

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Dec 10 2024

Certiorari to Laurens County

S.C. SUPREME COURT

Honorable B. Alex Hyman, Circuit Court Judge

DESHANNDON M. FRANKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000927

APPENDIX

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Appellate Defender

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ATTORNEYS FOR RESPONDENT

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT
FROM THE AUGUST 2016 TRIAL: STATE’S EXHIBIT #5 (AERIAL PHOTO),
STATE’S EXHIBIT #24 AND #25 (MAPS), STATE’S EXHIBIT #32 AND #35
(COMPUTER FILES), AND STATE’S EXHIBIT #50 (CHART)**

1 THE JUROR: Yes, ma'am.

2 MADAM CLERK: David L. Rhodes?

3 THE JUROR: Yes, ma'am.

4 MADAM CLERK: Ashley Graham Mathison?

5 THE JUROR: Yes, ma'am.

6 MADAM CLERK: Sharon R. Keith?

7 THE JUROR: Yes, ma'am.

8 MADAM CLERK: Cynthia M. Brown?

9 THE JUROR: Yes, ma'am.

10 MADAM CLERK: Melissa A. Myer?

11 THE JUROR: Yes, ma'am.

12 MADAM CLERK: Deborah L. Culbertson?

13 THE JUROR: Yes, ma'am.

14 MADAM CLERK: Joyce E. Arnold?

15 THE JUROR: Yes, ma'am.

16 MADAM CLERK: Carrie V. McDowell?

17 THE JUROR: Yes, ma'am.

18 MADAM CLERK: And Joseph D. Kelly.

19 THE JUROR: Yes, ma'am.

20 THE COURT: Anything further from the Defense?

21 MR. WILKES: Nothing, Your Honor.

22 THE COURT: Ladies and gentlemen of the jury, I want to
23 thank you for your service here this week. And please
24 understand that I do this day in and day out and sometimes
25 it's easy for me and even the attorneys and the other

1 participants to forget how difficult this is to exposure you
2 all to stuff that otherwise you did not want to see or
3 probably never would have seen or heard about. And for that
4 I'm truly sorry. But I do want to thank you for the
5 important work that you have done here this week. And you
6 do have my appreciation and my admiration for the work that
7 you put in here. The Court does have your paychecks for
8 this week. It should be \$100 for each of them or something
9 to that effect. So please just cash the check. Don't use
10 it to pay the power bill and do something nice for yourself
11 with it. All right? The pizza, your lunch is also on its
12 way here. I'll let you all adjourn to the back and you can
13 enjoy that. At this point in time, the only thing the Court
14 has to address are post-trial motions and sentencing. I'll
15 hear from the family of the two individuals involved in this
16 who were killed, and I'll also, of course, hear anything
17 that the Defense wants to say. If you want to stick around
18 for sentencing that's perfectly fine. I don't know if the
19 food is necessarily here yet, but if you choose to stay for
20 sentencing --

21 THE BAILIFF: It's here, Your Honor.

22 THE COURT: It is here?

23 THE BAILIFF: It's here.

24 THE COURT: Okay. I'll have to take a brief break for
25 them to prepare some basic paperwork. But if you want to

1 come in for sentencing that will be fine. I'll just ask
2 that you sit in the back row there where the alternates are.
3 Okay? If the alternates care to join them for lunch, you
4 all can feel free. All right?

5 With that, we'll be at ease for a few moments. Thank
6 you very much for your help. Thank you very much for your
7 work. And, Mr. Foreman, I need you to stick around and
8 actually sign the verdict on the indictments themselves.
9 But the rest of you, feel free to adjourn to the back and
10 have some pizza.

11 (Whereupon, the jury was released at 12:52 p.m.)

12 THE COURT: I'll take a brief break and let the State
13 and you all figure out who may want to speak for both sides.
14 Okay? So I'll be at ease for about five or 10 minutes. And
15 I'll allow any jurors who want to pop in here to also pop
16 in. Okay?

17 (Whereupon, a recess was held from 12:52 p.m. to 1:05
18 p.m.)

19 SENTENCE OF THE COURT

20 THE COURT: We're going to go back on the record in the
21 State versus Mr. Franks. At this point in time the Court
22 will entertain any post-trial motions from the Defense. I
23 do assume that you renew all prior motions; is that correct,
24 Mr. Wilkes?

25 MR. WILKES: That would be correct, Your Honor.

1 Without having to go hopefully into them in detail I would
2 renew those as a basis for a new trial.

3 THE COURT: Very good. The Court will deny -- well,
4 the Court will stick with the previous rulings that the
5 Court has made on everything pretrial, during trial. And
6 with regard to the Defendant's motion for a new trial, that
7 will be denied as well.

8 Solicitor, I'm happy at this point in time to hear
9 anything in terms of impact evidence from the family of the
10 victims.

11 MR. MOWRY: Your Honor, if it please the Court, the
12 victim Nikesha James' father, and the brother of Sammie
13 Darryl Leake, one in the same, his name is Tony Leake and he
14 would like to address the Court.

15 THE COURT: Yes, sir. What's your name, sir?

16 MR. LEAKE: Tony Leake.

17 THE COURT: Mr. Leake, happy to hear from you, sir.

18 MR. LEAKE: First of all, I want to thank the Court for
19 doing such a good -- great job for this trial. And I also
20 just want to state to you, Your Honor, that this family has
21 been through a whole lot in the last two and a half years,
22 and in those two and a half years I have received a
23 pacemaker. In those two and a half years Nikesha's boys,
24 Tay and Jay, the youngest one, is really having a hard time,
25 because they're still connected with their momma. When I

1 have -- when I had the grandboys, and sometimes the youngest
2 grandboy will wake me up 3:00, 4:00 in the morning and have
3 his bags packed, and I'm like Jay where you going. He say,
4 come on, Papa, let's go. I say, where we going, Jay. He
5 say, I'm going to go down to the church with my momma. And
6 I say, well, Jay, you can't -- we can't do that right now.
7 We can't go down to the church. And he just throws a temper
8 tantrum. And now he's having problems in school, tearing up
9 the classroom, all because of his mother has been taken away
10 from him. He's still connected, you know, and just -- this
11 was just a senseless act, Your Honor, and out of evilness
12 and the whole nine yards. And my family -- I'm speaking for
13 my family and everybody else in the courtroom that's
14 supporting us. We want Frank to get the highest of whatever
15 you have to give him. I want you -- I want the Court to
16 show him the same mercy that he showed Darryl and Kesha on
17 January the 31, 2014. Thank you, sir.

18 THE COURT: I understand, sir. Thank you, sir.

19 MR. MOWRY: And, Your Honor, we would like to echo Mr.
20 Leake. Your Honor is well familiar with the facts in these
21 case -- in these matters. You have been our pretrial judge
22 as well as our trial judge, so you are aware of the ends and
23 outs. This was a senseless vicious crime and deserves
24 nothing less than the maximum punishment.

25 THE COURT: I am correct, and I think I want to just --

1 I do want to just state it for the record. But my
2 understanding in pretrial conference that Mr. Leake has no
3 prior criminal history; is that correct?

4 MR. MOWRY: Mr. Franks.

5 THE COURT: I'm sorry. Mr. Franks has no prior
6 criminal history?

7 MR. MOWRY: No, sir. Nothing showed up on our rap
8 sheet.

9 THE COURT: Very good. Mr. Wilkes, I'm happy to hear
10 from you, certainly any member of Mr. Franks' family, and
11 anything that he may want to say.

12 MR. WILKES: Your Honor, if it please the Court, my
13 client does not wish to speak. And I would simply ask Your
14 Honor to take into consideration his age, his lack of
15 criminal record, and not penalize him for exercising his
16 Fifth Amendment right to remain silent.

17 THE COURT: I understand. Mr. Franks, I always give a
18 person an opportunity for any sort of statement to the
19 Court, but your attorney has indicated to me you do not wish
20 to make a statement. Is that correct, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Well, Mr. Leake and other members of the
23 victims' families who are present, I'm terribly sorry for
24 you all's loss and I'm very sorry for everything that Mr.
25 Franks has put you all through and is still putting you all

1 through. And I truly wish that there was something more
2 that the Court could do than what I have done here to help
3 with the pain that you all still feel and the issues that
4 you're still dealing with. And I'm truly sorry to have to
5 meet you all under these circumstances. I truly am. I'm
6 hoping that you're able to move through this and at least
7 remember your loved ones and honor their memory by taking
8 care of those that they left behind. And maybe that's the
9 only thing that you all really can do at this point in time
10 to try and make the situation better. I know that you'll
11 continue to do that.

12 Mr. Franks, I've taken a number of things under
13 consideration in this sentence, sir. First of all, I hear
14 that the State desires or wants a life sentence for this
15 offense, and certainly that's not an unreasonable request.
16 In my experience though, the Court's philosophy on that is
17 that typically a life sentence is better reserved for
18 individuals who repeatedly demonstrate an inability to
19 conform their conduct to the requirements of the law.
20 People who have prior criminal histories who have been in
21 trouble with the law repeatedly and then they commit the
22 ultimate crime. And so, Mr. Franks, I have -- I have not
23 given you the ultimate sentence in this particular case.
24 That doesn't lessen, of course, the severity and the
25 horrible nature of what you did on that night. And quite

1 truthfully I'm at a loss to explain how this crime ever
2 happened. That's a question I'm probably going to have and
3 maybe one that only you can answer. And I wish I could make
4 some sense of this. I cannot. And so, I echo Mr. Mowry's
5 comments and Mr. Leake's comments that this is nothing more
6 than a senseless act that has no rational reason, had no
7 purpose. It served no purpose whatsoever. Two people are
8 dead. And because of your actions, Mr. Franks, I've
9 determined that an appropriate sentence on both of the
10 murder indictments is -- and I also know that these crimes
11 you have to serve this day for day. So I've sentenced you
12 on each of the charges for murder to a sentence of 45 years.
13 On the possession of a weapon charge the sentence is five
14 years. All sentences will run concurrently. And assuming
15 you don't die in prison, Mr. Franks, you'll be approximately
16 74 years of age when you are released. I do however wish
17 you luck, and I will tell you that you have 10 days to file
18 notice of intent to appeal this matter. Instruct your
19 attorney accordingly and he will take care of filing that
20 notice for you. Mr. Franks, good luck. The record is
21 closed.

22 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 24th, 25th, 26th, 27th and 28th day of October, 2016.

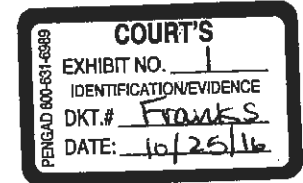
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR
Circuit Court Reporter
March 1, 2017

STATE OF SOUTH CAROLINA

County/Municipality of LAURENS



510

SEARCH WARRANT

Date 02/04/2014

Officer LT BEN BLACKMON

A handwritten signature in black ink, appearing to read "Ben Blackmon".

Date Printed: 02/04/2014 04:23:39 PM

000000000520

R9. 1/1/14

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

SEARCH WARRANT

Form Approved by
Attorney General
511
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

OF LAURENS

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A SINGLE OCCUPANCY DWELLING LOCATED AT THE CORNER OF SHEALY CIRCLE AND LEAMAN STREET IN THE TOWN LIMITS OF CROSS HILL IN LAURENS COUNTY, THIS IS A BRICK RESIDENCE NOTATED AS PARCEL NUMBER 902-02-01-028 IN THE LAURENS COUNTY GIS BELONGING TO GARFIELD BOYD, FROM THE CORNER OF NORTH MAIN STREET AND LEAMAN STREET IN CROSS HILL TRAVEL ON LEAMAN STREET TO THE INTERSECTION OF SHEALY CIRCLE, THE FIRST ROAD ENCOUNTERED ON LEAMAN, IT IS ON THE LEFT, THIS RESIDENCE IS THE FIRST RESIDENCE ON THE LEFT JUST PAST SHEALY CIRCLE, LOCATED ON THE CORNER, THIS IS TO INCLUDE ANY AND ALL OUTBUILDINGS, VEHICLES, CURTILAGE, ASSOCIATED PROPERTY (MAINTAINED OR OTHERWISE) WITH THIS ADDRESS BELONGING TO GARFIELD BOYD.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY AND ALL ITEMS OF EVIDENTIARY VALUE TO INCLUDE BUT NOT LIMITED TO CLOTHING, FIREARMS AND PARTS OF SUCH, AMMUNITION, BULLETS, CASINGS, MAGAZINES, FOOTWEAR AND IMPRESSIONS, ELECTRONIC COMMUNICATION DEVICES, SWABS, HAIR, FIBER, BLOOD, AND ANY AND ALL OTHER ITEMS OF PHYSICAL, SEROLOGICAL, AND TRACE EVIDENCE.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ANY LAWFUL MAGISTRATE.

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Lauren, S.C.

February 4, 2014
4:42 pm.
SCAA/513
(3-78)

Thomas Boyd (L.S.)
Signature of Judge

Date Printed: 02/04/2014 04:23:39 PM

119.2 T.L.C.

Personally appeared before me, one M.B. BLACKMON

no, being duly sworn, says that there is probably cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

ANY AND ALL ITEMS OF EVIDENTIARY VALUE TO INCLUDE BUT NOT LIMITED TO CLOTHING, FIREARMS AND PARTS OF SUCH, AMMUNITION, BULLETS, CASINGS, MAGAZINES, FOOTWEAR AND IMPRESSIONS, ELECTRONIC COMMUNICATION DEVICES, SWABS, HAIR, FIBER, BLOOD, AND ANY AND ALL OTHER ITEMS OF PHYSICAL, SEROLOGICAL, AND TRACE EVIDENCE.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A SINGLE OCCUPANCY DWELLING LOCATED AT THE CORNER OF SHEALY CIRCLE AND LEAMAN STREET IN THE TOWN LIMITS OF CROSS HILL IN LAURENS COUNTY, THIS IS A BRICK RESIDENCE NOTATED AS PARCEL NUMBER 902-02-01-028 IN THE LAURENS COUNTY GIS BELONGING TO GARFIELD BOYD, FROM THE CORNER OF NORTH MAIN STREET AND LEAMAN STREET IN CROSS HILL TRAVEL ON LEAMAN STREET TO THE INTERSECTION OF SHEALY CIRCLE, THE FIRST ROAD ENCOUNTERED ON LEAMAN, IT IS ON THE LEFT, THIS RESIDENCE IS THE FIRST RESIDENCE ON THE LEFT JUST PAST SHEALY CIRCLE, LOCATED ON THE CORNER, THIS IS TO INCLUDE ANY AND ALL OUTBUILDINGS, VEHICLES, CURTILAGE, ASSOCIATED PROPERTY (MAINTAINED OR OTHERWISE) WITH THIS ADDRESS BELONGING TO GARFIELD BOYD.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

ON JANUARY 31, 2014 THE LAURENS COUNTY SHERIFF'S OFFICE RESPONDED TO 42 HAVENDALE DRIVE IN CROSS HILL IN THE COUNTY LAURENS WHERE TWO INDIVIDUALS WERE FOUND DECEASED, AND UPON FURTHER INVESTIGATION OF THIS MATTER IT WAS FOUND THAT BOTH VICTIM'S WERE SHOT WITH A FIREARM WHICH LED TO THEIR DEMISE, ALSO UPON FURTHER INVESTIGATION WITNESSES WERE LOCATED AND INTERVIEWED WHO STATED THAT DESHANNDON MARKELLE FRANKS WAS AT THE INCIDENT LOCATION ON THE MORNING OF THE INCIDENT WEARING BROWN OR TAN OVERALLS OR COVERALLS, AND A RED SWEATER OR SWEAT SHIRT, AND HAS BEEN MAKING A RESIDENCE AT THE ABOVE LISTED LOCATION.

Sworn to and Subscribed before me

this 4 day of February 2014

Thomas J. Gault (L.S.)
Signature of Judge

4:42 pm.

[Signature]
Affiant

Address P.O. BOX 68LAURENS SC 29360Phone 864-984-4967

Date Printed: 02/04/2014 04:23:39 PM

19.7 515

RETURN

I received the attached Search Warrant 2-4-14, and have executed it as follows:

On 2 - 4 - 2014 at 1740 o'clock PM, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with GARFIELD BOYD

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

BROWN B.B OVERALLS, RED BACKPACK WITH TWO MAGAZINES AND SPOON, ONE BOX OF .40
CALIBER AMMO WITH 12 ROUNDS INSIDE, COMPOSITION BOOK, IPHONE 4 BOX CONTAINING
2 AND 1/2 ROUND WHITE PILLS WITH 512 IMPRINTED.

This inventory was made in the presence of Deputy CROCKETT

AND LT. SHELTON

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 18

day of February, 2014

[Signature]
 Signature of Judge

(L.S.)

[Signature]
 (Signature of Officer Executing Warrant)

Date Printed: 02/04/2014 04:23:39 PM

12:40 PM

pg. 4 of 1

Laurens County Sheriff's Office
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

PAGE NO. ____ OF ____ PAGES

766-9449

I, Milton Grant

am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Lt. Robert J. Plaxico. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 58 years of age, and I live at [REDACTED]ST. Cross Hill S.C.I can read and write and completed the 6th

grade in school. DOB: [REDACTED]

M.G. This statement is being written by Lt. Robert Plaxico at the request of Milton Grant. On 1-31-14 at about 1:30 AM, I WAS ASLEEP AND I WAS WAKE UP BY A CAR'S LIGHTS SHINING IN MY WINDOW. I LOOKED OUT AND SAW IT WAS A BROWN FORD. I CALLED MY NEPHEW AND TOLD HIM TO LOOK OUT BECAUSE SOMEBODY WAS TRYING TO TAKE SOMETHING. THE CAR LEFT IN A LITTLE WHILE. I COULDN'T GO BACK TO SLEEP AND AT ABOUT 3:00 AM I HEARD THREE GUN SHOTS. I WENT AND LOOKED OUT MY KITCHEN WINDOW DOWN TO NIKASHA'S HOUSE. THERE WERE A LOT OF LIGHTS ON AND THE FRONT DOOR WAS OPEN. I SAW SOMEONE COME OUT THE DOOR ONTO THE PORCH. HE WALKED INTO THE YARD AND THEN HE WENT BACK ON THE PORCH AND HE REACHED AND GRABBED THE DOOR HANDLE AND SLAMMED THE DOOR AND THE PORCH LIGHT WENT OFF. HE THEN WALKED BACK AND FORTH SHAKING HIS HEAD. I DID NOT SEE HIM WHEN HE LEFT BUT HE WAS WEARING A BROWN COAT OR BROWN JUMP SUIT. End of Milton Grant

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 3:44 PM M. on the 3 day of Feb, 2014

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS ____ DAY OF ____, 20__

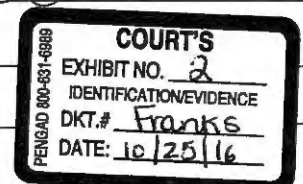
Signature of person giving voluntary statement

WITNESS: R. Plaxico

WITNESS: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

I certify that I have been given a copy of this statement consisting of ____ pages.



