

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Charleston County

S.C. SUPREME COURT

Honorable Edgar W. Dickson, Circuit Court Judge

TIMOTHY JAMES WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000969

APPENDIX

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1 down his initial reaction is I'm screwed, I'm sunk, I might
2 as well just kill myself. That shows you his reaction after
3 he did what he did. Kadasha is outside. Here Kadasha,
4 shoot me. Is that the act of a person who just had an
5 accidental shooting?

6 His adrenaline had been pumping. He was furious about
7 what had happened inside. Kadasha told you, before ever
8 hearing what Mr. Wright was going to say, that the voices
9 were loud. They were arguing. He wants to know
10 (inaudible), no, that is not how we behave, we don't talk

11 loud to each other.

12 The Boost Mobile phone. Keep the phone and give her
13 her mother back. Makes absolutely no sense that he would
14 not be there to help Melinda Ford if it had been an
15 accident.

16 Three to four feet away. He saw her. He saw her
17 coming down the stairs. He saw her going towards her car.
18 And he takes it. Maybe he loaded it before she came
19 outside. We don't know.

20 But we know this, she had time enough to scream. Such
21 a curdling scream that Kadasha jumped. No. And this is
22 more telling I think than most other things: When Kadasha
23 walks outside, that man has this gun over her mother; huh,
24 huh. He showed her. He showed her.

25 And then that precious face appears on the steps. His

1 number is up. His gut reaction is I might as well kill
2 myself. But boy does self preservation kick in.

3 He wants you to believe that the shotgun goes off and
4 Kadasha just stays in the home and that he has got to
5 (knocking sound) knock on the trailer to get her outside.
6 Are you kidding me?

7 Leonard Maxwell goes onto his porch to see it
8 immediately. And Kadasha did exactly as she told you. She
9 immediately went outside.

10 He wants you to believe that Melinda was talking to
11 him. Dr. Schandl told you those pellets ripped through her
12 body. Well, you've seen the photograph of the shotgun
13 wound, and it will be back there with you.

14 If you could pull it up. It is State's Exhibit 33.
15 (WHEREUPON, photo shown on ELMO.)

16 Look at the shotgun blast. Do you think she is
17 chatting with Timothy Wright. Kadasha told you she never
18 heard her mother's voice again. Her mother is barely
19 breathing. And he wants you to believe they talked?

20 And he wants you to believe that once I guess the
21 shooting of himself didn't happen.

22 Leonard Maxwell told you he fled to his truck and he
23 drove straight out. But in doing so he grabs one of those
24 trash bags and throws it in his truck?

25 It would have been impossible for him to have shot

1 Melinda Ford from the driver's side of this vehicle. You
2 saw where her body rest. You saw where she dropped her
3 keys, her wallet, her wine. She saw it coming. There was
4 no accident. She saw it coming and screamed no. The last
5 thing that Kadasha ever heard her mother say, no.

6 And then he fled and he has all these reasons why. And
7 doing what was best for him it would be to get away from the
8 family of Melinda Ford. And when did you turn from wanting
9 to end your life to wanting to preserve your life?

10 He told you he had to fumble around to find a phone in
11 the car as he is high tailing it down Bohicket. He didn't
12 call 911 and say listen y'all are chasing me, she is hurt
13 and it was an accident.

14 Instead he uses all his energy to go around vehicles,
15 to go into the left lane, to go as quickly as he can go on
16 that road. And nothing would stop him.

17 You can look back at the tape from the chase. You see
18 that nothing was going to stop Timmy Wright; not a railroad
19 tie, not a fence, not another fence. But when that truck
20 wouldn't go any further he got out and (inaudible) was able
21 to evade the police.

22 Kadasha has told us what she told us when she testified
23 and what she told the 911 operators. She said that night,
24 right as everything is happening, before she ever heard his
25 story; she's the one you can believe.

1 Who has the motive to lie? Who has the motive to lie
2 about details? Timmy Wright.

3 Don't be deceived by his head being down. He was bold
4 that night. He has been in this trial. He has had these
5 charges pending for two years. He has listened to every
6 word that was testified to. He has seen every photograph.
7 He has heard every 911 call. He concocted a story. An
8 answer for everything. He had an answer for everything.

9 Kadasha told us she heard her mother scream no. She
10 heard the gunshot. She immediately goes out. Don't forget
11 what Melinda Ford went outside for. Melinda Ford who spent
12 the day shopping with her daughter and her mother went to
13 run the Chinese food back over to her mother.

14 She never knew when she stepped out of that house she
15 would never walk back in it. Melinda Ford dropped those
16 items right at the car. And maybe she was able to run a bit
17 before he shot her.

18 But we know this: We know he knows how to load it, we
19 know he knows how to rack it, we know he knows how to put a
20 safety on and take a safety off, we know he knows how to
21 aim, and we know he knows how to shoot.

22 The reason Timothy Wright didn't tell Jodie Grant,
23 Chica Lockwood, Norie Banks, his own mamma what he told
24 y'all, he hadn't made it up; he had nothing to tell. Was he
25 going to look in the eyes of those who came to visit him and

1 say I ended the life of a girlfriend? He didn't tell it
2 because he hadn't come up with it yet. Two years to come up
3 with it.

4 What was Kadasha's concern that evening? One thing,
5 her mother. What was Chrisshon's concern that evening? One
6 thing, her mother. What was Leonard Maxwell, who didn't
7 even know Timothy Wright's main concern? Melinda Ford. The
8 only one who cared not a thing about the life of Melinda
9 Ford was Timothy Wright.

10 So in 20 years of hunting and 16 years of owning this

11 weapon it just so happened on the afternoon that you are
12 packing your stuff in the trash bags, that the woman said
13 enough, that you walk outside demoralized and furious, the
14 weapon is loaded with the safety off? Absolutely not.

15 He knew what his target was. Loaded it, racked it, and
16 shot it. He didn't even want to admit that their voices
17 were loud. A deer would have had a fighting chance. But he
18 shot his prey, Melinda Ford.

19 ~~Kadasha's reaction that evening was the reaction of~~
20 someone who was going to lose a loved one. Imagine those
21 girls, trying to breathe life into their dying mother. And
22 what is he doing? Trying to outrun the police, trying to
23 save himself.

24 You will have all of the photographs back there with
25 you. And you will see where Melinda Ford last was before

1 she got shot, dropping her items by her car, leaving the
2 house to go to her mother's. And you will see where he left
3 and left her.

4 Melinda Ford didn't deserve to die. Timothy Wright
5 doesn't deserve to get away with it. Kadasha that evening
6 giving details on 911. You will have the ability to listen
7 to those again. Let's listen to her words.

8 (WHEREUPON, 911 audio is played.)

9 MS. SHEALY: Shot my mamma because they were having an
10 argument.

11 (WHEREUPON, 911 audio continues to play.)

12 MS. SHEALY: What did he tell Chica Lockwood on the
13 phone? As soon as I find a way to try to get myself out of
14 this.

15 Melinda Ford gave Kadasha life, and Timothy Wright he
16 took Melinda's life. This is murder. This is not a lesser
17 offense, and this is not an accident. Thank you.

18 THE COURT: Madam forelady, ladies and gentlemen of the
19 jury, I am going to charge you on the law that is applicable
20 in this particular case at this time.

21 I will give you a copy of these instructions in written
22 form. And during your deliberations you may refer to the
23 instructions to guide your decision making.

24 You must consider the instructions as a whole and not
25 follow some and ignore others. And madam forelady, would

1 you please return the instructions to the court after you
2 have reached a verdict.

3 The defendant has pled not guilty to these indictments,
4 which places the burden on the State to prove the defendant
5 guilty. A person charged with committing a criminal offense
6 in South Carolina is never required to prove themselves
7 innocent. I charge you it is a vital important rule of law
8 that the defendant in a criminal trial, no matter what the
9 seriousness of the charge may be, must always be presumed to
10 be innocent until his guilt has been proven beyond a
11 reasonable doubt.

12 The presumption of innocence remains with the defendant
13 at all times from the moment he appears in court throughout
14 the trial until you the jury reach a verdict beyond a
15 reasonable doubt based on the testimony and evidence which
16 has been presented.

17 A presumption of innocence is a substantial right to
18 which every defendant is entitled unless and until you reach
19 a verdict of guilty beyond a reasonable doubt.

20 If you the jury do not find the defendant guilty beyond
21 a reasonable doubt it is your duty to acquit the defendant.

22 What is reasonable doubt? A reasonable doubt is the
23 kind of doubt that would cause a reasonable person to
24 hesitate to act.

25 The State has the burden of proving the defendant

1 guilty beyond a reasonable doubt. Some of you may have
2 served as jurors in civil cases where you were told it is
3 only necessary to prove a fact that is more likely true than
4 not, such as the greater weight or preponderance of the
5 evidence. In criminal cases the State's proof must be more
6 powerful and it must be beyond a reasonable doubt.

7 Proof beyond a reasonable doubt is proof that leaves
8 you firmly convinced of the defendant's guilt. There are
9 very few things in this world that we know with absolute
10 certainty. In criminal cases the law does not require proof
11 that overcomes every possible doubt.

12 If based on your consideration of the evidence if you
13 are firmly convinced that the defendant is guilty of the
14 crime charged, you must find the defendant guilty.

15 On the other hand, if you think there is a real
16 possibility the defendant is not guilty, you must give the
17 defendant the benefit of the doubt and find the defendant
18 not guilty.

19 The same Constitution, laws, which designate and make
20 you the finders of the fact make me the sole instructor of
21 the law. It is my duty to charge you the law applicable in
22 this case, and it is your duty as jurors to accept and apply
23 the law as I now state it to you.

24 The lawyers are not the instructors of the law. You
25 must accept the law and apply the law exactly as I state it

1 to you. You must not base your decision-making on your idea
2 of what the law is or what you think the law should be.

3 Under our constitution and code of laws only you the
4 jury can make -- finders of facts in this case. I am not
5 permitted to indicate to you how I may feel about the
6 testimony or evidence which has been presented throughout
7 this trial. But my intention is to be fair and impartial
8 towards each of the parties involved.

9 Necessarily you must determine the credibility of the
10 witnesses who have testified in this case. Credibility
11 means the believability. It is your duty as jurors to
12 analyze and to evaluate the evidence and determine which
13 evidence convinces you of its truth.

14 As you decide whether or not to believe a witness's
15 testimony about a particular matter you may consider the
16 following: The manner or appearance of the witness while on
17 the witness stand; was he or she straightforward or has --
18 and answered. The testimony of a witness was it consistent
19 or inconsistent. How the witness came to know the facts
20 that he or she testified to; was the witness present during
21 the incident or did a witness happen on the scene
22 afterwards. The reason the witness would want to give
23 testimony or to help one side or hurt the other. Has the
24 witness exhibited to you any interest, bias, prejudice, or
25 other motive in the case. Thus you may consider whether

1 a particular witness may gain some reward, payment, personal
2 advantage, or vindication for his or her testimony.

3 The strength of the witness's testimony: Was the
4 testimony of the witness strengthened or weakened by other
5 testimony or evidence. The duration and length of time
6 between the incident and when they reported. Would the
7 duration or length of time weaken or strengthen the
8 witness's memory. Were prior statements made by the witness
9 consistent or inconsistent with the witness's testimony.

10 In determining the believability of the witnesses who
11 have testimony in this case you may believe one witness over
12 several or several over one. You may believe a part of the
13 testimony of a witness and reject the remaining part of the
14 same testimony of the same witness. You may believe the
15 testimony of a witness in its entirety or reject the
16 testimony of a witness in its entirety. Of course you
17 should not determine the truth by merely counting the number
18 of witnesses presented by each side.

19 Rule of evidence ordinarily do not permit witnesses to
20 testify to opinions or conclusions. An exception to this
21 rule exists for witnesses called expert witnesses.
22 Witnesses who by education or experience have become an
23 expert in some art, science or profession are permitted to
24 give their opinion in certain areas if the court qualifies
25 them as an expert witness.

1 An expert witness may also give the reasons for their
2 opinion. An expert opinion is evidence for you to use in
3 any way you see fit. You should give the evidence the
4 weight and credibility that you believe is appropriate.

5 If you decide an expert's witness opinion is not based
6 on sufficient education or experience or you decide that the
7 reason given in support of the opinions are not sound or
8 that the opinion is outweighed by other evidence, you may
9 disregard the opinion entirely.

10 The evidence or the lack of evidence from which you

11 are to decide the facts include the following: The
12 sworn testimony of the witness both on direct and
13 cross-examination regardless of which side called the
14 witnesses. The exhibits that have been received into
15 evidence by the court and any of the facts agreed or
16 stipulated to by all the lawyers.

17 The following things are not evidence; you may not
18 consider them in deciding the facts: Arguments and
19 ~~statements made by the lawyers are not evidence. The~~
20 lawyers are not witnesses. Their opening statement, closing
21 arguments and statements are not -- are intended to help you
22 interpret the evidence but are not evidence. If the facts
23 as you remember them differ from the lawyer's statements,
24 your memory controls.

25 Questions and objections by the lawyers are not

1 evidence. Lawyers have a duty to their clients to make
2 objections when they believe a question is improper under
3 the rules of evidence. You should not allow any objections
4 or the court's ruling on the objections to influence you.

5 Testimony that has been stricken or that you have been
6 instructed to disregard is not evidence and must not be
7 considered.

8 Anything you may see on television, read it in the
9 paper or on the Internet or heard from others when court is
10 not in session is not evidence. You should base your
11 decisions solely on the sworn testimony of the witness, the
12 exhibits received into evidence by the court, and any facts
13 agreed or stipulated to by the lawyers.

14 The fact that the defendant was arrested and charged
15 and indicted in this case is not evidence and cannot be
16 considered as evidence of guilt nor does it create any
17 presumption or inference of guilt. The indictment is simply
18 the written instrument which contains the charges made
19 against the defendant.

20 Two types of evidence which are generally presented
21 during a trial, direct evidence and circumstantial evidence:
22 Direct evidence directly proves the existence of a fact. It
23 does not require deduction. Circumstantial evidence and the
24 proof of a chain of facts and circumstances indicating the
25 existence of a fact. Crimes may be proven by circumstantial

1 evidence.

2 The law makes no distinction between the weight or
3 value to be given to either direct or circumstantial
4 evidence. However to the extent the State relies on
5 circumstantial evidence all of the circumstances must be
6 consistent with each other and when taken together point to
7 the conclusion of guilt of the accused beyond a reasonable
8 doubt.

9 If these circumstances merely portray the defendant's
10 behavior as suspicious, the proof has failed. The State has

11 the burden of proving the defendant's guilt beyond a
12 reasonable doubt. This burden rests with the State
13 regardless of whether the State relies on circumstantial
14 evidence, direct evidence, or some combination of the two.

15 Murder. The defendant is charged with murder. The
16 State must prove beyond a reasonable doubt that the
17 defendant killed another person with malice aforethought.

18 In its popular sense the term malice conveys a meaning
19 ~~of hatred, ill will, or hostility towards another. In its~~
20 legal sense however malice does not necessarily mean ill
21 will towards the individual injured but signifies the
22 malignant recklessness for the lives or safety of others or
23 a condition of the mind which shows a heart fatally bent on
24 mischief.

25 Malice has been defined as the intentional doing of a

1 wrongful act towards another without legal justification or
2 excuse where the circumstances attending the killing show an
3 abandoned heart or malignant heart.

4 Malice aforethought does not require that malice exists
5 for any particular time before the act is committed. But
6 malice must exist in the mind of the defendant just before
7 and at the time the act was committed. In other words,
8 malice may be conceived at the very moment the fatal blow
9 was given. Therefore there must be a combination of evil
10 intent and the act.

11 Malice aforethought may be expressed or inferred.
12 These terms expressed and inferred do not mean different
13 kinds of malice, merely the manner in which malice may be
14 shown to exist. It is either by direct evidence or by
15 inference from the facts and circumstances which are
16 proven.

17 Express malice is shown when the person prepared to
18 plan beforehand to do the act which was later accomplished,
19 for example, lying in wait or any other acts of preparation
20 going to show that the deed was within the defendant's mind
21 would be expressed malice.

22 Malice is said to be expressed when there is
23 manifestation of a violent deliberate intention to
24 unlawfully take away the life of another human being.

25 Malice may be inferred from conduct showing a total

1 disregard for human life. Malice may be inferred where
2 there is no excuse or legal provocation for the killing.
3 Malice may be inferred from the brutal conduct on the part
4 of the person committing the crime.

5 The jury may also conclude by deductive reasoning that
6 under certain circumstances malice arises even -- (cough)
7 even though there is no expressed or direct evidence of an
8 intent to kill.

9 If facts prove sufficient to raise an inference of
10 malice this inference would be simply an evidentiary act to
11 be taken into consideration by you.

12 The defendant is not required to prove the absence of
13 malice. Rather, the State is required to prove the
14 existence of malice beyond a reasonable doubt.

15 Possession of a weapon during the commission of a
16 violent crime: A defendant is charged with possession of a
17 weapon during the commission of or attempt to commit a
18 violent crime. The State must prove beyond a reasonable
19 ~~doubt that the defendant was in possession of a firearm or~~
20 visibly displayed what appeared to be a firearm during the
21 commission of a violent crime.

22 A firearm means any machine gun, automatic rifle,
23 revolver, pistol, or any weapon which is designed or may be
24 readily converted to expel a projectile.

25 In order to find the defendant guilty of possession of

1 a weapon during the commission of a violent crime you must
2 first find a defendant guilty of either committing a violent
3 crime or attempted to commit the violent crime.

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

7 And included in the offense of murder is the lesser
8 offense of involuntary manslaughter. If you find that the
9 State has failed to prove beyond a reasonable doubt that the
10 defendant committed murder you may consider whether the
11 State has proven beyond a reasonable doubt that the
12 defendant committed involuntary manslaughter.

13 To prove involuntary manslaughter the State must prove
14 beyond a reasonable doubt that the defendant unintentionally
15 killed the victim without malice, was not engaged in
16 unlawful activity, not naturally intended to cause death or
17 great bodily harm, or that the defendant unintentionally
18 killed the victim without malice while engaged in a lawful
19 activity with reckless disregard for the safety of others.

20 Unintentional means that the defendant did not intend
21 for anyone to be killed or seriously injured. Reckless
22 disregard for the safety of others is more than mere
23 negligence or carelessness.

24 Mere negligence or carelessness is a failure to use the
25 care that a person, an ordinary person, would use under this

1 same circumstance. Reckless is a conscious failure to use
2 ordinary care.

3 Reckless disregard for the safety of others means that
4 you are not interested in the consequences of your act or
5 the rights and safety of others.

6 If a person who knows or should know ordinary care
7 requires certain precautions to be taken for the safety of
8 others when using a dan -- dangerous instrumentality such as
9 gun or a car when that person fails to use those precautions
10 without concern, the person's actions are considered
11 reckless.

12 The State must also prove beyond a reasonable doubt
13 that the defendant act was the proximate cause of the death.
14 Proximate cause is a direct result. It is an immediate
15 cause; it is an efficient cause; it is that cause without
16 which death of the victim would not have resulted and must
17 be a chain of causation from the time of the injury
18 inflicted by the defendant until the time of the victim's
19 death. ~~Proximate cause does not necessarily mean it~~
20 occurred immediately prior to death.

21 In determining the guilt or innocence of the defendant
22 you cannot consider any possible penalty for any particular
23 crime. Punishment for the crime is a matter for me to
24 determine and should never be considered by you in any way
25 whatsoever in arriving at an impartial verdict as to the

1 guilt or innocence of the defendant.

2 You have been selected as fair and impartial jurors
3 sworn to impartiality to try and determine the facts of this
4 case. And when you have complied with your oath to do so no
5 one will have the right to criticize your verdict and you
6 fully discharge your duty as jurors. You will decide this
7 case according to testimony you have heard from the sworn
8 witnesses along with the evidence introduced.

9 I charge you as jurors you must make a decision in this
10 case without bias, without prejudice to any party. You
11 cannot allow yourself to be governed by sympathy, prejudice,
12 passion, public opinion, or any other arbitrary factor.

13 Both the State and the defendant have the right to
14 expect that each one of you will carefully and impartially
15 consider all the evidence in the case. You will follow the
16 law as I have explained it to you.

17 Nothing I may have said or done during the course of
18 this trial has been in any way to -- or express or suggest
19 that during the case or opinion as to the facts, the weight
20 of the evidence or the credibility of the witnesses.

21 If you believe any of my actions or words have
22 indicated otherwise, you must disregard such and form your
23 own view of the case or your own opinion as to the facts,
24 the weight of the evidence, or the credibility of the
25 witnesses.

1 Madam forelady and ladies and gentlemen of the jury, I
2 would tell you that your verdict has to be unanimous. All
3 12 of you have to agree. And I would tell you that it is a
4 collective reasoning and collective decision on all 12 of
5 you's part. As I said earlier, it has to be unanimous.
6 And I would ask you to respect each other's opinions.
7 Re-evaluate your opinions if you think it is necessary and
8 reach a fair and just verdict.

9 Madam forelady, I have prepared a verdict form. And it
10 has at the top, the State of South Carolina versus James
11 Wright. It has Charleston County and the case number.

12 Number one, on the charge of murder: We the jury in
13 the charge of murder by unanimous consent find the
14 defendant, Timothy James Wright, guilty, not guilty.

15 If you find the defendant guilty of murder, proceed to
16 question two. If you find the defendant not guilty of
17 murder, proceed to question three.

18 Question two is about the commission -- possession of a
19 fire arm.

20 Question three is about involuntary manslaughter.

21 On the charge of possession of a fire arm during the
22 commission of a violent crime do not answer it if not guilty
23 in question one.

24 We the jury on the charge of possession of a firearm
25 during the commission of a violent crime by unanimous

1 consent find the defendant, Timothy James Wright, guilty,
2 not guilty.

3 On the charge of involuntary manslaughter, do not
4 answer involuntary manslaughter if you find him guilty of
5 murder. We the jury on the charge of involuntary
6 manslaughter by unanimous consent find the defendant,
7 Timothy James Wright, guilty, not guilty.

8 A place for the forelady to sign and date it today.

9 Madam forelady, I am going to ask you to go to the jury
10 room. But before you begin your deliberations wait for the
11 bailiff to bring the verdict form which I just read to you,
12 the criminal charge book, and all of the exhibits that have
13 been admitted into evidence.

14 I have to take up my charge with the attorneys, so I
15 may have to bring you back and correct something I've said
16 or add something that I've left out. So don't begin your
17 deliberations until the bailiff brings you all the exhibits
18 and tells you to begin your deliberations.

19 The two alternates, Mrs. Montgomery Dennis and Mr.
20 Goss, if you would just keep your seat please while the
21 other 12 jurors go to the jury room.

22 Madam forelady, if you will please follow the bailiffs
23 to the jury room.

24 (WHEREUPON, the jury exited the courtroom 3:13 p.m.,
25 February 4, 2015.)

1 THE COURT: All right. Any exception to the charge
2 from the State?

3 MS. SHEALY: Yes, Your Honor. I may be incorrect about
4 this, but the portion of your charge that you handed us the
5 email on regarding malice may be inferred from conduct
6 showing a total disregard for human life and it inferred
7 malice may also arise when the deed is done with a deadly
8 weapon, I don't think you charged that.

9 THE COURT: I didn't charge that.

10 MS. SHEALY: I think it would be appropriate to charge.

11 THE COURT: I don't think so under -- what is the name
12 of the case?

13 THE LAW CLERK: She has got it.

14 THE COURT: What is the name of the case?

15 MS. SHEALY: Oh, State versus Belcher.

16 THE COURT: Belcher. I don't think under State verses
17 Belcher it is appropriate under the facts of this case,
18 primarily because there was testimony about discharging a
19 firearm.

20 MS. SHEALY: Well ---

21 THE COURT: So I'm not going to charge it. Your motion
22 to do it is overruled, okay.

23 MS. SHEALY: Okay. And then also, Judge, regarding the
24 possession of a weapon during a crime of violence I noted
25 that you stopped where your charge after you said

1 trafficking cocaine.

2 THE COURT: Yeah, I --

3 MS. SHEALY: I don't know that the jury was instructed
4 that if they find him guilty of murder that murder is indeed
5 a violent crime.

6 THE COURT: Well, I think the -- I will be glad to
7 bring them back and tell them that. But I think the verdict
8 form itself would take care of that. I will come back ---

9 MS. SHEALY: Okay.

10 THE COURT: --- and tell them that murder is a violent
11 crime if you want me to; but I really think the verdict form
12 will take care of it.

13 MS. SHEALY: I would ask that you do so. And the part
14 that you are going to send back did you take out ---

15 THE COURT: Yeah, I'm going to take that out.

16 MS. SHEALY: --- the reference to trafficking?

17 THE COURT: I didn't read it to them. I am going to
18 take it out. I was going to add murder in it.

19 MS. SHEALY: Okay.

20 THE COURT: But I ---

21 MS. SHEALY: If you do that and charge them, that would
22 be great.

23 THE COURT: Do you want me to bring them back ---

24 MS. SHEALY: I do.

25 THE COURT: --- and tell them murder is a violent

1 crime?

2 MS. SHEALY: I do.

3 THE COURT: All right. I will do that. Any exceptions
4 from the defense?

5 MR. SMITH: No, Your Honor.

6 THE COURT: Okay. Bailiff, bring the jury back,
7 please.

8 (WHEREUPON, break 3:17 p.m., February 4, 2015.)

9 (WHEREUPON, instruction from the court for attorney to
10 review exhibits, interrupted by word from the bailiff that
11 jurors are ready.)

12 (WHEREUPON, the jury enters 3:18 p.m., February 4, 2015.)

13 THE BAILIFF: All jurors are present, Your Honor.

14 THE COURT: Okay. Thank you very much. Madam
15 forelady, ladies and gentlemen of the jury, I neglected to
16 tell you on the charge of possession of a pistol during a
17 violent crime, murder is a violent crime; involuntary
18 manslaughter is not a violent crime.

19 ~~Madam forelady, if you will go back to the jury room.~~

20 Thank you very much. And we will get the exhibits in to you
21 very shortly.

22 (WHEREUPON, jury exited the courtroom 3:19 p.m. February 4,
23 2015.)

