

RECEIVED

Jul 17 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Heath P. Taylor, Circuit Court Judge

App. Case No.: 2025-000361

Keshawn M. Rice,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX
Volume III of III

Tricia A. Blanchette
Post Office Box 2147
Leesville, SC 29070
(803) 908-3266
Attorney for Petitioner

Alan Wilson
Attorney General

D. Russell Barlow, II
Senior Assistant Deputy
Attorney General

Bryan T. Hall
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorneys for Respondent

INDEX

Record on Appeal.....	1
Trial Transcript (November 13-15, 2018).....	4
Indictments & Sentencing Sheets.....	370
Notice of Appeal.....	384
Brief of Appellant.....	386
Opinion, South Carolina Court of Appeals & Remittitur.....	401
Trial Transcript (February 5-7, 2018).....	405
Clerk Records.....	731
Application for Post Conviction Relief	815
Return.....	823
Amended Return.....	836
Motion for Discovery.....	848
Order Authorizing Discovery.....	853
Amendment.....	856
Order for Continuance & Appointment of Counsel.....	861
Order of Appointment of Counsel).....	863
Consent Order for Continuance.....	865
Evidentiary Hearing Transcript.....	867
PCR Exhibits.....	1031
Oder of Dismissal.....	1076
Rule 59, SCRCP, Motion.....	1104
Order Denying Rule 59, SCRCP, Motion.....	1111

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Keshawn Rice, 378305,

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-42-01217

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No. 74904

Address:

PO Box 2147

Leesville, SC 29070

Phone: 803-908-3266 Fax _____

E-mail: Blanchettelaw@gmail.com Other: _____

Defendant's Attorney:

Chelsey Marto, Bar No. _____

Address:

PO Box 11549

Columbia, SC 29211

Phone: 803-734-3737 Fax _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Discovery

Estimated Time Needed: 10 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

December 21, 2021

Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Keshawn Rice, 378305,)
Applicant,)

2021-CP-42-01217

v.)

MOTION FOR DISCOVERY

State of South Carolina,)
Respondent.)

COMES NOW Applicant, by and through his undersigned attorney, and requests that this Court enter an Order for Production of Discovery pursuant to S.C. Code Ann. §17-27-150(a) (2008).

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 19, 2021. Respondent submitted a Return and Motion for More Definite Statement on May 18, 2021 and an Amended Return and Motion for More Definite Statement on June 9, 2021.

Through written request, Applicant, through counsel, received a copy of the counsel's file. The file provided has been reviewed by counsel and a private investigator.

Upon review, it is apparent since the discovery is numbered that pages are omitted and documents have not been copied in proper order. Therefore, to ensure that Applicant has the case materials needed to properly prepare his case for an evidentiary hearing, Applicant would respectfully request the opportunity to issue a request and/or subpoena to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) limited to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. A complete copy of the Spartanburg County Clerk's file, to include any court exhibits.

2021 DEC 29 AM 11:45
FILED
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

2. A complete copy of Applicant's discoverable file maintained by the Spartanburg County Solicitor's Office, and if not contained therein a copy of the Spartanburg County Sheriff's Department and Coroner's file.
3. If not contained in counsel's file, a copy of the State Law Enforcement Agency (SLED) file.
4. The opportunity for Applicant's counsel, private investigator and potential experts to review the evidence maintained at the Spartanburg County Sheriff's Department and SLED (if needed).

Applicant would further request the opportunity for his counsel, private investigator and/or experts to review any and all requested materials that cannot be copied or provided to counsel. Additionally, Applicant would ask the Court to find that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel. Finally, Applicant would ask the Court to find that files should not include redaction if such redaction was not in the files that were discoverable during the underlying criminal proceeding.

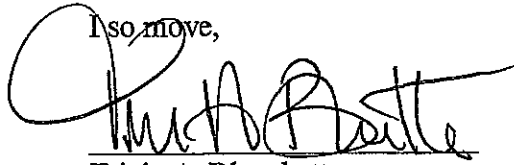
Applicant, through undersigned counsel, submits that the above listed requests are necessary for counsel, private investigator, and potential experts to properly prepare his case and to present his claims. Furthermore, the Applicant, through counsel, submits that this request is not being made as a fishing expedition, but it is only being submitted to the Court due to the importance of the requested materials in Applicant obtaining "one full bite of the apple." See Poston v. State, 339 S.C. 37, 528 S.E.2d 422 (2000), Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

THEREFORE, based upon the foregoing the Applicant respectfully requests that this Court hold a hearing and/or enter an Order for Discovery, which allows counsel to

FILED
 2021 DEC 29 AM 11:45
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

issue subpoenas to the appropriate parties, offices and agencies for the above requested case materials that are necessary for the presentation of Applicant's case.

I so move,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

Tricia A. Blanchette
Attorney at Law
PO Box 2147
Leesville, SC 29070

December 21, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Keshawn Rice, 378305,)
Applicant,)
v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2021-CP-42-01217

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney at Law, hereby certify that Pursuant to the Order issued by the South Carolina Supreme Court entitled *RE: Operation of the Trial Courts During the Coronavirus Emergency* (S.C. Sup. Ct. Order amended November 23, 2021), that a true copy of a Motion for Discovery has been served on opposing counsel this 21ST day of December 2021 by sending an email to her following registered email address

Chelsey Marto, Assistant Attorney General
ChelseyMarto@scag.gov



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. OEX

2021 DEC 29 AM 11:45

FILED

December 21, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Keshawn Rice, 378305,)
Applicant,)

2021-CP-42-01217

v.)

State of South Carolina,)
Respondent.)

ORDER AUTHORIZING DISCOVERY

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 19, 2021. Respondent submitted a Return and Motion for More Definite Statement on May 18, 2021 and an Amended Return and Motion for a More Definite Statement on June 9, 2021. Applicant, through counsel, submitted a Motion for Discovery on December 29, 2021. Thereafter, it was communicated to Applicant's counsel and the Court that the State did not oppose Applicant's Motion. Therefore, this Order is being entered without a hearing on Applicant's motion.

To ensure that Applicant and his attorney have the case materials needed to properly prepare his case for an evidentiary hearing, this Court finds Applicant shall be allowed to issue written requests and/or issue subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) limited to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. A complete copy of the Spartanburg County Clerk's file, to include any court exhibits.
2. A complete copy of Applicant's discoverable file maintained by the Spartanburg County Solicitor's Office, and if not contained therein a copy of the Spartanburg County Sheriff's Department and Coroner's file.
3. If not contained in counsel's file, a copy of the State Law Enforcement Agency (SLED) file.

AMY W. COX
CLERK OF COURT
SPARTANBURG COUNTY

2022 MAR 28 PM 5:19

FILED

4. The opportunity for Applicant's counsel, private investigator and potential experts to review the evidence maintained at the Spartanburg County Sheriff's Department and SLED (if needed).

If copies cannot be made of items in the requested file(s), this Court grants the opportunity for counsel for both parties, a private investigator and/or expert(s) to review such items in person. This Court finds that if a person, office or agency does not have a file to provide, Applicant's counsel must be provided with a written response and explanation for the absence of such file. This Court further finds that files should not be redacted if such redaction would not have been properly made when the files were subject to discovery during the underlying criminal proceeding. Applicant's counsel is to provide the Office of Attorney General with the opportunity to copy all discovery received pursuant to this Order.

Finally, this Court acknowledges that the Office of the Attorney General is the Respondent to this action, but the Office of the Attorney General does not represent any parties subject to discovery under this Order. Therefore, any party in receipt of a subpoena pursuant to this Order may file a timely objection with the Chief Administrative Judge for the Seventh Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That Applicant's counsel is permitted to serve a subpoena and/or submit a request, along with a copy of this Order, upon the above listed people, offices or agencies for the above listed items.
2. That any party in receipt of a subpoena pursuant to this Order may file a timely objection with the Chief Administrative Judge for the Seventh Judicial Circuit.
3. That the matter shall not be considered roster eligible until the discovery process is concluded.

SPARTANBURG COUNTY
CLERK OF COURT
AMY W. COOK

2022 MAR 28 PM 5:19

FILED

2
RKK
854

AND, IT IS SO ORDERED.


Honorable R. Keith Kelly
Chief Administrative Judge
Seventh Judicial Circuit

28 March, 2022

FILED
2022 MAR 28 PM 5:19
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Keshawn Rice, 378305,

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-42-01217

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No. 74904

Address:

PO Box 2147

Leesville, SC 29070

Phone: 803-908-3266 Fax _____

E-mail: Blanchettelaw@gmail.com Other: _____

Defendant's Attorney:

Chelsey Marto, Bar No. _____

Address:

PO Box 11549

Columbia, SC 29211

Phone: 803-734-3737 Fax _____

E-mail: _____ Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Amendment to Application for Post Conviction Relief
Estimated Time Needed: 5-6 hours

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

March 9, 2023
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Keshawn Rice, 378305,)
Applicant,)

2021-CP-42-01217

v.)

State of South Carolina,)
Respondent.)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 19, 2021. Respondent submitted a Return and Motion for More Definite Statement on May 18, 2021 and an Amended Return and Motion for a More Definite Statement on June 9, 2021.

On December 21, 2021, Applicant, through counsel, filed a Motion for Discovery. The Honorable R. Keith Kelly issued an Order Authorizing Discovery on March 28, 2022.

As a result of discovery received and the investigation conducted, Applicant would move to amend his original Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Trial counsel rendered ineffective assistance that was prejudicial to Applicant when he failed to properly investigate, prepare and effectively represent Applicant prior to and at his second trial. Specifically, Applicant alleges the following deficiencies:

a. Trial counsel failed to properly advise Applicant and handle matters related to the additional indictment (2018-GS-42-0649).

FILED
2023 MAR 14 AM 10:55
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

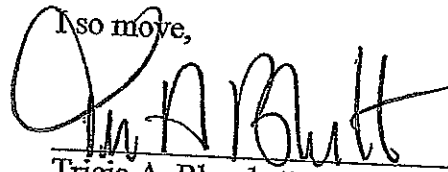
- b. Trial counsel failed to investigate and/or utilize witnesses for the defense.
- c. Trial counsel failed to effectively handle matters related to Cesar Mendez. Specifically, but not limited to the following:
 - 1) Failure to prepare to and/or utilize Cesar Mendez as a witness at trial.
 - 2) Failure to properly handle the State's Motion in Limine regarding matters related to the testimony of Cesar Mendez and/or failure to proffer his testimony.
 - 3) Failure to object to hearsay that violated the Confrontation Clause when law enforcement testified regarding the information provided by Cesar Mendez.
- d. Trial counsel failed to effectively handle matters related to Applicant's co-defendant Carnellious D. Stringer. Specifically, but not limited to the following:
 - 1) Failure to utilize and/or obtain the transcript of Mr. Stringer's plea on February 5, 2018.
 - 2) Failure to address the information provided regarding Mr. Stringer's plea to the court during sentencing.
- e. Trial counsel failed to advise Applicant and prepare for the State's evidence of flight that was not presented in the first trial. Trial counsel failed to object to hearsay evidence offered regarding flight at Applicant's second trial.
- f. Trial counsel failed to object and/or move for a mistrial when Kameron Wilson referenced the first trial during his direct testimony. Transcript p. 159, lns. 10-14.
- g. Trial counsel failed to make objections and arguments in the first and second trial and prepare in the second trial for the testimony of Zaria Owens and the State's witnesses regarding meeting with her.
- h. Trial counsel failed to effectively utilize information contained in discovery and testimony offered at the first trial to cross-examine and/or impeach the following witnesses:
 - 1) Jonathan Lawson
 - 2) Kevin Bowen
 - 3) Wendy Thomas
 - 4) Mary Ann Kotlarich

2023 MAR 14 AM 10:56
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

- 5) Kameron Wilson
- 6) Elian Nava
- 7) Dr. Wren

- i. Trial counsel failed to present a reasonable defense through his closing argument and failed to present the theory of the case provided in the first trial.
2. Appellate counsel provided ineffective assistance that was prejudicial to Applicant when she failed to raise any meritorious issues on appeal.
3. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

I so move,


Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

March 9, 2023

2023 MAR 14 AM 10:56
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Keshawn Rice, 378305,)
Applicant,)

v.)

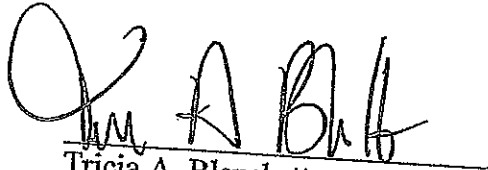
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2021-CP-42-01217

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify a true copy of an Amendment to Application for Post Conviction Relief has been served on opposing counsel this 10th day of March 2023 by delivering to Chelsey Marto, Assistant Attorney General, in person at the Office of the Attorney General located in the Rembert C. Dennis Building in Columbia, South Carolina.



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

March 10, 2023

AMY W. COX
SPARTANBURG COUNTY
CLERK OF COURT

2023 MAR 14 AM 10:56

FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
Keshawn Rice, 378305,)	
Applicant,)	2021-CP-42-01217
v.)	
State of South Carolina,)	ORDER FOR CONTINUANCE
Respondent.)	AND APPOINTMENT OF COUNSEL

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 19, 2021. Respondent submitted a Return and Motion for More Definite Statement on May 18, 2021 and an Amended Return and Motion for a More Definite Statement on June 9, 2021.

Applicant, through counsel, submitted a Motion for Discovery on December 29, 2021. The Honorable R. Keith Kelly issued an Order Authorizing Discovery on March 28, 2022. Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief on March 14, 2023. An evidentiary hearing is scheduled for June 21, 2023.

On June 2, 2023, this Court held a virtual status conference. Tricia A. Blanchette, Esquire, was present for Applicant. Joseph Giordano, Assistant Attorney General, was present for Respondent. Counsel for Applicant informed this Court that a co-defendant, Cesar Mendez Martinez, had provided information to Applicant's private investigator that was the basis of allegations set forth in the Amendment. Counsel also explained that Mr. Martinez was a necessary witness and requested that a continuance be granted and counsel be appointed for Mr. Martinez. Respondent consented to both of these requests.

Therefore, this Court finds that this matter should be continued to the next term of Court for post-conviction relief matters in the Seventh Judicial Circuit and that the parties

2023 JUN 14 PM 12:28

FILED

1 

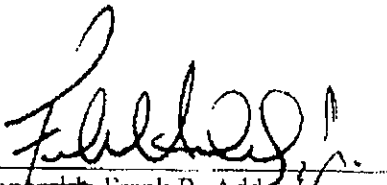
may request that the matter be set for a date certain via the Chief Administrative Judge for the Seventh Judicial Circuit. Additionally, this Court finds Mr. Martinez should be appointed counsel and directs counsel for Applicant to secure an Order to that effect from the Clerk of Court for Spartanburg County, who can appoint the next attorney on the civil appointment list in Spartanburg County.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled during the next appropriate term of post-conviction relief hearings.
2. That the Spartanburg County Clerk of Court shall issue an Order of Appointment of Counsel for Cesar Mendez Martinez.

AND, IT IS SO ORDERED.

June 13, 2023


Honorable Frank R. Addy, Jr.
Presiding Judge
Seventh Judicial Circuit

FILED
2023 JUN 14 PM 12:28
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Keshawn Rice, 378305,
Plaintiff(s),

-vs-

State of South Carolina,
Defendant(s).

) IN THE COURT OF (Select one.)
) ☒ COMMON PLEAS ☐ FAMILY COURT
) SEVENTH JUDICIAL CIRCUIT
) CASE NO.: 2021-CP-42-01217
) APPOINTMENT OF COUNSEL OR GAL
) (Select one.)
) ☒ ORDER
) ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| ☒ Post-Conviction Relief (PCR)/habeas case | ☐ Adoption | ☐ Juvenile |
| ☐ SVP case | ☐ Custody and/or Visitation | ☐ Abuse and Neglect |
| ☐ Minor Name Change | ☐ Other: | |

It appears that Cesar Mendez Martinez, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☒ Other: Cesar Mendez Martinez has been named as a witness in the above referenced Post Conviction Relief case and as such the Honorable Frank R. Addy, Jr., has found that he is entitled to counsel.

Therefore, it is ordered that _____, hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 13th DAY OF June 2023

AMENDED SUPERVISOR'S
IN THE COUNTY OF SPARTANBURG

☒ Circuit Judge ☐ Clerk of Court

NOTICE: Section 87-7111, Code of Laws of the State of South Carolina, requires appointed counsel entitled to payment from the Office of Indigent Defense

SCCA/267 (03/02)

(QID) to register the case online with QID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CLERK OF COURT
SPARTANBURG COUNTY
2023 JUN 14 PM 12:28

SCCA/267 (03/07)

FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
Keshawn Rice, 378305,)	
Applicant,)	2021-CP-42-01217
v.)	
State of South Carolina,)	CONSENT ORDER FOR CONTINUANCE
<u>Respondent.</u>)	

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 19, 2021. Respondent submitted a Return and Motion for More Definite Statement on May 18, 2021 and an Amended Return and Motion for a More Definite Statement on June 9, 2021.

Applicant, through counsel, submitted a Motion for Discovery on December 29, 2021. The Honorable R. Keith Kelly issued an Order Authorizing Discovery on March 28, 2022. Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief on March 14, 2023.

On June 2, 2023, the Honorable Frank R. Addy, Jr. conducted a virtual status conference due to an evidentiary hearing being scheduled for June 21, 2023. Thereafter, Judge Addy issued an Order for Continuance and Appointment of Counsel on June 13, 2023. By way of this Order, the Clerk's Office was instructed to appoint counsel for Cesar Mendez Martinez, a co-defendant and necessary witness. Following the issuance of the Order, Susannah Ross, Esquire, was appointed and began communication with Applicant's counsel and Mr. Martinez.

An evidentiary hearing is scheduled for November 1, 2023. After the issuance of the roster, Ms. Ross experienced a death in her family and was unable to schedule meeting with Mr. Martinez and Applicant's investigator prior to the scheduled

2023 OCT 26 PM 2:47
FILED
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

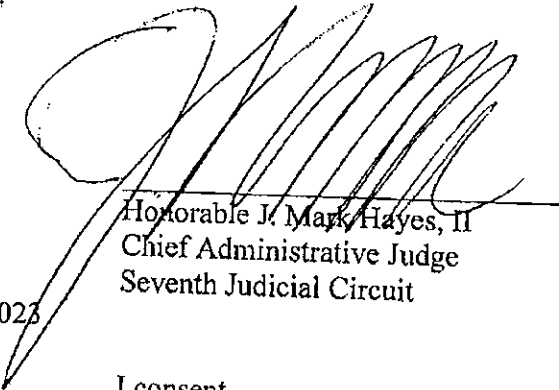
evidentiary hearing. Additionally, counsel for Respondent has been experiencing an ongoing medical situation. Therefore, both parties agree that a continuance of the hearing scheduled for November 1, 2023 is necessary.

Therefore, this Court finds that this matter should be continued to the next term of court for post-conviction relief matters in the Seventh Judicial Circuit and that the parties may request that the matter be set for a date certain via the Chief Administrative Judge for the Seventh Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled during the next appropriate term of post-conviction relief hearings.
2. That Applicant should remain within the custody of the South Carolina Department of Corrections.

AND, IT IS SO ORDERED.


Honorable J. Mark Hayes, II
Chief Administrative Judge
Seventh Judicial Circuit

10/26/23, 2023

I consent,

/s/ Tricia A. Blanchette
Tricia A. Blanchette
Attorney for Applicant.

I consent,

/s/ Suzanne Shaw
Suzanne Shaw
Assistant Attorney General

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

2023 OCT 26 PM 2:47

FILED

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

STATE OF SOUTH CAROLINA - COUNTY OF SPARTANBURG
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA	)
	) Docket No.
	) 2021-CP-42-01217
PLAINTIFF,	)
	)
V.	)
	)
	) PCR HEARING
KESHAWN RICE	)
	)
DEFENDANT.	)
	)
	)

May 23, 2024
Spartanburg, South Carolina

B-E-F-O-R-E:

THE HONORABLE HEATH TAYLOR

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

BRYAN HALL, ESQ.
Attorney General for the State of South Carolina

TRICIA BLANCHETTE, ESQ.
Attorney for the Defendant

Maria DiScioscia, RPR
Official Court Reporter

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

I N D E X

WITNESS	EXAMINATION BY	PAGE
Kathrine Hudgins	Direct by Ms. Blanchette	12
	Cross by Mr. Hall	28
	Redirect by Ms. Blanchette	35
	Recross by Mr. Hall	36
Richard Warder	Direct by Ms. Blanchette	39
	Cross by Mr. Hall	99
	Redirect by Ms. Blanchette	126
	Recross by Mr. Hall	130

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

E X H I B I T S

APPLICANT'S	DESCRIPTION	PAGE
Exhibit 1	Amendment packet 3/2023	8
Exhibit 2	Inmate request form	10
Exhibit 3	Letter from Ms. Hudgins	18
Exhibit 4	Letter to be relieved	42
Exhibit 5	Transport letter	52
Exhibit 6	SLED Trace Evidence Report	54
Exhibit 7	Plea transcript	65

1 THE BAILIFF: All rise.

2 THE COURT: Please be seated.

3 MR. HALL: Can we have Keshawn Rice, please.

4 THE COURT: Are we ready to proceed counsel?

5 MR. HALL: Yes, your Honor.

6 MS. BLANCHETTE: Yes, your Honor.

7 THE COURT: Call your case.

8 MR. HALL: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. HALL: Attorney General Bryan Hall for the
11 State.

12 Your Honor, this is the case of Keshawn Rice
13 versus The State of South Carolina, Docket Number
14 2021-CP-42-01217.

15 In March of 2017 the Spartanburg County Grand
16 Jury indicted Mr. Rice for murder Indictment Number
17 2017-GS-42-1795, armed robbery 2017-GS-42-1796, and
18 Burglary first-degree 2018-GS-42-0649. Those
19 indictments arose from an incident, in which, Mr. Rice
20 went to the victim's home with others to buy marijuana
21 and the victim was shot and died as result thereof.

22 On February 5th through 7th of 2018, Mr. Rice
23 proceeded to a jury trial before The Honorable J. Derham
24 Cole. Deputy Solicitor Derrick Bulsa prosecuted the
25 case and Mr. Rice was represented by Richard Warder.

1 That first trial resulted in a mistrial.

2 In November -- on November 13th through 15th
3 of 2018, Mr. Rice proceeded to a second jury trial
4 before, The Honorable J. Derham Cole. Deputy Solicitor
5 Derrick Bulsa prosecuted as well and Mr. Rice was
6 represented by Mr. Richard Warder. Following that
7 trial, the jury convicted Mr. Rice of voluntary
8 manslaughter, the lessor included of murder and armed
9 robbery and burglary first-degree.

10 Judge Cole sentenced Mr. Rice to 30 years for
11 voluntary manslaughter, 30 years for the armed robbery,
12 and 30 years for the burglary first-degree, ordered to
13 be served concurrently.

14 On November 21, 2018 a Notice of Appeal was
15 filed. And on appeal, Mr. Rice was represented by
16 appellant defender, Katherine Hudgins, who filed an
17 Anders Brief raising the following issues:

18 Did the trial judge error in allowing an
19 officer to speculate that appellant could have left the
20 country during the 10 days between the time of the
21 shooting and the time when appellant turned himself into
22 police, where there was no evidence appellant left the
23 country.

24 The Court of Appeals dismissed the appeal
25 following a review pursuant to *Anders v. California*. The

1 remitter was sent on March 31, 2021 and this PCR was
2 timely filed -- this PCR was filed on April 19, 2021.

3 There have been a number of amendments in this
4 case, but I will let Ms. Blanchette clarify for the
5 record, the allegations that Mr. Rice is proceeding on
6 today.

7 Your Honor, we have a court packet with you
8 that contains the records from Mr. Rice's first and
9 second trials. His court records, SCDC records, and the
10 records of his appeal, as well as, his current PCR.

11 THE COURT: Okay.

12 MR. HALL: May I approach to hand you.

13 THE COURT: Yes, sir.

14 Before we get started, I want to ask Mr. Rice
15 a few questions.

16 Mr. Rice, when you asked for Postconviction
17 Relief, there are two things that can happen.

18 First, if I find you're not entitled to a
19 Postconviction Relief, then you would serve the
20 remainder of your sentence. If I were to grant your
21 application for a Postconviction Relief, I would vacate
22 your conviction, as well as, the sentences and send the
23 case back for proceedings that would start from the
24 beginning. That means that if any of the charges were
25 dismissed, reduced, or dropped, as a result of plea

1 negotiations or anything of that nature, you would be
2 facing all those original charges again.

3 Do you understand all that?

4 MR. RICE: Yes, sir.

5 THE COURT: Do you want to go forward today?

6 MR. RICE: Yes, sir.

7 THE COURT: Okay.

8 Anything else Ms. Blanchette?

9 MS. BLANCHETTE: No, your Honor. I was just
10 going to clarify the amendments and introduce some
11 exhibits if the Court is ready for me to do that.

12 THE COURT: Sure.

13 MS. BLANCHETTE: Your Honor, Tricia Blanchette
14 on behalf of Mr. Rice. As the State indicated, we have
15 filed an amendment that was filed back on March 9, 2023.
16 Via that amendment, we made allegations numbered as 1-A
17 through J, and then 2 and 3. And we will be going
18 forward on that amendment today.

19 It's the March 9, 2023 amendment. If your
20 Honor needs a copy, I do have a copy I can provide.

21 THE COURT: It looks like I have a March 14th.

22 MS. BLANCHETTE: Yes, your Honor. I submitted
23 it on March 9th, it was filed on March 14th.

24 THE COURT: Okay. Then I have a copy.

25 MS. BLANCHETTE: Your Honor, as you graciously

1 allowed us to discuss in chambers, in conjunction with
2 that amendment, I have taken each issue as listed in the
3 amendment and -- I apologize.

4 My eyes fail me, it's H through I.

5 I've taken each issue as listed in the
6 amendment and provided the transcript cites that we rely
7 upon in support of those allegations. Those are also
8 the transcript cites I intend to ask Mr. Dick Warder,
9 who was trial counsel at both cases, about today. I
10 have set those out as first trial transcript and second
11 trial transcript. As in cases like this where we're
12 dealing with two trials I find it can be confusing.
13 It's my understanding the State does not oppose me
14 making that part of the record.

15 So I'd move to make that part of the record as
16 Applicant's Number 1 at this time.

17 THE COURT: Okay. It will be admitted as
18 Applicant's Number 1, without objection.

19 MR. HALL: No objection.

20 (Applicant's Exhibit 1, Amendment packet
21 3/2023, was entered into evidence.)

22 MS. BLANCHETTE: Would your Honor like a copy?

23 THE COURT: Yes, ma'am.

24 MS. BLANCHETTE: And does your law clerk need a
25 copy?

1 THE COURT: That would be great as well.

2 MS. BLANCHETTE: And your Honor, for further
3 clarification, it is written on Applicant's Number 1.
4 But since this amendment was filed over a year ago,
5 there have been some minor changes to it that I would
6 like to put on the record at this time, and I have
7 advised the State of.

8 THE COURT: Sure.

9 MS. BLANCHETTE: Under Issue 1(b): "Trial
10 counsel failed to investigate and/or utilize witnesses
11 for the defense."

12 We do not intend to call any witnesses to
13 support that claim.

14 THE COURT: Okay.

15 MS. BLANCHETTE: Then your Honor, under issue
16 1(e). We would ask that we could verbally amend as
17 reflected on Applicant's Number 1 to read as follows:

18 "Trial counsel failed to advise Applicant and
19 prepare for the State's evidence of flight that was not
20 presented in the first trial. Trial counsel failed to
21 object to hearsay evidence offered regarding flight at
22 Applicant's second trial."

23 And I did -- these are my own notes, I
24 apologize. It will say in the exhibit, "that we
25 verbally amended to include the language in bold." And

1 that will be reflected in Applicant's Number 1, your
2 Honor.

3 THE COURT: Okay.

4 MS. BLANCHETTE: Those are the only changes
5 that we have at this time to the Amendment that was
6 filed back in March of 2023.

7 THE COURT: Okay.

8 MS. BLANCHETTE: Then the final matter, your
9 Honor, before I'm ready to call my first witness. At
10 this time we would move to introduce a second exhibit,
11 Applicant's Number 2.

12 This came to my office via the packet from the
13 Clerk of Court's office that is provided to the Attorney
14 General's Office after the filing of the application.

15 It is an Inmate Request form. And it is dated
16 March 1, 2018 I believe is what is on the stamp, your
17 Honor.

18 I have provided a copy from the State. I'll
19 let them indicate if they have any opposition to this
20 coming in.

21 MR. HALL: No objection.

22 THE COURT: Very good. It will be Applicant's
23 2, without objection.

24 (Applicant's Exhibit 2, Inmate Request
25 form, was entered into evidence.)

1 MS. BLANCHETTE: And your Honor, we have
2 allegations that involve whether or not Mr. Warder
3 obtained the first trial transcript. So the purpose of
4 Applicant's Number 2 is, this is a clocked-in Inmate
5 Request, whereby Mr. Rice was trying to obtain that
6 transcript himself.

7 THE COURT: Okay.

8 MS. BLANCHETTE: Your Honor, would your law
9 clerk and yourself like a copy as well?

10 THE COURT: Sure.

11 MS. BLANCHETTE: With that, your Honor, I'm
12 prepared to call Ms. Hudgins.

13 THE COURT: Very good. Let's go off the record
14 for a moment.

15 (Whereupon, a short recess was taken.)

16 THE COURT: We're back on the record.

17 Ms. Hudgins, this is Judge Taylor. Can you
18 hear me?

19 MS. HUDGINS: Good morning, Judge Taylor.

20 THE COURT: How are you?

21 MS. HUDGINS: Good, thank you.

22 How are you?

23 THE COURT: I'm good.

24 Would you raise your right hand for me?

25 *Do you swear or affirm everything you're*

1 gonna tell me today is the truth.

2 MS. HUDGINS: Yes.

3 (Whereupon, the witness testified
4 virtually.)

5 THE COURT: Very good.

6 I think it's your witness, Ms. Blanchette.

7 MS. BLANCHETTE: Thank you, your Honor.

8

9 DIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q. Ms. Hudgins, this is Tricia Blanchette. I
12 believe I've effectively already called you to the stand
13 and the Judge has sworn you in.

14 How are you this morning?

15 A. I'm fine, thank you.

16 How are you?

17 Q. Good. And you can hear me okay?

18 A. I can.

19 MS. BLANCHETTE: If the Court doesn't mind,
20 I'll sit so it's better for the computer screen.

21 THE COURT: No problem.

22 MS. BLANCHETTE: Thank you, your Honor.

23 Q. (By Ms. Blanchette:) Ms. Hudgins, could you
24 just explain how it is that you're involved in the
25 matter of Keshawn Rice, what involvement you had as his

1 attorney?

2 A. Sure. I was appointed to the case as his
3 appellant defender. I received his file, which would
4 have included the transcript of the trial, any exhibits
5 that I would have ordered, indictments, sentencing
6 sheets, that sort of thing.

7 Q. And what is your process once you receive a
8 case like Mr. Rice's, how do you prepare your appellant
9 brief and filings?

10 A. Well, I would start by reading the transcript
11 (audio disruption) -- that would be preserved errors, so
12 that I could present those to the appellant court. I'll
13 go through the transcript once. Give it a once over.
14 Kind of, make some notes about that. Then I'll go back
15 and really, kind of, hone in on those objections that I
16 think might be meritorious for the appellant court to
17 consider and may result in a reversal. Do my research
18 based on whatever issues that I've determined should be
19 presented to the appellant court. And then, based on
20 the research and -- (audio disruption.)

21 MS. BLANCHETTE: Madam Court Reporter, do you
22 need her to repeat that last bit?

23 COURT REPORTER: Yes, please.

24 Q. (By Ms. Blanchette:) Ms. Hudgins,
25 unfortunately, you cut-out in that last sentence. Could

1 you just repeat that last sentence, if you can recall.

2 A. I think I said that, once I completed going
3 through the transcript and doing my legal research, then
4 I would write the brief.

5 Q. And in this case, you filed an *Anders Brief*;
6 is that correct?

7 A. That is correct.

8 Q. Can you explain what an *Anders brief* is or the
9 purpose of filing an *Anders brief*?

10 A. The *Anders* process, if I don't find any
11 meritorious issues -- can you hear me? Good.

12 If I don't find any meritorious issues that I
13 think will result in reversal, then what I'm required to
14 do is submit an issue to the Court. What that does, I
15 can be wrong, I've been wrong many times. But what that
16 will do is, that will enable the Court to review the
17 entire transcript rather than just the issues that I've
18 raised in the brief. If the Court deems an issue that
19 they think needs to be raised, they can send it back to
20 me. We call that an "Anders buck". That doesn't happen
21 very often, but it happens on occasion.

22 But that way, the client also get's to present
23 any issues that he or she may want to present to the
24 Court as well. So that's the *Anders* procedure.

25 We don't like to file *Anders briefs*, 'cause

1 frankly, I believe that the appellant court probably
2 doesn't take those *Anders briefs* as seriously as they do
3 *Meritorious briefs*, but sometimes our hands are tied and
4 I felt this way in this case.

5 Q. Why did you feel that your hands were tied in
6 this case?

7 A. I didn't find any meritorious issues that I
8 thought would result. There just weren't that many
9 objections in this case and as a result, I filed an
10 *Anders brief*.

11 Q. And the issue you did raise as reflected in
12 the *Anders brief*, dealt with speculation testimony
13 regarding the issue of flight.

14 Can you explain to us how you landed on that
15 issue?

16 A. Well, there wasn't an objection to that.
17 However, in reviewing it, I think the reason that is was
18 -- it's not that there wasn't an objection. But it
19 looks like trial counsel might have opened the door to
20 that testimony and that's why I filed it as an *Anders*.

21 Q. And so to clarify, you did not raise it as a
22 merits issues, because you reached the opinion that
23 trial counsel may have opened the door to the testimony
24 that you were saying was prejudicial?

25 A. Correct. I believe he opened the door on

1 cross-examination, which allowed the prosecutor to get
2 into that testimony. And I believe if I raised that as
3 a meritorious issues, that's what the Court of Appeals
4 would have found.

5 Q. And I wanted to ask you about a letter that
6 you wrote to Mr. Rice, the Applicant, and that you have
7 provided to myself, dated December 4, 2019.

8 Do you have a copy of that letter?

9 A. I do.

10 Q. I will do my best -- I believe it should pick
11 up on my screen. But I have shared this with the
12 Attorney General via email. It's, kind of, in tiny
13 print that you were able to provide it to me.

14 Do you recognize the document that I'm holding
15 up here?

16 A. I do recognize it.

17 Q. And that is the letter that you provided to
18 me?

19 A. Yep.

20 Q. And this is a letter that you addressed to Mr.
21 Rice; is that correct?

22 A. That's correct.

23 Q. And what was the purpose of this letter first?

24 A. The main purpose was to provide him a copy of
25 the *Anders* brief -- (Audio disruption) -- legally

1 appointed when the appellant attorney files an *Anders*
2 *brief*. I did want to explain to him, sort of, why I did
3 that. And in explaining why I filed the *Anders brief*, I
4 also raised a few issues that I had concerns about that
5 he possibly could raise -- (audio disruption.)

6 Q. I want to just ask you for two clarifications,
7 because I can tell Madam Court Reporter is having some
8 issue picking up some of your testimony.

9 A. Okay.

10 Q. For clarification, did you say that you wrote
11 the letter, "because client's can be disappointed"?

12 A. Yes. I think client's want you to file a
13 *Merits brief*. They don't want you to file an *Anders*
14 *brief*.

15 Q. And the second point of clarification I'm
16 gonna ask is, you cut off -- I believe your audio cut
17 off when you were saying, "you addressed some issues
18 that could be raised." And I did not hear personally.
19 I don't know if the State did, how you said these issues
20 could be raised.

21 A. If he was not able to prevail on direct
22 appeal, I jotted some issues that discovered after
23 researching, reading the transcript, that I thought he
24 might be able to raise in PCR.

