at that time, indicated that he did not want to testify without discussing it with an attorney first, which is why we stood the matter down at that time, and left the record open. As Mr. Mims -- Ms. Mims, excuse me, has pointed out, since that time he was appointed counsel, and we will get into it today, but I -- I believe that he intends to maintain his -- his right to remain silent. So we'll address at that time what we -- what we would like to do, in light of that, but that's -- that's what I

anticipate happening today, but, of course, I mean that's Mr. Pennington and Mr. Mason's call. But because we have this affidavit from Mr. Mason recanting his testimony, and his prior testimony at Belton's PCR hearing, that's, essentially, what -- what we're here to clean up today.

THE COURT: Okay. Are there any other witnesses, or ---

MS. MIMS: Yes, Your Honor, we -- we would also add the testimony of Ms. Jennifer Shealy, as I let Your Honor know before, that we will -- we will take some brief testimony from her, as well.

THE COURT: Okay. All right, well, Mr. Geel, I'll let you call your first witness, or we can discuss that first.

MR. GEEL: Sure. Well, I see there's something happening with Mr. Pennington's screen ---

THE COURT: Yeah, Mr. Pennington, you can just hit start video and unmute, you don't -- you're already brought over as a panelist. There you go.

MR. PENNINGTON: Here I am. Good morning, everyone.

MR. GEEL: Good morning.

MS. MIMS: Good morning.

MR. PENNINGTON: I guess I should jump in

here as the lawyer for Mr. Mason. I've spoken with Mr. Mason earlier this year and relayed to Mr. Geel that Mr. Mason does not intend to offer testimony, and intends to take the Fifth, and that is exactly what he's reiterated to me this morning. He is apparently online from Ridgeland.

THE COURT: Okay.

MR. PENNINGTON: Authorized me to advise the Court that that is his intent.

THE COURT: Okay. All right. And Mr. Geel, just so that we're clear, your -- your client, I'd like for him to be -- the video to be on. I don't know if the associate Warden can hit the start video there so that the Petitioner -- so that I can see the Petitioner, and he can -- I can make sure he's able to observe.

(Warden starts video for Petitioner.)

THE COURT: There we go. Thank you. All right, Mr. Geel, is that your client right there?

MR. GEEL: Yes, ma'am.

THE COURT: Okay, perfect. And that's fine, he doesn't need to unmuted, I just want to make sure that -- that way it lets me know that he's able to see what's going on, which is important, okay? Okay, well, Mr. Geel, with that, you've

already kind of stated your reliance on the prior affidavit from the other PCR from the co-defendant. Anything else? Any other witnesses you wish to call today?

MR. GEEL: Well, Your Honor, I -- I guess what I'd just like to establish is, that the Court -- so let -- let me take a step forward. In the event that Mr. Mason invokes his right to remain silent, what we intend to offer is under Rule 804, both the affidavit itself that was tendered as an exhibit in Belton's PCR, as well as the transcript of his -- Mason's testimony at Belton's PCR, our -- our position is that if Mason is declared unavailable for the purposes of Rule 804, which we submit that he is based on this invocation, that we're entitled to tender his transcript of his prior testimony and that affidavit as substantive exhibits in this case under Rule 804. So if the Court is satisfied based on Mr. Pennington's representation that Mr. Mason is -- is unavailable, then I don't need to -- I don't suppose that I need to call him. It may be best for the purposes of the record to actually call him and have him invoked, but if Your Honor is willing to just state on the record that he's unavailable for my purposes, then I'm -- I'm

satisfied.

THE COURT: Well, how about -- Ridgeland, if you can hit start video and unmute for me, I'll just have Mr. Mason affirm briefly that that's his intent. All right, so you're unmuted, Ridgeland, I can hear you. You just need to hit start video.

BY THE COURT:

Q. Thank you. All right, Mr. Mason, can you hear me okay?

A. Yes, ma'am.

Q. Okay. I hope you were able to hear Mr. Pennington's information that he gave me about your wish to invoke your Fifth Amendment right to not testify today; is that correct?

A. Yes, ma'am.

Q. Okay, all right, that's all I need from you. I just needed to affirm that on the record.

A. Yes, ma'am.

Q. Thank you.

THE COURT: If you want to hit -- there you go. All right, so we've taken care of that Mr. Geel. I understand your arguments, with respect to the hearsay exception. Would the State like to respond to that?

MS. MIMS: Yes, Your Honor, we would. And

we would object to any testimony that was used in Mr. Belton's PCR regarding Mr. Mason's testimony be not allowed in Mr. Conyers. And Mr. Geel mentioned Rule 804, but in Rule 804, and also it says that former testimony is allowed given in another hearing for the same or different proceeding, or in a deposition taken in compliance with the law in the course of the same or another proceeding, if the party against whom the testimony is now offered, which is the State, and, if so, action on proceeding. Had an opportunity as similar motive to develop the testimony by direct, cross or redirect examination, which I will present to the Court that we did not have the same motive or opportunity to develop testimony regarding King Conyers, opposed to Mr. Belton. The testimony that was given in Mr. Belton's PCR and the questions, and the statement we asked were specifically targeted towards Mr. -- Mr. Belton. In that -- in that testimony, there was no indication of a recantation for Mr. Conyers at that time, because his PCR had not been -- come forward. So I don't think we would object to, you know, Mr. Geel being able to use former testimony, where the testimony would not be relevant to Mr. Conyers PCR, and we haven't had the opportunity to properly

cross-examine Mr. Mason about his affidavit, or about this testimony, specifically, towards King Conyers.

And I wanted to point out to the Court, as well, that although Mr. Belton's PCR did -- he did get granted a new trial, Judge Dixon also found Mr. Mason's testimony as not credible.

THE COURT: Found that what? I'm sorry.

MS. MIMS: He found it uncredible.

THE COURT: Oh, okay. Okay, well, I think to make a -- an evaluation, I'm going to have to at least review the -- the transcript affidavit, as well as the prior Order from Judge Dixon, as it relates ---

MS. MIMS: Okay.

THE COURT: It's -- it's a shame these weren't sort of on the same PCR docket, but ---

MS. MIMS: Yeah, ---

THE COURT: That's ---

MS. MIMS: it didn't happen that way.

THE COURT: -- unfortunate how that got scheduled.

MR. GEEL: Your Honor, for the purposes of the record, may I tender those three documents as Applicant's? I don't know -- recall what number

we'd be on, but could I tender those as three exhibits for the purposes of this hearing.

THE COURT: Sure.

MS. MIMS: We could ---

THE COURT: For the purposes of this hearing -- go ahead, Ms. MIMS, what'd you want to say?

MS. MIMS: We could view it in camera first, and maybe not make it as exhibits, so you have the opportunity to review them?

THE COURT: Yeah, I mean it can be sealed I think. You know, how would you be tendering that Mr. Geel?

MR. GEEL: Well -- well, Your Honor, what -- what I think the most -- 'cause here's the thing, if -- if Your Honor determines that these are not admissible under Rule 804, I believe that ruling would be subject to Appellate reviews.

THE COURT: Right.

MR. GEEL: But it would be appropriate to seal them then. I think it would just ---

THE COURT: Well, PCR matters, in general, are sealed. I'm not really concerned particularly about the ---

MR. GEEL: Right, but ---

THE COURT: -- publication to them to the general public, or anything, but -- yeah.

MR. GEEL: Right. We -- we would need the Appellate Court to be able to review those documents to ---

THE COURT: Yeah.

MR. GEEL: -- determine whether they should have been admitted. So I -- I think as long as ---

THE COURT: Uh-huh.

MR. GEEL: -- the Court is clear whether you are considering those as admitted under Rule 804, we're covered in either event. If you -- if you rule that they are admissible, and you address the substance, then that's fine; but if you rule that they're inadmissible, but then ---

THE COURT: Well, they'll be marked as Court's exhibit, how about that? And I don't know if ---

MR. GEEL: Right.

THE COURT: -- we had previous Court exhibits marked or not.

MR. GEEL: Right.

THE COURT: We'll just mark these as A, B and C, because I know for a fact I wouldn't have done letters, so ---

MR. GEEL: Right.

THE COURT: -- it'll be clear, okay?

MR. GEEL: Yeah, that'll be -- that'll be fine, as long as they are part of the record ---

THE COURT: Yeah.

MR. GEEL: -- if -- if the Court says that they're not to be considered 804.

THE COURT: Yeah, it reads loud and clear. All right, so they'll be marked as Court's A, B, and C. And then how will you be getting that to me?

MR. GEEL: I can email them to you right now, Judge.

THE COURT: Oh, perfect, just email them to my law clerk. Okay. All right, well, with that, we'll switch -- switch gears to the AG. Ms. MIMS, you have a witness you'd like to call today; is that correct?

MS. MIMS: Yes, Your Honor. The State will call Jennifer Shealy.

THE COURT: Okay, and, Ms. Shealy's obviously present?

*** * * * ***

Jennifer Shealy,

having been duly sworn,

testifies as follows:

* * * * *

(Witness is sworn.)

THE COURT: Thank you. All right, Ms. MIMS.

DIRECT EXAMINATION

BY MS. MIMS:

Q. Ms. Shealy, can you hear me?

A. I can.

Q. Okay, great.

A. Can you hear me?

Q. Good morning, how are you doing?

A. I'm good, how are you?

Q. Fine. How long have you been practicing law?

A. Since 1986.

Q. Okay. And how much of that has been criminal law?

A. I clerked for a judge my first two years out of law school, and then the remainder of my career has been criminal law.

Q. Okay. So a very large portion. And how did you ---

A. Yes.

Q. How did you get involved with in case?

A. I was -- am, and was at the time

employed by the Solicitor's Office here in Charleston, and Ms. Wilson, our solicitor, assigned the case to me when it was originally just against Troy Mason.

Q. Okay.

A. He was the only Defendant arrested.

Q. Okay. And with Mr. Conyers, can you remind me a little bit of the State's theory of the case surrounding Mr. Conyers?

A. Yes. There were five defendants involved in this case. The -- the center city that was connecting all of the individuals was Charleston. At the time some of the Defendants lived elsewhere, but both Mr. Mason and Mr. Caldwell lived in Charleston. Mr. Conyers had previously lived in McClellanville, and this incident occurred in McClellanville when in the middle of the night, five intruders come into a home armed, believing that there was going to be a stash of drugs there. And as Mr. Mason entered the bedroom -- let -- let me start by saying at first some of the intruders went into the bedroom of a child who was there sleeping, the homeowner's daughter. Then they moved towards the bedroom of the owner of the home, and he was there with his girlfriend. Mr. Mason actually

got shot by the homeowner, and then as the girlfriend responded, she grabbed the gun and shot one of the intruders who died on the scene. Initially, the way they found Troy Mason was, he went to a hospital to get care for his nose that had been shot right in his nose area, and he gave an alibi as to where he was. And when the police started looking into it, they realized that sounded shaky. They tested blood at the scene against a buccal swab of his, and determined that he had actually been present at the scene. He was represented by Lori Proctor, the Public Defender's Office. And the other intruders' identities were only known by nicknames, but that was not until we actually got the assistant of -- assistance of Mr. Mason in describing what had happened that evening. We've learned that he and Mr. Caldwell left from Charleston, traveled to Charlotte, and picked up Jeremiah Belton, who was known as Finger, and Curtis Delaney who was known as Crime, picked up Mr. Conyers from West Columbia, and they traveled and went to Crime's girlfriend's house to kind of make the plan. And then they traveled together out to McClellanville. Mr. Delaney's nickname was Bez, B-E-Z. That name showed up on earlier criminal

matters where his nickname was mentioned. So, initially, Troy Mason cooperates and only gives the names of nicknames, because he did not know all of these people. Who he did know, obviously, was Mario -- Mario Caldwell. He gave us that full name, which led us to arrest Mario Caldwell. Then once Mario Caldwell cooperated, we learned of the -- still I think maybe of the nicknames, but he knew Jeremiah Belton. Right this second I can't remember if he knew Mr. Delaney's full name or just knew him as Bezz. And the telephone calls that had been occurring came to light. We were able to get cell tower records on various people in the case. And we put the pieces together that Mr. Belton was Finger, that was his nickname. Curtis Delaney as I indicated was Bezz. And the -- the overall picture started to come into place. What was very important ---

Q. Hold on.

A. Okay.

Q. Ms. Shealy, I wanted to -- was Bezz Curtis Delaney, or Mr. Conyers? I think it was ---

A. Oh, I'm sorry, I've been saying -- he's just advised me that I've been saying Delaney.

Q. Okay.

A. Bezz was ---

Q. Well, I want to make that clear for the record, I apologize.

A. Yeah.

Q. Go ahead.

A. I'm so sorry. Bezz -- okay, hold on, I'm getting the names confused. King Conyers was Bezz. I think I've been saying Delaney. Curtis Delaney is Crime, so I apologize for that confusion. We were able to determine that the location, where the cell tower records were pinging from wasn't West Columbia, and both Mr. Caldwell and Mr. Mason had indicated, again, that they had gone to two different cities. We learned that Curtis Delaney was -- the account for SC&G was in his name, at that location. Troy Mason, who, as I indicated previously, did not know everyone, unlike Mario Caldwell. Described the house and it being near a field, and, in fact, the house that the phone was pinging from, the house met the description, and there was a field right nearby. There were two women that were very important, Curtis Delaney's mother and Curtis Delaney's girlfriend. The mother indicated that on the day -- the morning hours after she learned that her -- her son had been killed in

the intrusion, that Curtis Delaney called her, and was crying and described what had happened inside the house, a whole bunch of details.