24 THE COURT: If y'all would come and make sure all the
25 exhibits are present.

1 MS. SHEALY: Your Honor, I know that there is one that
2 we had marked regarding that jail phone conversation. It is
3 one seventy ---

4 THE COURT: Have y'all edited it?

5 MS. SHEALY: This is the jail phone call that we never
6 put in ---

7 THE COURT: Right.

8 MS. SHEALY: --- because he admitted to it.

9 THE COURT: Right.

10 MS. SHEALY: So that needs to come out, 179.

11 THE COURT: Hand it to me so it doesn't get sent back.

12 MS. SHEALY: And then regarding the 911 phone call ---

13 THE COURT: How about the 911 phone call?

14 MS. SHEALY: We are going to do that right now.

15 THE COURT: Y'all are going to edit it?

16 MS. SHEALY: Uh-huh.

17 THE COURT: Okay. All right.

18 (WHEREUPON, exhibits were reviewed and confirmed by
19 counselors prior to the bailiff taking them to jury.)

20 (WHEREUPON, court was at recess.)

21 (WHEREUPON, jury note was marked as Court's Exhibit
22 Number 5.)

23 (WHEREUPON, court was at recess.)

24 THE COURT: We have a verdict. Would you bring the
25 jury, please.

1 (WHEREUPON, jury enters courtroom 5:23 p.m., February 4,
2 2014.)

3 THE COURT: Madam forelady, these are indictments that
4 I have talked about previously. And I've left you a verdict
5 on the indictment. I am going to ask the bailiff to come
6 and get you to sign. And I've dated it today, February
7 the 4th, 2015. And get you to sign right beside the date.

8 FORELADY: Yes, sir.

9 THE COURT: There are two of them.

10 FORELADY: Is there two?

11 THE COURT: Did you sign both of them?

12 FORELADY: Okay.

13 (WHEREUPON, documents were presented by the bailiff to the
14 court.)

15 THE COURT: Thank you, ma'am. Madam clerk, if you will
16 publish the verdict, please.

17 THE CLERK: In the Court of General Sessions for the
18 Ninth Judicial Circuit, Case Number 2013-GS-10-3170, State
19 of South Carolina, County of Charleston, State of South
20 Carolina versus Timothy James Wright, we the jury on the
21 charge of murder by unanimous consent find the defendant,
22 Timothy James Wright, guilty.

23 On the charge of possession of a firearm during the
24 commission of a violent crime, we the jury on the charge of
25 possession of a firearm during the commission of a violent

1 crime by unanimous consent find the defendant, Timothy James
2 Wright, guilty.

3 Signed forelady of the jury, February the 4th, 2015.

4 Ladies and gentlemen of the jury, if this is your
5 verdict please raise your right hand.

6 (WHEREUPON, the jurors unanimously complied.)

7 THE CLERK: Thank you.

8 THE COURT: All right. Let the record reflect all
9 twelve jurors raised their right hand.

10 Is there any motions as to the jury?

11 MR. SMITH: We just ask that you poll the jury, Your
12 Honor.

13 THE COURT: All right. Madam clerk, would you poll the
14 jury, please, ma'am.

15 Any from the State?

16 MS. SHEALY: No, Your Honor.

17 THE COURT: Okay.

18 THE CLERK: Ladies and gentlemen, I am going to ask you
19 two questions. I will first call your juror number and then
20 I will ask you is this your verdict. You will answer yes or
21 no. I will ask you then again is this still your verdict.
22 Again you will answer yes or no.

23 (WHEREUPON, each juror was individually polled and each
24 answered in the affirmative to both questions.)

25 THE CLERK: The jury has been polled, Your Honor.

1 THE COURT: Okay. Thank you very much. All right.
2 Solicitor, Ms. -- I'm sorry, Mr. Wright, Mr. Smith, Ms.
3 Runey, I am going -- it is 5:30, and I am not going to
4 sentence him tonight. I will do sentencing in the morning
5 at 11 o'clock. If you will be back at 11 o'clock in the
6 morning we will do sentencing.

7 Bring the sentence sheets. You may have them now, but
8 I'm going to postpone sentencing until 11 o'clock in the
9 morning. I will see you then. The bailiffs may take the
10 jury to the jury room. Thank y'all very much.

11 MS. SHEALY: Thank you.

12 (WHEREUPON, the jury exited 5:21 p.m., February 4, 2014.)

13 THE COURT: Let me see the lawyers up here.

14 (WHEREUPON, bench conference was had at 5:21 p.m. and
15 recessed for the day February 4, 2015.)

16 (WHEREUPON, resumed February 5, 2015, 11:11 a.m. for
17 sentencing.)

18 MS. SHEALY: Your Honor, may we approach for a second?

19 THE COURT: Yes, ma'am.

20 (WHEREUPON, bench conference was had at 11:11 a.m.)

21 (WHEREUPON, proceedings recessed 11:11 a.m.)

22 (WHEREUPON, proceedings resumed 11:15 a.m.)

23 THE COURT: All right. We are here for sentencing on
24 Timothy James Wright. And I understand the victims are
25 here; is that correct, Solicitor?

1 MS. SHEALY: That is correct.

2 THE COURT: All right. I will be glad to hear from you
3 or from anyone you would like for me to listen to.

4 MS. SHEALY: Thank you, Your Honor.

5 THE COURT: After the State presents whatever, I will
6 be glad to hear from the defendant and what you would like
7 for me to listen to.

8 MS. SHEALY: Your Honor, if we could first focus our
9 attention on Mr. Wright. Obviously this is not a situation
10 where he came in and accepted responsibility for his
11 actions.

12 I am unaware of anything difficult about this
13 gentleman's childhood. I believe he has had his mother
14 present during his trial. He enjoyed the benefit of her
15 being able to visit him in jail as he will when he goes to
16 prison.

17 In looking back at his prior record I had indicated
18 previously to the court that he has a conviction in 1998,
19 possession of cocaine. His 2001 simple assault conviction
20 involved his striking a girlfriend on her face with his
21 fist.

22 THE COURT: Was that reduced from a higher charge, or
23 could you determine? Was it reduced from I guess at that
24 time high and aggravated to simple, or was it simple all
25 along?

1 MS. SHEALY: Beg the court's indulgence just a moment.
2 The way it reads is -- hold on just a second and I will

3 THE COURT: I will ask Mr. Wright.

4 Mr. Wright, you were charged back in '01 on simple
5 assault. Were you originally charged with high and
6 aggravated -- assault and battery high and aggravated, it
7 was reduced and you pled guilty that; or were you originally
8 charged with simple assault, or do you know?

9 MR. WRIGHT: I was originally charged with simple
10 assault.

11 THE COURT: Okay. Thank you.

12 MS. SHEALY: The way the rap sheet reflects it, it says
13 arrest charge, assault and battery, conviction, simple
14 assault.

15 THE COURT: Okay. All right.

16 MS. SHEALY: And again, that was from striking a
17 girlfriend at the time. Now I'm not going over just
18 incident reports. I am only going over convictions.

19 ~~THE COURT: You can go over his incident reports.~~

20 MS. SHEALY: Well, there are other ---

21 THE COURT: Are there some where they weren't reduced
22 to arrest?

23 MS. SHEALY: I'm sorry, say that again.

24 THE COURT: Are you talking about there are some
25 incident reports where they did not issue arrest warrants?

1 MS. SHEALY: They either did not issue arrest warrants
2 or the victim backed out.

3 THE COURT: Well, I would like to hear from those.

4 MS. SHEALY: Okay.

5 THE COURT: We are not at trial. We are at sentencing.

6 MS. SHEALY: Beg the court's indulgence just a moment.

7 THE COURT: Obviously at trial they wouldn't be
8 admissible. I would like to hear about them.

9 MS. SHEALY: While my law clerk is looking for the
10 other incident reports I will go ahead and address another
11 conviction.

12 There is an assault and battery third charge from 2012,
13 June 2nd of 2012. He was accused of striking his wife's
14 16-year-old daughter causing her to have an abrasion on her
15 chest and some light bleeding. He was convicted of that.

16 And I think it is of interest two days later he files
17 an incident report because his wife removes his handgun from
18 his vehicle. Certainly I suggest -- it is suggestive of she
19 was scared for him to have a gun.

20 THE COURT: I know we have got first, second, and
21 third. Third is ---

22 MS. SHEALY: Third is like simple assault.

23 THE COURT: Third is the same as simple, right?

24 MS. SHEALY: Yes, ---

25 THE COURT: Okay.

1 MS. SHEALY: --- it is.

2 THE COURT: All right.

3 MS. SHEALY: It is. So, Judge, we certainly can see
4 episodes of violence in this defendant's background. They
5 appear to be of a domestic nature, even though he and Ms.
6 Ford had no prior violence in their relationship prior to
7 the day in question.

8 Let me see if we have found that incident report.

9 In July of 2001 there was no arrest, but a girlfriend
10 called during an argument asking for the police to come and
11 diffuse the situation out of fear of where it was leading.

12 And in September of 2003 there was a criminal domestic
13 violence charge involving the victim Tymeia Davis who he has
14 testified is one of the mothers of one of his children. He
15 grabbed her hair and punched her in the face.

16 THE COURT: Okay.

17 MS. SHEALY: So we are seeing a pattern of abusive
18 behavior on the part of Mr. Wright towards females, towards
19 ~~those that he is in a relationship with, and even the~~
20 children of those that he was in a relationship with.

21 And looking at that - and I know Your Honor has had the
22 benefit of watching both of Ms. Ford's daughters testify.
23 You know, it is interesting to look at this through the lens
24 of each of the individual children's eyes. Kadasha who had
25 enjoyed a delightful morning with her mother and her

1 grandmother, and for this to have occurred while she is
2 inside starting a load of clothes, thinking her mother is
3 running out to take this Chinese food back to her own
4 mother.

5 And we have heard the frantic behavior of Kadasha in
6 trying to find a phone to use and wondering where is EMS and
7 trying to provide aid to her mother. And her words are
8 chilling on that 911 tape: Are you serious. Are you
9 serious. He shot my momma because they had an argument.

10 That is a nice summary of exactly the atrociousness of
11 the act on Mr. Wright's part.

12 But then Chrisshon to have gotten off work and had no
13 idea what she was approaching and to drive up in that yard
14 and see her mother on the ground and the hysteria in her
15 voice trying to absorb what all had happened and to get on
16 her knees and to breathe life into her mother's mouth, to
17 attempt to do so.

18 And then Davion, the little boy, was with his father
19 that weekend having no idea that he would never see his
20 mother again.

21 And then Melinda Ford's mother herself, getting a phone
22 call from Kadasha, mamma is bringing your food over and then
23 later getting the phone call, momma has been shot.

24 You know, there is no substitute for losing a mother.
25 Kadasha and Chrisshon she won't be there for their weddings.

1 They won't have their mother there for her babies that
2 are -- that will be born. Nor will Davion. Kadasha and
3 Davion won't have their mother there for their high school
4 graduations or for her counsel.

5 But look what Melinda Ford lost. She lost all of that,
6 to not be able to experience that. She was only 37 years
7 old.

8 Here is a photograph that the children have brought
9 just so you can see their mother.

10 (WHEREUPON, photograph presented to the court.)

11 THE COURT: Thank you, ma'am.

12 MS. SHEALY: And we have seen the house from the
13 photographs that were presented, photographs of her children
14 in all the rooms. A family's home that she allowed this man
15 to come into. I believe, Your Honor, that both of the
16 daughters would like to address the court.

17 The State is asking life. This is palpable, the loss
18 for these children.

19 ~~THE COURT: This is what? I'm sorry.~~

20 MS. SHEALY: Palpable.

21 THE COURT: Okay.

22 MS. SHEALY: The loss for these children. And you see
23 the other family members who have been there throughout the
24 entire trial. Melinda Ford was beloved.

25 It strikes me as particularly difficult that the

1 children are not in the same home with their brother
2 anymore, the girls. It has divided the family. Not
3 emotionally. They still love their brother. But their
4 brother is not with them anymore. If you could hear from
5 Kadasha.

6 THE COURT: I would be glad to. Yes, ma'am.

7 MS. Kadasha J. : My name is Kadasha ---

8 THE COURT: Move to your left -- okay, she moved; so I
9 can see you. Go ahead.

10 MS. Kadasha J. : My name is Kadasha J. . And
11 I think he deserves life in prison because he took my mom's
12 life. And he has made my family torn apart. My family is
13 hurt. That is all I have got to say.

14 THE COURT: Let me ask you a question if I may. How
15 long had your mother and Mr. Wright been living together? I
16 think you testified at trial, but I don't remember what you
17 said?

18 MS. Kadasha J. : Like four months.

19 THE COURT: Four months?

20 MS. Kadasha J. : Yes, ma'am.

21 THE COURT: All right. During that four months period
22 did you observe any arguments or any physical contact with
23 Mr. Wright?

24 MS. Kadasha J. : Only one time.

25 THE COURT: Pardon?

1 MS. Kadasha J. : Only one time.

2 THE COURT: Was that this incident we tried, or was
3 that prior to this time?

4 MS. Kadasha J. : It was during the time that
5 he ---

6 THE COURT: Prior to this time?

7 MS. Kadasha J. : Yes, sir.

8 THE COURT: Can you tell me a little bit about it, what
9 you remember?

10 MS. Kadasha J. : All I just heard was him yelling

11 at her. Just I didn't hear my mom yelling back, but I heard
12 him yelling at her.

13 THE COURT: Okay. Thank you so very much.

14 MS. Kadasha J. : You are welcome.

15 THE COURT: Yes, ma'am, anybody else?

16 MS. KRASHON JENKINS: My name is Chrisshon, oldest

17 daughter of Melinda. I think we all here, my family and I,

18 have been waiting two years for this day here; and I do

19 believe that Timmy deserves life because my mom was only 37

20 years old when she got killed. She needed to live a full

21 live. So I feel like he shouldn't be able to live his whole

22 life outside of society. So I just feel that he does

23 deserve life in jail.

24 And then also my mom's loss isn't the only loss that

25 we -- my little brother Davion he was taken away from us,

1 from his dad all the way to another state. And he didn't
2 want to be there, so he was basically taken against his
3 will. He wants to be at home with us, but he can't because
4 that is just the effects of what -- of what he did.

5 And also I am raising my sister, my 17-year-old sister
6 along with the help of some of my family. But I'm only 21.
7 I shouldn't be having to deal with what -- not that I'm
8 complaining that I have, but I have to do whatever I have to
9 do to support my sister. And with that I do have two jobs
10 to make sure that I do whatever I can do for her.

11 THE COURT: Anything -- thank you so very much. I
12 appreciate it. I'm sorry about your loss.

13 MS. SHEALY: Your Honor, just briefly. I think you can
14 tell by the way Kadasha and Chrisshon speak that Melinda
15 Ford did an excellent job in raising her children. And in
16 that these two individuals had only been together for a few
17 months it was more of like a honeymoon period.

18 Mr. Wright testified and acknowledged that people began
19 telling Melinda Ford about Timothy Wright. And earlier that
20 day she had a conversation with her cousin or they ran into
21 a cousin while they were shopping. And that cousin also
22 shared with Melinda Ford you need to watch out for Timothy
23 Wright.

24 So the fact that there had not been anything physical
25 of a physical nature between them before this date was they

1 just weren't deep enough into a relationship. And obviously
2 when you shoot her in her back and kill her four months in,
3 that is the heightness -- heightened episode obviously of
4 violence.

5 We have nothing further at this time. Thank you.

6 Oh, I'm sorry. This is Isis Frasier. She is the
7 cousin of Melinda Ford who I was just mentioning had seen
8 Melinda earlier that day while shopping.

9 THE COURT: Who -- that -- have you got that letter
10 that is marked Court's Exhibit?

11 MS. SHEALY: The concerned citizen's letter?

12 THE COURT: Yeah, where is it?

13 MS. SHEALY: We don't know who the author of that is.

14 THE COURT: Have you got the letter?

15 THE COURT REPORTER: All the evidence is downstairs.

16 MS. SHEALY: All the evidence is downstairs.

17 THE COURT: I read that letter. And it is marked as
18 Court's Exhibit.

19 MS. SHEALY: Right. And I think it is sort of telling
20 that Mr. Wright had it in his glove compartment. He says
21 Melinda Ford had read it. I don't know whether she had read
22 it or not or whether he intercepted it.

23 THE COURT: So you don't know the author of that
24 letter?

25 MS. SHEALY: I do not know the author of that letter.

1 That letter references the way he treated his wife and her
2 child and warned of his behavior. And then I think Isis
3 Frasier would like to share with you her -- I'm not sure
4 what she wants to share.

5 THE COURT: Okay.

6 MS. SHEALY: But she is a cousin of Melinda Ford.

7 THE COURT: Isis, what is your last name?

8 MS. FRASIER: Frasier.

9 THE COURT: Ms. Frasier, I would be glad to hear you.

10 MS. FRASIER: Yes, sir. Actually the day Melinda and
11 I -- our grandmothers are sisters. I went -- Melinda and I
12 would text periodically, especially if there were different
13 things going on. And there was a show that was coming to
14 town. She texted are you and your husband going to the
15 show. And I said no, are you. She said yes. And I said
16 well okay, cousin, have fun.

17 Well, on Facebook she was getting ready to go to the
18 show. I said looking good cousin. Different people
19 responded telling her she looks really nice, the night
20 before.

21 That Saturday we were in -- I was in the Burlington
22 West Ashley parking lot, and we went into City Trends and
23 Melinda walked in. And she said Isis, and I turned around.
24 And I said well did you have fun. Because if you know
25 Melinda she is usually bubbly, upbeat. She likes to dress.

1 And just -- it just her aspect, something was wrong that
2 day.

3 And I said what is wrong. She said girl, I did not
4 have a good night. And I said why, the show was bad? She
5 said, I don't know. She said, I could not enjoy the show.
6 From Johns Island, out to eat, to North Charleston, she said
7 to the show, my boyfriend and I argued. And I said, your
8 boyfriend. And we would always talk about different things.
9 And she said, girl, yes.

10 And I said you have a boyfriend, who is your boyfriend.

11 She said, girl he told me not to tell you who he is. And I
12 said well how does he know me. She said wait a minute, let
13 me tell you the story first before I tell you.

14 She said I was looking at your picture on Facebook.
15 Dasha was in the kitchen. I said, oh, man, I'm proud of
16 Isis and her weight loss and she looks so good. And she
17 said her boyfriend said, who, big fat Isis?

18 And she said wait a minute, don't call my cousin big,
19 ~~fat; Isis looks really good and has lost a lot of weight.~~

20 And he said how do you know Isis. She said we are cousins.
21 And Desmona's daddy, that is my uncle too. And he said,
22 well don't -- don't tell Isis about you and I because Isis
23 always has something to say. And she and Mimi, Tamia Davis,
24 are really close and I don't want her to know that I am at
25 your house because Mimi still wants me. Verbatim.

1 And I said well, Melinda, he is lying. And I said --
2 and I asked her, I said well why would you go with Timmy, he
3 used to date our uncle's daughter and how he used to beat
4 her when we were undergrads at South Carolina State. I was
5 at Bennett, and she was at State. In 1997.

6 I met Timmy when we were in high school our senior --
7 senior time. He was going with our uncle's daughter. And I
8 asked Melinda. She said, Isis I did not know until recently
9 that that is the Timmy.

10 And then she began to tell me about a mark like this
11 bruise he had around the groin area. I don't know what's in
12 his pants. He has a deep like gash. And he said it
13 happened because Mimi tried to kill him and this long story.
14 And I said, Melinda, be careful.

15 And I asked her, I said has he ever hit you. And she
16 said no. She said but Isis I see it in him. And I said
17 well what do you mean. And she said it is just this look.
18 She said, well I think he has it because it is a thing with
19 all the brothers that I had.

20 And she said -- she started naming all these -- these
21 ladies and if I knew this lady named Althea and all these
22 different people was calling her.

23 And I said to my cousin I said the Lord sends a warning
24 before destruction. But I had no idea that would be the
25 last time that I would see her and hear her voice. And she

1 texted me a couple of hours later just to ask a question.

2 And I said Melinda, leave it alone.

3 And then a friend of mine, Tasha Miller comes beating
4 on my door, did you hear about Melinda. I said what
5 happened, Melinda who. She said your cousin, Timmy killed
6 her.

7 And I just don't understand why he had to kill her. He
8 could have just left her alone. And it saddens me
9 especially my years all the years I've been a clinician for
10 Charleston County for all these 11 years until I left in

11 2011. I've worked drug court, juvenile drug court. I've
12 never encountered someone who is so callus, has not said I'm
13 sorry, not said forgive. Nothing.

14 He reminds me of an addiction that is cunning and
15 baffling and that will hit you with the element of surprise.
16 And I am deeply saddened along with our family that he took
17 her life for no reason. Can't understand it. For selfish
18 reasons.

19 ~~And I am very disappointed and I am hurt. And not only~~
20 does he have small children -- like he told Melinda, I've
21 been friends with his kid's mother since we have been like
22 seven years old. And his children, those little boys who I
23 know personally, Timothy and Malek are suffering. And his
24 son Timothy is following in his footsteps. When he was
25 arrested he was sentenced over there in juvenile detention

1 over headquarters, can't understand what is going on and
2 trying to find a way to actually cope and is headed down the
3 same path to further penetrate in the criminal justice
4 system.

5 I am sorry this -- we lost a loved one. We can't go
6 and visit Melinda. But his family and his children can
7 still visit him. And that's all I have to say.

8 THE COURT: Okay. Thank you so very much. Anything
9 else, Solicitor?

10 MS. SHEALY: No, thank you, Your Honor.

11 THE COURT: Mr. Smith, I'll be glad to hear anything
12 you would like to say or anybody you want to speak on behalf
13 of Mr. Wright.

14 MR. SMITH: Thank you, Judge. Mr. Wright has been in
15 jail since this occurred. We initially attempted a bond
16 hearing, and at that time it was shortly after the gunshot
17 that he self-inflicted. We had him evaluated.

18 I have never had any problems communicating with him.
19 I want to make that clear to the court. But the doctor that
20 saw him, Dr. Mulberry, indicated that he did suffer from
21 depression. He has continued to get treatment for that
22 while he has been incarcerated.

23 He went to St. Andrews High School, but he left in the
24 11th grade. He had had kind of a series of work down
25 through the years. He worked Carolina Shelving and Mirror.

1 He worked there for a pretty good period of time. He worked
2 for a portable toilet company. He worked for Dunkin Donuts.
3 And he even worked for a period of time when they were
4 building the new Ravenel Bridge with RI Bridge Company that
5 he was involved with that.

6 His mother has been here as well as he sister
7 throughout the week to show their support for him.
8 Obviously I would ask the court not to take into
9 consideration any of the incident reports that didn't result
10 in a conviction. We are not prepared to cross-examine those

11 witnesses or to find out more about ---

12 THE COURT: We are not at trial, Mr. Smith; we are at
13 sentencing.

14 MR. SMITH: I understand.

15 THE COURT: And it is appropriate information for the
16 court to be aware of for sentencing, okay. So don't talk
17 about admissibility. I agree with you it would not be
18 admissible at trial, okay.

19 MR. SMITH: I understand that, Your Honor.

20 THE COURT: And his conduct in the past is very
21 relevant on sentencing.

22 MR. SMITH: It is, Your Honor.

23 THE COURT: And I'm going to consider it.

24 MR. SMITH: I understand.

25 THE COURT: Okay.

1 MR. SMITH: I understand your ruling as far as that
2 goes.

3 THE COURT: So don't sit there and tell me I can't
4 consider it.

5 MR. SMITH: No, I'm not saying that you can't. I am
6 just asking you to temper your consideration ---

7 THE COURT: I will be glad to place it under where it
8 is. You know, it was no conviction; but that happens so
9 frequently in domestic violence cases where the victim
10 refuses to prosecute and the prosecutor doesn't have any
11 independent evidence of it. It is right rampant throughout
12 the history of South Carolina and other states. And you
13 know that, and the solicitor knows that.

14 MR. SMITH: Yes, sir.

15 THE COURT: Okay.

16 MR. SMITH: No question about that. Your Honor, the --
17 I would say that his -- as I said, his mother has been here
18 and his sister has been here. One of his aunts, a number of
19 other family members throughout the week. They are a strong
20 support system for him and will continue to support him.

21 I do think Mr. Wright would like to briefly address the
22 court.

23 THE COURT: I would be glad to hear from his mother,
24 his sisters or whoever you would like for me to hear from,
25 okay, if they want to speak. And I would be glad to hear

1 from Mr. Wright at the appropriate time.

2 Yes, ma'am, your name?

3 MS. WRIGHT: Ethel Wright.

4 THE COURT: Are you his mother?

5 MS. WRIGHT: Yes, sir.

6 THE COURT: Yes, ma'am, Ms. Wright.

7 MS. WRIGHT: All I want to say, he is a very good son.
8 He takes care of his children. He worked hard. But, you
9 know, I don't know what happened in the situation, you know,
10 concerning this. And like all I want to say, he is a good,
11 good daddy. He will do anything for anybody.

12 And all this stuff that they've got about him of what
13 is going on, this is false information. I know him. That
14 is my son. I know all about him. I raised him. I know all
15 about him. I raised him.

16 And I want to say to the Ford's I am very, very sorry.
17 Y'all lost your loved one. I am truly sorry. Because I
18 take a big effect of this too myself on both sides. Not
19 only on my son's side but on y'all's side too.

20 I have been grieving. I have been crying, day and
21 night because I have been trying to figure out what
22 happened, what is going round. I am very, very sorry. I'm
23 sorry. I'm so sorry that y'all lost y'all's loved one.
24 Because I've been hurting by this. Not only about my son
25 but y'all too. I have been crying day and night. Nobody

1 knows my pain but me, Lord. But I am very, very sorry. I
2 am sorry. Thank you.

3 THE COURT: Unfortunately this situation is hard on
4 both families.

5 MS. WRIGHT: Yes, sir, ---

6 THE COURT: Both families suffered ---

7 MS. WRIGHT: -- it was hard on me because I take effect
8 on both sides. I cried both ways. I cried for my son.
9 This side. And I mean I cried day and night every day.