25 MS. BLANCHETTE: Your Honor, at this time I

1 would move this letter dated December 4, 2019 identified
2 by Ms. Hudgins as Applicant's Number 3.

3 THE COURT: Any objection from the State?

4 MR. HALL: Objection for hearsay, your Honor.

5 Ms. Hudgins is hear and present as she can
6 testify to the information in this letter. Our concern
7 is that Ms. Hudgins, in this letter, speaks about the
8 issues for which we are hear today, which is ineffective
9 assistance of trial counsel.

10 So we would object for hearsay.

11 THE COURT: Okay. Overruled. I'll allow it as
12 Applicant's 3.

13 (Applicant's Exhibit 3, Letter from Ms.

14 Hudgins, was entered into evidence.)

15 Q. (By Ms. Blanchette:) Ms. Hudgins, I just want
16 to take you through some of the issues that you do raise
17 in this letter.

18 In looking at the letter, you speak
19 specifically about the impeachment testimony of Zaria
20 Owens. If you could take us through what you were
21 trying to impart to Mr. Rice there.

22 A. I'm reading the paragraph. It says, that I
23 reviewed the issue with you and Mr. Rice, I'd mentioned
24 in the letter.

25 I think the first part of that was, I wanted

1 to tell him why I didn't raise this issue on direct
2 appeal. It looks like I determined that although it was
3 (audio disruption) -- it was properly admitted as
4 impeachment testimony. As I recall, there was no
5 objection (audio disruption) proper foundation made for
6 impeachment. That's why -- I wanted to address his
7 concerns with that hearsay during State's testimony. He
8 was concerned about that and I wanted to address it.

9 Q. And did you analyze that issue under Rule
10 613(b) of the Rules of Evidence?

11 A. I believe so.

12 Q. And just to clarify, just 'cause there is a
13 little bit of cutting in and out. The testimony of
14 Zaria Owens in the second trial, you were just reviewing
15 the second trial; is that correct?

16 A. That's correct.

17 Q. And you found that was being used as
18 impeachment testimony, the subsequent testimony?

19 A. I believe that although it was hearsay, it was
20 properly admitted as impeachment.

21 Q. And who was it that she would have been
22 impeaching?

23 A. It was per Zaria Owens testimony. I believe
24 the statements on page 244 were from, maybe a school
25 resource officer.

1 Q. Correct. And let me get you to turn to 244
2 and 245, if you have that in front of you.

3 A. I do.

4 Q. And in there, Mr. Smith is testifying.

5 A. Yes. (Inaudible)

6 Q. -- I'm sorry, Ms. Hudgins. We did not hear
7 anything you just said.

8 A. I'm sorry. Sorry that we're having problems.
9 Can you hear me now?

10 Q. Yes, we can.

11 A. Yes. This was testimony from a Thomas Smith
12 it appears. And it looks like there was an objection to
13 this as hearsay, by the trial lawyer. It appears that I
14 determined that that was properly admitted as
15 impeachment of Zaria Owens testimony, denying that she
16 told the officer the statement she made about Mr. Rice.

17 Q. In reviewing this section and in preparation
18 of your brief and in writing this letter and reviewing
19 it prior to this hearing, I do see where it says,
20 "hearsay". But did you see any discussion where this
21 was being offered under Rule 613(b) as impeachment
22 testimony or were the case *State versus Sierra* was
23 discussed, which is very similar. Where individuals
24 were called that had interviewed someone and then
25 offered testimony?

1 Do you see any discussion of that in the
2 record?

3 A. I did not.

4 MS. BLANCHETTE: Beg the Court's indulgence
5 for one moment.

6 THE COURT: Yes, ma'am.

7 Q. (By Ms. Blanchette:) Here we're talking about
8 Thomas Smith on pages 244 through 245. But have you
9 also reviewed the testimony of Richard Foster beginning
10 on page 236?

11 A. Yes.

12 Q. And did you see there where Mr. Foster's also
13 testifying to information given by Ms. Zaria?

14 A. I see that, yes.

15 Q. And was there any objection there?

16 A. I don't see an objection.

17 Q. And so that's not an issue that would have
18 been preserved for you to raise on appeal?

19 A. That's correct.

20 Q. And just going back, I don't know that we
21 discussed this enough at the beginning. In South
22 Carolina, does there have to be a proper objection or
23 motion made in order for an issue to be raised on
24 appeal?

25 A. Yes. We have a fairly strict contemporaneous

1 objection rule. In order for the appellant court to
2 review an issue, it has to be properly raised to the
3 trial judge with specific grounds for the objection and
4 then a ruling, in order for that to be something to be
5 considered 'preserved' that I can present to the
6 appellant court.

7 Q. Now, moving on to the second issue that you
8 raised in your letter. There you talk about Deputy
9 Bowen's testimony regarding Cesar Mendez?

10 A. Yes.

11 Q. And in your letter that you reference, "This
12 could be a violation of the Confrontation Clause."

13 Can you explain what you were attempting to
14 address there?

15 A. As I recall, it looks like the deputy, Deputy
16 Bowen, was allowed to testify about statements that
17 Mr. Mendez told him. And Mr. Mendez was, as I recall,
18 was never called as a witness. So that seemed to me to
19 present a pretty classic 'Confrontation Clause' problem.
20 I had to remember what page --

21 Q. I was going to reference you to page 112 where
22 officer or Deputy Bowen is testifying.

23 A. Yes. I've got it now. Thanks.

24 Q. And if you look at page 113 through 114, it
25 does appear there is an objection in bench conference.

1 But was there a record made of what that was for you to
2 review?

3 A. Now, I see on page 113 there is a line -- page
4 113, line 13. There's an objection to hearsay, which
5 was sustained. Then going over to page 114, it looks
6 like there was a bench conference that's never placed on
7 the record, what was discussed at bench. And then as I
8 recall, there was no objection based on confrontation.
9 And if that was discussed at the bench, it was certainly
10 never placed on the record.

11 Q. As the transcript reflects, there is
12 mention -- let me just find the cite for you real quick.

13 On page 113, of Mr. Mendez' emotional state
14 and that he was distraught. But in reviewing it, did
15 you ever see where they were specifically asking to
16 raise this as an 'excited utterance exception' to the
17 hearsay rule?

18 A. No, I don't see that.

19 Q. So since it's not specifically in the record,
20 that's not an issue that you could raise, if that was an
21 objection that Mr. Warder had lost and his testimony was
22 allowed on that basis?

23 A. That is correct.

24 Q. Finally, I want to ask you about the issue of
25 flight, if it's okay if I categorize it that way. That

1 is part of the issue that you raised on appeal.

2 You already indicated though that you had
3 preservation concerns; is that correct?

4 A. It's not so much I had preservation arguments.
5 I feel like, this is the issue that I raised on direct
6 appeal, correct, in the *Anders* brief?

7 Q. Yes. The flight issue.

8 A. There was an objection, as I recall, to
9 speculation. In my mind that's kind of a weak
10 objection. But my biggest concern (audio disruption)
11 during cross-examination it appears that trial counsel
12 asked about that and sort of opened the door to allow
13 the proffer to get up on redirect and ask that question.
14 So even when the objection based on speculation, if I
15 had raised that as a meritorious issue I'm sure that the
16 government would have said:

17 Well, they opened the door to it.

18 Q. And in your letter you referenced to, "That no
19 objection was made to Officer Kelly Parnell's testimony,
20 about what your mother allegedly told her."

21 Can you explain that?

22 A. Yes. Can you direct me to the record on that?
23 I'm sorry.

24 Q. Yeah and I'm probably going to ask you a
25 longer question. But at trial beginning on page 221.

1 The State first calls Cheryl Rice, Applicant's
2 grandmother. Then they called Lakisha Rice, his mother.
3 Then they called Kim Parnell, and Richy Foster, and
4 Master Deputy Mauro, that all appear to testify on this
5 flight issue.

6 A. Okay.

7 Q. Now, Lakisha Rice was Applicant's mother and
8 her relevant testimony begins on page 226.

9 A. Okay.

10 Q. Now, based upon your letter, you indicate that
11 Officer Kelly Parnell testified about, "What your mother
12 allegedly told her." In reviewing Ms. Rice's testimony,
13 did you find that Officer Parnell went further and
14 testified to additional information beyond what
15 Ms. Lakisha Rice testified to?

16 A. I believe that's correct.

17 Q. Did you see any objection by counsel so that
18 you could raise that issue on appeal?

19 A. No.

20 Q. Why did you think that was objectionable?

21 A. I'm trying to get to the, Officer Kelly's
22 testimony so that I can answer your question.

23 Q. And you can find that testimony on page 233 of
24 the trial transcript. I'm turning there myself.

25 A. Thank you. I thought I had it tabbed. Yeah,

1 I have it tabbed right here. Okay.

2 So while I'm reading on page 233 it says --
3 it's talking about, "Trying to get him to turn himself
4 in". And I think there should have been an objection to
5 that. She's talking about what the mother told her
6 about him turning himself in. I certainly think there
7 should have been an objection to that.

8 Q. And specifically, if you can look at page 234
9 lines 1 through 6. The officer indicates, "That his
10 mother had said, she went to Ms. Sincere Jeter's house
11 looking for him and he had fled."

12 A. Yes.

13 Q. And did you find that was testimony that
14 Ms. Rice offered?

15 A. No, she didn't offer -- she didn't go that
16 far. You're right.

17 Q. And did you find that to be objectionable?

18 A. Yes.

19 Q. And if an objection had been made and that had
20 been preserved, was that an issue that you would have
21 raised on appeal?

22 A. I mean that's stronger than the issue that I
23 ended up raising in the *Anders*, yes.

24 Q. Can you explain why you have that thought?

25 A. It goes to flight. It reflects poorly on Mr.

1 Rice. And I think with some of the other testimony that
2 was brought out without the other objection, I think the
3 two of those would have fit together in two nice issues
4 that might have changed my mind to make it from an
5 *Anders* to a *Merits*.

6 Q. Then this isn't in your letter, but if I can
7 get you to turn to page 159 of the transcript.

8 A. Yes.

9 Q. And beginning on lines 3 and 4. This is
10 Kameron Wilson. Are you familiar with who he was in the
11 case?

12 A. No, not really. But I can read through
13 quickly.

14 Q. Well, this is Kameron Wilson testifying. He's
15 a States's witness, one of Applicant's codefendants.

16 A. Okay.

17 Q. And beginning on line 3, he's being asked;
18 If he still considers Mr. Rice a friend.

19 A. Okay.

20 Q. Then he's asked: If they stay in touch.

21 A. Okay.

22 Q. Beginning on line 12, he asked:

23 "When did you stop talking to him?"

24 His response on line 13 is:

25 "After -- I think after the first trial."

1 A. That's right. This is the reference to the
2 first trial, which shouldn't have been made.

3 Q. Okay. Could you please explain that for the
4 record?

5 A. Well, obviously, the jury shouldn't be aware
6 that there was a first trial. That's obvious. That
7 should have been an issue and it was not. Had it been
8 objected to, that may have been another issue that I
9 could have raised on direct appeal in a *Merits* brief
10 rather than an *Anders*.

11 MS. BLANCHETTE: Your Honor, I have no further
12 questions for Ms. Hudgins.

13 THE COURT: Mr. Hall?

14
15 CROSS-EXAMINATION

16 BY MR. HALL:

17 Q. Good morning, Ms. Hudgins.

18 How are you?

19 A. Good morning, Mr. Hall. Fine.

20 How are you?

21 Q. Doing well.

22 MR. HALL: Beg the Court's indulgence.

23 Q. (By Mr. Hall:) Ms. Hudgins, how long have you
24 be practicing law?

25 A. Let's see, 32 years. 32 years. Wow, that's a

1 long time, isn't it.

2 Q. How much of that time has been spent in
3 appellant practice?

4 A. Well, probably 20 years of that.

5 Q. Ms. Hudgins, to clarify what you testified to
6 on direct. Can you just repeat the process that you go
7 through when you receive an appellant case?

8 A. Sure. I will receive the transcript. I will
9 review any exhibits or order any exhibits if I need to.
10 I will review the transcript for preserved objections
11 that I would be able to raise. Once I determine what
12 those objections or what those preserved issues are,
13 I'll do my legal research. Determine how I should frame
14 the issue. Determine whether I, whether they're
15 meritorious issues or if I'm going to have to file an
16 *Anders* brief. Then I will prepare the brief and file
17 it.

18 Q. Okay. And in this case, you filed an *Anders*
19 *brief*. So an *Anders* *brief*, essentially means that you
20 didn't find any preserved issues that had merit; is that
21 right?

22 A. That's correct.

23 Q. Now, you mentioned on direct that whether an
24 issue is preserved effects your ability to raise it on
25 appeal; is that right?

1 A. That's correct.

2 Q. But just because an issue is preserved,
3 doesn't mean that it has merit; right?

4 A. (Audio disruption.)

5 Q. I'm sorry Ms. Hudgins. We didn't hear your
6 testimony. Could you repeat that?

7 A. You asked that if, "just because it's
8 preserved, doesn't mean it's meritorious?"

9 And I answered: "That's correct."

10 Q. Just because it's unpreserved -- an
11 unpreserved issue, that also doesn't mean that if it had
12 been preserved, it would have been meritorious on
13 appeal; right?

14 A. Yes. That would -- by it not being preserved,
15 we don't have the ability for review by the appellant
16 court.

17 Q. I want to go through some of the specific
18 issues that we mentioned here.

19 MR. HALL: Beg the Court's indulgence.

20 THE COURT: No problem.

21 Q. (By Mr. Hall:) So the issue that you did raise
22 in this case, in the *Anders* brief was the speculation
23 issue.

24 A. That's correct.

25 Q. And you testified that that issue was

1 preserved; right?

2 A. It was preserved. Therefore, was an objection
3 as to speculation.

4 Q. And you testified that perhaps the issue could
5 have been prejudicial. But the Court of Appeals decided
6 not to take up that issue; is that right?

7 A. Yes. They dismissed the appeal under the
8 *Anders* procedure.

9 Q. And I want to talk about the testimony of
10 Zaria Owens. The testimony by Officer Thomas Smith, you
11 testified on direct that that was properly answered
12 under the 613, Rule 613(b); is that right?

13 A. Well, there was no objection to any sort of --
14 the State argued -- I believe that it would have been
15 found proper as impeachment. The problem was there was
16 no objection -- (audio disruption.) That's on pages 244
17 to 245, I believe.

18 Q. Ms. Hudgins, you cut off there for a second,
19 so we didn't hear your testimony.

20 Could you repeat that line?

21 A. I'm sorry. I think you were asking me about
22 pages 244 to 245 of the record. And it was my
23 determination that the statements, although hearsay,
24 were properly admitted as impeachment. But there was no
25 testimony about the foundation or any challenge to the

1 foundation under the impeachment rules.

2 So that was one of my concerns.

3 Q. I want to ask you about the objection that was
4 made by counsel on page 244. You mentioned that there
5 was a hearsay objection.

6 A. Mr. Hall, I'm going to flip to the page real
7 quickly. Okay.

8 Q. Yes, ma'am.

9 A. I'm there.

10 Yes. There was an objection. It was objected
11 to on hearsay grounds.

12 Q. Opposing counsel asked you on direct, that
13 there was no discussion of a 613 argument or a Sierra
14 argument. I won't get into those issues. But again,
15 trial counsel objected to hearsay. And you just
16 testified that it was properly admitted as impeachment.
17 Would it have been necessary for trial counsel to have
18 stated on the record then that it was a 613 objection?

19 A. Well, in order for me to -- (audio
20 disruption.)

21 Q. I'm sorry. I didn't hear that.

22 A. In order for me to have properly raised it on
23 appeal, there would have had to have been some other
24 objection other than the hearsay objection.

25 Q. Okay. And if you had raised or if counsel had

1 objected and raised those ground, either 613(b) or
2 Sierra, in your experience, do you believe that those
3 issues would have been successful?

4 A. Perhaps. And sometimes we have to look at the
5 cumulative nature of some of these errors in determining
6 whether to file a *Merits* or an *Anders*. If there had
7 been numerous meritorious issues that might be somewhat
8 weak or sometimes when you combine those, it makes the
9 issue on appeal stronger.

10 Q. But regarding the issues raised, you can't say
11 for certain whether those issues would have been
12 successful. It's --

13 A. -- that's correct.

14 Q. Okay. I want to move along to the testimony
15 by Deputy Bowen about what Cesar Mendez said to him at
16 the scene.

17 A. Okay.

18 Q. That's page 113 of the transcript.

19 A. I'm there.

20 Q. Trial counsel objected to those statements as
21 hearsay and they were sustained.

22 Although, there was a bench conference off the
23 record and we don't know what's said. Based on the,
24 what the transcript says and on page 114, the Court
25 allowed those statements in under the excited utterance

1 exception; is that right?

2 A. That's what it appears. There was no
3 objection to it under confrontation.

4 Q. I want to ask you about Kelly Parnell's
5 testimony about what Ms. Rice said in this case.

6 Again, if that issue had been objected
7 objected to and if you had raised that issue on appeal,
8 you can't say for certain whether that issue would have
9 been successful or not; right?

10 A. It does feed nicely into the issue that was
11 raised.

12 Q. But to clarify, you can't say for certain
13 whether or not the Court of Appeals would have ruled in
14 Mr. Rice's favor?

15 A. That's correct. I have no idea what the Court
16 of Appeals will do.

17 Q. One last question for you Ms. Hudgins.

18 With all the issues, there was a lot of
19 testimony here about what objections should have been
20 made or what issues should or shouldn't have been
21 raised. Again, one final question.

22 If an issue has been objected to and you have
23 the opportunity to raise it, you can't say for certain
24 whether or not the Court of Appeals would have ruled in
25 Mr. Rice's favor on all of those issues; correct?

1 A. That's correct.

2 MR. HALL: No further questions, your Honor.

3 THE COURT: Any on redirect?

4 MS. BLANCHETTE: Briefly and I have to restart
5 my video. I apologize.

6 Yes. Briefly, your Honor, on redirect.

7 THE COURT: Yes, ma'am.

8

9 REDIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q. Ms. Hudgins, the State asked you about Ms.
12 Zaria Owen's testimony. If I can have you look back at
13 page 244 and 245, the testimony of Mr. Thomas Smith.

14 A. I'm there.

15 Q. Are you familiar with the case of, *The State*
16 *versus Sierra* that was issued by South Carolina Court of
17 Appeals in 1999, that dealt with when an assistant
18 solicitor interjected themselves as a witness in trial
19 by asking about interviewing a witness?

20 A. I am now familiar with that case.

21 Q. And if you could look at page 244 and 245.
22 Specifically page 245, there the assistant solicitor or
23 the Solicitor, Mr. Bulsa, is asking in line 10.

24 "Did we meet with her approximately a week
25 later and did she reaffirm that comment that she heard

1 from Mr. Rice?"

2 So throughout, would you agree that Mr. Bulsa
3 is indicating that he was also at this meeting with
4 Thomas Smith?

5 A. It's certainly problematic testimony or
6 problematic questioning from the solicitor.

7 Q. Could you explain why you find that
8 problematic?

9 A. He is inserting himself into trial and that's
10 obviously improper. That should have been objected to.

11 Q. And if it was objected to, is that an issue
12 you would have considered raising on appeal under *State*
13 *versus Sierra*?

14 A. Absolutely.

15 MS. BLANCHETTE: Your Honor, I have no
16 further redirect.

17 THE COURT: Anything else Mr. Hall?

18 MR. HALL: Briefly, your Honor.

19
20 RECROSS-EXAMINATION

21 BY MR. HALL:

22 Q. Ms. Hudgins, how familiar are you with *State v*
23 *Sierra*?

24 A. I reviewed it last night.

25 Q. Are you familiar in that case with the supreme

1 court stating in that case that -- I'll withdraw that
2 question and rephrase.

3 Are you familiar in the *State v Sierra* case
4 that the solicitor in that case testified to statements
5 the witness has said to him, but there was no
6 third-party present for those statements?

7 A. I think that's correct.

8 Q. Would you agree that here, in this case, there
9 was as third-party present during the solicitor's
10 conversations with Ms. Owens; right?

11 A. I believe the solicitor's investigator was
12 there.

13 Q. And the investigator was Mr. Thomas Smith;
14 right?

15 A. I believe that's correct.

16 Q. And he testified at trial. That's what's on
17 page 244; right?

18 A. That's right.

19 Q. And so Mr. Rice's counsel is able to
20 cross-examine Mr. Smith about the statements that were
21 made; right?

22 A. Right.

23 Q. And ultimately, in the *State v Sierra* case
24 didn't the supreme court find that such error was
25 subject to a harmless error analysis?

1 A. Most errors are.

2 Q. And so if this -- if the objection had been
3 made and you raised the issue on appeal, wouldn't the
4 Court of Appeals have reviewed it under harmless error
5 analysis?

6 A. They would have reviewed it under that, but we
7 have no idea whether they would have found it harmless
8 or not.

9 Q. So you can't say for certain that if that
10 issue had been objected to and raised, that the Court of
11 Appeals would have ruled in Mr. Rice's favor; right?

12 A. That's correct.

13 MR. HALL: No further questions, your Honor.

14 MS. BLANCHETTE: Your Honor, if I could beg
15 the Court's indulgence for just one moment.

16 THE COURT: Sure.

17 MR. HALL: Just to clarify for the record. I
18 misspoke and said that this was a supreme court case,
19 but it was actually a court of appeals case. So I just
20 wanted to clear that up.

21 THE COURT: Very good. Is that all for Ms.
22 Hudgins?

23 MS. BLANCHETTE: Yes, your Honor.

24 THE COURT: She can be excused.

25 MS. BLANCHETTE: Thank you, your Honor.

1 MS. HUDGINS: Thank you again for your
2 indulgence. And I apologize again for the technical
3 difficulties.

4 THE COURT: Thank you, Ms. Hudgins.

5 MS. BLANCHETTE: Your Honor, if I may just
6 have a moment to shut this down before I call my next
7 witness. I assume we're exiting the virtual courtroom
8 at this time?

9 THE COURT: Yes. We can do that.

10 MS. BLANCHETTE: Then your Honor, if you would
11 allow the parties to approach regarding scheduling?

12 THE COURT: Sure.

13 (Whereupon, a brief discussion was held
14 off the record.)

15 MS. BLANCHETTE: Your Honor, I would call
16 Richard Warder to the stand.

17 THE COURT: Mr. Warder.

18 Mr. Warder, would you raise your right hand
19 for me.

20 *Do you swear or affirm everything you're*
21 *gonna tell me today is the truth.*

22 MR. WARDER: Yes, your Honor. I do.

23 THE COURT: All right. Have a seat.

24
25 DIRECT EXAMINATION

1 BY MS. BLANCHETTE:

2 Q. Can you please state your name for the record?

3 A. Richard Harold Warder.

4 Q. Mr. Warder, how are you currently employed?

5 A. I'm a lawyer.

6 Q. How long have you been a lawyer in the State
7 of South Carolina?

8 A. In the State of South Carolina, 49 years I
9 think.

10 Q. Have you practiced in any other states?

11 A. I have. I was admitted to the State of Iowa
12 and then the District of Columbia.

13 Q. So in total, how many years have you practiced
14 law?

15 A. 50.

16 Q. During your 49 years here in South Carolina,
17 have you had a primary area or focus of your practice?

18 A. Criminal defense.

19 Q. And with the number of years you've practiced,
20 I'm not going to ask you to estimate how many cases
21 you've handled, but I assume it's in the thousands
22 possibly.

23 A. I truly don't have an answer to that. It
24 would be a lot.

25 Q. Mr. Warder, can you explain to us how you

1 became involved in Mr. Rice's case before his first
2 trial?

3 A. Not exactly. Somebody -- the family came and
4 they hired me and started off, I don't remember when.

5 Q. But you represented him at his first trial
6 that was held in February 2018 in front of Judge Cole
7 here in Spartanburg?

8 A. I did.

9 Q. After that first trial ended in a deadlock, do
10 you recall moving to be relieved from the case?

11 A. Did I recall what?

12 Q. Moving to be relieved from the case?

13 A. I don't. I don't. I might have done that.

14 MS. BLANCHETTE: Your Honor, may I approach
15 the witness?

16 THE COURT: Yes, ma'am.

17 MS. BLANCHETTE: Your Honor, do I need to
18 continue to ask "to approach"?

19 THE COURT: No.

20 Q. (By Ms. Blanchette:) Mr. Warder, I'm going to
21 hand you a document and see if you can identify that for
22 the record.

23 A. It appears to be a motion to be relieved.

24 Q. Does that appear to be your signature there on
25 the second page?

1 A. That is my signature.

2 Q. And it's dated, it appears by your office on
3 February 15th, but filed February 16, 2018?

4 A. That appears to be correct.

5 Q. So that would be about 10 days after the first
6 trial had concluded?

7 A. Yes.

8 MS. BLANCHETTE: Your Honor, at this time I
9 would move the Motion to Be Relieved just referenced by
10 the witness, as Applicant's Number 4, I believe.

11 THE COURT: Any objection from the State?

12 MR. HALL: No objection.

13 THE COURT: All right. That would be
14 Applicant's 4.

15 (Applicant's Exhibit 4, Letter to be
16 relieved, was entered into evidence.)

17 Q. (By Ms. Blanchette:) And upon reviewing this
18 Motion, do you now recall moving to be relieved and your
19 reasoning for doing so?

20 A. I filed it at least. It's my signature. I
21 don't specifically recall.

22 Q. Okay. Now, do you recall how you became
23 involved and then appeared as counsel on the second
24 trial that was held on November 13th through 15th of
25 2018 here in Spartanburg in front of Judge Cole?

1 A. I would assume I wasn't relieved.

2 Q. So it's your assumption that you continued to
3 represent him from the first trial until the second
4 trial?

5 A. Yes, ma'am.

6 Q. Do you recall what preparation you did after
7 the first trial was deadlocked to get ready for the
8 second trial?

9 A. It was 7 years ago. The answer is: No, I
10 don't recall what preparation.

11 Q. Do you recall if you obtained the transcript
12 from the first trial to review and utilized in the
13 second trial?

14 A. I don't believe I did.

15 Q. You've had an opportunity this morning and I
16 had previously provided it to your office to review that
17 transcript; is that correct?

18 A. That is true.

19 Q. And this morning I will at some point be
20 asking you questions about the first trial and the
21 second trial. Because, would you agree, that a number
22 of the same witnesses were utilized in both trials?

23 A. Yes. I think at least a number of them were.

24 Q. Now, can you recall any time when you have a
25 first trial that either ends in a mistrial or a

1 deadlocked jury, whatever it may be, and then your
2 client's called to a second trial where you have
3 obtained the first trial transcript?

4 A. I've done that, but I can't recall which
5 specific case.

6 Q. What would be the purposes of getting the
7 first trial transcript?

8 A. Well, it would have some impeachment if I
9 thought there was facts that someone -- that that
10 testimony was invaluable for impeachment. There might
11 be other reasons you'd do that. I guess, I can't recall
12 why I would do that. I didn't have a purpose to do
13 that.

14 Q. I have already admitted Applicant's Number 2,
15 which is an Inmate Request filed by Mr. Rice on 2/23
16 trying to obtain that transcript and that was filed with
17 the Clerk of Court.

18 Do you recall him requesting you to get that
19 transcript?

20 A. It appears from this letter, he says: I'm no
21 longer his attorney and that's why he's asking for it.

22 Q. This would be filed short in time after you
23 moved to be relieved, but do you recall him ever asking
24 you to try to obtain it?

25 A. I don't have any recollection.

1 Q. Mr. Warder, before I jump into the specific
2 issues as set forth in the amendment, I'd like to give
3 you the opportunity to, kind of, explain how you
4 typically prepare for a trial.

5 Do you get all of the discovery from the
6 solicitor's office?

7 Do you have to come to review it?

8 What is the process of obtaining the
9 discovery?

10 A. We file the appropriate motions. We then
11 generally get discovery. If there's something that we
12 don't think's there, then we contact the solicitor and
13 try to get it. It depends on what it is and where...

14 You know, we try to get all we can. If
15 there's videos, we try to get them. I have an
16 investigator, we prolong -- try to go through them.
17 It's what it is.

18 We try and prepare the case so we know the
19 facts.

20 Q. As far as Mr. Rice's case, and we'll talk
21 about in preparation of the first and second trial.

22 Do you recall specifically how the discovery
23 was received and the work up you did --

24 A. -- no --

25 Q. -- leading up to each trial?

1 A. No.

2 Q. Mr. Warder, I'm going to go ahead and jump in
3 to the issues. And I'm gonna go right along with the
4 amendment to try to make that easier on everyone.

5 Issue 1(a) deals with the matter of the
6 additional burglary indictment.

7 If I can get you to turn to pages 15 to 16.
8 Do you have a second trial transcript up there with you?
9 I know I gave you the first one, but do you need a
10 second trial transcript?

11 A. Well, I have two. So I assume I have the
12 second one here.

13 Q. Please let me know if you need it.

14 A. I have the appellant record. Is that the one
15 you want?

16 Q. It does have the entire transcript in it, yes.
17 So if you could turn to page 15 of the record on appeal.
18 At the bottom of the page, beginning line 16 --

19 MS. BLANCHETTE: And your Honor, throughout
20 this day, I would just ask that, I'll be summarizing,
21 but the Court will always take notice of what the
22 transcript actually reflects.

23 Q. (By Ms. Blanchette:) Solicitor Bulsa is asking
24 the Court to preclude you from -- is making a Motion in
25 Limine to preclude you from referencing the timing of

1 this new indictment.

2 Do you recall this happening at the outset of
3 the second trial?

4 A. Are you talking about line 23 on page 16 --
5 22, 23. What are we talking about?

6 Q. I'm on page 15.

7 A. 15.

8 Q. Beginning on line 16. It carries through to
9 16, if you need to review that.

10 A. I've read that now. Your question is?

11 Q. Is it fair to say at that time you were
12 questioning:

13 What's going on here?

14 Why is this relevant?

15 A. I'm sorry. I'm not following your question.

16 Q. Did you have an understanding as to why the
17 State was raising that Motion in Limine?

18 A. It appears that they're talking about when the
19 indictment came out; right?

20 Q. Correct. There was an indictment handed down
21 as you all were discussing there between the first trial
22 and the second trial, the additional indictment.

23 A. Right.

24 Q. It appears the State is moving to preclude you
25 from raising anything in front of jury regard the timing

1 of that indictment?

2 A. Right.

3 Q. Was that something you were aware that they
4 were going move in Limine about?

5 A. I still don't understand what the timing, I
6 mean, why they would...

7 But the Court says: "If it becomes relevant."

8 Again, I don't know if it is relevant or not.

9 Q. Do you recall ever attempting to raise that or
10 was that going to be part of your strategy?

11 A. I don't -- I'm not -- I know of no strategy
12 move that I would have wanted to do that.

13 Q. I'll move on. As far as the investigation
14 prior to the first or second case, do you recall hiring
15 a private investigator?

16 A. No.

17 Q. Did you conduct an independent investigation
18 then?

19 A. Huh?

20 Q. Did you conduct your own independent
21 investigation?

22 A. Yes. I have an investigator on my staff.

23 Q. Okay. Do you recall that investigator on your
24 staff undertaking an investigation for Mr. Rice's
25 defense?

1 A. I'm sure he worked on the case with us.

2 Q. Okay. Now, Mr. Warder, I'm going to ask you
3 about allegations reflected in the amendment regarding
4 Cesar Mendez.

5 Do you recall who Cesar Mendez is in this
6 case?

7 A. Yes. I recall his name and I know he was one
8 of the defendants. I remember about Cesar -- Cesar was
9 the person, the first person, the third person we got
10 together that night. And Cesar was going to be the
11 victim of the first robbery, except that Cesar didn't
12 have any marijuana. And so we then turned to Cesar's
13 supplier as the victim of the second robbery. The
14 second robbery we were contemplating and we went to his
15 house. When I say "we" I mean my case.

16 Q. I was hoping I understood you correctly
17 Mr. Warder.

18 Mr. Warder, did you have an opportunity to
19 review the discovery that the State had provided
20 regarding Mr. Mendez' statements made, investigative
21 reports?

22 A. I'm sure I did.

23 Q. And is that something you would have had your
24 investigator look into or work on?

25 A. See, we work together on cases. And as

1 something that comes up that we need to know the answer
2 to, then the investigator get's involved and then...

3 But he's working on a number of cases at the
4 same time.

5 Q. And Mr. Warder, do you remember having the
6 opportunity to ever interview Mr. Mendez?

7 A. No. I don't think I did.

8 Q. And just to be clear for the record. I
9 apologize. He's name is Mendez-Martinez, but I am
10 referring to him at Cesar Mendez.

11 I'm going to show you a copy of an Order For
12 Transport that was in the Clerk of Court's records. And
13 it reflects here that Mr. Mendez was to be transported
14 to Spartanburg County Detention Center for Monday,
15 October 15, 2018 through the conclusion of Mr. Rice's
16 second trial.

17 A. Okay.

18 Q. During the time he would have been there at
19 the detention center under this transport order, do you
20 recall ever attempting to meet with him or have your
21 investigator meet with him?

22 A. No. I think I did talk to his counselor. If
23 anybody's represented, I always would talk to a lawyer
24 before I talk to them.

25 Q. Do you recall if in speaking to that lawyer,

1 you were given access to him or not to speak to Cesar?

2 A. No. I think he told me what his testimony
3 would be.

4 Q. Do you have a specific recollection of that or
5 do you know --

6 A. (Inaudible.)

7 Q. I'm sorry. I spoke over you when you were
8 answering. Do you mind answering again?

9 A. I'd have a more a general recollection. This
10 or a normal case, or cases with multiple defendants, we
11 try to keep in touch with the lawyers rather than trying
12 to get things from the client.

13 Q. And as we'll discuss as we go on with these
14 issues regarding Cesar, the State ended up calling
15 officers to testify to what Cesar testified or had told
16 them.

17 In your closing, you actually argue that Cesar
18 is the second shooter. So what I'm asking is, had you
19 evaluated calling Cesar as a witness in your case and
20 what evaluation did do you in that regard?

21 A. I could not possibly tell you.

22 Q. Okay.

23 A. I mean, obviously I evaluated everything as to
24 what strategy I formed or what I decided to do. It's
25 kind of dynamic and unique, kind of, a preliminary

1 decision and as the trial unfolds you, kind of, modify
2 what the strategy was throughout and how it fits in the
3 fold or unfolding things.

4 MS. BLANCHETTE: Your Honor, at this time I
5 would move the Order For Transport discussed with the
6 witness dated in the clerk's office, September 24, 2018
7 as Applicant's Number 5.

8 THE COURT: Any objection?

9 MR. HALL: No objection.

10 THE COURT: All right. That will be Applicant's
11 Exhibit 5.

12 (Applicant's Exhibit 5, Transport letter,
13 was entered into evidence.)

14 Q. (By Ms. Blanchette:) Mr. Warder, you indicated
15 that you recall having all the discovery material as
16 they're related to Cesar Mendez-Martinez; is that
17 correct?

18 A. I recall what?

19 Q. You recall receiving discovery related to
20 Mr. Cesar Mendez-Martinez?

21 A. I know I did. When you say, "I recall", I
22 don't remember a day that I'd come in and say: "Cesar's
23 discovery."

24 It came to my office. It came to our file.
25 We worked with it. But I don't recall the day it came

1 or anything like that.

2 Q. I'm going to hand you a specific document and
3 I'll keep using the word "recall" and see if it's
4 something you recall seeing as part of the discovery
5 you've received?

6 A. I don't recall either way.

7 Q. Can you identify what it appears to be for the
8 record?

9 A. Yeah. It appears to be a SLED report talking
10 about...

11 They found gunshot residue on some item, I
12 can't see.

13 Q. Mr. Warder, I'd direct your attention to the
14 second page where Item 12 is, one GSR kit performed,
15 Cesar Daniel Mendez-Martinez and then it gives the
16 results.

17 A. Okay. It list Item 12 at a GSR kit from Cesar
18 Mendez.

19 Q. What were the results of that?

20 A. They found gunshot residue.

21 Q. In the discovery that you received, do you
22 have any recollection of reviewing this, identifying
23 these results and working that into your trial strategy?

