

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jul 31 2024

S.C. SUPREME COURT

—————
Certiorari to Jasper County

Honorable Kristi F. Curtis, Circuit Court Judge

—————
JOSHUA LENARD POACHER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001899

—————
APPENDIX
—————

GARY H. JOHNSON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DANIELLE E DIXON
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803)734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT DATED APRIL 10-13, 2017 1

APPLICATION FOR POST-CONVICTION RELIEF512

RETURN AND MOTION FOR A MORE DEFINITE STATEMENT521

AMENDED PCR APPLICATION.....531

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 18, 2022533

ORDER OF DISMISSAL.....571

INDICTMENTS581

SENTENCE SHEETS589

SENTENCING

1 But that is the clarification, as far as his
2 juvenile record. And, again, I think that the crime
3 itself speaks, from the Solicitor's standpoint, that it
4 deserves a life sentence. This record does nothing but
5 support that.

6 THE COURT: Mr. Plexico, glad to hear from you.

7 MR. PLEXICO: Thank you, Your Honor. I don't see
8 the reading on the robbery case as the Solicitor does.
9 And I quote from the report in the robbery case, the
10 co-Defendant indicated that Poacher never entered the
11 store and the video surveillance clearly indicated
12 that as well. So, he is not the one that went in the
13 store. This is just black and white. And, if this is
14 not already a part of the record, this is on the last
15 page, on Page 15 Judge, so he's not the one who
16 actually went in. There was an older person who
17 should have went to general sessions court who
18 actually went in.

19 So, the other one is accurate that. He did get in
20 a fight with his girlfriend at the high school, your
21 Honor. But the first two, the assault and battery and
22 the burglary in 2008, that never went to court and that
23 was subsequently a behavioral contract with the
24 Department of Juvenile Justice. So, there was no
25 adjudication on that. So, he actually only has a

SENTENCING

1 robbery where he never entered the store. There is no
2 evidence that he touched the gun. And the video
3 clearly says that he didn't do the robbery.

4 And then you have the burglary, and also that was
5 with other people. So, that was with people that he
6 certainly shouldn't have been. But he did get punished
7 from that, Your Honor. I do have some things that I
8 want to show you and two people today that I would like
9 for you to hear from. You have already heard from some
10 of them and I expect them to be brief.

11 This is a certificate of his baptism and I would
12 like to, not put that into evidence, but I would like
13 to show it to the Court because I am sure it is a
14 treasure of his mom.

15 This is a picture of his graduating class. They
16 sent him to Beaufort Marine Institute and he did -- he
17 was a stellar student. He was at the top of his class.
18 As a matter of fact, Rotarian Club, after that, since
19 he did so well, and this is a picture of him with a
20 Rotarian. They had him give an impromptu speech to
21 encourage the giving of \$50,000 to the Technical
22 College of the Low Country and they thought that he had
23 done a great job in helping them fund raise to help
24 other people, Judge.

25 He also, while he was in school, received awards

SENTENCING

1 while he was there. And this is for his prep test
2 score, which was high. And this is for his 2007-2008
3 honor roll for him. So, he's a capable bright young
4 man, Your Honor. He knows that he's made some bad
5 choices and there's certainly no question about that.
6 He was younger, his older brothers and sister had grew
7 up and they weren't in the house to guide him and he
8 certainly picked the wrong type of guidance.

9 I would like you to hear from Shatteria, who is
10 the mother of his children.

11 THE COURT: I will be glad to have whoever it is
12 to come around, please.

13 MR. PLEXICO: Thank you.

14 THE COURT: Good morning. Would you state your
15 name for the record, ma'am?

16 MS. WALKER: Shatteria Walker.

17 THE COURT: Glad to hear from you.

18 MS. WALKER: I came to speak on Josh's behalf.

19 Like I was saying yesterday. Nobody is perfect. You
20 know, he had a very, very unstable childhood. I mean,
21 when I met him he was -- he is a good person. I mean,
22 we had our daughter early, you know, in 2008. And he
23 just felt like he needed to do anything to take care
24 of her. But I'm not justifying anything or saying
25 that it's right, because it's not. But he can be a

SENTENCING

1 better person. I can say that. Thank you.

2 MR. PLEXICO: Now, I would like you to hear from
3 his mama again. His mama is Ms. Gloria Poacher.
4 Please come up.

5 MS. POACHER: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MS. POACHER: I'm Gloria Poacher, I'm Joshua's
8 mother. I just want to give you a little bit of
9 background on our family and Josh. He comes from a
10 family of eight brothers and sisters, six boys and two
11 girls of my family. He is the baby. The next child
12 next to him is six years older than him. So, by the
13 time that he got into his teen years the others were
14 already grown and out of the home.

15 My oldest son is deputy sheriff in Pascagula. My
16 daughter, who is next to him, she is operating heavy
17 equipment in San Antonio, Texas, her and her husband
18 and one daughter. My other son is right here in the
19 courtroom. That is his wife. They have three children
20 and a home in Savannah. And he works for RB Baker. He
21 is a heavy equipment operator. My next son, he was
22 here for a few days, he is from -- he lives in Fort
23 Lauderdale, Florida but he had to return to work
24 unfortunately. But he was here to support his brother.
25 And he works in security in Fort Lauderdale.

SENTENCING

1 Loretta Blackwood, his other sister, you met her.
2 She testified about him. And his other brother,
3 another brother was here, Ernest, he was here Monday
4 but unfortunately he works for Beaufort County and he
5 has a wife and five children. His oldest is in
6 college. My oldest grandson is in the Armed Forces in
7 Afghanistan at this moment as we speak. I just wanted
8 to let you know, my niece is here, my sister has been
9 here, and different relatives have come through for the
10 few days. So, we are a very close-knit family and
11 Joshua happens to be the baby.

12 And I'm not putting blame on anything, it is this
13 generation, the younger generation that we have seems
14 like they are kind of violent and getting into a lot of
15 trouble.

16 Joshua is a good kid. And he just had a rough
17 childhood. I am his mom and all of the time I wasn't
18 at the house. And I was into drugs myself at one time.
19 And Josh, I have never had a discipline problem with
20 him at home. He's always been very respectful to me
21 and his dad. He's never shown me any, you know, any
22 violence toward him or, you know, the brothers that he
23 had, you know, his brothers and siblings and all, they
24 used to have their fights, quarrels and fall out.

25 But our family is very close, we are a very loving

SENTENCING

1 family. My sister is on her way here, she is in
2 insurance, that is her daughter there and she is a
3 beautician. Everybody is hard-working people and good
4 people and they have always been there for Josh since,
5 from the beginning of this. I feel like I fell
6 somewhere, I don't know at what point, Your Honor. But
7 he is a good kid and I mean, life -- I understand he
8 knows -- and I wanted to tell you about this too. He
9 got locked up that Sunday. That Saturday was the first
10 day that I was able to go see him. And when I went to
11 the jail house and he came out he had tears in his
12 eyes, he was boo hoo crying, and he said, mama, I gave
13 it up, I had to because it had been bothering me. He
14 said, I couldn't hold it in any longer. I had to let
15 them know what I did and take the consequences because
16 it was wrong. That is what he told me.

17 And he, most of that visit, we just sat there and
18 cried, the two of us, over what had happened. And I
19 just let him know that we loved him and that we would
20 always be there for him.

21 Your Honor, I am 65 years old. A life sentence is
22 even a 30-year sentence, but I have been assured that
23 he has his family in place. He has plenty of cousins
24 who couldn't make it because everybody is working, that
25 they would be there for him. Your Honor, I feel that

SENTENCING

1 everybody deserves a chance, you know, at
2 rehabilitation. I'm not diminishing the fact that he
3 took two lives. That is just a bad thing.

4 But I feel that with a lesser sentence he would
5 have time to sit. Because, even during that short
6 time, a few days in jail there, he realized what he had
7 done; it had been bothering him. Joshua grew up in a
8 church from a little boy. You know, he went to church
9 and church and go to school and did the right thing.
10 I'm just asking for some mercy, some hope at the end of
11 the tunnel. I'm not biblical, but Moses, David, God
12 gave him a chance and I'm asking you for the same
13 chance for my son from you, please. Thank you.

14 MR. PLEXICO: Your Honor, I would like to point
15 out. He started working at 17 with Two Waste
16 Collection Company, that is Republic Trash Company,
17 and he worked on the truck. And then he got another
18 job with Palm Waste, he was a helper on the truck.
19 And then he got another job, to replace the job that
20 he had just lost in July, when this happened, Judge.
21 He worked since he was 17. So, he will get out and go
22 to work. I think that he has got something that he
23 wants to say to you.

24 THE DEFENDANT: Yes, Your Honor. And as I said
25 yesterday, I would like to apologize to my family and

SENTENCING

1 most important, to the Patel family. I got into --
2 the night before this incident I got into some drugs
3 that I shouldn't have used. But it made me paranoid.
4 And after the incident happened and I was in jail I
5 realized that I shouldn't have used those drugs. And
6 while I am in the jail for these past three years, I
7 have used my time wisely and got a little bit more
8 closer to God. And I told myself and I made a promise
9 to God, if I get my life spared again, not saying that
10 I know what I did and I know that I was going to
11 prison for it.

12 But I say, if I get my life spared again I was
13 going to get out there and do the right thing and not
14 use drugs any more. And I know I did have a little
15 trouble in my background, but that was because I was
16 hanging around the wrong people and not having no
17 guidance.

18 But, once I hit the age of 17, I started
19 progressing, going to work, taking care of my kids. I
20 just had that one little relapse. And I can assure
21 you, if you spare me and have mercy on me that it won't
22 happen again.

23 THE COURT: All right. Anything further from the
24 State?

25 MR. STONE: Just in all fairness, I want to make

SENTENCING

1 sure that that on the robbery itself, he did have
2 codefendants. The other defendant was the one that
3 actually had the gun. The statement from Poacher at
4 the time was that he went with the other guy who had
5 the gun, knew what they were going to do before they
6 got there. And it is really confusing as far as which
7 one actually went in, that kind of thing, but it was
8 an armed robbery, it was at that Shell station and
9 Poacher was there with the codefendants.

