

**VOLUME II OF II**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County

**S.C. SUPREME COURT**

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

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STEVEN R. LEWIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000539

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APPENDIX

\_\_\_\_\_

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1 A Mr. Cash is the one that is -- is said to be -- had ran  
2 from the house, not me. I'm the one in there asleep.

3 Q And then in -- in closing, Mr. Bulsa takes advantage of  
4 that -- those comments and refers to them in Line 17.  
5 What -- what's he saying to the jury there? Can you read  
6 that?

7 A "It's kind of shocking to hear the officers say that 40  
8 people arrived" --

9 THE COURT REPORTER: (To the applicant) I'm sorry.  
10 I -- I can't understand. Can you speak up?

11 A "It's kind of shocking to hear the officers say that 40  
12 people arrived to apprehend him. That's how dangerous  
13 they thought the situation was."

14 Q Do you think that affected the jury, hearing that?

15 A Yes, ma'am.

16 Q How about -- did you get discovery? Did you get to  
17 review all your discovery?

18 A I got most of it. He brought it bits and pieces at a  
19 time. I still had -- I was getting pieces of it right  
20 before we went to trial.

21 Q Okay. And did you . . .

22 What -- what about the testimony? You didn't -- you  
23 chose not to testify, correct?

24 A No, ma'am. I did not.

25 Q Why is that?

1 A Mr. Shealy told me that that would best if I didn't.

2 Q All right. And you -- but you knew you had a right to if  
3 you wanted to?

4 A Yes and no. I wasn't for sure exactly how everything  
5 worked. I was just going off of what he was telling me  
6 because, like I said, from the very first time that I had  
7 met with him, he was telling me that he wanted to take  
8 this case to trial. He didn't see where he would have a  
9 problem beating it, you know, he -- he believed that I  
10 didn't do what was said to have been done, and he wanted  
11 to take it to trial because he felt he could win and have  
12 me free. So I just kind of went along with what he was  
13 saying when we spoke and, you know, he kept making  
14 everything sound good and then in the end when we  
15 actually went to court, it was kind of like he just  
16 turned his back on me. I don't know.

17 Q Okay. How about the testimony of Mr. Cash? Tell me a  
18 little bit about that. He's here prepared to testify as  
19 a witness. Well, not testify as a witness, but testify  
20 as a witness and for the purposes of your PCR.

21 A During -- during my trial, his grandmother came to the  
22 courthouse and stopped the trial and said that Mr. Cash  
23 was back at the jail and wanted to speak with my lawyer.  
24 And so they stopped the trial and went there -- my lawyer  
25 went there and spoke with him. The next day we came back

1 and I asked him, you know, what Mr. Cash had said and  
2 what the plan was from then -- from there, you know.

3 Q Uh-huh.

4 A And he said -- he said, "I -- I can't let Mr. Cash on the  
5 stand because I feel that he'll lie."

6 I said, "Well -- I mean, that's kind of up to the  
7 judge and the jury, correct?" You know, I mean, he just  
8 kind of . . .

9 Q Uh-huh. Okay. And -- and he's here today, would you  
10 like him to testify -- I mean, to what he would have  
11 said, today for this PCR?

12 A Yes, ma'am.

13 Q Is there anything else you'd like to tell the judge about  
14 your case?

15 A Just that I feel that Matthew Shealy really didn't have  
16 my interest -- my best interest at heart when we went to  
17 trial and during trial, you know, the things that I was  
18 asking him to do and everything and like I said before,  
19 it's kind of like he turned his back on me once we got in  
20 the trial. But from Day 1, you know, he was all for it,  
21 and he's the one that -- I don't know if you could say  
22 it, but he pretty much talked me into going to trial  
23 versus taking the 15 to 30 because he -- that's -- even  
24 he told the judge, you know, like at my bond hearing, you  
25 know, "This is triable case; we plan on taking it to

1 trial." Well, at that time I didn't know very much about  
2 anything as far as trials, my case, or anything. It had  
3 only been a few months, and he was saying, you know, it  
4 was a triable case; he had planned on taking it to trial.  
5 So, of course, I went with his recommendations on  
6 everything.

7 Q Okay.

8 MS. ROSS: (To the applicant) I have no further  
9 questions. Please answer any questions from the  
10 Attorney General.

11 THE COURT: Ms. Marto.

12 MS. MARTO: Yes, Your Honor.

13 **CROSS-EXAMINATION OF STEVEN LEWIS**

14 BY MS. MARTO:

15 Q Good morning, sir.

16 A Good morning.

17 Q So can you give us a bit of a background of the facts in  
18 this case?

19 A As far as?

20 Q What did the State allege happened?

21 A They alleged that someone had been shot and killed and  
22 someone else had been shot and it was an attempted  
23 murder, but as far as details, I only know what I had  
24 read.

25 Q Do you know who the victims were in this case?

1 A I know both of them.

2 Q How do you know them?

3 A Because Ms. Scruggs and her boyfriend, Carey -- that's  
4 someone I was actually staying with when I first got to  
5 South Carolina. I was working in South Carolina and  
6 that's someone I had went and stayed with for a few days  
7 while I was working here.

8 Q Okay. So --

9 A And that's when I met the other witness, Ms. Cash; that's  
10 when I met her and Mr. Cash and started talking to Ms.  
11 Cash.

12 Q Okay. So you lived with the victims in this case?

13 A For a short period of time, yes.

14 Q Okay. And one of the victims survived, correct?

15 A Yes.

16 Q And she testified at trial?

17 A Yes.

18 Q Okay. And she testified that she recognized you and Mr.  
19 Cash pretty much immediately, correct?

20 A Yes and no. Like I said, it was different between the  
21 two trials. There was a difference in between both of  
22 them, so . . .

23 Q Right. She stated at one trial that you were the  
24 shooter, and at another trial that Mr. Cash was the  
25 shooter, but she stated that she knew both of you were

1           there on scene; is that correct?

2   A       She did, yes. But at the same time Mr. Shealy was trying  
3           to point out the facts that, you know, they said that  
4           this crime happened somewhere between -- if I'm not  
5           mistaken, like three and five in the morning, so it was  
6           dark outside. And when we tried to bring up the facts  
7           that they said there was no lights on in the house,  
8           anything like that, that there would be no possible way  
9           of even identifying someone, then we kept getting shut  
10          down as far as trying to bring up -- trying to bring that  
11          up.

12   Q       Because Casey was pretty confident that she recognized  
13          both of you, correct?

14   A       I'm -- yes.

15   Q       Yeah.

16   A       But, I mean, she would because I had lived there, you  
17          know, I mean, it's not that -- to say that I was the  
18          person there when the crime happened, but just someone  
19          who was fresh on her mind. Because she didn't like me,  
20          she had a grudge against me because her boyfriend, Carey  
21          -- them two -- they had -- they were on parole for  
22          counterfeit money -- federal parole, and she didn't --  
23          she tried to get up with me while he was at work one day  
24          and when I told Carey about that, he brought it up to her  
25          and they got into a big fight and -- but they stayed

1 together because they had both been in trouble together.  
2 When I mentioned it to him, he said that he felt like she  
3 could get him in more trouble if he was to break up with  
4 her, so he stayed with her. But for her to actually --  
5 she had a grudge against me from that because she tried  
6 to get up with me, and I wouldn't have anything to do  
7 with it, so, basically, she had a grudge against me.

8 Q She had a grudge against you, so she framed you for  
9 murder?

10 A I mean, if that's how it -- it would look, then, yes.  
11 But, I mean, I wouldn't say that that's the whole  
12 reasoning behind it. I mean, there could have been -- I  
13 don't know her reasons behind it, you know. I really  
14 don't.

15 Q Right.

16 A We tried to bring up the fact that, you know, it was just  
17 -- she may have mentioned my name because I had been  
18 staying there, you know. She didn't really see many  
19 people. She may have thought she seen me, just because  
20 everything that was going on.

21 Q And are --

22 A I don't know.

23 Q -- you saying that your attorney brought all that up in  
24 cross-examination?

25 A We tried.

1 Q Okay. So you wanted to be tried together with Mr. Cash;  
2 is that correct?

3 A Yes.

4 Q But is it also your contention that he was more, I guess,  
5 guilty than you?

6 A I don't -- I had no idea if he did it or not. Like I  
7 said, I -- when he picked me up, I had no idea if he did  
8 any -- any crime or not. I don't know if he did or not.  
9 I still to this day don't know if he did or not.

10 Q Okay. Do you know if anybody else was in the house  
11 beyond the four of you?

12 A When? There was not four of us.

13 Q Well, it would have been Casey, Carey, you, and Cash,  
14 correct?

15 A (No response.)

16 Q Was anybody else in the house?

17 A When are you speaking about, because there wasn't just  
18 the four of us in that house at any given time?

19 Q Okay. Who -- who else was in the house?

20 A When?

21 Q When the shooting took place?

22 A Ma'am, I'm not sure. I wasn't there.

23 Q Okay. But she said you were there the whole time,  
24 correct?

25 A That's what she said, yes.

1 Q Gotcha.

2 A But it was also said that she was shot in the head at one  
3 spot and there was a bullet in the floor there, but there  
4 was only -- at the scene, one drop of blood and it even  
5 says that in the -- in the motion -- or the discovery I  
6 had. There was only one single drop of blood found on a  
7 stuffed animal right there by that bullet hole in the  
8 floor, but yet, she was at the neighbor's house pouring  
9 blood everywhere, that they had to clean it up, it was so  
10 much, you know. So as far as what happened, I -- I don't  
11 know.

12 Q Now, did your attorneys tell you you would win at trial?

13 A Yes. He did.

14 Q And that's why he told you not to take any of the plea  
15 offers or to plead?

16 A Yes. When he brought the pleas to me, he -- he said, "I  
17 -- this is outrageous, you know. They -- I've got to  
18 bring it to you, but, you know,  
19 we're -- we're going to trial." That's what he told me  
20 when he brought me the 40 to -- if I testified, it would  
21 be 40 years.

22 Q Now, he talked to Mr. Cash about testifying at your  
23 trial, correct?

24 A He did, yes.

25 Q And after speaking with him he decided not to call him as

1 a witness?

2 A Yes.

3 Q And at trial you were found guilty of murder, first  
4 degree burglary, armed robbery, and attempted murder,  
5 correct?

6 A Yes.

7 Q And that's why you received a life sentence because of  
8 the murder?

9 A Yes.

10 Q And that trial --

11 THE COURT REPORTER: Sir, please speak up.

12 Q -- was before Judge Cole, correct?

13 A Yes.

14 Q Now, you stated that originally Mr. Cash offered a  
15 statement in which he blamed you and that lead to you  
16 getting more convictions, correct?

17 A No. That led to us both being charged with more charges  
18 than what we had prior had (verbatim.)

19 Q But you think that he could have helped you at trial?

20 A Yes.

21 MS. MARTO: One moment, Your Honor.

22 Q So where were you when the shooting took place?

23 A I was at Mr. Cash's house -- his grandmother's house with  
24 Nicole Cash.

25 Q Where was Mr. Cash?

1 A He went to go buy some drugs from Carey, the guy that was  
2 deceased.

3 Q Okay. But you were never with him during that incident -  
4 -

5 A No.

6 Q -- right?

7 A I was not.

8 Q Did you -- so what happened after the incident?

9 A That morning, I got woke up -- the morning that we went  
10 back to North Carolina, I got woke up by him, saying that  
11 he was ready to go, take me back to North Carolina. I  
12 was there with Nicole and I put my stuff in the car and  
13 on the way back to North Carolina, I fell asleep on the  
14 way back and then as soon as we got to my house, once we  
15 unloaded everything, I went in there, laid down on the  
16 couch and went back to sleep. I had been working all  
17 week and was tired.