24 A. My trial strategy of course was formed during
25 the trial. Gunshot residue, I can't -- it might have

1 fit in the trial strategy or not. I don't remember from
2 7 years ago. But gunshot residue is frequently found on
3 items that were close to the firing of the gun. Gunshot
4 residue leaks from the -- the shells explode and comes
5 around the cylinder and revolver and there's several
6 ways it can get on you.

7 Q. And if you could look at the top of this
8 report. It's dated February 21, 2018. Would you agree
9 this is something that you would have received after the
10 first trial had concluded on February 7, 2018?

11 A. Yes. It appears to be prepared in at least
12 Trace Evidence Report was dated February 21, 2019.

13 MS. BLANCHETTE: Your Honor, at this time I
14 would move the SLED Trace Evidence Report in as
15 Applicant's Number 6.

16 MR. HALL: No objection from the State.

17 THE COURT: That will be Applicant's 6.

18 (Applicant's Exhibit 6, SLED's Trace
19 Evidence Report, was entered into
20 evidence.)

21 Q. (By Ms. Blanchette:) Mr. Warder, if I could
22 turn your attention to the second trial transcript. And
23 beginning on page 11, looking at line 12. There the
24 State makes a Motion in Limine, in going through page 12
25 and further on.

1 It appears the State is making a Motion in
2 Limine to preclude a line of questioning you did of the
3 victim's mother regarding moving marijuana after finding
4 her son shot at home.

5 A. Yes.

6 Q. The State argues specifically, on page 11
7 lines 12 through 20: "That it's false and it's
8 hearsay."

9 Specifically, they say: "Cesar is not
10 available as far as the State is concerned." So what he
11 said to police shouldn't be allowed to be introduced and
12 addressed with Maryann Kotlarich, who is the victim's
13 mother.

14 Do you recall that Motion in Limine?

15 A. No. The only memory, that the mother moved
16 the marijuana around were growing plants and everything
17 in the house. They were trying to keep me from going
18 into that.

19 Q. And if you could look at page 12, specifically
20 line 15 through 16. There, you're arguing: "She
21 committed perjury."

22 "She did not admit this in the first trial."

23 "I should be able to ask her about that."

24 Do you recall making those arguments?

25 A. Again, the answer is "no" I don't recall.

1 Q. And then specifically, on page 13, line 20.

2 You argue: "Cesar is the one that can
3 contradict it."

4 Talking about her testimony from the first
5 trial.

6 When you're done reviewing please, let me know
7 because I don't want to interrupt you?

8 A. No. I see -- I see where I said that.

9 Cesar in one trial had testified, "that didn't
10 happen."

11 She denied the last time.

12 Q. And I can point you to pages 116 through 117
13 of the first trial. In there, you're questioning on
14 cross-examination Maryann Kotlarich about moving the
15 marijuana and asking Cesar to do it.

16 Do you want a chance to review that or are you
17 familiar with that?

18 A. I'm familiar with the event.

19 Q. Had you planned to go into that same line of
20 questioning that you did on pages 116 through 117 in the
21 first transcript with the victim's mother in the second?

22 A. We're getting into something that don't
23 happen. We don't have a plan of exactly what we're
24 gonna say. We know the operative facts and we try to
25 judge. A trial is an ongoing thing. It's kind of like

1 a play, a drama. It develops and takes a line. The
2 jury get's interested in things. And you're more or
3 less, constantly changing the strategy as to what you
4 think will be the most effective. I never go into a
5 trial with a specific plan on what questions we're gonna
6 ask. We kind of find the facts we want to get in and
7 the direction we want to try and shape the testimony.
8 But there's no plan that has what questions I'm gonna
9 ask or not ask beforehand.

10 Q. I appreciate that Mr. Warder. But in this
11 case, you had done a first trial.

12 A. Yes.

13 Q. So you had done this line of questioning with
14 the victim's mother. Then the State's moving to
15 preclude you from doing it.

16 A. Right.

17 Q. The judge indicates, you-all will address that
18 when the time comes.

19 If we fast forward to when she testifies at
20 the second trial, it's not addressed and you don't go
21 into the second line of questioning.

22 My question is, is there a reason you did not,
23 you choose not to address it?

24 A. I'm sure there is.

25 Q. Could you provide that?

1 A. Not at all. That's something that's a trial
2 decision that's not written down and preserved. And I
3 don't have a recollection 7 years later why I did that.

4 Q. But in the Motion in Limine you would agree
5 that you're arguing:

6 "This is important."

7 "She's committed perjury."

8 "This needs to be brought out."

9 A. Yes.

10 Q. But then the judge never made a finding
11 ruling, nor did you ask her about is; is that correct?

12 A. I don't know if I asked. I would have to look
13 in the transcript, but that could be correct.

14 Q. Did you ever recall asking to proffer her
15 testimony outside the presence of the jury?

16 A. No.

17 Q. If I could get you to turn your attention to
18 the direct testimony of Kevin Bowens. And specifically,
19 if you could look at page 112. Would you agree in the
20 Motion of Limine, the State says:

21 "Cesar's not available and they don't want you
22 to get into hearsay?"

23 But beginning on page 112, the State begins
24 offering -- I'm sorry, do you need a chance to get
25 there.

1 A. What line?

2 Q. Beginning line 12. It's actually pages 112
3 through 115. Have you had an opportunity to familiarize
4 yourself with those pages?

5 A. We're talking about the February 5th through
6 7th trial?

7 Q. No. We're talking about the second trial,
8 November 13th through 15th.

9 A. You're talking about page 112 line --

10 Q. -- 112, beginning about line 13, Officer Bowen
11 get's questions regarding talking the male individual,
12 Mr. Mendez-Martinez off to the side and what he told
13 him?

14 A. Starting off with: "All right. Did you
15 separate the mother and Mr. Mendez?"

16 Q. Correct.

17 If you can let me know when you've reviewed
18 through 113 where you object, and then I'll ask you a
19 question.

20 A. Ask me the question. I'll see if I've read
21 far enough.

22 Q. You enter an objection as to hearsay on page
23 113. Can you explain or have any recollection as to
24 further basis, why you're making that objection?

25 A. What line is the objection on?

1 Q. Page 113, line 13.

2 A. Okay. I make a hearsay objection on line 13.

3 Q. Why were you making that hearsay objection?

4 A. Because it was hearsay, I think.

5 Q. Why did you find it was hearsay?

6 A. The witness said, "He tells me that he was
7 there." And I objected to that for hearsay.

8 Q. And then the questioning continues about his
9 emotional state. And they continue to ask him questions
10 and on page 114 line 7, a bench conference is held.

11 A. Okay.

12 Q. It doesn't appear in the record. So do you
13 recall the State ever moving to enter this as a hearsay
14 objection, as an excited utterance. We don't have a
15 record.

16 So do you have any recollection further than
17 what is reflected here?

18 A. I honestly have no recollection at all. It's
19 a bench conference. It happens and it's over with and
20 it's 7 years ago. I don't think anyone would have a
21 recollection of that.

22 Q. That's a very good point.

23 My next question is: Why did you not ask for
24 that to be put on the record so it could be reviewed by
25 a subsequent counsel, Ms. Katherine Hudgins, or for

1 court's to review, such as the Court here today?

2 A. I guess I was not convinced there was anything
3 on the bench conference I needed on the record.

4 Q. And did you continue to object or make a
5 record as they further examined Mr. Bowen about what
6 Cesar had told him, on pages 114 and 115?

7 A. Did I continue to exam him?

8 Q. Did you continue to object?

9 You made the one hearsay objection on 113.
10 There's a bench conference on page 114.

11 A. And I think whatever Judge Cole said at the
12 bench conference I ended it. I don't know what he said,
13 but I don't think we ever touched on the issue again,
14 did we?

15 Q. Would you agree here then, the State is
16 allowed to get in what Mr. Mendez said without having to
17 call Mr. Mendez?

18 A. What line would you say they got it in?

19 Q. Specifically, if you look at page 115, lines
20 12 through 13 or 12.

21 "So based on your understanding of your
22 conversation, did Mr. Mendez know who fired the shots?"

23 "Didn't know the name but he stated, two black
24 males. Yeah."

25 Did you object there?

1 A. No.

2 Q. Line 2 of that same page. They're going back
3 and forth. And he answers: "That Mr. Mendez said
4 Mr. Nava didn't fire a shot."

5 Did you object there?

6 A. I don't -- it's a lot of context. I can't
7 tell whether that was the answer I wanted or the answer
8 I didn't want. And that would have been if I objected
9 or not.

10 Q. Would you agree though, in the Motion in
11 Limine we were just talking about, the State was moving
12 to preclude you from getting to bring it in through
13 Maryann Kotlarich any potential testimony. That would
14 have to come through Cesar.

15 But here, the State was bringing in Cesar's
16 testimony through Deputy Bowen.

17 A. It appears the State is bringing it in, at
18 least in someway. I just don't know how I evaluated it
19 at the time we were going to trial.

20 Q. Now, you make the objection to hearsay on 113.

21 A. Yes.

22 Q. You have bench conference reflected. Do you
23 ever recall discussing that Confrontation Clause and the
24 defendant's right to confront the witness against him
25 and cross-examining Mr. Mendez?

1 A. I don't recall. I certainly, don't recall what
2 was said in the bench conference with Judge Cole.

3 MS. BLANCHETTE: If I can just beg the Court's
4 indulgence, one moment.

5 THE COURT: Yes, ma'am.

6 Q. (By Ms. Blanchette:) Mr. Warder, I'm going to
7 now turn to the allegations regarding Applicant's
8 codefendant Carnellious Stringer.

9 I first wanted to ask you, do you recall
10 obtaining his plea transcript? His plea was entered on
11 February 8, 2018, which was also the first day of the
12 first trial.

13 Do you recall getting his plea transcript?

14 A. I think I was there when he plead, but I'm not
15 sure.

16 Q. Do you recall if it happened right before Mr.
17 Rice's trial or have any specific recollection?

18 A. I don't have any specific recollection.

19 Q. Now, I have provided you, would agree, a copy
20 of Mr. Stringer's plea transcript to review?

21 A. I guess you have.

22 Q. You've had the opportunity to look over that?

23 A. Where's that at?

24 Q. I'll hand you a copy now if you would like.

25 A. Okay.

1 Q. I just wanted to clarify your testimony.

2 You're saying, you may have been present
3 during that actual plea proceeding.

4 A. I'm not sure. I don't know that -- I talked
5 to Clay a good bit about it.

6 Q. I'm sorry. I didn't hear that last part.

7 A. I did try talking to Clay Allen who was the
8 public defender representing him.

9 Q. And would you agree that it's important to
10 know what's said at your client's codefendant's plea
11 hearing?

12 A. Yes.

13 Q. And do you recall the role that was attributed
14 to Mr. Stringer in this case?

15 A. Do I recall what?

16 Q. The role that was attributed to Mr. Stringer,
17 what part he played in the case?

18 A. This has been a long time since I went through
19 the names. Mr. Stringer, he was one of original three
20 guys. And he was -- must have been a friend of my
21 client's.

22 MS. BLANCHETTE: Your Honor, at this time I
23 would move to admit the transcript of the plea
24 proceeding of Mr. Stringer. It's a total of 35 pages
25 including the court reporter's certificate and as

1 Applicant's Number 7.

2 I requested this myself and have provided the
3 State a copy of it. At the time, Chelsea Marto was the
4 acting Assistant Attorney General. I have her listed as
5 opposing counsel. And the State has had a copy of this
6 as well. That's the basis on which I'd like to admit it
7 and be able to question Mr. Warder regarding it's
8 content.

9 MR. HALL: No objection from the State.

10 THE COURT: Plea transcript be admitted as
11 Applicant's 7.

12 (Applicant's Exhibit 7, Plea transcript
13 of Carnellious Stringer, was entered into
14 evidence.)

15 Q. (By Ms. Blanchette:) If you could look to page
16 22 of the transcript of this plea proceeding.

17 On page 18 --

18 A. -- I thought it was 22?

19 Q. Page 22 of the plea proceeding of Mr. Stringer
20 that I handed you.

21 Beginning online 11, the Court, who is Judge
22 Cole, begins asking Mr. Stringer if he agrees with the
23 facts as provided by the solicitor. And if you could
24 jump down to line 18.

25 Specifically, Judge Cole asks: "Do you agree

1 as he stated that you and Mr. Rice had the guns?"

2 And he responds: "I had a gun."

3 Judge Cole states: "You had gun?"

4 And Mr. Stringer states: "I don't know about
5 anyone."

6 Would you agree there the Judge is actually
7 asking him about the involvement of your client and
8 whether or not he had a gun?

9 MR. HALL: Objection, speculation.

10 THE COURT: I think the transcript says what it
11 says. I think he can answer if it says it in the
12 transcript. So it's overruled.

13 Q. (By Ms. Blanchette:) Did you have a verbal
14 response or do you need me to ask you a question?

15 A. Ask the question.

16 Q. Beginning on page 22, specifically,
17 Mr. Stringer is asked about:

18 At the time, your client, who was getting
19 ready to start trial that day or was on trial that day,
20 about whether or not he had a gun. If you continue on
21 through page 25, he's asked questions about the
22 ballistics and who shot.

23 Going into trial, either on February 5th or in
24 November later, were you aware of this discussion
25 between Judge Cole, who was your trial judge and

1 Mr. Stringer, one of the codefendant's at his plea?

2 A. I honestly don't remember.

3 Q. Is this information that would have been
4 helpful to know going in to both of those trials?

5 A. I think I had information as to what the real
6 facts were. I got to talk to my client. Though I can't
7 recall our conversations, I had a good grasp of what the
8 facts were.

9 Q. If you could turn all the way to the end of
10 the second trial transcript, page 364. Specifically,
11 line 8 on page 364.

12 A. Hold on. You're faster than I am.

13 Q. What was that?

14 A. I said, slow down. You're too fast for me.

15 Q. Let me know when you need me to give it to you
16 again, the page number and cite. I'm sorry.

17 A. What line?

18 Q. Page 364, line 8. If you could read through
19 line 24 and let me know when you had a chance to review
20 that.

21 A. Okay.

22 Q. Specifically, the judge is asking Mr. Bulsa,
23 if he can recall what Mr. Stringer said, if he made an
24 admission at his sentencing.

25 Down on line 21, Mr. Bulsa -- I'm sorry.

1 Line 18 says: "I'm not sure he actually made
2 much of an admission other than an acceptance of
3 responsibility. I don't think he wanted to claim what
4 his actual role was. He just, he admitted being there
5 and being part of the incident. He had given a
6 statement to the effect denied being the shooter."

7 Now, if you look at the actual plea transcript
8 on page 25. He's specifically asked on line 14:

9 "How many times did you shoot your firearm?"

10 "Once", by Judge Cole.

11 Is there any reason you didn't have this
12 transcript or step in and correct Mr. Bulsa's
13 recollection?

14 A. There is a reason I didn't have it. I guess
15 there was -- I can't give you a reason I didn't have it.
16 You do -- we are in a case that, everybody was involved.
17 They got together, planned a robbery. Went and did a
18 robbery and it got bad and there was killing in it. And
19 everybody involved in that would have been guilty of the
20 crimes that were committed, even if he wasn't the
21 shooter. If you planned the armed robbery. You went
22 there conspired to rob and somebody got shot. Everybody
23 get's part of the deal.

24 Q. I'm going to now ask you about Applicant's
25 allegations regarding flight that's reflected in his

1 amendment.

2 As the first and second trial transcript
3 reflect, at the second trial the following witnesses
4 were called and testified on the matter of flight,
5 Cheryl Rice, Lakisha Rice, Kim Parnell, Richy Foster,
6 and Master Deputy Mauro.

7 Would you agree if the transcript so reflects
8 that they were called on the issue of flight in the
9 first trial transcript?

10 A. Yes.

11 Q. Did you know going into the second trial that
12 the State planned to interject this matter of flight?

13 A. I don't know why. I guess I might have been
14 suspicious, but I didn't know for sure they were.

15 Q. Do you have any specific recollection of
16 speaking to Cheryl Rice or Lekisha Rice, that were the
17 mother and grandmother of Mr. Rice, about the State
18 calling them as witnesses on this matter?

19 A. Don't have any specific recollection.

20 Q. Did you ever look through the discovery or
21 attempt to speak with the law enforcement witnesses Kim
22 Parnell, Richy Foster, or Master Deputy Mauro, on this
23 matter of flight going into the second trial?

24 A. I don't know who I talked to.

25 Q. Beginning on page 221 the State calls Cheryl

1 Rice, the grandmother of Mr. Rice. Through page 224 and
2 I'll give you a chance if you want to let me know when
3 you're there, beginning on 221.

4 She testifies on 222, the defendant had lived
5 with her since birth and the police came and busted down
6 her door. And she never saw Mr. Rice during this
7 timeframe.

8 If you look specifically on page 224 and line
9 15 through 16. She's asked about, "when he came into
10 contact with law enforcement" or sorry -- "when he
11 finally got caught."

12 And she's asked, "Was it about 10 days later?"

13 And she says: "I don't know for sure."

14 Do you see that there on page 224?

15 A. You want me to find when she says: "I don't
16 know the exact date," now?

17 Q. She says: "I don't know for sure." On line
18 16.

19 A. Line 16, I was on the wrong page.

20 Yes, I'm with you now.

21 Q. She tells the State, "she doesn't know for
22 sure."

23 But on your cross-examination you elicit from
24 her that it was 10 days later.

25 Do you recall the purpose of your

1 cross-examination there?

2 A. No.

3 Q. Now, Lakisha Rice is also called, his mother.

4 And on page 226 the State elicits from her, that Mr.

5 Rice is in alternative school.

6 Did you see any reason to object to that?

7 A. What line are we on?

8 Q. I'm sorry. 226 line 21?

9 A. Line 21. And the question is what?

10 Q. Did you have any basis or see a reason to
11 object to them eliciting that he was in alternative
12 school?

13 A. I don't think so. The question that appears
14 to be asked was, "Was he attending school?"

15 Q. Okay.

16 A. And the answer was: "Yes, he was attending
17 alternative school."

18 Q. And then Solicitor Bulsa continues his
19 questioning on line 25.

20 "He was."

21 "So if the police went there, they could have
22 found him?"

23 Answer: "Correct."

24 Question: "Okay. We'll see about that."

25 Did you see any reason to object to Solicitor

1 Bulsa's line of questioning here where he is commenting
2 about Ms. Rice's answer?

3 A. Did I see anything wrong about the correct
4 answer?

5 Q. Where the Solicitor says: "Okay, we'll see
6 about that," when his mother indicates he could have
7 been found at school?

8 A. It's argumentative and probably not the best
9 question. But I don't see anything prejudicial from
10 that.

11 Q. As the record reflects on page 229 after the
12 State concludes their direct examination, you do not do
13 any cross-examination.

14 Were you prepared to cross-examine her or did
15 you have a plan to cross-examine her going into this
16 trial?

17 A. I have no idea. If I didn't cross-examine
18 her, I didn't think it would be helpful.

19 Q. Do you have a specific reason or recollection
20 as to why?

21 A. Don't have. Usually, if a witness is
22 dangerous of something prejudicial -- outweighs the
23 balance -- the prejudice that might come against the
24 possibility of gaining and you choose what's best.

25 Q. The State also called Kim Parnell. And on

1 page 233 through 234, she explained how she assisted two
2 others in law enforcement looking for Mr. Rice.

3 Specifically on page 233, she begins
4 discussing on line 19, meeting with Mr. Rice's mother.
5 And then she's asked about what that conversation
6 entailed.

7 Do you need a chance to review that, 233 to
8 234?

9 A. Okay. Okay.

10 Q. Looking at the testimony on 233 to 234, it
11 appears Kim Parnell's being called to testify to what
12 Lakisha Rice told her.

13 A. Yes.

14 Q. I do not see an objection on those pages. Do
15 you think that was objectionable?

16 A. Yes.

17 Q. Why is that objectionable?

18 A. Objectionable because of hearsay.

19 Q. I'm sorry, I didn't hear you.

20 A. It's hearsay.

21 Q. Do you recall why you did not object to this?

22 A. Do not recall why I didn't.

23 Q. Specifically, on page 234 she's asked:

24 "Did she tell you that she went to look for
25 him at Sincere Jeter's house and he had fled?" That's

1 line 4.

2 And Kim Parnell says: "Yes, sir. She did."

3 If the transcript reflects that Ms. Rice
4 didn't testify to that, was it proper for Ms. Parnell to
5 come in and testify to that?

6 A. No, I wouldn't think so.

7 Q. Do you see where the State ever moved to
8 impeach her with that testimony, impeach Ms. Rice with
9 that testimony?

10 A. The question again is: Do I see the State's
11 trying to do that?

12 Q. I'm sorry. Do you see anywhere in the record
13 where the State or a record was made that the State's
14 introducing this for impeachment purposes and y'all make
15 a record of that or those are the questions just asked
16 without any record?

17 A. I guess they were trying to impeach her. I
18 really don't know.

19 Q. Without you making an objection there's no
20 record of that --

21 A. -- that's correct --

22 Q. -- is that correct?

23 A. -- that's right.

24 Q. And you would agree, that in order for an
25 issue like this to be reviewed by a higher court or even

1 reviewed by the Court sitting over the trial, you have
2 to make an objection?

3 A. I make objections to trial court usually, but
4 yeah, there had to be an objection before the next level
5 to consider it.

6 Q. And I asked that backwards. But you'd have to
7 make an objection for the trial court's to rule and that
8 would have to be on the record for the appellant court
9 to make a review of that?

10 A. Right.

11 Q. And are you aware that in this case the
12 appellant defender, Ms. Hudgins actually filed an *Anders*
13 *brief* stating there were no meritorious issues in this
14 case?

15 A. Was I aware of that?

16 Q. Were you aware that following your
17 representation of Mr. Rice in both trials, that his case
18 went to appellant defense and Ms. Hudgins filed an
19 *Anders brief*, stating that there were no meritorious
20 issues to be raised on a appeal?

21 A. I don't know, I didn't remember today. So I
22 don't know if today is the first time I heard that or if
23 I already knew that.

24 Q. I'm going to next ask you to turn to some
25 portions of the testimony of Richy Foster. He was asked

1 beginning on page 236 line 18, about his attempts to
2 help locate Mr. Rice. And 236 essentially through 239,
3 he goes through the steps they took, posters that were
4 prepared, usual steps they take. And gives a lot of
5 testimony about steps taken to locate Mr. Rice or locate
6 individuals in general.

7 If you could turn to your cross-examination on
8 page 239. And I apologize, I need to give you a
9 specific cite here.

10 A. Did I object to that on page 237, on line 13?

11 Q. Yes, you object to the poster; is that correct
12 Mr. Warder?

13 A. I think so.

14 Q. But Mr. Foster never gives a specific or talks
15 about the fact that your client did not turn himself in
16 for 10 days. But you asked him if 10 days is a long
17 time and if there's any evidence that he left the state,
18 city, or county.

19 You already indicated you weren't aware that
20 an *Anders* brief was filed. But that is the issue that's
21 raised in the *Anders* brief, is that this witness gives
22 testimony about the amount of time that your client, it
23 took for him to turn himself in and whether or not he
24 could have left the state, city, or county.

25 Do you need a chance to look at 239 through

1 240?

2 A. I think the officer speculated that he -- like
3 you said, he didn't know whether he left the state or
4 not. There was no --

5 Q. I apologize. Your cross is just on page 240
6 and you ask on line 20.

7 "No evidence he left the state, city, or
8 county?"

9 And the officer says: "Not that I know of."

10 A. I think the officer testified that he didn't
11 know any, and I just informed him that my client didn't
12 leave the state.

13 Q. But would you agree, based upon the questions
14 that you asked on 240, you were the one that interjected
15 the speculation that Ms. Hudgins addressed in her
16 appellant brief?

17 A. I felt they interjected at first and I was
18 correcting.

19 Q. On page 241 -- sorry, 240 very bottom through
20 241, is brief redirect which you object to at that
21 point. And say: "That's pure speculation."

22 Would you agree you opened the door to that
23 redirect?

24 MR. HALL: Objection, leading.

25 THE COURT: Overruled.

1 MR. WARDER: I make an objection and the judge
2 overrules.

3 Q. (By Ms. Blanchette:) And you object on
4 speculation, but would you agree that's the same exact
5 thing you were just asking him about on
6 cross-examination?

7 A. No, I -- the next -- the Court overrules the
8 objection. And then there's a question of:

9 "So there's just as much evidence he might
10 have fled the country, as to somebody talking about
11 bringing him back."

12 Still doesn't indicate that's what anybody
13 saying he fled.

14 Q. I'll move on. Unless you had anything further
15 you wanted to offer. I didn't mean to cut you off.

16 A. That's fine.

17 Q. Applicant has alleged in effective assistance
18 for failing to object or move for a mistrial when
19 Kameron Wilson referenced the first trial during his
20 direct testimony.

21 I'll reference you and the Court to page 159
22 of the second trial transcript. Beginning on about line
23 3, he's being asked questions about Mr. Rice. And I
24 would direct your attention through line 14.

25 A. Is this --

1 Q. I'm sorry. Yes, through line 14. 159, second
2 trial transcript. And that would be the bound record on
3 appeal.

4 A. Okay. What do you want me to go on 159?

5 Q. 159 beginning on line about 3, they're asking
6 him about Mr. Rice. And if you could just review that
7 through line 13.

8 A. Down to where he says: "His lawyer told him
9 to stop talking to my client."

10 Q. Right. And line 12 he says:

11 "When did you stop talking to him?"

12 And he says: "I think after the first trial."

13 A. Okay.

14 Q. First question. As a seasoned defense
15 attorney, is it proper for a witness to reference a
16 first trial in the second trial in front of the jury?

17 A. I guess it might be circumstances other wise,
18 generally it's not.

19 Q. My second question, which you may have already
20 answered.

21 Did you find this objectionable?

22 A. I don't think I raised an objection.

23 Q. Do you recall hearing this and thinking this
24 doesn't necessitate an objection, making that analysis?

25 A. I obviously don't remember what I heard in

1 that minute. The transcript shows I didn't make an
2 objection.

3 Q. And you would agree, as you testified before,
4 in order to get the trial court to rule on it, to have
5 the appellant court review it, an objection has to be
6 made to rule upon?

7 A. I understand. But you can understand as trial
8 lawyer, our focus is on what's going on. We're trying
9 to preserve the record as best we can. We're focusing
10 mainly on being happy, making that jury happy and
11 getting a verdict.

12 Q. I'm going to ask you some questions about
13 Zaria Owens. Do you recall what you knew about Zaria
14 Owens and her potential testimony going into the first
15 trial?

16 A. I didn't hear the name. Do I recall who?

17 Q. Zaria Owens.

18 A. No, I don't recall.

19 Q. Do you recall her testifying at the first and
20 second trial?

21 A. Not offhand.

22 Q. Then I will direct your attention to page 215
23 in the first trial transcript. And if it reflects there
24 that she testifies that she was dating your client back
25 in October of 2016. Does that jog your recollection as

1 to who Ms. Owens is in this case?

2 A. I remember his girlfriend, yes.

3 Q. Do you remember if he had the opportunity to
4 speak with her before trial?

5 A. Yes.

6 Q. Do you remember the extent of that
7 conversation?

8 A. No.

9 Q. Now, on page 216 the State begins asking her
10 about what Mr. Rice had told her and if he told her that
11 he was involved in a robbery.

12 And she responds that she got a story from a
13 Jaquan Hopkins. I'm sorry, that's 215 to 216.

14 On page 216, the solicitor states:

15 "That's not what you just told me outside was
16 it?"

17 And she says: "No."

18 Is there any reason you didn't object to that
19 line of questioning in the first trial transcript?

20 A. I don't object to anything until page 217 line
21 9.

22 Q. I was trying to let you catch up, but I was
23 gonna point that out. That you object on page 217 line
24 9. And you object because you say: "This is all
25 hearsay."

1 But she had testified up to that point and
2 then you make that objection; is that correct?

3 A. That's correct.

4 Q. And the judge sustains that objection
5 successfully.

6 A. Uh-huh.

7 MS. BLANCHETTE: Just one minute, if I can beg
8 the Court's indulgence.

9 THE COURT: Sure.

10 Q. (By Ms. Blanchette:) Then on page 218 they
11 continue to try to question her and you make further
12 objections; is that correct?

13 At the bottom of the page you object to the
14 form of questions?

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

16 Q. If you need to review it further before you
17 answer this question or if you just recall now that you
18 looked a little bit at it.

19 But do you recall that the questioning of
20 Ms. Owens was pretty contentious. She wasn't giving the
21 State the answers they were looking for in the first
22 trial?

23 MR. HALL: Objection, leading.

24 THE COURT: Overruled.

25 MR. WARDER: She was a witness that we had

1 some communication during the preparation. She was, as
2 I remember it, from a girlfriend strongly supporting
3 everything, to slowly coming around and not remembering
4 as much as she did at first.

5 That's really about all I remember about her.

6 Q. We will let the transcript reflect her line of
7 questioning and what happened in the first trial.

8 But in the second trial, the State not only
9 calls her on this issue, but then they also call Richy
10 Foster and Thomas Smith, two law enforcement witnesses
11 to testify about what Ms. Zaria Owens has told them.

12 Were you prepared going into the second trial
13 for the State to call additional law enforcement
14 witnesses to impeach the testimony of Ms. Owens?

15 A. I don't know how to answer the question. I
16 don't know how you're ever prepared for somebody to
17 bring in additional witnesses, other than I had all the
18 knowledge I needed to cross-examine them.

19 So when you don't know somebody is coming, are
20 you ever prepared?

21 Q. But you did know what she testified to and how
22 that went in the first trial. Did you have a strategy
23 or specific preparation for that going into the second
24 trial?

25 A. No. Once again, it depended on while the

1 trial was going and what she was saying.

2 Q. The record will reflect that she gives
3 relevant testimony on pages 230 to 231 about what she
4 had previously said. Then on page 232 you do not
5 conduct cross-examination of her.

6 Do you have any specific recollection as to
7 why you did not cross-examine Ms. Owens?

8 A. I'm sure for some reason I didn't think it
9 would be beneficial to our case.

10 Q. When Richy Foster takes the stand,
11 specifically, on page 236. And I'll give you a second
12 to turn there.

13 A. He had something to say on line 236.

14 Q. Yes, just one second. He's beginning at the
15 very top of the page on line 4. He's asked about going
16 to Dorman High School and meeting with his girlfriend.

17 A. I'm sorry, I thought you said 236.

18 Q. 236 line 4 of the second trial transcript.

19 A. Maybe I'm on the wrong trial transcript.

20 Okay.

21 Q. On lines 9 through 17 she -- I'm sorry. Richy
22 Foster is asked about what Ms. Zaria Owens told them
23 about Mr. Rice. I do not see an objection entered.

24 Is there a reason you didn't object to that
25 testimony?

1 I'm sorry. Do you find that testimony
2 objectionable?

3 And I'll give you a chance to read through it.

4 A. Hearsay is the big objection that stands out.

5 Q. Is there a reason you didn't make that
6 objection when he was testifying to what Ms. Rice told
7 them?

8 A. I know no specific reason, I don't right now.

9 Q. Then if you could turn to page 244, there
10 Thoms Smith.

11 A. 244.

12 Q. Yes, 244 Thomas Smith is testifying. He
13 answers questions that he works with the solicitor on
14 occasion. And that they went to meet with Ms. Owens.

15 Then he states -- he begins stating what she
16 said and on line 18 you object as to hearsay.

17 A. Yes.

18 Q. So there you do object when one of the
19 officer's is saying what Ms. Owens said. So do you
20 think you just missed it the first time around?

21 A. You see that a trial is constantly changing.
22 You constantly change your theory with it and what
23 evidence you want in. And I suppose that in this, this
24 seemed like it was more damaging or more credible
25 witness and so I objected.

1 Q. Then the record reflects, just to be fair to
2 you, that you also object on page 245 as well.

3 A. The judges are not completely consistent
4 either.

5 Q. Would you like to explain?

6 A. The judges are not completely consistent
7 either.

8 Q. I sorry. I thought you said, "the objections"
9 Mr. Warder. I didn't hear you completely.

10 MS. BLANCHETTE: Your Honor, at this time, I
11 was just taking notice of the hour and wanted to make
12 sure everybody had a proper lunch break. I was getting
13 ready to move into another allegation.

14 THE COURT: I was looking at your outline,
15 it's probably a good time to stop. We'll take a break
16 for lunch. Let's start back at 1:45.

17 MS. BLANCHETTE: Whatever works for your
18 Honor.

19 THE COURT: We will be in recess until 1:45.

20 (Whereupon, a lunch recess was taken.)

21
22 * * * * *

23
24 (Court recommenced after lunch recess.)

25

1 THE BAILIFF: All rise for the Court.

2 THE COURT: You may be seated.

3 Are we ready to proceed?

4 MS. BLANCHETTE: We are, your Honor. Just to
5 make sure we have a good record in this case, the AG and
6 I, both agreed that we would let your Honor know that we
7 did have a discussion with Mr. Warder, even though he's
8 a witness on the stand, just about scheduling.

9 THE COURT: Okay.

10 MS. BLANCHETTE: He was trying to get
11 information back to his office and anticipating the
12 length of the hearing.

13 THE COURT: Okay. Very good.

14 MS. BLANCHETTE: So those discussions were had
15 and I just wanted to make sure that was part of the
16 record.

17 THE COURT: Okay. Not a problem.

18 MS. BLANCHETTE: I'm ready, your Honor, to
19 continue with Mr. Warder.

20 THE COURT: Okay. Go ahead.

21

22 CONTINUED DIRECT EXAMINATION

23 BY MS. BLANCHETTE:

24 Q. Mr. Warder, during this next section of your
25 testimony, I'm going to ask you questions regarding

1 witnesses and their testimony in the first trial and
2 second trial. So if you have the first trial transcript
3 from February there in front of you, and the second
4 trial transcript from November, as long as there is no
5 objection, I'll summarize. But I'll also give you the
6 page citations if you want to check anything that I'm,
7 any information I'm providing to you.

8 The first testimony that I direct you to is
9 Jonathan Lawson's testimony in the first trial. On
10 pages 93 through 94, he's testifying about ballistics
11 evidence and the scene. If you can specifically look on
12 page 94 line 23, he's asked on direct:

13 "Based on your observations and your
14 experience, does it appear that a struggle had ensued?"

15 And he says: "Yes, sir."

16 Then again on page 97 through 100, he's asked
17 questions and he again testifies, "that a struggle had
18 ensued."

19 Upon review of the second trial transcript, it
20 doesn't appear that that testimony came out. Is there
21 any reason you didn't go into a line of questioning in
22 the second trial transcript to elicit that testimony
23 about a struggle from Mr. Lawson?

24 A. You know there's some questions that things
25 don't make any differences. And in a trial, when things

1 get a series of "no's", we go into some "yes" questions.
2 Sometimes those are the fillers that we ask questions to
3 get -- so the jury would think that we have some
4 knowledge of the facts and some things are controlled
5 with the witness. So sometimes that -- and I can't
6 think of any other reason, but sometimes we go into
7 things like that, areas like that, when we know
8 obviously there was a struggle. That wasn't really in
9 controversy, but to get some "yes" answers, I ask
10 questions sometimes like that.

11 Q. And to be fair, on direct, on page 90 in the
12 second. He's asked:

13 "If a struggle had ensued, could things have
14 been kicked around?"

15 And he said: "Yes, it could have."

16 So he touches on the idea, but doesn't go as
17 far as he did in the first.

18 So do you stand by your answer as you thought
19 it was sufficient?

20 A. Yes.

21 Q. The second witness I wanted to ask you about
22 is Kevin Bowen. and I'm going to circle back around to
23 some of his testimony where we talked about regarding
24 Cesar Mendez-Martinez.

25 But if you could look at the first trial

1 transcript on page 71.

2 A. That's the February?

3 Q. That is the February, yes.

4 A. 71?

5 Q. Yes, please.

6 A. Okay.

7 Q. There Solicitor Bulsa is questioning Mr. Bowen
8 about interaction with the male that we know to be
9 Cesar. And on line 9 when he's questioning him, he
10 says:

11 "You can't go into what the male told you, but
12 let me ask you a couple of questions with that
13 information."