10 MR. PLEXICO: May I, Your Honor, a little bit
11 more. I have a little bit more. And, Your Honor, he
12 knows that a minimum sentence here would be 30 years,
13 day for day, and he's looking at life several times,
14 in addition to the armed robbery and possession of a
15 weapon during the commission of the violent crimes.
16 Which is also day for day. But the black and white
17 document cannot be disputed that he is not on the
18 videotape, that he is not inside. There is no
19 confusion at all. Black and white when it is written
20 down he is just not on the videotape by the police
21 officer, which means that he wasn't actually inside
22 the Shell station during the robbery.

23 I just give you -- I just want you to know that.
24 He's been a lesser involved person in the prior
25 juvenile crimes, Your Honor. And that is how it is

SENTENCING

1 when you have older people there, used to be they
2 looked up to them. And I am not justifying anything
3 that happened, Judge. We just believe that there is
4 good in Joshua, that he is here, he is willing to take
5 the punishment and he eventually did tell them very
6 quickly, within a week, exactly everything that did
7 happen.

8 He tells me that he was taking Molly, which I find
9 with other clients is a drug that does make you
10 paranoid. I ask you to take that into consideration,
11 although I know that it is a self-induced creation.
12 But I think that may be his character. And I know that
13 it is a serious matter. And we just ask that you allow
14 him some time in his life when he gets out. We ask for
15 a sentence of 30 to 35 years. Thank you.

16 THE COURT: All right.

17 Let me just say this, it's never easy sitting here
18 regardless of whatever my decision may be, to make the
19 call. Under the circumstances life is the appropriate
20 sentence and I am going to sentence you to life on
21 Indictment 2015-387 and 2015-379. Under Indictment
22 2015-490 it will be 30 years. Under Indictment
23 2014-491 it will be 5 years. All concurrent. Good
24 luck to you.

25 MR. PLEXICO: Thank you, Your Honor.

SENTENCING

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 29th day of September, 2017.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

(850) 893-6662

mmanley@sccourts.org

15

16

17

18

19

20

21

22

23

24

25



April 6, 2020

Jasper County Clerk of Court
265 Russell Street
Ridgeland, SC 29936

RE: Joshua Poacher #372249 v. State

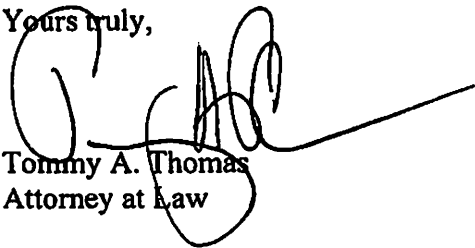
Dear Sir or Madam:

Enclosed please find an original and a copy of a PCR Application and coversheet that I am filing as a courtesy to Mr. Poacher so that he does not miss his statute of limitations, which is April 13, 2020.

Please note that I have not been retained to represent him in this matter.

Please return a clocked copy to me in the enclosed envelope. Thank you.

Yours truly,



Tommy A. Thomas
Attorney at Law

TAT/jem

FILED
JASPER COUNTY
CLERK OF COURT
2020 APR 10 AM 9:14

SCANNED
do 4-15-2020

MAILED
APR 4-9-2020

COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

JOSHUA POACHER #372249

FILED JASPER COUNTY CLERK OF COURT

CIVIL ACTION COVERSHEET

Plaintiff(s) 2020 APR 10 AM 9:14 2020-CP-27-1623

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: TOMMY A. THOMAS, ESO. Address: P.O. BOX 88 IRMO, SC 29063

SC Bar #: 5536 Telephone #: 803-732-5507 Fax #: 803-781-4226 Other: E-mail: JACKIE@PAROLEME.COM

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-NI-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Libel (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Incapacitated Adult Settlement (790), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Permanent Restraining Order (680), Interpleader (690), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670), Other (799)

Submitting Party Signature: [Signature]

Date: April 6, 2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)
)
 JOSHUA POACHER #372249)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2020-CP-27-163

APPLICATION FOR
POST-CONVICTION RELIEF

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 particular question on the reverse side of the page or on an additional page. Applicant shall make clear which question any such continued answer refers.

FILED
JASPER COUNTY
CLERK OF COURT
2020 APR 14

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 Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010
2. Name and location of Court which imposed sentence Jasper County Court of Common Pleas, 265 Russell Street, Ridgeland SC 29936
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-27-0378 - Murder
 - (b) 2015-GS-27-0379 - Murder
 - (c) 2015-GS-27-0490 - Attempted Armed Robbery
 - (d) 2015-GS-27-0491 - Firearms Provision

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 13, 2015 - Life
 - (b) April 13, 2015 - Life
 - (c) April 13, 2015 - Thirty (30) years
 - (d) April 13, 2015 - Five (5) years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (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. Appeal Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. April 17, 2019
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2019-UP-139
 - 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) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (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? _____
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. Stephen Plexico, Esq., PO Box 1114 Varnville SC 29944
 - ii. Kathrine Haggard Hudgins, Esq., P.O. Box 11589, Columbia, SC 29211
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial and sentencing
 - ii. Direct Appeal
 - iii. _____
19. State clearly the relief you seek in filing this application:
New Trial
20. Are you now under sentence from any other court that you have not challenged?
no

2020-CP-27-163

STATE OF SOUTH CAROLINA)
)
County of LEE)

VERIFICATION

I, Joshua Poacher, 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.

Joshua Poacher

SWORN to and subscribed before me this 2nd
day of April, 2020

James M. Glick (L.S.)
Notary Public

My Commission Expires: 09/04/2029

FILED
JASPER COUNTY
CLERK OF COURT
2020 APR 10 AM 9:14

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

I, Joshua Poacher, 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
2nd day of April, 2020.



 Notary Public

My Commission Expires: 09/04/2029

FILED
 JASPER COUNTY
 CLERK OF COURT
 2020 APR 10 AM 9:14

FILED
JASPER COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER 2021 OCT 18 PM 4: 25) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)
Joshua Poacher, SCDC #372249,) Case No.: 2020-CP-27-00163
)
Applicant,) **RETURN TO THE APPLICATION**
) **FOR POST-CONVICTION RELIEF**
v.) **AND MOTION FOR A MORE**
) **DEFINITE STATEMENT**
State of South Carolina,) (Counsel Already Appointed)
)
Respondent.)
_____)

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Tommy A. Thomas, Esquire, on behalf of Applicant¹, on April 10, 2020, and received by the South Carolina Attorney General's office on July 12, 2021², would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its December 2015 term, the Jasper County Grand Jury indicted Applicant for two counts of murder (2015-GS-27-00378, -00379); robbery – armed or alleging armed with deadly weapon (2015-GS-27-00490); and possession of a weapon during a violent crime (2015-GS-27-000491). On April 10-13, 2017, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh.

¹ Counsel, James K. Falk, has since been appointed to represent Applicant in this matter.

² Respondent's return was due to be filed on October 11, 2021. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Stephen T. Plexico, Esquire represented Applicant. Isaac McDuffie Stone and Mary Jones of the Fourteenth Circuit Solicitor's Office prosecuted the case.

At the conclusion of trial, the jury found Applicant guilty on each charge. Judge McIntosh sentenced Applicant to concurrent terms of life for each of the murder charges, to thirty years' imprisonment for the robbery charge, and to five years' imprisonment for the weapons charge.

Applicant filed a timely notice of appeal and was represented on appeal by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense – Division of Appellate Defense, who filed a brief pursuant to *Anders*³ on his behalf and a petition to be relived as counsel. On appeal, Applicant raised one (1) issue:

“Did the trial judge err in refusing to find that an out of court identification procedure was unduly suggestive?”

On April 17, 2019, the Court of Appeals dismissed the appeal and granted counsel's motion to be relieved. State v. Poacher, 2019-UP-139 (S.C. Ct. App. filed April 17, 2019). The Remittitur was issued on May 3, 2019.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this PCR action on April 10, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel

Applicant requests relief as follows:

“new trial”.

Attached herewith and incorporated for reference are the Jasper County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina

³ *Anders v. California*, 386 U.S. 738 (1967).

Department of Corrections; the records from Applicant's appeal, including the trial transcript; and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegation of Ineffective Assistance of Counsel, Generally

Applicant alleges "ineffective assistance of counsel". Without more specific facts and circumstances to support Applicant's claims, it is impossible for Respondent to respond specifically to this allegation. Instead, Respondent responds generally and moves for Applicant, through retained counsel, to file an amended return with specific allegations.

Applicant alleges he is entitled to post-conviction relief based on ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. 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; *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 first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see*

also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland’s* deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. *See id.* at 695 (Where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable

effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

As discussed, it is impossible for Respondent to reply specifically to Applicant’s claims without more facts and detail. Therefore, Respondent moves for Applicant, through appointed counsel, to file an amended return.

IV. Motion for a More Definite Statement

Respondent submits Applicant's claims of ineffective assistance of trial counsel are without merit. However, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has failed to provide specific facts to support his claim. "[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient." *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974); see S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); see also Rule 8(a)(2), SCRPC (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRPC ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRPC and the Uniform Post-Conviction Procedure Act.

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, 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 the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428

S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP. *See also* Rules 15(a)–(b), SCRCPP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. 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.

VII. Conclusion

WHEREFORE, the State moves for a more definite statement and the opportunity to respond to the more definite statement if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

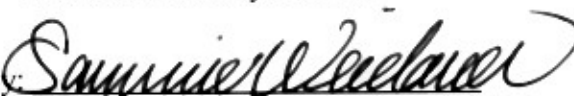
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
Post Office Box 11549
Columbia, S.C. 29211

October 14, 2021

STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)
 Joshua Poacher, #372249)
 Applicant,)
 v.)
 State of South Carolina)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL
 CIRCUIT

Case No.: 2020-CP-27-00163

Certificate of Service by Mail

FILED
 JASPER COUNTY
 CLERK OF COURT
 2021 OCT 18 PM 4:32

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to the Application for Post-Conviction Relief and Motion for A More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 14th day of October, 2021.