18 Q Okay. Now, how did you get to North Carolina?

19 A Mr. Cash took me.

20 Q In what car?

21 A In his personal car.

22 Q In his personal car?

23 A Yes.

24 Q He didn't take you in a PT Cruiser?

25 A No, ma'am.

1 Q Now, what would your testimony at trial have been, if you  
2 testified there?

3 A I don't know. I -- we didn't discuss anything about me  
4 testifying at trial, so I don't -- I don't know what it  
5 would have been.

6 Q Would you have told your story of the events?

7 A Yes.

8 Q And would that story have been the same story you just  
9 gave this Court today?

10 A Yes.

11 Q Do you know what the State said the murder weapon was?

12 A They said some -- a 9-millimeter pistol.

13 Q Do you know where they got the gun from?

14 A No. I do not.

15 Q Okay.

16 MS. MARTO: No further questions, Your Honor.

17 THE COURT: All right. (To Ms. Ross) Any redirect?

18 MS. ROSS: No, Your Honor.

19 THE COURT: All right. (To the applicant) You may  
20 step down.

21 (WHEREUPON, the applicant was excused.)

22 THE COURT: All right. (To Ms. Ross) Next witness.

23 MS. ROSS: We call Mr. Jason Andrew Cash via video.

24 THE COURT REPORTER: Mr. Cash, I'm the court  
25 reporter. Can you hear me?

1 MR. CASH: Barely. Yes.

2 THE COURT REPORTER: Can you hear me now?

3 MR. CASH: (No response.)

4 THE COURT: Mr. Cash, can you hear the court  
5 reporter?

6 THE WITNESS: I can hear you, but she's going in and  
7 out. I can barely hear her.

8 THE COURT REPORTER: Can you hear me now?

9 MR. CASH: Yes.

10 THE COURT REPORTER: Okay. Please raise your right  
11 hand.

12 MR. CASH: Ma'am?

13 THE COURT REPORTER: Please raise your right hand.

14 MR. CASH: Oh.

15 THE COURT REPORTER: I can get on another computer.

16 THE COURT: Hold on just a minute. She's getting in  
17 front of the computer, Mr. Cash. Hold on.

18 THE COURT REPORTER: Okay. Please raise your right  
19 hand.

20 (WHEREUPON, the witness was sworn.)

21 **DIRECT EXAMINATION OF JASON CASH**

22 BY MS. ROSS:

23 Q Hey, Mr. Cash. Can -- can you see me in the courtroom?

24 A No, ma'am. I can only see the Judge.

25 THE COURT REPORTER: Your video's not on.

1 Q Now?

2 A Okay. Hey.

3 Q Okay. Mr. Cash, we talked last week on the phone; is  
4 that correct? Can you hear me?

5 A Yes, ma'am.

6 Q We've spoken on the phone; is that correct?

7 A Yes, ma'am.

8 Q And I wanted to see -- were you -- I guess the questions  
9 that pertained to this PCR, were you available and  
10 willing to speak as a witness at Mr. Lewis's trial?

11 A Yes, ma'am.

12 Q And, at that point, you had been tried already; is that  
13 correct?

14 A Yes, ma'am.

15 Q And now you're in a good place where you -- you've had  
16 your PCR, as well?

17 A Yes, ma'am.

18 Q Okay. Now, when you spoke to Mr. Shealy -- just going  
19 back to the time of Mr. Lewis's trial -- was that the  
20 first time you'd spoken to him?

21 A Yes, ma'am.

22 Q And -- and you never were called to testify at Mr.  
23 Lewis's trial, correct?

24 A Recalled? What do you mean?

25 Q No. Mr. Shealy, after speaking to you, never had you

1           testify at Mr. Lewis's trial, right?

2   A       No, ma'am. I was gonna testify on his behalf.

3   Q       What would you have said?

4   A       That he never got out of the vehicle. He -- he said it  
5           hissself (verbatim) a minute ago, he was asleep in the  
6           car.

7   Q       Who was in the house?

8   A       The victim and, at the time, right before I left, whoever  
9           the -- the girl, Casey, is mentioning in these -- we have  
10          some recordings when she was speaking to my family,  
11          telling my mother what happened and all the events. And  
12          whoever she's referring to -- these Hells Angels members  
13          that came, while I was doing the deal with Carey and upon  
14          leaving, while all this was going on, these two people  
15          showed up and we -- we were leaving. He never left the  
16          vehicle; he was asleep in the car.

17   Q       So --

18   A       And upon --

19   Q       Go ahead.

20   A       -- upon leaving they -- they were already there, I mean,  
21          in the driveway, but they were getting out of their  
22          vehicle.

23   Q       All right. And what did Mr. Shealy tell you about  
24          testifying?

25   A       He said that he would be unable to allow me to testify on

1 his behalf because -- and that he had already mentioned  
2 to him -- or that they had already discussed something  
3 that went against what I was saying, but I don't see  
4 where that's possible. Everything he said was the same;  
5 he was asleep in the car.

6 Q And your point was that Mr. Lewis wasn't the shooter?

7 A Well, neither one of us were. We were -- we were  
8 leaving. He was asleep in the car. He didn't even know  
9 I went back to buy another bag because I was -- we were  
10 going to North Carolina, and he -- like, I said, he never  
11 even he was there; he was asleep in the car.

12 Q All right. And Mrs. -- Mrs. Cash is your sister,  
13 correct?

14 A Yes, ma'am.

15 Q Now -- and as far as -- as Casey, was she -- did you --  
16 was she under the influence a lot? Did she use a lot of  
17 drugs?

18 A At the time this event happened, they were trying to go  
19 to bed. That's why, you know, I didn't wake him for us  
20 to even go in there and really hang out too long, because  
21 they had been up for like five days -- five days  
22 straight. And any person past 72 hours is really, like,  
23 you know, mentally unstable and seeing stuff already. So  
24 they were just ready to go to bed. He didn't even want  
25 me to come back to buy anything else, you know. They

1           wanted to go to bed, but he wasn't gonna turn down the  
2           money, you know.

3   Q       And do you know if they had cameras on their house, just  
4           as an aside?

5   A       Yes. They did.

6           MS. ROSS: (To the Court) One second.

7   Q       You -- you wrote a letter of sorts saying all this to Mr.  
8           Lewis, as well, didn't you?

9   A       Yes. After I -- I guess while I was waiting to go to  
10          SCDC after my trial --

11   Q       Uh-huh.

12   A       -- I wrote him a letter -- I wrote him a letter stating  
13          that I would be willing to testify on his behalf to let  
14          the court know this. And when Mr. Shealy heard what I  
15          had to say and, like I said, he immediately shot me down  
16          and said, you know, "I can't allow you to testify on his  
17          behalf," because whatever I was saying was against what  
18          he claimed Mr. Lewis had already said to him or hinted to  
19          him to be other facts, so he was saying something about  
20          the Bar that the State could disbar him or something. I  
21          don't know, he just wasn't for it.

22   Q       All right.

23          MS. ROSS: (To the witness) I have nothing further.  
24          Please answer any questions the Attorney General may  
25          have.

CROSS-EXAMINATION OF JASON CASH

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BY MS. MARTO:

Q Good morning, sir.

A Good morning.

Q So the State alleged that you were Steven Lewis's co-defendant in this case; is that correct?

A Yes. It is, like, it's solely based off what Casey and -- you know, changed her story and said so many times that we was together and we -- we were working together, you know, so, I mean, I guess that would make us co-defendants if she said we were together.

Q And Casey held that pretty consistently, right, that the two of you were together the whole time?

A Well, yeah. He was seeing my sister, so we were -- we were hanging out a lot.

Q And why do you think Casey said that you did it if you didn't do it?

A See, that's the thing, the first thing out of her mouth was that he done it, but like he said, she had a grudge on him, because -- that girl had tried the same thing with both of us. When her boyfriend was not around, she would try to hit on us. It's like the first time I've, you know, ever said no to a -- a girl, you know, like that in the type of situation. But she had acquired some type of hepatitis or something, and we knew this so, you

1 know, whatever his reason was, that was my reason for,  
2 you know, "No. You know, get away from me, I'm -- you  
3 know, I'm (inaudible.) So she had some type of a grudge  
4 against both of us on the same situation.

5 Q But you're saying --

6 A I mean, first it was him, then it was me, like, you know,  
7 during my trial it was supposedly me and, you know, him.  
8 And then his trial, it was him and then we got these  
9 telephone recordings of her saying that it -- you know,  
10 the truth of it, it was some members claiming to be in  
11 the Hells Angels, whoever he was locked up with in  
12 federal prison, and they still had ties together or  
13 whatever, the people that showed up as I was leaving from  
14 buying the drugs from him. That's where, you know, she  
15 changed her story three different times. So, who really  
16 -- who knew?

17 Who's to say that she didn't do it? If you look at  
18 the crime scene, you know, she could have shot him after  
19 getting beat up or whatever because the injury that she  
20 sustained was inconsistent with a gunshot wound to the  
21 back of her head. So she could have gotten beat up by  
22 him. The house was tore up. They could have had a big  
23 fight over all the stuff. She could have killed him and  
24 then, you know, after getting beat up and then panicked  
25 and not knowing what to do, you know, going to the

1 neighbor and made the story up of, I guess, whoever she  
2 thought at the time to say, you know.

3 Q And it's your contention that the Hells Angels did it,  
4 right?

5 A That's what she said and then, you know, there was two  
6 guys that were getting out of their car when I was  
7 leaving. So that's the last people we seen over there,  
8 you know, but they were buying stuff a lot, too. Like I  
9 said, if it wasn't them, you know, the first party that  
10 she was, you know, then it could have been her herself.  
11 There was no --

12 Q And --

13 A -- blood in -- they said that we walked -- they said that  
14 two people had walked through these -- these tracks of  
15 blood -- a big pool of blood in the kitchen, but there's  
16 no blood in my car. There's no blood in the vehicle that  
17 we had, you know, to work on, you know, for Carey. We  
18 had the vehicle like a week prior to all this stuff,  
19 including that car. No blood in my car. So if we walked  
20 through all this blood, why is there no blood, no gunshot  
21 residue, no nothing on any -- either one of us, or the  
22 vehicle that they said we went away in after doing this?  
23 It's because there was no blood anywhere when we left.  
24 The crime hadn't happened, yet.

25 Q There was no mention of the Hells Angels at trial,

1           though, correct?

2   A       No.  There wasn't any at all, but on the telephone  
3           recordings, her conversations with my mother, she was  
4           telling her, you know, everything that went -- that  
5           happened, and the reason that she said that she didn't  
6           tell the truth at either trial or any statement, because  
7           whoever was involved in this that claimed to be with the  
8           Hells Angels or she thought was with the Hells Angels,  
9           she said they approached her and threatened her and her  
10          son's life if she said it was anybody else other than,  
11          you know, not them.  But it was strictly, you know, not  
12          them or, "You and your son -- you know, your life's in  
13          danger."  That's why she said that she was covering this  
14          stuff up like this; that's what she claimed.

