RECEIVED
Mar 03 2025
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Brian M. Gibbons, Circuit Court Judge

Case No. 2013-CP-02-1153

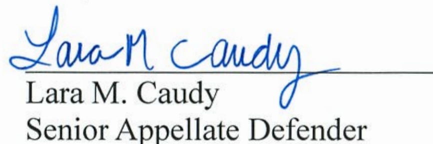
Artrell Hickson, Petitioner

v.

State of South Carolina, Respondent

NOTICE OF APPEAL

Petitioner Artrell Hickson appeals the Honorable Brian M. Gibbons' Order Denying his Application for Post-Conviction Relief filed on February 24, 2025. Petitioner received written notice of the entry of the Order in this matter on March 3, 2025.



Lara M. Caudy
Senior Appellate Defender

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

ATTORNEY FOR PETITIONER

March 3, 2025

Other Counsel of Record:
Zachary W. Jones, Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

cc: Robert J. Harte, Aiken County Clerk of Court

RECEIVED
Mar 03 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Artrell Hickson, #343019, Applicant, v. State of South Carolina, Respondent.	2013-CP-02-1153 **ORDER OF DISMISSAL**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this
FEB 24 2025
C.C.C.P. & G., Aiken County, S.C.
Deputy Clerk

This matter comes before the Court pursuant to an application filed by Artrell Hickson ("Applicant") for post-conviction relief ("PCR") originally filed on May 21, 2013. A hearing was held before on July 16, 2024, at the Aiken County Courthouse. Applicant was present and represented by Lara M. Caudy, Esquire. Assistant Attorney General Zachary W. Jones of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Kelley P. Brown, Esquire. This Court had before it the Aiken County Clerk of Court records concerning Applicant's convictions and sentences, the records of Applicant's direct appeal, the records of Applicant's previous PCR actions, the records of Applicant's PCR appeal, Applicant's South Carolina Department of Corrections records, the records of Applicant's current PCR action, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the

FILED February 24 2025
C.C.C.P. & G.S.
Deputy Clerk

Commission of a Violent Crime (2010-GS-02-0670). Kelley P. Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010, Applicant was found guilty as indicted. Judge Early sentenced Applicant to twenty-eight years' imprisonment for Armed Robbery and five years' imprisonment for Possession of a Firearm During the Commission of a Violent Crime, with both sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Hickson, Op. No. 2012-UP-667 (S.C. Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

Applicant filed an application for PCR on May 21, 2013. A hearing was held on September 11, 2015, at the Aiken County Courthouse before the Honorable Edgar W. Dickson. On January 9, 2017, Judge Dickson issued an Order of Dismissal denying the application. Applicant did not file a notice of appeal.

On June 19, 2019, Applicant filed a second PCR application seeking belated appellate review under Austin v. State[1] of Judge Dickson's 2017 Order of Dismissal. Applicant filed a third PCR application, also seeking Austin relief, on March 16, 2020. An evidentiary hearing on both applications was held on September 7, 2021, before the Honorable Courtney Clyburn Pope. On September 10, 2021, Judge Clyburn Pope issued an order merging Applicant's second and third PCR applications and granting Austin review of the denial of Applicant's first PCR application.

Applicant filed a timely notice of appeal from Judge Clyburn Pope's order. During the pendency of that appeal, it was determined that the transcript of the September 11, 2015, evidentiary hearing before Judge Dickson was not available. On April 5, 2022, the South Carolina

[1] 305 S.C. 453, 409 S.E.2d 395 (1991).

Supreme Court issued an order remanding the matter for a reconstruction of the record of the September 11, 2015, hearing.

A reconstruction hearing was held on April 28, 2022, before Judge Dickson. By order dated June 29, 2022, Judge Dickson found that the record could not be reconstructed to allow for meaningful appellate review. Subsequently, on August 23, 2022, the Supreme Court issued an order vacating the 2017 Order of Dismissal and remanding the matter to the circuit court for a new evidentiary hearing on Applicant's original PCR application.