Q. Sorry, this is -- I'm just clearing up for the record.

A. Oh, my gosh, I know -- I'm so sorry, okay.

Q. Uh-huh.

A. Let me just call him Bezz, okay? Bezz called Delaney's mother and indicated what had happened at the house, and he was crying. Bezz also spoke with Constance Manigault, the person whose house they had gone to the night, leading into the early morning hours, and was very upset. She was trying to find out what had happened to her boyfriend. So we had two women who had had contact with Mr. Conyers, and they both indicated that he was tearful, and giving details, and was aware of what had happened with Mr. Delaney.

During the trial we presented a cell tower mapping of the phone that was attributed to Mr. Conyers, reflecting, in fact, that he did go to Constance Manigault's house. Traveled to McClellanville in the middle of the night, and cementing what Mr. Mason had told us, and what Mr.

Caldwell had told us, Mr. Caldwell being more descriptive in that he knew the parties.

Q. Okay.

A. Go -- go ahead.

Q. Oh, yeah.

A. That's -- that's the overview. We had eyewitness testimony, and we had location being verified by Troy Mason, who never knew these people before, as to where they traveled and where they picked up each person. And we had cell tower records reflecting the route that Mason and Caldwell had described, which neither of them had the benefit of seeing cell tower records before they told us that. We presented a cell tower expert to testify, regarding the stuff that was taken. And Mr. Conyers' behavior the next day, when talking to loved ones of Mr. Delaney, with knowledge about what had happened. Additionally, both King Conyers and Jeremiah Belton had been talking to each other too in different cities, up to the date in question. And just in case I didn't make it clear, Mr. Belton, Mr. Delaney, Mr. Conyers all get picked up by Mario Caldwell and Troy, and then are brought back first to Constance Manigault's house. And I don't remember, I think Belton may have been dropped off

somewhere prior to going to Manigaults and reunite, and all travel to McClellanville, ultimately, killing the homeowner, robbing the house, etcetera.

Q. Okay, and so in your opinion, could you have tried Mr. Conyers separately?

A. Yes.

Q. Okay. And you talked a little bit about trial. Do you remember notice of an alibi witness being presented to you?

A. I do.

Q. Okay. And can you talk a little bit about that for me?

A. Yes. Mr. Conyers' attorney provided us with an alibi. One of the people was a Natasha Nann, N-A-N-N, Brown, and she was the sister to Mr. Conyers' girlfriend at the time, and I interviewed her. She indicated that her sister was still in love with Conyers, and advised her someone may be calling you. I think it was a birthday party that Conyers was asserting that he was at, instead of traveling to Charleston, and participating in the home invasion. She said that her sister's goal was to convince him that her baby was his. And when I spoke to her, she said, "He was absolutely not at the party."

Q. Okay.

A. That Bezz was not at the party. She explained that, you know, just that her sister maintained affection for the Defendant.

MR. GEEL: Your Honor, I'm going to object at this time. It sounds like double hearsay to me, at this point. I don't think that -- I think that if they want to say what Ms. Brown testified at this hearing, if they would like to get -- cross-examine Ms. Brown as to what she told her sister that was relayed to Ms. Shealy, they can subpoena that witness.

THE COURT: Okay. Ms. Mims, you want to respond?

MS. MIMS: Oh, yes, I can ask Ms. Shealy to limit her testimony, regarding her -- I'll ask if she can ---

THE COURT: I think, you know, instead of maybe direct quotes, what she garnered from, what she learned, generally, from her, based on her discussion is fine.

BY THE WITNESS:

Q. And I think I can -- maybe this will also assist. I explained to the defense attorney for Mr. Conyers that I had spoken to her, and that

she was emphatic that he had not been present. And, I'm sorry, Chris, can you refresh my memory as to whether -- are you saying the sister did testify at the trial?

MR. GEEL: At the prior PCR hearing in December.

BY WITNESS:

A. Okay, yeah, my recollection ---

Q. -- I'm sorry, Ms. Shealy, if that's confusing, the sister did not testify, it was the girlfriend of -- or the alleged -- girlfriend of the applicant that testified. We have not taken testimony from Mrs. Brown.

A. Okay.

Q. But as Judge McCoy has stated, if you kind of give a general, you know, ideas on what you relate to Mr. Murphy, or, you know, were -- were you -- did you have Natasha Brown there as a rebuttal witness for the State?

A. I had her available.

Q. Okay. And that was based upon your conversations that you've had with Mr. ---

A. But her sister -- I'm sorry.

Q. Yes.

A. Where her sister was listed as a

potential witness, of course, I anticipated that they may call her. And when Chris and I were having a conversation, I indicated, "Well, you know, I've talked to the sister of the girlfriend, and she said he was not there," if that answers your question?

Q. Yes.

A. Okay.

Q. It does answer my question.

MS. MIMS: I don't think I have any further questions.

THE COURT: Okay, Mr. Geel, do you have any cross for this witness?

MR. GEEL: Yes, just briefly.

THE COURT: Uh-huh.

CROSS-EXAMINATION

BY MR. GEEL:

Q. Ms. Shealy, are you able to hear me all right?

A. I am.

Q. Okay, thanks. So just to clarify what your position was, in the event that Mr. Conyers raised an alibi defense through his girlfriend, you were prepared to offer impeachment from the girlfriend's sister; does that accurately characterize?

A. Yes. The word I was having a hiccup on is prepared. She was on our witness list, and certainly I had talked to her about whether if they put that up, that I would need her. She wasn't like in the hallway waiting, but I had shared the information, that I had spoken to her with her -- with Mr. Conyers' attorney, and we had information, obviously, as to how to get her there. I cannot tell you definitively right this second, whether she had been subpoenaed, but, typically, if someone's on my witness list, I have achieved service. I had no reason to believe I had not, I just don't -- I can't necessarily make a representation to that right this second.

Q. Okay, thank you.

MR. GEEL: Nothing further. That's all I have, Judge.

MS. MIMS: I'm sorry, we couldn't hear you, Judge, I think you're muted.

MR. GEEL: Judge, I think you're muted.

THE COURT: You got me. Any objection to the witness being excused from the Solicitor's Office?

MS. MIMS: No, Your honor.

THE COURT: Okay. Thank y'all for your

participation today. Have a great day and a great weekend.

MS. SHEALY: Thank you, you too.

THE COURT: Take care. Okay, any other witnesses from the State?

MS. MIMS: No, Your Honor.

THE COURT: Okay. And just to double check, Mr. Geel, any other witnesses you need to call today?

MR. GEEL: No, Your Honor. Before we close evidence, just as long as those exhibits -- we done the issue ---

THE COURT: Court's ---

MR. GEEL: -- with exhibits.

THE COURT: -- A, B and C, yeah, those will be ---

MR. GEEL: Okay.

THE COURT: -- marked accordingly. If you want to clarify for the record which is which, that would be ---

MR. GEEL: Sure, I'd be ---

THE COURT: -- even better.

MR. GEEL: I'd be happy to do that. Just a moment, let me make sure I set these out correctly.

THE COURT: You can choose.

MR. GEEL: Okay, so I'll -- I'll make Court's Exhibit A the transcript of Belton's PCR hearing.

THE COURT: Okay.

MR. GEEL: Court's Exhibit B the affidavit of Troy Mason that was presented at that hearing. And then Court's Exhibit C, the Order granting Belton's PCR.

(Court's Exhibit A, Transcript of Belton's PCR Hearing, is marked for the record.)

(Court's Exhibit B, Affidavit of Troy Mason, is marked for the record.)

(Court's Exhibit C, Order granting Belton's PCR, is marked for the record.)

THE COURT: All right. I would hate to extend this anymore than it's already been extended, but I sure would love the attorneys to maybe just offer a brief -- a very brief briefing on that particular issue of hearsay exception, and how that would apply to those documents.

MS. MIMS: Well, we would be happy to do so.

THE COURT: I -- I don't want this to carry out for months, if y'all could do it in the next couple of weeks, that'd be great. I'm not trying to

put you on a super time crunch ---

MR. GEEL: Sure.

THE COURT: -- but ---

MR. GEEL: Your Honor, could it be like just a letter brief on that particular issue? Would that ---

THE COURT: I think, yeah, just a brief to the Court is perfect. Well, I don't know, y'all might -- it might be something you want to file for the record, since we're making a record out of all this, probably ---

MS. MIMS: I mean I think in the event that we ---

THE COURT: Yeah, probably best to file it.

MS. MIMS: -- for the Appellate record.

THE COURT: Yep, I think so. You know, one of those things you hear yourself saying it, and then you're like no. Yeah, probably best to file it, honestly, but, you know, again, just on that one issue really, so, you know, hopefully, it's nothing too lengthy or would require too much time from you all, okay?

MS. MIMS: Yes, and Your Honor, I just want -- we'll be at the Solicitor's Conference during next week, so if I could maybe have the week

following, that would be ---

THE COURT: Yeah, yeah, I mean two weeks, yeah, for sure.

MS. MIMS: Okay.

THE COURT: No problem, and -- and when you've -- once you file it, if you could just email my clerk a courtesy copy ---

MS. MIMS: Okay.

THE COURT: -- that way -- we don't always get notified when things are filed, so that way I'll be sure and have it, okay?

MS. MIMS: Okay.

MR. GEEL: And, Your Honor, I'm -- I'm happy to do that. And just to clarify, you just -- you only want briefing on the question of whether those three exhibits should be submitted as ---

THE COURT: Properly considered as a hearsay exception, yep.

MR. GEEL: Got it, okay, understood.

THE COURT: Okay. Okay, thank y'all.

MR. GEEL: Thank you, Judge.

THE COURT: Thank you, Mr. Pennington.

MS. MIMS: Thank you, Judge.

MR. GEEL: Thanks, Ashley, see you.

THE COURT: All right, and thank you ---

MR. PENNINGTON: Take care.

THE COURT: -- to our good wardens, thank y'all very much.

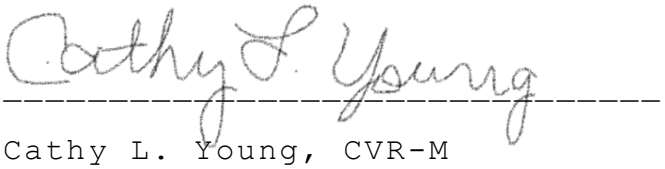
Whereupon, the hearing was concluded.)

- - -END OF TRANSCRIPT- - -

CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appear, in the Circuit Court for Charleston County, South Carolina, on the 16th day of September, 2022.

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



Cathy L. Young, CVR-M
Court Reporter and Notary
Public in and for South Carolina
My Commission expires: 3-28-2029

State of South Carolina Charleston County	In the Court of Common Pleas For the Ninth Judicial Circuit Case No(s): 2018-CP-10-00494
King Conyers v. State of South Carolina	**POST-HEARING BRIEF IN SUPPORT OF PCR APPLICATION**

COMES NOW the Applicant by and through undersigned Counsel, and hereby submits this post-hearing brief in support of Applicant's pending PCR Application. In support, Applicant respectfully shows as follows.

