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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

Lower Court Case No. 2017-CP-40-04518

William A. Wallace, #320396, Applicant,

vs.

State of South Carolina, Respondent.

Of Whom William A. Wallace is the Appellant

NOTICE OF APPEAL

William A. Wallace appeals the order of the Honorable Mat Murphy, dated September 5, 2024. Appellant's attorney received written notice of the entry of this order on October 2, 2024.

October 14, 2024

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
William A. Wallace, #320396	)	CASE NO. 2017-CP-40-04518
Applicant,	)	
v.	)	**ORDER OF DISMISSAL WITH PREJUDICE**
State of South Carolina,	)	
Respondent.	)	

Presiding Judge:	Hon. Maité Murphy
Applicant's Attorney:	Kimberly Y. Brooks, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Trial Counsels:	Stephen F. Krzyston, Esq. Kris Hines, Esq. Lucas Daniel Hawks, Esq.
Date of Hearing:	January 11, 2024
Court Reporter:	Lisa Carter

This matter comes before the Court by way of William A. Wallace's (Applicant) application for post-conviction relief (PCR) filed on July 28, 2017. On June 5, 2018, Respondent submitted its Return and Partial Motion to Dismiss. Respondent requested an evidentiary hearing on Applicant's claims and its motion to dismiss.

On January 11, 2024, an evidentiary hearing was held before the Honorable Maité Murphy. Applicant was present and represented by Kimberly Y. Brookes, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant testified on his behalf, and Respondent presented testimony from Stephen F. Krzyston, Esquire, Kris Hines, Esquire, and Lucas D. Hawks, Esquire, referred to collectively as Trial Counsel. Additionally, Respondent presented testimony from Fifth Circuit Deputy Solicitor April W. Sampson.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Richland County Clerk of Court. In July 2013, the Richland County Grand Jury indicted Applicant for Attempted Murder (2013-GS-40-04547), two counts of Murder (2013-GS-40-04548; 2013-GS-40-04554), Armed Robbery (2013-GS-40-04549), and three counts of Kidnapping (2013-GS-40-04550; 2013-GS-40-04551; 2013-GS-40-04553). Richland County Public Defenders Stephen F. Krzyston, Lucas D. Hawks, and Kris Hines, Esquires, represented Applicant. Fifth Circuit Assistant Solicitors April W. Sampson, Vance Eaton, and Daniel Coble, Esquires, prosecuted the case.

On January 21, 2014, a Motion to Relieve Counsel hearing convened before the Honorable Alison Renee Lee in Richland County. At the motion to relieve counsel hearing, it was established that Counsel Krzyston had been appointed for about a month. Mot. to Rel. Tr. 8. Previously, Applicant was represented by Mr. Strickler, and in April of 2013, Mr. Strickler transferred the case to Mr. Collins, who then left the Public Defender's office during the week of December 5, 2013. *Id.* Shortly thereafter, Applicant was served with the State's intention to seek life without parole close to when Applicant learned of Mr. Collins's departure and that his case would be again transferred to another attorney in the office. *Id.* Having his case transferred multiple times prompted Applicant to file a motion to relieve counsel. *Id.* The State took no position. Counsel

Krzyston indicated he had conducted initial discovery, assigned a second and third seat, and had no opposition in his continued representation of Applicant. Mot. to Rel. Tr. 8–9. The Court denied Applicant's request to relieve Counsel Krzyston. Mot. to Rel. Tr. 16–18.

PRE-TRIAL MOTIONS AND TRIAL

On July 31, 2014, a pre-trial hearing occurred before the Honorable Robert E. Hood in Kershaw County. Trial Counsel raised several motions, including motions to reveal any grants, proffers, or promises of immunity in exchange for testimony for any of the State's witnesses, to limit/exclude some of the photographs that the State would seek to admit, to compel on certain evidence they believed to exist, and requesting a *Jackson v. Denno*[1] hearing to address the admissibility of any statements made by their client as to their voluntariness.

On August 11–15, 2014, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. Trial Counsel made a pre-trial motion to exclude T-Mobile phone records because the exigency was not sought, and in support, Trial Counsel had evidence of the exigency request that SLED completed and transmitted.[2] Trial Tr. 113; Court Ex. 1. Trial Counsel also motioned to change venue. Trial Counsel also motioned to suppress approximately forty-three objectionable photographs based on their gruesome nature. Specifically, Counsel Krzyston argued there were sixteen autopsy photos, two photos of victim Pratt in the bathtub, one photo of Athell Johnson on the floor, eight photos of the bedroom in which Athell Johnson was found, and an additionally sixteen photos of the bathroom which depicted a large amount of blood. Judge Hood denied the motion regarding the exigency report, the motion regarding the issue of the firearms raised in

[1] *Jackson v. Denno*, 378 U.S. 368 (1964).

[2] The trial record memorializes Counsel Krzyston's argument that the circumstances SLED laid out on the exigency request did not match what law enforcement apparently knew at the time. However, the testimony of Richland County Officers refuted such contentions and indicated that the request was properly based on facts law enforcement knew at the time, prompting the search and arrest of Applicant. Trial Tr. 119.

Kershaw County, the motion to suppress the cell phone, and the motion to change venue. Regarding the 404(b) issues, the State agreed that the word "stolen" would be redacted and that the incident would only be about an altercation with words a couple of days prior. Trial Tr. 132.

Applicant was convicted of all charges as indicted. Judge Hood sentenced Applicant to three consecutive terms of life imprisonment without the possibility of parole for each murder and the attempted murder. Applicant received additional life sentences for each of his three kidnapping convictions and the armed robbery conviction. The latter four life sentences were issued concurrent to the third consecutive life sentence.

DIRECT APPEAL

On August 21, 2014, Applicant filed a timely Notice of Appeal. Appellate Defender Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense-Division of Appellate Defense, perfected the appeal presenting the following issue:

> Did the trial judge err in finding that the exigent circumstances exception to the search warrant requirement applied in refusing to suppress records obtained from a cell phone company without a search warrant or court order?