14 And he questions him on 71 through 72.

15 Would you agree that in the first transcript,
16 the State really limited and was trying to make sure
17 that they didn't elicit hearsay?

18 A. I don't remember that fact. I wouldn't -- I
19 certainly, wouldn't deny it.

20 Q. Okay. And so my question is, in the second
21 trial in his testimony that we've already talked about,
22 pages 112 through 114 where he gives specifics as to
23 what Mr. Mendez-Martinez said. Were you prepared for
24 the State to go down that line of questioning?

25 A. I really can't answer that, 'cause I can't

1 remember what I expected the State to do.

2 Q. Did you have the first trial transcript ready
3 to say:

4 Your Honor, in the first trial the State knew
5 they couldn't go into this line of questioning.

6 This is objectionable.

7 It should not come in.

8 A. I make objections as they seem appropriate to
9 me. I would not be surprised if I was somewhat
10 inconsistent every time.

11 Q. Next I'm going to ask you about the victim's
12 mother's testimony Maryann Kotlarich.

13 At the first trial her testimony begins on
14 page 103. But specifically, a section that we talked
15 about before, pages 116 through 117. You ask her about
16 instructing Cesar to move the drugs and about the drug
17 evidence. And you didn't utilize that line of
18 questioning in the second trial.

19 Do you recall any reason for not having or not
20 utilizing that line of questioning in the second trial?

21 A. I really don't know why I would have not put
22 it in or why I did. I mean, in trial it's really the
23 tempo, and the way the questions are going. How things
24 are on a high or low note. It's just kind of intuitive
25 strategy. So I often use things that will seem

1 appropriate in one situation and would not be used in
2 another.

3 The big thing about comparing two trials is
4 there's nothing the same from the opening statement to
5 the closing arguments. It's just not the same.
6 Witnesses say and seem to exaggerate in some areas and
7 not the other. The jury seems to be interested in some
8 testimony and not the other. Every question is, you ask
9 yourself:

10 Self, how bad can I get hurt with this or will
11 this really help?

12 And I'm kind of going with that. It's not
13 very scientific at all.

14 Q. Would you agree then that it would be
15 imperative to have that first trial transcript and be
16 utilizing it as those witnesses potentially are changing
17 their stories and giving different information?

18 A. I think it's to cumbersome in all -- trying to
19 compare something that you're gonna have to really
20 looking at. You lose spontaneity. I try and do as
21 little of that as I can.

22 Q. So you don't regularly use prior testimony for
23 impeachment?

24 A. It depends on who's on the stand and how
25 important. Sometimes the facts of impeachment are not

1 really significant.

2 Q. In speaking of witnesses, kind of, giving
3 different testimony and two different trials. I'll turn
4 next to Kameron Wilson. In the first trial and for your
5 reference and the Court's reference, on pages 131
6 through 132 of the first trial, he's very specific that
7 he says:

8 "There was no talk of this robbery plan until
9 Elian got in the car."

10 Do you recall that? But that's when he said
11 the robbery plan began.

12 A. I don't recall what he said at the time.

13 Q. Then in the second trial -- go ahead.

14 A. There wouldn't have been any talk. As I
15 understand it, the plan -- Elian wasn't -- he was gonna
16 be the first victim. He didn't even know.

17 Q. He actually testifies that when Elian came in,
18 he came up with the plan to do the robbery.

19 A. I understand, but I didn't talk to my client.

20 Q. But in the second trial, on pages 145 through
21 146, Mr. Wilson goes into this detailed testimony that
22 Mr. Rice came up with the plan via SnapChat asking him
23 to go on a money mission and completely changes his
24 story from what I just referenced in the first trial.

25 Was there any reason you didn't impeach him

1 with the different version he gave in the first trial?

2 A. I don't know why we didn't cover that.

3 Q. Then I'm going to ask you about some sections
4 about Elian Nava's testimony. In both trials he
5 testified on 172 and 197 respectfully. But in the first
6 trial, there was an issue of whether or not he knew
7 Cesar had a gun.

8 Do you remember that being an issue in the
9 trial? Whether or not Elian Nava knew Cesar had a gun?

10 A. I don't remember that, no. The transcript is
11 what I asked, I mean...

12 Q. In the first trial, if you look at pages or if
13 you want to look at pages 176 through 177. I'm going to
14 flip there myself.

15 He indicated at the top of page 177 that:

16 "Cesar told them to tell his friends that he
17 had a gun and if anything happens, he's willing to
18 shoot."

19 And he then is asked, "If he showed it to
20 him?"

21 And he responds "no."

22 And that carries over into the next page. And
23 he essentially says:

24 "I already knew he had one, 'cause like I
25 said, I know Cesar."

1 Would you agree there that he's giving some
2 reputation testimony about Cesar being known to carry a
3 gun?

4 A. Sure.

5 Q. I'll rephrase the question.

6 He's essentially asked about his interaction
7 with Cesar and Cesar advising him, he had a gun. And
8 the State asks him:

9 "How did you know?"

10 And this is me summarizing it.

11 And he says: "Because I know Cesar carries a
12 gun."

13 So he's offering his knowledge of Cesar's
14 reputation to have a gun.

15 In the second trial, he doesn't offer that
16 testimony about Cesar.

17 He says that -- just one second here. I
18 apologize.

19 That he just simply knew Cesar had a gun
20 because he told him.

21 Is there any reason you didn't elicit this
22 further reputation testimony about Cesar when you were
23 alleging he was a shooter in your closing argument?

24 A. If you -- I didn't see any difference between
25 him saying, he had a gun or having a reputation for

1 having a gun. It seems to me like something I never
2 would have focused on.

3 Q. And in the first trial, if you look at page
4 174 and this is also on Mr. Nava's testimony. Beginning
5 on line 15, the State is asking, how he knew the victim
6 in this case.

7 And on line 21 he gives the answer that:

8 He had met him and "I was with a couple
9 friends and he was selling some buds to one of my
10 friends, that's really when I meet him."

11 Do you know what "buds" would mean?

12 A. Of course I do.

13 Q. What would that be?

14 A. It's marijuana.

15 Q. Okay. So would you agree that he testifies in
16 the first trial that he knew the victim from buying
17 drugs from him previously?

18 A. I mean, the fact that this was over a drug
19 deal was hardly a fact in controversy.

20 Q. But in the second trial on page 201, he's
21 asked:

22 "How he met him?"

23 And he says: "He's just met him one time."

24 The State doesn't -- they've cleaned up their
25 case. They don't go into the drug testimony.

1 Is there any reason you didn't elicit that
2 testimony?

3 A. I thought there was no question in that
4 regard. It was almost a given fact.

5 Q. On pages 203 through 204, it appears that
6 Mr. Nava's really distancing himself in the second trial
7 from the whole plan. He testifies on 203, "that he
8 thought the plan had switched from a robbery just to a
9 purchase."

10 He also testifies on 204, "that he didn't know
11 that Neil, which would be Mr. Stringer or Mr. Rice had
12 guns, when he warned them."

13 This testimony wasn't offered in the first
14 trial. So were you prepared for Mr. Nava to offer this
15 different testimony where he's distancing himself,
16 removing himself, kind of, from the common scheme or
17 plan in this case?

18 A. I wouldn't -- I probably wouldn't have
19 remembered what Mr. Nava said anyway.

20 Q. And finally, Dr. Wren testified on 237 and 258
21 respectively in each trial. And in the first trial he
22 went into great detail on pages 249 through 251, about
23 the victims position and this is testimony you elicited.

24 And you question him about abrasions and he
25 finally responds:

1 "That there could be an argument that there
2 was a scuffle."

3 You didn't pursue that line of questioning in
4 the second. Is there any reason why you didn't pursue
5 that line of questioning with Dr. Wren about the
6 abrasions, the locations, and the potential of there
7 being a scuffle?

8 A. No. I didn't think a scuffle was an issue
9 probably. I mean, you choose what you go into by how
10 the trial's going and the way everything else is going.

11 Q. Finally, I'm going to turn to your closing
12 argument.

13 Do you remember your strategy or kind of your
14 theory in closing argument in the first case?

15 A. No. I don't remember exactly why I went into
16 it in the first case.

17 Q. Page 283 through 284 appears to be when you
18 kind of get into the major theory of your argument. On
19 page 284, line 20. You say:

20 "This was somebody trying to get marijuana,
21 not somebody trying to commit a robbery to hurt anybody.
22 Only when my client was attacked did he take any action
23 at all and that was to stop the fight."

24 Now, I'm going to compare to your argument in
25 the second case which appears on pages 313 through 317.

1 And there you argue, Cesar was the second shooter and
2 there is no physical evidence just oral.

3 Why did you not pursue this same type of
4 argument that deadlocked the jury in the first case?
5 That there was this scuffle. That your client was
6 attacked. That he was just reacting to what was
7 happening at this simple marijuana deal.

8 A. They were different cases. They were
9 different trials. They just involved the same people.
10 The facts came in differently. It seemed to me that
11 what was important I argued in the first case, in the
12 first case. What was important in the second case, I
13 argued in the second case.

14 MS. BLANCHETTE: Your Honor, if I could beg
15 the Court's indulgence, one moment.

16 THE COURT: Yes, ma'am.

17 MS. BLANCHETTE: No further questions of this
18 witness.

19 THE COURT: All right.

20 MR. HALL: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22

23 CROSS-EXAMINATION

24 MR. HALL:

25 Q. How are you doing Mr. Warder?

1 A. I guess, I'm fine. Little hard to tell.

2 Q. Mr. Warder, how long have you been practicing
3 law?

4 A. 50 years.

5 Q. And would you say that most of that time has
6 been spent in criminal law. About how much of that
7 time?

8 A. Probably, the last 30 years exclusively.

9 Q. You do recall receiving and reviewing the
10 State's discovery in this case; right?

11 A. Yeah. The answer is "yes" in my office. The
12 mail, discovery, everything comes in. Discovery goes to
13 my investigator. My investigator takes that discovery.
14 If it's on disc, he downloads them if it's pictures and
15 photographs. And then he meets with me and tells me
16 what's in the discovery that we can use. He shows a lot
17 of photographs and so I get summary of that. Then it's
18 put together in a file.

19 Q. Okay. So can you just briefly tell the Court,
20 essentially, what was the State's case here in Mr.
21 Rice's case, what was the State's theory?

22 A. The State's theory was that there was a drug
23 deal robbery. And that my client and the others had
24 went there to steal marijuana and there was a shooting
25 involved. There was a struggle, the deceased was shot

1 in the back and that everybody fled. Well, not
2 everybody, most everybody fled, one stayed behind and
3 that was it, I mean...

4 Q. And the State proceeded under the theory of
5 Hands of One, Hands of All, Accomplice Liability?

6 A. That you had to charge that. There was some
7 discussion -- nobody was indicted as a courtesy, but
8 Judge Cole correctly pointed out that, people, even in a
9 criminal enterprise is charged with that.

10 Q. And if you recall, can you tell us generally,
11 not referencing a specific trial, but what was your
12 defense strategy for defending this case?

13 A. Well, the defense strategy was: We did not
14 shoot the fatal shots. We weren't there. We were there,
15 but we weren't the trigger man. That in fact, we wanted
16 to bloody up a little bit, the victim, by the theory
17 that he was a marijuana salesman. But the trouble is
18 that, in explaining your theory, that the real theory in
19 a criminal trial is that reasonable doubt. That on some
20 material fact and some issue, you planted in the juries
21 mind something that you disagree with and it can be
22 anything that will cause them to retain reasonable
23 doubt. And so what a trial lawyer does or in my opinion
24 what a trial lawyer does, is he attacks anything he
25 feels he can get reasonable doubt out of. And what you

1 don't understand and I can't explain is, that trials are
2 completely different.

3 One of these trials was a single defendant.
4 The other trial there were codefendants. It changes
5 things and it changes how you do things and what the
6 questions that you ask and how you read the jury.

7 If other codefendants scores points with the
8 jury and you're a codefendant, you bleed off some of
9 that good. And that advice is true if he get's all
10 muddled up and makes it sound like a real sinister plot
11 it all goes against you.

12 In a single trial, it's all how the jury
13 perceives the cases that relates around you. And the
14 questions are different, facts are different. The only
15 thing that's still the same is, that we tried to instill
16 reasonable doubt.

17 We, a lot of times, if we can get a witness to
18 argue even a immaterial point, it something. It causes
19 one juror to have doubt and that's all we're trying --
20 we're trying to make it so there are things they don't
21 agree on.

22 Q. Okay. And you just testified and you also
23 testified on direct that each trial is different; right?

24 A. They're completely different. It's hard to
25 understand for the jury make-up, to everything. You sit

1 there one time and you have five elderly woman on it and
2 a bunch of hard working people. The next jury can be
3 completely different and they would read the evidence
4 completely different.

5 If the next jury was all college students and
6 stuff, their attitudes on everything involved in this
7 case.

8 Q. So to clarify, do you think it's reasonable
9 for an attorney to change their strategy as the trial
10 progresses?

11 A. You have too. You have too. Because things
12 happen that you couldn't count on. You get a vibe going
13 and you're trying to adapt quickly.

14 Q. The first trial was held in February of 2018;
15 right?

16 A. I think that's correct.

17 Q. That resulted in a mistrial, didn't it?

18 A. Yes, it was a mistrial.

19 Q. What ever happened in the first trial really
20 don't have any bearing on the conviction in the second
21 trial?

22 A. Absolutely, not.

23 Q. So we're only concerned with happened in the
24 second trial; right?

25 A. Yes.

1 Q. And that was in November of 2018?

2 A. Yes.

3 Q. During the time between the first and second
4 trial although, you don't recall your specific
5 preparation for the second trial, would it have been
6 your routine practice to review your notes from the
7 first trial?

8 A. Okay. My initial thing I try and do is, I try
9 to see what the other lawyers are gonna do.

10 Because are their client's gonna go trial
11 again?

12 Are their client's gonna try to cut deals?

13 Am I gonna be alone or with other people?

14 What's their position?

15 Then from there, we try and adopt to how the
16 whole situations changed.

17 Q. Because each trial is different, would you
18 agree that there maybe minor changes between the first
19 and second trial?

20 A. I think there's always minor changes. There
21 may be mayor charges. We try to do things that work.
22 Things that were unsuccessful the first time, we try
23 things that are more successful, we're gonna try to
24 reenforce that more.

25 Q. I want to ask you a specific question about

1 the first trial. In the first trial, would you agree
2 that the State's theory was that Mr. Rice and his
3 codefendant's went to the victim's house to look for
4 drugs; is that right?

5 A. Yes, sir. That was it.

6 Q. Also, in the first trial the State's theory
7 was that during that interaction, looking for drugs, the
8 victim was shot and died as a result; right?

9 A. Yes.

10 Q. Wouldn't you agree that that was also the
11 State's theory in the second trial as well?

12 A. I think the State in the second trial, you're
13 forgetting that they focused more on the fact that the
14 negotiation for the drugs went back and forth, and that
15 was really a ruse to find out where the drugs were
16 stored.

17 In other words, the defendants went there and
18 complained about the quantity of drugs. And so they
19 went back to try to get more drugs, and even we can buy
20 more drugs at one time. And the State's theory, kind
21 of, was that that negotiation was to find out where the
22 bag of drugs was so they could steal the supply that he
23 was taking the smaller amount out of.

24 Q. Now, would you agree that that change in
25 theory is not a substantial change?

1 A. I mean it's not like it's different from the
2 placement. It's different from what the jury was going
3 to hear.

4 Q. Let me ask you this Mr. Warder, did you
5 believe based on what you had done in between the first
6 and second trial, did you believe that you were
7 adequately prepared for the second trial?

8 A. I think I was prepared as a man can be for
9 what I need to defend. The first trial, I had
10 defendants that were somewhat supporting our theory and
11 my theory was all alone the second time.

12 Q. I wanted to ask you about the burglary
13 indictment that opposing counsel asked you about on page
14 15 of the second transcript. Do you have the second
15 transcript with you?

16 A. That be the November's transcript?

17 Q. Yes, sir. The November transcript.

18 A. Yes.

19 Q. I'll just summarize, so we won't have to dig
20 into it too much. The State filed a Motion in Limine to
21 preclude -- background information. After the first
22 trial, the State brought an indictment for burglary
23 first; right?

24 A. Yes.

25 Q. In their Motion in Limine in the second trial,

1 they filed a motion to prevent you from mentioning
2 during trial the timing of that indictment; right?

3 A. Yes.

4 Q. And you argued to the judge that you would
5 bring it up if it became relevant during the trial;
6 right?

7 A. Uh-huh.

8 Q. Did that fact ever become relevant during this
9 trial?

10 A. No.

11 Q. If you had challenged the State's indictment
12 on the basis of time, do you believe that would have
13 changed the outcome of this case?

14 A. No.

15 Q. I want to fast forward to some of the
16 testimony here in the second trial. I want to begin
17 with -- if we can back up to page 13 and talk about the
18 testimony of Cesar Mendez.

19 So on page 13, in summery, you essentially
20 mentioned to the Court you were planning on calling
21 Cesar Mendez to impeach Ms. Mary Kotlarich, who's the
22 victim's mother; right?

23 A. I'm not sure. I think my answer is a little
24 -- it was an attempt at being cagy.

25 Q. Let me just ask you this --

1 A. I mean, at that point in the trial I wouldn't
2 want the State to know what I was going to do.

3 Q. Let me ask you this. Although you were
4 thinking about doing it, did you believe it was
5 absolutely necessary in this case to call Mr. Cesar to
6 contradict the victim's mother?

7 A. No. It was somewhat danger in that.

8 Q. Because there was danger in it, did you
9 believe that perhaps that could actually hurt your case?

10 A. Sure it could.

11 Q. And I want to ask you about Cesar Mendez'
12 testimony in general. There is in evidence a transport
13 order and all this discussion about whether or not
14 Mr. Mendez should have been called to trial.

15 Do you believe it would have hurt your case to
16 have Mr. Mendez testify at trial?

17 A. Well, it well could've. There was some
18 possibility.

19 Q. Mr. Mendez was actually on the scene of the
20 shooting; right?

21 A. Yes.

22 Q. And he actually saw who the shooters were
23 right?

24 A. Yes.

25 Q. So if Mr. Mendez had testified at trial,

1 couldn't he have testified at trial and identified your
2 client as the shooter?

3 A. Could have.

4 Q. And that ultimately would hurt your case;
5 right?

6 A. Well, yeah. The jury would dislike the actual
7 trigger man more than somebody who was just there during
8 a planned robbery.

9 Q. Mr. Warder, I want to turn your attention to
10 page 113 and 114.

11 A. Of the November?

12 Q. Yes, sir. All my questions from here on out
13 will be from the second transcript.

14 A. Okay.

15 Q. There was testimony on direct about the
16 interactions or the testimony from Deputy Kevin Bowen
17 testifying to what Mr. Mendez said. Would you agree
18 that the Court entered those statements under the
19 excited utterance exception to hearsay, just based on
20 the testimony in the transcript?

21 A. You're talking about on page 114?

22 Q. On page 114. Yes, sir.

23 A. I can't see just what you're saying about it.

24 Q. Yes. On page 114, the solicitor ask: "Your
25 Honor, can I offer this as an exception to the hearsay

1 rule?"

2 And that was based on the testimony on the
3 previous page from 113 in which Officer Bowen testified
4 that Mr. Mendez was in a distraught emotional state.

5 Would you agree that that appears to be an
6 exception to the hearsay rule?

7 A. That would be an exception of that.

8 Q. And I want to ask you about, there's been some
9 allegations here that you failed to object for violation
10 of confrontation clause. So I want to ask you about
11 that.

12 Do you believe in your experience and your
13 opinion, if you had objected to the testimony as a
14 violation of the confrontation clause and the Court had
15 sustained that objection and excluded Mr. Bowen's
16 testimony regarding what Mendez said, do you believe
17 that excludeing that testimony would have changed the
18 outcome of this trial?

19 A. No.

20 Q. I want to move onto some of the specific
21 testimonies from some of the other witnesses. There
22 were a lot of questions and there was some allegations
23 regarding, not impeaching witnesses in the second trial
24 for inconsistencies in the first trial.

25 Do you recall any substantial inconsistencies

1 from the first and second trials?

2 A. The answer would've been, no. They've brought
3 up a lot of things today that -- there was no --

4 The basics of the State's theory remains
5 constant.

6 Q. So the testimony in the second trial would you
7 agree that there might be minor inconsistencies from the
8 testimony in the first trial?

9 A. Sure.

10 Q. Do you believe that cross-examining witnesses
11 on those minor inconsistencies would have changed the
12 outcome of this trial?

13 A. No.

14 Q. But if there were any substantial
15 inconsistencies between the testimony from witnesses in
16 the second trial from the first trial, you would have
17 cross-examined those witnesses on those statement;
18 right?

19 A. Yes.

20 Q. Getting into some of the specifics of the
21 testimonies. I'll summarized some of the points of
22 testimony and just ask you a question on it.

23 In the first trial, for the record that's page
24 70 of the first trial transcript, Officer Bowen
25 testified that when he first arrived on the scene he saw

1 a male and a female, Mendez and Mr. Rice or the victim's
2 mother. And he testified that Mendez gave him a
3 Hispanic name, but he didn't really specify the name.

4 In the second trial, he testified here, again,
5 on page 113 or 112 and 113, that the name given was Mr.
6 Nava.

7 Again, do you believe that that is a
8 substantial inconsistency?

9 A. No.

10 Q. Do you believe that cross-examining on that
11 inconsistency would have changed the outcome of this
12 case?

13 A. No, because the mental picture the jury would
14 have been the same regardless.

15 Q. And I want to ask you about the testimony of
16 Kameron Wilson. As you may recall Kameron Wilson was
17 the driver in this case. He was Mr. Rice's codefendant.
18 He was the one that drove them to the victim's house;
19 right?

20 A. Yes, sir.

21 Q. I want to ask you about the statement
22 Mr. Wilson made on page 159 of the second transcript,
23 that's the November transcript.

24 A. Okay.

25 Q. Lines 12 and 13, when Mr. Wilson references

1 the first trial. I want to ask you Mr. Warder, if you
2 had objected to that and the judge had sustained that
3 testimony -- and let's say the judge sustained that
4 objection and told the jury to disregard that statement.

5 Do you believe that a sustained objection to
6 that testimony would have changed the outcome of this
7 case?

8 A. No.

9 Q. I want to move along to the testimony of Elian
10 Nava. As you may recall, Elian Nava was another
11 codefendant of Mr. Rice's. He was involved not only in
12 planning the robbery, he was also present at the scene
13 of the shooting; right?

14 A. Yes.

15 Q. Isn't it true, he identified Mr. Rice and Mr.
16 Rice's codefendant, Caranellious Stringer, as the
17 shooters at trial?

18 A. Yes, sir.

19 Q. And because Mr. Elian Nava had identified Mr.
20 Rice as one of the shooters and was there and present at
21 the scene, do you believe that cross-examining him on
22 any minor inconsistencies would have changed the outcome
23 of this case?

24 A. No, I don't.

25 Q. I want to ask you also, while we're here,

1 about Mr. Nava's testimony. Isn't it true that also Mr.
2 Nava testified that when the shooting started in
3 response to the shooting, Cesar Mendez began firing at
4 the robbers; isn't that right?

5 A. Yes.

6 Q. And so, because Mr. Mendez was firing at
7 Mr. Rice and his codefendants, we would have expected
8 for there to be gunshot residue on Mr. Mendez; correct?

9 A. Yes.

10 Q. So the SLED report that, there was gunshot
11 residue on Mr. Mendez, would that have changed the
12 outcome if you had called Mr. Mendez at trial?

13 MS. BLANCHETTE: Your Honor, I object. I
14 think getting into this is outside his area of
15 expertise, offering an opinion on gunshot residue.

16 MR. HALL: Your Honor, I'm asking him about
17 his trial strategy. She entered into evidence the SLED
18 report regarding gunshot residue and questioned him
19 about whether or not that effected his defense strategy.

20 I'm simply asking if the fact that Mr. Mendez
21 had shot a gun and the reports saying there was gunshot
22 residue, if that effected his strategy.

23 THE COURT: I'll overrule it.

24 Q. (By Mr. Hall:) I'll move along to the
25 testimony of Jonathan Lawson.

1 As you've testified to on direct, there was
2 some testimony in the first trial that a struggle
3 ensured. In the second trial, Lawson also testified
4 that, it appeared a struggled had ensued.

5 So you would agree there was testimony of a
6 struggle in the second trial; right?

7 A. Yes.

8 Q. So did you believe it was necessary to get
9 into the weeds of asking questions on cross-examination
10 on that issue?

11 A. No, I didn't think there was any need.

12 Q. Because that testimony was already in the
13 record; right?

14 A. Yes.

15 Q. Actually, the jury in the second trial, they
16 convicted Mr. Rice of voluntary manslaughter, the lessor
17 included of murder; right?

18 A. Yes.

19 Q. And do you believe the testimony about a
20 struggle in the second trial actually was favorable in
21 obtaining that guilty verdict on the lessor included?

22 A. See, you never know what a jury -- what makes
23 them choose a particular verdict. But I would think, in
24 general, that would be favorable.

25 Q. I want to ask you about the testimony of

1 Maryann Kotlarich, who was the victim's mother in this
2 case. There was some questioning and allegations about
3 whether or not you should or shouldn't have impeached
4 her about moving the marijuana. So I just want to ask
5 you one question.

6 If you had cross-examined Ms. Kotlarich on
7 whether or not she moved the marijuana in this case, do
8 you believe that that would have changed the outcome in
9 this case?

10 A. All that did was muddy her up a little bit for
11 the jury to figure that marijuana was everywhere in the
12 house. It wouldn't change the result. I wanted it in
13 pretty bad, because it made the family, I thought, look
14 worse. You know, it wasn't terribly relevant.

15 Q. And you just testified, it wasn't relevant.
16 Perhaps it would have been useful for impeachment
17 purposes; right?

18 A. Well, it would generally -- well, the victim's
19 bad character is has no reason to shoot him or anything.
20 The victim with a bad character sometimes the jury would
21 give the defendant more of a break.

22 Q. But again, such testimony wouldn't have
23 changed the outcome of this case; would it?

24 A. No.

25 Q. I want to talk about the testimony of Dr. John

1 Wren. As you testified too on direct and as counsel
2 brought the allegations. There was testimony in the
3 first trial, in which, Dr. Wren testified to the
4 position of the victim's body and abrasions that were
5 found on the victim's body. Of course, as an allegation
6 that you didn't elicit such testimony in the second
7 trial.

8 Do you believe that cross-examining Dr. Wren
9 and eliciting testimony about abrasions would have
10 changed the outcome in this case?

11 A. No, it wouldn't change any material fact.

12 Q. Do you believe if you had cross-examined
13 Dr. Wren regarding the position of the victim's body
14 that, that would have changed the outcome of this case?

15 A. No, what I believed is that the least
16 testimony I could get by without the victim and where
17 his body position and all that stuff, unless he's
18 mentioned more, I was better off.

19 Q. Do you believe that more testimony about the
20 victim and the condition of his body would have hurt or
21 helped your case?

22 A. It would have been negative. It wouldn't have
23 been anything positive for us.

24 Q. And during each of those testimonies, you
25 raised objections that you believe in the moment would

1 have been successful; right?

2 A. Yes.

3 Q. Do you believe that you cross-examined each of
4 those witnesses as best you could?

5 A. On the facts we had, yes.

6 Q. I want to turn to allegations regarding
7 evidence of flight. There's an allegation that perhaps
8 you weren't prepared for testimony of flight in the
9 second trial.

10 Again, as you've testified too, each trial is
11 different. Aren't there somethings in the subsequent
12 trial that are raised that maybe weren't raised in the
13 first trial?

14 A. Yes, there's all kinds of things raised.

15 Q. Would you agree that you tried your best to
16 adopt to the evidence that was presented and offer the
17 best argument?

18 A. Yes.

19 Q. I want to ask you about Zaria Owen's, who was
20 Mr. Rise's ex-girlfriend. I will turn your attention to
21 page 230 of the transcript, the November transcript. On
22 this page, beginning at lines 12 through 16, the
23 solicitor in questioning Ms. Owens makes comments
24 regarding the statements that she made to the solicitor
25 and an investigation; right?

1 A. Yes.

2 Q. If you had objected to those comments and
3 let's say the judge had excluded them, and excluded that
4 testimony altogether, do you believe that would have
5 change the outcome of this case?

6 A. No. And I guess I was also somewhat concerned
7 about the fact it might open the door to get the
8 investigator in.

9 Q. Actually, you just testified you were
10 concerned that -- about the investigator's testimony
11 coming in. But didn't the State, in fact offer the
12 investigator's testimony, that was Thomas -- Thomas
13 Smith was the investigator that was present --

14 A. -- yes --

15 Q. -- at that meeting.

16 Didn't he testify at trial; right?

17 A. Was what now?

18 Q. Thomas Smith who was the investigator present
19 at that meeting with the solicitor and Ms. Owens?

20 A. I think that's right.

21 Q. So the State offered that testimony to impeach
22 Ms. Owens; right?

23 A. Yes.

24 Q. And that's proper under the Rules of Evidence;
25 isn't it?

1 A. Yes.

2 Q. I want to ask you about the testimony of
3 Cheryl Rice, who was Mr. Rice's grandmother in this
4 trial. Although, Ms. Rice didn't testify in the first
5 trial, she testified in the second trial.

6 Do you believe that her testimony was material
7 in this case?

8 A. No.

9 Q. Do you believe that if you had objected to her
10 testimony and it had been excluded in it's entirety, do
11 you believe that would have changed the outcome of this
12 case?

13 A. No.

14 Q. I want to also ask you about Mr. Lakisha Rice,
15 who was Mr. Rice's mother. She also didn't testify in
16 the first trial, but she testified in the second trial.
17 And her testimony was essentially that she couldn't get
18 in contact with Mr. Mr. Rice, and of course, the State
19 tried to impeach her with the testimony of investigator
20 Kim Parnell. That's on pages 233 and 234 as the
21 testimony by Investigator Kim Parnell.

22 If you had objected to the State's attempt
23 today impeach Ms. Rice based on the testimony of Kim
24 Parnell and let's say the Court had excluded Kim
25 Parnell's testimony in it's entirety, do you believe

1 that would have changed the outcome of this case?

2 A. No, I don't think it would have changed it at
3 all.

4 Q. I want to ask you about the testimony of Richy
5 Foster on page 241. In summery on page 241, Richy
6 Foster's testimony was the objection that you made to
7 speculation about Mr. Rice potentially leaving the
8 country, the flight objection.

9 I want to ask you, do you believe that flight
10 was a material issue in this case?

11 A. Do I believe what?

12 Q. Flight, the evidence --

13 A. -- no. It was no issue in this case.

14 Q. And if there was no evidence of flight at all
15 and the State had not called any of these witnesses, do
16 you believe that would have changed the outcome of this
17 case?

18 A. No.

19 MS. BLANCHETTE: Your Honor, I think this has
20 been asked and answered and getting to province of the
21 jury.

22 And sorry, I should have said, "I object"
23 first.

24 MR. HALL: Your Honor, he can testify to what
25 he believed effected the outcome of the trial based on

1 the evidence presented at trial. He does have personal
2 knowledge of that.

3 THE COURT: Like I mentioned in the hearing
4 Monday. Since this is a nonjury matter, I will take all
5 the evidence and give it whatever weight or credibility
6 I deem necessary and I think that's under *Brown versus*
7 *Allstate*.

8 Go ahead.

9 MR. HALL: Beg the Court's indulgence.

10 THE COURT: Yes.

11 Q. (By Mr. Hall:) Mr. Warder, I want to ask you
12 about your closing argument. And I want to ask you
13 about something you testified to on direct.

14 On direct, you testified that because these
15 were two different trials and two different -- two
16 different trials, that you employ different approaches
17 between the first and second trials in arguing to the
18 jury in closing arguments; is that right?

19 A. Yes.

20 Q. And would you agree that your closing argument
21 and your approach to a case would depend on the facts
22 and the evidence presented in that case; right?

23 A. Yes.

24 Q. So would you or do you agree that it would
25 have been reasonable for you to argue closing argument

1 in the first trial based on what was presented in that
2 trial; right?

3 A. Yes.

4 Q. And that may or may not be different from what
5 you argued in closing in the second trial because the
6 second trial is different; right?

7 A. Yes, the second trial was different.

8 Q. Do you believe that you gave the closing
9 argument in the second trial that you believe would be
10 the most effective in arguing the case to the jury?

11 A. I certainly did.

12 Q. Again, ultimately, in this case, the jury
13 found Mr. Rice guilty of voluntary manslaughter instead
14 of murder; right?

15 A. Yes.

16 Q. I want to ask you about Mr. Rice's
17 codefendant, Carnellious Stringer and the guilty plea
18 transcript.

19 MR. HALL: I beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 Q. (By Mr. Hall:) I want to direct your attention
22 to Mr. Stringer, to page 364 of the November transcript.
23 There was an allegation and some testimony on direct
24 about the solicitor making comments about Mr. Stringer's
25 role and statements that were made during Mr. Stringer's

1 guilty plea. And I can't remember if you testified,
2 whether or not you had obtained a copy of Mr. Stringer's
3 guilty plea testimony, but you testified that you
4 believe that you were there; right?

5 A. Huh, yeah.

6 Q. Do you believe that if you had obtained a
7 transcript from Mr. Stringer's plea hearing and had
8 corrected the solicitor's statement to the judge, do you
9 believe that would have effected sentencing in this
10 case?

11 A. No, I don't think that would matter.

12 Q. In fact, Mr. Race's received a sentence of
13 30-years in this case; right?

14 A. Yes.

15 Q. And Mr. Stringer also received a sentence of
16 30-years in this case --

17 A. -- yes --

18 Q. -- in his case.

19 And they both received the same sentences;
20 right?

21 A. Yes.

22 Q. I want to clarify a few more things for the
23 record. Again, the evidence in this case Mr. Kameron
24 Wislon, who was the driver and Mr. Rice's codefendant,
25 testified at trial; didn't he?

1 A. Yes.

2 Q. And he testified about Mr. Rice's involvement
3 in planning the robbery; right?

4 A. Yes.

5 Q. And he testified that Mr. Rice got into his
6 car with a gun; right?

7 A. Yes.

8 Q. And Mr. Wilson testified to taking Mr. Rice
9 and his codefendants to the victim's home; right?

10 A. He did.

11 Q. And Elian Nava, who was also in the car and at
12 the victim's home, also testified that Mr. Rice was
13 involved in this robbery; right?

14 In planning the robbery; right?

15 A. Yes.

16 Q. And Mr. Elian Nava who was in the victim's
17 garage when the shooting happened, testified that
18 Mr. Rice was one of the shooters; right?

19 A. That's right.

20 Q. And there was some physical evidence in this
21 case, shall casings; right?

22 A. Yes.

23 Q. That were obtained, recovered?

24 A. Yes, sir.

25 Q. And so given just the testimony Mr. Kameron

1 Wilson and the testimony of Elian Nava and some of the
2 physical evidence that was recovered from this case, do
3 you believe that in itself was sufficient for the jury
4 to convict Mr. Rice?

5 A. No question it was.

6 Q. I want to ask you one more question. Do you
7 believe that you represented Mr. Rice as best you could?

8 A. Yes.

9 Q. With the facts and circumstances of this case?

10 A. Circumstances of this case,.

11 MR. HALL: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. HALL: No further questions, your Honor.

14 THE COURT: Anything on redirect?

15 MS. BLANCHETTE: Briefly, your Honor.

16
17 REDIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q. Mr. Warder, at the outset of your
20 cross-examination, I believe you made some references to
21 how the first and second trial were different, in that
22 the codefendant's positions had changed.

23 Wouldn't you agree though, that Mr. Stringer
24 had plead guilty on the day of the first trial?

25 A. Yes.

1 Q. And in your testimony, I was a little
2 confused. Were you indicating that the first trial was
3 some type of joint trial with the codefendants?