I. Relevant Facts

The relevant background facts regarding the trial in this matter were summarized in Applicant's Second Amendment to his PCR Application, which stated as follows:

> This case involves a home-invasion at a remote residence in McClellanville, South Carolina. The State alleged that in July 2010, a group of men broke into the residence in the middle of the night. The home was owned by Melvin Simmons. Mr. Simmons was at home when the incident took place. During the course of the incident, gunfire was exchanged between Simmons and the group of men. Simmons was killed, along with one of the men who broke into his home. The rest of the men fled the scene. Troy Mason was later developed as a suspect in this incident after he appeared at Trident Medical Center suffering from a gunshot wound. Police later learned that Mason had been with Mario Caldwell that evening, and the police subsequently charged both men with murder. Mason and Caldwell later cooperated with the State against the Applicant Conyers and his co-defendant Jeremiah Belton, and accused them of participating in the home invasion as well. Conyers and Belton were charged with murder as well, and stood trial together, and both Mason and Caldwell testified against them.

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JULIE J. ARMSTRONG
CLERK OF COURT
WCC

After their convictions, Belton and Conyers both filed separate applications for post conviction relief. In Belton's application (Case No. 2018-CP-10-01247), Belton alleged *inter alia* that his attorney was constitutionally ineffective in failing to investigate his alibi defense. At Belton's January 22, 2020 evidentiary hearing, Belton presented the testimony of Troy Mason. Mason recanted the portion of his trial testimony in which he implicated Belton and Conyers in the home invasion incident. Mason testified that he previously had "beef" with Belton, and that he implicated Belton in the incident because he wanted to get back at Belton. Mason testified that after years of reflection, he believed that implicating Belton in the incident was wrong. Mason also tendered an affidavit that he had previously written, which confirmed his recantation of his trial testimony, and specifically stated that Conyers was not present at the home invasion incident either. At Belton's PCR hearing, the State was afforded the opportunity to cross-examine Mason regarding his post-trial recantation and affidavit. The State cross-examined Mason by pointing out that he had changed his story prior to trial. The State pointed out that Mason had changed his story four times. The State also asked Mason if there was any other reason for recanting his statement, other than the fact that he has "matured," and Mason did not give any other reason.

At Conyers' second PCR evidentiary hearing, held before this Court on September 16, 2022, Applicant's Counsel called Troy Mason to testify. Present counsel sought to have Mason testify in similar fashion to his testimony at Belton's PCR hearing. Present counsel was prepared to ask Mason about his affidavit which exonerates Conyers, and about his recantation of his trial testimony. However, Mason (who is now represented by counsel) invoked his right to remain silent, and indicated that he would not make any further statements about the incident in question. At that time, present Counsel moved this Court to admit the transcript and affidavit from Belton's January 2020 PCR proceedings, pursuant to Rule 804. The Court ordered the parties to submit a post-hearing brief on the admissibility of these materials under Rule 804.

II. Analysis

Rule 804 provides a hearsay exception in circumstances where the declarant is unavailable to testify. The rule states as follows:

> RULE 804 HEARSAY EXCEPTIONS;
>
> DECLARANT UNAVAILABLE
>
> (a) Definition of Unavailability. **"Unavailability as a witness" includes situations in which the declarant - (1) is exempted by ruling of the court on the ground of privilege** from testifying concerning the subject matter of the declarant's statement;
>
> ...
>
> (b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
>
> (1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

Thus, a plain reading of this rule requires that the party offering the testimony in question need only demonstrate (1) that the declarant is unavailable, and (2) that the "former testimony" being offered was taken during a proceeding "in compliance with the law in the course of the same or another proceeding," and that the opposing party had an opportunity and "similar motive to develop the testimony" by cross examination.

It is clear from the record before this Court that Mason is unavailable for the purposes of Rule 804. Mason clearly invoked his right to remain silent, per the advice of his attorney, and indicated that he would not answer any further questions regarding this matter. Rule 804 plainly states that witnesses who are exempted from testifying "by ruling of the court on the ground of privilege" are unavailable for the purposes of this rule. Mason fits squarely within this clear definition.

The record also amply demonstrates that the State had the opportunity to cross examine Mason at the prior PCR hearing, satisfying the second requirement under Rule 804. As previously noted, at Belton's PCR hearing the State challenged Mason's credibility by questioning him about

how many times he changed his story. The State pointed out how Mason's version of events has changed several times, and challenged the idea that his recent change of heart was the reason for recanting his testimony. Conyers must only demonstrate that the State had a *similar* motive to cross examine Mason, not an identical motive. Thus, it is of no consequence that the State has not had the opportunity to specifically cross examine Mason about his exoneration of Conyers, because the State had the exact same motive on cross-examination when the testimony dealt with Belton – the State sought to demonstrate that Mason had changed his story numerous times, and that his recantation of his trial testimony was simply not credible.

In *State v. Sanders*, 356 S.C. 214 (S.C. App. 2003), the Court of Appeals considered a similar situation as the one presented here. Sanders' co-defendant testified against him at trial, and Sanders was convicted. Sanders' conviction was later reversed due to unrelated errors during his first trial, and when his case was called for a second trial, the co-defendant could not be located. *Id.* at 216. The State moved under Rule 804 to admit a transcript of the co-defendant's testimony from Sanders' first trial. *Id.* Sanders' attorney objected, specifically arguing that the prior attorney (Sanders had new counsel during his second trial) did not adequately cross examine the co-defendant about the benefit he expected to receive in exchange for his testimony, and therefore the transcript could not be admitted. *Id.* The Court of Appeals held that the prior attorney had "ample opportunity" to question the co-defendant about his credibility and the benefit he expected to receive, and therefore the transcript was properly admissible under Rule 804. *Id.* at 219.

Similarly, in *State v. Nance*, 712 S.E.2d 446 (S.C. 2011), the Supreme Court considered whether a transcript of a deceased witness – who testified at Nance's first trial – could be admitted at Nance's retrial. The attorney from Nance's first trial testified at Nance's PCR hearing that he did not cross-examine the witness in question because his strategic plan was to concede Nance's guilt but attempt to establish that Nance was mentally ill. *Id.* at 452. Despite the fact that trial counsel conceded under oath that he did not vigorously cross examine the now-deceased witness, the Supreme Court held that the transcript was admissible under Rule 804 because defense counsel had the prior *opportunity* to cross examine the witness in question – the fact that

trial counsel did not make the most of that opportunity is not relevant for the purposes of admissibility under Rule 804. *Id.*

Turning to the present case, Conyers respectfully submits that the materials from Belton's PCR hearing are admissible in this matter under Rule 804. Mason is clearly unavailable as defined in Rule 804 – he was excused from testifying because he invoked his privilege against self-incrimination. Additionally, the State had the opportunity to cross examine Mason under oath during Belton's PCR hearing, when Mason provided substantially identical testimony to that which *would have been presented* at Conyers' hearing before this Court, had Mason not invoked his Fifth Amendment privilege. Thus, this situation falls squarely within the exception provided under Rule 804, and this Court should admit the tendered exhibits in this matter, and consider their substance in ruling on Conyers' PCR application.

On this day, October 8, 2022 it is
RESPECTFULLY SUBMITTED,

Christopher R. Geel
Geel Law Firm, LLC
P.O. Box 21771
Charleston, SC 29413
843-277-5080

CERTIFICATE OF SERVICE: I hereby certify that I have served a copy of this document upon the Attorney General's Office via U.S. Mail, on this day, October 8, 2022.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
King Conyers #317737, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-10-00494 **MEMORANDUM IN SUPPORT OF DENIAL**

FILED
2022 OCT 21 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before this Court by way of an application for post-conviction relief filed by King Conyers (Applicant) on February 1, 2018. Respondent made its return on May 21, 2018. An evidentiary hearing convened on December 8, 2021, at the Charleston County Courthouse before the Honorable Jennifer B. McCoy.

At the close of all evidence and hearing arguments from both sides, the Court directed parties to submit memoranda of law in support of their respective positions on whether the three exhibits counsel for Applicant sought to admit were admissible in this current post-conviction relief action. This memorandum follows.

I. PROCEDURAL HISTORY

King Conyers (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In November 2014, the Charleston County Grand Jury indicted Applicant for the murder of Melvin Simmons, Jr. (2014-GS-10-6484), first-degree burglary (2014-GS-10-6485), and possession of a firearm during the commission of a violent crime (2014-GS-10-6486). Christopher L. Murphy, Esquire, represented Applicant. Assistant Solicitors Jennifer K. Shealy and Daniel Cooper prosecuted the case.

On November 2, 2015, Applicant proceeded to a jury trial before the Honorable Kristi L. Harrington, circuit court judge. The jury found Applicant guilty as indicted. Judge Harrington sentenced Applicant to imprisonment for two concurrent terms of life for murder and first-degree burglary and a concurrent five years for the weapons charge.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense-Division of Appellate Defense, who submitted a brief and motion to be relieved pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals granted counsel's motion to be relieved and dismissed the appeal on January 10, 2018. *State v. Conyers*, Op. No. 2018-UP--019 (S.C. Ct. App. filed January 10, 2018).[1] The remittitur was issued on January 26, 2018.

On December 8, 2021, Applicant began an evidentiary hearing in front of the Honorable Jennifer B. McCoy. At the hearing, a co-defendant and witness for Mr. Conyers, Troy Mason, asked to be appointed counsel before taking the stand. Judge McCoy ended the hearing, and ordered counsel to be appointed to Mr. Mason, and left the record open to allow for the representation. Ashley Pennington, Esquire, was appointed as counsel for Mr. Mason.

On September 16, 2022, a hearing was re-convened via Webex Virtual Platform. At the hearing, Mr. Mason indicated to the court that he no longer wished to testify and wanted to invoke his right against self-incrimination pursuant to the Fifth Amendment of the United States constitution. In lieu of his testimony, counsel for Applicant sought to admit several exhibits including an "affidavit," an order granting Jeremiah Belton's Post-Conviction Relief and testimony of Troy Mason regarding his relationship with Jeremiah Belton during Belton's post-

[1] While his direct appeal was pending, Applicant filed a *pro se* motion for a new trial pursuant to Rule 29(b), SCRCrimP. The State moved for dismissal of this motion, citing his pending appeal before the Court of Appeals.

conviction relief evidentiary hearing.

II. ARGUMENT

The exhibits Applicant is seeking to admit are not admissible in this action, and should not be considered in Applicant's PCR action because the evidence submitted is not former testimony, and is irrelevant to the pending post-conviction relief action.

Former Testimony

Applicant contends that the exhibits he intends to introduce should be admitted as former testimony pursuant to South Carolina Rules of Evidence 804(b)(1) due to his witnesses' unavailability. In addition to other criteria, a declarant is considered unavailable because he refused to testify about the subject matter despite a court order to do so. SCRE 804(a)(2). Based upon Mr. Mason's unwillingness to testify and invocation of his Fifth Amendment right against self-incrimination, Mr. Mason is unavailable.

Furthermore, South Carolina Rules of Evidence provides that when a declarant is unavailable, former testimony is not excluded by the rule against hearsay when there is testimony that:

> (A) Was given as a witness at trial, hearing or lawful deposition, whether given during the current proceeding or a different one; AND
> (B) Is now offered against a party who had—or, in a civil case who predecessor in interest had – an ***opportunity and similar motive*** to develop it by direct, cross or redirect examination.

SCRE 804(b)(1)(emphasis added).

The South Carolina Court of Appeals contemplated a situation where former testimony of a now unavailable witness was admissible in the subsequent trial. *State v. Sanders*, 356 S.C. 214, 588 S.E.2d 142 (2003). In *Sanders,* an individual was charged with shooting and killing a

restaurant employee. *Id.* at 215. At the trial, the State called two jailhouse informants to testify that Sanders committed the crime. *Id.* at. 216. He was found guilty as charged, but the South Carolina Supreme Court later reversed his conviction and remanded the case for a new trial. *Id.* At the second trial, the State sought to move the transcript of one of the informants in as evidence, asserting that he could not be located and was unavailable. *Id.* Sanders objected to the entry of the transcript because it would violate the Confrontation Clause of the Sixth Amendment, as the second defense counsel would have cross-examined more vigorously and that the facts regarding the alleged deal were only revealed after the informant testified in the first trial. *Id.* The Trial Court admitted the testimony over objection. *Id.* In analyzing whether the testimony was admissible, the Court of Appeals agreed with the trial court that testimony was admissible because cross-examination had occurred in the first trial and that Solicitor's recollection of events surrounding the informant's testimony and his hopes for a deal were consistent with the testimony at the first trial. *See Id.* at 18. The Court found that despite ample opportunity, the Defense Counsel only asked one question regarding his communications with the Solicitor's office. *Id*

The South Carolina Court of Appeals also extends this right to civil actions and requires that the party against whom the testimony is offered that was a party to the former action, must have had a full opportunity to cross-examine the witness. *Ott v. Pittman*, 320 S.C. 72, 79 463, S.E.2d 101, 105 (Ct. App. 1995).