PAGE NO. _____ OF **515** PAGES

I am 22 years of age, and I live at St

Me and my Cousin came down to Keshia James house I think around 10 o'clock. We came in greeted Keshia and dab leake. We was seeing what they was doing. Also Lamia Kinaré was also down here, she was just chilling on the couch with her little girl. So we was just sitting watching tiv. and having a couple of drinks. So I guess we was down here a 3 hours. Then around like one something going on two^{o'clock} /am.ig was gone spend the night down Keshia house but she found out dab was staying the night to. So she ask me to take her and her baby home so I did. When I left dab and Keshia was alive and doing well. So right after I dropped Mia my cousin Shannon call me and ask me did I want to ride ~~to~~ up by Greenville. He said I he had some girls up there but when we got up there they was playing around, so I just forget and we went over my cousin house Brick Scurry and stayed the night because I didn't want to drive back down the road because I had been drinking. So the ~~next~~ following morning we woke up and came back down the road.

I certify that I have been given a copy of this statement consisting of _____ pages.

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, Deshaun Franks am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to _____. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 26 years of age, and I live at [REDACTED] cross hill sc 29332.
☒ I cannot read and write and completed the 12th grade in school. DOB: [REDACTED].

left wash about 12:30 got to Kasha house it was Kasha, Tamia her
brother & Darrel we chilled for about 15 minutes Tamia asked Devin
to take her home. He left to do so I was talking to Kasha and Darrel then
called Devin & told him hold on I'm going up the road I met him at the top of
the driveway and we left and went to Greenville called the girl I was
going to see she didn't answer so I called Sherry and spent the night up
the road at his house. In Ft. Inn. DF

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 4:45 p M. on the 31 day of Jan, 2014.

SUBSCRIBED TO AND SUBSCRIBED TO BEFORE

THIS ____ DAY OF ____, 20__

Deshaun Franks
Signature of person giving voluntary statement

WITNESS: [Signature]

WITNESS: [Signature]

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

I certify that I have been given a copy of this statement consisting of ____ pages.



Laurens County Sheriff's Office
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

PAGE NO. 1 OF 1 PAGES

517

540 2013

I, Lavashtia Pulley, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to H. Cheek. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 22 years of age, and I live at [REDACTED] H. Hiller

I can read and write and completed the 11 grade grade in school. DOB: [REDACTED]

Me and my aunt went to club. Shannon was at the door. Bogger was sitting in the back. Shannon was playing pool and messing with a boy named Rick sitting by me. That's when I saw the gun on his left side. Shannon had been play boxing with Rick while he was playing pool. When we were at the pool hall I felt something wasn't right when Shannon was acting the way he was. Shannon told me the gun was a Ruger and it would not go off because it was on safety. Shannon was wearing brown thick covers over his clothes with straps on them. The gun was inside the cover things. The gun was black and ashley colored. Shannon also pulled the gun after he put it back up. We (me and Shannon) went outside and Shannon pulled out some drugs. Me and Shannon talked a few minutes and then went back in. Shannon walked me back to the car when we got ready to leave. To me it appeared that Shannon was acting hyper and thugging. The drugs were in a chapstick container and he also had some in a pill bottle. Me and Shannon talked about Bogger when we were walking to the car. LP

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 9:40 PM on the 31 day of Jan, 2014

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 31 DAY OF January, 2014

[Signature]
Signature of person giving voluntary statement

WITNESS: [Signature]

WITNESS: [Signature]

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9/21/2015

I certify that I have been given a copy of this statement consisting of 1 pages.

The following MUST be read IN FULL by the interviewing officer to the person interviewed, and the answers given by that person must be written down EXACTLY, regardless of what the answer may be.

1. "You are (Under arrest for) (being interviewed in connection with)"
HOMICIDE OF SAMMIE DYRON LEAKE AND NIKESHA TRAVAREA JAMES
2. "You have the right to remain silent. You do not have to make any statement. You do not have to answer any questions. Do you understand this?" ☐
3. "Anything you say can and will be used against you in Court. Do you understand this?" ☐
4. "You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning if you wish. Do you understand this?" ☐
5. "If you want a lawyer but cannot afford to hire one, one will be appointed for you by the Court. Do you understand this?" ☐
6. "If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. Do you understand?" ☐
7. "Knowing these rights, are you willing to make a statement or answer questions without a lawyer being present?" ☐
8. "Have any threats or promises of any kind been made to you so that you will give us a statement?" ☐

I certify that the above items 1 through 8 were read to

TAMIA KETORIA SHUANTE KINARD

by me on **02/01/2014**

and that the answers recorded above are those given

by **TAMIA KETORIA SHUANTE KINARD**

at that time.

LT BRYANT CHEEK
INTERVIEWING OFFICER

I have read or have had read to me everything on this interview sheet and it is true and correct.

TAMIA KETORIA SHUANTE KINARD
PERSON INTERVIEWED

OTHER
PERSON(S)
PRESENT

M.B. BLACKMON

Name of person being interviewed TAMIA KETORIA SHUANTE KINARD		Date of Birth [REDACTED]	Sex F	Race B	Extent of Education 12TH GRADE	
Home Address [REDACTED]		City CLINTON			State SC	Zip 29325
Date and Time Interview Began 02/01/2014 1131	Date and Time Interview Ended 02/01/2014 1221	Place of Interview LAURENS COUNTY SHERIFF'S OFFICE				

STATEMENT

THIS STATEMENT WRITTEN BY M.B. BLACKMON AT MY REQUEST. NIKESHA JAMES CALLED ME ON JANUARY 30, 2014 IT WAS A THURSDAY AROUND ELEVEN OR ELEVEN-THIRTY AND ASKED WHAT I WAS DOING AND SAID SHE WAS BORED, SAID SHE WAS GOING TO CLEAN UP AND PUT SOME PICTURES ON THE WALL, THEN ASKED IF I FOUND A TAPE AND THEN I TOLD HER NO AND THEN A LITTLE WHILE LATER I ASKED IF SHE WOULD BRING THE MOVIE DOWN HERE AND SHE SAID YEAH AND ASKED IF I WAS GOING TO COOK AND THEN CAME TO MY HOUSE AT [REDACTED] STREET IN CROSS HILL, IT WAS ME, GLORIA DENDY, AND VADA SUBER, AND HER. WE WAS AT MY HOUSE LAUGHING AND TALKING AND HAVING A GOOD TIME HAVING FUN. THEN VADA LEFT AND THEN GLORIA LEFT AND ME AND NIKESHA GRABBED SOME SNACKS AND ME AND HER AND MY BABY LEFT. THEN WE WALKED TO HER HOUSE AND SOME PEOPLE CAME AND GOT SOME BABY CLOTHES. THEN MY AUNT CAME AND I DONE HER HAIR, AND ME AND MY AUNT WENT TO THE STORE. THEN ABOUT FIVE TEN MINUTES AFTER WE GOT BACK HER UNCLE DARRELL LEAKE GOT THERE. WE WERE STILL LAUGHING AND TALKING AND TEN MINUTES OR SO LATER TEVIN HILL AND SHANNON FRANKS COME IN WITHOUT KNOCKING OR ANYTHING, THEY JUST BUSTED IN ALL LOUD. THEN NIKESHA AND SHANNON WAS TALKING ABOUT SOMETHING, AND THEN SHANNON SAID SOMETHING LIKE, "IF YOU WANT TO BE WOMAN ABOUT IT YOU'D COME IN THE ROOM AND TALK ABOUT IT." THEN NIKESHA SAID, "GOD DAMN IT IF YOU WANT TO GO IN THE ROOM AND TALK ABOUT IT LET'S GO." WHILE THIS WAS GOING ON I WAS LAYING ON THE SOFA WITH MY BABY AND YOU COULD HEAR THEM BACK THERE TALKING AND THEY WERE TALKING AND LAUGHING AND WEREN'T TOO SERIOUS. THEN TEVIN

I sign page **1** of this statement to be true and correct and I have received copy(s) of

page(s) of my statement.

14000296

Witness

Signature of person giving statement

2-01-14 1226

Date and Time

2-01-14 1226

Date and Time

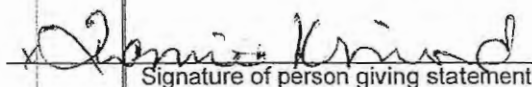
STATEMENT

WAS SITTING IN THE KITCHEN AND DARRELL LEAKE WAS JUST THERE PACING AROUND. THEN DARRELL ASKED TEVIN ASKED FOR A RIDE UP THE ROAD AND TEVIN TOLD HIM HE WASN'T GOING NO FURTHER THAN HOME AND DARRELL WALKED UP THE ROAD AND CAME BACK A LITTLE WHILE LATER. WHEN HE CAME BACK HE WALKED IN THE BACK AND PUT ON SOME BEDROOM SHOES AND PULLED A CHAIR OUT THE KITCHEN AND SAT IT NEXT TO THE TELEVISION AND THEN HE PLUGGED HIS PHONE IN THE TV CHARGER. TEVIN WENT BACK TO TALK TO SHANNON AND TOLD HIM HE WAS READY TO GO HOME BECAUSE HE WAS SLEEPY, AND SHANNON TOLD HIM, "WHY YOU TRYING TO RUSH ME NOW, I DONE GOT YOU DRUNK?" THEN VADA CALLED AND ASKED WHERE NIKESHA WAS AND I TOLD HIM SHE WAS IN THE BACK WITH SHANNON TALKING. THEN SHANNON AND NIKESHA CAME OUT AND SHANNON WAS LOUD AND SAID SOMETHING TO ME, AND I ASKED HIM TO RESPECT THE FACT MY BABY WAS ASLEEP. SHANNON SAID TO GO HOME AND I TOLD HIM WHY DIDN'T HE GO HOME. WHEN HE CAME FROM OUT THE ROOM AND NIKESHA WAS SITTING IN FRONT OF THE WINDOW ON THE LITTLE SOFA AND SHANNON PULLED OUT A GIN BOTTLE AND HE HAD ON A CORDUROY JUMP SUIT AND IT MADE HIM LOOK BIG, THEY WERE LIKE OVERALLS AND IT JUST MADE HIM LOOK SO BIG BECAUSE HE'S NOT A VERY BIG PERSON, IT WAS BROWN. THEN HE PUT ON A RED SWEATER OR SOMETHING AND THEN SAT BACK DOWN. TEVIN WAS STILL IN THE KITCHEN, HE HAD ON JEANS, AND A STOCKING CAP. SHANNON AND NIKESHA WAS ON THE COUCH, AND SHE WAS FUSSING AT HIM BECAUSE HE GOT THE LAST PINEAPPLE SODA OUT OF THE REFRIGERATOR AND MIXED IT WITH THE GIN. I TOLD HER I WAS GOING HOME BECAUSE MY BABY WAS ASLEEP AND SHANNON WAS STILL LOUD. SO I ASKED TEVIN FOR A RIDE, TEVIN WENT OUT AND WARMED UP THE CAR AND CAME BACK IN AND SAT DOWN AND TOLD ME "SOON AS YOU READY." WE LEFT OUT AND I PULLED OUT A CIGARETTE AND GAVE IT TO NIKESHA BEFORE I LEFT. THEN HE TOLD ME THAT HE WASN'T WORKING RIGHT NOW AND TOLD ME HE'D GIVE ME A RIDE WHERE EVER I NEEDED TO GO. THEN WHEN HE GOT ME HOME HE PULLED IN WHERE HE COULDN'T GET OUT AND I TOLD HIM JUST CUT THROUGH MY UNCLE MILT'S YARD AND GO BACK OUT. THEN HE SAID HE WAS GOING TO BACK UP AROUND AND GO BACK TO NIKESHA'S AND HE DID. SHANNON SEEMED LIKE HE WAS IN CHARGE OF TEVIN. IF THEY HAD LEFT I WOULD HAVE STAYED THERE BECAUSE I LEFT AROUND ONE IN THE MORNING. I REMEMBER I TOLD HIM I WAS GOING TO CALL VADA WHEN I GOT IN THE HOUSE AND I CALLED HIM AND TOLD HIM I WAS HOME. I REMEMBER SHE USED TO SEE A GUY NAMED "T" AND THAT HE WAS OLDER AND SHE WAS READY TO MAKE IT OFFICIAL WITH HIM, BUT I NEVER MET HIM. AFTER NIKESHA WAS KILLED I SPOKE TO QUISHA AND NAY NAY ABOUT HOW THEY FOUND HER AND THEY SAID THEY'D TALKED TO PEANUT AT THE BARBER SHOP AND HE SAID DARRELL CAME UP THERE WITH THE BROOM IN THE MIDDLE OF THE NIGHT AND THEY WERE ALL DRUNK AS HELL WITH SHANNON AND TEVIN AND THEY NEEDED TO GO CHECK ON THEM. QUISHA AND NAY NAY HAD ALREADY BEEN TRYING TO CALL NIKESHA AND SHE WOULDN'T ANSWER THE PHONE. I ASKED THEM HAD THEY SEEN TEVIN AND SHANNON AND THEY SAID SHANNON WAS JUST AT THE BARBER SHOP. END OF STATEMENT.

I sign page 2 of this statement to be true and correct and I have received copy(s) of

page(s) of my statement.

14000296


Witness
Signature of person giving statement02-01-14

Date and Time

2-01-14 1226

Date and Time

STATE OF SOUTH CAROLINA

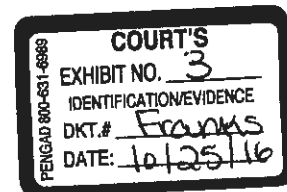
520

County/Municipality of LAURENS 14-000296

SEARCH WARRANT

Date 01/31/2014

Officer LIEUTENANT KEITH MCINTOSH



000000000517

Date Printed: 01/31/2014 11:12:34 PM

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF LAURENS:

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

ONE GRAY IN COLOR T-MOBILE CELLULAR PHONE IN A BLACK AND GRAY CASE AND IT IS MADE BYE BODY GLOVE, SERIAL NUMBER R21D64JYZVN. ONE IPHONE BLACK IN COLOR THAT IS IN A BLACK AND GRAY OTTER CASE. ONE WHITE IN COLOR IPHONE THAT IS IN A SPONGEBOB SQUARE PAINTS CASE.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY AND ALL ITEMS OF EVIDENTIARY VALUE TO INCLUDE BUT NOT LIMITED TO ANY AND ALL INFORMATION STORED ON THE DEVICE OR DEVICES ITSELF (IE: INCOMING AND OUTGOING CALLS, TEXT MESSAGE SENT/RECEIVED, STORED NUMBERS AND CONTACTS, AND ANY AND ALL GPS LOCATION INFORMATION, AND ANY AND ALL OTHER INFORMATION STORED THEREIN THAT IS NOT RELATED TO A TELEPHONE CALL OR TEXT MESSAGE AS WELL TO INCLUDE AUDIO OR VIDEO SEGMENTS), AND ANY AND ALL OTHER ITEMS OR PHYSICAL EVIDENCE.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ANY LAWFUL MAGISTRATE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Laurens, S.C.

Deborah L. Tucker (L.S.)
Signature of Judge

Personally appeared before me, one _____
 who, being duly sworn, says that there is probably cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

ANY AND ALL ITEMS OF EVIDENTIARY VALUE TO INCLUDE BUT NOT LIMITED TO ANY AND ALL INFORMATION STORED ON THE DEVICE OR
 DEVICES ITSELF (IE: INCOMING AND OUTGOING CALLS, TEXT MESSAGE SENT/RECEIVED, STORED NUMBERS AND CONTACTS, AND ANY
 AND ALL GPS LOCATION INFORMATION, AND ANY AND ALL OTHER INFORMATION STORED THEREIN THAT IS NOT RELATED TO A
 TELEPHONE CALL OR TEXT MESSAGE AS WELL TO INCLUDE AUDIO OR VIDEO SEGMENTS), AND ANY AND ALL OTHER ITEMS OR PHYSICAL
 EVIDENCE.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

ONE GRAY IN COLOR T-MOBILE CELLULAR PHONE IN A BLACK AND GRAY CASE AND IT IS MADE BYE BODY GLOVE, SERIAL NUMBER
 R21D64JYZVN. ONE IPHONE BLACK IN COLOR THAT IS IN A BLACK AND GRAY OTTER CASE. ONE WHITE IN COLOR IPHONE THAT IS IN
 A SPONGEBOB SQUARE PAINTS CASE.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

ON 01/31/2014 THE LAURENS COUNTY SHERIFF'S OFFICE RESPONDED TO 42 HAVENDALE DRIVE IN CROSS HILL AREA OF LAURENS
 COUNTY AND FOUND THAT TWO INDIVIDUALS HAD BEEN SHOT TO DEATH. ONE OF THE INDIVIDUALS WAS A SAMMIE DYRON LEAKE AND
 THE OTHER INDIVIDUAL WAS A NIKESHA TRAVAREA JAMES. DURING THE INVESTIGATION THERE WAS A MOBILE PHONE LOCATED INSIDE
 THE RESIDENCE AND THERE WERE TWO MOBILE PHONES THAT WERE TAKEN INTO EVIDENCE FROM PARTIES THAT WERE AT THE INCIDENT
 LOCATION PRIOR TO THE VICTIMS BEING LOCATED.

Sworn to and Subscribed before me

this 1st day of Feb., 2014.[Signature]

Signature of Judge

(L.S.)

[Signature]
Affiant

Address _____

Phone _____

Date Printed: 01/31/2014 11:12:34 PM

RETURN

I received the attached Search Warrant 2/1/14, and have executed it as follows:

On 2/1/14 at 9:00 o'clock 11, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with THE PHONES

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

A FORENSIC EXAM WAS CONDUCTED ON THE CELL PHONES USING
CELL-SAUGHT CELL PHONE FORENSIC DEVICE. THE RESULTS WERE
PLACED ON DVD'S AND TURNED OVER TO LEAD INVESTIGATOR.

This inventory was made in the presence of LT. MCINTOSH

AND AV. RAINEY GCSO

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 6th

day of February 2014

Stephan L. Tucker (L.S.)
 Signature of Judge

[Signature]
 (Signature of Officer Executing Warrant)

Date Printed: 01/31/2014 11:12:34 PM

SEARCH WARRANT INFORMATION

1. DATE AND EXACT TIME OF ISSUANCE. 02/01/14 0845
2. NAME OF PERSON TO WHOM WARRANT ISSUED.
J.K. McINTOSH
3. NAME OF PERSON WHOSE PROPERTY IS TO BE SEARCHED, IF UNKNOWN, DESCRIPTION OF PERSON AND ADDRESS OF PROPERTY TO BE SEARCHED.
ELECTRONIC STORAGE DEVICES (Cell Phones)
4. REASON FOR ISSUING WARRANT.
Double Homicide
5. DESCRIPTION OF ARTICLE SOUGHT IN SEARCH.
DATA FROM Phones
6. DATE AND TIME OF RETURN.
2/06/14 1000

10/24/2016 Original SW To
J. Keith McAtch



Phone: 864-984-4967

LAURENS COUNTY SHERIFF'S OFFICE

Post Office Box 68, Laurens, SC 29360

www.laurenssheriff.org

Ricky W. Chastain, Sheriff



Fax: 864-984-3923

FACSIMILE TRANSMITTAL SHEET

DATE: 02/03/14

SENDER: Lt Keith McIntosh RECIPIENT: Verizon Wireless
PHONE NUMBER: 864-871-3459 PHONE NUMBER: 800-452-5242
FAX NUMBER: 864-984-4967 FAX NUMBER: 800-345-6720

COMMENTS:

My E-mail is kmcmintosh@laurenssheriff.org

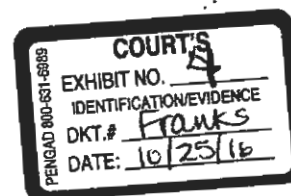
CONFIDENTIALITY NOTICE

THIS TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THE MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, DISTRIBUTION, OR COPYING OF THE INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL DOCUMENTS TO US AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL SERVICE.

WE ARE SENDING A TOTAL OF ☒ PAGE(S), INCLUDING THE COVER SHEET.

IF FOR SOME REASON YOU DO NOT RECEIVE THE INDICATED NUMBER OF PAGES, OR IF THERE IS A PROBLEM WITH THE TRANSMISSION, PLEASE CALL US AT 864-984-4967 AS SOON AS POSSIBLE SO THAT WE CAN CORRECT THE PROBLEM.

RICKY W. CHASTAIN, SHERIFF
LAURENS COUNTY, SOUTH CAROLINA





EMERGENCY SITUATION DISCLOSURE

Phone: (800) 451-5242 Option "4"

Fax: (800) 345-6720

Upon receipt of this completed form, Verizon Wireless may divulge records or other information to governmental entities in certain emergencies, pursuant to 18 U.S.C. §2702(b) (8) or §2702(e) (4) or an equivalent state law. Please complete this form and immediately fax it back to Verizon Wireless at 800-345-6720.

Does this request potentially involve the danger of death or serious physical injury to a person, necessitating the immediate release of information relating to that emergency? ☒ YES ☐ NO

Case #:	1667341
Analyst Name:	Patrice B.
Date of Request:	02/03/2014 09:28 EST
RE:	MDN:8649938639

Type of Records Being Requested:

- ☒ Subscriber Information
- ☒ Location Information
- ☒ Incoming and outgoing calls to and from target phone. Includes time/date.
- ☒ SMS Detail - Phone numbers that text messages were sent and received from. Includes time/date.
- ☐ Internet Activity -- Destination IP addresses. Includes time/date.

Time Frame for Which Information is Requested: 01-30-14-2200hr - 01-31-14- 1500hr

*** The lat and long measurements for location information are derived solely from the Round Trip Delay measurement. They are best estimates and are not related to any GPS measurement. Measurements with a high confidence factor may be more accurate than measurements with a low confidence factor, but all measurements are best estimates available rather than precise location.

Additional Comments and/or Information/Service Change Requests:

Requesting Investigative or Law Enforcement Officer:

Name:	Keith	Rank/Title:	Lt. CID
Law Enforcement Agency:	Laurens Cnty Sheriffs Ofc	Phone:	8848713459
Dispatcher / Badge Number (if applicable):	I-29	Fax:	8849845754
Address:	216 W Main St.; Laurens, 29380		
Email Address:	kmcintosh@laurenssheriff.org		

I certify that the foregoing is true and correct and understand that Verizon Wireless may rely upon this form to make an emergency disclosure to my law enforcement agency or governmental entity pursuant to 18 U.S.C. § 2702(b)(8) or § 2702(c)(4).

Requesting Officer Signature: Lt. Keith McIntosh Date: 02/03/14



EMERGENCY SITUATION DISCLOSURE

Phone: (800) 451-5242 Option "4"
Fax: (800) 345-6720

Upon receipt of this completed form, Verizon Wireless may divulge records or other information to governmental entities in certain emergencies, pursuant to 18 U.S.C. §2702(b) (8) or §2702(c) (4) or an equivalent state law. Please complete this form and **immediately** fax it back to Verizon Wireless at **800-345-6720**.

Does this request potentially involve the danger of death or serious physical injury to a person, necessitating the immediate release of information relating to that emergency? ☐ **YES** ☐ **NO**

Case #:	1667341
Analyst Name:	Patrice B.
Date of Request:	02/03/2014 09:26 EST
RE:	MDN:8649938639

Type of Records Being Requested:

- ☐ Subscriber Information
- ☐ Location Information
- ☐ Incoming and outgoing calls to and from target phone. Includes time/date.
- ☐ SMS Detail - Phone numbers that text messages were sent and received from. Includes time/date.
- ☐ Internet Activity – Destination IP addresses. Includes time/date.

Time Frame for Which Information is Requested:

**** The lat and long measurements for location information are derived solely from the Round Trip Delay measurement. They are best estimates and are not related to any GPS measurement. Measurements with a high confidence factor may be more accurate than measurements with a low confidence factor, but all measurements are best estimates available rather than precise location.*

Additional Comments and/or Information/Service Change Requests:**Requesting Investigative or Law Enforcement Officer:**

Name: Keith	Rank/Title:
Law Enforcement Agency: Laurens Cnty Sheriffs Ofc	Phone: 8648713459
Dispatcher / Badge Number (if applicable):	Fax: 8649845754
Address: 216 W Main St.; Laurens, 29360	
Email Address:	

I certify that the foregoing is true and correct and understand that Verizon Wireless may rely upon this form to make an emergency disclosure to my law enforcement agency or governmental entity pursuant to 18 U.S.C. § 2702(b)(8) or § 2702(c)(4).

Requesting Officer Signature: Date:

Verizon Wireless Workflow Manager

FAX COVER PAGE

To	Keith
To Fax Number	8649845754
From Analyst	Patrice Beaubrun
From Phone Number	8004515242
From Fax Number	8003456720
Case ID	1667341

Comments:

Please complete the attached Emergency Information Request form and fax it to 8003456720.

**Please note, VzW fax
numbers have
changed to:**

Subpoenas : 888-667-0028
Court Orders : 888-667-0026
Surveillance : 800-267-9129
Exigent : 800-345-6720

Please note that the time reflected on any call detail report or bill copy is reflective of the switch that processed the call, which may not be the same as the clock time at the cell site where the call was initiated.

The information contained in this message and any attachment may be proprietary, confidential and privileged or subject to the work product doctrine and thus protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by replying to this message and deleting it and all copies and backups thereof. Thank you.

CERTIFICATION OF RECORDS

Date: 10/6/16Case Number: 1667341

TO WHOM IT MAY CONCERN:

I do hereby certify and solemnly affirm under the penalties of perjury that, to the best of my knowledge, information and belief, the enclosed records are an accurate reproduction of the business records pertaining to:

MDN: 864-993-8639

These records are created and kept in the course of the regularly conducted business activity of Verizon, as a regular practice of that business activity. They were made at or near the time of the occurrence of the matters set forth therein, by or from information transmitted by a person with knowledge of those matters.

To the best of my knowledge and belief, the records are complete, as maintained by Verizon. The originals of said records are maintained through our records department and I certify that I am the Custodian of such records.

Sincerely,

Cheryl Scanlon
CHERYL SCANLON
 NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires 6/13/2019

P. Beaulieu
 Signing for Custodian of Records

VOLUNTARY STATEMENT

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

PERSONALLY appeared before me _____ who states:

"My name is JAMES MORGAN HILL My address is _____

Date of birth is: _____ Social Security # is: _____ Phone # is: _____

I completed the _____ grade in school, and ☒ I can ☐ I cannot read and write.

Before answering any questions or making any statements, M.B. BLACKMON

a person who identified himself as an investigator for the Laurens County Sheriff's Office duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement that I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statements hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make, with out cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

THIS STATEMENT WRITTEN BY M.B. BLACKMON AT MY REQUEST. I GOT OUT OF PRISON AND NIKESHA CALLED AND WE STARTED HAVING A PHYSICAL RELATIONSHIP. AFTER THIS SHE STARTED SAYING THINGS ABOUT DESHANNDON FRANKS BECAUSE DESHANNDON WAS TRYING TO GET AT HOOD FOR SOMETHING THAT WENT ON AT NIKESHA'S. DESHANNDON WAS MAD BECAUSE TEVIN WAS DRUNK AND WANTING TO FIGHT EVERYBODY AT HER HOUSE ONE NIGHT, AND HE BUMPED INTO HOOD. HOOD GOT MAD AND SAID HE WAS GOING TO SPRAY THE PLACE, MEANING SHOOT IT UP. I CALLED HER AND ASKED WHAT WAS GOING ON BECAUSE DESHANNDON TOLD ME WHAT WENT DOWN AT NIKESHA'S HOUSE. THEN THAT'S WHEN I HEARD A RUMOR THAT DESHANNDON FRANKS, TEVIN HILL, MENDEZ HILL AND MOOT HILL WAS GOING TO ROB HOOD AND THAT I WARNED HIM, BUT I HAD NO IDEA WHAT THAT WAS ABOUT, AND I DIDN'T. THEN AFTER THIS DESHANNDON CALLED ME A LOUDMOUTH, AND I REALIZED THAT THE RUMOR WAS ABOUT ME. TWO WEEKS AGO AT LUCIOUS'S STORE, PRIOR TO NIKESHA AND DAB GETTING KILLED I SAW DESHANNDON WITH A SILVER TOPPED GUN. END OF STATEMENT.

I have read each page of this statement consisting of ONE page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement. This statement was completed at 10:20 AM hours, on the date of February 07, 2014

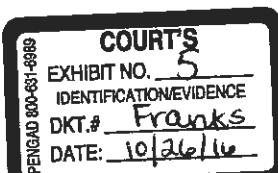
SWORN TO AND SUBSCRIBED TO BEFORE ME
THIS _____ DAY OF _____, 20____

Signature of person giving voluntary statement

witness: _____

witness: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____



VOLUNTARY STATEMENT

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

PERSONALLY appeared before me _____ who states:

"My name is SONNY DEMARIO HILL My address is _____

Date of birth is: _____ Social Security # is: _____

I completed the 12TH grade in school, and ☒ I can ☐ I cannot read and write.Before answering any questions or making any statements, M.B. BLACKMON

a person who identified himself as an investigator for the Laurens County Sheriff's Office duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement that I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statements hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make, with out cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

THIS STATEMENT WRITTEN BY M.B. BLACKMON AT MY REQUEST. BACK IN MY TENTH GRADE YEAR I WAS GOOD FRIENDS WITH NIKESHA, AND WE WERE FRIENDS EVER SINCE. I HAD A LITTLE CRUSH ON HER AND WE STARTED SHARING SOME CLASSES TOGETHER, AND I SAT BEHIND HER IN FIRST PERIOD. THEN MORE FEELINGS STARTED COMING INTO PLACE AS WE GOT OLDER. OUR FRIENDSHIP WAS CLOSER AND WE FELT LIKE WE LOVED EACH OTHER. WE PHYSICAL RELATIONSHIP ALSO UNTIL TWO MONTHS BEFORE HER DEATH, BUT WE REMAINED FRIENDS. ABOUT TWO WEEKS BEFORE NIKESHA'S DEATH I WAS AT HER HOUSE AND SHE TOLD ME DESHANNDON FRANKS WAS TRYING TO GET JAMES HILL TO PLOT ON ME AND HAVE ME ROBBED. AFTER THAT FRANKS CALLED ME AND I DIDN'T ANSWER AND THEN HE TEXTED ME AND ASKED ME WHAT I HEARD NIKESHA BEEN SAYING AND THAT I AIN'T HAD TIME FOR ALL THE BULL SHIT AND DIDN'T WANT TO HEAR ALL THAT. THEN HE TOLD ME I COULD BELIEVE WHAT I WANTED TO BELIEVE AND THAT ME AND HIM AIN'T NEVER HAD NO PROBLEMS. FRANKS TRIED TO ACT LIKE HIM AND JAMES HILL FELL OUT. SINCE THEN WHEN I WAS AROUND FRANKS HE WOULD ALWAYS ACT LIKE HE WAS IGNORING ME. I WASN'T SCARED OF HIM, AND I LOOKED AT HIM LIKE HE WAS MY COUSIN, BUT I KNEW HE HAD A PISTOL. IT WAS A RUGER NINE MILLIMETER IT WAS SILVER AND BLACK AND IT HAD A HAMMER AND A DECOCKER. THEN HE TOLD ME HE PURCHASED IT FROM A PAWN SHOP AND HE CARRIED IT A LOT BECAUSE I SEEN IT OFTEN. A COUPLE OF WEEKS BEFORE HER DEATH I WAS AT NIKESHA'S HOUSE WITH FRANKS, TEVIN HILL, LEE, BUBBA, AND SOME OTHERS AND TEVIN BUMPED INTO ME AND SAID A COUPLE OF WORDS LIKE HE WAS WANTING TO FIGHT. I STAYED INSIDE BECAUSE FRANKS ALWAYS CARRIED A GUN AND HE WAS OUT THERE WITH TEVIN AND I THOUGHT HE WAS OUT THERE GETTING HIS GUN READY FOR ME AND LOADING IT UP. I WENT TO THE STORE AFTER THAT AND WHEN I CAME BACK TEVIN AND JOHNTAVIOUS HAD GOT INTO A SCUFFLE. THEN NIKESHA TOLD ME ABOUT HAVING A RELATIONSHIP WITH JAMES HILL. SHE TOLD ME THAT HE WAS CRAZY AND HE THOUGHT SHE WAS HIS GIRLFRIEND AND SHE THOUGHT HE WAS ALWAYS WATCHING HER AND HE WOULD SHOW UP UNANNOUNCED AND UNINVITED. THEN A DAY BEFORE SHE DIED HE WAS AT HER HOUSE AND HE WAS COMING TO PICK UP HIS TWO COUSINS, JOHNTAVIOUS (BUBBA) BOYD AND LAMARRIS BOYD (LEE) BUT BEFORE THEY CAME OUT THE DOOR JAMES PULLED UP IN A BLACK CHRYSLER AND KEPT HIS LIGHTS ON HIGH BEAM POINTING AT ME. SAMMIE LEAKE GOT OUT THE CAR AND I ASKED HIM WHO WAS DRIVING AND HE TOLD ME IT WAS JAMES HILL. JAMES NEVER SAID ANYTHING TO ME, AND I NEVER SAID ANYTHING TO HIM. ME, BUBBA AND LEE GOT IN MY CAR AND WENT TO MY COUSIN'S HOUSE FOR SAMMIE LEAKE

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement. This statement was completed at 2:33 PM hours, on the date of February 07, 2014

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 12 DAY OF Feb, 2014

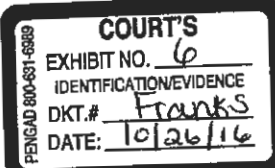
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 8/8/2016

Signature of person giving voluntary statement

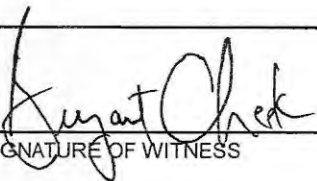
witness: _____

witness: _____

DISCOVERY MATERIAL Page 133 of 163
Print date: 8/14/16

VOLUNTARY STATEMENT
CONTINUATION STATEMENT OF SONNY DEMARIO HILL

TO CUT MY HAIR. THEN WE TALKED ABOUT THIRTY MINUTES TO AN HOUR AND WE TOOK HIM BACK HOME AND WE LEFT. THEN I HEARD ON THE STREET THAT DESHANNDON FRANKS HAD TRIED TO ROB AN OLDER WHITE MAN AND THE STORE IN TOWN. END OF STATEMENT.


SIGNATURE OF WITNESS

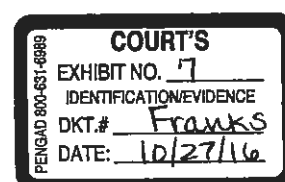

SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT

State
V.
Franks

Warren/open

- ✓ Atrayel Williams LS
- ✓ Laquesha Currenton WM
- ✓ Robbie Haupfear LS
- ✓ Mindy Worley WM
- ✓ Dr Fulcher LS
- ✓ Ira Parnell WM
- ✓ Lavashita Pulley WM
- ✓ Tamia Kinard LS
- ✓ Milton Grant WM
- ✓ Tevin Hill WM
- ✓ Rodrigus Scurry WM
- ✓ Bryant Cheek LS
- ✓ Keisha Hill Mobley LS

Ben Blackmon WM



Keith Macintosh LS

Jennifer Nates LS

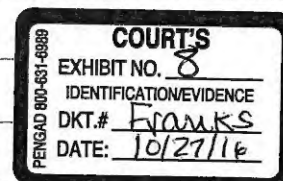
Jennifer Clayton LS

Mike Rainey WM

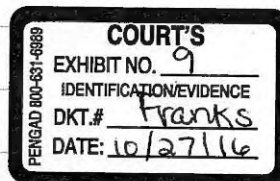
Dan Kelley WM

Lance/Close

Tevin Hill statement



Tevin Hill's Police Statement



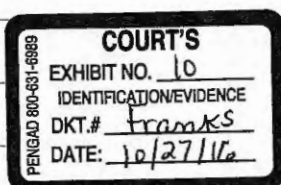
7:45 pm

10/27/2016

The jurors have not made
an unanimous decision.

We, the jury ask to meet
tomorrow morning.

We apologize for any
inconvenience.



Some of us have a question about 19
our Juror. Her Brother In law is in jail
for Killing 2 people 1 a policeman and wonder
2 other people. She Seems to Know every one
involved in the case. Very Hostile & gets
mad. Seems to be putting every one on trial
other than ~~the~~ Franks. Not sure what we
can do. I hope this makes sense to you.

Copy

539

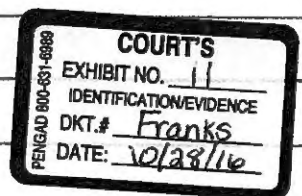
Mr. Foreman,

10/28/16

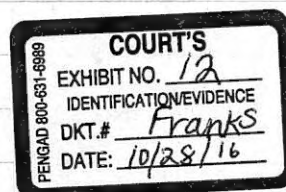
I received your note.
Understand there is nothing the
Court can do regarding your concerns.

Please continue your deliberations.

L. H. G. M.
Circuit Judge



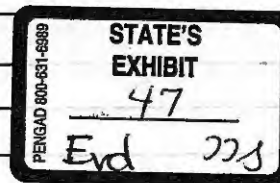
We would like to listen to Milton Grant's testimony a little later.



PAGE NO _____ OF **541** PAGES

I am 26 years of age, and I live at [REDACTED] cross hill sc 29534
☒ can not read and write and completed the 12th grade in school. DOB: [REDACTED]

left wash about 12:30 got to Kosha house it was Kosha, Tamia her baby & Darrel. we chilled for about a hr & 15 to 20 mins Tamia asked Trevia to take her home. He left to do so & I was talking to Kosha and Darrel then called Trevia & told him hold on I'm going up the road & met him at the top of the driveway and we left and went to Greenville called the girl I was going to see she didn't answer so I called Slurrry and spent the night up that road at his house. In Ft. Inn. DF



This statement was completed at 4:45 p M. on the 31 day of Jan, 2014

Signature of person giving voluntary statement

WITNESS:

WITNESS:

3LIC FOR SOUTH CAROLINA
ion Expires:

I have been given a copy of this statement consisting of _____ pages.

167	1/31/2014	3:00:13	3:00:24	Apple iPhone 4	af0e30dd	VZW - VERIZON WIRELESS	662529677	2014013103	1	34.29665	-81.99107	4 H
168	1/31/2014	2:54:52	2:54:58	Apple iPhone 4	af0e30dd	VZW - VERIZON WIRELESS	662492955	2014013102	1	34.30265	-81.99204	0 L
169	1/31/2014	2:53:52	2:54:03	Apple iPhone 4	af0e30dd	VZW - VERIZON WIRELESS	662486050	2014013102	1	34.3016	-81.99628	5 H
170	1/31/2014	2:51:30	2:51:51	Apple iPhone 4	af0e30dd	VZW - VERIZON WIRELESS	662469286	2014013102	1	34.30351	-82.00527	0 L
171	1/31/2014	2:49:18	2:49:26	Apple iPhone 4	af0e30dd	VZW - VERIZON WIRELESS	662449841	2014013102	1	34.30582	-82.01151	2 H
172	1/31/2014	2:46:36	2:46:39	Apple iPhone 4	af0e30dd	VZW - VERIZON WIRELESS	662427381	2014013102	1	34.33152	-82.00695	5 L
173	1/31/2014	2:46:26	2:46:31	Apple iPhone 4	af0e30dd	VZW - VERIZON WIRELESS	662426292	2014013102	1	34.29769	-81.99661	1 H
174	1/31/2014	2:46:15	2:46:23	Apple iPhone 4	af0e30dd	VZW - VERIZON WIRELESS	662425196	2014013102	1	34.29881	-81.9931	2 H



WITNESSES

Robert Plaxico
Laurens County Sheriff

WARRANT NUMBER

2014A3010100:88

True Bill

Walter E. Doherty

Foreman of the Grand Jury

Date: *5/2/14*

VERDICT

Guilt.

Hugh A. Rhy

Foreman

10-28-16

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2014

Indictment # 14GS30-0499

THE STATE

vs.

Deshaundon Markelle Franks

INDICTMENT FOR

Murder

CDR: 0116

SCANNED

RECEIVED

NOV 04 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF LAURENS****Murder**

At a Court of General Sessions, convened on the 2nd day of May, 2014, the Grand Jurors of Laurens County present upon their oath:

That Deshanndon Markelle Franks, on or about January 31, 2014, in Laurens County, willfully, feloniously, and with malice aforethought kill one Sammie Leake by means of shooting him with a firearm and that the said Sammie Leake did die in Laurens County as a proximate result thereof on or about January 31, 2014, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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


Deputy Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Laurens
STATE VS.
Deshannond Markelle Franks

INDICTMENT/CASE#: 14GS30-0499A/W#: 2014A3010100188Date of Offense: 1/31/2014S.C. Code § : 16-03-0010CDR Code #: 0116

AKA: _____

Race: _____ Sex: M Age: 29

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Cross Hill, SC 29332

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: D. Warren Mowry 4124

Mowry, O. Warren

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code of Laws § 26-13-10. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

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

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Tara Scott

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2159Sentence Date: 10-28-16Lynn W. Lancaster
Laurens County CCCP & GS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

WITNESSES

Robert Plaxico
Laurens County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2014

Indictment # 14GS30-0500

WARRANT NUMBER

2014A3010100189

THE STATE

vs.

Deshanndon Markelle Franks

Inue Bill

With E.S. D. J. J.

Foreman of the Grand Jury

Date: 5/2/14

VERDICT

Guilt

Hugh A. Rely

Foreman

10-28-16

INDICTMENT FOR

Murder

CDR: 9116

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

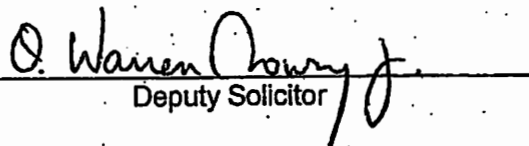
COUNTY OF LAURENS

Murder

At a Court of General Sessions, convened on the 2nd day of May, 2014, the Grand Jurors of Laurens County present upon their oath:

That Deshanndon Markelle Franks, on or about January 31, 2014, in Laurens County, willfully, feloniously, and with malice aforethought kill one Nikesha James by means of shooting her with a firearm and that the said Nikesha James did die in Laurens County as a proximate result thereof on or about January 31, 2014, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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


Deputy Solicitor

548

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Laurens

VS.

Deshannond Markelle Franks

AKA:

Race: Sex: M Age: 29

DOB: SS#

Address:

City, State, Zip: Cross Hill, SC 29332

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 14GS30-0500

A/W#: 2014A3010100189

Date of Offense: 1/31/2014

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mowry, O. Warren

SC Bar# 4124

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

A TRUE COPY OF ORIGINAL

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED ☐ Laurens County CCCP & GS

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

Robert Plaxico
Laurens County Sheriff

WARRANT NUMBER

2014A3010100192

True Bill

Walter E. Dixon III

Foreman of the Grand Jury

Date: *5/2/14*

VERDICT

Guilty

Hugh A. Riley

Foreman

10-28-16

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2014

Indictment # 14GS30-0501

THE STATE

vs.

Deshanndon Markelle Franks

INDICTMENT FOR

Possession of a Pistol
during a Violent Crime

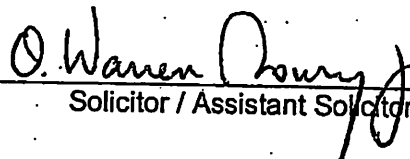
CDR: 0549

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF LAURENS****Possession of a Pistol during a Violent Crime**

At a Court of General Sessions, convened on the 2nd day of May, 2014, the Grand Jurors of Laurens County present upon their oath:

That Deshanndon Markelle Franks, in Laurens County, on or about January 31, 2014 possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor / Assistant Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Laurens
 STATE VS.
Deshannndon Markelle Franks

AKA:

Race: St Age: 29DOB: SS#

Address:

City, State, Zip: Cross Hill, SC 29332DL#: SID#*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life witho

INDICTMENT/CASE#: 14GS30-0501A/W#: 2014A3010100192Date of Offense: 1/31/2014S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490

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

0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

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

ATTEST:

Mowry, O. Warren

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 (Five) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$

\$

\$100

\$

\$12

\$

\$25

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$

\$

\$

\$

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster

Laurens County CCCP & GS

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code:

Sentence Date:

2159

10-28-2016

February 7, 2022

The Honorable Michelle Simmons
Clerk of Court, Laurens County
P.O. Box 287
Laurens, SC 29360

2022-CP-30-130

Re: Filing of Post-conviction Relief Application

Dear Ms. Simmons:

Enclosed for filing please find my formal application for post-conviction relief. Pursuant to S.C. Code 17-27-40, the completed application and attachments are properly included and notarized,

Please return a clock-stamped copy for my records. Thank you for your prompt attention to this matter.

Respectfully Submitted,

Deshaundon M. Franks

Deshaundon Markelle Franks

cc: File

MICHELLE SIMMONS
2022 FEB 22 PM 3:46
LAURENS COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

County of LaurensDeshanndon Franks 370250

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2022-CP-30-130

LAURENS COUNTY
CLERK OF COURT

2022 FEB 22 PM 3:43

T. J. MCATILE SIMMONS

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Laurens County Court House, Laurens County SC 29360
3. Name(s) of co-defendant(s) (if any) Tevin Hill
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-30-0499
 - (b) 2014-GS-30-0500

(c) 2014-65-30-0501

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Oct. 28, 2016(b) sentenced to 45 years day for day

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appealsii. South Carolina Supreme Court

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed convictionii. Affirmed

iii. _____

(c) the date of each such result:

i. Aug. 12, 2020ii. Sept. 21, 2021

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) _____
- (b) * See attachment
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) * See attachment
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

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

(a) N/A
 (b) _____
 (c) _____

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

(a) your arraignment and plea? —
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

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

(a) the name and address of each attorney who represented you:

i. _____

 ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. _____

 ii. _____

 iii. _____

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

New Trial

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

N/A

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

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

[Signature]

SWORN to and subscribed before me this 4th
day of February, 2022.

[Signature] (L.S.)
Notary Public

My Commission Expires: 8/4/2024

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

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

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

D. Franks
Applicant

SWORN or affirmed to and subscribed before me this

4th day of February, 2022.

Kenneth Robinson
Notary Public

My Commission Expires: 8/4/2024

10. a. ⁵⁶⁰ Mr. Franks was denied the right to effective assistance of counsel, guaranteed by the sixth & fourteenth amendments to the United States Constitution & by article I, 3 & 14 of the South Carolina Constitution during the guilt/innocence phase of his trial.

b.) Ineffective assistance of trial counsel in failing to ensure the co-defendant's conflicting (& exculpatory) initial written statement to police.

c.) Ineffective assistance of trial counsel for failing to insist on a "mere presence" jury instruction

d.) Mr. Franks was denied due process of law during his jury trial because of prosecutorial misconduct calculated to infringe on his constitutional right to a fair trial.

1.) a.) Ineffective assistance of trial counsel for failing to object, request a mistrial, and/or seek a curative instruction to improper comments - at both the beginning and end of the solicitor's closing argument - calculated to entice the jury to abandon their duty to decide the case on the evidence by appealing to the jurors inherent desire to protect their "community" by convicting petitioner. see *State v. Liberte*, 336 S.C. 648 (1999) (solicitor's improper comments urging the jury to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking mandated reversal.) (emphasis added). Additionally, petitioner was prejudiced by trial counsel's failure to put forth an objection throughout the closing argument as the judge was then precluded from giving the jury an immediate curative instruction. Moreover, this was not a case of overwhelming evidence as delineated in *Smalls v. State*, 422 S.C. 174 (2018) and *Thompson v. State*, 423 S.C. 235 (2018) ("for the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice... the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the 'Strickland' standard of 'a reasonable probability the fact finder would have had a reasonable doubt' cannot possibly be met.")

b.) ⁵⁶² ineffective assistance of trial counsel in failing to ensure the co-defendants conflicting (and exculpatory) initial written statement to police - a statement that corroborated petitioner's alibi and from which co-defendant completely changed his story at trial resulting in the outright dismissal of murder charges against him. Was properly placed into evidence at trial, thus effectively denying the jury, amidst deliberations, their specific request to review and compare the actual statement. As to prejudice, the jury's extended deliberations coupled with their specific request to review co-defendants initial statement substantiate an assertion that they were struggling with the credibility and motivation of co-defendant in changing his story to secure a dismissal of murder charges against himself. Petitioner was clearly prejudiced by counsel's deficiency in that once the jury was informed the statement could ^{not} be provided to them, due to not being placed into evidence, (and thus unable to be properly and fully considered/scrutinized) they returned with a guilty verdict soon after.

c.) Ineffective assistance of trial counsel for failing to insist on a "mere presence" jury instruction where the state put forth evidence of petitioner's presence at the trailer of Nikeshia Jones during a period of time prior to the crime, but no direct evidence existed tying petitioner to the actual killing of the victims. Moreover, the unconstitutional instruction that malice could be inferred from the use of a deadly weapon compounded the prejudice to petitioner in not having the jury reminded that mere presence at the scene of a crime is not enough to convict.

d.) The solicitor improperly used his closing argument to entice the jury⁵⁶³ to abandon their duty to decide case solely on the evidence by appealing to the jury's passions and inherent desires to protect their "community" by convicting petitioner. His multiple references were strategically made at both the beginning and the very end of his closing argument - pleading for "justice for us, the community" - thus "bookending" the state's last words to the jury with emotional impropriety. Additionally, the prejudicial harm was then compounded by the solicitor - at the end of closing - then denigrating defense counsel (and petitioner's entire defense) as nothing, but "all smoke and mirrors", ROA 463, 113. The combination and totality of these improper comments were highly prejudicial to petitioner. Further, the way in which the solicitor injected the comments into key parts of his closing support the assertion that they were calculated to improperly appeal to the passions and biases of the jury, see *State v. Linder* 276 S.C. 304 (1981) and *State v. Copeland* 321 S.C. 318 (1996) (Our Supreme Court "strongly disapproves" of closing arguments calculated "to improperly arouse the passions and prejudices of jurors, urging them to abandon their sworn role as fair and impartial arbiters of the facts and view the evidence from an improper perspective".) see also *State v. White* 246 S.C. 502 (1965) (holding that such an argument "tends to completely destroy and nullify all sense of impartiality in a case of this kind.") Petitioner was denied his right to a fair trial as under our high courts analysis in *Smalls and Thompson* this case was not one of overwhelming evidence of guilt.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
Deshanndon Markelle Franks.	)	Case No.: 2022-CP-30-130
S.C.D.C. No. 370250.	)	
	)	
Applicant.	)	
	)	RETURN
v.	)	(Counsel Appointed)
	)	
State of South Carolina.	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Applicant Deshanndon Markelle Franks on February 22, 2022, Respondent the State of South Carolina would show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the May 2014 term of the Laurens County Grand Jury for two counts of murder (2014-GS-30-0499, 0500) and one count of possession of a weapon during the commission of a violent crime (2014-GS-30-0501). Applicant was represented by J. Falkner Wilkes, Esquire ("Trial Counsel"). Assistant Solicitors Warren Mowry and Lance Sheek, of the Eighth Circuit Solicitor's Office, prosecuted the case. On August 24, 2016, Applicant proceeded to trial before the Honorable Frank R. Addy, Jr., and a jury. The jury found Applicant guilty as indicted on August 28, 2016. Judge Addy sentenced Applicant to imprisonment for concurrent terms of forty-five years on the two murder charges and five years on the charge of possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Robert M.

Dudek, of the South Carolina Commission on Indigent Defense Office of Appellate Defense,

who raised the following issue(s):

1. The court abused its discretion by qualifying Greenville County Sheriff's officer Dan Kelley as an expert to testify regarding where the contents of appellant's iPhone where the data allegedly showed the locations appellant was at on the night of the murder at different times, since Kelley deferred to Verizon, and Verizon engineers, regarding the accuracy of the data, because the court further erroneously abdicated its gatekeeping function of this Rule 702, SCRE, evidence
2. The court erred by charging the jury the Belcher instruction that "inferred malice may arise when the deed is done with a deadly weapon," since this was a purely circumstantial evidence case as to who the shooter was, the state admitted it had no theory of a motive for appellant to shoot the victims, and where the defense sought to show that a third-party was more likely actually the shooter, since the court improperly reasoned the instruction was proper because there were no lesser-included offense involved, but there was evidence in this case which "mitigated" against a verdict of murder

By opinion decided August 12, 2020, the South Carolina Court of Appeals affirmed Applicant's convictions. *State v. Franks*, 432 S.C. 58, 849 S.E.2d 580 (Ct. App. 2020). Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated September 21, 2021. The Remittitur was issued on September 24, 2021.

II. STATEMENT OF THE FACTS

On January 31, 2014, Atrayel Williams called 911 after she and Laquesha Curenton discovered the bodies of Nikesha James and Sammie Darryl Leake in the living room of James's mobile home. (Tr. pp.142-47).

The previous evening, Lavashtia Pulley saw Applicant and Tevin Hill at a club, and Applicant appeared unusually "hyped," "pumped," and "amped." (Tr. pp.226-27). At one point, Applicant showed Pulley a black pistol he carried under his coat, which he said was a Ruger. (Tr. pp.227-30). Pulley left the club at approximately 11:30 pm, and Applicant left at the same time. (Tr. pp.229-33).

Tamia Kinard testified she and her daughter were visiting at James's home that night.

(Tr. pp.236–38). Applicant and Hill came to James's house at around 12:15 in the morning. (Tr. pp.238–41). Kinard testified Applicant was talking loudly, jumping around, and generally acting abnormally "hyper" and "wild." (Tr. p.243). At one point, Applicant mentioned something James said on Facebook and asked James to come with him into another room and discuss it "like a man—I mean, like a woman." (Tr. pp.239–40). About ten or fifteen minutes later, Applicant and James emerged from the other room, laughing and talking normally, "like it wasn't a problem." (Tr. pp.240–41). At around 1:00, Hill took Kinard home, while Applicant stayed behind with James and Leake. (Tr. pp.241–42).

Hill testified that, on the night of the murders, he left the club with Applicant at around midnight and drove to James's house. (Tr. p.260). He confirmed that Applicant had a private conversation with James in another room, but he could not hear what was said. (Tr. pp.261–62). He then left with Kinard and her daughter, leaving Applicant at the house with James and Leake. (Tr. p.262–64). After dropping off Kinard and her daughter, Hill went to his grandmother's house to get something to eat. (Tr. pp.263–66). At around 2:00 or 3:00, he received a phone call from Applicant, who told him to come outside. (Tr. p.266). Hill went outside and saw Applicant walking towards him from the direction of James's trailer. (Tr. pp.266–67). Applicant looked "shaky," and he told Hill that "stuff went bad." (Tr. p.267). Applicant asked him to drive to Rodrigus Scurry's house, and he told Hill to take a roundabout route because Applicant "didn't want to go the regular way." (Tr. pp.267–69). They slept at Scurry's house until around 8:00 am, then returned to Hill's grandmother's house. (Tr. p.270). On the way, Applicant stated he wanted to "get the guns out of the house," but Hill did not understand what Applicant was talking about. (Tr. p.277).

Later that day, Hill was contacted by a police officer who asked him to call Applicant and

have him come talk to them. (Tr. pp.273–74). When Hill called Applicant, Applicant asked Hill if he “heard about what happened” to James and Leake. (Tr. p.274). Applicant told Hill to lie to the police and say he picked up Applicant the previous night after dropping off Kinard at her house. (Tr. p.275). Hill initially wrote a statement as Applicant instructed because he felt like his life was being threatened. (Tr. pp.276–77). However, after he was charged with the murders, he agreed to testify truthfully and plead guilty to lying to the police in exchange for the State dropping the murder charges. (Tr. p.283).

James’s neighbor, Milton Grant, testified he was watching television on the night of the murders because he couldn’t sleep. (Tr. pp.249–50). At around 3:00 am, he heard three gunshots. (Tr. p.250). He went to the window and saw somebody come out of James’s trailer, turn off the porch light, close the door, walk up and down the steps for a while, and then disappear into the darkness. (Tr. pp.250–51). Grant testified the person was wearing brown clothing. (Tr. p.251). Multiple witnesses testified that Applicant was wearing tan or brown overalls on the night of the murders. (Tr. p.228; p.239; p.259).

No murder weapon was found; however, the State’s expert testified that some of the bullets recovered from the crime scene were consistent with nine millimeter projectiles, multiple nine millimeter shell casings were found at the scene, a nine millimeter extended pistol magazine was found in Applicant’s house, and Applicant’s phone contained a photo of a Ruger nine millimeter pistol with an extended magazine. (Tr. pp.206–19).

III. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel for failing to object, request a mistrial, and/or seek a curative instruction to improper comments—at both the beginning and end of the

- solicitor's closing argument—calculated to entice the jury to abandon their duty to decide the case on the evidence by appealing to the jurors' inherent desire to protect their "community" by convicting Applicant. See *State v. Liberte*, 336 S.C. 648 (1999) (solicitor's improper comments urging the jury to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking mandated reversal). Additionally, Applicant was prejudiced by Trial Counsel's failure to put forward an objection throughout the closing argument as the judge was then precluded from giving the jury an immediate curative instruction. Moreover, this was not a case of overwhelming evidence as delineated in *Smalls v. State*, 422 S.C. 174 (2018), and *Thompson v. State*, 423 S.C. 235 (2018) ("For the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of a 'reasonable probability the fact finder would have had a reasonable doubt' cannot possibly be met.").
2. Ineffective assistance of Trial Counsel in failing to ensure the co-defendant's conflicting (and exculpatory) initial written statement to police—a statement that corroborated Applicant's alibi and from which co-defendant completely changed his story at trial resulting in the outright dismissal of murder charges against him—was properly placed into evidence at trial, this effectively denying the jury, amidst deliberations, their specific request to review and compare the actual statement. As to prejudice, the jury's extended deliberations coupled with their specific request to review co-defendant's initial statement substantiate an assertion that they were struggling with the credibility and motivation of co-defendant in changing his story to secure a dismissal of murder charges against himself. Applicant was clearly prejudiced by counsel's deficiency in that once the jury was informed the statement could not be provided to them, due to not being placed into evidence, (and thus unable to be properly and fully considered/scrutinized) they returned with a guilty verdict soon after.
 3. Ineffective assistance of Trial Counsel for failing to insist on a "mere presence" jury instruction where the State put forth evidence of Applicant's presence at the trailer of Nikesha James during a period of time prior to the crime, but no direct evidence existed tying Applicant to the actual killing of the victims. Moreover, the unconstitutional instruction that malice could be inferred from the use of a deadly weapon compounded the prejudice to Applicant in not having the jury reminded that mere presence at the scene of the crime is not enough to convict.
 4. The solicitor improperly used his closing argument to entice the jury to abandon their duty to decide the case solely on the evidence by appealing to the jury's passions and inherent desires to protect their "community" by convicting Applicant. His multiple references were strategically made at both the beginning and the very end of his closing argument—pleading for "justice for us, the community"—thus "bookending" the State's last words to the jury with emotional impropriety. Additionally, the prejudicial harm was then compounded by the solicitor—at the end of closing—then denigrating defense counsel (and Applicant's entire defense) as nothing, but "all smoke and mirrors." ROA 463, l. 3. The combination and totality of these improper comments were highly prejudicial to Applicant. Further, the way in which the solicitor injected the comments into key parts of his closing support the assertion that they were calculated to improperly

appeal to the passions and biases of the jury. See *State v. Linder*, 276 S.C. 304 (1981) and *State v. Copeland*, 321 S.C. 318 (1996) (our Supreme Court “strongly disapproves” of closing arguments calculated “to improperly arouse the passions and prejudices of jurors, urging them to abandon their sworn role as fair and impartial arbiters of the facts and view the evidence from an improper perspective.”); see also *State v. White*, 246 S.C. 502 (1965) (holding that such an argument “tends to completely destroy and nullify all sense of impartiality in a case of this kind”). Applicant was denied his right to a fair trial as under our high Court’s analysis in *Smalls and Thompson* this case was not one of overwhelming evidence of guilt.

Applicant requests a new trial as relief.

Attached to and incorporated herein are the records of the Laurens County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Trial Counsel, Generally

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(c), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its

“reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to

consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Failure to Object During Solicitor’s Closing Argument

Applicant’s allegation that Trial Counsel was ineffective for failing to object, move for a mistrial, or request a curative instruction during the solicitor’s closing argument is without merit. The statements made by the solicitor referring to the jurors’ “community” were not objectionable.

A solicitor’s closing argument should not appeal to the personal biases of the jurors, nor be calculated to arouse their passions or prejudices; rather, its content should stay within the record and reasonable inferences drawn from it. *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996).

The solicitor began his closing argument by correctly explaining the jury’s role as the finder of fact, saying “you’re going to have to go back to that room that you’ve been brought in and out of and you’re going to have to deliberate. You’re going to have to try to reach a verdict and decide what happened on January 31st of 2014.” (Tr. p.442). He then said, “[Trial Counsel] said you’re the drivers of the justice system. I’m not sure I quite agree with that. But you are the engine that makes it run. . . . This is how we administer justice. And that’s the reason it’s chosen from people in this community. It’s your community and this is how you serve to serve justice in your communities.” (Tr. p.442–43). In context, the solicitor was simply explaining the jury’s role in the justice system, not inviting the jury to decide the case on non-factual grounds. In fact, he clearly explained that the jury’s duty was to “decide what happened on January 31st of 2014,” i.e. to determine the facts based on the evidence presented. At no point did the solicitor suggest the jury abandon its duty to decide the case on the evidence, nor did he urge the jury to

convict Applicant in order to protect the community.

The solicitor then recited the evidence presented in the case at length, arguing that it demonstrated Applicant's guilt. (Tr. pp.447-61). At the end of the solicitor's closing argument, he stated, "And that's where all the evidence points. It consistently points there. . . . [T]he evidence is clear. Thank you for your time. I ask for justice. Justice for us, the community. Justice for Darryl and justice for Kesha." (Tr. pp.462-63). The solicitor's brief references to "justice" and the "community" followed an extensive and emphatic argument for Applicant's guilt properly based on the record and its reasonable inferences. *See Copeland*, 321 S.C. at 324, 468 S.E.2d at 624. Again, the solicitor's argument never suggested that the jury should abandon its duty to decide the case based on the facts, nor did he urge the jury to convict Applicant "in order to protect community values, preserve civil order, or deter future lawbreaking." *State v. Liberte*, 336 S.C. 648, 654, 521 S.E.2d 744, 747 (Ct. App. 1999) (quoting *United States v. Monaghan*, 741 F.2d 1434, 1441 (D.C. Cir. 1984)).

Because the solicitor's comments were not improper, Trial Counsel was not deficient for failing to object to them, move for a mistrial, or request a curative instruction. *Strickland*, 466 U.S. at 686. In addition, Applicant was not prejudiced because there is no reasonable probability the result of the trial would have been different if Trial Counsel had objected or requested a mistrial or curative instruction during the solicitor's closing argument; the solicitor's isolated references to "community" and "justice" could not possibly have confused the jury when the substance of the solicitor's closing argument was properly based on the evidence. *See Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this allegation of ineffective assistance of Trial Counsel is meritless.

Failure to Introduce Hill's Initial Written Statement

Applicant's allegation that Trial Counsel was ineffective for failing to introduce Hill's written statement into evidence is without merit. Hill testified his initial statement was a lie, made at Applicant's insistence in order to create a false alibi exonerating Applicant. Therefore, it was not necessary for Trial Counsel to introduce the statement in order to impeach Hill's credibility—Hill had already acknowledged that his testimony was not consistent with his initial statement to police. In addition, Hill testified to the content of his initial statement, so the jury had the opportunity to compare his own account of the statement to his testimony at trial and observe the inconsistencies in that manner. Because Trial Counsel had no need to introduce the statement itself in order to attack Hill's credibility, but could rely on Hill's own admission that his statements were inconsistent, Trial Counsel's failure to introduce the statement was not unreasonable. *See Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (holding the proper measure of counsel's performance is whether it was reasonable under prevailing professional norms).

The mere fact that the jury asked to see a copy of Hill's initial written statement does not mean the verdict would likely have been different if the statement had been introduced into evidence. Since there is no indication the contents of the statement differ materially from Hill's description of those contents during the trial, it is not likely that the jury would have reached a different result if they had been provided with a copy of the statement. *See id.* at 117–18, 386 S.E.2d at 625 (holding that, to prove prejudice, an applicant must show a reasonable likelihood that the result of his trial would have been different absent counsel's alleged error). Therefore, Trial Counsel was not ineffective for failing to introduce the statement into evidence.

Failure to Insist on a "Mere Presence" Jury Instruction

Applicant's allegation that Trial Counsel was ineffective for failing to insist on a jury instruction that a defendant's "mere presence" at the scene of the crime does not necessitate a

conviction is without merit. Trial Counsel did request a "mere presence" jury instruction, and the trial court took the request into consideration. (Tr. p.436-37). Prior to closing arguments, the trial court denied Trial Counsel's request on the record. (Tr. p.440). After instructing and dismissing the jury, the trial court asked if the defense had any exceptions or additions to the jury charge "[w]ith the exception of mere presence." (Tr. p.492).

The trial transcript clearly shows that Trial Counsel timely requested a "mere presence" jury instruction and received a ruling on the record. That was all that was required to raise the issue and preserve it for appellate review. *See Franks*, 432 S.C. 58, 79, 849 S.E.2d 580, 591 (holding an issue is properly preserved if it is raised to and ruled on by the trial court in a timely manner with sufficient specificity); *see also State v. McDaniel*, 320 S.C. 33, 37, 462 S.E.2d 882, 884 (Ct. App. 1995) (quoting *Dunn v. Coca-Cola Bottling Co.*, 311 S.C. 43, 46, 426 S.E.2d 756, 758 (1993) ("So long as the judge had an opportunity to rule on an issue, and did so, it was 'not incumbent upon defense counsel to harass the judge by parading the issue before him again.'"). Trial Counsel fulfilled his duty to his client by properly raising the issue; the mere fact that the trial court ultimately ruled against him does not mean Trial Counsel's performance was deficient. Trial Counsel was not required to harass the judge by "insisting" on a request that the judge had already denied on the record. Because Trial Counsel acted reasonably, Applicant's allegation of ineffective assistance is meritless. *See Cherry*, 300 S.C. at 117, 386 S.E.2d at 625.

Conclusion and Action Requested

Applicant can satisfy neither requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983)

("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

V. RESPONSE TO ALLEGATION OF PROSECUTORIAL MISCONDUCT

Applicant's allegation of prosecutorial misconduct is without merit. As explained in the State's response to Applicant's first allegation of ineffective assistance of Trial Counsel, the comments made by the solicitor during closing argument referring to "community" and "justice" were not improper; they did not appeal to the passions and prejudices of the jury, but were made in a context that emphasized the jury's role in finding facts based only on the evidence presented at trial. *See Copeland*, 321 S.C. at 324, 468 S.E.2d at 624.

Similarly, the solicitor's analogy of "smoke and mirrors" was a perfectly proper exercise of the prosecutor's right to argue against the plausibility of Applicant's defense. *See Liberte*, 336 S.C. 648, 653, 521 S.E.2d 744, 746 ("Certainly, a prosecutor is entitled to call into question the credibility of a defense."); *see also State v. Lunsford*, 318 S.C. 241, 246, 456 S.E.2d 918, 922 (Ct. App. 1995) (holding it was not improper for a solicitor to say, during closing argument, "So don't fall for that," when attacking defense counsel's arguments about the absence of fingerprint evidence). Nothing about the solicitor's closing argument amounted to a denial of Applicant's right to a fair trial. Therefore, Respondent submits that this allegation is meritless. However, insofar as Applicant's allegation of prosecutorial misconduct raises questions of fact that the record does not conclusively refute, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper*, 279 S.C. at 265, 305 S.E.2d at 248.

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All

claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRCP. *Pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (holding *pro se* filing a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases, . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)–(b), SCRCP (explaining how to amend a pleading).

Under section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless

granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

IX. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on Applicant's allegations.

Respectfully submitted,

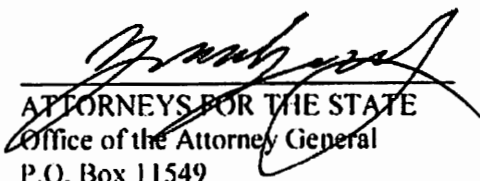
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

ZACHARY W. JONES
Assistant Attorney General

By:


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Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

June 3, 2022

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

DeShanndon Franks, #370250)

Applicant.)

v.)

State of South Carolina.)

COURT OF COMMON PLEAS
FOR THE 8TH JUDICIAL CIRCUIT
Case No.: 2022-CP-30-130**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on February 22, 2022, to add the following:

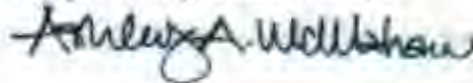
1. Ineffective Assistance of Counsel of J. Faulkner Wilkes, Esquire:

- a. Failure to object to the States's exhibits regarding the cell phone records on pages 420-421 of the trial transcript and failure to challenge Sgt Dan Kelley's qualification as an expert witness as to the reliability of records from Verizon. This failure did not allow for trial counsel to adequately challenge the reliability of the Verizon records since no one from Verizon was there to testify to such reliability. Because trial counsel did not object to the records coming in in the first place, trial counsel's reliability argument was without merit and not preserved for appeal.
- i. As noted in the opinion: "However, [Franks] did not object to the data on this basis during the suppression hearing or at the time the Verizon call records were introduced into evidence. Rather, his only objection to the records was based on his argument they were unlawfully obtained without a warrant, a ruling he does not challenge on appeal. Because the underlying data—the Verizon records—had already been admitted into evidence when the State offered Sergeant Kelley as an expert, Franks waived his challenge to the reliability of the data by failing to object at the time the State introduced the data." See Opinion 5758, at page 13.
- b. Failure to adequately cross-examine the co-defendant's conflicting statements given to the police.
- c. Failure to request a jury instruction on mere presence.
- d. Failure to object to the Solicitor's closing statement.
 - i. See lines 11-16, page 462: " But I want you to do this. I want you to listen to him carefully, because that's what your oath is

and that's what I want. When we do something as serious as what we're doing in this courtroom I want it done right. I do. Because I don't ever deal with anything more serious than one of our community members being killed."

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006); *see also Love v. State of South Carolina*, 428 S.C. 231, 834 S.E.2d 196 (2019).

Respectfully submitted,



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SC Bar No. 71676

ATTORNEY FOR APPLICANT

November 15, 2023

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary W. Jones
Assistant Attorney General
zacharyjones@scag.gov

This 15th day of November, 2023.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

1 STATE OF SOUTH CAROLINA.

2 -----x
3 DESHANNDON M. FRANKS,

4 Petitioner,

5 Case No.

6 -against-

2021-CP-30-00130

7 STATE,

8 Respondent.

9 -----x

10 November 28, 2023

11 Newberry, S.C.

12
13 B E F O R E:

14 HONORABLE B. ALEX HYMAN

15
16 A P P E A R A N C E S:

17 ASHLEY A. MCMAHAN

18 Attorney for the Petitioner

19
20 CRUISE MITCHELL

21 Attorney for the Respondent

22
23 Aileen Butler

24 Official Court Reporter

25

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Deshanndon M. Franks

Ms. McMahan	3			
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J. Flakner wilkes

Mr. Mitchell	15			
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Ms. McMahan		26		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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(NO EXHIBITS RECEIVED)

4
1 MR. JONES: This is is the post conviction
2 relief matter of Deshanndon Franks v State.
3 Case number 2022-CP-30-00130 out of Laurens
4 County.

5 I'm Cruise Mitchell on behalf of the State
6 of South Carolina. Applicant is present and
7 represented by counsel, Ashley McMahan.

8 Applicant was indicted at the May 2014 term
9 of the Laurens County Grand Jury for two counts
10 of murder and one count of possession of a
11 weapon during the commission of a violent crime.
12 Applicant was represented by J. Falkner Wilkes,
13 Esquire. Assistant Solicitors Warren Mowry and
14 Lance Sheek prosecuted the case.

15 On August 24, 2016, Applicant proceeded to
16 a jury trial before the Honorable Frank R. Addy,
17 Jr. The jury found Applicant guilty as
18 indicted. Judge Addy sentenced Applicant to 45
19 years imprisonment on the two murder charges and
20 five years for possession of a weapon during the
21 commission of a violent crime, with those
22 sentences to run concurrently.

23 Applicant filed a timely notice of appeal.
24 The appeal was perfect Chief Appellate Defender
25 Robert M. Dudek. By opinion decided on August

1 12, 2020, the South Carolina Court of Appeals
2 affirmed Applicant's convictions and sentences.
3 Applicant petitioned the Supreme Court for a
4 writ of certiorari, which was denied on
5 September 21, 2021. The remittitur was issued
6 on September 24, 2021 and with that I will turn
7 in over to Ms. McMahan.

8 THE COURT: Yes.

9 MS. MCMAHAN: Judge, at this time my client
10 would like to request a continuance.

11 THE COURT: All right.

12 MS. MCMAHAN: If you would allow him to
13 address the Court.

14 THE COURT: What are the grounds for that?

15 MS. MCMAHAN: I'm not sure. If we can just
16 let Mr. Franks speak I think that will be the
17 best way to go.

18 THE COURT: Yes, sir.

19 MR. FRANKS: I haven't been able to prepare
20 properly.

21 THE COURT: You haven't been prepared
22 properly? Speak up.

23 MR. FRANKS: I've spoken to her like twice.
24 Like two weeks before. She was telling me today
25 we will be able to come here prepared. None of

6
1 that happened.

2 THE COURT: And what are you referring to
3 about not being able to be prepared as far as
4 her?

5 MR. FRANKS: Yeah. I don't even know what
6 type of defense she has.

7 THE COURT: Well, this isn't a defense.
8 It's a PCR.

9 MR. FRANKS: I understand that. I understand
10 it but what I'm saying is I don't know what she
11 is bringing to the table.

12 THE COURT: Did you file your PCR?

13 MR. FRANKS: I did.

14 THE COURT: Then you laid out the grounds in
15 the PCR.

16 MR. FRANKS: Okay, but she said we made
17 amendments. I just got a copy of it today.

18 THE COURT: Do you need a minute to take a
19 look at what she has provided?

20 MR. FRANKS: We can do that.

21 THE COURT: All right. Let's take a minute
22 and have you take a look at that.

23 (WHEREUPON, there was a brief recess.)

24 MS. MCMAHAN: I think we are ready to go.

25 THE COURT: All right. We will proceed.

1 MS. MCMAHAN: So at this time we will call
2 the applicant. If you will step up.

3 Is Mr. Franks visible judge on your end?

4 THE COURT: No. You may have to put it up on
5 this.

6 MS. MCMAHAN: That might be helpful. There
7 we go.

8 THE COURT: Mr. Franks, I need you to raise
9 your right hand.

10 DESHANNDON FRANKS, called as a witness, was
11 sworn by the clerk and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MCMAHAN:

14 Q. Mr. Franks, you heard the judge ask you earlier
15 that you filed this PCR application yourself. Is that
16 correct?

17 A. Correct.

18 Q. And who was your attorney that was representing
19 you?

20 A. At trial?

21 Q. Yes.

22 A. Jeff Wilkes.

23 Q. Mr. Wilkes. And was Mr. Wilkes appointed or
24 retained?

25 A. Retained.

1 Q. And how far after you were arrested did you are
2 retain Mr. Wilkes?

3 A. Probably about I'm going to say about year and a
4 half or two years after.

5 Q. So a year after you were arrested initially?

6 A. Yeah, somewhere. Year and a half, two years.

7 Q. And you were in the detention center the whole
8 time?

9 A. Correct.

10 THE COURT: You are going to have to speak
11 up. I can barely hear you.

12 Q. Who did you have before Mr. Wilkes.

13 A. Joshua Nasrollahi.

14 MR. MITCHELL: Your Honor, if you don't mind
15 if I stand up there closer so I can hear better.

16 THE COURT: Fine.

17 Q. So you had Mr. Nasrollahi before then?

18 A. Correct.

19 Q. So how long after your initial arrest did you go
20 to trial?

21 A. I want to say it was like 33 months.

22 Q. Thirty three months. Almost three years later?

23 A. Correct.

24 Q. And when did you first meet with Mr. Wilkes?

25 A. It was probably about -- he came down and let me

1 know he had been retained and we build the case. After
2 that it was probably another two, maybe three, four
3 months.

4 Q. So you met with him one time right when you first
5 hired him?

6 A. Right.

7 Q. And then a couple of months later?

8 A. Correct.

9 Q. How many times do you think you met with Mr.
10 Wilkes?

11 A. Maybe around seven, eight times.

12 Q. Okay. And did he go over the discovery and
13 everything with you? The evidence that the State had
14 against you?

15 A. I would say yeah.

16 Q. And did he tell you what kind of time you were
17 looking at if you were convicted?

18 A. At the time he just said it could carry up to
19 life or death penalty.

20 Q. Okay. Were there any plea offers or anything you
21 all talked about?

22 A. Not until like the week of court.

23 Q. And what was that?

24 A. Anywhere between forty and fifty years.

25 Q. So you would plead to what you were charged with

1 but the State would recommend a cap, so to speak,
2 between forty and fifty years or a range?

3 A. Correct.

4 Q. And obviously you turned that down because you
5 went to trial?

6 A. Correct.

7 Q. And when you and Mr. Wilkes was talking what kind
8 of defenses were you guys talking about?

9 A. More so like mere presence. Technically that's
10 really it.

11 Q. Mere presence. Was that because the argument was
12 you just happen to be near that area when this crime
13 took place?

14 A. Correct.

15 Q. And some time during your trial Mr. Wilkes never
16 requested a mere presence jury instruction did he?

17 A. Well, I don't recall anything about him
18 announcing mere presence.

19 Q. Okay. And in your application we talked about
20 the co-defendants conflicting initial statements. The
21 first statement they gave kind of agreed with what you
22 were saying but then the second statement it changed.

23 A. Right.

24 Q. What was the issue with that that that Mr. Wilkes
25 didn't do?

1 A. I felt it was a perilous situation.

2 Q. So that Mr. Wilkes when he was cross examining
3 the co-defendant about the statement he didn't
4 adequately address the fact that there was conflicting
5 statements this individual had made?

6 A. Right.

7 Q. In that either one or the other was true but both
8 couldn't be true?

9 A. Right.

10 Q. And that whatever they were testifying to
11 obviously if one of them wasn't true something they were
12 testifying to could have been an outright lie in court?

13 A. Correct.

14 Q. And did you feel like Mr. Wilkes had adequately
15 pulled that out of that co-defendant when he was
16 addressing him on the record during your trial?

17 A. The only thing I felt he did was discuss a deal.
18 They did discuss a deal that was presented.

19 Q. So they did bring up the deal that he had made
20 with the State to testify, right?

21 A. Correct.

22 Q. Okay. And that came out at trial?

23 A. Correct.

24 Q. But he didn't say, hey, why did you give so many
25 different statements? What's the truth kind of thing?

1 A. Correct.

2 Q. Okay. And you don't recall anything about Mr.
3 Wilkes requesting a mere presence charge for the jury or
4 anything like that?

5 A. I don't remember.

6 Q. But when you guys were talking that was your
7 defense?

8 A. Yes, we spoke about it.

9 Q. And what was the issue with the cellphone
10 records? Do you remember there were some cellphone
11 records that came in?

12 A. Correct.

13 Q. And at some point the State qualified an
14 individual as an expert on the reliability of those
15 records?

16 A. Correct.

17 Q. But by the time Mr. Wilkes had -- was challenging
18 that the expert had already been qualified so he -- his
19 objection didn't go forward because he didn't object to
20 the qualification of the witness to begin with. Do you
21 remember that?

22 A. So he didn't object.

23 Q. He didn't object to the qualification of that
24 sergeant being made an expert on the reliability of
25 phone records?

1 A. If I'm a not mistaken I do -- I do remember him
2 challenging the credibility.

3 Q. But it was after he had already allowed him to be
4 qualified as witness, do you remember?

5 A. Okay.

6 Q. So then the ability for him to challenge that
7 ability ended once he allowed him to be qualified as a
8 witness?

9 A. Correct.

10 Q. Okay. What was the issue with the solicitor's
11 closing statement?

12 A. Me personally, I really just feeling as though he
13 was enticing the jury.

14 Q. Enticing the jury to do what?

15 A. The way he wanted them to do.

16 Q. And was that because of what the solicitor said
17 in closing?

18 A. Correct.

19 Q. Is that because he said I want you -- I want it
20 done right. I do, because I don't ever deal with
21 anything more serious than one of our community members
22 being killed?

23 A. Yeah, as well as he really provided the defense
24 (inaudible)--

25 Q. He really provided that you're defense was what?

1 A. Smoke and mirrors.

2 Q. Okay. Was there anything else in the solicitor's
3 closing? I think you addressed some of it in your
4 amendments. I mean, in your initial application.

5 Did you feel like the solicitor was improperly
6 appealing to the passions and biases of the jury in his
7 closing argument?

8 MR. MITCHELL: Your Honor, it calls for a
9 legal conclusion.

10 THE COURT: Sustained.

11 Q. Did you write that in your application?

12 A. I'm trying to find it now. I think I did. Hold
13 on. Correct.

14 Q. Okay. Is there anything else in your application
15 indication that you want the Court to know today about
16 your PCR?

17 A. No, at this moment.

18 Q. Okay, answer any questions Mr. Mitchell may have.

19 MR. MITCHELL: I have no questions for this
20 witness, Your Honor.

21 THE COURT: All right, sir, you may step
22 down. Call your next witness.

23 MS. MCMAHAN: The applicant rests.

24 THE COURT: Okay.

25 MR. MITCHELL: Your Honor, the State calls

1 Mr. Jeff Falkner Wilkes to the stand.

2 (WHEREUPON, the following witness appeared
3 virtually.)

4 THE COURT: Mr. Wilkes, our court reporter I
5 don't believe has it pulled up. So I'm going to
6 swear you.

7 Do you swear to tell the truth, the whole
8 truth, and nothing but the truth so help you
9 God?

10 THE WITNESS: I do.

11 MS. MCMAHAN: One moment. I just need to
12 get the file pulled up.

13 THE COURT: Mr. Wilkes, can you hear us
14 okay.

15 THE WITNESS: I can hear you fine Your
16 Honor.

17 DIRECT EXAMINATION

18 BY MR. MITCHELL:

19 Q. Good afternoon Mr. Wilkes.

20 A. Good afternoon Mr. Mitchell.

21 Q. How long have you been practicing law?

22 A. Since 1989.

23 Q. And a lot of that has been in criminal law?

24 A. Both as a prosecutor and defense attorney, yes.

25 Q. And were you appointed or retained in this case?

1 A. I was retained.

2 Q. And do you recall how many times you met Mr.
3 Franks?

4 A. There were at least six times. Maybe more, and
5 each time usually for a couple of hours I think at
6 least.

7 Q. And during the meetings did you review the
8 discovery with Mr. Franks?

9 A. I did.

10 Q. And did you all discuss the defenses?

11 A. I'm sure we did.

12 Q. And do you recall what your defense strategy was
13 in this case?

14 A. Well, that he did not commit the murders and that
15 the State was putting up evidence that he did. I think
16 we made an issue of him simply being at the location
17 wasn't sufficient proof, but then there was testimony
18 that kind of made that damaging.

19 Q. And I know it has been a while, Mr. Wilkes, but
20 can you briefly summarize the State's evidence in the
21 case or the facts in this case?

22 A. Well, it has been six years.

23 Q. Yes, sir.

24 A. Two people were killed and before they were
25 killed Mr. Franks, Mr. Hill, had gone to that residence.

1 Mr. Hill's testimony was that he had left the residence
2 to take home a female that was also there and her
3 daughter and I think the mother's name was Mia or was
4 called called Mia. Mr. Hill said that he had taken Mia
5 home and had left Mr. Franks at the residence alone with
6 the victims and they subsequently were found dead and
7 then Mr. Hill went on to testify to more damaging
8 information that he had picked up Mr. Franks.

9 Mr. Franks had made statements that something very
10 bad had happened, but never was specific about it. Kind
11 of created the inference that he may have killed the two
12 victims.

13 Q. And along that same line, during your cross
14 examination of Mr. Hill, what was your strategy dealing
15 with the conflicting statements?

16 A. Well, Mr. Hill -- Mr. Hill had given two
17 statements. I think the first statement has been
18 mischaracterized as exculpatory. It was not
19 exculpatory. It was inculpatory. And he later gave a
20 second statement expounded on that and then added in
21 things that supposedly happened after the murder that
22 would be further incriminating, but there were two
23 statements.

24 So, are you asking about my cross examination of
25 Hill or are you asking about the statements?

1 Q. Was there a reason why you didn't address the
2 fact that he made conflicting statements during your
3 cross examination?

4 A. Yes. That came out fairly well on direct the
5 fact that he had given a different statement. So that
6 came out on direct and then I had to size up Mr. Hill as
7 far as his potential to do more harm than good in a
8 cross examination. Mr. Hill I think seemed pretty
9 street wise and, you know, the Perry Mason fantasy where
10 witnesses break down and start crying and admit that
11 they are lying on the witness stand is pretty unlikely
12 and I saw Mr. Hill I guess just through his demeanor as
13 being pretty confident in his testimony which meant Mr.
14 Hill was something akin to a hand grenade with a pin
15 pulled, waiting for me to open the door literally to
16 have it thrown in my lap. So if I started cross
17 examining him two things could happen. One, is that
18 he's going to expound on why he gave the first statement
19 and didn't include all the other incriminating facts.
20 The likelihood being that he's going to testify that Mr.
21 Franks is a bad man and he's done bad things and he's
22 scared to death of him or because he could hurt people
23 or has hurt people and just a lot of potential damage is
24 going to come from why did you gave the different
25 statement.

1 The other thing that comes from getting to far in to
2 the statement is the first statement is incriminating.
3 The first statement said that they went to the house.
4 They were there. He left to take Mia and the child home
5 and particularly damaging in the first statement was Mr.
6 Hill said and when I left -- meaning he had left Mr.
7 Franks there along with the victims -- when I left, the
8 victims were alive and well. That's just not
9 exculpatory and I just didn't want the jury -- I didn't
10 -- I just didn't want the jury scrutinizing the first
11 statement in a way that I'm saying it's exculpatory
12 because it certainly wasn't.

13 Q. And did Mr. Hill admit that he lied in the first
14 statement during direct?

15 A. Yeah, I think he did. I think that was before
16 the jury that he -- I don't know if he said he lied
17 because everything that he said I think was basically
18 consistent with the second. It's just the second
19 statement I don't think contained -- or the second
20 statement contained more damning testimony.

21 The first statement only created the opportunity for
22 Mr. Franks to have committed the murder and just reading
23 it would make him the likely suspect. But the whole --
24 that statement when he left the victims were alive and
25 well was just terrible and I was trying to avoid that.

1 Q. Naturally you wouldn't want that admitted into
2 evidence?

3 A. No, not at all because again, it's not
4 exculpatory in the sense that it shows Mr. Franks is
5 innocent. It doesn't have the same -- all the same
6 information, allegations, that the second statement had,
7 but it's still consistent with the State's theory of the
8 case.

9 Q. And moving on Mr. Wilkes, did you request a mere
10 presence instruction in this case?

11 A. I think I did. I looked back over the transcript
12 and it looks like I did.

13 Q. And Mr. Wilkes, do you have the transcript in
14 front of you?

15 A. It is over here. I'll have to turn away and look
16 at it. I do.

17 Q. I believe on page 436.

18 A. Okay, 436.

19 Q. On line 19.

20 A. Yes. Yes, I see the mere presence. I did raise
21 mere presence on page 436. Yes, and I think it came up
22 again later but I don't know what page.

23 Q. Yes, I believe it's on page 440 starting on line
24 22 where the judge denied the mere presence instruction.

25 A. Yes, he indicated he was not going to instruct

1 mere presence on 440, but that's before the actual
2 instruction, so I think to preserve it it would have had
3 to have been probably noted or raised again after the
4 instruction and I think I did that too, or the judge
5 noted it. But I wouldn't know what page that would be
6 on.

7 Q. And Mr. Wilkes, do you recall the Verizon records
8 coming into the trial?

9 A. I do.

10 Q. And when the sheriff was qualified as the record
11 of this, did you object to his qualification as an
12 expert?

13 A. I don't think I did. I don't think I did. I
14 knew that he had been qualified as an expert before, so
15 I didn't. I don't normally make objections unless I
16 think they're well founded or may succeed. So I did
17 not.

18 Q. So I believe the Court of Appeals in their
19 opinion -- have you had an opportunity to read the
20 opinion?

21 A. I did.

22 Q. And the Court of Appeals ruled that the issue was
23 unpreserved as to the motion to suppress the Verizon
24 records based on reliability grounds?

25 A. Right, it wasn't really -- I won't say it was a

1 motion to suppress. It was more raising the 702 issue
2 to prevent testimony as to location, which I guess in
3 some sense that was truly -- that was the smoking
4 mirrors there because the 702 objection I don't think
5 would have stood any way.

6 I can explain the way the records came down. So the
7 -- I was aware that they were going to introduce the
8 phone records and that was a 803(6) issue because they
9 were business records commonly introduced into evidence.
10 So the 702 was kind of a secondary, but the issue on the
11 business records because they met the criteria of the 80
12 -- I think it's 803(6). They met the business records
13 criteria and they are introduced regularly all the time
14 back then even. So I knew they would be admitted as far
15 as business records. The question that I had then or
16 the issue that I had as far as the business records was
17 whether or not I wanted a Verizon expert in the
18 courtroom which I absolutely did not. So I did not
19 object to them being introduced without a custodian live
20 and in person. And this had been a pretrial issue. So
21 my theory was -- or at least my analysis was that they
22 were routinely admitted. They were admissible and they
23 would come in and my goal was not to have a Verizon
24 witness in the courtroom because if the Verizon witness
25 came into the courtroom for sure I could make no headway

1 on the 702 objection. The 702 objection is based on the
2 testimony related to scientific evidence and I had
3 researched this pretty extensively and the current -- at
4 that time the current white paper indicated that the
5 location data, the RTT and the augmented RTT and the
6 unaugmented RTT was reliable. Scientifically founded
7 and reliable and that's what the current technology was.
8 The white paper said that. So I knew that and at that
9 time I think location data was being used pretty
10 regularly in courts at that time. So I knew if I had a
11 Verizon expert in court they would be able to testify
12 and be very impressive as to how reliable they were of
13 the location data and I figured that any success in just
14 creating some potential doubt as to the reliability
15 would be through the officer. And so that's why I
16 approached kind of dealing with the officer on that
17 scientific data issue and trying to create some doubt
18 even though technically, scientifically, there was no
19 doubt and with the right testimony I knew that it would
20 be admissible any way, but I made it. I got into it as
21 far as I could. But then the judge ruled -- didn't rule
22 on the 702 issue. I think he ruled that was not raised
23 in the documents that were introduced -- or the records
24 were introduced and that I couldn't maintain a challenge
25 under 702 to the scientific basis of those records. I

1 didn't see that as the likely outcome because I had -- I
2 guess the analogy I made to the judge was it would be
3 like you can introduce a pair of pants at a trial if
4 they're admissible otherwise. You can admit them but if
5 the State were to testify as to DNA evidence that would
6 be the time to challenge that evidence and that's kind
7 of how I approached that, but knowing that I couldn't
8 make that 702 at the time that they were coming in
9 because that gets back to having had to commit to
10 challenging it in a way that was going to bring Verizon
11 in and that would have killed it any way. That was my
12 thought process.

13 Q. So the bottom line is you believe that the
14 Verizon expert coming to testify would not be beneficial
15 for Mr. Frank's defense?

16 A. No, of course not, because the Verizon -- anybody
17 coming from Verizon would have been able to testify as
18 to the reliability of the evidence and the technology.

19 Q. And moving onto the closing argument, Mr. Wilkes,
20 did you find anything in the solicitor's closing
21 objectionable?

22 A. No. I mean all of the things that were pointed
23 out in the application are skirting it of course, but I
24 did not find any one of those to be falling on the jury
25 to abandon, you know, their standard of fact finding and

1 what they must consider as far as guilt. I know that
2 generally a call to passion would be objectionable but I
3 didn't see the solicitor's statements as crossing that
4 line. I know that he did call on the jury to do justice
5 but that's really want we the jury to do. He didn't
6 call on them to convict to protect the community which I
7 think would be objectionable, but he didn't do that. He
8 called on them to do justice.

9 His comments both in opening and closing I did not
10 find -- I did not perceive them at the time to be
11 inflammatory to the extent that it would have effected
12 the jury's decision.

13 Q. And is it your practice that if you hear
14 something objectionable during opening or closing
15 arguments you would in fact object?

16 A. I object all the time in closing arguments. I'm
17 not opposed to objecting, but when I do I want it to be
18 a good objection.

19 MR. MITCHELL: Beg the Court's indulgence,
20 Your Honor.

21 Mr. Wilkes, I believe that is all the
22 questions I have for you. Thank you sir.

23 THE WITNESS: Yes, sir.

24 THE COURT: Yes, Miss McMahan.

25 MS. MCMAHAN: Do you mind if I sit down when

1 I'm asking questions.

2 THE COURT: That's fine.

3 CROSS EXAMINATION

4 BY MS. MCMAHAN:

5 Q. Good morning Mr. Wilkes.

6 A. Good morning.

7 Q. Absent Mr. Hill's testimony, what evidence did
8 the State have against Mr. Franks?

9 A. I think Mr. Hill's testimony -- well, there was
10 the testimony I think her name -- her full name is not
11 Mia. If I remember, I want to say that Mia testified
12 that Hill and Franks were there. I could be wrong, but
13 I think I remember that, but sometimes I get confused
14 between the statements that I read and the testimony
15 this far after the trial.

16 Q. Would you say that you felt the evidence was
17 overwhelming?

18 A. Not without Hill. Without Hill -- well, no.
19 It's not overwhelming if there's not an eyewitness. You
20 know, it's certainly not overwhelming. The fact that he
21 -- if there was -- if I'm right that Mia testified that
22 he was there last or they were there, if that's correct,
23 I still don't think that's overwhelming just because he
24 was the last person left with the victims. Pretty
25 convincing, but it's not overwhelming.

1 Q. And back to the records on the phone. If I'm
2 understanding you correctly, that you didn't want
3 someone from Verizon there to testify as to reliability,
4 but your argument was that they weren't reliable?

5 A. Smoke and mirrors. Yes, I had hoped that I could
6 question the officer just to see if the officer would be
7 able to testify that they were reliable. I knew he
8 would, but the fact that I knew that they were reliable
9 didn't stop me from -- I don't think from questioning
10 him to see if he would testify as to their reliability.
11 I think he did. I did try to get some momentum in
12 creating doubt as to how accurate his testimony to
13 location was.

14 Q. But ultimately your argument was the data that
15 was fed into GeoTime and ultimately the Court of Appeals
16 ruled that issue was not preserved for appeal. That you
17 had allowed the data to come in by objecting to the
18 search warrant and that was completely separate from the
19 reliability of the data.

20 A. Well, it was. I mean I saw the record being
21 admissible under business records exception. So -- but
22 even if they're admissible as business records if
23 there's a privacy interest there would still be a fourth
24 amendment objection and I think I made a fourth
25 amendment objection based on the lack of search warrant

1 because they did something called we need it real bad.
2 Give it to us now, which didn't seem to rise to fourth
3 amendment protection level. But that I saw as viable
4 despite the records being admissible as business
5 records.

6 So, again, they were introduced as business records.
7 If I had -- you know, told the solicitor we were going
8 to fight over that the solicitor was just going to put
9 Verizon on the stand.

10 Q. But if you had fought over it it would have been
11 preserved for appeal, correct?

12 A. If I would have fought over it it would have gone
13 down like this, or at least this is how I anticipated
14 it. Solicitor says, I'll introduce records as business
15 records under -- whatever I said -- 803(6) and I say,
16 no, that's not going to fly with me and you're going to
17 have to bring the custodian in. The custodian is the
18 Verizon records people. The Verizon people. They come
19 to court and then I have no argument under 702 because
20 as I said, I mean the technology at the time was
21 accepted as scientifically reliable. So the minute they
22 step in the courtroom there is no 702 argument.

23 Q. The sergeant that testified to GeoTime software
24 also had created some visualizations from it right?

25 A. Yes, he did.

1 Q. And you didn't object to those being admitted
2 either?

3 A. I did not.

4 Q. And had they been objected to that possibly could
5 have preserved that issue for appeal as well, correct?

6 A. Oh, of course, if I had objected that would have
7 preserved it.

8 MS. MCMAHAN: Court's indulgence, Your
9 Honor.

10 THE COURT: Yes, ma'am.

11 MS. MCMAHAN: No further questions.

12 THE COURT: Any redirect?

13 MR. MITCHELL: No redirect, Your Honor.

14 THE COURT: All right, Mr. Wilkes, thank you
15 for being here. May he be excused?

16 MS. MCMAHAN: I'm sorry.

17 THE COURT: Any objection to Mr. Wilkes
18 being excuse.

19 MS. MCMAHAN: No.

20 MR. MITCHELL: No objection from the State.

21 THE WITNESS: Thank you, Your Honor. Thank
22 you everybody.

23 MR. MITCHELL: Thank you Mr. Wilkes.

24 THE COURT: Okay. Any closing arguments?

25 MS. MCMAHAN: Yes, Your Honor. I think if

1 you read through the opinion from this case from
2 the Court of Appeals it clearly delineates
3 several issues that Mr. Wilkes did not preserve
4 for appeal that appellant defenders had
5 attempted to raise as issues on appeal and the
6 Court ultimately struck down saying they weren't
7 preserved. One of them was the reliability of
8 the data I guess per se. If you're looking at
9 -- well, there isn't page numbers on this, but
10 it's about six pages in. On page seven is where
11 it starts and then specifically about he never
12 objected to visualizations that was created from
13 the GeoTime data and because he had objected
14 under rule 702 -- well, let me back up.

15 He had initially tried to say that it
16 couldn't come in under search warrant grounds
17 under the fourth amendment issue, but ultimately
18 the Court said that the objection just concerned
19 the data from the phone company which is
20 separate to the admission as to reliability of
21 that data. So there's a distinction and at this
22 point, you know, I understand this was some time
23 ago. This opinion came out three years ago. So
24 the trial was significantly before that. But
25 we're in a situation now where, you know, GPS

1 isn't always that consistent and even Sergeant
2 Kelly's testimony points out that, you know, it
3 says it pings the phone company and it gives a
4 best estimate as to location. So it's not even
5 completely accurate in his own testimony. But
6 none of this could have even been argued or even
7 ruled upon by the Court of Appeals or ultimately
8 the Supreme Court. I think just based on those
9 issues alone that PCR should be granted. But I
10 just ask that you read the entire opinion before
11 making a decision.

12 THE COURT: All right. Counsel.

13 MR. MITCHELL: Your Honor, I might be
14 reading this differently than Miss McMahan, but
15 I believe that the objection as to the expert
16 who testified for the GeoTime was actually
17 preserved and ruled upon by the Court of
18 Appeals. They begin with the trial court did
19 not abuse it's discretion and Sergeant Kelley
20 was qualified to testify as an expert in the use
21 of GeoTime and other call records translation
22 tools. They go on and give an analysis about
23 why.

24 Then they go into the issues of the
25 reliability of the Verizon records as a separate

1 issue and then rule on that issue. However, Mr.
2 Wilkes was not efficient for one, the argument
3 he articulated a very valid reason for not
4 wanting to bring in the Verizon record's expert
5 to testify. That was not going to be helpful to
6 Mr. Frank's defense and furthermore, Your Honor,
7 the Court of Appeals goes on and says, even
8 assuming the issue is preserved, the trial court
9 did not abuse it's discretion by finding the
10 substance of the testimony was reliable. So
11 they gave an analysis despite finding it
12 unpreserved. Even if it was preserved it still
13 would have been deemed reliable. They even go
14 further and said, he can not be possibly
15 prejudiced by the records coming in or not
16 because what it showed was he was not -- it was
17 where he was not located as opposed to where he
18 was. He claimed he went to Greenville. Mr.
19 Hill's first statement he said he drove him to
20 Greenville and that was not the case. Mr.
21 Hill's second statement said that's not what
22 happened and so the Court of Appeals found that
23 it would have been merely cumulative to Mr.
24 Hill's testimony and thus not prejudiced in the
25 application.

1 Regarding the failure to cross examine the
2 co-defendants's specific statements, the
3 standard in Smith v State is that trial counsel
4 articulates a valid reason for not doing so.
5 Mr. Wilkes clearly testified that the statements
6 coming in were not going to be helpful for Mr.
7 Franks at all. In fact it would be inculpatory
8 and how Mr. Hill's demeanor on the stand that
9 day he was worried that going to far into the
10 plaintiff's statements would actually be harmful
11 to Mr. Frank's defense.

12 Mr. Wilkes did in fact request a mere
13 presence instruction. That's in the transcript,
14 Your Honor, and failing to object to closing,
15 Mr. Wilkes simply did not find anything the
16 solicitor said objectionable. The solicitor was
17 not telling the jury to abandon its duty to
18 decide the case based on the facts and did not
19 inform the jury to convict him because he was
20 there. He was merely reassessing the role in
21 the criminal justice system.

22 If you read the whole closing argument, the
23 solicitor clearly used the evidence in trial to
24 say why the jury should convict him. Not for
25 any other reason. So, with that, Your Honor,

1 the State just ask that you deny Mr. Franks'
2 application.

3 THE COURT: I will take a look at the
4 opinion. Anything else you want?

5 MS. MCMAHAN: Judge, I just want to add,
6 part of the issue is because he failed to object
7 to qualifications of this person as an expert
8 witness he couldn't have therefore challenge the
9 data that came from this person. So that's one
10 of the issues. And the other issue is, it
11 doesn't matter what the Court of Appeals said
12 that maybe it would still be ruled this way.
13 The issues were still not preserved
14 appropriately.

15 The second part is, he didn't object to any
16 of those visualizations coming in. None of that
17 issue came up and I don't recall -- I don't have
18 my notes directly in front of me, but I don't
19 think he renewed his request for the mere
20 presence objection after the jury instructions
21 were already read to the jury. So that also
22 wasn't preserved. So we're talking about four
23 separate issues that could have been preserved
24 for appeal that weren't. We got these Geo
25 location, GPS issues that are sort of hot button

1 items right now too, and I just think, you know,
2 all of that together shows that Mr. Franks
3 should get a new trial.

4 THE COURT: I'm going to take -- like I said
5 I will take a second look at the opinion. So I
6 will take this under advisement. I should have
7 a ruling this afternoon if possible. All right.
8 Thank you so much.

9 MS. MCMAHAN: Thank you, Your Honor.

10 (END OF TRANSCRIPT).
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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Newberry County, South Carolina, on the 28th day of November, 2023.

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

September 8, 2024

Aileen Butler

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

DeShanndon Franks, SCDC #370250,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 2022-CP-30-00130

ORDER OF DISMISSAL

K. MITCHELL 9 MONTHS
2024 MAY 31 A 11:23
LAURENS COUNTY
CLERK OF COURT

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by DeShanndon Franks (“Applicant”) on February 22, 2022. On November 28, 2023, a hearing into the matter was convened before the Honorable B. Alex Hyman at the Newberry County Courthouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. During the hearing, testimony was taken from Applicant and J. Falkner Wilkes (“Counsel”).

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant’s allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its May 2014 term, the Laurens County Grand Jury indicted Applicant for two counts of murder (2014-GS-30-00499, -00500) and possession of a weapon during the commission of a violent crime (2014-GS-30-00501). Applicant was represented by J. Falkner Wilkes, Esquire. Assistant

Solicitors Warren Mowry and Lance Sheek, of the Eighth Circuit Solicitor's Office, prosecuted the case.

On August 24, 2016, Applicant proceeded to a jury trial before the Honorable Frank R. Addy, Jr. The jury convicted Applicant as indicted. Judge Addy sentenced Applicant to concurrent terms of forty-five years each on the murder charges and five years on the charge of possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Robert M. Dudek, of the South Carolina Commission on Indigent Defense Office of Appellate Defense, who raised the following issue(s):

1. The court abused its discretion by qualifying Greenville County Sheriff's officer Dan Kelley as an expert to testify regarding where the contents of appellant's iPhone where the data allegedly showed the locations appellant was at on the night of the murder at different times, since Kelley deferred to Verizon, and Verizon engineers, regarding the accuracy of the data, because the court further erroneously abdicated its gatekeeping function of this Rule 702, SCRE, evidence
2. The court erred by charging the jury the Belcher instruction that "inferred malice may arise when the deed is done with a deadly weapon," since this was a purely circumstantial evidence case as to who the shooter was, the state admitted it had no theory of a motive for appellant to shoot the victims, and where the defense sought to show that a third-party was more likely actually the shooter, since the court improperly reasoned the instruction was proper because there were no lesser-included offense involved, but there was evidence in this case which "mitigated" against a verdict of murder

By opinion decided August 12, 2020, the South Carolina Court of Appeals affirmed Applicant's convictions. *State v. Franks*, 432 S.C. 58, 849 S.E.2d 580 (Ct. App. 2020) ("Opinion").

Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated September 21, 2021. The Remittitur was issued on September 24, 2021.

FACTUAL SUMMARY

On January 31, 2014, Atrayel Williams called 911 after she and Laquesha Curenton discovered the bodies of Nikesha James and Sammie Darryl Leake in the living room of James's

mobile home. (Tr. pp.142–47).

The previous evening, Lavashtia Pulley saw Applicant and Tevin Hill at a club, and Applicant appeared unusually “hyped,” “pumped,” and “amped.” (Tr. pp.226–27). At one point, Applicant showed Pulley a black pistol he carried under his coat, which he said was a Ruger. (Tr. pp.227–30). Pulley left the club at approximately 11:30 pm, and Applicant left at the same time. (Tr. pp.229–33).

Tamia Kinard testified she and her daughter were visiting at James’s home that night. (Tr. pp.236–38). Applicant and Hill came to James’s house at around 12:15 in the morning. (Tr. pp.238–41). Kinard testified Applicant was talking loudly, jumping around, and generally acting abnormally “hyper” and “wild.” (Tr. p.243). At one point, Applicant mentioned something James said on Facebook and asked James to come with him into another room and discuss it “like a man—I mean, like a woman.” (Tr. pp.239–40). About ten or fifteen minutes later, Applicant and James emerged from the other room, laughing and talking normally, “like it wasn’t a problem.” (Tr. pp.240–41). At around 1:00, Hill took Kinard home, while Applicant stayed behind with James and Leake. (Tr. pp.241–42).

Hill testified that, on the night of the murders, he left the club with Applicant at around midnight and drove to James’s house. (Tr. p.260). He confirmed that Applicant had a private conversation with James in another room, but he could not hear what was said. (Tr. pp.261–62). He then left with Kinard and her daughter, leaving Applicant at the house with James and Leake. (Tr. p.262–64). After dropping off Kinard and her daughter, Hill went to his grandmother’s house to get something to eat. (Tr. pp.263–66). At around 2:00 or 3:00, he received a phone call from Applicant, who told him to come outside. (Tr. p.266). Hill went outside and saw Applicant walking towards him from the direction of James’s trailer. (Tr. pp.266–67). Applicant looked

“shaky,” and he told Hill that “stuff went bad.” (Tr. p.267). Applicant asked him to drive to Rodrigus Scurry’s house, and he told Hill to take a roundabout route because Applicant “didn’t want to go the regular way.” (Tr. pp.267–69). They slept at Scurry’s house until around 8:00 am, then returned to Hill’s grandmother’s house. (Tr. p.270). On the way, Applicant stated he wanted to “get the guns out of the house,” but Hill did not understand what Applicant was talking about. (Tr. p.277).

Later that day, Hill was contacted by a police officer who asked him to call Applicant and have him come talk to them. (Tr. pp.273–74). When Hill called Applicant, Applicant asked Hill if he “heard about what happened” to James and Leake. (Tr. p.274). Applicant told Hill to lie to the police and say he picked up Applicant the previous night after dropping off Kinard at her house. (Tr. p.275). Hill initially wrote a statement as Applicant instructed because he felt like his life was being threatened. (Tr. pp.276–77). However, after he was charged with the murders, he agreed to testify truthfully and plead guilty to lying to the police in exchange for the State dropping the murder charges. (Tr. p.283).

James’s neighbor, Milton Grant, testified he was watching television on the night of the murders because he couldn’t sleep. (Tr. pp.249–50). At around 3:00 am, he heard three gunshots. (Tr. p.250). He went to the window and saw somebody come out of James’s trailer, turn off the porch light, close the door, walk up and down the steps for a while, and then disappear into the darkness. (Tr. pp.250–51). Grant testified the person was wearing brown clothing. (Tr. p.251). Multiple witnesses testified that Applicant was wearing tan or brown overalls on the night of the murders. (Tr. p.228; p.239; p.259).

No murder weapon was found; however, the State’s expert testified that some of the bullets recovered from the crime scene were consistent with nine millimeter projectiles, multiple

nine millimeter shell casings were found at the scene, a nine millimeter extended pistol magazine was found in Applicant's house, and Applicant's phone contained a photo of a Ruger nine millimeter pistol with an extended magazine. (Tr. pp.206–19).

CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel for failing to object, request a mistrial, and/or seek a curative instruction to improper comments—at both the beginning and end of the solicitor's closing argument—calculated to entice the jury to abandon their duty to decide the case on the evidence by appealing to the jurors' inherent desire to protect their "community" by convicting Applicant. *See State v. Liberte*, 336 S.C. 648 (1999) (solicitor's improper comments urging the jury to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking mandated reversal). Additionally, Applicant was prejudiced by Trial Counsel's failure to put forward an objection throughout the closing argument as the judge was then precluded from giving the jury an immediate curative instruction. Moreover, this was not a case of overwhelming evidence as delineated in *Smalls v. State*, 422 S.C. 174 (2018), and *Thompson v. State*, 423 S.C. 235 (2018) ("For the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of a 'reasonable probability the fact finder would have had a reasonable doubt' cannot possibly be met.").
2. Ineffective assistance of Trial Counsel in failing to ensure the co-defendant's conflicting (and exculpatory) initial written statement to police—a statement that corroborated Applicant's alibi and from which co-defendant completely changed his story at trial resulting in the outright dismissal of murder charges against him—was properly placed into evidence at trial, this effectively denying the jury, amidst deliberations, their specific request to review and compare the actual statement. As to prejudice, the jury's extended deliberations coupled with their specific request to review co-defendant's initial statement substantiate an assertion that they were struggling with the credibility and motivation of co-defendant in changing his story to secure a dismissal of murder charges against himself. Applicant was clearly prejudiced by counsel's deficiency in that once the jury was informed the statement could not be provided to them, due to not being placed into evidence, (and thus unable to be properly and fully considered/scrutinized) they returned with a guilty verdict soon after.
3. Ineffective assistance of Trial Counsel for failing to insist on a "mere presence" jury instruction where the State put forth evidence of Applicant's presence at the trailer of Nikesha James during a period of time prior to the crime, but no direct evidence existed tying Applicant to the actual killing of the victims. Moreover, the unconstitutional instruction that malice could be inferred from the use of a deadly weapon compounded the prejudice to Applicant in not having the jury reminded that mere presence at the scene

- of the crime is not enough to convict.
4. The solicitor improperly used his closing argument to entice the jury to abandon their duty to decide the case solely on the evidence by appealing to the jury's passions and inherent desires to protect their "community" by convicting Applicant. His multiple references were strategically made at both the beginning and the very end of his closing argument—pleading for "justice for us, the community"—thus "bookending" the State's last words to the jury with emotional impropriety. Additionally, the prejudicial harm was then compounded by the solicitor—at the end of closing—then denigrating defense counsel (and Applicant's entire defense) as nothing, but "all smoke and mirrors." ROA 463, l. 3. The combination and totality of these improper comments were highly prejudicial to Applicant. Further, the way in which the solicitor injected the comments into key parts of his closing support the assertion that they were calculated to improperly appeal to the passions and biases of the jury. *See State v. Linder*, 276 S.C. 304 (1981) and *State v. Copeland*, 321 S.C. 318 (1996) (our Supreme Court "strongly disapproves" of closing arguments calculated "to improperly arouse the passions and prejudices of jurors, urging them to abandon their sworn role as fair and impartial arbiters of the facts and view the evidence from an improper perspective."); *see also State v. White*, 246 S.C. 502 (1965) (holding that such an argument "tends to completely destroy and nullify all sense of impartiality in a case of this kind"). Applicant was denied his right to a fair trial as under our high Court's analysis in *Smalls and Thompson* this case was not one of overwhelming evidence of guilt.

Applicant requests a new trial as relief.

On November 15, 2023, Applicant filed an amended PCR application adding the following allegations:

1. Ineffective Assistance of Counsel of J. Falkner Wilkes, Esquire:
 - a. Failure to object to the State's exhibits regarding the cell phone records on pages 420-421 of the trial transcript and failure to challenge Sgt. Dan Kelley's qualification as an expert witness as to the reliability of records from Verizon. This failure did not allow trial counsel to adequately challenge the reliability of the Verizon records since no one from Verizon was there to testify to such reliability. Because trial counsel did not object to the records coming in the first place, trial counsel's reliability argument was without merit and not preserved for appeal.
 - i. As noted in the opinion: "However, [Franks] did not object to the data on this basis during the suppression hearing or at the time the Verizon call records were introduced into evidence. Rather, his only objection to the records was based on his argument they were unlawfully obtained without a warrant, a ruling he does not challenge on appeal. Because the underlying data – the Verizon records – had already been admitted into evidence when the State offered Sergeant Kelley as an expert, Franks waived his challenge to the reliability of the data by failing to object at the time the State introduced the data." See Opinion 5758, at page 13.

- b. Failure to adequately cross-examine the co-defendant's conflicting statements given to the police.
- c. Failure to request a jury instruction on mere presence.
- d. Failure to object to the Solicitor's closing statement.
 - i. See lines 11-16, page 462: "But I want you to do this. I want you to listen to him carefully, because that's what your oath is and that's what I want. When we do something as serious as what we're doing in this courtroom I want it done right. I do. Because I don't ever deal with anything more serious than one of our community members being killed."

At the evidentiary hearing, Applicant only went forward on the allegations in his amended application.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.*

(citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

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

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Applicant's allegations of ineffective assistance of counsel are without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Object to State's Exhibits Regarding Cell Phone Records and Failure to Object to Sgt. Dan Kelley's Qualification as an Expert

Applicant contends counsel was ineffective for failing to object to the State's exhibits regarding the cell phone records on pages 420-421 of the trial transcript and failure to challenge Sgt. Dan Kelley's qualification as an expert witness as to the reliability of records from Verizon. This Court disagrees and finds counsel was not ineffective in this regard.

1. **PCR Testimony**

Applicant testified Counsel did not timely object to the qualification of Sgt. Dan Kelley as an expert witness as to the reliability of records from Verizon. Counsel testified that the Court of Appeals ruled the Rule 702 objection was unpreserved. Counsel explained he was aware the State was going to introduce the records from Verizon but was concerned that if he fought the reliability of Sgt. Dan Kelley too hard then the State would call a witness from Verizon. Counsel testified he believed a witness from Verizon would be highly credible and damaging to Applicant's defense. Counsel testified he instead wanted to create reasonable doubt as to the records by having them admitted through Sgt. Kelley. Counsel explained he thoroughly researched this issue and

determined that the current white paper suggests the location data was both reliable and scientific. Counsel believed the Verizon records would have been admitted into evidence as business records. Counsel averred that if he had contested the records for lack of reliability, the Solicitor would have merely called the Verizon custodian as a witness which would have destroyed his 702 objection. Counsel further explained he did object to the evidence based on a 4th Amendment violation.

2. Discussion

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 [her] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). “[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010).

Counsel was clear he did not want to unduly contest the admission of the Verizon records on the basis of reliability, because the State would have called a witness from Verizon to testify as to the records. Counsel believed a witness from Verizon would be highly credible and damaging to Applicant’s defense. This Court finds this is a valid reason for not overly arguing the Verizon records on the basis they lacked reliability. Instead, Counsel based his objection primarily on a 4th Amendment violation which was properly raised and ruled upon by the trial court. This Court again finds this was a valid strategy. Therefore, Counsel was not deficient in failing to properly challenge the records from Verizon based on a reliability issue.

Furthermore, Applicant has failed to prove prejudice as to this allegation. As the Opinion from the Court of Appeals notes, even if the issue was preserved the “trial court did not abuse its discretion by admitting Sergeant Kelley’s expert testimony.” Furthermore, this Court finds

Applicant was not prejudiced by Counsel's failure to properly raise and preserve this issue for appeal. In footnote 8, the Court of Appeals stated the following in the Opinion:

We need not reach the issue of prejudice because we have found no error. Nevertheless, we question whether Sergeant Kelley's testimony prejudiced Franks because it showed where he was not as opposed to where he was. In other words, it was not used to place him at the crime scene but to show he never travelled to Greenville after he left James's residence. Further it was cumulative to Tevin's testimony that he drove Franks to Fountain Inn and not to Greenville.

This Court agrees with this analysis and finds Applicant was not prejudiced as to this allegation for the very same reasons offered by the Court of Appeals in the Opinion.

Accordingly, this Court finds this allegation is **DENIED**.

Failure to Adequately Cross-Examine the Co-Defendant's Conflicting Statements Given to Police

Applicant next contends Counsel was ineffective for failing to adequately cross-examine the co-defendant's conflicting statements given to law enforcement. This Court disagrees and finds the record from trial and Counsel's credible testimony refutes this allegation.

1. PCR Testimony

Applicant testified Counsel did not adequately address the discrepancy between his co-defendant's statements. Applicant acknowledged that Counsel did address the plea deal his co-defendant made with the State. Counsel testified the co-defendant gave multiple statements to law enforcement. Counsel explained he did not address the discrepancies because they came out on direct examination, and he believed the co-defendant had the potential to do more harm than good. Counsel noted that additional cross-examination on his statements could allow the co-defendant to expand upon his first statement in which co-defendant discussed how "bad and scary" Applicant was. Additionally, Counsel testified the co-defendant told law enforcement when that he left, the victim was alive and well. Counsel noted this was not an exculpatory statement. Furthermore, the

co-defendant had already admitted he lied on direct examination.

2. Discussion

This Court finds Counsel was not ineffective in failing to cross-examine Applicant's co-defendant regarding discrepancies in his statements to law enforcement. This Court finds Counsel articulated a valid reason for not aggressively cross-examining Applicant's co-defendant regarding his conflicting statements. Counsel was clear he believed that further cross-examination of Applicant's co-defendant would have been damaging to Applicant's defense in that he could have expanded upon his original statement that Applicant was "bad and scary." Therefore, this Court finds Counsel articulated a valid reason not to aggressively cross-examine the co-defendant regarding his conflicting statements which could have allowed the co-defendant to expand upon these exculpatory statements. Thus, Applicant has failed to meet his burden establishing Counsel was deficient in failing to cross-examine Applicant's co-defendant regarding his conflicting statements.

Furthermore, Applicant has failed to meet his burden establishing prejudice as to this allegation. As Counsel noted, Applicant's co-defendant already admitted he lied in his statements during direct examination, so any further cross-examination on this issue would have been merely cumulative to testimony already given. Furthermore, Applicant has failed to present sufficient evidence as to how further cross-examination of the co-defendant would have been beneficial to his defense. It is purely speculative that the co-defendant's testimony would have been benefited Applicant's defense had Counsel more rigorously cross-examined him on his conflicting statements.

Accordingly, this Court finds Applicant's allegation counsel was ineffective for not cross-examining the co-defendant on his conflicting statements at trial is **DENIED**.

Failure to Request Mere Presence Jury Instruction

Applicant contends counsel was ineffective for failing to request a jury instruction on mere presence. This Court disagrees and finds the record from Applicant's trial wholly refutes this allegation.

1. PCR Testimony

Applicant testified he did not remember if Counsel requested an instruction on mere presence. Counsel testified the transcript of Applicant's trial reflects he did request an instruction.

2. Discussion

This Court finds Counsel properly requested a jury instruction on mere presence during Applicant's trial. Tr. p. 436. The trial court held his ruling until after Applicant made a decision regarding whether he will testify. Tr. p. 437. Applicant chose not to testify and the trial court denied Counsel's request for a jury instruction on mere presence. Tr. p. 440. Thus, this Court finds Counsel properly requested a jury instruction on mere presence which was denied by the trial court.

Accordingly, this allegation is **DENIED**.

Failure to Object to Solicitor's Closing Argument

Applicant next contends Counsel was ineffective for failing to object to the Solicitor's closing statement. This Court disagrees and finds Counsel was not ineffective in this regard.

1. PCR Testimony

Counsel testified he did not believe the Solicitor was calling upon the jury to abandon their fact-finding. Counsel testified the Solicitor was not calling upon the jury to protect the community, merely telling them to do justice. Counsel testified he did not see these comments as objectionable. Counsel testified he objects to closing arguments all the time if it's a good objection.

2. Discussion

This Court finds Counsel was not ineffective for failing to object to the Solicitor's closing argument. The Solicitor made this statement during his closing argument:

But I want you to do this. I want you to listen to him carefully, because that's what your oath is and that's what I want. When we do something as serious as what we're doing in this courtroom I want it done right. I do. Because I don't ever deal with anything more serious than one of our community members being killed.

Tr. p. 462.

Counsel testified he did not believe the Solicitor's comments were objectionable. This Court agrees. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id.*

Applicant contends this argument was calculated to entice the jury to abandon their duty to decide the case on the evidence by appealing to the juror's inherent desire to protect their community by convicting Applicant, likening this argument to that held improper by *State v. Liberte*, 336 S.C. 648, 521 S.E.2d 744 (1999). This Court disagrees. In *Liberte*, the solicitor argued that the reasonable doubt standard "is . . . being used as a sword to attack law and order, to attack law enforcement, to attack people who are trying to keep drugs off our streets." *Id.* at 652, 521 S.E.2d at 746. The *Liberte* court held those comments improper because they "invited the jury to convict the Defendants, even if the evidence did not prove their guilt beyond a reasonable doubt, in order to keep the streets safe from the scourge of drugs." *Id.* at 653, 521 S.E.2d at 747.

The solicitor's comments in the present case came nowhere near the outrageous comments condemned in *Liberte*. The Solicitor did not call upon the jury to abandon the reasonable doubt standard, nor did the Solicitor ask the jury to come to a decision based on anything other than the

evidence presented at trial. Furthermore, the Solicitor did not request the jury convict Applicant based on a community member being killed, nor did he mention the reasonable doubt standard in conjunction with his statement regarding the community. In fact, the Solicitor told the jury, just before his comments on the community, to listen to the trial court "because that is what their oath is." The Solicitor was reiterating to the jury their duty to decide this case based on the evidence presented at trial and to adhere to the reasonable doubt standard. Thus, this Court finds these comments proper, and Counsel was not deficient in failing to object to the Solicitor's closing argument.

Furthermore, Applicant has not met his burden of proving he did not receive a fair trial because of the alleged improper argument. Applicant offered no evidence or testimony as to why these comments were prejudicial to Applicant. This Court finds the State's evidence in this case was strong and, if any improper comment was made, it did not prejudice Applicant. Therefore, Applicant has failed to prove prejudice as to this allegation.

Accordingly, this allegation is **DENIED**.

CONCLUSION

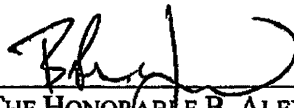
Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, the allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. This application with respect to all other allegations for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant remain in the custody of the State.

AND IT IS SO ORDERED this 21 day of May, 2024.



 THE HONORABLE B. ALEX HYMAN
 Presiding Judge
 Eighth Judicial Circuit

Conway, South Carolina