4 A. No. The first trial was not, as I recall, a
5 trial of just my client.

6 Q. So it was your recollection that he went
7 forward with other codefendants?

8 And that's where my confusion would lie.
9 Because in the transcript that's in the Court's packet
10 and what has been provided, it reflects *The State versus*
11 *Keshawn Melvin Rice* and doesn't give any indication of a
12 joint trial. And I took your testimony on cross to be
13 that there was a joint trial?

14 A. Yes. And I think we started off that way and
15 plead out at the beginning.

16 Q. Okay. The State also asked you about a
17 mistrial. And I think we all understand that when the
18 jury is deadlocked, there is a mistrial entered.

19 But would you agree, that in the first case,
20 the mistrial was a result of a deadlock jury, not some
21 type of legal error that caused a mistrial?

22 A. Right. There was a deadlocked.

23 Q. About the evidence of flight. The State asked
24 you a series of questions about your beliefs and whether
25 or not it was material and the State's usage of that in

1 the second trial.

2 Why would the State bring it in the second
3 trial if it wasn't material?

4 A. To say anything the State puts up is something
5 not material. They put up evidence to make people look
6 bad too. I make up the evidence to look good. Somebody
7 that runs, somebody in flight could be taken as evidence
8 of guilty.

9 Q. Would you agree it was prejudicial to your
10 client when the evidence of flight came in in the second
11 trial?

12 MR. HALL: Objection, leading.

13 THE COURT: Overruled.

14 Q. (By Ms. Blanchette:) Would you agree that it
15 was prejudicial to your client when the evidence of
16 flight came in in the second trial?

17 A. It could've been.

18 Q. I'm sorry. What was that?

19 A. It could have been.

20 Q. Furthermore, as Ms. Hudgins pointed out, the
21 issues she raised about speculation, that was actually
22 brought out in your cross-examination about your client
23 potentially leaving the county, city, or state?

24 A. I'm not sure what you're saying, but I don't
25 think that was the first time it was brought out.

1 Q. Finally, the State asked you about the
2 sentencing. In page 364, specifically, where Judge Cole
3 asked Solicitor Bulsa to refresh his memory of what had
4 happened during Mr. Stringer's plea. And I'm reading
5 from the transcript where Mr. Bulsa says:

6 "I'm not sure he actually made much of an
7 admission of defendant's acceptance of responsibility.
8 I don't think he wanted to claim what his actual role
9 was. He just -- he admitted being there and being part
10 of the incident. He had given a statement to that
11 effect, denying being the shooter."

12 Would you agree there, that Mr. Bulsa is
13 telling Judge Cole right before he gives your client the
14 same sentence, as Mr. Stringer -- that Mr. Stringer
15 denied being the shooter.

16 A. The question was what?

17 Q. The question was, would you agree that
18 Mr. Bulsa incorrectly tells the judge that Mr. Stringer
19 denied being the shooter, when he gave him his 30-year
20 sentence at his plea; which was incorrect.

21 A. Yes, that's incorrect, it would be.

22 Q. So why didn't you say: "Your Honor, I was
23 there." If that's the case.

24 Or: "I have the plea transcript?."

25 "When you gave him 30-years he had just

1 admitted to being the shooter. My client's been found
2 guilty of voluntary manslaughter. Please give him less
3 than 30-years and don't give him what the admitted
4 shooter was receiving."

5 Is there any reason you didn't make that
6 argument at sentencing?

7 A. I was arguing for the least sentence.

8 Q. But you didn't correct the solicitor here in
9 what he told the judge about --

10 A. -- no, It was --

11 Q. -- being the shooter.

12 A. It was the same judge, Judge Cole.

13 MS. BLANCHETTE: Your Honor, I have no further
14 questions.

15 THE COURT: Anything on recross?

16 MR. HALL: Briefly, your Honor.

17
18 RECROSS-EXAMINATION

19 BY MR. HALL:

20 Q. So the first trial ended in a mistrial; right?

21 A. Yes.

22 Q. Not a conviction; right?

23 A. Yes.

24 Q. You would say, as a defense attorney, that's
25 successful?

1 A. Yes, I would say that's successful and a
2 conviction to a lesser charge is somewhat successful.

3 Q. And the flight issue may have been
4 prejudicial, may not have been prejudicial. Was it
5 material?

6 A. No.

7 Q. And although, Mr. Stringer admitted in his
8 plea hearing he was the shooter and he didn't name any
9 one else, didn't Elian Nava testify at Mr. Rice's trial
10 that Mr. Rice and Stringer were the shooters?

11 A. Yes.

12 MR. HALL: No further questions, your Honor.

13 THE COURT: Anything else?

14 MS. BLANCHETTE: Nothing of this witness, your
15 Honor.

16 THE COURT: You may step down, sir.

17 Anything else, Ms. Blanchette?

18 MS. BLANCHETTE: Your Honor, the Applicant has
19 no further witness. I do have three cases that just
20 support our positions and allegations that weren't
21 specifically mentioned in the amendment. And I have
22 provided cites of those to the State before today.

23 I have a copy of those for, your Honor. Then
24 I'm happy to answer any questions or provide argument or
25 whatever the Court sees fit at this time.

1 THE COURT: I'm happy to hear from you,
2 whatever you want to do.

3 MS. BLANCHETTE: Your Honor, would you like
4 for the State to rest before I provide argument?

5 THE COURT: Yes, probably so.

6 MS. BLANCHETTE: Would you like me to hand up
7 the cases as part of my case in chief.

8 THE COURT: That would be fine.

9 MS. BLANCHETTE: Your Honor, the for the
10 record. The first case I'm handing up is *Harris versus*
11 *the state of South Carolina*. It's a Supreme Court of
12 South Carolina decision from 2008.

13 The second case, you've heard a bit about
14 today is *State versus Sierra*. That's a South Carolina
15 Court of Appeals decision from 1999.

16 And the final case is, *State versus King*, a
17 more recent decision out of our supreme court and that
18 is from 2018.

19 At the appropriate time I'm happy to explain
20 the purpose for handing those up or give argument,
21 whatever is requested.

22 THE COURT: Okay. Is the State calling any
23 witnesses?

24 MR. HALL: No, your Honor. The State rest.

25 THE COURT: Okay. Happy to hear from y'all.

1 MR. HALL: Your Honor, may Mr. Warder be
2 excused?

3 THE COURT: Yes.

4 MS. BLANCHETTE: Your Honor, on behalf of the
5 Applicant, I have appeared in front of you before and
6 you're always very attentive. You take notes. It
7 hasn't been too long since you were in my position and I
8 appreciate the attentiveness and just how you follow
9 along and make this very easy on both sides and allow us
10 to put up our cases and I know you take everything into
11 consideration.

12 With that said, I'll explain why I handed up
13 these cases. I can touch on some highlights. But most
14 importantly, I'm just here to answer any questions you
15 have. I know it's been a long day. So if there's
16 questions regarding anything. But I would rest on the
17 record. I believe argument is not part of the record.
18 It maybe part of your consideration, but we've put up
19 our witnesses. We've introduced our exhibits. I've
20 provided additional cases for you to consider and I'm
21 always happy to provide any memorandums or proposed
22 orders.

23 The cases that I did hand up, starting first
24 with the *King case*. This case is very well known for
25 what, kind of, triggered the attempted murder

1 clarification in this state. Bur I would point your
2 attention regarding, Investigative Hearsay. And that is
3 something that we have talked about a good bit in this
4 case. That was imbedded in that very long case.

5 *State versus Sierra*, I think we talked about
6 that enough today that your Honor would understand why I
7 handed that up.

8 And then *Harris v State* was an interesting
9 case. That case deals similarly with what we have here
10 today, two trials. And the issue was, counsel's failure
11 to impeach with the first trial transcript. And there's
12 a very interesting discussion that I think is relevant
13 to the issues here today.

14 With all respect to Mr. Warder, if he's still
15 here with us in the courtroom. I would submit he didn't
16 establish that he conducted a reasonable investigation
17 or offered reasonable strategy. Unfortunately, he could
18 not provide a specific recollection as to a number of
19 the matters set forth in the allegations and discussed
20 today.

21 Whereas, on the other hand, I find Ms. Hudgins
22 testimony was very clear. She had a great recollection
23 and she provided this Court very clear testimony about
24 issues that were not properly preserved in what she
25 would have been able to do on appeal if those issues had

1 been properly preserved.

2 Additionally, she offered testimony about the
3 very issue that she did raise on speculation was not
4 properly preserved, but she thought it was the strongest
5 amongst the issues that she had in doing an Anders
6 brief. And as she testified, the speculation actually
7 came from Mr. Warder himself opening the door to that
8 damaging testimony. It wasn't a result of the State's
9 actions.

10 It know Mr. Warder has offered a lot of
11 testimony on cross about how all of, each of the
12 different allegations he didn't believe whatever the
13 material that we were discussing in that allegation
14 didn't effect the outcome of trial. But I submit that's
15 for your Honor to determine. To look at the record,
16 look at everything before you and make that
17 determination.

18 Your Honor, as to each issues raised, it kind
19 of, came out of his cross and redirect. I wanted to
20 point out as to the issue of Mr. Stringer, that Mr. Rice
21 received the same sentence as the admitted shooter. And
22 that is something that I believe his failure to correct
23 Mr. Bulsa and give Judge Cole proper information. Judge
24 Cole said, "I don't remember." I know that Mr. Warder's
25 testimony just was that Judge Cole handled everything..

1 but he was asking Mr. Bulsa for help because he didn't
2 remember. Mr. Bulsa gave him misinformation right
3 before Mr. Rice's sentence when he was found guilty of
4 the lesser charge and then he maxes him out and all the
5 other sentences match that, your Honor.

6 As to the Cesar Mendez issue. I would just
7 ask your Honor to review everything in regard to that.
8 I just think it's so interesting that in the first trial
9 the State stopped their witness.

10 "You can't go into what Mr. Mendez says."

11 The State knows that's wrong. In the second
12 trial, yes, they manipulated and used the words "excited
13 utterance," but there's no proper objections made.
14 There's nothing put on record. And I think what
15 establishes just what a huge error that was, was the
16 testimony of Ms. Hudgins, as to how she could not raise
17 those issues on appeal in her analysis of those issues
18 as a results.

19 As to the evidence of flight, your Honor. We
20 submit that Mr. Warder just simply was not prepared for
21 it. Material or not, we all know what flight does in a
22 trial --

23 THE COURT: -- while I was looking through the
24 charge, he didn't charge him on that.

25 MS. BLANCHETTE: Correct. And they bring in

1 these -- I believe that is correct, your Honor. I'd have
2 to double check.

3 THE COURT: If it's in there, I missed it.
4 But I don't think Judge Cole charged him on -- 'cause I
5 think the State can ask for a charge on that, am I
6 correct?

7 MS. BLANCHETTE: They can. And it tells the
8 jury the proper weight to give that. How they're
9 supposed to consider it.

10 Instead, they just heard this flight evidence,
11 then was riddled with hearsay and bolstering by calling
12 these additional law enforcement witnesses. And the
13 first trial was deadlocked. The second trial they
14 weren't. So I submit, your Honor, can look at that and
15 say:

16 Yes, this did effect the outcome of this
17 trial.

18 The State wouldn't have done it if they didn't
19 think it was gonna help them the second time around. I
20 think that's common sense. That doesn't have to be a
21 belief or testimony from Mr. Warder. That's just simply
22 common sense. That the State changed their approach,
23 Mr. Warder wasn't ready for it, and it prejudiced my
24 client.

25 As far as the objection when Kameron Wilson

1 referenced the first trial. In Mr. Warders direct, it's
2 my recollection, that he admitted he should have made an
3 objection. I think that testimony, kind of, changed in
4 cross-examination. But I'll reference your Honor back
5 to Ms. Hudgins' testimony again. How that should have
6 been objected too and she would have raised it on
7 appeal. And she was left with an issue that had no
8 merit and had to raise it as Anders. And during her
9 testimony, she went through a litany of issues that were
10 in this transcript, that weren't properly preserved and
11 she didn't get to raise.

12 THE COURT: Do you have any law on the -- as
13 far as referring to a prior trial?

14 MS. BLANCHETTE: Your Honor, I did read a
15 number of cases and I didn't find one that was directly
16 on point. Actually, yesterday, I started reading
17 through all those to make sure -- and I hate to be
18 casual, but it's just something we all, kind of, know
19 you're not supposed to do.

20 THE COURT: I mean, I wonder, is it that big
21 of a deal? I don't know?

22 Attorney General, then McMaster gave me the
23 pleasure of trying a case three times. It was on the
24 front page of the state paper every time. So it wasn't
25 like it was secret to any jurors that were coming back

1 in.

2 I'm just wondering is that a thing? I know
3 you raised it and I understand why, but it is a thing?

4 MS. BLANCHETTE: I did that circle myself
5 yesterday.

6 I was like: We do Motion in Limine usually,
7 which is absent from here. Usually there's a Motion in
8 Limine or some type of discussion in the beginning,
9 especially since Judge Cole did both. I found that
10 confusing that it's not addressed at the beginning of
11 the second trial transcript.

12 You do see with other witnesses though, when
13 the State saying: "When you testified before." Zaria
14 Owens, they do that. They say: "When you testified
15 before."

16 So clearly the State isn't trying to keep that
17 out even though it's not been discussed --

18 THE COURT: -- yeah, I know. Everybody does
19 it. I did a murder trial a couple of weeks ago and I'd
20 also heard the Stand Your Ground. And they were using
21 the Stand Your Ground transcript and they were very
22 careful to say: "A prior hearing."

23 MS. BLANCHETTE: Yes. We're all careful. We do
24 it. I guess --

25 THE COURT: I guess my question is, why are we

1 so careful. I can't find any law on it.

2 MS. BLANCHETTE: Well, in the law I found
3 yesterday, and I'm happy to provide to your Honor and to
4 your law clerk. And I did have one or two cases that I
5 thought would be helpful, but just didn't land exactly
6 where I wanted to land. Because in every case and this
7 is what happens with appeals: It has to be preserved
8 and the issue preserved is the issue the Court rules on.

9 In every case that I found a curative was
10 given. And the discussion is: Whether or not the
11 curative was sufficient to cure any prejudice?

12 Which isn't our issue here. He missed the
13 objection. So we don't even get the ruling of Judge
14 Cole. We don't get the curative to then look and see if
15 the curative when taken as whole in light of the entire
16 transcript cured. We just don't have the curative. So
17 that's why I didn't pull those cases, because I felt
18 like that wasn't on point. But that's all I could find,
19 but I'm happy to continue to do some research. Is
20 because we don't have the curative here, so it's not our
21 set of facts. It's a different vehicle set of facts
22 that went up to the Court in all of those cases.

23 THE COURT: Okay. All right.

24 MS. BLANCHETTE: And your Honor, I did touch
25 on Ms. Zaria Owens as I was just speaking about that

1 issue with you in answering your question. That's the
2 next one I have here. Again, in the first trial, they
3 put up Zaria. They tetter where Mr. Warder, I submit,
4 should have made a *State versus Sierra* objection.
5 Because it's just Mr. Bulsa asking her about his
6 interaction with her in this meeting. The State clues
7 in on the first trial, she's not gonna testify the way
8 we need her to. So in the second trial the bring her
9 and her two law enforcement witness or their two law
10 enforcement witnesses to bolster, impeach, whatever you
11 want to say it is. The problem is, Mr. Warder doesn't
12 seem to be tracking with everybody else as to what's
13 going. He's not making necessary objections. He's not
14 making a record. He's not addressing this issue, which
15 ultimately Judge Cole can rule on. And if Judge Cole
16 rules against him, Ms. Hudgins can raise on appeal to
17 have a high Court review it, as they did in *Sierra* to
18 see if it was proper. To see if the utilization of
19 Ms. Owens testimony. Yes, it may have been proper, as I
20 think Ms. Hudgin says under Impeachment in 613(b) to do
21 it this way. But he doesn't make a record. They don't
22 talk about it. It just seems like he kind of let's it
23 go and goes with the flow of it. Instead of making sure
24 -- a fundamental PCR cases say that, a PCR applicant can
25 be successful if we can show that he did not properly

1 put the State's case to the test. He didn't make the
2 adversarial process work. In not making simple
3 objections in following Rule 613(b) and invoking the
4 confrontation clause, that's not making the adversarial
5 process work.

6 Great if it would have come in. Or his
7 opinion now is, "I don't think it effected things." But
8 he didn't make the process work in that moment. He
9 didn't make the necessary objections. He didn't make
10 the record.

11 Finally, your Honor, turning to the issue of
12 the first and second trial testimonies that I compared
13 and asked him questions about the statement through
14 cross as well.

15 It may seem knit picky but I did provide you a
16 case that's directly on point of when counsel failed to
17 do that. Why not utilize the resource when you've had
18 the first trial to be able to impeach those witnesses to
19 make sure you elicit all the favorable testimony they
20 gave before. It felt like there were a number of
21 different answers given as to why he didn't do it. I
22 think it was clear, he didn't have the second trial
23 transcript. I don't think that's effective
24 representation. If the first trial ended in a deadlock
25 jury, something must have gone right for the defendant

1 in that case. I think you would want to have that. You
2 would want to memorize that. You would want to have
3 notes on that. You would know all the good things you
4 wanted to come out in the second trial and be ready to
5 utilize it in anyway you could to get the smallest
6 advantage.

7 As Mr. Warder's said: "It's just a matter of
8 reasonable doubt."

9 "You just got to shift them a little bit."

10 And by not utilizing that and bringing out the
11 things that we referenced, I think that he was
12 ineffective in that regard.

13 Your Honor, I didn't touch on everything. I
14 tried to hit some of the bigger highlights. Are there
15 any questions that you have?

16 THE COURT: You also, and you may have just
17 thrown it in there, had Ineffective assistance of
18 appellate counsel.

19 Is that something I need to be considering?

20 MS. BLANCHETTE: Your Honor, we're not
21 abandoning it. But after hearing Ms. Hudgins testimony
22 today, I think she provided credible testimony as to why
23 she raised the issue that she did and why she did not
24 raise any additional issues. I think her testimony in
25 total supports more of a claim of ineffective assistance

1 of trial counsel.

2 THE COURT: Your position that failure to get
3 that first transcript alone is ineffective assistance of
4 counsel?

5 MS. BLANCHETTE: I do not want to sit here and
6 Monday morning quarterback or any standards and
7 guidelines of what you have to do as a defense attorney.
8 I believe Mr. Warder said that he typically does it. He
9 couldn't recall doing it in this case. And I think that
10 lack of recollection, of getting it and focusing any of
11 his energy into what happened in that first trial to be
12 prepared for the second trial is ineffective assistance.
13 I'm a little cautious in just saying: "Standing alone"
14 because I think we have to take it in the context of
15 everything. But I would submit to your Honor that's
16 something that should be a heavy consideration as to
17 whether or not he offered ineffective assistance.

18 When I do these amendments and do these
19 hearings, I like to set them out as separate issues. But
20 similarly these things do interrelate. Your Honor and I
21 did one recently where it was extremely interrelated.
22 Theis case I did try to set out the issues that I think
23 not having that transcript, kind of, ties back into a
24 lot of these issues. So I guess I've just gone in a big
25 circle in not giving you a direct answer.

1 THE COURT: That's okay.

2 MS. BLANCHETTE: Wouldn't make for a very good
3 appellant argument. But, yes, your Honor. I would land
4 with, I think it's ineffective assistance for not
5 getting the transcript. What happened in the *Harris*
6 case, the issue that came up there was, they actually at
7 the PCR didn't introduce the first trial transcript. So
8 under the Any Evidence Standard of review became very
9 difficult for appellant court to examine whether it
10 would have mattered if he got it or not. That's why in
11 our allegation I tried to point out some specific
12 testimonies where we submitted it did truly matter.

13 THE COURT: Okay.

14 MS. BLANCHETTE: Your Honor, with that said,
15 we would respectfully ask that you review each issue
16 raised, the entire record that we put before you. I
17 would be happy to do any memorandums, further research,
18 or propose an order. If your Honor does want a proposed
19 order, I would ask for time to obtain the transcript. I
20 just like to make sure those orders are accurate and
21 provide your Honor the best work product that I can in
22 that regard.

23 THE COURT: Okay. Mr. Attorney General.

24 MR. HALL: May it please the Court?

25 THE COURT: Yes, sir.

1 MR. HALL: Judge, I want to begin with the
2 allegation against appellant counsel. They've brought
3 an allegation for Ineffective Assistance of appellant
4 counsel. But as Ms. Blanchette just mentioned, she
5 believed that Ms. Hudgins' testimony was credible. But
6 then she also said that we should listen to Ms. Hudgins'
7 testimony to determine ineffective assistance of trial
8 counsel. So it seems like they're trying to have it
9 both ways in the allegation. I would just ask this
10 court to consider that for what it is. As far as the
11 allegation against Ms. Hudgins.

12 Getting into the allegations of ineffective
13 assistance of trial counsel against Mr. Warder. The
14 burden is on the Applicant to prove two things under
15 *Strickland v Washington*. They must first prove that
16 counsel was deficient. And deficient requires --
17 "finding a deficiency requires this court to examine Mr.
18 Warder's actions under reasonable prevailing
19 professional norms." In deciding that, *Strickland* is
20 clear the Court must defer to the reasonable strategic
21 decisions of trial counsel. Mr. Warder testified to
22 several reasonable decisions that he made in this case
23 regarding whether or not to employ certain strategies
24 from the first and second trial based on the evidence
25 that was presented in the trial.

1 I could go all day down the list about
2 deficiency and whether certain things were deficient or
3 whether they weren't. But I really want the Court to
4 focus it's analysis on prejudice. Under *Strickland*
5 prejudice is whether there's a reasonable probability
6 that the result of the trial would have been different
7 but for counsels alleged deficiencies. And the Court in
8 *Strickland* said that: "Court's can consider prejudice
9 without even addressing deficiency."

10 I want to talk a prejudice here in this case.
11 First any allegations against anything Mr. Warder did in
12 the first trial, there's no prejudice because the first
13 trial ended in a mistrial. Counsel can't be deficient
14 and have a resulting prejudice if the case ended in a
15 mistrial. There's no conviction there.

16 THE COURT: I don't think they're arguing that,
17 are they?

18 MR. HALL: I believe are some allegations
19 about some of the things he did in the first trial.

20 THE COURT: I think the Applicant just has
21 something to compare the second trial too. I don't
22 think they're saying he did anything wrong in the first
23 trial. Unless I'm missing something?

24 MS. BLANCHETTE: Would you like me to speak,
25 your Honor?

1 THE COURT: Yes, ma'am.

2 MS. BLANCHETTE: Your Honor, throughout the
3 amendment, throughout the day, when we're talking about
4 about his preparation, investigation, what he did.
5 Obviously, we have to incorporated the first trial. But
6 I don't think that we can make viable claims of
7 ineffective assistance on the first trial alone. But
8 since he represented him from start to finish, we're
9 asking the Court to review the entire record, since he
10 represented him at both trials.

11 THE COURT: Can there even be an ineffective
12 assistance since there was no verdict? These may just
13 be academic questions.

14 MS. BLANCHETTE: And a very good academic
15 question, your Honor. The only one that maybe I think
16 the State is seeing is Zaria Owens, where we talk about
17 him handling the testimony and then handling it in the
18 second. That was just as your Honor says, just a
19 position for you to see how it went from the first to
20 the second, to be able to properly analysis, did we
21 handle it correctly in the second.

22 But our allegations ultimately all go to what
23 happened in the second that resulted in a guilty
24 verdict. Because that would be the verdict that your
25 Honor would have to set aside by granting PCR relief.

1 MR. HALL: And just for the record, I was
2 referencing Allegation G, in which they allege: "Failed
3 to make objections and arguments in the first and second
4 trial." So I just wanted to clarify for the record.

5 Our focus here, as we all agree, is the second
6 trial. I want to make arguments regarding the second
7 trial.

8 THE COURT: Sure.

9 MR. HALL: Your Honor, the evidence in this
10 case was overwhelmingly in favor of a finding of guilt.
11 You had Kameron Wilson who was the codefendant of Mr.
12 Rice, who was the driver. Who testified at trial that
13 he picked up Mr. Rice, along with the other
14 codefendant's and while he's giving them a ride,
15 Mr. Rice and his codefendant's are all planning a
16 robbery. They're talking about: We're gonna find
17 somebody to get marijuana from and we're gonna rob him.

18 They go to Elian Nava and Mr. Nava says: "I
19 don't have any marijuana, but I'll take you to who
20 does." And they go to Cesar Mendez.

21 Cesar Mendez says: "I don't have any
22 marijuana, but I will take you to who does."

23 They ultimately, end up at the victim's house.
24 And Mr. Wilson testified that when Mr. Rice and
25 Mr. Stringer got into his car, they both had guns.

1 Elian Nava who was present in the victim's garage when
2 the shooting happened, testified that Mr. Rice and
3 Mr. Stringer entered the garage with guns and they were
4 both shooting at the victim. We don't know which bullet
5 was the fatal shot, but again, under the theory of
6 Accomplice Liability, it doesn't matter. Also, there
7 was physical evidence in this case. There were shell
8 casings that were recovered and there was also physical
9 evidence that Mr. Rice's fingerprints were also found on
10 the car. The point being, from the testimony of those
11 two witnesses alone and the physical evidence in this
12 case, that was sufficient for the -- that was
13 overwhelming evidence of guilt that the jury could have
14 found him guilty regardless of any of the allegations
15 that they allege counsel should or shouldn't have done.

16 I want to talk about some of the law in this
17 case. Counsel cited *Harris v State*. And Your Honor, we
18 would agree with counsel, that that is a case you should
19 consider when deciding this case. We actually believe
20 it's a great case and it's favorable to our position.
21 I'm going to summarize some of the holdings from *Harris*
22 *v State*. The Supreme Court held that in the *Harris*
23 case, "Counsel's preparation in the first and second
24 trials was in ineffective assistance of counsel because
25 the preparation was sufficient."

1 Mr. Warder testified here that he prepared for
2 the second trial and he believed that he was adequately
3 prepared.

4 The Court also held that "The defendant in
5 this case failed to show he was prejudice by any lack of
6 preparation by counsel."

7 We would argue there's no showing of
8 prejudice. The evidence in this case is overwhelming.

9 The defendant failed to provide PCR -- well,
10 that was to the allegation of failure to provide a copy
11 of the transcript, that's provided here today.

12 "Any deficiency in counsel's failure to obtain
13 the transcript, did not prejudice the defendant because
14 the transcript was inconsequential."

15 "Counsel's failure to obtain the transcript
16 did not prejudice the defendant because the evidence of
17 guilt was overwhelming."

18 That's what the Supreme Court decided in
19 *Harris v. State*. And so if you take that case and
20 compare it to the facts of this case, they're very
21 similar cases. You have a trial, you have a second
22 trial. Counsel testified he was prepared. The evidence
23 in this case was overwhelming. And based on that case
24 alone, the Supreme Court has offered precedence
25 regarding how to this case.

1 I want to move along to testimony of Cesar
2 Mendez and the Confrontation Clause issue. And
3 regardless, of whether or not, there was a Confrontation
4 Clause Violation, again, Mr. Rice can't prove prejudice.
5 And we would also cite to *State v Sierra*. Again, point
6 the Court's attention to this case. We believe also
7 this case is favorable to our position as well.

8 So what does the Court say in *Sierra*? In
9 *Sierra*, the Court of Appeals stated a violation of the
10 Sixth Amendment Confrontation Clause is not a per se
11 reversible error but depends on a host of factors. And
12 the factors they gave was:

13 The importance of a witnesses testimony to the
14 prosecutions case.

15 Whether the testimony was cumulative

16 And the presence of corroborating or
17 contradicting testimony.

18 So taking the Court's factors in *Sierra* and
19 applying them here. Mr. Cesar's statement was simply
20 that four men were present and two shot. The only
21 person that he named as being present was Nava, and
22 that's because that's the only person that he knew. But
23 there was testimony from Elian Nava himself and Kameron
24 Wilson, which was both corroborating and cumulative to
25 Mr. Cesar's testimony. Such that, Mr. Cesar's testimony

1 wasn't important to the State's case. If that testimony
2 in it's entirety --

3 THE COURT: -- well, that begs the question:

4 Why did they even take that chance?

5 MR. HALL: Your Honor, I can't --

6 THE COURT: -- it's like flying too close to
7 the sun.

8 Or why are we even talking about that?

9 I know that's not your strategic -- but why
10 would they even push that envelop if it wasn't that
11 important to them.

12 MR. HALL: Well, flying too close to the sun,
13 sometimes you get burned.

14 But again, the Court's analysis here is, as
15 the Court of Appeal's stated in *Sierra*: It's under a
16 harmless error analysis. You look at the importance of
17 the testimony. Again, if officer Bowen didn't testify
18 to what Cesar Mendez said at all, it would not have
19 changed the outcome of this case. The testimony was
20 cumulative and corroborating to testimony of both Elian
21 Nava and Kameron Wilson.

22 And because it was a nonreversible harmless
23 error or because we're arguing that it's a nonreversible
24 harmless error, they can't prove prejudice in the Court
25 admitting that testimony.

1 THE COURT: Well, it was harmless then. If I
2 make it now, they might not find it harmless.

3 MR. HALL: Again, your Honor, the Court in
4 Sierra said, you have to look at factors to determine
5 whether or not it's a reversal error. And we would this
6 Court to look at those factors and compare them to the
7 testimony and evidence in this case and incident of
8 Mr. Cesar Mendez's testimony. And again, we argue that
9 it did not contribute to the overall verdict.

10 THE COURT: Okay.

11 MR. HALL: Moving onto their allegations
12 regarding failure to call Mr. Mendez. Again, they're
13 dropping the allegation regarding failure to call
14 witnesses. But the allegation that trial counsel didn't
15 utilize Mr. Mendez to impeach the victim's mother.
16 Mr. Warder testified himself that he didn't believe
17 having Mr. Mendez there to testify would have helped his
18 case. Mr. Mendez was actually there in the garage when
19 the robbery happened. He didn't have anything to do
20 with the robbery. He was an innocent -- essentially an
21 innocent by standard regarding the robbery and the
22 resulting murder. But having Mr. Mendez there, an
23 eyewitness to testify who the shooters were, would not
24 have helped this case at all. So there's no prejudice
25 in that regard.

1 I want to move along to the evidence of flight
2 in this case. Again, Mr. Warder's testified that he
3 didn't believe flight was immaterial in this case. And
4 again, if you go through the trial transcript and
5 exclude every flight witness that testified. Again, the
6 testimony from Elian Nava and Kameron Wilson by itself,
7 those two testimonies was sufficient for the jury to
8 find that Mr. Rice was guilty in this case; regardless
9 of any evidence of flight.

10 Getting into some of the specifics of --

11 THE COURT: Wait now, I think that's the same
12 argument that I was suggesting earlier. If it's so
13 insignificant, the why would the State go to such great
14 lengths to include it?

15 MR. HALL: Your Honor, I can't speak for the
16 solicitor's strategy or their motives for doing so, but
17 again...

18 THE COURT: They jumped through a bunch of
19 hoops to get it in there.

20 MR. HALL: Your Honor, again, I don't know
21 what's the solicitor mind but...

22 THE COURT: Okay. Obviously, you didn't try
23 the case.

24 MR. HALL: But as I argue, if you exclude
25 that testimony I think the evidence is still there for

1 the jury to convict.

2 Regarding the testimony of Zarria Owens and
3 the solicitor questioning her and stating to what Owens
4 said to solicitor. We would again, cite to *State v*
5 *Sierra*. Again, it's a great case for your Honor to
6 review.

7 So let's talk about the facts of *Sierra*. In
8 *Sierra*, the solicitor questioned the witness regarding
9 statements the witness made to the solicitor and there
10 was no third party present at said meetings who could
11 have testified to what was said during those meetings.
12 So the only persons that knew what happened during that
13 meeting was the witness on the stand and the solicitor.
14 So the Court found that that was not only improper but
15 it was a reversible error because there was no third
16 party there. If I waited the defendant's Confrontation
17 clause and right to cross-examine the solicitor on their
18 statements, as you know, an attorney can't be both
19 lawyer and witness in this case.

20 Here, in this case, those facts aren't the
21 same. Here, in this case, there was a third party
22 present during the meetings between Ms. Owens and the
23 Solicitor. There was an investigator Thomas Smith, who
24 was present and testified in Mr. Rice's trial and was
25 subject to cross-examination. And so not only is that

1 not a violation of Confrontation Clause, but Mr. --
2 there's no prejudice here under *State V Sierra*. We
3 would also argue that those facts are distinguished from
4 the facts of *Sierra*.

5 Your Honor, there were a lot of allegations
6 about what witnesses said in the first trial and what
7 they said or didn't say in the second trial. Again, we
8 would ask this Court to look at the *Harris v State* case.
9 We believe that's a great case in that regard. Again,
10 counsel testified he cross-examine witnesses in
11 accordance with his reasonable strategic decisions and
12 cross-examined witnesses according to substantial
13 contradictions to their testimony. If you were to take
14 all the allegations from the first -- or all of the
15 allegations about testimony from the first trial and
16 compare them side-by-side to the testimony in the second
17 trial, the witnesses testify -- the witnesses testimony
18 were consistent with minor inconsistencies. And the
19 reason why I cite to the *Harris v State* case is, in that
20 case, there was a similar sort of the allegation in that
21 case, in which, in the first trial the officer testified
22 to one thing and in the second trial he testified to
23 essentially the exact same thing give or take a few
24 words, but the testimony in it, at it's core, was
25 consistent. And the Court found that the

1 inconsistencies were inconsequential. So here, in this
2 case, all the testimonies from the first trial, compared
3 to the testimonies in the second trial, any variations
4 were minor inconsistencies, they were inconsequential.
5 So any allegations that he should have cross-examine
6 them on minor inconsistencies would not have changed the
7 outcome in this case.

8 Your Honor, again, we would ask you to review
9 the record in it's entirety, review the cases that we
10 have cited here today. And we would ask that you deny
11 Mr. Rice's application for PCR.

12 THE COURT: I was looking at the transcript on
13 Ms. Owens and I didn't look at it as closely when we
14 first went through it. But isn't the solicitor
15 effectively testifying.

16 MR. HALL: Yes, so what I was arguing was
17 under *State V Sierra*. Again, a lawyer can't testify to
18 something a witness says to them. But again, the facts
19 of this case are distinguished from *Sierra*. In that, in
20 *Sierra* there was no third party to get those statements
21 in. So when the solicitor questioned the witness about
22 those statements, in *Sierra* there was nobody there to
23 not only get the testimony in for impeachment purposes,
24 but there was nobody there that could be cross-examined
25 for a Sixth Amendment Confrontation Clause concerns. In

1 this case, there was a third party Investigator Smith
2 who was there and present when the solicitor questioned
3 Ms. Owens. and Investigator Smith testified in this
4 trial and that testimony was properly entered as
5 impeachment evidence under Rule 613 and no there were
6 Confrontation Clause concerns based on the Court's
7 precedent in *Sierra* because counsel was able to
8 cross-examine Investigator Smith about the statements
9 that the solicitor made, as well as, the statements
10 that Ms. Owen's made. So that's the distinguishing
11 factor in *Sierra* case and in this case, was the presence
12 of a third party witness who couldn't testify to those
13 statements.

14 THE COURT: It seems like he's impeaching his
15 own witness with his testimony.

16 MR. HALL: I'm sorry?

17 THE COURT: It seems like he's impeaching his
18 own witness with his testimony.

19 MR. HALL: Seems like the Solicitor is
20 impeaching his own witness?

21 THE COURT: Uh-huh.

22 MR. HALL: Well, your Honor, that's allowed by
23 the rules. You can impeach your own witness.

24 THE COURT: Not with your own testimony.

25 MR. HALL: Oh, I'm sorry. I get what you're

1 saying. That's why the testimony of Thomas Smith was
2 entered. For the record those are pages 243 through
3 245. And Investigator Thomas Smith, his testimony was
4 offered for purposes of impeachment, so that the
5 solicitor's words alone were not the impeaching words.
6 The testimony of Thomas Smith regardless if you remove
7 the solicitor's words, the testimony of Investigator
8 Thomas Smith was the impeachment testimony. You don't
9 need the solicitor's words and that's how this case is
10 different from *Sierra*.