Here, the State did not have a full opportunity to develop testimony regarding two of the exhibits that Applicant is seeking to admit into evidence regarding Applicant during the cross-examination of Mr. Mason in another individual's post-conviction relief matter. First, the instant case is easily distinguishable from *Sanders* in that Applicant's counsel seeks to admit testimony from another individual's post-conviction relief evidentiary hearing who had differing burdens for

proving the truth. In *Sanders*, the matter was a re-trial on the same charges against the same individual, where counsel had the opportunity and cross-examined the informant about prior meetings.

Here, however, at the time of cross-examination of Mr. Mason in the other matter, there was no indication that Applicant sought to introduce or use Troy Mason as an alibi witness. Applicant filed his post-conviction relief application in this matter on February 1, 2018. In that application, Applicant listed that there was ineffective assistance of counsel for three specific reasons: ineffective assistance of counsel due to abandonment during a critical stage and failure to present an alibi defense, violation of fourth amendment rights for failure to appear at a *Franks* Hearing and for errors rendered at trial and appeal were fundamentally unfair because of counsel's to object and as well as a lack of investigation. *See* PCR Application of Applicant. p 3.

While the alleged affidavit from Mr. Mason was not written until April 6, 2018, there was no notice that Applicant would be going forward on any allegations of newly discovered evidence from Troy Mason's testimony until an amendment was filed on November 29, 2021, a little over a week before Applicant's scheduled evidentiary hearing on December 8, 2021. The testimony Applicant seeks to admit was collected during an evidentiary hearing of another individual on January 20, 2020. At that time, almost two years after the initial application of Applicant King Conyers, there still had been no amendment to King Conyers' file to alert the State to elicit testimony from Troy Mason regarding Applicant. Additionally, any cross-examination regarding King Conyers would have required clairvoyance from the State and created an unreasonable burden as the State would have had to anticipate the future unavailability of Applicant's witness who decided to protect himself against self-incrimination, testified at another individual's evidentiary hearing only to their knowledge about Belton, and did not testify at all as it relates to

King Conyers, further requiring the State to elicit wholly irrelevant testimony during cross-examination. Accordingly, the State did not have the similar motive to cross-examine Mr. Mason during the testimony counsel seeks to enter, because the testimony was taken in the defense of Belton's post-conviction relief application, and the State was not aware that Applicant King Conyers would be seeking to use Mason's testimony or "affidavit" as newly discovered evidence until a year after the testimony was taken. This is an entirely different situation than *State v. Sanders*, where defense counsel had the ability to discuss and later cross-examine the informant on prior conversations between the informant and solicitor, albeit insufficiently according to Sanders' second counsel.

Furthermore, allowing the admission of the affidavit would be improper because it would not be former testimony from Mr. Mason, as it was not admitted into evidence at the first post-conviction relief hearing or given at any trial, hearing, or lawful deposition as required by the rule. Admission of the affidavit would completely foreclose the State's opportunity to cross-examine Troy Mason on the affidavit as it relates to King Conyers. At Belton's evidentiary hearing, counsel only elicited testimony from Mr. Mason regarding some of the issues in an affidavit, to which Mr. Mason gave live testimony on. Here, however, the State has no opportunity to authenticate the affidavit as Mr. Mason's in this matter or as the affidavit that was referenced in the evidentiary hearing of Mr. Belton nor would we have the opportunity to cross-examine Mr. Mason on the content of the affidavit or its authenticity because he is now unavailable.

Accordingly, these two exhibits should not be entered into the record and considered in this post-conviction relief matter because they are not former testimony pursuant to SCRE 804(b)(1) as the State did not have a full opportunity or similar motive for cross-examination.

Relevance

Applicant is seeking to admit an order granting relief of Jeremiah Belton, as well as testimony from Troy Mason as it relates to Belton's post-conviction relief action. These exhibits are not relevant to the current action and should not be admitted.

"Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence. SCRE 401. The testimony elicited at the post-conviction relief evidentiary hearing of Belton, dealt with specifically with the whereabouts of Belton and his relationship with Belton. Mr. Mason never mentioned the name, whereabouts or exonerating evidence of King Conyers throughout the testimony. Testimony regarding Belton would not make any question of fact more probable as it relates to Mr. Conyers.

Furthermore, Applicant seeks to admit the order granting post-conviction relief for Belton. This order also has no relevance to the matter of King Conyers. It is the burden of the Applicant to prove each and every allegation that is alleged for relief. Providing the Court with the order of dismissal of another applicant, who was granted post-conviction relief on one singular issue based on perceived ineffectiveness of his attorney on matter that directly related to establishing an alibi for Belton is wholly improper. Belton's counsel's ineffectiveness has no bearing on Applicant's ability to prove his allegations as they had different counsels, and is not relevant as it would not make any fact more probable in King Conyers' post-conviction relief matter.

Accordingly, testimony from Troy Mason regarding Belton and the order granting post-conviction for Belton should not be admitted because they are irrelevant.

III. CONCLUSION

This court should sustain the objection of the State and not admit the three exhibits presented by Applicant because they do not qualify as former testimony pursuant to 804(b)(1) and are not relevant to this matter.

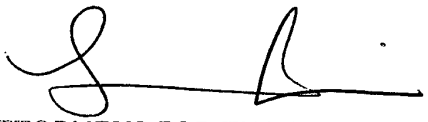
Respectfully submitted,

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Attorney General

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ALAN WILSON
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October 17, 2022

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: **King Conyers, #317737 v. State of South Carolina**
Case No.: 2018-CP-10-00494

Dear Ms. Armstrong:

Enclosed please find the original Memorandum of Law in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Lauren T. Mims
Assistant Attorney General

LTM/vh

cc: Christopher R. Geel, Esquire

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
King Conyers, SCDC #317737, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-10-494 **ORDER OF DISMISSAL**

FILED
2023 APR 24 PM 12:
JULIE J. ARMSTRONG
CLERK OF COURT
BY DGA

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by King Conyers (Applicant) on February 1, 2018. Respondent filed a return requesting an evidentiary hearing. On December 8, 2021, and September 16, 2022, an evidentiary hearing convened before the Honorable Jennifer B. McCoy. Applicant was present and represented by Christopher R. Geel, Esquire. Assistant Attorney General Lauren T. Mims represented Respondent. Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In November 2014, the Charleston County Grand Jury indicted Applicant for the murder of Melvin Simmons, Jr. (2014-GS-10-6484), first-degree burglary (2014-GS-10-6485), and possession of a firearm during the commission of a violent crime (2014-GS-10-6486).

On November 2, 2015, Applicant proceeded to a jury trial before the Honorable Kristi L. Harrington. Christopher L. Murphy, Esquire, represented Applicant, and Assistant Solicitors Jennifer K. Shealy and Daniel Cooper prosecuted the case. The jury found Applicant guilty as indicted. Judge Harrington sentenced Applicant to concurrent terms of life imprisonment for

murder and first-degree burglary, and five years' imprisonment for the weapon charge.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander submitted a brief and motion to be relieved pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal pursuant to Anders. State v. Conyers, Op. No. 2018-UP-019 (S.C. Ct. App. filed January 10, 2018).[1] The remittitur was sent January 26, 2018.

SUMMARY OF PERTINENT TRIAL TESTIMONY

During trial, the State presented testimony from co-defendants Troy Mason and Mario Caldwell. According to Mason, he and Caldwell drove from Charleston to Charlotte the evening prior to the murder to pick up "Finger," whom he identified as Applicant's co-defendant Jeremiah Belton. (R. 246, 249-50). Thereafter, they picked up Curtis Delaney ("Crime"), then drove to Columbia and picked up "Bez."[2] (R. 250, 252). They returned to Charleston and went to a house "off Dorchester Road." (R. 254). While there, Bez discussed robbing someone he had "dealt with" before. (R. 255-56). Mason testified he, Caldwell, Belton, Delaney, and Bez drove to a house in McClellanville. (R. 258). They entered the victim's home with guns; once inside, Mason heard shooting in the back of the house. (R. 259-60). Mason was shot; he later had his mother drive him to the hospital. (R. 262, 266). Mason admitted he initially told investigators he was shot in Red Bank—a story he and Caldwell came up with before Mason went to the hospital. (R. 266-67). Mason later turned himself in; thereafter, he implicated Caldwell, Belton, and Bez. (R. 268-69).

Caldwell testified he drove to Charlotte to pick up Belton, and Mason rode with him. (Tr. 483). After picking up Belton, they picked up Delaney. (R. 484). Caldwell stated Belton

[1] While his direct appeal was pending, Applicant filed a pro se motion for a new trial pursuant to Rule 29(b), SCRCrimP. The State moved to dismiss, citing his pending appeal.
[2] During his testimony, Mason identified "Bez" as Applicant.

then drove to Columbia, where they picked up Bez. (R. 476, 487-89). He testified he had never met Delaney or Bez prior to this night. (R. 476, 485). Caldwell stated they returned to Charleston and stopped at a community called "The Hub"; at that time, Belton met up with two other guys that Caldwell did not know. (R. 492-93). He stated Bez discussed robbing someone. (R. 498). Thereafter, Caldwell, Mason, Bez, and Delany drove to a house in McClellanville, and Belton rode with the two other guys in a different car. (R. 499-502). The seven men met outside the house with guns. (R. 507-08). Caldwell testified Delaney, Mason, Belton, and Applicant went inside the home; Caldwell heard gunshots but never made it inside. (R. 508). He stated Delaney was shot, and Bez left him at the scene. (R. 512-13). Mason was also shot; Caldwell drove Mason to his mother's house. (R. 509, 515-16).

Constance Manigault testified she was dating Delaney in March of 2010. (R. 426-27). While dating Delaney, she met Delaney's friend "Bez"; during trial she pointed out Applicant and identified him as Bez. (R. 428-29). Manigault stated that after she met Bez, she entered his phone number—which ended in 9516—into her phone contact list. (R. 429). She stated she called Bez's phone on July 9, 2010, looking for Delaney. (R. 431). According to Manigault, Delaney called her from Bez's phone at 2:09 a.m. on July 10, 2010. (R. 432). Manigault testified she called Bez's phone later that morning looking for Delaney. (R. 433-44). After learning Delaney was dead, she called Bez's number again. (R. 434-35). She continued,

> And Bez returned my phone call at 11:29 that morning and I told him, you know, ...Crime is dead, and he said yes. He said he was crying all day Saturday. And I asked him who Curtis was with. He said he can't tell me because o the people was mixed up in some other stuff. And he also said that he doesn't want to be involved. I said, you're already involved because you know who he was with. I said you're going to tell me who he was with. But he continued saying no. He was saying . . . telling you who these people are won't bring Curtis back. I ask him . . . what was the number Crime called him from, but he said he had erased all his . . . call log because his girlfriend likes to go through this phone.

(R. 435-36). On cross-examination, trial counsel questioned Manigault about how many times she had seen Applicant before; she acknowledged it was only once. (R. 438). When pressed, Manigault acknowledged she did not know when she programmed Bez's number into her phone but maintained the number was entered in her phone as Bez's number. (R. 439-40).

In addition to the foregoing, the State presented testimony from Willis Walker, who was qualified over objection as an expert in call-detail analysis. (R. 892-913). According to Walker, the number ending in 9516 was registered as "prepaid customer" without a subscriber name. (R. 921). He stated the phone used cell phone towers in the West Columbia area on July 8-9. (R. 947-49). On July 10, the phone used cell phone towers near Orangeburg between 12:21 a.m. and 21:58 a.m. (R. 949-50). Between 2:48 and 2:59 a.m., the phone used towers in the Charleston area. (R. 951). Between 3:17 and 3:29 a.m., the phone used towers near the Mount Pleasant area. (R. 953).[3] At 5:20 a.m., the phone used a tower near Trident Hospital. (R. 958). At 5:26-5:27 a.m., the phone used a tower in the Goose Creek area. (R. 958-59). At 5:52 a.m., the phone used a tower in the North Charleston area. (R. 959). At 7:34 a.m., the phone used a tower in the Orangeburg area. (R. 960). Finally, at 8:21 a.m., the phone began using a tower in West Columbia, and continued using that tower throughout the day on July 10. (R. 960-61).