 Vickie Hall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF JASPER)	FOR THE 14th JUDICIAL CIRCUIT
)	
Joshua Lenard Poacher)	2020-CP-27-0163
Applicant)	AMENDED PCR APPLICATION
Vs.)	
State of South Carolina)	
Respondent,))	
_____)	

Applicant by counsel amends his initial PCR application to include the following specific allegation of ineffective assistance of counsel.

1. Trial counsel was ineffective when he failed to object to the testimony that Kimberley Mears' latent print analysis was peer reviewed. The statement impermissibly bolstered agent Mears' testimony. Additionally, since defendant had no opportunity to confront the other SLED agents that peer-reviewed agent Mears' analysis, the testimony that her work was peer reviewed violated his rights under the Sixth Amendment's Conformation Clause.
2. Trial counsel was ineffective for not seeking a hearing pursuant to State v. Council, 335 S.C. 1 (1999) to challenge the reliability of SLED agent Suzanne Crommer's expert testimony in the field of toolmarks and firearm identification.

Respectfully Submitted,

s/ James Falk

James K Falk
 Falk Law Firm
 PO Box 38
 Charleston, SC 29402
 (843) 606-6007
 jfalklaw@gmail.com

CERTIFICATE OF SERVICE

A copy of the above was emailed this July 7 2022 to Samantha Weidauer and Lauren Mims at the SC Attorney General's Office

James Falk

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF JASPER

4 Joshua Poacher,
5
6 Petitioner,

7 vs. Transcript of Record
8 2020-CP-27-00163

9 State of South Carolina,
10
11 Respondent.

12

13

14

July 18, 2022
Beaufort, South Carolina

15

B E F O R E:

16

The HONORABLE KRISTI F. CURTIS

17

18

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

19

James K. Falk, Representing the Petitioner

20

Lauren Mims, Representing the Respondent

21

22

23

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Witness Name	Page	Line
Steven Plexico		
Examination By Mr. Falk	8	12
Cross By Ms. Mims	20	11
Re-Direct By Mr. Falk	30	14
Certificate of Reporter	38	1

1 THE BAILIFF: All rise. The Honorable
2 Kristi Curtis presiding.

3 THE COURT: Thank you-all. Please have a
4 seat. You-all bear with me just a moment. Let me
5 get my computer up.

6 (Off the record.)

7 THE COURT: Okay. Good morning. We're
8 here this morning on Joshua -- is it Poacher?

9 MS. MIMS: Yes, Your Honor.

10 THE COURT: Okay. And is that you,
11 Miss Mims?

12 MS. MIMS: Yes.

13 THE COURT: Good morning.

14 MS. MIMS: Good morning. How are you?

15 THE COURT: Doing fine, thank.

16 I'll turn it over to you, if you want to
17 get us started.

18 MS. MIMS: Okay. May it please the
19 Court?

20 THE COURT: Yes, ma'am.

21 MS. MIMS: I'm Lauren Mims and I'll be
22 representing the State of South Carolina. This is
23 the post-conviction relief matter of Joshua
24 Poacher vs. State, docket number 2020-CP-10-00163.
25 This matter is before the Court because of an

1 application for post-conviction relief filed by
2 Mr. Poacher in Jasper County on July 12, 2021.

3 During the December 2015 term, the
4 Jasper County Grand Jury indicted applicant on two
5 counts of murder, robbery, armed or allegedly
6 armed with a deadly weapon, and possession of a
7 weapon during a violent crime.

8 On April 10th to 13th of 2017, applicant
9 proceeded to a jury trial before the
10 Honorable R. Lawton McIntosh. Steven T. Plexico,
11 Esquire represented applicant.

12 Duffie Stone and Mary Jones with the 14th
13 Circuit Solicitor's Office prosecuted the case.

14 At the conclusion of trial, the jury
15 found applicant guilty as charged.

16 Judge McIntosh sentenced applicant to
17 concurrent terms of life for each of the murder
18 charges, to 30 years imprisonment for the robbery
19 charge, and five years imprisonment for the
20 weapons charge.

21 Applicant filed a timely notice of appeal
22 and was represented on appeal by appellant
23 defender Catherine Hudgens of the South Carolina
24 Commission On Indigent Defense, Division of
25 Appellate Defense who filed a brief pursuant to

1 Anders on his behalf. And on the petition to be
2 relieved as counsel on appeal, applicant raised
3 one issue that at the trial the judge erred in
4 refusing to find that an out-of-court
5 identification proceeding was unduly suggestive.

6 On April 17th, 2019, the Court of Appeals
7 dismissed the appeal and granted counsel's motion
8 to be relieved. The remittitur was issued on
9 May 3rd, 2019, and this post-conviction relief
10 follows.

11 I will turn it over to Mr. Falk, and I
12 would ask that he place the issue that he plans on
13 going forward on on the record.

14 THE COURT: Okay. And do we intend to
15 have Mr. Poacher over here for the proceeding?

16 MR. FALK: Wherever he would like to be.
17 I do not plan on calling him as a witness.

18 THE COURT: Mr. Poacher, do you want to
19 sit next to your attorney, sir? Is that you okay
20 with you-all who transported him?

21 Sure, if you want to come sit with your
22 lawyer.

23 THE COURT: Bear with me while I get
24 on-line.

25 (Off the record.)

1 MS. MIMS: Judge, I have a copy of the
2 records, if that's easier.

3 THE COURT: If you-all just bear with me
4 because I need to be on this regardless. I'm
5 getting on now.

6 MS. MIMS: Okay.

7 THE COURT: I got his records in front of
8 me now.

9 Mr. Falk, normally this is the point at
10 which I would talk with your client about wanting
11 to go forward this morning. Do you think that I
12 need to do that given the fact that he's got two
13 concurrent life sentences and five years.

14 MR. FALK: We need to go forward.

15 THE COURT: Normally, if it looked like
16 on retrial you could get more time than what you
17 did get, then we would have a discussion this
18 morning about the wisdom of going forward. But
19 given the fact that you have two concurrent life
20 sentences, I don't see any downside to us going
21 forward.

22 So, Mr. Falk, go right ahead.

23 MR. FALK: I'll call up Steven Plexico to
24 the stand.

25 MS. MIMS: Your Honor, before Mr. Plexico

1 is sworn, can we get the allegations on the
2 record?

3 THE COURT: Yes. I think the initial
4 application just said ineffective assistance of
5 counsel. Is there an amended application?

6 MR. FALK: There's an amended
7 application, Your Honor, and there's really two
8 points. One is, we believe there was some
9 vouching testimony of Mrs. -- of Agent Meers that
10 should have been objected to both under the
11 confrontation clause and just as to it being
12 vouching.

13 Then we also believe that counsel should
14 have requested a counsel hearing before the
15 ballistics expert, Cromer, could testify, and he
16 should have conducted a more rigorous
17 cross-examination of her testimony.

18 THE COURT: Okay. Does that satisfy your
19 concerns, Miss Mims?

20 MS. MIMS: Yes, Your Honor.

21 THE COURT: Okay. Go ahead, Mr. Plexico.

22 THE CLERK: Raise your right hand. Do
23 you solemnly swear or affirm that the testimony
24 you give to the Court in this trial shall be the
25 truth so help you God?

1 THE WITNESS: Yes.

2 THE CLERK: Just once you get stated,
3 will you state your first name and spell out your
4 last name for the court reporter.

5 THE WITNESS: Yes. Steve Plexico. That's
6 P-l-e-x-i-c-o. I assume everybody can hear me.
7 Madame Court Reporter?

8 COURT REPORTER: Yes, sir. Thank you.

9 WHEREUPON:

10 STEVE PLEXICO,
11 after having been sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q Are you ready?

15 A Yes.

16 Q Mr. Plexico, can you tell me a little bit about
17 this case, what this case was about?

18 A Well, this was a double murder at a hotel.
19 Some employees stayed at the hotel. My client, I
20 started talking to him before I was even
21 appointed. I went to the jail. Somebody was over
22 there crying. They were there with their mom. So
23 as a favor, I went ahead and talked to him. I
24 looked at the jail list. I spent a lot of time at
25 the Jasper jail back in those days.

1 I saw he was charged with murder. Found out
2 a little bit about the case. Essentially, he had
3 credit cards belonging to the dead couple, as I
4 remember back then. So I told him there's a big
5 difference between transaction card fraud and double
6 murder, and he just needed not to talk to the police
7 at all, period. Just tell them he wanted an attorney
8 and asked to get me appointed.

9 And then the next thing I knew, he had spent
10 a long time talking to the police at his own request,
11 if I remember correctly, unfortunately, for him.

12 Q So there was no -- he didn't have a Jackson vs.
13 Denno?

14 A I don't recall that.

15 Q Let me --

16 A I've been like four -- I've been involved in
17 four to six murder cases just in the last 14
18 months.

19 Q There was some forensic evidence in this case?

20 A Yes, sir.

21 Q Part of the forensic evidence was the blueprint
22 analysis; is that correct?

23 A Blueprint?

24 Q Fingerprint.

25 A Fingerprint. Yes.

1 Q Fingerprint analysis. Pardon.

2 A Yes, sir.

3 Q And I notice that you conducted a rather vigorous
4 cross-examination of Miss Meers in this case.

5 A Yes.

6 Q Because you were trying to, sort of, have her
7 quantify how many points you have to have in common
8 between the -- what are the two terms? You have the
9 evidence and the known, or something? The found print
10 and the known print?

11 A Yes.

12 Q And you were asking them about needing to find,
13 you know, some way to gauge how many points in common
14 you have to have between the two prints.

15 A Yeah. Americans seem to do it, kind of,
16 slackly. They use the minimum number which would
17 lead to error and cause doubt in the jurors's
18 mind, is what I was trying to get across. If I
19 remember correctly, I think, like, 16 is the
20 European standard or at least in some countries.