15   Q       Now, Mr. Shealy came to visit you concerning your  
16          testimony, correct?

17   A       Yes.  They called me back -- over to County like two  
18          weeks after my trial right before his, to talk to him,  
19          you know, on his behalf for him.

20   Q       And what did y'all discuss when he came to visit you?  
21          What did you say your testimony would be at trial?

22   A       Same thing that I just said.

23   Q       And, now, you're stating that Mr. Lewis was asleep in the  
24          vehicle the whole time, correct?

25   A       Yes.

1 Q And --

2 A He fell asleep like five minutes after leaving my house  
3 and he didn't wake up. He was running -- like I said,  
4 they were up for five days, but we were also up for a  
5 couple days ourself (verbatim) and he had been working  
6 and got me a job working with him, so we were tired, as  
7 well. So five minutes after we went to my house, he was  
8 asleep and he slept -- he woke up like one time on the  
9 way to his house and that was about it. That's when I  
10 stopped at the store to get gas.

11 He was out the whole time, and that's where they  
12 found him at -- it was on the couch because as he told  
13 you, he went in his house and went to sleep on his couch.  
14 The only reason I stayed with him that night was because  
15 we were supposed to go to work that next morning at the  
16 job running, like, fiber optic cable that he had gotten  
17 me along with a crew working up there with him in North  
18 Carolina.

19 Q And, now, did you just hear Mr. Lewis's testimony?

20 A I could hear little bits and pieces of it, but it was too  
21 far out of range --

22 Q Do you recall --

23 A -- yes, ma'am.

24 Q -- him saying -- I believe he said he was at Mrs. Cash's  
25 house at the time of the incident. Do you recall that?

1 A Yes. I went to get a bag from Carey while he was there,  
2 but, like, he said -- when he went to sleep in the car I  
3 was -- you know, I was a drug addict, so I wanted to go  
4 buy -- go buy another bag of -- it wasn't like an hour  
5 after I left the first time I went back to the house and  
6 knew I needed -- it was one of those times I would need  
7 another bag, so I called him back and five minutes after  
8 we left the house, he fell asleep, so he never knew I  
9 went back and bought another bag, but, you know --

10 Q Okay.

11 A -- so, I mean, I went there twice that night, but saying,  
12 you know, the second time he was with me and didn't know  
13 because he was asleep in the car.

14 Q And, immediately, after the incident, you and Mr. Lewis  
15 took off and went to North Carolina, correct?

16 A Before the incident (audio interruption) after the  
17 incident. Before the incident even happened, as I said,  
18 I was leaving after buying a bag from him, I was at the  
19 door. I went to sit in their living room for a second to  
20 do the last little bit of the first one, and we left. As  
21 we were leaving, these two guys were sitting in a car  
22 outside with the -- they still had the headlights -- they  
23 were putting the headlights off as I walked out. They  
24 had just pulled in, and as I was pulling out of the  
25 driveway, they're getting out of their vehicle.

1 MS. MARTO: No further questions, Your Honor.

2 THE COURT: All right. (To Ms. Ross) Any redirect?

3 MS. ROSS: No, Your Honor.

4 THE COURT: All right. Thank you, sir.

5 MS. MARTO: May the witness --

6 THE COURT: We can end the --

7 MS. MARTO: -- be excused?

8 THE COURT: -- Webex, right?

9 THE COURT REPORTER: Yeah. We're done.

10 MS. ROSS: No objection.

11 (WHEREUPON, the witness was excused.)

12 THE COURT: All right. Anything else from the

13 Applicant?

14 MS. ROSS: No, Your Honor.

15 THE COURT: All right. Anything from the State?

16 MS. MARTO: Yes, Your Honor. We would call Mr.

17 Matthew Shealy to the stand.

18 THE COURT: All right. Mr. Shealy, come on up.

19 THE COURT REPORTER: Place your left hand on the

20 Bible. Raise your right.

21 MR. SHEALY: Okay.

22 (WHEREUPON, the witness was sworn.)

23 **DIRECT EXAMINATION OF MATTHEW SHEALY, ESQ.**

24 BY MS. MARTO:

25 Q Good morning, sir.

1 A Good morning.

2 Q Well, did you ever get Mr. Lewis from the beginning of  
3 the case?

4 A I did.

5 Q And were you appointed or retained?

6 A I was appointed.

7 Q Okay. Now, how many times did you meet with Mr. Lewis?

8 A I have no idea. I mean, a number of times over the life  
9 of the -- the case, but I couldn't tell you the exact  
10 number.

11 Q And what did y'all discuss during those meetings?

12 A We discussed the discovery, the -- then the procedural  
13 stuff about requesting bonds and stuff like that, as well  
14 as what he said happened, that sort of thing, and trial  
15 strategy, that sort of thing.

16 Q Okay. And what discovery did they have in the case?

17 A Well, I mean, you've heard a lot. So Mr. Lewis's  
18 position was always that he was at the house with Ms.  
19 Cash, that they were in bed that night, whatever  
20 happened, happened. I think he -- he admitted he knew  
21 that Mr. Cash had left, but that was all that -- that he  
22 knew. That Nicole had been sold some bad heroin,  
23 apparently, at some point in the past. Cash was angry  
24 about it. My client knew that Cash was -- was angry  
25 about it, knows that Cash left, but didn't know what

1           happened after that. And then -- then he -- he went to  
2           North Carolina, as you've heard. I think Mr. Cash went  
3           with him but whatever happened, happened, but he didn't  
4           know anything about that.

5           Now, the problem is that he told the police that  
6           immediately, and Ms. Scruggs -- or Ms. Cash's position  
7           was always, "Nuh-uh." Now, she was stoned out of her  
8           mind and that was gonna -- what we tried to portray, but  
9           the problem with that is, she was the only one who could  
10          testify to that. And she was, again, unfortunately,  
11          gonna -- she was solidly in the, "No. He wasn't with me  
12          that night. They left together," as I recall. But at  
13          least her position was certainly, "He wasn't with me that  
14          night." And the police had locked her into that pretty  
15          quickly, and she continued to be locked into that  
16          throughout all of the trial. So they had that problem  
17          for our alibi witness.

18          And then they have Ms. Scruggs who testified,  
19          obviously, that -- that Mr. Lewis and Mr. Cash came.  
20          There was a -- a -- an altercation. Mr. Mauldin was  
21          shot. She was shot. I think that the -- there was kind  
22          of an allegation -- so Mr. Mauldin obviously was a big  
23          drug dealer. He dealt with a lot of heroin, houseful of  
24          stolen property, and I think we brought that out in the  
25          trial. So I think the -- the theory was that the motive

1 was basically theft; they were gonna steal some stuff. I  
2 don't know that -- and I don't remember exactly how far  
3 that got, but it's -- ultimately, she's the eyewitness.  
4 She IDs both of them, because she doesn't die and that --  
5 and that's what tied my client to the -- the murder,  
6 essentially.

7 Q And, now, concerning the bond hearing, did you think that  
8 Mr. Lewis had a chance of success at getting a bond on  
9 this case?

10 A Well, I mean, yeah. He had no prior history, so there's  
11 always a shot when you don't have a prior criminal  
12 history. Certainly, you never come in and -- and say how  
13 -- you know, I have never said my case is not a triable  
14 one at a bond hearing, because that doesn't usually help  
15 you get a bond. And as I've told a number of other  
16 lawyers, you -- you certainly don't want to plead your  
17 client guilty at a bond hearing and I see that happen  
18 from time to time and that rarely turns out well for  
19 either the bond or the trial or the plea.

20 You know, we -- we always had a shot at it, and Mr.  
21 -- Mr. Lewis, as I said, was always a solidly, "I didn't  
22 do anything. I didn't commit this crime." It's not my  
23 job to make people plead guilty to things that they  
24 didn't do.

25 As to the -- the offer, I think 40 for testimony was

1           outrageous, so that's why I would have told him that. I  
2           mean, that -- that's not -- that's not much of a deal.  
3           There's no reason to testify against somebody if you're  
4           gonna get 40 years. You might as well take that shot,  
5           because, again, people might not show up, people might  
6           change their testimony; you never know what'll happen at  
7           a trial.

8   Q       Was it your position that this was a triable case?

9   A       Well, sure. I mean, I think they're all triable, I mean  
10          they're -- they're -- I would have preferred that Ms.  
11          Scruggs not say that he wasn't with her, but I felt that  
12          there was enough problems with what people were saying  
13          and there were enough weird things that I think we  
14          brought out. I mean, obviously, the jury disagreed with  
15          me, but . . .

16   Q       And, now, what was your approach when it came to cross-  
17          examining Casey?

18   A       Casey Scruggs?

19   Q       Yes.

20   A       I mean, it was basically that they were lying, I suppose.  
21          I mean, that she wasn't reliable, that the -- that the  
22          eyewitness ID was not particularly reliable.

23   Q       And did you consider bringing up the criminal history  
24          that Mr. Lewis discussed?

25   A       Yeah. And if -- if I -- if she had that history, I don't

1 know why I wouldn't have brought it up, frankly. If I  
2 didn't bring it up, then I should have.

3 Q Now, why did you decide not to try -- did you want Mr.  
4 Cash to be tried alongside Mr. Lewis?

5 A No.

6 Q Why not?

7 A Because they had mountains of evidence against Mr. Cash.  
8 So the way that the public defender's office handles co-  
9 defendants is they're -- we're supposed to conflict out --  
10 -- we were supposed to conflict out the most culpable  
11 person -- or the least culpable person -- excuse me --  
12 the guy who's likely to cooperate with the State. Claire  
13 Hall had gotten Mr. Cash earlier than I got Mr. Lewis;  
14 I'm not entirely sure why that is. And initially,  
15 Derrick Balsa thought that Cash was the less culpable  
16 one, and Claire Hall apparently said, "Yeah. He'll  
17 testify." So he was sent to Travis Moore.

18 So I kept Mr. Lewis, and, obviously, Mr. Cash was --  
19 was going to testify or was cooperating, but then started  
20 backing up, wrote that unfortunate statement, and then  
21 right before trial, he -- he backed all the way up and  
22 insisted on a -- a trial. And I think at some Balsa  
23 probably thought, No. We've got the wrong guy as the  
24 culpable one. So I want to just try both of them. So he  
25 may have blown that up himself; I don't know.

1           But you don't -- whenever they really, really,  
2           really have the other guy, you don't necessarily want to  
3           be sitting next to him. That just tends to be a bad  
4           idea, so that was kind of where we were.

5   Q       So there was a greater chance of him being found not  
6           guilty if he went by himself than if he was tried with  
7           Mr. Cash; is that correct?

8   A       In my opinion, yes, because the other thing is we had a  
9           transcript from the first case. So we were able to  
10          cross-examine based on what people testified at the first  
11          trial -- or, you know, in the second trial, so that was  
12          helpful, as well.

13   Q       Now, did you see any reason to move for a change of venue  
14          in this case?

15   A       I -- I did not. I didn't think that would be successful.  
16          I -- I did not think that that would be successful, I  
17          mean, so, no.

18   Q       And did you see any reason to move to reconsider the  
19          sentence?

20   A       No. I mean, we -- we were gonna -- the way that I  
21          generally handle that is -- that's an appeal issue. If  
22          we had filed a motion to reconsider it would have stalled  
23          his appeal out. Judge Cole's ordinary sentence in these  
24          cases are -- is life. That -- that's just what he  
25          ordinarily does. We argued all of the other information.