In addition to testifying to cell-tower mapping, Walker testified the 9516 number had several calls with Manigault's number, including calls at 2:09 a.m. and 12:29 p.m. on July 10. (R. 937-40). Likewise, the 9516 number had twenty-two calls with the phone associated with Belton between July 8-10, including calls at 11:16 and 11:41 p.m. on July 9; a call at 2:43 a.m. on July 10; and five calls between 5:31 and 5:36 a.m. on July 10. (R. 942-44).

ALLEGATIONS RAISED AND RELIEF SOUGHT

In his PCR application, Applicant alleges he is being held in custody unlawfully for the

[3] Over objection, the State admitted a map of the various cell towers utilized by the phone. From the testimony alone, it's not entirely clear where all of the towers were located.

following reasons:

a. Ineffective assistance of counsel: "Counsel abandon[ed] applicant at critical stages of trial and failed to present an alibi defense."
b. Violation of 4th Amendment: "Counsel failed to appear of Frank's hearing/separate trial hearing."
c. Counsel errors rendered trial and appeal fundamentally unfair: "Counsel failed to object and presence as well as lack of investigation."

Prior to the evidentiary hearing, Applicant filed an amended application raising the following allegations:

1. Failure to prepare, investigate, communicate, and present a defense:

   a. Trial counsel was constitutionally ineffective when he failed to investigate, prepare, and present an alibi defense; failed to interview Applicant's alibi witness; failed to move for a continuance when Applicant's alibi witness did not appear for trial; and failed to ask Applicant about his alibi when he testified.
   b. Trial counsel was constitutionally ineffective when he failed to investigate and prepare for trial regarding the telephone evidence presented at trial. (Tr. 429, 436, 886-992, 920, 1016). Trial counsel failed to investigate Applicant's claim that the cell phone evidence that was used against him at trial was not his cell phone. Trial counsel failed to present testimony that Applicant was not the owner/user of the phone number as alleged at trial.
   c. Trial counsel was constitutionally ineffective when he failed to investigate and prepare for trial by failing to communicate with Applicant, failing to provide Applicant his Rule 5 discovery materials and/or review the materials with Applicant, failing to meet with Applicant at the jail, and not allowing Applicant reasonable access to information that was needed in order to make informed, knowing, and voluntary decisions regarding his case.
   d. Trial counsel was constitutionally ineffective when he failed to fully prepare the Applicant to testify at trial. (Tr. 1058-61).

2. Failure to appear at critical states of trial and ensure Applicant's presence during critical stages of trial:

   a. Trial counsel was constitutionally ineffective when he failed to appear at critical stages of the case. (October 27, 2015 motions hearing).
   b. Trial counsel was constitutionally ineffective when he failed to ensure that Applicant was present for critical stages of the case. (Tr. 606, October 27, 2015 motions hearing).

3. Failure to object to trial evidence and argument

a. Trial counsel was constitutionally ineffective when he failed to challenge and/or move to exclude the in-court identification of King Conyers by Constance Manigault. (Tr. 428-29).
b. Trial counsel was constitutionally ineffective when he failed to object to improper inflammatory remarks by the State during closing argument. (Tr. 1125).

4. Failure to join co-defendant's motion: Trial counsel was constitutionally ineffective when he failed to join the co-defendant's pre-trial severance motion.

5. Appellate counsel's failure to raise meritorious appellate issues: Appellate counsel was constitutionally ineffective when he failed to challenge the qualification of the State's expert witness on appeal. (Tr. 892-913).

6. Newly-Discovered and Newly-Available Evidence: Applicant is entitled to PCR based on newly-available and newly-discovered evidence and testimony from co-defendants Jeremiah Belton and Troy Mason. This evidence exonerates Applicant and was not available to Applicant at the time of trial, either because the co-defendant was not available at trial (Belton) or because the co-defendant has since recanted his trial testimony (Mason).

At the PCR hearing, Applicant proceeded on the allegations in his amended application.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the PCR hearing, Applicant testified he met with counsel "at least three or four times," for "ten, fifteen minutes, maximum." (PCR 67). Applicant stated he told counsel about his alibi witness, Vondayna Brown, from the beginning and provided counsel her contact information. (PCR 68).

Trial counsel testified he was appointed to Applicant's case and had "plenty of time" to prepare. (PCR 32). He recalled the State's evidence indicated "five guys went to this house in Georgetown and there was a shootout over some drugs." (PCR 32). Counsel testified "[t]he evidence showed that [Applicant], Belton, and another fellow were partying in North Charleston, drove up to Columbia and then to Charlotte and back to Charleston." (PCR 33). He stated Applicant denied being there or having anything to do with the crime, which "didn't make any

sense with the evidence against him." (PCR 33). Trial counsel testified his biggest problem was that Applicant denied knowledge of anything that happened, which was not helpful. (PCR 33). He stated Mason and Caldwell were going to testify and place Applicant at the scene. (PCR 34). Additionally, the State had GPS data from a phone Applicant was using that "pinged" cell phone towers "from North Charleston all the way up to Charlotte and back down and then back up to Georgetown." (PCR 34). Trial counsel recalled challenging the qualifications of the cell phone expert, but the trial court overruled his objection. (PCR 35).

Trial counsel stated the State's evidence indicated Applicant did not go inside the home with a gun, and counsel's strategy was to shorten the timeline as much as he could. (PCR 36). He stated,

> When you looked at the whole scope of things, having [Applicant] testify or his wanting to testify that he had nothing to do with anything, he wasn't in North Charleston, he didn't drive up to Columbia, didn't make any sense. And what I was trying to explain to [Applicant] is, what makes sense is you were involved in the beginning. You drove to Georgetown, but you didn't go in the house and didn't fire any shots and didn't have anything to do with the actual murders.
>
> But he refused. He said he just wasn't there. So we had this inconsistency at trial and what his position was.

(PCR 36). Counsel explained he struggled with a strategy because he had to "go with what the client wants, even though it didn't make any sense." (PCR 55). He stated their theory was Applicant was not there, which "was kind of a silly proposition because all the evidence, a lot of it indicated he was there."[4] (PCR 55).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the records of the Charleston County Clerk of Court regarding the underlying convictions, Applicant's

[4] This Court will reference additional PCR testimony where relevant below.

records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action. 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. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance 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.

Alibi

At the PCR hearing, Applicant testified he told counsel about his alibi witness from the beginning and provided counsel her contact information. (PCR 68). According to Applicant, Brown would have testified Applicant was with her at her niece's birthday party the night of the murder. (PCR 75-76). Applicant recalled learning at trial that Brown's sister was available to testify and dispute his alibi defense. (PCR 68). Applicant stated he "continually" asked counsel what happened to Brown, but counsel did not provide an answer. (PCR 75).

Brown testified she was in a relationship with Applicant in 2010 and they lived together. She recalled his normal schedule involved leaving for work around 7:00 to 7:30 a.m. and returning home by 5:00 p.m. Brown further testified Applicant would typically walk to a convenience store after getting home to purchase beer. She recalled July 9, 2010, because that was her niece's birthday party. Brown stated Applicant was with her at the birthday party that evening; they left their house around 5:00 p.m. to go to the party.

Brown stated she learned Applicant had been arrested when he called her from prison. She stated she asked him how he did "something on July the 10th when [he was] at a birthday party." Brown stated she indicated she could testify for him because she knew he "didn't do it because [they] were together." She testified trial counsel called her the day before Applicant's trial and asked her to testify; however, her car broke down on the way to court.

Trial counsel testified Brown was the only person Applicant asked him to interview. (PCR 54). He stated he notified the State that he was going to present an alibi defense. (PCR 36). Trial counsel stated he contacted Applicant's employee and learned Applicant was off of work the two or three days around the incident; therefore, he "couldn't call those folks as a witness because they weren't going to say [Applicant] was working the day of this incident." (PCR 37).

Trial counsel also explored presenting an alibi that Applicant was at a birthday party on the night of the murder. (PCR 37). He testified he spoke to Brown and was prepared to call her as a witness; however, he did not subpoena her because he expected her to voluntarily appear. (PCR 37, 44). Counsel recalled Brown had car trouble on the day of trial and could not attend. (PCR 44). Counsel testified he did not move for a continuance because he believed Brown's testimony would have opened the door for the State to call Brown's sister as a rebuttal witness. (PCR 44). Counsel explained he spoke to Brown's sister, who "was adamant [Applicant] was not at that birthday party." (PCR 44). Trial counsel testified, "[K]nowing that the sister was gonna come in and say that Ms. Brown and [Applicant] are lying about this, there was no need [to request a continuance]. I didn't have any heartburn about her not coming up and testifying about this." (PCR 45). Counsel stated he planned to call Brown as a witness prior to talking to Brown's sister, but after speaking with the sister and "eyeball[ing] her and hear[ing] her story, there was no way [he] was calling anybody else to claim . . . these folks were at the birthday party." (PCR 45).

Assistant Solicitor Jennifer Shealy, who prosecuted this case, testified she spoke to Brown's sister prior to trial and was prepared to call her as a rebuttal witness if Applicant or Brown testified Applicant was at the party the night of the murder. (Sept. 2022 Tr. 25, 27-29).

This Court finds Applicant has failed to prove counsel was ineffective in his preparation and investigation of an alibi defense. Counsel **credibly** testified Brown was the only person Applicant asked him to interview, and he interviewed Brown and was prepared to call her as an alibi witness. Consistent with counsel's testimony in this regard, Applicant did not testify to any other person he wanted counsel to call to establish an alibi (other than himself and Brown). This Court finds counsel's investigation and preparation of this alibi defense was reasonable under prevailing professional norms, and Applicant has not shown counsel was deficient.

Further, this Court finds Applicant did not show counsel was deficient for failing to move for a continuance when Brown did not appear for trial. This Court finds **credible** counsel's testimony that the State was prepared to call Brown's sister as a rebuttal witness if Brown or Applicant testified Applicant was at the party. This Court further finds **credible** counsel's testimony that Brown's sister was adamant Applicant was not at the party, which would have been damaging to Applicant's alibi defense and his overall case. Based on the foregoing, counsel articulated a valid reason for not requesting a continuance to procure Brown's testimony. Likewise, trial counsel articulated a valid reason for not questioning Applicant about his alibi defense when Applicant testified—specifically, counsel **credibly** testified he was concerned that the State would use Brown's sister to undermine Applicant's testimony. Applicant has not overcome the presumption that counsel's decisions related to the alibi defense were within prevailing professional norms; thus, Applicant has not shown counsel was deficient.

Finally, this Court finds Applicant has not shown prejudice from counsel's failure to call Brown as a witness. This Court had the opportunity to assess Brown's and Applicant's demeanor and finds their testimony that Applicant was at the birthday party that evening to be **not credible**. This Court notes Brown was in a relationship with Applicant and lived with him at the time this murder occurred. This Court also notes Brown's testimony that Applicant worked

the day of the murder contradicted what trial counsel **credibly** testified he discovered when talking to Applicant's employer. Further, based on State's evidence against Applicant, as well as counsel's and the solicitor's **credible** testimony that the State had a rebuttal witness that would undermine this alibi defense, this Court finds Applicant has not shown a reasonable likelihood exists that the outcome would have been different had Brown and Applicant testified to this alibi defense. Thus, this claim is denied.

Phone evidence

At the PCR hearing, Applicant recalled that trial counsel told him the State had "some cellphone numbers, none linking to [Applicant]." (PCR 70). He testified he lived in Columbia at the time and did not have an "843" number.[5] (PCR 77-78). Applicant stated he told counsel to look through that phone to see if that number had contacted any of Applicants' family members or his girlfriend. (App. 81-82). Applicant agreed Manigault testified at trial that Applicant used the phone but maintained he did not know Manigault. (PCR 84).

Brown testified she was not aware that Applicant had a phone ending in 9516. She stated she owned an Android phone that she shared with Applicant; that number did not end in 9516.