21 Q It almost seems like the American standard almost,
22 sort of, gets down to a subjective test.

23 A Yeah. I mean, you find one thing. Let's
24 move on to the next set of prints. We got a bunch
25 to get done today, get home early for dinner. I

1 mean, that kind of thing. I mean, I don't think
2 it was done right, but that's not my area.

3 Q So after you cross-examined her about her
4 methodology, and -- I guess, about her methodology.

5 And on redirect, he asked her -- and I'm
6 going to page 280. And then there is this question on
7 the bottom of page 280 starting on line 23 where
8 Mr. Stone -- or Solicitor Stone said: "Okay. And
9 this print, once you actually do it, then it is peered
10 reviewed. In other words, you have other experts in
11 your department to check after your work; is that
12 correct?"

13 And her response was: "Yes, another examiner
14 reviews my work. This entire case file."

15 Did you know -- did you know anything about
16 the peer reviewed examination of her work?

17 A No, I did not. I think that's pretty much
18 their standard procedure.

19 Q But do you know whether or not -- you know, how
20 many points in common the peer reviewer would have had
21 to find?

22 A No, I don't.

23 Q Would you agree though that if it sounds like it's
24 peer reviewed that that is somewhat -- that's another
25 individual that both are bolstering her testimony?

1 A Yes, vouching for her, the quality of her
2 work.

3 Q And you didn't have any opportunity to
4 cross-examination of any of the peer reviewers, did
5 you?

6 A No, I should have objected to that.

7 Q So you would agree that that's possibly a
8 confrontation clause issue?

9 A Yes, sir.

10 Q And the bolstering issue.

11 Now, this is really, kind of, my focus here
12 though, is that then, at some point --

13 MR. FALK: I'm sorry, Your Honor. I lost
14 my page.

15 BY MR. FALK:

16 Q So then the State called Suzanne Cromer, and
17 that's started on page 285.

18 A All right.

19 Q And she was the SLED ballistics expert, is that
20 fair to say?

21 A Yes.

22 Q Do you know what kind of training she had?

23 A They sent me a vitae, I would imagine. It's
24 been a while. I don't remember.

25 Q Do you know if any of her -- what kind of testing

1 she was subjected to to see whether or not her
2 identifications ever generated any false positives?

3 A No, I don't.

4 Q And there's some references in the testimony --
5 there's some references in the testimony that she had
6 some tests, that there's performed tests. And then
7 she talks about doing case tests, which are preparing
8 mock cases.

9 Let's assume that that is some type of
10 opportunity for them to do some type of comparative
11 testing, or validation studies to see how accurate she
12 is.

13 A Yes, sir. Well, essentially, she just talks
14 about how she got trained to do the job.

15 Q Do you know what kind of validation testing SLED
16 conducts?

17 A No, I don't exactly.

18 Q Are you -- so then -- would it have been helpful
19 to know what type of false positives she's generated
20 through her testing?

21 A In retrospect, that would have been helpful.
22 I don't know the quality of how helpful it would
23 have been.

24 Q Would it have been helpful --

25 A It would have been another point I could have

1 asked.

2 Q Would it have been helpful to know what kind of
3 testing methods that SLED uses to do these validation
4 studies?

5 A Probably that could be analyzed too, yes,
6 sir.

7 Q There is -- because there is one type of -- are
8 you aware that there's one type of validation study
9 where they're given, like, 10 bullets and 10 guns and
10 they have to match them up?

11 A I don't know the procedure that they use, or
12 the types.

13 Q Certainly the testimony -- so her testimony about
14 the bullets, she talks about the lands and the grooves
15 to start with, right?

16 A Yes, sir.

17 Q And she talks about going -- I think she's the one
18 that talks about going up her ladder to get out her
19 microscope.

20 A I don't know.

21 Q I mean, a juror could probably understand
22 testimony about, you know, somebody can say that's a
23 40-caliber bullet and there's six grooves on the
24 outside, and Rugers -- 40-caliber Ruger automatics
25 have a certain type of twist to them. So that's kind

1 of the basic testimony that she gives. What is the
2 caliber of the gun? How many grooves there are?
3 Which way the grooves are rifled? Right? That's a
4 standard.

5 But then she goes to the microscopic testing
6 when she says she pulls out her -- I think she's the
7 one that says -- so on page 304, she talks about the
8 microscopic testing.

9 A Yes, sir.

10 Q How many points in common were there -- did she
11 find in the microscopic testing? It's not in the
12 testimony. I didn't know if you had that in
13 advance?

14 A No, no, no. I don't know that. I'm relying
15 completely on the record.

16 Q Because knowing that there's a standard, whether
17 or not it's 6 points or 8 points, that's similar to
18 the argument that you were making on the fingerprint
19 analysis, is it not?

20 A Yes, sir.

21 Q And if you don't have any type of standard where
22 you have to find so many points, it really almost
23 becomes a subjective test.

24 A Yes, sir. I'll be doing that in the
25 future.

1 Q Mr. Plexico, I'm going to show you a report that I
2 showed to you briefly at the beginning, but this is a
3 report to the president. It's entitled Report to the
4 President --

5 MS. MIMS: You Honor, may we have a brief
6 recess so I can review this? I've not been
7 provided this before today.

8 THE COURT: Sure.

9 (Off the record.)

10 BY MR. FALK:

11 Q So I showed you this report, and it is dated 2016.
12 It's the Forensic Science and Criminal Courts,
13 Ensuring Scientific Validity of Feature Comparisons
14 Methods, and it was generated by the President's
15 Counsel Of Advisers On Science And Technology. Were
16 you aware of this report?

17 A No, I wasn't, sir.

18 MS. MIMS: And, Your Honor, I would
19 object to any further use of this report or any
20 further mention of this report. I haven't been
21 able to look at the report and verify its veracity
22 or have any opportunity to refute this.

23 THE COURT: I'm going to allow him to go
24 forward. And then if there's anything you want to
25 submit to the Court after the hearing, I'll give

1 you some time to do that.

2 Go ahead, Mr. Falk.

3 BY MR. FALK:

4 Q If you could, just read that gray box at the top
5 of the page to yourself.

6 A All right. Yes, sir.

7 Q If I could just grab it back from you.

8 MS. MIMS: What page are you referring
9 to?

10 MR. FALK: Page 112.

11 BY MR. FALK:

12 Q So under the conclusion, at the section when
13 they're talking about the firearms analysis, they say
14 PCAST, which is the President's Commission --
15 President's Counsel Of Advisers On Science And
16 Technology. They opine that, "PCAST finds that
17 firearm analysis currently falls short of the criteria
18 for a foundational validity because there is only a
19 single appropriately designed study to measure
20 validity and estimate reliability. A scientific
21 criteria for foundational validity require more than
22 one such study to demonstrate reproducibility."

23 Had you known that opinion, would have you
24 have considered having maybe a counsel hearing at the
25 very beginning before Cromer was even allowed to

1 testify?

2 A Yes, sir.

3 Q Because that would -- I mean, she's giving
4 opinions, and here is some evidence that the report --
5 that the science is not there to show that the testing
6 methodology is, first of all, uniform, and that it is
7 reliable.

8 A Yes, sir.

9 Q You would agree that the -- the fact that they
10 could tie bullets to the gun was a real problem for
11 Mr. Poacher, would you not?

12 A Yes. One of many.

13 Q Would your case had been better had they never
14 been able to find the gun?

15 A Of course.

16 Q Were you aware of any -- hold on.

17 Were you aware that there's some cases
18 out the federal district courts where they are
19 restricting the use of -- or they're limiting an
20 expert's ability to opine that a particular bullet
21 came from a particular gun?

22 A I wasn't aware of that, but I'm glad that you
23 have told me. I will note that.

24 Q And these cases go back as far as 2005. And just
25 for the record, I'm citing United States vs. Monteiro,

1 which is 407 F.Supp.2d 351, District Court of
2 Massachusetts, and another District Court of
3 Massachusetts, United States vs. Green, which is
4 405 F.Supp.2d, 2005.

5 When did this case go to trial?

6 A I would have to look on the date. I think
7 it's 2017, half a decade ago.

8 Q I'm just going to ask you to read one more
9 paragraph from the report. It's on page 105. It's
10 the second paragraph where it states, "In its 2008
11 report..."

12 A Yes, sir.

13 Q Just that second paragraph, read that.

14 A "In its 2008 report..." --

15 Q Just read it to yourself. I just want to ask you
16 some questions about it.

17 A Yes, that is.

18 Q So this is -- so that section where it says the
19 2008 report from the National Research Counsel opined
20 that, "The validity of the fundamental assumptions of
21 uniqueness and reproducibility of firearm-related tool
22 marks has not yet been demonstrated."

23 So, I mean, this is not a situation --
24 because I asked you -- I'm embarrassed that I forget
25 when this case went to trial. But there was

1 literature in the field upon which you could have had
2 a counsel hearing.

3 A I don't dispute that, sir.

4 Q Okay.

5 A And I'm glad I'm aware of it now. In all my
6 years of doing this, I haven't heard anything. I
7 haven't heard anything about that.

8 Q I'm sending you a copy of the whole shebang.

9 A Thank you so much.

10 MR. FALK: No further questions.

11 CROSS-EXAMINATION

12 BY MS. MIMS:

13 Q Good morning, Mr. Plexico. How are you doing?

14 A Good morning, ma'am.

15 Q Before we get into the allegations, I'm going to
16 ask you a few questions.

17 How long have you been practicing law?

18 A I was admitted in '88 or '89, and I've been a
19 public defender since '90, I think. Yeah, '90.

20 Q So the vast majority of it --

21 A Thirty years.

22 Q The vast majority of it has been criminal law?

23 A Yes.

24 Q And you were appointed to represent Mr. Poacher,
25 correct?

1 A Yes. I talked to him before I was even
2 appointed and tried to get him quiet.
3 Unfortunately, you can look at the transcript, he
4 didn't listen.