10 THE COURT: Okay. Thank you so very much.

11 MS. WRIGHT: Thank you, Judge.

12 THE COURT: Anybody else?

13 MR. SMITH: I think Mr. Wright would like to.

14 THE COURT: Okay. Mr. Wright, I would be glad to hear
15 you.

16 MR. WRIGHT: Your Honor, if I may I would just like to
17 turn and apologize to the Ford family.

18 MS. SHEALY: I would ask that he not direct ---

19 THE COURT: I'm sorry, what?

20 MS. SHEALY: I would ask that he not physically direct
21 his comments towards them.

22 THE COURT: What do you want to say to the Ford family?

23 MR. WRIGHT: I just want to say I am truly sorry for
24 their loss.

25 THE COURT: Okay. What do you want to tell me about

1 sentencing?

2 MR. WRIGHT: Your Honor, I know it was a tragic
3 accident. I mean I'm sorry for it. There's nothing I can
4 do about it now. But it wasn't intended for Melinda to get
5 harmed or killed. I had no intentions at all in doing that.

6 I've never laid my hands on her, not -- never got
7 physical with her. It was an accident that happened. I am
8 truly sorry for it. There's nothing more I can do about
9 that.

10 THE COURT: Anything else?

11 MR. WRIGHT: No, sir.

12 THE COURT: Okay. Thank you very much.

13 Mr. Smith, anything else?

14 MR. SMITH: No, Your Honor.

15 THE COURT: All right, Mr. Wright, Number Indictment
16 Number 3170 as to the murder charge, sentenced to the State
17 Department of Corrections for a period of life. That is
18 concurrent with the firearm charge.

19 The firearm charge, 3172, sentenced to the State
20 Department of Corrections for a period of five years. That
21 is concurrent. Thank you very much.

22 Thank y'all very much.

23 MS. SHEALY: Thank you, Your Honor.

24 THE COURT: Both of you did a good job in the trial,
25 and I enjoyed working with you.

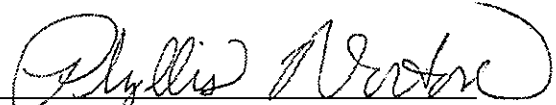
1 MR. SMITH: Thank you, Your Honor.
2 (WHEREUPON, the trial concluded 11:41 a.m., February 5,
3 2015.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on February 2-5, 2015.

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



PHYLLIS NORTON, CVR

(Signature in blue ink.)

Date: April 29, 2015

Certified Transcript Provided For: SCC(D)
Certification Reference # 042915 0216

Hey Melinda

Hope this letter reaches you in good health and spirits. The reason for this letter is to inform you of a certain situation at home. I don't know how involved you are with that young man name TIMMY, but here are some words of advice, that anit SHIT you have for a man.

For example: The way he up and left his high and dry was really wrong. He acted as if she was caught cheating and doing the dirt and he also had the nerve to choke her daughter for showing her (KAREN) a picture of him and another female (VICKI) he was out with. For that he was ARRESTED.

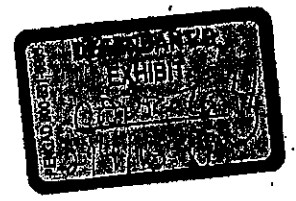
2. What kind of man quits his job because the child support people found out where he was working (JUST TRIFFLING). I guess living off his father check is enough for him to get by.

What I'm trying to say is from what I know about you that's not your type of guy. Just giving you the heads up, because he will try and spoil your kids that's his way of trying to get next to you. Once he has done that he will try control your every move, thoughts etc. Once again from what I know about you, I hope you don't let that happen. Maybe the WHITE GIRL he is also messing with at the gas station allows him to do so. But before I end this letter be aware of how you leave personal items laying around CHECK BOOK, CREDIT CARDS, DEBIT CARDS ETC ...If not you will be in trouble. Im not trying to destroy anything, but I'm just LOOKING OUT. I WOULD WANT SOMEONE TO DO THE SAME FOR ME!!!!!!!

CONCERNED
CITIZEN!!!!!!!



*Melinda Ford
30440 Betsy Kerrison Hwy
Johns Isl. St.
29455*



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY JAMES WRIGHT,

APPELLANT

APPELLATE CASE NO. 2015-000636

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion and violate the Appellant's due process rights by considering information presented in sentencing obtained from past incident reports that did not result in convictions when the defendant had no notice that these prior incidents would be addressed and no opportunity to rebut this information?

STATEMENT OF THE CASE

In June of 2013 the Charleston County Grand Jury indicted Wright for murder and possession of a weapon during the commission of a violent crime, indictments #2013-GS-10-03170 and 03172. On February 2, 2015 Wright proceeded to jury trial before the Honorable J.C. Buddy Nicholson, Jr. Attorneys Ted Smith and Martha Kent Runey represented Wright at trial. The jury returned verdicts of guilty as charged and Judge Nicholson sentenced Wright to a life sentence on the murder conviction and a concurrent term of five years on the weapon conviction. An order denying defendant's motion for new trial was filed on March 2, 2015 and a timely notice of intent to appeal was filed on March 11, 2015. This appeal follows.

STATEMENT OF FACTS

The Appellant proceeded to jury trial on February 2, 2015 and two days later the jury returned a verdict of guilty on both charges. The sentencing hearing was held on February 5, 2015. During sentencing the Solicitor provided the Court with Appellant's prior conviction history, including:

- 1998 Possession of Cocaine, (R.O.A. 166, ll. 17-19),
- 2001 Simple Assault from striking his girlfriend in the face with his fist (R.O.A. 166, ll. 19-25 –529 ll. 1-14),
- June 2, 2012 Assault and Battery 3rd Degree from striking his wife's daughter, (R.O.A. 168, ll. 12-15).

The Solicitor mentioned her intent to address only prior convictions and not "just incident reports" which "either did not issue arrest warrants or the victim backed out." (R.O.A. 167, ll. 16-18 – R.O.A. 168, ll. 1-2). The Judge responded that he wanted to hear this additional information regarding incidents that did not result in conviction. (R.O.A. 168, l. 3). At the Court's request the State presented information on the following incidents:

- In July, 2001 Mr. Wright's girlfriend called police during an argument and asked for assistance diffusing the situation "out of fear of where it was leading." No charges were filed against anyone. (R.O.A. 169, ll. 9-11).
- In September, 2003 Mr. Wright was charged Criminal Domestic Violence after he assaulted his child's mother by grabbing her hair and punching her in the face. (R.O.A. 169, ll. 12-15).
- June 4, 2012 Mr. Wright filed an incident report when his wife removed his handgun from his vehicle. (R.O.A. 168, ll. 12-19). The State argued that this was "suggestive" of the fact that his wife was scared for him to have a gun. (R.O.A. 168, ll. 18-19).

It appears that none of the complaining parties were present in Court to verify whether or not these incident reports were accurate summations of what occurred or not.

The State argued the information in the incident reports showed a “pattern of abusive behavior on the part of Mr. Wright towards females, towards those that he is in a relationship with, an even the children of those that he was in a relationship with.” (R.O.A. 169, ll. 17-20). Further, the State used these incidents to argue that there existed multiple “episodes of violence in the defendant’s background” that “appear to be of a domestic nature, *even though he and Ms. Ford had no prior violence in their relationship prior to the day in question*¹.” (R.O.A. 169, ll. 3-7)(emphasis added).

Trial counsel for the Appellant attempted to object and requested that the Court disregard the un-substantiated and inflammatory information presented. In doing so he said “[o]bviously I would ask the court not to take into consideration any of the incident reports that didn’t result in a conviction. We are not prepared to cross-examine those witnesses or to find out more about ---.” (R.O.A. 181, ll. 8-11). The Judge interrupted trial counsel mid-way through his objection and proceeded to inform trial counsel that, while this information would be clearly inadmissible at trial, it was appropriate for consideration in sentencing. (R.O.A. 181, ll. 12-21). The Judge ultimately said “I’m going to consider it” and “don’t sit there and tell me I can’t consider it.” (R.O.A. 181, l. 23 – R.O.A. 182, l. 3-4).

While the Judge continued to say that he understood that these incidents did not result in convictions, he also added that non-convictions happen “so frequently in domestic violence cases where the victim refuses to prosecute and the prosecutor doesn’t have any independent evidence of it.” (R.O.A. 182, ll. 8-11). This statement by the Judge reflects an assumption that the Defendant was likely at fault in these situations. The Court did not have any witness with personal knowledge to

¹ The Judge verified this information by asking the deceased’s daughter if she had observed any arguments or physical altercations between the Applicant and the deceased during the four months they lived together prior to this incident. (R.O.A. 172, ll. 21-23). She explained that she only heard the Applicant yell at the deceased on one occasion. (R.O.A. 173, ll. 1-13).

verify what actually happened when the incident reports were written, yet it appears he considered this information as if it were reliable.

ARGUMENT

The trial judge abused his discretion and violated the Appellant's due process rights by considering information presented in sentencing obtained from prior unrelated incident reports that did not result in convictions when the defendant had no notice that these prior incidents would be addressed and no opportunity to rebut this information.

“At sentencing, a judge has an obligation to consider information material to punishment. A sentencing judge ‘may appropriately conduct an inquiry broad in scope, largely unlimited as to either the kind of information he may consider, or the source from which it may come.’” Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984), *citing* State v. Sullivan, 367 S.C. 610, 230 S.E.2d 621 (1976), United States v. Tucker, 404 U.S. 443, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972), *and* State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976).

While it is true that evidentiary rules do not apply in sentencing hearings pursuant to 1101(d)(3) SCRE, a minimal standard for reliability should be required regarding any information presented in a court of law that may directly impact an individual's liberty. Our Courts have held that such a due process standard applies in restitution hearings where, despite the fact that it is still just a sentencing hearing, the defendant must be placed on notice of the hearing and given the opportunity to be heard and the opportunity to cross-examine witnesses. State v. Gulledge, 326 S.C. 220, 487 S.E.2d 590, 595 (1997).

In State v. Franklin, the Applicant complained that the Judge considered “unauthenticated and prejudicial matters” in imposing his sentence, including 1) the existence of pending charges, 2)

prison infractions with contested resolutions. 267 S.C. 240, 226 S.E.2d 896 (1976). In reviewing this matter Supreme Court reasoned, “[I]f justice is to be done, a sentencing judge should know all the material facts. Fair administration of justice demands that the judge will not act on surmise or suspicion but will impose sentences with insight and understanding. Hence, the judge is required to listen and give serious consideration to any information material to punishment. If a defendant’s record, as publicly disclosed, is incorrectly reported, defendant should have an opportunity to explain any discrepancy and inform the court concerning the alleged errors.” *Id.* at 245, 897. In upholding Franklin’s sentence, the Court noted “the appellant was given an opportunity to explain each of the alleged incidents, which were not denied by him, but rather explained. Under these circumstances, we find that the facts which were divulged to the court were fully disclosed to the appellant in such a manner that he had an opportunity to explain any misapprehension the court may have had.” *Id.* at 246, 898. (*see also*, State v. Sullivan, where the Defendant argued that the municipal court had no authority to impose fines for prior convictions and therefore they couldn’t be used against him in sentencing for a new conviction. 267 S.C. 610, 230 S.E.2d 621 (1976). In Sullivan the Court explained, “[A]ppellant had the opportunity to explain any discrepancies and the sentencing judge has the obligation to consider information material to punishment.” *Id.* at 618, 625.) (*See also*, State v. Rich, where the appellate court remanded the case for resentencing because trial judge improperly considered criminal charges which appeared on defendant’s criminal record but did not have dispositions. 269 S.C. 701, 239 S.E.2d 731 (1977).)

It is clear in the Applicant’s transcript that he was denied a meaningful opportunity to explain or challenge the information presented during his sentencing hearing. First of all, when defense counsel attempted to object to consideration of these matters the Judge powerfully insisted

that they would be considered. Secondly, it is clear that the Appellant did not have notice that these matters would be presented to the Court. A review of the record reveals that the State did not intend on presenting information obtained from these prior incident reports and they were only discussed at the Judge's request. (R.O.A. 168, ll. 1-3). Therefore, it stands to reason that the State did not specifically inform the Applicant nor his trial counsel that un-charged incidents and allegations from 2001, 2003, and 2012 were going to be used against him in his 2015 sentencing hearing. Trial counsel would have had no reason to discuss these prior incidents in detail with his client or investigate them and accordingly had nothing to present in rebuttal.

Due process rights do not end when a verdict is imposed. Our code of laws very clearly provides for due process rights in sentencing when individuals are convicted of murder when the death penalty is sought by the State. See, South Carolina Code of Laws Ann. § 16-3-20. Due process rights also exist when financial restitution is sought by the State. State v. Gullede, 326 S.C. 220, 487 S.E.2d 590, 595 (1997). Why would our Courts allow a complete lack of due process rights when a possible life sentence sought by the State?

Applicant argues that, had a minimal standard for due process in sentencing been in effect, the State would not have been able to portray the Applicant as a *repeat offender* of domestic abuse. The record reflects that his actual convictions and history with the deceased did not reflect that type of behavior. It is further arguable that such a minimal due process standard would have prevented the Court from being exposed to the vast amount of unsubstantiated hearsay, gossip, and accusation provided by the deceased's cousin, Isis Frasier, when she provided the Court with a lengthy unsworn statement regarding what she has heard from others about the Applicant abusing other women. (R.O.A. 176, l. 7 - R.O.A. 180, l. 7.).

Certainly the appellant would submit that various types of information would be appropriate for a Judge to consider in any sentencing hearing, including prior convictions, aggravating factors related to the underlying incident, and victim impact. That information is fair, relevant, and has a modicum of reliability sufficient for the Court to comfortably rely on. However, the Appellant submits that information obtained from prior unrelated incident reports which did not result in conviction, and any other unsubstantiated information unrelated to the incident for which the individual is sentenced should not be presented to or considered by a sentencing judge. This information is unreliable and only used by the State when inflammatory in nature in an attempt to encourage the Judge to impose a higher sentence. A criminal defendant's due process rights are clearly violated when the State attempts to impact an individual's liberty with information that has not been vetted with any minimal standard of reliability and the defendant has not opportunity to object or rebut this information.

If this Court refuses to adopt a strict principal prohibiting certain information from being presented in sentencing hearings, the Appellant would suggest an alternative resolution to ensure due process for criminal defendants. This Court should adopt and impose a rule for sentencing hearings requiring that, if the State is going to present information obtained from prior unrelated incident reports which did not result in conviction or any other information unrelated to the incident for which the individual is sentenced, the State must provide the criminal defendant with reasonable notice as to what information will be presented and the Court must allow the defendant a meaningful opportunity to rebut the information presented.


The Appellant's due process rights were violated because no procedural safeguard was in place to ensure that he had reasonable notice as to what would be presented during the sentencing hearing. Without such notice, the defendant was denied a meaningful opportunity to rebut the

unsubstantiated claims. Because the Appellant's due process rights were violated in his sentencing, this case should be remanded for a new sentencing hearing.

CONCLUSION

Based on the above argument, the sentence should be reversed and the case remanded for new sentencing.

Respectfully submitted,

By: 

Kristy Goldberg
Attorney for Appellant

ROBERT M. DUDEK
Chief Appellate Defender

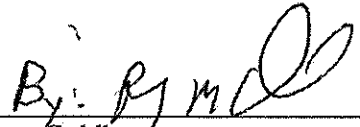
ATTORNEYS FOR APPELLANT

This 30th day of June, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

June 30, 2016

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

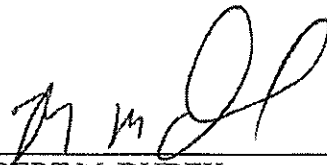
TIMOTHY JAMES WRIGHT,

APPELLANT

APPELLATE CASE NO. 2015-000636

CERTIFICATE OF SERVICE

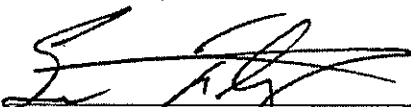
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of June, 2016.



ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 30th day of June, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge
Appeal Case No. 2015-000636

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TIMOTHY JAMES WRIGHT,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion and violate the Appellant's due process rights by considering information presented in sentencing obtained from past incident reports that did not result in convictions when the defendant had no notice that these prior incidents would be addressed and no opportunity to rebut this information?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion in considering in sentencing two incident reports regarding crimes for which Wright was not convicted when the arguments raised on appeal were not preserved for appellate review, the trial court was well within its discretion in considering the information contained in the incident reports, and Wright failed to utilize the afforded opportunity to address the allegations presented in the reports during his sentencing hearing?

STATEMENT OF THE CASE

On February 2-5, 2015, Appellant Timothy James Wright ("Wright") was tried by a jury for the murder of Melinda Ford and for possession of a firearm during the commission of a violent crime. Wright was tried in the Charleston County Court of General Sessions before the Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge. Ted Smith and Martha Kent Runey, both Assistant Public Defenders for Charleston County, represented Wright. The State was represented by Assistant Solicitors Jennifer Shealy and Ted Corvey of the Ninth Judicial Circuit Solicitor's Office.

On February 4, 2015, Wright was convicted of murder and possession of a weapon during the commission of a violent crime. (R. pp. 163-64). He was sentenced to life confinement for the murder conviction and five years confinement for the possession of a weapon during the commission of a violent crime conviction, both to be served concurrently. (R. p. 185). Before this Court is Wright's direct appeal of his sentence. Wright requests this Court reverse his sentence and remand for new sentencing. The State respectfully requests this Court deny Wright's appeal and affirm his convictions and sentences.

STATEMENT OF FACTS

On February 16, 2013, Appellant Timothy Wright shot his soon to be ex-girlfriend, Melinda Ford, with a shotgun. The shot was fired within three to four feet of Ford. (R. p. 103). The pathologist noted that the shotgun blast essentially destroyed Ford's right lung, bruised her left lung, and the blast damaged her liver as well. (R. p. 100). Ford died as a result of right lung and liver maceration due to a close range shotgun wound to the back. (R. pp. 105-6).

Background

Wright and Ford had been dating for approximately seven to eight months before the shooting. (R. p. 107). Wright had been living with Ford and her three children for approximately five months. (R. p. 7). Ford had three children. Chrisson Hayward, Ford's oldest daughter, was nineteen at the time of the shooting; Kadasha J., Ford's youngest daughter, was fifteen; and Davon M., Ford's son, was six. (R. pp. 2-4; 45). Ford's mother, Kate Ford ("Kate"), also lived nearby. (R. p. 51).

Wright was a hunter. (R. pp. 7, 112). He testified that he kept a 12 gauge Remington pump gun in a cabinet in Ford's bedroom. (R. p. 112).

Kadasha testified that she, Ford, and Kate went shopping on the day of the shooting.¹ (R. pp. 3, 5, 7-8). During the trip, Ford's mother picked up some Chinese food. (R. p. 8). Ford and Kadasha took Kate to her house on their way home, and they then returned to their home. (R. pp. 9-10). When the two got home, they unpacked the car, and they went to their separate bedrooms. (R. p. 10). While unpacking the car, the two found Kate left her Chinese takeout. (R. p. 10). Kadasha noted Wright was home

¹ They were shopping for a cousin's birthday party that was scheduled for the next day. (R. pp. 7-8).

when they arrived. (R. p. 10). She also indicated that Ford stopped in the kitchen and poured wine into a jar. (R. pp. 10-11).

Kadasha testified that she washed her clothes that afternoon. (R. p. 16). While Kadasha was in the kitchen, she heard Wright screaming in Ford's bedroom, but she did not hear Ford's voice. (R. p. 16). She later saw him open up the bedroom door, and he came out to the kitchen. (R. p. 16). Kadasha noted that she heard Wright say he was done; he got some black trash bags from a cabinet and started packing up his belongings that were in Ford's bedroom. (R. pp. 16-17). Ford was inside the bedroom at that time. (R. p. 18).

Wright Shoots Ford

Kadasha went back to her bedroom. (R. p. 18). Ford stopped by her room and told Kadasha that she was going to take Kate her Chinese food.² (R. p. 18). The next thing Kadasha heard was Ford scream very loud. (R. p. 18). She next heard a gunshot. (R. p. 19). After hearing the gunshot, Kadasha ran to the door and saw Wright standing over Ford with a gun in his hands. (R. pp. 19-21, see R. p. 36).

Wright was wearing a white shirt, Nike slacks, and a camouflage jacket. (R. p. 20). Kadasha was able to identify the gun he was holding. (R. pp. 21-22). She noted that Wright was standing in front of the porch around Ford, who was on the ground at that time. (R. pp. 21-22). Kadasha testified Wright said he would shoot Kadasha. (R. p. 21). Kadasha noted that at some point, he said "huh, huh, huh" and pointed the gun

² Kate Ford, Melinda's mother and Kadasha's grandmother, testified that Kadasha called to inform her that Melinda would be bringing her Chinese food. (R. p. 51).

at Ford.³ (R. p. 22). Kadasha attempted to find a phone at her house, and when she could not find one, she ran to the next door neighbor's house to call for help. (R. pp. 22-23, 37). The neighbors were already on the phone with a 911 operator. (R. pp. 23-24).

Kadasha looked back towards her house and saw Wright on the ground next to Ford. (R. p. 24). She heard a second gunshot. (R. p. 24). After the second shot, she saw Wright lying on the ground next to Ford. (R. p. 37). She assumed he shot himself. (R. p. 37). She then ran back over to her house. (R. p. 24).

Wright then got up, ran to his truck, and drove off. (R. pp. 25, 28). Kadasha moved the gun he had been holding back from where they were. (R. p. 25). She ran over to Ford, found Ford's cell phone, and called 911. (R. p. 26). Kadasha noted that her mother was not able to speak, and it appeared she had been shot in the chest. (R. p. 27). The 911 dispatcher gave instructions on how to stop the bleeding. (R. p. 27).

Chrisson arrived at the home while Kadasha was attempting to help stop the bleeding. (R. pp. 29-31, 47-48). After being advised by a neighbor of what was going on, she assisted Kadasha in aiding their mother. (R. pp. 47-48).

Leonard Maxwell, one of Ford's neighbors, testified he heard gunshots that afternoon. (R. pp. 38-39). After he heard the first shot, he ran out to the porch and saw Ford lying on the ground. (R. p. 39). He thought he saw Wright shoot the gun again. (R. p. 39). Maxwell saw Wright standing over Ford, and then saw him lying next to her on the ground. (R. p. 39).

³ During cross-examination, Kadasha testified that at some point after the initial shooting, Wright attempted to give the gun to Kadasha and requested that she shoot him. (Tr. 172). She declined to do so. (Tr. 172).

After the first shot, Maxwell looked out over the porch and saw Ford on the ground. (R. p. 40). That's when he heard a second shot. (R. p. 40). He saw Wright point the gun at himself. (R. p. 40). Wright put the gun in his mouth and said he was going to kill himself. (R. p. 40). Maxwell told him no, but then Wright shot himself twice. (R. pp. 40, 44). After that, Wright got in his truck and drove away. (R. p. 41). Maxwell noted that Ford's daughter came over after the first shot. (R. p. 41). At that time, Maxwell's roommate had already called 911. (R. p. 41). Maxwell also testified he was outside when Kadasha was attempting to help Ford. (R. p. 42). He was telling her to apply pressure. (R. p. 43). He also saw her move the gun out of the way. (R. p. 43).

Ford was dead when EMS arrived. (R. p. 54).

Wright Was Apprehended

Wright led law enforcement in a vehicle pursuit around John's Island. (See R. pp. 59-69, 73-76). The chase ended after Wright drove his truck through a fence and onto a baseball diamond in a local park. (R. pp. 57, 69, 74-77). Wright, however, eluded arrest at the scene. He instead hid in a local residence that was under construction. (R. pp. 70-72, 92-95, 120-21). After midnight the next morning, Wright surrendered to law enforcement, who had maintained a perimeter near the site of the truck crash. (R. pp. 78-80, 81-82). He was treated at the scene by EMS and was transported to MUSC for treatment of his gunshot wounds. (R. pp. 80, 82-89).

Wright Asserts the Shooting Was An Accident

Wright testified that on the day of the shooting, he purchased a cell phone for Kadasha. (R. p. 108). He was at home when Kadasha and Ford came home from shopping. (R. p. 109). He noted that Ford was frustrated about comments people had

made to her regarding their relationship. (R. pp. 109-10). The two had a discussion in Ford's bedroom about that issue for three to four minutes. (R. p. 110). Wright decided that based on that discussion, it was best that he leave the home. (R. p. 110). He went to the kitchen, got some trash bags, and went back into the room to pack his clothing. (R. pp. 110-11).

Wright testified that all of his clothes were on hangers. (R. p. 111). After he packed some of his belongings, and while Ford was in the bathroom, Wright grabbed the shotgun he kept in the room, along with two bags he had packed, and he headed outside to his truck. (R. pp. 113-14).

I walked outside and. I went to go open the truck door. Because my — the way my vehicle was sitting I had the two bags in my hand, the shotgun in my hand. And I went to go use one hand and kick the handle open to release the door. And when I released the door I used the other hand to kind of swing the door open.

(R. p. 114, ll 7-12). The shotgun fired. (R. p. 114). Wright claimed he did not know Ford was outside. (R. p. 114). After the shotgun fired, Wright dropped the bags that were in his hands, and he started walking away back towards the step. (R. p. 115). He then heard Ford call his name. (R. p. 115). According to Wright, Ford then told him she had been shot. (R. p. 115). Wright testified that he tried to pick her up off the ground, but she told him to stop because of the pain. (R. p. 115).

Wright asserted that he called for Kadasha, but she did not come outside immediately. (R. p. 115). He also stated that he told Kadasha to go call for help. (R. p. 115). She ran back into the house, but when she returned, he attempted to hand Kadasha the shotgun and asked her to shoot him. (R. p. 116). Wright noted that Kadasha never touched the shotgun. (R. p. 116). Instead, he went off to the side and

shot himself with the shotgun. (R. p. 117). Wright said that he heard Ford yell out, so he walked over to her and explained what he did to himself. (R. p. 117). He then shot himself again. (R. p. 117). Wright testified that he then went back over to Ford, held her leg, and talked to her. (R. p. 117).

Wright testified that he observed Kadasha and a neighbor calling for help on the phone. (R. p. 118). At that point, Wright became concerned about his personal safety if members of Ford's family came to the scene. (R. p. 118). He promptly got into his truck, left the scene, and drove in the direction of his aunt's house. (R. pp. 118-19). Wright acknowledged that he saw a police car pull behind him with lights on, and that he did not stop. (R. pp. 119-20). He also admitted that he crashed his truck into a couple of fences, and that he got out of the truck and ran into a house under construction nearby. (R. p. 120). From the house, Wright could see police officers in the softball field where he left his truck. (R. pp. 120-21). Wright recalled that at some time after many of the officers left the scene, he walked out to the remaining officers. (R. p. 121). He recalled being treated by EMS, and that he was transported to MUSC. (R. pp. 121-22).