The Court of Appeals affirmed Applicant's conviction and sentence. *State v. Wallace*, Op. 2016-UP-344 (Ct. App. filed June 29, 2016). The Court of Appeals found overwhelming evidence of Applicant's guilt, thus the admission of the cell phone location data would constitute harmless error, and merely noted as dicta that "federal appellate courts, including a recent *en banc* decision from the United States Court of Appeals for the Fourth Circuit, have uniformly found such police action does not violate the Fourth Amendment." *Id.* (citing *United States v. Graham*. Op. No. 12-4659, 4–5 (4th Cir. filed May 31, 2016) (*en banc*) ("We now hold that the Government's [warrantless] acquisition of historical [cell-site location information] from Defendants' cell phone

provider did not violate the Fourth Amendment.")). Pursuant to Rule 221(a), SCACR, Applicant filed a Petition for Rehearing on July 14, 2016. The Court denied the petition on August 18, 2016.

On September 19, 2016, Applicant filed a Petition for Writ of Certiorari. The Supreme Court of South Carolina denied the petition on May 30, 2017. The Remittitur was returned to the circuit court on June 2, 2017.

FACTS GIVING RISE TO THE CONVICTION

Around 10:00 AM on June 28, 2012, Raquel Weston (Victim) received a phone call from her boyfriend Athell Johnson telling her to "bring the money and hurry up." R. 982:2–5. Johnson was wheelchair-bound, having been paralyzed from the waist down, and Victim helped care for Johnson at their Garners Ferry Road apartment. R. 976:9–977:18. Victim also held Johnson's money; Johnson was a drug dealer and regularly asked Victim to store cash in a backpack at Victim's second apartment. R. 978:12–979:15.

That morning, Victim grabbed the backpack and drove to the Garners Ferry Road apartment. R. 984:17–25. When she arrived, the door was locked, and when she used her key to open it, she found Johnson "laying on the right side of the living room. His feet were tied up. His hands w[ere] tied behind his back. His wheelchair was in the corner[.]" R. 985:4–19. She tried to step back but was forcefully pulled inside by Applicant. R. 985:19–21. Victim knew Applicant because she had seen him with Johnson "almost every day" in recent months. R. 986:17–24.

Applicant had a gun and was not acting alone. Another man, DeAndre Diggs, was standing by Johnson with a knife. R. 986: 1-5. Applicant took Victim's cell phone, instructing her to put down her belongings and sit on the couch. (R. p. 987, ll. 11-21). Victim sat down

on her sectional sofa, noticing that Jamal Pratt, a longtime friend of Johnson's, was also tied up with trash bags on the floor nearby. R. 978:1–9, 987:23–988:14.

Next, Victim looked on at the Garners Ferry Road apartment as Applicant asked Johnson "if that was all the money." R. 988:16–17. Applicant walked around the apartment. R. 988:23–22. Diggs took Victim's hot iron and burned Johnson's leg and face. R. 988:10–16. Applicant told Victim that Johnson was going to die, then Victim watched as Diggs pulled paralyzed Johnson, now with a trash bag tied over his mouth, to another room. R. 990:1–15. Applicant made Pratt walk to another back room in the apartment. R. 683:20–24, 990:20-21. Diggs tied Victim's hands as she remained on the living room sofa. R. 991:2–8. Applicant "kept going back and forth outside" and returning. R. 991:13–16. Diggs left the apartment for good. R. 684:11–24, 992:1–7. Applicant walked down the hallway to the back of the apartment, and Victim heard four gunshots. R. 992:8–18.

Applicant emerged from the back of the apartment and led Victim to the "white old car" in the parking lot. Diggs and Victim held onto handguns, and there was another "big shotgun" in the passenger seat. R. 993:1–25. Applicant regularly drove his Aunt's white 1999 Buick LeSabre, which was missing a passenger's side mirror, and security footage showed that car arriving at the Garners Ferry Road complex around 10:00 AM. R. 459:14–460:20, 1066:1–23. Applicant next drove Diggs and Victim from Garners Ferry to Bluff Road and crossed "into a wooded area." R. 994:1–16. When Diggs asked Applicant about Johnson and Pratt, Applicant announced their fate by stating that "they were asleep." R. 688:14–21.

They arrived at a swampy area, and Applicant instructed Diggs to "get rid of Ms. Weston." R. 995. Applicant instructed Victim to get out of the car and walk with Diggs. R. 995:19–25. She walked down a dirt road until Diggs told her to walk into the woods. She hesitated. He pushed her.

She ran and tripped and fell. "Then he shot at [her] more than once." After two or three shots, she was lying in the woods, eyes closed. R. 996:10–19.

Applicant and Diggs drove to Applicant's residence. R. 694:4–15. Applicant unloaded the car of guns, drugs, and money, and they changed their shirts. R. 694:24–695:4. Wallace's friend Kimberly Cox picked them up, taking Diggs back to work at the chicken farm. R. 656:7–11, 697:7–12. Cox and Applicant then ran some errands around Broad River Road, ending up at the Burlington Coat Factory. R. 657: 6–24.

Back in the woods, Victim opened her eyes, took stock of her physical condition, and walked out to the nearest road. R. 996:21, 997:6. A farm worker in a Jeep saw Victim "waving her hands covered in blood," and he picked her up to take her to the hospital. R. 250:2– 251: 4. Victim told him that she had been shot by Applicant and that there were two other victims at her Garners Ferry Road apartment. At the time, she did not know Diggs' name. R. 997: 9–25. The Jeep's driver called 911 and successfully flagged down a passing Sheriff's Deputy, who rendered roadside assistance until an ambulance arrived. R. 252:18–253:7. Victim also told the Sheriff's Deputy that Applicant had shot her. R. 264:18–24.

Based on information from Victim, law enforcement responded to the Garners Ferry Road apartment. R. 768:17–25. Corporal Robert Moreland led the entry into the apartment, unlocking the door and leading law enforcement in clearing the apartment. R. 321:3–23, 323:8–25. They first found a victim in the back bedroom straight down the hallway…leaning back against the bed." R. 324:4–14. The nonresponsive victim appeared to have suffered a gunshot wound to the head; he made "a death gurgle." R. 324:14–24. The second victim was found "lying face down in the bathroom. He also had the death gurgle ...." R. 325:4–10.