Counsel recalled the State had a phone that it alleged Applicant used the night of the murder, but Applicant denied the phone was his. (PCR 46). However, counsel explained ownership of the phone wasn't the issue because the State's evidence indicated Applicant had that phone and was using it to send texts. (PCR 46-47). He averred there was "very little evidence" that the phone belonged to Applicant. (PCR 35).

This Court finds Applicant has failed to overcome the presumption that counsel provided effective assistance in this regard. This Court agrees ownership of the phone wasn't the primary issue; rather, the issue was who was using the phone the night of the murder. The primary

[5] The number the State relied on at trial began with "843" and ended in "9516."

evidence the State relied on in establishing who used the phone that night was Manigault's testimony that she entered the 9516 number in her phone as "Bez," Delany contacted her from that number the night of the murder, and she spoke to Bez on that number the next day about Delaney's death. (Tr. 429, 431-36). This Court finds counsel did an effective job of cross-examining Manigault about her identification of Applicant as Bez. Specifically, he elicited testimony that Manigault had only met Bez once before and she could not recall when she entered Bez's number in her phone. (Tr. 438-40). Ultimately, the issue of whether Applicant was in fact "Bez" was a question of fact for the jury. Based on evidence showing Applicant was using the phone, this Court finds counsel's decision to not further explore ownership by looking at numbers the phone may have used was reasonable within prevailing professional norms. Thus, Applicant has not shown deficiency.

Further, this Court finds it is not reasonably likely the outcome of Applicant's trial would have been different had counsel further challenged ownership of the phone. The testimony presented at trial showed Bez—whom several witnesses identified as Applicant—was using the phone on the night of the murder, regardless of who owned it. Notably, one does not need to *own* a phone to *use* it. This Court finds further information about the contacts in the 9516 phone would not have reasonably changed the outcome of trial, especially in light of the fact people can own more than one phone or borrow other people's phones. Thus, Applicant has not shown prejudice.

Failed to Communicate/Review Discovery

Applicant stated he never received "a motion of discovery." (PCR 70). However, he recalled that trial counsel told him two of his co-defendants would testify against him and the State had "some cellphone numbers, none linking to [Applicant]." (PCR 70).

Trial counsel stated he typically sends multiple letters to clients explaining the State's evidence. (PCR 38-39). Although he typically does not visit clients a lot in jail, he testified he talks to them on the phone and through letters. (PCR 39). Counsel stated he generally provides clients as much discovery as he can. (PCR 39). In this case, however, there were "boxes of documents." (PCR 39). Counsel explained "[a] lot of it was just cell phone records from all those folks who didn't have anything to do with it, so [he] wouldn't have given [Applicant] those, just because they wouldn't have made any sense." (PCR 39). He stated he would not have sent all of the boxes of information, but he would have sent Applicant the most pertinent stuff. (App. 39-40).

This Court finds **credible** trial counsel's testimony that he communicated with Applicant through phone calls and mail about the State's evidence and provided Applicant the most pertinent discovery. This Court further notes Applicant himself testified to discussing his co-defendants' testimony and cellphone records with counsel, which this Court finds was the most damaging evidence presented against Applicant at his trial. Counsel's discussions with Applicant about his discovery were reasonable under prevailing professional norms; thus, Applicant has not shown counsel was deficient. Further, Applicant has failed to set forth what *additional* discovery he believes counsel should have discussed with him, and how discussing that alleged additional discovery would have changed the outcome of this trial. Thus, Applicant has not shown prejudice, and this claim is denied.

Failed to prepare Applicant to testify

Applicant stated they reviewed his potential testimony "in that ten-minute time span" at trial, but he did not know what counsel would ask him or what he would say. (PCR 75). He maintained he had an alibi and stated he was at a birthday party that evening. (PCR 75-76).

Applicant testified he expected counsel to ask him whether he was at the party and with Brown that weekend, but counsel never did. (PCR 75-76).

Counsel stated he "definitely" spoke with Applicant about his right to testify and told him his "only chance . . . of getting out of this is by testifying." (PCR 55). He stated they discussed Applicant's potential testimony and he told Applicant, "[Y]ou're gonna have to explain where you were, why you weren't there, and it's gonna have to make sense, and he wasn't able to do that." (PCR 55). Trial counsel testified he believed Applicant would testify he was not present at the crime as part of his alibi defense, and he discussed that with Applicant prior to trial. (PCR 38). Counsel stated he explained to Applicant that he could not claim he was at the birthday party "because that sister's going to bury you if you claim that." (PCR 45). He was concerned that Applicant would open the door for the sister's testimony when he testified. (PCR 45-46).

This Court finds **credible** counsel's testimony that he discussed with Applicant his right to testify. This Court further finds **credible** counsel's foregoing testimony about the advice counsel provided to Applicant about his testimony. This Court finds counsel's advice to Applicant to *not* testify he was at the party was reasonable under prevailing professional norms based on counsel's **credible** testimony about what Brown's sister was expected to testify to on rebuttal. Likewise, in light of the circumstances and Applicant's insistence he was not present when counsel testified the evidence showed otherwise, this Court finds counsel's advice overall was reasonable under prevailing professional norms. Thus, Applicant has not proven deficiency.

Additionally, Applicant has not set forth what additional advice counsel should have provided regarding his testimony. As this Court previously found, counsel articulated a valid reason for not eliciting testimony that Applicant was at the birthday party. Other than questioning him about being at the birthday party, Applicant has not set forth what he believes

counsel should have elicited from him or what advice he believes counsel should have provided. Thus, Applicant has failed to prove any prejudice in this regard, and this claim is denied.

Failed to join motion to sever;
Failed to appear/ensure Applicant's appearance

Applicant testified his co-defendant, Belton, filed a pretrial motion to sever; however, Applicant did not recall whether counsel ever discussed Belton's motion to sever with him. (PCR 71-72). Applicant stated he was transported to court for the motion hearing, and he believed it was both his and Belton's motion. (PCR 71-72). However, he testified "they told [him he] had to go back because [his] attorney wasn't present." (PCR 71). Applicant testified he never gave counsel permission to waive his presence at any point during his jury trial. (PCR 73).

Trial counsel stated he rarely sought motions to sever and would not have in this case because he believed Applicant was the least culpable of the co-defendants. (PCR 40). When asked if he joined in with Belton's motion to sever, counsel replied, "Probably not." (PCR 40). He explained that at trial, he wanted "the State to be focused on the other guy and not necessarily [Applicant]." (PCR 40). Had the trials been severed, "all the focus would be on [Applicant]." (PCR 40). Counsel did not recall a hearing on Belton's motion to sever. (PCR 40). After reviewing a transcript from Belton's pretrial hearing, trial counsel agreed he and Applicant were not there. (PCR 41). Counsel explained it was not his motion and he may not have received notice of it. (PCR 41-42). He could not recall whether he was notified of that hearing but reiterated he did not want to sever Applicant's case from Belton's. (PCR 42).

Counsel reviewed page 606 of the trial transcript and agreed he waived Applicant's appearance during that "motion." (PCR 43). He did not recall discussing that with Applicant but stated, "I probably did not ask him." (PCR 43). Counsel stated it would be common for him to waive his client's appearance at a motion hearing like that one. (PCR 43).

This Court finds counsel articulated a valid strategy for not moving to sever the trials and thus was not deficient in this regard. Specifically, counsel **credibly** explained he did not want to sever the trial because he believed Belton was more culpable, and the jury would be less focused on Applicant if Applicant was tried with Belton. This Court finds this is a valid strategy, and Applicant has failed to rebut the presumption that this strategy fell within prevailing professional norms. Further, because counsel and Applicant did not join in the motion, this Court finds counsel's failure to ensure he and Applicant were present at Belton's motion hearing did not fall below prevailing professional norms. Thus, Applicant did not prove deficiency.

Likewise, Applicant has not shown a reasonably likelihood the outcome would have been different had counsel joined in the motion to sever or ensured Applicant's attendance at the hearing. Ultimately, Applicant and Belton were tried together, meaning any motion to sever was denied.[6] Thus, this Court finds Applicant has not shown prejudice in this regard. Overall, counsel articulated a valid strategy for not seeking to sever Applicant's trial from Belton's and thus was not ineffective in this regard.

Finally, Applicant has not shown counsel was ineffective for "waiving" his appearance at trial. The "motion" referenced by Applicant on page 606 of the trial transcript occurred on the start of the third day of trial, when the solicitor informed the Court she intended to call as an additional witness a custodian of records from the clerk of court's office. The custodian of records had pulled a 2002 murder arrest warrant for Applicant, and the State sought to call her to establish that Applicant once lived in McClellanville—where this murder occurred. (R. 603). Trial counsel objected, arguing it was highly prejudicial and hearsay. (R. 603-04). The Court indicated it would allow limited testimony that, according to the document, Applicant had lived in McClellanville, but it would not allow testimony about *what* the document was. (R. 604-05).

[6] Applicant did not present evidence of what actually happened at that hearing.

At the conclusion of the hearing, the Court noted Applicant was not present and asked if counsel waived Applicant's presence. (R. 606). Counsel responded, "Yes, I have."

This Court finds the foregoing portion of trial was not a critical stage of trial. Further, under these circumstances, this Court finds Applicant has not shown counsel's conduct fell below prevailing professional norms. Counsel argued against the admissibility of the testimony, but the trial court allowed limited testimony about where the document indicated Applicant had lived. If counsel had indicated to the court he was *not* waiving Applicant's appearance for that limited hearing, it is not reasonably likely the court would have changed its ruling on this issue. This Court notes nothing indicates Applicant was not present when the clerk of court testified or at any other stage of trial. At the PCR hearing, Applicant pointed only to this objection—heard outside the presence of the jury—to support his assertion that counsel waived his appearance. Given the limited scope of this objection and the circumstances under which it was raised, this Court finds Applicant did not prove counsel was ineffective for waiving Applicant's appearance. Thus, this claim is denied.

Failed to challenge in-court identification of Constance Manigault

At the PCR hearing, Applicant testified he did not know who Manigault was, and it surprised him that she identified him in court. (PCR 78). He stated counsel "mentioned a name, and I told them that I didn't know who that was." (PCR 79). Applicant agreed he and counsel discussed the fact that Manigault may identify him in court. (PCR 79).

Trial counsel testified he did not specifically recall Manigault's testimony. (PCR 47). When asked whether he considered challenging her in-court identification of Applicant, he replied, "I don't recall doing it and probably not. I wouldn't have known what to challenge because she said that's him." (PCR 48). He acknowledged he did not request a pretrial Neil v. Biggers hearing; when asked why, counsel explained, "I didn't think it was going to be fruitful at

all." (PCR 49). He stated he does not typically "just throw out motions because I can, just the same way I don't make objections because I can. I want to make sure that if I'm gonna do something, it has merit and it has a strong probability of success." (PCR 49). Trial counsel also explained that in jury trials, he does not want to make objections that will be overruled because the jury may think he's trying to hide something. (PCR 51). He averred objections can "bring more attention and more focus to whatever issue it is." (PCR 52).

This Court finds Applicant failed to prove counsel was ineffective for not further challenging Manigault's in-court identification. Nothing in Manigault's testimony and nothing presented by Applicant at the PCR hearing suggested Manigault's identification was based on an unduly suggestive police procedure. See State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012) ("In Neil v. Biggers, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification."); id. ("Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed."). Rather, the crux of Manigault's testimony was she had previously met Bez and entered Bez's number into her phone, and Delaney called her from Bez's phone on the night of the murder.

Further, this Court finds counsel articulated a valid reason for not further challenging Manigault's identification in that he did not want to raise a frivolous objection that may get overruled and cause the jury to think he was hiding something. Notably, trial counsel *did* challenge Manigault's identification of Applicant on cross-examination by eliciting an admission that she only met Applicant once prior to this occasion and she could not recall when she entered Bez's number into her phone. This Court finds counsel's challenge of Manigault's identification

through cross-examination was reasonable within prevailing professional norms, and Applicant failed to prove counsel was deficient.

Likewise, this Court finds it is not reasonably likely the outcome of trial would have been different had counsel further challenged Manigault's in-court identification. Even if her in-court identification had been suppressed (which Applicant has not proven was reasonably likely), Manigault would have still been able to testify that she entered the number of someone named Bez into her phone, and Delaney called her from Bez's number the night of the murder. The State had other witnesses identify Bez in court and/or testify that Applicant's nickname was Bez. (R. 244-45, 318, 447-48, 476-77, 577). Thus, even if Manigault's identification had been challenged and suppressed, it is not reasonably likely the outcome of this trial would have been different, and Applicant did not prove prejudice.