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN HEARING ABOUT WRIGHT'S INCIDENT REPORTS PRIOR TO SENTENCING; HIS ARGUMENTS FOR RELIEF ARE NOT PRESERVED FOR APPELLATE REVIEW, THE INCIDENT REPORTS WERE PROPERLY CONSIDERED BY THE TRIAL COURT IN SENTENCING, AND THE CONSIDERATION OF THE INCIDENT REPORTS DID NOT CONSTITUTE A DUE PROCESS VIOLATION.

Discussion at the Sentencing Hearing

The trial court sentenced Wright on February 5, 2015. At the sentencing hearing, the solicitor initially noted the State was unaware of any difficulties Wright may have had in his childhood. (R. p. 166). Wright's prior record consisted of a 1998 conviction for possession of cocaine and a 2001 conviction for simple assault in which Wright struck his girlfriend in her face with his fist. (R. p. 166). The trial court asked both the solicitor and Wright if the simple assault conviction was reduced from a higher charge. *Id.* The solicitor noted that the rap sheet reflected that Wright was arrested for assault and battery, and he was convicted of simple assault. (R. p. 167). Wright also stated that he was originally charged with simple assault. *Id.*

The solicitor indicated she was only addressing Wright's convictions when the trial court expressed she could discuss incident reports. (R. p. 167).

THE COURT: You can go over his incident reports.

MS. SHEALY: Well, there are other ---

THE COURT: Are there some where they weren't reduced to arrest?

MS. SHEALY: I'm sorry, say that again.

THE COURT: Are you talking about there are some incident reports where they did not issue arrest warrants?

MS. SHEALY: They either did not issue arrest warrants or the victim backed out.

THE COURT: Well, I would like to hear from those.

MS. SHEALY: Okay..

THE COURT: We are not at trial. We are at sentencing.

(R. p. 167, l 19 – 168, l 5).

The solicitor also informed the trial court of a 2012 conviction for assault and battery, third degree in which Wright was accused of striking his wife's 16 year old daughter. (R. p. 168): The solicitor noted two days after the incident that led to the conviction, Wright had filed an incident report asserting his wife removed his handgun from his vehicle. Id. The solicitor contended the wife's actions were suggestive that she was scared for Wright to have a gun. Id.

Based on the convictions, the solicitor argued it was apparent that Wright had episodes of violence in his background. They appeared to be of a domestic nature, though there were no prior incidents between Wright and Ford. (R. p. 169). At that point, the solicitor also discussed two incident reports that did not result in convictions.

In July of 2001 there was no arrest, but a girlfriend called during an argument asking for the police to come and diffuse the situation out of fear of where it was leading.

And in September of 2003 there was a criminal domestic violence charge involving the victim Tymeia Davis who he has testified is one of the mothers of one of his children. He grabbed her hair and punched her in the face.

(R. p. 169, ll 9-15).

The solicitor further contended one could see a pattern of abusive behavior on the part of Wright towards females and those with whom he is involved in a relationship and their children. (R. p. 169). The solicitor then focused on the testimony of the

victim's family members who testified and the impact the shooting has had on them. (R. pp. 169-71). The State then requested the trial court sentence Wright to life confinement. (R. p. 171).

During the sentencing hearing, Kadasha recalled one argument between Wright and Ford prior to the shooting in which Wright yelled at Ford. (R. pp. 172-73). Chrisson also informed the trial court of the impact the murder has had on her and her two siblings. The solicitor also referred the trial court to a letter that was found in the glove compartment of Wright's truck. (R. pp. 175-76). The letter discussed Wright's treatment of his wife and her child, and it warned Ford of Wright's behavior. (R. pp. 175-76). Isis Frasier, Ford's cousin, stated Ford had informed her that Wright never hit her, but Ford feared Wright was capable of harming her. (R. p. 178). Frasier further discussed the harm Wright's actions in killing Ford had on both Ford's family and on Wright's children. (R. pp. 179-80).

At the hearing, Wright's counsel indicated Wright was evaluated in light of the self-inflicted gunshot wounds. (R. p. 180). Counsel noted he never had any problems communicating with Wright, and the doctor who evaluated Wright indicated he suffered from depression. Id. Wright was receiving treatment for depression while he was incarcerated. Id. Counsel further noted Wright has worked a series of jobs over the years, and also indicated his mother and sister were in court throughout the week to show their support for Wright. (R. pp. 180-81). Then, the following exchange occurred regarding the incident reports:

Obviously I would ask the court not to take into consideration any of the incident reports that didn't result in a conviction. We are not prepared to cross-examine those witnesses or to find out more about ---

THE COURT: We are not at trial; Mr. Smith; we are at sentencing.

MR. SMITH: I understand.

THE COURT: And it is appropriate information for the court to be aware of for sentencing, okay. So don't talk about admissibility. I agree with you it would not be admissible at trial, okay.

MR. SMITH: I understand that, Your Honor.

THE COURT: And his conduct in the past is very relevant on sentencing.

MR. SMITH: It is, Your Honor.

THE COURT: And I'm going to consider it.

MR. SMITH: I understand.

THE COURT: Okay.

MR. SMITH: I understand your ruling as far as that goes.

THE COURT: So don't sit there and tell me I can't consider it.

MR. SMITH: No, I'm not saying that you can't. I am just asking you to temper your consideration.

THE COURT: I will be glad to place it under where it is. You know, it was no conviction; but that happens so frequently in domestic violence cases where the victim refuses to prosecute and the prosecutor doesn't have any independent evidence of it. It is right rampant throughout the history of South Carolina and other states. And you know that, and the solicitor knows that.

MR. SMITH: Yes, sir.

THE COURT: Okay.

MR. SMITH: No question about that, Your Honor, the -- I would say that his -- as I said, his mother has been here and his sister has been here. One of his aunts, a number of other family members throughout the week. They are a strong support system for him and will continue to support him.

(R. p. 181, | 8 – 182, | 20). After a statement from Wright's mother and a brief statement from Wright, the trial court sentenced Wright to life imprisonment for the murder conviction. (R. pp. 183-85).

Standard of Review

“It is well settled in this State that [an appellate court] has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute itself violates the constitutional injunction, Article I, Sec. 19, against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive.” Wood v. State, 257 S.C. 179, 184 S.E.2d 702 (1971). A judge is allowed broad discretion in sentencing within statutory limits. Garrett v. State, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) (citing State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974)). A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice. Garrett, 320 S.C. at 356, 465 S.E.2d at 350 (citing Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979)).

“[T]he admissibility of evidence is limited by constitutional provisions which require the evidence to be relevant, reliable and trustworthy. State v. Gullledge, 326 S.C. 220, 487 S.E.2d 590, 594 (1997) (citing United States v. Silverman, 976 F.2d 1502 (6th Cir.1992), cert. denied, 507 U.S. 990, 113 S.Ct. 1595, 123 L.Ed.2d 159 (1993) (hearsay evidence inadmissible at trial may be considered at sentencing); United States v. Holmes, 961 F.2d 599 (6th Cir.), cert. denied, 506 U.S. 881, 113 S.Ct. 232, 121 L.Ed.2d 168 (1992); 24 C.J.S., Criminal Law § 1494 (1989) (hearsay is admissible if relevant and reliable); Thomas W. Hutchison, et al, Federal Sentencing and Practice at

649 (2d ed.1994) (“a court may consider any relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided the information has sufficient indicia of reliability to support its probable accuracy”).

A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come. U.S. v. Magliano, 336 F.2d 817 (4th Cir. 1964); North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969).

State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976)

A. Wright’s arguments are not preserved for appellate review.

On appeal, Wright contends the trial court abused its discretion in considering information from prior incident reports that did not result in convictions because Wright had no notice that these prior incidents would be addressed and had no opportunity to rebut the information contained in the incident reports. The arguments presented on appeal were not presented to the trial court. First, Wright did not raise a contemporaneous objection to the consideration of the incident reports.⁴ Second, Wright never argued to the trial court that it would be a due process violation for the court to consider the incident reports, nor did he contend that he did not have adequate notice to respond to the allegations presented in the incident reports. As a general rule, an issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review. Issues not raised in the trial court will not be considered on appeal. State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388

⁴ If a timely objection is not made at a sentencing hearing, an issue may not be preserved for appellate review. State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991)

(1995)(defendant's claim that his due process rights were violated because he was not present at pretrial hearing during which trial judge decided to bring in jury from another county because of pretrial publicity was not preserved, where defendant did not object to his absence from pretrial hearing), cert. denied, 516 U.S. 1096, 116 S.Ct. 821, 133 L.Ed.2d 764 (1996), overruled on other grounds by State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998); Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995) (but for very few exceptional situations, appellate court cannot address issue unless it was raised to, and ruled upon by, trial court); Schofield v. Richland County Sch. Dist., 316 S.C. 78, 447 S.E.2d 189 (1994) (issue not raised to or ruled upon by trial judge is not properly before Supreme Court on appeal). Since Wright's due process and notice arguments were not presented to the trial court, and they were not ruled upon by the trial court, they are not preserved for appellate review.

Third, Wright waived the argument that was presented at the sentencing hearing. While Wright initially requested the trial court not consider the information contained in the incident reports, he later agreed the information contained in the reports could be considered by the trial court. Specifically, Wright stated that he was not contending the trial judge could not consider the incident reports; he merely wanted the trial court to temper its consideration of the information contained in those reports. (R. p. 182). "[Where an objection is expressly withdrawn, it cannot be raised on appeal." State v. King, Op. No. 5390 (S.C.Ct.App. filed March 16, 2016 (Shearouse Adv.Sh. No. 11 at 29) (available at 2016 WL 1039478, at *10)(citing Rosamond Enter., Inc. v. McGranahan, 278 S.C. 512, 513, 299 S.E.2d 337, 338 (1983) (per curiam) ("Any objection to that testimony cannot be raised for the first time on review, nor can it be

heard on appeal when it is not properly raised by an exception.”); see also Ligon v. Norris, 371 S.C. 625, 634, 640 S.E.2d 467, 472 (Ct.App.2006) (“An objection withdrawn at trial constitutes an express waiver of the issue and does not preserve the issue for appellate review.”).. Since the only potential objection was withdrawn by Wright at the sentencing hearing, it is not preserved for appellate review.

B. The trial court did not abuse its discretion in considering the incident reports.

The trial court was well within its discretion to consider the incident reports regarding the July 2001 domestic violence allegation and the September 2003 allegation assault allegation. The trial court’s consideration of the information did not constitute a due process violation.

“Sentencing courts have not only taken into consideration a defendant’s prior convictions, but have also considered a defendant’s past criminal behavior, even if no conviction resulted from that behavior.” Nichols v. United States, 511 U.S. 738, 747, 114 S. Ct. 1921, 1928 (1994). The United States Supreme Court upheld the constitutionality of considering such previous conduct in Williams v. New York, 337 U.S. 241, 69 S.Ct. 1079 (1949). Nichols, 511 U.S. at 747, 114 S.Ct. at 1928.

A sentencing judge, however, is not confined to the narrow issue of guilt. His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial.

Williams, 337 U.S. at 247, 69 S. Ct. at 1083 (footnote omitted).

That being said, a criminal defendant has a due process right not to be sentenced on the basis of false information. Townsend v. Burke, 334 U.S. 736, 741, 68 S.Ct. 1252, 1255, 92 L.Ed. 1690 (1948); United States v. Restrepo, 832 F.2d 146, 149 (11th Cir.1987); see Gullede, 326 S.C. 220, 487 S.E.2d at 594 (noting the broad scope of the circuit court's inquiry regarding issues relevant to imposing a sentence, but noting that constitutional provisions require the evidence to be relevant, reliable and trustworthy."); see also State v. Thomason, 355 S.C. 278, 286, 584 S.E.2d 143, 147 (Ct. App. 2003).

If justice is to be done, a sentencing judge should know all the material facts. Fair administration of justice demands that the judge will not act on surmise or suspicion but will impose sentences with insight and understanding. Hence, the judge is required to listen and give serious consideration to any information material to punishment. If a defendant's record, as publicly disclosed, is incorrectly reported, defendant should have an opportunity to explain any discrepancy and inform the court concerning the alleged errors.

Franklin, 267 S.C. at 245-46, 226 S.E.2d at 897.

Wright here fails to show his right to due process was violated by the trial court's consideration of the two incident reports presented at sentencing. First, neither at the sentencing hearing nor on appeal has Wright asserted that any of the information contained in the incident reports was false. Instead, on appeal, Wright only contends that he was not provided with adequate opportunity to address the allegations presented in the incident reports. Second, contrary to Wright's assertions, he was clearly provided with a meaningful opportunity to explain any discrepancy and inform the trial court of any alleged errors within the incident reports at issue. Wright's counsel had the opportunity to present a response, and Wright was provided allowed to comment on anything he wished in sentencing. They chose not to address the incident

reports. (See R. pp. 180-81, 182-85). Respondent would note Wright never indicated he needed more time to prepare a response to the allegations presented in the incident reports, nor did Wright request a continuance in order to bring in witnesses to challenge the accuracy of the incident reports. Altogether, he failed to show the trial court error in this regard.

This case is analogous to the scenario presented in State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). In Franklin, the appellant asserted the trial court improperly considered information that was not properly before it for sentencing. These included a probation report that included charges for which the appellant had not been tried and charges of infractions of prison rules. Id. at 245, 226 S.E.2d at 897. The appellant objected to the trial court's consideration of the charges included in the probation report, and further explained that those violations had been dropped and explained that a prior armed robbery conviction. Id.

The South Carolina Supreme Court affirmed the appellant's sentence. The Supreme Court found that the facts that were divulged to the trial court were also fully disclosed to the appellant in such a manner that he had an opportunity to explain any misapprehension the court may have had. Franklin, 267 S.C. at 246, 226 S.E.2d at 898. Similarly, in State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976), the South Carolina Supreme Court found the trial court did not abuse its discretion in considering two prior fines for marijuana violations at sentencing. Sullivan, 267 at 618, 230 S.E.2d at 625. In Sullivan, the Supreme Court noted the appellant "had the opportunity to explain any discrepancies and the sentencing judge has the obligation to consider information material to punishment." Id.

As was the case in Franklin, the trial court here considered incident reports regarding crimes for which Wright had not been tried. Wright was provided with the information as the trial court was informed. Wright had the opportunity to challenge the information presented as the trial court allowed Wright and counsel to discuss anything they wished to present regarding sentencing. (See R. pp. 180-85). Unlike the appellant in Franklin, Wright here chose not to challenge any of the information presented in the incident reports. Since Wright was properly provided with the information to be considered, and he had a meaningful opportunity to challenge the information if he wanted to do so, Wright cannot show the trial court abused its discretion in hearing about the two incident reports. See Franklin, 267 S.C. at 246, 226 S.E.2d at 898; Sullivan, 267 at 618, 230 S.E.2d at 625.

Wright's case is also clearly distinguishable from the scenario presented in State v. Rich, 269 S.C. 701, 239 S.E.2d 731 (1977). In Rich, the record reflected the sentencing judge acquiesced to the defendant's request to not consider charges that did not have dispositions on the defendant's rap sheet. Id. at 702, 239 S.E.2d at 732. However, despite the sentencing judge's indication that he would not consider those charges, statements made by the same judge at a motion for reconsideration of sentence hearing indicated the sentence was influenced by those unresolved charges the judge stated he would not consider. Id. at 703, 239 S.E.2d at 732. The Supreme Court remanded for resentencing, noting that the trial judge failed to discuss the appellant's record prior to imposing sentence and did not designate what he was not considering for sentencing purposes. Id. at 703-04, 239 S.E.2d at 732. Unlike the defendant in Rich, Wright was fully aware of the information being considered by the

sentencing judge. The trial court clearly informed Wright that he would be considering the incident reports relating to the charges for which Wright was not convicted. (R. p. 182). Further, unlike the situation presented in Rich, the trial court here informed Wright at a time during the sentencing hearing that would allow Wright to present argument that would rebut or mitigate the information contained in the incident reports.

Wright's assertion that the State could not have portrayed him as a repeat offender of domestic abuse without the incident reports is without merit. The transcript reflects that prior to discussing the incident reports, the State had already informed the trial court that Wright had two prior convictions reflective of domestic violence. First, Wright had been convicted of simple assault for an incident in which he struck a girlfriend on her face with his fist in 2001. (R. p. 166). Second, Wright had a 2012 conviction for a third degree assault and battery that resulted from Wright striking his wife's sixteen year old daughter. (R. p. 168). Furthermore, Kadasha informed the trial court that she recalled an incident in which Wright engaged in an argument with the victim. (R. pp. 172-73). Kadasha noted the argument consisted primarily of Wright yelling at Ford, but Kadasha did not hear Ford yelling in return. Id. The trial court was also informed of a letter that warned Ford of Wright's treatment of his wife and her child. (R. pp. 175-76; Court's Exhibit 4). The trial court also heard from one of the victim's cousins about how Wright hit his girlfriend in 1997. (R. p. 178). Even without the discussion of the incident reports, the State presented significant and substantive information to support its argument that Wright was a repeat offender of domestic abuse.

Altogether, the trial court did not abuse its discretion in considering the information contained in the two incident reports for sentencing. Wright had an opportunity to challenge the veracity of the information presented in the incident reports at the sentencing hearing, and he chose not to utilize that opportunity. Wright has not shown that his sentence was the result of consideration of false information. He has not established he was denied due process. As a result, this claim for relief should be denied, and Wright's sentence should be affirmed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court deny Wright's appeal and affirm his convictions for murder, possession of a weapon during the commission of a violent crime, and his sentence of life imprisonment for murder.

Respectfully submitted,

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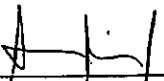
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July 11, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge
Appeal Case No. 2015-000636

RECEIVED
JUL 11 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

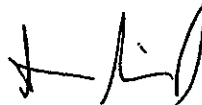
TIMOTHY JAMES WRIGHT,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 11th day of July, 2016.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

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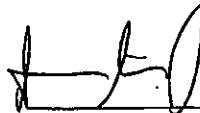
APPELLANT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201; and to Kristy Goldberg, Esq., Law Offices of Kristy Goldberg, 1720 Main Street, Suite 303, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 11th day of July, 2015.



ALPHONSO SIMON, JR.
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY JAMES WRIGHT,

APPELLANT

APPELLATE CASE NO. 2015-000636

FINAL REPLY BRIEF OF APPELLANT

KRISTY GOLDBERG

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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ARGUMENT IN REPLY

Preservation

The Record clearly reflects that defense counsel made his objection sufficiently for the trial judge to understand the objection and articulate a lengthy response. Defense counsel asked the Court “not to take into consideration any of the incident reports that didn’t result in conviction.” (R.O.A. 181, ll. 8-10). Defense counsel then had a brief opportunity to explain the basis for his objection, at least in part, before he was interrupted by the Judge. Defense counsel explained that he was “not prepared to cross-examine those witnesses or find out more about...” (R.O.A. 181, ll. 10-11). At this point the Court cut off defense counsel’s argument and powerfully overruled the objection. (R.O.A. 181, ll. 12-25, T R.O.A. 182, ll. 1-15).

Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Instead, a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue. State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010) *citing* Hubbard v. Rowe, 192 S.C. 12, 19; 5 S.E.2d 187, 189 (1939). Defense counsel was able to fairly raise the issue to the trial court in such a manner that the Judge was able to understand exactly what the objection was and rule against it. The objection was clear and the response by the Court was clear. Therefore, it is preserved for appeal.

Further, it would have been unreasonable for defense counsel to continue to argue with the Court’s ruling after it was so strongly articulated by the Court. Such argument is

prohibited by Rule 18, SCRCrimP. Additionally, further argument by defense counsel would have been a reckless move immediately before his client's sentencing, especially after the Judge said "[D]on't sit there and tell me I can't consider it." (R.O.A. 182, ll. 3-4).

Abuse of Discretion

In overruling defense counsel's objection to the contested unsubstantiated information, the Judge made the following statement:

I will be glad to place it under where it is. You know, it was no conviction; but that happens so frequently in domestic violence cases where the victim refuses to prosecute and the prosecutor doesn't have any independent evidence of it. It is right rampant throughout the history of South Carolina and other states. And you know that, and the solicitor knows that.

(R.O.A. 182, ll. 7-13). In this statement the Judge expresses his personal opinion regarding domestic violence cases in general and expresses that he is going to use this belief and bias in such a way to assume that the prior allegations presented in this case were likely true. The Court then considered this information against the Defendant in sentencing. It is clear that the Court determined that the Defendant's history showed a pattern of abusive behavior despite the facts that there was no known history of violence between the Defendant and the victim and his only prior convictions were a 17 year old possession of cocaine, a 14 year old simple assault, and a 3 year old assault and battery. (R.O.A. 172, ll. 14-25, R.O.A. 173, ll. 1-14, R.O.A. 166, ll. 17-25, R.O.A. 167, ll. 1-15). The Court sentenced the defendant to the maximum sentence possible in this case. (R.O.A. 185, ll. 15-18).

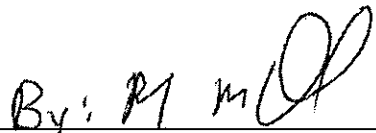
The State argues that the Defendant was provided with a "meaningful opportunity to explain any discrepancy and inform the trial court of any alleged errors within the incident reports" and "never indicated he needed more time to prepare a response." (Initial Brief of

Respondent, 18-19) This is clearly not true. Defense counsel stated: “We are not prepared to cross-examine those witnesses or to find out more about...” (R.O.A. 181, ll. 10-11). Accordingly, defense counsel informed the court that he did not have the opportunity to explain any discrepancies or challenge the information, as should be allowed as discussed in State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976), State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976).

CONCLUSION

This court should consider defense counsel's objection to be preserved as counsel fairly raised the issue to the trial court and the trial court had an opportunity to rule on the issue. It is clear that the trial court understood the substance of the objection and ruled accordingly. This court should also find that the trial judge abused his discretion in considering information presented from past incident reports that did not result in conviction as the judge considered those allegations to be true based on the Court's personal bias and beliefs regarding domestic violence cases in general.

Respectfully submitted,



Kristy Goldberg

Robert M. Dudek
Appellate Defender

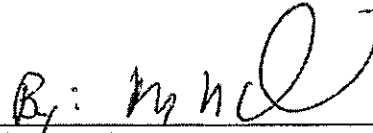
ATTORNEYS FOR APPELLANT.

This 30th day of June, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

June 30, 2016

By: 

Kristy Goldberg
Attorney for Appellant

Law Office of Kristy Goldberg
1720 Main Street, Suite 303
Columbia, South Carolina 29021
Phone (803) 667-6633
kristy@kristygoldberglaw.com

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

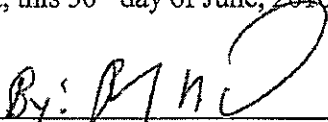
TIMOTHY JAMES WRIGHT,

APPELLANT

APPELLATE CASE NO. 2015-000636

CERTIFICATE OF SERVICE

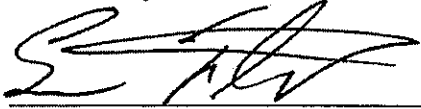
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, this 30th day of June, 2016.

By: 

Kristy Goldberg

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 30th day of June, 2016.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Timothy James Wright, Appellant.

Appellate Case No. 2015-000636

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-448
Heard October 4, 2017 – Filed December 6, 2017

AFFIRMED

Chief Appellate Defender Robert Michael Dudek and
Kristy Grafton Goldberg, of Law Office of Kristy
Goldberg, LLC, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, and Assistant
Attorney General Alphonso Simon, Jr., of Columbia; and
Solicitor Scarlett Anne Wilson, of Charleston; all for
Respondent.

PER CURIAM: Timothy James Wright appeals his sentences for murder and possession of a weapon during a violent crime, arguing the trial court erred in considering information during the sentencing hearing that was obtained from prior unrelated incident reports regarding crimes for which he was not convicted. At his sentencing hearing, Wright initially argued the trial court could not consider the incident reports. However, Wright later conceded he was not requesting that the trial court refrain from considering the incident reports but instead requesting the trial court "temper [its] consideration" of the incident reports. Therefore, Wright waived any objection to the trial court's consideration of the prior incident reports. Accordingly, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only."); *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) ("A sentence will not be overturned absent an abuse of discretion . . ."); *State v. Bryant*, 372 S.C. 305, 315–16, 642 S.E.2d 582, 588 (2007) (explaining an issue conceded at trial cannot be argued on appeal); *State v. Mitchell*, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (holding appellant waived an issue for appellate review because he acquiesced to the trial court's ruling).

AFFIRMED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

TIMOTHY JAMES WRIGHT)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2018-CP-10-4365
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

AFFIDAVIT OF FACTS GIVING
JUDICIAL NOTICE

2018 SEP -4 PM 4:15
FILED
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER C.I. P.O. BOX 205 RIDGEVILLE S.C.
29472
2. Name and location of Court which imposed sentence CHARLESTON COUNTY
COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) _____
N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-10-03170 FOR MURDER
 - (b) 2013-GS-10-03172 WEAPON POSSESSION DURING VOL. CRIME

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEBRUARY 5, 2015
 - (b) FEBRUARY 5, 2015
 - (c) "
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty XX
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. S.C. COURT OF APPEALS
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. CONVICTION AFFIRMED
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. DECEMBER 6, 2017
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results: OPINION NO. 2017-UP-448
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) 4TH., 5TH., 6TH., 13TH., 14TH., 15TH. AMENDMENT VIOLA-
- (b) TIONS; FRAUD UPON THE COURT; DUE PROCESS VIOLATIONS;
- (c) SUBJECT MATTER JURISDICTION; INEFFECTIVE ASSIST. COUNSEL

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) I GIVE ALL PARTIES JUDICIAL NOTICE THAT I INTEND
- (b) TO AMEND THIS PCR ONCE LEGAL COUNSEL IS APPOINTED:
- (c) MEMORANDUM OF LAW WILL THEN FOLLOW HIGHLIGHTING ISSUES.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) LEGAL COUNSEL WAS INEFFECTIVE AND I HAVE NOT DISCOVERED
- (b) THE ISSUES UNTIL NOW,
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. SEE CASE 2015-000636 FROM APPEALS COURT.
 - ii. "
 - iii. "
- (b) the proceedings at which each such attorney represented you:
 - i. "
 - ii. "
 - iii. "

19. State clearly the relief you seek in filing this application:

CONVICTION AND SENTENCE VACATED; MY NAME AND DNA REMOVED
FROM ANY DEROGATORY FILES; AN ORDER ISSUED EXPUNGING MY
RECORD; ALL MONIES PAID OUT RETURNED.