1 We argued the -- the lack of criminal history, so I don't  
2 know that I had anything new for him to consider, and I  
3 think that's kind of a threshold matter in a motion to  
4 reconsider is generally when I have something new to  
5 present.

6 Q So --

7 A I didn't have anything.

8 Q -- you think if you filed it, it would have been denied?

9 A Yeah. I think so.

10 Q Now, you discussed Jason Cash's potential testimony,  
11 correct?

12 A I did.

13 Q And what were your discussions with Mr. Cash consisting  
14 of?

15 A Okay. So he was brought back, and I went and talked to  
16 him at the jail; he was in Pod 3. And the first thing he  
17 said to me was, "What can I say to get Steven out of  
18 this," or something to those effect -- to that effect.

19 I can't tell him to what to say, I mean, that --  
20 that's -- when they're talking about, "I can't let him  
21 lie," if I'm telling him what to testify to, then that's  
22 me suborning perjury, so I can't do that. And I told  
23 him, "Well, I can't -- I can't do that. So, why don't  
24 you tell me what happened."

25 And he told me, essentially, that, well, Nicole had

1           been sold some bad dope. He was angry about it. Steven  
2           went with him to try to keep cooler heads to prevail.  
3           They didn't. And it just -- everybody kind of saw red  
4           and then there were some shootings and -- and whatnot.  
5           And that Mr. Lewis had actively participated in all of  
6           that. And I think, ultimately, Mr. Cash may have  
7           exonerated him of being the shooter, but not of -- not  
8           participating in the taking of the things or something --  
9           yeah, that kind of thing.

10                 So, basically, what Mr. Cash would have testified  
11           to, would have had them both found guilty of voluntary  
12           manslaughter. And I had taken him -- taken my client a  
13           voluntary manslaughter offer already, and he had already  
14           rejected that offer. And it made no sense to me to have  
15           someone testify to something to prove what my client had  
16           already turned down. I mean, he had rejected voluntary  
17           manslaughter after we had talked about it, and it's just  
18           not particularly helpful to have him prove the thing we  
19           didn't want. Particularly, given our position was we  
20           weren't there.

21                 So it wasn't simply I can't let him lie. It was, I  
22           can't let him lie, so I couldn't tell him what to say,  
23           but, also, what he will say is not going to be -- is not  
24           gonna get us where you want to go. So that's why we  
25           didn't call him.

1           Now, this -- the Hells Angels' business, I don't --  
2           I don't know where that came from.

3   Q       You don't recall anything about --

4   A       No. There was --

5   Q       -- Hells Angels?

6   A       -- there was nothing about two people or -- or any of  
7           that, or my client being asleep in the car. They had  
8           both gone in, so -- I -- like, I said, I don't recall any  
9           of that.

10   Q       Okay. And did Mr. Lewis's story about what he was doing  
11           at that time differ from what he discussed with you prior  
12           to trial?

13   A       You mean what he's testified today?

14   Q       Yes.

15   A       No. It's -- I mean, that -- like I said, I think his  
16           story has stayed pretty consistent. He was in bed with  
17           Nicole Cash, was the story he told me, and that's the  
18           story that I believe he's testified to today.

19   Q       Now, did he have one offer on the table, or were there  
20           multiple offers, at some point?

21   A       Well, I believe that there were a couple. So the initial  
22           offer was the 40 years and testify, which is silly, and I  
23           would never -- I -- I don't -- I don't like people  
24           pleading guilty to just straight up to murder, anyway --  
25           or to murder, particularly if they're gonna testify, too.

1 I don't think that's -- that it makes sense to do that,  
2 because there are some judges that after a trial will  
3 give you 40. So I didn't see that as a -- a viable  
4 offer, and I think I told him that I didn't see that a  
5 viable offer, particularly given we had a defense.

6 There was a voluntary -- I don't remember there  
7 being a -- a range. There may very well have been, but I  
8 don't remember that, but if there had been I would --  
9 I'll defer to the 15 to 30, but, again, he didn't -- he  
10 didn't want to take it.

11 I -- I can't force people to do stuff. I mean, I'm --  
12 I'm bigger than I used to be, but I'm still not very big.

13 Q Okay. Do you think that a plea to voluntary would have  
14 been in his best interest?

15 A I mean -- he says he didn't commit any crime, so, no. I  
16 mean, yeah. He -- if he's not guilty; he's not guilty.  
17 And if he's not there, then he didn't commit voluntary  
18 manslaughter, so . . .

19 Q And, again, Ms. Cash's testimony differed from his story  
20 about what he was doing that night?

21 A It -- it -- and that was something that I was honest with  
22 him from the beginning, was that, you know, we have that  
23 issue.

24 Q Now, was there any theories behind where they got the  
25 murder weapon from?

1 A What do you -- what do you mean?

2 Q Do you recall if they had taken a gun or something from  
3 Ms. Cash?

4 A Oh, yeah. I think there was a 9-millimeter that had been  
5 taken, yes.

6 Q And do you recall what the basis of the, I guess, armed  
7 robbery would have been?

8 A I believe that the allegation was that they had taken  
9 some the, again, allegedly stolen property. Now, we know  
10 that it was full of stolen property because in the  
11 incident report it says, "This place is full of stolen  
12 property. We need to return it to the -- the people from  
13 whom it was stolen." So I think that the -- I believe --  
14 as I recall the allegation was that he took stolen  
15 property -- or they took stolen property  
16 contemporaneously with the presentation of the pistol and  
17 the shooting and all of that.

18 Q Was there any talk about a PT Cruiser that may have been  
19 missing? Do you recall?

20 A There was a PT Cruiser, and I believe Mr. -- they found  
21 it because of Mr. Cash's jail recordings.

22 Q Okay.

23 A Which was another reason we didn't want to be tried  
24 together, because there were lots of jail recordings that  
25 were not at all helpful.

1 Q And pretty much immediately after the incident happened,  
2 Mr. Lewis and Mr. Cash went up to North Carolina?

3 A They did. Again, that is where Mr. -- Mr. Lewis worked.  
4 He did lay fiber-optic cable up there.

5 MS. MARTO: One moment, Your Honor.

6 Q Do you recall any issues with the indictments, with there  
7 being additional indictments that could have been  
8 challenged?

9 A I don't recall any. I mean, the State gets to indict  
10 people for armed robbery. I mean, if -- if they indicted  
11 him for multiple armed robberies or something, we may  
12 have had an issue. But I don't recall any indictment  
13 being deficient. It's -- it's hard for an indictment to  
14 be deficient in this State, frankly.

15 Q Now, do you recall the prosecutor using any excessive  
16 leading questions throughout the trial?

17 A Well, I think, yes. So Ms. -- Ms. -- not Scruggs, but  
18 Ms. Cash -- so they had had to subpoena her for the first  
19 trial. They ultimately had to put her in jail, and I  
20 believe they held her in jail on contempt for the first  
21 trial and then through to the second trial. And she was  
22 not a particularly cooperative witness, so, I mean, they  
23 -- they -- there were leading questions. Frankly, my  
24 recollection was that -- and you can only object so much,  
25 one, and two, the judge was allowing him to lead her

1           because of the uncooperative nature, although, again, at  
2           some point it became too much. But -- but, yes, I  
3           thought it was excessively leading.

4 Q       Do you think that any of that leading would have made a  
5           difference in the trial outcome?

6 A       I mean, not -- probably not. But, you know, I would have  
7           loved for her to just say, "I want to talk to you," and  
8           stick with that, but that's not what she testified to,  
9           so . . .

10 Q       Do you recall the prosecutor using any perjured testimony  
11           at the trial?

12 A       I mean, I don't know that he used any -- I mean, I -- I  
13           don't make that determination. I mean, people testify to  
14           what they testify to, but I don't get to say that that's  
15           true or not unless I have some basis to believe that it's  
16           -- I mean, I know it wasn't what my client said happened.  
17           I don't know that I heard anything that was necessarily  
18           perjured. I don't -- I don't know the answer to that  
19           question, I suppose.

20 Q       Okay. Do you recall discussing the right to testify at  
21           trial with Mr. Lewis?

22 A       I do.

23 Q       And what -- what was discussed during those discussions?

24 A       Well, I don't necessarily remember exactly why we decided  
25           for him not to testify. I think that it was based on the

1 fact that it was going to be roughly what he's testified  
2 to today and there were going to be some problems with  
3 that based on what had already been entered into  
4 evidence. I mean, looking back on it, I probably should  
5 have put him up there, but, at the time, I didn't think  
6 it was necessary, so . . .

7 Q Do you think that he would be determined "incredible" by  
8 the jury?

9 A I don't know the answer to that. I mean, I just don't  
10 know. There's -- eyewitness IDs are difficult; they're  
11 just difficult. Whenever a person who's been shot says,  
12 "That's the guy who shot me," it's -- it's difficult to  
13 overcome that --

14 Q And --

15 A -- so . . .

16 Q -- again, Mr. Lewis was living with Casey a few days  
17 prior to the incident, correct?

18 A Well, I don't know about a few days prior, but, yeah,  
19 they -- they were living together previously, but there  
20 had also been other interchanges, so -- I mean, she knew  
21 him pretty well. Knew him by -- as "Scooter," I believe.  
22 They were -- somewhat -- I mean, close isn't really a  
23 word, but they were -- certainly had seen each other  
24 fairly regularly.

25 Q Now, did you find anything improper about any instruction

1 on the hand of one, hand of all?

2 A I mean, I don't like it, but -- but, unfortunately, it's  
3 the -- the rule in South Carolina is that that's the --  
4 the charge. They gave the correct charge; the charge  
5 that's always given in these cases. I mean, I don't -- I  
6 don't care for the charge, but I'm a criminal defense  
7 attorney, so, no. I don't see anything improper beyond  
8 the -- what I think are legitimate reasons for an appeals  
9 court to overrule it, but, no.

10 MS. MARTO: One moment, Your Honor. No further  
11 questions, Your Honor.

12 THE COURT: (To Ms. Ross) All right. Cross?

13 MS. ROSS: Thank you. May it please the Court.

14 **CROSS-EXAMINATION OF MATTHEW SHEALY, ESQ.**

15 BY MS. ROSS:

16 Q With this -- with the hand of one and the hand of all  
17 charge coming in and evidence that the co-defendant had  
18 been tried, what, a month or two prior and convicted, so  
19 the jury sort of knowing that, wouldn't it be worth just  
20 putting up Mr. Lewis and Mr. Cash just because they had  
21 the hand of one, hand of all thing there?

22 A You mean, having to testify?

23 Q Uh-huh.

24 A Well -- and, again, looking back on it, I probably should  
25 have had him testify, I'll admit that. I couldn't -- I

1 mean, for Mr. Cash, again, there would have been some  
2 problems, because the story he's just told up there is  
3 different from the story he told me.

4 Q Right.

5 A I think there would have been --

6 Q And I understand your ethical duties. I think that the  
7 way that I -- I deal with that is to say, "What would you  
8 testify to?"

9 A Right.

10 Q Or, "What -- what do you have to say?" Or something to  
11 that effect.

12 A Well, I certainly can do that with respect to a  
13 defendant. The defendant certainly has the absolute  
14 right to testify --

15 Q Uh-huh.

16 A -- but whenever it's an actual witness, I think it's  
17 maybe a little bit different. I don't think I can put up  
18 a witness, particularly after -- I mean, if he had -- if  
19 the story he had told me, after I said, "I can't tell you  
20 what to say. You just need to tell me what happened."