5 Q And so you represented him throughout the entire
6 thing?

7 A Right. I represented him before I
8 represented him, so to speak.

9 Q And so --

10 A I was trying.

11 Q -- if you could me a ballpark -- it doesn't have
12 to be an exact number -- how many times did you meet
13 or talk?

14 A I have a little file here covered in notes.
15 But, I mean, I started before I was appointed.
16 And what I was trying to do was ward off yet
17 another murder case by keeping the client quiet.
18 If the client doesn't give up the farm, so to
19 speak, he would come out a whole lot of better.
20 But, of course, that plan didn't work. So then
21 they had everything he told them, so that was
22 pretty much all that she wrote.

23 Q Okay. And, of course, did you discuss the charges
24 with him, things of that nature?

25 A I did that the first time I met him. I got a

1 skinny brief on what was going on. I super
2 emphasized, you got to be quiet. Do not give them
3 a statement. And then, if I remember correctly,
4 he's the one that asked them to come in and
5 re-interview him, which it's just mind-boggling.

6 Q And so you got Rule 5 discovery in this case?

7 A Eventually, whenever. It takes a while on a
8 murder case, especially if SLED is involved in
9 anything. You know, it's a dribble here and
10 there, but, you know, we do get it.

11 Q If you could, just give me, kind of, an overview
12 of the State's case, like what they provided in
13 discovery.

14 A Well, I can't remember when they gave me
15 everything, but, you know, I went out. Every time
16 he'd write me a letter, I'd try to go see him. I
17 mean, just on the one side of the page here, I got
18 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
19 notations, not including the other side and
20 everything else. I don't always make a notation
21 every time I talk to him. If you're mad at me, I
22 just go calm you down. Sometimes I don't -- you
23 know, water rolls off me like a duck.

24 So, you know -- you know, I've talked to
25 him plenty.

1 The main thing is, he just confessed. I
2 mean, you know, I didn't see a way to keep out the
3 confessions. I mean, that's all you need. Forget
4 everything else.

5 Q And so outside of the confession, was there
6 anything else that was particularly problematic in the
7 evidence?

8 A The whole thing was just horrible. I mean,
9 it was a -- it's a double murder. Any murder is
10 dreadful.

11 THE COURT: Sir, can I get you to speak
12 up a little louder.

13 THE WITNESS: Sure. Any murder is
14 dreadful, but a double murder of an older couple
15 is just, you know, reprehensible. I mean, you're
16 starting out -- you know, that's like killing a
17 child. I mean, you're starting out in a whole --
18 I mean, that's bad. And, *Hey, I was there.* You
19 know, *I had the gun.*

20 BY MS. MIMS:

21 Q And so what was your overall defense?

22 A Well, I think he was just done in. I was
23 trying to go for a fumble. Maybe they'd screw
24 something up. This just doesn't happen this day
25 and age.

1 Q Okay. Let's go ahead and dive into the
2 fingerprint analysis, or Miss Meers's testimony.

3 A Well, I mean that just goes to how many
4 points you got and what you want to believe. And,
5 you know, sometimes you'd get -- especially in
6 this. You know, ever since Rodney King, you know,
7 we have a lot of citizens that do not trust the
8 government, and this has been going on for decades
9 now and it's only getting worse.

10 I mean, I go to federal court. It doesn't
11 look like there's enough jurors even showing up there.
12 It's a matter of respect in the community for the
13 judicial branch. Unfortunately, that's the sad
14 reflection.

15 But you have a lot of people, you know, if
16 they get an idea that something is not fair, they just
17 aren't going to convict your guy. That's the reality.
18 This is the truth about America, unfortunately.

19 Q And so I think you testified a little bit earlier,
20 but I wanted to get a little further testimony, and I
21 can refresh your recollection if need be, but you
22 provided some serious cross-examination and some
23 voir dire here.

24 A Yes.

25 Q And do you remember asking Miss Meers about the

1 types of identification?

2 A For the fingerprints?

3 Q Yes.

4 A Yes. It's been a while. Half a decade. But
5 you know, I was trying to do the best job I could
6 for the guy.

7 Q And do you remember asking her about her
8 strategies and tactics regarding the analysis?

9 A Not specifically.

10 Q Okay. Would it be helpful if I refresh your
11 recollection?

12 A Sure.

13 Q Okay.

14 A I have one if you want to just tell me the
15 page.

16 Q Okay. That is -- it begins on page 274.

17 A All right. I'm there.

18 Q And, if you could, just read up until 278 for me.

19 A Sure. How far did you say to go?

20 Q 278 at the bottom.

21 A All right. It just makes her look a little
22 crooked.

23 Q So --

24 A You know --

25 Q You --

1 A -- insecure. Doubtful, crooked.

2 Q Let's get in that a little bit.

3 Okay. So the first time she mentions that
4 all of her cases are peer reviewed by a second medical
5 examiner, that's in 275. And that's during your
6 cross-examination, correct?

7 A Yes, sir -- yes, ma'am.

8 Q And you immediately ask her: "Human-beings
9 sometimes have pressures put upon them and have
10 biases, is that not correct?"

11 She says, "Yes."

12 "And does computer have biases? Can you put
13 pressure on a computer without reprogramming it to
14 give a certain result when you're under pressure?"

15 And so, if you could, just kind of walk me
16 through any trial strategy that you had there.

17 A Well, I was just trying to cast doubt on her
18 and, you know, pretty much the whole system and
19 the way of doing it. Fortunately for defense,
20 when SLED testifies, they are particularly, overly
21 confident and arrogant and rude. Okay? The way
22 they behave in the courtroom. They're apparently,
23 which I've taken to cross-examine them about, they
24 are trained how to testify as if someone does not
25 know how tell the truth, perhaps. So -- and they

1 are just horrible, horrible witnesses.

2 And over the decades, it's become alarmingly
3 apparent that they probably need to restructure their
4 "how to testify" program. Sorry. It's the truth.
5 It's just the truth.

6 Q And so you --

7 A They won't look at you when they testify.
8 That's odd. I've asked them, *Is there someone*
9 *over there asking you a question? Do you have a*
10 *problem with making eye contact?* You're here to
11 tell the truth, just the way they should.

12 Q So based on that trial strategy to make her look a
13 little suspect or to put her testimony into doubt, you
14 went into a very long colloquy -- not colloquy -- you
15 went into a very long portion in your closing about
16 the veracity or the reliability of these fingerprints,
17 correct?

18 A Right. They whole -- you know, the system
19 stinks, the case stinks. Basically, if you're
20 doing it wrong, you get wrongful convictions. You
21 got to be careful about that. And if you have say
22 doubt, toss it.

23 Q And you testified a little bit earlier that
24 Mr. Stone's, the Solicitor's redirect could have been
25 vouching.

1 Do you think -- would it be safe to say that
2 you think that you recovered that basis of her
3 testimony?

4 A Well, I could have. You know, I didn't think
5 about it at the time. But, if I did, I mean, I
6 would have had a second thought about objecting
7 and just let it roll along, because, you know,
8 they aren't here to testify. And the next thing I
9 know is, Your Honor, can we knock off earlier this
10 afternoon because want to do -- we want to make
11 sure that Mr. Plexico has that other State's
12 witness that we can get a peer review done, or,
13 was a third person present during a confession
14 statement, or whatever. So sometimes it's better
15 to keep your mouth shut on roll on.

16 Q And so had you --

17 A It's trial experience. Don't dig -- you're
18 in a deep hole. Don't dig the hole deeper.

19 Q Right. And I want to ask you, in your wealth of
20 criminal experience, especially with murder trials,
21 have you ever called an individual who peer reviewed a
22 fingerprint analysis?

23 A No, that would be poor trial strategy because
24 you're just -- it's just -- first off, the witness
25 is there, so they were told -- you know, as a

1 matter of law, that they were told that they were
2 correct. Therefore, you're bringing somebody else
3 in there to vouch for that first witness saying,
4 yes, in deed, they're correct. And I'm their
5 supervisor, and, by George, I'm saying they're --
6 I'm doubly certain they are correct. As a matter
7 of fact, I went and checked it again yesterday.

8 Q And so --

9 A You're just hanging your guy out or your girl
10 out to dry when you're doing those things. You
11 don't do that. That's poor -- people with trial
12 experience do not do that.

13 MS. MIMS: Beg the Court's indulgence.

14 BY MS. MIMS:

15 Q Okay. Let's turn a little bit to the second
16 allegation regarding the counsel hearing for the
17 firearms analyst.

18 Is it your testimony that you have never seen
19 that report that Mr. Falk gave to you earlier?

20 A I haven't heard it. I mean, I go to the
21 conference, and, you know, I get training and hang
22 out with colleagues who do criminal work, and I've
23 never heard of that before.

24 Q And, again, in your wealth of experience, have you
25 -- do you know of any South Carolina direction or any

1 South Carolina law that has put the reliability of the
2 firearm testing into question?

3 A No. No, ma'am.

4 Q And you didn't know of any at the time, correct?

5 A I didn't know of any.

6 Q Was there anything that alerted you to put her
7 reliability into question? Her training?

8 A Not particularly.

9 Q Nothing particularly?

10 A No.

11 MS. MIMS: Beg the Court's indulgence.

12 No further questions, Your Honor.

13 THE COURT: Thank you. Mr. Falk.

14 REDIRECT EXAMINATION

15 BY MR. FALK:

16 Q You testified that you're used to them talking
17 about the peer review?

18 A Well, I wouldn't say used to. I just never
19 caught it before, so it's not in my mind about how
20 many times they've done that before.

21 But when, you know, something like that comes
22 up, you don't bring in a second expert to say, yeah,
23 yeah, they're right. I think it would be a poor trial
24 strategy. You wouldn't do that.

25 Q But you're aware that at times those experts will

1 talk about that their work is peer reviewed.

2 A Yes. That's part of their voir dire when
3 they start.

4 Q Could you have considered trying to move in limine
5 to prevent them from saying that?

6 A Yes, I could have. I will in the future.

7 Q And that would have been -- then you wouldn't have
8 had this delay that you said could have possibly
9 disadvantaged your client with them going out and
10 getting a guy, right?