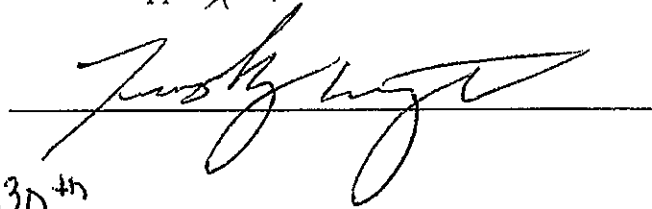
20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
County of CHARLESTON)

VERIFICATION

I, TIMOTHY JAMES WRIGHT, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 30th day of August, 2018.

Ludeman Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, TIMOTHY JAMES WRIGHT, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



 Applicant

SWORN or affirmed to and subscribed before me this 30th day of August, 2018.



 Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
 Timothy James Wright #354842,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-4365

**RETURN AND MOTION FOR A
 MORE DEFINITE STATEMENT**

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on September 4, 2018, would respectfully show this Court:

I. Procedural History

Timothy James Wright (Applicant) is presently confined pursuant to orders of the Charleston County Clerk of Court. In June 2013, the Charleston County Grand Jury indicted Applicant for Murder and Possession of a Firearm During the Commission of a Violent Crime (2013-GS-10-03170,2).

Ted Smith, Esquire, and Martha Kent Runey, Esquire represented Applicant. Assistant Solicitor Jennifer Shealy and Ted Corvey prosecuted the case. On February 2, 2015, Applicant proceeded to trial before the Honorable J.C Buddy Nicholson Jr. and a jury. Judge Nicholson sentenced Applicant to life on indictment (2013-GS-10-03170) and a concurrent five year sentence on indictment (2013-GS-10-03172). Applicant appealed his conviction, which was affirmed by the Court of Appeals on December 6, 2017. The Remittitur was issued on March 21, 2018.

II. Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. 4th, 5th, 6th, 13th, 14th, 15th Amendment Violations
2. Fraud upon the Court
3. Due Process Violations
4. Subject Matter Jurisdiction
5. Ineffective Assistance of Counsel

In relief sought, Applicant is seeking: "Conviction and sentence vacated; my name and DNA removed from any derogatory files; an order issued expunging my record; all monies paid out returned."

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the trial transcript, the appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

III. Due Process Violations

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights as afforded to him under the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "...specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make a prima facie showing which would entitle him to relief before an evidentiary hearing will be

scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Applicant has failed to make a prima facie showing that his constitutional right to due process was violated, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based and relief is sought.

IV. Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Respondent submits, notwithstanding the procedural bar, Applicant cannot meet this burden. For these reasons, Respondent submits that this allegation should be summarily dismissed.

V. Ineffective Assistance of Counsel

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are

not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

VI. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel that are not refuted by the plea transcript.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH
Assistant Attorney General

By: *Benjamin Limbaugh*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

January 10, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Timothy J Wright 354842)
) Applicant)
 Vs.)
 State of South Carolina)
) Respondent,)
 _____)

COURT OF COMMON PLEAS)
)
 FOR THE 9th JUDICIAL CIRCUIT)
)
 2018-CP-10-4365)
)
 AMENDED PCR APPLICATION)

FILED
 2019 MAY -6 PM 3:53
 JULIE J. HENSTRONG
 CLERK OF COURT

Applicant Timothy J Wright, by counsel hereby amends the Post-Conviction Relief Application that he filed on September 4, 2018 to add the following grounds of ineffective assistance of trial counsel.

1. Prior to sentencing, the State advised the court that defendant had a prior conviction for 3rd degree Assault and Battery. The State then summarized the facts from the incident report leading to that arrest. (Transcript page 530 lines 12-15). Additionally the State advised the court that there were two prior incident reports which did not lead to an arrest but which alleged criminal domestic violence. The state then summarized the facts from those incident reports. (Transcript page 531 lines 9-15). The issue of whether or not the trial court abused its discretion in considering this information for sentencing purposes was raised on appeal. In a *per curiam* decision, the Court of Appeals held that the issue was not properly preserved for review. Applicant therefore respectfully contends that trial counsel was ineffective for:

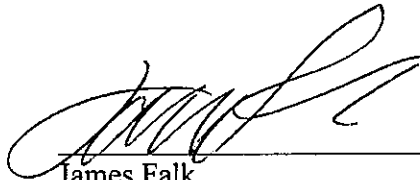
- a. Not objecting to the State’s disclosure of the alleged facts underlying the June 2, 2012 conviction for 3rd degree assault and battery; and the July 2001 and September 2003 criminal domestic violence allegations for which no arrest warrant was issued.
- b. Not requesting a continuance of the sentencing hearing in order to allow counsel time to prepare to rebut the allegations from these three incidents.

2. Counsel was ineffective for failing to object to the admission of State’s exhibit 173 which was referred to as the “Concerned Citizen Letter”. The letter was unsigned and the State acknowledged that it did not know who authored the letter. The content of the letter was hearsay and trial counsel should have objected to the introduction of the letter. The parties later agreed to withdraw the introduction of exhibit 173. The exhibit was withdrawn and later marked as Court’s

Exhibit 4. The trial court reviewed the content of Court's exhibit 4 prior to sentencing. Even though the jury did not review the contents of the Concerned Citizen Letter, trial counsel was ineffective for: 1) not objecting to the letter being marked as a Court's exhibit; 2) not objecting to the State summarizing the content of the letter for the Court; and, 3) not objecting the Court reviewing the content of the letter prior to sentencing. (Transcript 537 l. 17 through 538 line 4).

3. Trial counsel was ineffective for not objecting to the State's improper pitting of witnesses. (Transcript p 435 lines 7-13).

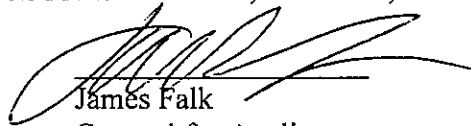
Respectfully Submitted,



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CERTIFICATE OF SERVICE

Undersigned certifies that on May 6, 2020 a copy of the above was both mailed and emailed to Benjamin Limbaugh at PO Box 11549 Columbia, SC 29211; blimbaugh@scag.gov



James Falk
Counsel for Applicant

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	2018-CP-10-04365
COUNTY OF CHARLESTON)	
)	
)	
)	
)	
TIMOTHY J. WRIGHT,)	
APPLICANT,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
RESPONDENT.)	
_____)	

January 21, 2020
Charleston, South Carolina

B E F O R E:

THE HONORABLE EDGAR W. DICKSON, JUDGE

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

JAMES KRISTIAN FALK, ESQ.
Attorney for the Applicant

SARA ELYSSA GUNTON, ESQ.
Attorney for the Respondent

Transcribed by:
CHERYL A. SMITH
Circuit Court Reporter
from DCRP, Digital
Courtroom Recorder
Project

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(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

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EXHIBITS

	<u>NO</u>	<u>DESCRIPTION</u>		<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 4:25 p.m.)

MS. GUNTON: May it please the Court.

THE COURT: Yes, ma'am.

MS. GUNTON: Your Honor, the case before us is Timothy J. Wright. It is Docket Number 2018-CP-10-4365.

Timothy Wright is presently confined pursuant to orders of the Charleston County clerk of court. In June 2013, the Charleston County grand jury indicted applicant for murder and possession of a firearm during the commission of a violent crime. Ted Smith, Esquire represented applicant on those charges. Assistant solicitor Jennifer Shealy and Ted Corvey prosecuted the case.

On February 2, 2015, the applicant proceeded to trial before the Honorable J.C. Buddy Nicholson, Junior and a jury. Judge Nicholson sentenced applicant to life on the murder indictment and a concurrent five-year sentence for the possession of a weapons charge.

Applicant appealed his conviction which was affirmed by the Court of Appeals on December 6, 2017, and the remittitur was returned to the circuit court on March 21, 2018.

Applicant filed for postconviction relief on September 4th of 2018, and the State sent its return on

1 January 10th of 2019.

2 Applicant is present in the courtroom today and is
3 represented here at the PCR hearing by James K. Falk,
4 Esquire.

5 And at this time, Your Honor, the State is ready to
6 proceed, but before we do so, I would request that the
7 applicant enumerate on the record the allegations he plans
8 to go forward on today.

9 THE COURT: All right. Mr. Falk, just so you know,
10 I've got an amended PCR application.

11 MR. FALK: Yes. I don't know how it got -- I

12 didn't ---

13 THE COURT: And I guess it was May 6, 2020.

14 MR. FALK: Yes.

15 THE COURT: And then I have an email that you sent to
16 the State about the grounds, ineffective assistance
17 (inaudible), that the Court should have charged accident
18 and involuntary ---

19 MR. FALK: Yes.

20 THE COURT: --- and some other, okay?

21 MR. FALK: Yes.

22 THE COURT: All right. And is -- are those what he's
23 going forward on? Or does it also include his original
24 application?

25 MR. FALK: Your Honor, there's a couple more. I think

1 what I handed you is some of our strongest arguments that
2 we're going forward on, but there are some things that my
3 client and I discussed. And ---

4 THE COURT: From his original application.

5 MR. FALK: What I think it would fall under is
6 ineffective assistance of counsel application.

7 THE COURT: Okay.

8 MR. FALK: And there is a -- during the voir dire in
9 this case, a question was asked about this being basically
10 a domestic violence case. There was a question asked about
11 whether or not anybody was a victim of domestic violence or
12 knew anybody, close family. That type of question was
13 asked. And several people came up forward to speak. One
14 of the people who came up forward to speak was Robin
15 Elmore. And Robin Elmore had said that she -- there's
16 some testimony on page 44 in the transcript saying, you
17 know, what her relationship was to domestic violence. And
18 it may be a bit attenuated, but it's still -- it's what she
19 said. And, unfortunately, by the time the jury came
20 around, Mr. Smith was out of strikes and had to accept
21 Ms. Elmore as his -- as the 12th juror on this case. And
22 we believe that Mr. Smith probably should have at least
23 made a motion for cause at that time for not striking
24 Ms. Elmore from the jury.

25 My client, in what he did address in his PCR

1 application, he has some concerns that there's a
2 significant difference in the testimony that was in the
3 warrant affidavits and the actual testimony from one of the
4 witnesses. And what this is about is the victim, the
5 daughter of the victim -- well, if you read the affidavits
6 supporting the arrest warrants and the indictments, it
7 sounded like the daughter of the victim witnessed the
8 shooting, but when the daughter actually testified, she did
9 not witness the actual shooting. She came out immediately
10 afterwards. And my client believes there's a significant
11 difference between the facts as alleged and the facts that
12 were brought forward.

13 Finally, my client has concerns that one of the -- and
14 he just really reminded me of this fact that one of the
15 jurors during the case was seeming to give him the evil eye
16 through most of the trial. He talked to Ms. Runey about
17 it, but he thought that possibly his trial counsel should
18 have addressed that issue.

19 So we'd sort of like to maybe hit those in summary at
20 the end. But I believe that the issues in the amended PCR
21 application and then in this most recent are what I believe
22 are the strongest issues.

23 THE COURT: All right. Are you prepared to call your
24 first witness?

25 MR. FALK: We would like to call Mr. Smith to the

1 stand.

2 THE COURT: Mr. Smith. All right.

3 MR. SMITH: Good afternoon, Judge.

4 THE COURT: How are you, sir?

5 MR. SMITH: Good.

6 THE CLERK: Please raise your right hand and put your
7 left on the Bible. Thank you.

8 WHEREUPON,

9 WILLIAM TAD SMITH,

10 After having been duly sworn, testified as follows:

11 THE CLERK: Thank you. You may have a seat, and for
12 the record, please state your name, spelling your last
13 name.

14 THE WITNESS: William Tad Smith, S-M-I-T-H.

15 THE COURT: All right. Mr. Falk, he's your witness.

16 DIRECT EXAMINATION

17 BY MR. FALK:

18 Q Mr. Smith, why don't you just sort of give sort of a
19 brief summary of what this case was about.

20 A This case was charged from -- as a murder from the
21 beginning. It involved Mr. Wright and his girlfriend at
22 the time. And the allegation was that after an argument,
23 Mr. Wright shot his girlfriend and then fled the scene.

24 Q And there was also testimony that he -- that the --
25 that he shot the victim but then sort of went up and held

1 her at the end, right? Or before fleeing.

2 A That's correct.

3 Q Okay. And what was your theory of the case? What was
4 your strategy going to be here? Because you -- is it fair
5 to say that there was a witness that heard a gun fire
6 blast, came outside, saw your client with the gun on the
7 front porch?

8 A Yes.

9 Q Okay. So identity, those kind of issues really
10 weren't going to be ---

11 A That's correct.

12 Q So what was your theory of defense here?

13 A Mr. Wright told me early -- from early on in the case
14 his version of facts and what had occurred, and they
15 included that they had had some type of fight but that the
16 gun going off was the result of a coat hanger catching the
17 trigger and causing the gun to go off and that it was -- he
18 was not intentionally shooting her.

19 Q And certainly, he didn't have malice at the time the
20 gun went off; is that correct?

21 A That -- according to his version, that's true.

22 Q Okay. And unfortunately, when I look at this trial
23 record, I cannot find that the charge conference was
24 recorded. So can you tell me what -- regarding the lesser
25 included offenses, what did you ask for?

1 A We asked -- in addition to the charge that we got, we
2 asked for the charge of accident ---

3 Q Okay.

4 A --- and I believe we asked for involuntary as well.
5 The judge refused to charge anything other than what he
6 charged, which was the voluntary.

7 Q All right. Did you think that there was testimony in
8 the record that would support a charge for accident?

9 A I did, based on Mr. Wright's testimony.

10 Q And also, wasn't there some ballistic testimony as far
11 as the angle of the shots where they --

12 MR. FALK: May I approach?

13 THE COURT: You may.

14 BY MR. FALK:

15 Q I showed you a few pieces of the discovery?

16 A Yes.

17 Q And that shows -- and I'm just trying to refresh your
18 memory. So was there maybe some question of the trajectory
19 of the pellets as to supporting that it was an accidental
20 shooting?

21 A There -- I guess there was, based on what Mr. Wright
22 had told me.

23 Q Okay. Because the entry wound wasn't straight on. It
24 was kind of going up at an angle and out, right?

25 A That's correct.

1 Q Okay. And then you -- and Mr. Wright took the stand;
2 is that correct?

3 A He did.

4 Q And so that certainly was -- and if we summarize his
5 testimony, it was he was packing up his gear, he was moving
6 out of the house, he had a bunch of trash bags with his
7 stuff in it, and the gun went off by accident.

8 A That's correct.

9 Q And the jury heard that.

10 A They did.

11 Q Okay. And was there also some testimony that he
12 bought a cell phone for the girl?

13 A Yes.

14 Q Yeah. So he wasn't really severing ties with that
15 family. He -- you know, there was testimony that he --
16 might have been a temporary misunderstanding.

17 A Right. I think that there was testimony that there
18 had been ups and downs in the relationship ---

19 Q Okay.

20 A -- with -- with both he and the other family members.

21 Q All right. The judge did not charge on accident.

22 A He did not.

23 Q I cannot find anywhere in the record that you -- well,
24 when I look at the record, it shows that you did not object
25 to the charge that was given to the jury.

1 A That's correct.

2 Q Okay. So whether or not the judge, Judge Nicholson,
3 erred in not charging on accident, that issue was not
4 preserved for appellate review; is that fair to say?

5 A That's fair to say.

6 Q Okay. Now, the things sort of -- can you explain to
7 me how this concerned citizen's letter came into the case?
8 And I've got a copy of that to show you, if those refresh
9 your memory. So do you remember the concerned citizen
10 letter that was ---

11 A I remember it, but I don't know that I have a copy of
12 it. Do you -- would you have one that I can take a look
13 at?

14 MR. FALK: Yeah. I'll bring it up to you in a second.
15 I thought I had another copy. I apologize. Oh, here it
16 is.

17 Your Honor, while Mr. Smith is looking at the
18 concerned citizen letter, there was another point that I
19 raised in my amended PCR application. I think the third
20 point was there was some, I think, inappropriate pitting of
21 witnesses that I want to discuss also.

22 THE COURT: Okay. Ms. Gunton, before -- before we get
23 -- I just happen to be looking at the transcript of record,
24 and apparently I had a transcript, they both seem to say
25 that they are from February 2nd through the 5th. One

1 starts at page 135. Is 135 designated (inaudible)? I see
2 it in here. I'm just curious. I've got -- I thought I had
3 the extra pages 135 through ---

4 MS. GUNTON: I think you may have gotten a copy of the
5 record on appeal and then a copy of the just full
6 transcript.

7 THE COURT: Okay.

8 MS. GUNTON: That would be my only -- for why there's
9 two seemingly duplicative.

10 THE COURT: Okay. So I see what the difference is as
11 far as ---

12 MR. FALK: And so the transcript is 547 pages-ish.

13 THE COURT: And on appeal the only thing that was made
14 part of the record was just the pages that counsel failed
15 to ---

16 MR. FALK: Yes.

17 MS. GUNTON: Yes, Your Honor.

18 THE COURT: Excuse me, Mr. Smith. Perhaps you'd like
19 the afternoon to review it.

20 Thank, y'all. Go ahead.

21 BY MR. FALK:

22 Q So the concerned citizen's letter.

23 A Yes.

24 Q What is your -- how did this come into the trial?
25 Because it shows that it was actually submitted as a

1 Court's exhibit.

2 A I honestly don't remember. If you could -- if there
3 is a point, I didn't see that in the transcript, but I may
4 have missed it.

5 Q But you recall that there was a letter that the State
6 tried to introduce, and I think they withdrew this as part
7 of their evidence, where the letter says, "Hey, Melinda,
8 hope this letter reaches you in good spirits. The reason
9 for this letter is to inform you of a situation at home. I
10 don't know how involved you are with the young man named
11 Timmy, but here is some words of advice that" -- then
12 there's some expletives.

13 A Yeah.

14 Q Okay.

15 A That's correct.

16 Q And so it certainly does not paint a flattering
17 picture of Mr. Wright.

18 A That's true.

19 Q But we don't know who wrote the letter?

20 A We don't.

21 Q We don't even know where it came from.

22 A Have no idea.

23 Q Although, I do think that there was a -- it looks like
24 it was -- from what I got as part of the Court's exhibit,
25 it looks like it was mailed because there was a stamp in

1 the corner of it. And it was addressed to Melinda Ford.

2 A That's correct.

3 Q Okay. Do you -- do you remember that, during the
4 sentencing part of this hearing, the judge, even though
5 this was not a defense or a State's exhibit because they
6 had withdrawn it, the judge was considering this concerned
7 citizen's letter?

8 A That's correct, as far as I know.

9 Q I can bring those pages to you. It was State's
10 Exhibit 173, and I guess there was an objection to it. And
11 the record will show that they withdrew the objection. But

12 then at -- on 537 of the transcript, if you look at
13 line 17, the judge is talking about, yeah, I read that
14 letter.

15 A I see that.

16 Q And that's this concerned citizen letter, this -- it
17 was Exhibit Number 173 that the State withdrew. But it
18 still was made a Court's Exhibit.

19 A Yes.

20 Q Did you consider objecting to it being a Court's
21 exhibit?

22 A I did not.

23 Q Because it was being -- so this anonymous letter was
24 being used as influencing the judge as part of the
25 sentencing in this case. Do you think that's fair to say?

1 A I think that's what Ms. Shealy intended, yes.

2 Q Yes. And there was also some other stuff that
3 Ms. Shealy wanted the Court -- ultimately the Court found
4 out about during the sentencing portion; is that correct?

5 A That's correct.

6 Q And that is the other issue, and that is the charges
7 for which he had not been prosecuted on.

8 A That's correct.

9 Q So these were allegations. There was no disposition,
10 there's no resolution of these charges, but the Court heard
11 these as part of -- heard the sort of the facts as part of
12 -- during the sentencing portion of the case.

13 A Yes.

14 Q And when it happened, what did you -- what did you do
15 when you found out that Ms. Shealy was going to be able to
16 start talking about allegations for which this person had
17 never been -- even really had a chance to respond to, but
18 they were going to be part of this sentencing? What was
19 your response?

20 A At that point, I asked -- you know, indicated to the
21 Court that I had not seen these reports, was not prepared
22 to go forward with rebutting anything that Ms. Shealy had
23 to say regarding those or to address the reports at all.

24 Q Well, I'm sure as part of your Rule 5 you got a rap
25 sheet for him.

1 A Yes.

2 Q And they were probably listed in the rap sheet, were
3 they not?

4 A There were instances -- I believe these were uncharged
5 conduct, I believe, some of these.

6 Q Okay. So you really didn't have this information.

7 A That's correct.

8 Q And did you ask for a -- did you ask for a
9 continuance?

10 A I did not. I asked the judge not to consider those.
11 He denied that request.

12 Q In fact, you asked -- what were -- you asked the judge
13 to -- I'm trying to find what exactly -- what exactly you
14 asked the judge to do. Maybe just not stress them or not
15 rely too heavily on them?

16 A Give me just a second. I'm almost to that section. I
17 can . . .

18 Q I think your quote was "temper its consideration."

19 A That's correct.

20 Q Okay.

21 THE COURT: Just out of curiosity, where are y'all
22 referring to? Where is that?

23 MR. FALK: That's actually from the unpublished
24 opinion. And I'll get the -- I'll get the ---

25 THE COURT: All right. Here. That's the unpublished

1 opinion. Yes. I got that. I see what you're talking
2 about, the unpublished opinion. "Wright later conceded he
3 was not requesting the trial court refrain from considering
4 the incident reports but instead requesting the trial court
5 to temper its consideration of the incident report."

6 MR. FALK: Yeah.

7 And so these allegations that was July 2001, and I'm
8 looking at page 531 of the transcript, so there was -- for
9 which there was no arrest on an allegation of September
10 2003 and July 2001. And the Court -- this information was
11 read -- was read into the record, and the Court certainly
12 was interested in hearing about that. Because the judge
13 actually goes on to make a comment that . . .

14 Hold on, Your Honor. I have the judge's comment.
15 Your Honor, I will find it before Mr. Smith leaves the
16 stand, what I was looking for.

17 THE COURT: Okay.

18 BY MR. FALK:

19 Q Okay. Yeah. So it's on page 544, lines 5 and 6 is
20 actually where he says, "No, I'm not asking you. I'm just
21 asking you to temper your consideration."

22 A Yes, I see that.

23 Q And Judge Nicholson got a little testy with you, it
24 sounded like, because the line before that says, "So don't
25 sit there and tell me what I can't consider."

1 A A little testy would be an understatement, but yes.

2 Q What I'm looking for, and I thought I had flagged and
3 I apologize, but didn't Judge Nicholson also make some kind
4 of comment that these kind of guys get a lot of -- these
5 get a lot of charges and the cases don't go forward because
6 the witnesses don't want to cooperate or -- did he make
7 some type of -- do you remember that remark?

8 A Yeah. I think it actually is in about line 7 through
9 13 on 544.

10 Q Oh, I'm sorry. It's right there. Yes. Lines --
11 yeah. That paragraph between -- on 544, 7 through 14.

12 "But that happens so frequently in domestic violence cases
13 where the victim refuses to prosecute and the prosecutor
14 doesn't have any independent evidence of it. It is rampant
15 throughout the history of South Carolina and other states.
16 You know that as well as I do," or some kind of remark like
17 that.

18 A That's correct.

19 Q So did you think that those comments by the judge were
20 possibly inappropriate? It's seeming to show bias that
21 he's sentencing Mr. Wright based on what he perceives is
22 the case in all these domestic violence cases across the
23 state, but not necessarily the facts in Mr. Wright's case.

24 A It certainly can be taken that way.

25 Q And have you read the opinion in this case?

1 A I have.

2 Q And it does say that -- because that is the issue that
3 appellate defense raised on appeal is the propriety of the
4 sentencing going forward with the judge being influenced by
5 the concerned citizen letter and these allegations for
6 which there wasn't even an arrest. And the appellate court
7 said that that issue was not preserved because you
8 abandoned the argument?

9 A Uh-huh, yes.

10 Q Was that your intention to just sort of abandon the
11 argument?

12 A I don't think so, but ---

13 Q You didn't want to just let that fly, though, right?

14 A That's correct.

15 Q Did you realize that by asking the judge just to
16 temper his remarks that you were, in effect, waiving any
17 objection you might have to those sentencing reports being
18 used?

19 A I did not. At the time, I probably should have
20 handled it differently, looking at it now.

21 Q Okay. And would you have had -- would you have been
22 better prepared to at least have asked for a continuance
23 and gotten those reports so that you could have possibly
24 even addressed these charges?

25 A Yes.

1 Q Because you just had this allegation of these charges
2 in 2001 and 2002. You probably didn't have a chance to
3 talk to your client about them or, you know, know any of
4 the facts underlying them; is that correct?

5 'A That's correct.

6 Q Because they may have been not bona fide allegations
7 at all; is that right? I mean, you had no reason to think
8 they're true.

9 A I really didn't know what to think about them ---

10 Q Right?

11 A --- because I hadn't seen nothing about them.

12 Q Do you think you would have benefit [sic] by asking
13 for a continuance at this time?

14 A I probably would have, yes.

15 Q Because it wouldn't have been that unusual to have a
16 jury reach a verdict and then have sentencing done on a
17 separate date. I mean, that's not an uncommon practice, is
18 it?

19 A It's not.

20 Q And let me just -- Ms. Shealy was -- do you think at
21 some point in there she was actually pitting the
22 prosecution's witness against your client?

23 A She ---

24 Q And if I could draw your attention to page 435,
25 lines 7 through 13.

1 A I'm sorry. Could you repeat the page number? I'm
2 sorry.

3 Q In the transcript, page 435.

4 A Okay.

5 Q And then lines sort of 7 through 13 where Ms. Shealy
6 is cross-examining Mr. Wright.

7 A It probably could be objectionable.

8 Q I mean, that's kind of almost the definition of
9 pitting is that, you know, she said this where you --
10 Mr. Wright, are you calling her a -- you calling her a
11 liar? I mean, that's sort of kind of textbook pitting of
12 witnesses, isn't it?