21 Q Uh-huh.

22 A If the story he had told me right after that matched what  
23 he just testified to, then I wouldn't have necessarily  
24 had a problem putting him up there and saying, "All  
25 right. What happened?"

1 Q Okay. So you're saying you could not?

2 A So the problem is that what -- what he told me happened  
3 would have proven voluntary manslaughter on their -- on  
4 both of their behalves, and my client had already  
5 rejected voluntary manslaughter, so --

6 Q Okay.

7 A -- I didn't want to put up a defense that my client's  
8 already rejected. Does that make sense? I mean --

9 Q And when -- at what point did he reject that voluntary  
10 manslaughter?

11 A Just prior to the trial, so the week before.

12 Q And you didn't go back to him and ask, "Hey. Cash is  
13 here. This is what might come out"?

14 A No. We did talk about what he was going to testify to,  
15 and I told him, "Well, I don't see any reason to -- to  
16 use him, because he's going to testify voluntary  
17 manslaughter and you didn't want that." I guess I didn't  
18 specifically ask, "Do you want me to go back and ask the  
19 State if they'll reoffer voluntary?" I did not do that.

20 Q Okay.

21 A And maybe I could have and maybe I should have, but he  
22 didn't -- he didn't evidence to me any desire to take the  
23 voluntary after I talked to him about what Cash had said,  
24 that I can recall.

25 Q Did you have any recording or did you write down what

1 Cash was telling you at the time when you went and met  
2 with him during trial?

3 A I believe that I did, but I don't have my file. I'm not  
4 with the public defender's office anymore.

5 Q Okay. As far as redirect and beyond the scope, is -- is  
6 that sort of -- does that always -- does the State almost  
7 always have some sort of redirect in trials?

8 A Well, they have the right to redirect, they  
9 don't --

10 Q Sure.

11 A -- always redirect, but --

12 Q Okay.

13 A -- yeah. They --

14 Q I just noticed on this one there just seemed to be a lot  
15 of redirect and sometimes it had nothing to do with what  
16 you had said --

17 A Uh-huh.

18 Q -- it was just reiterating their direct.

19 A Right.

20 Q And you never objected to that or argued?

21 A I guess not.

22 MS. ROSS: Beg the Court's indulgence.

23 Q Would it -- would it surprise you if you did say at the  
24 bond hearing that "this was a very triable case"?

25 A No. I, absolutely, would have said that at the bond

1 hearing. I mean, you want to get your client a bond.

2 You're not gonna say --

3 Q Right.

4 A -- throw us. You're not gonna say, we're gonna lose this  
5 case in a walkover. I mean, I'll --

6 Q And did you -- did you ever tell -- Mr. Shealy -- I mean,  
7 Mr. Lewis that?

8 A I, probably -- yeah. I mean, because it is. Like, it  
9 was a -- a case for -- I mean, he says it didn't happen.  
10 I got it. So drug addicts saying it did happen.

11 Q Uh-huh.

12 A And we can kick dirt on all of their credibility. I mean  
13 -- and so, yes. I -- I probably did tell him that it was  
14 a triable case.

15 Q Okay. Do you think you advised him not to take the  
16 manslaughter, or to turn down the manslaughter?

17 A I doubt that I advised him to turn that down. I don't  
18 know that I said, "Don't take the manslaughter." I --  
19 what I probably said -- and this is the -- the speech  
20 that I give people who tell me they didn't do anything,  
21 but they get an offer that is reasonable, is, "Look, I  
22 understand what you've told me that you didn't commit  
23 this crime. The offer that they've given you is" -- I  
24 guess in this case, "voluntary." And, again, I'll defer  
25 to the 15 to 30 range.

1 Q Uh-huh.

2 A "It's 15 to 30. I don't know what happened because I  
3 wasn't there. I can't tell you what happened, but I can  
4 tell you that a jury generally figures out what's -- what  
5 happened, and so if you did it, you probably want to take  
6 this deal. If you didn't do it, then you probably want  
7 to have a trial."

8 Q All right.

9 A Because that's generally the -- that's generally the  
10 speech that I give because, again, I -- I don't want some  
11 -- I -- I just think that if I'm delivering what is a  
12 reasonable offer, but the guy says he didn't do it, I  
13 think I've gotta make sure he understands that to plead  
14 guilty is to plead guilty.

15 Q Right.

16 A And then if he says, "Well, I want to take it," then I  
17 explain what "North Carolina vs. Alford"  
18 is or --

19 Q And so Alford wasn't an option there?

20 A Well, I mean, it would have been an option, so I mean,  
21 that -- that would have been part of the speech, but my  
22 speech on Alford kind of changes depending on the person,  
23 so . . .

24 Q All right.

25 MS. ROSS: Okay. (To the Court) I have no further

1 questions.

2 MS. MARTO: Just briefly, Your Honor.

3 REDIRECT EXAMINATION OF MATTHEW SHEALY, ESQ.

4 BY MS. MARTO:

5 Q So if Mr. Lewis testified at trial, he would have been  
6 contradicted by multiple State witnesses, correct?

7 A Well, yeah. I mean, it would have been -- I mean,  
8 obviously, Ms. Scruggs would have said -- he would have  
9 been contradicted by Scruggs saying that he's the one who  
10 shot her, and, also, Ms. Cash saying that he wasn't --  
11 that "I wasn't with him that night."

12 Q And if Jason Cash were to testify at the trial, he really  
13 would have only strengthened the State's case, correct?

14 A The State's case as to voluntary manslaughter, not  
15 murder. And, now, as to the armed robbery, I -- I don't  
16 know that, and burglary becomes difficult, because they  
17 were invited in, but then it became a confrontation, and  
18 so -- but that would have been an issue. I don't know  
19 exactly how the jury would have determined that, frankly.

20 Q And Mr. Lewis never indicated to you that he desired to  
21 take a plea?

22 A No.

23 Q He always wanted to go to trial --

24 A He did.

25 Q -- because he was innocent?

1 A Because he didn't do anything wrong, no.

2 MS. MARTO: No further questions, Your Honor.

3 MS. ROSS: I have one -- one briefly, Judge.

4 **RECROSS-EXAMINATION OF MATTHEW SHEALY, ESQ.**

5 BY MS. ROSS:

6 Q Just going back: There was circumstantial evidence but  
7 no forensic evidence or anything in this case against Mr.  
8 Lewis, was there?

9 A Yes. I don't believe so, no.

10 MS. ROSS: Nothing further, Judge.

11 THE COURT: (To the State) Anything?

12 MS. MARTO: Nothing further, Judge.

13 THE COURT: All right. Thank you, Mr. Shealy. You  
14 may step down.

15 THE WITNESS: Thank you, Judge.

16 (WHEREUPON, the witness was excused.)

17 THE COURT: All right.

18 MS. MARTO: No further witnesses, Your Honor.

19 THE COURT: All right. Anything from the parties?

20 **CLOSING ARGUMENTS**

21 MS. ROSS: Judge, I'd only say I shouldn't have said  
22 circumstantial evidence. Obviously eyewitnesses are  
23 more than circumstantial, so I misspoke there, but  
24 there was evidence -- a lot of the robbery evidence  
25 -- the victim had said that my client had robbed

1           them, like, the week prior when he moved out, so  
2           that was already -- she had said that she was angry,  
3           she said that they had been robbed by him before.  
4           So that was sort of questionable, so that's where I  
5           was going with that. As far as no blood evidence in  
6           the car or anything like that, none of that link  
7           directly to Mr. Lewis.

8           I would just argue the points that I made,  
9           initially, at the beginning and ask you to review it  
10          based on those.

11         THE COURT: All right. Thank you. Ms. Marto?

12         MS. ROSS: Thanks, Your Honor.

13                                 CLOSING ARGUMENTS

14         MS. MARTO: Yes, Your Honor. We would just hold  
15         that this case ultimately hinges upon eyewitness  
16         testimony, as well as the testimony of several other  
17         people, including Nicole Cash, who basically refuted  
18         the alibi that he would have proposed. And so we  
19         would argue that Mr. Shealy did cross-examine these  
20         witnesses, did point out issues with credibility,  
21         but, ultimately, the jury decided the evidence was  
22         sufficient enough to convict. So because of that,  
23         we would hold Counsel as ineffective and you deny  
24         relief (as spoken.)

25         THE COURT: Thank you. All right. I will take it

1           under advisement and let you know my decision.

2           Thank you, both.

3           MS. MARTO: Thank you, Your Honor.

4           MS. ROSS: Thank you.

5                           (Whereupon, the within hearing was

6                           concluded at 11:47 a.m.)

7           (\*This transcript may contain quoted material.

8           Such material is reproduced as read or quoted by the

9           speaker.)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on April 21st, 2022.

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



Amber J. Payne, CVR

Date: June 7, 2023

Notary public for South Carolina

My commission expires August 12, 2029

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 Steven Lewis, #372738, )  
   Applicant, )  
   ) )  
   v. )  
   ) )  
 State of South Carolina, )  
   Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-42-02014

**ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant’s post-conviction relief application filed June 4, 2019. Respondent made its return on September 6, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held at the Spartanburg County Courthouse. Susannah Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Co-defendant Jason Cash testified via Webex. Counsel Matthew Shealy also testified in person. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the August 2015 term of the Spartanburg County Grand Jury for kidnapping (2015-GS-42-03788), murder (2015-GS-42-03789), and attempted murder (2015-GS-42-03790). Applicant was further indicted at the February 2017 term for burglary, first degree (2017-GS-42-00523); and armed robbery (2017-GS-42-00524). Matthew W. Shealy, Esquire represented Applicant. Derrick B.

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Bulsa and Nicholas J. Sharpe, Esquires, of the Seventh Circuit Solicitor's Office, prosecuted the case. On May 22, 2017, Applicant proceeded to trial before the Honorable J. Derham Cole, circuit court judge, and a jury. The jury found Applicant guilty as indicted on May 24, 2017. Judge Cole sentenced Applicant to imprisonment for concurrent terms of life for murder, life for burglary, and thirty years' imprisonment for armed robbery. Judge Cole additionally sentenced Applicant to a consecutive term of thirty years' imprisonment for attempted murder. Pursuant to S.C. Code Ann. § 16-3-910, Applicant was not sentenced for kidnapping.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Robert M. Dudek, Esquire, filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), which offered the following issue:

Whether the court erred by admitting appellant's jail calls where the relevance of those calls was substantially outweighed by their unduly prejudicial effect, given the cursing about irrelevant matters, and untrue hearsay information that a witness had been murdered that was on those calls, and where the judge erroneously reasoned that because appellant did not deny the charges on the jail calls that they were admissible as statements against interest?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Lewis*, Op. No. 2019-UP-155 (S.C. Ct. App. filed May 1, 2019). The remittitur was issued on May 23, 2019.