At the hospital, Victim was lucid despite sustaining gunshots in the head and arm. She made positive photo-lineup identifications of both Applicant and Diggs from a gurney. R. 443:1–444:25, 998:22–1003:4. Victim underwent successful surgery to remove and repair three gunshot wounds to the head and a fourth to an arm; she testified to the entirety of her experience at trial.[3] R. 537:3–540:5.

The other two victims, Johnson and Pratt, each suffered gunshot wounds to the right side of the head, resulting in irreversible brain damage and death. R. 533:5–535:11, 575:1–3. Johnson suffered a graze wound to the back of his head in addition to the fatal shot. R. 567:1–16. Stippling evident on each victim's head indicated that the shots were fired downward from a distance of only one to two feet. R. 554:18–566:10, 572:21–573:6, 574:21–23.

Richland County Fugitive Task Force simultaneously worked to locate William Wallace, seeking assistance from SLED. R. 345:11–346:20. Special Agent Diego Nova of SLED's fugitive unit received the call from Richland County and submitted an exigent form to T-Mobile to obtain Wallace's cell phone records. R. 495:9–496:23, 1198–1199. Nova received real-time call information, which placed Applicant "somewhere around the Bush River Road area" near "Dutch Square Mall." R. 499:2–25, 1200–1209. Law enforcement assigned to Wallace's apprehension were radioed to that area and "were able to see [Applicant] coming out of Burlington Coat Factory." R. 500:12–25. Applicant was apprehended on Bush River Road, where the Fugitive Task Force was "told over the radio basically to go to this area, fan out and start looking for the Crown Vic" that they believed Applicant to be driving. R. 347:6–350:14.

A few days later, on July 3, 2012, Investigator Michael Laurita responded to a call to Tashonda Toatley's (Toatley) residence off Rosewood Drive, where he recovered a Hi-Point nine-

[3] Diggs also testified in great detail to the entirety of his and Appellant's involvement. R. 662–740.

millimeter handgun from underneath her mattress. R. 291:10–22. Toatley called to report finding the firearm after receiving "several phone calls from [Applicant's] family where they were telling her that they had to come over to her house to retrieve something of [Applicant's]" and searching her house for a reason why. R. 307:19–308:2, 744:1–25. She recalled Applicant visiting her apartment on June 28, 2012. R. 743:3–24. She left him inside unattended and told him to lock the door on his way out. R. 308:2–8. That nine-millimeter Hi- Point recovered from underneath Toatley's mattress ultimately conclusively tested as a match for the gun that fired the bullets retrieved from Johnson and Pratt's heads. R. 928:21–929:14, 931:9–25.

At trial, the cell phone records obtained pursuant to the exigency request corroborated the testimony of other witnesses, including that of Victim and Diggs. Richland County Captain Scott McDonald (McDonald) testified that according to Applicant's T- Mobile call records and corresponding cell tower coordinates, Applicant first called Diggs on the morning of the murder. R. 10517:11–1053:15. Applicant made that call near the location where he dropped his Aunt off at work that morning. R. 1053:13–22. The following "significant" call McDonald testified to came from the area near the chicken farm where he next picked Diggs up from work. R. 1054:20–1055:5. Applicant's subsequent phone calls came between 10:00 AM and 12:00 PM near the Gamers Ferry Road apartment complex late in the morning, placing him at the crime scene. R. 1055:21–25, 1058:1–7.

CURRENT ACTION BEFORE THIS COURT

In his application for PCR, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. "Attorney failed to object to the qualification of Captain Scott McDonald as an expert witness in cell phone technology."

b. "My co-defendant plea to the charges that I were found guilty on."
c. "Officers of the law lied in obtaining invalid exigent request form."

2. Prosecutorial Misconduct
   a. Discovery violation on behalf of the State solicitor.
3. Allegations Contained in Attachments to Application:
   a. "Applicant Co-Defendant De'Andre Diggs testified at trial that Applicant committed both murders but did not see Applicant shoot anyone. Applicant Co-Defendant De'Andre Diggs would later plea to the charged that Applicant is serving time for, in which he testified Applicant had committed these crimes."
   b. "Sled Agent Diego Nova gave a false statement to obtain a Exigent Warrant which stated as follows: suspect is armed and dangerous has shot/killed one victim and struck female victim on the head with a handgun, escaped and is threatening the life of surviving victim and family. Applicant were never in custody and when located Applicant were arrested without any incident."
   c. "Trial Judge admitted into evidence the Exigent Warrant when he were aware that the statement of Sled Agent Diego Nova were false."
   d. "The State Solicitor April Sampson committed several motion violations by not turning over evidence that were in the custody of the State Investigator Don Robinson did a report and testified to his report that the defense were unaware of, statements were made by Tremaine Anderson, Jerica Sumter, and Terrance Francis that were not turn over to the defense and also Judge Hood informed the defense and the state to turn over all and any new evidence that are in the possession of either party that have not been reviewed by the other state or defense."
   e. "Investigator Harold Bouknight testified to marker A not being related to the crime scene and make A was published to jury as state exhibit 115."
   f. "Sgt Robert Moveland said he never saw scene like that but Judge Hood had rule court exhibit 117 in and were publish to the jury."
   g. "Investigator Stan Richards found a shell casing on the bed at 8100 Deer Meadow Village and did not do a DNA or fingerprints on the shell casing."
   h. "Captain Scott McDonald said he had a warrant in his hand for my arrest. Judge Hood denied the motion to suppress the statement do to their were a arrest warrant for my arrest. Warrant were obtained by Investigators Bolding and Kienzle

from the warrant division on Huger Street while Applicant were inside the car being transport to Alvin S. Glenn detention center four hours after being detain by RCSD."

i. "The Solicitor April Sampson tells the court cant nobody testify that the Applicant shot or killed anyone."
j. "The victim Raquel Weston tells investigators that Applicant Co-Defendant had a black hang un in her tweet bird bag, in which it were the same gun used to shoot victim and Athel Johnson and Jamal Pratt."
k. "Officer Matthew Taylor testified to a report officer Michael Laurita did, officer Matthew Taylor took a witness back to the crime scene and officer Matthew Taylor did not do a report in this incident."
l. "Judge Hood informed the state to notify the defense if their will be any promises in exchanged for testimony dismissal of charges r sentence reducing of Co-Defendant De'Andre Diggs."