13 A It is.

14 Q And she was certainly a significant witness for the
15 State, was she not?

16 A She was.

17 Q And was it a trial strategy not to object to that, or
18 what was -- or is it just one of those things?

19 A I think I may have just missed it.

20 Q Yeah. Okay. Do you recall, at some point during the
21 trial, that Mr. Wright maybe talking to Ms. Runey and maybe
22 to you about one of the witnesses seeming -- I mean one of
23 the jurors seeming to be staring at him through the whole
24 trial?

25 A I do not remember that. But I have no reason to

1 believe that's not the case if ---

2 Q Okay.

3 A --- if that's the way Mr. Wright remembers it.

4 Q Okay. If you did think that one of the jurors was
5 certainly giving Mr. Wright the impression that she had
6 already made up her mind about the case, would that have
7 been something that you could have brought to the Court's
8 attention?

9 A Yes. It would have been or it could have been.

10 Q Now, would you admit that there was a -- there was a
11 difference in the testimony regarding whether or not the

12 State's witness actually witnessed the shooting?

13 A Yes. I do think that the initial reports indicated or
14 sounded as if she had, but certainly, her testimony at
15 trial was that she had come out after.

16 Q I'm going to -- just to sort of refresh your memory, I
17 think this is the page.

18 A Sure.

19 Q Maybe 54 of the Rule 5 materials.

20 And what are you looking at there?

21 A That's the grand jury indictment summary.

22 Q Okay. And if you read -- just take a second to read
23 through it.

24 A Sure. (Pause.) Okay.

25 Q And once you get to the end of that, you're left with

1 the impression that the witness saw the actual shooting.

2 A I think, according to this, yes.

3 Q Yeah. Okay. But the witness -- and it was her
4 testimony that she did not see the shooting; is that
5 correct?

6 A That's correct. And I did know that prior to trial.

7 Q Beg your pardon?

8 A I knew that prior to trial, that that was going to be
9 her testimony.

10 Q Did you -- so would that have been something that you
11 wanted to -- did you consider possibly challenging the
12 indictment because the facts in the indictment were
13 different from what you knew to be the facts in the case?

14 A I did not think about challenging the indictment.

15 Q Let me ask you about the voir dire. There was a
16 question. Do you recall asking the question about whether
17 or not people were victims of domestic violence?

18 A I -- that is one of the -- generally the standard
19 questions that I ask in a case like this.

20 Q Would you look at page 44 in the transcript?

21 A Yes.

22 Q I'm sorry. Page 46 in the transcript. All right.
23 Well, let's go to page 45. The question was in length on
24 line 8 -- wait a minute. Excuse me. It's on page 44, line
25 15. "Is any member of the jury panel or a member of their

1 immediate family or close, personal friends been employed
2 by law enforcement agency." No, no. That's not it. I'm
3 sorry. I'm sorry. It's on line 17. It's 46, line 17.
4 "Does any member of the jury panel or your relative or
5 close, personal friends been in a violent domestic
6 situation? If so, please stand." So that was -- that was
7 your voir dire question.

8 A Yes.

9 Q Okay. And Robin Elsmore stood up.

10 A She did.

11 Q And if you can kind of look over on pages 47 through
12 48, she discusses how that question applied to her, that
13 there was domestic violence between a brother-in-law and
14 his wife -- her brother-in-law and his wife.

15 A Yes. I see that.

16 Q Okay. At the end of the questioning, you did make a
17 motion about that juror; is that correct?

18 A That's correct.

19 Q And when you get to page 85, Juror Number 112 gets
20 called. And that's Robin Elsmore, the same person we're
21 talking about on line 6.

22 A Yes.

23 Q And you didn't have any strikes.

24 A That's correct.

25 Q Did you think about making a motion for cause there

1 because of her involvement with domestic violence?

2 A I did not. I did not.

3 Q Was it did you think that her relationship was too
4 attenuated to the domestic violence?

5 A I did in that situation.

6 Q Because she wasn't really the victim.

7 A She wasn't a victim, and it, at least from the
8 question, didn't seem as if she knew a whole lot about the
9 situation.

10 Q Okay. And actually, she may have thought that the
11 person making the allegations in that case might not have
12 been being truthful.

13 A Yeah. I'm not ---

14 Q Because I think she said the person got a nose job out
15 of it.

16 A That's correct.

17 MR. FALK: Okay. All right. Your Honor, I don't
18 believe I have any more questions for Mr. Smith at this
19 time.

20 THE COURT: All right. Ms. Gunton, any questions of
21 this witness?

22 MS. GUNTON: Yes, Your Honor.

23 CROSS EXAMINATION

24 BY MS. GUNTON:

25 Q Good afternoon, Mr. Smith. And I appreciate you being

1 here this late in the evening now. I just want to start
2 over brief kind of housekeeping questionings.

3 So how long have you been practicing law?

4 A 17 years.

5 Q And how much of that time has been focused on criminal
6 law?

7 A The entire 17 years.

8 Q And where are you currently employed?

9 A I'm the deputy public defender at the Charleston
10 County Public Defender's Office.

11 Q Okay. And so this was a murder trial. At this point
12 in your career, would you say that this is kind of routine
13 practice for you to have been handling a murder trial?

14 A Yes.

15 Q Okay. And were there any, I don't know, kind of
16 nuances at this specific thing, or was this just like an
17 average -- average in the sense of you as a senior public
18 defender dealing with this, but was this kind of a standard
19 trial going forward?

20 A It was. It was pretty much a fact-driven case.

21 Q Okay. And can you get into, I guess, how you started
22 with your involvement in this case with Mr. Wright?

23 A Yes. So we, at the time, did not have a presence in
24 our local bond court, and so what occurs is anyone that is
25 charged is screened by a jail screener. That paperwork

1 comes to the office. Mr. Pennington, the ninth circuit
2 public defender, then appoints murder cases to different
3 attorneys. So I received Mr. Wright's case, and from early
4 on was kind of involved in his case.

5 Q Okay. And can you give us a bit of detail on your
6 preparation in how you prepared this case and what facts
7 you had, what evidence you had?

8 A Sure. So, again, this was not kind of a case of -- a
9 whodunit case, so to speak. We kind of knew who the
10 players were. We did early on try to reach out to
11 Mrs. Ford's family. They did not want to speak with us.
12 We did that through Ms. Shealy. The rest of the time was
13 primarily spent with Mr. Wright and learning and
14 understanding his events and what he had indicated
15 occurred.

16 Q Right. Okay. And what defenses did you look at?
17 Because I know that on direct, Mr. Falk had brought up an
18 indication of possibly an accident. And so was that a
19 potential defense that you had looked at, either
20 self-defense or an accident?

21 A We did not -- we didn't look at self-defense because
22 there was no kind of indication of any type of fight
23 between the two, a physical fight between the two. We did
24 look at accident as a potential defense. We also
25 potentially looked at involuntary as a defense based on

1 what Mr. Wright had told us about the situation.

2 Q And I know that, from review of the record, that I
3 believe the charge conference you had was -- occurred up at
4 the bench and it wasn't on the record, and just so for the
5 sake of clarity, that you had requested, I guess, at this
6 charge conference, that he be charged with an accident,
7 that Judge Nicholson decided that he was not going to go
8 forward with that.

9 A That's correct. The judge said, "I'm not -- not going
10 to charge accident. I'll charge voluntary, but I'm not
11 going to charge accident."

12 Q And just from, I guess, my review of this, that, in
13 this case, he was actually charged, first and foremost,
14 with murder, but then he was charged with the lesser
15 included involuntary manslaughter instead of voluntary.

16 A That's correct.

17 Q So were you happy with that in terms of that would be
18 involuntary manslaughter standard kind of encompassed
19 accident? Was that kind of on the same playing field with

20 you so it wasn't -- it was not (indiscernible) from
21 voluntary. So were you okay with that charge?

22 A I actually was. My thought process on that was I
23 didn't -- you know, in evaluating the case, I did not think
24 it would be a case where a jury would find him not guilty
25 by reason of accident alone, and so involuntary, I thought,

1 was a possibility.

2 Q Right. And from your, I guess, summation of looking
3 back, that even if you had gone forward and received the
4 accident charge, the jury still convicted him of murder
5 when they did, in fact, have the involuntary manslaughter
6 option that they'd gone with. So does that kind of, I
7 guess, quell any fears you have looking back that the
8 charge was okay?

9 A Yes.

10 Q Okay. And turning to the incident reports and
11 sentencing which occurred, so you had -- you kind of
12 objected in a sense not contemporaneously to when the
13 assistant solicitor was bringing in the incident reports,
14 but you did make it clear to the judge that you were not
15 happy with those being put in the record?

16 A I did.

17 Q Okay. And what were your concerns and fears with him
18 evaluating the incident reports?

19 A My main fear, of course, was I had not seen them, so I
20 was not exactly sure what ---

21 Q Okay.

22 A --- what the facts and circumstances were.

23 Q Okay. And just to be clear that, at the conclusion of
24 this trial when the jury came back with their verdict,
25 sentencing was deferred until the next morning; is that

1 correct?

2 A That's correct.

3 Q Okay. And did you have a chance to speak with your
4 client after the jury came back and gave their guilty
5 verdict?

6 A I know we spoke at the table. I don't know whether --
7 I don't remember that we spoke that evening.

8 Q Okay. And usually when it comes to you -- mitigation
9 for your clients during sentencing, what types of
10 conversations took place between you and your client in
11 terms of his past history, past criminal record? Were you
12 kind of blindsided by these past incident reports?

13 A The ones of the kind of the uncharged conduct I was
14 not aware of. Obviously, things that he had been charged
15 with, I knew about those even if he was not convicted. We
16 had talked at some length. I don't -- I don't remember him
17 bringing up any other incidents, and I certainly wasn't
18 aware of the ones that we were talking about here.

19 Q And so in your -- I can say at this point in my little
20 career, but your extensive career in criminal -- dealing
21 with criminal cases, that when it comes to sentencing, that
22 you are aware that a trial judge and sentencing judge has
23 very broad discretion in what they can and cannot -- or
24 what they can choose to look at in terms of sentencing; is
25 that correct?

1 A That's correct.

2 Q So was this something -- the incident reports and
3 reading those, was that something that you had never come
4 across before, or is that kind of something that you have
5 seen come up where a sentencing judge has wanted to see
6 incident reports?

7 A I have seen that on a couple of occasions, but I have
8 not seen that very often.

9 Q Okay. And would you say that it was out of line for
10 Judge Nicholson to have -- wanting to look into the
11 incident reports in this matter?

12 A No. Ultimately, I do think it's his discretion to do
13 that. Obviously, I would have liked to have had the
14 opportunity to respond.

15 Q Right. And if you had requested a continuance in this
16 case, I guess my follow-up question with that would be what
17 would you have done to prepare? So looking at this, I
18 believe it was an assault and battery third from 2001,
19 there was a CDV in 2003. Those would be incident reports.
20 So those were so -- I mean, they're pretty far back in time
21 and I know they were brought in sentencing, but what would
22 you have done to prepare to rebut those?

23 A I probably would have talked more extensively with
24 Mr. Wright about what those were about and potentially
25 tried to get copies of those.

1 Q Okay. And then turning to the State's Exhibit 173,
2 which I believe was then later converted to Court's
3 Exhibit 4, the concerned citizen's letter ---

4 A Yes.

5 Q --- so that was never disclosed to the jury; is that
6 correct?

7 A That's correct.

8 Q Okay. And so the only time that that ever really came
9 into play was during sentencing when Judge Nicholson said
10 that he had looked at it.

11 A That's correct.

12 Q Okay. And, again, going back to the broad discretion
13 that sentencing judges have, would you not consider that
14 concerned citizen's letter even though it is hearsay
15 evidence? But hearsay rules kind of go out the window
16 during sentencing, that that was very relevant because it
17 was sent to the victim at the time, presumably when she was
18 still living. Regarding the defendant, would that not be
19 relevant to sentencing?

20 A Potentially, it could be. My concern, obviously,
21 should have been more about where that letter came from and
22 whether the source was at all credible.

23 Q Okay. But do you think that -- so in terms of the
24 sentencing range that -- the applicant was sentenced within
25 the statutory limit itself, being a murder conviction,

1 correct?

2 A That's correct.

3 Q So do you think that it was this concerned citizen
4 letter, or do you think that any of these incident reports
5 were -- did they taint at all his decision to sentence to
6 life without parole, was it these -- one thing or was it
7 the jury came back with a verdict, it's guilty, I have
8 broad discretion to sentence up to life imprisonment
9 without parole based on the circumstances of the crime?

10 A You know, I think that -- I think that I knew early
11 on. At least from my experience with Judge Nicholson and
12 with other judges, the facts in this case, the seriousness
13 of domestic violence in the state, I knew and I think
14 Mr. Wright and I discussed the fact that it probably
15 would be a life sentence if he were convicted of the
16 murder.

17 Q Right. And both the victim's daughters did testify
18 and provide victim impact statements at the sentencing
19 hearing. And do you think that is something that did weigh
20 heavily on Judge Nicholson when it came to determining
21 sentencing?

22 A Yes. I would imagine so.

23 Q And turning to the improper pitting of witnesses, I
24 believe we touched on this earlier, but it's page 435 of
25 the transcript. And during this part, the assistant

1 solicitor was cross-examining the applicant, and she
2 essentially asked whether or not the victim's daughter, who
3 had testified earlier, whether or not she was telling the
4 truth or lying. And the applicant said that she was a
5 liar. And this refers, again, to when the victim's
6 daughter testified earlier about she was not a witness to
7 the shooting, she came out after she heard gunshots, she
8 heard her mother scream and then she approached the porch
9 where everything was happening and then found her mother
10 and the applicant with a firearm; is that correct?

11 A That's correct.

12 Q Okay. So when it comes to whether or not she was
13 lying, you can agree that it was -- you probably should
14 have objected to it, but when it came to the actual
15 discussion of was this a critical issue to the case, would
16 you say that it was a critical issue that they were talking
17 about or was it just ---

18 A No. I don't believe that issue was critical.

19 MS. GUNTON: Okay. Just to clarify, Your Honor, the
20 kind of comparison testimony is -- it's page 435, lines 7
21 through 13. And then the victim's daughter testified, it's
22 page 155 of the transcript. And that would be lines 11
23 through 18.

24 THE COURT: Thank you, ma'am.

25 MS. GUNTON: Uh-huh.

1 BY MS. GUNTON:

2 Q And did you -- when it comes to the juror possibly
3 staring down at the applicant during the trial, was that
4 something that ever was brought to your attention by him?
5 Were you ever really aware of the jury, what they were
6 looking like?

7 A I honestly don't remember that, but that could have
8 occurred.

9 Q And just to touch back on the witness pitting, you had
10 mentioned, I believe you said that -- you stated earlier
11 that identification was never an issue in this case; is
12 that correct?

13 A That's correct.

14 Q Okay. So her testimony that she did not specifically
15 -- she came out after she heard the gunshot, right? So
16 that's kind of in juxtaposition to the incident report that
17 said that the witnesses saw the shooting occur, right?

18 A That's correct.

19 Q Would that be anything that you think is particularly
20 prejudicial to this case or harmful, the veracity of this
21 witness?

22 A Not on that particular issue, no.

23 Q And was there any other -- were you -- so you said
24 earlier that you were not really surprised by the verdict
25 when it came out; is that correct?

1 A Well, I think what I was indicating is I did not think
2 that accident by itself would have won the case. So, you
3 know, based on the testimony that we had heard, based on
4 Mr. Wright, I did not know exactly how the jury would come
5 out and how they found whether his testimony was credible
6 or not.

7 Q Okay. And you are aware of kind of the requirements
8 of what you need in order to show accident, right?

9 A Yes.

10 Q And do you think that anything in the specific facts
11 in this case, I believe earlier you had mentioned something

12 with a coat hanger and the gun, was that anything that was
13 verified ---

14 A It was ---

15 Q --- by police officers on the scene or ---

16 A No. There was -- there was conflicting talk about
17 that particular issue. Mr. Wright indicated that the coat
18 hanger caused the gun to go off.

19 Q Did he ever give you a reason for why there was a coat
20 hanger?

21 A He was -- he was moving things out of the home at the
22 time.

23 Q And I think the last thing I want to touch on was at
24 the end. In addition to the murder sentence, he was also
25 sentenced to an additional five years on the weapons

1 charge. And at that time, why did you not object to that?

2 A I don't -- I don't even remember that. You know, I
3 just assumed that it would honestly be subsumed by the life
4 sentence on the murder conviction.

5 MS. GUNTON: I have no further questions for this
6 witness, Your Honor.

7 THE COURT: Anything?

8 MR. FALK: May I redirect?

9 THE COURT: Yes, sir.

10 MR. FALK: I guess I should have asked whether the
11 Court wanted to go first. I'm sorry.

12 THE COURT: No, no, no, no. I'm ready for any
13 questions on redirect, Mr. Falk.

14 REDIRECT EXAMINATION

15 BY MR. FALK:

16 Q You thought there was evidence in the case that -- I
17 mean, you asked for the accident charge; is that correct?

18 A That's correct.

19 Q And so you thought there was some evidence that would
20 support that argument; is that correct?

21 A That's correct.

22 Q And so when you're saying that you were happy with the
23 fact that there was a charge on involuntary, would you have
24 also preferred there be a charge on accident and
25 involuntary?

1 A Of course, yes.

2 Q Okay. The -- you said that you've seen a couple of
3 times this -- these allegations, you know, being used in
4 part of sentencing.

5 A Yes.

6 Q Well, first of all, let's go back. You never got
7 those police reports; is that correct?

8 A That's correct.

9 Q So that was never part of the Brady materials?

10 A They were not.

11 Q I mean, obviously, y'all asked for discovery.

12 A That's correct.

13 Q And it was never supplied to you.

14 A That's correct.

15 Q So potentially, is that -- could you have considered
16 even raising a Brady argument right there, you know, this
17 is information that we never could get?

18 A I suppose that you could, yes.

19 Q It wouldn't be something that you -- I mean, is there
20 any reason to anticipate that you go into a sentencing and
21 that the solicitor would start -- when they're going
22 through your client's criminal records, start talking about
23 stuff for which there were allegations, there's no way to
24 anticipate that, is there?

25 A I did not anticipate that in this case. There may be

1 situations where that would come up. I've had situations
2 since where that has come up. But I anticipated in those
3 scenarios.

4 Q And you had said that had you had more time, you could
5 have talked to -- you could have talked to Mr. Wright about
6 those and get maybe his version of the facts there.

7 A That's correct.

8 MR. FALK: Okay. That's all I have on redirect.

9 THE COURT: Thank you, sir.

10 Anything on recross?

11 MS. GUNTON: No recross, Your Honor.

12 THE COURT: All right. You may step down. Thank you,
13 sir.

14 Are you prepared to call your next witness?

15 MR. FALK: I'd like to call Mr. Wright to the stand.

16 THE COURT: Mr. Wright.

17 THE CLERK: As much as you're able, if you can place
18 your left hand on the Bible and raise your right hand,
19 please. Thank you.

20 WHEREUPON,

21 TIMOTHY J. WRIGHT,

22 After having been duly sworn, testified as follows:

23 THE CLERK: Thank you. Please have a seat. For the
24 record, please state your name and spell your last.

25 THE WITNESS: Timothy Wright, W-R-I-G-H-T.

DIRECT EXAMINATION

1
2 BY MR. FALK:

3 Q Now, Mr. Wright, I'm not going to have you sort of go
4 through all your testimony at the time of the trial, but
5 why don't you just summarize how this shooting was an
6 accident? I mean, what happened? How did the gun go off?

7 A Well, after me -- me and Melinda got through talking,
8 I found it best for me just to move on. So I gave her
9 daughter a cell phone. I said, "You call me anytime you
10 need to talk," because Melinda was starting to give up on
11 her because of the little problems she was causing.

12 So she told me, "You deal with her."

13 So I wanted to keep in contact with her. So I gave
14 her a cell phone.

15 I started packing my stuff. And as I was packing my
16 stuff, I went to the closet. I put them in -- put them in
17 a trash bag -- I put the whole hangers in a trash bag. I
18 didn't bother to take the clothes off the hangers. I sat
19 everything in a trash bag. I went in the closet where I

20 kept ---

21 Q Let me just interrupt you for a second. So you
22 weren't there that day to pack up your gear, right? I
23 mean, that was not ---

24 A I was -- I was sleeping when they returned from
25 wherever -- the outing.

1 Q Yeah. Okay. Okay. So, I mean, you weren't ready
2 with suitcases and all to pack up that day.

3 A No, no. I had no intentions of leaving until she came
4 home. And she was frustrated about something, and she was
5 doing the talking. I was doing the listening. I said --
6 you know, because I had told her about the incident. I
7 said, you know, "People going to tell you all kind of
8 things." My wife or whoever, these females I've been
9 dealing with, even to one of her own cousins, you know,
10 I've dealt with two of her cousins, and they failed to tell
11 her, but I told her on my own. So I was like this -- this
12 is becoming too much. I need to just move on.

13 So I went and started packing up my clothes. I went
14 in the closet where I had -- I call it a "bush gun," which
15 was the gun that was in the accident. I put that gun up
16 with two "cools" bags. I put it in the vehicle. I was
17 going to the vehicle with the clothes, and as I was about
18 to pick up the door handle and swing around with the bag,
19 one of the bags "snugged" the trigger.

20 And a piece of the pop-off hanger, I think they found
21 it on the scene. The trash bag was there. I don't know if
22 they tested it for gunpowder residue, but it should have
23 been a lot on it.

24 Q Okay. So that's how she got shot.

25 A That's how she got shot.

1 Q That's pretty much what your testimony was at the
2 trial.

3 A Yes, sir.

4 Q Okay. If you could just go a little bit as far as
5 this witness -- I mean this juror that you felt was maybe
6 giving you the evil eye through the trial, what's your --
7 what was your understanding of that?

8 A The impression she gave me was she kept staring at me
9 like I -- like I got you, like I'm going to get you. She
10 kept staring with -- and I told -- well, Mr. Smith, I told
11 Mr. Smith, and I told his assistant who was sitting right

12 next to me. But she said, "Well, let me look and see if
13 she does it." And she tapped me on the -- she says,
14 "Mr. Wright, you're right. She is doing it." And she
15 jotted something down on a piece of paper. I don't know
16 what she did with it.

17 Q Okay. Prior to going into that trial, did you know
18 who wrote the concerned citizen letter?

19 A I have no clue. I have no clue. But I know when
20 Melinda received it, she gave it directly to me. She said,
21 "Here, read this."

22 Q Okay.

23 A I don't know where it came from. She doesn't know who
24 it -- she didn't know who it came from.

25 Q Those allegations from 2001, 2002, what did you know

1 about them? Did you even know that a police report had
2 been written about you?

3 A No.

4 Q So they were -- so that's referring to -- so the
5 solicitor was talking about a July 2001 allegation by a
6 girlfriend?

7 A What was it?

8 Q I mean, you were never even served any kind of a ---

9 A No, sir.

10 Q Okay. And do you know who Timia [phonetic] Davis is?

11 A Yes, sir.

12 Q Who is that?

13 A That's my two boys' mother.

14 Q Okay. Did you know that there was some kind of --
15 that she'd made some type of allegation in September of
16 2003?

17 A I had no clue to it. But I can also share with you
18 that Timia Davis also -- she put me into a car accident
19 because I threatened to leave her, and she ran us head-on
20 with an 18 Wheeler on Line Miles Bridge [phonetic], say,
21 "If I can't have you, nobody would."

22 And -- and the only reason why I didn't press charges
23 against her, because I was hospitalized and she walked out
24 with a bump on her head. And they had to cut me out of the
25 vehicle because we had two younger kids together, and who's

1 going to take care of them if I had her locked up and I was
2 in the hospital? So I asked the officers, "Just charge her
3 with the accident," and that's what they did.

4 Q So you didn't -- obviously, Mr. Smith didn't know
5 anything about that.

6 A Oh, I mentioned it -- I mentioned -- I put everything
7 on the table to Mr. Smith. I told him about everything.
8 And Mr. ---

9 Q About Timia Davis?

10 A Yes, sir.

11 MR. FALK: Okay. I have nothing further, Your Honor.

12 THE COURT: All right. Anything on cross-examination?

13 MS. GUNTON: No, Your Honor.

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

15 Mr. Falk, does the applicant have any other witnesses?

16 MR. FALK: No. I would like the opportunity to recall

17 Mr. Smith.

18 THE COURT: The opportunity to recall?

19 MR. FALK: Yes.

20 THE COURT: And -- okay.

21 MR. FALK: I didn't know -- you know, procedurally
22 when you want that (inaudible).

23 THE COURT: I'm glad you didn't leave, Mr. Smith.

24 MR. SMITH: It would have been a long walk back over.

25 THE COURT: All right. Mr. Smith, you understand and

1 you know that, as an officer of the Court, you're still
2 under oath anyway, and a witness.

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: All right. Go ahead.

5 WHEREUPON,

6 WILLIAM TAD SMITH,

7 After having previously been duly sworn, testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. FALK:

11 Q Mr. Smith, the only reason I brought you up here is
12 because of his talking about Timia Davis. Do you recall
13 any kind of -- preparing for the trial any kind of
14 discussion about Timia Davis?

15 A I remember the discussion about the accident on the
16 bridge ---

17 Q Okay.

18 A --- and him indicating to me about that and their
19 relationship. But as far as the specific incident of
20 conduct, I don't remember anything like that.

21 Q Had you known you were going to need to rebut
22 testimony about Timia Davis, would you have gotten
23 information about this accident?

24 A I certainly would have tried to get more information.
25 Obviously, Mr. Wright had given me kind of the details of

1 what had occurred.

2 Q But Timia Davis was never called as a witness in this
3 trial.

4 A She was not.

5 Q Was she on the witness list?

6 A I don't believe so.

7 Q So Mr. Wright might have told you something about her,
8 but you certainly weren't ready to rebut any kind of
9 allegations or testimony from her; is that correct?