### **Summary of Relevant Facts**

#### ***The Victim's Testimony***

Casey Scruggs testified she lived with her boyfriend, Carey Mauldin, at a home on Highway 11 for three or four months. (R. 189, 207). Scruggs met Applicant ("Scooter") through Mauldin, who ~~met Applicant at a store~~ and explained he stayed with them for between two weeks and a month. (R. 190). Scruggs vaguely knew Jason "Drew" Cash and that he drove a

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Mazda. (R. 191). Applicant stayed with Scruggs and Mauldin until May 17, 2015, when he stole their car, drugs, and an LG Vista cell phone and left. (R. 191-93). Mauldin purchased a blue iPhone to replace the stolen phone. (R. 193-94). Scruggs next saw Applicant on May 22, 2015, when she woke to the sight of the lights on in the living room and kitchen, and heard Mauldin tell her “Baby, call 9-1-1.” (R. 194-95). As Scruggs reached for the phone, Applicant ran into the bedroom, wearing purple latex gloves. (R. 195). Applicant bound Scruggs’s head, hands, and ankles with grey duct tape, and taped her mouth. (R. 195-96). After tying her up, Applicant resumed ransacking the house alongside Cash for two hours. (R. 196). They stole televisions, cologne, jewelry, other assorted items, and the PT Cruiser parked in the driveway. (R. 196-97). Scruggs broke free of her restraints and fled to the side door to escape but failed. (R. 197). Scruggs saw Cash loading loot into his Mazda and Applicant return to the house. (R. 197). Applicant saw Scruggs was loose, captured her, and dragged her to the bedroom. (R. 197-98). Applicant shot Scruggs in the back of her head, then ran to the living room and shot Mauldin. (R. 197-98). Applicant and Cash immediately departed. (R. 198). Scruggs, only grazed by the bullet, got up from the floor and fled to the Turner and Stewart residences. (R. 198-99). She could not remember the ambulance taking her to the hospital. (R. 199). Scruggs was certain Applicant invaded her home and tied her up. (R. 199).

On cross-examination, Counsel impeached Scruggs on a variety of points. Scruggs was not surprised to hear that she misidentified the day of the week. (R. 200). Scruggs testified that on May 17, 2015, Applicant stole a safe that contained drugs, then corrected herself and asserted Applicant stole only the drugs contained in the safe. (R. 200-01). Scruggs initially denied Applicant stole anything else but testified Applicant had stolen a Nicole Cash’s pistol. (R. 201). Scruggs testified she and Mauldin went to bed around 12:30 A.M., and that Mauldin received a

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phone call from Cash to arrange a sale of drugs. (R. 201-02). Scruggs woke up roughly thirty minutes after the call. (R. 202). Immediately after Mauldin told her to call 911, she heard two or five gunshots, and Applicant tied her up between thirty and sixty seconds later. (R. 202-05). Scruggs also testified that she saw from her bed that Mauldin was on his knees before Cash, and that Cash was angry, but she did not hear a gunshot. (R. 204). Scruggs thought Cash was angry at Mauldin over “some bad drugs . . . or something along that line.” (R. 204-05). Scruggs testified only one gun was used in the attack, and that she was not shot when she was tied up, but was pistol whipped later and shot only after being dragged to the bedroom. (R. 207-08). When asked if she could see a vehicle while looking out through a window, Scruggs testified that it was dark outside and that she could not tell. (R. 210-11). Scruggs testified the house lights were on and bright when she left. (R. 211-12). Scruggs admitted that Mauldin gave her methamphetamines and Suboxone, but initially denied the drugs had any effect on her before admitting they did and that she was using meth that day and for days prior to the attack. (R. 212-13). Scruggs also testified Mauldin possessed several phones and intended to sell “about five” of them. (R. 214-15).

On redirect examination, Scruggs testified she believed Mauldin was still alive when she escaped the house. (R. 217-18). Scruggs knew the pistol stolen by Applicant belonged to Nicole because Cash told her. (R. 219). Cash pawned the pistol to Mauldin in exchange for heroin. (R. 219). Scruggs initially denied she could tell what kind of gun was used, but then asserted that it was a Kil-Tec 9mm. (R. 219-20).

On recross examination, Scruggs testified that people sold things to Mauldin in exchange for drugs, and that much of the property in the home was itself stolen. (R. 220-21). Scruggs denied being with Nicole when she purchased the gun. (R. 221).

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*The Neighbors*

Tony Turner, a neighbor, woke around 5:00 a.m. to a loud banging at his door. (R. 82-83). He opened the door to find Scruggs covered in duct tape and blood[,]” in a monstrous panic. (R. 84). Turner called the police and unbound Scruggs, who started telling him about “Scooter” and expressed worry for her child and herself. (R. 84-85). While assisting Scruggs, Turner noticed the PT Cruiser was gone. (R. 85-86). Turner freed Scruggs’ hands but left the head bindings in place for fear of relieving pressure from the head wound. (R. 86-87). Once EMS arrived after a few minutes, a somewhat calmer Scruggs joined paramedics and was whisked away to the hospital. (R. 87, 89). After Scruggs was taken to the hospital, and after he gave his police statement, Turner returned home and showered off the blood splashed on him. (R. 87-88). On cross-examination, Turner testified he was never woken by gunshots or screeching tires. (R. 90-91).

Adam Stewart, a neighbor, was woken the morning of May 22, 2015, by his frantic daughter, who told him someone was beating on the front door. (R. 106-07). Adam could not see anybody from within the house but could hear a commotion. (R. 107). Adam and his daughter went outside to see what was going on, to where Turner was cutting tape off of a distraught Scruggs, and Scruggs “kept saying that Carey had been shot, Carey had been shot, he was dead, he was dead[,]” and further “just kept saying Scooter, Scooter, Scooter done it, Scooter done it.” (R. 107-08). Adam testified he was unfamiliar with Scooter and Cash. (R. 106). Adam noted that Mauldin’s PT Cruiser was gone. (R. 106, 108-11).

Tonya Stewart also testified to being woken the morning of May 22, 2015, by her daughter, who reported “somebody beating and banging on the front door.” (R. 112). When they went downstairs and opened the front door, they found blood on the front porch and commotion

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near a neighbor's house. (R. 112-13). Tonya exited out of a side door and went to the scene, where Scruggs was duct taped and pouring blood. (R. 112-13). Scruggs "kept saying, well, Scooter had shot her and Carcy." (R. 113).

***First Responders & Law Enforcement's Investigation***

On May 22, 2015, Deputy Nicholas Hullinger, of the Spartanburg County Sheriff's Office ("SCSO"), was directed by dispatch a little after 5:00 a.m. to a residence in Chesnee, South Carolina, along Highway 11. (R. 70-72). When Hullinger arrived on scene, the neighbors had gathered at the house, who directed him inside. (R. 71-72). Hullinger explained he went into the house with the understanding "that there was someone in the house and they were half way on the couch and half way on the floor[,]" and that there were possibly other people in the house. (R. 72). Hullinger immediately found Mauldin, dead and covered in a blanket, then cleared the house, finding no one inside. (R. 72-73, 76-77). The house was ransacked. (R. 77). Hullinger went outside, separated the witnesses, and directed other arriving officers to take statements. (R. 73-74). Hullinger learned shortly thereafter that Scruggs had already left with paramedics just prior to arrival. (R. 74).

On cross-examination, Hullinger testified he learned another person had been into the house before him and thrown the blanket over Mauldin. (R. 77-78). Hullinger testified that he did not recall any lights in the house, and that he used his flashlight in clearing the house. (R. 78).

Zachary Hubbard was a paramedic who responded to the scene. (R. 91-92). On scene, Hubbard found Scruggs standing in the driveway in a white sheet, drenched in blood, with loose duct tape around her wrists, panicked and trying to speak. (R. 92-93). Hubbard only learned that Scruggs had been shot after they got to the scene. (R. 93, 96-97). Because nobody could tell Hubbard the whereabouts of the shooters, Hubbard very quickly loaded her into the ambulance

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and left the scene. (R. 93). The only light on scene was what shined from the ambulance. (R. 93-94). Hubbard hooked Scruggs up to an intravenous drip and to a cardiac monitor, then removed the tape over her mouth, prompting Scruggs to clearly tell Hubbard that Cash and Applicant had tied up and shot her and her boyfriend. (R. 94, 98-99, 101-02). Hubbard described Scruggs' wound and explained "some type of object had opened up a large portion of the flesh from her skull." (R. 101).

Investigator Todd Ruffner, of the South Carolina Law Enforcement Division, dispatched to Spartanburg Regional Hospital to check on Scruggs after the shooting. (R. 290-91). Ruffner found Scruggs upset in the trauma bay of the emergency room. (R. 291). Scruggs told Ruffner that she had been tied up and shot by Applicant and Cash. (R. 291). Ruffner later joined officers at a location in Inman, South Carolina, believed to be Cash's home, to execute a search warrant and take photographs. (R. 291-93). Ruffner found blue surgical gloves in a filing cabinet in Cash's bedroom. (R. 294-95). On cross-examination, Ruffner affirmed that Scruggs told him she believed Cash shot her. (R. 296).

Investigator Robert Charles Talanges, SCSO, was the primary forensic officer who worked the scene. (R. 113-15). Talanges found the door to the sunporch was knocked off its hinges but was still padlocked. (R. 116-17, 123, 139-40). Bloody smears ran from room to room, indicating Mauldin was dragged through the house. (R. 118-19, 154-55). Shards and pieces of a broken yellow vase were scattered in the living room. (R. 119). The house was ransacked. (R. 120-22). Spent shell casings were recovered from the living room. (R. 124). A bloodstained stuffed animal was found near where Scruggs had lay, and beneath that was a bullet hole in the floor, from which a bullet was recovered. (R. 124-28). Nearby, Talanges found a piece of blue latex glove, a gray roll of duct tape, and a shell casing. (R. 125-27, 159). Another bullet hole in

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the ceiling, and a projectile recovered therefrom. (R. 128). At least one round was fired in the kitchen, the living room, and the bedroom. (R. 155). Talanges recovered four projectiles and three shell casings from the investigation; the fourth shell casing was never found. (R. 138-39). Talanges executed a search warrant at a location on Flynn Road following a lead on the PT Cruiser missing from the scene. (R. 130-31). Talanges found an "impact," or part of a bumper, matching to a Chrysler vehicle and recovered it. (R. 131-32). Officers also found a clump of cloth, beneath which they recovered a ring of keys which included a key to a Chrysler vehicle. (R. 132-33). Talanges and another detective returned to the original scene with the keys, tried the keys on the locks to the house, and discovered they opened the doors. (R. 133-34). Talanges also executed a search warrant on a suspect's Mazda recovered from North Carolina, from which he recovered "a little baggy that had something like drug paraphernalia in it[.]" (R. 134-35, 150-52).

Despite the pieces of latex indicating gloves were used, Officer Steven Horton, SCSO, and law enforcement recovered twenty-six latent fingerprints from the crime scene. (R. 129-30, 150-62). From the twenty-six latent prints recovered from the scene, thirteen were identified by Courtney Burgess, SCSO, of which one matched to Applicant. (R. 165-69). Of the remaining twelve identified, nine matched to Mauldin, and three matched to Scruggs. (R. 170).

Corporal Brian Ezell, a canine handler with the Guilford County Sheriff's Office ("GCSO") in Greensboro, North Carolina, converged with twelve to thirteen other officers on an address in Guilford County on May 23, 2015, following a lead that Applicant and Cash were at the property. (R. 221-23). Law enforcement approached the building around 2:00 A.M. and set a perimeter around the houses. (R. 222-23). When Ezell pulled around to the back of one of the houses, Cash fled out the back and into the woods, where he was apprehended. (R. 223). Despite calls over a loudspeaker to come out starting at around 3 A.M., Applicant remained in the house

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until the S.W.A.T. team breached the front door with explosives sometime around 5:00 to 5:30 A.M. (R. 223-24). After the door was blown off, Applicant "came out and gave up." (R. 224).