11 A Right.

12 Q And you could have asked about that comment about
13 peer review?

14 A I should have, yes, sir.

15 Q All right. And as far as trial strategy, you had
16 talked about part of your strategy was to make the
17 investigation look bad, make Meers's cross in
18 question. So, certainly, had you conducted the same
19 type of cross-exam -- had you conducted at rigorous
20 cross-examination of Miss Cromer, would that have fit
21 into your trial strategy?

22 A Yes. I wasn't aware of those present cases
23 back then.

24 MR. FALK: Thank you.

25 THE COURT: Anything further from the

1 State?

2 MS. MIMS: No recross, Your Honor.

3 THE COURT: Thank you, sir. You can step
4 down.

5 MR. FALK: We have no further
6 witnesses.

7 THE COURT: Okay. Anything you-all want
8 to tell me in conclusion? This is your hearing.

9 MR. FALK: Your Honor, I can provide you
10 other case law that I think would be helpful to
11 get your arms around the problems with this
12 firearms testimony. And I would cite you to
13 United States vs. Monteiro, which is another
14 district court case in Massachusetts,
15 407 F.Supp. 2d 351. In that court, the judge
16 said, "Because an examiner's" -- referring to a
17 firearms examiner. "Because an examiner's bottom
18 line opinion as to the identification is largely a
19 subjective one, there's no reliable, statistical,
20 or scientific methodology which will currently
21 permit the expert to testify that it is a match to
22 an absolute certainly or to an arbitrary degree of
23 statistical certainty."

24 THE COURT: You said 407 F.Supp. 2d 351?

25 MR. FALK: Yes.

1 So my point, Your Honor, is, there is
2 case out there. The only time you can get -- the
3 only time things change is when somebody raises it
4 for the first time. So it's not -- I mean, I'm
5 not creating this issue, that there is case law
6 out there that scholarly -- articles out there on
7 this issue. And Mr. Plexico certainly argued that
8 the gun was a -- you know, had they not found the
9 gun, his case would have certainly improved.

10 And if you look at page 408 of the
11 closing argument by the State, the Solicitor said,
12 "These are the bullets here, and they also match
13 the gun that he had hidden under his bed."

14 So, I mean, they certainly are
15 highlighting Cromer's testimony and the
16 reliability of her evaluation.

17 And, again, if you want, I can give you a
18 memo on the case law on this, but that's our
19 argument.

20 THE COURT: Okay. Miss Mims, anything in
21 reply?

22 MS. MIMS: Yes, briefly, Your Honor.

23 In closing, we would like to point out to
24 the Court that in post-conviction relief the
25 applicant must show that counsel was deficient in

1 accordance with professional norms, and that he
2 was prejudiced by these deficiencies to such an
3 extent that there is a reasonable probability he
4 would not have been convicted but for counsel's
5 errors or omissions.

6 And here, we don't believe that he has
7 met his requisite burden.

8 Specifically for failing to object to
9 Meers's testimony, I wanted point the Court to a
10 case, a South Carolina Court of Appeals case,
11 State vs. McCray, which is 413 S.C 76, where the
12 Court of Appeals actually found that if
13 applicant's confrontation clause rights were
14 violated when a SLED peer reviewer testified in
15 lieu of someone who did the SLED report and had no
16 independent recollection, it was testimony
17 hearsay, and that person was merely serving as a
18 conduit for someone else's testimony.

19 We don't have that here. We have the
20 person who conducted the analysis, who could --
21 who had independent recollection. And, because of
22 this, this should be denied.

23 Furthermore, regarding the tool marks and
24 the reliability of a specialist, there is no
25 South Carolina law or directive that Mr. Falk

1 could cite to or Mr. Plexico with both of their
2 amounts of experience regarding the reliability of
3 the tool mark -- excuse me -- of the tool marks
4 and reliability specialties. And to say that --
5 let me rephrase. The standard here is that
6 counsel has to be deficient according to
7 professional norms.

8 As Mr. Plexico testified to, he attended
9 various conferences, he practices in federal court
10 as well as state court, and he had not heard about
11 this specific reliability.

12 In PCR, individuals -- excuse me. Under
13 Strickland, individuals are not entitled to a
14 perfect representation, but one that is
15 reasonable. And here, I believe that
16 Mr. Plexico's representation of applicant was
17 reasonable presented with what he was -- presented
18 with the overwhelming amount of evidence.

19 So for those reasons, Your Honor, I ask
20 that the Court deny Mr. Poacher's application for
21 PCR, and that the State be provided an opportunity
22 to further brief the issue that Mr. Falk brought
23 up.

24 MR. FALK: Your Honor, if I could -- I
25 think the State is sort of mischaracterizing my

1 argument regarding Miss Meers's testimony. I
2 mean, I know the McCray case. That's actually my
3 client. It was my case. I wasn't saying it was
4 conduit testimony. My concern with the testimony
5 was that it was bolstering testimony of an expert.

6 I mean, first of all, it bolsters. And I
7 have people who received PCR relief where the
8 State has impermissibly bolstered their own
9 witnesses.

10 And then the second point is, possibly,
11 that there is a confrontation issue because it is
12 referring to testimony from somebody who is not in
13 the courtroom.

14 THE COURT: Thank you.

15 MS. MIMS: May I reply?

16 THE COURT: Sure.

17 MS. MIMS: As it came out on
18 cross-examination, it was in Mr. Plexico's
19 testimony where the -- where Miss Meers first
20 spoke about her work being peer reviewed. And
21 because of that, he went further on to distinguish
22 a human peer review versus a computer peer review.
23 And he spoke again about this in his closing. And
24 so I think, again, that's easily distinguishable.

25 And I don't believe the State's case was

1 bolstered either. The State -- I apologize, Your
2 Honor.

3 THE COURT: That's all right.

4 MS. MIMS: It wasn't the State that
5 bolstered the testimony of the witness. It came
6 out during Mr. Plexico's cross-examination in
7 which he was able to distinguish that greatly. So
8 I don't believe there was any bolstering.

9 THE COURT: Okay, thank you. I'm going
10 to take it under advisement. Is there is
11 anything -- since you did not have the report that
12 Mr. Falk referred to, if there's something that
13 you want to give to me, say within, like, 10 days,
14 I'll be glad to look at anything else you want to
15 give me.

16 MS. MIMS: All right. Thank you.

17 THE COURT: Thank you-all.

18 (The hearing was concluded.)

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions Court for Jasper County, South Carolina.

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

July 4, 2023



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)
)
)
 Joshua Poacher, #372249,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-27-00163

ORDER OF DISMISSAL

2023 DEC -7 P 1:23
 FILED
 CLERK OF COURT
 JASPER COUNTY

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Joshua Poacher (Applicant) on April 10, 2020. Respondent made a return requesting an evidentiary hearing. On July 18, 2022, an evidentiary hearing convened before this Court. Applicant was present and represented by James K. Falk, Esquire. Assistant Attorney General Lauren Mims represented Respondent. Applicant did not testify at the hearing but called as a witness trial counsel Stephen Plexico, Esquire. Respondent did not call any witnesses. After reviewing all records and evidence before this Court, this Court finds Applicant failed to meet his burden of proof and denies and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In December 2015, the Jasper County Grand Jury indicted Applicant for two counts of murder (2015-GS-27-00378, -00379), armed robbery (2015-GS-27-00490), and possession of a weapon during the commission of a violent crime (2015-GS-27-00491). On April 10-13, 2017, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. Stephen Plexico, Esquire represented Applicant. Solicitor Issac McDuffie Stone and Assistant Solicitor Mary Jones prosecuted the case. Applicant was found guilty as indicted and sentenced concurrently to life for each murder charge, thirty years for armed robbery, and five years for the weapon charge.

Applicant filed a timely notice of appeal that was perfected by Appellate Defender Kathrine H. Hudgins through filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed pursuant to Anders. The remittitur was sent May 3, 2019.

Summary of Relevant Facts

At trial, the State presented evidence that Applicant robbed and fatally shot two housekeepers at a Best Western hotel; both were deceased when emergency personnel arrived. (Tr. 138). One victim suffered two gunshot wounds: one to the wrist and the other to the neck. (Trial Tr. 338). The other victim suffered four gunshot wounds: three on the left arm or shoulder and the fourth entering through the left side of the back and exiting through the base of the neck. (Tr. 344-47). Several hotel guests heard gunshots and gave a description of the man leaving that was consistent with Applicant's appearance, and an eyewitness identified him from a lineup. (Tr. 163-71, 217-19). Police recovered a gun from Applicant's room in a different hotel; an expert in tool markings and firearm identification testified cartridges recovered from the scene and a cartridge recovered from one of the victims were fired by the gun. (Tr. 300-05). The State also presented evidence showing Applicant attempted to use one of victim's debit cards fifteen times the day following the murder. Additionally, Applicant's fingerprints were found on paperwork in the room where the victims were shot. (Tr. 262-66). Finally, Applicant gave a statement to law enforcement acknowledging he was present at the crime scene, but claiming he did not intend to rob anyone.

Current Action Before this Court

On April 10, 2020, Applicant timely filed this PCR application generally alleging ineffective assistance of counsel. Prior to the hearing, he amended his application to allege:

- I. Ineffective assistance of counsel:
 - a. Failed to object to testimony that Kimberly Mears' latent print analysis was peer reviewed. The statement impermissibly bolstered agent Mears' testimony. Additionally, since defendant

had no opportunity to confront the other SLED agents that peer-reviewed agent Mears' analysis, the testimony that her work was peer reviewed violated the Confrontation Clause.

- b. Failed to request a hearing pursuant to *State v. Council*, 335 S.C. 1 (1999) to challenge the reliability of SLED agent Suzanne Cromer's expert testimony in the field of toolmarks and firearm identification.