10 A That's correct.

11 MR. FALK: I have no further questions.

12 THE COURT: Anything on cross?

13 MS. GUNTON: Briefly, Your Honor.

14 THE COURT: Okay. Go ahead.

15 CROSS EXAMINATION

16 BY MS. GUNTON:

17 Q There's been a lot of talk about a lot of testimony
18 from nontestifying witnesses through these incident reports
19 and the accident that took place that we just heard about

20 and whether or not that played a role in his sentencing.

21 But I think the thing is, that incident was not on trial,
22 was it? That never was at the heart of the matter of the
23 incident that actually took place in which he was accused
24 and convicted of murdering Melinda Ford; is that correct?

25 A That's correct.

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

2 THE COURT: Anything on redirect?

3 MR. FALK: No, Your Honor.

4 THE COURT: Can Mr. Smith finally go to his office?

5 MR. FALK: I think he can go home.

6 THE COURT: Okay.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Mr. Smith, you're finally
9 excused.

10 THE WITNESS: I appreciate it, Your Honor.

11 THE COURT: If they call you, you're going to have to
12 come back.

13 THE WITNESS: Okay. I will run.

14 THE COURT: Thank you, sir.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Falk, after him, do you have any
17 other ---

18 MR. FALK: No, Your Honor.

19 THE COURT: Okay. Does the State have any witnesses
20 it wishes to call?

21 MS. GUNTON: No, Your Honor. I just wanted to hand up
22 to you case law briefly, if that's okay with you.

23 THE COURT: I love case law.

24 MS. GUNTON: It's highlighted.

25 THE COURT: Oh, good. Thank you. Why weren't you

1 here when Ms. Blanchette was here, see how easy that was to
2 do.

3 MS. GUNTON: The first case I'm going to hand up is
4 State vs. Gullede and Hess [phonetic], referring to the
5 admissibility of -- the inadmissibility of evidentiary
6 rules during sentencing.

7 And then this I briefly wanted to put on the record.
8 This is State v. Palmer. This was in Mr. Falk's amended
9 application. This is regarding the five-year sentencing
10 for the possession of a weapons charge, and the State would
11 concede at this point that was an illegal sentence, just
12 the five years.

13 THE COURT: Okay. So I -- that part of the sentence
14 can be vacated by me? Or are you just conceding it should
15 be vacated?

16 MS. GUNTON: I concede that it should be. I'm not
17 really sure procedurally how ---

18 MR. FALK: I think the law is that. But -- you know.

19 THE COURT: Okay.

20 MR. FALK: Your Honor, as far as case law, we'll stand
21 on the arguments that were raised by appellate counsel as
22 far as the propriety of the end. If you don't have the
23 brief, I'll provide the brief. But I think it should have
24 been in your packet.

25 THE COURT: Hold on. Hold on a second. I think I --

1 I have the final brief of the appellate.

2 MR. FALK: Okay.

3 THE COURT: Okay. And so -- and that was one -- that
4 was prepared by Kristy Goldberg?

5 MR. FALK: Yes.

6 THE COURT: Okay. And that's your argument?

7 MR. FALK: Well, it's on the point of, you know, I
8 guess -- I guess it would go to the prejudice prong of the
9 argument about failing to -- you know, the appellate court
10 ruled that Mr. Smith waived any objection to the use of
11 that testimony during the sentencing. And I think to get
12 over the prejudice prong would have to be that he had bona
13 fide claims that that was, in fact, improper use, that
14 testimony.

15 THE COURT: Okay.

16 MR. FALK: So I think it's relevant on that point.

17 THE COURT: All right. And, Ms. Gunton, anything else
18 you want to add?

19 MS. GUNTON: I'd further just point the court's
20 attention to Hayden v. State. It's cite 283 SC 121. It's
21 a 1984 case. And that just basically goes into discussion
22 that a sentencing judge has very, very broad discretion and
23 basically unlimited in the amount and what type of
24 information that he or she may consider during sentencing
25 and where it can come from.

1 THE COURT: And give me that cite again, please,
2 ma'am.

3 MS. GUNTON: It is Hayden, H-A-Y-D-E-N, v. State.
4 It's 283 SC 121. And that is a 1984 case.

5 THE COURT: Okay. Anything else, Mr. Falk?

6 MR. FALK: Well, I mean, I'd just like to summarize my
7 argument.

8 THE COURT: Oh, yeah. Oh, yeah. Go ahead. I'm
9 sorry. I didn't mean to stop you from that.

10 MR. FALK: No, Your Honor. I mean, my point is that
11 on this sentencing part, you've really got sort of three
12 different -- at least two different things that are going
13 on there. You have potentially the State is in the midst
14 of a Brady violation by bringing forward information that
15 they felt was -- that became relevant during the sentencing
16 for which Mr. Smith testified he never was given. So he
17 had no opportunity really to respond to it.

18 The reason why I wanted to bring him back up and talk
19 about that one witness was that would be the type of
20 information that maybe he would have wanted to garner had
21 he known he was going to have to rebut. Because it is her
22 testimony coming through. I mean, I get that. She didn't
23 testify against him in the case in chief, but certainly,
24 testifying that he had done this kind of stuff before, I
25 mean, that -- that was being used. And the fact that he

1 could have rebutted her credibility with this whole story
2 about the accident, I think, shows that Mr. Smith, I think,
3 was the victim of a Brady violation and at least should
4 have asked for a continuation of the sentencing hearing so
5 that he'd have time to rebut the testimony that was
6 offered.

7 And I don't think the -- I don't think the testimony
8 was appropriate regardless of how much discretion that
9 judges are afforded in the sentencing. I mean, you can't
10 sentence people based on what people are saying in the --
11 you know, his reputation in the -- well, I mean, what
12 people are saying about him. I mean, that's totally
13 inappropriate. It hasn't been vetted at all as far as its
14 reliability.

15 And that statement by Judge Nicholson clearly shows
16 that he's wrapping Mr. Wright up in the same -- you know,
17 painting him in the same brush of everybody else who has a
18 domestic violence charge. And he clearly was influenced by
19 these other allegations even though -- so, I mean, whether
20 or not -- even if you get to the point to say, yeah, he
21 could have considered it, I don't think Mr. Smith handled
22 that properly. He either should have asked for a
23 continuance, and I also think he should have argued that
24 that was a Brady violation for that information coming in.
25 He was -- no way to prepare for that.

1 And on the accident charge, he testified he thought
2 there was testimony in there that would support the charge.
3 The fact -- the case law, and I will provide this case
4 later, but there is case law out there that even though the
5 jury convicts on a higher charge, that does not mean that
6 there was no prejudice from failing to charge on a lesser
7 included. And accident is really not a lesser included. I
8 guess it's -- I don't know if it's an affirmative defense
9 or exactly how it's classified. But still, he testified
10 that there was testimony in there. If you look at the
11 trial transcript, it was this testimony here, it's

12 corroborated somewhat by the testimony about the trajectory
13 of the bullet -- or of the shells. He was entitled to the
14 instruction. There was no way to address that on appeal
15 because the charge conference wasn't recorded, and I think
16 the way the case law reads, that that's on Mr. Smith for
17 not having made his objection to the charge part of the
18 record.

19 THE COURT: Anything else?

20 MR. FALK: I do think the -- I do think the pitting of
21 the witness, I do think it's important because she is a
22 witness. And the fact that Mr. Wright's -- I mean,
23 granted, there's no doubt about who the shooter was, but as
24 far as the circumstances of how the shooting took place,
25 that certainly was contested. And so, I mean, there --

1 there is some dispute as to her testimony. And that's why
2 I think the pitting was important because ---

3 THE COURT: You think the pitting had that much
4 influence on the jury?

5 MR. FALK: Not as much as the -- not as much as the
6 fact that they weren't able to get the ---

7 THE COURT: Accident.

8 MR. FALK: --- accident charge. But, I mean, I don't
9 think they're allowed to say, what, is that witness lying?
10 I mean, I think that's sort of like right out of the books.
11 That's what pitting witnesses is. You can't say, well, he
12 said this, does that mean that person -- you're not
13 supposed to do that.

14 As I said it when I started this, I think the greater
15 issues are the issues that, in effect, were addressed on
16 the appeal but that he couldn't -- he didn't get appellate
17 relief because it wasn't preserved. However that comes
18 out, it falls on trial counsel and the concerns about the
19 failure to charge on accident.

20 THE COURT: So because Mr. Smith did not preserve
21 those issues on appeal, Mr. Wright should get a new trial?

22 MR. FALK: Yes, Your Honor.

23 THE COURT: Okay. All right. Thank you, sir.

24 MR. FALK: Thank you.

25 THE COURT: Ms. Gunton, anything you'd like to get on

1 the record?

2 MS. GUNTON: Yes, Your Honor. And just for the
3 record's sake, at this point in time five minutes ago, the
4 State would rest its case.

5 THE COURT: Thank you, ma'am.

6 MS. GUNTON: Turning just briefly to the incident
7 reports that came in, I'd point the Court's attention to
8 page 529 of the transcript in which the assistant solicitor
9 begins to go over them. Just for clarity, there was an
10 assault and battery third from 2012, and he was accused of
11 striking his wife's 16-year-old daughter in the face which
12 that resulted in a conviction. And then it goes on to say
13 two days later he filed -- he filed an incident report
14 because his wife removed his handgun from his own vehicle.
15 And then later on there were two other additional incident
16 reports. July 2001 a girlfriend called during an argument
17 asking for police to come and diffuse the situation this is
18 page 531 at lines 8 through 15, and continues on with
19 September of 2003 there was a criminal domestic violence
20 charge. And I believe that was the one involving Timia
21 Davis.

22 And going back to the case law that I handed up
23 earlier, the State v. Gullede, I would argue that this
24 information was very much relevant and trustworthy and
25 necessary for the Court's consideration when it came to

1 sentencing the applicant on these charges.

2 Turning to the pitting of the witnesses, I do not
3 think -- where I do think that trial counsel was deficient
4 for failing to object, I in no way think that the applicant
5 was prejudiced by the failure to object to the pitting of
6 the witnesses. It was not a critical issue in the trial,
7 and it was one moment in time, so I do not think that he
8 should deserve a new trial based off of that.

9 And regarding State's Exhibit 173, which is also
10 Court's Exhibit Number 4, also known as the concerned
11 citizen's letter, that never appeared before the jury. And
12 I also think that goes back to what was in that Gulledge
13 standard of was this information relevant and was it
14 trustworthy in terms of consideration for the Court.

15 And looking briefly to the potential of a juror
16 staring down the applicant, Mr. Smith never said that the
17 applicant discussed that with him or brought that to his
18 attention, nor did he ever say that he was aware of it
19 during trial. So we do not think that he was deficient or
20 prejudiced in any way from any juror misconduct or anything
21 like that.

22 And so overall, I think that the applicant was not at
23 all prejudiced by any ineffectiveness on behalf of trial
24 counsel, it never was not prejudiced, and therefore, the
25 State would request that you deny his application for

1 postconviction relief.

2 THE COURT: All right.

3 MR. FALK: Your Honor, I have a copy of the concerned
4 citizen letter.

5 THE COURT: You do?

6 MR. FALK: Yeah. I mean, it should be part of the
7 record because it was a trial exhibit, but -- I mean it was
8 a Court's Exhibit.

9 THE COURT: Any objection to that, Ms. Gunton?

10 MS. GUNTON: No objection, Your Honor.

11 MR. FALK: It has the Court's stamp on the front.

12 THE COURT: Okay. And just for the record, I have
13 Court's Number 4, a Court's exhibit from February 4, 2015.
14 Okay. That would be the concerned citizen letter. All
15 right.

16 MR. FALK: And if I can just ---

17 THE COURT: Go ahead.

18 MR. FALK: That's not hearsay because you can't even
19 attribute it to the speaker. I mean, there's -- there's

20 hearsay which says, well, Bob said this. At least somebody
21 could track down Bob. This is an -- this is like an
22 anonymous tip from somebody who doesn't know the
23 credibility. I mean, it's pretty rank.

24 THE COURT: All right. The form order I'm signing
25 says that I'm taking this under advisement and I'm not

1 requiring any proposed orders at this time because I want
2 to think about it. But that does not mean I won't come
3 back and ask y'all to do something.

4 MR. FALK: Thank you, Your Honor.

5 THE COURT: Okay. All right. Thank you.

6 MS. GUNTON: Thank you, Your Honor.

7 THE COURT: Okay.

8 (WHEREUPON, proceedings concluded at 5:45 p.m.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth 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 digitally recorded proceedings had from the DCRP, Digital Courtroom Recorder

Project, and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina, on the 21st day of January, 2020.

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

September 20, 2021

Cheryl A. Smith
Cheryl A. Smith, CVR-M
Court Reporter

ATTY
SOL
AG
GS

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Timothy James Wright, #354842,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

No.:2018-CP-10-4365

ORDER OF DISMISSAL

FILED
2022 JUL -7 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an application of post-conviction relief filed by Timothy James Wright (Applicant) September 4, 2018. The State (Respondent) made its Return and Motion for More Definite Statement of the Respondent on January 10, 2019. An evidentiary hearing convened on January 21, 2020, at the Charleston County Courthouse before the Honorable Edgar W. Dickson, circuit court judge.

Applicant was present at the hearing and was represented by James K. Falk, Esquire. Assistant Attorney General Sara Elyssa Gunton of South Carolina Attorney General's Office represented the State. Applicant testified on his own behalf and presented testimony from trial counsel, William Smith.

This Court had before it a copy of the Charleston County Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the post-conviction relief application, Respondent's return, the trial transcript and appellate records. After a review of the record and all evidence presented, for the reasons set forth below, this Court finds Applicant has failed to meet his requisite burden of proof to all allegations except his allegation of an illegal sentence. Therefore, Applicant's application for relief is denied and dismissed with prejudice in part, and granted in part.

I. PROCEDURAL HISTORY

Timothy James Wright (Applicant) is presently confined pursuant to orders of the Charleston County Clerk of Court. In June 2013, the Charleston County Grand Jury indicted Applicant for Murder and Possession of a Firearm During the Commission of a Violent Crime (2013-GS-10-03170,2).

Ted Smith, Esquire, and Martha Kent Runey, Esquire represented Applicant. Assistant Solicitor Jennifer Shealy and Ted Corvey prosecuted the case. On February 2, 2015, Applicant proceeded to trial before the Honorable J.C. Buddy Nicholson Jr. and a jury. Judge Nicholson sentenced Applicant to life on indictment murder and a concurrent five year sentence for possession of a weapon during the commission of a violent crime.

Direct Appeal

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The sole issue on appeal was whether the judge abused its discretion and violated the Appellant's due process rights by considering information presented in sentencing obtained from past incident reports that did not result in convictions when the defendant had no notice that these prior incidents would be addressed and no opportunity to rebut the information. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion filed December 6, 2017. *State v. Timothy James Wright*, Op. No. 2017-UP-448 (Ct. App. 2017). The remittitur was returned to the circuit court on March 21, 2018

I. Current Application

In his *pro se* application for post-conviction relief, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. 4th, 5th, 6th, 13th, 14th, 15th Amendment Violations
2. Fraud upon the Court
3. Due Process Violations
4. Subject Matter Jurisdiction
5. Ineffective Assistance of Counsel

On May 6, 2020 Applicant submitted through counsel an Amended PCR Application, wherein Applicant made three additional allegations regarding the ineffectiveness of trial counsel:

1. "Prior to sentencing, the state advised the court that defendant had a prior conviction for 3rd degree Assault and Battery. The State then summarized the facts from the incident report leading to that arrest. (Transcript page 530 lines 12-15). Additionally, the State advised the court that there were two prior incident reports which did not lead to an arrest but which alleged criminal domestic violence. The state then summarized the facts from those incident reports. (Transcript page 531 lines 9-15). The issue of whether or not the trial court abused its discretion in considering this information for sentencing purposes was raised on appeal. In a per curiam decision, the Court of Appeals held that the issue was not properly preserved for review. Applicant therefore respectfully contends that trial counsel was ineffective for:
 - a. Not objecting to the State's disclosure of the alleged facts underlying the June 2, 2012 conviction for 3rd degree assault and battery; and the July 2001 and September 2003 - criminal domestic violence allegations for which no arrest warrant was issued.
 - b. Not requesting a continuance of the sentencing hearing in order to allow counsel time to prepare to rebut the allegations from these three incidents.
2. Counsel was ineffective for failing to object to the admission of State's exhibit 173 which was referred to as the "Concerned Citizen Letter". The letter was unsigned and the State acknowledged that it did not know who authored the letter. The content of the letter was hearsay and trial counsel should have objected to the introduction of the letter. The parties later agreed to withdraw the introduction of exhibit 1 73. The exhibit was withdrawn and later marked as Court's Exhibit 4. The trial court reviewed the content of Court's exhibit 4 prior to sentencing. Even though the jury did not review the contents of the Concerned Citizen Letter, trial counsel was ineffective for: 1) not objecting to the letter being marked as a Court's exhibit; 2) not objecting to the State summarizing the content of the letter for the Court; and, 3) not objecting the Court reviewing the content of the letter prior to sentencing. (Transcript 537 1. 17 through 538 line 4).
3. Trial counsel was ineffective for not objecting to the State's improper pitting of witnesses. (Transcript p 435 lines 7-13)."

At the evidentiary hearing, counsel for Applicant restated Applicant's contention that there were several incidents in this matter that he believed evidenced Ineffective assistance of counsel and added a number of additional claims as follows:

1. Applicant added to his allegation that Counsel was ineffective failing to object to the jury charge when the charge delivered by the Court did not include a jury charge on accident and involuntary manslaughter.
2. Applicant also added to his allegations that counsel was failing to object to the five year sentence for the possession for weapon during the commission of crime, as it was an illegal sentence pursuant to *State v. Palmer*
3. Applicant through counsel further asserted that counsel was ineffective for failing to move strike a juror for cause. Applicant through counsel alleged that during voir dire in this case, a question was asked about: 1) its classification as a domestic violence case, and 2) whether or not anybody was a victim of domestic violence or knew anybody through close family relation who was a victim of domestic violence. In response to these questions several people came forward to speak, one of which being Robin Elsmore. During jury selection trial counsel was out of strikes by the time Ms. Elsmore was to be decided on and he had to accept her as the 12th juror on this case.
4. Applicant had concerns regarding differences between the testimony that was in the warrant affidavits and the actual testimony from the daughter of the witness. In a reading of the affidavits supporting the arrest warrants and the indictments it appeared as though the daughter of the victim witnessed the shooting, however in actual testimony it was discovered that she did not witness the shooting but arrived on the scene immediately afterwards. Applicant claims there is a significant difference between the facts as alleged and the facts that were brought forward.
5. Applicant alleges trial counsel was ineffective failing to address a juror who Applicant asserted had a fear of hostility towards him. Applicant claims that through the duration of the trial one of the jurors seemed to give him "the evil eye". Applicant brought these suspicions to the attention of trial counsel and feels as though their failure to address that matter was inappropriate.

Counsel for Applicant represented to the Court that he intended to go forward on the issues in the allegations in the Amended Allegations as well those introduced at the hearing, and that he no longer wished to go forward on any allegations from the original Application outside of Ineffective Assistance of Counsel.

In relief sought, Applicant is seeking: "Conviction and sentence vacated; my name and

DNA removed from any derogatory files; an order issued expunging my record; all monies paid out returned.”

This court has before it the records of the Charleston County Clerk of Court regarding the subject convictions, the trial transcript, the appellate records, and the application and amendments.

II. FACTS GIVING RISE TO CHARGES

On February 16, 2013, Appellant Timothy Wright shot his soon to be ex-girlfriend, Melinda Ford, with a shotgun. The shot was fired within three to four feet of Ford. (R. p. 103). The pathologist noted that the shotgun blast essentially destroyed Ford's right lung, bruised her left lung, and the blast damaged her liver as well. (R. p. 100). Ford died as a result of right lung and liver maceration due to a close-range shotgun wound to the back. (R. pp. 105-6).

Background

Wright and Ford had been dating for approximately seven to eight months before the shooting. (R. p. 107). Wright had been living with Ford and her three children for approximately five months. (R. p. 7). Ford had three children. Chrisson Hayward, Ford's oldest daughter, was nineteen at the time of the shooting; Kadasha J., Ford's youngest daughter, was fifteen; and Davon M., Ford's son, was six. (R. pp. 24; 45). Ford's mother, Kate Ford ("Kate"), also lived nearby. (R. p. 51).

Wright was a hunter. (R. pp. 7, 112). He testified that he kept a 12-gauge Remington pump gun in a cabinet in Ford's bedroom. (R. p. 112).

Kadasha testified that she, Ford, and Kate went shopping on the day of the shooting.¹ (R. pp. 3, 5, 7-8). During the trip, Ford's mother picked up some Chinese food. (R. p. 8). Ford and

¹ They were shopping for a cousin's birthday party that was scheduled for the next day. (R. pp. 7-8).

Kadasha took Kate to her house on their way home, and they then returned to their home. (R. pp. 9-10). When the two got home, they unpacked the car, and they went to their separate bedrooms. (R. p. 10). While unpacking the car, the two found Kate left her Chinese takeout. (R. p. 10). Kadasha noted Wright was home when they arrived. (R. p. 10). She also indicated that Ford stopped in the kitchen and poured wine into a jar. (R. pp. 10-11).

Kadasha testified that she washed her clothes that afternoon. (R. p. 16). While Kadasha was in the kitchen, she heard Wright screaming in Ford's bedroom, but she did not hear Ford's voice. (R. p. 16). She later saw him open up the bedroom door, and he came out to the kitchen. (R. p. 16). Kadasha noted that she heard Wright say he was done; he got some black trash bags from a cabinet and started packing up his belongings that were in Ford's bedroom. (R. pp. 16-17). Ford was inside the bedroom at that time. (R. p. 18).

Wriaht Shoots Ford

Kadasha went back to her bedroom. (R. p. 18). Ford stopped by her room and told Kadasha that she was going to take Kate her Chinese food.² (R. p. 18). The next thing Kadasha heard was Ford scream very loud. (R. p. 18). She next heard a gunshot. (R. p. 19). After hearing the gunshot, Kadasha ran to the door and saw Wright standing over Ford with a gun in his hands. (R. pp. 19-21, see R. p. 36).

Wright was wearing a white shirt, Nike slacks, and a camouflage jacket. (R. p. 20). Kadasha was able to identify the gun he was holding. (R. pp. 21-22). She noted that Wright was standing in front of the porch around Ford, who was on the ground at that time. (R. pp. 21-22). Kadasha testified Wright said he would shoot Kadasha. (R. p. 21). Kadasha noted that at some point, he

² Kate Ford, Melinda's mother and Kadasha's grandmother, testified that Kadasha called to inform her that Melinda would be bringing her Chinese food. (R. p. 51)

said "huh, huh, huh" and pointed the gun at Ford.³ (R. p. 22). Kadasha attempted to find a phone at her house, and when she could not find one, she ran to the next door neighbor's house to call for help. (R. pp. 23, 37). The neighbors were already on the phone with a 911 operator. (R. pp. 23-24).

Kadasha looked back towards her house and saw Wright on the ground next to Ford. (R. p. 24). She heard a second gunshot. (R. p. 24). After the second shot, she saw Wright lying on the ground next to Ford. (R. p. 37). She assumed he shot himself. (R. p. 37). She then ran back over to her house. (R. p. 24).

Wright then got up, ran to his truck, and drove off. (R. pp. 25, 28). Kadasha moved the gun he had been holding back from where they were. (R. p. 25). She ran over to Ford, found Ford's cell phone, and called 911. (R. p. 26). Kadasha noted that her mother was not able to speak, and it appeared she had been shot in the chest. (R. p. 27). The 911 dispatcher gave instructions on how to stop the bleeding. (R. p. 27). Chrisson arrived at the home while Kadasha was attempting to help stop the bleeding. (R. pp. 29-31, 4748). After being advised by a neighbor of what was going on, she assisted Kadasha in aiding their mother. (R. pp. 47-48).

Leonard Maxwell, one of Ford's neighbors, testified he heard gunshots that afternoon. (R. pp. 38-39). After he heard the first shot, he ran out to the porch and saw Ford lying on the ground. (R. p. 39). He thought he saw Wright shoot the gun again. (R. p. 39). Maxwell saw Wright standing over Ford, and then saw him lying next to her on the ground. (R. p. 39).

After the first shot, Maxwell looked out over the porch and saw Ford on the ground. (R. p. 40). That's when he heard a second shot. (R. p. 40). He saw Wright point the gun at himself. (R. p.

3. During cross-examination, Kadasha testified that at some point after the initial shooting, Wright attempted to give the gun to Kadasha and requested that she shoot him. (Tr. 172). She declined to do so. (Tr. 172).

40). Wright put the gun in his mouth and said he was going to kill himself. (R. p. 40). Maxwell told him no, but then Wright shot himself twice. (R. pp. 40, 44). After that, Wright got in his truck and drove away. (R. p. 41). Maxwell noted that Ford's daughter came over after the first shot. (R. p. 41). At that time, Maxwell's roommate had already called 911. (R. p. 41). Maxwell also testified he was outside when Kadasha was attempting to help Ford. (R. p. 42). He was telling her to apply pressure. (R. p. 43). He also saw her move the gun out of the way. (R. p. 43). Ford was dead when EMS arrived. (R. p. 54).

Wright Was Apprehended

Wright led law enforcement in a vehicle pursuit around John's Island. (See R. pp. 59-69, 73-76). The chase ended after Wright drove his truck through a fence and onto a baseball diamond in a local park. (R. pp. 57, 69, 74-77). Wright, however, eluded arrest at the scene. He instead hid in a local residence that was under construction. (R. pp. 70-72, 92-95, 120-21). After midnight the next morning, Wright surrendered to law enforcement, who had maintained a perimeter near the site of the truck crash. (R. pp. 78-80, 81-82). He was treated at the scene by EMS and was transported to MUSC for treatment of his gunshot wounds. (R. pp. 80, 82-89).

Wright Asserts the Shooting Was an Accident

Wright testified that on the day of the shooting, he purchased a cell phone for Kadasha. (R. p. 108). He was at home when Kadasha and Ford came home from shopping. (R. p. 109). He noted that Ford was frustrated about comments people had made to her regarding their relationship. (R. pp. 109-10). The two had a discussion in Ford's bedroom about that issue for three to four minutes. (R. p. 110). Wright decided that based on that discussion, it was best that he leave the home. (R.

p. 110). He went to the kitchen, got some trash bags, and went back into the room to pack his clothing. (R. pp. 110-11).