UNDERLYING FACTS

Around noon on June 25, 2009, Gabrielle Hastings was working as a teller at the Graniteville branch of Security Federal Bank when she looked up and saw three gunmen wearing dark clothes, gloves, and bandanas over their faces enter the bank. (Tr. pp. 42-43; p. 53; pp. 56-57; pp. 90-91; p. 95; p. 112). After entering the bank, the first gunman approached the counter of Amanda Wood, another teller at the bank, knocked her envelopes into the floor, pointed a gun at her, and demanded money. (Tr. pp. 51-52). Wood gave the gunman, who was approximately 5'4" tall and was wearing a backpack, money from her cash drawer. (Tr. p. 52; p. 91). Meanwhile, the second gunman, who was also around 5'4" tall, approached the office of Tonya Key, the branch manager of the bank, and ordered her to open the vault. (Tr. p. 43; p. 52). Terrified, Key was too afraid to move and did not respond. (Tr. p. 43). The second gunman then left the offices and demanded money from Wood. (Tr. p. 52). Wood told him she already gave the money to the first gunman, so he moved to the next counter and took stacks of $1 bills, $5 bills, and $20 bills from Hastings at gunpoint. (Tr. p. 52; pp. 57-58). Throughout the robbery, the third gunman remained at the door and acted as a lookout for the others. (Tr. p. 51; p. 58; pp. 90-91).

Approximately two minutes after the robbery began, the three gunmen fled from the bank and ran towards a nearby wooded area.[2] (Tr. p. 43; p. 61). The bank employees then locked the door and triggered an alarm. (Tr. pp. 43-44; p. 57). Shortly thereafter, law enforcement officers responded to the bank, secured the scene, and obtained a description of the suspects from the terrified employees inside the bank. (Tr. pp. 60-61; pp. 111-113). The bank employees informed the officers that the robbers were three black males wearing dark clothing, masks, and gloves. (Tr. pp. 111-112). Additionally, the bank employees described the suspects as approximately 5'4" tall. (Tr. p. 111). Subsequently, several bloodhound tracking teams were called to the scene and attempted to track the gunmen in the direction they fled after the robbery. (Tr. p. 64).

Officer Demetrick Drumming of the Aiken Public Safety Department and Lieutenant Clay Adams of the Aiken County Sheriff's Office followed the bloodhounds to a nearby church. (Tr. p. 67; p. 69; p. 96; p. 98). Next to the church, the officers discovered David Kearse hiding underneath a storage shed. (Tr. p. 70; pp. 96-97). The officers removed Kearse from underneath the shed and took him into custody. (Tr. p. 70; pp. 96-97). After arresting Kearse, the officers looked underneath the shed where Kearse had been hiding and discovered a semi-automatic pistol and a large wad of $5 bills hidden behind a cinder block.[3] (Tr. p. 71; p. 97; pp. 100-102; p. 108).

Meanwhile, Investigator Greg Savell of the Aiken County Sheriff's Office responded to the bank and obtained a copy of the surveillance footage of the robbery. (Tr. p. 100; p. 113). He then travelled to the location of Kearse's arrest and transported him to the Aiken County Detention Center. (Tr. pp. 133-114). After arriving at the detention center, Investigator Savell informed

[2] During the robbery, the gunmen stole a total of $4,902 from the bank. (Tr. p. 123). The majority of the money was never recovered. (Tr. p. 123).

[3] In total, Kearse was in possession of $290 comprised entirely of $5 bills at the time of his arrest. (Tr. p. 123). Notably, Kearse was also dressed in black. (Tr. p. 70).

Kearse of his rights and interviewed him about the robbery. (Tr. pp. 114-115). Kearse admitted to committing the robbery and implicated Appellant Artrell Jabar Hickson and Appellant's brother, Javier Hickson ("Javier"), as his accomplices in the crime.[4] (Tr. pp. 115-116).

Subsequently, on June 30, 2009, Appellant and Javier were arrested in connection to the robbery of the Graniteville branch of Security Federal Bank.[5] (Tr. p. 122). Once they were taken into custody, officers took photographs of the men during the booking process. (Tr. pp. 79-80; p. 122). Thereafter, Appellant and Javier were each indicted for armed robbery and possession of a firearm during the commission of a violent crime, and the brothers proceeded to trial together. (Tr. p. 7; Indictments).

During trial, the bank employees recounted the circumstances of the bank robbery, and the responding officers testified about their investigation into the robbery leading up to the arrests of Kearse, Appellant, and Javier. (Tr. p. 42; pp. 50-51; p. 57; p. 70). Additionally, the surveillance footage of the robbery was played for the jury. (Tr. pp. 54-55). Subsequently, the solicitor informed the trial judge that he intended to introduce a photograph taken of Appellant after he was arrested for the robbery. (Tr. p. 79). The solicitor noted Appellant's appearance had changed since the photograph was taken and asserted Appellant's identifiable features displayed in the photograph could be used to identify Appellant as one of the gunmen when compared to the surveillance footage. (Tr. pp. 79-80). In response, defense counsel objected to the admission of the photograph and argued there was no demonstrable need for it since Appellant was available in the courtroom for comparative purposes. (Tr. p. 81). Defense counsel further claimed the

[4] Kearse refused to provide a written statement because he was scared. (Tr. p. 117). However, he directed the officers to the location where he parted ways with Appellant and Javier after the robbery. (Tr. p. 117).

[5] At the time of their arrests, Appellant was 5'4" tall and Javier was 5'6" tall. (Tr. p. 121).

photograph showed Appellant in a jail uniform. (Tr. pp. 82-83). Javier's defense counsel also objected, arguing the prejudicial nature of the photograph outweighed its probative value. (Tr. p. 83). Following the arguments of counsel, the trial judge ruled the photograph was admissible after determining there was a demonstrable need for it under the circumstances, it was not suggestive of a criminal record, and it was relatively benign. (Tr. p. 84). However, the trial judge cautioned the solicitor to avoid calling attention to the photograph's origins. (Tr. p. 84).

Thereafter, during Investigator Savell's testimony, Investigator Savell reviewed several photographs taken from the surveillance footage of the robbery and noted one of the robbers had pronounced bushy eyebrows and appeared to fully fill the space of the hood covering his head. (Tr. pp. 118-119). The solicitor then introduced a photograph of Appellant taken on the day of Appellant's arrest five days after the robbery, and the photograph was admitted into evidence over objection.[6] (Tr. p. 122). No reference was made regarding why the photograph of Appellant was taken. (Tr. p. 122).

As the trial progressed, Sabrina Oakman, who was living with Kearse at the time of the robbery, testified about the events of June 25, 2009. (Tr. pp. 140-141). Oakman stated Kearse got up on the morning of the robbery, left the home, and then returned around 10:30 a.m. (Tr. p. 142). After returning home, Oakman testified Kearse asked her for a ride, and she drove him to Appellant and Javier's home. (Tr. pp. 142-143). Oakman stated she and Kearse picked up Javier and Appellant, who was wearing a black backpack, before driving to Kearse's grandmother's house, where Kearse retrieved something from his grandmother's backyard. (Tr. pp. 144-146). Oakman

---

[6] In the photograph, Appellant's full head of hair and distinctive eyebrows and nose are clearly visible. (State's Ex. # 20). Additionally, Appellant is pictured wearing a white shirt underneath a blue or green shirt in the photograph. (State's Ex. # 20). Notably, it is not readily apparent that the clothing Appellant is wearing is prison-issued attire, and nothing visible on the clothing identifies it as such. (State's Ex. # 20).

indicated the four then drove to a Wal-Mart where Javier's girlfriend and sister worked. (Tr. pp. 146-147). At the Wal-Mart, Oakman testified Javier went inside, returned a short time later, and followed them to Graniteville in another vehicle. (Tr. pp. 147-148). Oakman noted Kearse was in possession of a cell phone at the time even though he did not own one. (Tr. p. 148). After leaving the Wal-Mart, Oakman testified she dropped Appellant and Kearse off at Kalmia Apartments prior to 12:00 p.m. and then left.[7] (Tr. p. 150). Shortly after noon, Oakman stated she heard a phone ringing in her vehicle, found Javier's phone, and answered the call. (Tr. pp. 151-152). Oakman testified Kearse, who sounded mad and was breathing heavily, was the caller, and he asked her to pick him up at a church before the call ended.[8] (Tr. pp. 152-154). Oakman indicated she then returned to Kalmia Apartments and encountered Appellant and Javier's sister, Monique Hickson ("Monique"), Javier's girlfriend, Crystal Harris, and "Devon."[9] (Tr. pp. 154-156; p. 189). At the apartment complex, Oakman testified she got into an argument with Harris and was accused of failing to fulfill her responsibilities as the getaway driver. (Tr. pp. 155-156). Oakman stated she then left the apartments in an effort to find Kearse but was unable to do so. (Tr. p. 156).

Consistent with Oakman's testimony, Stanley Galloway, a guest at Kalmia Apartments, confirmed he saw Kearse, Appellant, and Javier at the apartment complex before lunchtime on June 25, 2009. (Tr. pp. 179-180). Likewise, Beatrix Wright acknowledged she told investigators

---

[7] Notably, Kalmia Apartments was located only a few blocks away from the Graniteville branch of Security Federal Bank. (Tr. p. 114).

[8] Kearse called Javier's phone using Appellant's cell phone. (Tr. pp. 151-153). The caller I.D. on Javier's phone identified the caller as "My Bro." (Tr. p. 152).

[9] Significantly, Harris and Monique were supposed to be working at the Wal-Mart at that time. (Tr. pp. 175-176). However, the two unexpectedly left work at 12:55 p.m. that day, and their absences were unexcused. (Tr. pp. 175-177).

she saw Appellant, Javier, and Kearse at the apartment complex on the morning of the robbery. (Tr. pp. 187-188). Additionally, Candice Bryant, Wright's cousin, testified she saw Kearse, Appellant, and Javier outside of Wright's apartment prior to the robbery.[10] (Tr. p. 185; pp. 192-193).

On cross-examination, defense counsel questioned Bryant about a portion of her statement to law enforcement officers, and Bryant's statement was marked for identification purposes. (Tr. pp. 194-195). Thereafter, the solicitor asked Bryant to read her entire statement to the jury, and defense counsel for both Appellant and Javier objected, arguing it contained inadmissible hearsay. (Tr. p. 197). The trial judge then asserted Appellant already introduced the statement before permitting Bryant to read her statement to the jury.[11] (Tr. p. 197). Bryant then read the following statement:

On the day of the robbery at Security Federal Graniteville Artrell Hickson, Javier Hickson, and David Kearse came to my cousin's Beatrix Wright's apartment. They were in a white Ford Focus. A dark skinned girl was driving. She worked – she – it was thought that she worked at Walmart on the south side. They were talking to Beatrix's boyfriend Stanley. After a while, they left. Stanley remained. Me and Beatrix took Stanley home to New Ellenton. We came back and saw the police who told us the bank had been robbed. Sabrina Oakman drove her black Tahoe and asked if Stanley knew where David was. We told her we had taken him to New Ellenton. Big Phil and Devon were at Kalmia Apartments saying, Them boys done robbed the bank I think. I saw a white Ford Focus. Phil and Devon were at the entrance to Kalmia Apartments. Sabrina kept

[10] At the outset of her testimony, Bryant noted she received a text message on the preceding night stating: "What are you at the courthouse snitching?" (Tr. p. 192).

[11] Near the end of trial, the court reporter confirmed Appellant did not introduce any exhibits during trial. (Tr. p. 258).

calling Artrell's cellphone because David had it because Big Phil said David had the phone. Sabrina kept saying, David is in a storage in the woods. Sabrina was crying and said she was here to find him and pick him up. Sabrina and Artrell – Sabrina, Artrell, and Javier along with Devon. Beatrix told me that Artrell, Javier, and David were trying to get Stanley to rob the bank with them. Beatrix said Stanley told me this. Artrell dated a girl at Walmart on the south side. The girl was thought to be in the white Ford Focus. (Tr. pp. 198-199). Wright identified "Big Phil" as Phillip Paul and "Devon" as Devon Jones. (Tr. p. 199).

Following Wright's testimony, Randy Wilson testified about his knowledge of the robbery of the Graniteville branch of the Security Federal Bank. (Tr. pp. 201-202). At the outset of his testimony, Wilson noted he robbed a different bank on July 1, 2009, with Paul and Jelani Edwards, and was arrested.[12] (Tr. p. 201). After he was arrested, Wilson confirmed he implicated Appellant and Javier in the robbery on June 25, 2009. (Tr. pp. 202-203). Wilson stated he met with Paul, Edwards, Appellant, and Javier on June 24, 2009, to discuss the robbery that was to occur the next day. (Tr. pp. 203-204). During the meeting, Wilson testified they determined which bank was going to be robbed and who was going to commit the crime. (Tr. pp. 204-205). Wilson stated they decided Appellant, Javier, and Kearse were going to commit the crime, and Paul was going to supply the firearms.[13] (Tr. pp. 204-205). Wilson indicated Kearse's girlfriend was supposed to drop the robbers off before the crime and "Von" was going to drive them away afterwards. (Tr. p. 207). Subsequently, on the day of the robbery, Wilson stated he was at home with Paul and

---

[12] At the time of trial, Wilson was serving a sentence for armed robbery. (Tr. p. 203). Wilson testified he hoped to have his sentence reduced after testifying during Appellant and Javier's trial. (Tr. p. 212).

[13] Wilson testified Appellant asked Paul to let him use an AK-47 during the robbery, but Paul declined to give it to Appellant. (Tr. pp. 205-206).

Edwards when Edwards' phone rang. (Tr. p. 207). Wilson testified Edwards answer the call and he overheard Appellant state they were "hemmed up" in Graniteville. (Tr. p. 208). Wilson stated Edwards and Paul then left in Edwards' vehicle.[14] (Tr. p. 208).

Subsequently, David Kearse testified about his involvement in the robbery of the Graniteville branch of Security Federal Bank. (Tr. p. 219). Kearse stated they began planning to rob the bank a week before the crime occurred, and the initial discussion regarding the robbery involved Appellant, Edwards, and Kearse. (Tr. p. 222). Later that week, Kearse testified he met with Appellant, Javier, and Paul to further discuss the robbery. (Tr. pp. 223-224). During the second meeting, Kearse testified they planned when they were going to commit the crime and what they were going to wear. (Tr. p. 224). Following that meeting, Kearse, Javier, and Appellant initially agreed to commit the robbery on June 24, 2009. (Tr. p. 225). However, on the day of the planned robbery, Kearse stated they drove by the bank and decided to wait. (Tr. p. 226). Then, on the next day, Kearse testified he asked Oakman to drive him to Appellant and Javier's house and they picked up Appellant and Javier. (Tr. pp. 228-229). Kearse stated they then went to his grandmother's house and picked up some gloves before driving to Wal-Mart. (Tr. pp. 229-230). At the Wal-Mart, Kearse indicated Javier borrowed his girlfriend's car, and they then all drove to Kalmia Apartments in Graniteville. (Tr. pp. 230-231). At the apartment complex, Kearse stated they changed into black clothes and retrieved their guns from Appellant's backpack. (Tr. pp. 233). They then met with Jones, who was supposed to be the getaway driver, and rode with Jones to the bank. (Tr. p. 232; p. 234). Kearse stated they went into the bank, committed the robbery, and came back outside. (Tr. pp. 234-235). Once outside, Kearse testified Jones was nowhere to be

[14] Around 3:30 p.m. on the day of the robbery, Investigator James Criscillis of the Aiken County Sheriff's Office observed Edwards and Paul travelling in Edwards' vehicle near the bank. (Tr. p. 214; pp. 216-217).

found, so they fled to a nearby wooded area. (Tr. pp. 235-236). Kearse stated they then split up and he called Oakman on Appellant's phone. (Tr. pp. 237-238). Kearse testified he was later arrested while hiding under a shed and implicated Appellant and Javier in the crime. (Tr. p. 238). Kearse then identified Appellant and Javier in the surveillance photographs of the robbery. (Tr. p. 239).

Subsequently, the State rested its case, and defense counsel moved for a directed verdict, arguing no "credible evidence" linking Appellant to the crime had been presented. (Tr. p. 252). The trial judge denied the motion. (Tr. p. 252). Thereafter, during closing arguments, the solicitor noted Appellant's eyebrows, nose, and amount of hair matched the same features of one of the robbers visible in the surveillance photographs. (Tr. pp. 267-268). The solicitor further argued Bryant's statement was important in placing Appellant and Javier at the apartment complex prior to the robbery. (Tr. p. 279). However, the solicitor did not reference or emphasize any of the challenged portions of Bryant's statement in his argument to the jury. (Tr. pp. 279-280). Thereafter, at the conclusion of trial, Appellant was convicted as indicted. (Tr. pp. 321-322). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty-eight years.[15] (Tr. p. 326).

ALLEGATIONS

In his original application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
   a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure

[15] Javier was also convicted as indicted and received an identical sentence. (Tr. pp. 321-322; p. 326).

to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."

b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to provide the State with a written notice of the applicant's intent to offer a 'Alibi Witness.'"
e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses, Charles Smalls; [and] Tommy Parker . . . for the defense during applicant's criminal trial."
f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel failing to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and

South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."

h. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

Applicant, through counsel, filed an amended application on January 18, 2024, alleging that he is being held in custody unlawfully for the following reasons:

A. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to object to the trial judge's erroneous jury instructions directing the jury to return a "fair and impartial" verdict, which diluted the State's burden of proof and shifted the burden on proof to Applicant. See Tr. 310, ll. 13-21; See also State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012); State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998).

B. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to properly cross-examine Randy Wilson regarding the amount of prison time he was facing on the armed robbery charge for which he pled guilty and was seeking to be resentenced on in exchange for his testimony against Applicant as such evidence was critical to show bias. See Tr. 203, ll. 4-24; Tr. 211, l. 21 – 212, l. 15; See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018); State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012); State v. Mizzle, 349 S.C. 326, 563 S.E.2d 315 (2002).

C. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to object to the admission of a text message allegedly received by Candice Bryant pursuant to Rule 403, SCRE, since any probative value of the evidence was substantially outweighed by the danger of unfair prejudice. *See*

Tr. 191, l.15 – 192, l.12. The evidence had zero probative value and was unfairly prejudicial because it suggested to the jury that Applicant or someone on his behalf engaged or attempted to engage in witness intimidation. Trial Counsel was also deficient for failing to request the testimony concerning the content of the text message be proffered outside the presence of the jury before the judge ruled.

D. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to advise Applicant to testify in his defense since there is a reasonable probability the outcome of Applicant's trial would have been different had he testified.

E. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to call Charles Smalls and Tommy Parker as alibi witnesses at trial since there is a reasonable probability the outcome of Applicant's trial would have been different if Smalls and Parker had testified.

At the evidentiary hearing, Applicant proceeded on the allegations articulated in his amended application.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's post-conviction relief actions related to these convictions, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

This Court finds Applicant has not met his burden of proving that Trial Counsel was ineffective as to any of his allegations.

Arrest Warrants

(Original Allegations "a," "b," and "c")

In his original application, Applicant alleges that Trial Counsel was ineffective for failing to move to quash the arrest warrants for Applicant's charges because the warrants were conclusory and insufficient to establish probable cause. Applicant further alleges that Trial Counsel was ineffective for failing to move to suppress evidence stemming from these arrest warrants and for failing to move to dismiss the charges because of the allegedly insufficient warrants. This Court finds these allegations are meritless and should be denied and dismissed with prejudice.

Applicant presented no arguments or evidence at the evidentiary hearing to substantiate these allegations. Therefore, the Court finds these allegations have been abandoned. In addition, it is well settled that an arrest warrant is facially valid if it contains information, given under oath, that plainly and substantially sets forth the offense charged. Carter v. Bryant, 429 S.C. 298, 308, 838 S.E.2d 523, 529 (Ct. App. 2020). Moreover, an arrest warrant may properly be issued based on information and belief. State v. Porter, 251 S.C. 393, 400–01, 162 S.E.2d 843, 847 (1968). Both warrants in this matter facially comply with those requirements. Applicant has failed to meet his burden of proving that the facially valid warrants in this case were not, in fact, based on probable cause. Therefore, he has failed to prove that Trial Counsel was deficient for failing to challenge those warrants, and he has not shown that he was prejudiced thereby.

Failure to call alibi witnesses

(Original Allegations "d" and "e"; Amended Allegation "E")

Applicant alleges in his original and amended application that Trial Counsel was deficient for failing to call Charles Smalls and Tommy Parker to testify at trial. Applicant claims these witnesses could have provided an alibi for him and his brother Javier. The Court finds this allegation is without merit.

Applicant failed to present his alibi witnesses at the PCR hearing; therefore, he cannot claim ineffective assistance of counsel for failing to call said witnesses at the trial. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (an applicant cannot show prejudice due to the failure of trial counsel to call alleged alibi witnesses at trial if the applicant does not present said witnesses at the PCR hearing on his behalf). Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

In addition, Trial Counsel testified that she possessed no notes or recollection concerning Charles Smalls as a potential alibi witness, and Applicant testified he could not remember whether he told Trial Counsel about any alibi witnesses. Therefore, the Court finds Applicant has not met his burden of proving that Trial Counsel was deficient for failing to call Charles Smalls.

Finally, Trial Counsel testified that she had notes from a telephone conversation with Tommy Parker, and the trial transcript indicates that Parker was listed as a potential witness. (Trial Tr. p.9, line 8). Therefore, the Court finds Trial Counsel adequately investigated Tommy Parker as a potential alibi witness. Trial Counsel testified her notes indicated Parker claimed to be with Applicant at the time of the crime; she could not specifically recall why she did not call Parker, but she testified that many considerations could have come up during trial that may have caused her not to call him. This Court, in evaluating the deficiency prong of Strickland, must indulge the strong presumption that Trial Counsel made all significant decisions in the exercise of reasonable professional judgment, and must affirmatively entertain the range of possible reasons Trial Counsel may have had for proceeding as she did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011).

There are many reasons Trial Counsel may have reasonably decided not to call Tommy Parker as a witness. This Court notes that, because Applicant did not call any witnesses, Trial

Counsel was able to have the final closing argument at the trial. (Trial Tr. p.258); see State v. Mouzon, 326 S.C. 199, 203, 485 S.E.2d 918, 921 (1997) ("In a criminal prosecution, where a defendant introduces no testimony, he is entitled to the final closing argument to the jury."). This is a valid strategic consideration for criminal defense attorneys. See id. at 205, 485 S.E.2d at 921 ("If Mouzon had been allowed to argue last, then he could have more adequately addressed the issue of conspiracy to distribute crack cocaine."). In addition, Trial Counsel may have believed that a jury would not find Parker's alibi testimony credible, that the solicitor would be able to persuasively attack Parker's testimony on cross-examination, or that Parker might change his story once he took the stand. Since Tommy Parker did not testify at the evidentiary hearing, this Court cannot find that any of these possibilities were not "within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 669.

Furthermore, this Court notes that Javier's attorney, Michael Routzong, also knew that Parker claimed to have been with Applicant and Javier at the time the robbery occurred; however, Mr. Routzong—like Trial Counsel—chose not to call Parker to testify. This strongly suggests that, whatever Trial Counsel's reasons for not calling Parker may have been, they were shared by Mr. Routzong. The fact that two defense attorneys independently decided not to call a supposedly favorable defense witness strongly suggests that the decision was professionally reasonable. For all these reasons, this Court finds Applicant has failed to rebut the strong presumption that Trial Counsel's decision was within the wide range of reasonable professional judgment.

Because Applicant has failed to prove either deficiency or prejudice as to this allegation, this allegation is denied and dismissed with prejudice.

Failure to advise Applicant to testify at trial

(Original Allegation "f"; Amended Allegation "D")

In his original and amended application, Applicant alleges that Trial Counsel was ineffective for failing to advise him to testify at trial. This allegation is meritless.

At the evidentiary hearing, Applicant did not explain what his testimony would have been had he elected to testify at trial. Therefore, the Court finds Applicant has not met his burden of proving a reasonable probability that the result of his trial would have been different but for the alleged deficiency of Trial Counsel. See United States v. Terry, 366 F.3d 312, 316 (4th Cir. 2005) (holding defendant failed to prove he was prejudiced by counsel's allegedly unreasonable advice not to testify, where defendant provided "no concrete evidence of what he would have testified to in exculpation").

In addition, the trial judge fully discussed Applicant's right to testify on the record and allowed him additional time to speak with his attorney, and Applicant stated—under oath—that he wished to remain silent. (Trial Tr. pp.253–56). See Blackledge v. Allison, 431 U.S. 63, 74 (1977) ("Solemn declarations in open court carry a strong presumption of verity."). Therefore, this allegation is denied and dismissed with prejudice.

Failure to request a Neil v. Biggers *hearing*

(Original Allegation "g")

Applicant's argument that Trial Counsel was ineffective for failing to request a Neil v. Biggers[16] hearing is also meritless. No evidence was presented on this issue at the evidentiary hearing; therefore, the Court finds this allegation has been abandoned.

Nevertheless, this allegation would have been meritless as a matter of law in any event. This was an armed robbery where the three suspects covered their faces, law enforcement did not present the Victims with any photo lineups to identify, nor did the Victims ever identify the

[16] 409 U.S. 188 (1972).

suspects. This Court finds that there was no basis on which to request a Neil v. Biggers hearing, thus Trial Counsel cannot be found ineffective for this reason. Neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

Failure to move to strike witnesses statements read at trial

(Original Allegation "h")

Applicant alleges that Trial Counsel was ineffective for failing to move to strike the statements that were read before the jury at the trial. No evidence was presented regarding this allegation at the evidentiary hearing; therefore, this allegation is deemed abandoned.

Failure to object to jury instructions

(Amended Allegation "A")

Applicant argues Trial Counsel was ineffective for failing to object to the trial judge's references to "true facts" and a "true and just verdict" during its preliminary instructions to the jury. Applicant contends this language is inappropriate under State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000). However, this Court finds Trial Counsel was not ineffective for failing to object to the trial judge's jury instructions because the instructions were not objectionable. Aleksey held that such language is *not* improper if it "did not appear in either the reasonable doubt or circumstantial evidence charges." Aleksey, 343 S.C. at 27, 538 S.E.2d at 251. Since the challenged comments in this case did not appear in the reasonable doubt or circumstantial evidence charges, they were not objectionable.

Applicant also argues Trial Counsel was ineffective for failing to object to the trial judge's instructions to the jury referring to a "fair and impartial verdict." (Tr. p.310, line 20). Again, the Court finds the challenged language was not improper. The use of the phrase "fair and impartial"

does not rise to the level of the improper charge in State v. Daniels where the jury was instructed to reach a verdict that represented "truth and justice for all parties that are involved in this case." State v. Daniels, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012). Daniels specifically pointed to the "all parties involved" phrase as potentially leading jurors to weigh the interests of victims in arriving at their verdict, which would be improper. That phrase does not appear in the trial court's instructions in this case. In addition, Daniels was not decided until *after* Applicant's trial had concluded. Trial Counsel cannot be deemed deficient for failing to make an objection based on a Supreme Court opinion that did not exist at the time.

The Court also finds that, even if these isolated phrases were somehow improper, the trial court's jury instructions as a whole were free from error, and there was no reasonable probability that the jury applied the challenged instructions in an unconstitutional way. See id. at 258, 737 S.E.2d at 477. Therefore, this Court also finds Applicant has failed to prove either deficiency or prejudice as to this allegation.

Failure to cross-examine Randy Wilson about sentencing

(Amended Allegation "B")

Applicant's argument that Trial Counsel was ineffective for failing to cross-examine Randy Wilson about the amount of prison time he was facing is meritless. Trial Counsel *did* cross-examine Randy Wilson about his motivations for testifying, and she successfully elicited that he was "going to be in the South Carolina Department of Corrections for a good long time" and that he was hoping the State would reduce his sentence if his testimony helped the State. Applicant appears to argue that Trial Counsel should have gone into the specific sentence he had received and the specific amount of reduction he was hoping for, but this Court finds those details were not necessary to render Trial Counsel's cross-examination effective. Trial Counsel went on to argue

in closing that Randy Wilson had a motive to fabricate his testimony in order to get a sentence reduction. (Trial Tr. pp.301–02). The Court finds Applicant has not met his burden of proving that Trial Counsel was ineffective for failing to more thoroughly question Randy Wilson on this point, nor has he met his burden of proving a reasonable likelihood that eliciting additional minor details about Wilson's sentence would have changed the result of the trial. The Court finds neither prong of the Strickland test is met, and this allegation must be denied and dismissed with prejudice.

Failure to object to testimony of Candice Bryant regarding text message

(Amended Allegation "C")

Finally, Applicant argues that Trial Counsel was ineffective for failing to object to Candice Bryant's testimony regarding a text message she received prior to being called as a witness. That text message was "What are you at the courthouse snitching?" (Trial Tr. p.192, lines 7–10). Applicant acknowledges that Trial Counsel *did* object to this testimony on the ground of relevance; however, Applicant now contends Trial Counsel should have objected under Rule 403, SCRE, on the ground the message was substantially more prejudicial than probative. Applicant claims the text message had zero probative value and was unfairly prejudicial because it suggested Applicant or someone acting on his behalf was attempting to intimidate the witness into not "snitching" at the courthouse.

The Court finds the very inference Applicant claims was "unfairly prejudicial" was, in fact, the source of the testimony's legitimate probative value. Contrary to Applicant's argument, evidence of witness intimidation is considered highly probative of a defendant's consciousness of guilt, which is a legitimate focus of the State's proof. See State v. Edwards, 383 S.C. 66, 69–73, 678 S.E.2d 405, 406–08 (2009). The fact that a witness was warned to stop "snitching" at the courthouse, on the night before that witness was called to testify at Applicant's trial, is indeed

strong evidence that either Applicant or someone acting on his behalf was attempting to suppress evidence of his guilt. That fact was probative and was not "unfair" to Applicant; therefore, Trial Counsel was not deficient for failing to object under Rule 403, SCRE.

In addition, because the evidence was admissible, this Court finds there could be no prejudice for failing to proffer it outside the presence of the jury. Accordingly, the Court finds Applicant has not met his burden of proving either deficiency or prejudice as to this issue.

V. CONCLUSION

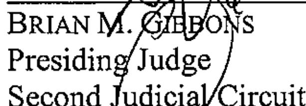
This Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Trial Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. 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 South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this ________ day of 2/14, 2025.



BRIAN M. GIBBONS
Presiding Judge
Second Judicial Circuit

________, South Carolina