At the evidentiary hearing, Applicant pled additional claims of ineffective assistance of counsel, as follows:

4. Ineffective Assistance of Counsel
   a. Failed to prepare because Trial Counsel was not aware of Investigator Don Robinson's investigative report.
   b. Failed to object to fabricated cell warrant.
   c. Failed to interview Applicant's brother, Brandon Mack and Officer Brayboy at Alvin S. Glen.
   d. Failed to object to Investigator Scott McDonald (McDonald) initials on photo identifying Applicant, which McDonald signed on behalf of Raquel Weston.
   e. Failed to call GSR expert to prove Applicant never fired a weapon.
   f. Failed to object to "hand of one, hand of all" charges.
   g. Failed to cross examine Will Cedarstaff and ask him about the evidence he handled.
   h. Failed to present evidence of recording from additional cameras from apartment complex that would have shown Applicant did not have a weapon.
   i. Counsel Krzyston was ineffective in his representation due to his inexperience.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act[4] (the Act) provides that any person who has been convicted of a crime may seek PCR based upon the following types of allegations:

> 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
> 2. That the court was without jurisdiction to impose sentence;
> 3. That the sentence exceeds the maximum authorized by law;
> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813,

[4] S.C. Code Ann. §§ 17-27-10 to -160.

814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and

"evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n 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." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of Trial Counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S.at 112.

Finally, 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 689–90. 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. Id. 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"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the PCR action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for PCR. See Rule 71.1(e), SCRCP (stating that in a PCR action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286

S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Trial Counsels' testimony at the evidentiary hearing **credible** and **persuasive,** where they presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the trial. This Court further finds applicable the strong presumption that at all stages of Trial Counsels' representation of Applicant they rendered adequate assistance and exercised reasonable professional judgment in their representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF COUNSEL ALLEGATIONS ON THE MERITS

Allegation 2a: **Discovery violation on behalf of Solicitor Sampson.**
Allegation 3d: **Solicitor Sampson failed to turn over written statements from Terrance Francis, Tremaine Anderson, Chantel Pick, and Victim.**

Applicant alleges prosecutorial misconduct in that Solicitor Sampson failed to turn over written statements from Terrance Francis, Tremaine Anderson, Chantel Pick, and Victim. This Court finds this allegation is without merit.

In evaluating post-trial Brady[5] claims, the applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material to guilt or punishment. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, *supra*. Furthermore, the prosecution has the duty to disclose such evidence even in the absence of a request by the accused. United States v. Agurs, 427 U.S. 97, 107 (1976).

PCR Evidentiary Hearing

On direct examination, Applicant testified there were statements made by Terrance Francis, Tremaine Anderson, Chantel Pick, and Victim, which he had never seen. PCR Tr. 11. Applicant testified Trial Counsel told him the State had never provided them with the statements. Id. Additionally, Applicant testified Solicitor Sampson stated at trial that she had spoken with Tremaine Anderson and called him to trial, but then she stated she had never spoken with Tremaine. Id.

On direct examination, Counsel Krzyston testified he does not recall any evidence that was not provided. PCR Tr. 18. Counsel Krzyston testified that if there were statements, they were disclosed. Id. Counsel Krzyston testified Solicitor Sampson may have met with some of the

[5] Brady v. Maryland, 373 U.S. 83 (1963).

witnesses and did not take formal statements from them. Id. Counsel Krzyston testified the substance of that information would have been relayed to them verbally or through email. Id. Counsel Krzyston testified he does not recall any issues concerning the lack of disclosure of witness statements. Id.

On direct examination, Solicitor Sampson testified she did not recall the witness Applicant testified to, Tremaine Anderson. PCR Tr. 37. Solicitor Sampson testified that she recalled one of the names being a girlfriend, who stated her boyfriend might be involved in the crime with Applicant, but the girlfriend decided not to testify. Id. Solicitor Sampson testified Trial Counsel was given every written statement. PCR Tr. 38. Solicitor Sampson testified that when she meets with witnesses, the witnesses often state things differently or add to their statements, and her duty is to provide those to the defense. Id. However, Solicitor Sampson testified these statements were not written, and she sent the defense emails or a Word doc with additional statements from witnesses. Id.

Findings

This Court finds the combination of the record, Trial Counsel's **credible** testimony, and Solicitor Sampson's **credible** testimony that there was no prosecutorial misconduct, **Brady** violations, or ineffective assistance of counsel. Solicitor Sampson **credibly** testified she turned over all the statements to Trial Counsel. Additionally, Trial Counsel **credibly** testified there was no indication of a lack of evidence disclosure. Trial Counsel **credibly** testified if there were any statements, they were disclosed. Applicant's contention that he was not provided statements is pure conjecture, especially considering the alleged witness statements or the witnesses' testimony were not provided at the evidentiary. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance. Furthermore, Applicant has failed to present sufficient evidence of any Brady violations or prosecutorial misconduct.

Accordingly, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4a: Failed to prepare because Trial Counsel was unaware of Investigator Robinson's investigative report.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to prepare and failing to investigate his case. Specifically, Applicant asserts Trial Counsel was unaware of Investigator Robinson's investigative report. This Court finds this allegation is without merit.

When claims of ineffective assistance of counsel are based on lack of preparation time, an applicant challenging his conviction must show specific prejudice resulting from counsel's lack of time to prepare. United States v. Cronic, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984); U.S. v. LaRoache, 896 F.2d 815 (4th Cir. 1990). To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete

investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

While counsel is not required to investigate or submit every conceivable line of mitigating evidence, a decision not to investigate must be reasonable. Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant was not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified Counsel Krzyston did not properly prepare because Counsel Krzyston had no knowledge of Investigator Don Robinson's (Inv. Robinson) report. PCR Tr. 8. Applicant testified that they found out about the report when Inv. Robinson was on the stand testifying. Id.

On direct examination, Counsel Krzyston testified he had mistakenly represented to the trial court that he did not have a copy of the investigative report. PCR Tr. 19. Counsel Krzyston testified there were various law enforcement agencies and officers involved with the search and investigation. Id. Counsel Krzyston testified he does not recall the report being substantive because Inv. Robinson was not the lead investigator on the case. Id. However, Counsel Krzyston testified that upon review, the report was in the back-slot pocket of the trial notebooks. Id.