Wright testified that all of his clothes were on hangers. (R. p. 111). After he packed some of his belongings, and while Ford was in the bathroom, Wright grabbed the shotgun he kept in the room, along with two bags he had packed, and he headed outside to his truck. (R. pp. 113-14).

"I walked outside and. I went to go open the truck door. Because my — the way my vehicle was sitting I had the two bags in my hand, the shotgun in my hand. And I went to go use one hand and kick the handle open to release the door. And when I released the door I used the other hand to kind of swing the door open." (R. p. 114, ll 7-12). The shotgun fired. (R. p. 114). Wright claimed he did not know Ford was outside. (R. p. 114). After the shotgun fired, Wright dropped the bags that were in his hands, and he started walking away back towards the step. (R. p. 115). He then heard Ford call his name. (R. p. 115). According to Wright, Ford then told him she had been shot. (R. p. 115). Wright testified that he tried to pick her up off the ground, but she told him to stop because of the pain. (R. p. 115).

Wright asserted that he called for Kadasha, but she did not come outside immediately. (R. p. 115). He also stated that he told Kadasha to go call for help. (R. p. 115). She ran back into the house, but when she returned, he attempted to hand Kadasha the shotgun and asked her to shoot him. (R. p. 116). Wright noted that Kadasha never touched the shotgun. (R. p. 116). Instead, he went off to the side and shot himself with the shotgun. (R. p. 117). Wright said that he heard Ford yell out, so he walked over to her and explained what he did to himself. (R. p. 117). He then shot himself again. (R. p. 117). Wright testified that he then went back over to Ford, held her leg, and talked to her. (R. p. 117).

Wright testified that he observed Kadasha and a neighbor calling for help on the phone. (R. p. 118). At that point, Wright became concerned about his personal safety if members of Ford's family came to the scene. (R. p. 118). He promptly got into his truck, left the scene, and drove in the direction of his aunt's house. (R. pp. 118-19). Wright acknowledged that he saw a police car pull behind him with lights on, and that he did not stop. (R. pp. 119-20). He also admitted that he crashed his truck into a couple of fences, and that he got out of the truck and ran into a house under construction nearby. (R. p. 120). From the house, Wright could see police officers in the softball field where he left his truck. (R. pp. 120-21). Wright recalled that at some time after many of the officers left the scene, he walked out to the remaining officers. (R. p. 121). He recalled being treated by EMS, and that he was transported to MUSC. (R. pp. 121-22).

III. SUMMARY OF FACTS ADDUCED AT THE EVIDENTIARY HEARING

Applicant called trial counsel, William Smith. Counsel testified that he has been practicing law for seventeen years, and the entirety of that time has been spent specializing in criminal cases. Counsel further testified that he was appointed to Applicant's case as a public defender at the Ninth Circuit Public Defender's Office. When asked what the overall theory of defense was for Applicant's case, Counsel testified that this was a fact-driven case, and that there was little investigation to do because "they knew all the players." Counsel further testified that he tried to reach out to the family members of the victim to no avail, and largely relied on Applicant's version of events.

Trial counsel testified further about possible defenses. He stated that they did not look into any self-defense claims because there was no indication of any type of fights between Applicant and victim. Counsel stated that after reviewing the facts he did not think this would be a case where a jury would find Applicant not guilty by accident alone. However, he still requested that Judge

Nicholson charge accident, and Judge Nicholson chose not to do so. After he could not get the charge on accident, trial counsel Counsel hoped to turn the jury in favor of the lesser charge of involuntary manslaughter.

Furthermore, Counsel contended that his strategy for this case was based upon Mr. Wright's version of events wherein the gun firing was the result of a coat hanger catching the trigger and causing the gun to go off and that he was not intentionally attempting to shoot the victim. However, based upon the fact that the judge did not issue a charge on accident, that issue was not preserved for appellate review. In this matter the jury still convicted Applicant with murder over the lesser charge presented, a fact that trial counsel testified to as "quelling his fears" of a problematic charge being issued in this matter. When testifying about trial counsel's failure to object to the additional weapons charge for which Applicant was sentenced to five years imprisonment, trial counsel asserted that he assumed it would be subsumed by the life sentence on the murder conviction. Therefore, trial counsel did not feel the need to object to this charge.

Counsel testified that the State failed to provide investigative reports that were used at sentencing. He contended he was provided a RAP sheet for his client. When asked why he did not raise a Brady argument for the state's failure to supply the investigative reports, counsel testified that he did not anticipate that the solicitor would assert facts from which allegations had arose against Applicant. This assumption was based on his experience where he stated that Applicant's case would not normally be a scenario that called for such action by the State. In accordance with these facts, trial counsel contends that he was sufficiently caught off guard by the reports of uncharged allegations toward applicant and was not properly prepared to refute those claims. Trial counsel then asked the Judge to temper his consideration in regards to that information, and that



request was denied by the trial court due to the fact that it is common for the court to see domestic violence cases wherein the victim refuses to cooperate with the prosecution.

Trial counsel further explained that in his extensive legal career dealing with criminal proceedings, he has known the trial judge and sentencing judge to have very broad discretion in what they chose to look at in terms of sentencing. Therefore, trial counsel did not feel that it was inappropriate of the judge to look into the incident reports in this matter.

When asked whether he had any memory of any juror giving Applicant the visual impression of contempt, trial counsel testified that he had no memory of that incident. However, had he been aware of it, he asserts that he would have brought it to the court's attention.

Counsel further testified that when speaking about the testimony of the victim's daughter, that her testimony within the initial reports gave the impression that she had witnessed the shooting firsthand. Counsel testified that the testimony at trial that she had arrived at the crime scene shortly after the shooting took place was different, but he was aware of that being the witness' testimony. Trial counsel testified that he did not consider challenging the indictment on these grounds, due to the fact that identification was not a critical issue in the case. Therefore, the juxtaposition of the testimony to the incident report did not appear particularly prejudicial or harmful to this case.

In regard to Applicant's claim that counsel was ineffective for failure to file a motion remove to Robin Elsmore as the twelfth juror for cause. Trial Counsel testified that this decision was based upon the fact that Ms. Elsmore's relationship was too attenuated to the domestic violence in this situation. Ms. Elsmore was not the victim in the situation, she described to the court nor did she appear to have many of the facts surrounding it.

Furthermore, Applicant testified briefly on his behalf. He testified to his version of the events that occurred on the night of the shooting as an accidental event triggered by a clothes

hanger catching the trigger of the gun causing a misfire which struck the victim. Applicant further testified that one of the jurors throughout the trial was giving him menacing looks, and that upon him alerting trial counsel to this fact he requested that his assistant monitor the situation. Applicant asserts that this assistant affirmed his suspicions and made a note of the situation, but he did not testify if she let Mr. Smith know.

Applicant asserted that a former girlfriend (Timia Davis), who may have been responsible for the "letter from a concerned citizen" which sparked the debate regarding Applicant's uncharged allegations, caused a car accident which left him hospitalized. He did not press charges for this car accident citing that she needed to be able to take care of the two children they shared while he was in the hospital. Applicant claims that this information was shared with trial counsel prior to trial.

In response to this allegation trial counsel contends that he remembered the discussion about the accident to which applicant referred. However, this information did not lie at the heart of the matter for which Applicant stood trial and therefore trial counsel did not further investigate this incident or call Ms. Davis to testify in his trial.

IV. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687-88; *accord. Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e),

SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

V. FINDING OF FACT AND CONCLUSIONS OF LAW

This Court has heard the testimony and evidence presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After the testimony presented and considering the legal arguments by counsels, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claim raised the evidentiary hearing.

Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

This Court finds Applicant has failed to his burden of proving he is entitled post-conviction relief on any of the allegations of ineffective. Applicant has failed to prove deficiency and any prejudice there from.

- A. Ineffective assistance of counsel for 1) not objecting to the State’s disclosure of alleged facts underlying the June 2, 2012 conviction for 3rd degree assault and battery, and the July 2001 and September 2003- criminal domestic violence allegations where no arrest was issued. 2) Not requesting a continuance of the sentencing hearing in order to allow counsel time to prepare to rebut the allegation from these three incidents.**

Applicant alleges that trial counsel was ineffective for failing to object to the use and disclosure of incident reports where no arrest was issued in consideration for sentencing, and ineffective failing to request a continuance rebut the allegation. This court finds the issues are without merit and dismisses them without prejudice.

At the evidentiary hearing, Applicant called Ted Smith, Esquire. When asked why he did not object to this information being discussed during sentencing, he agreed with the State that in his extensive legal career, it was his understanding that sentencing judges have broad discretion in what they are able to consider during sentencing. He further testified that he has seen on a couple of occasions that judges have the opportunity to look at incident reports. He testified that while he would have like to have an opportunity to respond to the incident reports, he felt that it was ultimately in the Court's discretion.

Furthermore, when asked what he may have done if he requested a continuance in this case, trial counsel testified that he may have tried to get a copy of the records and discussed what those incident reports with Applicant. He further agreed with the State that Applicant was sentenced within the sentencing range for murder, and that he discussed with Applicant he would likely get a life without parole due from his experience with Judge Nicholson as well as the seriousness of domestic violence in the State. Additionally, he agreed with the State in that the victim's daughter's testimony and victim impact statements weighed heavily on the trial judge in sentencing.

In *State v. Gullede*, the South Carolina Supreme Court held that in a sentencing proceeding, that the trial court may consider information which may be inadmissible under evidentiary rules.

This Court has reviewed the records, to include the transcript of the trial, and this Court has heard and reviewed the evidentiary hearing testimony summarized above. This Court finds no deficiency in counsel's handling of the incident reports and not requesting a continuance due to their introduction during sentencing. As stated in *State v. Gullledge*, when sentencing a convicted a defendant, a trial court exercises a wide discretion regarding the sources and types of evidence it may use to assist it in determining the kind and extent of punishment to be imposed. This Court finds Trial Counsel's testimony credible in that he understood that the law allowed for judges to use broad discretion in their consideration of items for sentencing, and because of that, he did not object to the incident reports and did not request a continuance because of that. Additionally, trial counsel asked the court to "temper its consideration" of the incident reports, in which the trial court denied, as Judge Nicholson stated that a no conviction was common occurrence in domestic violence cases. Furthermore, this Court finds Applicant has failed to show any resulting prejudice from Counsel's alleged deficiency. Notably, trial counsel testified that he spoke with Applicant about his increased ~~changes~~^{chances} of getting a life without parole sentence due to the seriousness of domestic violence in South Carolina, as well as his prior experience in front of the trial judge. Furthermore, trial counsel agreed with the State that the testimony and victim statements from the Victim's daughter weighed heavily in sentencing.

Furthermore, Applicant claims Counsel was ineffective for failing to seek a continuance. Trial counsel testified that he would have been able to look further into the reports and shared what those reports meant to Applicant, but agreed that the trial judge had the broad discretion to consider anything during sentencing and that he explained to Applicant that he would likely get a life without parole sentence if convicted. This court finds that Counsel was not deficient for failing to request a continuance. Additionally, Applicant failed to show how the continuance request would

not only be granted, but would have changed the results of the proceedings. Therefore, the record does not support a finding of deficiency nor a finding of prejudice for either of these issues. Accordingly, these allegations are denied and dismissed with prejudice.

B. Ineffective Assistance of counsel for 1) not objecting to the “Concerned Citizen’s Letter” being marked as a Court’s exhibit; 2) not objecting to the State summarizing the content of the letter for the Court; and, 3) not objecting the Court reviewing the content of the letter prior to sentencing.

Applicant asserts that Counsel was ineffective for not objecting to the Concerned Citizen’s letter being marked as a Court’s exhibit, not objecting to the state summarizing the content of the letter for the court and not objecting to the Court reviewing the content of the letter prior to court. The Court finds these allegations are without merit.

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800–01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380, 811 S.E.2d at 804 (“[T]he proper inquiry for determining prejudice . . . is whether there is evidence in the record to support the trial court’s finding If so, an appellate court would necessarily have affirmed the trial court’s [ruling]”).

Similarly, “[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence.” *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally ‘unreasonable’ action, nor can it prejudice the defendant against whom the evidence was admitted.” *Id.*; *see Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner

challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

Trial counsel testified that he did not object to the introduction of the “Concerned Citizen’s Letter.” He further testified that the letter never was in front of the jury, and only became relevant during the sentencing stages of trial. He further testified that he believed that the concerned citizen’s letter could be relevant, but he admits that he should have been concerned about its admissibility to begin with. However, trial counsel did agree with the State in that Applicant was sentenced within the statutory range of life without parole. When asked whether or not he felt that this letter solely tainted the trial judge’s decision to sentence Applicant to life without parole, he stated that he had discussions with Applicant regarding the likelihood of getting life without parole prior to trial, based on the seriousness of domestic violence in South Carolina and as well as his experiences in front of the trial judge. He continued to agree that the victim’s testimony and impact statements likely had a large impact on sentencing as well. Trial Counsel further agreed with the State that hearsay is inapplicable at sentencing due to broad discretion in sentencing afforded to trial judges.

This Court finds Applicant failed to meet his burden of proving that Counsel’s failure to object to the Concerned Citizen’s letter was deficient. Counsel demonstrated through his testimony that the letter was never put forth in front of the jury, and credibly testified that he felt the letter was not the sole issue considered at sentencing, that he counseled Applicant on his exposure to a life sentence before trial and the letter was relevant in sentencing.

Moreover, Applicant has failed to show prejudice in that any objection to the Concerned Citizen’s Letter would have changed the outcome of his trial. The letter was nor presented to the

jury as it was withdrawn by mutual agreement of counsel. Furthermore, in sentencing, Applicant was sentenced within statutory range, and was counseled on the possibility of receiving a life sentence before trial. Furthermore, due to the broad discretion in sentencing Therefore, this Court finds that Applicant has failed to produce any evidence that an objection to the Concerned Citizen's letter would have changed the outcome of his trial.

Applicant has produced no probative evidence towards meeting his burden as to either prong of *Strickland*, and accordingly his demand for relief by way of this allegation is denied.

C. Ineffective for not objecting to the State's alleged improper pitting of witnesses.

Applicant alleges trial counsel was ineffective for failing to object when the State impermissibly pitted witnesses. Specifically, Applicant argues the following portion of the State's cross-examination of him improperly pitted his testimony against the victim's daughter who witnesses the altercation and testified as State's witnesses:

Q. When she came out there, the 15-year-old at the time, you had this weapon; you had it down on Melinda going huh, isn't that true?

A. No, ma'am, that is not the truth.

Q. So [minor] is liar?

A. Well, she is a liar; because I did not have the gun pointed on Melinda saying huh, huh, huh.

(R.p. 435, line 7-13). Counsel did not object to this line of questioning.

"No matter how a question is worded, anytime a solicitor asks a defendant to comment on the truthfulness or explain the testimony of an adverse witness, the defendant is in effect being pitted

against the adverse witness. This kind of argumentative questioning is improper.” *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998) (citing *State v. Bryant*, 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994); *State v. Sapps*, 295 S.C. 484, 486, 369 S.E.2d 145, 145-46 (1988)). “However, improper pitting constitutes reversible error only if the accused is unfairly prejudiced.” *Id.* “To establish his claim of ineffective assistance of counsel, petitioner had to show a reasonable probability that the result of his trial would have been different if counsel had objected to the solicitor’s improper questions.” *Id.* (citing *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997)). A reasonable probability is a probability sufficient to undermine confidence in the outcome of a trial. *Id.*

This Court finds that although the State’s questioning of Applicant was improper because it asked him to “comment on the truthfulness or explain the testimony of an adverse witness,” Applicant cannot establish any resulting prejudice, and thus, cannot meet his burden to show counsel was constitutionally ineffective. The uncontroverted testimony from both Applicant and the State’s witnesses all confirmed that Applicant was the person that shot the victim. Trial counsel for Applicant further testified that he may should have objected to this line of questioning, but he did not believe that the testimony was critical to the overall case. Therefore, the State’s attempt to bring up a discrepancy between Applicant’s version of events and that of the State’s witnesses had no real impact on the outcome of the trial. Therefore, Applicant cannot establish any constitutional ineffectiveness of counsel for failing to object. This allegation is denied and dismissed with prejudice.

D. Failure to object to the Jury Charge

Applicant alleges that trial counsel was ineffective for failing to object to the jury charge given by the Court because the charge did not include a jury charge on accident. This Court finds that Applicant has failed to prove that counsel was constitutionally ineffective.

At the evidentiary hearing, Trial Counsel testified that he considered accident as a defense based upon the way the Applicant represented the facts. Counsel admitted there was some testimony presented to the jury that ~~his~~^{this} was an accident. However, trial counsel credibly testified that he requested a charge on accident during an off-record charge conferenced but the trial judge refused to charge Accident, but would charge voluntary manslaughter. Trial Counsel testified about the requirements to show accident, and testified that there was conflicting information presented to the jury on that specific issue. When asked whether or not he was happy with the results of the jury charge, trial counsel stated that he was in fact happy with Jury charge on involuntary manslaughter, because he did not think the jury would find Applicant guilty by reason of accident alone.

This Court finds Applicant cannot establish any constitutional ineffectiveness of counsel for failing to properly preserve the request an accident charge. Trial counsel was not deficient, as this Court finds his testimony credible that he in fact requested the jury charge but was told by the trial judge that he was not going to charge it. Furthermore, the Court finds failing to object to the jury charge did not prejudice this client, because the jury was able to hear Applicant's alleged testimony about the incident surrounding the shooting, but there was also conflicting information about whether or not the shooting was indeed an accident. This Court finds that trial counsel was not constitutionally ineffective in her request for such an instruction. This allegation is denied and dismissed with prejudice.

E. Failure to Strike a Juror

Applicant claims Counsel was ineffective for failing to strike Robin Elsmore for cause after her disclosure about a family member's history with domestic violence, and failing to strike a juror for allegedly giving Applicant "the evil eye."

"[J]ury selection is a process that inherently falls within the expertise and experience of trial counsel." *Palacio v. State*, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." *Id.* Accordingly, "[i]n PCR proceedings, a defendant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense." *Id.*

This Court finds that trial counsel was not constitutionally ineffective for failing to move to strike this juror for cause. During voir dire, the potential juror notified the court that her brother-in-law and his wife had been in a domestic violence situation for which they had to appear in family court. The juror went on to say that she personally did not feel that domestic violence happened but that it was a "long story." However, the juror represented to the Court that she could be impartial in this matter, but wanted to let the court know about the domestic violence situation to be transparent. At the evidentiary hearing, on direct examination, trial counsel testified that he did not find it necessary to strike this juror for cause, because the domestic violence situation that she spoke about was too attenuated from the domestic violence, and from her testimony, she did not appear to be knowledgeable about the situation between her brother-in-law and his wife.

Furthermore, at the evidentiary hearing, trial counsel testified that he had no independent recollection of a juror giving Applicant "an evil eye" and that he would have been able to bring it up to the Court if he felt that the juror had already made up her mind, but did not know about it.

This court finds that Applicant was not constitutionally ineffective for failing to strike a juror for cause for her relationship with a person who has committed domestic violence or for not moving to strike a juror for giving Applicant “the evil eye.” First, this court finds counsel was not deficient for failing to move to strike Robin Elsmore because he credibly testified he did not consider striking this juror because he felt that her connection to the domestic violence was too attenuated, as she was not the victim or had a personal relationship with domestic violence and did not seem to appear to know much about the situation that she informed the court about. Furthermore, as there was no constitutional deficiency, this Court finds that Applicant was not prejudiced by having this juror seated.

Additionally, this Court finds that trial counsel was not constitutionally ineffective for failing to bring to the Court’s attention that a juror allegedly gave Applicant the “evil eye” during the trial. This Court finds trial counsel’s testimony credible in that he had no independent recollection of a juror giving Applicant any look, but he could have presented that information to the Court had he been made aware. This court finds that counsel was not deficient for failing to inform the court of a juror who gave Applicant “the evil eye,” Furthermore, this Court finds Applicant has failed to show any resulting prejudice.

Accordingly, this Court finds that trial was not constitutionally ineffective for failing to move to strike Juror Elsmore for cause or for moving to strike a juror from the jury who allegedly gave Applicant “the evil eye.” Therefore, these allegations are denied and dismissed with prejudice.

F. Failing to Challenge the Indictment

Applicant contends Counsel was ineffective for failing to challenge the sufficiency of the indictment. This Court disagrees and denies relief.

Applicant alleges that trial counsel was ineffective for failing to challenge the indictment because there is an alleged discrepancy in the facts presented in the indictment than the facts that were presented at trial. Applicant alleges that it appears in the indictment that the witness saw the first shot take place, but the witness testified at trial that she did not see the shot take place. Importantly, however, Applicant did not testify to ever bringing this to trial counsel's attention. When reviewing the indictment, Counsel testified that it appeared to be different, but that he anticipated and was made aware of that the witness' testimony at trial would be that she did not see the shot until afterward, and he did not think to challenge the indictment on that basis.

However, a motion to quash an indictment tests only the facial validity of the indictment. *See* S.C. Code Ann. § 17-19-90 (2014). "A motion to quash does not test the sufficiency of the State's evidence; the sufficiency of the evidence can properly be challenged only by a motion for a directed verdict following the State's presentation of its case at trial."⁴ *State v. Massey*, 430 S.C. 349, 359, 844 S.E.2d 667, 671 (2020). Applicant's allegations at the evidentiary hearing did not raise an issue with the facial validity of the indictment, but rather appears to raise an issue with the sufficiency or type of proof offered by the State. Moreover, this Court has reviewed the indictment and finds it was indeed facially valid, and Counsel had no viable objection to make. The Court therefore finds Counsel was not deficient, nor was Applicant prejudiced by Counsel's failure to challenge the indictment.

This allegations is dismissed with prejudice, and relief is denied.

E. Failure to Object to Sentencing

Applicant contends that trial counsel was ineffective for failing to object to the Trial Judge sentencing Applicant to five years for the possession of a weapon during the commission

⁴ Counsel moved for a directed verdict at the close of the State's case. Trial Tr. pp. 406.

of violent crime when he was sentenced to life without parole for murder. This court agrees, and vacates this sentence.

Trial counsel testified at the PCR hearing that there was no strategic reason to not object to this sentence at the trial. He stated that he thought the five years would be overcome by the murder charge. However, that is an inaccurate characterization of the law. South Carolina Code § 16-23-490 states:

a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime. This five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime

South Carolina Code Ann. §16-23-490.

Accordingly, the trial judge's sentence was improper as he sentenced Applicant to five years for the possession of a weapon during the commission of a violent crime. Therefore, this Court vacates Applicant's conviction for possession of weapon during the commission of a violent crime.

VII. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has established the sole constitutional violation in that he is serving an improper sentence for possession of a weapon during the commission of a violent crime. Therefore, this application for post-conviction relief is granted in part and denied in part. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation on all allegations outside the issue of

Applicant's improper sentence. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice as to every allegation outside of Applicant's improper sentence.

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

IT IS THEREFORE ORDERED:

1. That the Applicant's sentence as to the possession of a weapon during the commission of violent crime is vacated.
2. That the other claims in this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 30th day of June, 2022.



THE HONORABLE EDGAR DICKSON
Presiding Judge
Ninth Judicial Circuit

Orangelmy, South Carolina

JKS20130201419

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013002755B

ARREST WARRANT NUMBER

2013A1010200882

DATE OF ARREST

February 22, 2013

ACTION OF GRAND JURY

Scott B. ...

Foreperson of Grand Jury

Date:

JUN 3 2013

VERDICT

Guilty

John ...

Foreperson of Petit Jury

2/4/15

Date:

INDICT

DOCKET NO. 2013GS1003170

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

TIMOTHY JAMES WRIGHT

DOB: [REDACTED]

B/M

Indictment for

Murder

JKS20130201419

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013002755B

ARREST WARRANT NUMBER

2013A1010200883

DATE OF ARREST

February 22, 2013

ACTION OF GRAND JURY

THE STATE

South Butler

Foreperson of Grand Jury

JUN 6 2013

Date:

VERDICT

Guilty

Qui-Ann

2/4/15

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1003172

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

TIMOTHY JAMES WRIGHT

DOB: [REDACTED]

B/M

Indictment for

Possession Of A Firearm During The
Commission Of A Violent Crime

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

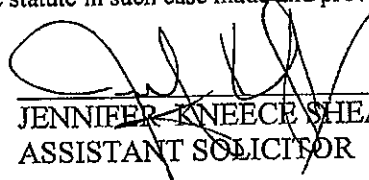
INDICTMENT

At a Court of General Sessions, convened on June 3, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Firearm During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about February 16, 2013, the Defendant, TIMOTHY JAMES WRIGHT, did possess a shotgun during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Charleston)
 STATE VS.)
Timothy James Wright)
 AKA: _____)
 Race: BLACK Sex: M Age: 36)
 DOB: _____ SS#: _____)
 Address: _____ W Montague Ave Lot _____)
 City, State, Zip: N Charleston, SC 29418-5673)
 DL#: _____ SID#: SC01112783)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1003170
 A/W#: 2013A1010200882
 Date of Offense: 2/16/2013
 S.C. Code § : 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder

CONVICTED OF or PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: _____ n919
 Kneece Shoaly, Jennifer SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of life days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: w/ ~~prob~~ fine adv
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

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

Clerk of Court/ Deputy Clerk Phyllis Norton
 Court Reporter: _____
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code _____
 Sentence Date: 2/15/13

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2013GS1003172
A/W#: 2013A1010200883
Date of Offense: 2/16/2013
S.C. Code § : 16-23-0490
CDR Code #: 0549

AKA: Timothy James Wright
Race: BLACK Sex: M Age: 36
DOB: [REDACTED] SS#: [REDACTED]
Address: W Montague Ave Lot [REDACTED]
City, State, Zip: N Charleston, SC 29418-5673
DL#: [REDACTED] SID#: SC01112783

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Possession of a Firearm or Knife During Commission of a Violent Crime

CONVICTED OF or PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] ng19
Kneece Shealy, Jennifer SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient:	_____
*Fine:	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
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3% to County (if paid in installments)	\$ <u>3.90</u>
TOTAL	\$ <u>133.90</u>

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: Phyllis Norton
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: _____
Sentence Date: 2/5/13