At the PCR hearing, Applicant proceeded only on the allegations of his amended application. Applicant also asserted counsel should have more rigorously cross-examined Cromer's testimony. This Court finds any other allegations raised in his initial application are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Trial Counsel testified he met with Applicant at least thirteen times and discussed the charges with Applicant the first time he met him. (PCR 20-21). He stated he spoke with Applicant before even he was appointed. Trial Counsel advised him not to talk to law enforcement. Applicant disregarded this advice, however, and initiated a lengthy interview with law enforcement on his own, wherein he admitted to being on scene with a gun. (PCR 7-8, 21-22). Trial Counsel averred the case's trajectory was effectively set once Applicant provided statements to police, and he did not see a way of excluding the confession at trial. (PCR 20, 22 22). He stated his trial strategy was to try and capitalize on any error the State made at trial. (PCR 22)

Trial Counsel testified the State had fingerprint evidence, and he rigorously cross-examined the fingerprint expert Mears about the difference between the European standard and the American standard. (PCR 9). He explained the European standard requires sixteen common points whereas the American standard requires fewer points, and he was trying to convey to the jury that the American standard is less rigorous. (PCR 9). He averred this line of questioning would lead to doubt in the jurors' minds. (PCR 9). Counsel testified he did not know anything

about Mears's work being peer reviewed but stated "that's pretty much their standard practice." (PCR 10). He agreed the testimony that her report had been peer-reviewed amounted to vouching for her work. (PCR 10-11). He agreed he did not have the opportunity to cross-examine any peer-reviewers. (PCR 11).

Trial Counsel testified he tried to cross-examine Mears about the issues involved in fingerprint analysis and cast doubt on her testimony. (PCR 23-25). He stated he raised the issues with the fingerprint analysis during closing argument. (PCR 26). Trial Counsel testified it is sometimes a better strategy not to object at trial, so that more attention is not brought to something problematic for the defense. (PCR 27). He stated he never brought an independent expert in at trial to testify regarding fingerprint analysis. (PCR 27). Trial Counsel averred this would be a poor trial strategy because the independent expert would likely just vouch for the State's expert. (PCR 27-28).

Trial Counsel testified the State called Suzanne Cromer to testify as a ballistics expert from SLED. (PCR 11). He did not recall her credentials or know what testing she was subject to in determining if her results led to false positives in the past. (PCR 11-12). When asked, "[W]ould it have been helpful to know what type of false positives she's generated through her testing?", counsel replied, "In retrospect, that would have been helpful. I don't know the quality of how helpful it would have been." (PCR 12). He stated he did know SLED's testing procedure. (PCR 13). He agreed he did not know how many similar points were required for a match in firearms markings and it was a subjective test. (PCR 14).

Trial Counsel stated he had never reviewed the report "Forensic Science and Criminal Courts, Ensuring Scientific Validity of Feature Comparisons Methods," generated by the President's Counsel of Advisers on Science and Technology. (PCR 15). He acknowledged the

report effectively stated that firearm analysis falls short of the criteria required for foundational validity because there was only one study conducted supporting this analysis. (PCR 16). Trial Counsel testified had he seen this report, he would have requested a Council hearing pretrial. (PCR 16-17). He stated he was unaware of United States v. Monteiro, 407 F.Supp. 2d 351 (2005), and United States v. Green, 405 F. Supp. 2d (2005), which limited an “expert’s ability to opinion that a particular bullet came from a particular gun.” (PCR 17-18). Trial Counsel explained, “In all my years of doing this, I haven’t heard anything . . . about that.” (PCR 19). He stated he would have conducted a similar cross-examination of the firearms expert as he did the fingerprint expert if he knew of the report. (PCR Tr. 30). He stated he never heard of a directive in South Carolina specifically challenging firearm analysis. (PCR Tr. 29).

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying convictions, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof.

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d

813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Fingerprint Analysis Testimony

This Court finds Applicant failed to prove Trial Counsel was ineffective for failing to object to testimony by Agent Mears that her analysis was peer reviewed. He contends this statement impermissibly bolstered agent Mears’s testimony, and since he had no opportunity to confront the other SLED agents that peer-reviewed her analysis, the testimony that her work was

peer reviewed violated the Confrontation Clause.

This Court finds Applicant failed to prove counsel was deficient. Initially, Mears's testimony that all of the cases in her office were peer-reviewed did not improperly bolster her testimony, and no Confrontation Clause violation occurred based on Mears's mere passing statement that her work had been peer-reviewed—especially when Mears never commented on what that peer review revealed. (Tr. 275, 278, 280-81). Further, counsel articulated a valid strategy in not objecting because certain objections may draw more attention to the testimony for the jury, which is not helpful to the defense. Ultimately Mears's statement was a mere, passing statement that her work had been peer-reviewed, and counsel's credible testimony that he did not want to draw attention to this was reasonable within prevailing professional norms. Finally, this Court finds counsel's strategy in cross-examining Mears was reasonable under prevailing professional norms. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel"). Specifically, Trial Counsel's decision to focus his cross-examination on the less rigorous American standard for fingerprint comparison was reasonable. Ultimately Applicant did not prove counsel was deficient in this regard.

Further, Applicant did not prove prejudice in light of Applicant's own statement to law enforcement that he was present at the crime scene. Initially, this Court finds it is not reasonably likely the fingerprint evidence itself would have been excluded based upon an objection of improper bolstering or a Confrontation Clause violation. This Court further finds the State had a strong case against Applicant that included Applicant's incriminating statements, several eyewitnesses describing a man matching his description, a witness identification from a photo-lineup, and the fact Applicant was caught using the victims' ATM cards. Based on the foregoing,

this Court finds it is not reasonably likely the outcome would be different had Trial Counsel raised this objection. Thus, Applicant did not prove prejudice, and this claim is denied.

Cromer's expert testimony

This Court finds Applicant did not prove Trial Counsel was ineffective for failing to request a pre-trial hearing on Cromer's expert testimony or in his cross-examination of Cromer. "[T]he proper analysis for determining admissibility of scientific evidence is now under the SCRE." State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). "When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." Id. To determine reliability, the trial judge should apply the Jones factors. Id. "[U]nder the Jones standard, the Court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved ; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." Id. at 1, 515 S.E.2d at 517.

Initially, this Court finds the expert testimony presented by Cromer related to identifying firearm markings on cartridge casings is common testimony in South Carolina by experts in this field; thus, Trial Counsel's failure to challenge the reliability of this testimony did not fall outside of prevailing professional norms and was not deficient. Likewise, Applicant did not show a reasonable likelihood this testimony would have been excluded under Jones. Although Applicant cited to a single article that he alleged "found firearm analysis falls short of the criteria required for a foundational validity because there was only one study conducted backing this analysis," the standard under Jones and Council does not require universal acceptance.¹ Thus, this singular

¹ Applicant's reliance on United States v. Monteiro, 407 F.Supp. 2d 351 (D. Mass. 2005), and United States v. Green, 405 F. Supp. 2d 104 (D. Mass. 2005) is misplaced because these cases applied the Daubert standard that was rejected

article standing alone does not foreclose the reliability of this expert testimony.² Because Applicant did not show a reasonable likelihood this expert testimony would have been deemed unreliable under Jones and thus excluded, he did not prove counsel was deficient for not challenging its reliability. This Court further finds Trial Counsel's cross-examination of Cromer was reasonable within prevailing professional norms, and Applicant did not set forth what more counsel should have done that would have reasonably changed the outcome. Thus, he did not prove deficiency in counsel's conduct related to Cromer.

Likewise, Applicant did not prove prejudice from Trial Counsel's failure to further challenge Cromer's testimony. As noted, even if Trial Counsel had challenged the reliability of this testimony under Jones—the proper standard in South Carolina—it is not reasonably likely it would have been excluded as unreliable. Finally, based on the overwhelming evidence against Applicant, it is not reasonably likely the outcome would have been different had Trial Counsel successfully excluded Cromer's expert testimony. Specifically, Applicant provided incriminating statements to police; several eyewitnesses heard the gunshots and saw a person matching Applicant's description leaving the area; an eyewitness selected Applicant from a lineup; and police recovered Applicant's fingerprints from paperwork at the scene. Based on the foregoing, it is not reasonably likely the outcome would have been different had Trial Counsel objected to Cromer's expert testimony, and this claim is denied.

Conclusion

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is

by our Supreme Court in Council. This Court further notes both courts found the underlying methodology of firearms identification sufficiently reliable to be admitted. Monteiro, 407 F. Supp. 2d at 372; Green, 405 F.Supp.2d at 124.

² This Court further notes Applicant did not enter this report into evidence at the PCR hearing, making any conclusion about whether Cromer's testimony would have been excluded by this report speculative at best.

denied and dismissed with prejudice. Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. applicant has the right to an 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). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 27th day of November, 2023.



KRISTI F. CURTIS
Presiding Judge
Fourteenth Judicial Circuit



_____, South Carolina.

8432345678

WITNESSES

Richard Johnson - SLED

DOCKET NO. 2015GS2700490

The State of South Carolina
County of Jasper

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

Defendant

COURT OF GENERAL SESSIONS

December Term 2015

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

THE STATE

vs.

Joshua Lenard Poacher

ARREST WARRANT NUMBER

2015GS2700490

JAEUSSEI

Indictment For

Robbery - Armed or Alleging Armed With Deadly Weapon

SC Code: 16-11-330(A)

CDR Code: 0139

TRUE BILL

NO BILL

DATE

TRUE

G. J. ...

12/17/15

Foreperson of Grand Jury

Date:

Defendant

VERDICT

X Guilty

Witness:

X J. E. ...

Foreperson of Petit Jury

Date:

4-12-17

C.C.C. PLS. and G.S.

INDICT

8432345678

03:07:54 p.m. 04-17-2017

2 / 9

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

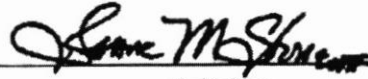
INDICTMENT
2015GS2700490

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Jasper County present upon their oath:

Robbery - Armed or Alleging Armed With Deadly Weapon

That in Jasper County, South Carolina, on or about August 16, 2015, the Defendant, Joshua Lenard Poacher, did commit robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did take and carry away goods and/or monies from the person or immediate presence of Hansaben and Kantibha Patel with the intent to permanently deprive them of possession thereof, all in violation of Section 16-11-330(A), et al. of the Codes of Law of South Carolina.