On cross-examination, Counsel Krzyston testified that he had previously reviewed the investigative report. PCR Tr. 25.

On cross-examination, Counsel Hawks testified he did not recall any evidentiary concerns about the investigative report. PCR Tr. 31.

On direct examination, Solicitor Sampson testified she remembered this happening because it was the only time that has occurred. PCR Tr. 35. Solicitor Sampson testified there were so many agencies involved, and Applicant had been through different lawyers. PCR Tr. 35–36. Solicitor Sampson testified that there were many evidence issues, and they had to resend evidence because some videos were corrupt, but they tried to provide everything to Trial Counsel. PCR Tr. 36. At one point in trial, Solicitor Sampson testified that when Robinson testified concerning his report, Counsel Krzyston asked about the report. PCR Tr. 36. Solicitor Sampson testified she obtained a copy of the discovery list and email to Trial Counsel showing that Trial Counsel had a copy of the report. PCR Tr. 36.

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Counsel Krzyston **credibly** testified he

had the report and reviewed it, and it was a mistake on his part. Solicitor Sampson **credibly** testified Trial Counsel was provided with a copy of Inv. Robinson's investigative report. Counsel Krzyston's and Solicitor Sampson's **credible** testimony, combined with the record, reflects the report was in Trial Counsel's possession, they had an opportunity to review the report, and the report did not contain any evidence that would have benefited Applicant.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1c: **Officer lied in obtaining invalid exigent request form.**
Allegation 3b: **"Sled Agent Diego Nova gave a false statement to obtain a Exigent Warrant which stated as follows: suspect is armed and dangerous has shot/killed one victim and struck female victim on the head with a handgun, escaped and is threatening the life of surviving victim and family. Applicant were never in custody and when located Applicant were arrested without any incident."**
Allegation 4b: **Failed to object to a fabricated cell warrant.**

Applicant alleges Trial Counsel was constitutionally ineffective for failure to object. Specifically, Applicant asserts Trial Counsel failed to object to a fabricated cell warrant obtained by SLED Agent Diego Nova. This Court finds this allegation is without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n 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." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what

questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

Trial

During pre-trial hearings, Counsel Krzyston motioned to suppress the records obtained from T-Mobile as the exigency request was invalid and called Amber Lawson (Lawson) to testify to support the motion. Trial Tr. 101–02, 107. Lawson testified she created an incident report on the events that took place on June 28, 2012, related to the events giving rise to Applicant's conviction. Trial Tr. 103. Lawson testified she noted in her report that two individuals had been shot and testified she asked an officer if she needed to notify residents to take extra precautions. Trial Tr. 108–09. Lawson testified the officer responded there was no ongoing threat to the community. Trial Tr. 109–10.

On cross-examination, Lawson testified she was not aware of the information given to T-Mobile, and Lawson testified she was not mindful at the time of what the suspects had done, where they were located, or law enforcement's efforts in finding the suspects. Trial Tr. 111. Lawson testified that her question to the officer concerned the apartment complex's residents and not Richland County. Trial Tr. 112.

Based on this testimony, Counsel Krzyston argued the exigency request should be suppressed as the details included to support the exigency request did not comport with what law enforcement knew at the time. Trial Tr. 114–16. The trial court indicated that Lawson's testimony

was insufficient to support Counsel Krzyston's argument, and in response, Counsel Krzyston called McDonald to testify. Trial Tr. 116–24.

After hearing the testimony and arguments, the trial court denied Trial Counsel's motion, stating the following:

> As to the exigency request, I don't believe there is enough evidence in the record to determine that the exigency request was not appropriate. The testimony of a witness who says that some deputy told her what was going on doesn't fully encompass the exigency circumstances based upon the information contained in the exigency request and the lack of any evidence to the contrary as to what was in Agent Nova's mind at that time. The motion to suppress the exigency request is denied, and the motion to suppress the cell phone is denied.

Trial Tr. 133:12–23.

Direct Appeal

Applicant raised this issue on direct appeal, and the Court of Appeals held that if there was any error, the error was harmless considering overwhelming evidence against Applicant, including the immediate identification of Applicant by the victim, citing State v. Covert, 368 S.C. 188, 196, 628 S.E.2d 482, 487 (Ct. App. 2006) ("Error is harmless where it could not reasonably have affected the result of the trial. Generally, appellate courts will not set aside convictions due to insubstantial error not affecting the result." (citation and internal quotation marks omitted)), and State v. Herring, 387 S.C. 201, 215-16, 692 S.E.2d 490, 497 (2009) (finding that even if a search violated the Fourth Amendment the error was harmless given the overwhelming evidence of guilt).

Additionally, the Court of Appeals noted that though the Supreme Court "has not directly addressed the issue of whether the warrantless procurement of cell-site location data violates the Fourth Amendment, the federal appellate courts... have uniformly found such police action does not violate the Fourth Amendment." State v. Wallace, Op. No. 2016-UP-344 (Ct. App. filed June

29, 2016), citing United State v. Graham, Op. No. 12-4659, 4-5 (4th Cir. filed May 31, 2016) (en banc) ("We now hold that the Government's [warrantless] acquisition of historical [cell-site location information] from Defendants' cell phone provider did not violate the Fourth Amendment."); id. at 5-6 ("All of our sister circuits to have considered the question have held, as we do today, that the government does not violate the Fourth Amendment when it obtains historical [cell-site location information] from a service provider without a warrant.").

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified Trial Counsel should have objected to the exigent warrant request faxed to T-Mobile by Agent Diego Nova (Agent Nova). PCR Tr. 8–9. Applicant testified the warrant was fabricated. PCR Tr. 9. Applicant testified Trial Counsel did not object. Id.