Failed to object to State's closing argument

In his application, Applicant avers counsel was ineffective for not objecting to the State's closing argument. In support, Applicant pointed to one page (1125) of the State's nearly twenty-page closing argument. When questioned about this at the PCR hearing, trial counsel explained that especially in jury trials, he does not want to make objections that will be overruled because the jury will look at him like he's trying to hide something. (PCR 51). He also averred objections can "bring more attention and more focus to whatever issue it is." (PCR 52). Counsel explained,

> This was a week-long trial. And as with every trial, . . . the jurors are tired, they want to get out. They're not listening as closely as they were at the beginning, and I don't want, unless something is incredibly damaging and just completely off the walls wrong, I'm not going to object at closing.

(PCR 52).

This Court finds Applicant has failed to prove counsel was ineffective in this regard. First, this Court finds the solicitor's comments on page 1125 related to the "snitching code" was not improper. See Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) ("A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom."). Likewise, this Court finds the solicitor's comments did not appeal to the personal biases of the jury; were not calculated to arouse the jurors'' passions or prejudices; and were based on reasonable inferences from the trial testimony. See id. This Court further finds counsel articulated a valid reason for not objecting to this argument in that he did not believe an objection here would be successful and he did not want the jury to think he was trying to hide something. (PCR 50-51). This Court agrees that an objection here would have made the jury think he was hiding something, and this Court further agrees the argument here did not rise to the level of warranting an objection. Thus, Applicant did not prove counsel was deficient.

Further—and critically—nothing on page 1125 of the transcript "so infected the trial with unfairness as to make the resulting conviction a denial of due process." See Brown, 383 S.C. at 515-16, 680 S.E.2d at 914-15 ("Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process."). Any statement on page 1125 must be considered in the context of the State's nearly twenty-page closing argument. Overall, this Court finds this argument did not amount to a due process violation, it is not reasonably likely the outcome would have been

different—either at trial or on appeal—if counsel *had* objected to this argument, and Applicant has failed to prove prejudice.

Ineffective Assistance of Appellate Counsel

In his amended application, Applicant contends appellate counsel was ineffective for not raising as an issue a challenge to Willis Walker's qualification as an expert in call-detail analysis. This Court finds Applicant has not proven appellate counsel was ineffective in this regard.

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones v. Barnes, 463 U.S. 745, 754 (1983).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Southerland v. State, 337 S.C. at 616, 524 S.E.2d at 836. Thus, an applicant must prove 1) appellate counsel's performance was deficient, and 2) the applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

At the PCR hearing, appellate counsel recalled reviewing Walker's testimony. He agreed trial counsel preserved an issue related to Walker's qualification as an expert. However, appellate counsel did not believe that issue had much merit.

This Court finds Applicant has failed to prove appellate counsel was ineffective for not raising this issue on appeal. Appellate counsel testified he did not believe this issue had merit. This Court agrees and finds Applicant failed to overcome the presumption that appellate counsel's decision here fell within prevailing professional norms. Specifically, Applicant did not set forth any additional argument or law to support his mere contention that appellate counsel should have raised this issue. Thus, Applicant has failed to prove deficiency.

For the same reason, Applicant has not proven prejudice. Applicant did not set forth any case, statute, or other relevant law to support his contention that this issue should have been raised. Additionally, this Court finds Walker's testimony at trial that he had been an intelligence analyst since 2009; he used call-detail logs as part of his job; he received training on using call logs at Quantico, in Charlotte (one week), in Atlanta (three days), and in Columbia (several days); he received over sixty hours of training in mapping software; he had taught seminars on using cell-phone data; and he had analyzed more than 100 call-detail logs was sufficient for the trial court to qualify him as an expert in call-detail analysis. (Tr. 885-88, 895-900). See Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."). In the absence of additional law, Applicant has not met his burden of proving the outcome would have been different if appellate counsel had raised this issue on appeal. Thus, this claim is denied.

Newly-Discovered Evidence

In his application, Applicant alleges he is entitled to relief based on newly-discovered evidence. Specifically, Applicant alleges:

> Applicant is entitled to PCR based on newly-available and newly-discovered evidence and testimony from co-defendants Jeremiah Belton and Troy Mason. This evidence exonerates Applicant and was not available to Applicant at the time of trial, either because the co-defendant was not available at trial (Belton) or because the co-defendant has since recanted his trial testimony (Mason).

The Uniform PCR Act provides a person may institute a PCR action if "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice". S.C. Code Ann. § 17-27-20(A)(4). To warrant a new trial, an applicant must show the newly-discovered evidence

(1) Is such as would probably change the result if a new trial was had;
(2) Has been discovered since the trial;
(3) Could not by the exercise of due diligence have been discovered before the trial;
(4) Is material to the issue of guilt or innocence; and,
(5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983).

Belton

At the PCR hearing, Belton—Applicant's co-defendant—testified he was also convicted of these charges. (PCR 27). He stated he had an alibi witness that his lawyer did not call. (PCR 28). Belton stated that during his PCR hearing, he testified he was not present at the crime scene. (PCR 28). When asked if he had any evidence regarding whether Applicant was at the crime scene, Belton initially stated, "Not at no crime scene." (PCR 29). He then testified he was not with Applicant. (App. 29). Belton testified he traveled from Charlotte to Columbia to Charleston the night of the murder and was with "the individuals who were at the crime scene

prior to their going to the crime scene." (App. 30). Belton testified Applicant was not with his group. (App. 30).

This Court finds Belton's testimony does not meet the threshold for newly-discovered evidence. Notably, Belton testified he was *not* at the crime scene; he also testified he was *not* with Applicant. Thus, Belton could not offer any testimony as to whether *Applicant* was at the crime scene. Based on Belton's testimony that he was not with Applicant, any alibi witness Belton may have had is not germane to the issue of whether *Applicant* was at the crime scene. Overall, this Court finds Belton's testimony would not have changed the outcome of Applicant's trial. Likewise, this Court finds Belton's testimony was not material to Applicant's guilt or innocence. Thus, Applicant has not met his burden of proving he is entitled to a new trial based on Belton's testimony.

Mason

Applicant called Mason as a witness, and Mason asserted his Fifth Amendment right against incrimination and refused to testify. (Sept. 2022 Tr. 12). In response, Applicant moved to enter into evidence a statement[7] from Mason, Mason's testimony from Belton's PCR hearing, and the circuit court order granting Belton's PCR application. The State objected to the admission of Mason's affidavit and testimony from Belton's PCR hearing, asserting it was hearsay and not admissible under Rule 804, SCRE. The State further contended that at the time of Belton's PCR hearing, it did not have notice that it would need to cross-examine Mason about anything related to Applicant's case. The PCR court accepted the documents as court exhibits for appellate review purposes but deferred ruling on their admissibility at the hearing.[8][9]

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[7] Although this statement purports to be an affidavit, it is not notarized.
[8] Both parties submitted briefs regarding the admissibility of the documents.
[9] Based on this Court's prior finding that any alibi Belton may have had would not be germane to the issue of whether Applicant was at the crime scene, this Court finds the order granting Belton post-conviction relief is not relevant to Applicant's PCR proceeding.

This Court finds Mason's statement and testimony from Belton's PCR hearing are not admissible. Specifically, they do not meet the Rule 804(b)(1), SCRE, exception to hearsay. First, under the plain language of Rule 804(b)(1), the written statement is not admissible because it is not "[t]estimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law." Rule 804(b)(1), SCRE.

Further, Mason's testimony from Belton's PCR proceeding is not admissible under Rule 804(b)(1) because the State did not have "an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." Id. At the time of Belton's PCR hearing, there was no indication that Applicant would seek to introduce or use Mason as an alibi witness. Applicant filed his PCR application on February 1, 2018; in that application, Applicant did not raise any allegations involving Mason. The State dis not have notice that Applicant would proceed on any allegations of newly discovered evidence from Mason's testimony until Applicant filed an amended application on November 29, 2021—approximately one week before Applicant's evidentiary hearing. The testimony Applicant seeks to admit was obtained during Belton's evidentiary hearing on January 20, 2020. At that time, Applicant had not amended his PCR application to alert the State to elicit testimony from Mason regarding Applicant. Any cross-examination of Mason regarding Applicant thus would have required clairvoyance from the State. The State did not have a reason to cross-examine Mason regarding Applicant during Belton's PCR hearing. Thus, this Court finds Mason's testimony from Belton's PCR hearing is inadmissible under Rule 804(b)(1).[10] In the absence of any testimony from Mason, Applicant has not met his burden of proving newly-discovered evidence.

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[10] Further, nothing about Mason's testimony at Belton's PCR hearing is material to Applicant's guilt or innocence. At Belton's PCR hearing, Mason merely testified that since the trial, he (1) provided an affidavit stating they dropped Belton off prior to the incident; (2) Belton was not with the co-defendants at the time of the crime, (3) Belton was not present with the co-defendants on July 10, 2010, and (4) he implicated Belton at trial because he "had a beef with

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 17 day of April, 2023.

JENNIFER B. MCCOY
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

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him." (Belton PCR 13-18). Mason offered absolutely no testimony about whether Applicant was with the co-defendants the night of the murder. Although he recanted his testimony that Belton was involved, he never testified he was recanting his testimony that Applicant was involved. Thus, even if Mason's testimony from Belton's PCR hearing was considered, Applicant has still not met his burden of establishing newly-discovered evidence.

Atty
GS
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AG

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-01247
	)	
Jeremiah F. Belton, #261628,	)	
	)	ORDER GRANTING APPLICATION
Applicant,	)	FOR POST CONVICTION RELIEF
-versus-	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

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CLERK OF COURT

This matter came before this Court in Charleston County on January 22, 2020 upon Applicant's request for post-conviction relief ("PCR"). At the hearing, the State was represented by Benjamin Limbaugh, Esq. and the Applicant was represented by Leslie T. Sarji, Esq. The Applicant, Jeremiah Belton, made several arguments in support of his claim of ineffective assistance of trial counsel, newly discovered evidence, and prosecutorial misconduct. Those arguments and the Court's findings on each are discussed below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted in case number 2014-GS-10-6483 for one count of Possession of a Deadly Weapon During Commission of a Violent Crime; in case number 2014-GS-10-6482 for one count of Burglary, First Degree; and in case number 2014-GS-10-6481 for one count of murder. Applicant entered a not guilty plea and was tried by a jury along with his co-defendant, King Conyers. Applicant was represented at trial by Adam Mlynarczyk, Esquire and Koontz Mlynarczyk, Esquire. He was found guilty on all three charges and was sentenced to concurrent terms of life without parole for murder and burglary,

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first degree, plus five years on the weapons charge.

Applicant filed a timely Notice of Appeal. An *Anders* brief was filed by Appellate Defender Susan B. Hacket. Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the Appeal on January 10, 2018, and remittitur was issued on January 26, 2018.

On March 8, 2018, Applicant filed an initial application for post-conviction relief, and an amended application for post-conviction relief was filed in November 2019. Applicant's original application and amended application for post-conviction relief alleges that he is being held in custody unlawfully as he received ineffective assistance of counsel for the following reasons:

a. Trial counsel failed to adequately investigate his case, including failing to investigate Applicant's alibi witnesses and failed to offer the alibi witnesses' testimony during the trial of this matter;

b. Trial counsel failed to engage in meaningful adversarial testing by failing to conduct adequate cross-examination of the State's witnesses;

c. Trial counsel failed to adequately discuss the evidence produced by the government with Applicant, thereby preventing him from meaningfully assisting with his own defense;

d. Trial counsel failed to address the trial court's abuse of discretion in denying Applicant's Motion pursuant to Franks v. Delaware, 438 U.S. 154 (1978);

e. Trial counsel failed to make timely objections;

f. Newly discovered evidence;

g. Prosecution offered false testimony of county jail cellmate, "Mario," including false testimony regarding job and threats or intimidation;

h. Prosecution offered false testimony of the chief investigator;

i. Prosecutorial misconduct;

j. Prosecution offered perjured testimony during the *Franks* hearing;

k. Improper closing argument was prejudicial;

l. Abuse of discretion; and

m. Trial counsel failed to make objections to jury charge.