Officer Tracy Nelson, GCSO, photographed the scene after Applicant was arrested. (R. 232-36). Ivy Lawson, a former resident who dated Applicant's brother and still had property there, recovered things after investigators finished going through the house, and subsequently turned over several cell phones a few weeks later. (R. 237-51).

Officer William S. Howell, GCSO, reviewed Applicant's jail calls while he was in custody in North Carolina, recorded them, and provided three of them at trial. (R. 267-68; State's Trial Exhibit No. 80). As part of one call, Applicant advised Lawson to get rid of Mauldin's phone. (R. 259-60; State's Trial Exhibit No. 80).

Detective Paul Anthony Norris, SCSO, interviewed Cash's sister, Nicole Cash. (R. 269-71). After the interview, Norris and other officers searched the house. (R. 271). In June 2015, Norris retrieved from GCSO officers a box of evidence recovered from Applicant's arrest scene, which included multiple phones. (R. 271-73). Norris met with Scruggs, who identified Mauldin's LG Vista and iPhone. (R. 273-74). Norris subsequently learned that the missing PT Cruiser might be at a property on Flynn Road, but when law enforcement got there, the only things they found were a set of keys and the Styrofoam bumper stamped with the model number for a PT Cruiser. (R. 274-75). Norris and Talenges returned to the original crime scene and found the keys worked on the doors to the house and storage shed. (R. 275-76). Norris testified he sent three cartridges and four bullets to the Greenville County Sheriff's Office for ballistics analysis and noted that the perpetrators were suspected to have used a Kel-Tec 9mm, and that the casings recovered were all 9 mm. (R. 276). The gun was never found. (R. 290). None of the latent prints lifted from the crime scene matched Applicant. (R. 291). Too much time passed between the

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killing and Applicant's capture to conduct meaningful testing for gunshot residuc. (R. 295).

Lindsey McGraw, an SCSO computer forensics investigator, examined the phones recovered and identified them as an "LG Vista model LGD631 and this Apple iPhone model 5c." (R. 280-82). McGraw pulled data from the phones and determined they both belonged to Mauldin. (R. 282). Tyler McBee, a records custodian for AT&T, confirmed the number had been assigned to Mauldin on May 19, 2015. (R. 285-86).

Dr. John David Wren, the forensic pathologist, testified Mauldin suffered a through-and-through gunshot wound to the head, two through-and-through gunshot wounds to the back, and one shot to his left forearm. (R. 333-40). Wren concluded Mauldin bled to death. (R. 340). Wren described the headshot as "a make-sure-he's-dead type gunshot[.]" (R. 340-41).

James Armstrong, an expert in firearms and toolmark identification from the Greenville County Sheriff's Office, could not definitively state the spent cartridges were fired by the same gun, but that the cartridges and recovered bullets were all the same caliber and could have been fired by a Kil-Tec 9mm. (R. 345-49). On cross-examination, Armstrong admitted he could not definitively match the bullets to the casings and explained that he generated a list of no less than twenty-five different weapons that could have fired the bullets. (R. 349-50).

#### *Cash's Family and Friends*

Tracy Lanning, a friend of Cash's grandmother Emma Cooke, arrived at Cooke's house at around 7 A.M. the morning of May 22, 2015, to accompany her to Spartanburg to testify on behalf of her son. (R. 23, 173, 179). Lanning saw Cash's car backed up to an outbuilding, doors open, with Applicant standing in the doorway of the car moving something between the car and the outbuilding. (R. 173-74, 177-79). Lanning and Applicant exchanged looks as she got out of truck, and she explained his appearance as "like I had caught him doing something[.]" even

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though she hadn't actually seen him move anything. (R. 174). Lanning walked towards the house and asked Applicant where Cash was; Applicant replied that he was inside. (R. 174). As Lanning walked into the house, she noticed a small black bag laying along the walkway that she assumed belonged to Cooke, so she scooped it up and carried it in. (R. 174-78). Lanning showed the bag to Cooke after making a cup of coffee, where together they found it contained jewelry, little bottles, and a piece of paper with names and numbers; Cooke denied ownership. (R. 175, 180). Lanning went downstairs, found Cash in his bedroom, tossed the bag to him, and promptly turned around to go back upstairs. (R. 175). As she ascended, Lanning heard Cash and Applicant discussing where she found it, how she got it, where it came from, and whether she opened or looked in it. (R. 175). The two nervously called Lanning back down to question her about the bag. (R. 175-76).

On cross-examination, Lanning testified she had not met Applicant before that day. (R. 178-79). Lanning was present at the house when law enforcement searched the property. (R. 180-81).

Clifford Cash, Cash's father, testified that Cash was living with Cooke in May 2015, and that he had never met Applicant before. (R. 182). Clifford explained Cash was fixing up some property along Flynn Road, which Cash expected to inherit. (R. 183-84). After Clifford learned of Cash's arrest, he visited the Flynn Road property and found a PT Cruiser in one piece behind the building, obscured by pallets and tarps. (R. 184). Clifford told the police about the vehicle but did not know if they recovered it. (R. 185).

On cross-examination, Clifford could not say if the car was on the property, or where the property line was. (R. 186-87). Clifford could not say if Applicant had ever been at the property. (R. 187).

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Bridgette Nicole Cash, Cash's sister, met Applicant through drug use with Mauldin, and knew him at the time as "Scooter." (R. 299-300, 304). Applicant was visiting downstairs with Cash on the date of the killing. (R. 301). Nicole explained Applicant did not have a car, but that Cash drove a Mazda. (R. 302). Nicole explained that she owned a Kil-Tec 9mm that she purchased April 30, 2015, and subsequently provided to Mauldin, which Applicant stole from Mauldin and refused to return to her. (R. 302-04). The Friday night before the killing, Applicant expressed his desire to rob Mauldin to Nicole and Cash. (R. 315). Nicole was too drugged to participate in the conversation. (R. 315). Applicant still had Nicole's gun and was wiping off bullets, making her nervous. (R. 315-16). She heard the two leave. (R. 316). Nicole saw the two again the following morning around 7 A.M. and thought they were about to leave for Greensboro. (R. 316-17). The morning after the killing, before the police arrived and searched the house, Nicole called Cash and asked where he was; Cash put Applicant on the speakerphone and reported they were in Greensboro. (R. 317-18). As the police knocked on the door, Nicole could hear Cash telling her to answer the door as Applicant said she should not. (R. 318). Nicole answered the door and admitted she owned a pistol but did not give it to them or tell them where it was, worried she would get in trouble for not reporting it stolen. (R. 318-19).

On cross-examination, Nicole testified she thought she met Applicant seven or eight times but was unsure. (R. 319-20). When confronted with her testimony from Cash's trial that she only met Applicant twice, Nicole replied that she had been under the influence of pills, methamphetamine, and "pretty much anything" for the preceding decade. (R. 320-21). Nicole stated that prior to going to bed on May 22, 2015, she had been awake for "about five or six days, taking like short naps in between." (R. 321). Mauldin was the sole source for Nicole's heavy drug habit. (R. 321). As to the call, Nicole recalled she could not be sure of what

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Applicant was saying, but that she heard him in the background. (R. 323-24). Nicole denied any memory of a fight with Cash over the gun but admitted telling Officer Norris as much. (R. 326-27). Nicole admitted she overdosed at some point but could not remember on which day she overdosed. (R. 327). Nicole also admitted to receiving gifts in the form of “small items, perfumes and other things like that” around the time of the robberies and killing. (R. 328-29).

On redirect examination, Nicole admitted that she was a drug addict, and that she attempted to get some treatment through a detox center. (R. 331). Nicole denied being under the influence during trial and asserted she had not used drugs since she was incarcerated. (R. 331). Nicole further explained the gifts of perfume were provided by Applicant and that she knew he had stolen them from Scruggs. (R. 331-32).

#### **Current Action Before this Court**

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Failure to move to dismiss two superseding indictments.
2. Failure to challenge the multiplicitous indictments.
3. Failure to object to the severance of a joint trial allowing the prosecution to gain an advantage from the delay.
4. Failure to object to the prosecution’s excessive leading questions.
5. Failure to object when the prosecutor elicited prejudicial, irrelevant, and highly inflammatory statements about stolen property.
6. Opening the door into allegations that Applicant stole a handgun from the victim’s residence prior to the incident.
7. Failure to recross State’s key witness after the prosecution opened the door to impeachment testimony regarding bias and credibility.
8. Failure to object to the prosecution’s use of perjured testimony.
9. Failure to object to the hands of one, hands of all instruction.
10. Failure to request specific instruction to require the jury to find unity element where Applicant and codefendant conspired together but were tried separately.
11. Cumulative error.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel:

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- a. Failure to properly cross-examine witnesses, especially Casey Scruggs.
  - i. Failure to impeach her with prior convictions.
- b. Failure to highlight discrepancies between his and his co-defendant's trial.
- c. Failure to challenge duplicative indictments.
- d. Failure to object to excessive leading.
- e. Failure to explain the sentencing range Applicant's exposed to.
- f. Failure to request change of venue.
- g. Failure to object to a severed trial.
- h. Failure to move to reconsider the sentence.
- i. For opening the door to testimony about Applicant stealing a handgun.
- j. Failure to show Applicant all discovery prior to trial.
- k. For discouraging Applicant from testifying at trial.
- l. For discouraging Applicant from pleading.
- m. Failure to call Jason Cash to testify.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

### Summary of the Testimony

#### *Applicant Testimony*

Applicant testified that he felt that Counsel did not have his best interest at hand. He stated that Counsel was unable to do the things he asked of him. For example, Applicant stated, he questioned witnesses, but did not do so properly. He stated that he thought Counsel did not properly cross-examine Casey Scruggs in particular. He stated that he wanted Counsel to question her about her bad check charges, but that the witness lied on the stand. He stated that she admitted to this at Cash's trial, but not his.

Applicant stated that Counsel told him he should expect to receive a fifteen-year sentence. He stated that Counsel did not push discrepancies in testimonies between his and his co-defendant's trial enough. He stated that he and Cash had separate trials. He stated that Cash decided he would not testify against him. He stated he did not threaten Cash into deciding not to testify. He stated that he had duplicative indictments for kidnapping and armed robbery that should have been dismissed. He stated that there was excessive leading throughout his trial. He

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stated that Counsel provided some witnesses with answers.

Applicant testified that his understanding of hand of one hand of all was that if he knew or saw anything within the vicinity of his co-defendant, he was also guilty. Applicant stated that everyone on the jury knew about the case and one of the jurors knew a solicitor. Applicant stated he asked about a change of venue, but Counsel did not make this request. He stated Counsel never moved for a mistrial. He testified that his attorney brought up the gun, even though one was never found. He stated he thought he was prejudiced by Counsel's deficiencies. Applicant stated that Counsel never moved to reconsider the sentence or conviction.

Prior to apprehension by the police, Applicant stated he was asleep on the couch and that no one knocked on the door. He stated he awoke to find the door lying beside him. Applicant stated the State took advantage of the fact that there were forty officers involved during closing. He stated that he reviewed part of his discovery leading up to trial. Applicant testified that Counsel told him it would not be beneficial for him to testify at trial. He stated that he did not think Counsel had his best interest at heart, that he turned his back on him at trial, and talked him into proceeding forward at trial.