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



Solicitor

8432345678

03:09:56 p.m. 04-17-2017

9/9

WITNESSES

Richard Johnson - SLED

DOCKET NO. 2015GS2700491

The State of South Carolina
County of Jasper

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

Defendant

COURT OF GENERAL SESSIONS

December Term 2015

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

THE STATE

vs.

Joshua Lenard Poacher

ARREST WARRANT NUMBER

2015GS2700491

1A50353

[Handwritten signature]

Indictment For

Possession of Weapon During Violent Crime

SC Code: 16-23-490

CDR Code: 0549

TRUE BILL *TRUE*

NO BILL

FOREMAN *[Signature]*

DATE *12/17/15*

Foreperson of Grand Jury

Date:

Defendant

VERDICT

X Guilty

Witness:

Foreperson of Petit Jury

Date: *4-12-17*

INDICT

C.C.C. PLS. and G.S.

8432345678

03:09:39 p.m. 04-17-2017

8 / 9

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

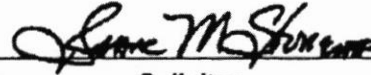
INDICTMENT
2015GS2700491

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Jasper County present upon their oath:

Possession of Weapon During Violent Crime

That in Jasper County, South Carolina, on or about August 16, 2015, the Defendant, Joshua Lenard Poacher, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

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



Solicitor

8432345678

03:09:19 p.m. 04-17-2017 7/9

WITNESSES

Richard Johnson - SLED

DOCKET NO. 2015GS2700379

**The State of South Carolina
County of Jasper**

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

Defendant

COURT OF GENERAL SESSIONS

December Term 2015

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

ARREST WARRANT NUMBER

2015A2710300005

THE STATE

vs.

Joshua Lenard Poacher

[Handwritten signature]

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

Defendant

TRUE BILL *True*

NO BILL

FOREMAN *W. S. Poacher*

DATE *12/17/15*

Foreperson of Grand Jury

Date:

Witness:

VERDICT

X *Guilty*

X *[Handwritten signature]*

Foreperson of Petit Jury

Date: *4-12-17*

INDICT

C.C.C. PLS. and G.S.

8432345678

03:09:07 p.m. 04-17-2017

6 / 9

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

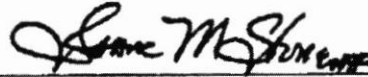
INDICTMENT
2015GS2700379

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about August 16, 2015, the Defendant, Joshua Lenard Poacher, did, with malice aforethought, kill Kantibha Patel and Kantibha Patel did die as a proximate result of Joshua Lenard Poacher's actions, to wit: by means of shooting her, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

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



Solicitor

8432345678

03:08:52 p.m. 04-17-2017 5/9

WITNESSES

Richard Johnson - SLED

DOCKET NO. 2015GS2700378

The State of South Carolina
County of Jasper

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

Defendant

COURT OF GENERAL SESSIONS

December Term 2015

I _____

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

THE STATE

vs.

Joshua Lenard Poacher

ARREST WARRANT NUMBER

2015A2710300004

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

Defendant

Witness:

C.C.C. PLS. and G.S.

TRUE BILL *TRUE*

NO BILL

FOREMAN *J. K. Stouter*

DATE *12/17/15*

Foreperson of Grand Jury

Date:

VERDICT

X Guilty

Foreperson of Petty Jury

Date: *4-12-17*

INDICT

8432345678

03:08:36 p.m. 04-17-2017

4/9

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

INDICTMENT
2015GS2700378

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about August 16, 2015, the Defendant, Joshua Lenard Poacher, did, with malice aforethought, kill Hansaben Patel and Hansaben Patel did die as a proximate result of Joshua Lenard Poacher's actions, to wit: by means of shooting him, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

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


Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

JASPER

STATE

INDICTMENT/CASE#:

2015-GS-27-0378

AKA:

JOSHUA POACHER

A/W#:

2015A2710300004

Race:

B

Sex:

M

Date of Offense:

8/11/15

DOB:

74

SS#

S.C. Code §:

16-03-0010

Address:

1 FRONTAGE RD.

CDR Code #:

0112

City, State, Zip:

YEMASSEE SC 29945

DL#

SID#

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 of the S.C. Code of Laws, bearing CDR Code # 0112

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

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

ATTEST:

[Signature] 11883/

Solicitor

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: The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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. _____

Recipient: _____

May serve W/E beginning Substance Abuse Counseling

*Fine:		\$	0
§14-1-206 (Assessments 107.5%)		\$	0
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	0
§56-5-2995 (DUI Assessment)	\$12	\$	0
§56-1-286 (DUI Breath Test)	\$25	\$	0
Proviso 61.6 (Public Def/Probation)	\$500	\$	0
§14-1-212 (Law Enforce. Funding)	\$25	\$	25
§14-1-213 (Drug Court Surcharge)	\$150	\$	0
§50-21-114 (BUI Breath Test Fee)	\$50	\$	0
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	0
3% to County (if paid in installments)		\$	3.75

Random Drug/Alcohol Testing Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____ \$ _____ Paid to Public Defender Fund

Other: _____

TOTAL \$ 128.75

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk *Monja Manley*
Court Reporter: *Monja Manley*

Presiding Judge *[Signature]*
Judge Code: *2155*
Sentence Date: *4-12-17*

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

JASPER

STATE

VS.

JOSHUA POACHER

INDICTMENT/CASE#: 2015-GS27-0379

A/W#: 2015-02-710300005

AKA:

Race:

Sex: M

DOB:

SS#:

Address:

51 FRONTAGE RD.

City, State, Zip:

VENASSEE SC 29945

DL#

SID#

*CDL Yes No CMV Yes No Hazmat Yes No

Date of Offense: 8/11/15

S.C. Code §: 16-3-10

CDR Code #: 0114

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Murder

CONVICTED OF or PLEADS

In violation of § 16-33-0010 of the S.C. Code of Laws, bearing CDR Code # 0114

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

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury (def.'s initials) Negotiated Sentence. Recommendation by the State.

ATTEST:

[Signature]

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

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: _____

Set by SCDPPPS

Recipient: _____

*Fine:		\$	0
§14-1-206 (Assessments 107.5%)		\$	0
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	0
§56-5-2995 (DUI Assessment)	\$12	\$	0
§56-1-286 (DUI Breath Test)	\$25	\$	0
Proviso 61.6 (Public Def/Probation)	\$500	\$	0
§14-1-212 (Law Enforce. Funding)	\$25	\$	25
§14-1-213 (Drug Court Surcharge)	\$150	\$	0
§50-21-114 (BUI Breath Test Fee)	\$50	\$	0
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	0
3% to County (if paid in installments)		\$	3.75

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, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge *[Signature]*
Judge Code: 0155
Sentence Date: 7-12-17

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk *Maya Boshck*
Court Reporter: MONA MANLEY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

JASPER

STATE

INDICTMENT/CASE#: 2015-GS-27-00490

VS. JOSHUA POACHER

A/W#: 2015GS2700490

AKA:

Date of Offense: 8/11/15

Race: B

Sex: M

S.C. Code §: 16-11-330(B)

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0024

Address: [REDACTED] FRONTAGE RD.

City, State, Zip: Yemassee SC 29945

DL#

SID#

*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO:

Armed Robbery

In violation of §

16-11-330(B)

of the S.C. Code of Laws, bearing CDR Code #

0024

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As indicted, Lesser Included Offense,

Defendant Waives Presentment to Grand Jury (def.'s initials)

The plea is: Without Negotiations or Recommendation,

Negotiated Sentence, Recommendation by the State

ATTEST:

[Signature]
Solicitor

Solicitor

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 30 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 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 (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. _____

Recipient: _____

May serve W/E beginning Substance Abuse Counseling

*Fine:		\$	0
§14-1-206 (Assessments 107.5%)		\$	0
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	0
§56-5-2995 (DUI Assessment)	\$12	\$	0
§56-1-286 (DUI Breath Test)	\$25	\$	0
Proviso 61.6 (Public Def/Probation)	\$500	\$	0
§14-1-212 (Law Enforce. Funding)	\$25	\$	25
§14-1-213 (Drug Court Surcharge)	\$150	\$	0
§50-21-114 (BUI Breath Test Fee)	\$50	\$	0
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	0
3% to County (if paid in installments)		\$	3.75

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

TOTAL

\$ 128.75

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk

Margaret Boshard

Court Reporter: MONA MANLEY

Presiding Judge

Judge Code: 2155

Sentence Date: 4-12-17

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Jasper

STATE

vs. Joshua Poacher

INDICTMENT/CASE#: 2015 Gs 27 - 0491

AW#: 2015 Gs 2706491

Date of Offense: 5/16/15

S.C. Code §: 16-23-490

CDR Code #: 0549

AKA:

Race: B

Sex: M

Age: 22

DOB: 10/12/92

SS#: [REDACTED]

Address: [REDACTED]

Frontage ca. [REDACTED]

City, State, Zip: Newmarket, SC

DL#

SID#

*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Possession of a Weapon During Commission of Viol. Crime

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence. Recommendation by the State.

ATTEST:

[Signature]

Solicitor

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 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 (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. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling

*Fine:		\$	0
§14-1-206 (Assessments 107.5%)		\$	0
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	0
§56-5-2995 (DUI Assessment)	\$12	\$	0
§56-1-286 (DUI Breath Test)	\$25	\$	0
Proviso 61.6 (Public Def/Probation)	\$500	\$	0
§14-1-212 (Law Enforce. Funding)	\$25	\$	25
§14-1-213 (Drug Court Surcharge)	\$150	\$	0
§50-21-114 (BUI Breath Test Fee)	\$50	\$	0
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	0
3% to County (if paid in installments)		\$	3.75

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter: MONA MANLEY

[Signature] Maytal Boshick

Appointed PD or appointed other counsel. Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2155

Sentence Date: 7-12-17