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 provided at the Post-Conviction Relief hearing. Further, this Court has had the opportunity to observe the witnesses presented at the hearing, 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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Fraiser v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Post-Conviction Relief Applicant must prove that (1) counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that the deficient performance prejudiced the Applicant's case. Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). In order to prove prejudice, an Applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Courts presume that "counsel rendered adequate assistance and made all significant decisions in

the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. The PCR Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

I. Failure to investigate alibi witnesses

Applicant alleged that trial counsel was ineffective for failing to investigate a certain alibi witness, Magdalene Edwards. Applicant testified at the PCR hearing that he gave trial counsel the name of his alibi, but that trial counsel never investigated further. Applicant testified that he had consistently denied his involvement in the crimes of conviction and that he had told trial counsel "where I was, ... where I went when they dropped me off that night." [PCR transcript p. 21.]. Applicant testified that he was with Magdalene Edwards between 3:00 a.m. and 7:00 a.m., which was during the time of the crimes alleged and that there was no physical evidence that linked him to the crimes. As such, Applicant testified as to his belief that the alibi witness testimony would likely have produced a different result at trial. Applicant testified that trial counsel dismissed his requests for investigation of his alibi witness because the prosecution's case was based solely upon the testimony of co-defendants.

Magdalene Edwards testified at the PCR hearing that Applicant is the father of her youngest daughter. Edwards testified that Applicant was with her from sometime between 3:00 a.m. and 4:00 a.m. on the day of the crimes on July 10, 2010, and that he remained with her until 6:30 a.m. or 7:00 a.m. that morning. Edwards testified that she dropped Applicant off that morning at "the Hub" on her way to work and that it was already daylight outside when she dropped him off.

Adam Mlynarczyk ("trial counsel") testified that his investigation of the case was thorough. Trial counsel testified that Applicant's cell phone had not "pinged" at or near the incident location

and that it stopped at around 3:00 a.m. in the area around Ashley Phosphate in North Charleston and that there was no communication on Applicant's phone until around 6:00 a.m. Trial counsel testified that he had record of Edwards having called his office about a bond modification hearing but that he had never been provided her name as an alibi. Trial counsel admitted that he did not talk to Applicant about "these things" referring to attempts to construct an alibi defense. [PCR transcript p. 83] though he then contradicted himself and testified that he and Applicant *had* testified about alibi and that he had never received a "solid lead" on an alibi.

The South Carolina Supreme Court has held that failure to attempt to investigate an alibi witness is unreasonable. In Walker v. State, the Court noted that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 407 S.C. 400, 405 (2014) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). The Court also recognized that "[o]ne component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable." Id. (citing Grooms v. Solem, 923 F.2d 88, 90 (8th Cir. 1991)).

Applicant testified that he had provided trial counsel with Edwards' name as an alibi witness. Trial counsel contradicted himself when testifying about whether he had or had not discussed alibi witnesses with Applicant. Accordingly, I find Applicant to be credible on this issue. This Court finds that trial counsel was ineffective for failing to investigate a potential credible alibi witness, and that the defendant was prejudiced because the alibi testimony created the reasonable probability of a different outcome at trial had she testified.

II. Newly Discovered Evidence

Applicant alleges that he is entitled to a new trial based on after discovered evidence. An individual requesting a new trial based on after discovered evidence must show: (1) that the evidence is such as would probably change the result if a new trial was had; (2) the the evidence has been discovered since the trial; (3) that the evidence could not by the exercise of due diligence have been discovered before the trial; (4) that the evidence is material to the issue of guilt or innocence; and (5) that the evidence is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-612 (1983). Each prong of the test must be met for an Applicant to prevail on a claim for a new trial based upon newly discovered evidence. "Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." State v. Wright, 269 S.C. 414, 237 S.E.2d 764 (1977) (quoting State v. Whitener, 228 S.C. 244, 89 S.E. 2d 701(1955)).

Troy Mason, a co-defendant who testified against Applicant during his original trial, was present and offered testimony at the PCR hearing. Mason testified after having been advised by the Court that he could be charged with perjury for lying under oath if he testified at the PCR hearing in a way that was substantially different from the testimony he offered at trial. Mason was instructed as to the possible penalties he would be facing if that happened.

Mason stated he testified at Mr. Belton's original trial that Mr. Belton was present and participated in the crimes of conviction. Mason admitted that after the trial, he had provided an affidavit to Belton attesting to the fact that Belton had been dropped off prior to the crime and that he was not present nor did he participate in the crimes of conviction. Mason testified that Applicant was not actually present on the night of July 10, 2010, the night of the crimes that resulted in Applicant's conviction.

When questioned as to why Mason would have lied during the trial about Belton's involvement, Mason explained that he has "personal issues" with Belton and that the testimony Mason had offered during the trial was his way of getting back at Belton. Mason testified that he had realized since being in prison that "putting a man in prison for the rest of his life for something he wasn't involved in is just not right. Like that eat at your conscious [sic] just as worse as the crime itself." [PCR transcript p. 16.] Trial counsel cross-examined Mason during trial about the veracity of Mason's testimony, and trial counsel testified that he believed it was clear at the time of trial that it was clear that Mason was not telling the truth, but the admission from Mason of having offered perjured testimony was not something that could have been gathered by the defense at the time of Applicant's original trial.

This Court finds Mason's testimony to be unreliable. Mason admitted to lying during Applicant's trial because he was trying to get back at Applicant for "personal issues" he had with Applicant. Moreover, Mason was advised of the penalties he would be subjecting himself to if he testified at the PCR hearing in a manner substantially different from what he had said during Applicant's trial. Even knowing that the testimony he gave at the PCR hearing could be against Mason's own penal interest, Mason testified that he had previously lied at trial. This Court finds that the testimony Mason offered is not believable and Applicant's PCR is denied on the grounds of newly discovered evidence.

III. Failure to object to jury instruction on hand of one is the hand of all

Applicant alleges trial counsel was ineffective for failing to investigate if the hand of one is the hand of all charge is unconstitutional and for failing to object to the jury instruction being given. However, trial counsel was not deficient for failing to object to the instruction where evidence existed in the record to support the charge and there was no basis for any objection.

Applicant testified that he doesn't believe that the jury should have been charged the hand of one is the hand of all because he didn't kill anyone. Applicant testified that he did not participate in the murder. Applicant testified that he was not on the property and there was no proof of that. Applicant testified that his understanding of the law was that he would have had to participate, aid, abet, or assist in the crime. Applicant testified that Troy Mason did not testify that he participated, aided, or assisted in the murder and Mario Caldwell testified that Applicant was never in the house when the crime happened. Trial counsel testified that the testimony of Troy Mason and Mario Caldwell supported the jury instruction on the hand of one is the hand of all.

"In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct.App.2003). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Id. at 318, 577 S.E.2d at 464. A jury charge which is substantially correct and covers the law does not require reversal. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996). State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "The substance of the law is what must be charged to the jury, not any particular verbiage." Adkins, 353 S.C. at 318–19, 577 S.E.2d at 464. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011). "A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989). "However, if the trial judge refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request." Id. " 'It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand,

and the principle is not otherwise included in the charge.' " State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct.App.2005) (quoting Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000)). "If there is any evidence to support a charge, the trial court should grant the request." Williams, 367 S.C. at 195, 624 S.E.2d at 445. State v. Brandt, 393 S.C. 526, 549–50, 713 S.E.2d 591, 603 (2011). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). A trial judge's failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues. Id. at 479, 697 S.E.2d at 583–84. "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." Id. at 479, 697 S.E.2d at 584. State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011).

Applicant has failed to prove that trial counsel was deficient for failing to challenge the constitutionality of the hand of one is the hand of all jury instruction or for failing to object to the instruction being given. First, trial counsel had absolutely no basis for objecting to the constitutionality of the instruction, as the instruction has consistently been held to be constitutional. Neither this Court, nor the Supreme Court of this state, would require trial counsel make objections with no legal basis. Second, this Court has found no basis upon which trial counsel could have objected to the trial court instructing the jury on the hand of one is the hand of all. This Court finds that significant evidence exists in the trial record to support the trial court giving the instruction and any objection, if sustained, would have been overturned on appeal. However, this Court finds that if any objection would have been made it would not have been sustained by the trial court. This Court finds that Applicant has failed to meet his burden and this allegation is dismissed with prejudice.

IV. Failure to adequately cross-examine the witnesses

Applicant alleges trial counsel was deficient for failing to engage in meaningful adversarial testing by failing to conduct adequate cross-examination of the State's witnesses. However, Applicant has failed to meet his burden in proving either deficiency or prejudice as to this allegation.

Applicant testified trial counsel could have cross-examined Mario Caldwell more thoroughly. Applicant testified that Caldwell saying that the only reason he did not leave that night was because he was waiting for a hundred-dollar payment to come for picking Applicant up in Charlotte was untrue. Applicant testified further that Caldwell's testimony that Caldwell was working and Applicant showed up there to intimidate him was false. Applicant testified that Caldwell was actually the one who got him the job and cosigned for him to get it. Trial counsel testified that he felt that he did a good job cross-examining the witnesses in this case. Trial counsel testified that he thought it was pretty clear that they were not telling the truth and they were just trying to get a deal for themselves. Trial counsel did testify that he wished he had gotten the written transcripts of the recorded statements of Caldwell, but still felt that that his cross-examination was effective. Trial counsel testified that he did get out to the jury that the witnesses had changed their stories multiple times throughout the case.

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain

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strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). "[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include 'which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.' What motions to file and 'whether to put on evidence so as to preserve the final word in closing argument' are also strategic and tactical decisions to be made by trial counsel." Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (internal citations omitted). Trial counsel's strategy is reviewed under "an objective standard of reasonableness." Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

Applicant has wholly failed to meet his burden in proving both deficiency and prejudice relating to the allegation that trial counsel was ineffective for failing to properly cross-examine witnesses. Trial counsel effectively cross-examined both Troy Mason and Mario Caldwell, highlighting for the jury the multiple varying statements of the witnesses. This Court finds that Applicant has failed to prove any deficiency on the part of counsel and has presented no evidence he was prejudiced by the alleged deficiency. Therefore, this Court dismisses this allegation with prejudice.

V. Ineffective assistance of appellate counsel for failing to challenge the trial court's abuse of discretion for denying a Frank's hearing

Applicant alleged appellate counsel was ineffective for failing to challenge the trial court's decision to deny Applicant a Frank's hearing. However, Applicant withdrew this allegation during his evidentiary hearing. (PCR p. 101). Therefore, this Court dismisses this allegation with prejudice.

VI. Prosecutorial Misconduct

Applicant alleged the State either knowingly based on information was aware of the perjury being committed by its own witnesses of Frank's hearing as well as trial. However, Applicant has wholly failed to meet his burden concerning this allegation. Applicant testified he believes the prosecutor allowed the witnesses to testify falsely at trial. Applicant testified that the prosecutor misled the jury with her opening statement, closing arguments, and other statements that she made during trial. Applicant's only presented evidence was his opinion testimony and no other evidence was presented to this Court. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, therefore, this allegation is dismissed.

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CONCLUSION

Based on the foregoing reasons, this Court finds and concludes that the Applicant has established sufficient constitutional violations and deprivations and that this Court is required to grant his application for Post-Conviction Relief. Specifically, that Applicant was prejudiced by trial counsel's failure to investigate an alibi witness. This application must be granted and the Applicant's case reversed and remanded. Accordingly;

IT IS THEREFORE ORDERED that the Application for Post-Conviction Relief must be granted and the Applicant's conviction is hereby SET ASIDE and the Applicant's sentence is hereby VACATED. This matter is hereby REMANDED for further prosecution.

IT IS FURTHER ORDERED that the Defendant shall remain in custody until the resolution of his case.

AND IT IS SO ORDERED!

JUDGE EDGAR W. DICKSON
PRESIDING JUDGE, 9TH CIRCUIT

Charleston, South Carolina
January 7, 2022

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Jennifer B. McCoy, Circuit Court Judge

Case No. 2018-CP-10-494

King Conyers, #317737, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

King Conyers, Petitioner, appeals the attached Order of Dismissal issued by the Honorable Jennifer McCoy on April 24, 2023. Petitioner, through counsel, received notice of the entry of the Order on April 29, 2023.

Date: May 1, 2023

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