11 THE COURT: I agree with you, they didn't need
12 the solicitor's words, but we got them.

13 MR. HALL: Again, distinguishing factors is
14 the presence of the third party witness to testify.

15 THE COURT: Maybe. I'll read the case.

16 MR. HALL: Yes, sir.

17 THE COURT: Anything else?

18 MR. HALL: That's all, your Honor.

19 THE COURT: Ms. Blanchette, do you have
20 anything in reply?

21 MS. BLANCHETTE: Just on the *Sierra* matter,
22 your Honor. I think you're tracking exactly with what
23 I'm thinking. The problem here is Mr. Warder's sat on
24 his hands. The State just presented you how the
25 argument should have been made. How the analysis would

1 have happened, as they submit, on appeal. But we don't
2 have any of that. Because Mr. Busla does it in the
3 first trial, he does it in the second trial and checked.
4 And then in the second trial, it get's even worse
5 because he get's away with it and impeaches his own
6 witness with his own words. Clearly, he talks about
7 being at the meeting again. But then he calls law
8 enforcement to even further bolster what he did in the
9 first trial. So I don't think it's as clean as they're
10 trying to do this in distinguishing it from *Sierra*. And
11 I gave, your Honor, *Sierra* because I think it's on point
12 in several ways, but it can also be distinguished and
13 that's why I appreciate your Honor reviewing it.

14 But the issue here is, Mr. Warder didn't do
15 anything. That testimony all comes in and the State
16 get's to impeach their own witness with the solicitor's
17 own words and with two law enforcement witnesses and we
18 submit that's highly prejudicial.

19 The other thing that I wanted to point out and
20 then I'm not going to belabor any of these points. I can
21 go through everything and respond. But it appears the
22 State is asking you to put the big blanket of
23 overwhelming evidence of guilt onto every one of our
24 allegations and it appears from what he's saying, the
25 overwhelming evidence of guilt, the reason why you must

1 deny every one of these allegations in total, because he
2 submitted that you can just look at prejudice alone and
3 not worry about the deficiency, is the testimony of
4 Elian Nava and Kameron Wilson from the second trial.

5 Well, guess what? They testified in the first
6 trial and the jury was deadlocked. I submit that's not
7 very overwhelming evidence of guilt. We would submit
8 that that's not a proper analysis to conduct in this
9 case or a reason to deny each and every one of the
10 applicant's allegations.

11 On that, your Honor, I will sit down unless
12 there's anything further you would like to hear from me.

13 THE COURT: I don't think so. I think I've got
14 it.

15 Anything else from the State?

16 MR. HALL: No, your Honor.

17 THE COURT: You both did a very good job and I
18 appreciate your professionalism.

19 We are adjourned. I will take it under
20 advisement and let y'all know.

21 (Whereupon, the hearing was adjourned.)
22
23
24
25

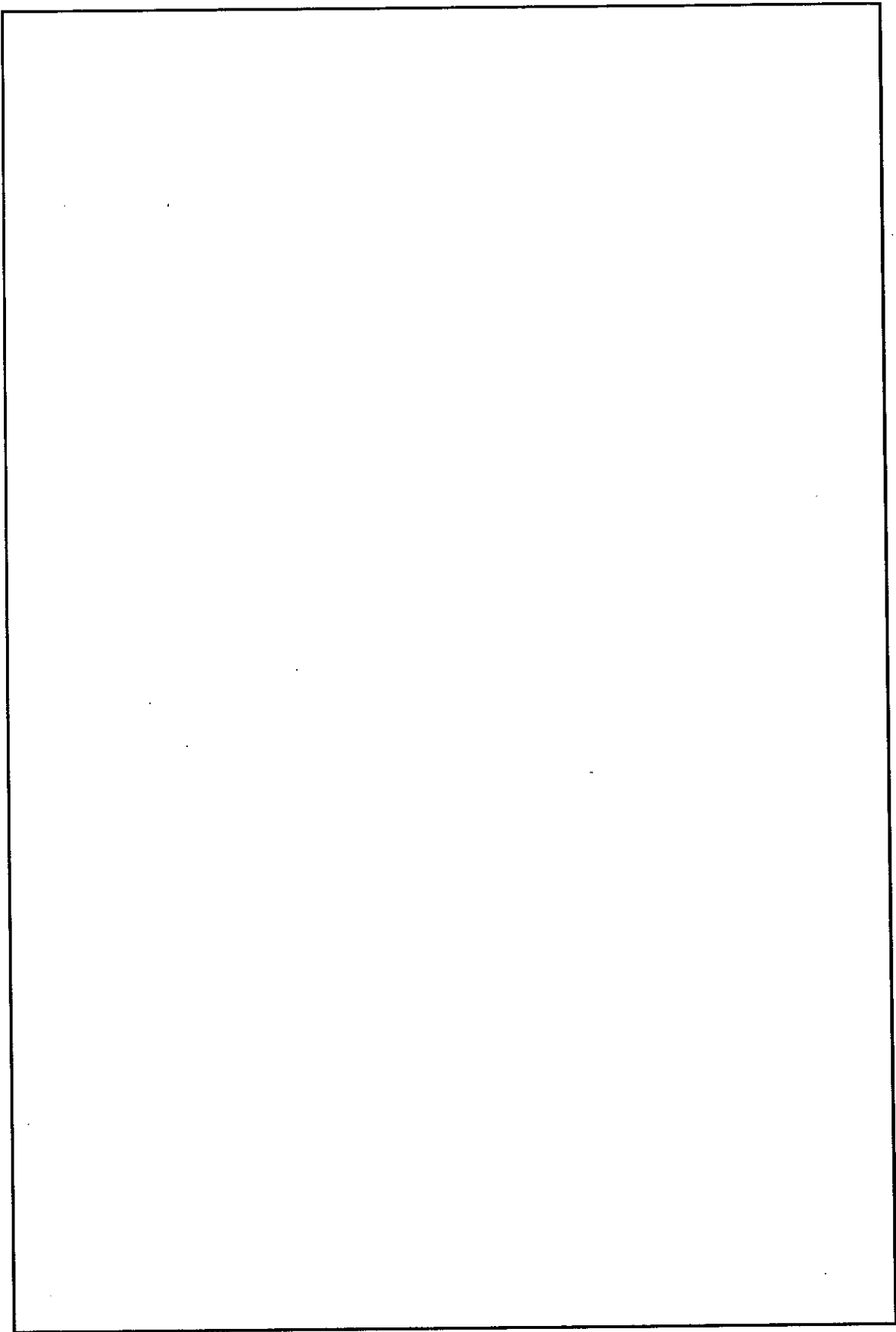
C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Spartanburg, South Carolina, on the 23rd day of May, 2024.

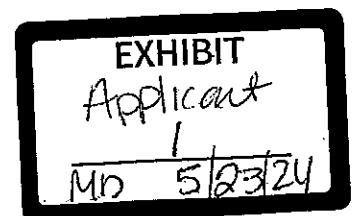
I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.

Maria DiScioscia
Official Court Reporter

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



1. Trial counsel rendered ineffective assistance that was prejudicial to Applicant when he failed to properly investigate, prepare and effectively represent Applicant prior to and at his second trial. Specifically, Applicant alleges the following deficiencies:
 - a. Trial counsel failed to properly advise Applicant and handle matters related to the additional indictment (2018-GS-42-0649).
 - 1) 2nd Trial Transcript pp. 15-16.
 - b. Trial counsel failed to investigate and/or utilize witnesses for the defense.
 - 1) **Applicant is not calling any additional witnesses to support a claim that counsel failed to call witnesses.**
 - c. Trial counsel failed to effectively handle matters related to Cesar Mendez. Specifically, but not limited to the following:
 - 1) Failure to prepare to and/or utilize Cesar Mendez as a witness at trial.
 - 2) Failure to properly handle the State's Motion in Limine regarding matters related to the testimony of Cesar Mendez and/or failure to proffer his testimony.
 - i. 2nd Trial Transcript pp. 11-15, 119
 - ii. 1st Trial Transcript pp. 116-117
 - 3) Failure to object to hearsay that violated the Confrontation Clause when law enforcement testified regarding the information provided by Cesar Mendez.
 - i. 2nd Trial Transcript pp. 112-115
 - d. Trial counsel failed to effectively handle matters related to Applicant's co-defendant Carnellious D. Stringer. Specifically, but not limited to the following:
 - 1) Failure to utilize and/or obtain the transcript of Mr. Stringer's plea on February 5, 2018.
 - i. Stringer Plea Hearing pp. 22-25
 - 2) Failure to address the information provided regarding Mr. Stringer's plea to the court during sentencing.
 - i. 2nd Trial Transcript p. 364
 - e. Trial counsel failed to advise Applicant and prepare for the State's evidence of flight that was not presented in the first trial. Trial counsel failed to object



to the line of questioning and to hearsay evidence offered regarding flight at Applicant's second trial. (verbally amend to include language in **bold**)

- 1) Witnesses and page citations:
 - i. Cheryl Rice: 2nd Trial Transcript pp. 221-224
 - ii. Lakeisha Rice: 2nd Trial Transcript pp. 226-229
 - iii. Kim Parnell: 2nd Trial Transcript pp. 233-234
 - iv. Richie Foster
 1. 2nd Trial Transcript pp. 235-241
 2. See *Ander's* Brief / Issue Raised on Appeal
- f. Trial counsel failed to object and/or move for a mistrial when Kameron Wilson referenced the first trial during his direct testimony. Transcript p. 159, lns. 10-14.
 - 1) Also see 2nd Trial Transcript p. 159, lns. 3-4
- g. Trial counsel failed to make objections and arguments in the first and second trial and prepare in the second trial for the testimony of Zaria Owens and the State's witnesses regarding meeting with her.
 - 1) 1st Trial
 - i. Witness and page citations:
 1. Zaria Owens: 1st Trial Transcript pp. 212-221
 - 2) 2nd Trial
 - i. Witnesses and page citations:
 1. Zaria Owens: 2nd Trial Transcript pp. 229-232
 2. Richie Foster: 2nd Trial Transcript pp. 235-236
 3. Thomas Smith: 2nd Trial Transcript pp. 244-245
- h. Trial counsel failed to effectively utilize information contained in discovery and testimony offered at the first trial to cross-examine and/or impeach the following witnesses:
 - 1) Jonathan Lawson (Start of Testimony: 1st p. 77, 2nd p. 78)
 - i. 1st Trial Transcript pp. 93-95, 97-100
 - ii. 2nd Trial Transcript p. 90
 - 2) Kevin Bowen (Start of Testimony: 1st p. 68, 2nd p. 110)
 - i. 1st Trial Transcript pp. 71-72
 - ii. 2nd Trial Transcript pp. 112-115
 - 3) Wendy Thomas (Applicant is not pursuing this allegation)
 - 4) Mary Ann Kotlarich (Start of Testimony 1st p. 103, 2nd p. 119)
 - i. 1st Trial Transcript pp. 109-110, 116
 - 5) Kameron Wilson (Start of Testimony 1st p. 121, 2nd p. 136)
 - i. 1st Trial Transcript pp. 131-132
 - ii. 2nd Trial Transcript pp. 145-147
 - 6) Elian Nava (Start of Testimony 1st p. 172, 2nd p. 197)
 - i. 1st Trial Transcript pp. 174, lns. 16-23, 176-178
 - ii. 2nd Trial Transcript pp. 201, lns. 12-14, 203-207, 211, ln. 22

7) Dr. Wren (Start of Testimony 1st p. 237, 2nd p. 258)
i. 1st Trial Transcript pp. 249-251

i. Trial counsel failed to present a reasonable defense through his closing argument and failed to present the theory of the case provided in the first trial.

1) 1st Trial Transcript pp. 283-284, 286, ln. 14

2) 2nd Trial Transcript pp. 313-314, 316-317

2. Appellate counsel provided ineffective assistance that was prejudicial to Applicant when she failed to raise any meritorious issues on appeal.

3. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

EXHIBIT

Applicant
2

MD 5/23/24

INMATE REQUEST

Inmate:	99761	RICE, KESHAWN MELVIN
File Date:	2/23/2018 9:22:00 AM	
Meeting Date:		
Resolution Date:	2/26/2018 8:34:00 AM	
Request Status:	CLOS	

Chairman:	
Member 1:	
Member 2:	
Officers:	KIOSK8
Subject of Grievance:	LEGAL/REQUEST/LEGAL MATERIAL/RESEARCH/COPIES

Statement:

I RECENTLY WENT TO TRIAL ON FEB. 5 - FEB. 7 AND IT WAS DECLARED A MISTRIAL. I WAS WONDERING DO YOU THINK YOU CAN GET MY TRIAL TRANSCRIPTS SO I MAY FOLLOW UP ON MY CASE WORK? I WOULD'VE ASKED MY ATTORNEY BUT HE'S NO LONGER MY LAWYER FOR THE TIME BEING SO THAT'S WHY I'M ASKING YOU

Review:

Findings:

SENT TO CLERK OF COURT

A DUCLOS

Clerk of Court Response:

You will have to contact the court reporter on your case about getting a transcript. If you need an address, provide the case warrant number or indictment no.

B Hunter
General Sessions Clerk



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11588
Columbia, South Carolina 29211-1588
Telephone: (803) 734-1330
Facsimile: (803) 734-1337

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 4, 2019

Mr. Keshawn Melvin Rice, #378305
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Rice:

Enclosed please find a copy of the Anders Brief of Appellant and the Record on Appeal in your case, which I have filed with the South Carolina Court of Appeals. The Court will write to you in the future eliciting any written memorandum you may want to submit for the Court's consideration of your appeal. That memorandum should be sent to the Court of Appeals, and not to me. The petition to be relieved is a standard part of the Anders procedure, it does not mean that I do not wish to represent you.

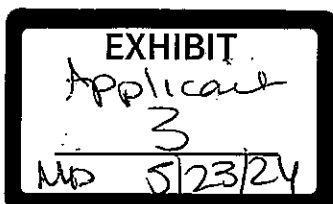
I reviewed the issues you brought to my attention in a letter dated September 22, 2019. The trial judge properly denied the directed verdict motion based on accomplice liability. Although the statements on pages 244-245 may have been double hearsay, the statements were properly admitted as impeachment of Zaria Owens' testimony denying that she told the officer that you said there was a robbery and no one was supposed to get hurt.

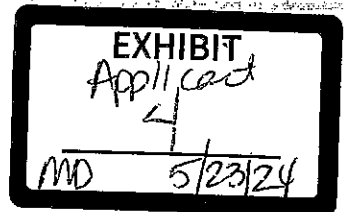
If the Court of Appeals affirms the convictions and you proceed to post-conviction relief, you may consider alleging ineffective assistance of trial counsel for failing to object to Deputy Bowen's testimony as to what Mendez told him as a violation of the Confrontation Clause. You may also consider alleging that trial counsel was ineffective for not objecting on hearsay grounds to Officer Kelly Parnell's testimony about what your mother allegedly told her. I hope this is helpful. Please contact me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/cws
Enclosure





STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF GENERAL SESSIONS
) 2016A4210103874
) 2016A4210103505

STATE OF SOUTH CAROLINA,

-vs-

) MOTION TO BE RELIEVED AS COUNSEL

Keshawn Melvin Rice,

Defendants.

PLEASE TAKE NOTICE that the undersigned attorney for the Defendant, hereby moves this Court for an order relieving him of all other duties in his representation of the Defendant in the above captioned matter, and to have counsel appointed for Defendant for his re-trial.

Counsel would show that he was hired on October 28, 2016. Counsel made all pretrial preparations and appeared at all proceedings in this matter, including the Jury Trial which was held on February 5, 2018. The Jury was unable to reach a verdict and a mistrial was granted on February 7, 2018.

Counsel would show that at the time of the trial, the Defendant had failed to pay all of his fee, and at the time of trial Defendant still owed a balance of \$12,250.00. Counsel would show that the Contract between Defendant and his Counsel required an additional fee of \$10,000 if the case had to be retried because the jury couldn't reach a verdict.

FILED
2018 FEB 16 AM 9:05
CLERK OF COURT
GREENVILLE COUNTY

Counsel would show that the Defendant is indigent and his family is unable or unwilling to pay the fee that would be required for counsel to represent him when the case is scheduled to be tried again.

Counsel would show that this case is not scheduled for a new trial date, and that Richard H. Warder has completed all of the requirements under his contract with the Defendant.

Therefore, Richard H. Warder is thereby moving to be relieved as counsel for the Defendant in the above captioned matter, and that the Court appoint a public defender to represent Defendant at his new trial.

Respectfully submitted,


Richard H. Warder

February 15, 2018

Greenville, South Carolina

I CONSENT:


KESHAWN MELVIN RICE, DEFENDANT

FILED
CLARK COUNTY COURT
2018 FEB 16 AM 9:05
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

STATE,)

v.)

Order for Transport

Keshawn Rice,)

2017-GS-42-1795-96

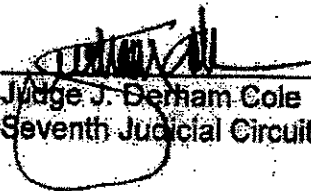
Defendant.)

This matter comes before the court upon the motion by the State seeking to have a witness transported to the Spartanburg County Detention Center from the Lee Correctional Institution. It appears that **Cesar Mendez Martinez, SCDC ID: 00373834**, is a witness in the above case scheduled for trial on November 12, 2018. It appears the State needs Mr. Mendez transported to Spartanburg for trial preparation.

IT IS THEREFORE ORDERED that **Cesar Mendez Martinez, SCDC ID: 00373834**, be transported by officers with the Spartanburg County Sheriff's Office or the Spartanburg County Detention Center by **Monday, October 15, 2018**.

IT IS FURTHER ORDERED that **Cesar Mendez Martinez** be held in the Spartanburg County Detention Center pending the conclusion of the above trial and be kept separate from the defendant, Keshawn Rice, and a witness, Elian Nava.

IT IS SO ORDERED.


Judge J. Derham Cole
Seventh Judicial Circuit

September 24, 2018

On the Motion of:



Derrick B. Balsa
Deputy Solicitor

M. HOPE BLACKLEY

2018 SEP 24 AM 10:22

CLERK OF COURT
SPARTANBURG COUNTY

EXHIBIT

5

MD 5/23/24

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

Sgt. Joey Guffey
Spartanburg County Sheriff's Office
PO Box 771
Spartanburg, SC 29304-0771

TRACE EVIDENCE
February 21, 2018
SLED LAB: L16-15296
Your Case No: 2016100391
Incident Date: 10/08/2016
[V-Deceased] Thompson Demas
[W] Cesar Martinez
[S] Keshawn Rice

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

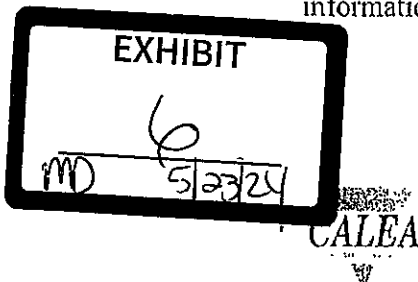
ITEMS OF EVIDENCE:

Item: 11 One GSR kit from Thompson Demas

Item 11 was analyzed using Scanning Electron Microscopy with Energy Dispersive X-Ray Spectrometry (SEM-EDX) for morphology and elemental composition.

RESULTS:

Particles characteristic of gunshot primer residue were found. In general, particles characteristic of gunshot primer residue are microscopic, molten particles that contain the elements lead, barium, and antimony. Gunshot primer residue can come from being in the vicinity to the discharge of a firearm, to include sustaining a gunshot wound, discharging a firearm, or coming into contact with a surface that has gunshot primer residue on it. No information can be provided as to the likelihood of any of these scenarios.



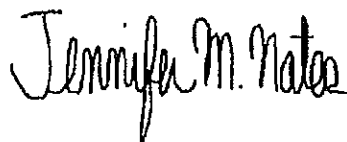
Item: 12 One GSR kit form Cesar Daniel Mendez Martinez

Item 12 was analyzed using Scanning Electron Microscopy with Energy Dispersive X-Ray Spectrometry (SEM-EDX) for morphology and elemental composition.

RESULTS:

Particles characteristic of gunshot primer residue were found. In general, particles characteristic of gunshot primer residue are microscopic, molten particles that contain the elements lead, barium, and antimony. Gunshot primer residue can come from discharging a firearm, being in the vicinity to the discharge of a firearm, or coming into contact with a surface that has gunshot primer residue on it.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Lt. Jennifer M. Nates
Forensic Scientist



1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SPARTANBURG)

COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,)

5 PLAINTIFF,)

6 VS.)

7 CARNELLIIOUS DAEKWON STRINGER,)

8 DEFENDANT.)

TRANSCRIPT

OF

RECORD

2017-GS-42-1798

2017-GS-42-1799

9
10 February 5th, 2018
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE J. DERHAM COLE, Judge.
15

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

17 DERRICK BULSA
18 DEPUTY SOLICITOR
Attorney for the State

19 CLAY ALLEN
20 PUBLIC DEFENDER
Attorney for the Defendant
21
22

23 PAMELA E. GREEN
24 Circuit Court Reporter
Seventh Judicial Circuit
25

I N D E X O F W I T N E S S E S

(WHEREUPON, there were no exhibits marked during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: Okay.

4 SOLICITOR BULSA: Please the Court.

5 Your Honor, State versus Carnellious Daekwon Stringer.
6 2017-GS-42-1798. True billed indictment for murder.

7 2017-GS-42-1719 (sic), true billed indictment for armed
8 robbery.

9 He's represented by Clay Allen. Indicates he wishes to
10 plead guilty to both charges. Recommendation by the State.

11 THE COURT: With a recommendation?

12 SOLICITOR BULSA: Yes, sir, it's a 30 year sentence.

13 THE COURT: All right. You are Carnellious Daekwon
14 Stringer?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And Mr. Allen is your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I have before me two indictments.

19 Indictment 2017-01798 charges you with the crime of
20 murder. The State alleges, on October the 8th of 2016, you
21 did, willfully and with malice aforethought, kill one
22 Thompson Demas by shooting him, and that he died as a
23 proximate result of that gunshot wound.

24 If convicted of the crime of murder, you could receive
25 a sentence of not less than 30 years, and not more than life

1 in prison.

2 Do you understand what you're charged with in that
3 indictment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand the potential sentence
6 that can be imposed upon the conviction?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Indictment 2017-01799 charges you with
9 armed robbery.

10 The State alleges, on October the 8th of 2016, you did,
11 while armed with a deadly weapon, take, steal, and carry
12 away, from the person or presence of Thompson Demas, by the
13 use, use of force or intimidation, goods or monies that
14 belonged to him, being described as a book bag, with intent
15 to permanently deprive him of use and possession of his
16 property, and that that robbery was taken -- was
17 accomplished by the use of that deadly weapon. That
18 constitutes armed robbery for which you can receive a
19 sentence of not less than ten years in jail, and not more
20 than 30 years in jail.

21 Do you understand that charge and the potential
22 punishment?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And how long has Mr. Allen been
25 representing you on these charges?

1 THE DEFENDANT: About five months.

2 THE COURT: How long?

3 THE DEFENDANT: About five months.

4 THE COURT: And during those five months, have you had
5 plenty of time to talk with him about these charges as well
6 as your decision as to how to proceed with them?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did he go over each of the indictments with
9 you and explain to you what the State claims you did?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And he told you, told you what kind of
12 sentences could be imposed if you were found guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did you tell him everything you know about
15 the allegations made against you as reflected in these
16 indictments?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And after you and he discussed it, did you
19 and he determine whether or not you have a defense to either
20 the charge of murder or to the charge of armed robbery?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you know of a defense that you have to
23 either?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You do?

1 THE DEFENDANT: Talking about do I have a defense?

2 THE COURT: Are you aware of any defense that you have
3 to the charges of murder and/or armed robbery?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Do you have a defense to either
6 of those charges?

7 THE DEFENDANT: No, sir.

8 THE COURT: You don't?

9 THE DEFENDANT: (Nods negatively.)

10 THE COURT: How would you like to dispose of your case?
11 Do you wish to enter a plea of guilty or not guilty?

12 THE DEFENDANT: Plead guilty.

13 THE COURT: Before I can accept your plea of guilty,
14 I've got to ask you a number of questions. The purpose of
15 the questions is for me to determine whether or not your
16 decision to plead guilty is freely and voluntarily made,
17 that nobody's forced you into it, nobody's pressured you
18 into it, and that you understand the consequences of that
19 decision.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: First of all, you have a right to remain
22 silent, and that means that nobody can require that you
23 testify even if you go to trial. No one can require that
24 you make any statement. Nobody can require that you answer
25 any questions that relate to the charges brought against you

1 because you have an absolute right to remain silent, and to
2 require the State to come into Court with sufficient
3 evidence to establish your guilt to the satisfaction of a
4 jury beyond a reasonable doubt, and you don't have to assist
5 them in their efforts to prove you guilty by you providing
6 statements or answering questions that might tend to prove
7 your own guilt.

8 But, in order to plead guilty, you have to answer
9 questions that I ask, and you have to answer those questions
10 even if the responses to those questions might tend to prove
11 you guilty of a crime the State claims you committed because
12 I have to have an understanding and appreciation of the fact
13 that there is a factual basis for these charges, and your
14 decision to plead guilty.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand you have the right to
17 remain silent?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did Mr. Allen explain to you that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, understanding it, do you wish to give
24 it up in order to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: So, you would prefer to remain silent?

2 THE DEFENDANT: No, sir.

3 THE COURT: Well, okay. Well, which is it?

4 You've told me both or what you've told me is
5 inconsistent. Let's put it that way.

6 Do you understand that, if you wish to -- well, as I've
7 told you, if you want to plead guilty, I'm gonna ask you
8 questions. In order for me to take your guilty plea, you
9 have to answer the questions. That necessarily means you
10 have to give up your right to remain silent because you're
11 gonna be talking to me.

12 You understand?

13 THE DEFENDANT: (Nods affirmatively.)

14 THE COURT: Sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: However, you have the right to remain
17 silent. If you wish to remain silent, then you can, but
18 that means we'll go to trial. There will be no guilty plea.
19 Of course, if you go to trial, you can still testify if you
20 want to, but that's up to you.

21 So, do you wish to give up your right to remain silent,
22 and to answer my questions in order to plead guilty or would
23 you prefer to remain silent and to have a jury trial in this
24 case?

25 THE DEFENDANT: Answer your questions.

1 THE COURT: Sir?

2 THE DEFENDANT: I said I would answer your questions.

3 THE COURT: So, you wish to give up your right to
4 remain silent?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Did Mr. Allen also explain to
7 you that you have a right to confront, and to examine
8 witnesses in Court who provide evidence against you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: In other words, you got a right to require
11 the State to bring each of their witnesses, anybody who's
12 gonna be offering testimony or evidence tending to prove you
13 guilty of these charges, could be required to come to Court
14 and take that witness stand, be placed under oath, testify
15 in your presence so you can see who they are, you can hear
16 what they have to say, and Mr. Allen can examine them. That
17 is, to ask them questions in order to test their
18 credibility, and the reliability of the information that
19 they're providing to the Court.

20 Now, if you plead guilty, that doesn't happen. The
21 witnesses don't come to Court. They don't take the witness
22 stand. They don't testify. You don't get to ask them any
23 questions. You don't get to confront them. That's the
24 right of confrontation. That doesn't occur when you plead
25 guilty. That only occurs when you have a jury trial.

1 Do you understand your right to confront and to examine
2 the witnesses?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to give that right up in order
5 to plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did Mr. Allen also explain to you that you
8 have a right to have a jury trial, and to have 12 jurors
9 decide if you're guilty or not?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You understand that, if you have a jury
12 trial, you'd help select the jury that decides the case?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you know, do you know how many jurors
15 are selected for a jury trial in Circuit Court?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: How many?

18 THE DEFENDANT: Twelve.

19 THE COURT: All right. And once those 12 are selected,
20 do you know who has to prove your guilt beyond a reasonable
21 doubt?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Who?

24 THE DEFENDANT: The jury trial.

25 THE COURT: Right.

1 At a jury trial, who has to prove your guilt?
2 who has the responsibility of presenting evidence to
3 convince the jury that you're guilty?

4 THE DEFENDANT: I guess the jury trial, sir.

5 MR. ALLEN: No, who. Who has to prove your guilt.

6 THE COURT: What did I say?

7 MR. ALLEN: I think you said the same thing.

8 THE COURT: Oh, I do too.

9 The prosecutor. The Solicitor. He's the one that's
10 got to come forth with evidence to show the jury to prove
11 you guilty.

12 You understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, if you have a jury trial, and you put
15 the State to that test, do you understand that you still
16 don't have to testify?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Nobody can make you take the witness stand.
19 Your lawyer can't make you. The prosecutor can't make you.
20 I can't make you. You get to decide if you're gonna testify
21 or not. If you want to, you can, but nobody can require it.

22 Do you understand you have a right to testify or not at
23 a jury trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In other words, you still have the right to

1 remain silent.

2 THE DEFENDANT: (Nods affirmatively.)

3 THE COURT: Do you understand that, if you have a jury
4 trial, that all 12 jurors have to be convinced of your guilt
5 beyond a reasonable doubt before they can find you guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand your right to have the
8 jury make that decision?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you wish to give that right up in order
11 to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did Mr. Allen explain to you that the
14 crimes of murder and armed robbery are both designated and
15 classified as violent offenses under the law?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand the significance of that
18 designation?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any prior convictions for any
21 violent offense?

22 THE DEFENDANT: No, sir.

23 THE COURT: Did Mr. Allen explain to you that the
24 crimes of murder and armed robbery are also designated and
25 classified as most serious offenses under the law?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand the significance of that
3 designation?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any prior convictions for most
6 serious offenses?

7 THE DEFENDANT: No, sir.

8 THE COURT: Did Mr. Allen also explain to you that the
9 crimes of murder and armed robbery are also designated and
10 classified as no parole offenses under the law?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand the significance of that
13 designation and classification?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: The solicitor says that he's going to make
16 a recommendation as to the sentence. In other words, what
17 he's saying is that, if you plead guilty to murder, and if
18 you plead guilty to armed robbery, he has apparently agreed
19 with you and your lawyer to recommend a particular sentence
20 that you and he want me to follow.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: What do they agree to recommend on your
23 behalf?

24 THE DEFENDANT: Thirty years.

25 THE COURT: Thirty years?

1 THE DEFENDANT: Yes, sir.
2 THE COURT: On each indictment?
3 THE DEFENDANT: Yes, sir.
4 THE COURT: Those sentences to run concurrently?
5 THE DEFENDANT: Yes, sir.
6 THE COURT: Other than that recommendation, were you
7 promised anything that resulted in your decision to plead
8 guilty?
9 THE DEFENDANT: No, sir.
10 THE COURT: Are you pleading guilty freely and
11 voluntarily?
12 THE DEFENDANT: Yes, sir.
13 THE COURT: Have you been forced in any way?
14 THE DEFENDANT: No, sir.
15 THE COURT: Coerced in any fashion?
16 THE DEFENDANT: No, sir.
17 THE COURT: Pressured in any way?
18 THE DEFENDANT: No, sir.
19 THE COURT: You've made the decision on your own to
20 enter these pleas of guilty?
21 THE DEFENDANT: Yes, sir.
22 THE COURT: And are you satisfied with that decision?
23 THE DEFENDANT: Yes, sir.
24 THE COURT: You are 18 years old?
25 THE DEFENDANT: Yes, sir.

1 THE COURT: How far did you go in school?
2 THE DEFENDANT: Ninth grade.
3 THE COURT: The ninth grade?
4 THE DEFENDANT: (Nods affirmatively.)
5 THE COURT: And why did you drop out?
6 THE DEFENDANT: I just -- I ain't dropped out. I just
7 stopped going.
8 THE COURT: You didn't drop out?
9 You just quit going?
10 THE DEFENDANT: (Nods affirmatively.)
11 THE COURT: Well, isn't that sort of like dropping out?
12 THE DEFENDANT: No, I was at DJJ.
13 THE COURT: You were at DJJ?
14 THE DEFENDANT: Yes.
15 THE COURT: So, you had to quit.
16 What were you doing in DJJ?
17 THE DEFENDANT: Probation violation.
18 THE COURT: What were you on probation for?
19 THE DEFENDANT: I think assault and battery.
20 THE COURT: And while you're in DJJ, did you work on
21 your education?
22 THE DEFENDANT: Yes, sir.
23 THE COURT: Have you gotten your GED?
24 THE DEFENDANT: No, sir.
25 THE COURT: Any reason why you can't?

1 THE DEFENDANT: I tried to get it, but they said my
2 Codefendant was getting it. So, I had to wait.

3 THE COURT: Okay. Have you ever been married?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you ever had a child?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you ever had a job?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you ever been treated for any type of
10 substance abuse or addiction?

11 THE DEFENDANT: Yes, sir, SADAC.

12 THE COURT: And what were you treated for?

13 THE DEFENDANT: Marijuana.

14 THE COURT: Marijuana.

15 And do you still smoke marijuana?

16 THE DEFENDANT: No, sir.

17 THE COURT: How long have you been in jail?

18 THE DEFENDANT: I'd say about 15 or 16 months.

19 THE COURT: Have you ever -- do you suffer from any
20 addiction to marijuana or any other drug?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you ever been treated for any type of
23 mental illness or emotional disturbance?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you suffer from any such a condition

1 today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you able to read and to write?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And have you understood all of your
6 discussions with your lawyer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And has he answered every question that you
9 have about your decision here today on these charges?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions you need to ask
12 me about your decision or about this process?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. The solicitor's gonna tell me
15 about his version of what he thinks the facts are. In other
16 words, he's gonna tell me why he thinks you're guilty of
17 murder and armed robbery, and he's gonna tell me what
18 evidence he has that he would present at trial in order to
19 convict you of murder and armed robbery.

20 Now, I assume that Mr. Allen has talked to you about
21 the evidence that's in the possession of the State?

22 THE DEFENDANT: (Nods affirmatively.)

23 THE COURT: Is that true?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And he's shared with you what the State has

1 that they intend to offer at trial to prove you guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Listen to what the prosecutor
4 tells me about what he claims you did, and why he thinks you
5 did it. And, when he's through, I'll ask you if you agree
6 or disagree with his version of those facts. So, pay
7 attention to him.

8 okay?

9 THE DEFENDANT: (Nods affirmatively.)

10 SOLICITOR BULSA: Thank you, Your Honor.

11 The indictment states that this occurred on October the
12 8th of 2016. Your Honor, it occurred about 3:30 in the
13 morning at Londonderry Subdivision on the west side of town.
14 Specifically, on the -- East Kilarney Lake Road.

15 There's a group of young men, five total, that went
16 over to that residence. Four of them had entered into a
17 conspiracy of sorts to rob someone of some drugs. One of
18 those individuals by the name of Elian Nava, he contacted a
19 Cesar Mendez. Cesar knew of Thompson Demas, who lived in
20 Londonderry, who possibly had some marijuana that they could
21 go get.

22 Cesar was not brought into the conspiracy to rob, but
23 he was brought into the group. Cesar actually directed the
24 driver of the vehicle over to the location. When he got to
25 the location, Cesar and Elian Nava went in to meet with the

1 victim into his garage area under the premise of buying some
2 marijuana.

3 THE COURT: Well, excuse me.

4 Who went in?

5 SOLICITOR BULSA: Elian Nava and Cesar Mendez.

6 THE COURT: Nava.

7 SOLICITOR BULSA: Two Hispanics.

8 THE COURT: Okay.

9 SOLICITOR BULSA: Mr. Rice and Mr. Stringer and
10 Mr. Wilson were at the car. Mr. Wilson was the driver of
11 the vehicle. Mr. Rice and Mr. Stringer were seen by
12 Mr. Wilson as having pistols.

13 They followed Mr. Nava and Mr. Mendez to the garage.
14 And, while the supposed deal was taking place, we believe
15 the evidence would show Mr. Rice and Mr. Stringer rushed
16 into the garage at gunpoint demanding the drugs.