On cross-examination, Applicant testified that the incident consisted of someone being shot and killed and another just shot as a part of an attempted murder. He stated that he knew both the victims and that he had previously stayed with one of the victims for a brief period. He stated that one of the victims survived and testified at trial. He stated that the victim identified him as a perpetrator because she had a grudge against him. He stated that the surviving victim was interested in him romantically, but he shot her down. He stated that Counsel cross-examined the victim at trial but did not think he did an effective job. He stated that he wanted to be tried with Cash and stated that he was unsure whether Cash committed the crime or not. He stated he

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was not present at the shooting. He stated he was found guilty at trial. He stated that Cash initially made a statement against him. After the incident, Applicant stated that Cash took him back to North Carolina, where he fell asleep and was ultimately apprehended. He stated that the murder weapon was a 9-millimeter pistol. He testified he was unsure where the gun was retrieved.

*Cash Testimony*

Cash testified he was available to speak as a witness at Applicant’s trial, but never testified. Cash testified that Applicant never left the vehicle and stated that neither one of them was the shooter. Cash testified he went inside the home to do a drug deal while Applicant slept in the car. Cash testified that he wrote a letter to Applicant stating he was willing to testify at Applicant’s trial. Cash testified that Counsel decided not to call him to testify at the trial.

On cross-examination, Cash stated he was with Casey Scruggs throughout the whole incident. He stated he thought Casey lied on him because she held grudges against him and Applicant because they rejected her romantic advances. Cash testified that he thought the Hell’s Angels were the people that shot the victims. He stated that he thought Casey may have killed the deceased victim. He testified that there was no blood or gunshot residue on him or Applicant. Cash acknowledged that there was no mention of Hell’s Angels leading up to trial, but stated they threatened the surviving victim. Cash testified that he met with Counsel and discussed his potential testimony. Cash testified that Applicant was asleep. He stated he stayed with Applicant because they had to work in the morning. He stated he went to the home to buy drugs. He stated that he and Applicant left the home before the shooting occurred.

*Counsel Testimony*

Counsel testified that he was appointed to represent Applicant. He stated they met

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multiple times and went over the facts, bond, and discovery. Counsel testified that he thought this case was triable. Counsel testified that Applicant always alleged he was in bed at the time of the incident. Counsel stated that Applicant always stated he did not know what happened. He stated that the motive of the crime was theft. He stated that the surviving victim identified Applicant and Cash.

Counsel testified that his strategy concerning cross-examining Casey was to show she was lying. He testified that she was not a favorable or cooperative witness for the defense. He stated that any leading of this witness likely did not have an impact at trial.

Counsel testified that he never wanted Applicant tried with Cash because Cash had mountains of evidence against him. He stated that there was a greater chance of being found not guilty if Applicant was tried by himself. Counsel testified that there was not a reason to change venues and did not think such a request would be successful. Counsel testified he did not pursue a post-trial motion because he did not think it would be successful and the issue should be raised on appeal instead.

Counsel testified that Cash informed him that he was sold some bad drugs, that a shooting occurred, and Applicant was involved in all of it. He stated that if Cash testified, the best option Applicant had was being found guilty of voluntary manslaughter. He stated that Cash's testimony would not have been helpful in Applicant's case. He stated that Applicant rejected all plea offers. He stated that Cash's testimony at the PCR hearing was different from what he stated it would be prior to trial.

Counsel testified that he did not recall hearing about Hell's Angels leading up to trial. Counsel testified that there was stolen property involved in this crime and a 9mm was taken. Counsel testified that Applicant and Cash took off to North Carolina immediately following the

crime because Applicant worked in North Carolina.

Counsel testified that he did not see a problem with the indictments and that it is difficult for an indictment to be wrong in South Carolina. Counsel testified he did not think Applicant testifying would have been a good idea, though stated that maybe he should have called him in hindsight. Counsel testified that he is not a fan of the hand of one hand of all theory, but that that was rooted in his perspective as a criminal defense attorney.

On cross-examination, Counsel stated that Cash’s proffered testimony would have resulted in both men being found guilty of voluntary manslaughter. He stated that this was not preferred, since Applicant previously rejected a plea offer to voluntary manslaughter. He stated that his testimony at the PCR hearing was different than what he was told before trial.

On re-direct, Counsel testified that Applicant’s testimony would have been refuted by the State’s witnesses. On re-cross, he testified that there was only circumstantial evidence in this case.

**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 and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant’s South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action’s records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated

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*Ineffective Assistance of Counsel*

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(c), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed

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in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

#### ***Failure to Properly Cross-Examine Witnesses***

Applicant claims Counsel was ineffective for failure to properly cross-examine the witnesses, especially Casey Scruggs. “Where trial counsel articulates a valid reason for employing a certain trial strategy, counsel will not be deemed ineffective.” *McKnight v. State*, 378 S.C. 33, 43, 661 S.E.2d 354, 359 (2008) (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)). Counsel can be deficient when examining witnesses if they fail to elicit testimony key to a petitioner’s defense. *Miller v. State*, 379 S.C. 108, 116, 665 S.E.2d 596, 600 (2008), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)

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(finding counsel was deficient in failing to elicit testimony about similarities between armed robberies from a witness who could corroborate where the applicant’s key defense was third party guilt).

Counsel credibly testified that his approach when cross-examining Scruggs was to paint her as dishonest before the jury. This Court finds Counsel achieved that goal. Additionally, Applicant failed to show what she could have been cross-examined on, but was not, or how that alleged failure resulted in a different outcome at trial. Accordingly, because Applicant failed to establish both deficiency and prejudice, relief is denied on this ground.

***Failure to Highlight Discrepancies between Trials***

Applicant claims Counsel was ineffective for failure to highlight the discrepancies in testimonies of witnesses between Cash’s trial and his. This Court finds Counsel’s approach in cross-examining witnesses reasonable and concludes that it was often based on pointing out inconsistencies and otherwise impeaching the credibility of those witnesses. Additionally, Applicant has not pointed to anything specific that Counsel could have highlighted that would have impacted the outcome at trial. Accordingly, relief is denied.

***Failure to Challenge Indictments***

Applicant is alleging he is entitled to PCR relief because Counsel was ineffective for failing to challenge the indictments. Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to

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announce and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it appraises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) citing *State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

Counsel credibly testified that he did not see anything wrong with the indictments and he did not think a challenge to the indictments would be successful. However, even if there was something faulty with the indictments, the right to challenge them has been waived. Accordingly, relief is denied on this ground.

***Failure to Object to Leading***

Applicant claims Counsel was ineffective for failure to object to the State's leading questions. This Court finds Counsel credible in his assertion that he did not think any leading questions asked affected the outcome at trial. Applicant failed to meet his burden of proving prejudice and, accordingly, relief is denied on this ground.

***Failure to Request a Change of Venue***

Applicant claims Counsel was ineffective for failure to request a change of venue. Counsel credibly testified that there was no basis for a change of venue and that he thought if one was requested, the request would be denied. Accordingly, relief is denied on this ground.

***Failure to Object to Severed Trial***

Applicant claims Counsel was ineffective for failure to object to the severed trial between him and his co-defendant, Jason Cash. However, Counsel's reasoning for wanting a severed trial was compelling; Cash had a wealth of evidence against him and he did not want his client being implicated in the crime more than he already was. This was a reasonable decision on Counsel's part. Additionally, this Court declines to find that Counsel's decision to co-sign on the severed

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trial did not prejudice Applicant in the least. Accordingly, relief is denied on this ground.

***Failure to Explain Sentencing Ranges***

Applicant claims Counsel was ineffective for failure to explain the sentencing ranges. Even if true, this Court cannot find how Applicant could have been prejudiced from this. Accordingly, relief is denied.

***Failure to Show All Discovery***

Applicant claims Counsel was ineffective for failure to review discovery with him. Counsel credibly testified that he met with Applicant to review the discovery multiple times. Applicant failed to show what he thought was not reviewed with him, how it was important, or how it impacted trial. Accordingly, relief is denied on this ground.

***Failure to Move to Reconsider the Conviction and Sentence***

Applicant claims Counsel was ineffective for failure to move to reconsider the conviction and sentence. Counsel credibly testified that he did not think a motion would be successful and thought any issues that could be raised in a post-trial motion should be raised on appeal instead. This is a reasonable decision and Counsel is not found deficient as a result. Additionally, because there was no showing that the motion would have been successful, no prejudice is found. Accordingly, relief is denied on this ground.

***Discouraging Applicant from Testifying***

Applicant alleges Counsel was ineffective for discouraging Applicant from testifying. “The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. However, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions.” *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). “If a defendant chooses not to

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take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." *Id.* "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." *Id.*

Applicant was engaged in a thorough colloquy about his right to testify. (Tr. 352-54). Thereafter, Applicant elected not to testify. (Tr. 354). Based upon the transcript, Applicant seemingly knew what he was doing by electing not to testify, and this decision was made voluntarily. Though Counsel testified that looking back he would have encouraged Applicant to testify, this comment was made with the benefit of hindsight. *See Yarborough*, 540 U.S. at 8 ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Counsel's advice at the time was reasonable. Further, this Court declines to find that Applicant's testimony would have made a difference at trial. Specifically, this Court agrees with Counsel's assertion that had Applicant testified at trial, his testimony would have been refuted by the State's witnesses. Accordingly, relief is denied.

#### ***Opening the Door – Stolen Handgun***

Applicant claims Counsel was ineffective for opening the door to testimony concerning a stolen handgun. This Court fails to find an objectionable basis from which Counsel could have objected. However, even if this was objectionable, this Court declines to find it prejudiced Applicant at all, given the strength of the State's case against him. Accordingly, relief is denied.

#### ***Discouraging Applicant from Pleading***

Applicant claims Counsel was ineffective because he discouraged Applicant from pleading. Counsel credibly testified that he told Applicant he should plead if he was guilty and go to trial if he was innocent. Counsel also credibly testified Applicant always maintained his

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innocence and, consequently, he would never tell him to plead while innocent of the crime. This is reasonable and Applicant cannot meet his burden of proving prejudice on this claim. Accordingly, relief is denied.

***Failure to Call Jason Cash to Testify***

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

“In most PCR cases in which the applicant seeks relief for trial counsel’s failure to call witnesses, the PCR court’s analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel’s performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his

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testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Based upon Cash's testimony at the PCR hearing and Counsel's subsequent testimony about the decision not to call Cash, this Court finds that Counsel's decision not to call Cash to testify was reasonable. Cash would not have been a helpful witness to the defense, as he has significant credibility issues and his narrative about the Hell's Angels is unbelievable.

Accordingly, if he was called, he would not have changed the outcome at trial. Relief is denied as a result.

### Conclusion

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

This Court notifies Applicant that he must file and serve a notice of appeal within thirty

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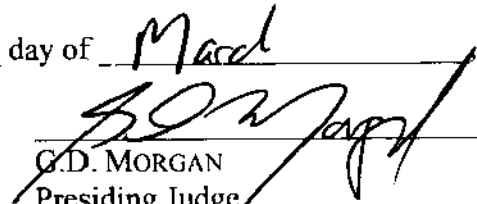
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days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

**IT IS THEREFORE ORDERED:**

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 16<sup>th</sup> day of March 2023.

  
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 G.D. MORGAN  
 Presiding Judge  
 Seventh Judicial Circuit

Spartanburg, South Carolina.

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