On direct examination, Counsel Krzyston testified that when the decedents were discovered and law enforcement responded to Dear Meadow Apartments, they determined either contemporaneously or through an alternative means that Applicant was a suspect. PCR Tr. 20. Counsel Krzyston testified law enforcement faxed an exigency warrant request based on law enforcement's representation that Applicant was armed and dangerous because Applicant had threatened third parties. Id. Counsel Krzyston testified that they questioned the investigator who swore on the exigency warrant request. PCR Tr. 21. Additionally, Counsel Krzyston testified they subpoenaed and called the manager, who stated Applicant was armed and dangerous. PCR Tr. 21. Counsel Krzyston testified that the manager said the request was inconsistent with her statement, and Trial Counsel had challenged the admissibility of the warrant on that basis, but their motion was denied. Id.

Findings

Contrary to Applicant's assertion, the record reflects Trial Counsel moved to have the cell phone records suppressed based on an invalid exigency warrant. Ultimately, the trial court denied Trial Counsel's motion. This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, *supra*. This Court further finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Trial Counsel reasonably and adequately argued the motion to suppress the cell phone data based on the invalid exigency warrant.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4c: Failure to interview Applicant's brother Brandon Mack and Officer Brayboy.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to interview Brandon Mack and Officer Brayboy. This Court finds this allegation is without merit.

An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d

807 (1998). Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the PCR hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

PCR Evidentiary Hearing

On direct examination, Applicant testified there were no witnesses presented to testify on his behalf. PCR Tr. 10. Applicant testified that had Trial Counsel called his brother, Brandon Mack (Mack), and Officer Brayboy, one of them could have clarified what he was saying on a recorded phone call with Mack about removing some evidence. PCR Tr. 10. Additionally, Applicant testified that his co-defendant spoke with Officer Brayboy and told him certain things about his case that he wanted to bring to Trial Counsel and the State. PCR Tr. 11.

On cross-examination, Counsel Krzyston testified that he did not recall Applicant discussing his brother as a possible witness. PCR Tr. 25.

On cross-examination, Counsel Hawks acknowledged that the Applicant might have inquired about his brother being a witness. PCR Tr. 31. Counsel Hawks further explained that calling a witness would have necessitated a complete change in their defense strategy. PCR Tr. 31. He emphasized that they would have only called a witness if it would have bolstered their strategy. PCR Tr. 31. Counsel Hawks also clarified that they could not have prevented the Applicant from testifying. PCR Tr. 32. He reiterated that calling a witness would have meant a complete overhaul of their 'whole game plan.' PCR Tr. 32.

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. First, Counsel Krzyston **credibly** testified that he did not recall any discussion of calling Applicant's brother to testify. Additionally, Counsel Hawks **credibly** testified that calling witnesses would have changed the defense strategy, and Trial Counsel would only have called a witness to help their strategy. Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992), citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) ("Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective.").

Moreover, Applicant failed to produce and otherwise offer the testimony in accordance with the rules of evidence of either party at the evidentiary hearing. Mere speculation as to what a witness may or may not have testified to is not enough. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing.)

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4d: Failed to object to Investigator Scott McDonald's initials on photo identifying Applicant that he signed on behalf of Victim.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to Investigator Scott McDonald's initials on photo identifying Applicant that he signed on behalf of Raquel Weston (Victim). This Court finds this allegation is without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n 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." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d

1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not object to McDonald signing the victim's initials by his photo, which identified Applicant out of a photo line-up. PCR Tr. 12.

On direct examination, Counsel Krzyston testified he did not recall whether they objected to the officer signing Victim's initials. PCR Tr. 22. Counsel Krzyston testified that there may have been a third victim of the attempted murder who did testify against Applicant. PCR Tr. 23. Counsel Krzyston testified Applicant's co-defendant shot Victim in the head, and she was in the hospital. PCR Tr. 23. Counsel Krzyston testified the only thing he could think about is that "[Victim] was incapable of signing and so perhaps [McDonald] signed" on her behalf. PCR Tr. 23.

On direct examination, Solicitor Sampson testified that the victim was shot in the head, arm, and in her wrist. PCR Tr. 37. Solicitor Sampson testified a witness found the Victim, and the

Victim identified Applicant immediately after the incident. Id. Solicitor Sampson testified there was a "six pack line up photo ID," and while the Victim identified Applicant, she could not write. Id. Solicitor Sampson further testified McDonald signed Victim's initials, but the Victim was sitting there when he did it. PCR Tr. 38. Solicitor Sampson testified that Victim testified and identified Applicant and his co-defendant, and Applicant's co-defendant testified against Applicant. PCR Tr. 38.

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* This Court Solicitor Sampson **credibly** testified the victim identified Applicant as the shooter from a line-up but was unable to initial the line-up herself due to her injuries, specifically, the gunshot to her wrist. Solicitor Sampson **credibly** testified McDonald was sitting next to the Victim when she made the identification and initialed the photo line-up. No testimony or evidence was presented that the Victim's initials were signed against her wishes or under duress; instead, it was done contemporaneously with her identification and due to injuries that made her unable to initial herself. This Court cannot determine any basis upon which Trial Counsel could have objected under the circumstances.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Therefore, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4e: Failure to call GSR expert to prove Applicant never fired a weapon.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to call a GSR expert to prove Applicant never fired a weapon. This Court finds this allegation is without merit.

An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the PCR hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

Trial

At trial, the SLED analyst Whitney Berry (Berry) testified she did not personally take Applicant's GSR kit and that the sample was submitted to SLED. PCR Tr. 860. Berry testified that she took the sample from the evidence holding area from the trace department and analyzed it. Trial Tr. 860. Berry testified it is generally accepted that the GSR will not last on the hands or on a living person for more than six hours. Trial Tr. 858. Berry testified they looked at the four areas of the hands, and all of the areas of Applicant's hands were negative, but that did not mean that there was nothing on his hands. Trial Tr. 860.

PCR Evidentiary Hearing

On direct examination, Applicant testified that no experts were called at his trial. PCR Tr. 12. Applicant testified that he felt like experts should have been called. PCR Tr. 12. Specifically, Applicant testified the GSR expert should have been called to prove Applicant never fired a weapon. Applicant further testified he was arrested nearly two hours after the incident had occurred and underwent a GSR test at the scene. PCR Tr. 12. Applicant testified there were no GSR particles found on his hand to indicate he shot the weapon. PCR Tr. 12–13.

On cross-examination, Counsel Krzyston testified that he did not recall any discussions about GSR. PCR Tr. 23. Counsel Krzyston testified that if there had been a negative GSR test, then the results would have been evidence that favored Applicant. PCR Tr. 23.

On direct examination, Counsel Hines testified her main focus at trial was the firearms, not the GSR, but rather the match versus non-match itself. PCR Tr. 28.

On direct examination, Solicitor Sampson testified Applicant was arrested coming out of Burlington Factory around the late afternoon. PCR Tr. 39. Solicitor Sampson testified that Applicant did have a GSR test; however, it was done more than six hours later. PCR Tr. 38. Solicitor Sampson testified the GSR test was performed longer than the window customarily allows on a suspect. PCR Tr. 39. Solicitor Sampson testified the GSR result would have been negative anyway. Id.

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* This Court finds Solicitor Sampson **credibly** testified Applicant did undergo a GSR test; however, the test was performed later than

customarily allowed on a suspect. At trial, Berry testified that the GSR results for Applicant were negative. Based on the record before this Court, this Court cannot fathom what a GSR expert would have added that would have changed the outcome of his case.

Moreover, Applicant failed to produce and otherwise offer the testimony in accordance with the rules of evidence of either party at the evidentiary hearing. Mere speculation as to what a witness may or may not have testified to is not enough. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing.)

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Therefore, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4f: Failed to object to "hand of one, hand of all" charge.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the "hand of one, hand of all" jury charge. This Court finds this allegation is without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the

Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n 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." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland

standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

"Under [the hand of one, the hand of all] theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). Mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. State v. Condrey, 349 S.C. 184, 195, 562 S.E.2d 320, 325 (Ct. App. 2002). However, "presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a [principal]." State v. Hill, 268 S.C. 390, 395–96, 234 S.E.2d 219, 221 (1977).

Trial

At trial, Victim testified to Applicant's involvement in forcing her into the apartment and presence while her boyfriend, Athell, was being tortured. Trial Tr. 941–45. Victim testified that Applicant brought her into a bedroom and told her Athell was going to die because "He violated me…He is going to die." Trial Tr. 945–46. Victim testified Applicant instructed his co-defendant to tie her up, and Applicant had a gun in his hands. Trial Tr. 946–47. Victim testified Applicant

and his co-defendant drove her out into a wooded area, and Applicant instructed her to get out of the car and walk with his co-defendant, who had a gun. Trial Tr. 949–52. Applicant's co-defendant walked Victim into the woods, and then the co-defendant shot Victim multiple times. Trial Tr. 952.

PCR Evidentiary Hearing

On direct examination, Applicant testified he had an issue with how Trial Counsel handled the "hand of one, hand of all" charge. PCR Tr. 13. Applicant testified the State argued Applicant was present when his co-defendant walked the victim to the woods and shot her in the head. Id. Applicant testified that the victim stated he stayed in the car. Id. Applicant testified he had no knowledge his co-defendant would shoot the victim. Id.

On cross-examination, Counsel Krzyston testified he did not recall whether he objected to the "hand of one, hand of all" charges. PCR Tr. 23. Counsel Krzyston testified he did recall ample testimony from the witnesses that would have supported a conspiracy that would have availed the opportunity for the State to ask for that charge. PCR Tr. 23.

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Specifically, this Court finds ample evidence was presented at Applicant's trial not only of his presence and willful involvement in the crime but also evidence that he knew what would happen to Victim. Additionally, Trial Counsel **credibly** testified there was ample testimony from the witnesses that would have supported a conspiracy of aiding and abetting. Notably, Victim testified that Applicant and his co-defendant worked in concert in the murder of Athell and attempted murder of Victim. Therefore, the "hand

of one, hand of all" charge was appropriate, and Trial Counsel is not deficient for failing to object to the charge, and Applicant is unable to show resulting prejudice.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Therefore, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4g: Failure to cross-examine Will Cedarstaff and ask him about the evidence he handled.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to cross-examine Will Cedarstaff and ask him about the evidence he handled. This Court finds this allegation is without merit.

An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the PCR hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). In order to show prejudice from the failure to contact an allegedly favorable witness, a

PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

Trial

At trial, Deputy Blackmon testified that Will Cedarstaff was not an employee but rather an evidence custodian. Trial Tr. 435. Deputy Blackmon testified that Cedarstaff actually took the evidence from Investigator Beeler. Trial Tr. 435.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Will Cedarstaff (Cedarstaff) was not an employee of the Richland County Sheriff's Department. PCR Tr. 13. Applicant testified a law enforcement officer testified he handled some evidence in this case. PCR Tr. 13. Applicant testified, "Trial Counsels did not put him on the stand to ask him how he handled the evidence." PCR Tr. 14.

On direct examination, Counsel Krzyston testified that he did not recall precisely what they did or did not object to with respect to the chain of custody. PCR Tr. 24. Counsel Krzyston testified he does not remember there being any outward indication of an issue with the chain. PCR Tr. 24.

On direct examination, Counsel Hines testified that Cedarstaff was an evidence custodian at the Richland County Sheriff's Department. PCR Tr. 29.

On cross-examination, Counsel Hawks testified that he recognized the name because he had seen it on documents but did not recall anything specific about the case. PCR Tr. 32.

On direct examination, Solicitor Sampson testified she did not recall any evidentiary issues except for allegations concerning the use of a stingray. PCR Tr. 39–40.

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Notably, Applicant has failed to present any testimony or evidence on how calling Cedarstaff would have changed the outcome of trial. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the PCR hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Therefore, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4h: Trial Counsel failed to present evidence of recording from additional cameras from apartment complex that would have shown Applicant did not have a weapon.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to present evidence of recording from additional cameras from apartment complex that would have shown Applicant did not have a weapon. This Court finds this allegation is without merit.

When claims of ineffective assistance of counsel are based on lack of preparation time, an applicant challenging his conviction must show specific prejudice resulting from counsel's lack of time to prepare. United States v. Cronic, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984); U.S. v. LaRoache, 896 F.2d 815 (4th Cir. 1990). To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

While counsel is not required to investigate or submit every conceivable line of mitigating evidence, a decision not to investigate must be reasonable. Davis v. State, 326 S.C. 283, 486 S.E.2d

747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant was not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Evidentiary Hearing Testimony

At the evidentiary hearing on direct examination, Applicant testified Amber Lawson (Lawson) was the apartment manager at Deer Meadows Village. PCR Tr. 14. Applicant testified that Lawson testified there were twelve cameras at the apartment complex. Id. Applicant testified his attorneys were only shown two cameras of the front and the office. Id. Applicant further testified that the camera angle would have shown Applicant and Victim leaving the apartment and that he had no weapon in his hand. Id. Applicant testified the apartment complex had only two working cameras. PCR Tr. 15. Applicant testified that he was informed all the other cameras were "black." Id.

On cross-examination, Counsel Krzyston testified he recalled some cameras caught the vehicle going in and out. PCR Tr. 24. Counsel Krzyston testified there was no video footage that was ever disclosed that depicted anyone exiting the vehicle to confirm or disconfirm identity of the parties that were in the vehicle. Id. Counsel Krzyston testified Applicant was tied to the vehicle through a family member. Id.

On cross-examination, Counsel Hawks testified he did not recall an issue about the apartment manager and the cameras. PCR Tr. 32.

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. There is no indication Trial Counsel were deficient and failed to investigate, in fact Counsel Krzyston **credibly** testified there was no footage of anyone exiting the vehicle to confirm or disconfirm the identity of the parties. Additionally, Counsel Krzyston **credibly** testified that Applicant's family member tied Applicant to the vehicle.

Here, Applicant merely testified, without providing more, that a video existed of him leaving an apartment with the victim, showing he did not have a gun in his hand. Applicant testimony is pure conjecture. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice). Additionally, even if such a video existed, Applicant failed to establish how it would have affected the outcome of his case considering the overwhelming evidence against him.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegations 4i: Trial Counsel was ineffective because he was inexperienced.

Applicant alleges Trial Counsel was constitutionally ineffective because he was inexperienced. This Court finds this allegation is without merit.

Under Strickland, "the proper standard for attorney performance is that of reasonably effective assistance." Strickland, 466 U.S. at 687. In Cronic, the Court noted that the relative experience of an attorney, either in time spent practicing or in a given field of practice, did not undermine their conclusion counsel was effective, stating, "Every experienced criminal defense attorney once tried his first criminal case." 466 U.S. at 665.

PCR Evidentiary Hearing

On direct examination, Applicant alleged Trial Counsel was ineffective as they were both freshly out of law school. PCR Tr. 7.

On cross-examination, Counsel Krzyston testified he was barred in 2012, and Applicant's trial was in 2014. PCR Tr. 26. Counsel Krzyston testified he had been promoted to the violent team at the Public Defender's Office over other, more experienced public defenders. Id.

On direct examination, Counsel Hines testified she was involved in the case as an advisor since she was a senior attorney and knew the experience level of Counsel Krzyston and Counsel Hawks. PCR Tr. 27. Counsel Hines testified she was not supervising Counsel Krzyston and Counsel Hawks but advising and making suggestions about matters one would only learn through experience. PCR Tr. 28.

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. A brief review of the record refutes Applicant's contention Trial Counsel were ineffective due to their experience, as it is clear Trial Counsel made every effort to provide Applicant with a strong defense in the face of overwhelming evidence. Additionally, Counsel Krzyston **credibly** testified he had been promoted over others more senior than him to the violent team, implying he was competent to try the case. Additionally, Counsel Hines **credibly** testified she made herself available as a resource to Trial Counsel, providing advice and suggestions where Trial Counsel did not have the experience.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has

failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Therefore, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS ABANDONED

Allegation 1a:	**Trial Counsel failed to object to the qualification of Captain Scott McDonald as an expert witness in cell phone technology.**
Allegation 1b:	**Ineffective assistance of counsel because "[his] co-defendant plea to the charges that [he was] found guilty on."**
Allegation 3a:	**"Applicant Co-Defendant De'Andre Diggs testified at trial that Applicant committed both murders but did not see Applicant shoot anyone. Applicant Co-Defendant De'Andre Diggs would later plea to the charged that Applicant is serving time for, in which he testified Applicant had committed these crimes."**
Allegation 3c.	**"Trial Judge admitted into evidence the Exigent Warrant when he were aware that the statement of Sled Agent Diego Nova were false."**
Allegation 3e.	**"Investigator Harold Bouknight testified to marker A not being related to the crime scene and make A was published to jury as state exhibit 115."**
Allegation 3f.	**"Sgt Robert Moveland said he never saw scene like that but Judge Hood had rule court exhibit 117 in and were publish to the jury."**
Allegation 3g.	**"Investigator Stan Richards found a shell casing on the bed at 8100 Deer Meadow Village and did not do a DNA or fingerprints on the shell casing."**
Allegation 3h.	**"Captain Scott McDonald said he had a warrant in his hand for my arrest. Judge Hood denied the motion to suppress the statement do to their were a arrest warrant for my arrest. Warrant were obtained by Investigators Bolding and Kienzle from the warrant division on Huger Street while Applicant were inside the car being transport to Alvin S. Glenn**

	detention center four hours after being detain by RCSD."
Allegation 3i.	**"The Solicitor April Sampson tells the court cant nobody testify that the Applicant shot or killed anyone."**
Allegation 3j.	**"The victim Raquel Weston tells investigators that Applicant Co-Defendant had a black hang un in her tweet bird bag, in which it were the same gun used to shoot victim and Athel Johnson and Jamal Pratt."**
Allegation 3k.	**"Officer Matthew Taylor testified to a report officer Michael Laurita did, officer Matthew Taylor took a witness back to the crime scene and officer Matthew Taylor did not do a report in this incident."**
Allegation 3l.	**"Judge Hood informed the state to notify the defense if their will be any promises in exchanged for testimony dismissal of charges r sentence reducing of Co-Defendant De'Andre Diggs."**

Applicant failed to present any evidence, testimony, or legal authority regarding these allegations at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Therefore, the Court deems these allegations abandoned.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for PCR must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453,

409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 **day of** Sept. **, 2024.**

THE HONORABLE MAITÉ MURPHY
Presiding Judge
Fifth Judicial Circuit

Charleston, South Carolina