17 Unfortunately, Mr. Demas resisted, did not give in, and
18 actually began to struggle with one of the individuals who
19 we believe was Mr. Rice. Shots were fired in, into the
20 garage area. One shot struck the back wall of the garage.
21 One shot actually struck the vehicle parked in the garage.
22 The garage door was down. There was a walk through entrance
23 door that we believe the men came through into the garage
24 area.

25 At least three other shots were fired that struck the

1 victim Thompson. He died at the scene, and three bullets
2 were removed from his body. They were compared with each
3 other, and they were identified as having been shot by two
4 different firearms.

5 Mr. Mendez remained at the scene while the other --
6 while Mr. Rice, Mr. Stringer, Mr. Nava ran back to the car
7 that was parked out on the roadway.

8 Your Honor, the, the entrance into this garage is
9 behind the house. So, you can't see it from the roadway.
10 So, Mr. Wilson did not have the view of what was taking
11 place, but he heard the, the shots, and he saw the men
12 running back. He picked them up and drove them away from
13 the area, and deposited them at two different locations.

14 Mr. Mendez stayed to give what aid he could to his --
15 who he called a friend, Thompson, which was none. He was
16 pretty much dead soon after the shots. It looks like he may
17 of tried to crawl out the garage -- the walk through door.

18 Mr. Mendez alerted Thompson's mother. She came out,
19 saw what happened, called the police. The police arrived.
20 The police spoke with Mr. Mendez. He didn't know
21 Mr. Stringer or Mr. Rice by name, but he was able to give
22 the police Elian Nava's name, and the police tracked down
23 Mr. Nava, who provided the name of Kameron Wilson.
24 Mr. Wilson provided the name of Keshawn Rice.

25 Photo lines-up were shown. The police had a little

1 difficulty identifying who Mr. Stringer was. His name's
2 Carnellious, but he went by Neal, and we believe he may of
3 actually used a different name to the Hispanic boys on that
4 evening to try to hide his identity.

5 But, nonetheless, Mr. Wilson was able to identify him
6 to the police. The police arrested Mr. Stringer, and
7 Mr. Stringer gave a statement admitting that he was with the
8 men, and went to that location, but said he went just to buy
9 marijuana. So, he does put himself at the scene, and, and
10 leaving the scene with the men.

11 Those are the facts of the case. When they were
12 leaving the garage, they didn't get marijuana. Mr. Stringer
13 actually grabbed a book bag, which we believe he thought
14 contained some marijuana. He grabbed the book bag and fled
15 the garage and took it back to the car. While in the car
16 driving away, he was going through the book bag, and
17 realized there was nothing but some paraphernalia items in
18 it.

19 So, they didn't really get anything of value other than
20 the book bag. That would, that would constitute the armed
21 robbery.

22 THE COURT: Any history?

23 SOLICITOR BULSA: He has a juvenile record. The
24 assault and battery that he referenced. He had two assault
25 and batteries that were diverted in 2011 to 2012s. Also a

1 2012 disturbing schools was diverted. Then, in May of 2012,
2 he was prosecuted and adjudicated for petit larceny.

3 2014, he was adjudicated for disturbing school and
4 resisting arrest as well as trespassing. He was put on
5 probation for those offenses. He had three separate
6 incidents of probation violations for those offenses in June
7 of 2015, September of 2015, and May of 2016.

8 He was -- I need to add he was just 16 years old at the
9 time of the commission of this crime. His birthdate was in
10 December of 2016.

11 THE COURT: All right. Mr. Stringer, did you
12 understand everything the solicitor just told me?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you agree or disagree with him?

15 THE DEFENDANT: Agree.

16 THE COURT: You agree?

17 THE DEFENDANT: (Nods affirmatively.)

18 THE COURT: Do you agree, as he stated, that you and
19 Mr. Rice had the guns?

20 THE DEFENDANT: I had a gun.

21 THE COURT: You had a gun?

22 THE DEFENDANT: I don't know about anyone.

23 THE COURT: All right. Do you know who else had a gun?

24 THE DEFENDANT: No, sir.

25 THE COURT: But you know there was another gun there?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you the only person that shot?

3 THE DEFENDANT: Yeah. No, I don't know. I just know I
4 had a weapon, and I used my firearm.

5 THE COURT: So, you, you had a weapon and you fired the
6 weapon?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you struck Mr. Demas?

9 THE DEFENDANT: I mean to my knowledge, yes, sir.

10 THE COURT: All right. And the ballistics showed that
11 somebody else --

12 SOLICITOR BULSA: Yes, sir.

13 THE COURT: -- fired a weapon. There was another
14 weapon, another bullet from a different weapon---

15 SOLICITOR BULSA: Yes, sir, there were---

16 THE COURT: ---that were used.

17 SOLICITOR BULSA: ---five shell casings recovered, and
18 three bullets recovered. The five shell casings came back
19 to two separate firearms. The three bullets come back to
20 two separate firearms. Of course, we don't have firearms to
21 compare them to, but they show that two firearms were
22 present and used.

23 THE COURT: And Mr. Demas was shot with two separate
24 firearms?

25 SOLICITOR BULSA: Yes, sir.

1 THE COURT: Okay.

2 SOLICITOR BULSA: One bullet from the groin area, and
3 then two bullets in the back.

4 THE COURT: All right. So, so, one bullet, you agree,
5 came from your gun?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And one bullet came from another gun in the
8 possession of someone else?

9 THE DEFENDANT: To my knowledge, that's what it saying
10 in my motion, sir.

11 THE COURT: Sir?

12 THE DEFENDANT: I said that's what it say in my
13 discovery, sir.

14 THE COURT: Well, I know, but I'm asking you cause
15 those people in that discovery weren't there. You were.

16 THE DEFENDANT: I mean I can't answer for them. I just
17 know what I did.

18 THE COURT: I understand.

19 well, you know who else was there cause you were there.

20 THE DEFENDANT: But I ain't know them. I ain't know
21 they names.

22 THE COURT: You didn't know anybody else---

23 THE DEFENDANT: No, sir.

24 THE COURT: ---name who was there?

25 You just hooked up with people that you don't even

1 know?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Well, why did you hook up with them and go
4 out there?

5 THE DEFENDANT: To go get some marijuana.

6 THE COURT: To get some marijuana?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Well, how did you know to hook up with
9 these people that you didn't know to go over there to get
10 marijuana?

11 THE DEFENDANT: I mean I just -- I guess I was just
12 talking about it, and they say they knew where to get some
13 from them.

14 THE COURT: How many times did you shoot your firearm?

15 THE DEFENDANT: Once.

16 THE COURT: Once.

17 And did you hear any other bullets being fired?

18 THE DEFENDANT: I can't remember, sir.

19 THE COURT: Sir?

20 THE DEFENDANT: I said I can't remember.

21 THE COURT: You can't remember?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. Do you still want me to accept
24 your plea of guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. As you've heard, the solicitor
2 says he's making a recommendation as to sentence.

3 You understand a recommendation is just a
4 recommendation?

5 THE DEFENDANT: Oh, yes, sir.

6 THE COURT: In other words, I don't have to go along
7 with it, and I can accept your guilty plea, and hear from
8 you, and still sentence you to life in prison if I think
9 that's more appropriate under the circumstances relating to
10 this case, and your knowledge, and your willingness to share
11 that knowledge.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So, you still wish for me to accept your
14 plea of guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I'll accept it and hear from
17 you and Mr. Allen.

18 MR. ALLEN: Your Honor, if it please the Court.

19 I want to clarify one thing. My office has been
20 representing him for soon after his arrest in
21 November 30th of 2016. Matthew Shealy, previously at my
22 office, was representing him initially, and, when Mr. Shealy
23 left the office, I picked up representing him. That's why
24 he advised the Court that I was representing him for five
25 months, which is about the time that Mr. Shealy left.

1 THE COURT: Well, in any event, Mr. Stringer, you have
2 had a lawyer with the Public Defender's Office for five
3 months.

4 Is that true?

5 THE DEFENDANT: Well, him and another one, Matthew
6 Shealy, until Matthew Shealy left.

7 THE COURT: All right.

8 MR. ALLEN: For about 15 months.

9 THE COURT: So, so, you've had a lawyer for 15 months?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is that true?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You've had Mr. Allen for five months?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So, you've had plenty of time to talk with
16 each of your lawyers in making your decision?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay.

19 MR. ALLEN: Thank you, Your Honor.

20 During the time that we've represented him, we've
21 engaged the services of a mitigation investigator to assist
22 us in identifying some information about him, and getting
23 records. And while our investigation wasn't necessarily
24 complete prior to this trial coming up, but one thing I --
25 that mitigation investigator noticed that, when we talked

1 with him, she noticed some maturing on, on his part over the
2 past little over a year that she's been assisting us in this
3 case.

4 And, you know, it's difficult, I have found, in dealing
5 with young people, like Carnellious, that it's difficult to
6 get them to come around to accepting recommendations of
7 extremely long periods of time such as 30 years, which as
8 I've explained to him, would be day for day be -- beginning
9 with whatever time, you know, with credit for the time that
10 he has---

11 THE COURT: Yeah, I did---

12 MR. ALLEN: ---been incarcerated.

13 THE COURT: ---mention no parole, and, of course, in
14 this situation, it actually means no parole. I mean
15 there's, there's some -- you know, some no parole sentences
16 do permit you to be released earlier than the entire
17 sentence. But, but, in this case, it does not. You the --
18 the murder case does not allow for early release.

19 You understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay.

22 MR. ALLEN: And we talked about it, and I think we've
23 seen some growing and some maturing in, in his
24 acknowledgment and understanding that this recommendation is
25 basically the best possible outcome for him under all the

1 circumstances, Your Honor.

2 I do wish the Court to acknowledge the fact that he is
3 before the Court pleading guilty, and acknowledging his
4 involvement in this particular case. And I'd ask the Court
5 to consider or to accept the recommendation of the State
6 that we've worked out.

7 This in, indeed saves the State of South Carolina a
8 great deal of time and effort to not only prove the case,
9 but also proceed further.

10 THE COURT: Well, it might not because, if there's a
11 Codefendant, they've got to try that case.

12 MR. ALLEN: I have no control over that, Your Honor.

13 THE COURT: I know, but you said it saves us time. It
14 really doesn't cause we probably try the case anyway.

15 MR. ALLEN: Perhaps, but that's a very good -- that's a
16 good point.

17 THE COURT: Thank you.

18 MR. ALLEN: But he's doing what he can to, to --.

19 THE COURT: Well, he's accepting responsibility. He
20 gets credit for that.

21 MR. ALLEN: Thank you very -- thank you, Your Honor.

22 When I was looking over some of his records, I, I would
23 note to the Court that it looks like, according to some of
24 the school records, that he was diagnosed as ADHD. He
25 sometimes received medication for that. I believe that some

1 of disturbing the schools came at times when he wasn't
2 either taking the medication or something like that, and
3 then that, unfortunately, he acted out in schools at times
4 to -- and, and I think that serves to explain some of his
5 conduct. At least, some of his early misconduct.

6 With him today in Court are his grandparents. He's got
7 an aunt. He's got brothers. He's got a girlfriend, and
8 other family members. I don't think they wish to speak,
9 Your Honor, but I do want the Court to see that he does have
10 family support, which is gonna be very important for him
11 while he serves his period of incarceration. Therefore,
12 Your Honor, we ask the Court to go along with the
13 recommendation of the State.

14 THE COURT: All right. Mr. Stringer, do you want to
15 add anything to what your lawyer has told me?

16 THE DEFENDANT: No, sir.

17 SOLICITOR BULSA: Your Honor, I believe the victim's
18 father would like to address the Court.

19 THE COURT: Okay.

20 SOLICITOR BULSA: Come on up, sir.

21 MR. DEMAS: Afternoon, Your Honor. My name is George
22 Demas. I live Upstate New York.

23 I was Thomas -- I shouldn't say that. I am Thomas'
24 father. I always will be whether he's with us here or
25 someplace else.

1. My daughter, his sister, is here. His Godmother is
2 here, and they represent the large family of people who knew
3 him and loved him.

4 I don't know exactly how this thing started out or how
5 it happened, but I know that there was a point where this
6 Defendant made a decision, a very, very serious decision,
7 and made the wrong decision, and he murdered my son. That
8 can never be resolved, but there's a whole lot more to it
9 than that.

10 Thompson's gone. He's paid that price, but I too pay a
11 price, and his daughter, and his Godmother, and the rest of
12 the large family that loved him, and that price is that,
13 although he will always be in the hearts of all those
14 people, he will never be in the lives of them.

15 And there is one other thing, surprisingly, that occurs
16 to me, that this man took that day, and that is he took a
17 part of the lives of all of his family and friends that are
18 here today that care about him like we cared about my son.
19 And they will suffer as we suffered for as long as they
20 live. And this is all because of a selfish, bad decision
21 that this man made because he believed that it was okay to
22 take something that wasn't his without prior knowledge or
23 remuneration for stealing it. And then went that final,
24 fatal step further and took his life.

25 And, strangely, it's occurred to me that, therefore,

1 Thompson's life and this young man's life are, therefore,
2 intertwined together forever just as they are intertwined
3 with his family and with mine. It's not something I would
4 want, but it's the reality, and I think it's important for
5 this Court and for this Defendant to understand that, to
6 understand that for one, greedy, crazy moment he took an
7 awful lot from an awful lot of people. If you will, from
8 his people and from my people.

9 I'm angry with him. I suppose I hate him. Hopefully
10 that will go away. I certainly can't, at this point in
11 time, forgive him for that, but I know that, for me to do
12 that, that's the right thing to do and the Christian thing
13 to do, and I will work on it.

14 And it occurs to me also that he ought to work on
15 understanding the gravity of his act, and, more than that,
16 understand the size of it. It's not shooting one person in
17 a garage one night to steal from him. It's very negatively
18 affecting a lot of people for a long time.

19 I don't hear anything that tells me that he's repentant
20 about it or that he's thought about it, but that's not a
21 problem now. With the justice meted out by this Court,
22 he'll have plenty of time to do that. And I hope for his
23 sake, and for the sake of his family, that he does that
24 while he spends those long years paying for what he did to
25 us.

1 One other comment and I want to make, and that is to
2 tell you how much I and my family appreciate the diligent
3 work, and the professionalism and the kindness that we've
4 been shown by the investigators, by the Court people, by
5 Your Honor, by everybody else. They've been very helpful
6 and, and kind to us all in helping us get to this point
7 today and get from this point on. And, for that, I thank
8 you, and I thank them.

9 And I'm glad that that's part of their record because
10 they deserve to be -- have acknowledged the good that
11 they've done for the little they can for us.

12 Thank you.

13 THE COURT: Thank you, Mr. Demas.

14 You're in agreement with the, the agreement that was
15 worked out?

16 MR. DEMAS: Yes.

17 THE COURT: Okay. I wish you the best under the
18 circumstances.

19 MR. DEMAS: I, I came here for -- I didn't want to come
20 here.

21 THE COURT: Oh, I understand.

22 MR. DEMAS: Thompson owed -- we owe it to Thompson to
23 come here and to witness this proceeding. And that's why
24 we're here.

25 THE COURT: Well, thank you for your effort.

1 MR. DEMAS: Thank you.

2 SOLICITOR BULSA: Yes, sir.

3 THE COURT: Anything else?

4 SOLICITOR BULSA: No, sir.

5 THE COURT: All right. On Indictment 2017-01798,
6 that's the indictment for murder, wherein you pled guilty,
7 sentence of the Court is you, Carnelius Daekwon Stringer, be
8 confined to the South Carolina Department of Corrections for
9 a period of 30 years.

10 Indictment 2017-01799, armed robbery, wherein you pled
11 guilty, a like sentence to run concurrently, and he's to be
12 given credit for any time that he's entitled to pursuant to
13 24-13-40.

14 MR. ALLEN: Thank you very much, Your Honor.

15 SOLICITOR BULSA: Thank you, Your Honor.

16

17

18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

19

20

21

22

23

24

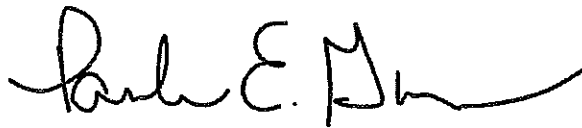
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 5th day of February, 2018.

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

July 3rd, 2018

A handwritten signature in cursive script, appearing to read 'Pamela E. Green', written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Keshawn M. Rice, SCDC #378305,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2021-CP-42-01217

ORDER OF DISMISSAL

This matter is before the Court pursuant to an application for post-conviction relief ("PCR") filed by Keshawn M. Rice ("Applicant") on April 19, 2021. On May 23, 2024, an evidentiary hearing convened before the Honorable Heath P. Taylor. Applicant was present and represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant called as witnesses Richard H. Warder, Esquire, and Kathrine H. Hudgins, Esquire. Respondent did not call any witnesses. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") serving a thirty (30) year sentence. In March 2017, the Spartanburg County Grand Jury indicted Applicant for murder (2017-GS-42-1795), 1st degree burglary (2018-GS-42-0649), and armed robbery (2017-GS-42-1796). These charges arose from incident in which Applicant and his co-defendants (Carnellious Stringer,¹ Elian Nava, and Kameron Wilson) went to the victim's home

¹ Carnellious Stringer pled guilty to murder and armed robbery before the Honorable J. Derham Cole on February 5, 2018, and received a sentence of thirty (30) years.

FILED
2024 JAN 13 PM 12:11
CLERK OF COURT
SPARTANBURG COUNTY
AMY WOOD

2021-CP-42-01217

to buy marijuana. Applicant and Stringer were armed with guns. In a plot to rob the victim, a scuffle ensued, and Stringer shot victim three (3) times, resulting in victim's death.

On February 5-7, 2018, Applicant proceeded to a jury trial before the Honorable J. Derham Cole, which resulted in a mistrial. On November 13-15, 2018, Applicant proceeded to a second jury trial before the Honorable J. Derham Cole. Deputy Solicitor Derrick Balsa prosecuted the case. Richard Warder, Esquire, ("Counsel") represented Applicant. The jury convicted Applicant of voluntary manslaughter, the lesser included of murder; 1st degree burglary; and armed robbery. Judge Cole sentenced Applicant to a concurrent sentence of thirty (30) years for each charge.

Applicant filed a timely notice of appeal. Applicant was represented on appeal by Appellate Defender Kathrine H. Hudgins, who filed an *Anders*² brief, raising the following issue:

Did the trial judge err in allowing an officer to speculate that Appellant could have left the county during the ten days between the time of the shooting and the time Appellant turned himself in to police when there was no evidence that Appellant left the country?

On March 10, 2021, the Court of Appeals dismissed the Applicant's appeal following review pursuant to *Anders*. The Remittitur was sent on March 31, 2021.

CURRENT APPLICATION

Applicant timely commenced this PCR action on April 19, 2021, alleging he is being held in custody unlawfully because of ineffective assistance of counsel for failure to properly prepare and investigate prior to trial, failure to present a reasonable defense, and failure to make objections and motions. On May 21, 2021, Respondent filed its Return and Motion for a More Definite Statement. On June 9, 2021, Respondent filed an Amended Return and Motion for a More Definite Statement. On March 14, 2023, Applicant filed an amendment to his PCR application, raising the following allegations (verbatim):

² *Anders v. California*, 386 U.S. 738 (1967).

FILED
2025 JAN 13 PM 12:14
CLERK OF COURT
CRIMINAL COURT
ANY W. COX
2021-CP-42-01217

[Ineffective Assistance of Trial Counsel]

1. Trial counsel rendered ineffective assistance that was prejudicial to Applicant when he failed to properly investigate, prepare and effectively represent Applicant prior to and at his second trial. Specifically, Applicant alleges the following deficiencies:
 - a. Trial counsel failed to properly advise Applicant and handle matters related to the additional indictment [burglary 1st degree] (2018-GS-42-0649).
 - b. Trial counsel failed to investigate and/or utilize witnesses for the defense. **[Allegation withdrawn]**
 - c. Trial counsel failed to effectively handle matters related to Cesar Mendez. Specifically, but not limited to the following:
 - i. Failure to prepare and/or utilize Cesar Mendez as a witness at trial.
 - ii. Failure to properly handle the State's Motion in Limine regarding matters related to the testimony of Cesar Mendez and/or failure to proffer his testimony.
 - iii. Failure to object to hearsay that violated the Confrontation Clause when law enforcement testified regarding the information provided by Cesar Mendez.
 - d. Trial counsel failed to effectively handle matters related to Applicant's co-defendant Carnellious D. Stringer. Specifically, but not limited to the following:
 - i. Failure to utilize and/or obtain the transcript of Mr. Stringer's plea on February 5, 2028.
 - ii. Failure to address the information provided regarding Mr. Stringer's plea to the court during sentencing.
 - e. Trial counsel failed to advise Applicant and prepare for the State's evidence of flight that was not presented in the first trial. Trial counsel failed to object to the line of questioning and to hearsay evidence offered regarding flight at Applicant's second trial.
 - f. Trial counsel failed to object and/or move for a mistrial when Kameron Wilson referenced the first trial during his direct testimony.
 - g. Trial counsel failed to make objections and arguments in the first and second trial and prepare in the second trial for the testimony of Zaria Owens and the State's witnesses regarding meeting with her.
 - h. Trial counsel failed to effectively utilize information contained in discovery and testimony offered at the first trial to cross-examine and/or impeach the following witnesses:
 - i. Jonathan Lawson
 - ii. Kevin Bowen
 - iii. Wendy Thomas
 - iv. Mary Ann Kotlarich
 - v. Kameron Wilson
 - vi. Elian Nava

FILED
2025 JAN 13 PM 12:15
CLERK OF COURT
SPRINT LENO COUNTY
ANY VA COX

- vii. Dr. Wren
- i. Trial counsel failed to present a reasonable defense through his closing argument and failed to present the theory of the case provided in the first trial.

[Ineffective Assistance of Appellate Counsel]

2. Appellate counsel provided ineffective assistance that was prejudicial to Applicant when she failed to raise any meritorious issues on appeal.

Before this Court are the Spartanburg County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; the trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Trial Counsel's Testimony

Richard Warder ("Counsel") testified that he has been practicing law for fifty (50) years, including thirty (30) years exclusively in criminal defense. Counsel testified that he was retained by Applicant's family. Counsel testified that he represented Applicant in his first trial in February 2018. Counsel testified that he does not recall a motion to be relieved as counsel after Applicant's first trial but the fact that he represented Applicant in his second trial assumes Applicant did not relieve Counsel. Counsel testified that he did not obtain a transcript from Applicant's first trial but has done so [before]. Counsel testified that the purpose for getting a transcript from the first trial would be for impeachment materials.

Counsel testified that in preparation, he files discovery motions and prepares the case to know the facts. Counsel testified that he did not hire a private investigator for Applicant's case but conducted an independent investigation with an investigator who worked on the case. Counsel testified that he reviewed the discovery with his investigator, read the investigative reports, and statements. Counsel testified that the State's theory was that Applicant, and others, went to steal marijuana, and there was a shooting. Counsel testified that his defense strategy was to create

reasonable doubt and argue that although Applicant was present, he was not the trigger man.

Regarding the burglary indictment, Counsel testified that the State motioned for the defense not to comment on the timing of the indictment, and Counsel told the court that if something arises regarding timing that would be beneficial to Applicant, he would ask about it. (Nov. Tr. 15-16). Counsel testified that timing of the indictment did not become relevant during the second trial.

Regarding Cesar Mendez, Counsel testified that Mendez was a third-person that was going to the victim of the robbery plot, but Mendez did not have marijuana, so he took Applicant and his co-defendants to his supplier. Mendez testified that he reviewed statements made by Mendez and investigative reports with his investigator but did not interview Mendez. Counsel testified that he does not recall an Order for Transport for Cesar Mendez (Appl.'s Ex. 5). Counsel testified that he had a general recollection of what Mendez's testimony would be but does not recall his strategy for not calling Mendez. Counsel testified that there was "somewhat danger" in calling Mendez to testify, and Mendez was present at the scene of the shooting and could have identified the shooters. Counsel testified that he did not recall a SLED report that indicated the presence of GSR on Mendez (Appl.'s Ex. 6). Counsel testified that the GSR report might have fit into the defense strategy or not. On cross-examination, Counsel agreed that he would expect GSR to be on Mendez since it was known that Mendez shot at the robbers. (Nov. Tr. 207).

Counsel testified that the State made a motion in limine to preclude the questioning of the victim's mother, Mary Ann Kotlarich, regarding her moving marijuana. Counsel testified that he questioned Kotlarich in the first trial about moving marijuana.³ Counsel testified that he did not believe it was necessary to call Mendez to contradict Kotlarich's testimony. Counsel testified that

³ The court excluded the testimony in Applicant's second trial since Kotlarich had denied the allegation. (Feb. Tr. 116-17; Nov. Tr. 14). The court stated that it would permit questioning of Kotlarich regarding the marijuana if Applicant had another witness to contradict the denial. (Feb. Tr. 13-14).

FILED
JAN 13 2021
CLERK OF DISTRICT COURT
ARIZONA
ADVISORY

he does not recall a reason for not getting into the testimony in his second trial but his trial strategy changes depending on what Counsel believes is most effective based on the facts presented at trial. Counsel testified that he does not recall asking the court to proffer Kotlarich's testimony. Counsel testified that if he had crossed Kotlarich on the marijuana, he does not believe it would have changed the outcome.

Regarding Kameron Wilson's mentioning Applicant's first trial, Counsel testified that he does not believe asking for an instruction for the jury to disregard the comment would have changed the outcome.

Regarding Kevin Bowen's testimony about what Mendez told him, Counsel testified that he objected for hearsay but does not recall the bench conference from seven (7) years ago (Nov. Tr. 114:7). Counsel testified that what the judge said in the bench conference stood and does not recall mentioning the Confrontation Clause. Counsel testified that if he had objected for violation of the Confrontation Clause, and Bowen's testimony were excluded, he does not believe it would have changed the outcome of trial. Regarding Carnellious Stringer's testimony, Counsel testified that he cross-examined the best he could with the facts he had. Counsel testified that the case was that Applicant and others got together, and everyone involved was culpable. Counsel testified that he believes if he had obtained a transcript from Stringer's guilty plea that it would not have mattered in Applicant's trial.

Regarding testimony of flight, Counsel testified that he does not recall flight being in Applicant's first trial and might have been suspicious of flight. Counsel testified that he does not recall speaking to Cheryl Rice, Lakeisha Rice, or Richie Foster or Kim Parnell. Counsel testified that he does not recall the purpose of his cross-examination of Cheryl Rice but did not believe Cheryl Rice's testimony was material to the case. Counsel testified that he did not believe there

2021-CP-42-01217
Page 15
CITY OF COVINGTON
SHERIFF'S OFFICE
ADAM COX

was a basis to object to Lakeisha Rice's testimony that Applicant was in an alternative school and does not believe the exclusion of Rice's testimony would have changed the outcome. Counsel testified that he does not know why he did not cross-examine Lakeisha Rice but did not see a reason to. Regarding Kim Parnell's testimony, Counsel testified that he believed it was objectionable as hearsay but does not recall why he did not object but thinks the State was trying to impeach Zaria Owens. Regarding Richie Foster's testimony, Counsel testified that he crossed Foster about flight. Counsel further testified that flight was not a material issue in the case, and he does not believe flight had an effect on the outcome of trial. Counsel testified that he believed the State interjected the speculation first. Regarding Zaria Owens' testimony, Counsel testified that he spoke to Owens before trial but does not recall the extent of the conversation. Counsel testified that he did not cross-examine Owens because he did not believe it would be beneficial to the case. Counsel testified that the hearsay testimony (Nov. Tr. 244) was objectionable, but he does not know of a specific reason for not objecting. Regarding Jonathan Lawson, Counsel testified that there was testimony of a struggle in the second trial, and Counsel believed the testimony to be favorable to Applicant.

Counsel testified that two trials are never the same, some witnesses' testimonies change between the first and second trial. Counsel testified that he does not recall any of the witnesses' testimonies being substantially inconsistent between Applicant's first and second trial, and the State's theory of the case remained constant. Counsel testified that he does not believe cross-examining the witnesses on minor inconsistencies would have changed the outcome of Applicant's trial. Counsel testified that a single trial depends on how the jury perceives the cases. Counsel testified that it is reasonable for an attorney to change their strategy as a trial progresses. Counsel testified that he was prepared for Applicant's second trial. Counsel testified that using prior

FILED
2021 JAN 13 PM 2:15
CLERK OF COURT
SPRINGFIELD, MISSOURI
2021-CP-42-01217

testimony for impeachment depends on whether the facts are significant. Counsel testified that he made arguments in closing based on what was different in the second trial and what he believed to be most effective. Counsel testified that the State had sufficient evidence to convict Applicant, and Counsel did the best he could with the facts and evidence given.

Appellate Counsel's Testimony

Katherine Hudgins ("Appellate Counsel") testified that she was appointed to Applicant's case as appellate defender. Appellate Counsel testified that she read and reviewed the trial transcript from Applicant's trial to look for preserved errors and meritorious issues. Appellate Counsel testified that she does legal research and writes the brief. Appellate Counsel testified that she files an *Anders* brief if she does not find meritorious issues that may result in a reversal. Appellate Counsel testified that she filed an *Anders* brief in Applicant's case. Appellate Counsel testified that her hands were tied in Applicant's case because of issues that were not preserved by objection. Regarding the speculation issue, Appellate Counsel testified that while Counsel objected to it, she believed Counsel opened the door to this issue. Appellate Counsel testified that she wrote Applicant a letter (Appl.'s Ex. 3) to explain to Applicant why she filed an *Anders* brief in his case. Regarding the impeachment testimony of Zaria Owens, Appellate Counsel testified that Owens' testimony was properly admitted over Counsel's objection as impeachment under Rule 613(b). Appellate Counsel testified that there was no discussion of a *Sierra* argument. Regarding the testimony of Richie Foster about Zaria Owens, Appellate Counsel testified that she could not raise the issue on appeal because there was no objection. Regarding Deputy Bowens' testimony about what Cesar Mendez said, Appellate Counsel testified that Counsel objected to the statements for hearsay but not for a Confrontation Clause violation, which did not preserve the issue for appeal. Regarding speculation of flight, Appellate Counsel testified that Counsel's objection was weak

since Counsel asked about it, opening the door to the solicitor's testimony. Regarding Kim Parnell's testimony about Applicant's mother, Appellate Counsel testified that the testimony should have been objected to, and Appellate Counsel would have raised this issue on appeal if preserved. Regarding Kameron Wilson's reference to Applicant's first trial, Appellate Counsel testified that the reference should not have been made, and she would have raised the issue on appeal if Counsel had objected. Regarding a *Sierra* issue, Appellate Counsel testified that testimony by the solicitor was problematic, and she would have raised the issue on appeal if preserved. Appellate Counsel testified that in the *Sierra* case, the solicitor did not have a third-party present when the solicitor spoke to the witness. Appellate Counsel agreed that the solicitor in Applicant's case had a third-party present who testified at trial and was able to be cross-examined. Appellate Counsel testified that she could not say whether the Court of Appeals would have ruled in Applicant's favor on all the issues that could have been raised if preserved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the

FILED
2021 JAN 13 PM 12:55
CLERK OF COURT
SOUTH CAROLINA
APPELLATE COURT
COLUMBIA, SC

adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing “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.

1. Failure to Properly Investigate, Prepare, and Effectively Represent Applicant Prior to and at his Second Trial

This Court finds Applicant failed to prove Counsel was ineffective for failing to properly investigate, prepare, and effectively represent him prior to and at his second trial. “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “The scope of a reasonable investigation depends on a number of issues, but at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642

S.E.2d 590, 597 (2007). Counsel's duty to investigate is limited to reasonable investigations or a reasonable decision that makes particular investigations unnecessary. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597; *Strickland*, 466 U.S. at 691. In applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation should be evaluated for reasonableness under all the circumstances with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop if counsel had more fully prepared. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The applicant must further present evidence demonstrating how additional preparation and the discoverable matters or defenses would have resulted in a different outcome. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (holding applicant's allegation that counsel's preparation was inadequate was merely speculative, and applicant failed to prove he was prejudiced by counsel's preparation), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds Counsel's investigation, preparation, and representation of Applicant was reasonable under prevailing professional norms and thus, was not deficient. This Court finds credible Counsel's testimony that he was prepared to try Applicant's case. This Court finds credible Counsel's testimony that he reviewed discovery with an investigator on his staff. This Court finds credible Counsel's testimony that his defense strategy was to create reasonable doubt.

FILED
2021 JUN 13 PM 12:15
CLERK OF COURT
SOUTH CAROLINA
JUVENILE COURT
2021-CP-42-01217

and argue that although Applicant was present, he was not the trigger man. This Court finds credible Counsel's testimony that, in his experience, trial strategies change between a first and second trials based on the information that is presented to the jury. This Court finds credible Counsel's testimony that the State's theory of the case remained constant between the first and second trials. This Court finds credible Counsel's testimony that he made arguments in closing argument based on what was different in the second trial and what he believed to be most effective. This Court finds Applicant failed to prove he was prejudiced by Counsel's investigation, preparation, and representation by failing to present evidence demonstrating how additional investigations or preparation by Counsel would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

A. Failure to properly advise Applicant and handle matters related to the additional indictment for first-degree burglary (2018-GS-42-0649).

This Court finds Applicant failed to prove Counsel was ineffective for failing to properly advise him and handle matters related to the indictment for first-degree burglary. This Court finds credible Counsel's testimony that the burglary indictment and the timing thereof were immaterial in Applicant's second trial. This Court finds the record reflects Counsel informed the court that he would bring up the timing of the indictment if it became apparent that the timing was beneficial to Applicant. (Nov. Tr. 15-16). This Court finds Applicant failed to prove prejudice by failing to show a reasonable probability the result of trial would have been different but for Counsel's performance in handling the burglary indictment. Thus, Applicant failed to meet his burden.

B. Failure to investigate and/or utilize witnesses for the defense. [Allegation withdrawn by Applicant]

C. Failure to effectively handle matters related to Cesar Mendez.

Failure to call Cesar Mendez as a witness at trial.

Failure to properly handle the State's motion in limine regarding the testimony of Cesar Mendez and failure to proffer his testimony.

This Court finds Applicant failed to prove Counsel was ineffective for failing to call Cesar Mendez as a witness at trial and failure to proffer his testimony. At trial, the State made a motion in limine to exclude the defense from question whether Mary Ann Kotlarich, the victim's mother, told Cesar Mendez to move or hide marijuana. (Nov. Tr. 11). Counsel informed the Court that Kotlarich testified in the first trial and denied telling Mendez to move or remove marijuana. (Nov. Tr. 13). When asked by the court if Counsel had a witness who could contradict Kotlarich's testimony if she denies the allegation, Counsel stated that Cesar Mendez can contradict it. (Nov. Tr. 13). When asked by the court, Counsel stated that he did not know whether he would call Mendez. (Nov. Tr. 13). The court told Counsel that he would permit questioning of Kotlarich regarding the marijuana if Counsel had a witness that could contradict Kotlarich if she denied. (Nov. Tr. 15).

This Court finds credible Counsel's testimony that although he does not recall why Cesar Mendez was not called as a witness at trial, he does not believe the testimony would have been favorable to Applicant. This Court finds credible Counsel's testimony that Cesar Mendez was present at the scene and could have identified the shooter(s). This Court finds Applicant failed to prove prejudice by failing to call Cesar Mendez as a witness in the PCR hearing. *See Glover v. State*, 318, 496, 498-99, 458 S.E.2d 285, 540 (1995) (applicant must prove counsel's inaction resulted in prejudice by producing witnesses at the PCR hearing to show a reasonable probability the result of trial would have been different based on the witness' testimony). Regarding the State's motion in limine, this Court finds Applicant failed to prove prejudice by failing prove there is a reasonable probability the result of trial would have been different but for Counsel's performance in handling the State's motion in limine. Thus, Applicant failed to meet his burden.

FILED
2025 JAN 13 PM 12:15
CLERK OF COURT
HARRIS COUNTY
HARRIS CO. TX

Failure to object to hearsay that violated the Confrontation Clause when law enforcement testified regarding the information provided by Cesar Mendez.

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to Deputy Bowen's testimony about what Cesar Mendez said for violation of the Confrontation Clause. This Court finds that Counsel objected to Bowen's testimony for hearsay, which was sustained initially. (Nov. Tr. 113:8-14). The solicitor then questioned Bowen about Mendez's emotion state, which he described as "distraught" and in "shock" when the officer arrived shortly after the incident. (Nov. Tr. 113:15-21). The solicitor then offered the testimony under the excited utterance exception of the hearsay rule. (Nov. Tr. 114-15). Deputy Bowen testified that Cesar Mendez told him that four (4) men were present, and Mendez identified Elian Nava as one of the men. (Nov. Tr. 114). Bowen testified that Mendez told him that Nava did not fire a shot, but two (2) Black males fired shots. (Nov. Tr. 115).

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object to testimony of Mendez's statements for violation of the Confrontation Clause. The Sixth Amendment's Confrontation Clause guarantees the accused right to confront witnesses against him. U.S. Const. amend VI. The Confrontation Clause bars a testimonial out-of-court statement by a witness unless the witness is subject to cross-examination by the defendant. *Davis v. Washington*, 547 U.S. 813 (2006); *Crawford v. Washington*, 541 U.S. 36 (2004). A violation of the Sixth Amendment right to confront witnesses is not a per se reversible error, but depends upon a host of factors such as (1) the importance of the witnesses' testimony in the prosecution's case; (2) whether the testimony was cumulative; (3) the presence or absence of corroborating or contradicting testimony by the witness; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the prosecution's case. *State v. Sierra*, 337 S.C. 368, 379 S.E.2d 187, 193 (1999).

Applying the factors from *Sierra*, this Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object. Mendez's statements established that four (4) men were present in the victim's garage: Elian Nava and two (2) unidentified Black men who fired shots. The State presented testimony from Elian Nava, Applicant's co-defendant, who placed himself, Cesar Mendez, Carnellious Stringer, and Applicant in the victim's garage at the time of the shooting. (Nov. Tr. 204-07). Nava testified that Applicant and Stringer had guns inside of the garage when victim was shot. (Nov. Tr. 206-07). Kameron Wilson, Applicant's co-defendant, testified that he drove Applicant and the others to the victim's house, and four (4) men got out of the car. (Nov. Tr. 150). Wilson testified that he only saw Applicant and Stringer with guns that night. (Nov. Tr. 151).

This Court finds Bowen's testimony of Mendez' statements was merely cumulative to and corroborated the testimonies of Nava and Wilson, establishing that four (4) men were present in the victim's garage including two (2) Black men with guns. This Court finds that Nava's and Wilson's testimonies sufficiently established those facts irrespective of Mendez' statements such that if Mendez' statements had been excluded from trial, it would not have made a difference. Accordingly, this Court finds Mendez's statements were not important to the prosecution's case since the information provided from the statements was presented through the testimonies of Nava and Wilson. This Court finds credible Counsel's testimony that he does not believe the result of Applicant's trial would have been different if he had objected to, and the court had excluded, Bowen's testimony regarding what Mendez told him.

This Court finds the prosecution's case was strong without Mendez' statements since two eyewitnesses, Nava and Wilson, placed Applicant and Stringer at the scene with guns when the victim was shot. This Court finds Applicant failed to prove prejudice by failing to show a

reasonable probability that the result of trial would have been different but for Counsel's failure to object to the testimony as a violation of the Confrontation Clause. This Court need not address whether Counsel was deficient for failing to object because Applicant failed to prove prejudice. *Strickland*, 466 U.S. at 697 (stating if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed). Thus, Applicant failed to meet his burden.

D. Failure to effectively handle matters related to Applicant's co-defendant, Carnellious Stringer.

Failure to utilize/and or obtain the transcript of Stringer's guilty plea.

Failure to address the information provided regarding Stringer's plea to the court during sentencing.

This Court finds Applicant failed to prove Counsel was ineffective for failing to obtain and utilize the transcript from Stringer's guilty plea and failing to give the information from the plea to the court during Applicant's sentencing. At Applicant's sentencing, the judge asked for his memory to be refreshed regarding the admissions Stringer made at his guilty plea. (Nov. Tr. 364). At Stringer's guilty plea hearing, Stringer denied knowing the names of the others that were present and admitted to shooting his firearm once. (Appl.'s Ex. 7, pages 24-25). This Court finds *credible* Counsel's testimony that he believes obtaining a transcript from Stringer's guilty plea would not have mattered in Applicant's case. Applicant and Stringer both received thirty (30) year sentences. This Court finds Applicant failed to prove he was prejudiced by failing to show there's a reasonable probability the result of his trial or sentencing would have been different but for Counsel's failure to obtain, utilize, and present information from Stringer's guilty plea. *See Harris*, 377 S.C. at 77, 659 S.E.2d at 146 (stating that even if the applicant showed counsel was deficient for failing to obtain a transcript, the applicant failed to prove the alleged deficiency prejudiced his defense).

FILED
2021 JUN 13 PM 12:17
CLERK OF COURT
SUPERIOR COURT
JANUARY 13, 2021
P. 17 V. 100

abrogated on other grounds by *Smalls*, 422 S.C. 174, 810 S.E.2d 836. Thus, Applicant failed to meet his burden.

E. Failure to Prepare for the State's Evidence of Flight that was not presented in the first trial.

Failure to Object to the Line of Questioning and Hearsay Evidence Offered Regarding Flight in Applicant's Second Trial.

This Court finds Applicant failed to prove Counsel was ineffective for failing to prepare for the State's evidence of flight in the second trial that was not presented in Applicant's first trial. This Court finds credible Counsel's testimony that the State's theory of the case remained constant between the first and second trials. This Court finds credible Counsel's testimony that he does not recall flight being in Applicant's first trial and although he might have been suspicious of flight in the second trial, he did not believe evidence of flight in the second trial flight was a material issue that had an effect on the outcome of trial. This Court finds Applicant failed to prove he was prejudiced by Counsel's performance because there was overwhelming evidence of Applicant's guilt as two (2) eyewitnesses, Nava and Wilson, testified that Applicant and Stringer had guns, and Nava testified that Stringer shot the victim during the course of the robbery. *See Brown v. State*, 383 S.C. 506, 518, 680 S.E.2d 909, 916 (2009) (stating there was overwhelming evidence of the applicant's guilt where the state presented testimony from four (4) eyewitnesses who saw the applicant committing the crime). This Court finds Applicant failed to prove there is a reasonable probability that the result of trial would have been different but for Counsel's performance regarding evidence of flight.

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the line of questioning and hearsay evidence offered regarding flight in Applicant's second trial. Investigator Kim Parnell testified in the second trial that she spoke to Applicant's mother who told

FILED
JAN 13 12:16
CLERK OF COURT
STRIKES COUNTY
ALABAMA

Parnell that she had contact with Applicant and tried to get him to turn himself in. (Nov. Tr. 233-34). This Court finds credible Counsel's testimony that he did not believe flight was a material issue that had an effect on the outcome of Applicant's trial. Since there was overwhelming evidence of Applicant's guilt, this Court finds Applicant failed to prove prejudice by failing to show a reasonable probability that the result of trial would have been different but for Counsel's failure to object to the line of questioning and hearsay testimony regarding flight. Thus, Applicant failed to meet his burden.

F. Failure to object to Kameron Wilson referencing Applicant's first trial

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to Kameron Wilson referencing Applicant's first trial. This Court finds credible Counsel's testimony that he does not believe asking for an instruction for the jury to disregard the comment would have changed the outcome. Since there was overwhelming evidence of Applicant's guilt, this Court finds Applicant failed to prove prejudice by failing to show a reasonable probability that the result of trial would have been different but for Counsel's failure to object to Wilson's reference to Applicant's first trial. Thus, Applicant failed to meet his burden.

G. Failure to make objections and arguments in the first and second trial and prepare for the testimony of Zaria Owens and the State's witnesses regarding meeting with her.

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to and prepare for the testimony of Zaria Owens and the State's witness regarding meeting with her. When questioning a witness about a prior inconsistent statement that the witness allegedly made to the cross-examiner, the cross-examiner is implicated as a witness with the natural result of pitting the cross-examiner's memory and credibility against that of the witness. *Sierra*, 337 S.C. at 373, 523 S.E.2d at 189. Absent written or recorded statements, the natural source of extrinsic

proof of the prior inconsistent statement under Rule 613, SCRE, is the testimony of the person to whom the statement was made. *Id.*

In *Sierra*, the Court of Appeals held a solicitor's questioning of a witness regarding what the witness told the solicitor was improper where there was *no independent evidence* presented to establish the witness' statement, and the solicitor argued her own version of the prior conversation to the jury. *Id.* at 376, 523 S.E.2d at 191 (emphasis added). The witness testified that the drugs in question belonged to him, and his co-defendant knew nothing about it. *Id.* at 371, 523 S.E.2d at 188. Attempting to impeach the witness for a prior inconsistent statement, the solicitor questioned the witness about statements the witness made to the solicitor in a pretrial meeting. *Id.* at 371-72, 523 S.E.2d at 188-89. The solicitor presented *no independent evidence* to establish that the witness made the statement. *Id.* (emphasis added). The solicitor argued her version of the prior conversation to the jury in closing arguments. *Id.* The Court reasoned the solicitor's attempt to impeach the witness under Rule 613 was improper because the solicitor implicated themselves as a witness, pitting the solicitor's memory against the witness' credibility, since there was *no extrinsic evidence of the witness' statement* other than the solicitor's knowledge. *Id.* (emphasis added). The solicitor violated the Sixth Amendment's Confrontation Clause by implicating themselves as a witness because the defendant was denied the opportunity to cross-examine the solicitor about the statements. *Id.* at 378, 523 S.E.2d at 192. The court determined the solicitor's statements were prejudicial to the defendant because the case was circumstantial, credibility was crucial to the case, and there was *no other evidence offered* to dispute the witness' testimony besides the solicitor's word. *Id.* at 380, 523 S.E.2d at 193.

In Applicant's second trial, Zaria Owens testified that she had contact with Applicant after the shooting, but she *denied* telling the solicitor and an investigator that Applicant was "involved."

2021 JAN 3 PM 12:15
RECEIVED
SPRINGFIELD COUNTY
ATTORNEY GENERAL
2021-CP-42501217

in a robbery, and nobody was supposed to get hurt[.]” (Nov. Tr. 231) (emphasis added). In response to Owens’ denial, the solicitor presented testimony from Investigator Thomas Smith, who was present at the meeting between Owens and the solicitor, to impeach Owens using her prior statement to the solicitor about Applicant’s involvement in the robbery. (Nov. Tr. 244-45).

Unlike in *Sierra*, the solicitor’s impeachment of Owens with her prior statements did not depend solely on the solicitor’s word or recollection because the solicitor presented extrinsic evidence through the testimony of Investigator Smith to establish that Owens had in fact made the statement. Owens was presented with sufficient information regarding the prior statement she made to the solicitor, and when she denied it, the solicitor presented the testimony of Investigator Smith to attack Owens’ credibility, which is allowed under Rule 613(b). *See* Rule 613(b), SCRE. Additionally, unlike in *Sierra*, there is no Confrontation Clause violation because Investigator Thomas testified and was subject to cross-examination by Applicant. Since the solicitor’s questioning did not violate *Sierra* or the Confrontation Clause, this Court finds Applicant failed to prove Counsel was deficient for failing to object.

This Court finds Counsel articulated a reasonable strategic decision for not cross-examining Owen because this Court finds credible Counsel’s testimony that he did not believe cross-examining Owens would be beneficial to the case. In accordance with *Strickland*, this Court defers to Counsel’s judgment. This Court finds Applicant failed to prove prejudice by failing to show a reasonable probability that the result of trial would have been different but for Counsel’s failure to object, arguments, and preparation regarding Owens’ testimony. Thus, Applicant failed to meet his burden.

H. Failure to effectively utilize information contained in discovery and testimony offered at the first trial to cross-examine and/or impeach the following witnesses: Jonathan Lawson, Kevin Bowen, Wendy Thomas, Mary Ann Kotlarich, Kameron Wilson, Elian Nava, and Dr. Wren.

FILED
JAN 13 PM 1:16
CLERK OF COURT
JAN 13 2017
2021-CP-42-01217

This Court finds Applicant failed to prove Counsel was ineffective for failing to utilize the information contained in discovery and testimony from the first trial to cross-examine and/or impeach Jonathan Lawson, Kevin Bowen, Wendy Thomas, Mary Ann Kotlarich, Kameron Wilson, Elian Nava, and Dr. Wren. Applicant cited *Harris v. State*.

In *Harris*, the Supreme Court held trial counsel was not ineffective for failing to prepare for a defendant's first and second trial by not obtaining the transcript from first trial and not impeaching witnesses in the second trial for statements made in the first trial where the witnesses' statements were essentially the same. *Harris*, 377 S.C. at 76, 659 S.E.2d at 146-47, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. The applicant alleged trial counsel was ineffective for failing to prepare for the second trial by failing to obtain a transcript from the first trial and failing to cross-examine the State's witnesses for statements made in the first trial. *Id.* Trial counsel testified at the PCR hearing that he reviewed the discovery materials; there were no additions to discovery between the first and second trials; the facts were fresh on his mind for the second trial; and he had mastered the applicant's defense and was prepared for the applicant's case. *Id.* at 74, 659 S.E.2d at 144-45. Trial counsel acknowledged there were differences in officer testimony from the first and second trials. *Id.* at 78, 659 S.E.2d at 147. In the applicant's first trial, an officer who arrested the applicant testified that the applicant stated "you got me;" however, in the second trial, a different officer, who assisted in the arrest, testified that the applicant said "you got me. I did it. You got me[.]" *Id.* The Court determined that the testimonies from both officers in the separate trials were "essentially the same," and the fact that trial counsel did not obtain a transcript to impeach the officer in the second trial was "inconsequential." *Id.* The Court held the applicant failed to prove he was prejudiced by trial counsel's preparation and failure to obtain a

FILED
2021 JAN 13 PM 12:16
CLERK OF COURT
SOUTH ALABAMA COUNTY
JAN 13 2021
2021-CP-42-01217

transcript from the first trial to impeach the witnesses for prior inconsistent statements because there was overwhelming evidence of the applicant's guilt. *Id.*

This Court has reviewed the trial transcripts and compared the testimonies of the witnesses from Applicant's first and second trials. A summary of the testimonies from the witnesses at issue are as follows:

Deputy Kevin Bowen

1st Trial: testified that he arrived and noticed a male and female. (Feb. Tr. 70). The male was a dark-skinned Hispanic who had knowledge of someone involved, and the name provided was a Hispanic name. (Feb. Tr. 71-72).

2nd Trial: testified that he arrived and noticed a male and female. (Nov. Tr. 111). The male was identified as Cesar Mendez. (Nov. Tr. 112). Mendez identified Elian Nava as the only person he knew. Mendez indicated that two (2) Black men fired shots. (Nov. Tr. 112-115).

Officer Wendy Thomas

1st Trial: testified that she arrived to assist and saw Bowen speaking to a male and female. (Feb. Tr. 76). Thomas took the female, who was identified as the victim's mother. (Feb. Tr. 76-77). The victim's mother's demeanor was distraught, and Thomas stayed with her for approximately one (1) hour until a victim's advocate and an investigator arrived. (Feb. Tr. 76-77).

2nd Trial: testified that she spoke to a female, who was identified as the victim's mother. (Nov. Tr. 111-12). The victim's mother was distraught, confused, and crying. (Nov. Tr. 118). Thomas stayed with her for approximately thirty (30) minutes. (Nov. Tr. 118).

Investigator Jonathan Lawson

1st Trial: testified that based on the location, it appeared the shooter(s) were moving around. Based on observation, it appeared that a struggle had ensued. (Feb. Tr. 94).

2nd Trial: testified that he could tell from the scene that some type of gunfight had occurred, and if a struggle ensued, things could have been kicked around. (Nov. Tr. 90).

Mary Ann Kotlarich

1st Trial: testified that she woke up to a noise around 3:34 am, got out of bed and went looking for the victim. (Feb. Tr. 105-06). She went to the garage and does not remember if the main garage door was open or closed but if opened, the victim would have been the one to open it. (Feb. Tr. 108).

She went to the front door, heard a man screaming and went back to the garage, where she saw a man standing. (Feb. Tr. 108-09). She asked the man who he was, what was going on, and where was the victim. (Feb. Tr. 109). The man responded and pointed, and she saw the victim lying on the ground. (Feb. Tr. 109-10).

2nd Trial: testified that she heard noises around 3:30 am and went looking for the victim. (Nov. Tr. 121-22). She looked around the garage but did not see anything. (Nov. Tr. 122). She does not recall whether the garage door was open or closed but if open when police arrived, she would have been the one to open it. (Nov. Tr. 123). She went to the front door, heard yelling, and went back to the garage where she saw a man standing. (Nov. Tr. 123-24). She did not know who the man was. (Nov. Tr. 124). She asked the man what was going on and where was the victim. The man pointed, and she saw the victim lying on the ground. (Nov. Tr. 124).

Kameron Wilson

1st Trial: testified that he understood from Applicant that they were going to pick up Elian Nava to rob him and talk of the robbery came up when Nava got into the car. (Feb. Tr. 131). There was no talk of a robbery before Nava got in. (Feb. Tr. 131). Applicant was involved in the robbery talk. (Feb. Tr. 132). Wilson gave the group a ride and was just the driver; Wilson was not going to rob anyone. (Feb. Tr. 132). Wilson understood that he was to stay in the car while the others committed the robbery. (Feb. Tr. 132-33). Applicant and Stringer had guns. (Feb. Tr. 138-39). While waiting in the car, Wilson heard gunshots and saw people, Applicant, Stringer, and Nava running back to the car. (Feb. Tr. 140-41)

2nd Trial: testified that he was going to Elian Nava's house to pick him up to find someone with weed. (Nov. Tr. 145). Applicant used the words "money mission" when he texted Wilson on Snap Chat and asked Wilson to pick him up. (Nov. Tr. 145). Wilson believed he was on a "money mission" when Applicant picked him up, and "money mission" could mean a lot of things. (Nov. Tr. 146). The group picked up Nava then went to Cesar Mendez because Nava believed Mendez had weed. (Nov. Tr. 146). Talk of the robbery started on the way to Mendez. (Nov. Tr. 146). Wilson did not talk about the robbery but was driving. (Nov. Tr. 146-47). Wilson knew the group was going to rob someone but continued to drive them. (Nov. Tr. 146-47). Wilson stayed in the car while the others went up to the house. (Nov. Tr. 150-51). Applicant and Stringer had guns that night. (Nov. Tr. 151). Wilson heard three (3) gunshots and saw Applicant, Stringer, and Nava running back to his car. (Nov. Tr. 153-53).

Elian Nava

1st Trial: testified that he did not really know the victim, met the victim one (1) time, and the victim sold bud to one of Nava's friends. (Feb. Tr. 174).

2025 JAN 13 PM 2:16
FILED
SPAD
2021-CP-4201217

Applicant, Nava, Stringer, and Wilson were going to rob someone; the group did not include Mendez in the robbery plan. (Feb. Tr. 177). Applicant and Stringer (A.K.A. "Neal" for Carnellious) came into the garage with guns. (Feb. Tr. 179). Applicant and Stringer started shooting. (Feb. Tr. 179). Applicant and the victim started wrestling; Stringer pointed a gun at Nava and Mendez. (Feb. Tr. 179). Nava heard gunshots but did not know if the victim was hit. (Feb. Tr. 180). After hearing shots, Stringer came back in and shot the victim in the back two (2) to three (3) times while the victim was holding onto Applicant's leg. (Feb. Tr. 180-82). Mendez pulled out his gun and started shooting at them. (Feb. Tr. 181). Nava ran back to the car with Applicant and Stringer. (Feb. Tr. 184).

2nd Trial: testified that he met the victim one (1) time but did not really know him. (Nov. Tr. 201). Nava hit up Mendez. (Nov. Tr. 199) If Mendez had marijuana, he would have been the target of the robbery. (Nov. Tr. 200). Mendez said he did not have marijuana but knew who did. (Nov. Tr. 200). Mendez was not in the robbery scheme. (Nov. Tr. 200-01). When they arrived at the victim's house, Nava was unsure whether it was still a robbery because the group did not discuss what would happen at the victim's house. (Nov. Tr. 203). When Applicant handed Nava money, Nava thought the group just wanted to buy weed. (Nov. Tr. 203). Applicant and Stringer entered the garage with guns pointed at Nava and the victim. (Nov. Tr. 205). The victim started fighting Applicant, then Nava heard gunshots. (Nov. Tr. 205). Stringer came back into the garage. (Nov. Tr. 206). While the victim was holding onto Applicant's leg, Stringer shot the victim three (3) times in the back. (Nov. Tr. 206-07). Mendez pulled out a gun and started shooting at Nava. (Nov. Tr. 207). Nava ran to the car with Applicant and Stringer. (Nov. Tr. 207).

Dr. John Wren

1st Trial: regarding the victim's position, testified that two (2) shots in the back came from the same general direction. (Feb. Tr. 249). The person that inflicted those wounds was firing down toward him in some manner. (Feb. Tr. 249). The victim had a close-range gunshot. (Feb. Tr. 249). The victim had an abraded area over his right eye and forehead with blood draining, a superficial minor laceration to his posterior and superior right ear, and contusions of the upper mid abdomen. (Feb. Tr. 250).

2nd Trial: testified that the victim's gunshot wound to the leg did not hit anything of vital importance but was potentially fatal if it had not been treated. (Nov. Tr. 267). The victim's two (2) gunshot wounds to the back were immediately fatal. (Nov. Tr. 267). [No testimony about the victim's position or abrasions.]

This Court finds the witnesses testimonies were essentially the same in the second trial as in the first trial. This Court finds that any inconsistencies between each of the witnesses' testimonies in the first and second trials were minor and inconsequential to the State's theory of the case. This Court finds credible Counsel's testimony that he reviewed discovery and was prepared for Applicant's second trial. This Court finds credible Counsel's testimony that the State's theory of the case remained constant between the first and second trials. This Court finds credible Counsel's testimony that he cross-examined the witnesses the best he could with the facts he had. This Court finds credible Counsel's testimony that using prior testimony for impeachment depends on whether the facts are significant. This Court finds credible Counsel's testimony that there were no substantial inconsistencies between the witnesses' testimonies in the first and second trial.

This Court has reviewed Counsel's cross-examination of the witnesses and finds Counsel's performance was reasonable under prevailing professional norms and thus, not deficient. Due to the overwhelming evidence of Applicant's guilt, this Court finds Applicant failed to prove prejudice by failing to show a reasonable probability that the result of trial would have been different but for Counsel's failure to cross-examine any of the witnesses in question for prior inconsistent statements. Thus, Applicant failed to meet his burden.

I. Failure to present a reasonable defense through his closing argument and failed to present the theory of the case provided in the first trial.

This Court finds Applicant failed to prove Counsel was ineffective for failing to present a reasonable defense in closing argument and failed to present the same theory of the case provided in the first trial. As *Strickland* states, "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant." *Strickland*, 466 U.S. 668, 690 (1984).

466 U.S. at 688-89. Judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689.

This Court finds Counsel's performance in closing argument in Applicant's second trial was reasonable under prevailing professional norms and thus, was not deficient. This Court finds credible Counsel's testimony that, in his experience, a trial depends on how the jury perceives the case, and it is reasonable for an attorney to change their strategy as the trial progresses. This Court finds credible Counsel's testimony that he was prepared for Applicant's second trial. This Court finds credible Counsel's testimony that he made arguments in closing based on what was presented in the second trial and what he believed to be most effective. This Court finds credible Counsel's testimony that his defense strategy was to create reasonable doubt and argue that although Applicant was present, he was not the trigger man.

This Court finds Counsel articulated reasonable strategic decisions for what he believed was best to represent Applicant, and this Court defers to Counsel's judgment. This Court finds Applicant failed to prove prejudice by failing to present some argument or defense that Counsel could have presented in the second trial that would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

Ineffective Assistance of Appellate Counsel

In analyzing ineffective assistance of appellate counsel, the court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (providing applicant must prove appellate counsel's performance was deficient and must prove prejudice by showing a reasonable probability the result of the proceeding would have been different but for counsel's errors).

2. Failure to raise any meritorious issues on appeal.

FILED
2025 JAN 13 PM 2:16
CLERK OF COURT
SPRINGFIELD
MASSACHUSETTS
2021-CP-42-01217

This Court finds Applicant failed to prove Appellate Counsel was ineffective for failing to raise any meritorious issues on appeal. This Court finds credible Appellate Counsel's testimony that she read and reviewed the trial transcript from Applicant's trial to look for preserved errors and meritorious issues. This Court finds credible Appellate Counsel's testimony that she did legal research and wrote the brief based on her research. This Court finds credible Appellate Counsel's testimony that hands were tied in Applicant's case because of issues that were unpreserved. This Court finds credible Appellate Counsel's testimony that she filed an *Anders* brief in Applicant's case because she did not find any meritorious issues. This Court finds credible Appellate Counsel's testimony that she could not say whether the Court of Appeals would have ruled in Applicant's favor on call of the issues that could have been raised if preserved.

This Court finds Appellate Counsel's representation and performance was reasonable under prevailing professional norms and thus, was not deficient. This Court finds Appellate Counsel exercised reasonable judgment in deciding which issue(s) to raise on appeal in Applicant's case, and this Court defers to Appellate Counsel's judgment. This Court finds Applicant failed to prove prejudice by failing to show a reasonable probability that Applicant's appeal would have resulted in a different outcome but for Appellate Counsel's failure to raise an issue that she could have. Thus, Applicant failed to meet his burden.

[Space left blank intentionally. Conclusion follows on next page.]

FILED
2025 JAN 13 PM 12:16
CLERK OF COURT
SPRINGFIELD, MO
2021-CP-42-01217

CONCLUSION

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

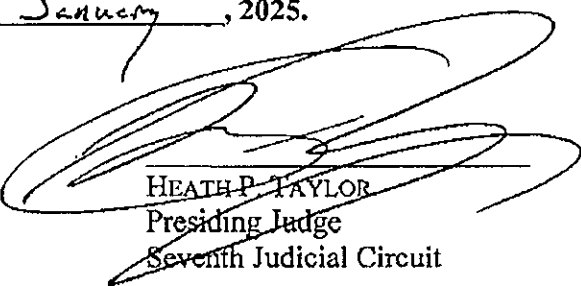
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED THIS 3rd day of January, 2025.

Orangeburg, South Carolina


HEATH P. TAYLOR
Presiding Judge
Seventh Judicial Circuit

FILED
2025 JAN 13 PM 12:16
CLERK OF COURT
SEVENTH JUDICIAL CIRCUIT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CASE NO.: 2021-CP-42-01217

Keshawn Rice, 378305,

Plaintiff,

vs.

State of South Carolina

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904
Address:
PO Box 2147
Leesville, SC 29070
Phone: 803-908-3266 Fax _____
E-mail: Blanchettelaw@gmail.com Other: _____

Defendant's Attorney:
Bryan Hall, Bar No. _____
Address:
PO Box 11549
Columbia, SC 29211
Phone: 803-734-3737 Fax _____
E-mail: _____ Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Rule 59, a & e

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

January 21, 2025
Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

FILED
2025 JAN 31 PM 3:59
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
Keshawn Rice, 378305,)	
Applicant,)	2021-CP-42-01217
v.)	
State of South Carolina,)	MOTION PURSUANT TO
Respondent.)	RULE 59 (a) & (e), SCRCP

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 19, 2021. Pursuant to Rule 59 (a) & (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

PROCEDURAL HISTORY

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 19, 2021. Respondent submitted a Return and Motion for More Definite Statement on May 18, 2021 and an Amended Return and Motion for a More Definite Statement on June 9, 2021.

On December 21, 2021, Applicant, through counsel, filed a Motion for Discovery. The Honorable R. Keith Kelly issued an Order Authorizing Discovery on March 28, 2022.

On March 14, 2023, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief. The Amendment reads as follows:

As a result of discovery received and the investigation conducted, Applicant would move to amend his original Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

FILED
2025 JAN 31 PM 3:59
CLERK OF COURT
SOUTH CAROLINA
SPARTANBURG COUNTY

1. Trial counsel rendered ineffective assistance that was prejudicial to Applicant when he failed to properly investigate, prepare and effectively represent Applicant prior to and at his second trial. Specifically, Applicant alleges the following deficiencies:
 - a. Trial counsel failed to properly advise Applicant and handle matters related to the additional indictment (2018-GS-42-0649).
 - b. Trial counsel failed to investigate and/or utilize witnesses for the defense.¹
 - c. Trial counsel failed to effectively handle matters related to Cesar Mendez. Specifically, but not limited to the following:
 - 1) Failure to prepare to and/or utilize Cesar Mendez as a witness at trial.
 - 2) Failure to properly handle the State's Motion in Limine regarding matters related to the testimony of Cesar Mendez and/or failure to proffer his testimony.
 - 3) Failure to object to hearsay that violated the Confrontation Clause when law enforcement testified regarding the information provided by Cesar Mendez.
 - d. Trial counsel failed to effectively handle matters related to Applicant's co-defendant Carnellious D. Stringer. Specifically, but not limited to the following:
 - 1) Failure to utilize and/or obtain the transcript of Mr. Stringer's plea on February 5, 2018.
 - 2) Failure to address the information provided regarding Mr. Stringer's plea to the court during sentencing.
 - e. Trial counsel failed to advise Applicant and prepare for the State's evidence of flight that was not presented in the first trial. Trial counsel failed to object to hearsay evidence offered regarding flight at Applicant's second trial.

¹ At the evidentiary hearing, Applicant's counsel informed the Court that Applicant would not be calling any additional witnesses to support the claim that counsel failed to call witnesses.

² At the evidentiary hearing, this issue was verbally amended as follows: Trial counsel failed to advise Applicant and prepare for the State's evidence of flight that was not presented in the first trial. Trial counsel failed to object to the line of questioning and to hearsay evidence offered regarding flight at Applicant's second trial.

FILED
2025 JAN 31 PM 3:59
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. JOX

- f. Trial counsel failed to object and/or move for a mistrial when Kameron Wilson referenced the first trial during his direct testimony. Transcript p. 159, lns. 10-14.
 - g. Trial counsel failed to make objections and arguments in the first and second trial and prepare in the second trial for the testimony of Zaria Owens and the State's witnesses regarding meeting with her.
 - h. Trial counsel failed to effectively utilize information contained in discovery and testimony offered at the first trial to cross-examine and/or impeach the following witnesses:
 - 1) Jonathan Lawson
 - 2) Kevin Bowen
 - 3) Wendy Thomas
 - 4) Mary Ann Kotlarich
 - 5) Kameron Wilson
 - 6) Elian Nava
 - 7) Dr. Wren
 - i. Trial counsel failed to present a reasonable defense through his closing argument and failed to present the theory of the case provided in the first trial.
- 2. Appellate counsel provided ineffective assistance that was prejudicial to Applicant when she failed to raise any meritorious issues on appeal.
 - 3. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On May 23, 2024, an evidentiary hearing was convened in Spartanburg County in front of the Honorable Heath P. Taylor. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Bryan T. Hall, Assistant Attorney General. As witnesses, Applicant called Richard H. Warder, Esquire, and Kathrine H. Hudgins, Esquire. Respondent did not call a witness.

At the conclusion of the hearing, the Court took the matter under advisement. On January 25, 2025, an Order of Dismissal was issued, which was filed on January 13, 2025.

Applicant, through counsel, received a copy of the signed and filed Order via email on January 13, 2025, from which this Motion timely follows.

ARGUMENT

Pursuant to Rule 59 (a) & (e), SCRCP, Applicant moves before the Court to open the standing Order, amend the findings of fact and conclusions of law and/or direct the entry of a new judgment.

In *Marlar v. State*, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. *See also* S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that the Court ensure that specific findings of fact and conclusions of law are entered on each issue raised in the Amendment and that the record before the Court and testimony of each witness is properly addressed in the standing Order of Dismissal (“Order”).³

Additionally, Applicant would ask the Court to review the record provided to and made before the Court and reconsider the denial of relief.⁴ Applicant would ask the Court to reconsider the facts, reasonings and findings set forth in the standing Order and find that relief should be granted. Applicant submits that the record before the Court establishes that counsel rendered ineffective assistance that directly affected the outcome of the second trial. Applicant submits that Attorney Warder’s testimony did not establish

³ It appears that the bolded portion of issue 1(f) was not specifically addressed in the Order: Trial counsel failed to object and/or move for mistrial when Kameron Wilson referenced the first trial during his direct testimony. Transcript p. 159, lns. 10-14.

⁴ Applicant also submits the analysis of the record and law in the standing Order is presented in the light most favorable to the State.

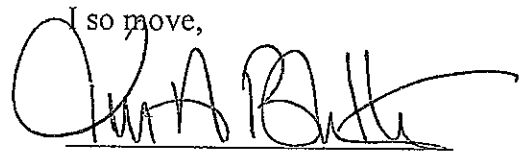
FILED
2025 JAN 31 PM 3:59
CLERK OF COURT
SPARTANBURG COUNTY
AMY A. COX

effective assistance when he was asked about the allegations set forth in the Amendment and the record before the Court. Furthermore, Applicant submits the testimony of Attorney Hudgins supports a finding that the errors and omissions of trial counsel resulted in her inability to raise additional viable issues on appeal.

Applicant submits that the record before this Court establishes that Attorney Warder failed to pivot from Applicant's first trial and properly prepare and represent him prior to and during his second trial. As alleged in the Amendment and addressed at the evidentiary hearing, Applicant submits that Attorney Warder made clear and prejudicial errors throughout the trial that amounted to ineffective assistance requiring the granting of a new trial.

CONCLUSION

In conclusion, Applicant would request that the Court review the full record, and alter, amend or reconsider the standing Order of Dismissal and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRPC.

I so move,


Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

January 21, 2025

FILED

2025 JAN 31 PM 3:59

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Keshawn Rice, 378305,)
Applicant,)

2021-CP-42-01217

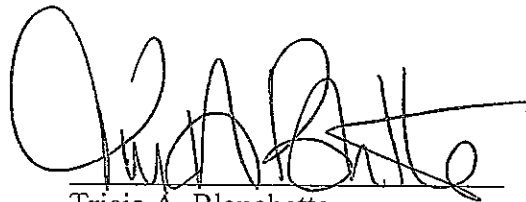
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that pursuant to the Order issued by the South Carolina Supreme Court "RE: Service by E-Mail in the Trial Courts," issued on May 6, 2022, that a true copy of Motion Pursuant to Rule 59 (a) & (e) has been served on opposing counsel this 21st day of January 2025 by sending an email to his following registered email address:

Bryan T. Hall, Assistant Attorney General
Bryanhall@scag.gov



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

January 21, 2025

FILED
2025 JAN 31 PM 3:59
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Keshawn Rice, #338305,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)

) CASE NO. 2021-CP-42-01217
)
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER IS BEFORE THE COURT on Applicant's Motion to Reconsider, pursuant to Rule 59, SCRCP, Dismissal of Applicant's Application for Post Conviction Relief. On May 23, 2024, an evidentiary hearing was convened at the Spartanburg County Courthouse before the undersigned. An Order of Dismissal with Prejudice was subsequently issued on January 3, 2025, and filed on January 13, 2025. The present motion was filed by Applicant on January 21, 2025. After considering the arguments set forth in Applicant's Motion to Reconsider as well as the facts of the case and arguments of counsel at the evidentiary hearing, this Court finds that the Application's Application for Post Conviction Relief was appropriately dismissed. Thus, this Court hereby denies Applicant's Motion to Reconsider.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Applicant's Motion to Reconsider is hereby denied.

IT IS SO ORDERED.

The Hon. Heath P. Taylor
Circuit Court Judge
First Judicial Circuit

This 24th day of January, 2025.

Columbia, South Carolina

FILED
2025 JAN 30 AM 10:41
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA